



Model No-Action Letter Application

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Instructions for Using the Model No-Action Letter Application

On September 10, 2019, the Consumer Financial Protection Bureau issued a No-Action Letter Policy, along with a Compliance Assistance Sandbox Policy and Trial Disclosure Program Policy,¹ to promote innovation and facilitate compliance in consumer financial services.

Covington & Burling LLP is pleased to provide this Model No-Action Letter Application as a starting point for clients and friends who are interested in preparing an application for a No-Action Letter or for participation in the Compliance Assistance Sandbox or Trial Disclosure Program.² An MS Word version of the model is available by contacting a member of our financial services team.

This Model No-Action Letter Application includes the following documents:

- 1. Cover Letter, including a request for confidential treatment under the Freedom of Information Act**
- 2. No-Action Letter application form**
- 3. Draft No-Action Letter language**
- 4. Compliance Assistance Sandbox application form (optional)**
- 5. Trial Disclosure Program application form (optional)**

The documents contain *[bracketed placeholders]* to be completed by the company along with commentary to assist in providing information that will be helpful to the Bureau.

No-Action Letter

A no-action letter reduces regulatory uncertainty with respect to an innovative product or service through a statement that the Bureau will not bring supervisory or enforcement action against the company for offering the product or service. The Bureau strongly encourages potential applicants to contact the Office of Innovation at officeofinnovation@cfpb.gov for informal, preliminary discussion of a contemplated proposal prior to submitting a formal application for a No-Action Letter. We suggest consulting with counsel for advice in structuring the initial discussion with the Office of Innovation.

¹ The No-Action Letter Policy is available here: https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-no-action-letters.pdf

The Compliance Assistance Sandbox Policy is available here: https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-cas.pdf

The Trial Disclosure Program Policy is available here: https://files.consumerfinance.gov/f/documents/cfpb_final-policy-to-encourage-tdp.pdf

² The information in this model does not, and is not intended to, constitute legal advice.

Compliance Assistance Sandbox

The Compliance Assistance Sandbox is an additional program by the Bureau to foster innovation in consumer financial services. The sandbox provides for the issuance of Bureau approvals that represent binding assurance that specific aspects of a product or service are compliant with specified legal provisions. The Compliance Assistance Sandbox is complementary of the No-Action Letter program, and there are many scenarios in which companies may find it useful to obtain both a No-Action Letter and a Compliance Assistance Sandbox approval.

Trial Disclosure Program

The Trial Disclosure Program, like the Compliance Assistance Sandbox, is a separate but complementary program to support the offering of innovative products or services by financial services companies. The Bureau will approve trial disclosures to be offered by a company and to deem such disclosures to be in compliance with, or exempt from, federal disclosure requirements. The Trial Disclosure Program also may be combined with the No-Action Letter program and/or Compliance Assistance Sandbox.

Participation in the CFPB Innovation Programs

As one example of how a company could seek to participate in the three CFPB innovation programs, a hypothetical lender may wish to use a proprietary underwriting process powered by artificial intelligence in order to underwrite consumer loans through online channels. The lender could apply for a No-Action Letter with respect to its underwriting process in order to obtain the Bureau's commitment that it will not initiate supervisory or enforcement action against the lender under the prohibition on unfair, deceptive, or abusive acts or practices and under consumer financial services laws. The lender also may seek the Bureau's approval under the Compliance Assistance Sandbox that specific aspects of the lender's online lending program, such as the underwriting process or marketing channels, comply with specified laws such as the Equal Credit Opportunity Act or Truth in Lending Act in order to obtain a safe harbor from liability under these laws, whether from administrative action or private enforcement, to the fullest extent possible under the Bureau's authority. The lender also could seek to use a bespoke disclosure form for certain of its lending products and apply for an exemption under the Trial Disclosure Program from certain federal disclosure requirements for the form.

Alternative Procedures for No-Action Letter Templates and No-Action Letters for Substantially Similar Products and Services

The Bureau's No-Action Letter Policy contains alternative procedures for the submission of no-action letter applications by service providers, trade associations, consumer groups, or other third parties. These procedures, which include the submission of a No-Action Letter Template, require consideration

of additional factors and are not addressed in this model set of documents. However, this model could, with relatively minor modifications, be repurposed to serve as an application for a No-Action Letter Template.

The Policy also contains procedures for applications for a No-Action Letter to cover a consumer financial product or service that is substantially similar to a consumer financial product or service that is the subject of an existing No-Action Letter. The model, while not developed specifically for these applications, likewise could be repurposed to serve as an application for such a No-Action Letter.

Coordination with Other Regulators

The No-Action Letter Policy requires an applicant to identify the regulators with whom the applicant would like the Bureau to coordinate, particularly if the applicant previously has contacted another regulator about the product or service. This coordination is critical to ensuring interested regulators have visibility into the product or service and the effect of an No-Action Letter.

* * *

The Bureau's No-Action Letter Policy, Compliance Assistance Sandbox Policy, and Trial Disclosure Program Policy represent a significant step forward in the United States' efforts to facilitate innovation in financial services. If you have any questions or would like to discuss the policies, please do not hesitate to reach out to any of the undersigned attorneys in our financial services group:



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[CONFIDENTIAL TREATMENT REQUESTED]

[Insert Letterhead]

By Electronic Mail (officeofinnovation@cfpb.gov)

[Insert date]

Mr. Paul Watkins
Assistant Director, Office of Innovation
Consumer Financial Protection Bureau
1700 G. St. NW
Washington, DC 20522

Dear Mr. Watkins:

On behalf of *[insert company name]* (the “Company” or “Applicant”), we are submitting the enclosed application (the “Application”) to request the Consumer Financial Protection Bureau’s (“Bureau”) approval for a No-Action Letter under its Policy on No-Action Letters, 84 Fed. Reg. 48229 (Sept. 13, 2019) (the “Policy”).

[Insert short summary of product or service and nature of request]

The Applicant requests confidential treatment of the enclosed Confidential Exhibits and all information contained therein (collectively, the “Confidential Information”) under the Freedom of Information Act, 5 U.S.C. § 552, and Bureau regulations implementing the Freedom of Information Act, *e.g.*, 12 C.F.R. § 1070.41. All Confidential Exhibits are specifically identified in the public portions of the Application and have been separately bound and labeled “Confidential Treatment Requested.”

The Confidential Information consists of highly sensitive business information that is proprietary in nature and not otherwise available to the public. Disclosure of any Confidential Information to the public, including competitors of the Applicant, could result in substantial harm to the competitive position of the Applicant and its affiliates. In particular, the Confidential Information includes confidential commercial and financial information that relates to the business, personnel, and financial affairs of the Applicant and its affiliates, the disclosure of which could provide competitors with direct knowledge of the business plans and activities of the Applicant and its affiliates, to the material detriment of their competitive position.

If the Bureau makes any preliminary determination not to afford confidential treatment to any part of the Confidential Information or to disclose any part of the Confidential Information to the public, the Applicant respectfully requests the opportunity to be notified before any final determination is made in order for the Applicant to discuss the matter with the Bureau and provide any further information that may be appropriate to explain why confidential treatment should be granted. *See* Executive Order 12,600 (June 23, 1987).

[CONFIDENTIAL TREATMENT REQUESTED]

[CONFIDENTIAL TREATMENT REQUESTED]

If you have any questions or comments, please do not hesitate to contact us.

Sincerely,

[Insert Signatory]
[Insert Company]

CC: *[Insert CC recipients]*

[CONFIDENTIAL TREATMENT REQUESTED]

[CONFIDENTIAL TREATMENT REQUESTED]

**APPLICATION FOR A NO-ACTION LETTER FROM THE
CONSUMER FINANCIAL PROTECTION BUREAU**

SUBMITTED BY

[INSERT COMPANY NAME]

[INSERT CONTACT INFORMATION]

[INSERT DATE]

[CONFIDENTIAL TREATMENT REQUESTED]

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EXECUTIVE SUMMARY

[Insert executive summary, including information describing:

- *The company and its product or service*
- *No-action letter relief sought in Application, and, if applicable, Compliance Assistance Sandbox and Trial Disclosure Program*
- *Key benefits to consumers if Application is approved*
- *Key benefits to innovation, competition, and financial services industry if Application is approved]*

A. NO-ACTION LETTER APPLICATION INFORMATION

1. The identity of the applicant

[Insert applicant name and address and brief description of applicant's business. Provide the name and information of the contact person for Bureau communications on this Application]

2. A description of the consumer financial product or service in question, including (a) how the product or service functions; (b) the terms on which it will be offered; and (c) the manner in which it is offered or provided, including any consumer disclosures

[Insert description of the product or service in accordance with question, as well as a description of marketing channels, fees and other costs paid by the customer, key service providers that are necessary to provide the product or service, any limitations on the product or service, and planned disclosures]

3. An explanation of the potential consumer benefits associated with the product or service

[Insert explanation of the potential consumer benefits associated with the product or service, such as:

- Increased consumer access to a financial product or service*
- Use of a novel financial product or service*
- Enhanced financial literacy*
- Greater privacy or cybersecurity protections*
- Expansion of products and services available to unbanked/underbanked*
- Reduced fees and other costs*
- Enhanced clarity and conspicuousness of disclosures]*

4. An explanation of the potential consumer risks associated with the product or service, and how the applicant intends to mitigate such risks

[Insert explanation of the potential consumer risks associated with the product or service, such as:

- Potential for consumer confusion*
- Potential discrimination risk*

And explanation of risk mitigants, such as:

- *Policies and procedures*
- *Board and managerial oversight*
- *Compliance reviews, testing, and audits*
- *Disclosures and consumer education*
- *Pilot program/limited release of product or service]*

5. **An identification of the statutory and/or regulatory provisions as to which the applicant seeks a No-Action Letter and an explanation of why a No-Action Letter is needed, such as uncertainty or ambiguity regarding the application of the identified statutory and/or regulatory provisions to the product or service in question**

[Insert comprehensive and specific inventory of the statutory and/or regulatory provisions to be covered by the No-Action Letter and, for each, an explanation of the necessity of the No-Action Letter, such as:

- *Regulatory uncertainty or ambiguity of statutory and/or regulatory provisions*
- *Opportunity to offer product or service on the temporary basis to test market reactions and demand*
- *Ability to test technology underlying the product or service]*

6. **If the applicant wishes to request confidential treatment under the Freedom of Information Act (FOIA), the Bureau's rule on Disclosure of Records and Information (Disclosure Rule), or other applicable law, this request and the basis therefor should be included in a separate letter and submitted with the application. The applicant should specifically identify the information for which confidential treatment is requested, and may reference the Bureau's intentions regarding confidentiality under section G of the Policy**

[See separate cover letter]

7. **If the applicant wishes the Bureau to coordinate with other regulators, the applicant should identify those regulators, including but not limited to those the applicant has contacted about offering or providing the product or service in question**

[Insert list of regulators to coordinate with the Bureau and an explanation of the reason for coordination, such as discussions with primary prudential regulator]

[CONFIDENTIAL TREATMENT REQUESTED]

B. EXHIBITS

1. *[Insert exhibits (if any)]*

[CONFIDENTIAL TREATMENT REQUESTED]

C. DRAFT NO-ACTION LETTER LANGUAGE

The following language, which tracks language used by the Bureau in issuing past No-Action Letters, is intended to assist the Consumer Financial Protection Bureau staff in crafting a No-Action Letter in connection with this Application.

“This letter is in response to an Application for a No-Action Letter (Application), filed with the Bureau of Consumer Financial Protection (Bureau) by *[insert company name]* (Recipient). The Application described *[insert company name]*’s *[insert product or service]* and the bases for the Bureau to grant a No-Action Letter. The Bureau has considered and grants the Application, and accordingly issues this No-Action Letter pursuant to the Bureau’s Policy on No-Action Letters (Policy)

Unless or until terminated by the Bureau as described below, the Bureau will not make supervisory findings or bring a supervisory or enforcement action against any Recipient under:

- (a) its authority to prevent unfair, deceptive, or abusive acts or practices, or
- (b) *[insert specific law(s) and/or regulations(s) cited in Application]*

for *[insert description of product]*, provided that:

[insert Bureau conditions for granting No-Action Letter Application, if any].

The Recipients may reasonably rely on the preceding Bureau commitment.³

The Bureau may terminate this No-Action Letter as to one or more Recipients if it determines that it is necessary or appropriate to do so to advance the primary purposes of the Policy, such as where one or more Recipients fail to substantially comply in good faith with the terms and conditions of the No-Action Letter; *[insert other grounds for termination, if any]*;⁴ or controlling law changes as a result of a statutory change or a Supreme Court decision that clearly permits or clearly prohibits conduct covered by the letter.⁵ In the event of such termination, the Bureau will not bring an action to impose retroactive liability with respect to conduct covered by this No-Action Letter, except where a failure to substantially comply in good faith with the terms and conditions of the No-Action Letter caused Dodd-Frank Act actionable substantial injury.⁶

³ The Bureau maintains the authority to obtain information relating to the consumer financial products and services covered by this No-Action Letter under its applicable supervision, enforcement, and other authorities in the same manner and frequency that it obtains information relating to any consumer financial products or services not subject to a No-Action Letter.

⁴ Such ground includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

⁵ If a Circuit Court of Appeals decision clearly prohibits conduct covered by the letter, the Bureau may consider modifying the letter so that it is inoperative within that Circuit.

⁶ “Dodd-Frank Act actionable substantial injury” means substantial injury that is not reasonably avoidable by the consumer, where such substantial injury is not outweighed by countervailing benefits to consumers or competition. See 12 U.S.C. § 5531(c); see also 12 U.S.C. § 5536(a)(1)(B). Such a retroactive action would be particularly likely where

Recipient shall apprise the Bureau of (a) material changes to information included in the Application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the Application.⁷

This No-Action Letter is based on the factual representations made in the Application.

This No-Action Letter is limited to the Recipient, and does not apply to any other persons or entities. This No-Action Letter is limited to the Recipient's conduct in *[insert description of product]*. This No-Action Letter does not apply to any other conduct of the Recipients.

This No-Action Letter does not purport to express any legal conclusions regarding the meaning or application of the above-referenced laws and regulations; and does not constitute the Bureau's endorsement of any services, conduct, agreements, etc. described above or in the Application, or any other product or service offered or provided by the Recipient.

This No-Action Letter and the non-confidential aspects of the Application will be published on the Bureau's website.

Sincerely,

[Insert Bureau Signatory]"

conduct covered by the letter caused Dodd-Frank Act actionable substantial injury without the Bureau's knowledge due to the recipient's failure to substantially comply in good faith with the requirement under section C.4 of the Policy to inform the Bureau of (a) material changes to information included in the application and (b) material information indicating that the described aspects of the product or service are not performing as anticipated in the application.

⁷ "Not performing as anticipated" includes the materialization of consumer risks identified in the application, and the materialization of other consumer risks not identified in the application.

D. COMPLIANCE ASSISTANCE APPLICATION [OPTIONAL]

1. The identity of the applicant

[Insert applicant name and address, and brief description of applicant's business. Provide the name and information of the contact person for Bureau communications on this Application]/ [Insert cross-reference to other section(s) of the Application]

2. A description of the consumer financial product or service to be offered or provided, including (a) how the product or service functions; (b) the terms on which it will be offered; (c) the manner in which it is offered or provided, including any consumer disclosures; and (d) an identification of how the product or service, or the manner in which it is offered or provided to consumers, may further innovation

[Insert description of the product or service in accordance with question, as well as a description of marketing channels, fees and other costs paid by the customer, key service providers that are necessary to provide the product or service, any limitations on the product or service, planned disclosures, and innovation associated with the product or service]/ [Insert cross-reference to other section(s) of the Application]

3. An explanation of the potential consumer benefits associated with the product or service, and suggested metrics for evaluating whether such benefits are realized, such as consumer utilization numbers

[Insert explanation of the potential consumer benefits associated with the product or service, such as:

- *Increased consumer access to a financial product or service*
- *Use of a novel financial product or service*
- *Enhanced financial literacy*
- *Greater privacy or cybersecurity protections*
- *Expansion of products and services available to unbanked/underbanked*
- *Reduced fees and other costs*
- *Enhanced clarity and conspicuousness of disclosures*

As well as suggested metrics for evaluating benefits, such as:

- *Consumer utilization numbers*
- *Cost savings passed along to consumers*

- *Development of technologies*]/ [Insert cross-reference to other section(s) of the Application]

4. An explanation of the potential consumer risks associated with the product or service, and how the applicant intends to mitigate such risks, including plans for addressing unanticipated consumer harms

[Insert explanation of the potential consumer risks associated with the product or service, such as:

- *Potential consumer confusion*
- *Potential discrimination risk*

And explanation of risk mitigants, such as:

- *Policies and procedures*
- *Board and managerial oversight*
- *Compliance reviews, testing, and audits*
- *Disclosures and consumer education*
- *Pilot program/limited release of product or service*]/ [Insert cross-reference to other section(s) of the Application]

5. (a) An identification of the described aspects of the product or service as to which the applicant seeks an approval; an identification of the statutory and regulatory provisions as to which the applicant seeks that approval; an identification of the potential uncertainty or ambiguity that such approval would address; and an explanation of why the requested approval is an appropriate resolution of that uncertainty or ambiguity, including an explanation of why the described aspect of the product or service complies with the applicable statutory and regulatory provisions; (b) If the applicant also seeks a No-Action Letter, it should consult the NAL Policy for information about what to include for that aspect of its application

[Insert description of the product or service aspects to be covered by approval, a comprehensive and specific inventory of the statutory and/or regulatory provisions to be covered by the assistance, and explanation of the necessity of the assistance, such as:

- *Resolution of uncertainty or ambiguity of statutory and/or regulatory provisions*
- *Opportunity to offer product or service on the temporary basis to test market reactions and demand*

- *Ability to test technology underlying the product or service*

And an explanation of why the product or service aspect complies with each statutory and/or regulatory provision]/ [Insert cross-reference to other section(s) of the Application]

- 6. The requested duration of compliance assistance, and a description of other limitations on the scope of such assistance, such as limits on the volume of transactions, the number of consumers to which the product or service is to be offered or provided, or geographic scope**

[Insert requested duration of compliance assistance and a description of any other limitations on the scope of the assistance, such as:

- *Volume of transactions*
- *Number of consumers to be offered or to receive the product or service*
- *Geographic scope*
- *Specific requirements considered in scope or out of scope of assistance]/ [Insert cross-reference to other section(s) of the Application]*

- 7. A description of data on consumer impacts associated with the described aspects of the product or service that the applicant possesses or intends to develop and that will be shared with the Bureau if the application is granted, and a proposed schedule for sharing this data with the Bureau**

[Insert description of data generated by the product or service, such as transactional data, web browsing data, creditworthiness data, and schedule that applicant will share with the Bureau]

- 8. If the applicant wishes to request confidential treatment under the Freedom of Information Act (FOIA), the Bureau's rule on Disclosure of Records and Information (Disclosure Rule), or other applicable law, this request and the basis therefor should be included in a separate letter and submitted with the application. The applicant should specifically identify the information for which confidential treatment is requested, and may reference the Bureau's intentions regarding confidentiality under section H of the Policy**

[See separate cover letter]

[CONFIDENTIAL TREATMENT REQUESTED]

- 9. If the applicant wishes the Bureau to coordinate with other regulators, the applicant should identify those regulators, including but not limited to those that the applicant has contacted about offering or providing the product or service in question**

[Insert list of regulators to coordinate with the Bureau and an explanation of the reason for coordination, such as discussions with primary prudential regulator]/ [Insert cross-reference to other section(s) of the Application]

[CONFIDENTIAL TREATMENT REQUESTED]

**E. TRIAL DISCLOSURE PROGRAM WAIVER APPLICATION
[OPTIONAL]**

1. The identity of the applicant

[Insert applicant name and address, and brief description of applicant's business. Provide the name and information of the contact person for Bureau communications on this Application]/ [Insert cross-reference to other section(s) of the Application]

2. A description of the trial disclosures or delivery mechanisms in question

[Insert description of the trial disclosures or delivery mechanisms, such as:

- *SMS message-based disclosures*
- *Mobile application disclosures*
- *Internet of Things-based disclosures]*

3. An explanation of how the trial disclosures or delivery mechanisms are designed to improve upon Federal disclosure requirements with respect to consumer understanding, cost effectiveness, or otherwise, along with metrics for evaluating whether such improvements are realized, such as comparisons with existing costs or consumer payment or response rates for the applicant or the relevant industry

[Insert explanation of how the trial disclosures or delivery mechanisms are designed to improve upon existing disclosure requirements, such as:

- *Enhanced disclosure clarity or conspicuousness*
- *Enhanced customer acknowledgment rates*

And metrics for evaluating realization of such benefits, such as comparison against federally-required disclosures or cost comparisons]

4. An explanation of the potential consumer risks associated with the trial disclosures, how the applicant intends to mitigate such risks, and how such risks will be assessed during the course of the trial disclosure program

[Insert explanation of the potential consumer risks associated with the product or service, such as:

- *Potential consumer confusion*
- *Potential discrimination risk*

And explanation of risk mitigants, such as:

- *Policies and procedures*
- *Board and managerial oversight*
- *Compliance reviews, testing, and audits*
- *Disclosures and consumer education*
- *Pilot program/limited release of product or service*

And mechanisms for assessing risks during trial disclosure period, such as customer surveys]/ [Insert cross-reference to other section(s) of the Application]

5. An identification of the statutory and regulatory provisions with respect to which the applicant seeks a TDP Waiver

[Insert comprehensive and specific inventory of the statutory and/or regulatory provisions to be covered by the TDP Waiver]/ [Insert cross-reference to other section(s) of the Application]

6. The requested duration of the testing program, and a plan to wind down or modify activity at its conclusion

[Insert requested duration of the testing program and plan to wind down, modify, or terminate activity at conclusion]

7. The size, location, and nature of the consumer population to be involved in the testing program, an explanation of how the population was chosen, and a description of any plans to scale or modify the population over the duration of the testing program

[Insert description of the size, location, and nature of the consumer population to be involved in the testing program, including information about the expected number of people to be included in the population, an explanation of the methodology for selecting the population, such as random chance or creditworthiness characteristics, and description of plans to change the population over the course of the testing program]

8. A description of test result data that the applicant expects to share with the Bureau, and a schedule for sharing that data

[Insert description of data generated by use of the trial disclosure for the product or service and schedule that the applicant will share with the Bureau]/ [Insert cross-reference to other section(s) of the Application]

9. **If the applicant wishes to request confidential treatment under the Freedom of Information Act (FOIA), the Bureau's rule on Disclosure of Records and Information (Disclosure Rule), or other applicable law for certain information included in the application, the applicant should identify this information as specifically as possible, and may reference the Bureau's intentions regarding confidentiality under section G**

[See separate cover letter]

10. **If the applicant wishes the Bureau to coordinate with other regulators, the applicant should identify those regulators, including, but not limited to, those that the applicant has contacted about providing the trial disclosures in question**

[Insert list of regulators to coordinate with the Bureau and an explanation of the reason for coordination, such as discussions with primary prudential regulator]/ [Insert cross-reference to other section(s) of the Application]