

[Banking and Finance Law Daily Wrap Up, TOP STORY—CFPB proposes streamlining process for No-Action letters; creating Product Sandbox, \(Dec. 12, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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The Consumer Financial Protection Bureau has proposed a change of its policy on No-Action letters, along with the creation of a Product Sandbox. The new proposal would revise the current policy because the Bureau believes that both the process required to obtain a No-Action Letter and the relief currently available have not provided firms with sufficient incentives to seek No-Action Letters from Bureau staff. The proposed Policy has two parts. The first part is a revision of the 2016 Policy designed to increase the utilization of the policy and bring certain elements more in line with similar no-action letter programs offered by other agencies. Part II is a description of the Product Sandbox. Both Part I and Part II of the policy would have a streamlined application and review process. Under the new proposed process the Bureau would expect to grant or deny an application within 60 days after notifying an applicant that its application is complete. The Bureau's [proposed policy guidance and procedural rule](#) will be published in the *Federal Register* Dec. 13, 2018. Comments are requested by Feb. 11, 2019.

Changes in policy. 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. To date, the Bureau has issued only one such No-Action Letter. The new proposal would revise the 2016 Policy "in order to more effectively carry out its statutory purpose and objectives." The Bureau believes 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.

Part I of the proposal would streamline the process of applying for a No-Action Letter by eliminating several elements the Bureau believes to be redundant or unduly burdensome, such as a commitment to data-sharing. The Bureau's review of applications for a No-Action Letter would be streamlined to "focus on the quality and persuasiveness of the application."

1. 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.
2. No-Action Letters would be issued by duly authorized officials of the Bureau to provide recipients greater assurance that the Bureau itself stands behind the no-action relief provided by the letters.
3. A new section concerning Bureau coordination with other regulators that offer no-action letters or similar forms of relief is included in the proposal.

Part II of the proposal covers the creation of the Bureau's Product Sandbox. The Product Sandbox would include no-action relief substantially the same as that available under Part I, as well as two forms of additional relief: approvals by order under three statutory safe harbor provisions; and exemptions by order (i) from statutory provisions under statutory exemption-by-order provisions; or (ii) from regulatory provisions that do not mirror statutory provisions under rulemaking authority or other general authority. Approval relief and exemption relief would be provided for a limited period of time--the proposal suggests that two years would be appropriate in most cases. Also included in the proposal is a section regarding extensions for participation in the Product Sandbox, which would specify the procedures for applying for such an extension and clarify the Bureau's intention to grant such applications where there is evidence of consumer benefit and an absence of consumer harm.

Part II includes a provision concerning Bureau coordination with other regulators that offer similar programs designed to facilitate innovation. Applicants would be required to commit to sharing data with the Bureau concerning the products or services offered or provided in the Product Sandbox.

The Bureau has requested comments on the following:

- whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;
- the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used;
- ways to enhance the quality, utility, and clarity of the information to be collected; and
- ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Reducing enforcement. Rep. Maxine Waters (D-Calif), Ranking Member of the Committee on Financial Services, issued a [statement](#) expressing concern that the proposal will reduce enforcement. According to Waters, the proposal "significantly loosen its 'no-action letter' policy in a way that could let bad actors that abuse consumers off the hook entirely from enforcement action by the agency." Waters stated, "While it is important for our financial regulators to encourage responsible innovation, this is a deeply irresponsible overreach that instead encourages and abets consumer abuses by putting certain financial institutions in an enforcement-free-zone." She called it "yet another step to weaken the Consumer Bureau and curtail its enforcement tools."

"Shocking" and "unlawful" move. National Consumer Law Center (NCLC) Associate Director Lauren Saunders [responded](#) to the CFPB's proposal, calling the "no action" policy a "consumer protection desert that could wipe out consumer protection laws for entire industries, giving companies a safe harbor from liability if they harm consumers and from supervision or enforcement by the CFPB against unfair, deceptive, or abusive practices." The NCLC criticized the policy, saying that it would give the Bureau broad authority to exempt entire industries from consumer protection laws and oversight.

Companies: National Consumer Law Center

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