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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2012–0046]

Policy To Encourage Trial Disclosure Programs; Information Collection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of policy.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing its Policy to Encourage Trial Disclosure Programs (Policy), which is intended to carry out the Bureau's authority under of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).

DATES: The Policy is effective on October 29, 2013.

FOR FURTHER INFORMATION CONTACT: For additional information about the Policy, contact Will Wade-Gery, Division of Research, Markets and Regulations, Consumer Financial Protection Bureau, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Overview

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 publishing the Policy that is laid out in full in the final section of this Notice. Under its terms, if the Bureau approves a specific trial, then, for the duration of an agreed testing period, the Bureau will deem a testing company's disclosure, to the extent that it is used in accordance with 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.

II. Overview of Public Comments

On December 17, 2012, the Bureau published a notice inviting the general public and other Federal agencies to comment on any aspect of its proposed Policy to Encourage Trial Disclosure Programs (the Proposed Policy).[1] The Bureau received eighteen formal comments on the Proposed Policy. Industry trade associations and other industry groups submitted nine comment letters. Financial services providers submitted three comment letters. There were three comment letters from consumer groups. Individuals also submitted a further three comments.

All commenters supported the stated goals of the Proposed Policy. Most comments asked for clarification or further detailing around specific parts of the Proposed Policy. Some urged changes to the Proposed Policy either to create more incentives for the regulated community to participate in trial disclosure programs or to provide for additional consumer protections in approved tests. One comment opposed implementation of the Proposed Policy, at least in its current form; this commenter also disputed the Bureau's legal authority for certain aspects of the Proposed Policy.

III. Summary of Comments, Bureau Response, and Resulting Policy Changes

This section provides a summary of the comments received by subject matter. It also summarizes the Bureau's assessment of the comments by subject matter and, where applicable, describes the resulting changes that the Bureau is making in the final Policy. With some specific exceptions, the Bureau has not made changes to the substance of the Policy. In response to certain comments, however, it has revised the Policy to provide additional clarity and elaboration around a number of specific points.

A. Legal Authority

As noted in the Proposed Policy, Section 1032(e) of the Dodd-Frank Act gives the Bureau authority to permit trial programs that are designed to ''improve upon'' existing disclosures. One consumer group contended that the Proposed Policy exceeds the Bureau's legal authority in two respects: (1) By not requiring trial disclosure programs to meet the criteria for model forms prescribed by the Bureau under Section 5532(b) of the Act, 12 U.S.C. 5532(b); and (2) by potentially permitting trial disclosure programs that are designed to test cost savings alone. The Bureau believes both contentions lack legal merit.

Section 5532(b)(1) authorizes the Bureau to issue model forms that ''may be used at the option of a covered person.'' Section 5532(b)(2) sets forth three ''minimum'' features such model forms must possess. These provisions do not limit the trial disclosures that the Bureau may approve under Section 5532(e). In that provision, Congress gave the Bureau authority to permit testing of disclosures that violate disclosure requirements imposed directly on covered persons by the Bureau. There is no textual or other reason to think that Congress intended the Bureau's authority under Section 5532(e) to be circumscribed by Section 5532(b).

Indeed, adding the Section 5532(b)(2) criteria to the Policy arguably would frustrate Congress' purposes in enacting Section 5532(e). Thus, a proposal to change a delivery mechanism, as opposed to the content of the disclosure, would not track against the criteria for a model form. Yet there is nothing in Section 1032(e) to suggest that Congress intended to exclude changed delivery mechanisms from the list of potential improvements. As a matter of policy, however, to the extent a proposal includes revised disclosures, the Bureau believes those should meet the stated 1032(b)(2) criteria of plain language, clear format and design, and

[1] 77 FR 74625 (Dec. 17, 2012).

succinctness. The Policy has been revised to make that point.

The Bureau also sees no legal or policy reason to eliminate cost-effectiveness as a sufficient criterion for an ''improved'' disclosure. In the Bureau's view, a trial disclosure that is intended to maintain the same level of consumer understanding but in a more cost effective manner counts as an improved disclosure. Under the Policy, however, the Bureau will not approve any trial disclosure that it believes will weaken consumer understanding of valuable information that is the focus of a regulatory obligation. That outcome is not one that the Policy is intended to enable, and the Bureau has revised the Policy to make that clear.

B. Approval Process

Most comments concerned the approval process for trial disclosure programs. Comments focused on the areas identified below.

1. Cost-Sharing

Several trade associations and financial services companies questioned whether, in light of the costs involved in designing and implementing trial disclosure programs, companies will have sufficient incentive to use the Policy. For the most part, however, these commenters did not urge more streamlined application or participation procedures. Instead, they requested a clear indication from the Bureau that several covered persons—potentially facilitated by a trade organization—may properly spread the costs of participation among themselves, thereby improving the incentive to participate. Some trade associations noted that absent such collaboration, industry participants would lack the resources to conduct a trial program.

The Bureau would welcome collaboration and cost-sharing, and it has clarified the final Policy to this effect. To help ensure adequate protection for consumers, however, the Bureau must know the identity of each specific in-market tester before approving that entity's participation. As a result, the Bureau will not give final approval to any proposed trial disclosure unless the entities involved are specifically identified. At the same time, however, the Bureau sees no reason why a single trial disclosure program may not properly be proposed and implemented by more than one covered person. In fact, as both industry and consumer commenters noted, multi-party tests may offer more robust and reliable results. By the same token, the Policy should not be read to prevent a trade association—or indeed any other entity, including non-profit groups or third-party vendors—from helping to facilitate cost-spreading.

In addition, the Policy does not rule out the possibility of the Bureau conditionally approving a particular disclosure for testing without at that point requiring the specific identity of all participants. In this kind of staggered approval arrangement, there would be a follow-on process for specific testers to secure approval to use the disclosure. But even if the Bureau were to stage approval in this manner, the Policy would still not permit a particular tester to claim the benefit of a waiver unless the Bureau ultimately approves it *by name* as a test participant.

2. Development Costs

Citing the costs of developing a proposal and implementing a trial disclosure program, several commenters urged the Bureau to permit covered persons to contact the Bureau to discuss a proposal before they submit complete applications. This initial contact could help companies avoid the costs of developing proposals that are unlikely to meet with the Bureau's approval, whether because of the merits of the proposal or because the Bureau is close to approving a duplicative proposal. The Policy is not intended to limit this kind of initial contact. The present Policy is one component part of the Bureau's Project Catalyst initiative, which invites companies to bring innovation-related concerns to the Bureau's attention at *ProjectCatalyst@cfpb.gov*. Disclosure innovators, therefore, may use that point of contact to request a preliminary discussion of a potential trial disclosure proposal.

3. Iterative Testing

Several commenters, including industry and consumer group commenters, suggested that the Policy accommodate iterative testing of disclosures. The Bureau acknowledges that in some cases, iterative testing, using relatively small test populations, may help refine and improve disclosure concepts. Instead of a single, larger test, of a preset disclosure, this kind of approach involves a sequence of smaller tests that enable ongoing improvements to a test disclosure concept. Both forms of testing may serve well in different contexts, and the Bureau intends for the Policy to support both approaches.

In cases where iterative testing is appropriate, therefore, the Bureau will follow a staggered approach to waiver approval. At an initial stage, an iterative proposal should follow all the normal terms of the Policy, with the exception that it may not include all forms of the disclosure to be tested, to the extent that these are unknown at the point of initial submission. Any such proposal should explain why iterative testing is the more effective means of proceeding with respect to the particular disclosure. If the Bureau approves the program, an initial waiver will then cover the first test disclosure, and the Bureau will commit in the Terms and Conditions document governing that waiver to consider later iterations of the test disclosure for follow-on waivers on a defined fast-track basis. The Policy thereby enables iterative testing, where it is appropriate, while also ensuring that each tested disclosure is specifically authorized.

4. Additional Safeguards

Notice and Comment

Several consumer groups asked that the Policy require that all proposed disclosures be subject to full notice and comment. In contrast, a financial service provider cautioned that such a procedure would dissuade companies from proposing trial disclosure programs because it would add considerable time and expense to the process. In the Bureau's assessment, requiring notice and comment for each proposed disclosure would conflict with Congress's instruction to issue standards and procedures ''designed to encourage covered persons to conduct trial disclosure programs.'' (12 U.S.C. 5532(e)(2).) The Bureau believes that it is highly unlikely that covered persons would be willing to subject proposals to full notice and comment, not least because of the extended time period involved. In addition, a test disclosure does not represent a proposed Bureau rule. Test results could help the Bureau to put forward proposed rule changes, but full notice and comment would then apply at that point.

Other Safeguards

Consumer groups also proposed that tests be approved only when there is no statutory liability associated with the disclosure process. In addition, they proposed that no in-market tests proceed until after ''lab-based'' qualitative testing of each proposed disclosure.

The Bureau does not agree that tests should be limited to disclosures for which non-compliance carries no statutory liability. Section 1032(e) authorizes the Bureau to apply a time-limited safe harbor with respect to disclosure requirements under ''a rule or an enumerated consumer law.'' [2] It does not limit this authority to statutes

[2] 12 U.S.C. 5532(e)(2); *see also* n.17 *infra.*

(or rules) that impose no liability. In addition, while statutory liability may well indicate that a disclosure is intended to prevent severe consumer harm, as the commenters reasonably contend, that does not argue against testing for disclosure improvement. The more important the role of disclosure in preventing harm, the more important it is to improve disclosures as much as possible. If 1032(e) were used only where disclosure does not matter to consumer welfare, its purpose would go unrealized.

The Bureau agrees with commenters that qualitative testing will often be a useful means of showing that a disclosure is worth testing. That is not a compelling reason, however, to make qualitative testing an absolute requirement for test approval. The approval process calls for reasonable grounds to expect the revised disclosures to represent an improvement. In many cases, those grounds will consist—at least in part—of qualitative test results. But that need not always be the case. Other grounds could certainly supply a sufficient basis for expecting improved outcomes. Similar disclosures may have been used and shown to be effective for related consumer financial products, or prior research may offer reasonable grounds to believe the revised disclosure will be an improvement.

5. Guidance on Bureau Disclosure Priorities

Some commenters asked the Bureau to identity priority areas for potential tests. The Bureau does not rule out taking this step at some point in the future. In considering ways to improve disclosure policy, the Bureau may in the future identify one or more areas as particularly appropriate for testing.

C. Legal Protection

1. Waiver Scope

Several trade associations and industry participants asked the Bureau to clarify the scope of the safe harbor that will be provided to approved participants. In particular, they asked whether the waivers would shield participants from (i) private litigation by consumers and (ii) enforcement or other proceedings by other regulators.

The Bureau recognizes that Section 1032(e) will not provide the incentive to test new disclosures that Congress intended unless the scope of any approved waivers is clear. Entities that the Bureau approves for a waiver—so long as their conduct accords with the terms of approval—should not face private liability exposure for violating those provisions of a federal disclosure statute or rule that the Bureau identifies as being within the scope of the waiver. Because such a waiver deems the trial disclosure to be in compliance with or exempt it from the provisions identified by the Bureau, there is no basis under those provisions for a private suit based on the company's use of the disclosure. The same rationale applies 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. When a Bureau-issued waiver is in effect, there can be no predicate for an enforcement or supervisory action by such a regulator that is both based on statutory or regulatory provisions that are within the scope of the waiver and against a company with an approved program in compliance with the terms of the wavier.

It is true that certain other federal regulators may, in certain circumstances, issue rules that overlap with the Bureau's rules. (*See, e.g.,* 12 U.S.C. 5581(b)(5))(D).) When considering a waiver, therefore, the Bureau will confer, as appropriate, with other federal regulators. Similarly, although the Bureau lacks authority to waive state disclosure requirements, the Bureau will endeavor to work with state regulators, as appropriate, to secure their support for a particular trial disclosure program. The Bureau also encourages participants to confer with other federal and state regulators where a proposed disclosure implicates requirements administered by such regulators. In addition, submissions may properly indicate whether other regulators have indicated support or opposition to the proposal.

2. Affirmative Bureau Statements

Finally, several commenters asked the Bureau to state that disclosures approved under the Policy are not deceptive. The Bureau does not intend to approve test disclosures that it considers deceptive. As a result, the Bureau anticipates being able to make this kind of statement when it publishes notice of a waiver. In either case, however, the Bureau's determination would be provisional. Unless and until otherwise indicated, the Bureau's statement or waiver would apply only to disclosures that an approved party made under the terms of that particular approved trial disclosure program.

3. Waiver Revocation

The Proposed Policy specified that if the Bureau decides to revoke or partially revoke a waiver for failure to follow the waiver's terms, it: (i) Will do so in writing, specifying the reason or reasons for its action; and (ii) may offer an opportunity to correct any such failure before revoking a waiver. Several commenters found these procedural protections insufficient and requested that they be enhanced in various ways.

The Bureau acknowledges that entities may reasonably request some opportunity to dispute grounds for a potential revocation. Before determining to issue a revocation, therefore, the Bureau will notify the company of its grounds for its potential revocation, and permit the company an opportunity to respond, consistent with the terms of this Policy. The Policy has been clarified to this effect.

D. Public Disclosure

Commenters raised two public disclosure concerns.

1. Consumer Awareness of Tests

Citing protocols for conducting research on human subjects, consumer groups urged that consumers be given the chance to opt out of test participation. They also requested that test disclosures be clearly identified as such. One industry submission suggested that the Bureau inform consumers after the fact of their participation in a test.

The Bureau does not agree that standard practice argues for requiring consumer consent in this context. In-market testing of consumer behavior and reactions to new products or new ways of delivering services is a constant of modern life. Companies routinely carry out such tests using their customer base, without consumer consent or awareness. The fact that companies must share test results with the Bureau does not compel a different outcome here. As the statute makes clear, 1032(e) tests are still conducted *by covered persons*.

Furthermore, there is very good reason not to identify test disclosures at the time of delivery. As one commenter observed, disclosures only work to the extent consumers read them. A critical test of any disclosure's effectiveness, therefore, is whether consumers decide to read it in any given case. As a result, if consumers are told that a disclosure is for a test, it will no longer be possible to test for the most basic and controlling component of disclosure effectiveness. Moreover, requiring such disclosure would be in tension with Congress's recognition in section 1032 that public disclosure of programs may appropriately be limited in order to

encourage the conduct of ''effective'' tests.[3]

The Bureau has considered requiring companies to alert consumers that they are in a test population—regardless of whether the consumers are in a control group or in the group to receive a test disclosure.[4] This type of notification, potentially supplemented by an opt-out option, would create equivalency between the two groups. At the same time, however, it would prevent effective testing in many cases. All consumers would be alerted to the fact of disclosure testing, and their conduct upon receiving disclosures would likely change as a result. In the Bureau's assessment, the benefit of this direct notice, weighed against the cost of preventing effective testing and associated disclosure improvements, does not warrant a categorical rule requiring direct disclosure of testing to test populations. To the extent that companies can find ways to provide notice or an opt-out option that do not risk the effectiveness of potential tests, however, the Bureau encourages them to do so.

2. Disclosure of Test Results

Several consumer groups urged that all test results be made public. After careful consideration, the Bureau has decided not to revise the Proposed Policy to this effect. Congress has directed that public disclosure be limited as necessary to encourage covered persons to conduct effective tests. (*See* 12 U.S.C. 5532(e)(3).) In the Bureau's assessment, requiring testing companies to commit, *a priori,* to complete public disclosure of test results may unproductively discourage valuable potential programs that stand to benefit consumers. Some of the information provided to the Bureau may comprise trade secrets or other confidential business information. Testing companies will ultimately need to permit public use of test results if those results are to enable regulatory change. An incentive to public disclosure, therefore, is built into the structure of the program. Particularly against that background, additional categorical rules could reduce the incentive to propose potentially valuable trial disclosure programs. In addition, the absence of a categorical rule does not preclude the Bureau from seeking a particular level of disclosure in connection with any particular proposal.

E. Other Considerations

Commenters also requested clarification on a number of discrete issues.

1. Delivery Form

The Bureau confirms that disclosure improvements may properly consist of revised forms of delivery, not simply changes to the content of disclosures. This was already covered at footnote 7 of the Proposed Policy. It is now reflected in the eligibility criteria listed in Section A of the final Policy.

2. Electronic Submission

Submissions for approval can be made via electronic means. Submitters can use the Project Catalyst email address. The Policy has been revised accordingly.

3. Bureau Monitoring of Consumer Harm

Several consumer groups requested that the Bureau monitor tests for potential harm to consumers. The Proposed Policy already called for proposals to include plans to mitigate any harm identified. To further address the concern raised, however, the Bureau has amended the eligibility criteria to include both an identification of any risks of consumer harm that may be associated with the proposed program and a description of how the program mitigates any such risks.

IV. Final Policy

The text of the final 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 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.[5]

In subsection 1032(e) of the Dodd-Frank Act, Congress also gave the Bureau authority to approve ''trial disclosure programs.'' [6] 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, for a defined period, ''deem'' a participating company ''to be in compliance with,'' or ''exempt'' from identified federal disclosure requirements.[7] 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. 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 issuing its Policy on trial disclosure programs.[8] 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, consistent with the protections for consumers that are described in this Policy.[9] The information that companies generate by such programs may then help the Bureau to establish more effective disclosure rules and practices.[10]

The policy has four sections:

[3] 12 U.S.C. 5532(e)(3).

[4] Indirect notice that consumers may receive a test disclosure will already be provided by the Bureau's Web site publication of approved test disclosures.

[5] *See* 12 U.S.C. 5532(a)–(d).

[6] 12 U.S.C. 5532(e).

[7] 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.

[8] 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).

[9] The Policy is not intended to nor should it be construed to: (1) Restrict or limit in any way the 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 with respect to that program. Those rights, however, are based on the approval notice, and not on the present policy guidance.

[10] 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.

• Section A describes which proposed programs will be considered eligible for a temporary waiver;
• Section B lists factors the Bureau will 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.

Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The information that should be submitted to demonstrate eligibility, as described further in Section A below, has been deemed to be a collection of information for these purposes. The OMB control number for this collection is 3170–0039. It expires on 09/30/2016. 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. Comments regarding this collection of information, including the estimated response time, suggestions for improving the usefulness of the information, or suggestions for reducing the burden to respond to this collection should be submitted to Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by email to *CFPB_Public_PRA@cfpb.gov*.

A. Eligibility

To be considered eligible for a waiver, a proposal should:

1. Identify the testing company or companies; [11]

2. Describe the new disclosures or delivery methods that are to be tested; [12]

3. Describe how these changes are expected to improve upon existing disclosures,[13] particularly with respect to consumer use, consumer understanding, and/or cost-effectiveness; [14]

4. Provide a reasonable basis for expecting these improvements, and 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 any risks of consumer harm that may be associated with the proposed program, describe how the program mitigates such risks, and explain the testing procedures that will be used to assess for potential consumer harm during the course of the test;

7. Identify with particularity which provisions of current rules or enumerated consumer laws are to be temporarily waived in connection with the trial disclosure program; [15]

8. Identify any third-party vendors to be used in connection with the proposed program and describe their proposed role;

9. Contain a commitment to and schedule for sharing test result data [16] with the Bureau;

10. 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

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

All proposals should be submitted via email to *ProjectCatalyst@cfpb.gov*.[17] Submitted proposals may be withdrawn at any time.

B. Approval of Proposals for Waivers

To decide whether to approve a proposed program for a waiver,[18] the Bureau will consider a variety 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 more cost-effective disclosure rules or policies;

[11] The Bureau will accept proposals that involve testing by more than one company. Each testing company must be approved by name and must be a signatory to specific waiver terms, as described further in Section C below. Although not every testing company need be identified in an initial application, no company can test subject to a waiver unless and until it has obtained—and become a signatory to—specific Bureau approval to test a given disclosure. The Bureau will not provide that approval unless it is satisfied, in its sole discretion, that a company has met all eligibility requirements for approval and should be approved for the applicable testing program under the terms of this Policy.

[12] So long as otherwise consistent with the minimum eligibility standards, a proposal could include modifications to an existing model form or other disclosures, changed delivery mechanisms, replacement of a model form or existing disclosure requirements with new disclosure or forms, and/or the elimination of select disclosure requirements. All proposals 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 proposals consist of revised disclosure content—as opposed to revised or streamlined delivery mechanisms—that content should be in plain language, reflect a clear format and design, and be succinct.

If a proposal is for iterative testing, it should include copies of all forms of the disclosure that are known at the time of initial submission. It should explain why iterative testing is the more effective means of proceeding with respect to the particular disclosure concept. In addition, it should include a proposal for a streamlined approval process for different iterations of the disclosure. Again, no disclosure can be subject to a waiver under Section 1032(e) unless the specific tester has been approved to test that specific disclosure.

[13] The relevant existing disclosures are those made in accordance with disclosure rules issued either under the authority of Section 1032 or to implement an enumerated statute. *See* 12 U.S.C. 5532(e)(1).

[14] Trial disclosures should be ''designed to improve upon'' existing disclosures. 12 U.S.C. 5532(e)(1). Intended improvements may go to consumer use and 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 use and understanding, and cost-effectiveness. Although the Bureau considers cost-effectiveness an appropriate metric of disclosure improvement, it will not approve a trial disclosure that it believes will weaken consumer understanding of valuable information that is the focus of a regulatory obligation, no matter the cost savings obtained.

[15] 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.

[16] The proposal should commit to sharing test result data with the Bureau within a reasonable period following the end of the program. In addition, it should contain either (1) a commitment to sharing with the Bureau interim data on test results during the course of the program, or (2) an explanation for why such interim data cannot reasonably be provided.

[17] The email subject line should begin ''Trial Disclosure Program.'' The present Policy is one component part of the Bureau's Project Catalyst initiative, which invites companies to bring innovation-related concerns to the Bureau's attention at *ProjectCatalyst@cfpb.gov*. Disclosure innovators may use the same Project Catalyst point of contact to request a preliminary discussion of a potential trial disclosure proposal. There are no formal submission requirements to request such a preliminary discussion.

[18] 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.

3. The extent to which the program anticipates, controls for, and mitigates risks to consumers; [19]

4. The strength and record of the company's compliance management system relative to the size, nature, and complexity of the company's consumer business;

5. 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;

6. The extent to which existing data or other evidence indicate that the proposed changes will realize the intended improvements; and

7. 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 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.[20] 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.[21]

Waiver terms and conditions will be in writing in an integrated document entitled ''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. Identify the company or companies that are receiving a waiver;

2. Specify the new disclosure(s) or delivery methods to be used by that company or companies under the terms 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. Specify the temporary duration of the waiver;

5. Describe and delineate the test population(s); and

6. 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.

D. Bureau Disclosure of Information Regarding Trial Programs

The Bureau will publish notice on its Web site 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 or companies in accordance with the approved terms of use.

Public disclosure of any other information regarding trial programs is governed by the Bureau's Rule on Disclosure of Records and Information.[22] 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.[23] 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.

Dated: October 23, 2013.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2013–25580 Filed 10–28–13; 8:45 am]

BILLING CODE 4810–AM–P

[19] 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.

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

[21] Before determining to issue 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 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.

[22] *See* 12 CFR 1070 *et seq.*

[23] *See* 12 CFR 1070.14.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1245; Directorate Identifier 2012–NE–41–AD; Amendment 39–17626; AD 2013–21–02]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines and Continental Motors, Inc. Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding airworthiness directive (AD) 2012–24–09 for Lycoming Engines TIO–540–AK1A, and Continental Motors, Inc. (CMI) TSIO–360–MB, TSIO–360–SB, and TSIO–360–RB reciprocating engines, with certain Hartzell Engine Technologies (HET) turbochargers, model TA0411, installed. AD 2012–24–09 required removing certain HET turbochargers from service before further flight. This AD also requires removing certain HET turbochargers from service before further flight. This AD was prompted by a report that an additional engine, the CMI LTSIO–360–RB, has the affected HET turbochargers installed. We are issuing this AD to prevent turbocharger turbine wheel failure, reduction or complete loss of engine power, loss of engine oil, oil fire, and damage to the airplane.

DATES: This AD is effective November 13, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 20, 2012 (77 FR 72203, December 5, 2012).

We must receive any comments on this AD by December 13, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m.