



January 4, 2013

CFPB: Proposed Policy to Encourage Trial Disclosure Programs & Information Collection

Executive Summary

The Consumer Financial Protection Bureau (CFPB or Bureau) has issued a proposed policy *(Policy) to encourage trial disclosure programs, as further explained in this Comment Call. In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Congress gave the Bureau authority to provide certain legal protections to companies to conduct trial disclosure programs.

Under the Policy, if the Bureau approves a specific trial, then, for the duration of an agreed testing period, the Bureau will deem the testing company's disclosure, to the extent it is used solely by the testing company under the terms and conditions approved by the Bureau, to be in compliance with, or hold it exempt from, applicable federal disclosure requirements.

The CFPB is seeking opportunities to enhance consumer protection by facilitating innovation in financial products and services and enabling companies to research informative, cost-effective disclosures. Additionally, the CFPB believes that in-market testing, involving companies and consumers in real world situations, may offer valuable information the Bureau can use to improve disclosure rules and model forms.

The Policy contains four sections:

- Section A describes which proposed programs will be considered eligible for a temporary waiver;
- Section B lists factors the Bureau may consider in deciding which eligible programs to approve for such a waiver;
- Section C describes the Bureau's procedures for issuing waivers; and
- Section D describes how the agency will disclose information about these programs.

Additionally, the Bureau is also seeking comments on the information to be submitted to the CFPB by any company that seeks CFPB approval of a proposed trial disclosure program under the Policy. The Policy lays out eligibility criteria for trial programs, which requires companies proposing such tests to provide certain information to the Bureau.

Detailed Summary

Under Section 1032 of Dodd-Frank, Congress gave the CFPB authority to develop rules to ensure that consumers receive accurate and effective disclosures, as well as model forms, to assist companies to comply with those rules. Specifically, subsection 1032(e) of Dodd-Frank gave the CFPB authority to approve trial disclosure programs. Further, in subsection 1021(b)(5) of Dodd-Frank, Congress gave the bureau a statutory objective to “facilitate access and innovation” in the “markets for consumer financial products and services, and empowered the Bureau to provide a legal safe harbor to companies testing revised disclosures. As such, the CFPB has proposed this policy on trial disclosure programs to encourage banks, thrifts, credit unions, and other financial services companies to innovate by proposing and conducting such programs.¹ The information generated by such programs may then help the Bureau to establish more effective disclosure rules and practices.²

Section A – Eligibility

Trial disclosure program proposals must be submitted in writing to the Bureau. To be considered eligible for a waiver, a proposal should:

1. Describe the disclosures that are to be tested;³
2. Describe how these changes are expected to improve upon existing disclosures, particularly with respect to consumer understanding and/or cost-effectiveness;⁴

¹ The Policy is not intended to nor should it be construed to: (1) restrict or limit in any way the CFPB’s discretion in exercising its authorities; (2) constitute an interpretation of law; or (3) create or confer upon any covered person (including one who is the subject of CFPB supervisory, investigation or enforcement activity) or consumer, any substantive or procedural rights or defenses that are enforceable in any manner. 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.

² The Policy should not be viewed as substituting for the normal process of rulemaking. In the event that information learned from trial disclosure programs triggers or otherwise informs follow-on rulemaking, the Bureau would follow the standard rulemaking process, which affords the public the opportunity of submitting comments on a proposed regulation.

³ So long as otherwise consistent with the minimum eligibility standards, new disclosures could include modifications to an existing model form, changed delivery mechanisms, wholesale replacement of a model form or existing disclosure requirements with new disclosure requirements or forms, and/or the elimination of select disclosure programs. All proposals should include a copy of the trial disclosures to be tested and a clear statement of how they would be provided to consumers.

3. Provide a reasonable explanation for expecting these improvements;
4. Provide metrics for testing whether such improvements are realized;
5. Identify the duration of the test and the size, location, and nature of the consumer population involved in the test, and explain why that duration and scope are reasonably necessary for sound testing;
6. Identify with particularity which current rules or enumerated consumer laws are to be temporarily waived in connection with the trial disclosure program;
7. Identify any third-party vendors to be used in connection with the proposed program and describe their proposed role;
8. Contain a commitment to sharing test result data⁵ with the Bureau;
9. Acknowledge that the Bureau may revoke any approved waiver if the program violates the terms and conditions under which the Bureau approves the program;
and
10. Explain how the company will address disclosure requirements for the test population at the conclusion of the test period.

Section B – Approval of Proposals for Waivers

To decide whether to approval a proposed program for a waiver,⁶ the CFPB may take into account a number of factors, including:

1. The extent to which the program may help the Bureau develop disclosure rules or policies that better enable consumers to understand the costs, benefits, and risks associated with consumer financial products or services;
2. The extent to which the program may help the Bureau develop rules or policies to correct or mitigate market failure;
3. The extent to which the program may help the Bureau develop more cost-effective disclosure rules or policies;
4. The extent to which the program controls for and mitigates risks to consumers;⁷
5. The strength of the company's compliance management system relative to the size, nature, and complexity of the company's consumer business;

⁴ The relevant existing disclosures are those made in accordance with disclosure rules issued either under the authority of Section 1032(a) of Dodd-Frank or to implement an enumerated consumer law.

⁵ The proposal should commit to sharing test result data with the Bureau at the end of the program. In addition, it should contain either (1) a commitment to sharing with the Bureau interim data on test results during the course of the program, or (2) an explanation for why such interim data cannot reasonably be provided.

⁶ The decision whether to approve a proposed program for a waiver will be within the Bureau's sole discretion. The Bureau will review reasonable requests to reconsider its position on programs for which it has not approved a waiver.

⁷ This includes the extent to which a proposal contains reasonable contingency plans for addressing unanticipated consumer harms that arise during the duration of the test.

6. How effectively and efficiently the program will test for potential improvements to consumer understanding and/or the cost-effectiveness of disclosures, and how narrowly the program is tailored to the testing objectives;
7. The extent to which existing data or other evidence indicate that the proposed changes will realize the intended improvements; and
8. The extent to which the company intends to permit public disclosure of test results.

In reviewing and approving applications, the CFPB will also take into consideration the scope and nature of programs currently underway as well as the Bureau's currently available resources.

Section C – Waiver Procedures for Approved Programs

When the Bureau approves a waiver, it will provide the company or companies that receive the waiver with the specific terms and conditions of its approval. If the CFPB determines not to approve a proposed trial program, it will inform the company of its determination. Waivers will require companies to certify, and document or otherwise demonstrate to the Bureau, their compliance with these approved terms and conditions. If a company does not follow the terms and conditions of the waiver, the CFPB may revoke the waiver in whole or in part.⁸

Waiver terms and conditions will be in writing in an integrated document entitled "1032(e) Trial Disclosure Waiver: Terms and Conditions." This document will be signed by the Director of the CFPB or by his or her designee, and by an officer of each company approved for a waiver in connection with the program. In addition, the document will:

1. List the company or companies that are receiving a waiver;
2. Specify the temporary duration of the waiver;
3. Specify the rules and statutory provisions that the Bureau will waive during the test period for the testing company or companies;
4. Describe and delineate the test population;
5. Specify the changed disclosure or disclosures to be used; and
6. List any other conditions on the effectiveness of the waiver, such as the terms of testing, data sharing, certification of compliance with the terms of the waiver, and/or public disclosure.

Section D – Bureau Disclosure of Information Regarding Trial Programs

⁸ If the Bureau revokes or partially revokes a waiver for failure to follow the waiver's terms, it will do so in writing and it will specify the reason or reasons for its action. The CFPB may offer an opportunity to correct any such failure before revoking a waiver.

The CFPB will publish notice on its website of any trial disclosure program that it approves for a waiver. The notice will (i) identify the company or companies conducting the trial disclosure program; (ii) summarize the changed disclosures to be used, their intended purpose, and the duration of their intended use; (iii) summarize the scope of the waiver and the CFPB's reasons for granting it; and (iv) state that the waiver only applies to the testing company in accordance with the approved terms of use.

Public disclosure of any other information regarding trial programs is governed by the CFPB's Interim Final Rule on Disclosure of Records and Information. To the extent the CFPB wishes to disclose information regarding trial programs, the terms of disclosure will be listed in the terms and conditions document, previously discussed in this Comment Call.

The proposed policy and proposed information collection can be accessed [here](#). **Please submit comments to CUNA by Friday, February 1, 2013.** Comments are due to the CFPB by February 15, 2013 and can be filed using <http://www.regulations.gov>. If commenting directly to the CFPB, commenters may also submit comments via email to CFPB_Public_PRA@cfpb.gov. Submissions should include the agency name, and the title "Policy to Encourage Trial Disclosure Programs; Information Collection."

For more information about CFPB rulemaking, contact CUNA Deputy General Counsel Mary Dunn at Mdunn@cuna.coop or Senior Assistant General Counsel Jared Ihrig at jihrig@cuna.coop.

REQUEST FOR COMMENTS:

1. The CFPB is seeking comments in general on the Policy and/or the related information collection aspect of the proposal. All comments will be included in the public record.

2. With respect to the information collection, the agency is seeking feedback on the following:
 - Whether the collection of information is necessary for the proper performance of the Bureau, including whether the information shall have practical utility;
 - The accuracy of the CFPB's estimate of the burden of the collection of information, including the validity of the methodology and the assumptions used;
 - Ways to enhance the quality, utility, and clarity of the information to be collected; and

- Ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.