



November 6, 2020

## CFPB GRANTS SAFE HARBOR TO BANK OF AMERICA FOR SMALL DOLLAR LOAN PROGRAM

The CFPB has approved Bank of America's no action letter application for its new short-term, payday loan program. Bank of America is the first major bank to receive such a letter. The application was based on the No-Action Letter Template issued by the CFPB on May 22, 2020. Under the CFPB No Action Letter policy, the No Action Letter provides increased certainty that the CFPB "will not bring a supervisory or enforcement action against a company for providing a product or service under certain facts and circumstances."

Bank of America intends to roll out its "Balance Assist" program next year. The short term loan program allows customers that have checking accounts with the bank for a set period of time and with inflows exceeding a predetermined threshold to borrow up to \$500 for a flat fee of \$5, regardless of the amount borrowed. The loan will be repaid in installments over a period of three months. The APR, including the \$5 fee, will not exceed 36%.

The No-Action letter is limited in scope, and specifically states that it is:

- (1) Limited to Bank of America, and does not apply to any other persons or entities;
- (2) Is limited to the described aspects of Balance Assist set forth in the application;
- (3) Does not apply to Bank of America's offering or providing different aspects of Balance Assist, or Bank of America's offering or providing any other product or service;
- (4) Is based on the factual representations made in the application;
- (5) Does not purport to express any legal conclusions regarding the meaning or application of Sections 1031 and 1035 of the Dodd-Frank Act; and
- (6) Does not constitute the Bureau's endorsement of "Balance Assist" or any other product or service offered or provided by Bank of America.

In light of the coronavirus pandemic, federal regulators have encouraged financial institutions to offer these types of small-dollar lending programs. We work with clients to create compliant,

innovative lending products in response to increasing customer liquidity needs.

✧ *Mike Tomkies and Emily Cellier*

Darrell L. Dreher  
[ddreher@dtlaw.com](mailto:ddreher@dtlaw.com)

Elizabeth L. Anstaett  
[eanstaett@dtlaw.com](mailto:eanstaett@dtlaw.com)

Emily C. Cellier  
[ecellier@dtlaw.com](mailto:ecellier@dtlaw.com)

Susan L. Ostrander  
[sostrander@dtlaw.com](mailto:sostrander@dtlaw.com)

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
[WWW.DTLAW.COM](http://WWW.DTLAW.COM)

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Michael C. Tomkies  
[mtomkies@dtlaw.com](mailto:mtomkies@dtlaw.com)

Susan M. Seaman  
[sseaman@dtlaw.com](mailto:sseaman@dtlaw.com)

Lindsay P. Valentine  
[lvalentine@dtlaw.com](mailto:lvalentine@dtlaw.com)

Judith M. Scheiderer  
[jscheiderer@dtlaw.com](mailto:jscheiderer@dtlaw.com)

Robin R. De Leo  
[robin@deher-la.com](mailto:robin@deher-la.com)