

November 4, 2022

***By electronic delivery to:***

**<https://www.reginfo.gov/public/do/PRAMain>**

Ms. Lindsay Abate  
Senior Policy Analyst  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Eisenhower Executive Office Building  
1650 Pennsylvania Avenue, NW  
Washington, DC 20503

Re: Notice and Request for Comment, Consumer Response Intake Form, Docket No.  
CFPB-2022-0069, 87 Fed. Reg. 60,385 (Oct. 5, 2022)

Dear Ms. Abate,

The American Bankers Association<sup>1</sup> (ABA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (Bureau or CFPB) request for an extension, with modification, of the Office of Management and Budget's (OMB) approval of the existing information collection titled "Consumer Response Intake Form" (Extension Request).<sup>2</sup> Consumers use the Consumer Response Intake Form (Intake Form) to submit a complaint to the Bureau regarding a financial product or service, which the Bureau forwards to the appropriate financial institution for response.

The Intake Form asks for information about the product or service referenced in the complaint and information about the consumer filing the complaint. Among other changes, the Bureau requests approval by OMB of four fields it proposes to add to the Intake Form to capture certain demographic information about the consumer: (1) gender; (2) race; (3) whether the consumer is of Hispanic, Latino, or Spanish origin; and (4) the consumer's preferred language.<sup>3</sup>

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$23.7 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$19.6 trillion in deposits, and extend \$11.8 trillion in loans.

<sup>2</sup> Notice and Request for Comment, Consumer Response Intake Form, Docket No. CFPB-2022-0069, 87 Fed. Reg. 60,385 (Oct. 5, 2022).

<sup>3</sup> Bureau of Consumer Fin. Prot. (Bureau), Supporting Statement for Consumer Response Intake Form, OMB Control No. 3170-0011, at 1-2 (Oct. 5, 2022),

[https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202205-3170-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202205-3170-001) [hereinafter, Supporting Statement]; *Id.*, Inventory of Questions for the Consumer Financial Protection Bureau's Consumer Response Intake Form, OMB Control No. 3170-0011, at 3 & 5 (Oct. 5, 2022), <https://www.reginfo.gov/public/do/DownloadDocument?objectID=125425700>.

As OMB is aware, the Paperwork Reduction Act (PRA) requires OMB to analyze whether a proposed information collection (or proposed modification of an existing collection) provides practical benefit to the agency and minimizes the burden on members of the public who will be asked to complete the agency's form.<sup>4</sup> The Bureau asserts that collecting demographic information about the gender, race, and ethnicity of a consumer submitting a complaint will help the agency "gain insights about the populations [it] serve[s], identify emerging issues, and pinpoint what areas may benefit from new or revised educational tools."<sup>5</sup> Although we support the Bureau's stated purposes for gathering this demographic information, we also anticipate that the Bureau and other stakeholders will use the information to make assertions about whether financial institutions are treating all consumers fairly.

ABA and our member banks support fair, objective, and transparent enforcement of civil rights and fair lending laws. However, we are concerned that the proposed collection of information about the gender, race, and ethnicity of a consumer submitting a complaint will be used to compare the treatment of different demographic groups, and we do not believe it can be used to conduct a fair and reliable fair lending analysis. Moreover, we are concerned that the CFPB will use this data to look for disparities based on race, etc., across all complaints, not just those related to extensions of credit. As noted in our whitepaper, *Unfairness and Discrimination: Examining the CFPB's Conflation of Distinct Statutory Concepts*, ABA does not believe that the CFPB is authorized to extend fair lending laws beyond the bounds carefully set by Congress.<sup>6</sup>

As the Bureau acknowledges, the complaints submitted do not reflect a "statistical sample of consumers' experiences in the marketplace" and are "not necessarily representative of all consumers' experiences with a financial product or company."<sup>7</sup> Instead, complaints are submitted by a self-selecting cohort of consumers—i.e., those consumers who have the time and inclination to submit a complaint to the Bureau. Also, providing the demographic information will be voluntary, and some consumers will choose not to provide it. Therefore, the Bureau will have demographic data on a *subset* of those consumers that chose to submit a complaint. This data cannot fairly and reliably be used to reach conclusions regarding whether a bank is treating all customers equitably.

Even if complaints were submitted by a representative sample of consumers, the complaints themselves cannot support a fair lending analysis. The Bureau has acknowledged that complaints "may contain factually incorrect information,"<sup>8</sup> and that its staff "don't verify all the facts

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<sup>4</sup> Paperwork Reduction Act of 1995, 44 U.S.C. § 3506(c)(2); 5 C.F.R. § 1320.8(d) (2018).

<sup>5</sup> Bureau, Supporting Statement, *supra* note 3, at 2.

<sup>6</sup> Am. Bankers Ass'n, *Unfairness and Discrimination: Examining the CFPB's Conflation of Distinct Statutory Concepts* (2022), <https://www.aba.com/advocacy/policy-analysis/unfairness-and-discrimination>.

<sup>7</sup> Bureau of Consumer Fin. Prot., Consumer Complaint Database, <https://www.consumerfinance.gov/data-research/consumer-complaints/> (last visited Oct. 31, 2022).

<sup>8</sup> Notice of Proposed Policy Statement with Request for Public Comment, 79 Fed. Reg. 42,765, 42,767 (July 23, 2014).

alleged in complaints” or review complaint narratives.<sup>9</sup> Besides containing information that is potentially false and misleading, the “complaint” may be (a) an inquiry about a product or service; (b) based on a misunderstanding of the product’s terms of service; or (c) a “rant” about a company or industry practice that is not founded on a specific interaction between a consumer and the company. Without assurance that complaints reflect legitimate dissatisfaction with a bank’s products or service, it would be irresponsible to draw conclusions about whether members of protected groups are being treated unfairly.<sup>10</sup>

In addition, we are concerned that, by asking consumers to state their preferred language in the complaint, the Bureau may give consumers the false impression that the financial institution will respond to the complaint in the consumer’s preferred language. We ask the Bureau to state, in the complaint form, that communications from the financial institution may not be available in the consumer’s preferred language. The Bureau should adopt language similar to the question that the Government-Sponsored Enterprises ask mortgage applicants about their language preference.<sup>11</sup> That language is attached.

Thank you for your consideration of these views.

Sincerely,



Jonathan Thessin  
Vice President/Senior Counsel  
Consumer & Regulatory Compliance  
Regulatory Compliance and Policy

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<sup>9</sup> Bureau, Consumer Complaint Database, <https://www.consumerfinance.gov/data-research/consumer-complaints/> (last visited May 18, 2018) (archived webpage on file with the author). The U.S. Department of the Treasury reached the same conclusion that the Bureau’s database of complaints submitted by consumer “lacks appropriate safeguards.” U.S. Dep’t of Treas., *A Financial System That Creates Economic Opportunities: Banks and Credit Unions* 87 (June 2017), <https://www.cii.org/files/A%20Financial%20System.pdf>. The Treasury Department noted criticism that the “database may provide misleading or incomplete information to consumers because it does not indicate whether a complaint reflects dissatisfaction with legitimate terms of service, as opposed to actual wrongdoing, and does not provide information on the size of the relevant market.” *Id.*

<sup>10</sup> If OMB approves the addition of the four demographic fields to the Intake Form, we urge the Bureau to include a disclaimer in any report it publishes that relies on the demographic information that the data cannot prove discrimination. We also recommend that OMB condition approval of the proposed demographic questions on the Bureau’s commitment to providing financial institutions with access to the demographic data on the complaints submitted by their customers.

<sup>11</sup> See Fannie Mae/Freddie Mac Form 1103, Supplemental Consumer Information Form (2022), <https://singlefamily.fanniemae.com/media/29326/display>.

Cc: Anthony May  
Paperwork Reduction Act Officer  
Bureau of Consumer Financial Protection

## ATTACHMENT

Below is the question that the Government-Sponsored Enterprises ask mortgage applicants about their language preference:

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### Language Preference

**Language Preference – Your loan transaction is likely to be conducted in English. This question requests information to see if communications are available to assist you in your preferred language.** Please be aware that communications may NOT be available in your preferred language.

*Optional* - Mark the language you would prefer, if available:

☐ English   ☐ Chinese   ☐ Korean   ☐ Spanish   ☐ Tagalog   ☐ Vietnamese   ☐ Other:    ☐ I do not wish to respond  
(中文)   (한국어)   (Español)   (Tagalog)   (Tiếng Việt)

Your answer will NOT negatively affect your mortgage application. Your answer does not mean the Lender or Other Loan Participants agree to communicate or provide documents in your preferred language. However, it may let them assist you or direct you to persons who can assist you.

**Language assistance and resources may be available through housing counseling agencies approved by the U.S. Department of Housing and Urban Development. To find a housing counseling agency, contact one of the following Federal government agencies:**

- U.S. Department of Housing and Urban Development (HUD) at (800) 569-4287 or [https://www.hud.gov/program\\_offices/housing/sfh/hcc](https://www.hud.gov/program_offices/housing/sfh/hcc).
- Consumer Financial Protection Bureau (CFPB) at (855) 411-2372 or [www.consumerfinance.gov/find-a-housing-counselor](http://www.consumerfinance.gov/find-a-housing-counselor).