



FINANCIAL
SERVICES
ROUNDTABLE



June 8, 2017

By electronic delivery to:
www.regulations.gov

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Request for Information Regarding Credit Card Market
Docket No. CFPB-2017-0006

Dear Ms. Jackson:

The Financial Services Roundtable¹ and the Consumer Bankers Association² (the “Associations”) appreciate the opportunity to provide comments on the Consumer Financial Protection Bureau’s (the “Bureau”) request for information on the credit card market.³ We strongly support the Bureau’s efforts to gather data on the credit card market and to make evidence-based, incremental improvements to the Bureau’s operations and issuances in order to enhance consumer protection. Our comments focus on the specific issues relevant to our members.

¹ As *advocates for a strong financial future*TM, FSR represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$98.4 trillion in managed assets, \$1.1 trillion in revenue, and 2.4 million jobs.

² The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

³ 82 Fed. Reg. 13313 (March 10, 2017) (the “Request”).

I. Overview

The consumer credit card market has almost returned to its pre-2008 economic recession volumes. Total outstanding revolving consumer credit was just over \$1 trillion in 2008, reached a low of \$840 billion in 2010, rose to \$891.1 billion in 2014, and nearly returned to pre-recession volume of \$1 trillion in 2016. While this slow recovery is due to many factors, one is the CARD Act and its implementing regulations.

This letter addresses the following issues related to the credit card market.

- *Risk-based pricing (Section D)*. Restrictions on rate increases for outstanding balances have caused banks to adopt variable interest rates in order to maintain consumer access to credit consistent with safety and soundness principles.
- *Deferred interest products (Section E)*. These products are valuable to consumers and small businesses alike. Existing disclosure requirements and substantive consumer protections sufficiently regulate deferred interest products and negate the need for further regulatory action.
- *Third-party comparison sites (Section G)*. While credit card issuers may set certain minimum standards for third-party comparison sites, the sites should bear responsibility for their interactions with consumers.
- *Innovation (Section H)*. Innovations in the credit card market include new technologies, data aggregation activities, credit card debt consolidation loans offered by non-banks, and alternative data and modeling techniques. We also identify roadblocks to innovation.
- *Online and mobile account servicing (Section J)*. Mobile banking allows consumers to obtain more account information faster, and via a device that the consumer finds most convenient. We urge the Bureau to support electronic banking and make it easier for consumers to elect to receive electronic disclosures.
- *Rewards products (Section K)*. Credit card rewards programs are an example of effective self-regulation that negates the need for regulatory intervention.
- *Variable interest rates (Section L)*. We note the general awareness of a rising interest rate environment to conclude that there is no need for additional regulatory action with respect to variable interest rates.
- *Debt collection (Section M)*. Debt collection rules should ensure that consumers only pay the debts they owe and are treated fairly but not unduly restrict the ability of issuers to communicate with delinquent borrowers.

II. Comments

The headings to the following comments correspond to the issues presented by the Bureau in its Request.

D. The Cost and Availability of Consumer Credit Cards, the Use of Risk-Based Pricing for Consumer Credit Cards, and Consumer Credit Card Product Innovation

Risk-based pricing continues to be used by credit card issuers to offer products to a wide array of consumers at prices that are tempered to consider safety and soundness principles. The risk-based pricing disclosure requirements are triggered when a consumer receives pricing that is “materially less favorable than the most favorable [pricing] available to a substantial proportion of consumers from or through that” issuer.⁴ In practice, the potential applicability of those requirements – and the significant compliance burdens they place on issuers – has caused banks to limit the number of rates that are made available to the detriment of the consuming public. For example, an issuer that has a range of rates from 15.99% to 28.99% could offer 10 rates within that range, but is instead discouraged by the risk-based pricing rules to only offer four or fewer rates within that range.⁵ In addition, restrictions on future rate increases for outstanding balances have caused banks to adopt variable interest rates in order to maintain consumer access to credit consistent with safety and soundness principles. (See discussion of variable rates on page 8).

E. Deferred Interest Products⁶

We do not believe that additional action by the Bureau in connection with deferred interest promotional offers is warranted at this time for three primary reasons. First, deferred interest offers serve as an important tool for consumers to finance the purchase of goods and services from retailers, including small businesses. Second, deferred interest offers are already sufficiently regulated. Third, deferred interest offers are not a significant source of consumer complaints.

Important financial tool for consumers and small businesses. Deferred interest offers are an important and popular financing option for consumers, especially those making significant purchases such as appliances and home repairs and improvements. The very high “payoff rates” associated with deferred interest promotions demonstrate that consumers understand how these promotions work. Moreover, the fact that many consumers are repeat users of deferred interest offers demonstrates their fondness for the product. Consumers understand how deferred interest offers work and enjoy the flexibility associated with the product. For these reasons, consumers choose deferred interest offers over other forms of credit.

⁴ 12 CFR 1022.72(a).

⁵ See 12 CFR 1022.72(b)(2).

⁶ The Bureau issued a press release on the date of this letter announcing that it has sent letters to retail credit card companies regarding the continued use of deferred interest programs. While we do not have sufficient time to review and fully respond to the announcement in this comment letter, as set forth herein, we believe that continued availability of deferred interest programs is important for both consumers and small businesses. We welcome the opportunity to engage with the Bureau on this subject and address any specific concerns that the Bureau may have.

In addition, deferred interest offers are critical to small businesses, who compete for customers every day. These businesses offer deferred interest products because they promote customer loyalty and enhance customer satisfaction. Reducing the availability or increasing the costs of deferred interest offers due to increased compliance costs and more restrictive underwriting requirements would harm consumers and small businesses who rely on these offers.

Sufficient Regulation. Regulation Z requires the pertinent features of deferred interest offers to be disclosed in all advertisements, including: (1) that the deferred interest period be stated in a clear and conspicuous manner; (2) that each use of the term “no interest”, or a similar term, in any written or electronic advertisement be in immediate proximity to the term “if paid in full” preceding the disclosure of the deferred interest period; and (3) a statement that interest will be charged from the date of the transaction if the balance is not paid in full within the deferred interest period and, if applicable, if the account is in default before the end of that period.⁷

In addition, following account opening, Regulation Z requires consumers to be notified on the front of any page of each periodic statement of the date by which the outstanding balance must be paid in full to avoid paying finance charges. Moreover, additional information regarding the deferred interest promotion (including the deferred interest balance and deferred interest charges) must be identified elsewhere on the statement.⁸ These and other disclosures, when provided in a clear and compliant manner, give consumers the relevant information to understand the costs and terms of deferred interest offers.

Not a Significant Source of Complaints. Deferred interest offers do not represent a significant source of complaints received by our members. Moreover, the Bureau’s data indicates that most consumers fulfill the terms of deferred interest offers (*e.g.* pay in full within the specified period) and obtain interest-free financing.⁹ Together, these factors indicate that consumers understand the terms of deferred interest offers and how they work.

Given the existing disclosure requirements and substantive consumer protections described above, as well as the lack of complaints received by our members, consumers appear to understand deferred interest offers and continue to benefit from them. Therefore, no additional Bureau action is needed regarding deferred interest offers.

⁷ 12 CFR 1026.16(h). The commentary provides additional, extensive detail on how deferred interest disclosures should be presented in advertisements. *See* 12 CFR Part 1026 Comment 16(h).

⁸ 12 CFR 1026.7(b)(14) (2015) and 12 CFR Part 1026 Comment 7(b)-1.ii. Additional consumer protections apply to deferred interest balances, including special payment allocation rules that favor paying down higher-interest balances first until the end of the deferred interest period nears, at which time payments are allocated first to the outstanding deferred interest balance to enhance the likelihood that it will be paid in full upon expiration of the promotion. *See* 12 CFR 1026.53(b).

⁹ *See* Consumer Financial Protection Bureau, The Consumer Credit Card Market 167 (December 2015), available at http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf. *See also* Consumer Financial Protection Bureau, CARD Act Report 80 (October 1, 2013), available at http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

G. Third-Party Comparison Sites

Standards and oversight. Third-party comparison sites are a powerful tool for consumers to compare the costs and benefits of various financial products and services, including credit cards. Many credit card issuers have adopted practices informed by the FTC's Guide Concerning the Use of Endorsements and Testimonials in Advertising¹⁰ whereby, for example, the issuers require third party comparison sites to:

- Clearly and conspicuously disclose that credit card products are provided from advertisers who may compensate the site owners and that the sites might not include all available products or offers; and
- Ensure that products are presented in a non-deceptive manner and that all required terms and conditions are appropriately and accurately displayed accurately.

Financial services provided by third party comparison sites. There has been a noticeable trend for product aggregators to enhance their capabilities by offering consumer finance-related services, including aggregating consumer financial information on one platform for analysis and advice. The Associations' comments in response to the Bureau's 2016 Request for Information Regarding Consumer Access to Financial Records addressed a number of issues that aggregators of consumer financial records present, including data security and privacy, data access and use transparency, clarity of liability for unauthorized transactions, and customer choice and control.¹¹ When third-party comparison sites aggregate consumer financial information and aggregate financial product records, the sites should be held responsible for ensuring that offers made in that context do not mislead consumers regarding a consumer's likelihood of being approved for a new product, based on their individual financial information.

Oversight and accountability for wrongdoing. While credit card issuers may set certain minimum standards for third-party comparison sites advertising the issuers' cards, the sites ultimately should be held liable for any practices that result in a violation of law, including unfair, deceptive, or abusive acts or practices that might occur when offering credit cards and other financial services to consumers.

H. Innovation

New technologies and their consumer benefits. New payment technologies are making credit card payments faster, more secure, and more accessible. Many companies, including financial institutions and non-bank financial technology companies, have developed innovative mobile wallet and other payment solutions. Tokenization, point-of-sale identity verification, and

¹⁰ See 16 CFR Part 255.

¹¹ See *Comments re: Docket No. CFPB-2016-0048, Request for Information Regarding Consumer Access to Financial Records*, Financial Services Roundtable and BITS (February 21, 2017), available at <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0048-0044&attachmentNumber=1&contentType=pdf> and *Comments re: Docket No. CFPB-2016-0048, Request for Information Regarding Consumer Access to Financial Records*, Consumer Bankers Association (February 21, 2017), available at <https://www.regulations.gov/contentStreamer?documentId=CFPB-2016-0048-0050&attachmentNumber=1&contentType=pdf>.

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card controls that provide cardholders the ability to set dollar limits for in-person, card-not-present transactions have the potential to help limit fraudulent transactions. In addition, EMV chip credit cards have become ubiquitous and have contributed to a significant decrease in counterfeit fraud.¹² Many credit card issuers are placing an emphasis on their digital functionalities to ensure that consumers are able to access and manage their credit card accounts using the device of their choice.

Aggregators of Consumer Financial Data. Companies that aggregate consumer financial data, including consumers' credit card transaction and other data, have the potential to impact consumers in the credit card market. While aggregator services can help customers manage their credit cards accounts, including how they use credit cards in connection with other financial products and services, aggregators also present several concerns for the Association's members, which were detailed in the Associations' comments in response to the Bureau's request for information regarding access to consumer financial records.¹³

Credit Card Debt Consolidation Loans Sold by Non-Banks. A number of non-bank companies are offering closed-end loans as an option to consolidate credit card debt and obtain purportedly lower interest rates. Many of these products are offered by companies that are primarily technology platforms and make loans through bank partnership arrangements.¹⁴ We urge the Bureau to ensure that these offers and the underlying products are compliant with applicable laws.

Alternative Data and Modeling Techniques. The Bureau issued a Request for Information Regarding the Use of Alternative Data and Modeling Techniques in the Credit Process earlier this year.¹⁵ In response to this request, the Associations submitted comment letters stating that alternative data and modeling techniques are not substitutes for existing processes but can help supplement or enhance traditional credit models.¹⁶ The letters offered the following principles to guide any future action by the Bureau regarding alternative data and modeling techniques:

¹² Visa Chip Card Update: December 2016, available at <https://usa.visa.com/dam/VCOM/global/visa-everywhere/documents/visa-chip-infographic-december.pdf> (stating that "96% of Visa credit payment volume was done on chip cards in December 2016"; the company observed a "52% decrease in counterfeit fraud at chip-enabled merchants in September 2016 compared to a year earlier", and 14% decrease for all merchants).

¹³ See Fn. 10 and accompanying text.

¹⁴ For example, loans made available at payoff.com are made available through two "lending partners", including a credit union and a state-chartered bank. The footer of the payoff.com homepage states: "Payoff works with lending partners to ultimately originate loans. Information about our Lending Partners, including their address, financial institution type and charter, as well as links to their websites and privacy policies can be found on our Lending Partners page." The company's website promotes its product as "A loan to pay off credit cards" and claims that the loan can "Increase Your FICO® Score by 40+ Points". (Information last accessed on June 7, 2017.)

¹⁵ 82 Fed. Reg. 11183 (February 21, 2017).

¹⁶ See *Comments re: Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process*, Financial Services Roundtable (May 19, 2017), available at <https://www.regulations.gov/contentStreamer?documentId=CFPB-2017-0005-0068&attachmentNumber=1&contentType=pdf> and *Comments re: Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process*, Consumer Bankers Association (May 19, 2017), available at <https://www.regulations.gov/contentStreamer?documentId=CFPB-2017-0005-0073&attachmentNumber=1&contentType=pdf>.

1. Alternative modeling techniques should align with existing model risk management guidance;
2. Regulators should not mandate the use of alternative data or modeling techniques;
3. Any regulatory clarification on the application of consumer financial protection laws to alternative data should be developed in a transparent and reasonable manner; and
4. The Bureau should coordinate but not overlap with other regulators and government agencies.

Eliminating roadblocks to innovation. The Bureau's final policy on No-Action Letters¹⁷ was intended to provide relief for financial institutions seeking to implement innovative solutions, but were not willing to proceed due to some uncertainty from novel or untested applications of the law. While the Associations support the objectives of the No-Action Letter policy, the policy has not achieved its stated outcomes because no No-Action Letters have been issued to date. Consistent with the Associations' comments on the No-Action Letter policy proposal,¹⁸ the Bureau could make this policy more effective by: (1) expanding its scope to apply to existing products and services; (2) streamlining the application process; and (3) not limiting the issuance of No-Action Letters to only rare and exceptional circumstances. In addition, when No-Action Letters are granted, they should provide meaningful protections against supervisory and enforcement actions.

J. Online and Mobile Account Servicing

Online and mobile account servicing platforms are making it easier for consumers to monitor their credit card transactions, identify fraud and initiate error resolution procedures, make payments, and otherwise manage their accounts.

Consumers are increasingly electing to receive electronic versions of statements and disclosures rather than receiving paper versions in the mail. Mobile banking allows a consumer to obtain this information faster, and to retrieve it at a time, and via a device, that the consumer finds most convenient. For example, account alerts by mobile text or push notifications on a mobile app give customers instant awareness of upcoming payment due dates and unusual account activity. Indeed, the core purposes of periodic statements are being fulfilled by online and mobile account servicing platforms: monitoring transactions for errors and fraud; receiving payment information and related disclosures; receiving cost and fee information; and making a retainable copy of periodic statements available.

To foster these practical and powerful innovations, any new rulemakings should take into consideration the prevalence and effectiveness of online and mobile account servicing. In particular, such rulemakings should facilitate the electronic delivery of disclosures and account

¹⁷ 81 Fed. Reg. 8686 (February 22, 2016).

¹⁸ See *Comments re: Proposed Policy on No-Action Letters*, Financial Services Roundtable (December 15, 2014), available at <https://www.regulations.gov/contentStreamer?documentId=CFPB-2014-0025-0018&attachmentNumber=1&contentType=pdf> and *Comments re: Proposed Policy on No-Action Letters*, American Bankers Association, American Bankers Insurance Association, and Consumer Bankers Association (December 15, 2014), available at <https://www.regulations.gov/contentStreamer?documentId=CFPB-2014-0025-0010&attachmentNumber=1&contentType=pdf>.

information by streamlining the process for consumers to agree to receive electronic disclosures under the E-SIGN Act. The E-SIGN Act, which became law in the year 2000, permits consumer disclosures that are required by law to be given in writing to be provided electronically if the consumer consents to receive the disclosures electronically *and* the consent is provided in a manner that reasonably demonstrates the consumer's ability to access information electronically.¹⁹ Concerns about consumers' ability to access and effectively use the Internet, email, and other electronic platforms are not at the same level they might have been when the law was adopted. Now, the reasonable demonstration requirement makes account openings, recurring debits, and certain other transactions unnecessarily difficult for consumers who wish to receive documents and disclosures electronically. Absent statutory revisions to the E-SIGN Act, we urge the CFPB to provide flexible options for providing electronic disclosures at the consumer's request *without* the requirement that consumers make a reasonable demonstration of their ability to receive electronic disclosures under the E-SIGN Act.

K. Rewards Products

Credit card reward programs continue to be a key driver for consumer product selection, continued engagement with their credit cards, and overall product satisfaction. The Association's members view their offerings of credit card reward programs as a model of effective self-regulation, whereby credit card issuers have effectively enhanced their reward program disclosures to inform consumers of key reward program terms at the right time. These disclosures generally seek to ensure that consumers understand how rewards may be earned, redeemed, and potentially lost. Since complicated reward program terms tend to be more difficult to disclose and challenging for consumers to understand (resulting in higher instances of abandonment), the Association's members have worked to simplify the terms governing how rewards are earned and may be redeemed, and to make any limitations readily apparent to consumers. Such effective self-regulation and focus on positive consumer experiences with reward programs negates the need for regulatory intervention from the Bureau. Introducing regulations to govern reward programs will make these programs more difficult to operate and stifle further innovation.

L. Variable Interest Rates

We see no need for additional regulatory action concerning variable interest rates. While many credit card products carry a variable interest rate that is based on an index, such as the Treasury bill rate, plus a margin, Regulation Z includes extensive regulations that require the disclosure of variable rate terms when an account is opened, including disclosure of:

- 1) The fact that the annual percentage rate may increase;
- 2) How the rate is determined, including the margin;
- 3) The circumstances under which the rate may increase;
- 4) The frequency with which the rate may increase;
- 5) Any limitation on the amount the rate may change; and

¹⁹ 15 USC 7001(c).

6) The effect(s) of an increase.²⁰

Indeed, when finalizing substantive rules governing interest rate changes in 2009, the Federal Reserve Board (the Board) required that advance notice of rate increases be given in certain circumstances, but determined that such notice was not appropriate with respect to variable rates that were properly disclosed at account opening.²¹ The Board noted that variable interest rates give creditors “the ability to [quickly] respond to market or other conditions”, and that delaying the imposition of properly disclosed variable rates was not necessary given the other substantive protections on rate increases afforded in Regulation Z.

Moreover, the United States entered a period of rising interest rates starting in 2016²² and, given the mass-media coverage of this rising interest rate environment, consumers are generally aware that the interest rates on their credit cards may also increase.²³ At the same time, the Association’s members have not received a notable increase in related consumer complaints that might suggest a lack of such awareness. Therefore, we see no need for additional regulatory action with respect to variable interest rates.

M. Debt Collection

The Associations support strong debt collection rules that ensure consumers only pay the debts they owe and treat consumers fairly whenever they are contacted about the repayment of a debt. Any rules on debt collection practices must be balanced against the vital need for card issuers, and creditors generally, to collect delinquent debts. Few issues have a more direct bearing on the cost and availability of credit: if our members cannot recover outstanding debts owed to them, their costs will rise, consumer prices will rise, and fewer resources will be available for other important goals, such as innovation and cybersecurity.

In February of 2014, the Associations, along with the American Bankers Association, filed comments on the Bureau’s Advance Notice of Proposed Rulemaking on Debt Collection Practices that explore debt collection practices in greater detail.²⁴ Specifically, and as discussed more fully in that letter, we urged the Bureau:

²⁰ See 12 CFR 1026.6(b)(4)(i)(C).

²¹ 74 Fed. Reg. 5244, 5344 (January 29, 2009).

²² See Federal Reserve Board Press Release (“In view of realized and expected labor market conditions and inflation, the Committee decided to raise the target range for the federal funds rate to 1/2 to 3/4 percent. The stance of monetary policy remains accommodative, thereby supporting some further strengthening in labor market conditions and a return to 2 percent inflation.”) (December 14, 2016), available at <https://www.federalreserve.gov/newsevents/pressreleases/monetary20161214a.htm>.

²³ See *Finally: Fed raises rates for first time in 2016*, Patrick Gillespie, CNN (December 15, 2016), available at <http://money.cnn.com/2016/12/14/news/economy/federal-reserve-rate-hike-december/>, and *Fed raises rates, signals more to come in 2017*, Patrick Gillespie, CNN (March 15, 2017), available at <http://money.cnn.com/2017/03/15/news/economy/fed-march-meeting/>.

²⁴ See *Comments re: Docket No. CFPB-2013-0033, Debt Collection (Regulation F), Advanced Notice of Proposed Rulemaking*, American Bankers Association, Consumer Bankers Association, and Financial Services Roundtable March 23, 2014), available at <https://www.regulations.gov/document?D=CFPB-2013-0033-0328>.

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- Not to subject first-party debt collection efforts to the Fair Debt Collection Practices Act's ("FDCPA") provisions, including those related to debt collection communications, given the substantially different issues that arise in third-party debt collection;
- To test the effectiveness of proposed revisions to debt validation notices;
- To incorporate the Fair Credit Reporting Act's definition of "direct dispute" and its dispute resolution framework into any new proposed FDCPA rulemaking related to dispute resolution; and
- Not to create a central repository for the storage and sharing of information and documents related to consumer debt.

In addition to these recommendations, the Associations would ask the CFPB to carefully consider the costs and potential consumer harm that may result if too many burdensome restrictions are placed on the ability of issuers to communicate with delinquent borrowers. Our members place a high value on establishing and maintaining positive, long lasting customer relationships. As a result, they have developed a variety of communication channels to provide timely and important information to their customers, including for example, account updates and notifications by phone, text messages, email, and mobile apps.

These same channels are also used to communicate with distressed borrowers to offer workout options that are tailored to their specific needs. Through experience, the Association's members have found that early and often communication can make a significant difference in consumer outcomes, and our customers have a better chance at receiving a favorable resolution if contact can be established. Therefore, any new communication rules should be clearly stated and specifically designed to promote communication between the borrower and lender.

III. Conclusion

We thank the Bureau for the opportunity to provide comments on the credit card market. With respect to deferred interest products, we encourage the Bureau to rely on the existing, robust regulatory regime and to not take further action on these products. We also urge the Bureau to hold third-party comparison sites making representations about credit cards responsible for their interactions with consumers.

The full extent and functionality of electronic banking features available to consumers should be recognized, and we urge the Bureau to streamline processes for consumers to elect to receive electronic disclosures. We note that credit card rewards programs have successfully developed under an effective self-regulatory construct, and that consumers with variable interest rate products are generally aware of the current interest rate environment, negating the need for additional regulations in both regards. Finally, we note that strong debt collection rules are important for consumers and issuers alike, and that burdensome restrictions on communications should be avoided.

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The Associations would be happy to provide the Bureau with additional information if you have any questions about the foregoing or otherwise in connection with your review of the credit card market. Should you have additional questions, please feel free to contact Richard Foster with the Financial Services Roundtable at Richard.Foster@FSRoundtable.org or 202-589-2424 or Dong Hong with the Consumer Bankers Associations at dhong@consumerbankers.com or 202-552-6360.

Sincerely yours,



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