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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2014-0025]

Policy on No-Action Letters; information collection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final Policy Statement.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing a final policy statement on No-Action Letters (Policy), which is intended to further objectives under section 1021 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).

DATES: The Bureau released this Policy Statement on its website on February 18, 2016.

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SUPPLEMENTARY INFORMATION:

I. Overview

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 Pursuant to its authority, the Bureau is finalizing the Policy that is set forth in section VI below. Under the Policy, Bureau staff would, in its discretion, issue no-action letters (NALs) to specific applicants in instances involving innovative

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 carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. 12 U.S.C. 5512(b)(1).

financial products or services that promise substantial consumer benefit where there is substantial uncertainty whether or how specific provisions of statutes implemented or regulations issued by the Bureau would be applied (for example if, because of intervening technological developments, the application of statutes and regulations to a new product 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 at the 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 generally 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 Policy.

II. Overview of Public Comments

On October 16, 2014, the Bureau published in the **Federal Register** a notice inviting the general public and other Federal agencies to comment on any aspect of its proposed Policy on No-Action Letters (Proposed Policy).² The Bureau received 28 formal comments on the Proposed Policy. Industry trade associations and other industry-oriented groups submitted 16 comment letters. Financial services providers submitted 3 comment letters. There were 3 comment letters from consumer-oriented groups. Individuals submitted a further 6 comments.

² 79 FR 62118 (Oct. 16, 2014).

Virtually all commenters supported the stated goals of the Proposed Policy, to reduce regulatory uncertainty and facilitate innovation. No commenter disputed the Bureau's legal authority to adopt the Proposed Policy. Most comments asked for clarification or further detailing around specific parts of the Proposed Policy. Some urged changes to the Proposed Policy, for example, to make NALs more available to providers of consumer financial products and services with less burden or fewer restrictions or, in the case of some consumer-oriented commenters, to provide for additional consumer protections. Many commenters also urged the Bureau to make modifications to address concerns about the disclosure of proprietary business information and trade secrets. One industry trade association urged the Bureau to abandon the Proposed Policy because the organization considered that, as proposed, it would not facilitate and improve compliance in a meaningful way.

III. Summary of Comments, Bureau Response, and Resulting Policy Changes

This section provides a summary of the principal comments received by subject matter. It also summarizes the Bureau's assessment of the comments by subject matter and, where applicable, describes the resulting changes that the Bureau is making in the final Policy. The Bureau has made some changes in response to comments received and to provide additional clarity, but in substantial part follows the Proposal.

While addressing discrete issues, commenters also expressed more general concerns that the criteria in the Proposed Policy were unworkable or that entities were unlikely to receive NALs. The Bureau believes the Policy will facilitate innovation and otherwise substantially enhance consumer benefits. However, the Bureau plans to monitor the effectiveness of the Policy and to assess periodically whether changes to the Policy would better effectuate these purposes.

A. Types of Guidance

Several industry trade groups urged the Bureau to adopt a policy for providing definitive regulatory interpretations to industry participants, such as in the form of Bureau interpretive rules and letters and advisory opinions, in addition to adopting a policy for issuing NALs. These commenters generally argued that guidance of this character would be useful to provide needed clarity regarding matters of potential regulatory uncertainty, and to facilitate compliance, and could address broader topics than may be presented in the context of a particular NAL. Some of these commenters anticipated that industry members would seek Bureau interpretive letters in circumstances in which applying for a NAL would be especially burdensome, or in circumstances that did not involve a product that would meet the parameters of the proposed NAL policy (such as a product already well-established in the marketplace). Various commenters stated that it is important for industry that the Bureau issue types of guidance that are legally binding, on the Bureau as well as (subject to judicial review) on other regulators and on consumer challengers, in addition to NALs, which provide only non-binding staff guidance.

The Bureau is committed to devoting substantial efforts to improving regulatory clarity and transparency to consumers, industry, and other stakeholders. The Bureau provides extensive interpretive guidance regarding regulations it has issued to govern the provision of consumer financial products and services, in a variety of ways. Many of the Bureau's regulations are accompanied by official Bureau interpretations, specifically keyed to the regulations by section number and published in the Code of Federal Regulations, that provide detail regarding interpretation and application of the regulations. Prior to promulgation of rules, Bureau staff has undertaken broad industry outreach to identify areas of potential uncertainty and to ascertain key matters of concern to industry regarding implementation and compliance. In many cases, such

official interpretations are promulgated through notice and comment, simultaneously with issuance of the regulations. The Bureau actively monitors these official interpretations, and it has issued revisions of these official interpretations, in light of industry needs and other developments, on multiple occasions. In other instances, apart from official Bureau interpretations published in the Code of Federal Regulations, the Bureau has issued official interpretations or regulatory guidance on a stand-alone basis.

The Bureau has taken a number of steps to support industry implementation of its regulations and provide guidance to help financial institutions and other stakeholders understand, operationalize, and comply with new consumer protections. The Bureau has engaged directly and intensively with financial institutions, vendors, and others through a regulatory implementation project. As part of this effort, the Bureau has published plain-language guides and other resources, such as compliance guides, sample forms, fact sheets, rule summaries, charts, and toolkits. The Bureau has also published readiness guides that include check-lists of things for industry to do prior to a rule's effective date, such as updating policies and procedures and providing training for staff. In addition, the Bureau has conducted free webinars, available for public viewing through the Bureau's website, that provide guidance on how to interpret and apply its rules. These resources are available on the Bureau's website at www.consumerfinance.gov/regulatory-implementation.

The Bureau also provides unofficial oral staff guidance in response to regulatory interpretive questions that financial institutions and others subject to the Bureau's regulations can submit on an ongoing basis through a dedicated email address. The Bureau has provided unofficial oral guidance in response to thousands of such requests. In addition, Bureau regulatory staff has undertaken extensive post-issuance outreach to identify problem areas and

provide further oral and written guidance about its regulations, on a timely basis.³ Bureau staff regularly meets with industry representatives and other stakeholders regarding all areas within its regulatory jurisdiction to identify areas of regulatory uncertainty or compliance challenges, and to formulate an appropriate response when necessary. For example, the Bureau has published additional official commentary in response to feedback from stakeholders, including industry. Bureau staff has also provided remarks and addressed questions about Bureau rules and related implementation matters at numerous formal events and informal stakeholder meetings.

Moreover, the Bureau has published an array of bulletins to further clarify regulatory obligations and enhance compliance where industry has advised the Bureau of interpretive or other concerns or the Bureau's market awareness has led it to believe there are uncertainties requiring attention.

A substantial portion of the Bureau's personnel and other resources are devoted to these efforts. The Bureau intends to continue engaging closely and working with industry and other stakeholders to answer questions, provide regulatory support and guidance, and evaluate any issues industry and consumers experience as rules are issued and implemented. The Bureau also will continue its coordination with other federal government regulators to promote a consistent regulatory experience for industry. The Bureau is aware that many regulated entities have access to resources, counsel, advice, and processes of their own beyond the tools provided by the Bureau that they may use to assist in the interpretation of regulatory requirements and achieve regulatory compliance. The Bureau does not have the capacity to replace these private resources

³ For example, the Bureau has provided substantial guidance relating to implementation of the Know Before You Owe/TILA-RESPA Integrated Disclosure rule, including a compliance guide, a guide to forms, a closing factsheet, a disclosure timeline, integrated loan disclosure forms and samples, and webinars. Many of these materials are made available on the Internet at <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>.⁴ 5 U.S.C. 603(a), 604(a).

and tools, and does not believe that it would be desirable as a policy matter for the Bureau to try to do so. The Bureau will continue to engage in broad efforts to obtain industry feedback and attempt to employ its resources to provide broad industry and consumer support and guidance through the most efficient and appropriate means. The Bureau believes that experience with the NAL process will assist the Bureau in evaluating other potential steps.

The Policy being finalized today is intended to be one additional tool in the Bureau's kit to facilitate compliance and innovation, to supplement the foregoing means in instances where no-action treatment appears to offer advantages. Most of the Bureau's guidance resources will continue to be devoted to efforts other than NALs, as discussed above. The NAL Policy is intended to make efficient use of Bureau resources by focusing on matters of significant uncertainty, *e.g.*, where technological developments have given rise to novel products not envisioned at the time existing statutes and regulations were issued, and substantial regulatory uncertainty poses a barrier to marketplace innovation. The Policy calls on applicants to identify the relevant facts, and specific regulatory issues needing attention, because applicants are well-positioned to do so effectively and insightfully. As contrasted with amendment of a regulation or an official interpretation, no-action treatment may often be a more useful tool for such cases because, among other things, the novel aspects of the product in question may be subject to evolution, the policy and legal implications are likely not yet sufficiently well understood to justify a definitive regulatory treatment of the relevant issues, and the time required to mature such a definitive treatment may be inconsistent with product-innovation needs of industry.

B. Matters Concerning Other Regulators

Two commenters requested clarification about coordination between Bureau staff and federal prudential regulators, stating that a NAL may be of little benefit to an institution whose

prudential regulator considers a proposed product to violate applicable requirements. Other commenters urged the Bureau to make NALs binding on other regulators, to shield a NAL-covered product from the prospect of adverse treatment by another regulator.

The Bureau has not modified the Policy in response to these comments. Bureau staff regularly consults with other governmental agencies, Federal and State, with respect to financial industry matters, including product innovations. Applicants should be aware that Bureau staff may consult with other governmental agencies that may have enforcement, supervisory or licensing authority over the applicant, or other interest in matters relating to a NAL, in appropriate cases. The NAL Policy requires that NAL applicants provide information regarding relevant governmental investigations, licensing discipline, supervisory reviews, and enforcement actions, and this information may be a subject of discussions by Bureau staff with other governmental agencies. If an applicant is a depository institution, it should anticipate that Bureau staff may communicate with the applicant's primary federal prudential regulator and appropriate state regulators in evaluating issuance of a NAL.

While the Bureau may, in some circumstances, have the authority to issue waivers of otherwise-applicable legal requirements, or to establish definitive interpretations of legal requirements, or take similar actions, NALs issued under today's Policy are limited to a statement by Bureau staff that it does not intend to recommend enforcement or supervisory action by the Bureau. As such, they are not intended to bind other agencies. Other agencies will remain free to make independent determinations concerning their respective authorities and concerns. As discussed above, the Bureau will continue to evaluate its existing guidance tools and other guidance tools available to it, and nothing in today's Policy rules out or otherwise addresses other actions that the Bureau may take, for example to issue waivers, identify

exceptions, provide interpretations, or undertake other regulatory relief, in appropriate circumstances.

C. NALs Concerning UDAAPs

The Proposed Policy indicated that Bureau staff would presumptively not issue NALs where the request concerns a legal or product environment that the staff considers to be inappropriate for no-action treatment, and provided the example that, at the present time, the staff does not anticipate no-action treatment of unfair, deceptive, or abusive acts or practices (UDAAP) matters. The Bureau received two types of comments regarding this statement about UDAAP matters in the Proposed Policy. First, two industry commenters made the point that a NAL would have little utility if it did not include some assurance that the Bureau would not pursue a UDAAP claim against the requester for offering the same product addressed in the letter. Second, several industry commenters more generally urged that UDAAP matters should not be categorically ruled out, and that UDAAPs may be particularly important areas of NAL treatment.

The statement in the Proposed Policy was not directed at the “follow on” UDAAP concern raised by the first type of comment. As detailed in Section C of the Policy, in deciding whether to provide a NAL, staff considerations will include, among other things:

- “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”;

- “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”; and
- “The extent to which the requester controls for and effectively addresses and mitigates risks to consumers.”

Given that a NAL will be based, in part, on such factors, it is highly unlikely that staff would first provide a NAL – which would include a statement that 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 under the specific identified provisions and applications of statutes or regulations that are the subject of the NAL – and then recommend initiation of such action in respect to those same particular aspects of its product under the Bureau’s UDAAP authority in the absence of new facts or circumstances. For example, if staff provided a NAL in response to a request stating that there was substantial uncertainty regarding whether particular disclosures comply with TILA and Regulation Z, the requester could expect that staff would not then recommend an enforcement or supervisory action on the basis that those same disclosures were deceptive under Dodd-Frank Act section 1031 – except in the absence of new or extraordinary circumstances. At the same time, a grant of NAL treatment respecting a particular aspect of a product should not be understood to excuse potential UDAAP violations that might arise from other aspects of the product, such as marketing or operation that were not addressed in the NAL letter or stem from subsequent changes in the product.

The Bureau also recognizes the perspective behind the second type of comment. The Bureau’s statement about UDAAP matters in the Proposed Policy was based primarily on two considerations. First, evaluation of whether an act or practice constitutes a UDAAP is typically an intensively factual question that requires detailed consideration of a wide range of potentially

relevant circumstances. Such evaluations can be more complicated, and uncertain, than evaluation of an act or practice with respect to a regulatory or statutory provision that is drawn more narrowly and precisely than the statutory UDAAP prohibitions. This complexity may be especially pertinent in the context of requests for NAL treatment under the Policy, which are limited to instances in which there is *substantial uncertainty* regarding whether the particular aspects of the product identified in the request are unfair, deceptive, or abusive. Second, as noted in the Proposed Policy, the Bureau has quite limited resources to devote to consideration and issuance of NALs at this time. The Bureau is concerned that devoting attention to UDAAP-focused NAL requests could misallocate its resources away from more narrowly-focused cases that are more likely to be workable NAL candidates. However, the Bureau need not make a categorical determination at this time.

Accordingly, the example in Section B of the Proposed Policy regarding UDAAP matters has been deleted from the Policy. The Bureau cautions, however, that this change should not be interpreted as portending the issuance of a significant volume of such UDAAP-focused NALs. As noted in the Proposed Policy and elsewhere in this Final Policy Statement, the Bureau anticipates that NALs will be provided rarely because they require a thorough and persuasive demonstration of the appropriateness of NAL treatment. The considerations referred to above are likely to mean that UDAAP-focused NALs will be particularly uncommon.

D. Timetable for Issuance of a NAL

Several industry commenters suggested that the Bureau adopt a specific timetable for approval or denial of a NAL once an application has been submitted. These commenters generally expressed a view that prescriptive timetables on the order of 45, 60, or 90 days are necessary in order to accommodate the rapid development processes of novel products. At the

same time, a number of industry commenters, including some of those urging prescribed timetables for action on applications, expressed the view that it is important that prospective applicants have an opportunity to confer informally with Bureau staff before making an application, in order to align expectations and to allow for development and adjustments before making any formal application.

Although Bureau staff will make reasonable efforts to respond to applications in a timely manner, the Bureau has not included any strict timetable in the Policy. If the NAL process does not reach a conclusion that is in keeping with an innovator's timing or other needs, an innovator may withdraw its application and proceed as it considers appropriate with respect to its product without a NAL. Because NAL applications are expected to be individualized events on the part of the applicant and Bureau staff involving novel products, because product changes may continue during the NAL process, and because the Bureau does not yet have concrete experience in processing NAL applications, the Bureau is not prepared to prescribe a prescriptive timetable by which an application must be resolved. As noted in footnote 7 of the Policy, innovators are encouraged to contact staff for informal preliminary discussion in advance of filing an application for a NAL. Such discussions are expected to address the potential applicant's product development plans, information-sharing, any anticipated complications in the NAL process, and anticipated timetables in light of such considerations.

E. Information to be Included in Applications

Several industry representatives criticized the Proposed Policy as requiring applicants to provide an unduly burdensome volume of information. Some commenters suggested that information requirements be minimized specifically for smaller organizations that may have relatively fewer resources to devote to the NAL process. A number of commenters requested

changes in the Proposed Policy's requirements that applicants identify the particular provisions of statutes or regulations about which NAL treatment is being requested, state why NAL treatment is necessary and appropriate to remove substantial regulatory uncertainty, and provide a candid explanation of potential consumer risks. In addition to asserting that it would be burdensome to provide such information, commenters expressed concern that providing information along these lines could have the effect of requiring applicants to target their products for third-party challenge if a NAL application is made public.

The Bureau has not changed these information requirements in the Policy in response to these comments. Whenever any conscientious firm, large or small, intends to launch a consumer financial product that raises substantial regulatory questions, the Bureau expects that the firm would on its own, as a matter of its compliance obligations wholly apart from a NAL application, undertake carefully to identify and evaluate the consumer risks, regulatory issues, and other matters the Policy requires a NAL application to address. In this respect, the Bureau does not expect the Policy to involve substantial additional information-gathering burdens. While the Bureau understands that some innovators find it burdensome to undertake their own assessment of applicable regulatory and other legal obligations, consumer impacts that their products might create, and other relevant matters, the Bureau is not in a position, through its NAL policy, to perform these compliance obligations for industry members.

The Bureau's intention is to devote its NAL resources at this time to addressing instances in which substantial uncertainty in the statutes and regulations that are within its jurisdiction are creating a barrier to bringing consumer-beneficial products to market. If an applicant cannot identify its product as presenting such a case, or if the applicant does not intend to be candid in its request and related communications, the Bureau's resources can more usefully be focused

elsewhere. To be clear, firms are not required to seek NAL treatment before launching a product. Moreover, in identifying areas of regulatory uncertainty an applicant is not required to concede that its product contravenes any requirement. On the contrary, the Policy explicitly calls on the applicant to explain why it believes its product should not be treated as subject to or precluded by pertinent statutes and regulations as properly understood and applied. If a prospective applicant believes that information regarding its product requires confidential protection, informal advance discussion with the staff can explore what particular information and detail is necessary to be included in an application, the timing of NAL issuance, and how best to protect proprietary matter. In addition, section A.15 of the Policy provides that an application may include a request for confidential treatment of certain information. If a NAL is issued, it may be unavoidable that its publication will, to some extent, publicly identify aspects of regulatory uncertainty that are involved, but the Bureau believes that such transparency to industry and consumers is a critical value to be served by the NAL process.

F. Public Comment on NALs

Some commenters in the consumer advocacy community requested that the Bureau modify the Proposed Policy to provide that any NAL will be subject to a 30-day notice-and-comment period, preferably in advance of NAL issuance. These commenters asserted that such a process is advisable to balance an applicant's self-interested submissions by bringing to bear other viewpoints through a public process.

The Bureau declines to adopt the comment period suggestion. Comment periods are not typical of other agencies' no-action letter procedures. The Bureau believes that imposing such a comment period requirement in advance of issuance would unnecessarily discourage NAL applications and delay the NAL process, inhibiting the intended benefits of the Policy. Staff has

the ability to conduct outreach to the public as needed to obtain input on a variety of regulatory matters, which includes issues pertaining to NAL requests. Staff also intends to monitor products that are the subject of NALs on an ongoing basis, including comments that may be received from the public following issuance of a NAL. This monitoring will not be confined to a 30-day or other prescribed period.

G. Protection of Proprietary Information

Several commenters expressed concern that publication of NALs, which would include publication of a version or summary of the application, may compromise entities' proprietary business information or trade secrets. Some commenters raised a concern that, if the Bureau were to deny a NAL application for innocuous reasons and announce the denial, it might cause injury to the applicant if it later introduced the subject product into the marketplace. Other commenters, including industry commenters, specifically encouraged routine publication so that industry members will have insight into the Bureau staff's perspectives.

The Bureau considers that publication of NALs issued by staff is an important aspect of the Bureau's transparency principles. The released version or summary of the application and the terms of the NAL will provide relevant and potentially important information to consumers and industry concerning the new product and Bureau staff's perspective. In general, the consumer-facing characteristics of the product involved will become known to the market at the time of product launch in any event. The Policy does not specify the timing for the Bureau's NAL publication. To the extent that a potential applicant has concerns regarding the public release of particular information, Bureau staff plans to confer with the applicant, in advance of a submission or later, to discuss whether the information is necessary to submit as part of the application or otherwise, redaction from any documents to be released publicly, timing of any

release, application of the Bureau's rule concerning Disclosure of Records and Information, 12 CFR part 1070, and other relevant matters.

Denials of a request for a NAL generally would not be published. However, because a circumstance may arise in which publication of a denial would be in the public interest, the Policy does not categorically rule out publication of denials.

The finalized Policy makes one editing change with respect to publication of NALs and applications, to conform section D of the Policy to the wording of section B of the Policy with respect to publication of a "a version or summary of" the request.

H. Modification or Revocation of NALs

Under the Policy, a NAL is subject to subsequent revocation or modification in the discretion of Bureau staff, and may be immediate upon notice. Revocation or modification of a NAL does not itself constitute a determination that a product violates any regulatory requirement or that the firm must withdraw the product from the market. Obviously, however, modification or revocation reflects a change in facts, circumstances, or outlook on the part of Bureau staff. Some industry and consumer commenters urged the Bureau to adopt procedural protections around the revocation/modification process, including suggesting that the Bureau communicate with recipients prior to revocation or modification, and that it provide a grace period to allow recipients to modify or cease relevant policies or practices.

In response, the Bureau has added a statement to section D.6 of the Policy concerning revocations or modifications initiated by staff. Unless there is a reason not to do so in a particular case, before determining to revoke or modify a NAL, Bureau staff plans to communicate with the requesting entity (or entities) regarding the grounds for potential

revocation or modification and permit an opportunity to respond. If staff revokes or modifies a NAL, it intends to do so in writing. Staff plans to make revocations and modifications public.

I. Limitation to Emerging Products Involving Substantial Regulatory Uncertainty

Several commenters suggested that the Bureau not limit NALs to instances of emerging products, or that it not limit NALs to instances of substantial regulatory uncertainty. These commenters advocated that the Bureau provide NALs dealing with products that are already established and/or where there is no substantial regulatory uncertainty. The Bureau does not believe such a change to the Policy is desirable at this time. The Bureau's resources available to devote to NALs are limited, and the Bureau considers it desirable to focus these resources at this time on reducing barriers to innovation. If a product is already established in the marketplace, or if there are no substantial regulatory uncertainties interfering with its development, then Bureau resources for reducing barriers to innovation would be better allocated to other NAL cases, or to other efforts.

J. Potential Risks and Benefits to Consumers

Some consumer advocates urged the Bureau to revise the Proposed Policy to specifically limit NALs to products where staff is convinced that the product will clearly not involve any risk to consumers. Reflecting a different perspective, a number of industry commenters urged that the Bureau eliminate the requirement that a proposed NAL product promise substantial benefits to consumers. Some of these commenters considered that application of the "substantial benefits" standard would involve the Bureau in inappropriately choosing winners and losers, and some expressed the view that assessment of substantial benefits was unknowable for new products or unduly subjective.

The finalized Policy has not incorporated the changes advocated by either of these two perspectives. The Bureau believes that its Policy has appropriately articulated requirements with respect to both risks and benefits. The Policy specifically requires an applicant to candidly disclose potential consumer risk information, and establishes that NAL applications would be assessed on the basis of such risks and how they may be effectively addressed and mitigated. In addition, issuance of a NAL may be conditioned on the provision of future data to enable Bureau staff to monitor ongoing risk and respond as necessary. A firm is not required to obtain a NAL in order to launch a product. But issuance of NALs is committed to the discretion of Bureau staff, and the Policy appropriately requires an applicant to identify anticipated consumer benefits so that Bureau staff can evaluate whether the request merits the diversion of the Bureau's limited resources away from other important consumer protection work.

K. Denials of NAL Requests and Publication of Denials

Under the Policy, decisions whether to issue a NAL are committed to the discretion of Bureau staff. Section B of the Policy describes the categories of formal responses that the staff expects normally to use in response to a request (granting, denying, or declining to grant or deny, the request). Section C of the Policy identifies 10 factors that, among others, staff plans to consider in deciding whether to issue a NAL. Several commenters suggested that the Proposed Policy be amended to prescribe that staff elaborate specific reasons when it determines that a particular application for a NAL will not be granted. The principal point advanced in favor of requiring such a statement of reasons is that it would provide substantive guidance to industry regarding Bureau analysis of regulatory issues. Some other commenters suggested that all denials be made public. Relatedly, some commenters interpreted section B of the Proposed

Policy to mean that, in some cases, the Bureau would not communicate in any way with the requesting entity.

The Bureau does not agree that it would be advisable to require staff to provide specific reasons for declining to provide NALs, or that denials generally should be made public. Publishing such statements regarding denials is not typical of no-action letter programs of other agencies, and the Bureau does not believe that providing such statements about denials would be a productive method of industry or public guidance, when weighed against the burden on Bureau resources that would be involved. The Bureau has limited resources to devote to NALs, and it believes that those resources are best focused on the work required to grant NALs when appropriate and to monitor those that are granted. As noted elsewhere, individual applicants are advised to contact staff in advance for informal discussion before committing significant effort toward a potential NAL application. In the unusual case in which none of the types of responses described in Part B of the Policy is provided, the staff plans to notify the requester that its response has been received and that staff has decided not to provide a response that corresponds to one of the types described in Part B of the Policy.

L. Anticipated Volume of NALs

As stated in the Proposed Policy, the Bureau anticipates that NALs would be provided only on the basis of exceptional circumstances and a thorough and persuasive demonstration of the appropriateness of such treatment. Several commenters expressed dissatisfaction that NALs are likely to be rarely issued, and urged that the Bureau should make NALs more widely available, recognizing that they may later be withdrawn if necessary.

Bureau staff currently devotes considerable effort to maintaining ongoing communication with financial services product developers and other industry members, including concrete

informal discussions about forthcoming innovations and regulatory considerations. Based on this experience, the Bureau estimates that, realistically, it will on average receive one to three actionable applications per year. If the volume of viable applications exceeds this volume, the Bureau will work to accommodate the need. The Policy anticipates that staff would provide no-action treatment only on a thorough-and-persuasive demonstration that the relevant criteria, as specified in the Policy, are met. That NALs may be withdrawn at a later stage is not, in the Bureau's view, a justification to provide no-action treatment based on unrefined product concepts, inadequate information, or incomplete attention by an applicant to regulatory requirements or mitigation of consumer protection risks.

M. Covering Third Parties

Some commenters urged the Bureau to address no-action protection of third parties that may be associated with an applicant's product, such as firms that provide functions that are integrated with the product's operation or distribution, or provide ancillary products or services. A product developer seeking NAL treatment may not intend itself to be the provider of that product to consumers, or may depend on other firms as service providers or in other ways. These other firms may be reluctant to participate in the commercialization of the product if they lack NAL protection, but for a variety of legitimate commercial reasons they may not be identifiable at the time of the NAL application or issuance. Some commenters also urged the Bureau to allow trade associations to submit requests on behalf of their members.

The Bureau is sympathetic to the complications described. The Policy envisions that a NAL application may be submitted jointly by multiple firms, which may ease some of these complications. The Bureau is not, however, willing to grant NAL treatment to a firm that is not identified in the application process and has not agreed to the affirmations and undertakings

specified by the Policy (such as affirmations regarding the accuracy of information presented about the product and the firm, undertakings to provide additional information, and descriptions of safeguards the applicant will employ). The Bureau envisions that, in many cases, a firm that comes to be involved in the provision of a product, though not itself the applicant covered by a NAL, will draw sufficient comfort from a NAL issued to the identified applicant. Where this is not so, Bureau staff will be available to confer with the applicant, and the other firm(s), regarding the reasons why the other firm(s) were not co-applicants, whether an issued NAL may be modified, and other possible approaches to the situation. For similar reasons, the Bureau is not willing to grant NAL treatment to trade associations on behalf of their members.

N. Limitations on Quantity of Transactions or Period of Time

Some commenters sought clarification regarding the Proposed Policy's anticipation that a NAL may be subject to time limitations or limitations on the quantity of transactions. The Policy, which is slightly revised on this point for clarity, provides that a NAL issued by Bureau staff will generally include a description of any conditions or limitations attending no-action treatment, such as the requester's undertaking 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. These NAL terms will be informed by commitments identified in the application and by staff's evaluation of consumer risks. The Bureau expects such considerations to be taken into account on a case-by-case basis. If a NAL application is based on uncertainty regarding a particular regulatory safeguard, for example, the applicant may find it appropriate to introduce a different method to safeguard comparable consumer protection concerns. If an applicant intends to test its product in a particular way, and review consumer data arising from the test, the applicant may suggest limiting the NAL to those terms as a factor in demonstrating

limitations on consumer risks. If an applicant envisions the iterative development of a product, different limitations or safeguards may apply at successive stages of the development.

IV. Regulatory Requirements

This Policy on No-Action Letters constitutes an agency general statement of policy and/or 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). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁴

V. 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 comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. OMB has approved the collections of information contained this Policy. The OMB Number is 3170-0059 (Expiration Date: 02/28/2019).

VI. Final Policy

The text of the final Policy is as follows:

POLICY ON NO-ACTION LETTERS

⁴ 5 U.S.C. 603(a), 604(a).

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.⁵ 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 specific 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 Policy 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 Policy on No-Action Letters (Policy). Under the Policy, an entity may submit a request for a

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

No-Action Letter from Bureau staff (staff). A No-Action Letter would include 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 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.⁶ By furnishing a dedicated mechanism through which substantial regulatory uncertainty can be reduced, the 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 Policy to benefit consumers in further ways. The Bureau also expects the Policy to help further its consumer protection functions and objectives, including market monitoring and rulemaking, particularly when a No-Action Letter is conditioned on a commitment by the requester to share data about the product with the Bureau, or to engage in other consultation that may help inform

⁶ The 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 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.

Bureau decisions regarding whether to take further action in connection with the financial product in question.

The 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 who have requested No-Action Letters.

A. Submitting Requests for No-Action Letters

Requests for a No-Action Letter should be submitted in writing via email to ProjectCatalyst@cfpb.gov.⁷ 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.
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;

⁷ The email subject line should begin “Request for No-Action Letter.” The 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.

- 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. A commitment 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 a statement of any undertaking by the requester, 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. Commitments 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 withdrawn or 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. Requesters are advised to specifically identify data that the Requester believes to be confidential supervisory information that should be shielded from public disclosure.

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, but is not required to, 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.

Type (i) responses, and a version or summary of the request, generally would be published on the Bureau's website.⁸ Type (ii) responses generally would be provided to the requester but generally would not be published on the Bureau's website.⁹ Type (iii) and (iv) responses generally would be provided to the requester and 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 would provide only responses of type (iii) or (iv), or, where appropriate, no response at all, include:

1. The requester or its principals are the subject of ongoing governmental law

⁸ Type (i) responses are further discussed in Section D below.

⁹ The Bureau may publish a denial on its website if it believes that doing so is in the public interest.

enforcement investigation, supervisory review, or enforcement action respecting the product or a related or similar product.¹⁰

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 matter that the staff considers to be inappropriate for no-action treatment.
4. The staff has decided not to invest the Bureau resources that appear likely to be necessary to address the request adequately.

No-Action Letters will not be routinely available. The Bureau anticipates that No-Action Letters will be provided 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.

C. Staff Assessment of Requests for No-Action Letters

The staff considerations, in deciding whether to provide a No-Action Letter,¹¹ include:

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

¹⁰ If the staff decides to provide a type (iii) response to the entity in such circumstances, the response would not be published on the Bureau's website.

¹¹ 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.

- 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.¹²
 5. The extent to which granting the request is necessary in order to reduce substantial regulatory uncertainty for the requester with respect to the requester's product.
 6. The extent to which the substantial 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 Trial Disclosure Programs.¹³
 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.

¹² 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.

¹³ 78 FR 64389 (Oct. 29, 2013).

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 plans to publish the letter, along with a version or summary of the request, on the Bureau's website. The expected contents of a No-Action Letter 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 under the 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 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 stated 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 that the No-Action Letter constitutes a determination by the Bureau or its staff about, or is an interpretation of, or grants 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 constitutes 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 is 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 No-Action Letter, 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. Unless there is a reason not to do so in a particular case, staff plans to communicate with the requesting entity (or entities) regarding the grounds for potential revocation or modification in advance of a revocation or modification, and permit an opportunity to respond. When staff

revokes or modifies a No-Action Letter, staff intends to do so in writing. Staff plans to make revocations and modifications public.

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 is not intended to be honored or deferred to in any way by any court or any other government agency or person.
8. A statement of any expiration date, or volume limitation, applicable to the No-Action Letter (and whether or not the requester may seek to renew the No-Action Letter).
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. 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.

E. Bureau Disclosure of Entity Data

The Bureau's disclosure of a version or summary 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 rules regarding Disclosure of Records and Information.¹⁴ For example, 12 CFR 1070.14 generally requires the Bureau to make its records available to any person pursuant to a request that conforms to the rules and procedures of that section, subject to the application of the FOIA exemptions and exclusions. To the extent the Bureau affirmatively wishes to disclose

¹⁴ See 12 CFR part 1070.

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 seek to redact data to protect consumers' privacy interests.

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Director, Bureau of Consumer Financial Protection.

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