American Bankers Association
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By electronic delivery to:
www.regulations.gov

Desk Officer for the Bureau of Consumer Financial Protection
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building
Room 10235
Washington, DC 20503

Re: Notice and Request for Comment Regarding Debt Collection Quantitative Disclosure Testing, OMB Control Number: 3170-XXXX, Docket No. CFPB–2019–0003

Dear Sir or Madam,

The American Bankers Association (ABA)[1] appreciates the opportunity to submit comments regarding the Bureau of Consumer Financial Protection's (Bureau) request for approval[2] under the Paperwork Reduction Act (PRA) to conduct a national web-based survey of 8,000 individuals as part of the Bureau's research on debt collection disclosures (Survey).[3] The Survey asks respondents to review a draft validation notice[4] and answer questions regarding (1) the notice and the disclosures contained therein, (2) the respondent's perception and understanding of debt-related lawsuits, and (3) the respondent's self-assessment of his/her financial well-being. The Bureau seeks PRA approval to conduct this Survey to inform its Fair Debt Collection Practices Act (FDCPA) rulemaking;[5] in particular, the Survey will explore consumer comprehension and decision making in response to debt collection forms required by the FDCPA.[6]

The PRA and its public comment process was enacted "to ensure the greatest possible public benefit from and to maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal government"[7] and "to improve the quality and use of federal

[1] The American Bankers Association is the voice of the nation's $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly $14 trillion in deposits, and extend more than $10 trillion in loans.
[2] Information Collection, Debt Collection Quantitative Disclosure Testing, 84 Fed. Reg. 1430 (Feb. 4, 2019).
[3] BUREAU OF CONSUMER FIN. PROT., OMB CONTROL NO. 3170-XXXX, DEBT COLLECTION QUALITATIVE DISCLOSURE TESTING, SUPPORTING STATEMENT A, at 1 (2019) [hereinafter 2019 SUPPORTING STATEMENT A].
[4] 15 U.S.C. § 1692g requires that debt collectors send consumers a written notice regarding the amount of the debt, the name of the creditor to whom the debt is owed, and statements regarding the consumer's ability to dispute the validity of the debt, and the obligation of the debt collector to provide verification of the debt. While seemingly straightforward, the content of validation notices has been subject to extended litigation challenging their sufficiency.
[5] 2019 SUPPORTING STATEMENT A, *supra* note 3, at 2-3.
[6] BUREAU OF CONSUMER FIN. PROT., DEBT COLLECTION SURVEY INSTRUMENT (2019).
[7] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, § 3501(2), 109 Stat. 163, 163-64 (1995).

information to strengthen decision making, accountability, and openness in Government and society."[8] The PRA usually affords two opportunities for public comment: the first, a 60-day notice period for substantive comment, and a subsequent 30-day notice period which typically runs concurrent to OIRA's review. As we have commented previously, the Bureau has on numerous occasions under the previous Director gone through the motions of PRA compliance without providing meaningful opportunity for substantive public comment on its data collection efforts.[9] We are concerned that it may do so again in this instance.

On August 4, 2017, we opposed the initial request for approval of the proposed Survey because of the Bureau's failure to release the draft validation notices to be tested by the Survey. Our comment explained that the Survey asks respondents to answer a series of questions after reading a draft validation notice.[10] However, the validation notice was not included in the materials available to the public during the 60-day comment period. Therefore, it was impossible to comment meaningfully on the Survey.[11]

In its second PRA submission, made in November 2017, the Bureau published the draft validation notices. Seeking to justify why it had not released the materials previously, the Bureau stated that "[t]he information collection for which the Bureau is seeking OMB approval at this time is for the *testing project itself*, not the specific content of the draft disclosure forms" (emphasis added).[12] However, the Survey seeks to test consumers' understanding of the validation notices and draft disclosure text contained therein. There can be no meaningful assessment of the Survey's putative value, as required by the PRA, without an evaluation of the draft disclosures about which the Bureau sought to test consumers' understanding. The Bureau's assertion that it was seeking approval for the testing project itself rather than the substantive content was a circular argument that does not excuse compliance with the PRA.

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[8] *Id*.

[9] Letter from Jonathan Thessin, ABA, & Steven Zeisel, Consumer Bankers Ass'n (CBA), to Howard Shelanski, Administrator & Dominic Mancini, Deputy Administrator, Office of Info. & Regulatory Affairs, Office of Mgmt. & Budget (July 13, 2016), https://www.aba.com/Advocacy/commentletters/Documents/cl-PRA-ConsumerEngage2016.pdf; Letter from Virginia O'Neil, ABA & Dong Hong, CBA, to Bureau of Consumer Fin. Prot. (June 12, 2014), https://www.aba.com/Advocacy/commentletters/Documents/clCFPB-PRA-consumer2014June.pdf; Jonathan Thessin, ABA, et al., to David M. Silberman, Assoc. Dir. for Research, Markets, and Regulations, Bureau of Consumer Fin. Prot. (Sept. 30, 2015), https://www.aba.com/Advocacy/commentletters/Documents/cl-PRA-SurveyOverdraftForms2015.pdf.

[10] BUREAU OF CONSUMER FIN. PROT., OMB CONTROL NO. 3170-XXXX, DEBT COLLECTION QUALITATIVE DISCLOSURE TESTING, SUPPORTING STATEMENT A, at 4 (2017) [hereinafter 2017 SUPPORTING STATEMENT A].

[11] Letter from Anjali Phillips, ABA, to Darrin King, Paperwork Reduction Act Officer, Bureau of Consumer Fin. Prot. (Aug. 4, 2017), https://www.aba.com/Advocacy/commentletters/Documents/cl-DebtCollection-2017.pdf.

[12] 2017 SUPPORTING STATEMENT A, *supra* note 10, at 7.

While the Bureau's second PRA request was put on hold due to then Acting Director Mulvaney's "freeze" on new regulatory actions,[13] the Bureau has renewed it with the filing made on February 4, 2019.[14]

We support the use of empirical data within the Bureau's rulemaking process,[15] however we are concerned that the Bureau is putting the cart before the horse with this proposed Survey. The Bureau's reasons for conducting this Survey—to determine whether to include additional disclosures and information to the validation notices[16]—are not appropriately addressed via a PRA request.

For example, the draft validation notices, while published as part of the Bureau's Small Business Regulatory Enforcement Fairness Act (SBREFA) consultation, have not been subject to broad public comment. We support the Bureau drafting and releasing a "model" validation notice, which would promote consumer understanding while curtailing frivolous litigation regarding the sufficiency of these notices. However, the content and form of the notice should be considered as part of the rulemaking process. The Survey's validation notice includes specific information on amounts owed, interest, and fees. The systems and procedures necessary to generate that information quickly and accurately will need to be developed. As part of the rulemaking process, policymakers should compare the cost of generating such infrastructure with the benefit to consumers of having the information presented exactly as shown. Once the Bureau has heard from all interested parties regarding the feasibility of its draft validation notices, *then* such notices can be put forward for consumer testing.

The additional disclosures to be tested by the Survey also present important policy issues that should be considered as part of an Administrative Procedure Act rulemaking, not through a PRA request. Several of the disclosures that the Bureau seeks to test are variations of statements about whether a debt is within the statute of limitations and/or whether the collector intends to sue to collect. However, whether a statute of limitation applies to a particular debt is a legal determination often adjudicated by a judge in a court of law. Thus, the Bureau's proposed disclosures are essentially legal determinations that are highly fact-specific and subject to varying state laws. New legal and technological infrastructure will be required to generate such individualized disclosures, and to ensure accuracy for each consumer and account. Again, such infrastructure is not currently in place. The Bureau's policymakers should compare the cost of generation to the benefit of consumers having this additional information. These are policy questions. Assuming this balancing is resolved in favor of the new disclosures, *then* the Bureau should move forward with testing various iterations of disclosures for consumer comprehension.

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[13] Mark Moore, *Mulvaney Begins at CFPB with Immediate Freeze on Regulations*, N.Y. POST, Nov. 27, 2017, 5:24pm), https://nypost.com/2017/11/27/mulvaney-begins-at-cfpb-with-immediate-freeze-on-regulations/.
[14] Information Collection, Debt Collection Quantitative Disclosure Testing, 84 Fed. Reg. 1430.
[15] Anjali Phillips, *supra* note 11.
[16] 2019 SUPPORTING STATEMENT A, *supra* note 3, at 3.

Instead, the Bureau proposes to expend nearly half a million dollars in public funds[17] to test the validation notices and their disclosures without first assessing their utility to consumer decision making. ABA is concerned that once the validation notices and disclosures have been made subject to consumer testing, the Bureau will rely on those data in the final rule to justify the inclusion of the disclosures, regardless of practicality or cost. Given the Bureau's expression of intent to release a Notice of Proposed Rulemaking in March 2019,[18] it is unclear when or how the Bureau will allow the public an opportunity to comment on the Survey results before they are incorporated into the rulemaking. Thus, we renew our objection to this PRA request from the Bureau.

Information collected at taxpayer expense should be designed to have the greatest public benefit and maximum utility, as envisioned by the PRA.[19] Service of that goal requires that the Bureau release its data collection plan as part of the proposed rule and only embark on consumer testing after it has heard from the public on the substantive issues presented by the validation notices and disclosures.

ABA appreciates the opportunity to comment on the proposed Survey. If you have any questions, please contact the undersigned at 202-663-5338 or dbanks@aba.com.

Sincerely,

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[17] 2019 SUPPORTING STATEMENT A, *supra* note 3, at 15 ("The contract to carry out the study will cost $445,806.80").
[18] OFFICE OF INFO. & REGULATORY AFFAIRS, OFFICE OF MGMT. & BUDGET, DEBT COLLECTION RULE, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=3170-AA41 (last visited Feb. 28, 2018).
[19] Pub. L. No. 104-13, § 3501(2), 109 Stat. 163, 163-64 (1995).

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