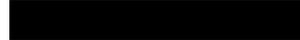


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July 29, 2013

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

By electronic mail.

*Re: Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding  
Dispute Resolution Provisions in Credit Card Agreements,*

*Office of Management and Budget (OMB), Control Number 3170-XXXX,*

*Docket No: CFPB-2013-0016*

To Whom It May Concern:

This letter responds to CFPB's proposed Agency Information Collection Activity titled "Telephone Survey Exploring Consumer Awareness of and Perception Regarding Dispute Resolution Provisions in Credit Card Agreements" (78 *Federal Register*, p. 34352, June 7, 2013) and its Supporting Statements (hereinafter the "Supporting Document"). The comments that follow arise from many years of research experience concerning consumer financial services in the academic, public, and private sectors. This includes survey research on consumers awareness, use of, and attitudes toward financial services published by the Federal Reserve Board in five different decades (1970s through the current decade). My comments below reflect my views and not those of the Federal Reserve Board or other individuals or organizations. At no point do I intend any comments to sound severe, but based upon decades of experience in this area, I believe that the proposed survey project exhibits severe difficulties and that useful commentary should point them out with relevant emphasis.

I have looked at the Supporting Document for the proposed national survey of consumer awareness of arbitration and other methods of credit card dispute resolution. For reasons discussed further below, the proposed survey is not likely to produce usable research data. This outcome seems so obvious that the proposed Agency Information Collection Activity necessarily raises the question whether the Information Collection Activity actually is intended to produce no data on awareness of dispute resolution procedures as an argument supporting a predetermined agenda to recommend regulation. At this time, the Information Collection Activity is not ripe for public comment. At a minimum, it should be carefully and professionally

rethought before even asking for good-faith public commentary. Nonetheless, I have detailed some of my concerns in commentary that follows.

The CFPB might better address the matter of consumers and dispute resolution procedures through experimental, rather than survey, procedures. With subjects and a careful experimental design, tradeoffs between dispute resolution and other features and costs of card plans could be explored (e.g. fees of various amounts in lieu of arbitration clauses). Redesigning this project this way would involve a considerable professional undertaking, but it would be more likely to provide useful results to the agency in any exploration of the efficacy of various dispute resolution procedures.

Comments:

Section 1028(a) of the Dodd-Frank Act requires a study of pre-dispute arbitration agreements. It does not automatically follow, however, that a population survey of consumers will produce useful research results on this subject justifying expenditure of scarce taxpayer funds.

Even before development of specific procedures for ensuring technical adequacy of survey methodology, a survey research project of this level of obvious expense requires three developmental steps in order for the survey to be useful and cost-justified:

1. Clear identification of a specific researchable question to be answered with a survey;
2. Specific statistical measurements or metrics to be obtained from the survey that will answer the research question; and
3. Development of specific survey questions to obtain these measurements.

It appears from the comment request that very little attention has been devoted to steps 1 and 2 and the efforts on step 3 are premature and not ready for public comment.

#### 1. The Research Question.

Page 2 of the Supporting Document (specifically, the first page numbered 2 since the Supporting Document contains three pages numbered “2”) states the following:

The key estimates to be derived from the survey are the extent of consumer awareness of dispute resolution provisions in their agreements with covered persons, as well as consumers’ perceptions of such provisions. The survey will necessarily explore consumers’ perceptions regarding the two primary forms of dispute resolution: arbitration and litigation [footnotes omitted].

First, the survey will explore the extent to which credit card consumers are aware of dispute resolution provisions in their contracts with credit card issuers [footnote omitted].

Second, it will investigate whether credit card consumers' assumptions about their formal dispute resolution options, on the one hand, correspond to the choices set out in the applicable provisions of their credit card contracts, on the other hand. The survey will ask about the extent of respondents' prior experiences with litigation or arbitration, to identify potential correlations between past experiences and current assumptions.

Third, the survey will probe whether and how consumers weigh dispute resolution provisions when choosing credit card products.

Fourth, it will investigate credit card consumers' beliefs regarding formal dispute resolution options (e.g., the smallest claim amounts respondents believe they would pursue in arbitration vs. litigation; whether respondents feel that they need a lawyer for either forum).

It is not clear that these questions are topics researchable by consumer survey methodology that will determine something new or unknown (i.e. be "research"). Most interested parties, as well as most behavioral scientists experienced in studying consumers' financial behavior, will likely concede that most consumers probably are not at all aware of these subjects. It is not a good use of scarce financial resources, especially if the use is by an agency without appropriated budget and having a special responsibility to use the resources of taxpayers well, to expend them on a survey to establish something already highly likely known: absence of consumer awareness of these topics.

In fact, the Supporting Document suggests on P. 7 that research on awareness of contract provisions is already extant, even if not specifically on credit card dispute resolution:

The majority of prior awareness research has explored the extent to which consumers read consumer contracts generally. Such research largely has not focused on consumer awareness of arbitration provisions. The studies usually do not focus on consumer financial products and services (footnotes omitted).

Unless prior research suggests that awareness of contract provisions is either widespread or variable, it is not likely that one more survey will provide much that is new.

This naturally presents questions about the underlying motivation for the project. Since discovery of useful new information seems unlikely, appearances may suggest to some observers that the goal is to establish absence of awareness of these topics as a logical straw man and then attack the straw man with the need for regulation. This is not research, but rather suggests a political motivation for this project and poor use of the resource of others who expect good stewardship.

Page 10 of the Supporting Document suggests that the motivation does not concern awareness. It states:

If the survey was (sic) not implemented, the CFPB would be limited in its ability to provide an analysis of how dispute resolution provisions are used in connection with the offering or providing of financial products or services to consumers [emphasis added]. For example, the CFPB would lack data on whether consumers are even aware of dispute resolution provisions in their agreements with covered persons and how, if at all, consumers assess those provisions when evaluating competing enrollment opportunities.

This statement suggests that the underlying object of the project involves “use” of dispute resolution provisions rather than awareness. Although the second sentence of this paragraph employs the word “aware” and suggests it is related to the consumer survey of awareness of financial contract provisions, this paragraph clearly concerns use of these contract provisions. Frequency of use of these provisions, outcomes of such use, difficulties surrounding their use, relative costs of different methods of dispute resolution, satisfaction with outcomes, etc. all are researchable topics, but not by consumer survey methodology using a nationwide probability sampling frame. These are rare events and should be studied by relevant methods and more efficient sampling frames if samples are needed.

In sum, it is not clear that the Supporting Document adequately establishes the need for a consumer survey using a relatively small but expensive nationwide probability sampling frame.

## 2. Specific measurements.

The Supporting Document does not discuss the specific measurements to be made by the proposed consumer survey. Its discussion of survey methodology reflects only survey measurement generalities along with methods for survey sampling design, telephone sampling design, weighting methodology, etc. but not the specific measurements to be collected and why. It does not discuss how these measurements are to be collected and how they will be connected with the underlying research question or any specific questions asked of respondents.

It appears that the specific measurements and their relation to the study objectives are to be an afterthought, to be developed only as the project goes along. It appears that the discussion of methodology found in the Supporting Document actually is from some other source developed for some other purpose and merely inserted into the Supporting Document. At the most basic level, even this section’s separate page numbering scheme suggests this.

Better methodology would involve carefully specifying the underlying research objective, developing the metrics necessary to answer the research question, and then designing survey questions to provide these measurements. Even assuming that a consumer survey is usefully related to unanswered research needs involving dispute resolution mechanisms in consumers’ credit card contracts, it is not clear that this second step has been adequately undertaken. There is no list of the measurements expected from the questions to be asked, beyond a listing of

generalities on page 4 of the Supporting Document (none of which is measurable by the proposed survey methods), or how they relate to survey objectives and previous unknowns, let alone to specific respondent questions.

### 3. The questions.

Even under assumptions that a consumer survey is needed to answer researchable questions and that the relevant measurements will be determined, the draft questions proposed in the Supporting Document are inadequate for any obvious purpose. There is commentary below on them, but first some general concerns:

#### A. Question design.

It does not appear that the draft questions in Appendix D were carefully designed. They pose a number of kinds of difficulties noted generally in the following paragraphs and more specifically in a later section below. As indicated above, it appears that the only participation of researchers in this project has involved discussions of technical aspects of methodology and that these sections actually appear to have been developed elsewhere for other purposes.

#### B. Inappropriateness of asking questions whose answers the respondent does not know.

One of the principles of survey research is that you cannot measure by survey research things that respondents do not know or have not thought about. This is especially true for facts, as opposed to opinions. Attempting to ask such questions gives rise to what descriptively might be characterized here for illustrative purposes as the “Ethiopia Problem.” Two sorts of biases arise:

First, respondents might be willing and able to answer an attitude or opinion question on something they do not know anything about or have not thought about, but the measurement is really of something else. For instance, respondents might be willing to answer the following question posed to them in a survey about US foreign policy:

“People have many different opinions about US foreign policy and we are interested in what you think [some sort of preamble like this might be necessary because of the likely unfamiliar nature of the question to follow]: In your opinion is United States policy with respect to Ethiopia very good, somewhat good, somewhat bad, or very bad?”

Respondents in a good mood might answer such a question and it might be possible to calculate a distribution of responses and analyze them by education, income grouping, section of the country, etc. The difficulty is that the measurements likely would not be about opinions on Ethiopia policy but rather about opinions on the President or the government in general.

If the question were altered slightly, for example, to include the words “recommended by Republican/Democratic Party political leaders” after “United States policy” in the stem of the

question, then the measurement would be on opinions about the relevant political party rather than about foreign policy. Again respondents in a good mood might answer such an opinion question, but their answers likely would not really reflect a measurement on the question asked.

But if the next two questions were: “What aspect of current US Ethiopia policy is best? ... What aspect of current US Ethiopia policy is worst?” there would be the additional problem that respondents do not like to be insulted by a survey. Some experts call such questions “test questions” and consumers do not like to be tested about things they do not know in a voluntary survey. Asking about facts that the respondent does not know will cause annoyance, increase refusals, increase overall survey break offs and failures, and create biases due to limitations in the remaining sample. Asking questions of opinion but especially of fact where respondent knowledge is unlikely is inappropriate and self defeating.

#### C. Small sample size.

Because much knowledge of the subject matter is unlikely, there will not be much data for any analysis and breakdowns for analysis will be impossible. For studying dispute resolution, a sample frame of those actually using such procedures would be much more efficient and productive.

4. Review of individual questions. (Portions of the following taken from the Supporting Document are in italics and commentary not.)

#### *Group One*

*1. Have you ever applied for a bank credit card (a credit card with a bank name on it, American Express, or Discover card)?*

- *Yes*
- *No*
- *Don't Know*
- *Refused*

*[This is a screening question. If the participant does not acknowledge having a credit card, he or she is ineligible for survey participation.]*

Comment: This line of questioning reflects the lack of attention to the measurements to be collected and professional consideration of these metrics and associated questions. In general in recent years, consumers do not “apply” for cards. They respond to prescreened solicitations or accept new cards after specific offers from participating retail sources (Home Depot, Southwest Airline, Hilton Hotels, etc., etc.). They do not generally “apply” for cards and so the meaning of this question is subject to a variety of interpretations and misinterpretations. Many card holders may never have “applied” for a card, in their view, in their entire lifetime. At best, it will be

difficult to argue that measurements will be consistent across respondents or even consistent with measurements from elsewhere about the proportion of the public with such cards.

Even if question wording is changed to repair this difficulty, the card most recently obtained may not be the card the individual uses most often or knows most about. The card most recently obtained may be in a drawer somewhere and its original or current terms uninteresting or unimportant to the respondent. The survey respondent may have obtained it only in response to some incentive (price reduction at some point of sale, offer of some number of frequent flyer miles, etc.), and it may not be the card of interest to that individual. And so awareness of terms will be inconsistently measured across respondents, even in the unlikely event that the individual reads credit card agreements closely on cards actually used, or is interested in dispute resolution terms on them.

*If you have more than one card, please answer the remaining questions for the card you applied for most recently. Please do not include cards used primarily for business purposes.*

2. *What financial institution issued your credit card?*

- *Enter company name*
- *Don't Know*
- *Refused*

*[The survey asks consumers a number of questions regarding credit card agreements they currently hold, in an effort to test consumers' awareness of dispute resolution provisions in contracts they have already agreed to. By identifying the banks that issued consumers' credit cards, the CFPB will be able to compare consumers' beliefs about their credit card agreements with the content of the actual agreements.]*

Comment: There likely will be many refusals to answer this question, especially in the current environment of heightened concern over invasive federal governmental interest in the private concerns of individuals. Refusals likely will obviate the need for the question since there will probably be at best only very inconsistent opportunity to compare respondents' awareness of dispute resolution provisions (if there is any awareness, which seems unlikely) to actual issuer policies on cards "applied" for.

Even if refusals were not an issue, asking for financial institution may not indicate which subsidiary issued the card. Some issuers have more than one card-issuing subsidiary and terms and provisions may not be the same across subsidiaries or across cards at an individual subsidiary.

3. *How long ago did you obtain this credit card?*

- *Year*
- *Years Ago*
- *Months Ago*

- *Don't Know*
- *Refused*

*[The survey asks consumers a number of questions regarding credit card agreements they currently hold, to test consumers' awareness of dispute resolution provisions in contracts they have already agreed to. To the extent that consumers are unable to recall details about their credit card contracts, Question 3 helps distinguish failure to recall due to the passage of time from failure to recall for other reasons.]*

Comment: Most respondents are unlikely to be aware of dispute resolution procedures for multiple reasons and this question likely will not offer any help in distinguishing among them, even assuming the question refers to cards they actually use and not most recently “applied” for.

*4. Did you consider any other card before applying for your card? In other words, did you comparison-shop for credit-cards?*

- *Yes*
- *No*
- *Don't Know*
- *Refused*

*[One of the survey's key estimates is whether, and how, consumers value dispute resolution provisions when determining which credit card to enroll with. This question begins that inquiry by asking if consumers consider other credit cards before enrolling with a credit card.]*

Comment: See discussion above about how most consumers do not “apply” for cards. Consequently, many are unlikely when agreeing to accept dual branded cards in exchange for incentives at point of sale, on the Internet, or through the mail, to be “shopping” for anyone’s card. Further, they may never use the card again. Consequently, responses to this question are at best going to be inconsistent and any tallies misleading.

*5. Do you remember the reasons you chose to apply for that card? If so, can you list your reasons?*

*[One of the survey's key estimates is understanding the factors that consumers weigh when choosing a credit card – in particular, whether consumers weigh dispute resolution provisions when choosing their credit cards. This question asks consumers to identify those factors.]*

Comment: The Federal Reserve Board and others have studied the question of preferences for card features extensively in the past. It hardly is a “key” new research question. Based on earlier research, it seems unlikely there will be a single respondent who mentions dispute resolution aspects of card agreements.

*[Half of the respondents will receive Version A of Question 6. The other half will receive Version B.]*

*6. [VERSION A] Suppose you have a dispute with your credit card company. You've called customer service, but weren't able to resolve the dispute to your satisfaction. As a last resort, you decide to file legal claims against the company. I'm going to read you a list of ways that legal disputes are sometimes decided. After each one, please tell me if you believe you have the legal right to require that your dispute be decided in that way, even if the company wants something else. [Order of Selections Randomized]*

*a.*

*i. In court (not including small claims court)?*

- Yes*
- No*
- Don't Know*
- Refused*

*ii. In small claims court, provided your claim is small enough to qualify?*

- Yes*
- No*
- I Don't Know*
- Refused*

*iii. By an arbitrator?*

- Yes*
- No*
- I Don't Know*
- Refused*

*b. Has your credit card company ever given you an opportunity to opt out of an arbitration provision in your cardholder agreement?*

*i. Did you exercise that option?*

*c. [VERSION B] Have you ever reviewed your cardholder agreement?*

- Yes*
- No*
- I Don't Know*
- Refused*

*i. [If yes] Does the agreement discuss how disputes should be resolved if customer service can't resolve them? Yes, no, or I don't know?*

- Yes*

- *No*
- *I Don't Know*
- *Refused*

ii. *[If yes] What does it say?*

- *[Open-ended]*
- *I Don't Know*
- *Refused*

*[One of the survey's key estimates is whether consumers are aware of dispute resolution provisions in their credit card agreements. Version B of Question 6 asks consumers that question directly (whether their credit card agreements include terms that discuss arbitration). Version A of Question 6 seeks the same information.]*

Comment: Regardless whether open ended or closed ended credit is involved or how questions are randomized or subdivided, this question area is inappropriate for the reason called above the "Ethiopia problem": You simply cannot reasonably ask respondents questions about something they do not know about or have not thought about, particularly questions of facts. It will produce adverse reactions, refusals, interview break offs, and likely little data but any that result will contain unknown biases.

Responsible academic researchers would not undertake such questioning for these reasons but also because it is abusive of respondents. University human subject review committees likely would not allow it.

7 through 13. *Group Three and Group Four*

The inappropriateness of the questions that follow this one are so severe and obvious that they are not further itemized or reproduced in this commentary. All of them suffer from severe forms of the Ethiopia problem and are highly unlikely to produce any usable data or answers to any questions. For example, any consumer responses about consideration of "regular" state or federal court versus small claims court with or without a lawyer (Question 9) will be only guesswork. Further, small claims courts are not even the same in different jurisdictions or have the same name.

The questions in these sections also suffer for the additional difficulty of being hypothetical in nature. What individuals will actually do or not do in actual situations can vary substantially from what they say they will do in a hypothetical situation suggested to them. Again this seems so obvious that further discussion is unnecessary. At a minimum, no useful data are likely to result from any of this line of questioning.

In sum, using the taxpayers' funds to undertake the proposed survey is inappropriate for a number of reasons:

- It does not identify a researchable topic for which a random population survey of credit card holders will provide an answer;
- Its Supporting Document does not suggest actual measurements to be collected by survey to answer a specific question;
- The draft questions proposed are inappropriate in a number of ways and highly unlikely to produce any usable new information.

Better would be careful experimental research that permits estimation of consumer tradeoffs among possible financial alternatives. Such research might also necessarily involve hypothetical conditions, but with careful professional design it could produce useful results on researchable questions, even on uncommon events like dispute resolution. Consumer evaluation of such events involve perceptions both of probabilities and costs, which could be studied by careful experiments. They cannot reasonably be studied by surveys of matters consumers have not considered.

Thank you for consideration of these comments.

Sincerely,

[Signed]

Thomas A. Durkin