

August 19, 2014

By electronic delivery to:
www.regulations.gov

Bureau of Consumer Financial Protection
Attention: PRA Office
1700 G Street, N.W.
Washington, D.C. 20552

Re: Proposed Information Collection, "Debt Collection Survey from the Consumer Credit Panel," OMB Control No. 3170-XXXX; Docket No. CFPB-2014-0017

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Bureau of Consumer Financial Protection's (Bureau) request for approval by the Office of Management and Budget (OMB) of a proposed information collection, to survey consumers about their experience with debt collection.²

The current request for comment marks the second stage in the Paperwork Reduction Act (PRA) review process. On May 6, 2014, ABA commented on the initial draft of the proposed Survey.³ In our letter, we expressed general support for a consumer survey; however, we identified significant design and methodological concerns and suggested changes to the survey instrument and its administration that the banking industry believes will improve the integrity and practical utility of the proposed information collection. Our observations on the proposed survey included the following:

- The Survey fails to explore the differences between consumer experience with creditors collecting their own debt (first-party creditors) and consumer experience with third-party debt collectors.

¹ The American Bankers Association is the voice of the nation's \$14 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend nearly \$8 trillion in loans. ABA believes that government policies should recognize the industry's diversity. Laws and regulations should be tailored to correspond to a bank's charter, business model, geography and risk profile. This policymaking approach avoids the negative economic consequences of burdensome, unsuitable and inefficient bank regulation. Through a broad array of information, training, staff expertise and resources, ABA supports banks as they perform their critical role as drivers of America's economic growth and job creation.

² 79 Fed. Reg. 42765 (July 23, 2014). See also Information Collection Request Supporting Statement (ICR), available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201402-3170-004; Survey Instrument, "The Consumer's Perspective on Debt and Debt Collection: A survey by the Consumer Financial Protection Bureau to learn about Americans' experiences with debt and debt collection," available at http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201402-3170-004&icID=210380.

³ See ABA comment letter, dated May 6, 2014, available at <http://www.aba.com/Advocacy/commentletters/Documents/clDebtCollectionSurveyComment2014.pdf>.

- The Survey should be administered exclusively online in order to maximize response rates, permit the use of prescreening questions, and minimize the potential for response bias and other sources of error.
- The Survey should be designed to identify and manage potential response bias.
- The Survey should be more focused and much shorter than 77 questions in order to provide usable information from an ample number and range of participants.
- In addition, we provided suggestions for improving the clarity and neutrality of specific survey questions.

As also noted in our letter, ABA believes that value can be derived from surveying consumers if Bureau researchers are committed to transparency and to engagement with stakeholders throughout survey planning, execution, and reporting. Doing so will improve the quality of the Bureau's research, increase public acceptance of it, and further the Dodd-Frank Act's goal of empirically based consumer protection that does not harm consumers more than it benefits them.

Lamentably, the revised Information Collection Request (ICR) that the Bureau submitted for OMB approval responds only perfunctorily to stakeholder comments and reflects very little real change to the Survey instrument. It fails to resolve material design and methodological shortcomings necessary to ensure that the data generated by the Survey will have practical utility for the debt collection rulemaking. Therefore, ABA recommends that OMB disapprove of the proposed information collection request.

I. The proposed Survey will not provide data on the degree to which consumer experience with creditors collecting their own debt differs from consumer experience with third-party debt collection.

As explained in detail in ABA's comments on the Advance Notice of Proposed Rulemaking on debt collection⁴ and the initial PRA request, there are fundamental differences between first-party creditors collecting their own debt and third-party debt collectors collecting debt.⁵ We strongly believe that the Bureau's policy choices must be built upon a clear understanding of the degree to which consumer experiences *differ* and must identify those entities and practices that present the greatest risk to consumers. Accordingly, we called for the redesign of the Survey, and suggested that it be administered online so that respondents could be pre-screened (and

⁴ See ABA comment letter dated February 28, 2014 *available at* <http://www.aba.com/Compliance/Regulatory/Documents/clDebtCollection2014Feb.pdf> .

⁵ *Id.* at 4-5. See also Comment letter of ACA International, May 5, 2014, p. 4, *available at* <http://www.regulations.gov/#!documentDetail;D=CFPB-2014-0005-0055> ("The CFPB creates an overbroad definition of 'debt collector,' which includes original creditors, debt owners, third-party collection agencies, collections law firms and debt buyers. Each type of market participant is distinguishable from the others and unique. The proposed survey does not allow for responses that contemplate the different types of market participants and, as such, the conclusions drawn from the responses cannot reasonably support effective and nuanced rule making relating to the entire debt collection market.")

sorted into appropriate samples) according to their experience, i.e., whether the entity collecting the debt was a first-party creditor or a third-party debt collector.

The Bureau's response to this suggestion demonstrates its ambivalence to investigating this fundamental question. The ICR states:

For brevity, the questionnaire had defined "debt collector" for purposes of the survey to comprise both first and third parties. The Bureau *generally agrees* that it *may be* beneficial to maintain this distinction more clearly. To do so, the revised survey refers to "creditor or debt collector" throughout, rather than "debt collector." In addition, question 28 [sic] of the revised survey will allow for analysis that may highlight differences, *if any*, in consumers' experiences with creditors compared with debt collectors.⁶

Moreover, the substitution of a compound subject, "creditor *or* debt collector," for the term "debt collector" does not minimize the potential for confusion and the likelihood that data reflecting distinct debtor experiences will be improperly aggregated. Indeed, with a compound subject, there is no way to determine whether a survey respondent's answers are based on an experience with first-party or third-party collections, seriously limiting the reliability of the collected survey data and the types of conclusions that can be drawn from it.

Nor do we agree that the addition of a single question, "Thinking about the person or company that contacted you most recently about this debt, was this the creditor or a debt collector?" will support fulsome analysis of the differences between consumer experiences.⁷ That question appears in a section titled, "Your most recent debt collection", and it inquires only about "the person or company that contacted you most recently about the debt." Thus, its utility for highlighting the differences in consumer experiences will be limited to the questions asked in that section. In addition, each of the other 64 questions – including the 26 questions that precede it – makes no distinction about the entity collecting the debt, clearly failing to direct respondents' attention to *a* particular debt collection experience with either a creditor or third-party debt collector collecting the debt. Under the circumstances, this single question cannot be used to sort the data reliably.

Our prior comments also expressed the banking industry's concern with the failure of the Survey to probe the degree to which consumer experience differs based on the category of debt in collection. We explained that the complexity of certain bills – for example, medical or many phone, cable, and utility bills – may make it harder for a consumer to be certain that the amount due is correct. In addition, we pointed out that efforts to collect particular categories of debt, for example medical debt, may be more emotionally charged and may elicit a more negative response to collection-related communications than may be the case for other categories of debt in collection.

⁶ ICR, *supra* at 9 (emphasis added). The 27th question, mislabeled question 28, asks respondents the following: Thinking about the person or company that contacted you most recently about this debt, was this the creditor or a debt collector? *Please check one response.*

- The creditor (for example, the original lender, store or hospital)
- A debt collector (including a law firm or debt collection company trying to collect the debt)
- Don't know

⁷ *Id.*

The ICR expresses the Bureau’s intention to “select a sample that is stratified by the type of collection (e.g., medical or non-medical collection) or past due loan payment (e.g., credit card balance or student loan).”⁸ Presumably, researchers hope to have sufficient samples to permit analysis of the degree to which the category of debt in collection impacts a consumer’s ability to recognize the debt or their reaction to collection-related communications. Nevertheless, the failure to direct survey respondents to focus on **one** particular debt collection experience and to clearly identify the category of debt being collected means that the Survey will not generate data that will support this important analysis.

ABA believes that only by identifying the degree to which consumer experience with first and third-party collection activities differ, and precisely identifying those practices that present the most risk of consumer harm, can regulations be appropriately calibrated to protect consumers without imposing unnecessary burdens on consumers and on the industries that provide the services that they seek. We strongly urge OMB to disapprove the information collection unless the Bureau revises the survey and its administration so that respondents’ are directed to answer based on a specific debt collection experience adequately described by type of collector and type of debt being collected.

Failure to capture these distinctions will yield a poor foundation for any future debt collection policy or rulemaking. To the extent debt features, collection practices, and debtor experiences vary across categories of debt and collectors of debt, regulation should take into consideration those distinctions to tailor responsibilities of the parties rather than to impose a single set of regulatory requirements irrespective of such varied circumstances.

II. Merely providing an *option* to complete the Survey online is an illusory change to the proposed information collection.

To facilitate this depth of analysis, ABA urged the Bureau to conduct the Survey exclusively online. We explained that doing so would enable the use of screening questions to identify, and sort into appropriate samples, the type of entity collecting the debt and the category of debt being collected. Online administration permits survey questions to be appropriately tailored to probe each respondent’s experience, which will significantly simplify and shorten the survey and may increase the number of consumers that complete the survey.⁹ In addition, web-based design capabilities offer enhanced formatting flexibility, permitting attention to be drawn to important matters. For example, consumers could be reminded by pop-up boxes, or other visual aids, that they are to limit their answers to one particular debt collection experience, which will improve the reliability of the data generated. Finally, given the complexity of the survey logic and many of the questions, data quality is likely to be higher with online administration.

⁸ *Id.* at 10.

⁹ The banking industry has continuing concerns with the length of the Survey. A sixty-five question survey that spans 14 pages is likely to discourage response rates or cause survey fatigue, resulting in incomplete responses or respondents rushing through the questions without thoughtfully considering each question.

The Bureau's response to this suggestion further demonstrates its indifference to stakeholder feedback. The ICR fails to acknowledge these important capabilities and their potential for improving the efficiency and utility of the proposed information collection. Instead, it states only,

Several individual commenters indicated that the survey might obtain a higher response rate if it were conducted online or by email.... The Bureau agrees that some respondents may find it less burdensome to respond to an online survey, and the Bureau plans to provide an online option.¹⁰

Merely providing an online option to complete the Survey is an illusory change to the proposed information collection. It is a missed opportunity to take full advantage of the design and formatting features that may be built into an online survey, which we believe would improve significantly the practical utility of the data and the efficiency of the information collection.

Moreover, the manner by which the Bureau plans to offer the online option underscores the Bureau's intention to proceed primarily with a paper-based Survey. It proposes adding a link to access the survey online *on the last page of the 14-page survey*—placement that virtually assures the link will not be noticed until it is too late, if it is seen at all.¹¹

III. The revised ICR does not reflect a commitment to transparency, public participation, and collaboration.

ABA's comment to the initial PRA filing emphasized the importance of transparency and public engagement throughout the survey process, from planning through execution and analysis of the data. We believe the PRA review process should promote the Administration's repeated commitment to creating a more open government that is committed to "transparency, public participation, and collaboration."¹² Recognizing the responsibility of stakeholders to be engaged at all phases of the rulemaking process, ABA and its members expended considerable time and effort to provide constructive commentary on the proposed Survey, including specific suggestions for improving the survey instrument and its administration. However, few of our comments were addressed in the ICR submitted to OMB.

For example, we urged Bureau researchers to pretest survey questions and share the results with stakeholders, as well as any subsequent changes made to the Survey, prior to re-

¹⁰ ICR *supra*, at 8.

¹¹ The ICR also states, "The Bureau believes it cannot conduct the survey exclusively online but instead must contact respondents by mail to ensure confidentiality and compliance with FCRA." Neither privacy concerns nor the FCRA, however, prohibit the Bureau from conducting the survey exclusively online. Indeed, the process the Bureau contemplates for conducting a paper-based survey need be modified only slightly to administer the Survey online. The ICR describes the following process for administering a paper-based survey: (1) the Bureau will randomly select 10,000 credit records from the Consumer Credit Panel and will assign each a unique identifier; (2) the Bureau will transmit that list to the credit reporting agency; (3) the credit reporting agency will identify the consumers associated with each credit record and will mail each consumer a cover letter, a paper copy of the Survey instrument, and a \$5.00 inducement to complete the Survey. To conduct the survey online, the Bureau can follow steps (1) and (2) above, unchanged. Step (3) would be modified only slightly; the consumer reporting agency would mail \$5.00 and a letter that includes a link and personal code to be used to access the survey online.

¹² Open Government Directive, December 8, 2009, available at <http://www.whitehouse.gov/open/documents/open-government-directive>.

submitting the clearance request to OMB. The ICR acknowledges the Bureau's intention to pretest (by restating, *verbatim*, its discussion on pretesting included in the initial ICR filing): "The clearance includes pretesting the questionnaires to ensure the collection of reliable information while minimizing respondent burden and costs. For example, the Bureau may use cognitive interviewing or pretesting to gauge the effectiveness of survey questions and whether respondents understand each question."¹³

However, there is no commitment to sharing the results with stakeholders, and there has been no apparent effort to complete this testing and to report about the testing and any resulting changes to the Survey instrument in the resubmission filed with OMB, the preferred course of action for complex surveys.¹⁴ Accordingly, the public will have no opportunity to review and respond to the test results and any changes made.

In addition, ABA raised industry concerns about the anticipated 34% response rate and urged careful analysis of whether such a high response rate could signal the unreliability of the sample. We explained that the Bureau bases its response rate estimate, in part, on the response rate received by the "continuation survey" of the National Survey of Mortgage Borrowers (National Mortgage Survey). That survey, which remains in the field, intentionally oversampled consumers who were delinquent on their mortgages and has had a response rate to date of 33%.¹⁵ ABA believes that the National Mortgage Survey's response rate – like that anticipated for the debt collection Survey – may indicate the presence of significant response bias. Consumers who are behind on their mortgage may demonstrate a greater propensity to complete the National Mortgage Survey than would the population as a whole. Similarly, consumers who may have had a negative experience with debt collection may be more likely to respond to a survey on debt collection being conducted by the new federal agency charged with consumer protection than would be the case for the underlying population, raising legitimate questions about the representative nature of Survey responses.

In light of this possibility, our letter urged Bureau researchers to acknowledge the risk of response bias and describe steps that would be taken to identify and minimize this potential source of error. The revised ICR, however, does not offer practical information about how potential bias will be managed; it includes only the following summary statement: "With regard to differences between respondents and nonrespondents, given that the sample frame comes from credit records, the Bureau intends to analyze the presence and extent of nonresponse bias and to correct for such bias, if detected."¹⁶ We also note that the revised ICR reflects a slightly lower response rate estimate; it has been decreased from 34 to 30%; however, there is no explanation for this adjustment.¹⁷

¹³ *Id.* at 3.

¹⁴ See OMB Guidance on Agency Survey and Statistical Information Collections, January 20, 2006, at 45, *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/pmc_survey_guidance_2006.pdf. (Although we recognize that OMB guidance permits agencies that plan to pretest a survey to describe the pretesting activities in the final OMB submission, when this approach is used OMB approval usually includes as a term of the clearance a requirement that the agency report to OMB the results of the pretesting and any changes to the survey instrument that were made based on the findings.)

¹⁵ ICR *supra* at 13.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 13.

To ensure adequate samples of respondents with first-party creditor collection experience, we urged the Bureau researchers to oversample consumers whose credit report shows that they were 30-days late with a payment, but may not show further delinquency. Again, the ICR does not address this suggestion.

Overall, the information collection submission reflects obligatory, “check-box” compliance with OMB Guidance for Agency Survey and Statistical Information Collections. That guidance describes specific expectations for information collections, including the *formula* to be used to calculate response rates,¹⁸ and for surveys with expected response rates lower than 80%, a “complete description of how the expected response rate was determined, a detailed description of steps that will be taken to maximize the response rate, and a description of plans to evaluate nonresponse bias.”¹⁹ In addition, OMB’s Guidance requires researchers to estimate response rates for specific subgroups;²⁰ to examine the potential impact of nonresponse to specific survey questions; and “to specify how they will handle missing item data and assess or control potential nonresponse bias, including whether the information will be imputed.”²¹

Judged by these standards, the information collection request the Bureau has submitted demonstrates a troubling lack of commitment to transparency, public participation, and collaboration that is to inform the PRA process “to enhance the quality, utility, and clarity of the information to be collected.”²² Given the Bureau’s track record of manipulating the public release of research rather than pursuing a peer review process, these methodological shortcomings risk being overwhelmed by the agency’s spin at time of publication. As a consequence, the impact of potential sources of error very likely will be under-disclosed and under-reported.

IV. Conclusion

The banking industry appreciates the challenges of the PRA review process while also recognizing the important public purpose behind that process. However cumbersome the process may be, it is important to remember, and be faithful to, its underlying purpose: “to ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government” and to “improve the quality and use of Federal information to strengthen decision-making, accountability, and openness in Government and society.”²³

ABA does not believe that the PRA submission under review meets these standards. The revised ICR responds only perfunctorily to stakeholder comments and reflects very little real change to the Survey instrument. It fails to resolve material design and methodological shortcomings necessary to ensure that the data generated by the Survey will have practical

¹⁸ OMB Guidance, *supra* at 57-58.

¹⁹ *Id.*, at 61.

²⁰ *Id.*

²¹ *Id.*, at 67-68.

²² See Memorandum for the Heads of Executive Departments and Independent Regulatory Agencies: Information Collection Under the Paperwork Reduction Act, April 7, 2010, *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf.

²³ 44 U.S.C. § 3501.

utility for the debt collection rulemaking. Therefore, ABA respectfully urges OMB to disapprove the proposed information collection.

Respectfully submitted,

A handwritten signature in black ink that reads "Virginia O'Neill". The signature is written in a cursive, flowing style.

Virginia O'Neill
Vice President, Assistant Chief Compliance Counsel