THE
NATIONAL LAW REVIEW

State AGs Seek Withdrawal Or Substantial Modification Of CFPB's Proposal To Revise Trial Disclosure Policy

Ballard Spahr LLP
Article By
Alan S. Kaplinsky
Ballard Spahr LLP
Consumer Finance Monitor

- Financial Institutions & Banking
- All Federal

Monday, October 22, 2018

A group of 11 state attorneys general and the District of Columbia AG submitted a comment letter to the CFPB on its proposed revisions to its trial disclosure policy (TDP) in which they ask the Bureau to withdraw or substantially modify its proposal. Led by the Illinois AG, the other ten state AGs who are signatories to the letter are the AGs of California, Iowa, Massachusetts, Maryland, North Carolina, New Jersey, Oregon, Pennsylvania, Virginia, and Washington.

Several consumer and public interest groups submitted a comment letter to the Bureau in which their principal objection to the proposal is that it exceeds the Bureau's trial disclosure program authority under the Dodd-Frank Act. According to the groups, DFA Section 1032(e)(1) limits the Bureau's authority to the improvement of model forms and the proposal would exceed that authority to the extent it would allow the Bureau to allow trial disclosure programs that change or eliminate the substantive information required to be disclosed by an enumerated consumer law or deviate from any other substantive requirements of such law.

In their comment letter, the state AGs also point to the language in Section 1032(e)(1) which provides that the Bureau can allow a covered person to conduct a trial disclosure program "for the purpose of providing trial disclosures to consumers that are designed *to improve upon* any model form issued [by the CFPB pursuant to its authority to prescribe disclosure rules under Section 1032 and issue related model

forms], or any other model form issued to implement an enumerated statute, as applicable." (emphasis added). According to the AGs, "any trial disclosure only improves upon a model or other form if it either enhances consumer understanding or, at a bare minimum, preserves existing consumer understanding." They assert that "a trial disclosure that is cost-effective but that does not improve or preserve existing consumer understanding is not permitted under Dodd-Frank."

The state AGs object to language in the Bureau's proposal which provides that an applicant for a waiver must describe how the new disclosures or delivery mechanisms it wants to use in a trial program "improve upon existing disclosures or delivery mechanisms with respect to cost effectiveness, increased consumer understanding, or otherwise." They argue that the Bureau "lacks regulatory authority to grant waivers to any trial disclosure that decreases consumer understanding" and that the Bureau's authority under Section 1032(e)(1) "was not intended to merely lessen costs or regulatory burden on financial institutions regardless of whether there is an attendant improvement in consumer disclosures."

Like the consumer and public interest groups, the state AGs also object to the proposal for allowing a company to extend a waiver beyond the initial two-year period and for relying on companies to notify the Bureau of "material changes in customer services inquiries, complaint patterns, default rates, or other information" that should be investigated. They criticize the proposal for not specifying what constitutes a "material change" and instead leaving what triggers a reporting requirement to a company's discretion.

For a discussion of the CFPB's proposed revisions to its trial disclosure program policy, click here to listen to our recent podcast.