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LEGAL UPDATES

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Ohio Regulatory Sandbox Law Signed into Law

On December 16, 2022, Ohio Governor Mike DeWine signed Ohio S.B. 249, which creates a regulatory sandbox to test novel financial products and services on a temporary basis. The Ohio Regulatory Sandbox Law requires the Ohio Superintendent of Financial Institutions to establish a regulatory sandbox program. The law becomes effective on March 14, 2023.

Scope of the Ohio regulatory sandbox

The regulatory sandbox will be available to test “novel financial products or services.” This term includes financial products or services that make use of or incorporate new or emerging technology, or reimagine uses of existing technologies, to address a problem, provide a benefit or otherwise offer a product, service, business model, or delivery mechanism that is not known by the Superintendent to have a comparable widespread offering in Ohio. Part of the definition is based on the regulator’s knowledge of existing product offerings in Ohio.

Offering the novel financial product or service must also trigger a licensing or authorization requirement under certain Ohio laws related to money transmitters, nonbank loans, residential mortgage lending, credit unions, credit services organizations, pawnbrokers, or precious metals dealers. Both consumer-purpose and business-purpose financial products or services may be tested in the sandbox.

To be approved for sandbox participation, the Ohio Regulatory Sandbox Law requires that a person must not hold a license or have authorization under Ohio law to offer the novel financial product or service. The person may hold and continue to use Ohio licenses and authorizations to offer products or services other than the novel financial product or services to Ohio residents.

Regulatory relief for sandbox participants

When testing in the sandbox, a person will not be subject to Ohio laws that require a license or authorization to offer the novel financial product or service. As stated in the Ohio Regulatory Sandbox Law, the Ohio legislature also intends for a sandbox participant to be deemed to have the appropriate Ohio license for purposes of any federal law that requires state licensure or authorization.

In addition to licensing relief, a person may ask the Superintendent for exemption(s) from any Ohio law other than the Regulatory Sandbox Law and the Consumer Sales Practices Act when participating in the sandbox. The Superintendent has discretion to approve or deny the request. While the Superintendent may grant additional regulatory relief to a sandbox participant, the Superintendent also has the authority to require a sandbox participant to follow other Ohio regulatory laws while testing a product or service.

How the sandbox works

A person must apply to the Superintendent to participate in the regulatory sandbox. The sandbox application requires submission of information about the product or service (including how it is regulated) and the person's testing plan. The Superintendent will accept applications on a rolling basis. The Superintendent must approve or deny an application within a certain period of time after the application is initially submitted.

If approved for the sandbox, a participant must enter into an agreement with the Superintendent that lays out conditions to product testing. A sandbox participant must also make certain disclosures to consumers before a consumer uses a novel financial product or service. The Ohio Regulatory Sandbox Law places other obligations on sandbox participants such as periodic reporting requirements.

A person may participate in the sandbox for up to 24 months after the date of approval unless an extension is granted. At the end of sandbox participation, a person may either cease offering the product or service or may continue to offer the product or service by obtaining an Ohio license or authorization.

Testing in the sandbox involves some oversight by the Superintendent. The Superintendent has the right to access records, documents, and data from sandbox participants. The Superintendent may revoke a person's sandbox participation immediately in certain circumstances.

Sandbox confidentiality

The Ohio Regulatory Sandbox Law provides that records submitted or obtained by the Superintendent or certain Ohio agencies pursuant to the law are not public records and will not be

disclosed except that the Superintendent or an agency may disclose records to certain persons, including other state and federal agencies, like the Consumer Financial Protection Bureau (CFPB).

While records regarding sandbox participation will generally be confidential, the name of the sandbox participant and an overview of the participant's novel financial product or service are public record and may be disclosed. The Ohio Regulatory Sandbox Law does not explain what "overview" means and how much product information will be available in public records.

Challenges with other regulatory sandboxes

Regulatory sandboxes have been promoted as a way to foster innovation by encouraging fintech companies to test products with lighter oversight from a regulator; however, regulatory sandboxes have not been widely used by fintechs or other financial services providers. For example, Arizona was the first state to offer a regulatory fintech sandbox, and since March 2018, only 13 companies have participated in Arizona's regulatory sandbox. In September 2022, the CFPB terminated its No Action Letter program and Compliance Assistance Sandbox program, both of which were intended to encourage innovation by providing limited federal regulatory relief to startups. In a press release, the CFPB explained that the programs were terminated in part because they "proved to be ineffective."

One of the challenges with regulatory sandboxes is the lack of meaningful regulatory relief that they may provide to companies hoping to evaluate the viability of a product or service before obtaining a full-blown license. For example, a sandbox may provide relief from a state license, but other onerous federal or state laws may limit a startup's ability to test the product.

What this means to you

Before participating in a regulatory sandbox, fintech companies should identify federal and state laws that apply to its product or service and analyze the value of the sandbox relative to its costs.

Contact us

For more information about the Ohio Regulatory Sandbox Law or strategies to manage regulatory burdens with launching a new product or service, contact Susan Seaman or your Husch Blackwell attorney.