

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Policy to Encourage Trial Disclosure Programs; Information Collection

[Docket No. CFPB-2012-0046]

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed policy and proposed information collection; request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) invites the general public and other Federal agencies to take this opportunity to comment on its proposed Policy to Encourage Trial Disclosure Programs (Policy), which is intended to carry out the Bureau's authority under Section 1032(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), and also a proposed information collection associated with applications submitted by companies seeking Bureau approval to conduct trial disclosure programs under the proposed Policy as required by the Paperwork Reduction Act of 1995.

DATES: Written comments are encouraged and must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]** to be assured of consideration.

ADDRESSES: Submit comments on the proposed Policy by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions on this site for submitting comments.
- Mail/Hand Delivery/Courier: Monica Jackson, Office of the Executive Secretary,

Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Submit comments on the proposed information collection by any off the following methods:

- *Electronic:* CFPB_Public_PRA@cfpb.gov.
- *Mail/Hand Delivery/Courier:* Direct all written comments to Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street, NW, Washington, DC 20552.

Instructions: Submissions should include agency name and the title “Policy to Encourage Trial Disclosure Programs; Information Collection.” Comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435-7275. All comments, including any attachments and other supporting materials, will become part of the public record and subject to public disclosure. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. You should only submit information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: For additional information about the proposed information collection, contact the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street, NW, Washington, DC 20552, (202) 435-9011, or through the internet at CFPB_Public_PRA@cfpb.gov. For additional information about the proposed Policy, contact Will Wade-Gery, Research, Markets & Regulations Division, Bureau of Consumer Financial Protection, (202) 435-7700.

SUPPLEMENTARY INFORMATION: No waiver will issue under the Policy until the Office

of Management and Budget approves the proposed information collection and the Policy is finalized in light of comments received.

Title: Policy to Encourage Trial Disclosure Programs; Information Collection.

Office of Management and Budget (OMB) Control Number: 3170-XXXX.

Abstract: In subsection 1032(e) of the Dodd-Frank Act, 12 U.S.C. 5532(e), Congress gave the Bureau authority to provide certain legal protections to companies to conduct trial disclosure programs. This authority can be used to help further the Bureau's statutory objective, stated in subsection 1021(b)(5) of the Act, to "facilitate access and innovation" in the "markets for consumer financial products and services."

In line with this authority, the Bureau is proposing the Policy that is laid out in full in the next section of this Notice. Under the proposed 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 that 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 Bureau 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 recognizes 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 seeks comments on any aspect of this proposed Policy.

The Bureau is also seeking comments on the information to be submitted to the Bureau by any company that is seeking Bureau approval of a proposed trial disclosure program under the

proposed Policy. The proposed Policy lays out eligibility criteria for trial programs, which require companies proposing such tests to provide certain information to the Bureau. The Bureau invites the public to comment on all aspects of the proposed information collection that would be occasioned by these eligibility criteria.

Type of Information Collection Review: New collection.

Average Expected Annual Number of Information Collection Activities: 1.

Information Collection—Affected Public: Business or other for-profit or not-for-profit institutions.

Estimated Number of Respondents: 2-10.

Estimated Time Per Respondent: 10 hours.

Frequency of Response: 1.

Estimated Total Annual Burden Hours: 20-100.

Proposed Policy to Encourage Trial Disclosure Programs

The text of the proposed Policy is laid out in full below.

Consumers need timely and understandable information to make the financial decisions that they believe are best for themselves and their families. Much federal consumer protection law rests on the premise that accurate and effective disclosures are critical in helping Americans understand the costs, benefits, and risks of different consumer financial products and services. In Section 1032 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress gave the Consumer Financial Protection Bureau (Bureau) authority to develop rules to ensure that consumers receive such disclosures, as well as model forms to help

companies comply with those rules.¹

In subsection 1032(e) of the Dodd-Frank Act, Congress also gave the Bureau authority to approve “trial disclosure programs.”² This authority can be used to help further the Bureau’s statutory objective, stated in subsection 1021(b)(5) of the Dodd-Frank Act, to “facilitate access and innovation” in the “markets for consumer financial products and services.” In particular, Congress empowered the Bureau to provide a legal “safe harbor” to companies testing revised disclosures. For disclosure trials it approves, therefore, the Bureau will “deem” a participating company “to be in compliance with” or “exempt from” otherwise applicable federal disclosure requirements for a defined period.³ The Bureau believes that there may be significant opportunities to enhance consumer protection by facilitating innovation in financial products and services and by enabling responsible companies to research informative, cost-effective disclosures in test programs. We also recognize 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.

Accordingly, the Bureau is releasing its proposed Policy on trial disclosure programs.⁴ Our intent is for the Policy to encourage banks, thrifts, credit unions, and other financial services companies to innovate by proposing and conducting such programs.⁵ The information generated

¹ See 12 U.S.C. 5532(a)-(d).

² 12 U.S.C. 5532(e).

³ 12 U.S.C. 5532(e)(2). For convenience, this statutory authority to deem companies in compliance with or to exempt them from disclosure requirements – in each case for a limited period of time – is hereinafter referred to as the authority to issue “waivers” for approved programs.

⁴ The Bureau may permit a covered person or covered persons to conduct a trial disclosure program “subject to specified standards and procedures.” 12 U.S.C. 5532(e)(1).

⁵ The Policy is not intended to nor should it be construed to: (1) restrict or limit in any way the

by such programs may then help the Bureau to establish more effective disclosure rules and practices.⁶

The policy has 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 we will disclose information about these programs.

A. Eligibility

Trial disclosure program proposals should 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;⁷

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. Of course, 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.

⁶ 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.

⁷ 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 requirements. All proposals

2. Describe how these changes are expected to improve upon existing disclosures,⁸ particularly with respect to consumer understanding and/or cost-effectiveness;⁹
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;¹⁰
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 data¹¹ with the Bureau;

should include a copy of the trial disclosures to be tested and a clear statement of how they would be provided to consumers.

⁸ The relevant existing disclosures are those made in accordance with disclosure rules issued either under the authority of Section 1032(a) or to implement an enumerated consumer law. *See* 12 U.S.C. 5481(12).

⁹ Trial disclosures should be “designed to improve upon” existing disclosures. (12 U.S.C. 5532(e)(1).) Intended improvements may go to consumer understanding of the relevant product or service and/or to the cost-effectiveness of disclosures. The Bureau anticipates approving trial disclosure programs that are intended to improve both consumer understanding and cost-effectiveness.

¹⁰ Under subsection 1032(e)(2), the Bureau has authority to waive “a requirement of a rule or an enumerated consumer law,” as that term is defined in the Dodd-Frank Act. *See* 12 U.S.C. 5481(12). As used in subsection 1032(e)(2), the term “rule” includes: (i) rules implementing an enumerated consumer law; and (ii) rules implementing the Consumer Financial Protection Act of 2010, including rules promulgated by the Bureau under its authority to prevent unfair, abusive, or deceptive acts or practices, or to enable full, accurate and effective disclosure.

¹¹ 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

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.

B. Approval of Proposals for Waivers

To decide whether to approve a proposed program for a waiver,¹² the Bureau may take account of 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;¹³
5. The strength of the company's compliance management system relative to the

interim data on test results during the course of the program, or (2) an explanation for why such interim data cannot reasonably be provided.

¹² 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.

¹³ 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.

- size, nature, and complexity of the company's consumer business;
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
 9. The extent to which the company intends to permit public disclosure of test results.

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

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.¹⁴ 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 Bureau may revoke the waiver in whole or in part.¹⁵

Waiver terms and conditions will be in writing in an integrated document entitled

¹⁴ If the Bureau determines not to approve a proposed trial program, it will inform the company of its determination.

¹⁵ 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 Bureau may offer an opportunity to correct any such failure before revoking a waiver.

“1032(e) Trial Disclosure Waiver: Terms and Conditions.” This document will be signed by the Director of the Bureau 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.

D. Bureau Disclosure of Information Regarding Trial Programs

The Bureau 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 Bureau’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

Bureau's Interim Final Rule on Disclosure of Records and Information.¹⁶ For example, the rule requires the Bureau to make available records requested by the public unless they are subject to a FOIA exemption or exclusion.¹⁷ To the extent the Bureau wishes to disclose information regarding trial programs, the terms of such disclosure will be included in the 1032(e) Trial Disclosure Waiver: Terms and Conditions document. Consistent with applicable law and its own rules, the Bureau will not seek to disclose any test data that would conflict with consumers' privacy interests.

Request for Comments:

Comments are invited with respect to the proposed Policy and/or the related information collection effected by the application process for potential approval of a proposed trial disclosure program. All comments will become a matter of public record.

Comments related to the proposed information collection will be summarized and/or included in the request for OMB approval. With respect to the information collection, comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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

¹⁶ See 12 CFR 1070 *et seq.*

technology, e.g., permitting electronic submission of responses. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: December 10, 2012.

A handwritten signature in blue ink, appearing to read "Garry Reeder".

Garry Reeder,
Chief of Staff, Bureau of Consumer Financial Protection.

¹⁷ See 12 CRF 1070.14.