



BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB-2018-0023]

Policy to Encourage Trial Disclosure Programs

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed policy guidance; request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) invites the public to take this opportunity to comment on its proposal to create a Disclosure Sandbox through its revised Policy to Encourage Trial Disclosure Programs (Policy or TDP 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).

DATES: Written comments are encouraged and must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by Docket No. [CFPB-2018-0023], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. [CFPB-2018-0023] in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, 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 the documents by telephoning (202) 435-7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For additional information about the revised Policy, contact Paul Watkins, Assistant Director, Office of Innovation at officeofinnovation@cfpb.gov or 202-435-7000. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In subsection 1032(e) of the Dodd-Frank Act, Congress gave the Bureau authority to provide certain legal protections to companies to conduct trial disclosure programs.¹ This authority furthers the Bureau's statutory purpose, stated in subsection 1021(a) of the Act, to ensure that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and

¹ 12 U.S.C. 5532(e).

competitive.² Furthermore, this authority advances the Bureau's statutory objectives in subsection 1021(b) of the Act to ensure consumers are provided with timely and understandable information to make responsible decisions about financial transactions; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.³

More specifically, under section 1032(e), the Bureau may permit companies to conduct trial disclosure programs, limited in time and scope, to improve upon existing disclosures.⁴ Such permission may include providing a legal safe harbor; *i.e.*, the Bureau may deem a company conducting such a program to be in compliance with, or exempt from, a requirement of a rule or enumerated consumer law.⁵ Such trial disclosure programs must be subject to standards and procedures that are designed to encourage companies to conduct such programs.⁶ Similarly, although Bureau rules must provide for public disclosure of such programs, such public disclosure may be limited to the extent necessary to encourage covered persons to conduct effective trials.⁷

Pursuant to the purposes, objectives, and authority listed above, the Bureau proposed its Policy to Encourage Trial Disclosure Programs in December 2012, and finalized the Policy in September 2013. However, the Policy failed to effectively encourage trial disclosure programs: The Bureau did not permit a single such program in the nearly five years since the Policy was issued.

² 12 U.S.C. 5511(a).

³ 12 U.S.C. 5511(b)(1), (b)(3), (b)(5).

⁴ 12 U.S.C. 5532(e)(1).

⁵ 12 U.S.C. 5532(e)(2).

⁶ 12 U.S.C. 5532(e)(1), (2).

⁷ 12 U.S.C. 5532(e)(3).

II. Summary of the Proposed Revised Policy

In line with the above authority, the Bureau is proposing to revise the Policy in order to more effectively encourage companies to conduct trial disclosure programs. The proposed revisions have the following goals: (1) Reducing the application burden and review time frame; (2) increasing guidance regarding the testing time frame; (3) specifying procedures for extensions of successful trial disclosure programs; and (4) providing for coordination with existing or future programs offered by other regulators designed to facilitate innovation.

More specifically, the Bureau is proposing to streamline the application process by eliminating several elements it determined were redundant or otherwise unnecessary. The list of factors the Bureau intends to consider when reviewing applications has been substantially reduced for similar reasons. As a result, the Bureau's proposed review will now focus on the quality and persuasiveness of the application, especially the extent to which the trial disclosures are likely to be an improvement over existing disclosures, and the extent to which the testing program mitigates risks to consumers. Accordingly, under the proposed Policy, the Bureau intends to grant or deny a formal, complete application for a trial disclosure waiver within 60 days of submission. In addition, the proposed Policy reiterates that the Bureau may grant waivers for disclosures that improve upon existing requirements based upon cost-effectiveness, delivery mechanism, or consumer understanding.

As under the current Policy, during the testing period, the Bureau proposes to deem a testing company's trial disclosure, to the extent that it is used in accordance with the terms and conditions permitted by the Bureau, to be in compliance with, or exempted from, applicable

Federal disclosure requirements.⁸ To facilitate the Bureau’s awareness of the effects of trial disclosures on consumers, the proposed Policy clarifies that the Bureau intends to require recipients of such a waiver to notify the Bureau of material changes in complaint patterns or other information that should be investigated by the Bureau to determine if the trial disclosures may be causing a material, adverse, impact on consumer understanding.

The proposed Policy informs potential applicants of the Bureau’s expectation that a two-year testing period will be appropriate in most cases. It also adds a new section on the important subject of extensions of waivers for successful trial disclosure programs. The new section specifies the procedures for requesting such an extension and clarifies the Bureau’s intention to grant such requests where there is evidence that the trial disclosures have tested successfully. To the extent that testers are able to show that trial disclosures succeed in improving upon existing requirements, the Bureau will endeavor to amend disclosure rules accordingly and to permit the use of validated trial disclosures until such amendment is effective.

The proposed Policy also adds a new section regarding Bureau coordination with other regulators that offer similar programs designed to facilitate consumer-beneficial innovation. This new section provides that the Bureau intends to coordinate operation of the TDP Policy – the Bureau’s Disclosure Sandbox – with similar programs offered by State, Federal, or international regulators. It provides that the Bureau is interested in entering into agreements with other regulators where testing companies could be permitted to conduct a trial program pursuant

⁸ 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 permitted programs, irrespective of whether this authority is effectuated through granting a waiver directly to a testing company under Sections A, B and C or indirectly through an agreement with another regulator under Section E.

to the Bureau's agreement with the regulator on specified procedures, rather than through the application and approval process described in Sections A and B.

Finally, the proposed Policy clarifies that applications may be submitted by a group, such as a trade association, on behalf of its members, and may propose a scaled or iterative approach to testing.⁹

The Bureau believes significant opportunities exist 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 for improving disclosure rules and model forms.

The Bureau invites public comment on any aspect of the revised Policy. The Bureau will publish a final revised Policy after considering comments received. The Bureau will not accept formal applications until the comment period has closed and the Bureau has adopted a final revised Policy. However, the Bureau welcomes informal inquiries during the comment period.

III. Regulatory Requirements

The Bureau has concluded that, if finalized, this Policy Guidance would constitute an agency general statement of policy and/or a rule of agency organization, procedure, or practice exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(b). Notwithstanding this conclusion, the Bureau invites public comment on the proposed Policy. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.¹⁰

⁹ The Bureau has also made a number of technical changes to the Policy to accommodate the above-described substantive revisions and to increase clarity.

¹⁰ 5 U.S.C. 603(a), 604(a).

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. According to the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays currently a valid control number assigned by OMB. The information requested in Section A of this Policy has been previously approved by OMB and assigned OMB control number 3170-0039. It expires on 07/31/2019. You may access documentation for this OMB number on www.reginfo.gov by selecting “Information Collection Review” from the main menu, clicking on “Search,” and then entering the OMB control number.

The time required to complete this information collection is estimated to average between 2 and 10 hours per response, including the time for reviewing any instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection of information is required to obtain a benefit to the extent that the information is to establish eligibility for a temporary waiver, as described in this Policy.

The Bureau has determined that the revisions to this Policy do not introduce any new or substantively or materially revised collections of information beyond what has been previously approved by OMB. The Bureau has an interest in the public’s opinions regarding this determination as well as the public’s comments regarding the estimated response time, suggestions for improving the usefulness of the information, or suggestions for reducing the burden to respond to this information collection. Comments regarding PRA aspects of this

revised Policy may be submitted to the Bureau as outlined above in the “ADDRESSES” section of this document.

IV. Revised Policy to Encourage Trial Disclosure Programs

The text of the proposed Policy is as follows.

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, therefore, rests on the assumption that accurate and effective disclosures will help Americans understand the costs, benefits, and risks of 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 Bureau of Consumer Financial Protection (Bureau) authority to prescribe rules to ensure that consumers receive such disclosures, and to include in such rules model forms to facilitate compliance.¹¹ Furthermore, in subsection 1032(e) of the Dodd-Frank Act, Congress gave the Bureau authority to provide certain legal protections to companies to conduct trial disclosure programs.¹² This authority furthers the Bureau’s statutory purpose, stated in subsection 1021(a) of the Act, to ensure that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent and competitive.¹³ Furthermore, this authority advances the Bureau’s statutory objectives in subsection 1021(b) of the Act to ensure consumers are provided with timely and understandable information to make responsible decisions about financial transactions; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; and markets for

¹¹ 12 U.S.C. 5532(a)-(d). For purposes of the TDP Policy, disclosures encompass all notifications, including notifications of any adverse action.

¹² 12 U.S.C. 5532(e).

¹³ 12 U.S.C. 5511(a).

consumer financial products and services operate transparently and efficiently to facilitate access and innovation.¹⁴

More specifically, under section 1032(e), the Bureau may permit companies to conduct trial disclosure programs, limited in time and scope, to improve upon existing disclosures.¹⁵ Such permission may include providing a legal safe harbor; *i.e.*, the Bureau may deem a company conducting such a program to be in compliance with, or exempt from, a requirement of a rule or enumerated consumer law.¹⁶ Such trial disclosure programs must be subject to standards and procedures that are designed to encourage companies to conduct such programs.¹⁷ Similarly, although Bureau rules must provide for public disclosure of such programs, such public disclosure may be limited to the extent necessary to encourage covered persons to conduct effective trials.¹⁸

For permitted trial disclosure programs, therefore, the Bureau will, for a defined period, deem a participating company to be in compliance with, or exempt from, identified Federal disclosure requirements.¹⁹ As a result of this determination by the Bureau, no basis exists under those provisions for a private suit based on the company's use of the trial disclosure. The same is true with respect to other Federal and State regulators even if they have enforcement or supervisory authority as to the enumerated consumer laws for which the Bureau has rulemaking authority. There can be no predicate for an enforcement or supervisory action by such a regulator that is based on a statutory or regulatory provisions waived by the Bureau.

¹⁴ 12 U.S.C. 5511(b)(1), (b)(3), (b)(5).

¹⁵ 12 U.S.C. 5532(e)(1).

¹⁶ 12 U.S.C. 5532(e)(2).

¹⁷ 12 U.S.C. 5532(e)(1), (2).

¹⁸ 12 U.S.C. 5532(e)(3).

¹⁹ 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 permitted programs, irrespective of whether this authority is effectuated through granting a waiver to a testing company under Sections A, B and C or pursuant to an agreement with another regulator under Section E.

The Bureau also encourages applicants to confer with other Federal and State government officials where a proposed trial disclosure implicates requirements administered by such authorities. Applications that involve the Bureau coordinating with other such officials should identify the other authorities applicants have contacted with respect to the proposal.

The Bureau believes that there may be significant opportunities to enhance consumer protection by facilitating innovation in financial products and services through enabling responsible companies to research informative, cost-effective disclosures in test programs. 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 Policy implements the statutory requirement to issue standards and procedures for trial disclosure programs and is designed to encourage financial services companies to innovate by proposing and conducting such programs, consistent with the protections for consumers described in the Policy.²⁰

The Policy consists of six sections:

- Section A describes information that should be included in an application for a trial disclosure program waiver;

²⁰ 12 U.S.C. 5532(e). As specified in section C of the Policy, if the Bureau permits a trial disclosure program, the terms of its permission will specify certain legal rights granted to the recipient or recipients of the waiver with respect to that program. Those rights, however, are based on the terms of permission, and not on the Policy. The Policy is not intended to nor should it be construed to: (1) Restrict or limit in any way the Bureau'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 Bureau supervisory, investigation, or enforcement activity) or consumer, any substantive or procedural rights or defenses that are enforceable in any manner. Nor should the Policy 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.

- Section B lists factors the Bureau may consider in deciding whether to grant an application for a waiver and specifies the expected time frame for the Bureau’s review of formal, complete applications;
- Section C describes the Bureau’s procedures for issuing waivers;
- Section D describes the Bureau’s procedures for issuing extensions of waivers;
- Section E describes how the Bureau will coordinate with other regulators with respect to the Policy; and
- Section F describes disclosure of information relating to permitted trial disclosure program.

A. Submitting Applications for Trial Disclosure Program Waivers

Applications for a waiver should:

1. Identify the testing company or group of companies;²¹
2. Describe the new disclosures or delivery mechanisms that are to be tested;²² and how these changes are expected to improve upon existing disclosures or delivery mechanisms with respect to cost effectiveness, increased consumer understanding, or otherwise;

²¹ The Bureau intends to consider applications that involve testing by more than one company. A trade association or other group may apply on behalf of its members to test a certain disclosure. If a disclosure is permitted for a group, each testing company must notify the Bureau that the company will utilize the disclosure under the terms permitted for the group. Either the group must commit to providing testing data to the Bureau for all permitted companies broken down by individual company or each individual company must commit to providing data to the Bureau.

²² An application could include the elimination of disclosure requirements, modifications to an existing model form or other disclosures, changed delivery mechanisms, or replacement of a model form or existing disclosure requirements with new disclosures or forms. Applications should include a copy of the trial disclosures to be tested, a description of what they would replace, and a clear statement of how they would be provided to consumers. When applications consist of revised disclosure content—as opposed to revisions to delivery mechanisms—that content should be in plain language, reflect a clear format and design, and be succinct. If an application is for iterative testing, it should specify the initial disclosure and a description of the range or type of modifications intended for iterative testing.

3. Provide a reasonable basis for expecting and measuring these improvements, such as comparisons with existing costs, or consumer payment/response rates for the company or the relevant industry;
4. Identify the requested duration of the test,²³ and the size, location, and nature of the consumer population involved in the test, and explain why those parameters were selected, including whether the population will be scaled or modified over the duration of the test;²⁴
5. Identify any risks to consumers that may be associated with the proposed program, describe how the program intends to mitigate such risks, and explain the procedures that will be used to assess for potential risks to consumers during the course of the test;
6. Identify the statutory and regulatory requirements²⁵ to be temporarily waived in connection with the trial disclosure program;²⁶
7. Contain a commitment to and schedule for sharing test result data with the Bureau after the conclusion of the program, as well as indicating any test result data to be shared during the program; and

²³ The Bureau expects that a two-year testing period will be appropriate in most cases.

²⁴ If the applicant wishes the Bureau to coordinate with other regulators, the applicant should identify any governmental authorities that have allowed or been contacted about the trial disclosure in question.

²⁵ Applicants should describe the scope of the requested waiver with as much specificity as practicable, in part to enable the Bureau to respond expeditiously to the application. The Bureau recognizes that in some cases it may be difficult to determine precisely which regulatory requirements would apply, in the normal course, to a proposed test disclosure. In other cases, the applicant may lack the legal resources to make a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

²⁶ 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. 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.

8. Explain how the testing company or companies will address disclosure requirements for the test population at the conclusion of the test period.

All applications should be submitted via email to: *officeofinnovation@cfpb.gov*.

Submitted applications may be withdrawn at any time. Potential applicants are encouraged to contact the Office of Innovation for informal preliminary discussion of a contemplated proposal prior to submitting a formal, complete application.²⁷

B. Bureau Assessment of Applications for Trial Disclosure Program Waivers

To decide whether to permit a proposed trial disclosure program,²⁸ the Bureau will consider the quality and persuasiveness of the application, with a particular emphasis on items covered in subsections A.2 and A.5.

The Bureau intends to grant or deny formal, complete applications within 60 days of submission.

C. Waiver Procedures for Permitted Trial Disclosure Programs

When the Bureau grants a waiver, it intends to provide the company or companies that receive the waiver with the specific terms and conditions of its permission.²⁹ If a company does not follow 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.³⁰ To facilitate such a determination, the Bureau intends to require

²⁷ The email subject line should begin “Trial Disclosure Program.”

²⁸ The decision whether to permit a trial disclosure program will be within the Bureau’s sole discretion. The Bureau will review reasonable requests to reconsider its denial of a trial disclosure program.

²⁹ If the Bureau determines not to permit a proposed trial disclosure program, it will inform the company of its determination.

³⁰ Before issuing a revocation, the Bureau will notify the affected company (or companies) of the grounds for revocation, and permit an opportunity to respond. If the Bureau nonetheless determines that the company failed to follow the terms of the waiver, it may offer an opportunity to correct any such failure before revoking the waiver. If

companies to notify the Bureau of material changes in customer service inquiries, complaint patterns, default rates, or other information that should be investigated by the Bureau to determine if the trial disclosures may be causing a material, adverse, impact on consumer understanding.

The Bureau expects that waiver terms and conditions will be specified in writing in an integrated document entitled “1032(e) Trial Disclosure Waiver: Terms and Conditions.” The document will be signed by the Assistant Director of the Office of Innovation or other member of the Office of Innovation to whom the Director of the Bureau delegates such signature authority.

In addition, the Bureau expects the document will:

1. Identify the company or group of companies that are receiving a waiver;
2. Specify the new disclosure(s) or delivery methods to be used by the company or companies under the terms of the waiver;
3. Specify the scope of the waiver provided by the Bureau during the test period for the testing company or companies;³¹
4. Specify the duration of the waiver;
5. Describe the test population(s);
6. State that, in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the company or companies under its authority to prevent unfair, abusive, or deceptive acts or practices

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.

³¹ The waiver may be as limited as a specific provision or as broad as all requirements applicable to a particular disclosure, including specifically identified provisions.

predicated upon its or their use of the trial disclosures during the waiver period, provided the company engages in good faith, substantial, compliance with the terms of the waiver; and

7. Specify 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.³²

D. Procedures for Extension of Trial Disclosure Program Waivers

Waiver recipients may reapply by resubmitting the entirety of the information required under Section A. As an alternative, waiver recipients may request an extension for a specified period of time based upon the quality and persuasiveness of the test result data required to be provided to the Bureau under subsection A.7. The Bureau expects to place particular weight upon whether the data supports the objectives identified in the application under subsections A.2 and A.5 to improve upon existing disclosures, without causing a material, adverse, impact on consumer understanding. Such requests for an extension should include the duration of the requested extension and should be submitted no later than 150-days prior to the expiration of the waiver.³³

Upon the presentation of persuasive test result data, the Bureau anticipates permitting such extension requests for a period at least as long as the period of the original waiver. The Bureau anticipates permitting longer extensions where the Bureau is considering amending

³² The procedures specified in section C may be modified pursuant to coordination efforts with other regulators. *See* section E below.

³³ Assuming the two-year testing period the Bureau expects to be appropriate in most cases, the Bureau believes the testing company(s) would have sufficient time to gather evidence supportive of an extension request.

disclosure requirements in a manner consistent with the trial disclosures in question.³⁴ During the time period pending a rule amendment, the Bureau intends to consider means of making the improved disclosure available to other covered entities.

E. Regulatory Coordination

Subsection 1015 of the Dodd-Frank Act instructs the Bureau to coordinate with . . . Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.³⁵ Similarly, subsection 1042(c) of the Act instructs the Bureau to provide guidance in order to further coordinate actions with the State attorneys general and other regulators.³⁶ The Bureau’s direction to coordinate includes coordinating circumstances where States have chosen to limit their enforcement or other regulatory authority. One method of limiting such authority is through a State sandbox, or group of State sandboxes, or other limited scope State authorization program (“State sandbox”).³⁷ The Bureau is interested in entering into agreements with State authorities designed to improve upon existing disclosure requirements³⁸ by allowing covered persons to test disclosures within the state sandbox. Specifically, the Bureau expects that, in specified circumstances, such entities could receive permission to conduct a trial disclosure program pursuant to the Bureau’s agreement with the State authority, rather than through the process described in Sections A, B,

³⁴ Rule amendments that follow successful trial disclosure tests could continue to permit all existing disclosure practices—allowing an additional and alternative method of compliance, rather than replacing existing requirements with new ones. If the period of an extension were tied to the Bureau’s consideration of amending relevant disclosure requirements and the Bureau announced it was discontinuing its plans to amend the disclosure rules in question, such a waiver would be revised to be for a period of a fixed length or revoked after reasonable notice to the testing company(s).

³⁵ 12 U.S.C. 5495.

³⁶ 12 U.S.C. 5552(c).

³⁷ The concept of a regulatory sandbox is relatively new and does not have a precise, generally accepted definition. The term is used in this Policy to refer to a regulatory structure where a participant obtains limited or temporary access to a market in exchange for reduced regulatory barriers to entry or reduced regulatory uncertainty.

³⁸ See note 26.

and C. The Bureau is interested in negotiating agreements that include the following features. First, the State sandbox must contain safeguards that protect consumers from deception. Second, the State sandbox must be limited in time or scope. Third, the State sandbox entity must agree to provide the Bureau with data to assist the Bureau in assessing whether the disclosure (or disclosures) used within the scope of the state sandbox improves upon existing disclosures based upon cost effectiveness, consumer understanding, or otherwise. Alternatively, the State authority may agree to periodically provide the Bureau with such data regarding the disclosures used by participants in the State sandbox.

Under this Section, a State sandbox entity's authorization under the TDP Policy will be limited to the parameters of the State sandbox. If the entity seeks wider authorization under the TDP Policy, it must submit an application following the standard permission process detailed in Sections A, B, and C. Successful results from disclosures used within a State or other jurisdiction will be highly persuasive in supporting such an application under the TDP Policy.

Furthermore, the Bureau wishes to coordinate with other regulators. To this end, the Bureau intends to enter into agreements whenever practicable to coordinate permission to conduct trial programs with similar programs operated by State, Federal, or international regulators.

F. Bureau Disclosure of Information Regarding Trial Disclosure Programs

The Bureau intends to publish notice on its website of any trial disclosure program permitted under Section C or D.³⁹ The notice will: (i) Identify the company or companies conducting the trial disclosure program; (ii) summarize the new disclosures to be used and the

³⁹ The Bureau will at minimum publish the names of companies conducting trial disclosure programs pursuant to Section E, but reserves the discretion to negotiate any additional disclosure terms with the corresponding regulator.

duration of their intended use; and (iii) state that the waiver applies only to the testing company or companies in accordance with the permitted terms of use.

Public disclosure of any other information regarding trial disclosure programs is governed by the Bureau's Rule on Disclosure of Records and Information.⁴⁰ 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. To the extent the Bureau wishes to disclose information regarding trial disclosure 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.

Dated: August 30, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

⁴⁰ See 12 CFR 1070 *et seq.*

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