

May 9, 2016

By electronic delivery to:
www.regulations.gov

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

Re: Generic Information Collection Plan for “Qualitative Consumer Education and Engagement Information Collections”; Docket No. CFPB-2016-0009, OMB Control No. 3170-0036.

PRA Officer:

The American Bankers Association¹ submits this comment in response to the Bureau of Consumer Financial Protection’s (Bureau) request for approval, under the Paperwork Reduction Act of 1995 (PRA),² of an existing generic clearance “to collect qualitative data on effective strategies and consumer experiences . . .” (Qualitative Consumer Education Generic Clearance).³

ABA did not raise concerns when the Bureau first sought approval of this generic clearance in 2013 because the stated purpose of the clearance—“to develop a deeper understanding of effective financial education and empowerment strategies”⁴—is a subject that arguably may meet the purposes of a generic clearance. However, the Bureau has used this clearance to conduct information collections on substantive and policy-related issues—namely, overdraft services—which is prohibited by guidance interpreting the PRA that was published by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget. OIRA’s guidance requires that these collections be subject to the standard PRA clearance process, which obligates notice to the public and an opportunity for comment. As we have commented on multiple occasions, ABA opposes the use of the generic clearance process to undermine the accountability structure and purposes of the PRA.⁵

¹ The American Bankers Association is the voice of the nation’s \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits and extend more than \$8 trillion in loans.

² Paperwork Reduction Act of 1995, Pub. L. No. 104-13 (codified at 44 U.S.C. § 3501 et seq.).

³ Notice and Request for Comment, Generic Information Collection Plan for “Qualitative Consumer Education and Engagement Information Collections,” 81 Fed. Reg. 12479, 12480 (Mar. 9, 2016).

⁴ Supporting Statement A, Information Collection Request, Generic Clearance for Qualitative Consumer Education, Engagement, and Experience Information Collections 2 (OMB Control No.: 3170-0036), available at <http://www.reginfo.gov/public/do/DownloadDocument?objectID=46648301> (hereinafter, “Qualitative Consumer Education Generic Clearance Request Supporting Statement A”).

⁵ See, e.g., Letter from Virginia O’Neill, Am. Bankers Ass’n, and Dong Hong, Consumer Bankers Ass’n, to PRA Officer, Bureau of Consumer Fin. Prot. (June 12, 2014), available at <http://www.aba.com/Advocacy/commentletters/Documents/clCFPB-PRA-consumer2014June.pdf>

I. Paperwork Reduction Act and OIRA Guidance

OIRA's guidance implementing the Paperwork Reduction Act states that a generic clearance may be used only to conduct collections that "do not raise substantive or policy issues."⁶ This prohibition is intended to maximize the utility of the information collected—a central purpose of the PRA—by requiring that an information collection relating to a substantive or policy issue be conducted through the standard clearance process, which provides the public with an opportunity to comment on, and thus strengthen, the collection.⁷ By contrast, an information collection conducted under a generic clearance is not subject to public notice and comment.⁸ Importantly, OIRA's guidance provides no exception to the prohibition on using a generic clearance to conduct a substantive or policy-related collection.

II. The Bureau's Improper Use of the Qualitative Consumer Education Generic Clearance

Nothing in the Bureau's Qualitative Consumer Education Generic Clearance request suggested that the Bureau would use the clearance to conduct a substantive or policy-related collection. Indeed, the supporting statement indicated that the purpose of its data collection was to collect the following types of information:

- "Examples of promising practices and approaches in financial education and empowerment;
- "Examples of promising practices and approaches in delivering financial capability programming, particularly for special populations of consumers, such as low-income consumers;
- "Examples of promising practices and approaches in delivering targeted and/or innovative financial products and services to consumers, particularly for special populations of consumers, such as low-income consumers;

(opposing request for generic clearance to conduct information collections on topics that have significant substantive and policy implications for future consumer protection regulation).

⁶ CASS R. SUNSTEIN, ADMIN., OFFICE OF INFO. & REG. AFFAIRS, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, INFORMATION COLLECTION UNDER THE PAPERWORK REDUCTION ACT 5 (Apr. 7, 2010), available at https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf (hereinafter, "SUNSTEIN APRIL 2010 MEMO"); see also JOHN D. GRAHAM, ADMIN., OFFICE OF INFO. & REG. AFFAIRS, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, GUIDANCE ON AGENCY SURVEY AND STATISTICAL INFORMATION COLLECTIONS 6 (Jan. 20, 2006), available at https://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/pmc_survey_guidance_2006.pdf ("Individual collections [under a generic clearance] should not raise any substantive or policy issues . . .").

⁷ See 44 U.S.C. § 3501 (stating that the PRA was enacted to "ensure the greatest possible public benefit from and maximize the utility of information" collected by the Federal government and to "improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society").

⁸ See SUNSTEIN APRIL 2010 MEMO, *supra* note 6, at 5 (stating that, once OIRA grants its approval to a generic collection request, "individual collections that fall within the generic clearance are reviewed on an expedited basis and are not generally required to undergo further public comment").

- “Examples of challenges that financial education practitioners face in helping consumers[;]
- “Respondents’ assessments of the usability and effectiveness of financial education and empowerment tools and strategies;
- “Consumer stories about financial challenges they face, how they make financial decisions, and how they navigate the financial services marketplace; and
- “Respondents’ assessments of the type of knowledge, behavior, and other factors and experiences that affect consumer financial capability and well-being.”⁹

If the Bureau conducted information collections on these topics, it would advance its goal to develop a deeper understanding of effective financial education and empowerment strategies—topics that do not directly relate to policymaking. We in fact share the Bureau’s goal of educating and empowering consumers to make informed and responsible financial decisions. However, after obtaining approval for the Qualitative Consumer Education Generic Clearance in 2013, the Bureau improperly used it to seek approval—without notice to the public—for overdraft research. In February 2014, the Bureau submitted to OIRA a request to conduct an information collection on “Qualitative Research of Consumer Understanding and Decision-making Related to Overdrafts.”¹⁰ The stated purpose of this collection was “to better understand how consumers understand the [overdraft] product and how consumers make decisions about using different financial products.”¹¹ It is clear that this collection will inform the Bureau’s rulemaking on overdraft services and, consequently, should have been pursued through a standard clearance.¹² The Bureau’s Fall 2015 Regulatory Agenda unequivocally states that the agency will engage in rulemaking concerning overdraft programs on checking accounts.¹³

Despite being characterized as “qualitative research,” the Bureau acknowledged its interest in engaging in “qualitative information-gathering *to better understand the quantitative information that has been generated to-date.*”¹⁴ The collection request itself underscores the Bureau’s intent to conduct substantive research on overdraft. The questions asked of respondents include the number of times the consumer accessed overdraft during the past 12 months and the total

⁹ Qualitative Consumer Education Generic Clearance Request Supporting Statement A, *supra* note 4, at 2-3.

¹⁰ Qualitative Research of Consumer Understanding and Decision-making Related to Overdrafts, Request for Approval under the “Generic Clearance for Qualitative Consumer Education, Engagement, and Experience Information Collections” (OMB Control No.: 3170-0036), *available at* <http://www.reginfo.gov/public/do/DownloadDocument?objectID=46649801> (hereinafter, “Overdraft ICR”). The Bureau did not mention the subject of overdraft in its request for the generic clearance.

¹¹ *Id.* at 1.

¹² Despite the fact that the information collection on overdraft research will influence the Bureau’s overdraft rulemaking, the Bureau appeared to recognize, in its collection request, that a generic clearance may not be used for a substantive or policy-related collection. In that request, the Bureau *certified* “[i]nformation gathered will not be used for the purpose of substantially informing influential policy decisions.” *Id.* at 6.

¹³ Bureau of Consumer Fin. Prot., Fall 2015 Rulemaking Agenda, <http://www.consumerfinance.gov/about-us/blog/fall-2015-rulemaking-agenda/> (“The Bureau is preparing for a rulemaking concerning overdraft programs on checking accounts.”).

¹⁴ Overdraft ICR, *supra* note 10, at 1 (emphasis added).

amount of overdraft fees paid during that time.¹⁵ These topics bear directly on policy questions the Bureau is almost certainly considering as part of its rulemaking on overdraft, including the need for increased disclosures and limitations on usage.

Moreover, the information collection request cannot reasonably be characterized as “methodological testing” that may in certain circumstances be appropriate for a generic clearance.¹⁶ The supporting statement the Bureau submitted to OMB included an eight-page screener survey (with 19 questions), and a 12-page script of 43 questions for “in-depth telephone interviews” that will be conducted of 100 users of overdraft programs.¹⁷ Instead, it was a well-defined information collection that should have been subject to a more structured and comprehensive review process that would have enabled public review and comment.

III. Conclusion

ABA urges the Bureau to refrain from improperly using a generic clearance to conduct an individual collection on a substantive or policy issue, such as overdraft. If the Bureau desires to collect information on a substantive or policy issue, it should seek approval for a standard clearance, which would provide the public with an opportunity to comment on the collection request, including providing suggestions to improve the methodology of the proposed collection.

If you have questions about ABA’s comments or would like to discuss them, please contact the undersigned at jthessin@aba.com or 202-663-5016.

Sincerely,



Jonathan Thessin
Senior Counsel, Center for Regulatory Compliance

¹⁵ *Id.* at 9-10.

¹⁶ See CASS R. SUNSTEIN, ADMIN., OFFICE OF INFO. & REG. AFFAIRS, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, PAPERWORK REDUCTION ACT – GENERIC CLEARANCES 1 (May 28, 2010), available at https://www.whitehouse.gov/sites/default/files/omb/assets/infereg/PRA_Gen_ICRs_5-28-2010.pdf (“Clearances of generic ICRs provide a significantly streamlined process by which agencies may obtain OMB’s approval for particular information collections—usually voluntary, low-burden, and uncontroversial collections . . . including methodological testing, customer satisfaction surveys, focus groups, contests, and website satisfaction surveys.”).

¹⁷ Overdraft ICR, *supra* note 10, at 3 & 7-27.