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May 22, 2020

Bank Policy Institute
600 13th Street NW, Suite 400
Washington, D.C. 20005

This letter is in response to an application for a No-Action Letter Template (Application), filed with the Consumer Financial Protection Bureau (Bureau) by the Bank Policy Institute (BPI) that could serve as the basis for No-Action Letter applications by BPI members and other deposit-taking institutions subject to the Bureau's supervisory and enforcement authority (DI Applicants)¹ that intend to offer a standardized, small-dollar credit product as described in the Application (Proposed Product). The Application describes the general structure and features of the Proposed Product. Some of the features are quite definite, functioning as guardrails² that should be included in all versions of the Proposed Product. The Application explains that DI Applicants would design a version of the Proposed Product that includes the guardrails, but also would provide further specific information regarding the precise nature and details of the individual version of the Proposed Product they intend to offer, including the manner in which it would be offered and provided. Such specific details would depend on a variety of factors, including the financial institution's business strategy, risk tolerance, underwriting criteria, and customer needs.

¹ In light of the limitations on the Bureau's supervisory and enforcement jurisdiction set forth in Dodd-Frank Act section 1026, the term "DI Applicant" is limited to insured depository institutions and insured credit unions with total assets of more than \$10,000,000,000 and affiliates of such entities that are themselves insured depository institutions or insured credit unions. 12 U.S.C. 5515, 5516.

² Some of these guardrails may extend beyond the requirements of applicable laws and regulations. The inclusion of any particular guardrail should not be interpreted as a statement by the Bureau that small-dollar credit products must contain such guardrails to avoid violating the law.

The Bureau has considered and grants the Application, and accordingly issues this No-Action Letter Template pursuant to the Bureau’s Policy on No-Action Letters (Policy). The Bureau intends to grant applications from DI Applicants for a No-Action Letter based on this No-Action Letter Template under section E.1.b of the Policy, in appropriate cases. In general, such applications should include the information specified in section A of the Policy. An application should also include the certifications relating to the Proposed Product guardrails and the information about features and practices specified below.³ Under the Policy, each No-Action Letter has a limited scope. The Policy uses the term “described aspects of the product or service” to capture this scope, allowing applicants to describe both the product or service in question, and the manner in which it is offered or provided.⁴ Accordingly, in determining the scope of a potential No-Action Letter issued in response to an application based on this No-Action Letter Template, the Bureau will evaluate the adequacy of the description of the DI Applicant’s product (Applicant’s Product) contained in the application.⁵

The Application documents that, at least as early as 2008, Federal financial regulators have been encouraging depository institutions to engage in responsible small-dollar lending through various statements and guidance documents. The Bureau’s issuance of this No-Action Letter Template is intended to complement these expressions of encouragement by providing a mechanism through which DI Applicants may obtain a No-Action Letter from the Bureau that addresses the application of the prohibition on unfair, deceptive, and abusive acts and practices⁶ to described aspects of their particular small-dollar lending products. The Bureau will review each application submitted under this No-Action Letter Template. Granting this No-Action Letter Template does not obligate the Bureau to issue any No-Action Letter that the Bureau believes would not improve the options available to consumers within the market for small-dollar credit products.

³ Applications can address intended products or products already in market.

⁴ See section C.2 of the Policy.

⁵ For example, as noted below, if a DI Applicant wished to have particular marketing materials included within the subject matter scope of a potential No-Action Letter, the DI Applicant would need to include those materials in its application.

⁶ 12 U.S.C. 5531, 5536.

Guardrail Certifications

Applications should include the following certifications:

1. **Status**. The DI Applicant is an insured depository institution or insured credit union with total assets greater than \$10,000,000,000, or is an insured depository institution or insured credit union affiliated with such an entity.
2. **Eligibility**. The Applicant's Product is offered and provided only to consumers who hold a deposit account with the DI Applicant.
3. **Product Structure**. The Applicant's Product is structured as either (i) a fixed-term, amortizing small-dollar installment loan, which the customer would pay back in fixed minimum payment amounts over the term of the loan; or (ii) an open-end line of credit, which would be linked to a customer's associated deposit account with the DI Applicant, and amounts drawn under the line would have a fixed repayment period, to be repaid by the customer in fixed minimum payment amounts over that period.⁷
4. **Dollar Amount**. The Applicant's Product does not exceed \$2,500.
5. **Repayment Term and Structure**.
 - a. Where the Applicant's Product is structured as an installment loan, (i) the repayment term is more than 45 days and less than one year; and (ii) payments are amortized on a straight-line basis across more than one payment.
 - b. Where the Applicant's Product is structured as a line of credit, (i) the repayment term for each draw is more than 45 days and less than one year; and (ii) payments for each draw are amortized on a straight-line basis across more than one payment, except in the case of any single-payment loans as described in the next sentence. If a repayment structure includes a repayment term of 45 days or less and a single payment is utilized, it will be limited to cases where a draw is no more than 10 percent of the maximum dollar amount established for the Applicant's Product.
6. **No Balloon Payments**. None of the required payments under the Applicant's Product are more than twice as large as any other required payment.

⁷ Depository institutions would not offer the line of credit version of the Proposed Product by means of a credit card.

7. Rollovers. Rollovers (i.e., the extension or renewal of a loan or draw on which a scheduled payment has not been made, for an additional fee) are prohibited. Nor would a borrower be eligible to receive a new loan or draw to repay an outstanding balance associated with a prior loan or draw. Furthermore, a borrower with an existing loan or draw is not eligible to receive a new loan or draw until the existing loan or draw is fully repaid.
8. Underwriting. Underwriting for the Applicant's Product includes the consumer's transaction activity in their accounts with the DI Applicant, also known as "cash flow" underwriting.
9. Collateral. Borrowers are not required to provide collateral or any other security to take out the Applicant's Product.⁸
10. Costs and fees. No late payment fees or prepayment penalties are charged with respect to the Applicant's Product.
11. Disbursement. Funds (whether in the form of an installment loan or draw on a line of credit) are disbursed into the borrower's deposit account with the DI Applicant within three to five business days after the borrower is approved for the Applicant's Product.
12. Disclosures. Consumer disclosures and marketing materials associated with the Applicant's Product are designed to meet the requirements of all applicable state and federal consumer financial protection and other laws, and, where appropriate, are shortened and modified for consumers' ease of use and readability for online and mobile channels.⁹
13. Servicing. The Applicant's Product is serviced by the DI Applicant, not a third party.

⁸ The DI Applicant may retain a right to setoff to the extent doing so is consistent with applicable law and regulation.

⁹ To the extent there is uncertainty about whether such modified disclosures comply with applicable disclosure requirements, a DI Applicant could also submit an application under the Bureau's Policy to Encourage Trial Disclosure Programs or the Bureau's Policy on the Compliance Assistance Sandbox. See CFPB, Policy to Encourage Trial Disclosure Programs, 84 Fed. Reg. 48,260 (Sept. 13, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-09-13/pdf/2019-19761.pdf>; CFPB, Policy on the Compliance Assistance Sandbox, 84 Fed. Reg. 48,246 (Sept. 13, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-09-13/pdf/2019-19762.pdf>.

Information about Features and Practices

Applications should include the following information:

1. **APR**. The anticipated APR range of the Applicant's Product, as well as a description of how that range is calculated, including any and all fees and costs included in the calculation. A description of how the anticipated APR range, combined with other terms and conditions, would improve the options available to consumers within the market for small-dollar credit products.
2. **Other Fees**. A description of any fees other than the fees included in the calculation of the APR range. A description of how such fees, combined with other terms and conditions, would improve the options available to consumers within the market for small-dollar credit products.
3. **Repayment Term and Structure**. A description of any aspect of the repayment term and structure for the Applicant's Product more specific than the repayment term and structure specified in the guardrail certification regarding repayment term and structure above.
4. **Reborrowing Risk Mitigation**. A description of how the DI Applicant intends to mitigate reborrowing risk (in addition to underwriting and the prohibition on rollovers, etc. described above), such as through utilization of mechanisms such as "cooling off" periods, periodic borrowing limits, "off ramps," and/or similar measures.
5. **Underwriting**. A description of the underwriting criteria used for the Applicant's Product, including eligibility and credit decisioning criteria, including the extent to which the underwriting is streamlined relative to other identified underwriting processes.
6. **Marketing**. A description of how the DI Applicant intends to market the Applicant's Product.¹⁰
7. **Application Process**. A description of the process for applying for the Applicant's Product, including the extent to which the process is streamlined relative to other application processes.

¹⁰ To the extent the DI Applicant wishes particular marketing materials or disclosures to be included within the scope of a potential No-Action Letter, such as the disclosure of APR or other fees, the DI Applicant should include those materials in its application.

8. Credit Reporting. A description of any information the DI Applicant intends to provide to credit reporting agencies, such as information about payment and non-payment.
9. Other Features and/or Practices. A description of (i) any features of the Applicant's Product and the manner in which it is offered or provided (in addition to those listed above), and/or (ii) any acts or practices associated with offering or providing the Applicant's Product (in addition to those listed above), that the DI Applicant wishes to be included within the scope of a potential No-Action Letter.¹¹

This No-Action Letter Template is based on the factual representations made in BPI's No-Action Letter Template application.

This No-Action Letter Template is non-operative and non-binding on the Bureau.¹²

This No-Action Letter Template and a copy of the application will be published on the Bureau's website.

The Bureau anticipates that a No-Action Letter issued to a DI Applicant in response to an application based on the No-Action Letter Template would include the following elements:

- A statement that the letter
 - is limited to the DI Applicant, and does not apply to any other persons or entities;
 - is limited to the described aspects of the Applicant's Product set forth in the application;
 - does not apply to (i) the DI Applicant's offering or providing different aspects of the Applicant's Product, nor to (ii) the DI Applicant's offering or providing any other product or service;

¹¹ For example, if a DI Applicant wishes to include particular debt collection practices within the scope of a potential No-Action Letter, the DI Applicant should include a description of such practices within its application. In such a case, the DI Applicant could also request a No-Action Letter under applicable laws and regulations other than sections 1031 and 1036 of the Dodd-Frank Act. For example, an application that included descriptions of particular debt collection practices could also identify one or more provisions of the Fair Debt Collection Practices Act. 15 U.S.C. 1692 *et seq.*

¹² In particular, the Bureau may modify this No-Action Letter Template in light of the additional information provided in an application for a No-Action Letter based on this No-Action Letter Template, under section E.1.b of the Policy.

- is based on the factual representations made in the DI Applicant's application;
 - does not purport to express any legal conclusions regarding the meaning or application of sections 1031 and 1036 of the Dodd-Frank Act (12 U.S.C. 5531, 5536); and
 - does not constitute the Bureau's endorsement of the product that is described in the DI Applicant's application and is the subject of the letter, or any other product or service offered or provided by the DI Applicant.¹³
- A requirement that the DI Applicant apprise the Bureau of (a) material changes to information included in its application; and (b) material information indicating that the product described in its application is not performing as anticipated in the application.¹⁴
 - A statement that unless or until terminated by the Bureau (as described in section C.7 of the Policy), the Bureau will not make supervisory findings or bring a supervisory or enforcement action against the DI Applicant under its authority to prevent unfair, deceptive, or abusive acts or practices¹⁵ predicated on the DI Applicant's offering or providing the described aspects of the Applicant's Product set forth in the application.¹⁶
 - A statement that the DI Applicant may reasonably rely on any Bureau commitments made in the letter.¹⁷
 - A statement that the Bureau may terminate the letter if it determines that it is necessary or appropriate to do so to advance the primary purposes of the Policy, such as where the recipient fails to substantially comply in good faith with the terms and conditions of the letter; the described aspects of the product or service do not perform as anticipated in the application; 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.¹⁸

¹³ See section C.3 of the Policy.

¹⁴ See section C.4 of the Policy.

¹⁵ 12 U.S.C. 5531, 5536.

¹⁶ See section C.6 of the Policy.

¹⁷ See section C.7(i) of the Policy.

¹⁸ See section C.7(ii) of the Policy.

- A statement that upon termination, the Bureau will not bring an action to impose retroactive liability with respect to conduct covered by the letter, except where a failure to substantially comply in good faith with the terms and conditions of the letter caused Dodd-Frank Act actionable substantial injury.¹⁹
- A statement that the letter and a copy of the DI Applicant's application will be published on the Bureau's website.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Watkins", followed by a horizontal line.

Paul Watkins
Assistant Director, Office of Innovation
Consumer Financial Protection Bureau

¹⁹ See section C.7(iii) of the Policy.