CFSI Center for Financial Services Innovation

December 15, 2014

Consumer Financial Protection Bureau
Office of the Executive Secretary
1275 First Street N.E.
Washington DC 20002

RE: Docket No. CFPB-2014-0025
Policy on No-Action Letters

Dear Sirs,

The Center for Financial Services Innovation (CFSI) is submitting this letter in response to the request for comment by the Consumer Financial Protection Bureau (CFPB, the Bureau), published on October 16, 2014. We appreciate the opportunity to respond to the CFPB's request for comments on the proposed policy on No-Action Letters (NALs). Like you, we recognize the important role that high-quality innovation can play in financial services markets and in the financial health of consumers.

CFSI is a national authority on consumer financial health. We lead a network of financial services innovators committed to building higher quality products and services. CFSI informs, advises, and connects its network to seed innovation that will transform the financial services landscape. Our vision is to see a strong, robust, and competitive financial services marketplace, where the diversity of consumer transaction, savings, and credit needs are met by a range of providers offering clear, transparent, and high-quality products and services at reasonable prices. This vision is guided by our Compass Principles – Embrace inclusion, Build trust, Promote success, and Create opportunity. These principles are built on a solid foundation that recognizes the core market values of profitability and scalability, deep customer knowledge, safety, variation and choice, consumer-provider relationships, and cross-sector participation. We believe that financial services can be a force for good in people's lives and that meeting consumer need responsibly is good in the long run for both consumers and providers.

The Bureau is right to be concerned about the impact of supervision and regulation on innovation, because we at CFSI have seen instances where potentially high-quality innovations and products never make it to market because of regulatory concerns. As it stands, the NAL policy is unclear about the level of protection this structure affords, and whether it is enough to provoke and promote innovation. So while we believe the NAL policy is a step in the right direction, we encourage the CFPB to continue to push the envelope and experiment with other vehicles that would provide even more legal protection and reassurance.

Experiences with Innovation

As part of CFSI's work in seeding innovation, we work with a range of firms and organizations to pilot and test new, high-quality financial products and services. All of these products have to

CHI 20 N. Clark Street, Suite 1950
Chicago, IL 60602
tel: 312.881.5856 fax: 312.881.5802

NYC 611 Broadway, Suite 510
New York, NY 10012
tel: 312.881.5856

DC 1701 K St., Suite 1000
Washington DC 20006
tel: 202.888.7586

function within the existing regulatory structure – access to tools such as the No-Action Letter program could greatly facilitate future innovation projects.

In 2010, CFSI established the Financial Capability Innovation Fund (FCIF) to identify, support, and evaluate promising strategies that deliver positive behavior change for low-income and underserved consumers. The fund enables the in-market development, real-world testing, and rigorous evaluation of innovative tools, products, and services to improve consumer financial capability – to more effectively help consumers turn knowledge and good intentions into action. In our 2010-11 round of FCIF grants, we selected five projects that promote success by leveraging technology, applying behavioral economics concepts, and closely combining relevant, timely, actionable, and ongoing messaging with high-quality financial products and services. Building on the success of the original Fund, we launched the Financial Capability Innovation Fund II in 2012-13.[1] CFSI also provides several forms of non-financial support to ensure the success of the selected projects including strategic advice and guidance, technical assistance, enhanced visibility, and peer-learning opportunities such as our Financial Capability Innovators Development Lab.

In connection with our Compass Guide to Small-Dollar Credit, we have established a Test & Learn Working Group to pilot innovative credit products. The goal of the pilots is to test small-dollar credit products or product features that put into practice many of the recommendations the

---

[1] The grantees of the Financial Capability Innovation Fund I were:

- Clarifi (Formerly Consumer Credit Counseling Service of Delaware Valley) tested whether social commitments and text alerts can help consumers reduce debt.
- Co-opportunity, Inc. developed technology via a new online platform to enhance the effectiveness and scale of its volunteer budget coaching program.
- Filene Research Institute tested whether rewarding consistent and timely loan payments with interest rate reductions leads to better payment behavior.
- Piggymojo used goal visualization, social dynamics and mobile technology to help low-income savers turn impulse buys into "impulse saves."
- Mission Asset Fund franchised its Cestas Populares, or Lending Circles program, a peer loan coupled with product-specific peer-led education, to help immigrant and low-income customers build credit and manage credit wisely.

The grantees of the Financial Capability Innovation Fund II are:

- Center for Community Self-Help is testing underwriting models and behavioral design features with small-dollar credit products.
- Doorways to Dream Fund is employing "gamification" mechanics on a national scale to encourage positive savings behaviors.
- Juma is developing a Facebook application and mobile alert system to supplement their college savings program for high school youth.
- Mission Economic Development Agency is offering secured cards at tax time and using text messages to encourage responsible use.
- Mission SF is leveraging technology, the power of peers, and behavioral economics to integrate a scalable savings-focused financial capability model into municipal employment programs for youth and young adults.
- Moneythink, in partnership with IDEO.org, is developing a mobile application to support savings behavior and supplement a financial mentoring program between college and high-school students.
- The National League of Cities Institute is offering financial coaching and repayment supports for households behind on utility bills.
- Neighborhood Trust is partnering with employers through their new program, PayGoal, to allocate a portion of employees' wages toward their financial goals and communicate progress toward these goals as part of every paycheck.

Guide. Through the Test & Learn Working Group, CFSI will work with participating companies to evaluate the pilots, in order to better understand what works and to encourage replication of successful approaches that promise to improve the financial outcomes for borrowers.[2]

Third-Party Services

The Federal Register notice did not discuss how the Bureau might include use of third-party services with the No-Action Letter framework. The pressure increasing around third-party oversight and third-party risk management is a real problem for innovation. Often, a financial institution will seek to use a third-party service for a pilot test or new innovation. At this point, the due diligence required to try that is substantial, and risk-averse compliance management processes may end up cutting off beneficial innovations. If the NAL included covering third-party partnerships in innovation, it could be a great benefit.

As another third-party example, the Bureau may want to consider whether an organization could assemble a NAL for a project that included a variety of partners. Many, if not most, financial services projects take a collaboration of capabilities between firms, especially those innovations that leverage new models and new technology. Often it's a small innovator creating a concept and a larger organization wanting to take that to market. A product concept might be built principally by one firm, but could be supported by a number of technology and service providers and distributed by a third party. All of these organizations face regulatory scrutiny. For example, suppose a provider would like to see a specific new innovation in small-dollar credit come to market in a pilot program. That innovation will require a third party underwriter, a technology processor, a loan originator (probably a financial institution), an issuer (a financial institution, probably different from the originator), and a distributor. Could the provider secure a NAL for the project and then have that NAL apply to each of the participating parties? Or could the Bureau establish a parent-child concept, here the master NAL is granted to the project and then the participant programs file for individual NALs under the master?

The NAL proposed policy requires that requesters name the parties associated with the product, and this may be a stumbling block. Banks may not be legally allowed to proactively disclose the names of their clients – in many cases banks are providing a service to a third party (such as deposit accounts or access to ACH) that is enabling a product. Likewise, in many cases where a

[2] The members of the Test & Learn Working Group are:

- **Regions Bank** is piloting changes to its existing savings-secured installment loan that enable customers to borrow with as little as $250 in savings.
- **Kinecta Federal Credit Union** will begin piloting, in mid-June, a payday consolidation loan that will allow customers to convert multiple outstanding payday loans into a single installment loan.
- **LexisNexis Risk Solutions** is offering its RiskView score to underwrite the Kinecta Federal Credit Union loan.
- **Enova International** is piloting a new feature that allows customers of its online NetCredit Gold product to customize their loan terms and monthly payment amounts.
- **Vancity** is offering Vancity Fair & Fast Loan™. The product enables members to borrow up to $1500 at an annual interest rate of 19%, and with terms ranging from two months to two years. The Vancity Fair & Fast Loan™ relies on a combination of more inclusive eligibility criteria and an efficient application process, making the product accessible to a wide range of borrowers.

bank is working with a client on a new product feature, the bank generally prohibits the client from publicly disclosing the bank relationship.

Cross-agency Coordination

Other regulators should be included to ensure a shared understanding of the impact of particular innovations on consumers, firms, and the broader marketplace. If CFPB likes what it sees but the OCC, FDIC, the Federal Reserve, or other state regulators don't, then innovation will be stymied.

Proof-of-Concept Pilots vs Existing Products

Many firms conduct proof-of-concept pilots, or what we at CFSI call Test & Learn. These small-scale prototyping and development projects are important parts of the product development cycle and should be included under and NAL policy. Similarly, it seems like one would be better off keeping a low profile and working out the kinks than risking the CFPB publicly stating that the product doesn't warrant an NAL treatment. The CFPB is potentially punishing companies that are trying to work with them.

The policy needs to allow firms to make iterative changes to products and services as part of this test and learn process and to be flexible with respect to timelines, as some trial products may need to be out in the field longer than others to fully gauge their efficacy. Furthermore the policy needs to allow for both large changes in features and design as well as small tweaks that lead to improved benefits and usability of the products and services.

Data Sharing Policies

CFSI encourages the Bureau to include guidelines for the release of test results, data, and metrics generated by the pilots, consistent with intellectual property provisions. Timely release of data and results will enable the research community to independently validate the findings. Furthermore, it will enable successful pilots to be built upon by others in the marketplace.

The language around confidentiality and publishing is confusing. It seems these letters should remain confidential unless they are approved – or if the company allows them to be published. Publishing any request may put company business processes as risk.

Timeline for Review of Applications

We believe it would be helpful for the NAL policy to provide some idea about the timeline the CFPB will use for approvals or denials of proposed trials. Many federal programs have target response times (for example, 60 days). We believe it would be helpful for applicants to have some benchmark for expecting a response to help them plan budgets, staff time allocations, technology resources, and the like.

Conclusion

To reiterate, CFSI applauds the proposed No-Action Letter policy outlined by the CFBP; this provides an important opportunity to help industry work in partnership with regulators to develop creative, effective financial products and services that promote consumers' financial health. We believe the NAL policy is a step in the right direction, and we encourage the CFPB to continue to push the envelope and experiment with other vehicles that would provide even more legal protection and reassurance. We appreciate the CFPB's request for comment and hope our suggestions are useful in establishing the guidelines and fostering innovation.

Sincerely,

Jennifer Tescher
President and CEO
Center for Financial Services Innovation