



1700 G Street NW, Washington, D.C. 20552

November 5, 2020

Christi Gray  
SVP, Regulatory Relations Executive  
Bank of America, N.A.  
Bank of America Corporate Center  
100 N. Tryon St.  
Charlotte, NC 28255-0001

Dear Ms. Gray,

This letter is in response to an application for a No-Action Letter, filed with the Consumer Financial Protection Bureau (Bureau) by Bank of America, N.A. (Bank of America) under the Bureau's Policy on No-Action Letters (Policy).<sup>1</sup> Bank of America's application (Application) is based on the No-Action Letter Template issued by the Bureau on May 22, 2020 in response to an application from the Bank Policy Institute (BPI NAL Template).<sup>2</sup>

The Application describes the small-dollar credit product – “Balance Assist” – that Bank of America intends to offer and provide to consumers (Product). As recommended in the BPI NAL Template, the Application (a) includes each of the 13 Guardrail Certifications described in the template; and (b) provides further specific information about the Product in accordance with the “Information about Features and Practices” section of the template. The Application includes two Appendices. Appendix A is the Product Terms and Conditions that Bank of America intends to provide to consumers in connection with the Product, which includes various disclosures and other information about the Product. Appendix B includes Digital Marketing and Application

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<sup>1</sup> 84 FR 48229 (Sept. 13, 2019).

<sup>2</sup> Available at: <https://www.consumerfinance.gov/policy-compliance/innovation/granted-applications/>.

Materials Bank of America intends to use for marketing the Product and for communicating with consumers that apply for and receive the Product.

In the Application, Bank of America states that the Product's potential consumer benefits are substantially identical to those described in the BPI application for a NAL Template (BPI Application) and incorporates those descriptions by reference. In addition, Bank of America notes that the specific features of the Product detailed in section II.2 of the Application further support its potential consumer benefits.

Similarly, Bank of America states that the Product's potential consumer risks are substantially identical to those described in the BPI Application and incorporates those descriptions by reference. In addition, Bank of America notes that many of the specific features of the Product detailed in section II.2 of the Application are designed to further mitigate the potential consumer risks identified in the BPI Application.

Bank of America also states that the explanation of the statutory and/or regulatory provisions under which Bank of America submits the Application and the explanation as to why a No-Action Letter is needed are provided in the BPI Application, and it also incorporates those explanations by reference.

The Bureau has considered and grants the Application and accordingly issues this No-Action Letter pursuant to the Policy.

Unless or until terminated by the Bureau (as described in section C.7 of the Policy), the Bureau will not make supervisory findings or bring a supervisory or enforcement action against Bank of America under its authority to prevent unfair, deceptive, or abusive acts or practices<sup>3</sup> predicated on Bank of America's offering or providing the described aspects of the Product as set forth in the Application, i.e., the Product features and practices detailed in sections II.2 and III of the Application; and the information provided to consumers as set forth in Appendices A and B of the Application.

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<sup>3</sup> 12 U.S.C. 5531, 5536. Implicit in this statement is that the Bureau has not determined that the acts or practices in question are unfair, deceptive, or abusive.

Bank of America may reasonably rely upon the preceding Bureau commitment.<sup>4</sup>

This No-Action Letter:

- (a) is limited to Bank of America, and does not apply to any other persons or entities;
- (b) is limited to the described aspects of the Product set forth in the Application;
- (c) does not apply to (i) Bank of America's offering or providing different aspects of the Product, or (ii) Bank of America's offering or providing any other product or service;
- (d) is based on the factual representations made in the Application;
- (e) does not purport to express any legal conclusions regarding the meaning or application of sections 1031 and 1036 of the Dodd-Frank Act (12 U.S.C. 5531, 5536); and
- (f) does not constitute the Bureau's endorsement of the Product or any other product or service offered or provided by Bank of America.

Bank of America must apprise the Bureau of (a) material changes to information included in the Application; and (b) material information indicating that the described aspects of the Product are not performing as anticipated in the Application.<sup>5</sup>

The Bureau may terminate this No-Action Letter if it determines that it is necessary or appropriate to do so to advance the primary purposes of the Policy, such as where Bank of America fails to substantially comply in good faith with the terms and conditions of this No-Action Letter; the described aspects of the Product do not perform as anticipated in the Application; or controlling law changes as a result of a statutory change or a Supreme Court decision that clearly permits or clearly prohibits conduct covered by this No-Action Letter.<sup>6</sup>

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<sup>4</sup> The Bureau maintains the authority to obtain information relating to the consumer financial products and services covered by this No-Action Letter under its applicable supervision, enforcement, and other authorities in the same manner and frequency that it obtains information relating to any consumer financial products or services not subject to a No-Action Letter.

<sup>5</sup> "Not performing as anticipated" includes the materialization of consumer risks identified in the Application, and the materialization of other consumer risks not identified in the Application.

<sup>6</sup> If a Circuit Court of Appeals decision clearly prohibits conduct covered by this No-Action Letter, the Bureau may consider modifying the letter so that it is inoperative within that Circuit.

Upon termination, the Bureau will not bring an action to impose retroactive liability with respect to conduct covered by this No-Action Letter, except where a failure to substantially comply in good faith with the terms and conditions of the letter caused Dodd-Frank Act actionable substantial injury.<sup>7</sup>

This No-Action Letter and a copy of the Bank of America Application will be published on the Bureau's website.

Sincerely,



Edward Blatnik  
Acting Assistant Director, Office of Innovation  
Consumer Financial Protection Bureau

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<sup>7</sup> "Dodd-Frank Act actionable substantial injury" means substantial injury that is not reasonably avoidable by the consumer, where such substantial injury is not outweighed by countervailing benefits to consumers or competition. See 12 U.S.C. 5531(c); see also 12 U.S.C. 5536(a)(1)(B). Such a retroactive action would be particularly likely where conduct covered by the letter caused Dodd-Frank Act actionable substantial injury without the Bureau's knowledge due to the recipient's failure to substantially comply in good faith with the requirement under section C.4 of the Policy to inform the Bureau of (a) material changes to information included in the Application; and (b) material information indicating that the described aspects of the Product are not performing as anticipated in the Application.