

STATE OF NEVADA



STEVE SISOLAK
Governor

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DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE DIRECTOR

January 20, 2022

Sent via email to: director@lcb.state.nv.us

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Annual Report on Regulatory Experimentation Program for Product Innovation

Pursuant to NRS 657A.530, the Nevada Department of Business and Industry hereby submits to the Director of the Legislative Counsel Bureau, for transmittal to the Nevada Legislature, the enclosed report on the Regulatory Experimentation Program for Product Innovation (also known as the "Nevada Sandbox Program") for calendar year (CY) 2021.

Please contact me at (775) 684-2920 or treynolds@business.nv.gov if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Reynolds".

Terry Reynolds
Director

Enclosure a/s

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DEPARTMENT OF BUSINESS AND INDUSTRY
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Regulatory Experimentation Program for Product Innovation

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January 20, 2022

**ANNUAL REPORT ON THE
REGULATORY EXPERIMENTATION PROGRAM FOR PRODUCT INNOVATION
(NRS 657A)**

Pursuant to NRS 657A.530, the Director of the Nevada Department of Business and Industry hereby submits to the Director of the Legislative Counsel Bureau, for transmittal to the Nevada Legislature, the following report on the Regulatory Experimentation Program for Product Innovation (REPPI, also known as the “Nevada Sandbox Program”) for calendar year (CY) 2021.

Background

On June 13, 2019, Governor Sisolak signed into law Nevada Senate Bill No. 161,¹ which required the Director of the Nevada Department of Business and Industry to implement and administer the Regulatory Experimentation Program for Product Innovation, more commonly known as a regulatory sandbox program, for the State of Nevada. At its time of enactment, the law placed Nevada in the vanguard of states (the others being Arizona, Wyoming and Utah) operating regulatory sandbox programs for economic and business development, improved consumer choice, and more adaptive oversight of rapidly developing financial technologies.

The Nevada Sandbox Program is intended to allow persons or businesses with innovative financial technology (“fintech”) products or services to apply for the opportunity to test those products or services in the state without having to meet some or all of the regulatory requirements that might otherwise apply.

¹ Codified as NRS Chapter 657A.

Specifically, the program enables individuals or companies to obtain limited access to markets in Nevada to test a financial product or service without (1) applying for or obtaining any license or other authorization otherwise required by any provision of NRS chapters 645A (governing escrow agencies and agents), 645B (governing mortgage companies and mortgage loan originators), 645F (governing mortgage lending and related professions), or 645G (governing exchange facilitators); NRS title 55 (governing banks and related organizations, including domestic and foreign banks, bank holding companies, trust companies, family trust companies, and issuers of instruments for transmission or payment of money; and other financial institutions, including credit unions, savings banks, installment lenders, and thrift companies); or any regulation adopted pursuant thereto; or (2) otherwise complying with any provision of NRS chapters 645A, 645B, 645F or 645G; NRS title 55; or any regulation adopted pursuant thereto, except as otherwise required by the Director pursuant to certain authorities granted him in NRS Chapter 657A as the administrator of the Nevada Sandbox Program.

Summary of Program Operation and Status

Given CY 2021 was a legislative year in Nevada, program staff gave significant attention to monitoring policy and business developments in the blockchain and cryptocurrency space at the state, national and international levels.² In doing so, staff observed continued government uncertainty around the nature, scope, and value of blockchain as a technology. Headwinds to the technology's adoption and use (at least by government) were in evidence to different degrees throughout the United States, accompanied by concerns over the nature and developmental pace of policy frameworks implicated by the nascent industry's activities.

In states with existing sandboxes, program participation was typically non-existent or very limited, a situation traceable to (1) challenges from the pandemic, (2) concerns of regulators and policymakers as they continued to explore the complex issues associated with blockchain and related financial technologies, and (3) hesitation by potential applicants as they worked to familiarize themselves with existing regulations and assess the relative merits of pursuing a sandbox test versus conventional licensure. In states without sandboxes, interest remained high in blockchain technology as well as in potential ways to use it, but government efforts typically devolved into interim or ongoing policy studies, or into bill proposals that languished in committee. Exceptions did exist (for example, late in the year North Carolina established a

² Examples include (1) Utah's introduction and passage of HB217, which created an Office of Regulatory Relief in the Utah Governor's Office of Economic Development, along with a General Regulatory Sandbox Program and associated advisory committee; (2) Wyoming's Select Committee on Blockchain, Financial Technology, and Digital Innovation Technology, which met during the year to discuss bill drafts concerning an insurance sandbox, Wyoming Digital Privacy Act, and deregulated industrial power zones, as well as amendments to existing laws concerning digital identity, genetic information privacy, broadband/telehealth initiatives, DAOs, and the state's recently enacted Chancery Court system; and (3) Arizona's Blockchain and Cryptocurrency Study Committee, which began meeting in Fall 2021. In November 2021, staff also monitored the annual Singapore Fintech Festival, which is organized by the Monetary Authority of Singapore and widely considered one of the most important fintech conferences held each year.

sandbox program overseen by an innovation council and Ohio passed a law allowing the state and its political subdivisions to use distributed ledger technology) but these were limited.

As noted in last year's report, an internal work group comprised of staff from the Director's Office, Financial Institutions Division (FID), Division of Mortgage Lending (MLD), and Nevada Consumer Affairs Unit (NCA) exists to assist the Director in operation of the REPPI, as well as in review and processing of applications. Group members advise the Director on matters pertaining to their respective areas of administrative or regulatory responsibility; they also coordinate program related activities within their respective divisions or work units. Given various restrictions related to the COVID pandemic and lack of formal applications to the program during CY 2021, this group met only twice during the year (once virtually and once in person) to discuss general issues related to blockchain, cryptocurrency, and industry trends.

During the calendar year, the program received only one inquiry from a prospective applicant, a Las Vegas based company focused on digital marketing through use of utility non-fungible tokens, or NFTs.³ Staff facilitated contacts between the company and FID/MLD staff with the objective of determining whether a regulatory path existed for the prospective activity in question and to clarify the company's options moving forward. As of year-end, the company had not applied to the program.

The program also responded to the following inquiries or issues during the year:

- On January 21, 2021, staff participated in a group call organized by Joe Mulberry, Deputy Commissioner for the Wyoming Division of Banking, to discuss the potential for existing sandbox programs to assist in investigating and evaluating entities engaged in the Earned Wage Access (EWA) industry. Call participants included sandbox program staff in Arizona, Florida, Nevada, Utah, and Wyoming. In addition to EWA issues, the group discussed the potential value of cooperative agreements between sandbox jurisdictions for information sharing or other purposes. For reference, the Arizona Fintech Sandbox later shared with participants its memorandum of understanding with the Taiwan Financial Supervisory Commission. This was forwarded to the Director for his information, but no further action on EWA or cooperative agreements was taken by the REPPI during the calendar year.
- On January 28, 2021, Thomas Evanella, a reporter for *The Forum*, a media outlet in Fargo, North Dakota, requested the program's official start date and number of active participants. Staff provided the information on January 29.
- On March 1, 2021, Matthew Shackelford, a graduate student at Harvard University, asked to interview staff concerning design and structure of the REPPI as part of his work with the Conference of State Bank Supervisors (CSBS) to develop recommendations to assist future

³ Specifically, the scalable creation and distribution of digital assets for third-party brands or corporations. The company indicated it could use its technology to create funding opportunities for mortgages, automobiles, and many other asset classes.

state regulators in optimally designing fintech sandboxes. Program staff participated in a scheduled call with Mr. Shackelford on March 9 and answered all his questions. He was also forwarded a copy of the CY20 REPPi Report on March 11.

- On June 1, 2021, the NCA received a complaint (NCA-21-001421) concerning the purchase of cryptocurrency using an online app from a business registered to an address in Las Vegas. Given the crypto element, NCA staff contacted REPPi staff on June 3 as part of its steps to coordinate the potential issues and agencies involved. Staff offered its suggestions and NCA subsequently proceeded with investigation; no further REPPi involvement was required.
- On June 7, 2021, two phone inquiries concerning status of the program and application process were received from Nevada State Senator Ben Kieckhefer and Matt Walker (Greenberg Traurig), respectively. Staff provided each with the requested information.
- On July 20, 2021, David Pappas, a Nevada resident, submitted an email expressing interest in finding work with the REPPi or providing similar assistance to its sandbox activities. Staff responded the same day, thanking Mr. Pappas for his interest and directing him to the State of Nevada job openings website and the Division of Human Resource Management.
- On August 2, 2021, Jamie Schwartz, Director of Business and Industry Engagement for the UNLV Office of Economic Development, contacted the B&I Deputy Director in Las Vegas to discuss blockchain activities in Southern Nevada and opportunities for cooperation with the REPPi. Stationed at the UNLV office at Black Fire Innovation, Ms. Schwartz wanted to learn more about the state's sandbox program, including any opportunities for the program to partner with Black Fire Innovation in advancing local development of the digital currency space. Staff subsequently visited Black Fire Innovation on August 16 to tour that facility and discuss the intent and parameters of the sandbox program with Ms. Schwartz.
- On August 27, 2021, Josh Durham, a student at the Wake Forest University School of Law, asked to submit a survey to the REPPi. His request was in support of a school study on the efficacy of regulatory sandbox programs. After subsequent discussion and clarification, staff participated in a phone interview with Mr. Durham on September 9 to answer his questions concerning the Nevada program and the current state of regulatory sandboxes relative to industry trends. Staff responded to further questions from Mr. Durham on September 10, September 20, and October 4.
- On September 23, 2021, Cindy Fazio, Director of the Consumer Services Division of the Washington State Department of Financial Institutions, called to request information on the status of participation in the REPPi as part of general research her office was conducting into regulatory sandboxes. Staff provided the requested information.
- On October 6, 2021, Shannon Pleiman, a senior budget analyst with the Ohio Legislative Service Commission, requested information on the number of active participants in the

REPPI as part of her fiscal analysis for Ohio Senate Bill 249, which would create a regulatory sandbox program in Ohio for novel financial products and services. Staff provided the information to her the same day.⁴

- On November 30, 2021, at the invitation of Jamie Schwartz (UNLV), staff attended a Blockchain Meetup event at Black Fire Innovation's X-Co Accelerator space. The focus of the event was blockchain and real estate. Approximately 50-60 people attended. As part of the agenda, staff discussed the REPPI and answered questions from the audience.

This concluded the Department's program activities in CY 2021.

⁴ At this writing, Ohio SB249 is still pending further legislative action, having been reported out of its committee of origin in mid-December 2021.

Application Information

As required by NRS 657A.530(2), the following program information is included for the preceding calendar year (CY) 2021:

A. Number of Applications Submitted to Participate in the Program

No applications were submitted to the program in CY 2021.

B. Number of Applications that were Approved or Denied

No applications were approved or denied in CY 2021.

C. For Applications that were Denied, a Description of the Reasons for Denial:

Not applicable. See items A and B above.

D. For Applications that were Approved:

1. A description of each financial product or service provided by each participant in the Program.

Not applicable. See Items A, B and C above.

2. A statement of the number of participants providing each product or service.

Not applicable. See Items A, B and C above.

3. An estimate of the number of consumers using each product or service.

Not applicable. See Items A, B and C above.

Recommendations and Other Information

Pursuant to NRS 657A.530(3), the Director provides the following recommendations to the Nevada Legislature concerning the Nevada Sandbox Program:⁵

Recommendation 1: Revisit the purpose and requirements of the program. The rapidity at which blockchain and cryptocurrency entered public conversation in the last five years led many advocates and policymakers to promote regulatory sandbox programs as a means for understanding and managing the prospective disruptions to existing regulatory systems these technologies might cause. However, in states where sandboxes were adopted, only one has seen any real participation (Arizona, 11 companies in four years). This lack of participation is attributed to various causes, the most compelling being (1) a perceived unwillingness of many prospective applicants to be regulated; (2) mismatches between a sandbox's area of authority and the product or service in question; and (3) prospective administrative burdens associated with a sandbox application and ensuing product or service test. Utah addressed this issue in CY 2021 by implementing a simpler, more comprehensive approach called a General Regulatory Sandbox Program under that state's GOED. There, the program director has greater flexibility to set rules and requirements, and the program itself receives input from an advisory council comprised of individuals from business and industry, state regulatory agencies, and elected office. The Nevada Sandbox Program would benefit from a similar reassessment of its purpose and structure, particularly as these relate to the goals of economic development and state regulatory capacity building for emerging or innovative technologies.

Recommendation 2: Consider additional sources of budget for program operation. At present, the \$500 program application fee is the only program-specific revenue directly available to offset administrative or other costs. This is insufficient to meet current or prospective demands of the program, particularly if participation rates increase in the future.

Recommendation 3: Revisit statutory approach to money transmittal limits. The current NRS 657A limits on money transmittals are too low (and therefore a barrier to application) for fintech firms whose current or prospective clientele includes very large banks and financial institutions. Increasing the limits or providing the Director with greater flexibility to set them on a test-by-test basis could incentivize more advanced fintech firms to consider Nevada as a place for business.

Recommendation 4: Consider increasing program flexibility. Revisit the approach to consumer protection and program compliance in NRS 657A to give the program greater administrative flexibility in negotiating tests that meet both applicant and state objectives.

This completes the Department of Business and Industry's annual report on the Regulatory Experimentation Program for Product Innovation for CY 2021.

⁵ Recommendations #2-4 reprise and condense recommendations from the CY19 and CY20 REPI reports.

About This Report

This annual report on the Regulatory Experimentation Program for Product Innovation is a requirement of NRS 657A.530. It is prepared each year by the Office of the Director, Nevada Department of Business and Industry, and submitted on or before March 1 to the Director of the Legislative Counsel Bureau for transmittal to the Nevada Legislature.

The relevant statute is as follows:

NRS 657A.530. Report by Director to Legislature.

1. On or before March 1 of each year, the Director of the Department of Business and Industry shall prepare and submit to the Director of the Legislative Counsel Bureau, for transmittal to the Legislature, a report on the operation and status of the Program.

2. The report must include, for the immediately preceding calendar year:

(a) The number of applications submitted to participate in the Program, and the number of applications that were approved or denied;

(b) With respect to the applications that were denied, a description of the reasons for denial; and

(c) With respect to the applications that were approved:

(1) A description of each financial product or service provided by each participant in the Program;

(2) A statement of the number of participants providing each product or service; and

(3) An estimate of the number of consumers using each product or service.

3. The report may include any recommendations for legislation relating to the Program and any other information that the Director of the Department of Business and Industry deems relevant.

Please go online to http://business.nv.gov/Programs/Nevada_Sandbox_Program/ for more information on the program, including frequently asked questions, the Department's policy and procedure, a downloadable application form, and list of current program participants and tests.