

Insights: Alerts

CFPB Issues Proposed Revisions to No-Action Letter Policy and Proposes to Create a Product Sandbox

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The Consumer Financial Protection Bureau (CFPB or Bureau) has issued proposed revisions to its 2016 final policy on issuing No-Action Letters, along with a proposal to create a new Product Sandbox.

The Bureau proposed its Policy on No-Action Letters in October 2014 and finalized it in February 2016. The 2016 Policy provides for the issuance of No-Action Letters consisting of non-binding staff-level no-action recommendations. The Bureau has issued only one such No-Action Letter to date. In the Bureau's view, "this strongly suggests that both the process required to obtain a No-Action Letter and the relief available under the 2016 Policy have not provided firms with sufficient incentives to seek No-Action Letters from Bureau staff." Accordingly, the Bureau states that it is seeking comment on a number of changes to the 2016 Policy that would address these issues and "bring certain aspects of the Bureau's policy more into alignment with no-action letter programs offered by other federal regulators."

The Bureau has concluded that, if finalized, this policy guidance "would constitute an agency general statement of policy and 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)." However, the Bureau solicits public comments, which must be received within 60 days after the date the proposed policy guidance is published in the Federal Register.

According to the Bureau, the overarching goals of the [proposed No-Action Letter policy revisions and the Product Sandbox](#) are as follows: (1) streamline the application process; (2) streamline the Bureau's processing of applications; (3) expand the types of statutory and/or regulatory relief available; (4) specify procedures for an extension where the relief initially provided is of limited duration; and (5) provide for coordination with existing or future programs offered by other regulators designed to facilitate innovation.

Proposed Revisions to No-Action Letter Policy

The Bureau is proposing to streamline the process of applying for a No-Action Letter by eliminating several elements it believes to be "redundant or unduly burdensome." Similarly, the Bureau's review of applications for a No-Action Letter "would be streamlined to focus on the quality and persuasiveness of the application, with

particular emphasis on the potential benefits of the product or service in question for consumers, the extent to which the applicant identifies and controls for potential risks to consumers, and the extent to which no-action relief is needed.” Because these measures would be likely to expedite the application and review process, the Bureau would expect to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete.

To more closely align with certain aspects of no-action letter programs offered by other Federal agencies, the Bureau is re-assessing data-sharing requirements and time-period limitations for No-Action Letters. In contrast to the 2016 Policy, which requires applicants to commit to sharing data about the product or service in question, no such data sharing would be expected under the proposed revisions. Similarly, whereas one of the factors Bureau staff will consider in deciding whether to grant an application for a No-Action Letter under the 2016 Policy is the extent to which the letter would be limited in duration, the default assumption under the proposed revisions would be that No-Action Letters would have no such time-period limitation.

Under the 2016 Policy, a No-Action Letter is a staff recommendation of no-action relief. Under the proposed revisions, in contrast, No-Action Letters would be issued by duly authorized officials of the Bureau (the Assistant Director of the Office of Innovation or other members of the Office of Innovation) to provide recipients greater assurance that the Bureau itself stands behind the no-action relief provided by the letters. Whereas UDAAP-focused No-Action Letters were expected to be particularly uncommon under the 2016 Policy, there would be no such expectation under the proposed revisions.

Finally, the proposed revisions would include a new section concerning Bureau coordination with other regulators that offer no-action letters or similar forms of relief.

Creation of Product Sandbox

To supplement the single type of relief – non-binding staff-level no-action recommendations – available under the 2016 Policy, the Bureau also is proposing to create the Product Sandbox.

The Product Sandbox would include no-action relief substantially the same as that available under the No-Action Letter Policy, as well as two forms of additional relief: (a) approvals by order under three statutory safe harbor provisions; and (b) exemptions by order (i) from statutory provisions (as well as provisions of regulations implementing the statute in question) under statutory exemption-by-order provisions; or (ii) from regulatory provisions that do not mirror statutory provisions under rulemaking authority or other general authority. Where the Bureau provides such an exemption to a recipient(s), the recipient(s) would be immune from enforcement actions by any federal or state authorities, as well as from lawsuits brought by private parties, based on the relevant statutory or regulatory provisions and on the recipients (or recipients’) offering or providing the described aspects of the product or service.

In keeping with the “sandbox” concept, the Bureau states that approval relief and exemption relief would be provided for a limited period of time. The Bureau expects that two years would be appropriate in most cases. The Product Sandbox would also allow for procedures for participants to apply for an extension, but the Bureau states that it intends to grant such extensions only “where there is evidence of consumer benefit and an absence of consumer harm.”

In contrast to the proposed revisions to the No-Action Letter Policy, the Product Sandbox would require applicants to commit to sharing data with the Bureau concerning the products or services offered or provided in the Product Sandbox.

As with the proposed revisions to the No-Action Letter Policy, the Product Sandbox would have a streamlined application and review process, and the Bureau would expect to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete. The Bureau states that it intends to “consider the quality and persuasiveness of the application,” with particular emphasis on the potential benefits of the product or service in question for consumers, the extent to which the applicant identifies and controls for potential risks to consumers, and the extent to which approval, exemption, and/or no-action relief is needed.

The Product Sandbox would also include a similar provision as contained in the proposed revisions to the No-Action Letter Policy concerning Bureau coordination with other regulators that offer similar programs designed to facilitate innovation.

The Bureau is particularly interested in soliciting public comment on the scope of the grounds for No-Action Letter or Product Sandbox admission revocation, including whether there are additional changes in law that should be included as grounds for revocation.

We note that in September 2018, the Bureau [proposed significant revisions](#) to its “Policy to Encourage Trial Disclosure Programs, which sets forth the Bureau’s standards and procedures for exempting individual companies, on a case-by-case basis, from applicable federal disclosure requirements to allow those companies to test trial disclosures, but that proposal is not referenced in the proposed revisions to the NAL Policy and Product Sandbox proposal.

All of these initiatives, including the proposed policies and the creation of the Product Sandbox, combined with the Bureau joining the Global Financial Innovation Network, are the first actions to come from the Bureau’s new Office of Innovation, which then-Acting Director Mick Mulvaney [established](#) in mid-July. The Bureau has stated that the “Office of Innovation, and the Bureau as a whole, are committed to making the financial marketplace open to innovative ideas and approaches.”

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