



October 17, 2022

Comment Intake— Agency Information Collection
Consumer Financial Protection Bureau (Attention: PRA Office)
1700 G Street NW
Washington, DC 20552

**Re: Notice and Request for Comment, Consumer Financial Protection
Bureau; Agency Information Collection Activities: Comment Request (87
Fed. Reg. 50851-50,852, August 18, 2022)**

To Whom It May Concern:

The Center for Capital Markets Competitiveness (“CCMC”) appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (“CFPB”) regarding its notice and request for comments regarding the information collection titled “Report of Terms of Credit Card Plans (Form FR 2572) and Consumer and College Credit Card Agreements”¹ (the “RFI”).

The RFI states that the CFPB “is requesting to revise an existing information collection, titled ‘Report of Terms of Credit Card Plans (Form FR 2572) and Consumer and College Credit Card Agreements.’” The CFPB does not explain, however, how the CFPB intends to revise this information collection. It summarizes the credit card data the Bureau collects (specifically, the Terms of Credit Card Plans Survey and data collected from issuers pursuant to Sections 204 and 205 of the Credit Card Accountability Responsibility and Discharge Act of 2009 and 12 C.F.R. §§ 1026.57(d) and 1026.58).¹ the RFI does not provide any details on the changes the CFPB has in mind. Further, although the RFI states that documents prepared in support of the revisions can be accessed at www.regulations.gov, no such supporting documentation is available there. As a result, it is impossible for stakeholders to provide informed comments on the changes the CFPB may be contemplating.

The lack of information raises particular concern, since the CFPB has separately suggested—outside the appropriate regulatory channels—that it may be contemplating significant changes in the collection that are designed to alter how consumers shop for credit cards. The CFPB published a blog post by two members of its market research team that discussed some broad, directional thoughts on how the CFPB may

¹ See CFPB, Agency Information Collection: Comment Request, 87 Fed. Reg. 50,852 (Aug.18, 2022).

“modernize” how it collects credit card data.² As a matter of good regulatory governance, providing vague comments on potential CFPB considerations in a blog is not an adequate substitute for notice of and an opportunity to comment on specific proposed revisions announced in an actual RFI published in the Federal Register. The public should not have to guess about the CFPB’s intentions or try to discern official regulatory pronouncements from blog posts, press releases, or other informal statements. This is particularly true when the CFPB appears to intend to make significant and possibly misplaced changes to its current policy approach, whether with respect to a rule, an information collection, or other administrative tool.

We accordingly write to make the following three points about any revisions the CFPB may be considering:

- The CFPB should not make changes to the information collection without soliciting comment on specific contemplated changes.
- The CFPB should ensure that any revised information collection provides consumers with an accurate picture of the credit card market.
- The CFPB should not revise the information collection in a manner that implicitly or explicitly bias against one or more institutions in the credit card market.

Analysis

1. The CFPB should not make changes to the information collection without soliciting comment on specific contemplated changes.

The RFI does not provide any information on the revisions the CFPB is seeking public comment on. Rather, the RFI simply asks for public comment on the necessity, utility, and burden of the existing information collection.

Although the CFPB posted a blog post titled “Why we’re modernizing how we collect credit card data,” the CFPB’s RFI—the only official document the CFPB has issued in this process—does not describe the changes the CFPB intends to make in a manner that would allow the public to provide informed comment. Further detail would be necessary even if the blog post were an official part of the official administrative record here (which, of course it is not). For example, the blog post states that the CFPB is considering requiring selected issuers to submit data on the median Annual Percentage Rate (“APR”) offered to consumers in three credit score tiers. However, the

² John McNamara and Margaret Seikel, Why we’re modernizing how we collect credit card data (Aug. 19, 2022), <https://www.consumerfinance.gov/about-us/blog/why-were-modernizing-how-we-collect-credit-card-data>.

blog post does not specify any specific credit tiers or which issuers could be subject to such a requirement. In addition, the blog post suggests that the CFPB is considering requiring the top 25 issuers to submit data on each of their general-purpose cards. Again, the blog post does not provide details on the type of information that the CFPB is considering requesting from issuers.

The Bureau should not ask the public to guess what it intends to do in a contemplated policy action. Rather, it should eliminate the uncertainty it has created and put this request to revise the information collection on solid ground. To do so, the CFPB should identify the specific changes it contemplates in a supplemental notice. In doing so, the CFPB should solicit public comment on whether consumers will benefit from and utilize any data collected pursuant to those specific proposed revisions. For example, the CFPB should solicit public comment on the following topics:

- Whether and how consumers currently use the data the CFPB has published based on the results of the current information collection;
- How the general public makes use of other currently available resources, such as the consumer complaint portal, to evaluate particular goods and services;
- The types and format of data that would be most helpful and useful to consumers; and
- Whether specific data that would be collected in a revised collection would meaningfully inform consumers' choice of financial products.

Soliciting this information could help the CFPB determine whether efforts to make changes to the information collection are necessary and worthwhile and ensure that any proposed changes would allow for the collection and presentation of data in the manner that is most helpful to consumers.

An annual or even biannual report from the CFPB may not be able to accurately reflect the ever-changing credit card market, which could have negative implications for consumers. A report issued by the CFPB may not be updated as regularly as private reports or necessarily be consumer-friendly, particularly regarding ease in comparing options based on both credit history and features. Ultimately, if any consumers use a CFPB report on credit card to help make decisions regarding credit card services, they could be relying on outdated information. Notably, there are already many tools in the private market that help consumers identify and compare credit card options. Numerous banks also have features allowing consumers to easily compare the terms and conditions and rewards of various credit cards. At least some of these tools are free to use, updated regularly, and allow consumers to easily filter credit card options based on their credit history, desired credit card terms, and other preferences. Given these existing options, the CFPB should ensure that it solicits comments that allow it to make

an informed assessment of the relative benefits and burdens of a contemplated information collection, rather than simply assuming that a revised information collection will necessarily provide a net benefit to consumers.

2. The CFPB should ensure that any revised information collection provides consumers with an accurate picture of the credit card market.

It is critical that any changes to the information collection are grounded in an accurate understanding of the credit card market. While we do not have sufficient information to evaluate the proposed revisions on this point, aspects of the blog post give us concern about the assumptions behind the contemplated revisions.

For example, although credit score is an important factor in determining APR, lenders use proprietary underwriting models that also consider many other factors. These factors are both consumer-dependent and product-dependent. Presenting a median APR based solely on credit scores consequently could lead to misinforming consumers about their eligibility to obtain certain credit cards or certain credit card rates. A report that only considers the median APR of consumers who obtain a particular credit card could be misleading to consumers who are denied credit or receive a higher rate than expected based on their credit score. If the CFPB did propose to present median APRs based on credit score, the CFPB should detail how the median APR would be calculated, potential credit score tiers, and how the CFPB will account for factors other than credit scores that impact the APR a consumer will receive for a particular product. None of these details were provided in the RFI but are key considerations for public comment to ensure that consumers receive an accurate picture of the credit card market. The CFPB should keep these considerations in mind in any updated RFI and make sure the public can provide informed comments that allow the CFPB to address and correct any mistaken views about features of the credit card market.

3. The CFPB should not revise the information collection in a manner that implicitly or explicitly creates bias against one or more institutions in the credit card market.

While we cannot tell with confidence from the RFI, we are also concerned that the CFPB could characterize data collected pursuant to any revisions to the information collection in a way that causes unfair reputational harm to certain issuers. Doing so would put the CFPB in a position to pick winners and losers in the credit card market. This is not a proper role for the CFPB and it should ensure that any revised information collection does not mistakenly put the CFPB in that role.

The above-cited blog post states that the authors “want to help people make choices on which credit cards fits [sic] their unique needs,” and seems to have some

skepticism of credit cards offered by larger issuers. This raises concerns that the CFPB may either collect or characterize data in a way that is biased against certain issuers. Acting in this way could negatively impact competition among credit card issuers, particularly if there is unjustified harm. The CFPB should not distort the marketplace in this manner.

To be sure, the CFPB has not officially indicated whether certain issuers may be subject to increased requirements, nor the content of any such increased requirements. Without this information, the public cannot provide informed comments on any of the benefits or burdens of any revisions to the information collection. More detail is needed for the public to accurately assess the usefulness and potential burden of any proposed revisions to the information collection.

Still, the implication that the CFPB may choose to collect data in a way that appears designed to confirm a preconceived conclusion echoes of previous ill-advised efforts to steer consumer decision-making. In the past, for example, the CFPB has published lists of the top ten “most-complained-about-companies” in its periodic reports, without normalizing the data. Such lists were inherently flawed, as they inevitably named the companies that have the most customers. Publishing reports that suggested that these companies did something wrong because they had the largest number of customers was unfair and mischaracterized to consumers the suitability of the products offered. The CFPB should not make the same mistakes here.

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We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

A handwritten signature in black ink that reads "William R. Hulse". The signature is written in a cursive style with a large, prominent "W" and "H".

Bill Hulse
Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce