



The CFPB's Trial Disclosure Policy:

An Opportunity for Innovative Providers of Consumer Financial Products and Services to Bring Disclosures into the Twenty-first Century

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Do you represent twenty-first century clients that offer consumer financial products or services? Perhaps their offerings are available online and via mobile. Or perhaps your clients have been around for decades and prefer traditional modes of conducting business but have begun to realize that they may need a makeover to be appealing to the Millennials. Maybe they would like to be more agile, but have found that the disclosure requirements of various laws and regulations (e.g., Truth in Lending Act/Regulation Z, Electronic Funds Transfer Act/Regulation E, Gramm-Leach-Bliley Act/Regulation P) hamper their style and the delivery of their message. As their attorney, what are your options? In the past, you might have focused on counseling your clients on how to use the model forms found in those regulations for required disclosures. Now you have a new option — advising and assisting them with the development of trial disclosures that comport with the Consumer Financial Protection Bureau's ("CFPB") newly finalized [Policy to Encourage Trial Disclosure Programs](#) ("Policy").²

Release of the Trial Disclosure Policy

In early October 2013, amid the shutdown of the federal government, the CFPB released its finalized [new trial disclosure policy](#). The Policy was subsequently published in the *Federal Register* and became effective on October 29, 2013.³

Purpose of the Policy

The Policy is intended to "facilitate access and innovation" in the "markets for consumer financial products and services." The Policy recognizes that innovative companies are a rich resource that may be well-positioned to improve upon current regulatory requirements by developing disclosures that more accurately and effectively help consumers understand the costs, benefits, and risks of various consumer financial products and services.

Provision of a Safe Harbor or Waiver

The Policy provides companies with a safe harbor or "waiver" to test new disclosures on a trial basis. If a company's proposed disclosures are approved by the CFPB, during the testing period the company will be deemed to be in compliance with or exempt from the relevant federal disclosure requirements. The Policy addresses steps the agency

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² Bureau of Consumer Financial Protection, Notice of Policy, Policy to Encourage Trial Disclosure Programs; Information Collection, 78 Fed. Reg. 64389 (Oct. 29 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-10-29/pdf/2013-25580.pdf>.

³ Alex Plunkett, *Disclosures: A New Avenue for Improvement* (Oct. 3, 2013), available at www.consumerfinance.gov/blog/category/project-catalyst/.

will take, including conferring with other federal and state regulators, to help shield companies participating in the trial disclosure programs from private litigation and enforcement actions by other regulators.

Legal Basis for the Policy

Section 1032(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) provides the CFPB with authority to permit trial programs intended to improve upon existing disclosure requirements.

Improved Disclosure Proposals

Proposals may include: (1) innovative disclosures (e.g., disclosure content, format); and/or (2) innovative ways of delivering disclosures (e.g., means of disclosure delivery). Such proposals may pertain to any consumer financial product or service regulated by the CFPB. These proposals may be submitted by individual companies or groups of entities working together. Only those companies specifically approved by the CFPB, however, will be permitted to test the disclosures in lieu of complying with existing requirements.

Applying

Proposals may be submitted via email to the CFPB for its approval. The sample submission application provided by the CFPB is included below:

To: ProjectCatalyst@cfpb.gov
Subject: Disclosure trial application

Dear Project Catalyst Team,

[Insert clear description of the waiver request, the innovative disclosure, the potential consumer benefit, the testing structure, the evaluation methods, potential risks for consumer harm, and mitigation strategies for potential consumer harm]

Thanks,
[Your name]
[Your organization]
[Your contact information]

The Big Picture: Insights into the CFPB

The Policy provides us with insight into how the CFPB intends to regulate as a twenty-first century agency. The CFPB has already shown an inclination to promote innovation in the marketplace through the launch of its [Project Catalyst](#),⁴ the agency’s initiative to support innovation in the creation of [consumer-friendly financial products and services](#).⁵ This Policy is a core part of that initiative. The CFPB intends to use data from the trial disclosure programs to determine whether proposed innovations improve upon existing requirements. Such data may inform future disclosure rulemaking of the CFPB.

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⁴ <http://www.consumerfinance.gov/projectcatalyst/>.

⁵ Will Wade-Gery, *An Update on Trial Disclosures* (June 19, 2013), available at www.consumerfinance.gov/blog/category/project-catalyst/.