

August 23, 2013

By electronic delivery to:
www.regulations.gov

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

Re: Docket No. CFPB-2013-0022, Generic Clearance for Consumer Complaint and Information Collection System (Testing and Feedback)

PRA Officer:

The American Bankers Association¹ submits this comment in response to the Bureau of Consumer Financial Protection's information collection request for a generic clearance covering its consumer complaint and information collection system.² Specifically, the Bureau seeks generic clearances for information collections that will permit it (1) to pilot new consumer complaint and inquiry intake forms; (2) to gather consumer and stakeholder feedback about the consumer response process; (3) to promote complaint referral; and (4) to collect data about responding companies' internal complaint management processes. ABA opposes the request as proposed. Federal law has established a clearance process to reduce regulatory burden on customers and business alike and to ensure that significant new data gathering efforts are carefully evaluated on their own merits rather than through a generic process which provides little protection to the public. We recognize that there are exceptions for minor information collections, but we do not believe that those under consideration are appropriate candidates for the streamlined generic clearance process.

In 2011, the Bureau first proposed use of the generic clearance process for information collections associated with its establishment of the consumer response program, asserting that the multiple information collections required to implement the new program "would benefit from a streamlined and expedited [review] process."³ Similarly, today the Bureau contends that the "continuous process improvements needed to achieve the goals of efficient consumer complaint response require an adaptive information collection system." Efficiency and agency convenience, however, are not the standards by which a request for a generic clearance is to be

¹ ABA represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$185 million in assets.

² 78 Fed. Reg. 44931 (July 25, 2013).

³ Consumer Financial Protection Bureau Information Collection Request, Supporting Statement for Generic Clearance for Consumer Complaint and Information Collection System, *available at* http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201307-3170-002.

judged. Protection of the public is the primary concern, and that protection requires compliance with Paperwork Reduction Act (PRA) standards of public review and comment.

At a time when the Bureau's data collection and privacy protection practices are under increased public and Congressional scrutiny, the Bureau's approach to this consumer complaint information collection appears to be dismissively cavalier. Director Richard Cordray has clearly and publicly declared that the Bureau has no interest in individually identifiable consumer account information.⁴ We support that important policy standard. In that regard, one area that is obviously a collection of such personally identifiable and sensitive information is the consumer complaint area. Every complaint relies directly upon personal financial information, the privacy of which should be a major concern. Therefore, it is inappropriate and unwise for the Bureau to treat these data under generic rather than normal clearance procedures by the Office of Management and Budget (OMB).

Embedded within this request for generic clearance are substantial policy issues, such as the method of eliciting claims of discrimination from complainants and the potential collection of monitoring information about prohibited basis characteristics to evaluate such claims. Given the Bureau's demonstrated preference for publishing complaint information on its website and its sharing with state agencies, every element added to the database has significant privacy and information security implications. These topics should not be hurried through a clearance process intended for streamlining approval of website satisfaction surveys, which present few if any personal privacy issues.

One of the most significant and persistent concerns about the structure of the Bureau involves its degree of accountability. While there are several statutory processes applicable to 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

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."⁵ The Bureau is effectively seeking an exemption from these purposes of the law. The generic clearance process recognizes that in some minor cases information collections warrant a more streamlined and expedited PRA review process. An Office of Management and Budget memorandum notes that its use is limited to "situations in which (a) there is a need for multiple, similar low-burden collection *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."

⁴ "The bottom line for us is we're not overseeing or particularly interested in individual consumer behavior of you or me. What we're interested in are patterns of how consumers are affected by financial products and financial institutions." Remarks of Richard Cordray from *Politico*, Interview by Kate Davidson, 8/19/13 6:18 pm.

⁵ 44 U.S.C. § 3501.

(Emphasis added) The memorandum provides three examples in which a generic clearance is appropriate: “customer satisfaction surveys, focus group testing, and website usability surveys.”⁶

With the possible exception of the proposed information collections intended to elicit user experience and web portal feedback, it is clear that the proposed information collections do not meet this standard. Throughout the implementation of the consumer complaint process and database, ABA and its members have filed comments and met in person with Bureau staff to discuss the significant substantive and policy issues that have been presented, including privacy, privilege, information security as well as the many procedural issues and questions that have arisen.

Bureau staff has dismissed concern about these substantive policy issues as not falling within the scope of comments requested by a PRA notice. We disagree, as the substance of their request directly raises these issues, and it is on the basis of the existence of these very substantive issues that the Bureau’s request for generic clearance founders. There is no neat division between process and policy considering the prominent role that the Bureau has given to complaints in the supervisory process, their impact on regulatory policy, and the heightened attention paid to them as a result of the Bureau’s decision to report publically about consumer complaints. The generic clearance process was not intended to permit an agency to avoid its obligation to obtain broad public comment on information collections that raise substantive or policy issues.

Moreover, as noted above, the PRA process is intended to “improve the quality and use of Federal information *to strengthen decisionmaking, accountability, and openness in Government and society.*” In an effort to balance this goal with the streamlined generic clearance process, OMB requires an agency’s supporting statement to describe each proposed collection “as carefully as possible” so that OMB can determine whether “the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.”⁷ Thus, the generic clearance process contemplates a real review of the need for and practical utility of the proposed collection.

Inapplicability of Generic Clearance

Contrary to the Bureau’s assertion that it has “reasonably identified” the proposed information collections, ABA believes that the supporting statement fails to describe clearly the proposed collections to enable public review and comment *or* OMB evaluation. Rather than promoting accountability and openness, the PRA submissions are so inadequate as to obscure and limit effective regulatory oversight. For example, the Bureau states, “In an effort to be transparent, the CFPB has appended a comprehensive ‘generic clearance inventory’ that identifies the likely consumer protection subjects upon which it will expect to collect data over the next three years.” The inventory, however, consists of an excel spreadsheet that may have meaning to Bureau staff,

⁶ 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)).

⁷ *Id.* at 3.

but is virtually unintelligible to the public and interested stakeholders. Rather than promoting transparency and public comment on the proposed information collection, the inventory raises more questions than it answers. (See attached screen shot from a page of the inventory.)

Indeed, the entire supporting statement fails to promote public accountability and openness in government. It provides little specific and directly applicable information about the Bureau's proposed information collections and leaves the public observer struggling to understand the proposed collections and their substantive policy implications. For example, the supporting statement recites –

The CFPB is tasked with enforcing certain federal laws intended to ensure fair, equitable, and nondiscriminatory access to credit, including the Equal Credit Opportunity Act (ECOA). ECOA prohibits unlawful discrimination by any creditor against an applicant in a credit transaction based on race, color, national origin, sex, marital status, or age. ECOA also prohibits such unlawful discrimination by a creditor based on the fact that all or part of an applicant's income derives from any public assistance program or based upon the applicant's good faith exercise of any right under the Consumer Credit Protection Act. For these reasons, the piloting of new, or testing to improve existing complaint intake questions, may inquire about possible discrimination based on these factors.⁸

The final sentence suggests that the Bureau has plans to collect government monitoring information from consumers as part of the consumer response intake process. Clearly, such action would present substantive policy issues that warrant fulsome public and industry debate, not perfunctory mention and approval pursuant to the generic information clearance process. However, no additional information has been provided, and by its casual mention in a section titled "Justification for Sensitive Questions," it is unlikely to receive public notice and appropriate consideration of its significant policy implications.

Similarly, the supporting statement outlines a proposed new collection of information from companies and their third-party service providers in connection with the efficiency and accuracy of complaint referrals. Appended to the end of that description, the Bureau adds that it also intends to use the generic clearance process to "streamline the gathering of feedback from States *to develop criteria for appropriate State referral and inform a survey of State agency functional capacity* to receive referrals (e.g., operational capacity to conform to federal privacy and data security laws)."⁹ Again, there is a single mention of a proposed information collection that would present substantive policy issues but no further explanation. This failure of appropriate disclosure means that the proposal is unlikely to receive the public attention and consideration it warrants.

In addition, the supporting statement describes a proposed collection that would enable it to learn more about:

⁸ Supporting statement, *supra* at 8-9.

⁹ *Id.* at 17.

Companies' internal complaint management processes. Any such information collections would rely heavily on voluntary self-reporting by the companies themselves. Under a generic clearance, the CFPB could, for example, interview these companies...and evaluate how time is spent resolving consumer complaints routed by the CFPB through the Company Portal.¹⁰

That is a description of a direct, significant policy process entirely unsuitable for a generic clearance. Without more information, it is difficult to provide meaningful comment on this proposed information collection. It is unclear what the Bureau means by "companies," what "internal management processes" will be the target of the review, how involved the planned company interviews would be, or what would be involved in the information gathering to support the Bureau's evaluation of "how time is spent resolving consumer complaints." We note that as part of the *supervisory process* for financial institutions, examiners review and assess complaint management processes, a very significant policy exercise. Therefore, for those banks subject to the Bureau's supervisory jurisdiction, the proposed "voluntary" self-reporting (and we question whether a request from a federal regulator is ever truly voluntary) about their complaint management process would be unnecessarily duplicative and would not meet PRA requirements for minimizing collection burden. If, on the other hand, by the use of the word "companies" the Bureau intends for the proposed information collection to cover only non-bank covered persons not subject to regular Bureau examination, it may be a necessary and practical information collection, but a substantive one nevertheless. Clearly, the supporting statement fails to provide adequate information for the public to comment on, or for OMB to evaluate the practical utility of, the proposed information collection.

Finally, the Bureau's July 25, 2013, notice published in the *Federal Register* suggests that the Bureau is initiating a new generic information collection. The July 25, 2013, *Federal Register* notice is titled a "New Generic Clearance Request." In addition, OIRA's regulatory dashboard shows that OMB approved October 2011 information collection without change on February 24, 2012 (assigning it OMB Control Number 3170-0011), further suggesting that this is a new information collection subject to a 60-day initial comment period. Therefore, the Bureau should have provided a 60-day comment period, not just 30-days, to encourage additional public review of the supporting statement and ample opportunity for the public to file comments.¹¹

Conclusion

ABA appreciates the Bureau's effort to improve the accuracy and efficiency of the consumer response process. Our members share that goal; customer responsiveness is a priority for all bankers. Accordingly, throughout the implementation of the consumer response portal and database, ABA and its members have sought to be constructively engaged with the Bureau as it has addressed the many challenges and issues that have arisen. We understand that compliance with the PRA process adds additional challenge to this process, but we believe that the

¹⁰ *Id.* at 18.

¹¹ Alternatively, if this is a continuation of, or an amendment to, the existing generic information clearance, ABA believes that transparency requires the Bureau or OMB to explain the generic clearance amendment process, the review that process contemplates, and whether there is a time limitation for seeking amendment of an existing generic clearance.

substantive and policy issues presented mandate a level of public engagement and accountability not available pursuant to a generic clearance process. Consequently, ABA strongly urges the Bureau to withdraw, or OMB's Office of Information and Regulatory Affairs to deny, the Bureau's request for a generic clearance.

Respectfully submitted,

A handwritten signature in black ink that reads "Virginia O'Neill". The signature is written in a cursive, flowing style.

Virginia E. O'Neill
Senior Counsel
ABA Center for Regulatory Compliance

Screen Shot of a Page from the “Generic Clearance Inventory”

D30						Non-consumer/Commercial status	
Category	Sub-Category	Service, Product, or Field	Issues	Sub-Issues			
511 Intake	Financial Activity	Money services, in general	Provider/seller/authorized agent name	Bank			
512 Intake	Financial Activity	Money services, in general	Provider/seller/authorized agent name	Broker-dealer			
513 Intake	Financial Activity	Money services, in general	Provider/seller/authorized agent name	Credit union			
514 Intake	Financial Activity	Money services, in general	Provider/seller/authorized agent name	Money transmitter			
515 Intake	Financial Activity	Money services, in general	Provider/seller/authorized agent name	Other			
516 Intake	Financial Activity	Money services, in general	Provider/seller/authorized agent name	Retailer			
517 Intake	Financial Activity	Money services, in general	Provider/seller/authorized agent name	Thrift			
518 Intake	Financial Activity	Money services, in general	Transaction amount				
519 Intake	Financial Activity	Money services, in general	Transaction date				Time for Foreign currency t
520 Intake	Financial Activity	Money services, in general	Transfer identification/transaction number/money order number/traveler check serial number				
521 Intake	Financial Activity	Money services, in general	Type of institution	Bank or credit union			
522 Intake	Financial Activity	Money services, in general	Type of institution	Broker-dealer or other inve			
523 Intake	Financial Activity	Money services, in general	Type of institution	Retailer, check-casher, othe			
524 Intake	Financial Activity	Money services, in general	Type of product	online company			
525 Intake	Financial Activity	Money services, in general	Type of product	Check cashing			
526 Intake	Financial Activity	Money services, in general	Type of product	Domestic money transfer o			
527 Intake	Financial Activity	Money services, in general	Type of product	Foreign exchange			
528 Intake	Financial Activity	Money services, in general	Type of product	International money transf			
529 Intake	Financial Activity	Money services, in general	Type of product	Money orders			
530 Intake	Financial Activity	Money services, in general	Type of service	Travelers checks			
531 Intake	Financial Activity	Money services, in general	Type of service	By or cash a check, money e			
532 Intake	Financial Activity	Money services, in general	Type of service	check or similar payment i			
				Exchange currency			
				Receive a money transfer fro			
				Receive money transfer fro			