

THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy



October 18, 2012

By Electronic Delivery to CFPB_Public_PRA@cfpb.gov

Consumer Financial Protection Bureau
PRA Office
1700 G Street NW
Washington DC 20552

Shagufta Ahmed
Office of Management and Budget
New Executive Office Building, Room 10235
Washington DC 20503

Re: Pentagon Federal Short-Form Credit Card Agreement

Dear Madam/Sir:

The Financial Services Roundtable¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("Bureau" or "CFPB") notice and request for comment regarding the CFPB's intent to review data on Pentagon Federal Credit Union's use of the CFPB prototype short-form credit card agreement. The CFPB indicated it needs emergency approval from OMB "because the proposed information collection is essential to the mission of the agency and use of normal clearance procedures is reasonably likely to prevent collection."

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

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The Roundtable and its members share the CFPB's commitment to consumer understanding of consumer financial services. It is in the best interest of our customers—and in the best interests of financial services companies—when terms and conditions are clear and understandable.

We commend the Bureau for its plan to gather direct feedback from consumers regarding their understanding of terms and conditions. Even the best and most learned assumptions about consumer understanding require validation in the real world and we appreciate the CFPB's commitment to direct consumer testing.

However, we bring several concerns to the CFPB's attention. First, it is unclear how the short form agreement relates to the body of federal and state laws requiring disclosure of the terms of consumer financial services and state contract law. Second, we believe the significant flaws in the survey methodology will compromise the value and reliability of the survey results.

Distinguishing the Functions of Contracts and Disclosures

Disclosure is the primary tool used by federal and state lawmakers and regulators for the last fifty years to enhance understanding of consumer financial services. At the federal level, the Truth in Lending Act, the Real Estate Settlement Procedure Act and the Equal Credit Opportunity Act are based on the belief that consistent disclosure of key terms empowers consumers to make sound choices. Most recently, the creation of the “Schumer Box” and the harmonized TILA-RESPA disclosures required by the Dodd-Frank Act carry forward this strategy.

As the CFPB is aware, credit card agreements are contracts that memorialize the obligations of the issuer and borrower. Their specific terms form the basis of protections

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for both card issuers and cardholders and address important legal and regulatory issues.

Fundamentally, a contract is not a disclosure; it serves a different function. Attempting to convert a contract into a disclosure can compromise its effectiveness as a contract and, at the same time, undermine the effectiveness of the federally-mandated disclosures that consumers receive today.

Moreover, consumer financial services contracts are governed primarily by state law. While federal law mandates the manner and content of specific disclosures, state law governs with respect to contract formation and enforceability, and changing the underlying contractual agreement between an issuer and the consumer would create serious operational and litigation risk for the issuer. The fundamental purpose of the customer agreement is to state the legal rights and obligations of the parties. To fulfill that purpose, the agreement must be specific and cover a fairly broad range of topics. Introducing more generic language into the agreement in a well-intentioned but misguided attempt to promote clarity and brevity could create legal risk and increase the likelihood of litigation. This risk may be exacerbated if all terms and conditions are not available in a single location.

Study Flaws

Turning to the study itself, the Roundtable believes that the study's design and questions are flawed and that these flaws will prevent the survey from accurately determining whether consumer understanding is enhanced by a short-form credit card agreement, considered separately or in combination with the existing Schumer Box disclosure.

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One flaw involves the CFPB's assumptions regarding consumer recall; specifically, the existence of a cause and effect relationship between the length of an agreement and the consumer's ability to recall the terms of the agreement. The study assumes, without apparent basis, that it is easier for consumers to recall the terms of a shorter agreement than the terms of a longer agreement. The study also implicitly assumes that a consumer's ability to recall certain information is an appropriate proxy for actual understanding of the terms of the agreement. In fact, it is possible, even likely, that a consumer who received either form of the agreement understood the agreement's key terms and conditions when he or she opened the account, but is not able to recall that information from memory when surveyed weeks later.

The CFPB proposes a 15-minute telephone survey that will require consumers to recall details two weeks or more after receiving the credit card agreement. Other surveys of consumer financial products have refrained from making such assumptions about consumer recall, and instead have provided consumers with access to the disclosures or forms being tested. For example, tests by the Federal Reserve Board ("Board") involved focus groups, where the credit card disclosure or other document was present at the time of questioning. In a focus group, consumers are able to refer to the agreement, and researchers were able to evaluate how consumers responded to specific presentation formats. Before the CFPB proceeds with efforts to test consumer understanding of *any* consumer financial product agreement or other document, it should demonstrate that its key assumptions about consumer recall will lead to accurate data.

Another flaw involves failure to control for variables and outside influences. For example, the testing fails to determine whether the consumer was exposed to other

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documents or information from the issuer or otherwise available in the market. The survey does not explicitly isolate or consider whether Pentagon Federal customers received pre-application disclosures or initial disclosure statements, both of which would have provided information similar to the short-form agreement or the long-form agreement.

The survey also fails to consider whether Pentagon Federal customers may have applied for other credit cards during the same period of time and, as a result, would have received different card disclosures containing different terms and conditions.

Turning to the survey questions and instructions, the Roundtable is concerned that Pentagon Federal customers will receive either the short-form agreement or the long-form agreement, but not both. Nevertheless, all customers will be invited to compare the two forms through leading questions, including whether they “agree or disagree” with whether the “layout of [the] agreement makes it easier for [a customer] to find and understand the content of the agreement.” Without receiving and having an opportunity to review both agreements, however, it is impossible for surveyed customers to determine whether the agreement applicable to his or her card truly makes it “easier” to understand the terms of the account. Further, in connection with the question on whether the consumer normally reads a credit card agreement, if the consumer answers that he or she does not do so, the survey caller is prompted to “[e]ncourage them to elaborate on their answer.” Such prompting invites the introduction of multiple unintended variables into the survey results, particularly if survey callers use their own views or experiences to “encourage” Pentagon Federal customers to elaborate on their answers.

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The proposed survey also fails to solicit feedback regarding the bifurcated nature of the short-form agreement, which requires a consumer to go online, or make a telephone call, to access a glossary of additional terms and conditions. At a minimum, the survey should ask:

- Whether the consumer has Internet access;
- Whether the consumer understood that the agreement required him or her to go online or make a telephone call to obtain important additional terms;
- Whether the consumer went online or made a telephone call to obtain the additional terms; and
- Whether the consumer read and understood the terms of the glossary.

Importantly, the survey fails to test the impact that the Schumer Box disclosures, provided at the time of application, have on consumer recall. Thus, although the CFPB seeks to assess whether a short-form agreement is more helpful to consumers than a long-form agreement, the survey does not explore whether the short-form agreement is more or less helpful than the disclosures and other information supplied by the issuer at the time of application and/or account opening.

Conclusion

The CFPB recently released a strategic plan that outlined four main goals, including the goal of “empowering consumers to live better financial lives.” The CFPB’s strategic plan hopes to achieve this goal by helping “consumers understand the costs, risks and tradeoffs of financial decisions; build trusted relationships that are interactive and informative to help consumers take control of their financial choices to meet their

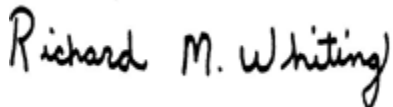
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own goals; and raise effectiveness of those who provide financial education services to increase financial literacy.”

The Roundtable fully supports the goal of empowering consumers to live better financial lives and, as noted above, we enthusiastically support consumer testing. We are concerned, however, that the proposed survey of Pentagon Federal Credit Union is seriously flawed. We urge the CFPB to conduct consumer focus group testing, similar to the Board’s previous studies, to ascertain which disclosure forms and formats are most likely to achieve our shared goals.

Thank you again for the opportunity to share our suggestions. If you have any questions, please contact me at rich@fsround.org or 202.589.2413, or Anne Wallace at anne@fsround.org or 202.589.1936.

Sincerely,

A handwritten signature in black ink that reads "Richard M. Whiting". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Richard M. Whiting
Executive Director & General Counsel