



Credit Union National Association

cuna.org

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February 15, 2013

Ms. Monica Jackson  
Office of the Executive Secretary  
Bureau of Consumer Financial Protection  
1700 G St., N.W.  
Washington, D.C. 20552

**Re: Docket No. CFPB-2012-0046; Policy to Encourage Trial Disclosure Programs; Information Collection**

Dear Ms. Jackson:

The Credit Union National Association (“CUNA”) appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed Policy to Encourage Trial Disclosure Programs (“Policy”), as well as the agency’s proposed information collection associated with the same. By way of background, CUNA is the nation’s largest credit union trade organization, representing approximately 90 percent of our nation’s 7,000 state and federal credit unions, which serve over 95 million members.

### **Overview of Proposed Policy & Information Collection**

Under the proposed policy, if the Bureau approves a specific trial disclosure, the disclosure will be deemed to be in compliance with applicable federal disclosure requirements if certain conditions are met.

The CFPB believes that there may be significant opportunities to enhance consumer protection by facilitating innovation in financial products and services and enabling companies to research informative, cost-effective disclosures. The Bureau also notes that in-market testing, involving companies and consumers in real world situations, may offer particularly valuable information with which to improve disclosure rules and model forms. The Bureau is seeking comments on the information to be submitted by any company that is seeking approval of a proposed trial disclosure program under the proposed Policy. The proposed policy includes eligibility criteria for trial programs.



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## **CUNA Supports the Concept of the Proposed Policy, but Maintains Concerns as to its Operational Feasibility for Credit Unions**

CUNA commends the Bureau for taking steps to improve federally-required disclosures to provide better consumer protection for consumers, and fully supports the Bureau's endeavor to seek new and innovative ideas and information from the marketplace in this regard.

Even though we support the concept and applaud the agency's creativity, we have some questions about the operational feasibility of the program for credit unions, especially in light of the participation requirements in the context of the current regulatory environment.

Given the recent volume of newly-finalized mortgage regulations issued by the Bureau, many credit unions are understandably overwhelmed by the implementation burdens that lie ahead. Over the coming months, these requirements will cause credit unions to necessarily divert valuable resources to the compliance efforts associated with these new rules, which may also leave fewer resources available to explore and pursue programs such as those under the proposed policy.

### **Eligibility**

Because the intent of the Bureau's proposed policy is to encourage banks, thrifts, credit unions and other financial services companies to innovate by proposing and conducting such trial disclosure programs, CUNA urges the Bureau to allow financial institutions such as credit unions to partner with major financial service provider vendors, such as compliance program vendors, in order to provide added resources and collaboration in participating in the Bureau's trial disclosure program. These partnerships will allow credit unions and other financial service providers to continue serving their members, while allowing for shared additional resources that could prove extremely beneficial in allowing institutions to fully participate in a trial disclosure program. Without the use of such partnerships, many credit unions will simply not have the resources to allow their full and active participation in any trial disclosure program under the Bureau's proposed policy.

Under the proposal, credit unions would be subject to ongoing costs and procedures which would need to be developed to comply with the proposal's various requirements. These include tracking specific metrics, implementing required system changes to produce and deliver the trial disclosures to consumers, and compiling, aggregating and reporting data relating to the effectiveness of the program as well as required testing. Even though the program is voluntary, with all of the proposed requirements, significant costs and burdens would be placed on participating institutions and we question whether smaller institutions will even have the resources to participate in such program.

Additionally, CUNA urges the agency to not develop programs that would favor certain classes of institutions over another. For example, regardless of whether the Bureau allows vendor participation along with credit unions as discussed above,

CUNA is hopeful that the Bureau will monitor the impact of this program to ensure that it does not produce a two-tier system that unduly advantages larger financial service providers that may have considerably more resources to devote to participating in the Bureau's trial disclosure program than smaller institutions do.

### **Factors to be Considered**

The Bureau indicates that in reviewing and approving applications, the agency "will also take into consideration the scope and nature of programs currently underway as well as the Bureau's currently available resources." The meaning and implication of this are unclear and CUNA urges the agency to explain what this statement means in the context of its approval process.

### **Waiver Procedures for Approved Programs**

It is unclear the extent to which the proposed policy regarding deemed compliance with applicable federal disclosure requirements would extend to an approved program. The Bureau notes that "...if the Bureau approves a waiver in connection with a trial disclosure program, the terms of its approval will specify certain legal rights granted to the recipient or recipients of the waiver. Those rights, however, are based on the approval notice, and not on the present policy guidance."

CUNA urges the agency to clarify to what extent the protections afforded under any such waiver will apply to the statutory liability provisions of any affected statute under which a waiver may be granted.

The CFPB should also clarify that protections under the waiver would also provide protection from other regulatory agencies and private rights of action seeking to enforce the affected statutes when a waiver is in place.

Unless the waiver and associated liability relief is clearly stated by the Bureau in the terms and conditions delineated for approved participants, the meaningfulness of the waiver will be limited and not be an incentive for participation. Credit unions are willing and ready participants with respect to providing meaningful input and creative ideas involving consumer financial products and services, and will be much more inclined to fully participate in programs where these uncertainties are eliminated by way of appropriate levels of detail and information on the front end of such programs.

### **Bureau Disclosure of Information Regarding Trial Programs**

Under the proposal, the Bureau will publish a notice on its Web site of any trial disclosure program that it approves for a waiver. While CUNA appreciates that the agency intends to inform the public of trial disclosure programs it has approved, CUNA would suggest that the Bureau consider allowing institutions contemplating participation in the trial disclosure program to know in advance of any pending proposals that the Bureau may not have yet approved. It would be most unfortunate for a financial institution to initiate, compile and submit all of the items required under

the eligibility section of the proposed Policy, only to find out later that the same or similar proposal was currently being considered by the Bureau.

### **Cost of Testing**

Given the proposed requirements, CUNA believes that institutions such as credit unions would be more inclined to participate in the program if the Bureau were to either share in the costs of any approved trial program, or allow credit unions to partner with vendors to share the costs of participating in the Bureau's program. The Bureau will receive benefits from an approved program because it can incorporate disclosures developed in the marketplace into the agency's commentaries. This will also benefit the entire financial services industry and hopefully would benefit consumers as well to the extent they receive more useful disclosures.

As previously discussed, the costs and resources associated with preparing for, participating in, and testing such trial disclosure programs can be extensive for credit unions, and we urge the Bureau to take this into account and respectfully consider our requests in this regard.

### **Information Collection**

CUNA urges the Bureau to consider allowing any information sought from an institution contemplating participation in the agency's trial disclosure program to be provided electronically. Electronic submission of documentation and associated information will mean lower costs for institutions choosing to participate in the program.

### **Conclusion**

CUNA again commends the agency for initiating the proposed policy and for considering allowing institutions to participate in developing trial disclosures which may improve the overall federally-required disclosures for consumers. In an age of over-regulation for many credit unions, which did not cause the financial crisis, CUNA welcomes programs such as those under the Bureau's policy, and we will continue working with our member credit unions to encourage them to take full advantage of such programs and other regulatory improvement initiatives that the Bureau may propose in the future.

We have raised some questions and concerns about the application of the program but we have also tried to suggest some practice solutions that we believe will improve the program.

Thank you for the opportunity to comment on the CFPB's proposed Policy to Encourage Trial Disclosure Programs ("Policy"), as well as the agency's proposed information collection associated with the same. If you have any questions concerning our letter, please feel free to contact CUNA's Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6732.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jared Ihrig", is positioned above the printed name.

Jared Ihrig  
Associate General Counsel