

Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB sets new policies to facilitate innovation, compliance; No-action letter to housing counselors, (Sept. 10, 2019)

Banking and Finance Law Daily Wrap Up

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Having received feedback, the Bureau is now promoting three new policies pertaining to no-action letters, its Trial Disclosure Program, and its Compliance Assistance Sandbox initiative.

Based on public comments the Consumer Financial Protection Bureau received from a "diverse array of stakeholders" during the past year, the Bureau has [announced](#) three new policies to promote financial innovation and to facilitate regulatory compliance: the No-Action (NAL) Policy, the Trial Disclosure Program (TDP) Policy, and the Compliance Assistance Sandbox (CAS) Policy. According to the CFPB's respective draft notices of the updated NAL, TDP, and CAS policies, each is "applicable on September 10, 2019." Further, in connection with its new NAL Policy, the CFPB noted that, in response to a request by the Department of Housing and Urban Development on behalf of more than 1,600 housing counseling agencies that participate in HUD's housing counseling program, the Bureau issued its first NAL to the HUD Deputy Assistant Secretary for Housing Counseling.

Depicting the three new Bureau policies as "common-sense policies that will foster innovation," CFPB Director Kathleen L. Kraninger remarked, "Innovation drives competition, which can lower prices and offer consumers more and better products and services. New products and services can expand financial options, especially to unbanked and under banked households, giving more consumers access to the benefits of the financial system."

In September 2018, the CFPB sought public comments on a proposal to amend its TDP Policy, allowing companies to apply for a waiver to test potential disclosure improvements on a trial basis (see [Banking and Finance Law Daily](#), Sept. 7, 2018). In December 2018, the CFPB sought public comments on changes to its NAL Policy because the Bureau believed that both the process required to obtain a no-action letter and the available relief did not provide firms with sufficient incentives to seek NALs from Bureau staff. Likewise, in keeping with its Product Sandbox initiative, the CFPB sought feedback in the same December 2018 proposal about streamlining the "application and review process" for its CAS Policy along with the NAL Policy (see [Banking and Finance Law Daily](#), Dec. 12, 2018).

NAL Policy. In tandem with the Bureau's [new NAL Policy](#), the CFPB issued its first no-action letter to HUD. In 2018, HUD expressed its concerns to the CFPB about housing counseling agencies (HCAs) and lenders "not entering into agreements that would fund counseling services due to uncertainty about the application of the Real Estate Settlement Procedures Act (RESPA)." Along these lines, the Coalition of HUD Intermediaries also submitted a February 2019 comment letter, which noted the "insufficiency of the Bureau's old NAL Policy" and which supported the "new NAL proposed policy."

Against this backdrop, the Bureau's Sept. 10, 2019, no-action letter to Sarah Gerecke, HUD Deputy Assistant Secretary for Housing Counseling, [states](#) that the Bureau will not take supervisory or enforcement action under RESPA against HUD-certified HCAs that have entered into certain fee-for-service arrangements with lenders for pre-purchase housing counseling services. According to the Bureau, the no-action letter is intended to "facilitate HCAs entering into such agreements with lenders and will enhance the ability of housing counseling agencies to obtain funding from additional sources."

Notably, modeled after the no-action letter to HUD under the revised policy, a NAL HUD [template](#) as well as a NAL HUD [application](#) has been made available by the CFPB.

TDP Policy. Next, under the [new TDP Policy](#), which streamlines the application and review process, entities seeking to improve consumer disclosures "may conduct in-market testing of alternative disclosures for a limited time upon permission by the Bureau." In keeping with the Dodd-Frank Act, the CFPB has the authority to provide certain legal protections for entities to conduct trial disclosure programs.

CAS Policy. In connection with the [new CAS Policy](#), the CFPB is promoting the testing of a financial product or service "where there is regulatory uncertainty." After the Bureau evaluates the pertinent product or service for compliance with relevant law, "an approved applicant that complies in good faith with the terms of the approval will have a 'safe harbor' from liability for specified conduct during the testing period." For instance, according to the Bureau, approvals under the new CAS Policy will provide protection from liability under the federal Truth in Lending Act, Electronic Fund Transfer Act, or the Equal Credit Opportunity Act.

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