

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB-2014-0025]

POLICY ON NO-ACTION LETTERS

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed policy and proposed information collection; request for comment.

SUMMARY: The Consumer Financial Protection Bureau (Bureau) invites the public to take this opportunity to comment on its proposed Policy on No-Action Letters (Policy), which is intended to further its objectives under section 1021 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), and also a proposed information collection associated with applications submitted by applicants requesting no-action letters 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 OF THIS DOCUMENT IN THE FEDERAL REGISTER]** to be assured of consideration.

ADDRESSES: You may submit comments, identified by the proposal's title, "Policy on No-Action Letters," and docket number (see above), by any of the following methods:

- Electronic: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Consumer Financial Protection Bureau, Office of the Executive Secretary, 1700 G Street, NW, Washington, DC 20552.
- Hand Delivery/Courier: Consumer Financial Protection Bureau, Office of the Executive

Secretary, 1275 First Street, NE, Washington, DC 20002.

Please note that comments submitted by fax or e-mail and those submitted after the comment period will not be accepted. Comments will be available for public inspection and copying at 1275 First Street, NE, Washington, D.C. 20002 between the hours of 10:00 a.m. and 5 p.m. eastern standard time. In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: For additional information about the proposed Policy please contact Dan Quan, Senior Advisor to the Director, Consumer Financial Protection Bureau, (202) 435-7678. 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 Consumer Financial Protection Bureau, 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. Policy on No-Action Letters

Abstract. In specifying the purposes, objectives, and functions of the Bureau in section 1021 of the Dodd-Frank Act, Congress authorized the Bureau to exercise its authorities for the purpose of ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.¹ In line with the Bureau's

¹ Section 1022(b)(1) of the Dodd Frank Act authorizes the Director to prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and

authority, it is proposing the Policy that is laid out in in the next section below. Under the proposed Policy, Bureau staff would, in its discretion, issue no-action letters (NALs) to specific applicants in instances involving innovative financial products or services that promise substantial consumer benefit where there is substantial uncertainty whether or how specific provisions of statutes or regulations implemented by the Bureau would be applied (for example if, because of intervening technological developments, the application of statutes and regulations to a new project is novel and complicated). The Policy is also designed to enhance compliance with applicable federal consumer financial laws. A NAL would advise the recipient that, subject to its stated limitations, the staff has no present intention to recommend initiation of an enforcement or supervisory action against the requester with respect to a specified matter. NALs would be subject to modification or revocation at any time in the sole discretion of the staff, and may be conditioned on particular undertakings by the applicant with respect to product or service usage and data-sharing with the Bureau. Issued NALs would be publicly disclosed. NALs would be non-binding on the Bureau, and would not bind courts or other actors who might challenge a NAL-recipient's product or service, such as other regulators or parties in litigation. The Bureau believes that there may be significant opportunities to facilitate innovation and access, and otherwise substantially enhance consumer benefits, through the proposed Policy.

II. 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 approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Further, the Bureau

carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

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 comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. The final policy will display the control number assigned by OMB.

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 a new information collection requirement, consisting of the information that should be submitted to demonstrate eligibility for a NAL as described further below. This has been deemed to be a collection of information for purposes of the PRA. Documentation prepared in support of this information collection request is available at www.regulations.gov. Requests for additional information and comments regarding this proposed collection of information should be submitted as described in the "ADDRESSES" section of this Notice.

Title of Collection: Policy on No-Action Letters.

OMB Control Number: 3170-XXXX.

Type of Review: New Collection (Request for a new OMB control number).

Affected Public: Private Sector (Certain businesses offering consumer financial products or services that meet the definition of “covered person” under section 1002(6) of the Dodd-Frank Act).

Estimated Number of Respondents: 1-3.

Estimated Total Annual Burden Hours: 50-300.

III. Request for Comments

Comments are invited with respect to any aspect of the proposed Policy and/or the related information collection effected by the application process for no-action letters.

Comments related to the proposed information collection will be summarized and/or included in the Bureau’s request for OMB approval. With respect to the collection, 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.

IV. Procedural Requirements

The Bureau concludes that the proposed Policy constitutes an agency general statement of policy and/or a rule of agency organization, procedure, or practice exempt pursuant to 5

U.S.C. 553(b). Notwithstanding this conclusion, the Bureau invites public comment on the proposed Policy. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply.

POLICY ON NO-ACTION LETTERS

Under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau’s objectives include “facilitating [consumer] access” to and “innovation” in markets for consumer financial products.² The Bureau recognizes that, in certain circumstances, some may perceive that the current regulatory framework may hinder the development of innovative financial products that promise substantial consumer benefit because, for example, existing laws and rules did not contemplate such products. In such circumstances, it may be substantially uncertain whether or how specific provisions of certain statutes and regulations should be applied to such a product – and thus whether the federal agency tasked with administering those portions of a statute or regulation may bring an enforcement or supervisory action against the developer of the product for failure to comply with those laws. Such regulatory uncertainty may discourage innovators from entering a market, or make it difficult for them to develop suitable products or attract sufficient investment or other support.

Federal agencies can reduce such regulatory uncertainty in a variety of ways. For example, an agency may clarify the application of its statutes and regulations to the type of product in question – by rulemaking or by the issuance of less formal guidance. Alternatively, an agency may provide some form of notification that it does not intend to recommend initiation of an enforcement or supervisory action against an entity based on the application of specific identified provisions of statutes or regulations to its offering of a particular product. This proposal is concerned with the latter means of reducing regulatory uncertainty in limited circumstances.

Pursuant to its authorities under the Dodd-Frank Act, the Bureau is today releasing its

² 12 U.S.C. 5511(b)(5). As used in this Proposed Policy, the term “product(s)” means “product(s) and services” or “products or service(s),” as appropriate.

Proposed Policy on No-Action Letters (Proposed Policy). Under the Proposed Policy, in the circumstances described above an entity may submit a request for a No-Action Letter from Bureau staff (staff). A No-Action Letter would be a statement that the staff has no present intention to recommend initiation of an enforcement or supervisory action against the requester with respect to particular aspects of its product, under specific identified provisions of statutes or regulations. Such a letter may be limited as to time, volume of transactions, or otherwise, and may be subject to potential renewal. Whether and how to provide a No-Action Letter or otherwise respond to such requests, including any limitations or conditions on acceptance, will be within the sole discretion of the staff.

The Proposed Policy is intended to facilitate consumer access to innovative financial products that promise substantial benefit to consumers, taking into account other marketplace offerings, and also to enhance compliance with applicable federal consumer financial laws.³ By furnishing a dedicated mechanism through which substantial regulatory uncertainty can be reduced, the Proposed Policy is also intended to discourage the offering of innovative consumer-*harmful* financial products in such circumstances. In addition, because No-Action Letters often will be conditioned on specified consumer protection conditions designed to satisfy – or even exceed – applicable disclosure requirements and substantive protections, the Bureau expects the Proposed Policy, if adopted, to benefit consumers in further ways. The Bureau also expects the Proposed Policy to help further its consumer protection functions and objectives, including market monitoring and rulemaking, when a No-Action Letter is conditioned on a commitment by

³ The Proposed Policy and any No-Action Letter 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, including the provision of no-action or similar relief other than pursuant to the Proposed Policy; (2) constitute an interpretation of law; or (3) create or confer upon any covered person (including one who is the subject of the Bureau supervisory, investigation, or enforcement activity) or consumer, any substantive or procedural rights or defenses that are enforceable in any manner.

the requester to share data about the product with the Bureau, or to engage in other consultation that may help inform Bureau decisions regarding whether to take further action in connection with the financial product in question.

The Proposed Policy has five sections:

- Section A describes information that should be included in requests for a No-Action Letter.
- Section B describes types of responses the staff may provide to requests for a No-Action Letter.
- Section C lists factors the staff may consider in deciding whether to provide a No-Action Letter.
- Section D describes the general content and limitations of No-Action Letters.
- Section E describes disclosure of data received from entities whose requests for No-Action Letters are granted.

A. Submitting Requests for No-Action Letters

Requests for a No-Action Letter should be submitted in writing via email to ProjectCatalyst@cfpb.gov.⁴ Submitted requests may be withdrawn by the requester at any time.

Requests should include the following:

1. The name(s) of the entity or entities and individual(s) requesting the No-Action Letter. The staff will not accept requests for No-Action Letters that fail to identify

⁴ The email subject line should begin “Request for No-Action Letter.” The Proposed Policy is one component of the Bureau’s Project Catalyst initiative, which invites organizations to bring innovation-related concerns to the Bureau’s attention at ProjectCatalyst@cfpb.gov. Innovators are advised to use the same Project Catalyst point of contact to initiate a preliminary discussion of a potential No-Action Letter. There are no formal submission requirements to request such a preliminary discussion.

the entity or entities and individuals providing the product.

2. A description of the consumer financial product involved, including:
 - a. how the product functions, and the terms on which the product will be offered;
 - b. the roles and relationships of all parties to transactions involving the product;
and
 - c. the manner in which it is offered to and used by consumers, including any consumer disclosures.
3. The timetable on which the product is expected to be offered. No-Action Letters are not intended for either well-established products or purely hypothetical products that are not close to being able to be offered.
4. An explanation of how the product is likely to provide substantial benefit to consumers differently from the present marketplace, and suggested metrics for evaluating whether such benefits are realized.
5. A candid explanation of potential consumer risks posed by the product – particularly as compared to other products available in the marketplace – and undertakings by the requester to address and minimize such risks.
6. A showing of why the requested No-Action Letter is necessary and appropriate to remove substantial regulatory uncertainty hindering the development of the product, including:
 - a. Identification of each of the specific provisions of the statutes and regulations regarding which a No-Action Letter is being requested, and a showing how each of these specific provisions of the statute(s) and regulation(s) should be applied to the product is substantially uncertain, including analysis of the

relevant legal authorities and policy considerations.

- b. A showing of why the product's aspects in question should not be treated as subject to or precluded by the specific identified statute(s) and regulation(s), and/or how the proposed compliance of the product's aspects in question with the specific identified statute(s) and regulation(s) is appropriate.
 - c. A showing of the product's compliance with other relevant federal and state regulatory requirements.
 - d. A showing of why the substantial regulatory uncertainty that is the subject of the request cannot be effectively addressed through means other than the requested No-Action Letter, such as modification of the product.
7. An affirmation that the facts and representations in the request are true and accurate.
 8. An undertaking by the requester to provide information requested by the staff in its evaluation of the request.
 9. A description of data that the requester possesses, and data it intends to develop, pertaining to the factual bases cited in support of the request and an undertaking, if the request is granted, to share appropriate data regarding the product with the Bureau, including data regarding the impact of the product on consumers. This description should also address the requester's intentions regarding consultation with the Bureau in its plans for development of additional data.
 10. Undertakings that, if the request is granted, the requester will not represent that the Bureau or its staff has: (i) licensed, authorized or endorsed the product, or its permissibility or appropriateness, in any way; (ii) determined, or provided an interpretation, that the product is or is not in compliance with legal or other

- requirements, or has been granted an exception, waiver, safe harbor, or comparable treatment; or (iii) granted No-Action Letter treatment with respect to any aspect of the requester's offerings or any provision of law other than those expressly addressed in the No-Action Letter.
11. An affirmation that, to the requester's knowledge (except as specifically disclosed in the request), neither the requester nor any other party with substantial ties to transactions involving the product is the subject of an ongoing, imminent, or threatened governmental investigation, supervisory review, enforcement action, or private civil action respecting the product, or any related or similar product; and an undertaking promptly to notify the Bureau (unless the request for a No-Action Letter has been denied) of any such governmental investigation, supervisory review, enforcement action, or private civil action that is initiated or threatened.
 12. An affirmation that (except as specifically disclosed in the request) the principals of the requester have not been subject to license discipline, adverse supervisory action, or enforcement action with respect to any financial product, license, or transaction within the past ten years.
 13. A statement specifying whether the request is limited to a particular time period, to a particular volume of transactions, or to other limitations.
 14. A description of any particular consumer safeguards the requester will employ, although they may not be required by law, if a No-Action Letter is issued, including any mitigation of potential for or consequences of consumer injury. The description should specify the requester's basis for asserting and considering that such safeguards are effective. The description should also address any future study the requester will

undertake to further evaluate the effectiveness of such safeguards.

15. If a request for confidential treatment is made, this request and the basis therefor should be included in a separate letter and submitted with the request for a No-Action Letter.

B. Staff Response to Requests for No-Action Letters

The decision whether to respond to a request for a No-Action Letter, and the nature of any response, is within the staff's sole discretion. Depending on the circumstances, the staff may: (i) grant the request (which grant may be partial, or may be subject to limitations or conditions); (ii) deny the request; (iii) specifically decline to either grant or deny the request, with an explanation; or (iv) specifically decline to either grant or deny the request, without explanation. The staff may communicate with the requester before making any decision regarding whether and how to respond to the request to seek clarification or for other purposes. The staff may permit requests to be modified in the course of such communications. No-Action Letters are subject to immediate modification and/or revocation upon notice.

Type (i) responses, and a version or summary of the request, will be published on the Bureau's website.⁵ Type (ii) responses will be provided to the requester but generally will not be published on the Bureau's website.⁶ Type (iii) and (iv) responses may be published on the Bureau's website, particularly if the staff believes that the information will be in the public interest.

Non-exclusive examples of circumstances under which the staff presumptively will not

⁵ Type (i) responses are further discussed in Section D below.

⁶ The Bureau may publish a denial on its website if it believes that doing so is in the public interest.

answer the request or will likely provide, at most, a response of type (iii) or (iv) include:

1. The requester or its principals are the subject of ongoing governmental law enforcement investigation, supervisory review, or enforcement action respecting the product or a related or similar product.⁷
2. The request concerns an area in which the Bureau is engaged in ongoing or anticipated rulemaking, supervisory, enforcement, or other initiatives.
3. The request concerns a legal or product environment which the staff considers to be inappropriate for no-action treatment. At the present time, for example, the staff does not anticipate no-action treatment of UDAAP matters.
4. The staff has determined that the request does not warrant investment of the Bureau resources that are likely necessary to address the request adequately.

No-Action Letters will not be routinely available. The Bureau anticipates that No-Action Letters will be provided only rarely and on the basis of exceptional circumstances and a thorough and persuasive demonstration of the appropriateness of such treatment. Requesters do not have a legal entitlement to no-action treatment of regulatory uncertainties, and Bureau resources available for consideration of No-Action Letter requests are limited in light of other Bureau priorities. Requesters may wish to include in their submissions any particular reasons why their request should be considered by the Bureau to be a matter of special importance.

⁷ If the staff decides to provide a Type (iii) response to the entity in such circumstances, the response will not be published on the Bureau's website.

C. Staff Assessment of Requests for No-Action Letters

In deciding whether to provide a No-Action Letter,⁸ the staff will consider a variety of factors, including:

1. The extent to which the requester's product structure, terms and conditions, and disclosures to and agreements with consumers enable consumers to meaningfully understand and appreciate the terms, characteristics, costs, benefits, and risks associated with the product, and to act effectively to protect themselves from unnecessary cost and risk.
2. The extent to which evidence, including the requester's own testing, indicates that the product's aspects in question may provide substantial benefits to consumers.
3. The extent to which the asserted benefits to consumers are available in the marketplace from other products.
4. The extent to which the requester controls for and effectively addresses and mitigates risks to consumers.⁹
5. The extent to which granting the request is necessary in order to reduce regulatory uncertainty for the requester with respect to the requester's product.
6. The extent to which the regulatory uncertainty identified by the requester may be better addressed through other regulatory means, such as Bureau rulemaking, other Bureau guidance, or provision of a waiver under the Bureau's Policy to Encourage

⁸ The decision whether to provide a No-Action Letter, and the terms on which it may be provided, are within the staff's sole discretion.

⁹ This factor includes the extent to which the requester has plans in place for addressing unanticipated consumer harms caused by the product and the extent to which the entity possesses the resources to compensate injured consumers.

Trial Disclosure Programs.¹⁰

7. Whether the entity is demonstrably in compliance with other relevant federal and state regulatory requirements.
8. The extent to which the request is sufficiently limited in time, volume of transactions, or otherwise, to allow the Bureau to learn about the product and the aspects in question while minimizing any consumer risk.
9. The extent to which any data that the entity has provided and agrees to provide to the Bureau regarding the operation of the product's aspects in question will be expected to further consumer protection.
10. The extent to which public disclosure of relevant data may be permitted.

D. Staff Provision of No-Action Letters

When the staff decides to provide a No-Action Letter, it will publish the letter, along with the request, on its website. The No-Action Letter will include the following:

1. A statement that, subject to the conditions and limitations set forth, the staff has no present intention to recommend initiation of an enforcement or supervisory action against the requester in respect to the particular aspects of its product, and under specific identified provisions and applications of statutes or regulations that are the subject of the No-Action Letter. The statement that the staff has no present intention to recommend initiation of an enforcement or supervisory action does not mean that the Bureau will not conduct supervisory activities or engage in enforcement investigation to evaluate the requester's compliance with the terms of the No-Action

¹⁰ 78 FR 64389 (Oct. 29, 2013).

- Letter or to evaluate other matters.
2. A statement that the no-action treatment is limited to the requester's offering of the product's aspects in question in the manner described, and that it does not pertain to (i) the requester for offering the product in a different manner; (ii) the requester for offering different products, or with respect to other provisions or applications of these or other statutes and regulations, or with respect to other aspects of the product; or (iii) any other person.
 3. A statement that the No-Action Letter is based on the facts and factual representations made in the request, and is contingent on the correctness of such facts and factual representations.
 4. A statement (a) disclaiming any intention by the Bureau or its staff to have reached a determination about, or to provide an interpretation of, or to grant any exception, waiver, safe harbor, or similar treatment respecting the statutes and rules identified in the request, or their application to the product's aspects in question, or otherwise to make an official expression of the Bureau's views, and that any explanatory discussion should not be interpreted as such an interpretation, waiver, safe harbor, or the like, that is binding on the Bureau, and (b) that the staff are not necessarily in agreement with any legal or policy analysis, any interpretation of data, or any other matter, set forth in the request.
 5. A description of any conditions or limitation attending the staff's recommendation, such as the requester's commitment to provide additional safeguards to consumers, or to share certain types of data with the Bureau, as well as any limitations as to time period or quantity of transactions.

6. A statement that the No-Action Letter is subject to modification or revocation at any time at the discretion of the staff for any reason, including that: the facts and representations in the request appear to be materially inaccurate or uncertain; the requester fails to satisfy conditions or violates limitations specified in the No-Action Letter; the product or any of its material features, terms, or conditions, is altered; or the staff determines that such modification or revocation is appropriate to protect consumers or is otherwise in the public interest. Revocation or modification may be immediate upon notice. To the extent that the facts and representations in the request are materially inaccurate, or the requester fails to satisfy conditions or violates limitations specified in the No-Action letter, and in other similar circumstances, the No-Action Letter is by its own terms inapplicable (even without modification or revocation) and the staff may recommend initiating a retrospective enforcement or supervisory action if appropriate.
7. A statement that the No-Action Letter is not issued by or on behalf of any other government agency or any other person and, so far as the Bureau is concerned, no other government agency or person, and no court, has any obligation to honor or defer to it in any way.
8. A statement of any expiration date, or volume limitation, applicable to the No-Action letter (and whether or not it may be sought to be renewed).
9. A statement that the No-Action letter becomes inapplicable upon failure to adhere to the affirmations or undertakings made in the request or stated as conditions of the issuance of the letter.

E. Bureau Disclosure of Entity Data

The Bureau's disclosure of the request and any data received from the requester in connection with a request for a No-Action Letter is governed by the Bureau's rule regarding Disclosure of Records and Information.¹¹ For example, the rule generally requires the Bureau to make available records requested by the public unless they are subject to a FOIA exemption or exclusion.¹² To the extent the Bureau affirmatively wishes to disclose such data, the terms of such disclosure will be consistent with applicable law and the Bureau's own rules and may be specified in a separate agreement with the requester. Consistent with applicable law and its own rules, the Bureau will not seek to disclose data that would conflict with consumers' privacy interests.

¹¹ See 12 CFR part 1070.

¹² See 12 CFR 1070.14.

[THIS SIGNATURE PAGE PERTAINS TO THE NOTICE OF PROPOSED POLICY
TITLED "POLICY ON NO-ACTION LETTERS"]

Dated: October 8, 2014.



Richard Cordray,

Director, Bureau of Consumer Financial Protection.