

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
Informational Statement
LCB FILE NO. R089-19
(Regulatory Experimentation Program for Product Innovation)**

The following statement is submitted for adoption of regulations pertaining to Nevada Administrative Code (NAC) Chapter 657A, Regulatory Experimentation Program for Product Innovation.

Note: Based on Nevada Senate Bill No. 161 as enrolled, the Department of Business and Industry anticipated that the proposed regulation would be codified in NAC Chapter 597 and cited this chapter number in materials pertaining to the proposed regulation's workshop and small business impact solicitation. The Legislative Counsel Bureau (LCB) subsequently identified the destination as NAC Chapter 657A; as a result, that chapter number was used in materials pertaining to the proposed regulation's notice of hearing to adopt and solicitation of additional comment. The Informational Statement reflects these changes.

1. A clear and concise explanation of the need for the adopted regulation.

To conform with and implement revisions made to the law governing a Regulatory Experimentation Program for Product Innovation and state regulation of innovative financial technology products and services, as enacted by Senate Bill 161 ("SB 161") of the 2019 Session of the Nevada Legislature; to ensure that regulations are written clearly and concisely to facilitate statutory provisions, required program administration, and consumer protection; and to comply with the Department's statutory duty to ensure the effectiveness of NRS chapters 645A, 645B, 645F and 645G; NRS titles 55 and 56; and any regulations adopted pursuant thereto.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notice of workshop, small business impact statement, and notice of intent to act upon the regulation were e-mailed to industry associations and persons who were known to have an interest in the regulations as well as any persons who had specifically requested such notice. These documents were also made available at the Department of Business and Industry's website at <http://www.business.nv.gov> and the Nevada Public Notice website at <http://notice.nv.gov>; posted at the Department's Las Vegas office and Carson City office; and provided to the Nevada State Library for posting. The proposed regulation and notice of intent to act upon the regulation were additionally provided to the Nevada State Library and all county libraries in Nevada at which the Department does not maintain an office, for posting. Notice of intent to act upon the regulation was further submitted for posting on the Nevada Legislature's website.

On November 1, 2019, via e-mail, the Department notified licensees of the Financial Institutions Division (236 persons) and the Division of Mortgage Lending (7,738 email addresses) concerning the proposed regulation, provided a copy of the proposed regulation, and solicited written comments concerning whether it would impose a direct and significant economic burden upon a small business that is subject to NRS 645A, 645B, 645F and 645G; NRS titles 55 and 56; and any regulations adopted pursuant thereto; or directly restrict the formation operation, or expansion of a small business that is subject to NRS 645A, 645B, 645F and 645G; NRS titles 55 and 56; and any regulations adopted pursuant thereto.

In response to the November 1, 2019 solicitation, the Department's record reflects receipt of two written comments, the stated concerns of which pertained to keeping the proposed program as free of regulatory conditions or requirements as possible to encourage testing of products that target unbanked or underbanked populations; increasing the size of the permissible testing pool (customer base) to ensure adequate scale for test analysis and capital investment; increasing the statutory time for tests to ensure adequate data analysis and product or service development; keeping the record retention schedule at the two-year minimum described in statute; documenting all application requirements in the proposed regulation; ensuring the application process is reasonable in scope to limit costs to startups or small businesses; clarifying the respective delegation authorities of the Director as described in Senate Bill 161 and the proposed regulation; revising the relocation approval mechanism described in the proposed regulation to a 60-day notification of the Director and affected customers, along with a determination by the Director of no harm from the relocation; and incorporating language to allow for agreements between the Director and applicants to protect an applicant's confidential or trade secret information from public disclosure.

A duly noticed workshop was held on November 21, 2019 in Las Vegas, Nevada and video-conferenced to Carson City, Nevada. Minutes of the workshop are attached hereto as "Exhibit A." The minutes reflect receipt of additional comments from three parties (two verbal and one verbal/written) and are detailed therein.

Thereafter, the Legislative Counsel Bureau (LCB) posted its revised draft of Proposed Regulation R089-19 on December 5, 2019. On December 13, 2019, the Director of the Department of Business and Industry issued and posted a Notice of Intent (dated December 16, 2019) to Act Upon a Regulation based upon the LCB Draft of Proposed Regulation R089-19, along with a similarly dated Notice of Public Meeting, and solicited further written comments on the proposed regulation. That same day, via email, the Department notified licensees of the Financial Institutions Division (237 persons) and the Division of Mortgage Lending (7,952 recipients) concerning the proposed regulation, provided a copy of the proposed regulation, and solicited written comments. The information was additionally posted on the Department's website, the State's official website, and at the Department's offices in Las Vegas and Carson City; and provided to the Nevada State Library and county libraries for posting. No written comments were received in response to these notices.

A duly noticed public hearing for adoption and amendment of the proposed regulation was held on January 17, 2020 in Las Vegas, Nevada, and video-conferenced to Carson City, Nevada. Minutes of the public hearing are attached hereto as “Exhibit B.” No comments were received at the public hearing.

3. The number of persons who:

	<u>Carson City</u>	<u>Las Vegas</u>
Attended November 21, 2019 workshop:	5	7
Testified at the workshop:	2	2
Attended January 17, 2020 hearing:	3	4
Testified at the hearing:	0	0

Submitted written comments: 3

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified in #3, above, as provided to the agency.

Attended November 21, 2019 workshop as video-conferenced with Carson City, Nevada:

Susan Angienello, All Western Mortgage, susan@allwestern.com
 Misty Bethany, All Western Mortgage, mbethany@ignitefunding.com
 Taylor Altman, Legal Aid Center of Southern Nevada, taltman@lacs.org, 702-386-1534
 Bill Theobald, iwcs@cox.net
 Whitney Jones, Boyd Law School, Investor Protection Clinic, jonesw3@unlv.nevada.edu
 Ryan Flanagan, Boyd Law School, Investor Protection Clinic, flans1@unlv.nevada.edu
 Peter Aldous, Legal Aid Center of Southern Nevada, paldous@lacs.org
 Lynn McConnell, Custody Digital Group, lynn.mccconnell@custodydigital.com
 Matthew Digesti, Blockchains LLC, mdigesti@blockchains.com
 Riley Snyder, The Nevada Independent, rileyjsnyder@gmail.com
 Tyson Falk, McDonald Carano, tfalk@mcdonaldcarano.com
 Marcus Rogers, Legacy Escrow, marcus63@live.com

Attended January 17, 2020 hearing as video-conferenced with Carson City, Nevada:

Samantha Sato, Carrara Nevada, samantha@carraranv.com
 Caleb L. Green, Dickinson Wright PLLC, cgreen@dickinson-wright.com
 Peter Aldous, Legal Aid Center of Southern Nevada, paldous@lacs.org
 Taylor Altman, Legal Aid Center of Southern Nevada, taltman@lacs.org
 Allison Genco, Ferrari Public Affairs, allison@ferraripa.com
 Amanda Brazeau, Rowe Law Group, amanda@rowelawnv.com
 Matt Digesti, Blockchains LLC, mdigesti@gmail.com

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public (see Item 2 above). A summary of responses can be found in the minutes to the workshop and hearing (Exhibits A and B, respectively) and small business impact statement. Copies of these materials can be obtained by contacting Chris Weiss, Director's Office, Nevada Department of Business and Industry, at cweiss@business.nv.gov or 702-486-5320.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

At the conclusion of the noticed public hearing on January 17, 2020, the permanent regulation was adopted in the form as proposed and reflected in the *LCB Draft of Proposed Regulation R089-19* dated December 5, 2019, because there was no significant objection to the proposed language.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

(a) Both adverse and beneficial effects

Adverse effects. The proposed regulation is not expected to result in any adverse economic impact on small businesses because the regulation does not establish additional requirements for such businesses with respect to issuance of a license or adherence to business standards already in place under NRS chapters 645A, 645B, 645F, and 645G; NRS titles 55 and 56; and regulations adopted pursuant thereto. On the contrary, consistent with the legislative intent of SB 161, the proposed regulation will support an administrative framework that allows program applicants, if approved, to test innovative financial products or services in the subject areas of business for up to two years without necessarily having to meet all the licensing and regulatory standards that might otherwise apply.

The regulation will not apply to any existing Nevada small business in the areas of interest, unless that business (1) decides to test an innovative product or service that would otherwise fall under NRS chapters 645A, 645B, 645F, or 645G; NRS titles 55 or 56; or regulations adopted pursuant thereto; (2) determines there would be some advantage to offering the product or service as part of a test under the regulatory sandbox program, instead of under its existing Nevada licenses or authorizations; and (3) applies and is approved for participation in the program. In such an instance, the effect of the proposed regulation (access to a reduction or temporary waiver of certain regulatory requirements) will be neutral to beneficial for the small business, not adverse.

Beneficial effects. The proposed regulation is anticipated to have a beneficial economic impact because it seeks to administer the subject program in a way that achieves the

Legislature's intent of reducing existing barriers to the introduction of innovative financial products or services within the state, and thereby encouraging businesses focused on advanced or innovative financial technology to establish operations here, while maintaining the state's ability to protect consumers. At present there is no assurance as to how many businesses, if any, will apply to or receive approval to participate in the Nevada regulatory sandbox program, or what those businesses will involve in terms of products, services, or economic activities.

(b) Both immediate and long-term effects.

Immediate and long-term beneficial effects. The proposed regulation is expected to result in cost and time-savings by applicants who, among other things, may have an innovative financial product or service ready to test, but lack the resources or proof of end-market necessary to validate the business model, attract capital for more conventional launch, or otherwise justify the time and cost in seeking establishment as a regulated Nevada business before knowing if their innovative product or service will work for consumers. To the extent the sandbox program attracts companies in the financial technology industry to Nevada, it will have a long-term beneficial effect on employment and economic development. However, any such immediate or long-term beneficial effects are not quantifiable at this time given program participants and the nature of their products and services are still unknown.

Immediate and long-term adverse effects. No immediate or long-term adverse effects are anticipated or have been noted.

8. The estimated cost to the agency for enforcement of the adopted regulation.

The Department anticipates costs to the Director's Office and applicable regulator divisions (Financial Institutions and Mortgage Lending) for enforcement of the proposed regulation. However, the Department is unable to provide estimates at present, pending launch and initial execution of the subject regulatory sandbox program. The Department currently expects the costs for enforcement to be met by the program application fee and/or absorbed into the existing workloads of current staffing levels.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agencies regulations known by the Department that the proposed regulation overlaps or duplicates.

10. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The adopted regulation does not include provisions which are known to be more stringent

than a federal regulation which regulates the same activity.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The adopted regulation provides for a new fee of \$500 per application submitted to the Department. The fee of \$500 is within the \$1,000 limit authorized to the Department by the Nevada Legislature as part of the enabling legislation (SB 161). Under SB 161, no more than six applications can be approved for the program in its first year, no more than ten in its second year, and no more than ten in its third year. However, retention of the application fee is not contingent upon approval or disapproval of an applicant, which means the total annual amount the Department can collect will depend on the level of applicant interest in the program. If the number of applications received does not exceed the number of program approvals permitted by statute, the \$500 fee is anticipated to result in total revenues of \$13,000 over the three calendar years (2020-22) the program is authorized to operate.

Money from the fee will be used by the Department to support enforcement costs of the regulation and program, as required by SB 161.

Enclosed:

Exhibit A – Minutes of November 21, 2019 Workshop on R089-19

Exhibit B – Minutes of January 17, 2020 Hearing on R089-19

EXHIBIT A



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR

STEVE SISOLAK
Governor

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TERRY REYNOLDS
Director

MARCEL SCHAEERER
Deputy Director

MINUTES

WORKSHOP

TO SOLICIT COMMENTS ON LCB FILE NO. R089-19 AND POLICY AND PROCEDURE X.0.0 OF THE B&I OFFICE OF THE DIRECTOR

(Regulatory Experimentation Program for Product Innovation, NAC 597)

LCB File No. R089-19

Date: November 21, 2019

Time: 1:00 pm

Location: Las Vegas
Nevada State Business Center
Department of Business & Industry
3300 W. Sahara Ave., Suite 400
Nevada Room
Las Vegas, NV 89102

Video Conferenced to:
Carson City
Nevada Division of Insurance
1818 College Pkwy.
First Floor Hearing Room
Carson City, NV 89706

Present: In Las Vegas:

Terry Reynolds, Director, Dept. of Business and Industry
Sandy O'Laughlin, Commissioner, Financial Institutions Division
Mary M. Young, Deputy Commissioner, Financial Institutions Division
Cathy Sheehy, Commissioner, Division of Mortgage Lending
Zeljana Adjari, Deputy Commissioner, Division of Mortgage Lending
Cris Carmona, Chief Investigator, Nevada Consumer Affairs Unit
Chris Weiss, Mgmt. Analyst, Director's Office, Dept. of Business and Industry
Beth Waite, Education and Information Officer, Division of Mortgage Lending

Teri Williams, Public Information Officer, Dept. of Business and Industry
Susan Augienello, All Western Mortgage
Misty Bethany, Ignite Funding
Peter Aldous, Legal Aid Center of Southern Nevada
Taylor Altman, Legal Aid Center of Southern Nevada
Whitney Jones, Boyd Law School Investor Protection Clinic
Ryan Flanagan, Boyd Law School Investor Protection Clinic
Bill Theobald, no affiliation listed

In Carson City:

Mark Krueger, Chief Deputy Attorney General & Consumer Counsel, Nevada AGO
Michelle Newman, Deputy Attorney General, Nevada AGO
Ernest Figueroa, Nevada Consumer Advocate, Nevada AGO
Doug Liveringhouse, Northern Managing Examiner, Financial Institutions Division
James (Rick) Dutton, Nevada Consumer Affairs Unit
Lynn T. McConnell, Chief Financial Officer, Custody Digital
Matt Digesti, VP Government Affairs, Blockchains LLC
Riley Snyder, Nevada Independent
Tyson Falk, Policy Analyst, McDonald Carano
Marcus Rogers, Legacy Escrow

**R089-19 and B&I Policy and Procedure X.0.0
November 21, 2019**

Management Analyst Chris Weiss on behalf of Director Terry Reynolds:

1. CALL TO ORDER

This is the time and place set for the workshop on a proposed regulation and a policy and procedure pertaining to Chapter 597 of the Nevada Administrative Code (“NAC”) and a Regulatory Experimentation Program for Product Innovation as described by the Notice of Workshop dated October 30, 2019, and posted on October 31, 2019 and November 1, 2019. Today is Thursday, November 21, 2019. The time is 1:01 p.m. This hearing is scheduled for 1:00 p.m. and is being video conferenced between the two locations: the Nevada Department of Business and Industry, Nevada Room, 3300 W. Sahara Ave., Suite 400, Las Vegas, NV 89102; and the Nevada Division of Insurance, First Floor Hearing Room, 1818 College Parkway, Carson City, NV 89706.

Introductions:

Terry Reynolds, Director, Nevada Department of Business and Industry
Sandy O’Laughlin, Commissioner, Financial Institutions Division
Mary M. Young, Deputy Commissioner, Financial Institutions Division
Cathy Sheehy, Commissioner, Division of Mortgage Lending
Zeljana Adjari, Deputy Commissioner, Division of Mortgage Lending
Mark Krueger, Chief Deputy Attorney General, Nevada Office of Attorney General
Ernest Figueroa, Nevada Consumer Advocate, Nevada Office of Attorney General

Michelle Newman, Deputy Attorney General, Nevada Office of Attorney General
Chris Weiss, Management Analyst, B&I Director's Office

Hearing Instructions:

If you have not already done so, please take the time to turn off all cell phones. There is a sign-in sheet at the door. If you have not already done so, please sign in. There are copies of the Notice of Workshop, proposed regulation, policy and procedure, small business impact statement, Senate Bill 161, and written comments received to date available by the sign-in sheet.

2. COMMENTS BY GENERAL PUBLIC

We will receive your comments on the proposed regulation and policy and procedure. Please stand, state your name, and business affiliation. If you have written material that you would like to submit, please hand it to a Department staff member at the conclusion of your comments.

Any comments from those in Carson City?

Lynn McConnell, Chief Financial Officer, Custody Digital Group, asked the Department to consider steps to broaden the sandbox program's features to make it more attractive both to larger institutions with diversified financial services and to the fintech providers who served them. She specifically cited the customer and transaction limits in the authorizing statute as not reflecting regard for trial of a product targeted at large institutional customers. Although the statute appeared to give the Director broad authority in these areas, she said it would help if there were some guidance or clarification for these potential applicants. She suggested defining exit procedures for the program, as well as providing mechanisms for guidance or meetings between participants and regulators. Lastly, she referenced approaches being taken by the Financial Conduct Authority in London and the new Express Sandbox Program run by the Monetary Authority in Singapore as worth following and incorporating where practical. She discussed trends in data sharing among international sandbox programs and the Global Financial Innovation Network (GFIN). A copy of her comments was submitted by email after the workshop and are included as Attachment A.

Mark Krueger, Chief Deputy Attorney General, asked for clarification on what kind of data Ms. McConnell envisioned being shared. Ms. McConnell described how a participant might have some aspect of their test design (for example, a survey or some other feedback loop) where data is coming back from consumers, institutional users, or small and medium enterprises, and one might want to know and share those results. She cited such things as feedback on marketing or disclosure effectiveness or similar testing data – the types of exchanges commonly encountered in sandboxes. Mr. Krueger asked whether that would involve personally identifying information (PII) and she replied no, she wasn't commenting on that one way or another. She noted if a company and customer agreed to that and the company held the data properly according to law or regulation, a sandbox regulator might want to inquire about it and could – she didn't think there was anything to prevent it. However, she also didn't think sandbox companies were focused on collecting PII unless it factored into the delivery or design of their product.

Matthew Digesti, Vice President of Government Affairs, Blockchains LLC, said the company had submitted written comments prior to the workshop (included as Attachment B). He thanked Terry Reynolds, the Department, and representatives of the Bureau of Consumer Protection for their work on the Nevada sandbox program. He referenced the program's economic development benefits for the state and said he appreciated the efforts being made.

Any additional comments from those in Carson City? Seeing that there are no additional comments in Carson City, any comments from the Las Vegas office?

Peter Aldous, Staff Attorney, Legal Aid Center of Southern Nevada, said he wanted to focus on one of the important mandates from the Legislature: consumer protection. Mr. Aldous noted that Section 30 of Senate Bill 161 gave the Director power to implement protections for consumers of financial products or services under the sandbox program. He thought one of the regulations or protections that needed to be in place was the ability or authority of the Director to require posting of a bond. Mr. Aldous said that, given the nature of the businesses in focus, some were going to fail. Referring to blockchain technology, he noted one of its benefits was the inability to change data once the data was in the blockchain, but that also meant it was very hard to undue any fraud or damage done as a result of that work. He said he also worked on bankruptcy cases and saw firsthand what happened when businesses overextended themselves and failed – there were few assets left and that is where a bond would benefit consumers. Mr. Aldous noted that almost all the NRS areas covered by the Nevada sandbox program require posting of bonds (the exception being installment loans); therefore, he said that, at the discretion of the Director and in an amount that is appropriate, the posting of a bond should be a requirement of the program.

Taylor Altman, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, said she represented low-income Nevada consumers who would be directly affected by the sandbox program and was requesting the implementation of an interest-rate cap in the regulation to protect consumers and uphold the Legislature's intent in enacting Senate Bill 161. She briefly described her view of the legislative intent of the program, stating that the program was not intended for use by existing businesses such as payday lenders to avoid regulations specifically implemented to protect Nevadans. She discussed the legislative history behind Senate Bill 161, noting that the original bill included reference to NRS 604A, which governs high-interest loans, in the list of statutes from which program participants could be exempted. The bill was subsequently amended to remove NRS 604A, making it clear the Legislature did not intend for high-interest lenders to participate in the program. She referenced the written comments provided by Financial Service Centers of America (FISCA) in response to the workshop posting and said the letter mischaracterized the program's purpose and legislative intent. (A copy of the FISCA letter is included as Attachment C.) She said the payday lending lobby was trying to sneak into the program and therefore it was imperative for the Director to implement an interest-rate cap in the regulations to protect Nevada consumers from predatory lenders.

Mr. Krueger replied to Ms. Altman's comments by underscoring the commitment of the Bureau of Consumer Protection when it came to protecting Nevada consumers. He also noted its recommendation to the Director that neither the regulation, nor the sandbox program, be used as a mechanism to thwart or avoid licensing under the specific areas of NRS cited (check cashing, payday lending, and title lending).

Terry Reynolds, Director, Nevada Department of Business and Industry, seconded Mr. Krueger's comments and affirmed that was how the Department felt about the issue raised by Ms. Altman.

Any additional comments from those here in Las Vegas? Seeing that there are no additional comments at this time, we will move to Items 3 and 4 on the agenda. We will take these jointly, but in order, then discuss written comments received and hear any comments from the audience.

3. PRESENTATION AND DISCUSSION OF PROPOSED REGULATION **LCB FILE NO. R089-19**

General Overview of Regulation

Section 1 creates NAC Chapter 597 by adding to it the provisions set forth in the rest of the regulation.

Sections 2 through 5 pertain to definitions. Section 2 states that words and terms used in the regulation have the meanings ascribed to them in Senate Bill 161 and Sections 3 through 5 of the regulation. Section 3 defines the phrase "change request." Section 4 defines the word "document." Section 5 defines the word "program" and phrase "Nevada sandbox program."

Section 6 provides that any authority, duty or responsibility of the Director under the Regulatory Experimentation Program for Product Innovation can be exercised or performed by any employee of the Department, if designated for such by the Director. It also states that any authority, duty or responsibility of the Department under the program can be exercised or performed by the Director.

Section 7 clarifies certain requirements for program participants, including their place of business, their need for basic business licenses, their need to get approval before engaging in a product or service test at a location where other business is being conducted, and their need to get approval before moving their place of business.

Section 8 clarifies certain minimum consents required by an applicant before the Director will consider a product or service for acceptance into the program. These include consent to the applicability of Nevada law and courts over all matters associated with the program and test; consent to the review or investigation of an applicant's credit history, criminal history and background; and agreement to comply with all program requirements and regulations, including any requirements imposed by the Director as a condition of a product or service test approval.

Section 9 describes the Director's options for responding to consumer complaints under the program, up to and including termination of a participant's participation. It also requires the Department to submit copies of every consumer complaint received under the program to the Bureau of Consumer Protection, Nevada Office of Attorney General.

Section 10 establishes the Director's requirement for periodic or regular reporting by program participants and provides the Director with general authority to set the frequency and content of reports on a case-by-case basis.

Section 11 extends the retention period for record-keeping by program participants from two to six years. It provides guidance on what types of consumer information must be kept as part of those records and gives the Director authority to increase the retention period.

Section 12 requires participants to allow the Office of Attorney General to examine records and documents for up to six years after the end of a test.

Section 13 allows the Director to deviate from, or impose additional or more restrictive, program provisions at any time and for any reason.

4. PRESENTATION AND DISCUSSION OF PROPOSED POLICY AND PROCEDURE **Policy and Procedure X.0.0, B&I Office of the Director**

General Overview of Policy and Procedure

The proposed policy and procedure is comprised of seven major sections.

Section I outlines the purpose of the document, which is to establish guidelines for the Regulatory Experimentation Program for Product Innovation for use by Department employees as well as program applicants and participants.

Section II outlines the policy of the Department when it comes to this program, which is to conduct the program in a manner consistent with the direction and intent of the Nevada Legislature as expressed in Senate Bill 161.

Section III describes the scope of the policy, which applies to all Department employees working on behalf of the program and all program applicants and participants.

Section IV defines the general responsibility of employees and program applicants and participants when it comes to the program. That responsibility is to comply with the guidelines contained in the policy and procedure and, when uncertain, to seek guidance from the Director or Office of the Director.

Section V outlines specific procedures for six administrative areas of the program: program application, change requests, consumer disclosures, consumer complaints, status reports, and notices to the Director. I will go into these in a moment.

Section VI describes the Director's ability to deviate from the policy for any good cause, or to modify applicability of the policy or procedures to a particular product, service, applicant or participant if, in the Director's opinion, attendant circumstances warrant such modification.

Section VII describes how the policy and procedure will be communicated to relevant Department employees, program applicants, and the Office of Attorney General.

Turning back to Section V, the following administrative procedures are covered by the section:

Subsection A – Program Application. This section describes the minimum requirements that must be met before the Director will begin to consider a product or service for possible acceptance into the sandbox program.

Subsection B – Change Requests. This section describes the minimum requirements that must be met for any change request made by a participant in the program. It also outlines specific requirements for change requests related to a request for relief, a request for extension, and a request to co-locate business activity or move the place of business.

Subsection C – Consumer Disclosures. This section describes the requirements for consumer disclosures by participants in the program.

Subsection D – Consumer Complaints. This section describes the authority of the Director in administering consumer complaints. It requires participants to respond to the Director within 10 days of being informed of a complaint and sets requirements for that response.

Subsection E – Status Reports. This section requires participants to submit regular reports to the Director. It defines basic reporting requirements for program participants, including frequency and content, unless otherwise required by the Director.

Subsection F – Notices to the Director. This section requires participants to notify the Director within 24 hours of any failure of the product or service test, any discovery of a computer breach, or any change in company ownership or key management personnel and sets basic requirements for each type of notice.

DISCUSSION AND CONSIDERATION OF WRITTEN COMMENTS

WRITTEN COMMENTS RECEIVED

- a. On October 31 and November 1, 2019, the Department sent the proposed regulation and policy and procedure via e-mail to all licensees of the Financial Institutions Division (a total of 236 persons, of which 11 proved undeliverable) and Mortgage Lending Division (a total of 7,738 email addresses, of which 236 proved undeliverable) to solicit comment from small businesses concerning the impact that the regulation would have on their business. In addition, the Notice of Workshop, proposed regulation, policy and procedure, small business impact statement, and Senate Bill 161 were posted on the Department's website; the State's official website; at the

B&I Director's Office in Las Vegas and Carson City; and at the Financial Institutions Division, Mortgage Lending Division and Nevada State Business Center in Las Vegas.

- b. The Legislative Counsel Bureau submitted questions and comments on November 4, 2019, primarily concerning the application fee amount to incorporate into the regulation, the role of applicable regulators in handling consumer complaints under the program, the frequency and timeline of participant reports under the program, the general authority of the Director to make program changes, and two definitions ("change request" and "Nevada Sandbox Program").
- c. The Department received written comments from two parties as follows:
 - i. Financial Service Centers of America (FISCA) submitted a comment letter dated November 11, 2019, primarily concerning keeping the proposed program as free of regulatory conditions or requirements as possible to encourage testing of products that target unbanked or underbanked populations; increasing the size of the available testing pool (customer base) to assure adequate scale for test analysis and capital investment; increasing the length of time permitted to tests to assure adequate data analysis and product or service development; and reducing the proposed six-year record retention schedule to the two-year minimum timeframe described in SB 161.
 - ii. Blockchains LLC submitted a comment letter dated November 15, 2019, primarily concerning documentation of all application requirements in the proposed regulation; ensuring the application process is reasonable in scope to limit costs to startups or small businesses; clarifying the respective delegation authorities of the Director as described in SB 161 and Section 6 of the proposed regulation; revising the relocation approval mechanism described in the proposed regulation to a 60-day notification of the Director and affected customers, along with a determination by the Director of no harm from the relocation; and incorporating language to allow for agreements between the Director and applicants to protect an applicant's confidential or trade secret information from public disclosure.

DISCUSSION AND CONSIDERATION OF AUDIENCE COMMENTS

If anyone wishes to offer comments on any of the preceding items (the proposed regulation, draft policy and procedure, or written comments received) for the Director's discussion and consideration at this time, now is the time to do so.

Any comments from those in Carson City?

Lynn McConnell, Chief Financial Officer, Custody Digital Group, had a question concerning Section F(1)(a) on page 21 of the workshop posting; specifically, the need to notify the Director in the event of a failure of the product or service test during the period of testing. She wanted to know what "failure" meant and was it determined by the participant, Department, etc.

Mark Krueger, Chief Deputy Attorney General, replied that it would depend because the Department did not know what product or services would be offered or what they would look like. He said this was a principal reason for the Director to have discretion in these matters, in order to make and adjust those determinations as the products or services entered the program and evolved in the marketplace.

Any additional comments from those in Carson City? Seeing that there are no additional comments in Carson City, any comments from Las Vegas?

Taylor Altman, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, said they had suggestions regarding Section 8 of the regulation and the application process. She recommended adding additional application requirements as follows:

- *Disclosure of whether the applicant had conducted a similar test in another sandbox jurisdiction*
- *Including a copy of any approved or denied application from another sandbox jurisdiction*
- *Including a statement outlining any complaints tied to a sandbox effort elsewhere*
- *Including a statement concerning whether such a sandbox test elsewhere was a success, failure or remains ongoing*
- *Including a statement of any regulatory actions pending against (or resolved by) the applicant elsewhere*

She recommended posting sandbox applications online for public comment prior to the Director making his decision. She suggested allowing comments to be submitted for 45 days, then letting the applicant respond to any comments within 15 days.

Mark Krueger, Chief Deputy Attorney General, suggested it would be more appropriate to locate Ms. Altman's comments in the policy rather than in the regulation (should the Director decide to pursue any of them) because the Department did not know what types of products or services might be proposed.

Ms. Altman offered three additional comments for use in either the regulation or policy and procedure. First, she recommended requiring participants to maintain the information they receive from customers in a secure manner. Second, she said participants should be required to give notice to consumers of any unauthorized acquisition of the data or a breach of the security system. Lastly, she thought "contact information" should be defined in Section 11 as mailing address, phone number and email.

Mark Krueger said that NRS Chapter 603A provided the protections Ms. Altman was referencing and these protections would still apply in the sandbox regulation. As for the need to specifically define "contact information," Mark deferred to the Director on that determination.

Any additional comments from Las Vegas? Seeing that there are no additional comments at this time, we will move to Item 5 on the agenda.

5. PUBLIC COMMENT

Now we will open to public comment once more. Would anyone like to make an additional comment? Any comments from those in Carson City? Any comments from Las Vegas? Seeing that there are no additional comments, we will move to Item 6.

6. CLOSE WORKSHOP (ADJOURNMENT)

The workshop for LCB File No. R089-19 pertaining to Chapter 597 of the Nevada Administrative Code and a B&I Office of the Director policy and procedure to administer a Regulatory Experimentation Program for Product Innovation is hereby closed and adjourned. Thank you.

The time of adjournment was approximately 1:36 p.m.

Attachments:

A – Custody Digital, Lynn McConnell, 11-21-2019 written comments

B – Blockchains LLC, 11-15-2019 written comments

C – Financial Service Centers of America, 11-11-2019 written comments

Minutes of Nov-21-2019 Workshop
November 26, 2019
Regulatory Experimentation Program for Product Innovation (LCB File No. R089-19)

Chris Weiss

From: lynn mcconnell <lynn.mcconnell@custodydigital.com>
Sent: Thursday, November 21, 2019 5:24 PM
To: Chris Weiss
Cc: lynn mcconnell; Matthew Digesti
Subject: Summary of comments at public workshop LCB file no. R089-19 NV Regulatory Sandbox

Dear Chris,

Here is a summary of my remarks to be included with the public comments made today at the public workshop meeting held regarding the Nevada Regulatory Sandbox legislation at the Nevada Department of Insurance in Carson City, NV. We appreciate the opportunity to participate in the proceedings and to contribute our views on behalf of our organization.

As a representative of a company considering Nevada as a possible location for a digital financial product or service, I am pleased to see the state Department of Business and Industry promoting programs for innovation including technology, financial services and digital services. The Regulatory Sandbox proposal is a positive step in the process of developing more business for the state and we are pleased to see this progress.

One comment about the structure of the policies and procedures. The primary emphasis is on consumer protection features in both the participant reporting and the complaints management process. This is of course quite an appropriate objective. However perhaps one or two additional points that could take into account the perspective of institutional business would broaden the program features and encourage a larger number of participants to apply.

Similarly the Senate Bill 161 in sections 16 (3) and 17 (2) subsections a and b provide for specific transaction limits for each customer and maximum transaction limits for the products approved for the program. These limits do not reflect consideration for a trial of a product targeted for one or more types of institutional customers. While I realize that section 19 of the Bill grants the Director substantial powers of discretion to modify these limits and other provisions of the program, my request is that further provisions be outlined so that businesses dealing with financial products designed for larger institutions and more diversified financial customer segments can also actively consider participation in the program as the digital assets and services economy expands.

You may also wish to consider any sandbox exit procedures to be drafted as well. This might also provide for the department announcements of successful tests and company program exits for firms that has used the program to build their customer base. They can also reap the benefits of the regulatory guidance received through the program. I did not see any reference to the provision of regulatory guidance in the procedures nor any reference to interim conferences or meetings with program administrators.

Last I wish to call your attention to the successful sandbox programs run by the Financial Conduct Authority in London and the new Express Sandbox program of the Monetary Authority of Singapore. There is a movement among international regulators to share sandbox results and information for the benefit of participating companies who can test products in multiple markets and speed their path to market with data shared among interested regulatory agencies. This arrangement is called GFIN and is set up via MOUs between regulatory agencies. This type of data sharing might be a possible item to consider as your sandbox program grows.

I close my remarks by expressing positive support for your overall initiative and look forward to seeing the first successful sandbox exits in 2020 and beyond.



Lynn McConnell / CFO
Custody Digital Group

lynn.mcconnell@custodydigital.com / +44 7894 835390

custodydigital.com

November 26, 2019

Regulatory Experimentation Program for Product Innovation (LCB File No. R089-19)



610 Waltham Way, Sparks, Nevada 89434
775.432.0000
www.Blockchains.com

November 15, 2019

Chris Weiss
Management Analyst, Director's Office
Nevada Department of Business and Industry
3300 W. Sahara Avenue, Suite 425
Las Vegas, Nevada 89102
(702) 486-5320 or cweiss@business.nv.gov

Signed copy via electronic mail to Chris Weiss at cweiss@business.nv.gov

Dear Mr. Weiss,

The written comments following this letter are submitted in response to your "Notice of Workshop To Solicit Comments on Proposed Regulations and Policy and Procedure Pertaining to Chapter 597 of the Nevada Administrative Code (LCB File No. R089-19) Regulatory Experimentation Program for Product Innovation."

We appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Digesti".

Matthew Digesti
Vice President of Government Affairs and Strategic Initiatives
Blockchains, LLC

Attachment B



Blockchains, LLC (“Blockchains”) is pleased to respond to the Proposed Regulation of the Director of the Department of Business and Industry, LCB File No. R089-191, which relate to S.B. 161 (2019) (the “Proposed Regulations”). Blockchains is developing a first-of-its-kind platform on the public Ethereum blockchain powered by built-in solutions for private key management, world-class digital asset storage, self-sovereign digital identity, and reputation. We have no current plans to apply for admission to the Regulatory Experimentation Program for Product Innovation (the “Regulatory Sandbox”). As an early-stage blockchain software development company, we are committed to supporting the growth of Nevada’s technology ecosystem because we believe that will benefit both Nevada businesses and residents. As such, we support the Regulatory Sandbox as a critical economic development and consumer protection tool.

We have reviewed the Proposed Regulations and commend the Director of the Nevada Department of Business and Industry (the “Director”) and the Consumer Advocate of the Bureau of Consumer Protection if the Office of the Nevada Attorney General (the “Consumer Advocate”) for their efforts. We support the Proposed Regulations and offer the following comments and suggested clarifications.

1. Section 12 of Senate Bill No. 161 sets forth information that must be included in each Regulatory Sandbox application. If there is a possibility that the Director could require any additional information in the application or impose any additional obligations on a prospective participant, we believe the potential additional information and obligations should be set out in the Proposed Regulations. A detailed and transparent application process codified in the Nevada Administrative Code (the “NAC”) is the best approach to ensuring the application process is consistent throughout the life of the Regulatory Sandbox and ensuring that each applicant knows exactly what may be required during the application process. We also encourage the Director to

Attachment B (continued)



ensure that the application process is reasonable in scope, including taking into consideration whether the costs and expenses associated with the application are prohibitive for startups or small businesses that may wish to apply. If the application process is cost prohibitive, then the legislative intent behind Senate Bill No. 161 will be frustrated and the number of applicants will be limited unnecessarily.

2. Section 11 of Senate Bill No. 161 states that “[i]n consultation with each applicable regulator, the Director shall establish and administer the [Regulatory Sandbox] to enable a person to obtain limited access to markets in this State to test a financial product or service” The “applicable regulator” is defined in Section 3 of the Bill as “the Commissioner of Mortgage Lending, the Division of Mortgage Lending of the Department of Business and Industry, the Commissioner of Financial Institutions or the Division of Financial Institutions of the Department of Business and Industry, as applicable, responsible for regulating a financial product or service.” Section 6 of the Proposed Regulations expands upon Section 11 of the Bill by stating , “[a]ny authority granted to the Director and any duty or responsibility assigned to the Director by any provision of this chapter or Senate Bill No. 161 . . . may be exercised or performed by any employee of the Department who is designated by the Director for that purpose.” This could be interpreted as permitting the Director to task a Financial Institutions Division employee with regulating a mortgage lending Regulatory Sandbox participant. However, if Section 6 of the Proposed Regulations is read in conjunction with Section 3 and Section 11 of the Bill, then Department of Business and Industry employees that may exercise or perform any duty or responsibility assigned to the Director should be limited to applicable regulators, which term is defined in Section 3 of the Bill as “the Commissioner of Mortgage Lending, the Division of Mortgage Lending of the Department of Business and Industry, the Commissioner of Financial

Attachment B (continued)



Institutions or the Division of Financial Institutions of the Department of Business and Industry, as applicable, responsible for regulating a financial product or service.”

3. Section 7(4) of the Proposed Regulations states that “[a] participant shall not move the place of business without first obtaining the written approval of the Director.” Startups and small businesses need flexibility when it comes to their operations, especially a large operational expense like leasing office space. Thus, this constraint may prove to be too burdensome for a Regulatory Sandbox participant and may discourage some potential applicants from applying. We propose to modify this constraint so that the Regulatory Sandbox participant may move physical locations within Nevada so long as (a) the Director and all existing customers are notified in writing of the new location and the date on which the move is planned to occur no later than sixty (60) days prior to the relocation and (b) the Director determines that no customer will be harmed by the relocation. We believe this adequately balances the need for business flexibility with the need for the Director to protect the interests of the consumers.

4. The purpose of the Regulatory Sandbox is to test, on a limited basis, innovative products and services in certain regulated industries detailed in Senate Bill No. 161. As such, some applicants may need to protect certain innovative products and services that contain commercially sensitive and valuable intellectual property from public disclosure. To encourage such businesses to participate in the Regulatory Sandbox, we believe that the Director and the applicant should have the ability to enter into an agreement wherein confidential and/or trade secret information is indeed protected from public disclosure. Neither the Bill nor the Proposed Regulations discusses this important topic or sets forth enabling language to ensure that applicants may request this type of agreement. We encourage the Director to consider amending the Proposed

Attachment B (continued)



Regulations to expressly address this critical component along with the rules by which such an agreement may be drafted, negotiated, and executed.

Blockchains would again like to thank the Director and the Consumer Advocate for their diligent work in drafting these Proposed Regulations and the substantial investment of time and resources to move Senate Bill No. 161 from legislation to reality. We believe this is a critical economic development tool from which every business and resident in Nevada can potentially benefit as we continue the important task of diversifying the economy in our great state.

Attachment B (continued)



FINANCIAL SERVICE CENTERS OF AMERICA, INC.
A NATIONAL TRADE ASSOCIATION

November 11, 2019

Via Email

Director Michael Brown
Nevada Department of Business and Industry
1830 College Parkway
Suite 100
Carson City, NV 89706

Re: LCB File No. R089-19I

Dear Director Brown:

As requested, this letter is meant to serve as a comment on the initial draft proposed regulations of your Department for the Regulatory Experimentation Program for Product Innovation (more commonly referred to as the “Nevada Sandbox Law”), LCB File No. R089-19. FiSCA is based in Washington, DC and is the oldest and largest national trade association representing the Financial Service Center (FSC) industry. FiSCA members offer a wide array of necessary financial products and services to tens of millions of Americans each year in accordance with state and federal law. Additional information about FiSCA is available at www.fisca.org.

We applaud Nevada state officials’ bi-partisan dedication to implementation of the Sandbox Law. This law makes Nevada to one of the first states in the country to establish a regulatory Sandbox in order to test new concepts in the rapidly evolving consumer finance marketplace and better serve Nevadans’ financial needs. The law will also spur economic development in the State. From our association’s vantage point we are in a unique position to work with our members and, in turn, federal officials at the Consumer Finance Protection Bureau (CFPB), and state officials in other states such as Arizona, which passed the first Sandbox bill last year. Additionally, FiSCA works closely with our chief outside counsel, Hudson Cook, and our members have worked with Ballard Spahr on Sandbox issues the past two years—both firms are leaders in consumer finance law in the U.S.

Here are four specific areas where we would like to focus as it relates to the Nevada Sandbox:

- It is critical that, to the extent possible, a true regulatory free zone is created and bracketed during the testing period for an innovator applicant. (In practice, where we have seen other states misstep in this regard is that the truest intent of the Sandbox is to hold state licensing and rate cap laws harmless during the testing period according

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Attachment C

to legal and practical interpretations to date. One-third of Americans are classified as “Unbanked” or “Underbanked” and that percentage is higher in the State of Nevada. Thus, it’s important to test a range of products which might serve populations who otherwise lack access to traditional credit products, such as credit cards or home equity lines of credit.)

- The size of the testing pool is of paramount importance when establishing a regulatory regime around the Sandbox. An adequate test population allows for the proper analysis of data and the construction of the best and most innovative new products; additionally, it provides much needed certainty for public and private investors (capital) in the applicant companies. (The current parameters for the Nevada Sandbox - 5,000 up to 7,500 with a special waiver - is more than 10 times smaller than the comparable Arizona Sandbox law. To the extent possible, FiSCA would strongly urge the Department and relevant officials to consider an expanded scope in the 17,500 to 20,000 consumer range – again, perhaps utilizing the existing waiver concept in the statute.)
- Likewise, the length of the testing period is of paramount importance when establishing a regulatory regime around the Sandbox. An adequate testing period also allows for the proper analysis of data and the construction of the best and most innovative new products; and, it provides much needed certainty for public and private investors (capital) in the applicant companies.
- The original law, SB 161, appears to have established a two (2) year window whereby applicant companies would keep all records on file following the cessation of the testing program. The proposed draft regulation would establish a period three times longer (6 years). FiSCA believes a timeline following the original statute makes the most sense from a practical standpoint, especially for nascent companies who will evolve rapidly and change shape. Six years is a lifetime in the rapidly evolving “fintech” marketplace.

Thank you for your consideration of our comments. Should you have any questions, please do not hesitate to reach out to me at, 202-327-9708, or at edalessio@fisca.org. Again, we commend Nevada’s state officials for taking a forward-looking approach to consumer finance and technology.

Very truly yours,



Edward P. D'Alessio
Executive Director

cc: Senator Kieckhefer
Senator Spearman
Chris Weiss, Management Analyst, Nevada Department of Business and Industry

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Attachment C (continued)

EXHIBIT B



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR

STEVE SISOLAK
Governor

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Las Vegas, Nevada 89102
(702) 486-2750 Fax (702) 486-2758
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TERRY REYNOLDS
Director

VINCENT MILAZZO
MARCEL SCHAERER
Deputy Directors

MINUTES

HEARING

FOR ADOPTION AND AMENDMENT OF REGULATIONS OF THE OFFICE OF THE DIRECTOR

(Regulatory Experimentation Program for Product Innovation, NAC 657A)
LCB File No. R089-19

Date: January 17, 2020

Time: 11:00 am

Location: Las Vegas
Nevada State Business Center
Department of Business & Industry
3300 W. Sahara Ave., Suite 400
Nevada Room
Las Vegas, NV 89102

Video Conferenced to:
Carson City
Nevada Division of Insurance
1818 College Pkwy.
First Floor Hearing Room
Carson City, NV 89706

Present: In Las Vegas:

Terry Reynolds, Director, Dept. of Business and Industry
Sandy O'Laughlin, Commissioner, Financial Institutions Division
Mary M. Young, Deputy Commissioner, Financial Institutions Division
Cathy Sheehy, Commissioner, Division of Mortgage Lending
Zeljana Adjari, Deputy Commissioner, Division of Mortgage Lending
Chris Weiss, Mgmt. Analyst, Director's Office, Dept. of Business and Industry
Beth Waite, Education and Information Officer, Division of Mortgage Lending

Samantha Sato, Carrara Nevada
Caleb L. Green, Dickinson Wright PLLC
Peter Aldous, Legal Aid Center of Southern Nevada
Taylor Altman, Legal Aid Center of Southern Nevada

In Carson City:

Mark Krueger, Chief Deputy Attorney General & Consumer Counsel, Nevada AGO
James (Rick) Dutton, Nevada Consumer Affairs Unit
Allison Genco, Ferrari Public Affairs
Amanda Brazeau, Rowe Law Group
Matt Digesti, Blockchains LLC

R089-19
January 17, 2020

Director Terry Reynolds:

1. CALL TO ORDER AND OPEN HEARING R089-19

This is the time and place set for the adoption and amendment of a proposed regulation pertaining to Chapter 657A of the Nevada Administrative Code (“NAC”) and a Regulatory Experimentation Program for Product Innovation for the State of Nevada as described by the Notice of Hearing and Notice of Public Meeting, both dated December 16, 2019, and properly noticed and posted accordingly. Today is Friday, January 17, 2020. The time is 11:01 a.m. This hearing is scheduled for 11:00 a.m. and is being video conferenced between the Nevada Department of Business and Industry, Nevada Room, 3300 W. Sahara Ave., Suite 400, Las Vegas, NV 89102; and the Nevada Division of Insurance, First Floor Hearing Room, 1818 College Parkway, Carson City, NV 89706.

Introductions:

Terry Reynolds, Director, Nevada Department of Business and Industry
Sandy O’Laughlin, Commissioner, Financial Institutions Division
Mary M. Young, Deputy Commissioner, Financial Institutions Division
Cathy Sheehy, Commissioner, Division of Mortgage Lending
Zeljana Adjari, Deputy Commissioner, Division of Mortgage Lending
Mark Krueger, Chief Deputy Attorney General, Nevada Office of Attorney General
Chris Weiss, Management Analyst, B&I Director’s Office

Hearing Instructions:

If you have not already done so, please take the time to turn off all cell phones. There is a sign-in sheet at the door. If you have not already done so, please sign in. There are copies of the Notice of Hearing with proposed regulation; Notice of Public Meeting with small business impact

statement; minutes of the November 21, 2019 workshop on LCB File No. R089-19; and Nevada Senate Bill No. 161 of the 2019 state legislative session are available by the sign-in sheet.

2. PUBLIC COMMENT

We will receive your comments on the proposed regulation. Please stand, state your name, and business affiliation. If you have written material that you would like to submit, please hand it to a Department staff member at the conclusion of your comments.

First, any comments from those in Carson City?

There were no comments from those in Carson City.

Any comments from those here in Las Vegas?

There were no comments from those in Las Vegas.

Seeing that there are no comments, we will move to Item 3 on the agenda.

3. PRESENTATION AND DISCUSSION OF PROPOSED REGULATION (LCB File No. R089-19) – FOR POSSIBLE ACTION

At the request of Director Terry Reynolds, Management Analyst Chris Weiss provided the following overview of the proposed regulation:

The initial draft regulation submitted by the Department of Business and Industry to the Legislative Counsel Bureau in October 2019 was revised by LCB on December 5, 2019, principally as follows:

- The regulation will reside in NAC Chapter 657A, titled “Regulatory Experimentation Program for Product Innovation.” It will not reside in NAC Chapter 597, “Miscellaneous Trade Regulations and Prohibited Acts,” as originally anticipated.
- LCB added or modified definitions for “Department,” “Director” and “Program.” They eliminated the definition for “change request.”
- They incorporated the program application fee of \$500 into the regulation.
- They reorganized the order of sections and revised language in various instances to reflect their legal interpretation of Senate Bill 161 as it applied to our initial draft.

The following is the proposed regulation as it stands today:

Mr. Weiss read the regulation aloud in its entirety (Sect. 1 through 15) to attendees. When the reading was finished, he proceeded to a discussion of comments.

The following is a summary of the comment process for the initial and revised regulation:

On October 31 and November 1, 2019, the Department sent the initial proposed regulation via e-mail to all licensees of the Financial Institutions Division and Mortgage Lending Division to notify them of a workshop on the regulation and to solicit comment from small businesses concerning the impact that the regulation would have on their business. In addition, the initial proposed regulation, small business impact statement, and Notice of Workshop were posted on the Department's website, the State's official website, and the website of the Legislative Counsel Bureau; at the B&I Director's Office in Las Vegas and Carson City; at the Financial Institutions Division, Mortgage Lending Division, Nevada State Business Center, Grant Sawyer Office Building, and Nevada Department of Employment, Training & Rehabilitation office in Las Vegas; at the Legislative Building, Capitol Building, Blasdel Office Building, Nevada Division of Insurance office, and State Library and Archives complex in Carson City; and at county libraries throughout the state.

The Department received five comments in response to this notice and solicitation as follows:

- Financial Service Centers of America (FISCA) submitted a comment letter dated November 11, 2019, primarily concerning keeping the proposed program as free of regulatory conditions or requirements as possible to encourage testing of products that target unbanked or underbanked populations; increasing the size of the available testing pool (customer base) to assure adequate scale for test analysis and capital investment; increasing the length of time permitted to tests to assure adequate data analysis and product or service development; and reducing the proposed six-year record retention schedule to the two-year minimum timeframe described in SB 161.
- Blockchains LLC submitted a comment letter dated November 15, 2019, primarily concerning documentation of all application requirements in the proposed regulation; ensuring the application process is reasonable in scope to limit costs to startups or small businesses; clarifying the respective delegation authorities of the Director as described in SB 161 and the initial proposed regulation; revising the relocation approval mechanism described in the proposed regulation to a 60-day notification of the Director and affected customers, along with a determination by the Director of no harm from the relocation; and incorporating language to allow for agreements between the Director and applicants to protect an applicant's confidential or trade secret information from public disclosure.
- Lynn McConnell, Chief Financial Officer, Custody Digital Group, submitted oral and written comments dated November 21, 2019, primarily concerning modifying the program's customer and transaction limits to make the program more attractive to larger institutions with diversified financial services and to fintech providers that served them; providing more guidance or clarification on these issues to potential large institutional applicants; defining exit procedures for the program; providing mechanisms for guidance or meetings between participants and regulators; incorporating data-sharing trends taking place in similar international programs; and clarifying what constituted a product or service test failure for the purposes of having to notify the Director under the program.

- Peter Aldous, Staff Attorney, Legal Aid Center of Southern Nevada, submitted oral comments dated November 21, 2019, primarily concerning consumer protection and requiring participants to post a bond in an amount considered appropriate by the Director.
- Taylor Altman, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, submitted oral comments dated November 21, 2019, primarily concerning implementing an interest-rate cap in the regulation to protect low-income consumers; ensuring the program was not used by businesses such as payday lenders to avoid regulations specifically implemented to protect Nevadans; requiring additional disclosures by program applicants as part of the application process, including whether the applicant had conducted a similar product or service test in another regulatory sandbox program, whether such a test was still ongoing or had been a success or failure, copies of any approved or denied applications to another sandbox program, a statement outlining any complaints tied to a sandbox test elsewhere, and a statement of any regulatory actions pending against (or resolved by) the applicant elsewhere; making program applications available for public comment as part of the Director's decision-making process; requiring program participants to maintain consumer information in a secure manner; requiring them to notify consumers of any unauthorized acquisition of their information or a computer breach; and defining consumer contact information as "mailing address, phone number and email."

Following issuance of the revised regulation by LCB on December 5, 2019, the Department sent the revised regulation via e-mail on December 13, 2019, to all licensees of the Financial Institutions Division and Mortgage Lending Division to notify them of this hearing and public meeting to (1) solicit additional comment on the regulation and (2) to adopt and amend the regulation. The notice of hearing, proposed regulation as revised by LCB, notice of public meeting, and small business impact statement were dated December 16th and posted/emailed in a manner identical to that described previously above for the November 2019 workshop.

The Department received one written question in response to the hearing and public meeting notices dated December 16th and posted and emailed on December 13th as follows:

- Donna Zebin, VP-Compliance Officer for Berkadia, a joint venture of Berkshire Hathaway and Jefferies Financial Group, submitted an email dated December 16, 2019, asking for confirmation that the "hearing and proposed amendments do not apply to our business..." B&I staff replied on December 16, 2019, indicating (1) the regulation pertained to establishment of a voluntary regulatory sandbox program for the State of Nevada similar to those found in Arizona and Utah where businesses developing innovative fintech products or services could apply for temporary waiver from certain requirements under state law to test those products for two years; (2) Ms. Zebin and Berkadia should review the referenced Nevada law to decide whether the program was something of potential interest to the company; and (3) if their company was not developing innovative financial technology products or services (as defined in the Nevada law), or was, but did not anticipate wanting to test such products in the Nevada marketplace under the conditions as provided for in the law (since Berkadia was already licensed here), then the regulation and program were likely of no interest or relevance

to their firm. A pdf copy of Nevada Senate Bill No. 161 as enrolled was attached for their reference.

The Department received no written comments in response to its notices dated December 16th and posted and emailed on December 13th.

In response to the comments received, the Department made changes to its program application form and corresponding language in its policy and procedure. These include listing all application requirements in the Department's policy and procedure for the program and having the applicant (1) provide information on any other sandbox applications or tests in which it is involved, (2) identify any proposed bonding as part of its proposed plan for a test in the Nevada sandbox, and (3) suggest or explain any exit procedures if the applicant decides not to pursue formal licensing in Nevada following termination of the test or conclusion of the testing period.

Several of the comments – including ones pertaining to money transmittal amounts, customer caps, and length of testing period – touched upon statutory requirements the Department is unable to change. These concerns will be noted in the program's annual report to the Nevada Legislature, but no further action will be taken at this time.

No action was taken concerning the comments about relocation approval, imposing a 60-day notification period on participants, or requiring a corresponding finding of no harm by the Director. The Department believes its current approach to a relocation request is administratively simpler than the suggested alternative and therefore will be less burdensome to prospective participants. It also preserves the Director's broad authority in administering such requests, consistent with legislative intent.

No action was taken concerning the comment about reducing the record retention schedule from six years to the statutory minimum of two years. The Department, in consultation with its applicable regulators and the Bureau of Consumer Protection, concluded that the lengthier requirement is in the best interests of consumers and the state, given any prospective information or actions needed to respond to complaints following conclusion of a participant test.

No action was taken concerning the comment about instituting a rate cap in the regulations. The Department is committed to protecting consumers from predatory lenders or other malicious actors in the financial institutions and mortgage lending space. However, given the legislative intent of the Nevada Sandbox Program, the Department believes this is best done in the program through (1) review of applicants and their proposed products and services, and (2) conditioned approvals to test in the program. Similarly, to minimize administrative complexity, the Department took no action in regulation concerning the comment to make applications available for public review and input.

The Department will address comments concerning the protection of consumer information, notification of computer breaches, definition of product/test failures, and holding of guidance or related meetings between applicants/participants and regulators through the program's application

review process and the subsequent case-by-case administration of participant tests. No action was deemed necessary in the regulation to handle these concerns.

4. ADOPTION OR AMENDMENT OF PROPOSED REGULATION R089-19 – FOR POSSIBLE ACTION

Director Terry Reynolds thanked B&I staff and Chief Deputy Attorney General Mark Krueger for their work on the proposed regulation, then took the following action:

As the Director of the Nevada Department of Business and Industry, I hereby adopt regulation R089-19 which pertains to Chapter 657A of the Nevada Administrative Code and a Regulatory Experimentation Program for Product Innovation for the State of Nevada as that regulation is described in the Legislative Counsel Bureau version dated December 5, 2019.

5. PUBLIC COMMENT

Now we will open the floor to public comment once more. For anyone who wishes to make a comment on any topic of their choosing, now is the time to do so. Would anyone like to make an additional comment? Any comments from those in Carson City? Any comments from the Las Vegas office?

There were no additional comments.

6. CLOSE HEARING R089-19 (ADJOURNMENT)

The hearing for R089-19 pertaining to Chapter 657A of the Nevada Administrative Code and a Regulatory Experimentation Program for Product Innovation for the State of Nevada is hereby closed and adjourned. Thank you.

The time of adjournment was approximately 11:30 am.

Attachments

A - Berkadia, 12-16-2019 email inquiry and B&I response

From: Donna Zebin <Donna.Zebin@berkadia.com>
Sent: Monday, December 16, 2019 12:07 PM
To: Chris Weiss
Subject: NOTICE OF HEARING FOR ADOPTION AND AMENDMENT OF REGULATIONS OF THE OFFICE OF THE DIRECTOR LCB FILE No. R089-19
Attachments: HEARING NOTICE LCB File R089-19 - 12-16-2019.pdf; MEETING NOTICE AGENDA LCB File R089-19 - 12-16-2019.pdf

Hello,

I am writing to you regarding the above-referenced notice of hearing that was received regarding the regulation of financial technology products and services as enacted by SB 161 of the 2019 Session of the NV Legislature. As I read the information, it all seems to be very consumer driven and I'm not sure it has any application to commercial mortgage loan origination. Berkadia Commercial Mortgage LLC is a licensed Mortgage Broker in NV (License #4505) and conducts strictly commercial mortgage loan origination. We do not handle any residential mortgage loans.

Can you please confirm that this hearing and the amendments do not apply to our business?



Donna L. Zebin

VP- Compliance Officer

323 Norristown Road Suite 300 | Ambler PA 19002
T: +1 (215) 328-3220 | F: +1 (215) 682-0770
donna.zebin@berkadia.com | www.berkadia.com
Berkadia Commercial Mortgage LLC

a Berkshire Hathaway and Jefferies Financial Group company

This message is intended for the individual or entity named above. If you are not the intended recipient, please do not read, copy, use or disclose this communication to others. Please notify the sender by reply and delete this message from your system. Thank you.

From: Chris Weiss
Sent: Monday, December 16, 2019 1:32 PM
To: 'Donna Zebin'
Subject: RE: NOTICE OF HEARING FOR ADOPTION AND AMENDMENT OF REGULATIONS OF THE OFFICE OF THE DIRECTOR LCB FILE No. R089-19
Attachments: Senate Bill 161 - As Enrolled.pdf

Hi Donna,

This regulation pertains to establishment of a regulatory sandbox program for the State of Nevada (Nevada Senate Bill 161, 2019 session). This is a voluntary testing program similar to those in states such as Arizona and Utah where businesses that are developing innovative fintech products or services can apply for temporary waiver from certain requirements under state law to test those products for two years. There are many caveats and other limitations under the Nevada law as passed, so I recommend you review the referenced Nevada Senate Bill (I've attached a copy) to decide whether this is something of potential interest to your company.

If your company is not developing innovative financial technology products or services (as defined in the bill), or is, but does not anticipate wanting to test such products in the Nevada marketplace under the conditions as provided for in the bill (since you are already licensed here), then the regulation and program are likely of no interest or relevance to your firm.

Sincerely,

Chris Weiss, Management Analyst
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