June 8, 2017

Submitted via www.regulations.gov

Ms. 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:

Auriemma Consulting Group (ACG)[1] appreciates the opportunity to submit responsive information to the Bureau of Consumer Financial Protection (Bureau or CFPB) on how the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act or Act) and associated protections continue to affect consumers and credit card issuers. Section 502 of the CARD Act requires the Bureau to conduct biennial reviews of the consumer credit card market and to seek public comment in connection with such reviews. Published on March 10, 2017, the present request for information (RFI) relates to the Bureau's third review of the consumer credit card market.[2]

This letter is submitted on behalf of a diverse array of regional and mass market credit card issuers, credit unions, and retailers that believe in a transparent credit card market with strong consumer safeguards. These institutions include full-service banks, mono-line issuers, subprime specialist issuers, retailers, and finance companies offering general-purpose and private-label consumer credit cards.

Opening Comments

The CARD Act has produced clear benefits for consumers. Pricing is more transparent. Back-end fees and APR repricing activity are less prevalent. And issuers have engaged in independent efforts to streamline consumer-facing materials, advancing the Act's goal of improved transparency.

These benefits must be weighed against the Act's unintended consequences. The consumer credit card market has recovered from the economic recession at a slow pace. Credit card APRs, while more transparent, have increased. And credit is less available to marginalized borrowers, resulting in more consumers resorting to fringe financial services. Further, the Act has limited issuers' ability to accommodate unique circumstances for cardholders – eroding the customer experience – and contributed to a substantial increase in compliance costs, requiring issuers to divert investments that would otherwise benefit customers. These trends have advanced over the two-year period.

[1] Auriemma Consulting Group is a management consultancy focused on the consumer payments and lending arena that has been advising financial institutions, retailers, capital markets participants, and other interested parties since 1984. We interact regularly with credit card issuers of all sizes.
[2] 82 Fed. Reg. 13313 (March 10, 2017)

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In our comments, we discuss the factors underlying the Act's unintended consequences and recommend regulatory solutions. In addition, we respond to a diverse array of "areas of further interest" raised in the RFI, including deferred interest products, secured credit cards, online and mobile account servicing, rewards products, variable interest rates, and debt collection.

A summary of our specific commentary in response to the RFI is provided below:

- Building on previous efforts, issuers have made incremental improvements to cardholder agreements over the two-year period and streamlined pricing and marketing.
- The extent to which CARD Act disclosures have affected consumer awareness, comprehension, or payment choices remains unclear.
- The industry's investment in consumer protection leading up to and following implementation of the CARD Act has been unprecedented. Strong protections have been put in place to ensure fair and accurate customer treatment.
- Key provisions of the CARD Act, including repricing restrictions and payment allocation requirements, have continued to place upward pressure on credit card APRs. The credit card market has recovered slowly from the economic recession in relation to non-revolving consumer credit markets.
- Deferred interest products offer significant benefit to consumers in need of short-term financing. Issuers have surpassed existing regulation with independent efforts to improve marketing and disclosure.
- There is evidence of highly positive consumer outcomes associated with secured credit card products. However, the CARD Act's ability-to-pay requirements are out of step with the purpose of such products, which is to help borrowers with limited or damaged credit history build or rebuild a positive credit record.
- Periodic billing statements, the primary delivery mechanism for enhanced consumer disclosures, are readily available in online and mobile access channels. Whether such disclosures have encouraged or enabled positive outcomes in print form, however, remains unclear.
- Credit card rewards programs are increasingly accessible and popular. Consumers are highly satisfied with key program features, including the ease of earning and redeeming rewards.
- Consumers understand the concept of variable interest rates, and that borrowing costs rise and fall with background interest rates. Current disclosure of variable rate information and APRs applicable to purchases is adequate.
- There is a heightened sensitivity to fair, accurate, and consistent customer treatment within debt collection and debt sale operations. Debt collection communication via traditional channels is in decline.

(a) The Terms of Credit Card Agreements and the Practices of Credit Card Issuers

Cardholder agreements have become simpler and shorter since implementation of the CARD Act. Issuers have enhanced the readability and accessibility of these documents despite the Act not mandating changes to contract length or form.

These changes have resulted in cardholder agreements that are accessible to their intended audience. The 2013 CARD Act Report found that "many issuers streamlined the presentation and content of their cardholder agreements between 2008 and 2012," consolidating terms and conditions into fewer documents, reducing the length of agreements, and improving readability. The Bureau's subsequent review found that the agreements of mass market issuers and credit unions "should be readable by a high-school graduate."

The industry has built on efforts to simplify cardholder agreements with incremental improvements in accessibility and clarity over the two-year period.

Issuers have focused on readability and presenting information in a more clear, organized format. Recent changes include:

- Lowering the Flesch-Kincaid grade level of cardholder agreements;
- Separating content into sections;
- Using tables and boxes to highlight important account information;
- Providing examples of key terms and concepts (e.g., credit limit, minimum payment calculation);
- Linking to tools and resources on the CFPB website.

While recent changes have generally been incremental in nature, some of our clients have redesigned their cardholder agreements, rewards guides, and other disclosures within the past two years as part of larger efforts to enhance consumer-facing materials. One issuer held focus groups with customers and non-customers to identify improvements. The issuer's redesigned agreement uses a ninth-grade reading level and organizes content into clearly defined sections.

Industry efforts to further simplify contractual language are impeded by statutory and regulatory requirements, as well as exposure to litigation risk.

As we pointed out in our 2015 comments, issuers are limited in their ability to simplify contractual language without increasing their exposure to legal, regulatory, and financial liability. It bears repeating that a certain level of "legalese" related to federal and state statutes, regulatory disclosures, and provisions about billing errors, changes in terms, and telephone communication is requisite and unavoidable.

Additionally, disclosures are intended to reveal detailed product terms to improve transparency to the cardholder. Disclosures are not intended to explain how a product works or to offer guidance on how to minimize the cost of using a product. Past analysis by the CFPB gauges the effectiveness of disclosures by measuring the cost paid by consumers, yet there is plenty of empirical data that consumers do not always act in their own best rational interest (e.g., many carry a balance despite having enough assets to pay in full).

Issuers have streamlined pricing, product offerings, and marketing.

Many of our clients reported consolidation of risk-based price points over the past two years. One issuer cut the number of price points by half, from four to two, while another consolidated 13 credit card products into two core offerings. In addition to consolidating price points, issuers have continued to eliminate fees, including minimum finance charges.

Streamlined product structures and a general emphasis on clarity in consumer-facing materials have contributed to simpler, more transparent marketing. Over the past two years, one issuer has adopted simplicity as a basic tenet of product design and pricing, with the objective of creating a clear, easy-to-understand consumer value proposition. Marketing collateral is subject to several layers of review both pre- and post-production across all channels.

(b) The Effectiveness of Disclosure of Terms, Fees, and Other Expenses of Credit Card Plans

Title II of the CARD Act introduced enhanced consumer disclosure requirements for periodic billing statements, including a minimum payment warning showing (1) the amount that will be paid and the repayment period length if the consumer makes only the minimum payment; and (2) a comparison to a three-year payoff schedule.

The CFPB has stated in past reports that "disclosures are intended to affect consumer behavior by making the consequences of particular choices more salient than they might otherwise be." For example, the minimum payment warning is intended to affect the incidence of minimum payments by making their costs more salient. Using this interpretation, we would expect to observe a change in payment choices as evidence of the disclosure's success.

Seven years following implementation, the extent to which the minimum payment warning has affected consumer awareness, comprehension, or payment choices remains unclear.

Empirical evidence on the effectiveness of the disclosure package is limited. It is our understanding that effectiveness testing did not take place prior to implementation.

Additionally, independent research on the drivers of debt repayment suggests the minimum payment warning has been unsuccessful at making costs more salient. Using a dataset covering 25% of the U.S. general-purpose credit card market, one recent study found that CARD Act disclosures resulted in fewer than 1% of accounts adopting the three-year repayment amount, and that the effect declines by half within one year.[3] One potential explanation is that other statement information, including the minimum payment amount, may be more salient to cardholders than the minimum payment warning.

Our clients report similar findings about the effect of disclosure requirements on payment choices. For example, one issuer reported that the percentage of accounts and balances making minimum payments has remained largely constant in the post-CARD Act era. While the issuer observed temporary reductions following implementation of the enhanced disclosures in 2010, payment behavior returned to previous levels shortly thereafter and has held steady since. Among those cardholders receiving statements, approximately 70% are receiving paper statements.

ACG and our clients support meaningful information disclosure for the purposes of consumer financial protection. In fact, as stated above, our clients have voluntarily enhanced their consumer-facing materials, including periodic billing statements, in recent years. That said, disclosure requirements should be based on evidence demonstrating a positive impact on consumer understanding or behavior. We are not aware of such evidence.

(c) The Adequacy of Protections Against Unfair or Deceptive Acts or Practices or Unlawful Discrimination Relating to Credit Card Plans

The industry's investment in consumer protection leading up to and following implementation of the CARD Act has been unprecedented. Issuers have continued to heighten their standards to ensure fair and accurate customer treatment. Compliance management systems now consist of three lines of defense covering front-line business units, independent risk management, and internal audit mechanisms. These systems are intended to prevent, detect, and correct instances of unfair customer treatment. Additionally, issuers have amended their policies and procedures to accommodate the increasing emphasis on principles-based enforcement.

The intensified focus on fair and accurate customer treatment has continued since the Bureau reported on the credit card market in 2015. Four key trends characterize the further enhancements that have taken place over the two-year period: (1) continued expansion of compliance programs with a specific emphasis on enhanced UDAAP and fair lending controls; (2) continued investment in complaint management programs to further improve intake and resolution; (3) a shift toward automated and rules-based systems; and (4) more transparent sales practices.

The heightening of compliance standards has continued over the two-year period, with a focus on enhanced UDAAP and fair lending controls.

Recent client efforts in this area include:

- Conducting dedicated fair lending and UDAAP risk assessments on an annual basis or more frequently;
- Incorporating fair lending and UDAAP as components of all periodic Compliance department risk assessments;
- Creating product-specific compliance oversight roles;
- Employing enhanced statistical analysis, including "matched-pair" testing;

[3] *See* Keys, Benjamin J. and Wang, Jialan, Minimum Payments and Debt Paydown in Consumer Credit Cards (October 2016), https://ssrn.com/abstract=2853238

- Modeling fair lending and UDAAP training of third-party service providers on internal programs and overseeing completion;
- Subjecting marketing collateral to several layers of review with a specific focus on fairness and UDAAP risk, both pre- and post-production across all channels.

Issuers are investing in training, technology, and staff to expand and improve their complaint management programs.

Complaint management has changed drastically in recent years. Institutional complaint definitions have expanded to include any expression of dissatisfaction voiced by customers. Front-line agents have received training to accurately identify and capture customer complaints, including those related to potential UDAAP or fair lending violations. And issuers have established direct lines of reporting up to the executive level.

Recent client efforts include:

- Incorporating complaint intake into agent performance scorecards;
- Using technology to mine calls for unidentified complaints, and performing QA reviews as an additional check;
- Escalating potential UDAAP or fair lending violations to specialized teams with deeper subject matter expertise;
- Performing root cause analysis to identify product and process improvements;
- Holding product and process owners accountable for reducing complaint volume and improving customer experience;
- Ensuring uniformity of all complaint resolutions regardless of channel.

There has been a philosophical shift away from "judgmental" systems toward more objective, statistically-developed techniques.

This trend has manifested most visibly in the transition from manual underwriting to automated credit decisioning, and in enhanced policies and controls to ensure manual interventions do not create gaps. Additionally, issuers have reduced or eliminated discretion from processes, systematically generating customer retention offers, developing strict policies governing such offers, and analyzing discretionary processes, such as policy exceptions and overrides. Even in the absence of systematic protections, monitoring and controls have been put in place to identify outlier agent behavior.

This dramatic paradigm shift has been a function of compliance rigor in recent years. Unfortunately, real life creates myriad scenarios, not all of which fit into models and procedures. An unintended consequence has been that issuers have no choice but to prioritize regulatory and compliance risk over customer need in some instances, eroding customer experience and contributing to avoidable customer complaints.

Sales practices emphasize transparency and the customer experience.

Our clients are reviewing and enhancing existing controls around incentive structures and other components of sales to ensure employees are engaging in appropriate behavior. There has been an overall reduction in the number of institutions paying out financial incentives for new account openings. Those issuers that offer financial incentives are incorporating a customer experience score into agent eligibility and/or linking eligibility to account activation as opposed to account opening. Some issuers have removed sales from the telephone channel.

Other client efforts include:

- Increasing oversight of new account openings and enhancing consent processes (e.g., requiring "wet" customer signature, recording 100% of phone calls, requiring verbal customer affirmation of account opening);
- Sending "welcome" letters or email notifications to recently opened accounts;
- Improving agent training and coaching efforts, and better equipping front-line agents to identify, capture, and escalate potential issues to the appropriate party;
- Increasing tracking, analysis, and reporting of complaints related to unauthorized account opening.

The shift toward principles-based enforcement has caused a major lack of clarity regarding regulatory expectations and conduct that is either forbidden or required.

The RFI solicits information on how unfair, deceptive, or abusive acts and practices might be prevented. As we pointed out in our 2015 comments, issuers would benefit from increased clarity surrounding the rules of engagement. Specifically, the emphasis on principles-based enforcement over technical regulation and vague definition of "abusive" acts and practices have created significant uncertainty.

(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

The cost and availability of consumer credit cards have changed in two notable ways since the Bureau reported on the credit card market in 2015: (1) APRs have increased; and (2) growth in revolving credit has continued to lag behind that of non-revolving credit.

Credit card APRs have reached historically-high levels.

In May, the national average APR on new credit card offers reached an all-time high of 15.82%.[4] While the Fed's March 15 interest rate hike is a contributing factor, APRs have remained elevated since implementation of the CARD Act more than seven years ago. Meanwhile, the finance rate on personal loans has been steadily declining for several years.

Consumer credit card markets have recovered slowly from the economic recession, particularly when compared with non-revolving consumer credit markets.[5]

We begin by reviewing the long-term trend in consumer credit shown in Figure 1. Since December 2007, total outstanding non-revolving consumer credit has grown by 74.5%, from $1,607.8 billion to $2,805.8 billion. Total outstanding revolving consumer credit, in contrast, has yet to return to its December 2007 level of $1,001.6 billion and, at $999.8 billion, remains depressed by 0.2%.[6] In March, the variance between non-revolving and revolving consumer credit, shown in Figure 2, reached an all-time high of $1,805.9 billion.

[4] *See* CreditCards.com Rate survey: Average card APR jumps to record high of 15.82 percent (May 31, 2017), http://www.creditcards.com/credit-card-news/interest-rate-report-53117-up-2121.php

[5] *See* Federal Reserve Bank, G.19 Consumer Credit March 2017 (May 5, 2017), http://www.federalreserve.gov/releases/g19/current/default.htm

[6] Credit card debt comprises the overwhelming share of G.19 revolving consumer debt.

FIGURE 1: CONSUMER CREDIT (FRB G19)

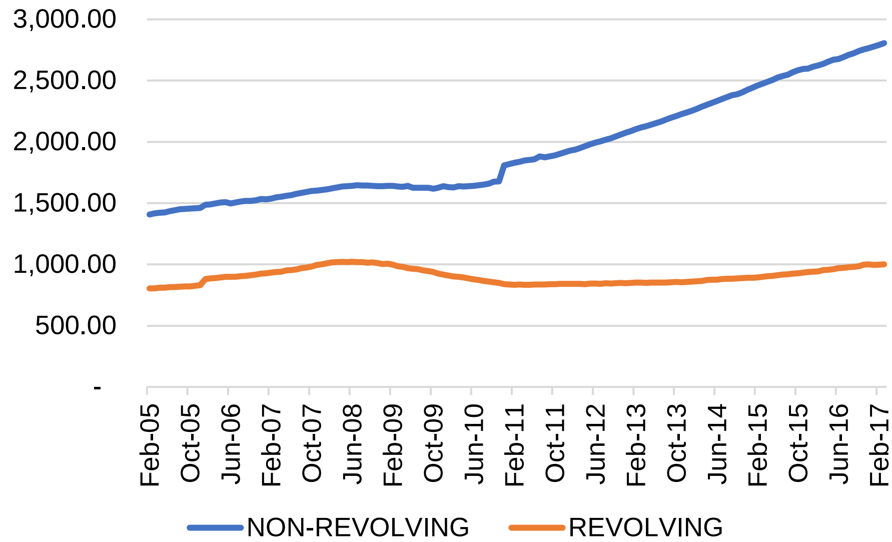
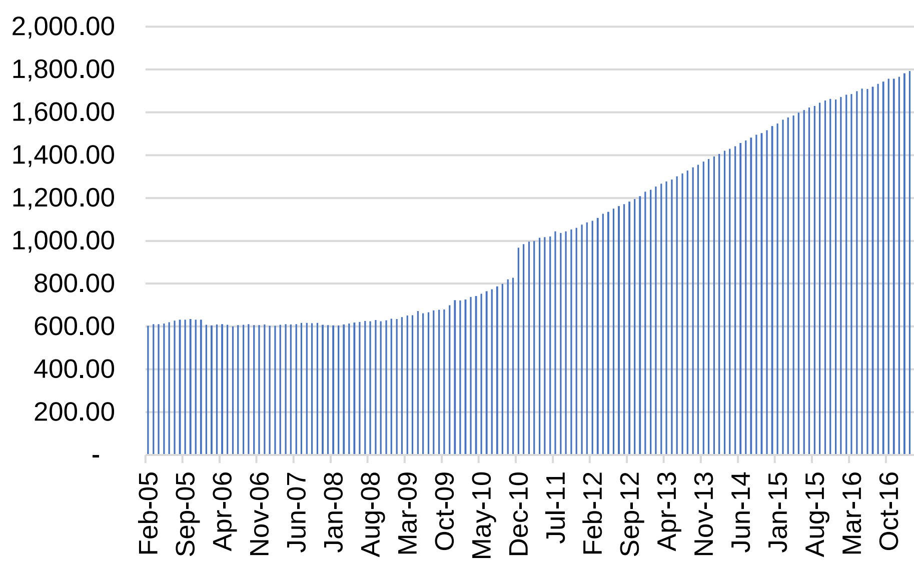


FIGURE 2: CONSUMER CREDIT VARIANCE (FRB G19)



The disparity between revolving and non-revolving credit becomes more apparent when comparing pre- and post-CARD Act quarterly growth rates. For the purposes of this comparison, we examine two discrete time periods:

- PHASE 1: the 29 quarters leading up to the financial crisis
- PHASE 2: the 29 quarters leading up to the present day and reflecting the impact of the CARD Act

Table 1 shows that non-revolving credit gained considerable momentum after implementation of the CARD Act while growth in revolving credit slowed:

TABLE 1: CONSUMER CREDIT QUARTERLY GROWTH (FRB G19)

	PHASE 1	PHASE 2
REVOLVING	$7.89 billion	$3.3 billion
NON-REVOLVING	$16.1 billion	$40.2 billion

Growth in revolving credit has slowed despite increasing consumer confidence, a relatively strong employment market, and record-high consumer credit scores.[7] Additionally, market forces the CFPB cited in 2013 (e.g., rising loan losses and chargeoffs caused by the economic recession) have dissipated.

The CFPB noted in its prior market report that it was "unable to discern any evidence that the CARD Act negatively impacted the rate of recovery in the overall credit card market following the recession." Additionally, we understand that certain CARD Act provisions restricted access to credit by design. These provisions included various restrictions on marketing credit cards to young people. They also encompassed "ability-to-pay" requirements intended to restrict access to those whose income and assets are deemed insufficient.

However, it is important to highlight that we operate in a demand-driven market. Regulations have focused on the *supply of* credit without giving attention to the *demand for* credit. CARD Act provisions may have intentionally limited supply, but they have not limited demand, which still exists outside the credit card market.

Borrowers are turning to other types of credit, including fringe financial services.

Personal loans were the fastest growing loan product in 2016.[8] Fintech and marketplace lenders have emerged as an entire industry to fill the limited supply from banks and card issuers, with some players achieving market cap values exceeding that of their bank and card issuer competitors in just a short period of time (more on their emergence is addressed in the requested section on that topic below). Additionally, payday and auto-title lenders serve millions of American households annually with high-interest loans – further evidence of reduced access.[9]

The CARD Act's repricing restrictions and payment allocation requirements are the primary drivers of these changes.

Prior to the February 2010 effective date for CARD Act repricing restrictions, issuers controlled for risk by adjusting pricing based on observations of borrower behavior over the life of a loan. Today, this strategy is less viable. For interest rate increases applicable to existing balances, issuers generally cannot increase the rate unless the consumer is at least 60 days past due and has been given 45 days written notice (below, we make observations about chargeoff risk at this stage of delinquency). As a result, issuers have been forced to resort to other methods of risk management, including reducing available credit to riskier borrowers and increasing interest rates.

It is important to note that credit cards are different from installment loans in that consumers are constantly drawing additional funds to manage their ever-evolving financial needs. Therefore, there is a joint expectation that consumers take personal responsibility to manage their finances based on their expectations for the future, and that issuers manage their risk exposure responsibly based on what they

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7 *See* AnnaMaria Andriotis, Credit Scores Hit Record High as Recession Wounds Heal (May 29, 2017), https://www.wsj.com/articles/credit-scores-hit-record-high-as-recession-wounds-heal-1496055600

8 *See* Nidhi Verma, 2017 predictions: Consumer balance and delinquency rates (January 17, 2017), https://www.transunion.com/blog/consumer-balance-and-delinquency-rates-2017-predictions

9 Payday loans carry a 391% APR on average according to the Center for Responsible Lending.

have observed in the past – even though the inherent risk of each consumer goes up and down in the future. Limiting the issuer's ability to manage to that ever-changing level of risk, which is at the mercy of the consumer's actions, seems to disregard the issuer's obligation to other regulatory agencies that monitor for safety and soundness.

The CARD Act's 60-day delinquency trigger is excessive, greatly increases the risk of loss, and penalizes the wrong people.

As mentioned above, issuers generally cannot increase rates on existing balances unless the consumer is at least 60 days past due and has been given 45 days written notice. As a result, the effective timeframe for rate increases is 105 days past due.

It is important to convey observations about chargeoff risk at this stage of delinquency. The likelihood of default increases nearly fourfold from 30 to 60 days past due, when rate increases on existing balances are technically permitted.[10] By 105 days past due, more than 80% of accounts will roll deeper into delinquency.[11]

Due to the narrow exceptions under which interest rate increases may be applied to existing balances, such increases are ultimately executed on a population of accounts that is significantly less likely to pay. In effect, rates are only raised on the small share of accounts that *do* in fact make payments. As a result, those cardholders who attempt to meet their financial obligations are the ones penalized. This is a phenomenon at any level of delinquency, but the adverse impact is far more pronounced in advanced stages due to the much higher likelihood of default.

ACG recommends the following regulatory solutions:

- Select a shorter period, such as 30 days past due, after which issuers are permitted to raise interest rates on existing balances.
- Expand disclosure requirements, if necessary, increasing the notice period prior to rate increases being applied.

Even in instances where rate increases are permitted, the Act's ongoing rate review requirement places an extreme administrative burden on issuers and makes such increases far less viable.

In the event that the interest rate is increased on an account, the CARD Act requires issuers to review that account at least once every six months to determine whether the factors prompting the increase have changed. This requirement applies to interest rate increases that occurred any time after January 1, 2009.

As there is virtually no statute of limitations for rate reviews, issuers are still required to review accounts that had their interest rates increased more than eight years ago. These accounts have failed to qualify for a rate reduction after at least 16 such reviews. The likelihood of these customers qualifying for a rate reduction in the future is extremely low.

ACG recommends the following regulatory solution:

- Replace the fixed date established by the CARD Act (i.e., January 1, 2009) with a rolling look-back period for reevaluating rate increases. This period should be a maximum of two years, or four rate reviews.

[10] Between cycles one and two, the percentage of accounts that age to charge-off without making a payment nearly quadruples, from 12.7% to 44.5%. ACG Credit Card Collections Quarterly Benchmark Study (Quarter 4, 2016). *Newly delinquent to chargeoff flow rate definition*: Average monthly contractual charge-off balances for the benchmark quarter divided by cycle 1 delinquent balances lagged two quarters. *Cycle 2 to chargeoff flow rate definition*: Average monthly contractual charge-off balances for the benchmark quarter divided by cycle 2 delinquent balances lagged two quarters.

[11] Ibid.

The CARD Act's payment allocation requirements have placed further upward pressure on pricing and preclude downward rate adjustments for borrowers in need of payment relief.

As stated above, the Act has limited issuers' ability to accommodate unique circumstances for cardholders. Such circumstances include borrower requests for downward rate adjustment.

Under the Act's payment allocation provision, issuers are required to allocate payments in excess of the minimum first to balances that are subject to the highest interest rates. The payment allocation requirement makes increasing the APR ineffective. APR reductions apply to the full balance effective immediately. APR increases, on the other hand, only apply to new balances which are subsequently paid off prior to the balances at the lower APR, effectively making the increase non-worthwhile. The bias toward rate reduction means the risks associated with lowering rates is much greater than can be economically justified.

For example, one issuer has a process to accommodate cardholder requests for an APR reduction. Upon receiving such requests, the issuer reviews an updated FICO score in combination with an internal "performance behavior score." As there is no mechanism to reprice for an increase in risk, in most cases the issuer will set the APR approximately 1.00% above what its underwriting guidelines would suggest. Even if issuers were to build a mechanism to compensate for added risk on accounts, they cannot effectively apply it because existing balances are locked in at the lower APR.

In their current form, the CARD Act's ability-to-pay (ATP) requirements restrict issuers' ability to grant credit to those consumers who need it most.

The CARD Act requires issuers to assess an applicant or cardholder's ability to make the required minimum payments before opening or increasing a credit line. Rules implementing the CARD Act require issuers to consider repayment ability based on the consumer's income or assets and current debt obligations. As a result, issuers have established policies and procedures that consider a consumer's ratio of debt to income or assets, commonly referred to as the "DTI ratio."

While we understand the ATP provision is a statutory requirement, the current calculation of ATP reflects a layman's view of risk management. Considering the magnitude of risk issuers undertake in granting credit, regulators should seek to incorporate industry risk management best practices into the measurement of ATP.

The DTI ratio is not an accurate risk indicator.

DTI does not account for credit history, payment behavior, or customer relationship data. Additionally, it is a popular misconception that income level is correlated to creditworthiness.

One issuer recently analyzed chargeoff rates across discrete, 10-point DTI bands (e.g., 0-9%, 10-19%). The data, which represents the first 12 months of performance for accounts opened from November 2014 to April 2015, reveals an inverse relationship between DTI and risk:

- Accounts within the lower, 10-19% DTI band had the highest chargeoff rate.
- Accounts within the highest, 90-99% DTI band had the lowest chargeoff rate.
- The chargeoff rate for the 10-19% DTI band was six times higher than the 90-99% DTI band.
- Overall, the results indicate that accounts with higher DTI ratios are lower-risk.

(The issuer conducted a similar analysis on its secured card portfolio. We discuss ATP requirements for secured card products in the requested section on that topic below.)

Our interpretation of the above findings centers on information that DTI does not reflect. Credit history and payment behavior, for example, may exert a greater influence on ability to pay than levels of income, assets, or debt. Additionally, it is important to note that measures of ability do not account for *willingness* to pay.

(e) Deferred Interest Products

Many private-label cards offer “deferred interest” promotional financing to consumers. These programs charge 0% interest if paid in full during a promotional period, which is generally six or 12 months. Consumers who repay the full promotional balance before the promotion’s end date obtain free financing, often for large-ticket items. Consumers who do not are subject to the same interest rate they would have otherwise paid.

With proper marketing and disclosure, deferred interest products offer significant benefit to consumers in need of short-term financing. As such, consumer demand for these products is robust.

Disclosure and marketing of deferred interest financing is adequately regulated, as is payment allocation in the final months of promotions.

The Board rules that went into effect on February 22, 2010 imposed several disclosure and marketing restrictions related to deferred interest financing. These include disclosure of (1) the promotional period timeframe and post-promotional APR; and (2) the promotional period end date on the front page of periodic statements. As an added protection, issuers may only use phrases such as “no interest” if accompanied by an “if paid in full” caveat.

Additionally, the CARD Act requires that payments in excess of the minimum payment in the last two months of a deferred interest promotion be allocated entirely to the promotional balance (i.e., the balance that would be subject to retroactive interest).

Issuers have engaged in independent efforts to improve cardholder comprehension and transparency.

In addition to complying with disclosure, marketing, and payment allocation requirements, issuers have undertaken efforts to further enhance transparency. These efforts include:

- Notifying customers of program end dates at multiple points, including 60 and 30 days prior;
- Displaying the status of promotions on customers’ online banking screens;
- Examining patterns in payment behavior to determine whether additional notification procedures are necessary;
- Promoting maximum clarity in marketing copy, including in-store signage and online banner ads.

As a result of existing regulation and the independent industry efforts described above, we believe no further action is warranted at this time.

(i) Secured Credit Cards

Secured credit cards are a valuable tool that can help borrowers establish or improve their credit. At account opening, approved borrowers provide a refundable security deposit to secure their credit line. Secured products offer many of the same security features and benefits as unsecured credit cards, including fraud protection and $0 fraud liability, access to online and mobile banking, account alerts, and free monthly FICO scores. Additionally, secured cards are offered by regulated providers that deliver many consumer protections in addition to access to credit.

As such, consumer demand is robust. One financial institution reported that secured cards account for 30% of credit card accounts opened in its partner branches. Approximately half of applicants have no credit score and half have deep subprime credit scores.

Secured credit cards are a beneficial and increasingly popular option for borrowers with limited or damaged credit history to build or rebuild a positive credit record.

As stated above, secured card products are designed and marketed to help borrowers establish or improve their credit through responsible use. In fact, several issuers offer “graduation” programs based on payment and credit history following account opening. Under such programs, issuers periodically review account activity and may “unsecure” a cardholder’s account or grant credit line increases (CLIs) when certain criteria are met. For example, one issuer reviews accounts after 12 months and upgrades those cardholders who have maintained a positive payment history. The issuer returns the cardholder's collateral in the form of a check and may grant a CLI. Issuers strive for maximum clarity and transparency in communicating graduation strategies to ensure cardholders understand how to achieve the requirements for advancement.

Secured cardholders tend to behave in accordance with the product's credit-building purpose.

There is evidence of highly positive consumer outcomes associated with secured cards, including high payment rates, low delinquency rates, and high rates of graduation to unsecured products. Approximately 50% of one issuer's secured accounts graduate to an unsecured product at 12 months, and the graduation rate improves beyond that point. The issuer, which reports that secured cardholders tend to pay in full, has observed previously unbanked consumers that establish a prime FICO score within 12 months through secured card usage.

ATP requirements are a regulatory obstacle limiting marketplace potential.

As discussed above, the CARD Act requires issuers to assess an applicant or cardholder's repayment ability by considering income or assets and current debt obligations. As a result, issuers have established policies and procedures that consider a consumer's ratio of debt to income or assets.

ATP requirements in their current form are out of step with the purpose of secured products, which is to help borrowers build or rebuild a positive credit record. Consumers typically apply for a secured card because they are liquidity-strained and fail to qualify for an unsecured product based on their income, assets, or debt obligations. Additionally, as with unsecured credit card products, DTI is not an accurate indicator of risk.

For example, one issuer recently analyzed the chargeoff rate across discrete, 10-point DTI bands (e.g., 0-9%, 10-19%) within its secured card portfolio. As with unsecured products, the analysis revealed an inverse relationship between DTI and risk:

- While there is some risk-ranking across DTI bands, loss rates are low and do not display significant variability.
- Credit performance does not significantly deteriorate above 100% DTI, further illustrating the impracticality of the ATP requirement for secured cards.
- Applying maximum DTI thresholds may also restrict credit availability to otherwise performing accounts.

A potential regulatory solution to mitigate the burden on secured card portfolios would be to revise the ATP calculation for these products. In particular, the CFPB should consider adjusting how current debt obligations factor into the calculation of ATP. The funds that serve as collateral should relieve some ATP requirements.

The RFI solicits information on consumer risks associated with secured cards. When choosing a secured card, consumers should understand how secured card features differ from those of prepaid products. For example, despite issuer efforts to clearly communicate these distinctions, consumers may incorrectly assume that payments will be automatically deducted from the collateral used to secure their account if they fail to make a payment. Additionally, consumers should understand that payment history will impact their credit scores.

(j) Online and Mobile Account Servicing

Some disclosures, including those required under Title II of the CARD Act, are delivered through periodic billing statements. The CFPB's prior report noted that many online and mobile users "have both opted out of receiving paper statements and appear to rarely access their statements online," and therefore rarely encounter such disclosures.

Periodic billing statements – including enhanced consumer disclosures – are at cardholder disposal online.

It is important to note that issuers make these documents easily available and accessible electronically. Cardholders know how to locate and access their billing statements and cardholder agreement as needed online. Issuers have taken steps in recent years to make online banking sites, where these documents are located, more user-friendly and navigable. These improvements are part of larger efforts to expand online and mobile functionality to meet customer preferences. Additionally, there is no effective method to induce a customer to review a billing statement, either online or in print.

As stated above, whether the CARD Act disclosures have enabled positive outcomes in print form remains unclear.

Independent research and issuer analyses call into question whether the disclosure has made minimum payment costs more salient to consumers. Extending such disclosures to online access channels would be a highly complex project from an IT perspective, and could distract from key content. Online account portals are designed for convenience and serve a specific purpose, and it is unnecessary to duplicate disclosures that are already accessible elsewhere online.

(k) Rewards Products

The Bureau's prior review found that credit card rewards have become ubiquitous, and that issuers are offering more diverse and compelling value propositions "to match the increasing popularity of these products with consumers." These trends have continued to evolve over the two-year period.

Credit card rewards programs are increasingly accessible, popular, and valuable to consumers.

The vast majority of cardholders now have at least one rewards product.[12] Most major subprime issuers now offer rewards programs on their products. And consumers are earning and redeeming unprecedented value from rewards. Increased access and value have contributed to record-high satisfaction. In fact, overall credit card satisfaction – in which rewards play a key role – reached a record high in 2016, surpassing the previous high set in 2015.[13] Additionally, rewards do not represent a significant source of complaints.[14]

Consumers are highly satisfied with key program features, including the ease of earning and redeeming rewards.

The vast majority of rewards cardholders, including 94% of cashback rewards cardholders and 89% of T&E (hotel/airline) rewards cardholders, describe redemption as easy.[15] In addition, consumers are highly satisfied with other key aspects of the rewards program on their most frequently used rewards card, including redemption options and frequency, the amount needed to earn rewards, and the rate at which rewards accrue.[16]

While redemption methods vary, consumers tend to prefer options with monetary equivalents, such as gift cards and checks, which offer transparent redemption value.[17] Additionally, it is worth highlighting that many cardholders use rewards points to pay down debt. In fact, 27% of cardholders apply points directly to statement charges.

[12] 80% of consumers have at least one rewards card. ACG Cardbeat® US Consumer Research Study, *Rewards Cards* (April 8, 2016)

[13] *See* J.D. Power 2016 U.S. Credit Card Satisfaction Study (August 18, 2016), http://www.jdpower.com/press-releases/2016-us-credit-card-satisfaction-study

[14] The CFPB handled roughly 1,000 complaints related to credit card rewards in 2016. *See* Consumer Response Annual Report (January 1 - December 31, 2016), http://files.consumerfinance.gov/f/documents/201703_cfpb_Consumer-Response-Annual-Report-2016.PDF

[15] ACG Cardbeat® US Consumer Research Study, *Rewards Cards* (April 8, 2016)

[16] Id.

[17] Generic rewards points cardholders most commonly redeem points through gift cards (30%), for statement charges (27%), or for a check (20%). ACG Cardbeat® US Consumer Research Study, *Rewards Cards* (April 8, 2016)

Rewards are important to cardholders comparing card offers, but less often cited as reasons for holding multiple rewards cards.

Nearly two-thirds (63%) of rewards cardholders, or half of all cardholders, have two or more rewards cards.[18] Although rewards provide consumers with an incentive for choosing a particular card, most with multiple rewards cards simply want another credit card, want a backup to their preferred card, or believe the additional offers were too good to pass up. This suggests that once a cardholder has one rewards card in their wallet, rewards become more of an expectation and less of a deciding factor.

Issuers have taken steps to improve the clarity of rewards program marketing materials and disclosures.

Recent client efforts include:

- Incorporating a supplementary "rewards guide" with cardholder agreements containing program terms and other information;
- Evaluating the language used in advertising campaigns and disclosures to ensure customer understanding of program terms;
- Prominently displaying a rewards summary on billing statements with information on benefits earned and redeemed;
- Eliminating rewards expiration or implementing notification processes (e.g., on billing statements) to alert customers of approaching expiration dates;
- Crediting the value of earned rewards to the estates of deceased customers;
- Simplifying redemption (e.g., allowing co-brand cardholders to redeem points at the point of sale).

While cardholders are generally satisfied with expiration policies, the impact of such policies on consumer choice is unclear.

In April 2016, one issuer performed A/B testing to evaluate the impact of rewards points expiration on direct mail marketing campaign response rates. The control group advertised cash-back rewards points with a three-year expiration date. The variation group advertised cash-back rewards points with no expiration date. The two physical packages, including the outside envelope and enclosed letter, were identical in appearance and content except for the advertised rewards policy and sent to the same profile of consumers.

The issuer observed no lift in response rate for the control group containing the no-expiration offer. In fact, the response rate for the control group was 12.5% *lower* than the variation group containing the three-year expiration date. This suggests rewards expiration policies are not a contributing factor when consumers are choosing a credit card.

(I) Variable Interest Rates

Most credit cards now have variable interest rates that rise and fall with background interest rates in the economy. In its prior market report, the CFPB expressed concern that consumers may fail to understand that their borrowing costs can increase, including on funds already borrowed, following a long period of stable interest rates and CARD Act restrictions on back-end repricing.

Consumers understand that their borrowing rate is linked to an index, and that the rates they pay to borrow can increase.

Issuers notify cardholders that rates can increase in thorough disclosures at account opening, and publish APRs applicable to purchases on all periodic billing statements. Cardholder agreements contain detailed information on variable rates, including:

- That APRs may vary;
- That APRs increase or decrease with the prime rate;
- When and how rates are determined and adjusted (i.e., by adding a margin to the prime rate);

[18] Id.

- How the margin is determined, and that it may vary based on product type; and
- When and where the prime rate is published (e.g., in the *Wall Street Journal*).

It is important to note that consumers have a certain obligation to borrow responsibly and to practice sound financial management. This includes having a general level of awareness of factors impacting their finances, such as changes in the index linked to their credit card rate. Adequately disclosing that such changes are possible and educating consumers on how to monitor for them is entirely appropriate. Placing an added burden on issuers to notify consumers of changes in background interest rates is not. First, it reinforces a lack of imperative for consumers to monitor factors impacting their finances. Second, it drives a behavior of dependency on the issuer. And third, it is inappropriate for the issuer to pass judgments on interest rates in the economy or to bear liability for communicating such judgments to consumers. As a result, we do not believe any changes or requirements are warranted in this area.

(m) Debt Collection

The RFI solicits information on changes to the policies and practices of issuers' debt collections and debt sales operations since 2015. Our comments in this section focus on two key themes: (1) increased conservatism and sources of inefficiency within debt collection communications; and (2) efforts to improve the accuracy and completeness of information furnished to debt buyers.

Debt Collection Communication Practices

Safeguards are in place to ensure customer-friendly debt collection communication practices.

All issuers limit the number of attempted calls per day for each account and temporarily suspend calling after establishing right-party contact. Additionally, issuers limit voicemail messages and attempts via alternate channels.

Outbound call frequency continues to decline. In fact, attempts per account per month have been in decline for several years.[19] Outbound call attempts have decreased by more than 50% since 2010, reaching a record low in the fourth quarter of 2016.[20]

Customer contact has declined with the decrease in call attempts. Right-party contacts per account per month reached a record low in the fourth quarter of 2016.[21] On average, it takes more than 60 attempts to establish contact with a delinquent borrower. The decline in contact has reduced issuers' ability to offer financial management assistance to distressed borrowers.

The Telephone Consumer Protection Act (TCPA) remains a major source of inefficiency.

The Act prohibits creditors from using automated dialing systems to call mobile phone numbers without the customer's prior express consent. The TCPA's original purpose – protecting consumers from incurring charges as a result of automated calls – now has the effect of restricting a key mode of communication.

The TCPA must be updated to reflect the reality of how people communicate in the modern era. Consumer preferences have shifted rapidly from voice and paper contact to digital media. Smartphone penetration is on the rise. And, perhaps most importantly, the majority of Americans now live in wireless-only households.[22] We urge the CFPB to cooperate with the Federal Communications Commission (FCC) on reforms in this area.

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[19] ACG Credit Card Collections Quarterly Benchmark Study (Quarter 4, 2016)

[20] Id.

[21] Id.

[22] 50.8% of American homes did not have a landline telephone but did have at least one wireless telephone. More than 70% of all adults aged 25-34 were living in wireless-only households. *See* Wireless Substitution: Early Release of Estimates From the National Health Interview Survey (July–December 2016), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf

Issuers are taking a more surgical approach to calling intensity and account strategy in general.

Issuers are attempting to be more strategic in their outbound calling strategies as the number of attempts has declined overall. Calling intensity, as opposed to being a universally applied standard, is being administered more surgically based on risk criteria. Many issuers have lowered intensity on low- and medium-risk accounts.

The industry has engaged in independent efforts to give customers more control over debt collection communications.

- *Cease-and-Desist (C&D) Requests.* There has been a shift toward honoring verbal customer requests to cease contact. According to the CFPB's debt collection consumer survey, 87% of consumers who had requested that a creditor or debt collector stop contacting them said they made the request by phone or in person.[23]
- *Inconvenient Times.* Creditors have controls in place to operate within calling times prescribed by the Fair Debt Collection Practices Act (FDCPA). In addition, many creditors have undertaken independent efforts to capture and honor specific "best time to call" and "do not call" requests. Honoring defined customer calling times adds significant complexity to outbound contact strategy and execution and requires sophisticated technology (additionally, cell phones add complexity to the determination of appropriate calling hours in accordance with the customer's local time zone). Systems limitations mean not all issuers can set narrow windows (e.g., Monday mornings) during which to block contact. To streamline execution, these issuers may instead define broad calling windows (e.g., mornings) during which contact is not permitted.

Conservatism around cease-and-desist requests and efforts to honor "do not call" requests are contributing to an increase in non-active collections queues. The percentage of contractually delinquent accounts called has decreased by 22.5% over the past five years and is at a historic low.[24] Less than half of delinquent borrowers received a call from creditors in the fourth quarter of 2016.[25]

Depending on systems capabilities, creditors may lack confidence in their ability to consistently honor specific calling windows. To avoid non-compliance with customer requests, these issuers may default to placing accounts in non-active collection queues, ceasing contact with the customer altogether. Additionally, an overall increase in customer representation by debt settlement companies is contributing to the increase in non-active queues.

The decline in the contactable customer population will likely make litigation more probable, both pre- and post-chargeoff, as a means of collection and recovery.

Debt collection communication remains heavily telephone-oriented.

Eighty-eight percent of respondents in the CFPB's debt collection consumer survey reported contact or attempted contact by phone.[26] Of the remaining 12% of consumers, more than four fifths—10% of all consumers—were contacted by letter only.[27] In contrast, just 19% of consumers who were most recently contacted by a creditor reported email contact.[28] Communication via text message is even less prevalent.

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[23] *See* Consumer Experiences with Debt Collection (January 2017) 34, http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf

[24] ACG Credit Card Collections Quarterly Benchmark Study (Quarter 4, 2016). *% of delinquent accounts called definition:* The number of unique accounts called (via dialer, manual, or interactive outbound VRU) in each cycle divided by the total number of accounts in each cycle.

[25] Id.

[26] *See* Consumer Experiences with Debt Collection (January 2017) 29, http://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf

[27] *See* Id.

[28] *See* Id.

Low usage of modern communication methods reflects a lack of clarity in the regulatory and legislative framework.

Technological advances since enactment of the FDCPA have outpaced regulatory updates, making it more difficult for creditors and collectors to comply. Legislation governing debt collection does not account for modern technologies such as email, text messaging, and voicemail. Lack of clarity has exposed the industry to significant risk of non-compliance with key provisions of the FDCPA, including prohibitions on communicating with a debtor at an inconvenient time or place, third-party disclosure, and harassment or abuse in connection with the collection of a debt. Additionally, there are open questions regarding third-party disclosure in voicemail messages and the mini-Miranda warning and other disclosures in text messages.

The anticipation of a third-party debt collection rule has caused issuers to accelerate or prioritize product- or customer relationship-level collections activity. Issuers are taking steps to develop both non-calling (e.g., text messaging, email) and omni-channel strategies in anticipation of a rule.

Debt Sales

Efforts to improve the accuracy and completeness of information provided to debt buyers have continued.

It is a common practice for issuers to sell charged-off debt to debt buyers. In general, there have been no major strategy changes or issuer entrants or exits from the market over the two-year period. Of those issuers selling debt, sales volume increased modestly (mid-single digits) year-over-year. Several issuers, however, have discontinued sales of bankruptcy accounts.

Office of the Comptroller of the Currency (OCC) guidance has brought about changes to purchase and sale agreements since 2013. These changes include:

- Inserting resale provisions (e.g., restrictions, notification/approval requirements);
- Incorporating audit access;
- Restricting litigation;
- Mandating contractual repurchase periods;
- Providing media to buyers at no additional cost.

Additionally, issuers are promoting greater accuracy of documents shared between all collection parties, upgrading their systems to support a record of the chain of custody, and sending sale notification letters to customers to inform them of account transfer to a third party.

A recent philosophy is that issuers should be active in all streams (e.g., internal recovery unit, agency, sales) to increase regulatory readiness and reduce the lead time to enter any one channel in terms of infrastructure, staffing, and legal compliance – even if such channels are not strategically in use.

Conclusion

On behalf of the issuers and retailers that contributed to this commentary, we appreciate the Bureau's consideration of our response. These organizations share in the goals of enhanced transparency and strong consumer protections. Such protections, including reduced fees and restrictions on repricing activity, come at a cost. This cost may be reflected in higher upfront prices, limited availability of credit, or diminished consumer choice. Since implementation of the CARD Act, there is evidence of each. Rigid restrictions on issuer practices, including practices that have historically facilitated the extension of credit to underserved communities, have required fundamental changes in the industry's approach.

We believe that strong consumer safeguards can be upheld. However, such protections must be weighed against the tradeoffs that accompany them. As discussed throughout this commentary, there are opportunities to adjust restrictions to balance them with sound management principles and more fully realize their intent.

We look forward to ongoing dialogue with the Bureau in its efforts to gather data on the consumer credit card market and to assess the functioning of the market overall.