

October 17, 2012

Consumer Financial Protection Bureau  
Attention PRA Office  
1700 G Street NW  
Washington D.C 20552

Re: Pentagon Federal Credit Card Agreement Simplification Survey

The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to comment on the Bureau of Consumer Financial Protection's (Bureau) request for comment on a proposed information collection related to Pentagon Federal Credit Union's (Pentagon Federal) new short-form credit card agreement and its existing long-form agreement for its Travel Rewards American Express credit card.<sup>2</sup> The purpose of the data collection is to determine whether consumers are likely to read the agreement, understand what they read, and find the information they receive meaningful.

The Bureau is required to obtain public comment for the data collection under the Paperwork Reduction Act of 1995 and is requesting "emergency processing and approval of the collection of information" from the Office of Management and Budget (OMB) on the basis that, without further explanation, the "proposed information collection is essential to the mission of the agency and the use of normal clearance procedures is reasonably likely to prevent collection." The Bureau's Supporting Statement, Credit Card Agreement Testing Survey OMB Control Number: 3170-XXXX (Supporting Statement), including the proposed survey questions, was available upon request by contacting the Bureau.

Our comments are based on the information provided by the Bureau, which does not include the contracts themselves, as they are not available.

While we appreciate the Bureau's intent to obtain data and conduct consumer testing, we believe that the proposed survey will yield little if any useful information in determining the best way to ensure that consumers notice and understand the credit card terms that are important to them. The Bureau itself acknowledges that the information gathered "will not be treated as statistically generalizable data."<sup>3</sup> That the information gathered cannot be extrapolated to either the general population or to other credit card agreements raises questions about the value of the proposed exercise.

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<sup>1</sup> 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.

<sup>2</sup> 77 FR 57560. (September 18, 2012)

<sup>3</sup> Supporting Statement, page 1. "Survey results will not be used to make statistically-valid assessments for the purposes of extrapolating to the broader US population." (Supporting Statement, page 1). "This survey is not a quantitative

In brief, we believe:

1. For purposes of determining how and what information consumers need and consider useful about their credit card agreement, the proposed data collection will not produce analytically sound, meaningful data that achieve the Bureau's stated goals to find out whether consumers are likely to understand what they read in the agreement and find it meaningful and useful.
2. Even if adjustments are made to the survey, the data cannot be extrapolated to the general population or to other credit card agreements. At best, the data collected will be usable to understand how some Pentagon Federal's members compare limited aspects of Pentagon Federal's two institution-specific agreements.
3. The proposed data collection lacks appropriate controls, including controls to take into account participants' varying interpretation of "agreement" in a survey testing their understanding of the agreement and controls that recognize and measure the role of multiple, other sources of information about agreement terms in a survey to determine whether customers understand those terms from the agreement.
4. The survey fails to inquire whether other sources, such as the currently required one-page summary of the account, are better vehicles to ensure consumer understanding of the important provisions of their credit card agreements.

We recommend that the Bureau instead focus its resources on qualitative research that examines what information related to their credit card consumers believe they need and find useful and the best means of delivering that information so that consumers notice and understand that information. Furthermore, we believe that the Bureau's hyperbole that this particular survey should receive "emergency" clearance because it is "essential" to its mission should be rejected and that the standard information collection process should apply, including requiring the public provision of all relevant components of the information collection--such as the agreements to be tested--before submission to OMB.

***Background.***

On December 7, 2011, the Bureau proposed a prototype credit card agreement designed "to make it easier for consumers to understand their credit cards." The proposed prototype included two printed pages of important terms, a one-page summary of those important terms as required under Regulation Z, and eight pages of definitions available on-line. In addition, other terms of the contract as well as informational explanations of undetermined length would have to be provided in print or made available on-line. Thus, when the definitions and other missing but required information are added, the credit card agreement prototype is substantially longer than the 5,000 words the Bureau stated was the average length of a credit card agreement.

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information collection and will not be used to make statistically-valid assessments for the purpose of extrapolating to a broader population." (Supporting Statement, page 2).

In our March 7, 2012, comment letter<sup>4</sup>, ABA supported the Bureau's efforts and goal to ensure that people understand the important terms of their credit card agreement and its outreach to the industry in those efforts. Indeed, in part because of the Bureau's concern, most of the large credit card issuers have simplified their contracts in the more than two years since the July 22, 2010, article the Bureau includes in Attachment C of the Supporting Statement about the readability of credit card contracts. Accordingly, that dated article should not be the basis for analyzing the readability of credit card contracts today.

We also recommended that the Bureau build on the existing one-page summary of the agreement currently required for all credit card issuers that highlights important terms in a noticeable format, as consumer testing had determined, and focus on a potential "User's Manual" or guide that instructs consumers generally on how credit cards work. In addition, we emphasized that any new disclosures or documents should be based on "analytically sound, meaningful data that can withstand scrutiny and peer review and consumer testing." We recommended in that letter and continue to recommend that such data gathering and testing should focus on and balance three goals:

That consumers:

- (1) are likely to read the document,
- (2) understand what they read, and
- (3) find the information they receive meaningful and useful.

We also emphasized in our earlier letter that testing and analysis should also reflect the diversity of customers and how they use their account and the diversity of products of a highly competitive market.

The Bureau now requests emergency approval from OMB for the collection of information about a shortened credit card agreement Pentagon Federal is piloting this fall. New credit card holders or existing cardholders receiving a replacement card will receive one of the two agreements.<sup>5</sup> Card recipients will be surveyed by phone until 500 customers have agreed to complete a telephone-based questionnaire. The Bureau notes, "Survey results will not be used to make statistically-valid assessments for the purposes of extrapolating to the broader US population." The Bureau has not indicated how the agreement being piloted resembles or varies from the prototype proposed in December 2011 and whether customers will access parts of the agreement online, as originally proposed.

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<sup>4</sup> [March 7, 2012 Comment Letter](#)

<sup>5</sup> It is not clear whether only new customers will be part of the survey. The *Federal Register* notice states that the Bureau will "send the short form credit card agreement to new credit card holders." (77 FR 57560). However, Part B.2. of the Bureau's Supporting Statement, Credit Card Agreement Testing Survey, OMB Control Number: 3170-XXXX ("Supporting Statement") states that Pentagon Federal will mail survey materials "upon approving an application for a new . . . American Express credit card or *reissuing an existing card*. (Emphasis added.)

**Discussion.**

***The Survey is not designed to achieve the Bureau’s stated goals and will produce only limited if any insight as to what credit card information is most useful to consumers and how best to convey it.***

In Attachment A to the Supporting Statement, the Bureau states that the goals of the survey are to find out:

1. Are consumers likely to read the agreement?
2. Are consumers likely to understand what they read?
3. Are consumers likely to find the information they receive meaningful and useful?

To begin, the survey intends to test the “agreement,” but there will be varied understandings among participants of what is included in the agreement, because customers will receive other information with the agreement, and some customers will interpret the term “agreement” to include that material and others will not. Many of the questions refer to and ask for details about the “Cardholder Agreement” without explaining what the “agreement” is. Presumably, in addition to the agreement, the customer also receives the one-page, table-formatted summary of the agreement required under Section 1016.6 of Regulation Z that highlights, among other terms, the APRs and fees, and potentially other materials that do not constitute the agreement. However, it will be difficult for even customers who have the documents in front of them (and many, we can expect, will not have the document in front of them when the interviewer phones) to know what documents constitute the “agreement.” Different customers are going to interpret the term “agreement” differently: some may include the Regulation Z material, for example, and some may not. Indeed, their interpretation may change as the survey progresses, but in a telephone interview they will have little opportunity to “go back” to the earlier question or ask for clarification,<sup>6</sup> further muddling the results. Accordingly the responses will vary based on individual respondent’s interpretation of “agreement” and not necessarily on the readability of the two agreements.

Moreover, while answers to the questions in the proposed survey could determine whether participants read the materials they receive, including but not limited to the agreement, they will offer little information about whether customers have understood certain information by virtue of the agreement or some other source, or whether they find that information meaningful and useful. Section G of the survey asks customers about specific information about the terms of the credit card (including APR, fixed or variable interest rate, whether the card has an annual fee, the consequences of paying late, and the amount of any late fee). However, the survey does not control for the numerous other variables related to how customers know those terms asked about in the survey. For example, customers may understand those terms from the required Regulation Z summary of the agreement, the summary box of the terms provided with the application, advertisements, the website, or even the

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<sup>6</sup> Telephone survey interviewers often have limited ability to offer clarifications of the meaning of the questions to avoid tainting the results.

periodic statement.<sup>7</sup> In effect, asking customers to recall pricing elements that are repeatedly conveyed to customers through multiple channels significantly muddies the waters with regard to any conclusions about how they know them and whether any variations in responses are attributable to the two different agreements. If the Bureau is trying to test whether customers understood information in the agreement, it should not focus on terms that are repeatedly highlighted in easy-to-read language and formats brought to the consumers' attention through other channels, but instead test agreement information that is not conveyed elsewhere.<sup>8</sup>

Section F of the survey also attempts to find out some information about comprehension, but any information gathered will be inconclusive and vague. For example, the first question asks whether the agreement "makes it easier for me to find and understand the content of the agreement." However, the question offers no object to the comparative "easier." "Easier" than what? The customer has nothing with which to compare. It is not clear whether the question intends to compare the contract with other credit card contracts, other financial service contracts (e.g. insurance), or any other contact the consumer encounters (e.g., cable, phone). Even specifying "compared to other credit card contracts" will yield fuzzy results as we can expect that few will be able to recall accurately previous credit card contracts and some presumably will not have ever had a credit card. In addition, the question suffers from being a compound question about two very different attributes—finding the agreement v. understanding the agreement.

Similarly, other questions in Section F asking whether there was any information the participant wished was "easier to find" or "explained better" and inquiring how they "felt" have no context and do not get to the critical question of whether customers feel it is necessary or useful to understand the entire agreement or all of the parts that they did understand. The best the answers would demonstrate is what Pentagon Federal customers might like to have highlighted elsewhere. Moreover, even if the results were able to show that those who receive the shorter agreement remember agreement terms better than those who receive the longer agreement, the results will still not answer the critical question of whether there are better ways and better times for customers to learn about information they believe important than by reading the contract when received. The Bureau appears to assume already that the agreement is the best and only way to ensure that customers understand what the Bureau believes they need and find useful and to ignore the possibility that there may be a better alternative to deliver customers what they want and need in a format they are most likely to notice and understand.

***Including existing customers in the survey will not produce helpful information on whether customers read or understand the contract.***

The Supporting Statement indicates that the survey may be testing agreements sent to those who already have an account. However, people who already have an account and receive a second

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<sup>7</sup> Customers will be contacted approximately 2-4 weeks after receipt of the agreement. (Supporting Statement, page 2) In addition, customers contacted may choose to participate in the survey after the initial contact. (Supporting Statement, page 8, Attachment A, Cardholder Agreement Survey Phone Questionnaire)

<sup>8</sup> This approach will not provide insight into what consumers believe is useful, because important terms, as determined by the Federal Reserve in consumer testing, already must be highlighted and conveyed multiple times outside of the agreement, illustrating how the proposed data collection approach will not achieve the Bureau's goals.

agreement that looks similar to the one already received are less likely to read the second agreement, because it appears to be a duplicate of something already received and reviewed. In contrast, if it looks different, they might assume that there is something new and different, and therefore are more likely to read it. Thus, an existing customer may be more likely to read the new contract simply because it is different, not that it is necessarily more readable or inviting to read.

***Additional comments.***

Given the short comment period and the inability to review the two specific agreements or accompanying materials, we cannot offer a thorough evaluation of the survey questions. For example, we do not know whether or how the shorter contract may be highlighted that will make the customer more likely to read it. However, we offer comments and concerns about several questions and aspects of the proposed data collection.

- Question G.5 of the proposed survey asks whether Pentagon Federal has to “give you a reason for increasing or decreasing your credit limit.” First, the question demands a yes or no answer, when in fact there are two questions: whether Pentagon Federal must provide a reason if a limit is decreased and whether it must provide a limit if it is increased. Thus, the customer who believes that Pentagon Federal must provide a reason for a decrease (which it may have to), but not one for an increase (which it does not have to), will not be able to answer the question with a single response as expected. Furthermore, the response in the proposed question indicates that Pentagon Federal is not required to provide a reason for decreasing a credit limit. However, Regulation B (Equal Credit Opportunity Act) provides otherwise: Section 1002.9 of that regulation requires creditors to provide reasons for adverse actions, either automatically or upon request, though most issuers provide it automatically. Section 1002.2(c)’s definition of adverse action includes “an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor’s accounts.” Thus, if Pentagon Federal lowers a credit limit of a customer based on the behavior or history of that particular customer, Pentagon Federal must explain the reason.
- Question D.1 asks whether the customer “normally” reads Cardholder Agreements. Respondents, who have never had a credit card or perhaps only one, will not be able to respond to the question accurately. Similarly Question D.3 asks, “Do you look for information on your credit card terms from sources *other than* the paper Cardholder Agreement?” This suggests that the question is focusing on a time other than the time of agreement receipt. However, Question E.1 follows up with a question asking what information you “were” looking for, suggesting that Question D.3 was referring to the time of agreement receipt. The questions that follow D.3 support that interpretation. Customers will be confused and will answer inconsistently.
- Finally, it is not clear from the proposal whether the entire agreement will be provided in paper form or whether portions will be available online, as envisioned in the Bureau’s proposed credit card agreement prototype. If parts of the agreement are provided online rather than with the

paper portion of the agreement, the Bureau should specifically ask about that aspect of the model.

**Conclusion.**

ABA appreciates and enthusiastically supports the Bureau's goal to ensure that credit card customers receive information in a form and at time that ensure they understand the important terms of their agreement. We urge the Bureau to build on the existing one-page summary of the agreement currently required for all credit issuers that highlights important terms in a noticeable format, one that was based on consumer testing. Any new disclosures should be based on analytically sound, meaningful data that can withstand scrutiny and peer review.

We do not believe that the current proposal achieves these goals or the proposal's stated goals. The data collected cannot be extrapolated to the general population or to other credit card agreements. Moreover, the data sought about the consumer's understanding of the product, its functions, terms or costs is not controlled in a way that forces the source of the responses to be limited to the content of the agreement being tested.

For all these reasons and for the lack of any factual demonstration that "emergency" clearance is warranted because of the "essential" nature of this particular survey to the mission of the agency, we ask that clearance of this information collection be denied in its current form.

We look forward to continuing the dialogue with the Bureau on this important matter.

Regards,



Nessa Eileen Feddis  
Vice President & Senior Counsel