



By electronic delivery: [2023\\_009\\_ConsumerCreditCardMarketRFI@cfpb.gov](mailto:2023_009_ConsumerCreditCardMarketRFI@cfpb.gov)

April 24, 2023

CARD Act Rules RFA Review and Credit Card Market Review  
Bureau of Consumer Financial Protection  
1700 G Street, NW  
Washington, D.C. 20552

Re: Request for Information Regarding Consumer Credit Card Market  
Docket No. CFPB-2023-0009

Dear Sir or Madam:

The American Bankers Association, the Consumer Bankers Association, and the National Association of Federally-Insured Credit Unions (collectively, Associations) are pleased to submit our comments to the Request for Information of the Consumer Financial Protection Bureau (Bureau) regarding the consumer credit card market pursuant to the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act or the Act).<sup>1</sup> Section 502(a) of the CARD Act requires the Bureau to conduct a review every two years of the consumer credit card market, including a review of the terms of credit card agreements and practices and the impact of the CARD Act on the cost and availability of credit, particularly with respect to non-prime borrowers. This year, the Bureau requests information about how the credit card market is functioning and asked for comment on seven specific topics of interest, as well as any information the public believes relevant to the review of the credit card market.

This letter covers five topics: (I) Access and Availability of Credit Cards, (II) Credit Card Rewards, (III) Competition in the Credit Card Market, (IV) Disclosures and E-SIGN, and (V) Credit Reporting. Pursuant to the Bureau's request, we have listed the relevant questions from the Request for Information in each section.

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<sup>1</sup> 88 Fed. Reg. 5,313 (Jan. 27, 2023).

## I. ACCESS AND AVAILABILITY OF CREDIT CARDS

*(4) The cost and availability of consumer credit cards; (a) How have the cost and availability of consumer credit cards (including with respect to non-prime borrowers) changed since the Bureau reported on the credit card market in 2021? What is responsible for changes (or absence of changes) in cost and availability?; (b) How, if at all, are the characteristics of consumers with lower credit scores changing? How are groups of consumers in different score tiers faring in the market? How do other factors relating to consumer demographics or financial lives affect consumers' ability to successfully obtain and use credit cards?*

This section summarizes recent developments in the cost and availability of credit cards, discusses the potential impacts of fee regulation, and describes the consequences to consumers of reduced credit card availability.

### Cost of Consumer Credit Cards

Since passage of the CARD Act, most credit cards have variable interest rates that are pegged to the prime rate.<sup>2</sup> As such, the average purchase annual percentage rate (APR) for all accounts rose steadily beginning around Q4 2014, when the Federal Reserve began increasing the federal funds rate, until peaking at 19.38 percent in Q1 2020. In the wake of the pandemic recession and the associated decline in the federal funds rate, APRs fell in 2020 and remained below pre-pandemic levels until interest rates began rising again in response to elevated inflation (see Figure 1).<sup>3</sup> The Federal Reserve's decision to raise rates by 425 basis points in Q2, Q3, and Q4 2022 led to a sharp increase in the average APR during the second half of that year.<sup>4</sup> (Subsequent rate hikes in Q1 2023 are not yet reflected in the Argus data.)

#### *Figure 1: Average Consumer Credit Card APR vs. Prime Rate<sup>5</sup>*

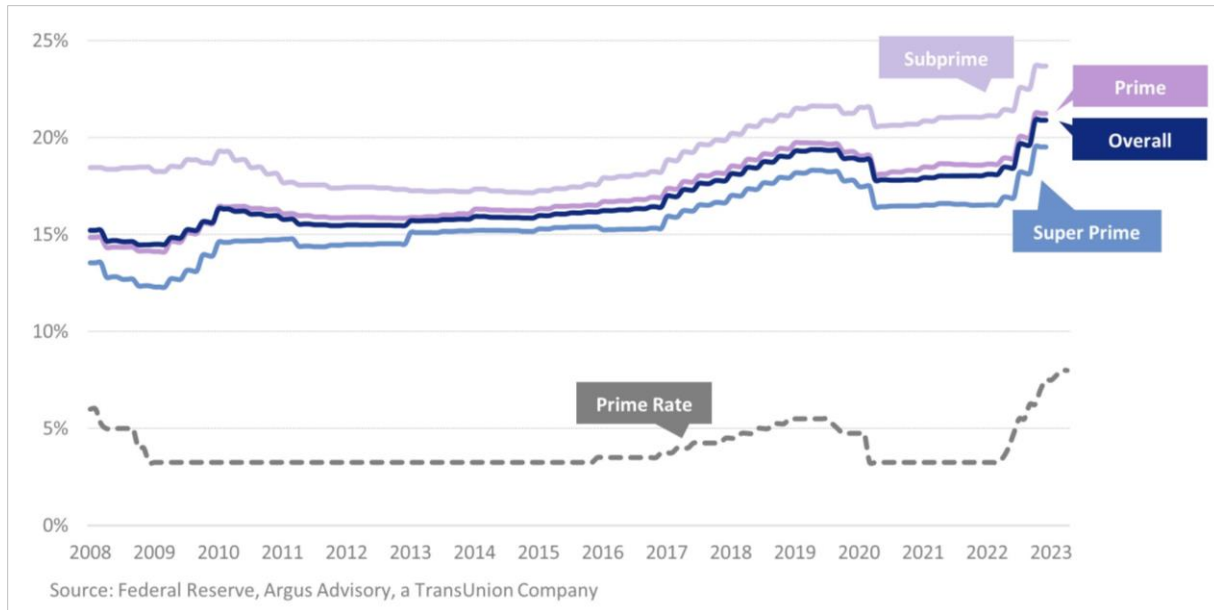
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<sup>2</sup> The CARD Act restricts card issuers' ability to increase credit card interest rates but allows rate increases on existing balances if the rate varies according to a publicly available index that is not under the issuers' control. As such, most card issuers shifted their fixed-rate accounts to variable-rate accounts pegged to the U.S. bank prime loan rate after the CARD Act was implemented. According to Bankrate, the number of fixed-rate consumer credit cards available dropped from 33 to five between January 2008 and November 2013. By 2018, more than 90 percent of general-purpose revolving balances were subject to variable rates, according to the Bureau's 2019 [Consumer Credit Card Market Report](#) (see p. 59).

<sup>3</sup> Data from Argus Advisory, a TransUnion Company ("Argus"). To portray a more accurate picture of the U.S. Consumer Card Industry, Argus has leveraged TransUnion's data to calibrate changes in the benchmark composition. This change begins in the data in Q1 2020.

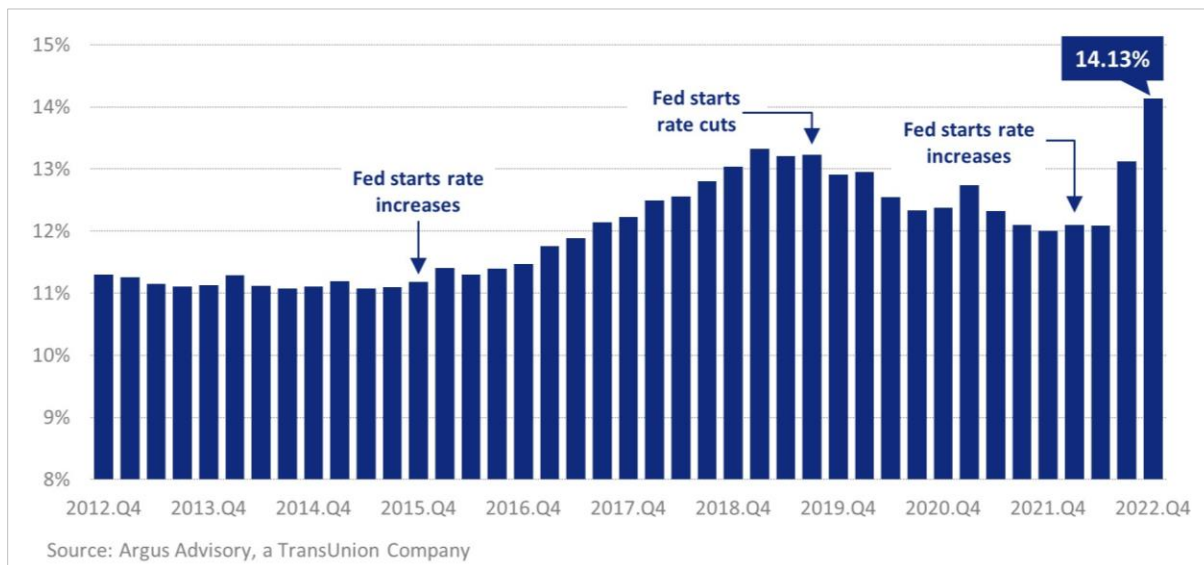
<sup>4</sup> As the Bureau found in its 2013 [CARD Act report](#) (pp 30–31), credit card interest rates increased after the CARD Act at a time when market interest rates declined. This change was in part due to the inability of credit card issuers to adjust prices based on cardholders' changing risk profiles, as well as on the Act's prohibition on interest rate floors. Prior to the CARD Act, some issuers used floors to hedge against the risk that a variable rate card pegged to the prime rate would fall below the level required to maintain profitability. As of July 2009, approximately 9 percent of bank-issued credit cards had a minimum rate requirement (up from 1 percent of accounts seven months earlier), while 40 percent maintained floors on the variable interest rate for cash advances (up from 10 percent at the end of 2008). After the CARD Act's implementation, issuers that relied on floors predictably raised rates in response to this new restriction. The changes brought about by the CARD Act resulted in higher interest rate margins (i.e., the difference between the average consumer credit card interest rate and the prime rate) as issuers sought alternative ways to manage portfolio-wide risk.

<sup>5</sup> Data from Argus is available through Q4 2022, while data from the Federal Reserve is available through Q1 2023.



A similar pattern can be observed in the effective finance charge yield, which is defined as the annualized interest income generated by a portfolio expressed as a percentage of a portfolio’s assets.<sup>6</sup> As Figure 2 illustrates, after declining through the end of 2021, the effective finance charge yield jumped by nearly 200 bps over Q3 and Q4 2022 due to persistent rate increases.

Figure 2: Credit Card Effective Finance Charge Yield



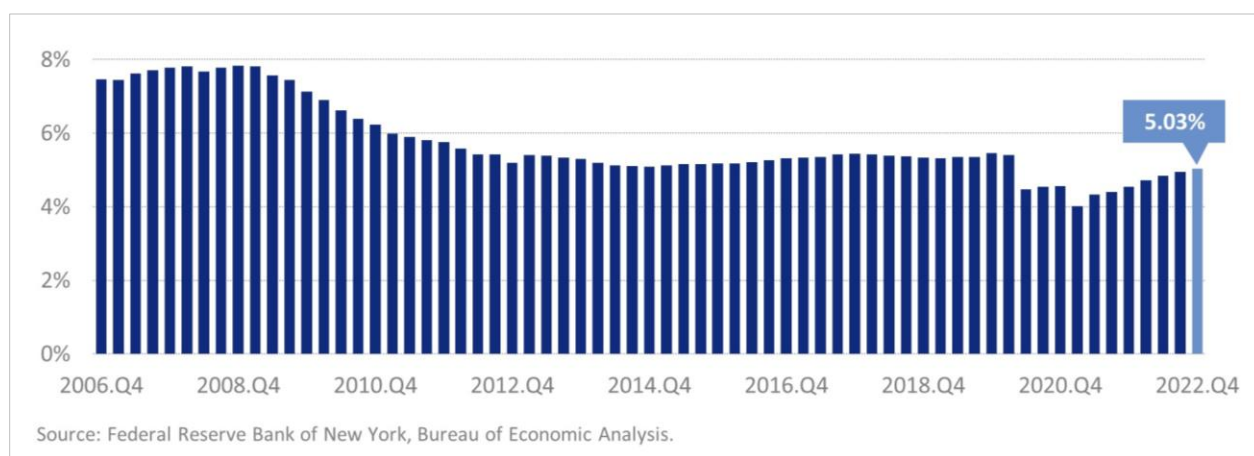
As a share of disposable income, credit card debt fell significantly in the aftermath of the 2008-09 recession and remained essentially flat from 2012 to 2019 before dropping sharply in Q2 2020. Increased

<sup>6</sup> In the credit card market, the effective finance charge yield measures total interest charged to all accounts, calculated as a share of total outstanding credit balances. In this way, it typically tracks the prime rate, but also reflects other factors, including the share of accountholders who carry a balance (i.e., “revolve”) for various risk tiers and the size of revolving balances.

unemployment insurance, loan repayment and eviction moratoriums, and direct stimulus payments caused personal income to spike 12 percent in April 2020 and 20 percent in March 2021.<sup>7</sup> Many consumers took advantage of the extra income to pay down debt,<sup>8</sup> and revolving consumer debt dropped by more than 30 percent in Q2 2020.<sup>9</sup>

After falling to a low of 4.02 percent in Q1 2021 following the provision of additional economic stimulus payments, the ratio of credit card debt to disposable income has been slowly returning to pre-pandemic readings. Rising prices and reduced federal assistance have increased consumers’ credit card use and cut into disposable income, causing outstanding credit card credit as a share of disposable income to steadily increase—though it was still below pre-pandemic levels as of Q4 2022 (see Figure 3).

**Figure 3: Credit Card Credit Outstanding as a Share of Disposable Income (Seasonally Adjusted)**



### Availability of Consumer Credit Cards

The share of subprime consumers in the credit card market has declined over the nearly 15 years since the CARD Act’s implementation. Since 2008, the number of subprime accounts has fallen by 22 percent, a loss of nearly 20 million accounts. The share of accounts that are subprime has also fallen. In Q1 2008, subprime users made up 25 percent of total accounts, while in Q2 2022, they accounted for just 18 percent. Among new accounts (those opened within the last two years), the number of subprime accounts is down 31 percent from 2008 levels.

**Table 1: Account Volume and Distribution by Risk, 2008--2022<sup>10</sup>**

<sup>7</sup> U.S. Bureau of Economic Analysis (2020), Personal Income, retrieved from [Federal Reserve Bank of St. Louis](#).

<sup>8</sup> Recent research suggests that 31 percent of total stimulus check spending was used to pay down consumer debts. Coibion, Olivier, Gorodnichenko, Yuriy and Weber, Michael (2020), “[How Did U.S. Consumers Use Their Stimulus Payments?](#)”, National Bureau of Economic Research Working Paper 27693.

<sup>9</sup> Federal Reserve Board (2020), [Consumer Credit - G.19](#).

<sup>10</sup> Data from Argus. The data revisions discussed in footnote 3 are not applied to this data, as those revisions led to a substantive increase in the number of accounts. In order to compare apples-to-apples data, this table uses unrevised data up to 2022.Q2.

Risk Category	Dist. of Accounts		Total Accounts (millions)			New Accounts (millions)		
	2008.Q1	2022.Q2	2008.Q1	2022.Q2	% Change	2008.Q1	2022.Q2	% Change
<b>Super-Prime</b> (760+)	42.3%	<b>52.7%</b>	150.4	206.2	<b>+37%</b>	27.6	29.8	<b>+8%</b>
<b>Prime</b> (680-759)	29.4%	<b>25.8%</b>	104.6	100.9	<b>-3%</b>	29.5	24.4	<b>-17%</b>
<b>Subprime</b> (< 680)	25.1%	<b>17.7%</b>	89.3	69.4	<b>-22%</b>	34.6	23.9	<b>-31%</b>

Part of the decline in subprime accounts following the onset of the COVID-19 pandemic can be attributed to tighter credit standards among issuers, who were facing significant uncertainty. The number and share of new subprime accounts have begun to recover over the past year. Still, Figure 4 illustrates the long-term effect that the CARD Act has had on subprime users.

Figure 4: Subprime Credit Card Accounts (Millions)<sup>11</sup>



Credit lines also fell sharply after the implementation of the CARD Act. For all accounts, credit lines remain 8 percent below 2008 levels. For new accounts, credit lines are 14 percent below their pre-CARD Act levels. Subprime accounts were even more affected, with average credit lines for new accounts falling from more than \$3,200 in Q1 2008 to about \$2,200 in Q4 2022, a 32 percent decline. While reductions in credit lines can help prevent cardholders from accumulating too much debt, they can also lower the efficacy of credit cards as a tool for everyday or emergency expenses.

Table 2: Average Credit Lines for Credit Card Accounts<sup>12</sup>

<sup>11</sup> Data from Argus. The data revisions discussed in footnote 3 are not applied to this data, as those revisions led to a substantive increase in the number of accounts across risk tiers. In order to compare apples-to-apples data, this chart uses unrevised data up to 2022.Q2.

<sup>12</sup> Data from Argus. To portray a more accurate picture of the U.S. Consumer Card Industry, Argus has leveraged TransUnion’s data to calibrate changes in the benchmark composition. This change begins in the data in Q1 2020.

Risk Category	Total Accounts (\$)			New Accounts (\$)		
	2008.Q1	2022.Q4	% Change	2008.Q1	2022.Q4	% Change
<b>Super-prime</b> (760+)	\$12,234	\$12,131	-0.8%	\$10,226	\$9,832	-3.9%
<b>Subprime</b> (680-759)	\$9,863	\$7,531	-24%	\$6,719	\$5,220	-22%
<b>Subprime</b> (< 680)	\$4,531	\$3,252	-28%	\$3,259	\$2,222	-32%

**Proposed Late Fee Regulations Would Increase Costs and Harm Credit Access**

Recent proposed regulations targeting late fees would have significant adverse impacts on the costs and availability of credit cards and would create new barriers to entry for smaller financial institutions. The Associations will respond to the Bureau’s proposed changes to credit card late fees in a separate comment letter, but given that the rule is directly relevant to consumer credit access and availability, its likely impacts are summarized below.

The Bureau’s proposed changes would effectively reduce the late fee safe harbor to the lesser of \$8 or 25 percent of a cardholder’s minimum payment due. This would result in more late payments and, correspondingly, significant financial risk related to the consequences of paying late, including reduced credit lines, higher interest rates, fewer reward offerings, and, in some cases, loss of credit access.<sup>13</sup>

In addition, the proposed changes would significantly reduce the revenue that issuers collect from late-paying accounts that they use to cover costs and risks related to late payments. As the Bureau acknowledges, these costs are likely to be shifted to people who pay on time. This shift would negatively impact both cardholders who pay late and those who pay on time. In its proposed rule, the Bureau concedes that “[c]ardholders who never pay late will not benefit from the reduction in late fees and could pay more for their account if maintenance fees in their market segment rise in response” to the proposed change.<sup>14</sup>

Cardholders who pay on time but carry a balance from month to month would face higher interest rates. The Bureau acknowledges that APRs could rise up to two percentage points for most cards, and that “[c]ardholders who carry a balance but rarely miss a payment are less likely to benefit on net.”<sup>15</sup> The Bureau also acknowledges that “if interest rates increase in response [to the proposed rule] and these on-time cardholders also carry a balance,” they will not benefit from the rule, and indeed would be harmed if the

<sup>13</sup> 88 Fed. Reg. 18,906, 18,922 (Mar. 29, 2023).

<sup>14</sup> 88 Fed. Reg. at 18,934-35 (“Sophisticated consumers, inasmuch [as] they would have been cross-subsidized by naïve customers’ costly mistakes, may pay higher maintenance fees or interest or collect fewer rewards if the issuer offsets the revenue lost to naïve consumers. The Bureau considers that to the extent there are offsetting changes to card terms, some of these changes are likely but has not quantified their magnitude.”).

<sup>15</sup> *Id.*

cost of credit increases as a result.<sup>16</sup> Because issuers are restricted from raising interest rates on existing balances, issuers principally would need to adjust APRs for new transactions<sup>17</sup> and newly opened accounts.<sup>18</sup>

Further, if the late fee safe harbor is reduced to \$8 or 25 percent of the required minimum payment, as proposed, issuers will be compelled to restrict access to credit in order to mitigate costs and manage risk. Decreased access to credit would have the largest impact on consumers with limited or no credit history and those with lower credit scores.

Finally, the cost of credit would go up for nearly all consumers commensurate with the fee amounts saved by late payers. The Associations expect that even cardholders who do not pay late and do not carry a balance and, therefore, do not pay interest may be adversely impacted by increased credit card annual fees, reduced card account features, and lost rewards.

### Interchange Regulation Would Increase Costs and Reduce Availability of Credit

Interchange regulation, proposed through legislative channels, would also adversely impact the cost and availability of credit. The Credit Card Competition Act of 2022 would have regulated the number of networks on which credit card transactions can be processed.<sup>19</sup> This limitation would have resulted in an effective price cap on interchange fees, which merchants pay to accept credit cards.

Similar legislation in the debit card space, intended to benefit consumers through supposed lower prices, instead had substantial negative consequences. For example, research from the Federal Reserve Bank of Richmond found that the vast majority of merchants did not lower prices in response to reduced interchange fees.<sup>20</sup> Further, independent academic research determined that banks fully offset losses through other account fees to support the cost of providing bank accounts and that “consumers are not helped by this interchange regulation.”<sup>21</sup> Legislators should be aware of these unintended consequences before they introduce any similar legislation in current or future Congresses.

### Consequences of Reduced Availability of Credit

If late fee, interchange, or other pricing caps go into effect, the consequences of reduced credit access will be significant and incurred largely by prime and subprime cardholders. The current period of inflation is eating away at the savings many consumers built up during the COVID-19 pandemic. According to a 2021 survey conducted by the Federal Reserve, 32 percent of consumers cannot cover a \$400 emergency

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<sup>16</sup> *Id.*

<sup>17</sup> 12 C.F.R. § 1026.55.(b)(3).

<sup>18</sup> Under §1026.55(b)(4), banks may increase rates on certain delinquent accounts, although issuers today rarely utilize the penalty APRs; however, if the late fee safe harbor is reduced to \$8, more issuers may exercise this option.

<sup>19</sup> [Credit Card Competition Act of 2022](#), S. 4674, 117th Cong. (2022).

<sup>20</sup> Wang, Zhu, Schwartz, Scarlett, and Mitchell, Neil (2014), “[The Impact of the Durbin Amendment on Merchants: A Survey Study](#)”.

<sup>21</sup> Mukharlyamov, Vladimir and Sarin, Natasha, “The Impact of the Durbin Amendment on Banks, Merchants, and Consumers” (2019), Faculty Scholarship at Penn Carey Law. 2046, available at: [https://scholarship.law.upenn.edu/faculty\\_scholarship/2046](https://scholarship.law.upenn.edu/faculty_scholarship/2046).

expense without using credit card financing or some other form of loan.<sup>22</sup> As of March 2023, 38 percent of households are finding it at least a little difficult to pay for usual household expenses, according to a Census Bureau survey.<sup>23</sup> During these periods of economic uncertainty, consumers often rely on credit cards to meet their spending needs.

Without access to a credit card, these consumers (often borrowers with subprime credit) turn to alternative short-term lending options like payday loans or pawn shops, which are more expensive than credit cards. Further, reducing access to credit cards removes an avenue to build credit. As former Director Cordray noted in 2017, “People with little or no credit history, or who lack a credit score, have fewer opportunities to borrow money in order to build a future and any credit that is available usually costs more. That only deepens their economic vulnerability.”<sup>24</sup>

## II. CREDIT CARD REWARDS

*(1) The terms of credit card agreements and the practices of credit card issuers; (c) How are the terms of, and practices related to, major supplementary credit card features (such as credit card rewards, deferred interest promotions, balance transfers, and cash advances) evolving?*

The Bureau has requested information on the practices and terms of rewards cards programs. Rewards programs are an essential tool for virtually all types of consumer-oriented businesses that emphasize customer loyalty (e.g., retailers, grocers, telecommunications) and are part of a well-functioning and competitive market. Rewards cards are popular across incomes and credit risk tiers, and consumers find them easy to understand.

### Rewards Cards Are Popular

Rewards cards have remained popular with consumers across incomes and credit risk levels. By mid-2022, rewards cards made up 85 percent of total credit card accounts in the U.S., up from only 60 percent in 2008 (see Figure 5).<sup>25</sup> For new accounts (less than two years old), rewards cards comprised 78 percent of total accounts. Among subprime accounts, rewards cards make up 72 percent of total card volume, compared to only 42 percent of total volume in 2008. This demonstrates the broad appeal and availability of rewards cards to consumers, regardless of credit score.

In 2021, the Bureau recognized the popularity of rewards cards among subprime users and noted that rewards have become a primary factor in card selection. During the pandemic, issuers shifted the focus of rewards cards as consumption patterns changed. Some offerings on travel and entertainment spending were replaced with credits or redemption on grocery or gasoline purchases. However, spending on rewards

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<sup>22</sup> Board of the Governors of the Federal Reserve (2022), “[Report on the Economic Well-Being of U.S. Households in 2021](#)” at 35.

<sup>23</sup> Census Bureau (2023), “[Week 55 Household Pulse Survey: March 1 – March 13.](#)”

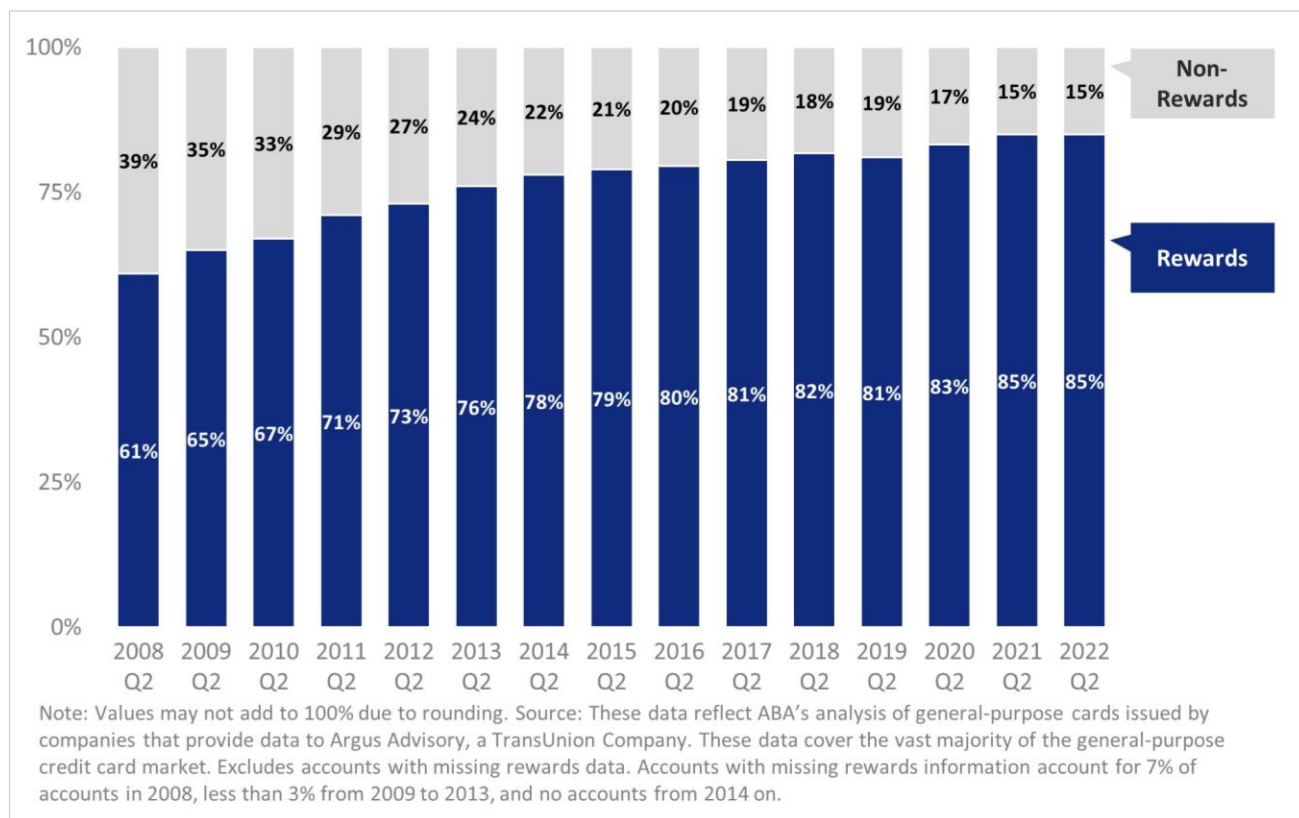
<sup>24</sup> Consumer Financial Protection Bureau (2017), [Prepared Remarks of CFPB Director Richard Cordray.](#)

<sup>25</sup> Data from Argus. As noted above, to portray a more accurate picture of the U.S. Consumer Card Industry, Argus has leveraged TransUnion’s data to calibrate changes in the benchmark composition. This change begins in the data in Q1 2020.



cards remained strong, particularly on cash-back rewards cards. In the first quarter of 2022, cash-back rewards cards made up 25 percent of total card volume.

Figure 5: Share of Total Account Volume, Rewards vs. Non-Rewards Cards (Percent)<sup>26</sup>



### Rewards Cards are Well-Understood by Consumers

Rewards cards, already popular in the credit card market, became even more valuable during and after the COVID-19 pandemic. The strength of the rewards market proves that consumers have confidence and see value in these programs. As evidenced below, consumers understand how to use their credit card rewards, including disclosures, agreements, and redemption policies. Consumers were further motivated during the pandemic and the inflationary environment that followed to take advantage of their offerings. For example:

- A WalletHub survey found that 80 percent of cardholders reported that rewards programs are “easy to use.” The same survey found that higher rates of inflation made consumers more interested in earning rewards on purchases. Cash-back rewards are by far the most popular form of rewards, with groceries and gas rated as the top bonus categories.<sup>27</sup>

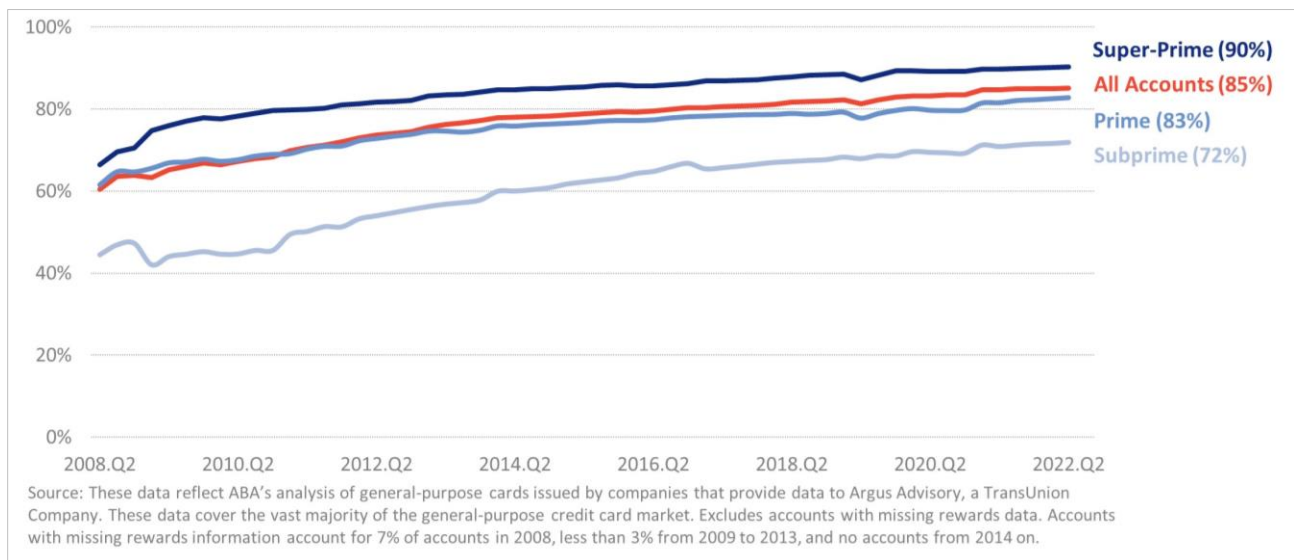
<sup>26</sup> The data revisions discussed in footnote 3 are not applied to this data, as those revisions led to a substantive increase in the number of accounts across risk tiers. In order to compare apples-to-apples data, this table uses unrevised data up to 2022.Q2.

<sup>27</sup> Wallet Hub (2022), [2022 Credit Card Rewards Survey](#).

- Morning Consult reported that 91 percent of rewards cardholders find rewards cards easy to use, and 83 percent were likely to prioritize rewards cards over non-rewards cards for purchases. Three-quarters of cardholders with low incomes report that they often use cash-back rewards. Among subprime consumers (which were defined as cardholders with FICO scores below 650), 85 percent find cash-back rewards valuable to their daily life.<sup>28</sup>

Consumers find credit card rewards programs easy to use and navigate, and, as a result, it is unsurprising that they tend to prioritize these cards over their non-rewards counterparts. In addition, consumers—including those with subprime credit or lower incomes—value the benefits they receive from these cards, reflecting the competitive and efficient nature of the market.

*Figure 6: Rewards Cards Share of Total Accounts, by Risk Category (Percent)<sup>29</sup>*



### Rewards Cards are Part of a Two-Sided Market, Benefitting Both Consumers and Merchants

Rewards programs serve as a vital part of the electronic payments system, benefiting both consumers and merchants.<sup>30</sup> Opponents of rewards cards argue that they are a transfer from cash users with lower incomes to rich rewards cardholders, but these arguments overlook the two-sided nature of the credit card market.

In two-sided markets, a platform serves multiple end users. Each side pays a price, and each side derives value. A classic example is a newspaper, which provides a service to both readers (who pay a subscription fee) and advertisers (who pay for ad space). Both sides benefit from the arrangement. In the case of the

<sup>28</sup> Morning Consult (2022), [General Views of Credit Card Rewards](#).

<sup>29</sup> The data revisions discussed in footnote 3 are not applied to this data, as those revisions led to a substantive increase in the number of accounts across risk tiers. In order to compare apples-to-apples data, this table uses unrevised data up to 2022.Q2.

<sup>30</sup> In a 2021 study, ABA examined rewards cards and their value to various participants in the credit card market, including merchants and consumers, segmented by income and credit score. For additional information on the two-sided market and the flaws associated with the “reverse Robin Hood” hypothesis. See ABA (2021), [“The Benefits of Credit Card Rewards.”](#)

credit card market, issuers and networks are the platform, and cardholders and merchants are the end users.<sup>31</sup> Merchants pay fees to accept credit cards, and they benefit from: the ability to sell goods and services online;<sup>32</sup> faster transaction times;<sup>33</sup> reduced cost of cash;<sup>34</sup> and prompt, guaranteed payments.<sup>35</sup> When merchants first begin accepting card payments, they experience a 10 to 15 percent increase in average transaction size.

On the other side of the market, cardholders pay fees and interest to use credit cards. In return, they receive myriad benefits including convenience, fraud protection, and rewards. Contrary to the “reverse Robin Hood” hypothesis, these benefits also extend to consumers who do not have credit cards. In addition to faster transaction times, non-cardholders may benefit from reduced prices. Since electronic payments drive down costs and because merchants are guaranteed payment, credit card acceptance should translate to lower prices, thereby benefitting not just cardholders but all consumers.<sup>36</sup>

### III. COMPETITION IN THE CREDIT CARD MARKET

*(7) Consumer credit card product innovation and competition; (e) How do innovations by firms offering other consumer financial products and services (such as buy-now-pay-later credit, mobile payments, or non-card point-of-sale loans) compete with credit cards, and to what extent do consumers view them as effective alternatives to or substitutes for credit cards?*

#### Buy Now, Pay Later Demonstrates the Competitive Nature of the Credit Card Market

E-commerce spending has surged over the past decade, a trend accelerated further by the COVID-19 pandemic. As a result, use of Buy Now, Pay Later (BNPL) services has grown rapidly, particularly among younger consumers. BNPL platforms are set up at the point of sale and allow consumers to pay for purchased goods in installments over a set period. These lines of credits are often offered at zero percent interest and are paid off over short periods of time (four months or fewer).

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<sup>31</sup> McAndrews, James & Wang, Zhu (2008), [“The Economics of Two-Sided Payment Card Markets: Pricing, Adoption, and Usage.”](#)

<sup>32</sup> Electronic payments also allow merchants to take advantage of other sales channels via e-commerce and mobile commerce avenues, which are growing rapidly. See Policy & Economic Research Council (2012), [“Credit Card Rewards: Context, History, and Value.”](#)

<sup>33</sup> Electronic payments cut down on checkout times and are processed twice as fast as cash and several times faster than checks, allowing retailers to move customers quickly through the checkout process. See Digital Transactions (2018), [“Many Merchants Expected to Erase Signature Requirements From Their Checkout Counters.”](#)

<sup>34</sup> Card acceptance reduces costs associated with counting, storing, safeguarding, and transporting cash, and limits losses from mislaid or stolen cash—all of which are significant expenses that retailers often overlook. A study conducted by a retail industry research firm found that the average retailer spends more than 9 percent of the value of its cash transactions counting, auditing, and depositing cash. See IHL Group (2018), [“Cash Multipliers: How Reducing the Costs of Cash Handling Can Enable Retail Sales and Profit Growth.”](#)

<sup>35</sup> Beyond helping merchants avoid the costs of cash, electronic payments reduce the risks to retailers associated with credit loss. Electronic payments are deposited directly into the merchant’s account, and issuers, not merchants, take responsibility for losses if a customer who uses a credit card is ultimately unable to pay. See Peter T. Dunn & Company LLC (2018), [“The Value of Electronic Payments.”](#)

<sup>36</sup> Semeraro, Steven (2018), [“How Reward Cards Encourage Merchants to Lower Prices.”](#) *Fortune*.

The Associations' members are responsibly participating in the growing BNPL market, and we believe that BNPL products, provided by banks and their partners, offer significant value to consumers and merchants. However, we are concerned that the rapid growth of BNPL products offered by unregulated companies presents risks to consumers, merchants, and the integrity of the consumer credit market. According to a recent Bureau report, BNPL users tend to have a lower average credit score than consumers who do not use those services. Some BNPL users also have higher levels of financial distress, such as higher levels of debt, higher credit utilization rates, and larger revolving balances.<sup>37</sup> These same users are more likely to use credit cards than non-BNPL users, and they are more likely to use high-interest financial services such as payday loans and pawn shops. Additionally, some BNPL products are not subject to the Truth in Lending Act and Regulation Z due to their short-term payment structure. However, as the Bureau notes, many BNPL consumers use the product without noticeable indications of financial stress. Responsible BNPL providers—including many members of the Associations—offer significant value to consumers and merchants.

The Associations believe that, with appropriate safeguards, BNPL is a valuable option for consumers. Members of the Associations that provide BNPL products go to great lengths to comply with consumer credit laws and provide fair and responsible access to credit. Non-bank BNPL providers should be held to the same regulatory standards as traditional banks and credit unions that issue BNPL, credit cards, and other consumer loans. At the same time, the rapid growth of BNPL products also demonstrates the highly competitive nature of the consumer credit market.

### Overregulation Risks Undermining a Functioning and Valued Credit Card Market

For decades, credit cards have provided a consistent, convenient form of revolving credit to consumers. Many cardholders rely on these products as a consumption- and income-smoothing tool, helping them continue to pay bills and afford essentials during periods of financial difficulty and uncertainty. Others utilize cash-back and travel rewards as part of their personal financial plans and budgets. All cardholders can enjoy the convenience provided by recent innovations such as “tap-to-pay” and the protection against financial fraud. And because the credit card market is highly competitive, issuers compete on pricing and rewards to the benefit of cardholders.

It is critical that new policies do not have unintended consequences on the foundations of this progress. For example, we urge policymakers to be measured and consider unintended consequences when regulating the uniform standard provided by comprehensive and accurate credit reporting, which is a building block of the credit card system. Similarly, proposals to arbitrarily limit the ability of banks to reach consumers about the status of their accounts or to facilitate payment arrangements only prevent consumers from receiving information about all options available to them.

As with all financial products, there is an optimal balance between market forces and regulatory oversight. The evidence shows that the credit card market is working well. While there is always room for improvement and fine-tuning, radical changes are not needed at this time. We urge the Bureau to rigorously assess the tradeoffs and costs that would accompany regulatory proposals that would represent major interventions in a functioning, safe, and transparent credit marketplace.

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<sup>37</sup> Consumer Financial Protection Bureau (2023), [“Consumer Use of Buy Now, Pay Later.”](#)

#### IV. DISCLOSURES AND E-SIGN

*(2) The effectiveness of disclosure of terms, fees, and other expenses of credit card plans; (a) How effective are current disclosures of rates, fees, and other cost terms of credit card accounts in conveying to consumers the costs of credit card plans?; (b) What further improvements in disclosure, if any, would benefit consumers and what costs would card issuers or others incur in providing such disclosures?; (c) How well are current credit card disclosure rules and practices adapted to the digital environment? What adaptations to credit card disclosure regimes in the digital environment would better serve consumers or reduce industry compliance burden?*

As we emerge from the pandemic and experience continuing digitization of financial services, the long-standing trend of consumers preferring digital engagement with their financial institutions continues. Consumers are increasingly choosing to receive account disclosures, statements, and other documents electronically for a variety of reasons, including convenience, accessibility, speed, security, health and safety, and environmental concerns. Even before the pandemic, consumers were increasingly engaging with their financial institutions through digital channels, including by making payments with wearable devices, managing accounts using voice activated technology, and interacting with customer support via mobile apps and AI.

The current regulatory environment has not kept pace with these technological developments or the clearly demonstrated consumer preference for digital-first, digital-only options. We continue to urge the Bureau to refresh its regulatory framework to recognize and affirm the positive role of innovative technologies in the financial lives and financial health of consumers, especially as consumers are presented with an expanding selection of non-bank options. Burdensome, outdated, and ambiguous requirements in Regulation Z are creating unnecessary friction where banks seek to innovate and better serve consumer customers who prefer digital engagement. These requirements include the Regulation Z provision that certain disclosures comply with the Electronic Signatures in Global and National Commerce Act's (E-SIGN Act) consumer consent provisions, and specifically the E-SIGN Act's "reasonable demonstration" requirement.

We again recommend that the Bureau comprehensively review all Regulation Z disclosure requirements with an eye toward the current digital landscape. Upon the conclusion of such a review, we ask the Bureau to develop alternative standards that can be used for different modes of communications and emerging technologies, especially the conversational and responsive interfaces consumers are seeking.

#### **The E-SIGN Act Is Outdated and Restrictive, and its Requirements Should Be Revisited**

Enacted in 2000, the E-SIGN Act was intended to promote (not impede) digital engagement with consumers. The E-SIGN Act codified the ability for electronic disclosures to satisfy any statutory or regulatory requirement that disclosures be provided in "writing" with the consumer's affirmative consent. Reflecting the then-novelty of digital channels, Congress included a requirement that the consumer provide or confirm consent in a manner that reasonably demonstrates that the consumer can access the subject information in the electronic form that will be used.<sup>38</sup>

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<sup>38</sup> 15 U.S.C. § 7001(c)(1)(C)(ii).

However, even nearly 25 years ago, Congress recognized consumers' improving facility with and preference for digital communications. As part of the E-SIGN Act, Congress required a study within 12 months of enactment to evaluate whether the reasonable demonstration requirement provided any benefit to consumers.<sup>39</sup> At that time, the Federal Trade Commission and the Department of Commerce concluded that "Congress should take no action *at this time* to amend the statute."<sup>40</sup> Congress also authorized the regulatory agencies to "by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 7001(c) of this title if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers."<sup>41</sup> We believe that, for consumers and credit card issuers, we are well past the point where elimination of the reasonable demonstration requirement will eliminate a substantial burden on electronic commerce, and will not increase the material risk of harm to consumers.

More than 20 years after the enactment of the E-SIGN Act, 72 percent of consumers now engage with their banks primarily through digital channels, with 45 percent primarily using mobile apps and 27 percent primarily using online banking on a desktop.<sup>42</sup> Electronic communications are more convenient, readily accessible, and re-accessible than paper communications. Additionally, electronic disclosures offer cost savings that can be passed on to consumers in the form of more competitive pricing and better services.

Regrettably, current requirements for written disclosures in Regulation Z impede safe, efficient, and environmentally friendly electronic disclosures. By way of example, during the pandemic, banks reported that based on challenges with the reasonable demonstration requirement, they required consumers to drive to church parking lots to receive account-opening disclosures that the bank could not deliver electronically as a result of the E-SIGN Act. Other friction points result in uncertain and compliance challenges: How do consumers at the point of sale in a store or branch demonstrate access to the information if using the financial institution's hardware and software to give consent rather than their own device? If the disclosures are provided online, is it reasonable to assume that the customer has access to the internet because the customer provides an email address? Do customers have to demonstrate that they can navigate the internet to find online disclosures? Can the demonstration be done using the financial service provider's equipment? The ambiguity of what constitutes "reasonable demonstration" often leads credit card issuers and other financial providers to implement processes that are inconvenient or burdensome to, and impractical for, the consumer, with the result that people who want electronic disclosures continue to receive paper.

To be clear, the E-SIGN Act requires—and the Associations strongly support—that a consumer affirmatively consent to electronic receipt of disclosures that are required to be in writing. Accordingly, it is important to ensure that people do not inadvertently or unintentionally agree to electronic disclosures that they cannot, in fact, access. We believe that both goals can be achieved through informed, meaningful consent,

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<sup>39</sup> *Id.* § 7005(b).

<sup>40</sup> Federal Trade Commission and U.S. Department of Commerce, "[Electronic Signatures in Global and National Commerce Act: The Consumer Consent Provision in Section 101\(c\)\(1\)\(C\)\(ii\)](#)" at ii, 14, June 2001 (emphasis added).

<sup>41</sup> 15 U.S.C. § 7004(d)(1).

<sup>42</sup> ABA and Morning Consult (2022), "[How Americans Bank.](#)"

just as other important credit card and financial product terms are explained and agreed to in compliance with numerous consumer financial protection regulations.

The Bureau and other federal and state regulators have a myriad of effective tools, including a broad range of enforcement tools, to address any problems that could arise, especially with regard to supervised institutions. The Bureau can make significant progress toward modernizing credit card and other disclosure requirements under its existing authorities.<sup>43</sup> It is empowered to allow consumers to consent to obtain written disclosures electronically without an obligation that the consumer demonstrate an ability to access the disclosures. This change would be consistent with the objective of the E-SIGN Act to normalize the use of electronic consent in the course of routine commerce.

### Regulation Z Required Disclosures Can Be Delivered More Effectively and Efficiently

Beyond the burden created by the obsolete “reasonable demonstration” requirement, we again encourage the Bureau to modernize Regulation Z to facilitate disclosures that are better suited to modern technology. Consumer financial transactions, like other consumer communications, are increasingly being conducted electronically. Due to the current regulatory framework, transactions are conducted online and disclosures displayed on a screen in a manner that often simply replicates paper disclosures, which deprives consumers of the benefits of optimized formatting. It has now been several years since communication has moved to smaller screens on tablets or cell phones, without sacrificing the value of the information conveyed—when there is flexibility to optimize messages for the technology used. In addition, interactive technologies offer a means of delivering information that is more consumer-friendly than paper-based disclosures. By presenting key terms of information in summary form and including links to additional information, consumers can access information more quickly and efficiently in an interactive electronic format than they can with paper disclosures.

Current disclosure requirements, including the formatting and presentation requirements, were designed based on an assumed paper delivery. The potential for regulatory sanctions or private litigation serves as a deterrent to delivering required disclosures in new formats, discouraging regulated traditional financial services providers from creating new means of delivering financial services that consumers value. Although the Bureau has made some efforts to accommodate electronic formats, such as through the advertising

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<sup>43</sup> As an initial matter, the phrase “in writing” in the Truth and Lending Act (TILA) and other federal statutes does not expressly denote paper, but rather, letters and words that may be read through any medium. Thus, TILA’s and other statutes’ requirements that disclosures be “in writing” do not mandate paper disclosures as the exclusive method or preclude electronic disclosures. Interpreting TILA in this manner would be entirely consistent with the Bureau’s statutory authority and would remove the unnecessary burden of reasonable demonstration from consumers’ interactions with their card issuers. Second, like many of the consumer financial protection statutes, TILA gives the Bureau discretion to make adjustments “necessary or proper to effectuate the purposes of the statute” and to “facilitate compliance therewith.” See 15 U.S.C. § 1604(a). Specifically, the rule writing authority in TILA provides, “The Bureau shall prescribe regulations to carry out the purposes of this subchapter. ...[S]uch regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.” *Id.* Indeed, the Bureau has already used its authority to provide specifically that E-SIGN’s requirements do not apply to certain written disclosures, including under Regulation Z for application and solicitation disclosures, advertising disclosures, and “early” disclosures required for home equity lines of credit. See 12 C.F.R. §§ 1026.5(a)(1)(iii), .16, .40 and .60.

rules in Regulation Z that allow certain required information to be accessible by link (one-click away), significant impediments remain.

We again urge the Bureau to create a regulatory framework that promotes alternative electronic disclosures that are more informative and useful for consumers, and more efficient for card issuers by adapting disclosure requirements to the rapidly evolving developments in electronic communications. Toward that end, we recommend that the Bureau undertake a ground-up review of all credit card disclosure requirements with an eye toward the current digital landscape and develop alternative standards that can be used for different modes of communication and emerging communications technologies, especially the conversational and responsive interfaces consumers are seeking.

## V. DEBT COLLECTION

*(1) The terms of credit card agreements and the practices of credit card issuers; (f) How have practices related to collecting on delinquent and charged-off credit card debt changed over the past two years?; (g) Has the use of electronic communication (e.g., email or SMS) by creditors and debt collectors in connection with credit card debt grown or otherwise evolved? If so, in what ways?*

Collecting on past due debts, particularly for credit card products, is an important component of the ecosystem that allows for the affordability and availability of consumer credit. Collections and recovery also are important to the safety and soundness of insured institutions.

The primary changes to practices regarding the collecting on delinquency and charged-off credit card debt relate to the CFPB's Regulation F final rule, which became effective in November 2021. While the Bureau appropriately declined to extend the Fair Debt Collection Practices Act (FDCPA) to first-party creditors, many banks, while not normally subject to the FDCPA, have adopted processes and procedures reflective of Regulation F to simplify compliance and streamline both internal operations and oversight of third-party vendors.

The implementation of Regulation F has produced overall positive changes for collections practices, including those used to collect credit card debt, as it provided much needed clarity to a somewhat fragmented industry. In addition, as reported in the Bureau's March 2023 report on 2022 complaint data, the share of debt collection complaints declined from 25 percent of all complaints in 2018 to less than 10 percent of all complaints in 2022.<sup>44</sup>

Regulation F's clarity on the use of electronic communications regarding debt has allowed more adoption of their use, providing cardholders with a convenient and private way to resolve account issues. Thus far, there have been no significant complaints of debt collectors using email or text in harassing or objectionable manners.

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<sup>44</sup> Bureau of Consumer Financial Protection (2019), "[Consumer Response Annual Report](#)" at 9; Bureau of Consumer Financial Protection (2022), "[Consumer Response Annual Report](#)" at 11. The volume of all complaints to the Bureau went up significantly from 2018 to 2022, but the portion of complaints attributed to debt collection dropped from 25 percent of all complaints to just 9 percent of all complaints.



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The Associations appreciate the opportunity to provide comments on the consumer credit card market, including issuer efforts to provide assistance to their customers given recent economic turbulence. Please contact the undersigned with any questions or to request additional information.

Sincerely,

AMERICAN BANKERS ASSOCIATION

CONSUMER BANKERS ASSOCIATION

NATIONAL ASSOCIATION OF FEDERALLY-INSURED CREDIT UNIONS