



December 15, 2014

Consumer Financial Protection Bureau  
Office of the Executive Secretary  
1700 G Street NW.  
Washington, DC 20552

**Re: *Policy on No-Action Letters (Docket No. CFPB-2014-0025)***

To Whom It May Concern:

The American Financial Services Association (“AFSA”)<sup>1</sup> welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed Policy on No-Action Letters (“Policy”). AFSA commends the Bureau for exploring ways to encourage AFSA members and other financial services providers to address regulatory issues in advance of implementing new products and services. We believe that no-action letters (“NALs”) are a beneficial tool; thus, the use of NALs should be expanded beyond what is proposed. In addition to expanding the scope and availability of NALs to all products, services, and activities, the CFPB should make a few other changes to the Policy.

***I. Expand the Scope and Availability of NALs***

NALs can build stronger relationships between the industry and the CFPB, as well as benefit consumers. NALs encourage industry members to seek approval of: changes of processes, enhancements to products and services, and innovative products or services. The CFPB’s proposed use of NALs is a step in the right direction and we commend the Bureau for taking this bold step. Because NALs can be so beneficial, we ask that the CFPB expand the Policy.

The Policy is based on the CFPB’s statutory authority to encourage the development of innovative products and services, authority that led to the “Project Catalyst” initiative. As a result, NALs are only available in limited circumstances involving new products and services that promise substantial consumer benefits. Clearly, however, the Bureau has authority to implement a broader NAL procedure.

The CFPB could use its authority to enforce consumer protection laws pertaining to financial products and services to implement a more expansive NAL procedure. Rather than limiting the availability of NALs to proposed “innovative” products and services, the Bureau should expand the applicability of this procedure to existing products and services (and modifications to them) and to existing regulatory requirements, including disclosure requirements (as it created in October 2013 with the Policy To Encourage Trial Disclosure Programs).

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<sup>1</sup> AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

For example, if a financial institution identified a more effective way to disclose information to consumers than an existing requirement, a NAL (rather than a “waiver” of enforcement under the current policy) could allow the institution to test the effectiveness of its proposed modified disclosure (with a designated subset of its customers and for a designated time period) with assurance that the test disclosure would not be deemed a violation of law. The results of such a test would enable the CFPB to assess whether the test disclosure enhanced the understanding of actual consumers. If the disclosure did enhance consumers’ understanding, the CFPB could propose a change in the regulatory requirement through the notice and comment rulemaking process. This would allow the enhanced disclosure to be made available to other consumers.

The Policy contemplates an infrequent use of NALs, since NALs would be available only in limited exceptional circumstances. It is unclear why the CFPB would implement a useful process while at the same time discouraging its use and limiting its availability. By limiting the use of NALs to new products and services and treating the NAL process as an exceptional procedure, the CFPB substantially limits the usefulness of the process and discourages covered persons from seeking no-action status for a proposed action.

The use of NALs by other agencies, notably the Securities and Exchange Commission (“SEC”), has proven to be an effective tool for providing clarity on the agency’s interpretation of legal requirements and alleviating the concerns of the affected industry member about potential enforcement activity. The process would be more valuable to industry, consumers and the Bureau itself if, like SEC NALs, it became commonly available. (The SEC has issued tens of thousands of NALs over the past four decades.) If the restriction is born of a concern that broader availability of NALs might encourage applications dealing with trivial concerns or settled law, or might overwhelm CFPB staff resources, those concerns should be addressed in the future if there are signs that such concerns are becoming reality. Strict limitations are not needed at the outset. In short, the NAL process should be viewed as a tool generally available to enhance the Bureau’s ability to protect consumers and encourage compliance with the law, as well as a tool that a covered entity can use to react to marketplace developments and emerging consumer needs and preferences.

## ***II. Other Changes***

In addition to expanding the scope and availability of NALs to all products, services, and activities, the CFPB should:

1. Make the submission process simpler by creating a form to fill out and asking for enough detail to understand the enhancement or new product or ask for further documentation if needed before deciding to approve or deny the NAL;
2. Keep the name of the companies confidential when publishing the facts, analysis, and decisions as to whether the NAL is approved or denied, as well as publish the quarter after the ruling (to help with the anti-competitive concerns);
3. Provide protections from enforcement and supervisory actions, as well as agree to intervene (either formally or through an amicus brief) in third party private litigation, if a NAL is granted; and
4. Do not publish any proprietary information about an enhancement or new product.

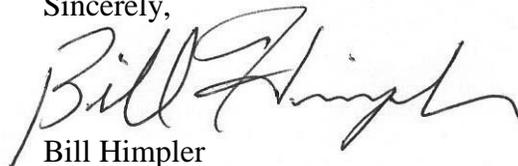
To facilitate the suggested expanded role of NALs, a more simplified application process is necessary. The submission process needs to provide clear confidentiality protections for proprietary information to encourage the use of the NAL process. The proposed detailed information submission requirements and undertakings required of applicants are obstacles to obtaining NALs, e.g., by entities concerned about the potential access of competitors to such information.

Also, limiting NALs to entities that are not the subject of enforcement actions, supervisory reviews, or potential future actions (information about which the applicant may be unaware) for the same “or similar” products are additional restrictions that do not seem appropriate. These restrictions will not foster a desire to use the NAL process. Such entities may have an economic and competitive incentive to move beyond past conduct that was challenged by the CFPB and win back lost customers through improved products, services and behavior. It makes little sense to bar them from working with the Bureau through the NAL process, a process that ensures close Bureau oversight of products or activities subject to the NAL.

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AFSA hopes that the CFPB seriously considers expanding the scope and availability of NALs to all products, services, and activities, as well as makes a few other changes to the Policy. We look forward to working with the CFPB on this issue. Please contact me by phone, 202-466-8616, or e-mail, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org), with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive, flowing style.

Bill Himpler  
Executive Vice President  
American Financial Services Association