



June 30, 2014

Bureau of Consumer Financial Protection
Attention: PRA Office
1700 G Street, NW
Washington DC. 200552

**Re: [Docket No. CFPB-2014-0011](#)
Office of Management and Budget Control Number 3170 XXXX:
Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding
Dispute Resolution Provisions in Credit Card Agreements.**

Ladies and Gentlemen:

The American Bankers Association,¹ the Consumer Bankers Association,² and the Financial Services Roundtable³ (the Associations) appreciate the opportunity to comment on the Bureau of Consumer Financial Protection's (Bureau) request for 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.

Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the Bureau to conduct a study and report to Congress concerning the "use" of agreements providing for arbitration of any future dispute in consumer financial products. The Dodd-Frank Act does not require the Bureau to conduct a survey of consumers as part of that study or otherwise. Under the Dodd-Frank Act, any exercise of the Bureau's authority to under Section 20128(b) to prohibit or limit the use of arbitration provisions in consumer financial services agreements if it finds

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 The **Consumer Bankers Association** (CBA) is the trade association for today's leaders in retail banking – banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

³ The **Financial Services Roundtable** represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$98.4 trillion in managed assets, \$1.1 trillion in revenue, and 2.4 million jobs.

that doing so is “in the public interest and for the protection of consumers” must be consistent with the study.⁴

The current request is focused exclusively on determining credit card holder awareness and understanding of credit card dispute resolution rights and whether they were a factor in selecting a credit card. The proposal follows the Bureau’s earlier request for comment published in the Federal Register on June 7, 2013.

The Associations appreciate the Bureau’s efforts to incorporate public comments on the previous version of this telephone survey. While the current version is shorter and clearer, the Associations strongly recommend that OMB not approve the proposal because it will not produce information of practical utility, remains materially flawed, and is inconsistent with the statutory mandate. Instead, the Associations recommend that the Bureau focus on obtaining important consumer information related to arbitration, including information with more utility than it seeks to obtain from this survey, through more effective means rather than through a telephone survey.

For the consumer responses to the proposed survey to be meaningful, the Bureau would have to collect other critical information, which, as a practical matter, cannot be reliably obtained through a telephone survey. This includes, for example, the reasons people may not be aware of their dispute resolution rights and the reasons dispute resolution rights are not a factor in choosing a card. Also absent from the survey are inquiries as to consumer dispute resolution preferences. All of those reasons and consumer preferences are materially important to the policy consideration of whether the use of mandatory arbitration would be “in the public interest and for the protection of consumers,” but if this information is not obtained, the analysis will lack the fact basis required to consider how consumers are or would be affected and the public interest best served.

Moreover, the survey seeks to collect information about which there is little debate or disagreement and which may be supported by other accessible information. Thus, we question the value of spending resources to gather this information instead of other critical information that will fill gaps.

The proposed telephone survey may give the appearance of bias toward a preconceived conclusion to regulate or prohibit arbitration clauses, notwithstanding that the data, given its flaws and incompleteness, will not support such actions. This would override careful and detailed studies and research that would provide better insight into consumer benefits from mandatory arbitration as compared to class-action litigation and insight into consumer preferences that will inform the discussion about the need for regulation. Rather than spending resources and asking consumers to invest their time on a telephone survey that will produce incomplete data, we recommend that the Bureau focus those resources on obtaining more useful and complete information through other means, such as consumer focus groups.

⁴ “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 disputes 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).” (12 U.S.C §5518(b))

The proposed study will not produce information of any practical utility.

Under the Paperwork Reduction Act, OMB must consider “whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility and is not unnecessarily duplicative of information otherwise reasonably accessible to the agency.”⁵ The proposed survey does not satisfy this standard. Absent the collection of other data that cannot be collected, as a practical matter, through telephone surveys, the proposed survey will not provide information of practical utility, assist the Bureau in collecting information about the “use” of arbitration clauses, or contribute to an analysis of whether regulation or restrictions are appropriate.

In fact, the Bureau has not articulated the hypothesis that the proposed survey is testing. This lack of articulated hypotheses illustrates a fundamental deficiency in the Bureau’s ability to connect its research to the statutorily mandated study.

To be useful, a survey showing that dispute resolution rights are not a factor in a credit card decision should also capture the reasons that they are not a factor. For example, if consumers are confident that any credit card dispute will be handled fairly and promptly, through formal or informal means, even without the right to join a class action suit or file a lawsuit in “regular court,”⁶ dispute resolution rights are not likely to be a factor in their credit card selection. To illustrate, dispute resolution provisions are not likely to be important to consumers who have had good experiences with resolving disputes through the card issuer or the Bureau or who have confidence in consumer protection laws. In such cases, consumers might realistically and rationally discount the dispute resolution feature.

Consumer confidence that disputes will be resolved fairly and promptly, combined with evidence of the benefits of arbitration compared to class actions and the range of effective enforcement power afforded the Bureau and other state and federal enforcement authorities, would weigh against new regulations or restrictions on arbitration agreements. However, it appears that the proposed survey will not capture the consumers’ reasoning about discounting dispute resolution provisions in credit card selection. If the Bureau does not capture such information, which would be hard if not impossible to obtain in a telephone survey, nor consumer preferences or the benefits to consumers (both collective and individual) as compared to class action, those important points may be absent from the deliberation process in considering potential regulations and restrictions on arbitration agreements.

In addition to these shortcomings, the proposed telephone survey does not, and cannot, as explained in our earlier [letter](#), offer insight into consumer opinions and preferences regarding mandatory arbitration, litigation, and class-action suits. In commenting on the earlier proposed telephone survey, the Associations objected to questions probing consumer preferences because, “the experience of respondents with credit card disputes and the resolution of those disputes through mandatory arbitration or judicial process is demonstrably inadequate *under the proposed methodology* to yield informed consumer response.” (Emphasis added.) The point is that such information cannot, as a practical matter, be determined through a *telephone* survey given the limits and nature of that

⁵ 44 U.S.C. 3506(c).

⁶ “Regular” court is a court other than small claims court. See Question 11 of Appendix A: Questionnaire, which contrasts “regular” court with small claims court.

particular methodology, e.g., the limited time available for explanations, background, questions, together with the impact of potential distractions in a telephone conversation.⁷

That is not to say that a *different* methodology, e.g., consumer focus groups, where there is opportunity to build the foundation by explaining the basics of the judicial and arbitration process and associated costs, benefits, and drawbacks, would not produce informed, credible, and useful information. The Bureau should develop a different methodology to explore how much consumers value different dispute resolution options, and whether and how much they might be willing to pay, in the form of higher fees or interest, for example, to maintain certain options. We believe that government resources would be better directed toward this type of research than the proposed telephone survey which will produce incomplete information that may lead to erroneous conclusions about what consumers would conclude actually serves their needs and interests.

The value and utility of the proposed telephone survey is also questionable because there is no debate or disagreement about the information that should be sought and because the Bureau already has other readily available sources to obtain that information. The primary objective of the proposed survey is to measure consumer understanding and awareness of dispute resolution rights and provisions in credit card agreements and whether they are factors in credit card selection. The Bureau asserts that it has been unable to identify prior empirical studies exploring the role of dispute resolution provisions in consumer credit acquisition decisions or consumer default assumptions.⁸

First, as noted, we are not aware of any disagreement about whether most credit card holders fully understand or are aware of arbitration agreements in their credit card agreements or whether such provisions are a primary consideration when choosing a credit card. Thus, there is no need or incentive for such a specific study. Second, the Bureau cites and rejects a Mercator Advisory Group 2011 report that examined credit card acquisition decisions as not duplicative of other studies, because the survey's list of potential answers to the question asking for the main reason for selecting a credit card did not specifically include "dispute resolution provisions/rights." The Bureau assumes that many of the people who responded, "some other reason" chose their card because of the dispute resolution provision. However, even if their assumption is true, most people chose one of the other designated reasons for choosing a card. Therefore, it is clear from the study that dispute resolution is not a leading reason for card selection. This conclusion is supported by (a) the types of credit card features highlighted in credit card marketing, clearly designed to appeal to consumers' interests; and (b) standard consumer advice on the factors to consider when selecting a credit card, which rarely if ever include dispute resolution options.

⁷ The Bureau in its Supporting Statement A to the current proposed survey has misunderstood the Associations' complaint in their letter of August 6, 2013, responding to the Bureau's Question 11 of the earlier proposed survey published June 7, 2013. The Associations wrote, "Few consumer will have knowledge about the benefits, disadvantages, and costs of arbitration and the various forms of judicial litigation (small claim litigation, individual, non-small claims litigation, and class action litigation) as dispute resolution mechanism unless they have been involved in each. Thus the vast majority of responses to the Bureau's proposed *telephone* survey will lack adequate foundation." [Emphasis added.] The Bureau misunderstood and interpreted this more broadly to mean "consumers would lack sufficient information to make meaningful assessments or comparisons about arbitration or litigation unless they have been involved in either" *for any type of research*. A foundation *could conceivably* be established if a different method were used even though the participant had not experienced either or both processes.

⁸ CFPB *Information Requests – Supporting Statement A: Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements*, 79, F.R. 30825 (May 29, 2014).

Other recommendations.

As noted, the Bureau has improved the proposed survey to some degree. For example, it has eliminated some questions that rely on hypotheticals or that would have guided participants to a particular answer.

With regard to ways to improve the latest version of the telephone survey, we encourage making the following changes, without detracting from our points about the fundamental inadequacy of a telephone survey for these purposes:

- Question 7 asks participants to imagine that they have noticed that the credit card company has been charging them “a fee for a service relating to your account” they are sure they did not sign up for. The bank “may have been charging . . . this fee for a while now.” The survey participant has called the customer service line, “but the credit card company refused to do anything about the fees.” The question then asks what the participant would do. What actions customers think they might take will vary significantly depending on the amount of the fee, the length of time it was imposed, and other factors. It is not practical in a telephone survey, given the time and other limitations, to present or anticipate the various and numerous iterations and fact patterns that will alter the participants’ response. Providing a single fact pattern—and one that begins with an assumption bias of bank error—will not produce useful data as it will be limited to a particular, non-representative, arbitrary fact pattern presented in an unbalanced fashion.
- The proposed draft survey inquires whether participants believe that they have the right to sue a bank in court if in their view the bank had violated the law. It subsequently distinguishes between “small claims” court and “regular” court. On this question, the Bureau should ensure that customers understand the meaning of the terms used, as many mandatory arbitration agreements permit customers to pursue a claim in small claims court.

Conclusion.

The Associations appreciate the improvements the Bureau has made to the initially proposed survey, but we continue to have serious concerns about the utility the survey will provide to consideration of the use of mandatory arbitration provisions. Rather than spending taxpayer resources and consumer time to gather information which is incomplete and may lead to erroneous conclusions and unwise decisions, we urge the Bureau to focus on using resources to fill information gaps with more complete, better informed data on the potential regulation of mandatory arbitration agreements.

Sincerely,

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