

June 12, 2014

By electronic delivery to:
www.regulations.gov

Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D. C. 20552
Attention: PRA Office

Re: Generic Information Collection Plan for Studies of Consumers Using Controlled Trials in Field and Economic Laboratory Settings; Docket No. CFPB-2014-0007, OMB Control No. 3170-XXXX.

PRA Officer:

The American Bankers Association¹ and the Consumer Bankers Association² (collectively, the Associations) submit this comment in response to the Bureau of Consumer Financial Protection's (Bureau) request for a generic clearance under the Paperwork Reduction Act (PRA) "to collect data from purposive samples through controlled trials in field and economic laboratory settings."³ Specifically, the Bureau seeks to conduct fifteen laboratory and twelve field research studies over a three-year period. The research will involve a total of 26,100 participants in an estimated 34,200 hours of testing.⁴ The Bureau's PRA submission to the Office of Management and Budget broadly describes the topics the Bureau is interested in studying, including:

- Consumer awareness and decision-making, for example, understanding what financial products or features people are aware of and why they chose one product over another;
- Consumer experiences and potential risks to consumers, including traditionally underserved consumers;
- Information disclosure and how disclosure may affect behavior;
- The effect of educational or other interventions on consumer financial behavior or outcomes.⁵

¹ American Bankers Association is the voice of the nation's \$14 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend nearly \$8 trillion in loans.

² Consumer Bankers Association is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

³ 79 Fed. Reg. 20865 (April 14, 2014).

⁴ Bureau of Consumer Financial Protection Paperwork Reduction Act Submission, Information Collection Request, Supporting Statement Part A, p. 10, available at <http://www.regulations.gov/#!documentDetail;D=CFPB-2014-0007-0004> (Submission).

⁵ *Id.* at 2-3.

The Associations fully support the Bureau's interest in studying the topics described above. Financial institutions and the customers they serve will benefit by the Bureau's use of "empirical evidence and rigorous research" to improve its understanding of consumer financial markets and the nature of consumer behavior in those markets.⁶ In addition, we strongly support the Bureau's goal of educating and empowering consumers to make informed and responsible financial decisions. Both endeavors will advance our shared objective of ensuring that regulations are appropriately calibrated to ensure that markets for consumer financial products and services are fair, transparent, and competitive.

Although we encourage the Bureau's effort to engage in this research, the Associations oppose the request for an expedited, "generic" clearance under the PRA. One of the most significant and persistent concerns about the structure of the Bureau involves its accountability. While there are statutory requirements, including the PRA process, intended to ensure Bureau accountability, they are only worthwhile to the degree they are observed. Neither the Bureau's PRA officer nor OMB should seek to undermine the accountability structure of the PRA through application of the generic clearance process to the information collections under consideration.

Paperwork Reduction Act Accountability

As we have written in response to numerous requests by the Bureau for a generic clearance, the Paperwork Reduction Act was enacted "to ensure the greatest possible public benefit from and to maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal government" and "to improve the quality and use of federal information to strengthen decision making, accountability, and openness in Government and society."⁷

The generic clearance process recognizes that in some instances, information collections warrant a more streamlined and expedited PRA review process. For example, an OMB memorandum notes that its use is limited to "situations in which (a) there is a need for multiple, similar low-burden collections *that do not raise substantive or policy issues* and (b) the specifics of each collection cannot be determined until shortly before the data are to be collected" (emphasis added).⁸ The memorandum provides three examples in which a generic clearance is appropriate: "customer satisfaction surveys, focus group testing, and website usability surveys."⁹

⁶ *Id.* at 2.

⁷ 44 U.S.C. §3501.

⁸ Office of Management and Budget Memorandum, Information Collection under the Paperwork Reduction Act (April 7, 2010) at 5, available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf. See also Office of Management and Budget Memorandum, Paperwork Reduction Act – Generic Clearances (May 28, 2010) ("Clearances of generic ICRs provide a significantly streamlined process by which agencies may obtain OMB's approval for particular information clearances – usually voluntary, low burden, and *uncontroversial* collections. . . . including methodological testing, customer satisfaction surveys, focus groups, contests, and website satisfaction surveys." (emphasis added)).

⁹ *Id.* at 3.

The Associations do not believe that the proposed data collections meet these standards. Rather, the research topics described in the Submission will explore and develop data on issues that are integral to consumer protection regulation. Clearly, information collections designed to collect data on “consumer awareness and decision-making” or “information disclosure and how disclosure may affect behavior” will have significant substantive and policy implications for any future consumer protection regulation. Therefore, the proposed data collections must follow a more structured and comprehensive review process that will enable fulsome public review and comment *and* effective regulatory oversight by the OMB. The grant of a generic clearance will circumvent this participation and oversight at the risk of leaving important information and data out of regulatory policy calculations.

Presumably anticipating this argument, the Bureau asserts that the information and data collected will be used only for “developmental and informative purposes” and will not be used to make regulatory decisions or to evaluate specific policies.¹⁰ There is no neat division between “developmental” and “substantive” research, however. Research is an iterative and cumulative process. The information learned and data generated by initial studies inform and influence subsequent hypotheses investigated—and ultimately, the substantive policy choices made. Indeed, to suggest that the considerable amounts of time and other resources that will be expended over a three-year period in field and laboratory studies involving 26,100 participants would *not* yield information and data that contributes to regulatory decisions would be an irresponsible expenditure of agency resources.

An Alternative Approach

In a recent speech to the American Bar Association, Director Cordray highlighted the importance of public engagement to ensure that the work of an “independent administrative agency can be squared with our democratic system of representative government.”¹¹ We agree and note that our members who understand existing consumer financial products and services, and who spend millions of dollars each year researching consumer demand and behavior, are uniquely qualified to comment on the design of field and economic laboratory studies.

Nevertheless, we appreciate the challenge of the PRA process, and understand staff’s interest in streamlining the information collection review process. Accordingly, we urge the Bureau’s PRA office and OMB to meet with Association representatives and interested members to design a more suitable streamlined review process that will ensure a meaningful opportunity for comment and will establish reasonable timeframes by which that feedback must be provided.

¹⁰ Submission, *supra* at 3.

¹¹ Prepared Remarks of CFPB Director Richard Cordray at the American Bar Association, April 3, 2014, *available at* <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-american-bar-association/>.

Conclusion

Thank you for the opportunity to comment on this proposed information collection. We look forward to meeting with you to discuss an alternative review process.

Respectfully submitted,

A handwritten signature in black ink that reads "Virginia O'Neill". The script is cursive and fluid.

Virginia O'Neill
Vice President and Assistant Chief Compliance Counsel
American Bankers Association

A handwritten signature in blue ink. It appears to be "Dong Hong" written in a stylized, cursive manner.

Dong Hong
Regulatory Counsel
Consumer Bankers Association