



January 4, 2013

CFPB SEEKS COMMENT ON TRIAL DISCLOSURE POLICY

The Bureau of Consumer Financial Protection recently issued a request for comment on its proposed "Policy to Encourage Trial Disclosure Programs." In discussing the Policy, the Bureau states that it believes 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 believes that in-market testing, in particular, may yield valuable information that could improve disclosure rules and model forms. The Bureau intends to encourage banks, thrifts, credit unions and other financial services companies to innovate by proposing and conducting trial disclosure programs.

Section 1032(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act gives the Bureau the authority to approve trial disclosure programs to facilitate access and innovation in the markets for consumer financial products and services. To that end the Bureau may offer a legal "safe harbor" to those conducting approved trials. Thus, the Bureau will "deem" a company participating in an approved trial "to be in compliance with" or "exempt from" federal disclosure requirements for a specified testing period — what the Bureau refers to as a "waiver."

Eligibility - Trial disclosure program proposals must identify with particularity which current rules or enumerated consumer laws are to be temporarily waived in connection with the trial disclosure program. Section 1032(e)(2) gives the Bureau the authority to waive "a requirement of a rule or an enumerated consumer law," as the term is defined in the Dodd-Frank Act. The term "rule" includes rules implementing (i) an enumerated consumer law and (ii) the Consumer Financial Protection Act of 2010, including the Bureau's rules to prevent unfair, abusive, or deceptive acts or practices, or to enable full, accurate and effective disclosure.

Proposals also must describe how the changes are expected to improve upon existing disclosures, particularly with respect to consumer understanding and/or cost-effectiveness. In particular, Section 1032(e)(1) requires that trial disclosures be "designed to improve upon" existing disclosures. The Policy specifies that

intended improvements may go to consumer understanding of the relevant product or service and/or to the cost-effectiveness of disclosures.

Approval – Among factors the Bureau will consider in deciding which proposals to approve for a waiver are (i) the strength of the company's compliance management system relative to the size, nature, and complexity of the company's consumer business and (ii) the extent to which the company intends to permit public disclosure of test results.

Waiver - When the Bureau approves a waiver, it will provide to the company the specific terms and conditions of the approval. If a company does not follow the terms and conditions of the waiver, the waiver may be revoked.

Disclosure - The Bureau will publish notice on its website of any approved trials. The notice will (i) identify the company, (ii) summarize the changed disclosures, their intended purpose, and the trial duration, (iii) summarize the scope of and reasons for granting the waiver and (iv) state that the waiver only applies to the testing company on approved terms. Public disclosure of any other information will be governed by the Bureau's Interim final Rule on Disclosure of Records and Information.

Comments on the proposed Policy and/or the related information collection effected by the application process should be submitted by February 15, 2013. □

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