

# Client Alert

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## The Bureau of Consumer Financial Protection Proposes Revised No-Action Letter Policy and New Product Sandbox

By **Obrea Poindexter, Sean Ruff, and Jennifer Talbert**

On December 13, 2018, the Bureau of Consumer Financial Protection (the “Bureau”) published in the *Federal Register* a [proposed policy](#) (“Proposed Policy”), which would modify its [2016 Policy on No-Action Letters](#) (the “2016 Policy”) and create a new “Product Sandbox” policy in an effort to encourage banks and financial services providers to test new financial products.

### PROPOSED NO-ACTION LETTER REVISIONS

The Proposed Policy is intended to fix several shortcomings of the 2016 Policy and encourage companies to test new financial products and services. The supplemental information published with the Proposed Policy describes changes to the No-Action Letters granted under the 2016 Policy, including:

- *No data sharing requirement.* In contrast to the 2016 Policy, the Proposed Policy would not require data sharing by No-Action Letter recipients. Under the 2016 Policy, No-Action Letter recipients are required to commit to data sharing, which commentators asserted would require participants to submit a burdensome volume of information to the Bureau.
- *No assumption of time-limited duration.* The Bureau’s Proposed Policy provides that the “default assumption” would be that No-Action Letters would not be time-limited. In contrast, the 2016 Policy requires the Bureau to consider the limited duration of a No-Action Letter when reviewing applications.
- *UDAAP-focused No-Action Letters.* In connection with the 2016 Policy, No-Action Letters providing a safe harbor for unfair, deceptive or abusive acts and practices (“UDAAP”) were expected to be “particularly uncommon.” Under the Proposed Policy, the Bureau indicated that it would be more likely to issue No-Action Letters in connection with UDAAP enforcement, which is significant given the latitude the Bureau has in bringing UDAAP enforcement actions.
- *Type of relief granted.* The 2016 Policy only grants a single type of relief in the form of non-binding, staff-level no-action recommendations. In order to provide more certainty about the effectiveness of No-Action Letters, the Proposed Policy provides that No-Action Letters would be issued by duly authorized officials of the Bureau (i.e., the Assistant Director of the Office of Innovation or other members of the Office of Innovation).
- *Streamlined application process.* The Bureau’s Proposed Policy aims to streamline the application process. Under the Proposed Policy, the Bureau’s review of applications would be more narrowly focused on the potential benefits of the applicant’s product or service, the applicant’s controls for

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consumer risks, and the extent of need for no-action relief. The Bureau also would be expected to grant or deny an application within 60 days of notifying the applicant that the application is complete.

## PROPOSED "PRODUCT SANDBOX"

In a parallel effort to incentivize entities to test new financial products and services, the Bureau's Proposed Policy would create a "Product Sandbox." Applicants for the Product Sandbox could receive up to three forms of relief:

- *Approval relief.* This relief would be provided pursuant to the Bureau's authority under the Truth in Lending Act, the Equal Credit Opportunity Act, and the Electronic Funds Transfer Act to provide a safe harbor from liability, such that the recipient would be immune from federal or state enforcement actions and private lawsuits brought under these laws.
- *Exemptions by order.* This relief would be granted to the extent of the Bureau's authority to grant exemptions by order from statutory provisions (e.g., under the Equal Credit Opportunity Act, the Home Ownership and Equity Protection Act, and the Federal Deposit Insurance Act), or from regulatory provisions that are not required by statute.
- *No-Action Letter relief,* identical to the No-Action relief described above, in which authorized officials of the Bureau would grant participants No-Action Letters for financial product or service testing.

While it is the Bureau's expectation that two years would be an appropriate duration for participation in the Product Sandbox, the Proposed Policy includes procedures for applying for extensions.

Product Sandbox participants would be subject to more requirements than No-Action Letter recipients. Specifically, Product Sandbox participants would be required to commit to a data sharing requirement, report information about "complaint patterns, default rates, or similar metrics" for measuring consumer harm, and agree to compensate consumers "for material, quantifiable, economic harm" caused by the participant's product or service.

## RELATED BUREAU ACTION

The Proposed Policy follows the Bureau's September announcement of its creation of a "disclosure sandbox," which would similarly encourage innovation in consumer disclosures. While the proposed modifications to the 2016 Policy may make it more appealing to banks and FinTech to apply for No-Action Letters or participate in the Product Sandbox, the success of the Proposed Policy is likely to depend on the Bureau's ability to coordinate with other state and federal regulators, given their independent ability to enforce applicable consumer protection law, without regard to the relief granted by the Bureau.

Comments on the proposed policy are due by February 11, 2019. The Bureau noted that it is particularly interested in receiving comments on the scope of the grounds for revocation of No-Action Letters and Product Sandbox participation.

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