

August 4, 2017

***By electronic delivery to:  
Darrin.King@cfpb.gov***

Mr. Darrin King  
Paperwork Reduction Act Officer  
Bureau of Consumer Financial Protection  
1275 First Street, N.E.  
Washington, D.C. 20002

**Re: Notice and Request for Comment Regarding Debt Collection Quantitative Disclosure Testing, OMB Control Number: 3170-XXXX, Docket No. CFPB: 2017-0013**

Dear Mr. King,

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to submit comments in response to the Bureau of Consumer Financial Protection's (Bureau) request for approval under the Paperwork Reduction Act (PRA) to conduct a national web-based survey of 8,000 individuals as part of the Bureau's study of debt collection disclosures (Debt Collection Disclosures Survey).<sup>2</sup>

ABA supports the Bureau's interest in conducting a survey of consumers to understand better their comprehension of and decision making in response to debt collection notices.<sup>3</sup> We agree that information about the effectiveness of debt collection disclosures should provide useful guidance to the Bureau for its Fair Debt Collection Practices Act (FDCPA) rulemaking, and we support efforts to improve consumer understanding of their rights under the FDCPA.

However, ABA opposes the Bureau's PRA request. The Bureau has declined to provide all the materials necessary for meaningful comment. Were the Bureau to provide the full information transparency and accountability require, ABA would very much want to support a valuable information gathering effort.

**I. Transparency and Accountability Require that the Bureau Provide the Full Survey Instrument, Including Attachments, When Seeking Public Comment.**

In its PRA submission, the Bureau stated that the survey intends to "test a number of outstanding questions related to disclosures the Bureau is developing in conjunction with its debt collection

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

<sup>2</sup> Notice and Request for Comment, Debt Collection Quantitative Disclosure Testing, 82 Fed. Reg. 106 (Jun. 5, 2017).

<sup>3</sup> *Id.*

rulemaking.”<sup>4</sup> As noted above, ABA supports the Bureau’s plan to explore consumer understanding of debt collection disclosures and consumer understanding of the collections process more generally. The information has the potential to improve engagement between consumers and collectors. For those reasons, the integrity of the PRA process should not be undermined. Indeed, faithful adherence to that process increases the likelihood of a properly designed and executed survey that will produce data that can be relied upon to support policymaking. Providing complete information about the study to be conducted, and considering feedback from all stakeholders – including consumer groups and the industry – can only improve the quality of the survey and ensure that the survey is designed to obtain the most useful results with minimal burden on the public.

ABA contacted the Bureau by phone and email to request the notices that will be tested. After receiving no substantive response, on July 14, 2017, ABA and two other trade associations sent a letter to the Bureau formally requesting any notices and other text referenced in the survey questions and an extension to the comment period to provide the public with the full benefit of the 60-day comment period.<sup>5</sup> The Bureau responded on August 2, 2017, stating in a letter that “the information necessary to comment on how we plan to evaluate consumer comprehension and decision-making, including the draft survey instrument and research methodology, has been released . . . .”<sup>6</sup> We disagree. The Bureau has refused to release necessary information, in contravention of the purposes of the PRA process and most ample public awareness and participation.

The PRA was enacted to “ensure the greatest possible public benefit from and maximize the utility of information”<sup>7</sup> collected by the Federal government, and to “improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society.”<sup>8</sup> The Bureau’s request for OIRA approval of this survey without providing all the materials necessary for meaningful comment contravenes the PRA goals of accountability and openness. In fact, OIRA has, in guidance on the PRA process, stated that “[a]t the time [the 60-day] notice is published, agencies must have at least a draft survey instrument available for the public to review.”<sup>9</sup>

Although the Bureau has provided the draft survey questions with its supporting statement, the materials provided in its submission, and made available to the public, are incomplete. The

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<sup>4</sup> BUREAU OF CONSUMER FIN. PROT., OMB CONTROL No.: 3170-XXXX, DEBT COLLECTION QUANTITATIVE DISCLOSURE TESTING, SUPPORTING STATEMENT PART A AT 4 (2017).

<sup>5</sup> See, Letter from ABA, CBA, and CUNA to Darrin King, Bureau of Consumer Fin. Prot. (July 14, 2017), available at <http://www.aba.com/Advocacy/commentletters/Documents/cl-RFE-DebtCollection2017.pdf>.

<sup>6</sup> Letter from David Silberman, Bureau of Consumer Fin. Prot. to ABA, CBA, and CUNA (Aug. 3, 2017), available at: <http://www.aba.com/Compliance/Documents/BureauResponse-DebtCollection2017.pdf>.

<sup>7</sup> Paperwork Reduction Act of 1995, Pub. L. No. 104-13 (codified at 44 U.S.C. § 3501(2)).

<sup>8</sup> *Id.* (codified at 44 U.S.C. § 3501(4)).

<sup>9</sup> JOHN D. GRAHAM, ADMIN., OFFICE OF INFO. & REGULATORY AFFAIRS, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, QUESTIONS & ANSWERS WHEN DESIGNING SURVEYS FOR INFO. COLLECTIONS 3 (Jan. 2006, last modified Oct. 2016), available at [https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/inforeg/pmc\\_survey\\_guidance\\_2006.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/inforeg/pmc_survey_guidance_2006.pdf).

survey questions ask respondents to answer a series of questions after reading a “financial notice.”<sup>10</sup> However, that notice is not included in the materials available to the public. Similarly, respondents are asked to review “text that appears on the notice ... which could appear on the notice in some cases, even though it was not on the version you saw” and to respond to a series of questions.<sup>11</sup> However, this text also has not been provided. Respondents cannot answer the survey questions without the referenced notice and text, and therefore these documents are inherently a part of the survey instrument. Without them, it is impossible to comment meaningfully on the survey instrument.

Moreover, in its supporting statement, the Bureau states that the notices to be tested through the survey were informed by previous qualitative research conducted by the Bureau under a generic clearance.<sup>12</sup> By using a generic clearance to pre-test the notices, the Bureau admits that it has already bypassed notice and comment on the draft disclosures and denied stakeholders – including consumers and the industry – an opportunity to offer feedback, a clear abuse of the generic clearance process, which is not to be used for policymaking purposes.

The Bureau also notes in its August 2, 2017, letter that “any disclosures that become a part of a rulemaking will be released at a later date and will be subject to public notice and comment.”<sup>13</sup> While we appreciate that there will be an opportunity to offer feedback further down the road on the disclosures that may become part of a rulemaking, it does not excuse compliance with the PRA, which mandates an opportunity to provide feedback on the disclosure testing that is the subject of the PRA request.

ABA continues to believe it is critical that the Bureau provide any notices and text referenced in the survey instrument and grant the statutory 60-day comment period to enable the public to review the notices and comment on the survey as required by the PRA.

## **II. Further Changes to the Survey Instrument or Disclosures Also Require Appropriate Notice and Comment.**

The survey methodology proposes to begin with a “soft launch” targeting *1,000 completed surveys* to “ensure the instrument is functioning as intended.”<sup>14</sup> Following this expansive soft launch, the Bureau intends to “pause the survey, *review results*, and identify any changes that

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<sup>10</sup> BUREAU OF CONSUMER FIN. PROT., OMB CONTROL NO. 3170-XXXX, DEBT COLLECTION QUANTITATIVE TESTING SURVEY INSTRUMENT, OUTLINE OF SURVEY ITEMS.

<sup>11</sup> *Id.* at 15 (Pre\_Q25a).

<sup>12</sup> See BUREAU OF CONSUMER FIN. PROT., OMB CONTROL NO.: 3170-XXXX, DEBT COLLECTION QUANTITATIVE DISCLOSURE TESTING, SUPPORTING STATEMENT PART A AT 4 (2017), *citing* BUREAU OF CONSUMER FIN. PROT., OMB CONTROL NO. 3170-0055, GENERIC INFORMATION COLLECTION PLAN TO CONDUCT COGNITIVE RESEARCH AND PILOT TESTING (2017), in an information collection titled “Debt Collection Disclosure Testing Quantitative Study, Pretesting of Survey Questions.”

<sup>13</sup> Letter from David Silberman, Bureau of Consumer Fin. Prot. to ABA, CBA, and CUNA (Aug. 2, 2017), *available at*: <http://www.aba.com/Compliance/Documents/BureauResponse-DebtCollection2017.pdf>.

<sup>14</sup> BUREAU OF CONSUMER FIN. PROT., OMB CONTROL NO. 3170-XXXX, DEBT COLLECTION QUANTITATIVE DISCLOSURE TESTING, SUPPORTING STATEMENT PART B AT 2 (2017).

need to be made before fully launching the survey.”<sup>15</sup> The survey is expected to be in the field for three weeks.<sup>16</sup>

Although ABA supports the Bureau’s intention to evaluate the effectiveness of the survey and make necessary adjustments, we have concerns with the plan outlined by the Bureau. First, any changes to specific survey questions may impact the results and the conclusions that can be drawn from the data. If changes are made to the questions, the responses should not be aggregated.

Second, transparency dictates that the public be provided notice and afforded the opportunity to comment on any changes made to the substance of the survey instrument. Otherwise, under the guise of “proper survey functioning” a survey instrument may be changed in meaningful ways, bypassing the PRA review process and potentially undermining the quality and the effectiveness of the approved information collection.

ABA does not oppose technical corrections to the survey’s functionality following the “soft launch,” such as adjustments to ensure buttons click properly and disclosures are accessible. However, changes to the content – particularly the survey questions and the disclosures tested – must be published for notice and comment as required by the PRA.

### **III. Conclusion**

Ultimately, stakeholders and the Bureau have a shared interest in ensuring that consumers understand the communications they receive about outstanding debts. This survey, if properly done, has the potential to provide insight into how to improve these communications. For that purpose, it is important to remember that, as Congress recognized when it enacted the PRA, inviting public comment on a proposed survey will “ensure the greatest possible public benefit from and maximize the utility of information collected.” Without providing the notices that the survey questions address, the effectiveness of the survey instrument itself cannot be fully evaluated, and the Bureau cannot obtain the meaningful comment prescribed by the PRA.

ABA urges the Bureau to make the disclosures available to the public and to reset the comment deadline so that interested stakeholders have the full 60-day period to review and comment on the proposed survey.

Sincerely,



Anjali Phillips  
Senior Counsel, Center for Regulatory Compliance

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<sup>15</sup> *Id.* (emphasis added).

<sup>16</sup> *Id.*

cc: Ms. Shagufta Ahmed  
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