

August 13, 2012

By electronic delivery to:
[CFPB Public PRA@cfpb.gov](mailto:CFPB_Public_PRA@cfpb.gov)

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

Re: Generic Clearance for Collection of Information on Compliance Costs and Other Effects of Regulations, OMB Control Number 3170-xxxx

Ladies and Gentlemen:

The American Bankers Association¹ and the Consumer Bankers Association,² (collectively, the Associations) submit this comment in response to the Bureau of Consumer Financial Protection's (Bureau) request for a generic information clearance to gather information on "compliance costs and other effects of regulations" (the Notice).³

The Associations strongly support the Bureau's interest in understanding the compliance costs and other effects of existing and proposed regulations. As recognized in the Notice, the Regulatory Flexibility Act and the Paperwork Reduction Act require the Bureau to consider the benefits and costs of certain rulemakings. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) expressly directs the Bureau to consider the "potential benefits and costs to consumers and covered persons, including the potential reduction in access by consumers to consumer financial products and services resulting from such a rule" as well as the impact of a proposed rule on consumers in rural areas and financial service providers with assets less than \$10 billion.⁴ Even without these statutory mandates, there is a growing appreciation of the need to understand and measure the burdens imposed by existing and proposed regulations to ensure continued access by consumers to financial products and services and to promote expansion and innovation in financial markets necessary to sustain economic growth.

¹ ABA represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets.

² The Consumer Bankers Association (CBA) is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

³ 77 Fed. Reg. 35658 (June 14, 2012).

⁴ See 12 U.S.C. 5512(B)(2)(A)(i) and (ii).

Although we support and encourage the Bureau’s effort to gather information and data on compliance costs and other effects of existing and proposed regulations, such an information collection must follow a more structured, comprehensive, and transparent solicitation of input. It must enable interested industry members and representatives to identify and respond to the compliance cost inquiries in a timely and adequate way, enabling the Bureau to conduct its cost and benefit analyses in a fulsome and transparent manner. The information to be collected is fundamental to substantive rulemaking, and the industry must be afforded the opportunity to make a meaningful contribution to the collection across a range of formats and venues that will ensure accurate and representative data is collected. Therefore, we oppose the use of an expedited, “generic” information collection request to circumvent this participation. Such an approach will be sure to leave important information off of the table and out of the necessary policy calculations.

Discussion

The Paperwork Reduction Act (PRA) was designed, among other things, to “improve the quality and use of Federal Information to strengthen decision-making, accountability, and openness in government and society.”⁵ Central to the PRA process is the solicitation of comments by the public on ways “to improve the integrity, quality, and utility of information” collected and used by the government.⁶ Therefore, the Office of Management and Budget (OMB) recognizes limited occasions in which the opportunity for public comment may be circumscribed. As explained by an April 7, 2010 OMB memorandum on the PRA, a generic clearance should be limited to “*low burden collections that do not raise substantive or policy issues*” and in which “the specifics of each collection cannot be determined until shortly before the data is to be collected.” The memorandum gives three examples of appropriate use of a generic clearance: “customer satisfaction surveys, focus group testing, and website usability surveys.”⁷

The Associations do not believe that the compliance cost information collection fits these standards. As discussed above, section 1022 of the Dodd-Frank Act underscores Congress’ intent for a cost-benefit analysis to be a central component of the Bureau’s rulemaking. As such, the collection of information and data on compliance costs and other impacts of regulation will have significant substantive and policy implications. The information may inform decisions about exceptions, thresholds, implementation time frames, and in practically every instance, whether a regulation should even be imposed. Generic clearances were not intended to short circuit an agency’s obligation to obtain public and industry comment on such matters.

⁵See 44 U.S.C §3501.

⁶Memorandum for the Heads of Executive Departments and Agencies and Independent Regulatory Agencies, “Information Collection under the Paperwork Reduction Act” (April 7, 2010), p. 2, *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf (emphasis added).

⁷*Id.* at 5.

Moreover, input from covered entities will greatly assist the Bureau’s efforts to collect information and data on compliance costs and burdens. The diversity among financial service providers in terms of asset size, business models (including their varied relationships with third-parties), and compliance management make it a challenge to collect information and data on compliance costs and burdens that is accurate and fully representative of the entire industry. This is even more the case when considering the impact of Bureau proposals on our customers. The banking industry’s customer base is just as diverse as the thousands of institutions in our industry, meaning that our customers can be affected in a variety of different ways, positive and negative, by Bureau proposals. A meaningful cost-benefit analysis must include a careful and well-informed understanding of what proposals will mean to those customers and the cost and availability of the services that they use.

Our members, who understand existing products and services and their related compliance obligations, and who spend billions of dollars each year researching customer demands and interests, are uniquely qualified to comment on the design of surveys, interviews, or focus group discussions in order to ensure that all costs and other impacts are captured and that the data collected reflects the full range of industry experience.

In addition, banking industry input can help minimize the burden of the collection itself. An important goal of OMB review is to “minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected.”⁸ By inviting industry comment on a specific information collection request, the banking industry can suggest ways to minimize burden for even the smallest respondents—imperative at a time of increasing regulatory burden—but that opportunity will be lost under the generic clearance process.

Once approval for a generic clearance is granted, the individual collections that fall within it are reviewed on an expedited basis and are not generally required to undergo further public comment. As a result, OMB directs that a supporting statement describe the following as carefully and completely as possible:

- The method of collection and, if statistical methods will be used, a discussion of the statistical methodology;
- The category, or categories, of respondents;
- The estimated “burden cap,” i.e., the maximum number of burden hours (per year) for the specific information collections, and against which burden will be charged for each collection actually used;
- The agency’s plans for how it will use the information collected;
- The agency’s plans to obtain public input regarding the specific information collections (i.e., consultation); and

⁸*Id.*

- The agency’s internal procedures to ensure that the specific collections comply with the PRA, applicable regulations, and the terms of the generic clearance.⁹

Judged by these standards, the Notice published by the Bureau is clearly inadequate. It lacks sufficient information to permit the public to comment or to enable OMB to approve the clearance. The Notice describes the methods of collection and intended respondents in sweeping generalities, stating that it intends to collect “*qualitative* information from industry participants regarding the compliance costs and other effects,” using “structured interviews, focus groups, conference calls, and written questionnaires” of “U.S. depository and non-depository financial institutions.”¹⁰ Finally, the Notice fails even to mention the Bureau’s plans to obtain public input regarding future specific information collections or its internal procedures to ensure that the specific collections comply with the PRA and the terms of the generic clearance

Indeed, the Notice appears to be a perfunctory effort to comply with the mandates of the PRA that denies the public the opportunity for meaningful comment on matters that have important substantive and policy implications. Accordingly, the Associations respectfully urge the Bureau to withdraw the request for a generic clearance for compliance cost information collection requests as inappropriate for the purpose at hand.

Alternative Approach

That being said, and as discussed previously, we support the Bureau’s effort to understand and quantify existing and anticipated compliance burdens, and we understand staff’s interest in streamlining the information collection review process. Accordingly, we urge the Bureau’s PRA Office and OMB to work with the banking industry and the undersigned trade associations to create a more suitable streamlining of the compliance cost information collection process. We envision a clearance process that has general applicability to compliance cost inquiries, but incorporates an enumerated specification of targeted information and provides interested parties a meaningful opportunity for comment on the relevant compliance costs. Such a streamlined information collection should identify the available methods sought to be used in the collection, the particular questions that any intake method will focus on, and establish reasonable timeframes through which such input can be tendered.

⁹ OMB Memorandum: Paperwork Reduction Act – Generic Clearances, May 28, 2010, available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf.

¹⁰ 77 Fed. Reg. *supra* at 35659. It is also unclear from the Notice whether the Bureau intends to collect quantitative information on compliance costs, but the Associations believe that collecting quantitative, representative, and statistically valid data on compliance costs is essential to meet Dodd-Frank Act rule making requirements.

Conclusion

Thank you for the opportunity to share our views on this important undertaking. Please contact Virginia O'Neill at 202-663-5073 or voneill@aba.com if you have any questions or would like to discuss any of the issues addressed in this letter.

Respectfully submitted,



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