

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2018-0042]

Policy on No-Action Letters and the BCFP Product Sandbox

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed policy guidance and procedural rule; proposed information collection; request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or BCFP) invites the public to take this opportunity to comment on (a) its proposed Policy on No-Action Letters and the BCFP Product Sandbox, which is intended to carry out certain of the Bureau's authorities under Federal consumer financial law; and (b) a proposed information collection associated with applications submitted by applicants requesting admission to the BCFP Product Sandbox under the proposed Policy as required by the Paperwork Reduction Act of 1995.

DATES: Written comments are encouraged and must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by Docket No. [CFPB-2018-0042], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. [CFPB-2018-0042] in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Standard Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For additional information about the proposed Policy, contact Paul Watkins, Assistant Director; Edward Blatnik, Senior Counsel; Albert Chang, Counsel; Office of Innovation, at officeofinnovation@cfpb.gov or 202-435-7000. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

Documentation prepared in support of the information collection request is available at www.regulations.gov. Requests for additional information on the proposed information collection should be directed to the Bureau of Consumer Financial Protection, Attention: PRA Office, 1700 G Street NW., Washington, DC 20552, (202) 435-9575, or email: PRA@cfpb.gov. Please do not submit comments to this mailbox.

SUPPLEMENTARY INFORMATION:

I. Background

In section 1021(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress established the Bureau's statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.¹ Relatedly, the Bureau's objectives include exercising its authorities under Federal consumer financial law for the purposes of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens, and that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.²

Congress has given the Bureau a variety of authorities under Title X of the Dodd-Frank Act and the enumerated consumer laws³ that it can exercise to promote this purpose and these objectives. These authorities include the authority to permit certain activity by a particular entity (or entities) by order (including approvals and exemptions), and discretionary supervision and enforcement authority.⁴

Pursuant to the purpose, objectives, and certain of the authorities listed above, the Bureau proposed its Policy on No-Action Letters in October 2014⁵ and finalized it in February 2016 (2016 Policy).⁶ 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.⁷

¹ 12 U.S.C. 5511(a).

² 12 U.S.C. 5511(b)(3), (5).

³ 12 U.S.C. 5481(12).

⁴ See notes 61, 64-65, *infra*.

⁵ 79 FR 62118 (Oct. 16, 2014).

⁶ 81 FR 8686 (Feb. 22, 2016).

⁷ See Bureau of Consumer Financial Protection, CFPB Announces First No-Action Letter to Upstart Network (Sept. 14, 2017), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/>.

II. Summary of the Proposed Policy

In line with the above authority, the Bureau is proposing to revise the 2016 Policy and proposing the BCFP Product Sandbox through its proposed Policy on No-Action Letters and the BCFP Product Sandbox (Policy) in order to more effectively carry out its statutory purpose and objectives. As noted, the Bureau has provided only one No-Action Letter under the 2016 Policy. The Bureau believes 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 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 proposed Policy has two parts. Part I 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 BCFP Product Sandbox.⁸

The proposed Policy has the following overarching goals: (1) streamlining the application process; (2) streamlining the Bureau's processing of applications; (3) expanding the types of statutory and/or regulatory relief available;⁹ (4) specifying procedures for an extension where the relief initially provided is of limited duration; and (5) providing for coordination with existing or future programs offered by other regulators designed to facilitate innovation.

⁸ The Bureau believes it is necessary and appropriate, and in the public interest, to include both parts in a single Policy in order to establish uniform procedures to encourage focused presentation of issues, ensure expeditious consideration of applications, and minimize the expenditure of Bureau resources.

⁹ For convenience, the term "relief" will be used hereinafter to cover relief from statutory and/or regulatory provisions.

Part I: No-Action Letters. In Part I, 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, such as a commitment to data-sharing.¹⁰ 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.¹¹

To more closely align Part I 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 available under Part I.¹² 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 Part I of the proposed Policy. 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

¹⁰ Commenters on the proposed 2016 Policy stated that it would require applicants to submit an unduly burdensome volume of information. 81 FR 8686, 8689 (Feb. 22, 2016). Stakeholders have expressed similar concerns subsequent to the finalization of the 2016 Policy.

¹¹ In comments on the proposed 2016 Policy, several stakeholders urged the Bureau to adopt a specific timetable for granting or denying an application for a No-Action Letter – ranging from 45 to 90 days – in order to accommodate the rapid development processes of innovative products and services. 81 FR 6686, 8689 (Feb. 22, 2016).

¹² Many of the proposed revisions are designed to more closely align Part I with no-action letter programs offered by other Federal agencies. *See, e.g.*, Securities and Exchange Commission, Procedures Applicable to Requests for No-Action and Interpretive Letters, Securities Act Release No. 6269 (Dec. 5, 1980) (available at: <http://www.sec.gov/rules/other/33-6269.pdf>) (limited application elements; no temporal limitation; no data-sharing requirements); Commodity Futures Trading Commission, Requests for Exemptive, No-Action and Interpretative Letters, 17 CFR 140.99 (same); Federal Housing Finance Agency, 12 CFR 1211.1, 1211.4, 1211.6 (same); Federal Energy Regulatory Commission, Informal Staff Advice on Regulatory Requirements; Interpretive Order Regarding No-Action Letter Process, 70 FR 71487 (Nov. 29, 2005) (same).

default assumption under Part I of the proposed Policy would be that No-Action Letters would have no such temporal limitation.

Under the 2016 Policy, a No-Action letter is a staff recommendation of no-action relief. Under Part I of the proposed Policy, in contrast, 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. Whereas UDAAP-focused No-Action Letters were expected to be particularly uncommon under the 2016 Policy, there would be no such expectation under Part I of the proposed Policy.¹³

Finally, Part I would include a new section concerning Bureau coordination with other regulators that offer no-action letters or similar forms of relief.¹⁴

Part II: BCFP Product Sandbox. The 2016 Policy is limited to a single type of relief: non-binding staff-level no-action recommendations. In comments on the proposed 2016 Policy, the Bureau was urged to provide types of relief that are legally binding on the Bureau as well as other parties. In its response to such comments, the Bureau stated that “experience with the NAL process will assist the Bureau in evaluating other potential” forms of relief.¹⁵ As noted, the Bureau has provided only one No-Action Letter under the 2016 Policy since it was finalized in February 2016, which strongly suggests that the relief available under the 2016 Policy has not provided firms with a sufficient incentive to seek No-Action Letters from Bureau staff. In view of this experience, the Bureau is proposing to create the BCFP Product Sandbox. The BCFP

¹³ Several commenters on the proposed 2016 Policy urged the Bureau not to exclude UDAAP-focused No-Action Letters on the grounds that no-action relief is particularly valuable for UDAAP matters. 81 FR 6686, 8688 (Feb. 22, 2016). Stakeholders have reiterated this view subsequent to the finalization of the 2016 Policy, including in comments submitted in response to the Bureau’s Request for Information Regarding Bureau Guidance and Implementation Support. 83 FR 13959 (Apr. 20, 2018).

¹⁴ The Bureau has also made a number of technical changes to accommodate the above-described substantive revisions and to increase clarity.

¹⁵ 81 FR 8686, 8688 (Feb. 22, 2016).

Product Sandbox would include no-action relief substantially the same as that available under Part I, as well as two forms of additional relief: (a) approvals by order under three statutory safe harbor provisions¹⁶ (approval relief); 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 (statutory exemptions);¹⁷ or (ii) from regulatory provisions that do not mirror statutory provisions under rulemaking authority or other general authority (regulatory exemptions).¹⁸

In keeping with the “sandbox” concept, 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.¹⁹ Part II of the proposed Policy also includes a section regarding extensions for participation in the BCFP 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. Similarly, in contrast to Part I, Part II would require applicants to commit to sharing data with the Bureau concerning the products or services offered or provided in the BCFP Product Sandbox.

Finally, like Part I, Part II 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. It would also include a similar provision concerning Bureau coordination with other regulators that offer similar programs designed to facilitate innovation.

¹⁶ See note 61, *infra*.

¹⁷ See note 64, *infra*.

¹⁸ See note 65, *infra*. Collectively, statutory exemptions and regulatory exemptions are referred to in the Policy as exemption relief.

¹⁹ Like the no-action relief available under Part I, the no-action relief available under Part II would not have a limited duration.

The Bureau invites comments with respect to any aspect of the proposed Policy. The Bureau is particularly interested in comment on the scope of the grounds for revocation, including whether there are additional changes in law that should be included as grounds for revocation.

III. Regulatory Requirements

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). The Policy is intended to provide information regarding the Bureau's plans to exercise its discretion to provide no-action, approval, and exemption relief, and to describe the procedural components of such discretion. The Policy does not impose any legal requirements on third parties, nor does it create or confer any substantive rights on third parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²⁰

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. § 3501 *et seq.*), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and it displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to

²⁰ 5 U.S.C. 603(a), 604(a).

comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. OMB has previously approved the collections of information contained in the Bureau's current Policy on No-Action Letters. The OMB Number is 3170-0059 (Expiration Date: 02/28/2019). The Bureau has determined that certain proposed revisions to the Policy would result in material changes from what has been previously approved by OMB; therefore, the Bureau plans to submit a request to OMB seeking approval for the revised information collections as contained in this proposed revised Policy.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the new information collection requirements in accordance with the PRA (*See* 44 U.S.C. § 3506(c)(2)(A)). This helps ensure that: the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The Proposed Policy contains revised information collection requirements which consist of the information that should be submitted in applications for admission to the BCFP Product Sandbox as described below in Section II.B. Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information and comments regarding the proposed revised collection of information should be submitted as described in the "**ADDRESSES**" section of this Notice.

Comments are invited on: (a) 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; (b) 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; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

V. Proposed Policy

The text of the proposed Policy is as follows:

POLICY ON NO-ACTION LETTERS AND THE BCFP PRODUCT SANDBOX

In section 1021(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress established the Bureau of Consumer Financial Protection's (Bureau's) statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.²¹ Relatedly, the Bureau's objectives include exercising its authorities under Federal consumer financial law for the purposes of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens, and that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.²²

²¹ 12 U.S.C. 5511(a).

²² 12 U.S.C. 5511(b)(3), (5).

Congress has given the Bureau a variety of authorities under Title X of the Dodd-Frank Act and the enumerated consumer laws²³ that it can exercise to promote this purpose and these objectives. These authorities include the authority to permit certain activity by a particular entity (or entities) by order (including approvals and exemptions), and discretionary supervision and enforcement authority.²⁴ Providing such types of relief may not only benefit consumers and entities that offer or provide consumer financial products or services; it may also inform the Bureau's exercise of other authorities with respect to such products or services, such as market monitoring and rulemaking.

The Policy on No-Action Letters and the BCFP Product Sandbox (Policy) sets forth the Bureau's policy and procedures regarding (i) issuance of No-Action Letters; and (ii) admission to the BCFP Product Sandbox, which involves issuance of (a) approvals by order and/or exemptions by order, and (b) no-action relief. The Policy's main purpose is to provide a mechanism through which the Bureau may more effectively carry out its statutory purpose and objectives.²⁵

The Policy has two parts: (I) No-Action Letters; (II) the BCFP Product Sandbox. The Bureau considers Part I and Part II to be mutually exclusive.

PART I. NO-ACTION LETTERS

This part consists of six sections:

- Section A describes No-Action Letters.
- Section B describes information that should be included in applications for a No-Action Letter.

²³ 12 U.S.C. 5481(12).

²⁴ See notes 26, 61, 64-65, *infra*.

²⁵ The Policy is not intended to, nor should it be construed to: (1) restrict or limit in any way the Bureau's discretion in exercising its authorities; (2) constitute an interpretation of law; or (3) create or confer upon any covered person or consumer, any substantive or procedural rights or defenses that are enforceable in any manner. In contrast, a particular No-Action Letter involves the Bureau's exercise of its supervision and enforcement discretion in a particular manner, and a particular approval or exemption gives the recipient certain legal rights.

- Section C lists factors the Bureau intends to consider in deciding whether to grant an application for a No-Action Letter.
- Section D describes the Bureau’s procedures for issuing No-Action Letters.
- Section E describes how the Bureau intends to coordinate with other regulators with respect to No-Action Letters.
- Section F describes Bureau disclosure of information about No-Action Letters.

A. Description of No-Action Letters

A No-Action Letter under Part I is a document provided to a particular entity or entities, based on particular facts and circumstances, through which the Bureau exercises its discretionary supervision and enforcement authority by providing no-action relief.²⁶ The Bureau intends that a No-Action Letter will include a statement that, subject to good faith, substantial compliance with the terms and conditions of the letter, and in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient predicated on the recipient’s offering or providing the described aspects of the product or service²⁷ under (a) its authority to prevent unfair, deceptive, or abusive acts or practices;²⁸ or (b) any other identified statutory or regulatory authority within the Bureau’s jurisdiction.²⁹ The

²⁶ See 12 U.S.C. 5561 *et seq.* (enforcement authority); 12 U.S.C. 5531(a) (UDAAP enforcement authority); 12 U.S.C. 5514, 5515 (supervision authority); 12 U.S.C. 5511(a) (“The Bureau shall seek to implement and, *where applicable*, enforce Federal consumer financial law . . .”) (emphasis added); *Heckler v. Chaney*, 470 U.S. 821, 832 (1985); *see also* 12 U.S.C. 5512(b)(1) (authorizing the Director of the Bureau to “issue . . . guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof”).

²⁷ For convenience, “described aspects of the product or service” is used in Part I to capture the subject matter scope of a No-Action Letter, including both the particular aspects of the product or service in question, and the particular manner in which it is offered or provided.

²⁸ Implicit in the statement under part (a) is that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive.

²⁹ The Bureau maintains the right to obtain information relating to the consumer financial product or service subject to a No-Action Letter under its applicable supervision and enforcement authorities.

Bureau intends that a No-Action Letter will also include a statement that the letter is limited to the recipient's (or recipients') offering or providing the described aspects of the product or service, and that it does not apply to the recipient's (or recipients') offering or providing different aspects of the product or service.^{30 31}

B. Submitting Applications for No-Action Letters

Applications for a No-Action Letter should include the following:

1. The identity of the entity or entities applying for a No-Action Letter;
2. A description of the consumer financial product or service in question, including (a) how the product or service functions, and the terms on which it will be offered; and (b) the manner in which it is offered or provided, including any consumer disclosures;
3. An explanation of the potential consumer benefits of the product or service and/or the manner in which it is offered or provided;
4. An explanation of the potential consumer risks posed by the product or service and/or the manner in which it is offered or provided, and how the applicant(s) intends to mitigate such risks;
5. An identification of the statutory and/or regulatory provisions from which the applicant(s) seeks no-action relief and an identification of the potential uncertainty, ambiguity, or barrier that such relief would address;³²

³⁰ For example, if only written disclosures were included within the scope of a No-Action Letter, marketing representations made orally by call center representatives could nevertheless be subject to supervisory or enforcement action.

³¹ Additional content the Bureau expects to be included in No-Action Letters is specified in Section I.D.

³² Applicants should describe the relevant provisions with as much specificity as practicable, in part to enable the Bureau to respond expeditiously to the application. The Bureau recognizes that in some cases it may be difficult to determine precisely which provisions would apply, in the normal course, to the product or service in question. In other cases, the applicant may lack the legal resources to make a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

6. If an applicant(s) wishes to request confidential treatment under the Freedom of Information Act,³³ the Bureau's rule on Disclosure of Records and Information,³⁴ or other applicable law, this request and the basis therefor should be included in a separate letter and submitted with the application.³⁵ Applicants are advised to specifically identify the information for which confidential treatment is requested, and may reference the Bureau's intentions regarding confidentiality under Section I.F; and
7. If an applicant(s) wishes the Bureau to coordinate with other regulators, the applicant(s) should identify those regulators, including but not limited to those that have been contacted about offering or providing the product or service in question.³⁶

The Bureau invites applications from trade associations, service providers,³⁷ and other third-parties. A trade association may wish to apply for a No-Action Letter on behalf of one or more of its members. Similarly, a service provider may wish to apply for a No-Action Letter covering business relationships with existing or prospective clients. In either case, the third-party applicant may be unable to describe all entities interested in a No-Action Letter. The third-

³³ 5 U.S.C. 552.

³⁴ 12 CFR part 1070.

³⁵ Applicants should describe the relevant legal bases for confidentiality with as much specificity as practicable. The Bureau recognizes that some applicants may lack the legal resources to provide a detailed and complete showing. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

³⁶ Depending on the extent of coordination requested, the Bureau may not be able to respond to the application within the time frame specified in Section I.C.

³⁷ The term "service provider" is generally defined in section 1002(26) of the Dodd-Frank Act as "any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service." 12 U.S.C. 5481(26). Some potential service providers may be unable to submit an application for a No-Action Letter without entering into a business relationship that enables them to provide a material service to a covered person. At the same time, a service provider may be unable to enter into such a business relationship absent appropriate relief.

party applicant may also have difficulty submitting a complete application without specific knowledge of the business practices of every entity interested in a No-Action Letter.

A trade association, service provider, or other third-party applicant should endeavor to submit a complete application. However, if a third-party applicant is unable to submit a complete application,³⁸ the Bureau may issue a provisional No-Action Letter subject to submission of additional information and the Bureau's subsequent issuance of a non-provisional No-Action Letter. Based on a review of this additional information, a non-provisional No-Action Letter may be issued to the third-party and/or the entity (or entities) described by the third-party. Additional entities described by the third-party applicant may receive the letter at the same or later time by informing the Bureau that they wish to receive the letter and providing the necessary information.

Applications may be submitted via email to: officeofinnovation@cfpb.gov or through other means designated by the Office of Innovation.³⁹ Submitted applications may be withdrawn at any time. Potential applicants are encouraged to contact the Office of Innovation at the same email address for informal preliminary discussion of a contemplated proposal prior to submitting a formal application.⁴⁰

C. Bureau Assessment of Applications for No-Action Letters

In deciding whether to grant an application for a No-Action Letter, the Bureau intends to consider the quality and persuasiveness of the application, with particular emphasis on the information specified in subsections I.B.3, I.B.4, and I.B.5.⁴¹

³⁸ For example, although a third-party should endeavor to identify all other entities jointly interested in pursuing an application, it may not be able to identify all such entities by name at the time of the application. In such cases, the third-party applicant could describe the type of other entity it wishes to receive a No-Action Letter.

³⁹ Except as provided in Section I.B, applications should not include any PII.

⁴⁰ The email subject line should begin: "No-Action Letter – Inquiry."

⁴¹ The decision whether to grant an application for a No-Action Letter will be within the Bureau's sole discretion.

The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete.

D. Bureau Procedures for Issuing No-Action Letters

When the Bureau decides to grant an application for a No-Action Letter, it intends to provide the recipient(s) with a No-Action Letter signed by the Assistant Director of the Office of Innovation or other members of the Office of Innovation, duly authorized by the Bureau, that sets forth the specific terms and conditions of the no-action relief provided.⁴² The Bureau expects the No-Action Letter will:

1. Identify the recipient(s);
2. Specify the subject matter scope of the letter, *i.e.*, the described aspects of the product or service;
3. State that the letter is limited to the recipient's (or recipients') offering or providing the described aspects of the product or service, and that it does not apply to the recipient's (or recipients') offering or providing different aspects of the product or service;
4. State that the letter is limited to the recipient(s), and that it does not apply to any other persons or entities;
5. Require the recipient(s) to inform the Bureau of material changes to information included in the application that would materially increase the risk of material, tangible harm to consumers;

⁴² If the Bureau decides to deny an application, it will inform the applicant(s) of its decision. The Bureau intends to respond to reasonable requests to reconsider its denial of an application within 60 days of such requests. Applicants may also withdraw, modify, and re-submit applications at any time.

6. Specify any other limitations or conditions, and the extent that the Bureau intends to publicly disclose information about the No-Action Letter;⁴³
7. State that, subject to good faith, substantial compliance with the terms and conditions of the letter, and in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient(s) predicated on the recipient's (or recipients') offering or providing the described aspects of the product or service under (a) its authority to prevent unfair, deceptive, or abusive acts or practices;⁴⁴ or (b) any other identified statutory or regulatory authority within the Bureau's jurisdiction.⁴⁵
8. State that, if the No-Action Letter is revoked for a reason other than the recipient's (or recipients') failure to substantially comply in good faith with the terms and conditions of the letter, the revocation is prospective only; *i.e.*, that the Bureau would not pursue an action to impose retroactive liability in such circumstances.

In certain circumstances, the Bureau may revoke the No-Action Letter in whole or in part. Based, in part, on its knowledge of no-action letter programs operated by other Federal agencies, the Bureau anticipates revocation to be quite rare. The Bureau expects the No-action Letter to specify the grounds of revocation, which the Bureau anticipates will be: (i) failure to substantially comply in good faith with the terms and conditions of the letter; (ii) a determination by the Bureau that the recipient's (or recipients') offering or providing the described aspects of the product or service is causing material, tangible, harm to consumers; and (iii) a determination

⁴³ If an applicant(s) objects to the disclosure of certain information and the Bureau insists that the information must be publicly disclosed if a No-Action Letter is issued, the applicant(s) may withdraw the application and the Bureau intends to treat all information related to the application as confidential to the full extent permitted by law.

⁴⁴ Implicit in the statement under part (a) is that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive.

⁴⁵ A No-Action Letter permits the Bureau to exercise its supervision and enforcement authorities with respect to the recipient's (or recipients') conduct outside the scope of the No-Action Letter.

by the Bureau that the legal uncertainty, ambiguity, or barrier that was the basis for grant of a No-Action Letter has changed as a result of a statutory change or a Supreme Court decision.

Before revoking a No-Action Letter, the Bureau will notify the recipient(s) of the grounds for revocation, and permit an opportunity to respond within a reasonable period of time. If the Bureau determines that the recipient(s) failed to substantially comply in good faith with the terms and conditions of the No-Action Letter, it will offer the recipient(s) an opportunity to cure the failure within a reasonable period of time before revoking the No-Action Letter. If the Bureau revokes or partially revokes a No-Action Letter, it will do so in writing and it will specify the reason(s) for its decision. The Bureau intends to allow the recipient(s) to wind-down the offering or providing of the describe aspects of the product or service during an appropriate period after revocation, unless the revocation was based upon the product or service causing material, tangible harm to consumers and a wind-down period would increase such harm.

E. Regulatory Coordination

Section 1015 of the Dodd-Frank Act instructs the Bureau to coordinate with Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.⁴⁶ Similarly, section 1042(c) of the Dodd-Frank Act instructs the Bureau to provide guidance in order to further coordinate actions with the State attorneys general and other regulators.⁴⁷ Such coordination includes coordinating in circumstances where other regulators have chosen to limit their enforcement or other regulatory authority. The Bureau is interested in entering into agreements with State authorities that issue similar forms of no-action relief that would provide for an alternative means of

⁴⁶ 12 U.S.C. 5495.

⁴⁷ 12 U.S.C. 5552(c).

receiving a No-Action Letter from the Bureau, *i.e.*, alternative to the process described in Sections I.B, I.C, and I.D.

Furthermore, the Bureau wishes to coordinate with other regulators more generally. To this end, the Bureau intends to enter into agreements whenever practicable to coordinate relief under Part I with similar forms of relief offered by State, Federal, or international regulators.

F. Bureau Disclosure of Information Regarding No-Action Letters

The Bureau intends to publish No-Action Letters on its website, as well as, in appropriate cases, a version or summary of the application. The Bureau also may publish denials of applications on its website, including an explanation of why the application was denied, particularly if it determines that doing so would be in the public interest.⁴⁸

Public disclosure of any other information regarding No-Action Letters is governed by applicable law, including the Dodd-Frank Act,⁴⁹ the Freedom of Information Act (FOIA),⁵⁰ and the Bureau's rule on Disclosure of Records and Information (Disclosure Rule).⁵¹ The Disclosure Rule generally prohibits the Bureau from disclosing confidential information,⁵² and defines confidential information to include information that may be exempt from disclosure under the FOIA⁵³ – including Exemption 4 regarding trade secrets and confidential commercial or financial information that is privileged or confidential.⁵⁴ The Disclosure Rule defines confidential supervisory information to include any information provided to the Bureau by a financial

⁴⁸ The Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial. Upon request, and to the extent permitted by law, the Bureau does not intend to release identifying information from published denials, and intends to redact such information from the denials published on its website.

⁴⁹ *See, e.g.*, 12 U.S.C. 5512(c)(8).

⁵⁰ 5 U.S.C. 552.

⁵¹ 12 CFR part 1070.

⁵² 12 CFR 1070.41.

⁵³ 12 CFR 1070.2(f).

⁵⁴ 5 U.S.C. 552(b)(4).

institution to enable the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services.⁵⁵ Relatedly, the Disclosure Rule defines business information as commercial or financial information obtained by the Bureau from a submitter that may be protected from disclosure under Exemption 4 of FOIA, and generally provides that such business information shall not be disclosed pursuant to a FOIA request except in accordance with section 1070.20 of the rule.⁵⁶

The Bureau anticipates that much of the information submitted by applicants in their applications, and by recipients during the pendency of the No-Action Letter, will qualify as confidential information, which may include confidential supervisory information and/or business information, under the Disclosure Rule.⁵⁷ In particular, information requested from applicants under subsections I.B.3, I.B.4, and I.B.5 is designed to enable the Bureau to assess potential risks to consumers posed by a No-Action Letter. Similarly, under subsection I.D.5, the Bureau is requiring notification of material changes to any application information to enable the Bureau to monitor for risks during the pendency of a No-Action Letter. Therefore, the Bureau expects that much of the information submitted that is responsive to subsections I.B.3, I.B.4, I.B.5, and I.D.5 may constitute confidential supervisory information since it is obtained, in part, for the purpose of monitoring for risks to consumers. Additionally, the Bureau expects that much of the information submitted that is responsive to subsection I.B.2 will constitute business information. The Bureau expects that it may also constitute confidential supervisory

⁵⁵ 12 CFR 1070.2(i)(1)(iv).

⁵⁶ 12 CFR 1070.20(a), (b).

⁵⁷ To the extent associated communications include the same information, that information would have the same status. But other information in associated communications may be subject to disclosure.

information, since understanding the nature of the applicant’s product or service and the manner in which it is offered or provided is essential for the Bureau to monitor for risks to consumers.⁵⁸

Disclosure of information or data provided to the Bureau under the Policy to other Federal and State agencies is governed by applicable law, including the Dodd-Frank Act⁵⁹ and the Bureau’s Disclosure Rule, and subject to Bureau Bulletin 12-01.⁶⁰ This includes disclosure consistent with Memoranda of Understanding (MOUs) the Bureau has with other Federal and State agencies. For example, under certain MOUs with other Federal agencies, the Bureau has agreed to provide CSI to those agencies.

To the extent the Bureau wishes to publicly disclose non-confidential information regarding a No-Action Letter, the terms of such disclosure will be included in the letter. The Bureau intends to draft the No-Action Letter in a manner such that confidential information is not disclosed. Consistent with applicable law and its own rules, the Bureau will not seek to publicly disclose any information that would conflict with consumers’ privacy interests.

PART II. BCFP PRODUCT SANDBOX

This part consists of seven sections:

- Section A describes the three types of relief available to participants in the BCFP Product Sandbox.
- Section B describes information that should be included in applications for admission to the BCFP Product Sandbox.
- Section C lists factors the Bureau intends to consider in deciding whether to grant an application for admission to the BCFP Product Sandbox.
- Section D describes procedures for granting admission to the BCFP Product Sandbox.
- Section E describes procedures for granting extensions of participation in the BCFP

⁵⁸ To the extent an applicant or recipient submits information in connection with any of the identified subsections that is not actually responsive to these subsections, such information may be subject to disclosure.

⁵⁹ See, e.g., 15 U.S.C. 5512(c)(6); 5514(b)(3); 5515(b)(2); 5516(c)(2); 5516(d)(2).

⁶⁰ Available at: https://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf.

Product Sandbox.

- Section F describes how the Bureau intends to coordinate with other regulators with respect to the BCFP Product Sandbox.
- Section G describes Bureau disclosure of information about the BCFP Product Sandbox.

A. Types of Relief Available to Participants in the BCFP Product Sandbox

1. Approvals

An approval under Part II is relief provided by the Bureau to a particular entity or entities, based on particular facts and circumstances, under one or more of three statutory safe harbor provisions.⁶¹ An approval issued to a particular entity or entities will include (a) a statement that, subject to good faith compliance with specified terms and conditions, the Bureau approves the recipient’s (or recipients’) offering or providing the described aspects of the product or service⁶²; and (b) a specification of the legal authority and rational basis for the Bureau’s issuance of the approval.

By operation of the applicable statutory provision(s), the recipient would have a “safe harbor” from liability under the applicable statute(s) to the fullest extent permitted by these provisions as to any act done or omitted in good faith in conformity with the approval; *i.e.*, the recipient would be immune from enforcement actions by any Federal or State authorities, as well as from lawsuits brought by private parties.⁶³

2. Exemptions

⁶¹ 15 U.S.C. 1640(f) (TILA); 15 U.S.C. 1691e(e) (ECOA); 15 U.S.C. 1693m(d) (EFTA).

⁶² For convenience, “described aspects of the product or service” is used in Part II to capture the subject matter scope of admission to the BCFP Product Sandbox and the attendant relief, including both the particular aspects of the product or service in question, and the particular manner in which it is offered or provided.

⁶³ 15 U.S.C. 1640(f); 15 U.S.C. 1691e(e); 15 U.S.C. 1693m(d).

An exemption under Part II is relief provided to a particular entity or entities, based on particular facts and circumstances, through which the Bureau exercises its authority to grant exemptions by order (i) from statutory provisions (as well as provisions of regulations implementing the statute in question) under statutory exemption-by-order provisions (statutory exemptions),⁶⁴ or (ii) from regulatory provisions that do not mirror statutory provisions under rulemaking authority or other general authority (regulatory exemptions).⁶⁵ An exemption issued to a particular entity or entities will include (a) a statement that, subject to good faith compliance with specified terms and conditions, the Bureau exempts the recipient(s) from complying with or deems it to be in compliance with specified statutory or regulatory provisions in connection with its offering or providing the described aspects of the product or service; and (b) a specification of the legal authority and rational basis for the Bureau’s issuance of the exemption.

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 recipient’s (or recipients’) offering or providing the described aspects of the product or service.⁶⁶

3. No-Action Relief

⁶⁴ See, e.g., 15 U.S.C. 1691c-2(g)(2) (ECOA); 15 U.S.C. 1639(p)(2) (HOEPA); 12 U.S.C. 1831t(d) (FDIA). Any exemption issued by the Bureau pursuant to such statutory authority will satisfy any applicable statutory requirements.

⁶⁵ See, e.g., *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 755 (1972) (“It is well established that an agency’s authority to proceed in a complex area . . . by means of rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances.”); *Brodsky v. U.S. Nuclear Regulatory Comm’n*, 783 F. Supp. 2d 448 (S.D.N.Y. 2011) (same); 15 U.S.C. 5512(b)(1) (authorizing the Director of the Bureau to “prescribe rules and issue orders and guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof”).

⁶⁶ See, e.g., 15 U.S.C. 5532(e) (exemption from a rule or enumerated consumer law issued by the Bureau constitutes a safe harbor from liability); *Williams v. Chartwell Fin. Servs., Ltd.*, 204 F.3d 748, 754 (7th Cir. 2004) (exemption effectively provides a safe harbor from liability).

The no-action relief available under Part II is substantially the same as the no-action relief available under Part I, including not having a limited duration.⁶⁷

B. Submitting Applications for Admission to the BCFP Product Sandbox

An application for admission to the BCFP Product Sandbox should include the following:

1. The identity of the entity or entities applying for admission to the BCFP Product Sandbox;
2. A description of the consumer financial product or service to be offered or provided within the BCFP Product Sandbox, including (a) how the product or service functions, and the terms on which it will be offered; and (b) the manner in which it is offered or provided to consumers, including any consumer disclosures;
3. The requested duration of participation in the BCFP Product Sandbox,⁶⁸ and a description of any other limitations on participation, such as limits on the volume of transactions, the number of consumers to which the product or service is to be offered or provided, or geographic scope;
4. An explanation of the potential consumer benefits of the product or service and/or the manner in which it is offered or provided, and suggested metrics for evaluating whether such benefits are realized, such as consumer utilization numbers;

⁶⁷ Although the no-action relief itself is substantially the same under Part I and Part II, potential applicants should keep in mind other differences between Part I and Part II when deciding whether to apply for a No-Action Letter under Part I, or for admission to the BCFP Product Sandbox under Part II, such as differences in data sharing expectations.

⁶⁸ The Bureau expects that two years will be an appropriate duration in most cases. As indicated in subsection II.A.3, the no-action relief available under Part II, like the no-action relief available under Part I, can be of unlimited duration. The “requested duration of participation in the BCFP Product Sandbox” element pertains only to approval relief and exemption relief.

5. An explanation of the potential consumer risks posed by the product or service and/or the manner in which it is offered or provided, and how the applicant(s) intends to mitigate such risks, including any plans for addressing unanticipated consumer harms and the amount of resources available to provide restitution for material, quantifiable, economic harm to consumers caused by the applicant's (or applicants') offering or providing the product or service;
6. An identification of the statutory and regulatory provisions from which the applicant(s) seeks relief, the type of relief sought (approval, exemption, and/or no-action relief), and an identification of the potential uncertainty, ambiguity or barrier that such relief would address,^{69 70}
7. A description of data the applicant(s) possesses and/or intends to develop pertaining to the impact of the product or service on consumers that will be shared with the Bureau if the application is granted,⁷¹ and a proposed schedule for sharing this data with the Bureau;
8. If an applicant(s) wishes to request confidential treatment under the Freedom of Information Act,⁷² the Bureau's rule on Disclosure of Records and Information,⁷³ or other applicable law, this request and the basis therefor should be included in a

⁶⁹ Applicants should describe the relevant provisions with as much specificity as practicable, in part to enable the Bureau to respond expeditiously to the application. The Bureau recognizes that in some cases it may be difficult to determine precisely which provisions would apply, in the normal course, to the product or service in question. In other cases, the applicant may lack the legal resources to make a fully precise determination. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

⁷⁰ If an applicant(s) seeks an exemption under statutes that permit the Bureau to issue exemptions by order provided certain standards are satisfied, the applicant(s) should explain how the relevant standards are satisfied.

⁷¹ The data the applicant expects to share with the Bureau should be limited to aggregate data.

⁷² 5 U.S.C. 552.

⁷³ 12 CFR part 1070.

separate letter and submitted with the application.⁷⁴ Applicants are advised to specifically identify the information for which confidential treatment is requested; and

9. If an applicant(s) wishes the Bureau to coordinate with other regulators, the applicant(s) should identify those regulators, including but not limited to those that have been contacted about offering or providing the product or service in question.⁷⁵

The Bureau invites applications from trade associations, service providers,⁷⁶ and other third-parties. A trade association may wish to apply for admission to the BCFP Product Sandbox on behalf of one or more of its members. Similarly, a service provider may wish to apply for admission to the BCFP Product Sandbox with existing or prospective clients. In either case, the third-party applicant may be unable to describe all entities interested in admission to the BCFP Product Sandbox. The third-party applicant may also have difficulty submitting a complete application for admission without specific knowledge of the business practices of every entity interested in admission.

A trade association, service provider, or other third-party applicant should endeavor to submit a complete application. However, if a third-party applicant is unable to submit a

⁷⁴ Applicants should describe the relevant legal bases for confidentiality with as much specificity as practicable. The Bureau recognizes that some applicants may lack the legal resources to provide a detailed and complete showing. In such circumstances, the applicant should provide the maximum specification practicable under the circumstances and explain the limits on further specification.

⁷⁵ Depending on the extent of coordination requested, the Bureau may not be able to respond to the application within the time frame specified in Section II.C.

⁷⁶ The term “service provider” is generally defined in section 1002(26) of the Dodd-Frank Act as “any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service.” 12 U.S.C. 5481(26). Some potential service providers may be unable to submit an application for admission to the BCFP Product Sandbox without entering into a business relationship that enables them to provide a material service to a covered person. At the same time, a service provider may be unable to enter into such a business relationship absent appropriate relief.

complete application,⁷⁷ the Bureau may grant provisional admission to the BCFP Product Sandbox subject to submission of additional information and the Bureau’s subsequent grant of non-provisional admission. Based on a review of this additional information, non-provisional admission may be granted to the third-party and/or the entity (or entities) described by the third-party. Additional entities identified by the third-party may be granted admission at the same or later time by informing the Bureau that they wish to be granted admission and providing the necessary information.

Applications may be submitted via email to: officeofinnovation@cfpb.gov or through other means designated by the Office of Innovation.⁷⁸ Submitted applications may be withdrawn at any time. Potential applicants are encouraged to contact the Office of Innovation at the same email address for informal preliminary discussion of a contemplated proposal prior to submitting a formal, complete application.⁷⁹

C. Bureau Assessment of Applications for Admission to the BCFP Product Sandbox

In deciding whether to grant an application for admission to the BCFP Product Sandbox,⁸⁰ the Bureau intends consider the quality and persuasiveness of the application, with particular emphasis on the information specified in subsections II.B.4, II.B.5, and II.B.6.

The Bureau intends to grant or deny an application within 60 days of notifying the applicant that the Bureau has deemed the application to be complete.

D. Procedures for Granting Admission to the BCFP Product Sandbox⁸¹

⁷⁷ For example, although a third-party should endeavor to identify all other entities jointly interested in pursuing an application, it may not be able to identify all such entities by name at the time of the application. In such cases, the third-party applicant could describe the type of other entity it wishes to be admitted to the BCFP Product Sandbox.

⁷⁸ Except as provided in Section II.B, applications should not include any PII.

⁷⁹ The email subject line should begin “BCFP Product Sandbox – Inquiry.”

⁸⁰ The decision whether to grant an application for admission to the BCFP Product Sandbox will be within the Bureau’s sole discretion.

⁸¹ The procedures specified in Section II.D may be modified pursuant to coordination efforts with other regulators, as specified in Section II.F.

When the Bureau decides to grant an application for admission to the BCFP Product Sandbox, it intends to provide the recipient(s) with a document entitled: BCFP Product Sandbox Participation Terms and Conditions (Terms and Conditions document), that sets forth the terms and conditions of the recipient's (or recipients') participation in the BCFP Product Sandbox, including the types and scope of the relief provided to the recipient(s) during its participation in the Sandbox. The Terms and Conditions document will be signed by the Assistant Director of the Office of Innovation or other members of the Office of Innovation, duly authorized by the Bureau and by an officer of each recipient.⁸² The Bureau expects the Terms and Conditions document will:

1. Identify the recipient entity or entities;
2. Specify the subject matter scope of the document, *i.e.*, the described aspects of the product or service;
3. State that the document is limited to the recipient's (or recipients') offering or providing the described aspects of the product or service, and that it does not apply to the recipient's (or recipients') offering or providing different aspects of the product or service;
4. State that the document is limited to the recipient(s), and that it does not apply to any other persons or entities;
5. Require the recipient(s) to report information about the effects of offering or providing the described aspects of the product or service on complaint patterns,

⁸² If the Bureau decides to deny an application, it will inform the applicant(s) of its decision. The Bureau intends to respond to reasonable requests to reconsider its denial of an application within 60 days of such requests. Applicants may also withdraw, modify, and re-submit applications at any time.

- default rates, or similar metrics that will enable to the Bureau to determine if doing so is causing material, tangible harm to consumers.
6. Include a commitment by the recipient(s) to compensate consumers for material, quantifiable, economic harm caused by the recipient's (or recipients') offering or providing the described aspects of the product or service within the BCFP Product Sandbox;
 7. Specify any other limitations or conditions, such as the duration of the recipient's (or recipients') participation in the BCFP Product Sandbox,⁸³ the nature and extent of the recipient's (or recipients') data sharing, and the extent that the Bureau intends to publicly disclose information about the recipient's (or recipients') participation in the BCFP Product Sandbox;⁸⁴
 8. (a) State that, subject to good faith compliance with the terms and conditions of the document, (i) the Bureau approves the recipient's (or recipients') offering or providing the described aspects of the product or service, and/or (ii) the Bureau exempts the recipient(s) from complying with or deems it to be in compliance with specified statutory or regulatory provisions in connection with its offering or providing the described aspects of the product or service; and (b) specify the legal authority⁸⁵ and rational basis for the Bureau's issuance of the approval and/or exemption.

⁸³ The Bureau expects two years to be an appropriate duration in most cases.

⁸⁴ If an applicant(s) objects to the disclosure of certain information and the Bureau insists that the information must be publicly disclosed if admission to the BCFP Product Sandbox is to be granted, the applicant(s) may withdraw the application and the Bureau intends to treat all information related to the application as confidential to the full extent permitted by law.

⁸⁵ See notes 61, 64-65, *supra*.

9. State that, subject to good faith compliance with the terms and conditions of the document, and in the exercise of its discretion, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the recipient(s) predicated on the recipient's (or recipients') offering or providing the described aspects of the product or service under (a) its authority to prevent unfair, deceptive, or abusive acts or practices;⁸⁶ or (b) any other identified statutory or regulatory authority within the Bureau's jurisdiction.⁸⁷
10. State that, if the relief provided pursuant to the document is revoked for a reason other than the recipient's (or recipients') failure to comply in good faith with the terms and conditions of the document, the revocation is prospective only; *i.e.*, that the Bureau would not pursue an action to impose retroactive liability in such circumstances.

In certain circumstances, the Bureau may revoke admission to the BCFP Product Sandbox in whole or in part. Based, in part, on its knowledge of similar relief programs operated by other Federal agencies, the Bureau anticipates revocation to be quite rare. The Bureau expects the Terms and Condition document to specify the grounds of revocation, which the Bureau anticipates will be: (i) failure to comply in good faith with the terms and conditions of the document; (ii) a determination by the Bureau that the recipient's (or recipients') offering or providing the described aspects of the product or service is causing material, tangible harm to consumers; and (iii) a determination by the Bureau that the legal uncertainty, ambiguity, or

⁸⁶ Implicit in the statement under part (a) is that the Bureau has not determined that doing so is deceptive, unfair, or abusive.

⁸⁷ The relief provided to a participant(s) in the BCFP Product Sandbox permits the Bureau to exercise its supervision and enforcement authorities with respect to conduct by the participant(s) outside the scope of that relief.

barrier that was the basis for the relief provided has changed as a result of a statutory change or a Supreme Court decision.

Before issuing a revocation, the Bureau will notify the recipient(s) of the grounds for revocation, and permit an opportunity to respond within a reasonable period of time. If the Bureau nonetheless determines that the recipient(s) failed to comply with the Terms and Conditions document, it will offer the recipient(s) an opportunity to cure the failure within a reasonable period of time before issuing a revocation. If the Bureau issues a revocation for failure to comply in good faith with the Terms and Conditions document, it will do so in writing and it will specify the reason(s) for its decision, including the reason(s) why any attempt to cure was inadequate. The Bureau intends to allow the recipient(s) to wind-down the offering or providing of the described aspects of the product or service during a period of six months after revocation, unless the revocation was based upon the product or service causing material, tangible harm to consumers and a wind-down period would increase such harm.

E. Procedures for Extension of Participation in the BCFP Product Sandbox

Participants in the BCFP Product Sandbox may apply for an extension of a specified period of time based upon the quality and persuasiveness of the data provided to the Bureau under Section II.D. The Bureau expects to place particular weight on the extent to which the data shows that the described aspects of the product or service are benefitting consumers and/or not causing material, tangible harm to consumers. Such applications for an extension should include the proposed duration of the extension and should be submitted no later than 90 days prior to the expiration of the applicant's participation in the BCFP Product Sandbox.⁸⁸

⁸⁸ Assuming the two-year period the Bureau expects to be appropriate in most cases, the Bureau believes recipients would have sufficient time to gather evidence supportive of an extension request. For periods of one year or less, the Bureau may consider an extension deadline appropriate for the period in question.

Alternatively, participants may reapply by resubmitting the entirety of the information specified in Section II.B.

Upon the presentation of persuasive data, the Bureau anticipates granting such extension applications for a period at least as long as the period of the applicant's (or applicants') original participation in the BCFP Product Sandbox. The Bureau anticipates permitting longer extensions where the Bureau is considering amending applicable regulatory requirements.⁸⁹ During the time period pending a rule amendment, the Bureau intends to consider means of providing similar relief to other covered entities that engage in the same or similar conduct in offering or providing comparable products.

F. Regulatory Coordination

Section 1015 of the Dodd-Frank Act instructs the Bureau to coordinate with Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.⁹⁰ Similarly, section 1042(c) of the Dodd-Frank Act instructs the Bureau to provide guidance in order to further coordinate actions with the State attorneys general and other regulators.⁹¹ Such coordination includes coordinating in circumstances where other regulators have chosen to limit their enforcement or other regulatory authority. One method of limiting such authority is through a State sandbox, or group of State sandboxes, or other limited scope State authorization program ("State sandbox").⁹² The Bureau is interested in entering into agreements with State authorities that operate or plan to

⁸⁹ The Bureau's plans regarding rulemaking activity are set forth in its Semiannual Regulatory Agenda, published in full on www.reginfo.gov. If the period of an extension were tied to the Bureau's consideration of amending relevant regulatory provisions and the Bureau announced it was discontinuing its plans to amend the provisions in question, the extension period would be adjusted accordingly, *e.g.*, adjusted to end on a specific date.

⁹⁰ 12 U.S.C. 5495.

⁹¹ 12 U.S.C. 5552(c).

⁹² The concept of a regulatory sandbox is relatively new and does not have a precise, generally accepted definition. The term is used in this Policy to refer to a regulatory structure where a participant obtains limited or temporary access to a market in exchange for reduced regulatory barriers to entry or reduced regulatory uncertainty.

operate a State sandbox that would provide for an alternative means of admission to the BCFP Product Sandbox, *i.e.*, alternative to the process described in Sections II.B, II.C, and II.D.

Furthermore, the Bureau wishes to coordinate with other regulators more generally. To this end, the Bureau intends to enter into agreements whenever practicable to coordinate relief under Part II with similar forms of relief offered by State, Federal, or international regulators.

G. Bureau Disclosure of Information Regarding the BCFP Product Sandbox

The Bureau intends to publish on its website information about the BCFP Product Sandbox. For entities admitted to the BCFP Product Sandbox pursuant to the process specified in Sections II.B, II.C, and II.D, the information is expected to include: (i) The identity of the entity or entities admitted to the BCFP Product Sandbox; (ii) the subject matter scope of its or their participation;⁹³ (iii) the duration of its or their participation; (iv) the types of relief provided to participant(s); (v) for approvals and/or exemptions, the legal authority and rational basis for the approval and/or exemption; and (vi) in appropriate cases, a version or summary of the application.⁹⁴ The Bureau also intends to publish on its website information about denials of applications submitted pursuant to Section B, including an explanation of why the application was denied.⁹⁵

Public disclosure of any other information regarding admission to the BCFP Product Sandbox is governed by applicable law, including the Dodd-Frank Act,⁹⁶ the Freedom of

⁹³ See subsection II.D.2, *supra*.

⁹⁴ The Bureau intends, at minimum, to publish the names of participants admitted to the BCFP Product Sandbox pursuant to Section II.F, but reserves the discretion to negotiate any additional disclosure terms with the corresponding regulator to the extent permitted by law.

⁹⁵ Upon request, and to the extent permitted by law, the Bureau does not intend to release identifying information from published denials, and intends to redact such information from the denials published on its website. The Bureau intends to publish denials only after the applicant is given an opportunity to request reconsideration of the denial.

⁹⁶ See, e.g., 12 U.S.C. 5512(c)(8).

Information Act (FOIA),⁹⁷ and the Bureau’s rule on Disclosure of Records and Information (Disclosure Rule).⁹⁸ The Disclosure Rule generally prohibits the Bureau from disclosing confidential information,⁹⁹ and defines confidential information to include confidential supervisory information and Bureau information that may be exempt from disclosure under the FOIA¹⁰⁰ – including trade secrets and confidential commercial or financial information that is privileged or confidential.¹⁰¹ The Disclosure Rule defines confidential supervisory information to include any information provided to the Bureau by a financial institution to enable the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services.¹⁰² Relatedly, the Disclosure Rule defines business information as commercial or financial information obtained by the Bureau from a submitter that may be protected from disclosure under Exemption 4 of FOIA, and generally provides that such business information shall not be disclosed pursuant to a FOIA request except in accordance with section 1070.20 of the rule.¹⁰³

The Bureau anticipates that much of the information submitted by applicants in their applications, and by recipients during their participation in the BCFP Product Sandbox pursuant to the Terms and Conditions document, will qualify as confidential information, which may include confidential supervisory information, and/or business information, under the Disclosure Rule.¹⁰⁴ In particular, the information requested under subsections II.B.3, II.B.4, II.B.6, and

⁹⁷ 5 U.S.C. 552.

⁹⁸ 12 CFR part 1070.

⁹⁹ 12 CFR 1070.41.

¹⁰⁰ 12 CFR 1070.2(f).

¹⁰¹ 5 U.S.C. 552(b)(4).

¹⁰² 12 CFR 1070.2(i)(1)(iv).

¹⁰³ 12 CFR 1070.20(a), (b).

¹⁰⁴ To the extent associated communications include the same information, that information would have the same status. But other information in associated communications may be subject to disclosure.

II.B.8 is designed to enable the Bureau to assess potential risks to consumers posed by the described aspect of the product or service. Similarly, subsection II.D.5 requires recipients to report information about the effects of offering or providing the described aspects of the product or service on complaint patterns, default rates, or similar metrics that will enable to the Bureau to determine if doing so is causing material, tangible harm to consumers. The other data and information the recipient(s) will provide pursuant to subsection II.D.6 will likewise be used by the Bureau to monitor for risks to consumers. Therefore, the Bureau expects that much of the information submitted that is responsive to subsections II.B.3, II.B.4, II.B.6, and II.B.8, and the referenced portions of subsection II.D, may constitute confidential supervisory information, since it is obtained for the purpose of monitoring for risks to consumers. Additionally, the Bureau expects that much of the information or data submitted responsive to subsections II.B.2, II.B.8, and II.D.6 will constitute business information. The Bureau expects that it may also constitute confidential supervisory information, since understanding the nature of the described aspects of the product or service is essential for the Bureau to monitor for risks to consumers.¹⁰⁵

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Disclosure of information or data provided to the Bureau under the Policy to other Federal and State agencies is governed by applicable law, including the Dodd-Frank Act¹⁰⁷ and the Bureau's Disclosure Rule, and subject to Bureau Bulletin 12-01.¹⁰⁸ This includes disclosure consistent with Memoranda of Understanding (MOUs) the Bureau has with other Federal and

¹⁰⁵ To the extent an applicant or recipient submits information in connection with any of the identified subsections that is not actually responsive to these subsections, such information may be subject to disclosure.

¹⁰⁶ The Bureau notes that the preceding protections from public disclosure must be balanced against the Bureau's potential need to publicly disclose submitted data in some form – as permitted by applicable law and/or consent of recipients – if it decides to revise relevant regulatory provisions through notice-and-comment rulemaking based, in part, on such data – as provided in Section E.

¹⁰⁷ See, e.g., 15 U.S.C. 5512(c)(6); 5514(b)(3); 5515(b)(2); 5516(c)(2); 5516(d)(2).

¹⁰⁸ Available at: https://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf.

State agencies. For example, under certain MOUs with other Federal agencies, the Bureau has agreed to provide CSI to those agencies.

To the extent the Bureau wishes to publicly disclose non-confidential information regarding the BCFP Product Sandbox, the terms of such disclosure will be included in the Terms and Conditions document specified in Section II.D. The Bureau intends to draft the document in a manner such that confidential information is not disclosed. Consistent with applicable law and its own rules, the Bureau will not seek to publicly disclose any information or data that would conflict with consumers' privacy interests.

**[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED POLICY GUIDANCE
TITLED: “POLICY ON NO-ACTION LETTERS AND THE BCFP PRODUCT
SANDBOX”]**

Dated: December ____, 2018

Mick Mulvaney

Acting Director, Bureau of Consumer Financial Protection