December 4, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Biden:

The undersigned organizations write to you today asking for your support in our quest for clear rules of the road in the financial services industry that take into account both the benefits and costs of regulations.

Millions of Americans are served by our organizations, which include credit unions, banks, mortgage lenders, auto finance companies, installment lenders, credit card issuers, equipment leasing and finance companies, payment processors, student loan servicers, fintechs, and many others. Large and small financial institutions alike share the Consumer Financial Protection Bureau's (CFPB) goal of making consumer financial markets work for consumers, responsible providers, and the economy as a whole.

Markets work best when the rules are clear, so it is possible to comply with them. Blog posts that contradict law or regulation,[1] vague guidance that deems common practices like using form contracts or including certain terms and conditions in contracts as alleged violations of law,[2] proclamations of the CFPB's novel interpretation of law via amicus briefs,[3] or enforcement actions that contradict state law,[4] are not setting clear expectations that it is possible to follow. Moreover, in some instances, guidance has imposed new substantive obligations on affected parties without going through the notice-and-comment process; in these instances, such guidance is not truly "guidance," but instead operates as a substantive rule.

Instead, we implore you to emphasize the need for rulemaking within your administration. Rulemaking includes an opportunity for notice and comment, giving stakeholders the chance to ask questions, review (and replicate) the underlying data and analysis in support of a proposed rule, point out potential inconsistences with different laws, and outline potential impacts on consumers and businesses. The CFPB continues to creatively avoid following the notice and comment rulemaking process as required under the Administrative Procedure Act.

In each rulemaking, agencies must thoroughly examine the costs and benefits of the proposed regulation. And they should base their conclusions on timely and relevant data that is rigorously analyzed. Unfortunately, the CFPB tends to ignore the costs of its regulations on the business community, including significant compliance costs for financial products and loan operation systems within each lender, new policies and procedures, systems acquisitions and changes, and the development of extensive training that would be required.[5] Moreover, the

[1] John L. Culhane Jr, "CFPB and DOJ Issue Joint Statement on Consideration of Immigration Status under ECOA but Omit Clear Guidance Consumer Finance Monitor," Consumer Finance Monitor, October 17, 2023, https://www.consumerfinancemonitor.com/2023/10/17/cfpb-and-doj-issue-joint-statement-on-consideration-of-immigration-status-under-ecoa-but-omit-clear-guidance/ and "AFSA Responds to CFPB Servicemember Press Release," American Financial Services Association, December 29, 2022, https://afsaonline.org/2022/12/29/afsa-responds-to-cfpb-servicemember-press-release/.

[2] Evan Weinberger, "Banks Slam Consumer Watchdog's Efforts to Define 'Abusive' Acts," Bloomberg Law, July 7, 2023, https://news.bloomberglaw.com/banking-law/banks-slam-consumer-watchdogs-efforts-to-define-abusive-acts.

[3] Br. Amicus Curiae of CFPB, *Milgram v. JP Morgan Chase*, Case No. 22-10250 (11th Cir. Apr. 7, 2022), cfpb_milgram-v-jpmorgan-chase_amicus-brief_2022-04.pdf.

[4] *See* The Bureau's enforcement action against Heights wherein the CFPB label's refinancing abusive, but South Carolina state law (Section 37-3-205) allows for refinancing; as well as the Bureau's action against USASF and against Wells Fargo where the companies are cited for a failure to ensure refunds of unearned GAP premiums, but Georgia state law (OCGA sec. 33-63-7(b)) specifies that in order to receive a refund, the borrower must provide a written request to the creditor.

[5] For example, the Small Business Administration's Office of Advocacy (Advocacy) has raised economic concerns for small businesses and consumers about several different proposed CFPB rules since January 2022. Specifically, Advocacy stated the CFPB's Small Business Lending Data Collection rule "may impact the cost of credit for small businesses and may lead to a decrease in lending to small, minority-

CFPB has failed to account for the cumulative impact of its numerous rulemakings, guidance documents, and informal proclamations via blog post or speech on banks and lending. Ultimately, these costs will be passed on to American consumers. This is contrary to the administration's goal of reducing fees for American consumers.

In October, the Office of Information and Regulatory Affairs (OIRA) published guidance to help agencies design regulations that promote competition in the marketplace.[6] Specifically, OIRA highlighted several instances when regulations hurt competition, including price controls that limit the ability of firms to enter the market with a higher-quality, higher-price offering and increasing barriers to entry, like rising compliance and risk costs. Furthermore, OIRA encourages agencies to publicize "prices, output, sales, quality metrics or other relevant information [that] can provide governments and the public with information to help make informed regulatory or consumption decisions." Unfortunately, recent CFPB rules have not embraced these examples and principles provided by OIRA, ultimately leaving consumers paying more for fewer financial services.

We hope that you will express the need for regulation via rulemaking as opposed to enforcement across your administration. We were discouraged to read that the CFPB is planning to hire 50% more enforcement attorneys during the next few months.[7] In the CFPB's 2022 financial report, 44% of the Bureau's entire workforce was already dedicated to its Supervision, Enforcement & Fair Lending Division.[8] However, only 10% of the CFPB's workforce is in the Research, Markets & Regulations Division.[9] Pursuing enforcement actions against a few players with the hopes of influencing the behavior of all other market participants is not nearly as effective in improving compliance as writing rules that apply clear standards across the industry. Furthermore, the lack of regulatory certainty created by regulation through enforcement leads to less innovation.

Like you, we believe it is important for financial service products to remain affordable for average Americans, especially those who may be un- or underbanked, credit invisible, or those with impaired credit histories. In October, the U.S. Bureau of Labor Statistics latest Consumer Price Index rose 3.7% during the last year and the costs for consumer goods such as gas prices, housing, energy, and other household prices continue to be elevated.[10] The Federal Reserve continues to maintain a higher federal funds rate, which will likely lead to higher costs of credit cards, mortgages, and vehicle loans. While the unemployment rate currently remains historically low, the personal saving rate dropped to 3.9% in August, down from the pandemic high of 32%.[11]

Our organizations represent industries that provide a pathway for many Americans seeking to improve their financial situation and achieve financial success. We share your goals and objectives of ensuring that Americans have choices among financial institutions in a competitive marketplace. However, without directional change at the CFPB away from regulation via blog posts, amicus briefs, and enforcement actions and toward clear regulations written with a thorough cost-benefit analysis, that pathway will narrow and only the most well-off consumers will be served. Spotty regulation creates an unlevel playing field that discourages financial institutions from taking risks on new products that may help underserved communities and reach customers who may pose more of a risk.

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and women-owned businesses and the "CFPB may have underestimated the costs of the proposed rule." SBA, Office of Advocacy, US Small Business Administration: Department of Advocacy. "Advocacy Submits Response To CFPB's Notice Of Proposed Rulemaking On Small Business Lending Data Collection," January 6, 2022. https://advocacy.sba.gov/wp-content/uploads/2022/01/FINAL_CFPB-Small-Business-Lending-Data-Collection-for-Filing_1.6.22.pdf.

[6] Office of Information and Regulatory Affairs (OIRA). "Guidance on Accounting for Competition Effects When Developing and Analyzing Regulatory Actions," October 23, 2023. https://www.whitehouse.gov/wp-content/uploads/2023/10/RegulatoryCompetitionGuidance.pdf.

[7] Kate Berry, "CFPB Plans to Hire 50% More Enforcement Attorneys, Support Staff," American Banker, October 5, 2023, https://www.americanbanker.com/news/cfpb-plans-to-hire-50-more-enforcement-attorneys-support-staff.

[8] Consumer Financial Protection Bureau. "Financial Report of the Consumer Financial Protection Bureau," November 15, 2022. https://files.consumerfinance.gov/f/documents/cfpb_financial-report_fy2022.pdf.

[9] *Id.*

[10] "Consumer Price Index: September 2023," Bureau of Labor Statistics, October 12, 2023, https://www.bls.gov/news.release/pdf/cpi.pdf.

[11] "Personal Saving Rate | U.S. Bureau of Economic Analysis (BEA)," n.d. https://www.bea.gov/data/income-saving/personal-saving-rate.

Thank you for your consideration,

ACA International[12]
American Financial Services Association[13]
American Land Title Association[14]
Consumer Bankers Association[15]
Credit Union National Association[16]
Equipment Leasing and Finance Association[17]
Innovative Lending Platform Association[18]
National Association of Federally-Insured Credit Unions[19]
National Bankers Association[20]
Online Lenders Alliance[21]

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[12] ACA represents approximately 1,700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies, however, are small businesses. The debt collection workforce is ethnically diverse and 70% of employees are women. According to recent ACA member data, 35% of ACA members have 10 employees or fewer, 56% of ACA members have 25 employees or fewer, and 70% of ACA members have 100 employees or fewer.

[13] Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

[14] The American Land Title Association (ALTA) represent title insurers, title agents and attorneys that provide peace of mind to Americans by insuring their property rights and closing their real estate transactions. Our members range from small, one-county operations to large national title insurers in the United States. The mission of ALTA is to improve the skills and knowledge of providers in the real property transaction, effectively advocate member concerns, and standardize products for industry use.

[15] The Consumer Bankers Association (CBA) is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

[16] The Credit Union National Association (CUNA) is the only national association that advocates on behalf of all of America's credit unions, which are owned by more than 135 million consumer members. CUNA, along with its network of affiliated state credit union leagues, delivers unwavering advocacy, continuous professional growth and operational confidence to protect the best interests of all credit unions.

[17] The Equipment Leasing and Finance Association (ELFA) is the trade association that represents companies in the $1 trillion equipment finance sector, which includes financial services companies and manufacturers engaged in financing capital goods. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. Its 580 members include independent and captive leasing and finance companies, banks, financial services corporations, broker/packagers and investment banks, as well as manufacturers and service providers. ELFA has been equipping business for success for more than 60 years.

[18] The Innovative Lending Platform Association (ILPA) is the leading trade organization representing a diverse group of online lending and service companies serving small businesses. United by a shared commitment to the health and success of small businesses in America, the ILPA is dedicated to advancing best practices and standards that support responsible innovation and access to capital for small businesses.

[19] The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 137 million consumers with personal and small business financial service products. It provides members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU proudly represents many smaller credit unions with relatively limited operations, as well as many of the largest and most sophisticated credit unions in the Nation. NAFCU represents 78 percent of total federal credit union assets and 62 percent of all federally-insured credit union assets.

[20] The National Bankers Association (NBA) is the leading trade association for the country's Minority Depository Institutions. Our members include Black, Hispanic, Asian, Pacific Islander, Native American, and women-owned and operated banks across the country who are on the front lines of closing the racial wealth gap by providing access to credit to low- and moderate income, minority, and underserved communities. Many of our members are also Community Development Financial Institutions.

[21] The Online Lenders Alliance (OLA) represents the growing industry of innovative companies developing and deploying new financial technology, including proprietary underwriting methods, sophisticated data analytics and non-traditional delivery channels, to offer online consumer loans and related products and services.