



WASHINGTON, D.C.

99 M Street SE
Suite 300
Washington, D.C. 20003-3799

Phone: 202-638-5777

Fax: 202-638-7734

October 10, 2018

Mr. Paul Watkins, Assistant Director
Office of Innovation
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Policy to Encourage Trial Disclosure Programs; Docket No. CFPB–2018–0023

Dear Mr. Watkins:

The Credit Union National Association (CUNA) represents America’s credit unions and their 110 million members. On behalf of our members, we are writing regarding the Bureau of Consumer Financial Protection’s (Bureau or BCFP) proposal to revise its Policy to Encourage Trial Disclosure Programs (Policy or TDP Policy). CUNA generally supports the revised TDP policy and the Bureau’s larger focus on facilitating innovation in the consumer financial services space. However, in the interest of fairness, CUNA recommends any Bureau-approved trial disclosure programs (TDPs) be narrow in scope and not excessively deviate from traditional regulatory standards regarding disclosure.

Encouraging Innovation Generally

The Bureau has a statutory mission to “ensure that all consumers have access to markets for consumer financial products and services and that markets for consumers financial products and services are fair, transparent, and competitive.” As part of this mission, Acting Director Mick Mulvaney has taken several steps to revitalize the Bureau’s approach to innovation as a key policy priority. While the creation of the Office of Innovation and resulting revamp of the TDP policy are positive developments, CUNA recommends the Bureau refrain from an overzealous promotion of innovation that places traditional financial institutions at an unwarranted disadvantage.

Innovation through technology and other creative solutions have the potential to enhance many financial institutions’ ability to deliver financial services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature and relatively small size. Consumers could benefit from financial institutions being provided more opportunities, under the careful oversight of regulators, to pursue fresh approaches to traditional questions such as the delivery of financial services and information related to those services. For this reason, CUNA supports the

Bureau's plans to encourage innovation through mechanisms like TDPs so long as credit unions have equal access to such programs and any approved programs are limited in number and narrow in scope.

Revisions to 2013 Policy

Section 1032(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the BCFP to create legal protections for entities that engage in Bureau-approved trial disclosure programs. Although the current TDP Policy has been in place for over five years, the Bureau has not approved a single TDP in that time. The lack of interest from stakeholders in pursuing the approval of a TDP is reflective of the current policy's unattractiveness. To resolve this issue, the Bureau proposes to codify several substantive amendments related to streamlining the application process, providing certainty for timeframes involved in approving a TDP, and making the Bureau's liability statement more prominent in the policy. In total, CUNA believes the revised policy proposal goes a long way toward making changes that are likely to increase interest in pursuing a TDP approval.

Approval Timeframe

Under the proposed policy, the Bureau states its intention "to grant or deny a formal, complete application for a trial disclosure program within 60 days of submission." CUNA supports this timeframe as a reasonable amount of time for the Bureau to consider the TDP application. However, as the Bureau notes, situations could arise where the Bureau has rejected the TDP application but the applying entity would like the Bureau to reconsider its decision. While the policy states "reasonable requests" to reconsider would be permitted, CUNA recommends the policy provide a timeframe for appeals to be approved or denied by the Bureau. Given the initial approval timeframe, the Bureau should consider an appeal decision timeframe of 30 days from the date the entity files an appeal or submits any required supplementary documentation.

Opportunity to Respond Prior to Waiver Revocation

In its policy, the Bureau states that in cases where an entity is failing to abide by "the terms and conditions of the waiver, or if the Bureau determines that the disclosure is causing a material, adverse, impact on consumer understanding, the Bureau may revoke the waiver in whole or in part." Further, the policy provides assurances that the entity would be permitted an opportunity to respond to the potential waiver violation. CUNA supports this provision and recommends the Bureau permit the entity reasonable latitude to cure any potential violation prior to revocation. A credit union or group of credit unions with an approved TDP is likely to have invested a meaningful amount of resources into the program. The Bureau should make a reasonable effort to preserve the TDP to avoid subjecting the entities to a total loss as the result of a revoked waiver.

Renewal of Approved TDPs

After a TDP has been approved, the Bureau policy states the entities could request an extension so long as the request is submitted “no later than 150-days prior to the expiration of the waiver.” CUNA recommends the Bureau consider allowing the extension request to be filed up to 90-days prior to expiration. This would give entities sufficient time to decide whether to file an extension request for an approved TDP while remaining consistent with the initial waiver approval decision timeline (90-days from receipt of a completed application). The Bureau should also consider adopting an appeals process for denials of applications to renew a TDP waiver comparable to the appeal for initial application denials.

Group Applications

The TDP Policy proposal states that the Bureau intends to “consider applications that involve testing by more than one company.” This provision permits a trade association, vendor, or other business to apply on behalf of several members or entities to test disclosures. CUNA strongly supports the Bureau permitting group applications for a TDP and believes a group application system increases the likelihood that credit unions will be able to take advantage of the renewed TDP Policy. Credit unions often work with one another, vendors, and other entities, such as Credit Union Service Organizations (CUSOs), to pool resources and attain access to programs or services that a single credit union may not have the economy of scale to pursue as an individual. Permitting a group to apply for a TDP is essential to providing equal access for credit unions to pursue a waiver. The Bureau could also consider developing an additional option for the lead applicant of a potential group to obtain a conditional TDP approval under the condition the applicant secures several others to participate in the program prior to the waiver taking effect. Such a policy would allow a group applicant to shop a conditionally-approved TDP waiver to prospective financial institutions, such an option could help to encourage broader TDP participation.

Revoked Waivers

The policy envisions the possibility of a waiver being revoked due to non-compliance with the terms of the waiver or the waiver resulting in a “material, adverse impact on consumer understanding.” In the event of a revoked waiver, CUNA recommends the TDP Policy clearly state the Bureau’s expectations for a financial institution after revocation as well as when liability protections are null and void. The removal of liability protection could hinge on whether the violation or adverse impact was the result of a good faith but unsuccessful program or represented a purposeful misrepresentation of information. In cases of good faith but unsuccessful efforts, CUNA believes it would be reasonable for the liability protection to end at the point the revocation is effective as opposed to retroactively.

Liability Considerations

A substantial component of the current program's nonexistent participation is due to the lack of certainty surrounding protection from liability provided by an approved waiver. The proposal's amendment to more conspicuously state the Bureau's policy on protection from liability is an effective way to mitigate some concerns. However, there are still questions that should be answered in any finalized policy, including potential treatment of unfair, deceptive, or abusive acts or practices (UDAAP) as well as State laws. An entity that sought and obtained approval of a TDP should be provided strong protection from liability, so long as they abide by the approved waiver in good faith, including liability from violations of UDAAP. As drafted, the policy appears to provide protections from enforcement of the Bureau's rules and enumerated laws but may not provide protection from the Bureau's general authority. While the current approach may be the most protection the Bureau can reasonably guarantee, CUNA encourages the Bureau to make the protections for participating entities as clear and binding as possible to avoid policy swings based on changes to the Bureau's leadership and regulatory approach. In addition, CUNA recommends that the protection policy state how the BCFP intends to address State law considerations, including whether preemption may apply or if the Bureau intends to engage in state-by-state arrangements, such as memorandums of understanding (MOUs), related to liability.

Conclusion

On behalf of America's credit unions and their 110 million members, thank you for the opportunity to share our views regarding the Bureau's revised Policy to Encourage Trial Disclosure Programs. If you have questions or require additional information related to our feedback, please do not hesitate to contact me at (202) 508-3629 or amonterrubio@cuna.coop.

Sincerely,



Alexander Monterrubio
Senior Director of Advocacy & Counsel