



CENTER FOR CAPITAL MARKETS  
COMPETITIVENESS

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September 5, 2019

Desk Officer for the Bureau of Consumer Financial Protection  
Office of Management and Budget  
New Executive Office Building  
Room 10235  
Washington, DC 20503

***Re: Agency Information Collection Activities: Submission for OMB  
Review***

To Whom It May Concern:

The U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness (“CCMC”) appreciates the opportunity to comment on the proposed renewal of the existing information collection entitled: “Policy on No-Action Letters and Compliance Assistance Sandbox Policy.”<sup>1</sup>

We believe that it is critical for the Bureau of Consumer Financial Protection (“Bureau”) to be able to provide regulatory certainty to the wide range of companies subject to its authority. An effective no-action letter process—as well as a companion process for issuing advisory opinions—is an important tool for providing such regulatory clarity. We have urged the Bureau to expand its existing no-action letter program and hope that it will do so in a forthcoming amended policy statement. Likewise, we have urged the Bureau to follow through with its proposal to create a regulatory sandbox and thereby facilitate innovation in consumer financial services.

A limited amount of information collection is a necessary element of any no-action letter or advisory opinion process, as well as of any sandbox. The Bureau, like any other agency, needs sufficient information to respond to requests for no-action letters or advisory opinions, or to engage with potential participants about innovative products. Unlike many other information collections, the collection at issue here also places no unwanted burden upon private entities. Only companies that seek to

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<sup>1</sup> See Notice and Request for Comment, 84 Fed. Reg. 38247 (Aug. 6, 2019).

participate in the no-action letter or sandbox processes—knowing the potential paperwork burden in advance—will experience (necessary) paperwork burdens under either policy. Reauthorizing the information collection at issue here thus not only is entirely appropriate, but also is extremely important for the Bureau as it seeks to clarify regulatory requirements and facilitate innovation in the marketplace for consumer financial products and services.

We accordingly write to emphasize two points:

- The contemplated information collection will help the Bureau reduce regulatory uncertainty and facilitate innovation;
- The contemplated paperwork burdens are appropriate for the proposed information collection.

### **Discussion**

#### **1. The contemplated information collections will help the Bureau reduce regulatory uncertainty and facilitate innovation.**

- a. No-action letters are a critical tool for the Bureau as it addresses regulatory uncertainty.

A wide range of federal agencies—including the Consumer Product Safety Commission, Justice Department, Federal Trade Commission, and SEC—routinely issue written opinions that clarify governing legal requirements. These opinions typically take one of two forms: a “no-action” letter stating that staff would not recommend that an enforcement action be pursued under stipulated facts, and an advisory opinion that interprets a governing legal standard for an entire market. These letters support the foundational principle of transparent and open government. The ability of a business to ask the government whether the law permits a specific practice or activity brings valuable clarity to the law – and fairness to its enforcement. From a business perspective, a “no” answer is preferable to an agency declining to disclose whether an activity is legally prohibited, and then potentially penalizing a business at a later date.

We are grateful that the Bureau has signaled a new openness to issuing no-action letters.<sup>2</sup> We appreciate that it has decided to revisit its first version of a no-

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<sup>2</sup> See Proposed Policy Guidance and Procedural Rule, Policy on No-Action Letters and the BCFP Product Sandbox, 83 Fed. Reg. 64036 (Dec. 13, 2018).

action letter policy that was, by design, helpful in only the rarest of circumstances. Under that policy, applicants have been required to satisfy a series of burdensome and intrusive requirements that find no equivalent within other federal agencies, with no assurance that the company will be protected from liability.<sup>3</sup> It has consequently not been surprising that only one no-action letter has been granted since the process was established two years ago.<sup>4</sup> Indeed, the Bureau itself estimated that it would receive no more than three actionable requests for no-action letters each year.<sup>5</sup>

The Bureau's limited informal processes for answering questions from regulated entities have not compensated for the absence of meaningful no-action and advisory opinion processes. Advisory opinions and no-action letters provide well-considered, prospective guidance to an entire market. In contrast, providing one-off advice to companies who call the Bureau with questions or to entities during supervision does nothing to standardize industry behavior. Instead, those private conversations create varying standards and an uneven regulatory playing field – some companies know the Bureau's expectations because they contacted the Bureau by phone and received verbal advice, while others have not received such advice and do not know the expectations.

We consequently appreciate that the Bureau now is moving to expand its no-action letter policy so that it is more in line with the policies of other peer agencies and will provide meaningful regulatory clarity to regulated businesses. While we remain hopeful that the Bureau also will adopt an advisory opinion process in the future, we believe that its proposal is a big step forward from the status quo. We also have joined with other trade associations to offer specific recommendations to further strengthen the Bureau's proposed policy statement on no-action letters. In particular, we have joined with our colleagues to urge the Bureau to take the following steps:

*Strengthen liability protections for companies that comply in good faith with the terms of a no-action letter.* Companies that work hard to comply with a Bureau no-action letter should not fear liability for behavior they understand to comply with the law. We have urged the Bureau to help avoid that outcome through the following actions:

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<sup>3</sup> See Policy on No-Action Letters; Information Collection, 81 Fed. Reg. 8686 (Feb. 22, 2016).

<sup>4</sup> Press Release, CFPB Announces First No-Action Letter to Upstart Network (Sept. 14, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/>.

<sup>5</sup> Policy on No-Action Letters, 81 Fed. Reg. 8686, 8691 (Feb. 22, 2016).

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1. The Bureau should include all its legal authorities – including its authority over unfair, deceptive, and abusive acts and practices – within the scope of the no-action letter process.
2. The Bureau should make clear that it stands behind the signatory of any no-action letter and will not second guess the guidance in that letter.
3. The Bureau should seek to engender deference to its no-action letters by courts and other regulators.
4. The Bureau should consult internally about a proposed no-action letter to ensure that the supervision and enforcement teams will act consistently with its guidance.

*Ensure adequate lead time is provided before the prospective termination of a no-action letter.* Companies will rely on Bureau no-action letters in refining their compliance activities. The Bureau consequently should not abruptly withdraw a no-action letter, but should give companies enough time to respond to its planned withdrawal. In addition, the Bureau should confirm that the termination of a no-action letter is prospective in effect.

*Coordinate proactively and fully with other regulators.* No-action letters issued by the Bureau will have limited value if other regulators take different views of the same issue. As a result, the Bureau—the primary regulator of consumer financial services—should work proactively and collaboratively with other regulators to ensure substantive coordination on matters addressed by no-action letters.

*Ensure the confidentiality of data and information.* The Bureau’s no-action letter process necessarily collects sensitive information about a company’s product or service and its approach to compliance. We appreciate the Bureau’s commitment to protecting the confidentiality of this information, but have urged it to further expand those efforts, including by more expressly stating how it will treat submitted information as protected by relevant exemptions to the Freedom of Information Act.

*Ensure that the no-action letter process is collaborative, fair, and transparent.* The Bureau’s proposed policy statement makes clear that it intends to work closely with companies as they seek no-action letter relief. The Bureau can further strengthen these relationships and the proposed amended no-action letter process, however, through a few enhancements that will make it more collaborative, fair, and transparent. In particular, the Bureau can take steps to strengthen relationships with companies seeking no-action letter relief, including through the early offer of voluntary “check point” meetings or by hosting forums on the no-action letter process. Moreover, the Bureau can clarify elements of the proposed no-action letter

process to avoid unnecessary confusion and promote fairness and transparency. For example, the Bureau should clarify the relationship between no-action relief and exemptive relief under other statutes that the Bureau administers (e.g. TILA, ECOA), and also clarify how it will treat applications for no-action letter relief submitted by trade associations.

*Revise rules based on experience gained with no-action letters.* The no-action letter process may identify unintended consequences or other opportunities to improve rules promulgated or inherited by the Bureau. The Bureau should commit to making such appropriate adjustments to rules or other governing policy statements after providing stakeholders an appropriate opportunity to comment.

We are grateful that the Bureau is considering stakeholder comments as it works to strengthen its no-action letter process. We hope that the Bureau soon will be operating a robust no-action letter process that provides meaningful regulatory certainty to consumer financial services companies. Of course, the Bureau will be unable to take these steps unless the data collection for no-action letters is reauthorized. We consequently urge OMB to reauthorize the data collection as proposed by the Bureau.

- b. A regulatory compliance sandbox will help the Bureau facilitate innovation in the consumer financial services market.

We also are grateful to the Bureau for its intended creation of a regulatory compliance “sandbox” that will allow companies to safely innovate in a way that benefits consumers. Congress tasked the Bureau with supporting innovation in the consumer financial services markets that it regulates.<sup>6</sup> The creation of a compliance sandbox will be an important step towards achieving that goal since it will facilitate the testing of new technologies or approaches with the benefit of regulatory guardrails that protect consumers. In this way, pilot projects under the proposed sandbox will drive innovation that benefits consumers while minimizing the risk of unintended consequences. While we have joined with our colleagues in requesting some specific changes to the proposed sandbox policy, we appreciate that the Bureau is pursuing this important tool for encouraging innovation in the consumer financial services market.

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<sup>6</sup> See Dodd-Frank Act § 1021(b)(5), codified at 12 U.S.C. § 1511(b)(5) (establishing, as an objective for the Bureau, that “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation”).

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Like the no-action letter process, a sandbox requires the exchange of information between a participant and the Bureau. Approving the proposed information collection consequently is essential to allowing the Bureau to take this important step in support of its mission of advancing innovation in the consumer financial services marketplace.

**2. The contemplated paperwork burdens are appropriate for the proposed information collection.**

The Bureau estimates that an average of nine companies will participate in the no-action letter and sandbox processes annually, and that the total annual burden will be 1,200 hours. We believe that the benefits of these programs will far outweigh the burdens imposed on program participants. We consequently would urge OMB to approve the renewal of the information collection proposed by the Bureau. We also would encourage the Bureau to continue to refine the no-action letter and sandbox processes over time in order to increase participation beyond the currently contemplated levels.

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We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quaadman', with a long, sweeping horizontal stroke extending to the right.

Tom Quaadman