

October 10, 2018

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

Re: Opposition to Policy to Encourage Trial Disclosure Programs, Docket No. CFPB-2018-0023

Dear Assistant Director Watkins:

The undersigned consumer, civil rights, legal services, labor and community groups write in strong opposition to your proposed policy to encourage trial disclosure programs. As with some other proposals for fintech “sandboxes,” vague promises of the benefits of innovation and industry claims about the constraints or uncertainties of existing regulations do not justify special treatment or waiver of consumer protection rules for favored companies or industries. **The proposed policy is far outside the consumer bureau’s authority and would allow entire industries to ignore consumer protection requirements for an unlimited time period with no showing of consumer benefit and no public input.**

We have several specific objections to the proposal.

1. The proposal exceeds the consumer bureau’s authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The law only permits the Bureau to allow waivers for trials “to improve upon any model form,” no more. 12 U.S.C. § 5532(e). The proposed policy would permit legal waivers far beyond model forms, up to the complete elimination of disclosure or potentially other requirements.

2. The proposal allows legal waivers based only on industry cost savings, with no improvement in consumer understanding and even with potential consumer harm. The bureau’s previous program excluded any trial that would “weaken consumer understanding ... no matter the cost savings obtained.” The current proposal allows waivers “within the Bureau’s sole discretion” and permits an improvement in “cost effectiveness” alone. Although applicants would have to identify risks to consumers, the bureau is not required to evaluate those risks independently, to ensure that the disclosures enable “consumers to understand the costs, benefits, and risks,” 12 U.S.C. § 5532(a), or to determine that improvements to consumers justify any potential risk.

3. There is no requirement for data collection during the program or oversight. The bureau is relying on the companies (potentially thousands, with no direct agreement with the bureau) to notify the bureau of material changes that should be investigated. There is no requirement for consumer testing, ongoing CFPB monitoring, or any evaluation or reporting.

4. The trials would not be narrowly limited but could apply industry-wide. The law permits trials by “a covered person.” The CFPB’s previous policy required companies to apply by name and to sign an agreement to abide by the trial requirements. The proposed policy allows petitions by trade associations on behalf of thousands of members for thousands of potential products. Thus, the program could allow entire industries to violate the express provisions of consumer protection laws without narrowly tailored guardrails.

5. The proposal allows for “trials” with no end in sight. The law requires trials “limited in time and scope.” The proposal allows an initial 2-year trial period, which may be extended for at least another 2 years, and then even further pending an “endeavor” to amend disclosure rules that could go on for years and years. For example, the CFPB began a rulemaking on prepaid card disclosures in 2012 and those disclosures will not take effect for seven years, until 2019. A “trial” could easily last a decade or longer.

6. The proposal provides no opportunity for public comment. Far-reaching changes could be adopted without any public input whatsoever, and without a clear view of all of the ramifications of proposed waivers.

7. The proposal might allow deviation from federal laws based on a state’s decision regarding state laws. A vague provision of the policy permits applications from states that have approved a sandbox instead of from companies themselves. While the policy claims to be limited to the parameters of the state sandbox, states have no authority to alter federal disclosure requirements and the CFPB should never provide a waiver of federal law based on states’ decisions regarding their own regulatory rules.

8. The proposal potentially allows broad changes to regulations without complying with the Administrative Procedures Act. Far-reaching, indefinite changes could be made without following APA, Dodd-Frank and other rulemaking requirements including notice and comment, analysis of the bureau’s legal authority, small business analysis, or cost and benefit evaluations.

It is easy to become mesmerized by the claim of “innovation.” But federal consumer protection laws, including disclosures, exist for strong reasons. It is important to revisit and update disclosure laws when appropriate, but that process should be undertaken in full public view, subject to notice and comment, with consumer impacts fully analyzed and changes applicable to all relevant parties. The Dodd-Frank authority permits only narrowly defined and limited pilots of model disclosure forms by an individual company. The current proposal is completely outside the CFPB’s authority. Any waivers that go beyond limited trials of model forms would be unlawful and would not give companies permission to avoid complying with the law.

Thank you for the opportunity to submit these comments.

Yours very truly,

Allied Progress
Americans for Financial Reform
Arizona Community Action Association
Arkansans Against Abusive Payday Lending
Atlanta Legal Aid Society, Inc.
California Reinvestment Coalition
Center for Economic Integrity
Center for Responsible Lending
Change to Win
Consumer Action
Consumer Advocacy & Protection Society (CAPS)
Consumer Federation of America

Delaware Community Reinvestment Action Council, Inc.
Demos
Florida Alliance for Consumer Protection
Florida Consumer Action Network
Georgia Watch
Heartland Alliance
Illinois People's Action
Kentucky Equal Justice Center
Maryland Consumer Rights Coalition
Montana Organizing Project
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Fair Housing Alliance
Navigator Collaborative
New Economy Project
North Carolina Justice Center
People's Action Institute
Public Citizen
Public Good Law Center
Public Justice Center
Public Law Center
Reinvestment Partners
South Carolina Christian Action Council
St. Vincent de Paul
Texas Appleseed
The Leadership Conference on Civil and Human Rights
Tzedek DC
U.S. PIRG
UnidosUS
Virginia Citizens Consumer Council
Virginia Poverty Law Center
West Virginia Center on Budget and Policy
Wisconsin Public Interest Research Group (WISPIRG)
Woodstock Institute