



Russell W. Schrader
Associate General Counsel
Global Enterprise Risk

January 3, 2012

Consumer Financial Protection Bureau
1500 Pennsylvania Avenue NW
Attn: 1801 L Street
Washington, DC 20220

Via Electronic Delivery

Re: Proposed Information Collection—Comment Request—CFPB—2011—0034

Ladies and Gentlemen:

This letter is submitted by Visa Inc. (“Visa”) in response to the notice requesting public comment published by the Bureau of Consumer Financial Protection (“Bureau”) in connection with Section 1032 of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act” or “Act”). The stated purpose of the Bureau’s proposed information collection is to solicit comment on a process for collecting information to “develop and prescribe standard model forms, disclosures, tools and other similar related materials that help to inform consumers about complex financial information related to consumer financial products.” Specifically, Section 1032 of the Dodd-Frank Act authorizes the Bureau to create model forms and disclosures “to ensure that the features of any consumer financial product or service . . . are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks” associated with the consumer financial product or service.

Visa has a strong interest in ensuring that consumers receive payment card disclosures that are accurate, informative and readily understandable to consumers. Visa appreciates the opportunity to comment on the Bureau’s proposed information collection regarding the development of model forms, disclosures and related materials.

Visa understands that the dynamic and complex nature of consumer financial products and services presents significant disclosure challenges. Visa also understands that financial institutions may have a tendency to “over disclose” in order to anticipate and respond in advance to a broad range of questions from cardholders, as well as protect themselves from potential liability, and that lengthy and complex disclosures are less likely to be understood by consumers. In order to strike the appropriate balance with respect to disclosures, Visa believes it is important, even at the information collection stage, to solicit input from covered entities in the industry and to establish clear principles with respect to the purpose of the underlying model forms or disclosures. Visa also recommends that all model forms and disclosures be tested and validated in advance by the Bureau through both qualitative methods (*i.e.* research, interviews and discussions with stakeholders) and quantitative methods (*i.e.* statistically significant numerical data) using a diverse and representative sampling of consumers across the U.S.

Consideration of Input from Covered Entities is Essential

It is essential that the Bureau actively solicit, and carefully consider, comment from covered entities concerning all aspects of the development and evaluation of model forms and disclosures. Although the supplemental information accompanying the request for comment contemplates some consideration of input from covered entities, the Bureau's contemplated information collection appears to be limited to possible requests for information regarding materials "currently used" by the industry "to ensure that any such materials can be implemented as easily and cost-effectively as possible." Such limited involvement by covered entities would not give the industry a sufficient opportunity to provide the Bureau with input concerning the content and design of model forms and disclosures.

Careful consideration of input from covered entities will greatly assist the Bureau in designing model forms that can be readily used by such entities, without being overly burdensome or creating undue exposure for covered entities. Presumably, one of the ultimate goals of the Bureau in designing model forms and disclosures is to encourage companies to use the forms so that consumers will receive key information in a manner that is most likely to be understandable to consumers; therefore, such forms should be designed so that companies can in fact use them without being exposed to contractual or other claims relating to the information provided.

As a result, not only should the information collection include soliciting input to assess whether the forms effectively inform consumers, the process also should include soliciting comment to assess whether the forms would adequately protect covered entities from possible state and federal claims. Inadequate safe harbors for covered entities under both federal and state consumer protection laws will limit the utility of any model form because companies will be reluctant to use such a form out of fear of being subjected to contractual or other claims relating to the model form.

For example, credit card issuers may well be reluctant to use the prototype credit card agreement released by the Bureau in early December 2011 due to concerns that use of the agreement could subject an issuer to contractual and other claims. As the CFPB is aware, the prototype credit card agreement contains two documents—a two-page agreement and a separate glossary that a consumer would receive over the Internet or through the mail at the consumer's request. This incorporation-by-reference concept underlying the prototype agreement may expose an issuer to challenges that the agreement is not enforceable under state contract law or that the agreement may be inconsistent with state laws restricting unfair and deceptive acts and practices laws ("UDAP") because it merely references important contract terms, which the consumer must either find on the Internet or request from the issuer.

Model Forms Should be Developed and Tested Based Upon Clear Principles

In addition to soliciting input from covered entities on the content and format of the model forms, the Bureau should formulate clear principles to guide the information collection process. Clear principles will focus and add structure to the information collection to ensure that the information is collected in the most efficient and effective manner possible. Furthermore, clear principles will aid the Bureau in making difficult policy decisions concerning the content of the form, and should help avoid cumbersome and unnecessary disclosures. Moreover, using

clear principles in connection with the information collection process will increase the likelihood that the model forms and disclosures issued by the Bureau are clear—providing covered entities, courts, enforcement agencies and others with standards for determining with greater certainty whether the terms and conditions were effectively disclosed as required by applicable state or federal law.

Because simple disclosures have been proven to enhance consumer understanding, an important principle for any model form or disclosure is simplicity. Thus, we recommend that the proposed information collection incorporate this principle to ensure this goal is met. For example, this principle would help focus the information collection on determining which terms significantly impact consumers. As a result, we recommend that the Bureau avoid requiring disclosure of incidental or immaterial information. Such information detracts from key terms and conditions and can be addressed in separate agency guidance or through educational initiatives.

Model Forms and Disclosures Should be Tested

Consistent with Section 1032(b)(3) of the Dodd-Frank Act, the proposed information collection process would utilize qualitative evaluation methods, such as think-aloud interviews and usability studies, to test model forms and disclosures. While the methods of collection are described in the proposal, the scope of the consumer testing is not. That is, the proposed information collection process does not specify standards that will be used for establishing the sample size and geographic area that would be used for consumer testing.

With respect to model forms and disclosures related to payment cards, Visa recommends consumer testing conducted by quantitative and qualitative evaluation methods with participants representing a broad range of consumers, including a range of ethnicities, ages, educational levels and credit card behavior. For instance, instead of using one city or geographic area, we recommend that the scope of the Bureau's information collection at least meet, if not exceed, the extent of the Federal Reserve Board's ("FRB") 2008 study for its credit card model forms and disclosures in terms of sample size, geographical sampling, and individual characteristics (race, gender, and credit status). Specifically, in connection with its 2008 amendments to Regulation Z, the FRB conducted a comprehensive review of the rules associated with revolving credit.¹ Consumer testing was a significant part of the FRB's review, which the FRB then used to develop the model forms.² Moreover, the FRB retained a research and consulting firm that conducted several tests.³ The rounds of testing were conducted in various cities throughout the United States. The consumer testing groups were comprised of participants representing "a range of ethnicities, ages, educational levels, and credit card behavior."⁴ In addition, both prime and subprime borrowers were represented. The testing included focus groups, as well as one-on-one meetings with credit card account holders.

¹ Federal Reserve Board, *Design and Testing of Effective Truth in Lending Disclosures: Findings From Experimental Study*, December 15, 2008 available at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081218a8.pdf>.

² 74 Fed. Reg. 5246 (Jan. 29, 2009).

³ *Id.*

⁴ *Id.*

In summary, Visa recommends expanding the scope of the proposed information collection as it pertains to covered entities to allow such entities, at their option, to submit input that should be carefully considered in formulating the content and design of all model forms and disclosures. Visa also recommends that the Bureau establish clear principles to guide the information collection process, and that it test the model forms and disclosures using quantitative and qualitative evaluation methods with participating consumers representing a broad cross-section of the U.S. population.

Thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact me at 650-432-1167.

Sincerely,

Russell W. Schrader