

COMMENTS
to the
Consumer Financial Protection Bureau
on its

Debt Collection Quantitative Disclosure Testing

OMB Control Number: 3170-XXXX
Docket No. CFPB-2017-0013
82 Fed. Reg. 25779

By the
National Consumer Law Center
On behalf of its low-income clients

August 4, 2017

As announced in the Federal Register, the Consumer Financial Protection Bureau (CFPB) plans to survey 8,000 individuals as part of its research into effective debt collection disclosures. We applaud the CFPB for taking a data-driven approach to assessing the effectiveness of disclosures to ensure that consumers comprehend their rights pertaining to debt collection. Consumer testing is a critical step to ensure that the CFPB promulgates the most effective regulations in its ongoing debt collection rulemaking.¹

We offer several recommendations for how the proposed disclosure testing can be used most effectively to enhance consumer protection.

- 1. Examine whether the least sophisticated consumer understands any disclosure, not merely whether one disclosure outperforms another.**

Supporting documents for the notice and request for comment state that the CFPB intends to “conduct an experimental research design and compare differences between groups to learn which debt collection disclosure forms work best to improve comprehension.”² We are concerned that identifying the disclosure that *works best* is insufficient; the CFPB must not be satisfied with a disclosure unless it is understandable to the least sophisticated consumer. Factors such as education level, prior experience with debt collection, and general financial literacy could all be used as proxies for consumer sophistication when assessing disclosures. The CFPB should report results of its consumer testing that are broken out by these categories to demonstrate that the potential disclosure is intelligible to the least sophisticated consumer.³

Moreover, we urge the CFPB to strive to test consumer understanding in other subgroups. A disclosure that “works best” for one group may work poorly for another group. In addition to analyzing comprehension for the least sophisticated consumer, the CFPB should also analyze and report survey results by race, age, income, gender, or state of residence. The CFPB should not be satisfied with a disclosure that works well overall but fails to result in high comprehension among certain subgroups.

¹ 68 Fed. Reg. 67,848 (Nov. 12, 2013).

² Bureau of Consumer Financial Protection, *Debt Collection Quantitative Disclosure Testing, Supporting Statement Part B*, p. 3, available at <https://www.regulations.gov/>.

³ The notice and request for comment states that the contractor “will provide tabulations at the aggregate level” and that “the CFPB may share aggregate findings from the survey with the public as appropriate.” Bureau of Consumer Financial Protection, *Debt Collection Quantitative Disclosure Testing, Supporting Statement Part A*, p.11, available at <https://www.regulations.gov/>. It is not clear whether the CFPB plans to report the findings broken out by any subgroups.

2. Use caution in drawing conclusions about consumer comprehension on the basis of the survey findings.

The proposed consumer testing will be carried out in an artificial setting (the online survey) rather than being tested in real-world debt collection. As a result, there is a risk that the survey will generate overly optimistic estimates of the level of comprehension among ordinary consumers. We therefore caution the CFPB against overstating the value of the results. Our concerns about overestimation are threefold:

- (a) Survey respondents are likely to be more attentive and focused than consumers would be in a real debt collection setting.

In an online survey, respondents are asked to set aside a time to concentrate on an artificial task at the behest of the researchers, in exchange for payment. Under these conditions, survey respondents are likely to show exceptional focus and motivation. In contrast, consumers who receive debt collection notices in the real world are likely to have any number of time-constraints or distractions that prevent them from carefully reading any materials (e.g., caregiving duties for another family member, the need to rush off to a second job, etc.). As a result, survey respondents are likely to perform better on a comprehension quiz than real-world consumers.

- (b) The online survey may differ from the context in which the consumer would encounter the disclosure.

Supporting documents for the notice and request for comment state that survey respondents “will be asked to read a validation notice and then answer questions based on a hypothetical situation.”⁴ As such, it appears that in the online survey, the disclosure language being tested (e.g. proposed revisions to the content and layout of the validation notice and proposed time-barred or obsolete debt disclosures)⁵ will be embedded within the validation notice. This is appropriate because it will allow the survey to simulate how consumers would encounter the information in real-world written materials.

However, it appears that for some participants, the survey specifically identifies certain language and then asks questions about that language. For example, Question 25a says:

⁴ Bureau of Consumer Financial Protection, *Debt Collection Quantitative Disclosure Testing, Supporting Statement Part A*, p.4, available at <https://www.regulations.gov/>.

⁵ *Id.* at pp.3-4.

Please look at this text that appears on the notice. You may or may not have already noticed this text when reading the notice.⁶

Since this task directs respondents' attention to the relevant language, participants' responses to all subsequent comprehension questions are likely to show inflated accuracy. We strongly recommend against these types of questions because they differ so much from the real-world use of these disclosures. However, if the CFPB does retain these questions, it should report separately about the performance among respondents who are and are not specifically directed to the relevant language. If the disclosure "works" among those who were specifically directed to the relevant language, the CFPB should not be satisfied. The disclosure must "work" among those who have not been directed to the relevant language because consumers who encounter the notice in the real world will not have the benefit of being directed to the specific language.

Moreover, there is no mention of whether the survey will include the statement of rights, which the CFPB has proposed requiring collectors to include with that notice.⁷ To adequately mirror real-world conditions, including the amount of information consumers receive all at once, the CFPB should present the statement of rights alongside the validation notice.

If the statement of rights is omitted from the online survey, the survey findings will not provide a reliable guide to real-world consumer comprehension. Information overload is a well-documented impediment to comprehension.⁸ Accordingly, the CFPB's test of the comprehensibility of a disclosure must mimic the real complexity and amount of information a consumer is likely to face. If the survey environment is less overwhelming than the real environment, the survey will not capture the effects of any information overload.

⁶ Bureau of Consumer Financial Protection, *Outline of Survey Items*, p. 15 Pre_Q25a, available at <https://www.regulations.gov/>

⁷ Bureau of Consumer Financial Protection, *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* (July 28, 2016) ("the proposals under consideration would require debt collectors to provide consumers with a one-page statement of rights document (Statement of Rights)").

⁸ E.g., Marin J. Eppler & Jeanne Mengis, *The Concept of Information Overload: A Review of Literature from Organization Science, Accounting, Marketing, MIS, and Related Disciplines*, 30 INFORMATION SOC. 325 (2010) ("Researchers across various disciplines has found that the performance (i.e., the quality of decisions or reasoning in general) of an individual correlates positively with the amount of information he or she receives—up to a certain point. If further information is provided beyond this point, the performance of the individual will rapidly decline. . . . The burden of a heavy information load will confuse the individual, affect his or her ability to set priorities, and make prior information harder to recall.").

- (c) Survey respondents may be more likely to refer back to the disclosure for help answering comprehension questions.

The notice and request for comment notes that respondents will be able to refer back to the validation notice at any time during the survey. This feature may lead to overestimation of comprehension, because respondents may be more inclined to refer back to the communication for help answering the survey questions than consumers will be.

For instance, Question 28 asks survey respondents to “Imagine that two months have passed after Person A received the notice, and Person A has not taken any action in response to the notice. Now Person A is applying for a car loan and the dealer is checking Person A’s credit report. Do you think the debt is legally allowed to appear on Person A’s credit report?”⁹ A survey respondent who does not know the answer to this question could easily click back to reread the notice and answer correctly. But a consumer who is in the midst of applying for a car loan may fail to dig up the letter received earlier which discloses the relevant information. In this way, the survey respondents’ performance may be artificially enhanced by the survey context.

To address these concerns, the CFPB should take note of how often participants use the “go back” feature as a crutch. The notice and request for comment states that the contractor will provide “paradata, helping us understand how people interact with the survey (i.e., how often they refer to the validation notice and for how long, and whether they return to previous questions during the survey).”¹⁰ We urge the CFPB to report (1) how often each question prompted respondents to click back to the validation notice; (2) how long participants spent on each survey question and the validation notice; and (3) how often participants changed their answers to each question. We also urge the CFPB to report all initial answers that were later changed.

3. Test auditory comprehension of an oral disclosure.

Debt collectors often communicate with consumers by phone. Auditory comprehension, however, is quite different from reading comprehension.¹¹ The same language that results in strong comprehension among survey respondents who read the written disclosure may result in weak comprehension among consumers who hear

⁹ Bureau of Consumer Financial Protection, *Outline of Survey Items*, p. 17, available at <https://www.regulations.gov/>

¹⁰ Bureau of Consumer Financial Protection, *Debt Collection Quantitative Disclosure Testing, Supporting Statement Part A*, p. 5, available at <https://www.regulations.gov/>.

¹¹ E.g., Erica B. Michael, Timothy A. Keller, Patricia A. Carpenter, & Marcel Adam Just, *fMRI Investigation of Sentence Comprehension by Eye and by Ear: Modality Fingerprints on Cognitive Processes*, 13 HUMAN BRAIN MAPPING 239 (2001) (“even when written and spoken language have the same content, the two modalities provide different information and make different demands on the comprehender.”).

the language recited orally. We, therefore, urge the CFPB to administer a phone survey or embed an audio file in an online comprehension survey. In this test, the survey respondent should not be permitted to refer back to the disclosure (e.g., replay the audio) when answering comprehension questions. This setup would be most faithful to real-world conditions.

4. Include more open-ended questions to test comprehension.

In addition to multiple-choice questions, the CFPB should provide participants with open text boxes and ask them to explain key concepts in their own words. Their responses may reveal nuances that a multiple-choice survey glosses over.¹²

5. Ensure that each unique treatment is tested on a sufficiently large and diverse pool of respondents.

We applaud the CFPB's plans to recruit 8,000 participants. Yet it is not clear from the notice and request for comment how many separate interventions (or combinations of interventions) the CFPB plans to test. If the participants are spread across too many conditions, there will not be enough statistical power to allow for comparisons of key subgroups. To avoid this problem, the CFPB should ensure that each unique combination of disclosures is tested on a sample that is large and diverse enough to permit comparisons of subgroups (e.g., high school graduates to college graduates).

¹² E.g., Yasuhiro Ozuru et al., *Comparing Comprehension Measured by Multiple-Choice and Open-Ended Questions*, 67 CANADIAN J. EXPERIMENTAL PSYCHOL. 1196 (2013) (finding that "open-ended and multiple-choice format questions measure different aspects of comprehension processes").