



August 6, 2013

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

***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:

The American Financial Services Association (“AFSA”) welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) proposed information collection, titled *Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements* (“Survey”). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) requires the CFPB to conduct a study of, and provide a report to Congress concerning, the use of pre-dispute agreements providing for arbitration of any future dispute between covered persons (entities offering or providing certain consumer financial products or services) and consumers in connection with the offering or providing of consumer financial products or services. The Dodd-Frank Act does not specify how the CFPB should conduct such a study. The CFPB proposes, as part of the study, to conduct a national telephone survey of 1,000 credit card holders exploring consumer awareness of and perceptions regarding dispute resolution provisions in credit card agreements.

AFSA believes that the proposed Survey is unnecessary for the completion of the study. The results the CFPB will gather from the Survey are obvious from the outset – consumers are not generally aware of the dispute resolution provisions in their credit card agreements. Conducting a Survey with an obvious result is not a good use of the CFPB’s limited resources, nor a statistically valid, empirically derived method of obtaining what should be statistically relevant data. If the CFPB decides to continue with the Survey, though, we ask that the Survey be substantially redesigned. There are a number of problems with the survey design, survey questions, estimated response rates, and sample frames. AFSA offers some suggestions to improve the Survey and some alternatives to conducting the Survey that will help the CFPB in its overall arbitration study.

I. Survey Planning: Goals and Objectives

We do not believe that conducting a national telephone survey of 1,000 credit card holders to explore consumer awareness of and perceptions regarding dispute resolution provisions in credit card agreements will materially help the CFPB conduct the study on arbitration mandated by the Dodd-Frank Act.¹ The results of the Survey will undoubtedly show that the vast majority of consumers are not aware of most of the provisions in their card agreements, including the dispute resolution provisions. Consumers' awareness of dispute resolutions terms is certainly very low unless the consumer has had a dispute with his credit card issuer and taken advantage of the arbitration provision.

In its Information Collection Request, the CFPB justifies the need for the Survey by stating, "little empirical research has focused on consumer awareness and assessment of arbitration provisions. The majority of prior awareness research has explored the extent to which consumers read contracts generally. Such research has not focused on consumer awareness of arbitration provisions."² These studies have shown that consumers do not generally read contracts. Accordingly, if consumers do not read contracts generally, there is no reason to assume that they may read an arbitration provision, in particular. This is especially so when any consideration by a consumer most likely will not be relevant unless the consumer has a dispute that has not been resolved through interaction with the credit card issuer's customer service mechanism. There have also been numerous surveys on why consumers choose a certain credit card and what is important to consumers in choosing a credit card. The answer has never been because of a credit card's dispute resolution terms. Consumers choose cards based on rewards, annual fees, or interest rates.

Even among consumers who have closed their credit card accounts (where one might expect to find consumers who have been involved in dispute resolution with their credit card issuer), few of the reasons for closing the account seem to point to anything that can be construed as reasons related to dispute resolution. Only 8% of primary card owners reported closing their credit card accounts in the 12 months covered by a study conducted by TNS' Consumer Payment Strategies Research Program. Among those who did close their account, only a few of the reason categories seem to have any potential to be associated issues that may have involved dispute resolution provisions. Further, even if we assume that every response within those few reason categories

¹ In Footnote 26 of the Survey, the CFPB states that AFSA suggests that the CFPB examine how well-informed consumers are regarding the benefits of arbitration programs. The full text of what AFSA wrote is, "The CFPB should also study why consumers may be passing on available arbitration options. For example, the CFPB should examine how well-informed consumers are as to the benefits of a fairly designed and administered arbitration program. As part of that examination, the CFPB may want to look into whether consumer advocates are discouraging the use of arbitration or whether the relative cost efficiency of arbitration is a disincentive to plaintiffs' attorneys who are often compensated through fee awards based on the lodestar method, which focuses not on the risks taken and results obtained but, instead, on the hours billed by the attorneys." We do not believe that the CFPB's proposed Survey actually fulfills our request. The Survey does not ask consumers if they know that arbitration may be cheaper, faster, and more convenient than pursuing a dispute in court.

² CFPB's Information Collection Request, *Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements*. OMB Control Number: 3170-XXX. p. 7

that could be associated with dispute resolution provisions, did involve dispute resolutions, we are only talking about 16% of those who closed an account, or roughly only 1% of total cardholders. The proposed 1,000 telephone interviews in the CFPB study would equate to only 10 respondents – hardly a statistically credible number. (See Appendix B for more information about the study.)

Given that the Survey is likely to show that consumers are not generally aware of the arbitration provision in their credit card agreement, AFSA is concerned that the CFPB will use the results of the Survey to improperly prohibit or restrict the use of arbitration agreements. It is not important for consumers to memorize the dispute resolution provisions in their card agreements. It is enough that consumers can find the dispute resolution provisions in their cardholder agreements when they need to, which they can obviously do, as consumers have brought many arbitrations. Dispute resolution provisions are like car jacks: everyone has one and could read the instructions on how to use it when they need it, but without needing it, very few people could say for sure how to use it or even what it looks like. The absence of people who can say how to use car jacks and what they look like does not prove that car jacks are not useful; it only proves that most people do not know how to use them or what they look like until they need them.

II. Survey Design

If the CFPB decides to conduct the proposed Survey, we ask that the Survey be substantially redesigned. In its current form, the Survey will not yield information of sufficient quality for whatever its intended purpose may be, as required by the Office of Management and Budget's ("OMB") Survey Guidance.³

- The Survey lacks detailed statistical measurements. The discussion in the proposed Survey 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. The Survey does not discuss how these measurements are to be collected and how they will be connected with any underlying research question or any specific questions asked of respondents.
- The current survey design will generate very few respondents who are in a position to answer specific questions. Most consumers do not know the dispute resolution provisions in their card agreements, nor are they familiar with arbitration or the process of bringing billing disputes to court. Thus, the Survey results will not be valid. Floyd Jackson Fowler, Jr., a Senior Research Fellow at the Center for Survey Research, wrote, "Researchers who do not adequately test respondent understanding of questions must assume that ambiguity will not have a large or systemic effect on their results."⁴ Those who make such assumptions generally produce invalid and very misleading surveys. Fowler goes on to explain, "Seven questions that were drawn from questions used in national health surveys were subjected to special pretest procedures and found to contain one or more poorly defined terms. When the questions were revised to clarify the definition of key

³ OMB's Guidance on Agency Survey and Statistical Information Collection. Jan. 2006.

⁴ Fowler, Floyd Jackson, Jr. *How Unclear Terms Affect Survey Data*. Public Opinion Quarterly, Vol. 56, Issue 2 (Summer 1992).

terms, significantly different estimates resulted. The implication is that unclear terms are likely to produce biased estimates. The results indicate that evaluation of survey questions to identify key terms that are not consistently understood and defining unclear terms are ways to reduce systematic error in survey measurement.”⁵

The Survey purports to exclude participants who rate themselves as having absolutely no knowledge about consumer arbitration proceedings or how to bring consumer claims in court from answering some of the questions. However, many survey participants will not rate themselves as having “no knowledge,” but will claim to have “a little knowledge,” regardless of whether they actually do have any knowledge because no one wants to seem unintelligent. Even if the participants do have a very little knowledge, a little knowledge is not enough to complete the Survey, which will likely have important policy implications.

- The hypothetical questions in the Survey should be removed. Hypothetical questions do not necessarily generate responses that predict what a consumer would do in a real world situation. The questions are trying to predict what action a consumer would take, but consumers answer the questions aspirationally, rather than practically. This is especially true for questions about which the respondent does not have the knowledge to answer validly. For example, a consumer may answer in Question 8 that the consumer would like to start a case against the issuer in court, but when actually faced with the situation, the consumer may choose the convenience of arbitration over having to take several days off work to go to court.
- The Survey errs in assuming that all small claims courts around the country operate in the same manner. Small claims courts vary extremely in how they operate.⁶ Many are not even called “small claims court.” For example, in Georgia and South Carolina “small claims court” is called “Magistrate Court.” In Tennessee, it is called “Court of General Sessions.” And in Texas, it is called “Justice Court.” The dollar limits in each state vary widely as well. South Carolina has a jurisdictional limit of \$7,500, while Tennessee has a limit of \$25,000. The survey should use the word “court” instead of “small claims court.”
- There are potential problems with the random digit dialing approach proposed by the CFPB. Research firms do not usually dial cell phone numbers. Current regulations prevent firms from using a “dialer” to call cell phones. Calls to cell phones must be hand-dialed. Most random digit dialing is done where a bank of phone exchanges will be loaded into the computer aided phone system and numbers generated (or obtained if there is a list) randomly. The call to the number is made essentially by a computer, and the interviewer picks up if someone answers. For cell phone numbers, the interviewer must manually enter the number to be called. This makes manual dialing much more expensive. Furthermore, respondents may be charged for minutes used. (If the CFPB decides not to call cell phones, this introduces an additional source of bias into the Survey. Consumers who answer their home phones are not necessarily representative of

⁵ *Ibid.*

⁶ Information on “small claims courts” in different states is available here: <http://www.nolo.com/legal-encyclopedia/small-claims-court-in-your-state-31016.html>

the entire population. For instance, consumers answering their home phones tend to be older, while many young consumers only have cell phones.)

- The proposed Survey questions are insufficient for the project’s intent. The exact way questions are phrased is important. A well-known example from a national survey demonstrates the importance of each word in a survey question and how a seemingly innocuous change of a single word can drastically shift univariate item results and introduce unintended (or sometimes, unfortunately, very much intended) biases. In that national survey one sample of respondents was asked, “Do you think the United States should allow public speeches against democracy?” A comparable sample of respondents was asked “Do you think the United States should prohibit public speeches against democracy?” Simply changing the word “allow” to “prohibit” resulted in a very significant 20% change in the survey results. The CFPB must submit any proposed survey questions to independent survey experts to ensure that the proposed survey questions are not structured to produce pre-selected but invalid and misleading results.⁷ Difficulties with the questions are discussed further in the following section and in Appendix A.

III. Survey Questions

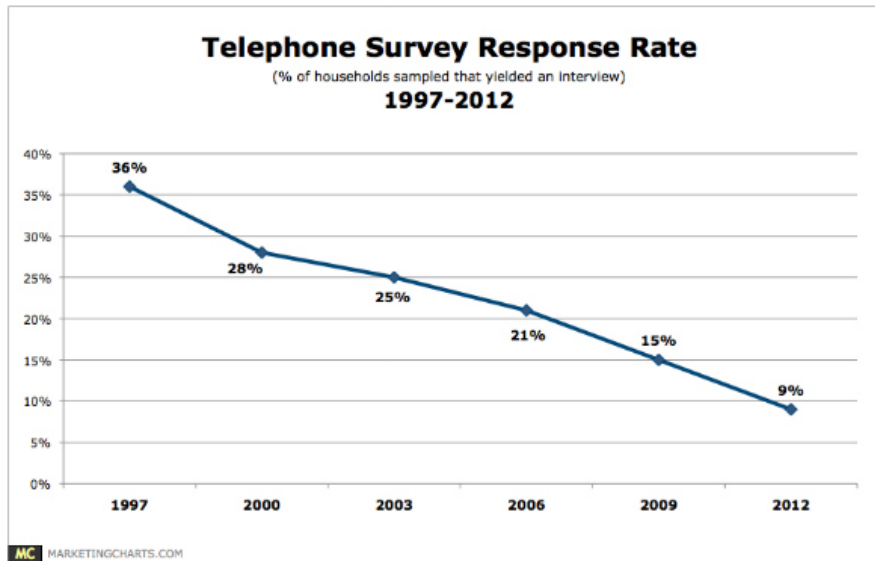
The Survey questions must be substantially changed. To begin with, the Survey is too long, particularly for a telephone survey. The introduction and many of the questions are very long. The length of the questionnaire should be kept to five minutes. Moreover, questions about how well consumers understand certain provisions and what provisions they prefer will be hard to cover on the telephone. Telephone survey questions must be very clear and simple.

AFSA has comments on many of the questions individually. Please see Appendix A for a chart with the Survey questions and AFSA’s comments.

IV. Survey Response Rates

The CFPB’s estimate of response rates are too high. Below is a chart from the Pew Research Center on Telephone Survey Response Rates.

⁷ Shuman, Howard and Stanley Presser. *Question Wording as an Independent Variable in Survey Analysis*. Sociological Methods & Research, Vol. 6 No. 2, November 1977.



Completion rates vary greatly, but could be much closer to 1-2%. To gather n=1000 complete responses could take 100,000 phone numbers, even calling each one several times. Even then, the sample of respondents is likely not going to be nationally representative. For example, it will likely be answered more by older people who stay at home, than by younger people. Furthermore, the sampling size for anyone that actually knows anything about consumer arbitration is going to be too small to be statistically valid.

V. Pretesting Survey Systems

Even though the CFPB is limited by the Paperwork Reduction Act (PRA), we still ask the CFPB to do a thorough pretest if it receives approval from OMB. A pretest would help determine if respondents would even be willing to participate in this Survey.

VI. Developing Sampling Frames

The CFPB states that it would like to gather a “representative” sample, using a random digit dialing approach. However, this begs the question – representatives of what? Should the respondents be representative of holders of major credit cards? Should the respondents be grouped by spending level? Number of cards? Number of transactions? Or other characteristics of card usage? In other words, a sample may be demographically “representative,” but not representative of credit card usage.

AFSA would also like the CFPB to specify if the sample will be drawn from a list of users of a particular bank or a particular card of a particular bank. Additionally, we would like the CFPB to investigate whether a sample of 1,000, or even 7,000, would generate a valid sample, given the number of credit cards used in the U.S.

VII. Processing and Editing of Data

The CFPB should record all of the calls and make the transcripts for all the calls available. “Failure to record every part of the exchange in the order in which it occurs raises questions about the reliability of the survey.”⁸ A record of the calls also allows for the possibility of expert analysis and a critique of claimed results.

It will be very difficult to code the responses to open-ended questions, so we suggest either making those questions multiple choice or removing them.

VIII. Data Analysis

The fully expected conclusion that consumers are generally not aware of the dispute resolution provisions in their card agreements does not mean that arbitration should be prohibited.

Any conclusion about arbitration versus courts obtained from the last few questions would be non-supportable and those questions should be removed. To the extent that any such questions are included, the results should be discounted because almost certainly the sample size will be too small and may not even include anyone “very knowledgeable” about arbitration.

IX. Suggestions for Improving the Current Survey

AFSA strongly believes that the CFPB should not conduct a telephone survey of credit card holders to explore consumer awareness of and perceptions regarding dispute resolution. However, if the CFPB decides to ask OMB for approval to conduct the Survey, we ask that the CFPB make important changes.

- The Survey should not be limited to credit cards. In the Dodd-Frank Act, Congress directed the CFPB to study consumer arbitration agreements for “covered persons,” not just for credit cards. A study limited to credit cards may skew results and have no other general application.
- Although we do not believe that a survey evaluating consumer awareness of dispute resolution provisions in credit card agreements is valuable, if the CFPB decides that it really needs that information, the CFPB should focus on Questions 1 – 6. Those questions attempt to determine the consumer’s awareness of dispute resolution provisions. One screening question should be added, though. The Survey should ask, “Do you regularly use a credit card?” If the answer is “no,” no further questions should be asked.

Questions 7 – 12 ask consumers about their perception of dispute resolution provisions. These questions will not result in meaningful feedback since they are hypothetical and most consumers will not have the knowledge to answer these questions. Additionally,

⁸ Diamond, Shari Seidman. *Reference Guide on Survey Research*. Reference Manual on Scientific Evidence 359-423, 3rd edition. Federal Judicial Center/National Academy of Sciences, 2011. [http://www.fjc.gov/public/pdf.nsf/lookup/sciman04.pdf/\\$file/sciman04.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sciman04.pdf/$file/sciman04.pdf).

these questions are complicated and convoluted. It is not clear what the CFPB is trying to measure with these questions.

- If the CFPB insists on asking questions about consumers' perception of dispute resolution provisions, the CFPB should improve Question 7.a.i. Instead of asking "Please tell me what you think are the important features of consumer arbitration proceedings," the CFPB should ask consumers, "What is consumer arbitration?" Consumers should then receive a list of definitions from which to select their response. We suggest the following choices: (a) a balance computation method, (b) a non-judicial dispute resolution process, (c) an electronic payment process, or (d) an automatic dialing device used by debt collectors. Any consumer who chooses any answer other than "a non-judicial dispute resolution process" would not answer any further questions on the Survey. For anyone who gave the correct answer, a follow-up question should be asked. The Survey could ask, "How do you know about arbitration?" Valid answers could be: I've been through one, I've talked with lawyers, etc. Invalid answers would be ones such as, "I think I might have read about it once," or "I've heard someone mention it."

Instead of the current Question 7.b.i, the Survey could test the respondent's familiarity with bringing disputes to court by asking questions such as: (a) Can you tell me anything about bringing claims to court? (b) Is there a requirement to have a lawyer? (c) What is the cost to bring claims to court? and (d) How long do such cases usually last?

- Question 5 asks, "Do you remember the reasons you chose to apply for that card? If so, can you list your reasons?" AFSA suggests that the CFPB use a follow-up probe, such as "Can you think of anything else?" or "What other reasons?" Then, the interviewer could give the respondent a closed-end list of choices. We suggest that the CFPB give the consumers the following choices: (a) absence of an annual fee, (b) lack of an arbitration provision, (c) low annual percentage rate, (d) rewards program, or (e) affiliated with a group or cause I support. The respondent could respond with all that apply, and even rank the top three. If the respondent does not mention dispute resolution, the Survey should end. Alternatively, if the respondent continues, the results from those who did not pick "lack of arbitration provision" should be analyzed separately from those who do.
- The Survey focuses on cards that were applied for recently, yet cardholders may be more familiar with terms and conditions of issuers whose card they have had for a longer period of time, and/or an issuer whose card they use as their primary card (card used most often). The CFPB should consider focusing the Survey on the respondent's primary card to add greater familiarity with issuer interactions, policies, etc.
- AFSA suggests that the CFPB use a mix of online and phone interviewing. Online panels are now a much more viable option than even a few years ago. The CFPB could consider interviewing approximately 20% on the phone and screening for those who are specifically not online. The CFPB could then only interview the consumer on the phone if the consumer was not online. The CFPB would then interview 80% online. The samples would have to be weighted/balanced later, but this is more likely to produce a representative sample. This would also be much more cost effective. The online sample

could be “invited” to the survey in proportion to census numbers (or other population parameters) to obtain a representative sample.

If the survey were online, AFSA would recommend asking respondents to give some open-ended responses about their understanding of the dispute resolution provisions of their card. The Survey could also show example provisions for the respondent to read and react to. There could also be a section on how well card holders understand the provisions they just read. This could be partly a “test” on whether the respondent understood what was just read.

- We suggest that instead of surveying a sample of card holders, the CFPB use a sample of consumers who have had billing disputes. The survey questioner should inform the respondent that a “dispute” is a “complaint that was not otherwise successfully addressed through the issuer’s customer service department.” The survey could ask those consumers how they tried to resolve those disputes and if they would go through that process again. What they did in the past is vastly more indicative of what they would do in the future than answers to hypothetical questions. Survey results with information about real behavior are more beneficial than survey results based on hypothetical information.

X. Alternatives to the Current Survey

Instead of conducting an expensive study, the CFPB should focus on reviewing published studies on arbitration. These studies show that: (1) consumers prevail more often than businesses in cases that go to arbitration; (2) the majority of consumer arbitrations result in monetary or non-monetary recovery for the consumer; (3) consumers win some relief in arbitration cases as often, or more often, than in court cases; (4) arbitration is quicker than bringing a lawsuit in the crowded and overburdened federal and state court systems; and (5) consumers may file and pursue arbitration at a minimal cost. Here is a list of studies we recommend that the CFPB review:

- The Financial Industry Regulatory Authority’s (“FINRA”) dispute resolution statistics;⁹
- *Creditor Claims in Arbitration and in Court*, The Searle Civil Justice Institute’s (“SCJI”) Preliminary Report (March 2009) and Interim Report No. 1 (November 2009) on consumer arbitration;¹⁰
- Sarah R. Cole’s and Kristen M. Blankley’s study, *Empirical Research on Consumer Arbitration: What the Data Reveals* (2009);¹¹

⁹ www.finra.org/ArbitrationMediation/AboutFINRADR/Statistics/ which demonstrate that in 2011, approximately 74 percent of customer claimant cases resulted, through settlements or awards, in monetary or non-monetary recovery for the consumer.

¹⁰ The study concluded that consumers won some relief in arbitration cases as often, or more often, than in court cases, even after controlling for differences among the types of cases and the venue in which they were brought. The study also concluded that prevailing consumers were awarded as high a percentage, or a higher percentage, of what they sought in arbitration, rather than in court cases. Moreover, the study found that arbitration was cheaper and faster for consumers.

¹¹ <http://pennstatelawreview.org/articles/113%20Penn%20St.%20L.%20Rev.%201051.pdf>

- Ernest & Young's 2004 study, *Outcomes of Arbitration, an Empirical Study of Consumer Lending Cases*;¹²
- The American Arbitration Association's Consumer-Related Disputes Supplementary Procedures;¹³
- Elizabeth Hill's *Due Process at Low Cost: An Empirical Study of Employment Arbitration Under the Auspices of the American Arbitration Association*;¹⁴
- Harris Interactive's *Arbitration: Simpler, Cheaper and Faster Than Litigation*;¹⁵
- Lewis L. Maltby's *Private Justice: Employment Arbitration and Civil Rights*;¹⁶
- Lisa B. Bingham's *Is There a Bias in Arbitration of Nonunion Employment Disputes? An Analysis of Active Cases and Outcomes*;¹⁷
- *Consumer and Employment Arbitration in California: A Review of Website Data Posted Pursuant to Section 1281.96 of the Code of Civil Procedure*;¹⁸
- Michael Delikat & Morris M. Kleiner's *An Empirical Study of Dispute Resolution Mechanisms: Where Do Plaintiffs Better Vindicate Their Rights?*;¹⁹
- Christopher R. Drahozal and Samantha Zyontz's *An Empirical Study of AAA Consumer Arbitration*;²⁰ and

¹² The study concluded that consumers prevailed more often than businesses in cases that went to an arbitration hearing. The study also showed that consumers obtained favorable results in close to 80 percent of the cases that were reviewed.

¹³ www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CGIQFjAA&url=http%3A%2F%2Fwww.adr.org%2Fcs%2Fidcplg%3FidcService%3DGET_FILE%26dDocName%3DADRSTG_005021%26RevisionSelectionMethod%3DLatestReleased&ei=F42qT8b_Gqbs6gHYstH1BA&usg=AFQjCNGTzLjDCrelZ_CmX0yjZSK6NZ1Akg&sig2=d9tIZI1cFo5pxz-KX6sxDw

¹⁴ Elizabeth Hill, *Due Process at Low Cost: An Empirical Study of Employment Arbitration Under the Auspices of the American Arbitration Association*, 18 OHIO ST. J. ON DISP. RESOL. 777 (2003).

¹⁵ <http://www.adrforum.com/rcontrol/documents/ResearchStudiesAndStatistics/2005HarrisPoll.pdf> (Apr. 2005) This study demonstrates strong satisfaction with arbitration results and process, including speed and simplicity.

¹⁶ 30 Colum. Hum. Rts. L. Rev. 29, 48, 63 (1998). The director of ACLU's National Task Force on Civil Liberties in the Workplace concludes that employees collectively receive 10.4% of their demand in litigation, compared with 18% in arbitration, and "arbitration holds the potential to make workplace justice truly available to rank-and-file employees for the first time in our history."

¹⁷ 6 INT'L J. CONFLICT MGMT. 369, 378 (1995). Employees won 73% of the arbitrations they initiated and 64% of all employment arbitrations, including those initiated by employers, in AAA employment arbitrations.

¹⁸ CAL. DISP. RESOL. INST. 25 (Aug. 2004), www.mediate.com/cdri/cdri_print_Aug_6.pdf. Consumers prevailed 71% of the time in arbitrations.

¹⁹ DISP. RESOL. J., Nov. 2003 – Jan. 2004, at 56, 57. Employees prevailed 33.6% of the time in court versus 46% of the time in arbitration in employment discrimination cases, received higher median damages awards, and took less time.

- Christopher R. Drahozal and Samantha Zyontz's *Creditor Claims in Arbitration and in Court*.²¹

Additionally, the CFPB could work with arbitration service providers, such as the American Arbitration Association, to gather a reliable data set. Data provided by consumers or companies would be anecdotal and neither accurate nor impartial. Data from arbitration providers would meet all of these criteria. In addition, arbitration service providers would be able to provide a much larger data set that would lead to more accurate study results.

The CFPB could also examine the consumer complaints it has received over the past year. Only a very small percentage of the complaints relate to arbitration. Looking into the details of the complaints might provide insight as to whether consumers are complaining about the results of arbitrations or something else (e.g., the consumer was not aware that a card agreement had an arbitration clause). This information might inform the CFPB as to whether pre-dispute arbitration agreements need to be restricted or could be improved, possibly by more explicit disclosures.

Furthermore, the CFPB could analyze the types of claims that consumers bring in arbitration. Determining the types of claims that consumers bring in arbitration could help identify those areas of consumer interaction where better education and outreach could improve consumers' access to the tools of arbitration.

We also believe that it would be useful for the CFPB to study the impact on the courts if consumer arbitration is shifted to litigation (including whether a shift from arbitration to litigation would cause an increase in costs for covered persons), and whether eliminating consumer arbitration in financial sector transactions would reduce U.S. corporations' competitiveness in the global arena by increasing their costs. Court congestion is relevant to the CFPB's study as it affects access to courts for the resolution of other disputes. In addition, we suggest that the CFPB study the cutbacks in the funding of the judiciary in light of the budgetary constraints faced by state and local governments.

²⁰ 25 Ohio St. J. on Disp. Resol. 843 (2010). This article concludes that arbitration is inexpensive and expeditious. It also found that there was no statistically significant repeat-player effect.

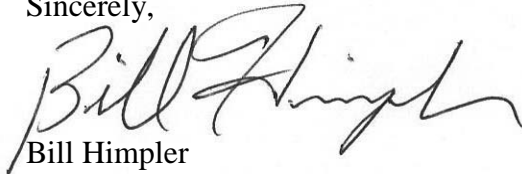
²¹ 7 Hastings Bus. L.J. 77 (2011). This article found that consumers prevailed more often in arbitrations than in court.

XI. Conclusion

AFSA does not believe that the CFPB should conduct a telephone survey exploring consumer awareness of and perceptions regarding dispute resolution provisions in credit card agreements. It is obvious that consumers are not aware of the dispute resolution provisions in their credit card agreements, so such a study is not a good use of the CFPB's resources. A telephone survey of consumers' perceptions of provisions that they are not aware of can only yield meaningless results.

We are happy to work with the CFPB as it explores alternative ways to complete its study on arbitration. Please feel free to contact me with any questions at 202-466-8616 or at bhimpler@afsamail.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Himpler", written over a faint, larger version of the same signature.

Bill Himpler
Executive Vice President
American Financial Services Association

APPENDIX A

Questionnaire Flow		Specific Comment
Survey Note: <i>Group One</i>		
1	Have you ever applied for a bank credit card (a credit card with a bank name on it, American Express, or Discover card)?	Since a respondent may <i>own</i> a credit card without necessarily <i>applying</i> for it (for example, a spouse may have applied), better wording might be: “Do you own a major credit card for your personal use (not business or corporate) that bills you monthly for the purchases you make on that card?”
Survey Note: <i>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.</i>		The card the consumer applied for most recently may not necessarily be the card they use most often (primary card), or the one they are most familiar with regarding terms and conditions, interactions/policies with the issuer, etc. It may be better to get perceptions based on their primary card. For example: “Please think about the card you currently use most often. We will refer to this card as your PRIMARY card.”
2	What financial institution issued your credit card? [Does the card have any other company names on it?]	We suggest an alternative question: “Which company or bank issued your PRIMARY credit card? This is the company or bank to whom you make your monthly payment and whose name typically appears on the back of the card and may also appear on the front of the card.”
Survey Note: <i>[Interviewer instruction: If the respondent answers “Visa,” “MasterCard,” or “American Express”] Does the card have any other company names on it?</i>		
3	How long ago did you obtain this credit card? ▪ Year, Years Ago, Months Ago, Don’t Know, Refused	The proposed scale in this question is awkward. The CFPB should consider coding actual responses into: 0-12 months, 1-2 years, 2-4 years, 5+ years, Don’t Know, Refused
Survey Note: <i>[The survey asks consumers a</i>		AFSA strongly suggests that failure to

<i>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.]</i>		recall dispute resolution provisions in contracts likely have very little to do with the passage of time, and much more to do with the fact that consumers pay little-to-no attention to these conditions unless there is an apparent need.
4	Did you consider any other card before applying for your card? In other words, did you comparison-shop for credit cards?	
5	Do you remember the reasons you chose to apply for that card? If so, can you list your reasons?	We believe it is likely that there would not be one respondent who mentions card terms/conditions or dispute resolution options as a reason for selecting a credit card.
Survey Note: <i>[Group Three (Questions 7-11) will precede Group Two (Question 6) for 50% of the telephone surveys.]</i>		
Survey Note: <i>Group Two [Half of the respondents will receive Version A of Question 6. The other half will receive Version B.]</i>		
6a	[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.	This is a very long introduction to listen to and remember for a telephone survey.
6b	Has your credit card company ever given you an opportunity to opt out of an arbitration provision in your cardholder agreement?	Validity is a problem here. To interpret responses as valid would assume consumers: (a) have read all correspondence with the issuer, and (b) had perfect recollection of instances dealing with opt-out options for this topic, versus other topics the issuer may have communicated with the cardholder about.
6b-i	Did you exercise that option?	
6c	[Version B] Have you ever reviewed your cardholder agreement?	We expect less than 10% to answer "yes" to this question. Given the

<ul style="list-style-type: none"> ▪ Yes ▪ No ▪ Don't Know ▪ Refused 	<p>proposed split sample structure (500 respondents would be asked this question), that is only ~50 respondents who may indicate they have ever reviewed their cardholder agreement. (We think 10% is a generous estimate).</p>
<p>6c-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?</p>	<p>Here the respondent base is further narrowed to identify consumers who can answer "yes" – that the cardholder agreement discussed how disputes should be resolved. Assuming (generously) that even half of those who say they have reviewed their agreement also say the agreement discussed how disputes should be resolved, that still equates to only ~ 25 respondents, hardly a robust sample for evaluation and commentary.</p>
<p>6c-ii [If yes] What does it say?</p>	<p>Even though ~25 may say the agreement discussed how disputes should be resolved, AFSA expects that fewer than half would be able to articulate a clear response to this. We also expect verbatim responses to be very vague, making it difficult to interpret and/or code. Realistic examples might be things like <i>"talks about the law,"</i> or <i>"legalese about how I can sue them,"</i> etc. Besides the small sample, the difficulty coding would not lend itself to strong credibility for overall findings.</p>
<p>Survey Note: Group Three</p>	
<p>7a On a scale of 0-5, with 0 being no knowledge and 5 being very knowledgeable, how familiar are you with consumer arbitration proceedings?</p>	<p>To appear somewhat intelligent to the survey taker, we expect most respondents will avoid the "0" or "no knowledge" response, favoring responses in the 1-5 range, but with the majority showing lower ratings on the scale. Distribution might look something like this:</p> <ul style="list-style-type: none"> ▪ 0 = 10% [no knowledge] ▪ 1 = 25% ▪ 2 = 48% ▪ 3 = 14% ▪ 4 = 8% ▪ 5 = 5% [very knowledgeable]

7a-i	[For any answer other than 0] Please tell me what you think are the important features of consumer arbitration proceedings.	This likely means that the majority of verbatim responses will be captured from respondents who rate themselves low on knowledge about consumer arbitration proceedings.
7b	On a scale of 0-5, with 0 being no knowledge and 5 being very knowledgeable, how familiar are you with bringing consumer claims in court?	Comments from 7a above apply
7b-i	[For any answer other than 0] Please tell me what you think are the important features of consumer arbitration proceedings.	Comments from 7a-i above apply
8a	Suppose you are sure that your credit card company made a billing error that affected a large number of credit card accounts, including yours. You have called customer service, but were not able to get the error fixed for your account. In dollar terms, how large would the error have to be for it to be worth it to you to:	This is a very long introduction to listen to and remember for a telephone survey. Respondents who are not listening closely as the statement is read (perhaps many) will need to have the statement repeated for clarity. Also, this is a hypothetical situation.
8a-i	Start a case against the company in small claims court? <ul style="list-style-type: none"> ▪ Yes ▪ No ▪ I Don't Know ▪ Refused 	<p>Answers to this question series likely reveal more about respondents' values, ideals/aspirations, which diminish survey validity since the question is trying to predict taking action – something that likely has more to do with more feasibility than values.</p> <p>Moreover, the choices given to consumers in this question and Question 9 are too limiting. Consumers trying to fix a billing error have other choices than court or arbitration after an initial call to customer service. And most consumers choose other options. Consumers may continue escalating their complaint through customer service, work with executives in the company, get in touch with a regulator, reach out to a consumer group, file an official complaint, etc. The CFPB should include these options in its list of choices.</p>
8a-ii	Start a case against the company in state or federal district court?	Comments from 8a-i above apply
8a-iii	Start arbitration against the company?	Comments from 8a-i above apply

8b	Suppose you received a class action settlement notice, which includes a form you can complete to obtain some money from a settlement relating to your credit card account. In dollar terms, how large would your claim have to be for it to be worth it to you to submit a claim form in response to a class action settlement notice?	Comments from 8a above apply
9	Now again, suppose you are sure that your credit card company made a billing error that affected a large number of credit card accounts, including yours. You have called customer service, but were not able to get the error fixed for your account. You have decided that it's worth it to file a legal claim.	Comments from 8a above apply. Additionally, this series of questions is not relevant because the consumer could get a lawyer at anytime. Nothing prevents the consumer from getting a lawyer.
9a	Would you be willing to go to court without a lawyer? (And by court, I mean "regular" state or federal court, not small claims court.)	Comments from 8a-i above apply
9b	[If yes] If the company had a lawyer, would you still be willing to proceed to court without a lawyer?	Comments from 8a-i above apply
9c	Would you be willing to go to arbitration without a lawyer?	Comments from 8a-i above apply
9d	[If yes] If the company had a lawyer, would you still be willing to proceed in arbitration without a lawyer?	Comments from 8a-i above apply
10a	Suppose you believe that your credit card company made a billing error that affected a large number of credit card accounts, yours included. You have called customer service, but were not able to resolve the dispute. On a scale of 0-5, with 0 being not fair at all, to 5 being the most fair, do you think an arbitrator would address the dispute fairly for you?	<p>Comments from 8a above apply</p> <p>This question, together with the follow-up questions, is too long for a phone survey.</p> <p>Moreover, questions should not ask about "fairness." Obviously, the plaintiff would, by the very fact that they brought the action, only consider it a fair result if the trier of fact agreed with the plaintiff, and awarded the plaintiff damages. Anyone who lost, or who got far less than they were promised, or believed they were entitled to obtain, would consider the result as something less than "fair," even though it may well have been the right decision. The subject also</p>

	<p>could have considered it “unfair” for reasons completely outside the process, especially if they were awarded \$10,000 or so, but fees, costs and the contingent fee left their attorney with the lion’s share of the award, leaving them to feel “cheated” by the system.</p> <p>Instead, the CFPB could consider asking, “What do you consider to be the requirements for a fair resolution of a dispute (on the scale of 0 = not required to 5 = absolutely required): application of the law, opportunity for me to present my side, opportunity for the credit card company to present its side, that I am awarded money, and that I had an attorney, that I did not need to have an attorney.”</p>
10b	<p>Suppose you believe that your credit card company made a billing error that affected a large number of credit card accounts, yours included. You have called customer service, but were not able to resolve the dispute. On a scale of 0-5, with 0 being not fair at all, to 5 being the most fair, do you think a court would address the dispute fairly for you?</p> <p>Rather than repeat the tedious scenario each time, offer it once. Then ask: “On a scale of 0-5, with 0 being not fair at all, to 5 being the most fair, how would you rate each of these ways of addressing the dispute:</p> <ul style="list-style-type: none"> ▪ Handling the dispute through a court ▪ Handling the dispute through an arbitrator
10c	<p>Suppose you receive a class action settlement notice in the mail, informing you that your credit card company has settled claims that it made a billing error against a large number of credit card accounts, yours included. The settlement notice says if you fill out and mail back a claim form, you will receive some share of the settlement. On a scale of 0-5, with 0 being not fair at all, to 5 being the most fair, do you think submitting the claim form would address the dispute fairly for you?</p> <p>Again, questions should not ask about “fairness.” Without knowing how the consumer defines “fair,” the response is meaningless.</p>
11	<p>Suppose you have a choice of two credit cards, Card A and Card B. The card you choose will be your only credit card for the next few years. Cards A and B are identical except for the following differences. With</p> <p>While this question does get at the issue directly, it (artificially) asks the respondent to presume differences in dispute resolution as being the only point of difference, despite that dispute</p>

	Card A you can sue your company in court if you have a dispute with them. Card A also allows you (and anyone else with the card) to participate in court-approved class action proceedings against your credit card company. With Card B, either you or the company can force the other side to have an arbitrator decide the dispute, even if the other side wants to have the dispute decided in court. Card B would prevent you (and anyone else with the card) from participating in any class actions against your credit card company.	resolution itself is likely severely lacking in significance to the respondent when choosing a credit card. This diminishes external validity as findings from this question cannot be extended to more practical contexts involving actual credit card decision-making among consumers.
11a	Do you prefer one card over the other?	
11b	Which offer would you prefer: Card A, where you can sue the company in court and participate in class actions? Or, Card B, where either you or the company can force the dispute to be decided by an arbitrator even if the other person wants the dispute decided in court, which would prevent you from participating in class actions.	
11c	How much money would it take for you to accept the other credit card instead?	This question is hypothetical and the answers do not necessarily reflect how much money it would take for the consumer to accept the other card instead in a real-world scenario.
12	Have you or your spouse ever participated in:	This question gets at a more real incidence rate. However, should these questions be narrowed to “a credit card you owned?”
12a	A court case?	
12a-i	Did you get a fair result?	Questions about “fairness” should be eliminated.
12b	What about a class action, for example by filing a claim?	
12b-i	Did you get a fair result?	
12c	How about an arbitration proceeding, where the parties were bound by the decision made by the arbitrator?	
12c-i	Did you get a fair result?	
13	Demographics (age, education, level, race, income, etc.)	

APPENDIX B

Source: Consumer Payment Strategies Study, August, 2012, TNS			
Table 1: Closed Credit Card Account Past 12 Months		Table 2: Most Important Reason For Closing Credit Card Account	
Consumer Payment Strategies TNS August 2012 Table 279 Q.103 Have You Closed A Credit Card Or Charge Card Account In The Past 12 Months? Base - Total Respondents		Consumer Payment Strategies TNS August 2012 Table 282 Q.107 Indicate The Most Important Reason That You Closed Your Most Recent Base - Closed A Credit Card Or Charge Card Account In The Past 12 Months	
			Total
Total, Weighted Base		100.0%	9893
Card account was not being used		1281	13.0%
I paid off the balance		1029	10.4%
My household had too many credit cards		930	9.4%
Interest rate was too high		857	8.7%
Annual fee was too high		579	5.9%
The issuer canceled my membership		444	4.5%
I got a new account that I preferred to use instead		433	4.4%
Rewards program not as good as other cards		431	4.4%
I received poor customer service		429	4.3%
Interest rate was increased		338	3.4%
I already had an account that I preferred to use		300	3.0%
Did not offer rewards (cash back, airline miles, points, discounts)		238	2.4%
Errors were made on the account		166	1.7%
Credit line was too low		131	1.3%
Questions or complaints were not handled properly		127	1.3%
Was charged with penalty fees (late/over limit charges)		110	1.1%
The special introductory rate ended		100	1.0%
Card not widely accepted		67	0.7%
Did not have extra services I valued, such as purchase protection or insurance coverage		16	0.2%
Other		1321	13.4%
None of the above		567	5.7%

TNS Methodology – TNS’ 2012 Consumer Payment Strategies Research Program is the source for developing the 2012 State of the Card Market report. Data were collected online utilizing a 60 minute survey. The survey was conducted in August 2012 among a total of 7,009 respondents who were the main decision makers responsible for evaluating financial services. In order to ensure that the responses of the surveyed respondents reflect the true distribution of U.S. households, the sample cases were weighted using the 2012 U.S. July Census estimates of the age and income distributions for the total U.S. consumer households. There are 119.2 million households.