

# PUBLIC SUBMISSION

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## Submitter Information

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## General Comment

We offer the following methodological comments from Professors Donna Shestowsky (University of California-Davis, School of Law) and Nancy Welsh (Penn State University, Dickinson School of Law). You will find our biographical information below.

Methodologically:

1. You indicate that you expect a response rate of 15-20% for a survey that will take 15 minutes and will not provide compensation to respondents. The anticipated response rate is quite optimistic—and may even be impossible if you use the mail alternative listed in the footnotes. See, e.g., James S. Kakalik et al., *Discovery Management: Further Analysis of the Civil Justice Reform Act Evaluation Data*, 39 B.C. L. REV. 613, 618 (1998) (noting a 13% response rate for mail study of litigants' perceptions of court proceedings); William H. Schwab, *Collaborative Lawyering: A Closer Look at an Emerging Practice*, 4 PEPP. DISP. RESOL. L.J. 351, 371 (2004) (noting that 7.1% of disputants returned a completed mail survey about collaborative lawyering); Lamont E. Stallworth & Linda K. Stroh, *Who is Seeking to Use ADR? Why Do They Choose to Do So?*, 51 DISP. RESOL. J. 30, 33-34 (1996) (noting that questionnaires were mailed to 3000 parties with cases pending at the Illinois Human Rights Commission; 109 employers and 102 claimants responded); JAMES S. KAKALIK ET AL., *AN EVALUATION OF MEDIATION AND EARLY NEUTRAL EVALUATION UNDER THE CIVIL JUSTICE REFORM ACT 24–25* (Rand Corp. ed. 1996) (reporting that “[c]omplete responses to our survey were received from . . . about one-ninth of the litigants on closed cases (about one-fifth of the litigants on closed cases for whom we had addresses)”). But see Lamont Stallworth et al., *The NLRB's Unfair Labor Practice Settlement Program: An Empirical Analysis of Participant Satisfaction*, DISP. RESOL. J., Nov. 2004-Jan. 2005, at 22, 25 (obtaining a 28% response rate for disputants using a

mail survey to obtain perceptions of a settlement program).

2. People with high debt are likely to be greatly underrepresented in your sample. Those with high debt who have experience with creditors' tactics in pursuing debtors will probably be much less likely than those without high debt to call back after getting a voicemail from a "researcher" using the script that you have proposed. This could affect the validity and generalizability of the results.
3. "The questionnaire will be tested with nine or fewer people in order to identify any problems that could deter respondents from completing the survey. The contractor may also make use of focus groups, which may identify similar issues." Fewer than nine people—when the study is expected to have 1000 people—is far too few. The agency should select a contractor committed to properly testing the survey language to ensure lay comprehension. That will involve using many more pilot subjects, in both English and Spanish if the CFPB plans to run the study in both languages.
4. Many questions are likely to require editing after they have been pretested. For example, the language in "Please tell me what you think are the important features of consumer arbitration proceedings" is likely to be too opaque for the average layperson, especially when the question is being read out loud, and the participant cannot read/review it and may have no experience with consumer arbitration. Without more specificity, or at least follow-up prompts, the validity and reliability of these questions are questionable.
5. Asking the participants about their credit cards may be viewed as personal to many. Based on our experience, you might get a lower "refused to participate" rate if you begin by asking a few questions at the start of the survey that are less personal in nature, to establish trust and rapport before asking any questions relating to the individual's finances.

#### Biographical information:

Donna Shestowsky is a Professor of Law at the University of California, Davis, at the School of Law. She earned BA and MS (psychology) degrees from Yale University and continued her education at Stanford University where she was awarded both a J.D. and a Ph.D. in Psychology. During the 2003-2004 academic year she was jointly appointed to the faculty at Northwestern University School of Law and the Kellogg School of Management. Dr. Shestowsky's research has been funded by competitive grants from the National Science Foundation and the American Bar Association.

Nancy Welsh is the William Trickett Faculty Scholar and a Professor of Law at Penn State University, Dickinson School of Law. Her research and writing, which are both doctrinal and empirical, examine negotiation, court-connected and agency-connected mediation and arbitration. Her work has appeared in numerous law reviews, bar journals and books. In 2006, as a Fulbright Scholar, Professor Welsh conducted research regarding the Netherlands' nationwide implementation of court-connected mediation.