

# NACCA

## National Association of Consumer Credit Administrators

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October 10, 2018

Paul Watkins

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

**RE: Policy to Encourage Trial Disclosure Protection (“the Policy” or “Policy”), Docket No. CFPB-2018-0023**

Dear Mr. Watkins,

The National Association of Consumer Credit Administrators (“NACCA”) is an association of state financial regulation agencies formed in 1935. NACCA’s members include financial regulators from 49 states, the District of Columbia, Puerto Rico, and Alberta, Canada. NACCA’s members have decades of experience regulating the consumer credit marketplace, including through the enforcement of Regulation X, Regulation Z and similar laws. We appreciate the opportunity to comment on the Bureau of Consumer Financial Protection’s (Bureau) draft Policy to Encourage Trial Disclosure Protection (“the Policy” or “Policy”), Docket No. CFPB-2018-0023.

### Introduction

The draft Policy intends to amend the 2013 version “to more effectively encourage companies to conduct trial disclosure programs.”<sup>1</sup> Generally, NACCA commends the Bureau’s efforts to foster innovation. While the proposal is better aligned with this goal than the existing policy, NACCA supports a careful balancing of industry interests and consumer understanding of credit terms and believes both can be accomplished. After a careful review of the Policy, NACCA identified the following concerns that could impair achieving such goals as detailed below.

### Methodologies and Metrics for Evaluating Potential Consumer Risks/ Harm

The core purpose of consumer disclosures is, “[allowing consumers] to compare more

readily the various credit terms available...and avoid the uninformed use of credit. . .”<sup>1</sup> Setting forth metrics and methodologies, balancing qualitative and quantitative factors and deriving information from state regulators can enhance achieving this goal and the participation and success of a trial program.

To adequately evaluate for effectiveness of accomplishing established objectives during and at the conclusion of the trial program, NACCA encourages the Bureau to engage in both quantitative and qualitative testing. Unbiased, statistically sound quantitative evaluation will give the Bureau a more accurate idea of whether new disclosures or delivery mechanisms actually improve on existing forms by increasing consumer understanding, decreasing business burden while not negatively impacting consumer understanding, or both. Otherwise, understanding the effect of new methods may remain imprecise. Further, by establishing clearly defined metrics and acceptable testing methodologies for determining improvements to model forms or disclosures, the Bureau may reduce industry concerns and encourage participation in the trial program. Such parameters can include that testing methodologies utilized are able to be replicated, allowing for independent validation of the participant’s testing results. Additional guidelines could provide for controlled testing, peer review of test design or results, statistically significant testing methods or metrics for determining how trial disclosure impacts consumers.

NACCA appreciates the nod to state-federal coordination in the trial program process and believes this cooperation can be extended to the trial evaluation stage. The Bureau can rely upon expertise of its fellow regulators at the state level, whether or not the state has implemented its own sandbox, when seeking information on consumer harm or risk. While NACCA agrees with requiring a participating company to provide consumer complaint, inquiry, default and like data<sup>2</sup>, the states also may hold information beneficial to an evaluation. NACCA members license or otherwise regulate several industries participating in the consumer credit marketplace, conduct regular exams of such companies and receive consumer complaints. Data derived from these activities can illuminate positive and adverse effects felt by consumers during the implementation of a trial program.

### **Potential Widespread Negative Consumer Impact**

The potential for consumer risk and uncertainty are magnified through allowing trade associations to apply for participation in the trial program on behalf of their numerous member companies. This practice can have sweeping implications for an entire industry and may result in nationwide implementation of a trial program that potentially negatively impacts consumers. The proposal is silent, though, on the issue of consumer consent to participate in a program that limits their rights. The importance of consumer awareness of a company’s implementation of a trial program and the consumer’s related ability to essentially “opt-out” of the experiment are magnified in such a broad scenario. Approving an industry as a whole via a trade association may also result in essentially requiring a consumer to participate in the program as their creditworthiness or personal circumstances may prohibit them from seeking financial resources elsewhere.

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<sup>1</sup> 15 U.S.C. § 1601 et seq.

<sup>2</sup> 83 Fed. Reg. 45,576 (Sep. 10, 2018).

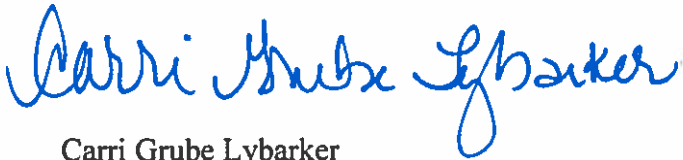
### **Creation of a “Race to the Bottom”**

The proposal recognizes that many states are making efforts to implement, or are already actively implementing, sandboxes to improve regulatory processes and/or the marketplace as a whole<sup>3</sup>. A concern with the Bureau accepting the standards for a sandbox implemented at the state level, however, is the potential for a “race to the bottom.” Federal adoption of state specific exemptions could present a meaningful risk of states lessening financial regulations as seen in years past in the consumer credit marketplace. As such, NACCA urges a cautious implementation of such standards.

### **Conclusion**

NACCA supports the goal of fostering innovation while safeguarding consumer interests and appreciates the opportunity to comment on the proposed trial disclosure program revisions. We hope you find the information provided beneficial.

Sincerely,



Carri Grube Lybarker  
President  
National Association of Consumer Credit Administrators

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<sup>3</sup> *Id.* at 45,578.