

**CONSUMER FINANCIAL PROTECTION BUREAU
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENTS A & B**

**TELEPHONE SURVEY EXPLORING CONSUMER AWARENESS OF AND
PERCEPTIONS REGARDING DISPUTE RESOLUTION PROVISIONS IN CREDIT
CARD AGREEMENTS**

(OMB CONTROL NUMBER: 3170-XXXX)

The Consumer Financial Protection Bureau (the “CFPB”) seeks approval from the Office of Management and Budget (“OMB”) to conduct a national telephone survey of 1,000 credit card holders as part of its study of mandatory pre-dispute arbitration agreements, which is required under Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, Title XIV (the “Dodd Frank Act”).

The survey will explore the extent of consumer awareness of dispute resolution provisions in their agreements with credit card providers, as well as consumers’ assessments of such provisions. The survey will necessarily seek information regarding consumers’ perceptions and valuations of the two primary forms of dispute resolution: arbitration and litigation.¹ The survey will not, however, gather data regarding respondents’ post-fact satisfaction with arbitration or litigation proceedings.

A. JUSTIFICATION

1. Circumstances Necessitating Collection of Information

The CFPB seeks approval from OMB to conduct a national telephone survey of 1,000 credit card holders² exploring consumer awareness of and perceptions regarding dispute resolution provisions in credit card agreements. The study will be conducted in English and Spanish and include both residential landlines and cellphones.³ Participation will be voluntary.

The goals and objectives of the survey will be to help fulfill the CFPB’s obligations under Section 1028(a) of the Dodd Frank Act, which requires the CFPB to conduct a study of, and provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between entities offering or providing certain consumer financial products or services (“covered persons”), on the one hand, and consumers, on the other hand, in connection

¹ Part B of this Supporting Statement provides a more detailed discussion of the survey’s key estimates, including the required precision. Similarly, Appendix D describes how each proposed survey question relates to the key survey estimates.

² The survey will focus on general purpose “bank” credit cards (including co-branded cards) and exclude proprietary credit cards.

³ Bilingual surveys and the use of both landlines and cellphones are intended to mitigate potential biases due to non-response and noncoverage of the sampling frame.

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with the offering or providing of consumer financial products or services. A copy of Section 1028 of the Dodd Frank Act is attached hereto as Appendix A.

The CFPB is the sole proposed potential user, but data from the survey will be publicly available in at least aggregate form. The CFPB is contemplating release of survey microdata, after taking appropriate disclosure protections, such as collapsing response cells and not returning specific variables (such as the identity of respondents' credit card providers).⁴

The key estimates to be derived from the survey are the extent of consumer awareness of dispute resolution provisions⁵ in their agreements with covered persons, as well as consumers' perceptions of such provisions. The survey will necessarily explore consumers' perceptions regarding the two primary forms of dispute resolution: arbitration and litigation.⁶

First, the survey will explore the extent to which credit card consumers are aware of dispute resolution provisions in their contracts with credit card issuers.⁷

Second, it will investigate whether credit card consumers' assumptions about their formal dispute resolution options, on the one hand, correspond to the choices set out in the applicable provisions of their credit card contracts, on the other hand. The survey will ask about the extent of respondents' prior experiences with litigation or arbitration, to identify potential correlations between past experiences and current assumptions.

Third, the survey will probe whether and how consumers weigh dispute resolution provisions when choosing credit card products.

Fourth, it will investigate credit card consumers' beliefs regarding formal dispute resolution options (e.g., the smallest claim amounts respondents believe they would pursue in arbitration vs. litigation; whether respondents feel that they need a lawyer for either forum).

The CFPB proposes using probability sampling to obtain approximately 1,000 respondents aged 18 or older. Based on an expected response rate of 15-20%, the CFPB proposes screening

⁴ The CFPB is currently developing an agency-wide policy regarding the appropriate levels of desensitizing personal information for data releases. Any release of survey microdata would be contingent on such policy being finalized.

⁵ This submission uses the term "dispute resolution provisions" to reference contractual provisions that address formal dispute resolution options. This would include agreements providing for arbitration of future disputes, often referred to as "mandatory pre-dispute arbitration agreements." The term does not encompass informal dispute resolution options, such as customer service telephone help lines or covered persons' internal complaint-reporting functions.

⁶ Part B of this Supporting Statement provides a more detailed discussion of the survey's key estimates, including the required precision. Similarly, Appendix D describes how each proposed survey question relates to the key survey estimates.

⁷ The study will be limited to credit cards. Among other reasons, credit cards offer strong penetration amongst consumers across the nation (in 2009, the U.S. Census estimated that 160 million Americans would own credit cards by 2012).

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roughly 7,000 individuals with credit cards in order to reach the 1,000 respondent sample. The sample will be selected to provide good geographic coverage of the United States. The observable demographic characteristics and information about measured differences across respondents, on the one hand, and nonrespondents that agree to participate in a non-response survey, on the other hand, will be used to construct sample weights so that estimates from the survey are representative of the population of roughly 160 million credit card customers. The CFPB anticipates an estimation error of +/- 3.1% for most of the survey questions.⁸

2. Use of the Information

The CFPB has not yet retained a contractor for the proposed survey. The CFPB will rely heavily on the experience and expertise of the proposed contractor regarding the design and content of the proposed survey. Accordingly, while the descriptions contained in this Statement of Purpose represent the CFPB's estimates of proposed survey design and content, both will be modified to reflect the input of the contractor, as well as comments from the Federal Register Notice process, cognitive testing, and pretesting.

The CFPB expects that the survey sample will be selected through random-digit dialing of residential and cellular telephones to obtain data from a target sample size of approximately 1,000 credit card holders across the country.⁹ Unlike an Internet-based or mailed survey, a telephone call requires real-time interaction, which minimizes the possibility that respondents will supplement their knowledge before responding to survey questions by searching the Internet or reviewing their credit card agreements.

The results of the survey will ultimately be communicated to the public as part of the CFPB's Dodd Frank Section 1028(a) study, to ensure an equivalent, timely release. The study will provide a detailed discussion of the survey's findings and methods. The CFPB will endeavor to provide survey documentation that will allow the public to understand how to properly analyze data from the survey, as well as evaluate and potentially recreate each key estimate.¹⁰ The report will also provide an evaluation of the quality of the data and areas for potential improvement.

The study will enable the CFPB to estimate:

⁸ The CFPB currently anticipates that this survey will be conducted as an independent "stand-alone" survey of consumers. It is possible, however, that a subset of the proposed questions will instead be incorporated into a pre-existing or "omnibus" survey, regularly-administered survey of consumers. Such an approach may allow for certain benefits, such as faster implementation, but would allow the CFPB less flexibility to tailor its data collection.

⁹ As described in Part B, after retaining a contractor and obtaining comments from the 60-Day Notice period, the CFPB may determine that alternatives to a random digit dialing design may be more appropriate. For example, the sample selection could be determined via address-based sampling, where a contractor would create a sample population using address information obtained from the United States Post Office.

¹⁰ The documentation will include, where appropriate, at least the information delineated in Guideline 7.3.1 of the OMB Standards and Guidelines for Statistical Surveys (Sept. 2006).

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- Credit card consumers’ awareness and assessments (e.g., preference, valuation, and relative weight) of dispute resolution provisions, focusing on current contracts relating to consumers’ most recently-obtained credit cards;
- Whether credit card consumers’ perceptions of the formal dispute resolution options available to them correspond to the options in their contracts with covered persons;
- Whether or how dispute resolution provisions (or lack thereof) factor into consumer choice of credit card products;
- Credit card consumers’ beliefs regarding formal dispute resolution methods, as contrasted to dispute resolution provisions, in particular:
 - Their perceptions of the respective transaction costs of different formal dispute resolution methods (including proceedings in small claims courts);¹¹
 - The extent of credit card consumers’ knowledge of features of formal dispute resolution methods;
 - Credit card consumers’ beliefs about whether they would be willing to proceed in different types of formal dispute resolution proceedings without an attorney;
 - The size at which disputes are sufficiently small that credit card consumers believe that they would not be willing to initiate different types of formal dispute resolution proceedings; and
 - Credit card consumers’ assessments of the substantive fairness or effectiveness of the different formal dispute resolution methods.

Section 1028(b) of the Dodd Frank Act states that the CFPB may prohibit or impose conditions or limitations on the use of arbitration provisions, subject to certain findings, which are required to be consistent with the study conducted under subsection (a) of Section 1028. As referenced above, this consumer survey will help the CFPB fulfill its obligations relating to the Section 1028(a) study.

¹¹ The study will focus on credit card consumers’ awareness and assessment of formal dispute resolution methods prior to participation in either litigation or arbitration, in contrast to after-the-fact satisfaction with either dispute resolution mechanism. This approach will help model consumers’ decision-making processes at the point that credit cards are offered or provided to them. It also avoids normalization issues introduced by consumer opinions that have been informed by participation in one forum, without the benefit of participation in the other for context. And, as discussed below, existing work has already explored consumers’ after-the-fact assessments.

Accordingly, while the survey asks about the extent of respondents’ prior experiences with arbitration or litigation (and the outcome of any such proceedings), the data obtained will be used to better understand other answers to the survey, as opposed to estimating consumer satisfaction with either forum.

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3. Use of Information Technology

The CFPB expects that its contractor will collect data electronically through the use of computer-assisted telephone interviewing software. Such software will help reduce errors by:

- Providing uniform question sequencing;
- Automatically skipping questions, where appropriate, based on prior answers to questions;
- Randomizing how certain questions, or groups of questions, are presented (e.g., asking certain consumers about arbitration before litigation and asking others about litigation before arbitration) to mitigate the effects of potential biases caused by the order the questions are presented;
- Ensuring that some questions cannot be skipped;
- Rejecting invalid responses or data entries; and
- Randomizing the selection of non-respondents for participation in a potential non-response survey, which would take place in the same call in which the individuals declined to participate in the primary survey.

Additionally, the contractor can collect data on the length of interviews, measures of the effectiveness of specific interviewers, and unit and item non-response rates. This type of information can be used to improve the data collection process.

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4. Efforts to Identify Duplication

Related and previous empirical studies focusing on dispute resolution provisions have studied the prevalence of arbitration provisions in various types of markets.¹² Other studies have explored arbitration outcomes, measuring consumer satisfaction after a dispute¹³ or the likelihood that consumers will achieve success in an arbitration proceeding, taking into consideration both win rates and award sizes.¹⁴

¹² See, e.g., Christopher R. Drahozal & Peter B. Rutledge, "Contract and Choice," 2013 B.Y.U. L. Rev. 1 (2013) (studying the prevalence of arbitration agreements in credit card agreements); Michael L. Rustad, *An Empirical Study of Predispute Mandatory Arbitration Clauses in Social Media Terms of Service Agreements*, 34 U. Ark. Little Rock L. Rev. 643 (2012) available at <http://ualr.edu/lawreview/files/2013/01/Rustad-Normal.pdf> (studying the prevalence of arbitration agreements in social media service agreements and privacy terms); Christopher R. Drahozal & Quentin R. Wittrock, *Is There a Flight from Arbitration?*, 37 Hofstra L. Rev. 71, 90-94 (2008) (studying the prevalence of arbitration agreements franchise agreements); Theodore Eisenberg, Geoffrey P. Miller & Emily Sherwin, *Arbitration's Summer Soldiers: An Empirical Study of Arbitration Clauses in Consumer and Nonconsumer Contracts* (2008), available at http://lsr.nellco.org/nyu_lewp/136; Florencia Marotta-Wurgler, "Unfair" Dispute Resolution Clauses: Much Ado About Nothing?, in *Boilerplate: The Foundation of Market Contracts* 45, 47-48 (Omri Ben-Shahar ed., 2007) (studying the prevalence of arbitration agreements in end-user software license agreements); Linda J. Demaine & Deborah R. Hensler, "Volunteering" to Arbitration Through Predispute Arbitration Clauses: The Average Consumer Experience, 67 Law & Contemp. Probs. 55, 73-74 (2004) (studying the prevalence of arbitration agreements in consumer contracts, generally); Elizabeth Rolph, Erik Moller & John E. Rolph, *Arbitration Agreements in Health Care: Myths and Reality*, 60 Law & Contemp. Probs. 153, 171 (1997) (studying the prevalence of arbitration agreements relating to California physicians and hospitals).

¹³ *Arbitration: Simpler, Cheaper, and Faster than Litigation*, Harris Interactive Survey, conducted for U.S. Chamber Institute for Legal Reform (Apr. 2005), available at <http://www.adrforum.com/rcontrol/documents/researchstudiesandstatistics/2005harrispoll.pdf> (19% of survey respondents had entered arbitration proceedings because they were required by contract; the other 81% voluntarily opted into the arbitration proceedings); *Outcomes in Arbitration: An Empirical Study of Consumer Lending Cases*, Ernst & Young (2004) (studying outcomes in 226 by the National Arbitration Forum in lending-related consumer-initiated cases).

Other studies have looked to consumer satisfaction in specific types of arbitration proceedings. See, e.g., Gary Tidwell, Kevin Foster & Michael Hummel, *Party Evaluation of Arbitrators: An Analysis of Data Collected from NASD Regulation Arbitrations 3* (1999) cited in Michael Perino, *Report to the Securities Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations* (2002), available at <http://www.sec.gov/pdf/arbconflict.pdf> (describing substantial level of satisfaction amongst respondents, but cautioning that findings were limited by a response rate of just 10-20%, which may reflect selection bias problems).

¹⁴ See, e.g., Alexander J.S. Colvin, *An Empirical Study of Employment Arbitration: Case Outcomes and Processes*, 8 J. Empirical Legal Stud. 1 (2011); Christopher R. Drahozal & Samantha Zyontz, *Creditor Claims in Arbitration and in Court*, 7 Hastings Bus. L.J.77 (2011) (comparing the outcomes of debt collection cases brought by creditors in arbitration as compared to outcomes of debt collection cases brought in court); Christopher R. Drahozal & Samantha Zyontz, *An Empirical Study of AAA Consumer Arbitration*, 25 Ohio St. J. on Disp. Resol. 843 (2010) (summarizing prior empirical work and discussing the results of a study of 301 consumer arbitrations administered by the American Arbitration Association in 2007); Peter B. Rutledge, *Whither Arbitration?*, 6 Geo. J.L. & Pub. Pol'y 549 (2008) (summarizing prior empirical work); Alexander J.S. Colvin, *Empirical Research on Employment Arbitration: Clarity Amidst the Sound and Fury?*, 11 Employee Rts. & Employment Pol'y J. 405, 418 (2007); Mark Fellows, *The Same Result as in Court, More Efficiently: Comparing Arbitration and Court Litigation Outcomes*, 14 Metropolitan Corp. Counsel 32 (2006) (study conducted by legal counsel for National Arbitration Forum, regarding 2003-2004 National Arbitration Forum consumer arbitration awards from California) available at <http://www.metrocorpocounsel.com/articles/6988/same-result-court-more-efficiently-comparing-arbitration-and->

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In contrast, little empirical research has focused on consumer awareness and assessment of arbitration provisions, including consumer awareness when choosing credit card products.

Regarding consumer awareness, the CFPB's proposed study would not duplicate previous studies. The majority of prior awareness research has explored the extent to which consumers read consumer contracts generally. Such research largely has not focused on consumer awareness of arbitration provisions.¹⁵ The studies usually do not focus on consumer financial products and services.¹⁶ And many of these studies likely cannot be generalized to the general population of credit card users in the United States because of the studies' limited size, geographic coverage, or other limitations.¹⁷

- In 2009, the Employee Rights Advocacy Institute for Law & Policy and Public Citizen conducted a nationwide survey of 800 voters, which explored the respondents' awareness of the existence of arbitration provisions in their employment agreements and certain agreements for goods and services.¹⁸ In particular, the study polled respondents about

court-litigation-outcomes; Lisa B. Bingham & Shimon Sarraf, *Employment Arbitration Before and After the Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising Out of Employment: Preliminary Evidence that Self-Regulation Makes a Difference*, in *Alternative Dispute Resolution in the Employment Arena: Proceedings of the New York University 53rd Annual Conference on Labor* 303, 320-28 (Samuel Estreicher & David Sherwyn eds. 2004); Michael Delikat & Morris Kleiner, *Comparing Litigation and Arbitration of Employment Disputes: Do Claimants Better Vindicate Their Rights in Litigation?*, 6 A.B.A. Litig. Sec. Conflict Mgmt. 1, 10 (2003); Theodore Eisenberg & Elizabeth Hill, *Arbitration and Litigation of Employment Claims: An Empirical Comparison*, 58 Disp. Resol. J. 44, 48 (Nov. 2003-Jan. 2004); Elizabeth Hill, *Due Process at Low Cost: An Empirical Study of Employment Arbitration Under the Auspices of the American Arbitration Association*, 18 Ohio St. J. Disp. Resol. 777, 806 (2003).

¹⁵ Arbitration provisions may be subject to different formatting (e.g., typeface, font size, bold, or underlining) than other contractual provisions. See, e.g., Lorene Park, *Be loud, clear, and fair in arbitration provisions or be prepared to litigate*, Released August 7, 2012 available at <http://www.employmentlawdaily.com/index.php/2012/08/07/be-loud-clear-and-fair-in-arbitration-provisions-or-be-prepared-to-litigate> (advising employers feature arbitration agreements in a separate document, or at least in its own paragraph set off with spacing, and to “[u]se a 12-point font or larger; and use a bold, underlined, and capitalized heading that includes the words “**Arbitration Agreement**.”) (emphasis in original).

¹⁶ See, e.g., Yannis Bakos et al., *Does Anyone Read the Fine Print? Testing a Law and Economics Approach to Standard Form Contracts 1-26*, N.Y.U. Law & Econ. Research Paper Series, Working Paper No. 09-04, 2009 (studying on-line browsing habits of 45,091 households relating to online software merchants).

¹⁷ Amy Schmitz, *Access to Consumer Remedies in the Squeaky Wheel System*, 39 Pepperdine L. Rev. 279-366 (2012) (describing panel of 306 Colorado consumers); Shmuel I. Becher & Esther Unger-Aviram, *The Law of Standard Form Contracts: Misguided Intuitions and Suggestions for Reconstruction*, 8 DePaul Bus. & Com. L.J. 199 (2010) (surveying 147 consumers); Debra Pogrund Stark & Jessica M. Choplin, *A License to Deceive: Enforcing Contractual Myths Despite Consumer Realities*, 5 N.Y.U. J.L. & Bus. 617, 619-23 (2000) (surveying 91 students fulfilling a course requirement; 106 approached in a public location; and 101 law students).

¹⁸ *National Study of Public Attitudes on Forced Arbitration: Findings from a Survey of 800 Likely 2010 Voters Nationwide*. The Employee Rights Advocacy Institute for Law & Policy and Public Citizen. Released 04/09 (research funded by the Public Welfare Foundation) available at <http://www.citizen.org/documents/lake-research-national-study-of-public-attitudes-forced-arbitration.pdf>.

their expectations regarding their ability to sue their employers in court as well as whether the respondents recalled executing mandatory arbitration provisions in terms of employment or terms of agreements for goods and services. The study, however, did not discuss the use of arbitration provisions in connection with the offering or providing of consumer financial products or services.

- In contrast, the Pew Charitable Trusts focused on checking accounts in its 2012 survey of 603 consumers.¹⁹ The study, however, did not describe data or survey questions relating to the extent of consumer awareness of arbitration provisions.²⁰ It similarly did not discuss how consumers weighed dispute resolution provisions when evaluating financial products. Instead, the study focused on (1) the prevalence of arbitration provisions in the account agreements of the largest 100 retail banks and credit unions by deposit volume and (2) consumers' preferences after they were presented with possible features of arbitration provisions or contrasting statements about arbitration provisions.
- In 2003, the Institute for Advanced Dispute Resolution surveyed 1,036 Americans, seeking information about consumer awareness and preferences regarding arbitration provisions. The study focused on arbitration provisions generally, as opposed to the financial sector. It explored, among other things: awareness of arbitration as a means to resolve disputes; consumer preferences regarding arbitration vs. litigation; the thresholds at which respondents would be willing to sue over money owed; and respondents' willingness to pursue claims without legal representation. The survey, however, focused on respondents' perspectives regarding voluntary arbitration proceedings, rather than arbitration proceedings that were required under pre-dispute contracts. And it has not been updated in ten years. There is significant controversy regarding whether the Institute for Advanced Dispute Resolution was or was not an arbitration advocacy organization.²¹
- And in 2008, the Center for Responsible Lending commissioned a study from Macro International as part of its regular CARAVAN® survey. The survey was conducted among a national probability sample of 1,007 adults, concluding that 68% of consumers that financed cars from dealerships were unaware if their contract had a "forced arbitration" clause after the clause was described to them. The study, however, did not list the questions used in the survey. Further, while the survey featured over a thousand respondents, only 27% of the survey population used a loan at a dealership to purchase a

¹⁹ *Banking on Arbitration: Big Banks, Consumers, and Checking Account Dispute Resolution*. The Pew Charitable Trusts. Released 11/26/09 available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_arbitration_report.pdf.

²⁰ The Pew study references a lack of consumer awareness regarding dispute resolution provisions, but stops short of discussing the data underlying any such inquiry. ("Pew found that many consumers are unaware that account agreements restrict their options if they have a dispute with their financial institution.") It similarly does not detail particular questions relating to such an inquiry.

²¹ Roper ASW, 2003 Legal Dispute Study: Institute for Advanced Dispute Resolution (2003) cited in Public Citizen, *The Arbitration Debate Trap*, at 20-22 (2008) (discussing controversy) available at [http://www.citizen.org/documents/ArbitrationDebateTrap\(Final\).pdf](http://www.citizen.org/documents/ArbitrationDebateTrap(Final).pdf).

car or truck. Accordingly, the sample size for the arbitration awareness questions was only 268 respondents. The proposed CFPB study, on the other hand, would seek information from a much larger sample set. More importantly, the CFPB will be able to look to relevant bank customer agreements, available independent of the respondents, to verify the accuracy of consumers' perceptions. For instance, the Center for Responsible Lending explains that 17% of respondents said that there was never an arbitration clause in their auto loan agreement. The study states, however, that "[c]onversations with experts familiar with these contracts suggest that many of the people who thought there was no arbitration in their contract likely were mistaken."²² Accordingly, in conducting certain regression analyses, the Center for Responsible Lending assumes that the full 17% was mistaken. The Center for Responsible Lending was unable to perform any check against the terms of the respondents' actual agreements. In contrast, the CFPB will be able to estimate the number of mistaken consumers more accurately by relying on the terms and conditions of the standard contracts for the consumers' respective credit card providers.

As for related and previous studies exploring consumers' pre-dispute *assessments*, as opposed to awareness, of arbitration provisions, in 2007 the Institute for Legal Reform, Public Opinion Strategies, and Benenson Strategy Group conducted a national telephone survey of 800 registered voters.²³ Among other findings, the authors concluded that voters strongly preferred arbitration over litigation to resolve serious disputes with companies. The survey, however, did not focus on arbitration provisions in consumer financial products and services. The CFPB's proposed survey would only cover non-proprietary consumer credit cards and also explore consumer preference in much greater detail – the extent of consumer awareness regarding arbitration and litigation options; consumer perceptions of the related transaction costs of each forum; whether consumers are willing to proceed without an attorney in either forum; and the value that consumers' associate with their preference of dispute resolution options.

The CFPB will continue to monitor empirical research and related work by Federal regulatory agencies and other researchers to ensure that the CFPB's research techniques reflect the current knowledge and best practices.²⁴

²² Joshua M. Frank, Center for Responsible Lending, *Stacked Deck: A Statistical Analysis of Forced Arbitration* (2009) available at http://www.responsiblelending.org/credit-cards/research-analysis/stacked_deck.pdf (also concluding that average non-incentive loan rates were higher for contracts that included "forced arbitration" clauses than contracts that did not include such provisions).

²³ Bill McInturff, Alex Bellonc, & Joel Benenson, *Key Findings from a National Survey of Likely Voters*, Institute for Legal Reform (Apr. 2008), available at <http://www.instituteforlegalreform.com/issues/docload.cfm?docID=1092>.

²⁴ The Information Collection Request Search Tool maintained by the OMB's Office of Information and Regulatory Affairs returned zero documents in response to a May 3, 2013 search for "arbitration survey." Available at <https://www.reginfo.gov>.

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5. Efforts to Minimize Burdens on Small Entities

The data collection is not anticipated to burden small entities because the survey will only collect information from individuals.²⁵

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

If the survey was not implemented, the CFPB would be limited in its ability to provide an analysis of how dispute resolution provisions are used in connection with the offering or providing of financial products or services to consumers. For example, the CFPB would lack data on whether consumers are even aware of dispute resolution provisions in their agreements with covered persons and how, if at all, consumers assess those provisions when evaluating competing enrollment opportunities.

Each surveyed individual will only participate once. Accordingly, frequency of data collection is not applicable.

7. Circumstances Requiring Special Information Collection

No special circumstances require the collection to be conducted in a manner inconsistent with the guidelines set forth in 5 C.F.R. 1320.5(d)(2).

²⁵ Given that the finances of small businesses are often intertwined with their owners, the survey instrument will instruct respondents to exclude cards used primarily for business purposes when responding to survey questions about credit card use.

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8. Consultation with Individuals Outside of the Agency on Availability of Data, Frequency of Data, Frequency of Collection, Clarity of Instructions and Forms, and Data Elements

On April 27, 2012, the CFPB made a “Request for Information Regarding Scope, Methods, and Data Sources for Conducting Study of Pre-Dispute Arbitration Agreements.” (77 F.R. 82.) The CFPB received over sixty comment letters in response.

Certain commentators suggested that the CFPB focus on consumer satisfaction after resolving a dispute in arbitration. The CFPB, however, does not propose that the survey include such an exploration. Among other reasons, such work would likely be duplicative of previously-conducted empirical research, as referenced in further detail above.

Commentators also made a number of other suggestions, including that the CFPB assess consumer awareness and understanding regarding dispute resolution provisions.²⁶ Their suggestions also included that the CFPB conduct a survey of consumers and legal representatives to assess the frequency with which potential claims are abandoned because of consumers’ assessments of the value of their claims or their chances of success in an arbitration proceeding.²⁷ This survey would address the first issue and provide data relevant to the second.

A copy of the Federal Register Notice which notified the public of the CFPB’s intent to collect this survey, and provided a 60-day comment period, was published on XXX (Vol. XX, No. XXX, Pages XXXX-XXXX).

A copy of a second Federal Register Notice, which announced that this information collection request will be forwarded to the OMB, was published on XXX (Vol. XX, No. XXX, Pages XXXX-XXXX).

[Discussion of comments received from 60-Day and 30-Day notices to be inserted.]

²⁶ Professor Alexander J.S. Colvin, ILR School, Cornell University (also suggesting that the CFPB assess satisfaction); June 22, 2012 letter from American Financial Services Association (among numerous suggestions, suggesting that the CFPB examine how well-informed consumers are regarding the benefits of arbitration programs); June 23, 2012 letter from Jill I. Gross, Pace University School of Law (“For the consumer-level study, researchers should survey consumers’ perceptions of fairness of arbitration clauses of sample companies as well as perceptions of fairness of the arbitration process with those companies”); June 22, 2012 letter from MFY Legal Services (among other suggestions, “[t]he CFPB should survey consumer knowledge about arbitration clauses and how arbitration works. Do consumers understand what it means to sign an arbitration clause?”); June 23, 2012 letter from National Association of Consumer Advocates and The National Consumer Law Center (among other suggestions, surveying consumers’ knowledge and understanding of pre-dispute arbitration).

²⁷ See, e.g., June 22, 2012 letter from Alliance for Justice (suggesting numerous potential surveys).

9. Payment or Gifts to Respondents

No payment or gifts will be offered to participants in the proposed survey. A payment of up to ten dollars, as determined by the CFPB with contractor input, will be used, however, for a study of a sample of non-respondents, conducted in the same calls as their refusals. This non-response study will allow the CFPB to better understand potential non-responses biases, at least as evidenced by systematic differences in the characteristics of respondents compared with those of non-respondents.

10. Assurance of Confidentiality

In the survey's introduction, respondents will be told about the study's purpose, the authority under which the data are being collected, that cooperation is voluntary, that responses will be used to produce statistical summaries only, and that identifying information will not be provided to the CFPB or to any financial institution.²⁸ If CFPB determines that microdata may be released, respondents will be informed of the potential release and provided a description of the procedures that will be used to reduce the likelihood of personally identifying respondents.

The CFPB will impose appropriate privacy requirements in its contract with its contractor, to the extent permitted by applicable laws. The contractor will agree to comply with all requirements and restrictions in the contract about information release, non-disclosure of personal information, privacy, and security in respondent screening, data collection, data processing and delivery to the CFPB. The contractor will be required to train or provide evidence that staff (e.g., interviewers, analysts, and researchers) have been trained on confidentiality protection practices.

The contractor and the CFPB will aggregate data and report results without referencing or disclosing any personally identifiable information about the participants. At the completion of the data collection, each respondent's telephone number will be separated from the answers to the survey questionnaire. At the completion of the project, the contractor will transfer or destroy all personal information according to security procedures and a data management plan to be approved by the CFPB.²⁹

The CFPB may offer compensation to individuals participating in a non-response bias analysis that would take place on the same call in which those individuals decline to participate in the primary survey. Some individuals may similarly be offered compensation to participate in the study. In such cases, the contractor will need to collect name and address information in order to send the respondent his or her compensation. The personal information will only be used for that purpose and will be maintained separately from survey responses.

²⁸ Respondents will be told the survey's OMB control number and that the CFPB cannot conduct an information request until it displays a valid OMB control number.

Also, consumers will be told that the average interview length is expected to be fifteen minutes, and that respondents should let interviewers know if they feel that this projection was inaccurate.

²⁹ The data management plan will provide, at least, that the CFPB's internal archived portion of the survey documentation contain the information set forth in Guideline 7.3.2 of the OMB Standards and Guidelines for Statistical Surveys (Sept. 2006), where appropriate.

11. Justification for Sensitive Questions

Respondents will be asked to identify the financial institution that issued their most recently-obtained credit card. The CFPB can consult documentation relating to that financial institution, to verify the accuracy of consumers' statements about their credit card agreements. An approximation of the year the credit card was issued will also be collected, to place the relative accuracy of consumers' recollections in context.

In proposed question 12, consumers will be asked about their prior experiences with arbitration, litigation, or class litigation. The actual disputes, however, will not be identified. This information will be collected, so that any correlation between past experiences and current assumptions can be identified and, if appropriate, controlled for.

Respondents will also be asked basic demographic information regarding race/ethnicity, gender, age, and income. This information will be used to gauge and potentially weight the sample (including by taking into consideration estimated demographic information of non-respondents) so that the survey reflects representative demographic populations in the larger national population of credit-card users.

This information collection will not include questions about sexual behavior and attitudes, religious beliefs, disability, social security numbers, or other matters generally considered private.

12. Estimated Burden of Information Collection³⁰

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Telephone Survey	1,000	1	1,000	0.250 ³¹	250
Non-Response	6,000	1	6,000	0.016	100
TOTALS					350

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

There are no annualized capital or start-up costs for the respondents to participate in the survey.

³⁰ The burden estimate may be updated after the contractor is retained to reflect whether the CFPB has determined to include a non-response survey. In such case, the updated Supporting Statement may also be updated to include a new appendix illustrating a sample non-response survey.

³¹ The estimate for average burden per response was arrived at by testing the proposed survey questions with multiple CFPB personnel that are unaffiliated with the proposed study.

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14. Estimated Cost to the Federal Government

There will be no annualized capital/start-up costs for the government to receive the survey information. The testing is funded with non-appropriated funds. It is anticipated that the contract to carry out the study will cost \$[to be determined].

The Blanket Purchase Agreement, under which the survey will be conducted, was awarded through a competitive bidding process.

15. Program Changes or Adjustments

There are no changes being made to this collection that will result in any change to the burden previously reported to OMB.

16. Plans for Editing, Statistical Analysis, and Publication

The CFPB anticipates that the survey will be completed within eight to twelve weeks of OMB approval. The contractor will develop the initial analysis and summary of the study findings.

Skip patterns will be embedded in the computer assisted telephone interviewing software, which should strongly mitigate erroneous data due to respondents being asked inappropriate questions or questions that were inadvertently skipped. The computer assisted telephone interviewing software will also contribute to data quality by not allowing responses that fall outside of logical bounds. Further, the CFPB and its contractor will review the data for logistical inconsistencies before tabulation and, where appropriate, edit the collected data to mitigate or correct detectable errors. Missing data that cannot be resolved through editing may be imputed using accepted statistical techniques such as multiple imputation through chained equations.

Other question combinations may not result in clearly erroneous answers, but will still require that specific combinations of answers be noted. For example, some questions are designed to provide rough estimates of respondents' familiarity with arbitration or litigation (e.g., "Please tell me what you think are the important features of consumer arbitration proceedings"). Respondents will later be asked more complex questions exploring, for example, the consumers' perception of transaction costs relating to either proceeding. If a respondent is unable to list any features of arbitration or litigation, their responses to the more complex question about valuation will not be edited per se – but the fact that the consumer was unable to list any features will be noted when analyzing the consumer's later responses, where a response would presumably require a deeper understanding of the different formal dispute resolution options.

Where appropriate, the contractor will convert answers provided in response to open-ended questions to standardized codes, which will allow the CFPB and future users of the data to better analyze the information. For example, Question 5 asks consumers to list the most important reasons for choosing their most recently-obtained credit card. The survey itself will not provide potential answers. But consumers' open-ended responses will be converted to common codes, where possible, so that all responses relating to low interest rates, for example, can be grouped together; whereas other answers relating to specific rewards features would be grouped in

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different codes. Some consumer answers, however, may not be appropriate for grouping into codes. In such case, the individuals' actual responses will be noted or summarized.

The report will provide tabulations at the national level. Once the data is tabulated, it will be presented along with an executive summary and detailed findings about consumer awareness and perceptions regarding whether and how credit card consumers evaluate agreements that provide for the arbitration of future disputes when offered credit cards. The report will also discuss credit card consumers' valuation and expectations regarding arbitration proceedings compared to litigation proceedings.

The report will also provide an evaluation of the quality of the data, as well as areas of potential improvement. The CFPB does not currently contemplate conducting additional surveys on this subject, but the information may be useful for data interpretation or designers of similar studies.

17. Display of Expiration Date

The CFPB plans to display the expiration date for OMB approval of the information collection on all instruments. Survey telephone administrators will also be provided this information.

18. Exceptions to the Certification Requirement

There are no exceptions to the Certification Requirement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

1. Respondent Universe and Selection Methods

A telephone survey (including both landline and cellphones) will be conducted to explore consumer awareness of and perceptions regarding dispute resolution provisions in consumer credit card agreements. The respondent universe for this survey will consist of the approximately 160 million Americans who own credit cards. The survey will initially reach out to 7,000 potential respondents, in an effort to ultimately collect information from approximately 1,000 credit card holders (assuming a response rate of 15-20%). Interviews will be conducted in English or Spanish, according to the respondent's preferred language.³²

A copy of the initial version of the proposed questionnaire is attached hereto as Appendix B; attached as Appendix C is the updated version of the questions, revised based on cognitive testing of the original and comments received as part of the 60-day and 30-day Federal Register Notice process; and the justification of each question is attached as Appendix D.

The CFPB expects that the survey sample will be selected through random-digit dialing of residential and cellular telephones to obtain data from a target sample size of approximately 1,000 credit card holders across the country. Unlike an Internet-based or mailed survey, a telephone call requires real-time interaction, which minimizes the possibility that respondents will supplement their knowledge before responding to survey questions by searching the Internet or reviewing their credit card agreements.

2. Information Collection Procedures

This Supporting Statement discusses specific aspects of the potential sample design and questionnaire because the CFPB believes that doing so will ultimately yield better data and estimates. Specifically, though the discussion and details are for general illustration of a likely approach, these details provide commentators a clear and concrete basis on which to suggest refinements. The examples and discussion, however, do not yet reflect the expertise and experience of a designated contractor, cognitive testing, or pretesting. Accordingly the design and questionnaire reflected in this Supporting Statement may be modified after a contractor is retained and after appropriate cognitive testing and pretesting.

The sample design for conducting the approximately 1,000 telephone interviews will likely be based on a list-assisted random digit dialing telephone sample.³³ In such case, analyzing the vast

³² In 2010, the U.S. Census released a report on language use in the United States in 2007. *Language Use in the United States: 2007*. United States Census Bureau. Released April 2010. The study found that 80% of the population 5 years and older spoke only English at home. Regarding the remaining 20%, the population that spoke a language other than English at home, three-fifths spoke Spanish or Spanish Creole (defined as including Spanish, Spanish Creole, and Ladino). The remaining population was in a group of diffuse categories: "Other Indo-European languages," "Asian and Pacific Island languages," or "Other languages."

³³ While this Supporting Statement describes a random digit design, the CFPB will ultimately determine the appropriate survey design with the contractor's input, after it is retained. For example, an alternative to a random digit dialing design would be address-based sampling, where the contractor would create a sample population using

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majority of the survey questions would involve calculating ratios based on data from the survey, for example how many interviewees (out of 1,000), picked a particular option. In general, confidence intervals are not known without assuming a particular functional form for the standard error of the population. In the case of ratios, and after making appropriate assumptions, one can use a Bernoulli distribution. The maximum standard deviation, when both variables are equally likely, is 0.25.³⁴ Based on that, a 95% confidence interval can be computed, with a confidence interval of at most +/- 3.1% for questions that are not subdivided for subsets of the sample population.³⁵ The confidence interval is actually narrower, given that answers are not equally likely. The exact bounds of the 95% confidence interval, however, will not be known until after the data are collected. This interval cannot be calculated for questions with numerical answers. The confidence interval described above is applicable for testing a single hypothesis. The CFPB will utilize the Bonferroni correction, or other widely acceptable and similar statistical methods, to arrive at the correct confidence intervals while testing many hypotheses simultaneously.³⁶

Regarding landline telephone numbers, telephone numbers are ten digits long (AAA-EEE-XXXX), where the first three numbers are the area code, the second three are the exchange, and the last four digits are the number within the exchange. The area code, three-digit exchange numbers, and the first two digits of the four-digit suffix specify a “100-bank” containing 100 telephone numbers. If the CFPB and the contractor do proceed with a random digit dialing sample, they will sample telephone numbers (using randomly-generated two-digit strings to complete the telephone number) from 100-banks that have been identified as containing at least three listed residential numbers, to ensure a relatively high hit-rate.

address information obtained from the United States Post Office. Telephone numbers would then associated with those addresses via outside vendors. This would allow the contractor to send prenotification letters to all of the proposed respondents. It would also alleviate many complications arising from the limitations of random digit dialing regarding cellphone-only consumers, such as the difficulty of determining a cellphone user’s Census region from his telephone number (given that consumers may move geographic regions without changing their cellphone numbers). These benefits would need to be weighed against potential issues specific to address-based sampling, such as the potential difficulty of associating phone numbers to addresses.

³⁴ This calculation is based on a binomial distribution where both outcomes are equally likely.

³⁵ See Peter Stopher, *Collecting, Managing, and Assessing Data Using Sample Surveys*, Cambridge University Press, Cambridge UK (2012). There are 1,000 respondents, the 95% level of confidence is equivalent to +/- 1.96 standard errors based on the normal distribution of the ratio statistic, and the maximum standard deviation of the population is 0.25. This results in a confidence interval of the estimated statistic +/- x , where $x = \frac{1.96}{\sqrt{1000/0.25}} \approx .031$.

For certain survey questions, however, subsets of consumers will be asked different variations of the question. Splitting up the population into subpopulations allows the CFPB to gather more specific data. And more importantly, it allows the CFPB to mitigate the risk of inadvertently biasing survey results by the way questions are asked. Because populations less than the full 1,000 respondent population will be used for these subsets of questions, however, the confidence intervals relating to these answers will necessarily be larger.

³⁶ If researchers are testing a sufficient number of null hypotheses, then at least one of them is likely to be rejected based on pure luck of the draw. Bonferroni correction, or a similar method, is utilized to ensure that a statistically significant result is not simply due to researchers testing so many hypotheses that some just happened to be true.

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The cellphone sample of telephone numbers could be drawn separately from telephone exchanges dedicated to cellphones.³⁷

The contractor will be required to normalize the collected data by geographic region. Sample sets for residential telephone numbers, for example, could be stratified by geographic Census region. The contractor could also aim to stratify sample sets for cellphone usage across geographic Census regions. This may require reliance on additional preliminary questions (i.e., “In what state do you live?”).

The initial sample sizes would be large enough to yield the required number (1,000) of interviews nationwide.

Sampling would be conducted independently within each stratum. The split between the number of landline and cellphone interviews could be determined based on latest available estimates of the proportion of adults with access to cell only, landline only, and dual users at the time of finalizing the sampling plan, taking account of demographic differences.³⁸

The CFPB will work with the contractor to determine the hours of the day and days of the week offering that offer the best probability of respondent contact (for example, 5:30 p.m. to 8:30 p.m. on weekdays; 9:00 a.m. to 8:30 p.m. on Saturdays; and between 12:00 noon and 8:30 p.m. on Sundays).

Five to ten calls (to be decided by the CFPB with contractor input) will be made to each telephone number to establish telephone contact; and then a maximum of five to ten calls will be made thereafter to complete the interview with the selected respondent. When contact is made with an answering machine or voicemail, a message could be left according to a set protocol on the second attempt. The message would explain that the household has been selected to participate in a national study by the CFPB and ask that the contractor’s toll-free number be called to schedule an interview. The message will explain that participation is voluntary. The message could also reference a notice on the CFPB website, which will display the contractor’s

³⁷ Upon initial contact and introduction with cellphone respondents, the interviewer will immediately ask questions to determine that the person is not in a situation that could pose a safety risk to that individual (e.g., driving). If the contacted individual is found to be in a situation that could pose a risk, the interviewer will terminate the call and call back at another time. If it is safe to proceed, the interviewer will begin the screening process, which could include questions to categorize the individual as “cellphone only” or “cellphone mostly.” Cellphone users not falling into one of those two categories could be screened out to reduce duplication of population elements in the cellphone and landline sampling frames.

³⁸ The most recent data published from the National Health Interview Survey in December 2012 shows that 35.8% of American homes relied solely on cellphones. Further, 15.9% of American homes received “all or almost all” calls on cellphones despite having a landline telephone.

Demographic differences may alter these numbers, though. For example, 60.1% of adults aged 25-29 lived in households with only cellphone telephones. 58.2% of adults renting their home relied solely on cellphones – twice the rate of adults owning their homes, 23.2%. 75.9% of adults living only with unrelated adult roommates were in cellphone-only households. Blumberg, Stephen J. and Julian V. Luke. *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2012*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics. Released 12/19/12 available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201212.PDF>.

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toll-free telephone number for interview scheduling, so prospective respondents can verify the legitimacy of the survey. The website would not collect any data from consumers or offer any tools for scheduling beyond displaying the contractor's toll-free telephone number.

Once contact has been made via landline telephone numbers, one adult in the selected household will be chosen at random for participation in the survey. The contractor could make the selection based on the household's "most recent birthday." The "most recent birthday" method asks for the credit-card holding adult within the sampled household who, at the time of respondent selection, has the most recent birthday (the callers will not request the date of the actual birthday).³⁹ Only that randomly-selected person will be eligible to participate in the survey. Randomization processes would likely not be used with cellphone respondents, where there is presumably a greater correlation between telephone numbers and specific individuals.

The CFPB will obtain approximately 1,000 replies to the survey. Given the unique nature of the survey, as described above, it is difficult to predict what the respondent reply rate will be with a reasonable degree of accuracy. The CFPB estimates that the response rate will be 15- 20%, given that dispute resolution provisions are unlikely to be salient topics for potential respondents.⁴⁰ The effect of the reply rate could be minimized, however, by careful study of the demographics of non-participants via a non-response survey described below. Provided that non-respondents are not demographically different from survey participants, the reply rate should not alter the usefulness of the data obtained from the 1,000 survey participants.⁴¹

Multiple telephone calls to potential survey respondents, the follow-up survey of non-respondents, the ten dollar payment for participation in the non-response survey, and the

³⁹ The "most recent birthday" method represents a random selection of household members that is presumably less intrusive than other random selection methods, which would generally require enumeration of all household members.

Another similar randomization protocol would be to ask 50% of respondents to identify the youngest male in the household over the age of 18, while asking the other 50% to identify the youngest female in the household over the age of 18.

⁴⁰ See, e.g., Floyd J. Fowler, Jr., *Survey Research Methods* p.58 (4th Ed. 2009) ("[E]ven conscientious organizations sometimes achieve response rates in the 30% to 50% range – particularly when the subject of the survey is not immediately engaging. The difficulty of achieving high response rates is one of the intrinsic limits of [random digit dialing] as a sampling approach."); Robert M. Groves, et. al., *Survey Methodology* pp. 187-88 (2d Ed. 2009) (describing non-response rates for the Survey of Consumers, conducted by the University of Michigan Survey Research Center, as growing "from percentages in the 30s in the 1980s to percentages near 60 more recently." "Again, the lesson is clear: response rates have declined over time."). Cf. Panel on a Research Agenda for the Future of Social Science Data Collection; Committee, et al., *Nonresponse in Social Science Surveys: A Research Agenda* p. 1-6 (2013) *advanced copy available at* http://www.nap.edu/catalog.php?record_id=18293 ("Based on the above evidence, we are able to conclude that non-response rates continue on a long-term upward path, but we are concerned that solid evidence about the *reasons* for the decline is still elusive") (emphasis in original).

⁴¹ Cf. Charles Manski, *Identification Problems in the Social Sciences*, Harvard University Press, Cambridge, MA (1999) (discussing potential issues when the assumption of similarity regarding survey participants and non-participants is not satisfied).

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potential prenotification letter, could help maximize the survey reply rate, potentially even through conversion of respondents that had initially declined to participate.

The CFPB does not anticipate that any particular survey questions will result in a significantly higher non-response rate than any other survey questions.

Each interviewer will be monitored for quality assurance throughout the course of the project.

- Audio monitoring will be used to maintain the quality of interviewer performance relating to matters such as:
 - Initial contact and recruitment;
 - Reading the questions as written;
 - Reading (or not reading, where appropriate) response categories according to study specifications;
 - Whether open-ended questions are properly probed;
 - Whether ambiguous or unclear answers are properly clarified;
 - Avoiding bias, either by comment, rate of speech, or by tone of voice; and
 - General professional conduct.
- The interviewers' data entry will also be monitored to ensure that the interviewer enters the correct code, number, or verbatim response.

The contractor shall study information about individuals that opted to not participate in the study to determine if any potential biases may have been introduced across the data sample by the size or demographics of the population that declined to participate in the survey (e.g., underestimation of the standard errors or non-response bias).

For example, the contractor may conduct a non-response follow-up survey with a sub-sample of households that declined to participate in the surveys – such surveys would take place in the same calls as the households' refusal regarding the primary survey. The follow-up survey would (1) investigate the reasons for non-response; (2) assess the potential biases that could be introduced by the non-responses; and (3) identify changes to the survey protocol that could reduce non-response rates. Given that the non-response survey will be limited to people that already declined to participate in the main survey, each participant could be offered a monetary reward of up to ten dollars for their participation.⁴² The pattern and distribution of refusals would be assessed to determine the nature of the non-responses. If any significant pattern or distribution emerges, a strategy for weight adjustment, imputation of missing characteristics, or refusal conversion could be considered. For example, the CFPB may determine that it is appropriate to repeat its earlier attempts to contact prospective respondents that it was originally unable to make contact with.⁴³

⁴² Alternatively, the respondent could be offered the ten dollar reward to participate in the primary survey. Any such offer would be communicated in the same call as the respondents' initial refusal.

⁴³ To increase enhance response rates, the contractor could attempt to reach prospective respondents it was originally unable to reach with mailed requests or other modalities, in addition to telephone calls.

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The survey could collect data at three separate points in time to mitigate the risk that an external event alters consumers' perceptions on a large scale. This three-part collection also allows for contingency planning, in the event that design parameters fail to meet expectations in initial data collections. In that regard, if quality assurance monitoring or initial test results yield extremely problematic results (such as dramatically inadequate participation), the contractor may suggest changes to the survey's questions or format. In such limited circumstances, additional rounds of data collection may be added to ensure that consistent standards are used across the entire collection.

The CFPB anticipates that this will be a one-time survey. Data collection will be spread across three different points in time to minimize the possibility that an external event (e.g., a popular news story) alters consumers' awareness or perceptions of dispute resolution provisions.

3. Methods to Maximize Response Rates and Address Issues of Non-Response

Regarding maximizing response rates, as referenced in greater detail above, at least five attempts to contact potential respondents will be made before the calls are abandoned. Calls will be made at different times of day and different days of the week.

A prenotification letter may be sent to those sample members for whom an address can be identified using outside data sources. The letter would emphasize the voluntary nature of the inquiry and encourage participation by stressing the value of the survey and how the results will be used. The letter would not, however, reference credit card agreements or dispute resolution provisions, so that consumers do not conduct research before the interview. A copy of a potential advance letter is attached hereto as Appendix E.

The questionnaire will be tested with nine or fewer people in order to identify any problems that could deter respondents from completing the survey. The contractor may also make use of focus groups, which may identify similar issues. The questionnaire may be revised based on the results of that testing. (See Appendix C.)

The contractor will emphasize to interviewers that their manner of approach at the time of first contact is often the most important factor in securing the interview. Interviewers will rely on a carefully-designed introduction emphasizing trust and the importance of the survey. Similarly, interviewers will be trained on how to answer the most likely questions for the survey. A hard copy of draft Frequently Asked Questions will be provided to each interviewer at their station. A copy of the Frequently Asked Questions is attached as Appendix F. Interviewers will be trained to answer all questions in an open, positive, and confident manner. If a caller is reluctant, the interviewer could provide a reference to a notice on the CFPB website, so prospective respondents can verify the legitimacy of the survey. The website would display the contractor's toll-free number so that respondents may reach the contractor to schedule interviews.

When respondents refuse to participate, the interviewer will seek information regarding the refusal to participate. The interviewer will enter this answer and any other details relating to the refusal into the computer-assisted telephone interviewing software. Certain respondents may be

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selected for a more thorough non-response survey, which would take place in the same call as the refusal, for a potential ten dollar reward.

4. Testing of Procedures or Methods

The contractor may use focus groups to gather information that will be used to tailor survey questions. Pre-test interviews will also be conducted with nine or fewer respondents prior to formal administration of the survey, in order to test all of the survey systems, the survey instrument, and the computer-assisted telephone interviewing software.⁴⁴ The pre-test will be conducted under conditions identical to the planned conditions for the administration of the survey. The issues to be addressed in the pre-test will include: the clarity of the wording of questions and responses; question sequencing and skip patterns; completion time; the randomization of certain question elements; checking that invalid responses are not entered; and the full range of procedures.

Following the pre-test interviews, the interviewers will report problems or observations they have with the project team. That feedback, combined with other data gathered from the pre-test, will be used to revise procedures, the computer-assisted telephone interviewing software, and the survey questions, as appropriate.

5. Contact Information for Statistical Aspects of the Design

The following individuals have reviewed technical and statistical aspects of procedures that will be used to conduct the proposed survey.

Will Wade-Gery
Division of Research, Markets and Regulations
Consumer Financial Protection Bureau
(202) 435-7700
william.wade-gery@cfpb.gov

Alexei Alexandrov
Division of Research, Markets and Regulations
Consumer Financial Protection Bureau
(202) 435-7700
alexei.alexandrov@cfpb.gov

Kelvin D. Chen
Division of Research, Markets and Regulations
Consumer Financial Protection Bureau
(202) 435-7700
kelvin.chen@cfpb.gov

[Contact Information for Contractor TBD]

⁴⁴ Such testing will include providing all possible responsible categories for each question to identify embedded errors, as well as skipping issues.

APPENDIX A:

Section 1028(a)-(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, Title XIV

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) **STUDY AND REPORT.**—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) **FURTHER AUTHORITY.**—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

(c) **LIMITATION.**—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) **EFFECTIVE DATE.**—Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (b) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau.

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APPENDIX B:

Initial Questionnaire – Does Not Reflect Alterations from Testing or Federal Register Notice Comment Process

[Appendix D features the initial questionnaire until the document is finalized.]

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APPENDIX C:

Proposed Final Questionnaire – Reflects Alterations from Testing and Federal Register Notice Comment Process

[Survey questions have yet to be finalized.]

APPENDIX D:

Proposed Script and Justification of Questions

This appendix provides a preliminary version of the proposed questionnaire along with explanation (in brackets and italicized) of the goal of each survey question. As noted above, the CFPB expects to revise this questionnaire based on the experience and knowledge of the contractor, comments from the public notice process, cognitive testing, and pretesting of the survey questions.

General Instructions, to be read to each respondent:

The Consumer Financial Protection Bureau is conducting an anonymous study, which is designed to help us understand consumer views about resolving legal disputes with their credit card companies. The survey should take about fifteen minutes from this point. Are you willing to complete this survey?⁴⁵

Before I ask you any questions, here are a few points to bear in mind.

First, the survey is anonymous. Your individual answers will be kept confidential. Only the overall results of the survey will be published.⁴⁶

Second, please ask questions if anything is unclear. If you don't understand the question, your answer should be "I don't understand the question."

Third, while you may have an answer to every question, for questions where you do not have an answer, it's correct and appropriate to say "I don't know." In many cases, survey respondents simply do not know the answer.

Fourth, to keep the survey as scientific as possible, I can't explain the questions or define terms while the survey is underway. After the survey, I may be able to answer some of your questions or point you to where you can obtain more information.

Finally, the OMB Control Number for this survey is: 370-XXXX. We cannot conduct, and you are not required to respond, to any request that does not provide a currently-valid OMB control number. At the conclusion of the survey, we will ask for any additional comments you have about the survey, including how it might be improved.

⁴⁵ If the respondent refuses, the interviewer can offer to schedule an interview at a future time or direct the respondent to the CFPB webpage to verify the legitimacy of the survey. If the respondent continues his refusal to participate, the interviewer can explain that he will cease attempting to contact the respondent and ask for basic demographic information for use with a non-response comparison.

⁴⁶ This statement will be changed before it is used if the CFPB determines that it will publish microdata relating to the survey.

Group One

1. Have you ever applied for a bank credit card (a credit card with a bank name on it, American Express, or Discover card)?
 - Yes
 - No
 - Don't Know
 - Refused

[This is a screening question. If the participant does not acknowledge having a credit card, he or she is ineligible for survey participation.]

- If you have more than one card, please answer the remaining questions for the card you applied for most recently. Please do not include cards used primarily for business purposes.

2. What financial institution issued your credit card?
 - Enter company name
 - Don't Know
 - Refused

[Interviewer instruction: If the respondent answers "Visa," "MasterCard," or "American Express"]

Does the card have any other company names on it?

[The survey asks consumers a number of questions regarding credit card agreements they currently hold, in an effort to test consumers' awareness of dispute resolution provisions in contracts they have already agreed to. By identifying the banks that issued consumers' credit cards, the CFPB will be able to compare consumers' beliefs about their credit card agreements with the content of the actual agreements.]

3. How long ago did you obtain this credit card?
 - Year
 - Years Ago
 - Months Ago
 - Don't Know
 - Refused

[The survey asks consumers a number of questions regarding credit card agreements they currently hold, to test consumers' awareness of dispute resolution provisions in contracts they have already agreed to. To the extent that consumers are unable to recall details about their credit card contracts, Question 3 helps distinguish failure to recall due to the passage of time from failure to recall for other reasons.]

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4. Did you consider any other card before applying for your card? In other words, did you comparison-shop for credit-cards?

- Yes
- No
- Don't Know
- Refused

[One of the survey's key estimates is whether, and how, consumers value dispute resolution provisions when determining which credit card to enroll with. This question begins that inquiry by asking if consumers consider other credit cards before enrolling with a credit card.]

5. Do you remember the reasons you chose to apply for that card? If so, can you list your reasons?

[One of the survey's key estimates is understanding the factors that consumers weigh when choosing a credit card – in particular, whether consumers weigh dispute resolution provisions when choosing their credit cards. This question asks consumers to identify those factors.]

[Group Three (Questions 7-11) will precede Group Two (Question 6) for 50% of the telephone surveys.]

Group Two

[Half of the respondents will receive Version A of Question 6. The other half will receive Version B.]

6.

a. [VERSION A] Suppose you have a dispute with your credit card company. You've called customer service, but weren't able to resolve the dispute to your satisfaction. As a last resort, you decide to file legal claims against the company. I'm going to read you a list of ways that legal disputes are sometimes decided. After each one, please tell me if you believe you have the legal right to require that your dispute be decided in that way, even if the company wants something else. *[Order of Selections Randomized]*

i. In court (not including small claims court)?

- Yes
- No
- I Don't Know
- Refused

ii. In small claims court, provided your claim is small enough to qualify?

- Yes
- No
- I Don't Know
- Refused

- iii. By an arbitrator?
 - Yes
 - No
 - I Don't Know
 - Refused

- b. Has your credit card company ever given you an opportunity to opt out of an arbitration provision in your cardholder agreement?
 - i. Did you exercise that option?

- c. [VERSION B] Have you ever reviewed your cardholder agreement?
 - Yes
 - No
 - I Don't Know
 - Refused

 - i. [If yes] Does the agreement discuss how disputes should be resolved if customer service can't resolve them? Yes, no, or I don't know?
 - Yes
 - No
 - I Don't Know
 - Refused

 - ii. [If yes] What does it say?
 - [Open-ended]
 - I Don't Know
 - Refused

[One of the survey's key estimates is whether consumers are aware of dispute resolution provisions in their credit card agreements. Version B of Question 6 asks consumers that question directly (whether their credit card agreements include terms that discuss arbitration). Version A of Question 6 seeks the same information.]

Group Three

7. *[Order of Subquestions 7a and 7b Randomized]*

- a. On a scale of 0-5, with 0 being no knowledge and 5 being very knowledgeable, how familiar are you with consumer arbitration proceedings?
 - i. *[For any answer other than 0]* Please tell me what you think are the important features of consumer arbitration proceedings.

- b. On a scale of 0-5, with 0 being no knowledge and 5 being very knowledgeable, how familiar are you with bringing consumer claims in court?

- i. *[For any answer other than 0]* Please tell me what you think are the important features of bringing a consumer dispute to court.

[One of the survey's key estimates is consumer awareness of the difference between dispute resolution in arbitration as compared to dispute resolution in litigation. This question explores consumer awareness by asking consumers if they can identify any important features of either type of formal dispute resolution. This information will also help put respondents' other survey answers in context. For instance, if a respondent states that he prefers litigation over arbitration, the CFPB may categorize his response differently if he is unable to name any features he considers important regarding either forum.]

8. *[In 25% of instances, Subquestion 8b will precede Subquestion 8a.]*
 - a. Suppose you are sure that your credit card company made a billing error that affected a large number of credit card accounts, including yours. You have called customer service, but were not able to get the error fixed for your account. In dollar terms, how large would the error have to be for it to be worth it to you to:
[Order of Selections Randomized]
 - i. Start a case against the company in small claims court?
 - ii. Start a case against the company in state or federal district court?
 - iii. Start an arbitration against the company?
 - b. Suppose you received a class action settlement notice, which includes a form you can complete to obtain some money from a settlement relating to your credit card account. In dollar terms, how large would your claim have to be for it to be worth it to you to submit a claim form in response to a class action settlement notice?

[One of the survey's key estimates is consumer perception of the transaction costs relating to different formal dispute resolution options. The key estimate is informative in and of itself (e.g., that consumers believe that they would not initiate a lawsuit for less than X dollars). Further, it yields a second key estimate, namely the relative ranking of the transaction costs (e.g., whether consumers perceive a lawsuit as having higher or lower transaction costs than submitting a claim form in response to a class action settlement notice).]

9. Now again, suppose you are sure that your credit card company made a billing error that affected a large number of credit card accounts, including yours. You have called customer service, but were not able to get the error fixed for your account. You have decided that it's worth it to file a legal claim.
 - a. Would you be willing to go to court without a lawyer? (And by court, I mean "regular" state or federal court, not small claims court.)

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- Yes
 - No
 - I Don't Know
 - Refused
- b. [If yes] If the company had a lawyer, would you still be willing to proceed to court without a lawyer?
- Yes
 - No
 - I Don't Know
 - Refused
- c. Would you be willing to go to arbitration without a lawyer?
- Yes
 - No
 - I Don't Know
 - Refused
- d. [If yes] If the company had a lawyer, would you still be willing to proceed in arbitration without a lawyer?
- Yes
 - No
 - I Don't Know
 - Refused

[One of the survey's key estimates is consumer perception of the difference between dispute resolution in arbitration as compared to dispute resolution in litigation. Question 9 probes consumer belief about one particular potential difference – the ability to seek relief without hiring an attorney.]

10.

[Order of selections randomized at two levels. First, for 1/3 of the time subsection c precedes the group of subsections a and b, while following them for the other 2/3 of the time. Second, 1/2 of the time, subsection a precedes subsection b, while following subsection b for the other 1/2 of the time. Accordingly, the order a/c/b will never occur.]

- a. Suppose you believe that your credit card company made a billing error that affected a large number of credit card accounts, yours included. You have called customer service, but were not able to resolve the dispute. On a scale of 0-5, with 0 being not fair at all, to 5 being the most fair, do you think an arbitrator would address the dispute fairly for you?
- b. Suppose you believe that your credit card company made a billing error that affected a large number of credit card accounts, yours included. You have called

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customer service, but were not able to resolve the dispute. On a scale of 0-5, with 0 being not fair at all, to 5 being the most fair, do you think a court would address the dispute fairly for you?

- c. Suppose you receive a class action settlement notice in the mail, informing you that your credit card company has settled claims that it made a billing error against a large number of credit card accounts, yours included. The settlement notice says if you fill out and mail back a claim form, you will receive some share of the settlement. On a scale of 0-5, with 0 being not fair at all, to 5 being the most fair, do you think submitting the claim form would address the dispute fairly for you?

[Regarding consumer perception of the difference between dispute resolution in arbitration as compared to dispute resolution in litigations, consumers may distinguish between the two alternatives by the perceived fairness and effectiveness of the proceedings. Question 10 explores consumers' perception of the fairness and effectiveness of different formal dispute resolution options. To the extent that consumers' answers to Question 8 are discounted for chance of success (either due to unfairness or some inherent characteristic of the formal dispute resolution option), their answers to Question 10 will help isolate the value attributable to transaction costs.]

11.

Suppose you have a choice of two credit cards, Card A and Card B. The card you choose will be your only credit card for the next few years. Cards A and B are identical except for the following differences. With Card A you can sue your company in court if you have a dispute with them. Card A also allows you (and anyone else with the card) to participate in court-approved class action proceedings against your credit card company. With Card B, either you or the company can force the other side to have an arbitrator decide the dispute, even if the other side wants to have the dispute decided in court. Card B would prevent you (and anyone else with the card) from participating in any class actions against your credit card company.

- a. Do you prefer one card over the other?
- b. Which offer would you prefer: Card A, where you can sue the company in court and participate in class actions? Or, Card B, where either you or the company can force the dispute to be decided by an arbitrator even if the other person wants the dispute decided in court, which would prevent you from participating in class actions.
- c. How much money would it take for you to accept the other credit card instead?⁴⁷
 - Dollar amount
 - I don't know

⁴⁷ The Bureau is considering estimating consumers' valuation of these provisions using alternative forms of the question, for example, by asking consumers how much they would be willing to pay to obtain their preferred option.

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- Refused

[One key estimate is consumer's valuation of mandatory pre-dispute arbitration provisions. Question 11 explores the valuation question by asking consumers whether they prefer cards with or without mandatory pre-dispute arbitration provisions. And then the question asks what monetary amount they would require to accept their non-preferred card. The absolute dollar amounts identified by consumers are informative, but the variance of consumers' valuations is also a key estimate.]

Group Four

12. Have you or your spouse ever participated in:

[Order of Selections Randomized]

- a. A court case?
 - i. Did you get a fair result?
- b. What about a class action, for example by filing a claim?
 - i. Did you get a fair result?
- c. How about an arbitration proceeding, where the parties were bound by the decision made by the arbitrator?
 - i. Did you get a fair result?

[The CFPB anticipates that consumer awareness and opinions regarding formal dispute resolution provisions will vary widely between respondents that have participated in either type of proceeding, as compared that those that have not. Question 12 asks each respondent if he has participated in either arbitration or litigation (and whether or not the obtained a favorable outcome), which will allow the CFPB to identify any correlations with that respondent's other answers.]

13. [Contractor to insert questions seeking demographic information, likely age, education level, race, and income]

APPENDIX E:

Prenotification Letter

DATE

NAME

ADDR1

ADDR2

CITY, ST ZIP

Dear NAME:

I am contacting you on behalf of the Consumer Financial Protection Bureau (the “CFPB”), a government agency established by Congress to protect consumers and help financial markets work for both consumers and firms.

The CFPB has contracted with [Contractor TBD] to conduct a national, voluntary survey, where they will ask consumers about specific types of consumer financial products. The survey is part of a study that was authorized by Congress under the Dodd-Frank Wall Street Reform and Consumer Protection Act. I am sending you this letter to notify you that an interviewer from [Contractor TBD] will be calling you in the near future to request that a member of your household participate in the survey.

The interview takes only about 15 minutes to complete.

The survey is completely voluntary and responses will remain anonymous. The person being interviewed doesn’t have to answer any questions that he or she doesn’t want to answer.

The CFPB has placed a link on its home page [WEBSITE] where prospective survey participants can confirm this is a government-sponsored survey. The survey has been reviewed and approved by the U.S. Office of Management and Budget. The OMB control number is: 3170-XXXX.

Your household’s participation in this survey would be a big help to the CFPB in its continuing efforts to get consumers the information they need to make financial decisions they believe are best for themselves and their families. I hope you will agree to participate.

Sincerely,

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APPENDIX F:

Frequently Asked Question List for Interviewers

[To be completed with contractor assistance.]