

April 16, 2024

The Honorable Patrick McHenry
Chairman, House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member, House Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Re: Opposition to H.R. 7440, The Financial Services Innovation Act of 2023

Dear Chair McHenry and Ranking Member Waters:

The undersigned consumer advocacy groups and academics write to oppose the Financial Services Innovation Act of 2023. As we wrote in October 2023 when this bill was first offered as a discussion draft, this legislation purports to provide a safe harbor for financial innovation, but too often, “innovation” is synonymous with a lack of meaningful safeguards for consumer financial products. Creating these regulatory “sandboxes” for companies would force agencies to shirk their statutory duties to enforce the law and protect consumers and instead prioritize allowing risky and unproven products into the marketplace before they have been fully evaluated to ensure that they comply with the law and are safe for consumers to use.

This legislation encourages new and unproven companies to evade existing consumer protection laws and regulations. This proposed legislation creates a clear, unassailable path for companies that do not wish to comply with longstanding, proven, effective safeguards against abuses in the financial marketplace. The end result would be a “Sahara desert” of consumer protections.

The proposed application process is wholly inadequate and will result in rubber stamping petitions for approval. The legislation would require the agency to respond to a petition within 30 days after a 60-day comment period closes (or 60 days after the petition is filed if a public comment period is waived by the agency). This is not nearly enough time to conduct a fulsome review of a new financial product, such as reviewing data, evaluating legal issues, consulting with other agencies, and evaluating the company and its background itself. This rushed approval process will consume enormous resources of agencies to timely complete the review. The approval standard of “more likely than not” is also too low and ensures that free-flowing approvals are not likely to be overturned.

Companies would not be required to provide enough information for agencies to meaningfully evaluate the product. The bill does not require companies to provide information about potential consumer risks, and it does not set forth any clear standards about what type of

data and information companies are required to provide. The bill uses vague language in the demonstration requirements for a petition and encourages companies to handpick self-serving information that fits their narrative instead of any objective measures of performance, or any information about fees and required payments accompanying the potential product. The bill also permits companies to utilize arbitration agreements with individual consumers, even further obscuring any opportunity to evaluate the product and consumers' experience with it.

Companies would be allowed to force other parties into arbitration. Section 8 (e) of this bill is bad policy that would allow a provider (a "covered person") to force another party into arbitration for matters related to a compliance agreement. Forcing another party into arbitration can already be done through terms and conditions. This unnecessary language goes further and would force a party into arbitration even where no one has agreed to a contract or terms and conditions.

Companies would be granted "get out of jail free" cards by simply filing a petition. Under this proposal, from the moment a petition is filed, no agency can initiate an enforcement action (including states, if the receiving agency provides them with notice) unless it receives a court-issued injunction. A company could simply file a petition to buy time, and then use the approval and resulting agreement as a shield despite known illegal conduct. This would not only encourage the filing of useless and baseless petitions, but the result would be that a company can choose whether it wants to be the subject of a federal or state enforcement action – to say this is backwards is a tremendous understatement. Blind endorsement of "innovations" leads to consumer harms. The past informs the present and the future, and plenty of examples demonstrate the harm of "innovative" products:

Pick-a-payment and exploding rate mortgages. The reckless mortgages that led to the foreclosure crisis were an "innovation" whose risks were largely ignored by regulators, even though they were apparent to many consumer advocates. It took years before defaults exploded to the level that they were viewed with concern and by then it was too late. Giving a stamp of approval to dangerous "innovations" could magnify the harm to consumers.

Algorithms or alternative data that lead to discrimination. A company could seek approval for use of alternative underwriting models even though it may later become clear that the model discriminates against equally qualified borrowers of color, as digital mortgages have been shown to do. Agencies cannot possibly give the complicated use of big data a gold star after a compressed and incomplete review period and should not bless untested models.

Payday loans designed to evade credit laws. Predatory lenders are regularly trying to find ways to evade consumer protections. The payday loan trade association could file a petition to approve a type of payday loan that claims not to be subject to the Truth in Lending Act, depriving consumers of protections through a process that encourages this dangerous type of "creative thinking."

For all of these reasons, we oppose the Financial Services Innovation Act of 2023.

Yours very truly,

Action for a Better Community
American Association for Justice
American Economic Liberties Project
Americans for Financial Reform
CAARMA
CASH Campaign of Maryland
Center for Digital Democracy
Center for Economic Integrity
Center for Responsible Lending
Columbia Consumer Education Council
Consumer Action
Consumer Federation of America
Consumer Federation of California
Consumer Reports
Consumers for Auto Reliability and Safety
Delaware Community Reinvestment Action Council
DC Consumer Rights Coalition
Demand Progress
Economic Action Maryland
Georgia Watch
Institute for Agriculture and Trade Policy
Kathleen Engel, Research Professor of Law, Suffolk University*
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
New Economy Project
New Jersey Citizen Action
New Yorkers for Responsible Lending
Professor Camille Z. Charles, University of Pennsylvania*
Prof. Lea Krivinskas Shepard, Loyola University Chicago
Public Citizen
Public Good Law Center
Public Justice Center
RAISE Texas
Revolving Door Project
Rise Economy (formerly California Reinvestment Coalition)
South Carolina Appleseed Legal Justice Center
Susan Block-Lieb, Fordham Law School*
Texas Appleseed

THE ONE LESS FOUNDATION

Tzedek DC

U.S. PIRG

Virginia Poverty Law Center

VOICE (Oklahoma)

Woodstock Institute

**organization listed for identification purposes only*