

September 30, 2015

By electronic delivery to:
David.silberman@cfpb.gov

Mr. David M. Silberman
Associate Director for Research, Markets, and Regulations
Bureau of Consumer Financial Protection
1275 First Street, N.E.
Washington, D.C. 20002

Dear Mr. Silberman,

We, the undersigned trade associations representing the financial services industry, write to express our concern with the Bureau of Consumer Financial Protection's (Bureau) request for approval under the Paperwork Reduction Act (PRA) to conduct a national web-based survey of 8,000 individuals as part of the Bureau's study of overdraft protection services.¹ We appreciate the Bureau's consideration of consumers' experience with and understanding of overdraft services. However, we are concerned that the Bureau did not include in its submission to the Office of Management and Budget (OMB) a draft survey instrument on which the public could comment, despite OMB guidance requiring publication of the survey simultaneous with the Bureau's request for comment. We urge the Bureau to re-submit its information collection request with the draft survey instrument.

Submitting a draft survey instrument as part of an information collection request is required by Federal guidelines implementing the PRA and increases the opportunity for important public feedback on the survey. Guidelines issued by the Administrator of OMB's Office of Information and Regulatory Affairs state that the "PRA requires that the agency publish a 60-day notice in the *Federal Register* to obtain public comment on the proposed collection, prior to submitting the information collection to OMB. *At the time this notice is published, agencies must have at least a draft survey instrument available for the public to review.*"² Accordingly, the agency should not withhold the survey instrument until a later date.

¹ Comment Request, Web-Based Quantitative Testing of Point of Sale/ATM (POS/ATM) Overdraft Disclosure Forms, 80 Fed. Reg. 53503 (Sept. 4, 2015).

² JOHN D. GRAHAM, ADMIN., OFFICE OF INFO. & REGULATORY AFFAIRS, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, GUIDANCE ON AGENCY SURVEY & STATISTICAL INFO. COLLECTIONS 3 (Jan. 20, 2006) ("OMB MEMORANDUM"), available at https://www.whitehouse.gov/sites/default/files/omb/assets/omb/infoereg/pmc_survey_guidance_2006.pdf (second emphasis added).

The Bureau's decision to withhold publication of the survey undermines the PRA review process. The PRA was enacted to "ensure the greatest possible public benefit from and maximize the utility of information" collected by the Federal government,³ and to "improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society."⁴ Accordingly, OMB requires publication of a draft survey at the time of the first submission because such publication maximizes the opportunity for public comment as well as the agency and OMB's consideration of those comments, all of which enhances the utility of the final survey instrument.

If, as here, the Bureau provides only a generalized description of topics to be explored by survey questions and withholds publication of the draft survey instrument until after the first round of comments is received, the Bureau will limit the public's and OMB's ability to assist the Bureau in producing a survey that will yield information of sufficient quality for its intended purpose. As OMB notes in its guidance, the PRA review process is intended, in part, to ensure that "the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality guidelines, or they should not propose to collect the information."⁵ These Information Quality Guidelines, in turn, designate as "influential information" that which will have a "clear and substantial impact on important public policies or important private sector decisions."⁶ The Guidelines require that agencies hold information designated as influential "to a higher standard of reproducibility and transparency than information that is not defined as influential."⁷

The data to be collected from the proposed consumer survey will constitute "influential information" subject to these higher standards because the feedback it seeks on consumers' understanding of overdraft disclosure forms is likely to influence the regulations the Bureau is expected to issue. Therefore, it is critical that the public be given an opportunity to comment on the design as well as the execution of the survey *and* that OMB be afforded the opportunity to consider those comments as it reviews the PRA request. This can only be accomplished if the draft survey is made available to the public during the first comment period.⁸

Therefore, we urge the Bureau to re-submit its PRA request for approval to OMB, submit a draft survey instrument with its information collection request, and extend the comment deadline to provide the public with the full 60-day comment period afforded by the first round of the PRA review process.

³ Paperwork Reduction Act of 1995, Pub. L. No. 104-13 (codified at 44 U.S.C. § 3501(2)).

⁴ *Id.* (codified at 44 U.S.C. § 3501(4)).

⁵ OMB MEMORANDUM, *supra* note 2, at 14.

⁶ *Id.*

⁷ *Id.*

⁸ OMB requires that the draft survey instrument be published simultaneous with the first notice seeking comment in order to provide that agency with a full range of viewpoints on the draft survey instrument when determining whether to approve the requesting agency's information collection request. If the Bureau does not publish the survey prior to the closing of the first comment period, OMB will not receive the benefit of the public's comment on the survey instrument itself; OMB will have only the Bureau's views on the survey instrument. Undoubtedly, this result would impair OMB's decision-making process regarding the Bureau's information collection request.

Thank you for your attention to this important matter.

Sincerely,



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Senior Counsel
Center for Regulatory Compliance
American Bankers Association



David Pommerehn
Vice President and Senior Counsel
Consumer Bankers Association



Senior Vice President & Senior Counsel for
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Alicia Nealon
Director of Regulatory Affairs
National Association of Federal Credit Unions

cc: The Honorable Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

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