



May 18, 2023

By electronic delivery to:
www.regulations.gov

Mr. Anthony May
PRA Officer
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Mr. William Bestani
Senior Policy Analyst
Office of Information and Regulatory Affairs
Office of Management and Budget
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Re: Notice and Request for Comment, Agency Information Collection Activities, Generic Information Collection titled “Junk Fees Timing Study,” CFPB-2023-0026, 88 Fed. Reg. 23,646 (Apr. 18, 2023)

Dear Mr. May and Mr. Bestani,

The American Bankers Association, Consumer Bankers Association, Credit Union National Association, National Association of Federally-Insured Credit Unions, and U.S. Chamber of Commerce (the Associations)¹ appreciate the opportunity to comment on the Consumer Financial Protection Bureau’s (Bureau) request for approval under the Paperwork Reduction Act² (PRA) of an information collection titled “Junk Fees Timing Study” (Timing Study).³ The Bureau seeks approval of the Timing Study under the Generic Information Collection titled “Generic Information Collection Plan for Studies of Consumers Using Controlled Trials in Field and Economic Laboratory Settings.”⁴ As discussed in greater detail below, the Timing Study does not fall under the limited uses that the White House’s Office of Information and Regulatory Affairs (OIRA) permits for a generic clearance.

Under the PRA, a federal agency that seeks to conduct a survey or collect information from ten or more individuals or entities, as here, must obtain approval by OIRA, an office within the Office of Management and Budget.⁵ Congress enacted the PRA to ensure that, when a federal

¹ A description of each trade association is listed in the Appendix.

² Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

³ Notice and Request for Comment, Agency Information Collection Activities, Generic Information Collection titled “Junk Fees Timing Study,” CFPB-2023-0026, 88 Fed. Reg. 23,646 (Apr. 18, 2023) [hereinafter, Timing Study Request for Comment].

⁴ Generic Information Collection Plan for Studies of Consumers using Controlled Trials in Field and Economic Laboratory Settings, Bureau of Consumer Fin. Prot., OMB Control No. 3170-0048 (expiration date Feb. 28, 2026).

⁵ 44 U.S.C. § 3507(a).

agency collects information from ten or more individuals or entities, the survey or information collection provides practical “benefit” to the agency and “maximize[s] the utility of information” collected, among other purposes.⁶ Congress sought to achieve these goals by requiring two opportunities for the public to comment on the collection request. First, the agency must publish a 60-day notice in the *Federal Register* soliciting comment on the proposed collection.⁷ This first round of comments is meant to inform the agency’s—and, importantly, OIRA’s—consideration of the proposed collection. At the conclusion of the comment period, the agency must submit the collection request to OIRA and publish a second notice to announce the start of OIRA’s review and of a second, 30-day public comment period.⁸ Under the PRA, the public notices must provide sufficient information about the proposed information collection, including a summary of the collection, a description of the need for the information, the proposed frequency of responses, and an estimated industry burden calculation.⁹ The PRA directs OIRA, when it considers the agency’s request, to “maximize the practical utility of and public benefit from [the] information collected.”¹⁰

The PRA provides no exception (applicable to the Timing Study) to the statute’s requirement that the public be provided with two opportunities for comment each time an agency seeks to conduct a survey or information collection. Nonetheless, since at least 2010, OIRA has allowed agencies to pursue information collections without providing an opportunity for public comment when the agency seeks to collect information under an already-approved “generic clearance.” As OIRA described, an agency may “request a ‘generic clearance’ in 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.”¹¹ OIRA has provided three examples of the types of collections that it believes are appropriate for this expedited review: “customer satisfaction surveys, focus group testing, and website usability surveys.”¹²

Putting aside questions about the legitimacy of the generic clearance process,¹³ we urge OIRA to enforce the limitations on use of the streamlined process and disapprove requests for collections that relate to substantive or policy issues. The failure to enforce these limitations invites agencies to “push the envelope” and seek to use a generic clearance for a survey that is neither low burden

⁶ *Id.* § 3501(2).

⁷ *Id.* § 3506(c)(2)(A).

⁸ *Id.* § 3507(b).

⁹ *Id.* § 3507(a)(1)(D)(ii)(II) – (VI).

¹⁰ *Id.* § 3504(c)(4).

¹¹ CASS R. SUNSTEIN, ADMIN., OFFICE OF INFO. & REGULATORY AFFAIRS, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, INFO. COLLECTION UNDER THE PAPERWORK REDUCTION ACT 5 (Apr. 7, 2010), https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/infoereg/PRAPrimer_04072010.pdf [hereinafter, SUNSTEIN MEMORANDUM]; *see also* OFFICE OF INFO. & REG. AFFAIRS, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, QUESTIONS & ANSWERS WHEN DESIGNING SURVEYS FOR INFORMATION COLLECTIONS 6 (Jan. 20, 2006), https://obamawhitehouse.archives.gov/sites/default/files/omb/infoereg/pmc_survey_guidance_2006.pdf (providing the same) [hereinafter, GRAHAM MEMORANDUM].

¹² SUNSTEIN MEMORANDUM, *supra* note 11, at 5.

¹³ OIRA created this exception on its own initiative. In its 2006 and 2010 memoranda describing the generic clearance process, the agency does not cite to any provision of the PRA to support its position that the statute allows an agency to conduct information collections without seeking OIRA’s approval for each collection. *See* SUNSTEIN MEMORANDUM, *supra* note 11, at 5; GRAHAM MEMORANDUM, *supra* note 11, at 6.

nor non-substantive. To maximize the utility of the information collected—a central purpose of the PRA—OIRA must insist that an information collection relating to a substantive or policy issue is conducted through the standard clearance process, which provides the public with two opportunities to comment on, and thus strengthen, the collection.¹⁴

There are strong policy reasons why a generic clearance is an inappropriate mechanism for collecting information on a substantive or policy issue. The prohibition ensures that the public can provide feedback on any collection that may be relied upon for rulemaking or other policymaking, thereby maximizing the utility of information collected and promoting “accountability[] and openness in Government and society.”¹⁵

The Timing Study does not fall within the limited uses that OIRA has defined for a generic clearance. The Timing Study is not a customer satisfaction survey, focus group test, or website usability survey, and the specifics of this collection can be determined before the data are to be collected. Instead, the Bureau appears intent on using the Timing Study to conduct research to inform the Bureau’s rulemakings or other policy actions. The full title of the Timing Study—the “Junk Fees Timing Study”—strongly suggests that the Bureau intends to use the data collected in connection with its on-going policy work to restrict what it has characterized as “junk” fees. In the one-sentence description of the Timing Study that the Bureau provided in its request for comment, the Bureau states that it intends to “investigate whether product information provided at the beginning of a product search leads to better choices than information that is revealed gradually during the search process and why.”¹⁶ This research is highly likely to inform the Bureau’s policymaking on overdraft fees and credit card fees, which could include rulemaking through which the Bureau proposes substantial revisions to well-accepted fee regulations. Accordingly, the scope of research proposed to be conducted demands adherence to the PRA’s requirements. Therefore, we urge OIRA to reject the Bureau’s request for approval of the Timing Study under the generic clearance process and to require the Bureau to resubmit the approval request through the full PRA process.

We understand that the Bureau intends to use a “hybrid” generic information collection process to seek approval of the Timing Study. As we understand, this “hybrid” process allows the Bureau, once it has obtained a generic clearance, to pursue under that generic clearance a substantive, policy-related collection by providing a single opportunity for public comment. Pursuant to that process, the Bureau has provided a single opportunity for comment on the Timing Study. However, OIRA’s guidance on generic clearances makes no reference to “hybrid” generic clearances, and the objectives and mandates of the PRA certainly do not support use of the generic clearance process for surveys that are intended to support substantive policy decisions.

¹⁴ See footnotes 7-10 and accompany text.

¹⁵ 44 U.S.C. § 3501(4).

¹⁶ Timing Study Request for Comment, 88 Fed. Reg. at 23,646.

Moreover, while the Bureau purports to request comment on the proposed Timing Study, it has not provided the survey instrument or any other substantive information related to the proposed collection besides a one-sentence “abstract” of the collection.¹⁷

Therefore, the public will not have an opportunity to provide comment on the survey instrument itself (i.e., the questions that will be asked of respondents), methodology used to identify survey respondents, or other aspects of the Timing Study. The public cannot meaningfully provide comment on the Timing Study—and assist the Bureau with maximizing the utility of information collected through the Timing Study—without reviewing the survey instrument, proposed universe of survey respondents, and other aspects of the survey. The way the Bureau structures its questions and the questions it asks will impact the responses it receives. Moreover, the Bureau’s approach is inconsistent with the PRA’s requirement that the agency requesting PRA approval provide to OIRA a summary of the proposed information collection, a description of the need for (and proposed use of) the information, the likely respondents, and the proposed frequency of responses.¹⁸

Consequently, if OIRA approves the Bureau’s PRA request under the “hybrid” generic clearance process, it should impose an explicit term on its approval that prohibits the Bureau from using the survey results to inform any Bureau rulemaking or other policy action.

Sincerely,

American Bankers Association
Consumer Bankers Association
Credit Union National Association
National Association of Federally-Insured Credit Unions
U.S. Chamber of Commerce

¹⁷ See *id.*; Bureau of Consumer Fin. Prot., Junk Fees Timing Study, CFPB-2023-0026, <https://www.regulations.gov/docket/CFPB-2023-0026> (last visited May 18, 2023).

¹⁸ 44 U.S.C. § 3507(a)(1)(D)(ii)(II) – (VI).

APPENDIX

The American Bankers Association is the voice of the nation's \$23.6 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.2 trillion in deposits and extend \$12.2 trillion in loans.

The Consumer Bankers Association is the only national trade association focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

The Credit Union National Association (CUNA) is the largest trade association in the United States representing America's credit unions, which serve more than 135 million members. Credit unions are not-for-profit, financial cooperatives established "for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive purposes."

The National Association of Federally-Insured Credit Unions (NAFCU) advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 135 million consumers with personal and small business financial service products. NAFCU provides members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment.

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness's (CCMC) mission is to advance America's global leadership in capital formation by supporting diverse capital markets that are the most fair, transparent, efficient, and innovative in the world. CCMC advocates on behalf of American businesses to ensure that legislation and regulation strengthen our capital markets allowing businesses—from the local flower shop to a multinational manufacturer—to mitigate risks, manage liquidity, access credit, and raise capital.