March 27, 2020

Office of Management and Budget
ATTN: Desk Officer for SSA

Social Security Administration, OLCA
ATTN: Faye I. Lipsky
Director, Office of Regulation and Reports Clearance
3100 West High Rise
6401 Security Blvd.
Baltimore, MD 21235

Via Electronic Mail

Re: Revised Draft eCBSV User Agreement and Related Materials, Docket No: SSA-2020-0011.

Dear Director Lipsky:

The undersigned associations appreciate the opportunity to comment on the Social Security Administration's ("SSA") revised Draft User Agreement for participants in the SSA's electronic Consent Based Social Security Number ("SSN") Verification ("eCBSV") Service, issued for notice and comment under the Paperwork Reduction Act ("PRA").[1] Our members are the future users of the eCBSV, so we appreciate the SSA's willingness to engage with us as it develops the system and implements Section 215 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (the "Banking Bill").[2] Since shortly after enactment of the Banking Bill, we have collaborated with SSA to ensure success of our shared goal of combatting identity fraud by:

- Developing an effective, efficient eCBSV system;
- Upholding consumers' privacy rights; and
- Ensuring proper use of eCBSV.

The revisions made to the Draft User Agreement have resulted in improvement, particularly in regards to the removal of broad terminology, narrowing the focus of SSA's authority, in line with the Banking Bill. However, the electronic consent requirements – arguably the most critical element of the document and, in fact, the essential core of the Banking Bill – remain considerably problematic. Our members recognize that use of eCBSV will require adapting to an electronic consent process specific to that system. However, as we will discuss in

[1] *Agency Information Collection Activities: Proposed Request*, 84 Fed. Reg. 66704 (Dec. 5, 2019). Our comments respond to the topics on which the SSA is soliciting feedback, including SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

[2] Unless otherwise noted, the terms used in this letter are as defined in the Draft User Agreement.

this letter, the proposed electronic consent requirements present significant operational burdens and are incongruous with modern informed consent practices, adding friction to financial services processes that puts at risk the effectiveness of eCBSV as a tool to protect consumers. As such, SSA cannot demonstrate that these elements of its proposed information collection are "necessary for the proper performance of the functions of the agency,"[3] or that they provide "utility" to the federal government or the public, as SSA is required to demonstrate under the PRA.[4] Further, we contend that SSA's proposed collection request imposes unjustified costs on the American public.

We appreciate and agree with SSA's desire to ensure consent from a consumer to perform an SSN Verification is informed. As financial institutions, our members are required through law and regulation – and the associated regulatory oversight and examination – to adhere to a myriad of comprehensive disclosure regimes intended to create informed consent. We also appreciate SSA's concern with the notion that allowing Permitted Entities unrestricted latitude to incorporate consent language of their own choosing could be problematic for a variety of reasons.

Based on responses to Comments 19-21 in the document titled "Addendum to Supporting Statement for Electronic Consent Based Social Security Number Verification" (the "Addendum"), we believe the scope of the recommendations we made in our January letter have been misinterpreted. Therefore we offer the following recommendation, and propose to work with SSA to perfect this language in a way that is amenable to the Agency and also addresses the operational challenges we previously expressed:

Recommendation

Remove section IV.A.2.b of the Revised User Agreement and modify the body text of Exhibit C to support a simpler, "plain language" approach to consent language that reads as follows:

> *As part of [Insert Purpose], I authorize the Social Security Administration (SSA) to verify to [Name of Permitted Entity] whether the name, Social Security Number (SSN) and date of birth I have submitted matches information in SSA records.*

As we detail in the pages that follow, such an approach would be fully aligned with financial sector regulatory requirements, as well as OMB's guidance to federal agencies on burden minimization in the context of the PRA. Most importantly, this "plain language" approach would be much easier for consumers to read and understand. The language proposed by SSA is 149 words; our alternative is just 39.

As an alternative to the above language, the agreement would still be improved by removing section IV.A.2.b of the Revised User Agreement and modifying the body text of Exhibit C to read as follows:

[3] 44 U.S.C. § 3506(c)(3)(A).
[4] 44 U.S.C. § 3501(2) & (4).

I authorize the Social Security Administration (SSA) to verify my Social Security number (SSN) (to match my name, SSN, and date of birth with information in SSA records) and to disclose to [name of Financial Institution/Permitted Entity] a match or no-match response concerning the results of the SSN verification for the purpose of [insert purpose]. My consent is for a one-time validation and is valid for [insert number of days].

Either of these approaches address the concerns raised by SSA in the Addendum regarding our recommendations, in particular by including several parts of the requested records along with the electronic consent.[5] They also address our continued concerns regarding the requirements of section IV.A.2.b, which would impose undue burden both on permitted entities accessing eCBSV, as well as consumers granting consent. **Mandating that information the consumer has, just moments before, entered into an application be redisplayed is redundant, violates financial sector cybersecurity standards and regulations, and is the one aspect of the Revised User Agreement most likely to undermine the utility of eCBSV.** We offer the following justifications to support our recommendation:

Justification #1: SSA Proposed Requirements are Incompatible with Financial Sector Regulatory Requirements and Practices Governing Retail Point-of-Sale Transactions

Each year, more than 50 million applications for credit are completed by consumers in stores at the point-of-sale. The financial institution behind the transaction must focus on information security and privacy, made more challenging by the fact that the financial institution has no control over other individuals in the store who may be watching, or even photographing, the data being inputted by the applicant.

Financial institutions are required by regulation, which is enforced through rigorous oversight and examination, to protect consumers' privacy. For example: Payment card-issuing banks and payment card-accepting merchants must comply with security standards established by the Payment Card Industry Security Standards Council, which mandates that cardholder data be secured from endpoint to endpoint, including at point-of-sale terminals.[6] Also, the Interagency Guidelines Establishing Information Security Standards, issued by the federal banking agencies, requires among other things that institutions ensure the security and confidentiality of customer information, and protect against unauthorized access to or use of such information that could be harmful to consumers.[7] **To comply with these requirements at the point-of-sale, financial institutions do not re-display sensitive customer information, such as date-of-birth and SSNs, that has already been entered in an application at any subsequent point in the process.**

[5] *See* Addendum "SSA Response #20."

[6] *See* "PCI Quick Reference Guide: Understanding the Payment Card Industry Data Security Standards version 1.2." PCI Security Standards Council, accessed at: https://www.pcisecuritystandards.org/pdfs/pci_ssc_quick_guide.pdf.

[7] *See "*Interagency Guidelines Establishing Information Security Standards," implementing section 501(b) of GLBA issued by the federal banking agencies (Security Guidelines).

The proposed requirements of Section IV.A.2.b of the Revised User Agreement would be in direct conflict with financial regulatory expectations and associated industry practices and, therefore, must not be part of the final User Agreement.

Justification #2: SSA's Requirements Will Be Detrimental to Consumers and Not Provide Informed Consent

In digital financial services, friction directly correlates to increased rates of application abandonment by consumers.[8] Such is the case with eCBSV: As currently drafted, the electronic consent requirements proposed in Section IV.A.2 of the revised User Agreement will generate the sort of friction likely to cause firms to reconsider their use of the system. As reported by several of our members, overly complex and lengthy language in digital applications can result in up to 6% of consumers abandoning the application process. Based on survey data of prospective users of eCBSV provided to SSA, **SSA's burdensome electronic consent requirements could negatively impact as many as 17,000,000 consumer applications each year**.[9]

Further, these requirements are inconsistent with the goal of achieving informed consent. Of note:

- A report by the Federal Reserve Board on informed consumer consent[10] offered the following:

  - ***What works in print may not work online.*** *Disclosure design needs to take into account the possibilities and limitations of alternative delivery channels.*
  - ***"Less is more" often remains true.*** *Too much information can overwhelm consumers or distract their attention from key content.*

- The Federal Trade Commission[11] offered the following regarding effective consumer disclosures:
  - *Mobile devices also present additional issues because a disclosure that would appear on the same screen of a standard desktop computer might, instead, require significant vertical and horizontal scrolling on a mobile screen.*
  - ***Don't ignore technological limitations.*** *Some browsers or devices may not support certain techniques for displaying disclosures or may display them in a manner that makes them difficult to read.*
  - *Disclosures should be as simple and straightforward as possible….Incorporating extraneous material into the disclosure also may diminish communication of the message to consumers.*

[8] *See*, for example: "The Rise of Onboarding Abandonment Rates." Instantor, 2018. Accessed at https://www.instantor.com/Instantor_eBook_December_2018.pdf.

[9] An industry survey of potential users of the eCBSV presented to SSA on March 12, 2019 by the American Bankers Association estimated that 283,457,851 inquiries to eCBSV would occur each year.

[10] Jeanne M. Hogarth and Ellen A. Merry, "Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing." Federal Reserve Board, 2011.

[11] ".com Disclosures: How to make Effective Disclosures in Digital Advertising." Federal Trade Commission, March 2013.

- A paper by the Center for Financial Services Innovation[12] stated the following:
  - *In addition to language, design, and formatting, the amount of information included…should strike the right balance between simplicity and comprehensiveness. Trying to accomplish everything…can be counterproductive….*

Much of the ongoing privacy debate at the state and federal levels is being driven by the aggregated sentiment of the above quotations: **It is not good for consumers, and does not achieve informed consent, when consumers are asked to "consent" to the sort of cumbersome, complicated language that SSA is proposing for eCBSV in Section IV.A.2.**

Justification #3: SSA's Overreliance on Legacy Policies and Procedures Is Incongruous with Modern Practices of the Federal Government and OMB Guidance

While we appreciate that previously established SSA policy requires certain information be displayed in the context of consent, legacy policies must not be the basis on which eCBSV is developed. The Banking Bill could not be more explicit in this regard when it stated "notwithstanding any other provision of law or regulation," a permitted entity may submit a request to eCBSV pursuant to a written, including electronic, consent and in connection with a permitted purpose, and that "no provision of law or requirement" should prevent the use of electronic consent for eCBSV. The following are evidence of this problematic overreliance on existing policies:

First, the Addendum features numerous references to existing policies, procedures and best practices at SSA to justify rejection of many of the recommendations we made in our letter filed January 17, 2020 (the "January letter") as part of this same PRA process. This reliance on existing methods rather than adherence to the plain text and stated Congressional intent[13] of the Banking Bill is central to our continued objection to the consent requirements proposed in the Revised User Agreement.

SSA Responses 19-21 in the Addendum are worth highlighting for this reason. Cited justifications for rejecting our recommendations include the Agency's "current disclosure policy," "current consent policy," and "best practices in assessing consents…outside the context of CBSV/e-CBSV" as justifications.[14] **Indeed, a side-by-side comparison of the elements**

[12] David Newville, "Thinking Inside the Box: Improving Consumer Outcomes Through Better Fee Disclosure for Prepaid Cards." Center for Financial Services Innovation, 2012.

[13] The intent of Congress, as articulated by the Banking Bill's primary author, is relevant: *"Nothing in this provision would require consumers to fill out extra forms, provide extra signatures, or do anything that would significantly alter their expectations for a seamless application experience. The goal is to inform consumers of the possible inquiry to the SSA and allow them to provide consent via the chosen method by the creditor, which now includes electronic signature."* (*See* 164 Cong. Rec. S1714 (2018) (statement of Sen. Tim Scott).)

[14] It is worth noting that a portion of SSA's Addendum on this topic is legally incorrect: SSA states in SSA Response #21 "First, the language is backwards, with the consumer giving the Permitted Entity consent to verify his or her information with SSA. Instead, the consumer must consent to SSA disclosing the SSN Verification to the Permitted Entity." However, this is not what the Banking Bill states. Section (f)(1)(A) of the Banking Bill states that consent is to be received "…**by** a permitted entity **from** the individual who is the subject of the request." [Emphasis added]. In other words, Congress directed that the Permitted Entity receive consent from a consumer, not SSA.

required to be displayed in section IV.A.2.b with the data fields on the paper form SSA-89 shows that they are the same.

Yet OMB's guidance to agencies for the PRA explicitly states that a conversion of an agency's current paper-based forms to digital may not always translate well to digital formats. **Per OMB's own guidance[15] to federal agencies on burden minimization in the context of the PRA:**

> *Many existing, PRA-approved paper-based forms can benefit from a conversion to an interactive form, like a web-based form or an editable PDF.*
>
> *However, many agencies find that a form conversion will spark other, more substantive changes in what information is collected and how questions are written. This may change or increase burden, or trigger questions regarding practical utility, resulting in the need for additional public comment under the PRA.*

The term "practical utility" is key: Despite OMB guidance, Congressional intent and the Banking Bill's clear directive to advance SSA's technological capabilities through the development of eCBSV and use of E-SIGN to govern electronic consent, **SSA is essentially shoehorning its antiquated paper-based process into the digital environment of eCBSV (see Appendix A for illustration).**

Second, it is useful to juxtapose this language against the following passage from the Office of Management and Budget's recent memorandum 19-17 on digital identity[16] which states:

> *Agencies that are authoritative sources for attributes (e.g., SSN) utilized in identity proofing events, as selected by OMB and permissible by law, shall establish privacy enhanced data validation APIs for public and private sector identity proofing services to consume, providing a mechanism to improve the assurance of digital identity verification transactions based on consumer consent.*
>
> *• These selected agencies, in coordination with OMB, shall establish standard processes and terms of use for public and private sector identity proofing services that want to consume the APIs.*

Critical is the use by OMB of the phrase "shall establish," particularly in the context of policies and procedures for initiatives such as eCBSV. **Were it the position of OMB that federal agencies such as SSA should rely on legacy best practices and policies to support novel initiatives such as eCBSV, it would not have used such forward-looking language.**

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[15] *See* "A Guide to the Paperwork Reduction Act," accessed at https://pra.digital.gov/do-i-need-clearance/form-updates-and-conversions/.

[16] *See* Office of Management and Budget memorandum M-19-17, "Enabling Mission Delivery through Improved Identity, Credential, and Access Management."

Third, we offer the following for reference:

- Executive Order 13571 states: "Government must also address the need to improve its services, not only to individuals, but also to private and Governmental entities to which the agency directly provides significant services. *Government managers must learn from what is working in the private sector and apply these best practices to deliver services better, faster, and at lower cost."* [Emphasis added]

- OMB Memorandum 11-24, "Implementing Executive Order 13571 on Streamlining Service Delivery and Improving Customer Service," offered the following on ways federal agencies should work to improve the customer experience which, in the case of eCBSV, means our members:

  • Continually identify and implement ways to eliminate unnecessary steps;
  • Assess process and technology changes for their impact on the customer's experience.
  • Analyze the gap between customer expectations and current agency service delivery

Again, the forward-thinking nature of these directives to federal agencies is clear. Taken together, these examples illustrate the fundamental problem with SSA's proposed approach to electronic consent: **The Agency's persistent reliance on policies and language developed for legacy paper-based SSA programs is not appropriate for implementation of the Banking Bill, runs counter to the stated positions of current and past Presidential Administrations, and is incompatible with the Federal Government's own guidance to reduce burden in the PRA process.**

In conclusion, we thank you for the opportunity to raise this critical issue. We offer this recommendation in good faith, aimed at accomplishing our shared goal of successfully implementing the Banking Bill for the benefit of consumers. We would welcome and appreciate the opportunity to work with SSA to resolve these issues in the most expeditious manner possible.

Sincerely,

American Bankers Association

Better Identity Coalition

Consumer Bankers Association

Consumer Data Industry Association

Consumer First Coalition

U.S. Chamber of Commerce

Appendix A

SSA's Requirements that All Consent Data be Displayed on the Same Electronic Screen Will Create an Unnecessary Burden on Consumers Conducting Point-of-Sale or Mobile Transactions.

The Office of Management and Budget produced "A Guide to the Paperwork Reduction Act" for federal agencies which states, in part, the following regarding the excessive burden that can be imposed when transitioning from paper-based to digital format:

> *Many existing, PRA-approved paper-based forms can benefit from a conversion to an interactive form, like a web-based form or an editable PDF.*
>
> *However, many agencies find that a form conversion will spark other, more substantive changes in what information is collected and how questions are written. This may change or increase burden, or trigger questions regarding practical utility, resulting in the need for additional public comment under the PRA.*

In contrast to this guidance, SSA has taken an approach to consent in the Revised User Agreement that will overwhelm consumers with three paragraphs of text. Between the requirements and expectations of Sections IV.A.2 and IV.E.2, each transaction will require text like the following to be displayed on a single screen:

Authorization for the Social Security Administration To Disclose Your Social Security Number Verification

By clicking the Accept button, you are signing the consent for SSA to disclose your SSN Verification to [Permitted Entity and/or Financial Institution]. You agree that your electronic signature has the same legal validity and effect as your handwritten signature on the document, and that it has the same meaning as your handwritten signature.

I authorize the Social Security Administration (SSA) to verify my Social Security number (SSN) (to match my name, SSN, and date of birth with information in SSA records) and to disclose to [Permitted Entity and/or Financial Institution] a match or no-match response concerning the results of the SSN verification for the following purpose(s): To Apply for a Credit Card.

-John Doe
-SSN: 123-45-678
-Birthday: January 1, 1970
-Name of BANK, 123 Main Street, Anytown, State, 20001
-I authorize SSA to disclose the SSN Verification to the party listed above.
-My consent to disclose the SSN Verification is valid for 90 days.

While it may be feasible to display this much text on a desktop screen, the model becomes unworkable when dealing with common digital environments, such as a point-of-sale or mobile transaction. The result of SSA's approach will be to overwhelm consumers with fine print before they click "Accept." Consumers will be better protected if SSA provides them with simpler, more streamlined and comprehensible language.

As demonstrated in the mockups below, text would be so small on a point-of-sale terminal or smartphone as to be illegible to a large part of the population, and would require the sort of excessive scrolling that has been widely acknowledged as inhibitive of informed consent.

SSA Proposed Language

Alternative Language Options (See page 2)