



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

6/26/2020 4:25:14 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Financial Institutions Division of TITLE-SERIES: 106-21

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Rule Pertaining to the Fintech Regulatory Sandbox

CITE STATUTORY AUTHORITY: 31A-8G-3 and 31A-2-4

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/31/2020 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule provides additional clarity to applicants who may wish to participate in the Fintech Regulatory Sandbox. The rule provides objectives and application guidance, additional information on the surety bond and information sharing agreements, clarifies the applicability of administrative due process provisions and partnerships with existing financial institutions, and mandates disclosure of existing regulatory relationships, sandbox or otherwise.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The entire rule contains new language to be used in the implementation of the Fintech Regulatory Sandbox Program. The legislature passed HB 4621 during the 2020 session, and the bill was signed into law by Governor Justice.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The impact on revenues of state government is unknown at this time. West Virginia is only the fifth state in the United States to enact a fintech regulatory sandbox, with three of those four others in operation for less than one year, so there is little data on their potential fiscal impact.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The impact on the Division's special revenue account is similarly unknown. The Division is assessing a \$1200 per product or service application fee and anticipates likely no greater than five applications in year one of the sandbox's operation. Therefore, the Division will rely on existing revenues from other programs to support the sandbox program as it grows.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The sandbox is intended to provide a test market using West Virginia residents for an innovative financial product or service. The potential market is limited by law to minimize a negative impact, and the law contains adequate consumer protections to mitigate against any risk of loss.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	6000

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The Division is analyzing the staffing required for this program and anticipates the need for support staff at some point to dedicate at least a portion of their time to this program, including an administrative services assistant and a paralegal. The balance of the time for those staff would support existing Division programs requiring administrative support. The Division is working on a reorganization of its current structure to enable existing professional staff to assess applications and manage the program. A final assessment of program costs will be made after approval and completion of the reorganization.

The revenues assume five applications per year, with a \$1200 application fee for a two-year sandbox period.

The Division is leveraging an existing licensing/registration system to eliminate startup and database costs for the new program, so the current expenses and asset requirements are minimal.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 106  
LEGISLATIVE RULE  
COMMISSIONER OF FINANCIAL INSTITUTIONS

SERIES 21  
RULE PERTAINING TO THE FINTECH REGULATORY SANDBOX

**§106-21-1. General.**

1.1. Scope. -- This rule establishes the general method for implementing West Virginia Code §§31A-8G-1, et seq.; it applies to all participants in the sandbox under that statute.

1.2. Authority. -- W.Va. Code §§31A-8G-3 and 31A-2-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

**§106-21-2. Objectives; Initial and Extension Applications.**

2.1. The operation of the fintech regulatory sandbox shall have the following objectives:

2.1.1. The testing of innovative financial products or services;

2.1.2. The analysis of regulatory, supervisory, and consumer protection statutes and rules to the use of financial technology; and

2.1.3. The identification of potential amendments to existing laws and rules and their application to financial products and services that would encourage and enable innovation in financial services.

2.2. The Commissioner or his or her designee may consult with prospective sandbox participants before an application is filed to learn about the business model of the prospective participant and determine whether the innovative financial product or service is appropriate for the sandbox. Consultations made pursuant to the section shall be confidential and not subject to disclosure.

2.3. A prospective sandbox participant shall complete and submit an application to the Commissioner on a form prescribed by the Commissioner. The Commissioner may direct an applicant to file a license application through the Nationwide Mortgage Licensing System and Registry operated by the State Regulatory Registry, LLC. The application shall be attested to as to its completeness and veracity.

2.4. The Commissioner may refuse to accept an incomplete application. The time period for making a determination on an application shall not commence until a complete application is received.

2.5. As a part of the application process, the following individuals shall submit release forms as a part of the fingerprint based background review process for participation in the fintech regulatory sandbox: Chief Executive Officer, President, owners and investors controlling either directly or indirectly 10% or more of the applicant as well as other individuals that are identified as controlling the day to day activity of the applicant.

**§106-21-3. Consumer Protection Bond.**

3.1. The consumer protection bond required by the Fintech Regulatory Sandbox Program shall be in place before an innovative product or service is made available to consumers.

3.2. The Commissioner may require a sandbox participant to increase or decrease its consumer protection bond depending upon the risk profile of the product or service and the number of consumers served. In no event shall a bond amount be less than that required by statute.

**§106-21-4. Information Sharing Agreements.**

4.1. The Commissioner may enter into information sharing agreements with other governmental agencies or self-regulatory organizations to carry out the purpose of the Fintech Regulatory Sandbox Program or for any other purpose relating to the sandbox.

4.2. The Commissioner may participate in multi-jurisdictional agreements to further the purposes of the Fintech Regulatory Sandbox Program.

**§106-21-5. Applicability of Administrative Due Process Provisions.**

5.1. Existing administrative procedure laws and rules which are applicable to a particular program or body of law shall apply, to the extent not inconsistent with the Fintech Regulatory Sandbox Program. If a sandbox participant would have required a license as a money transmitter, for example, to operate outside of the sandbox, those administrative procedure laws applicable to money transmitters would apply.

5.2. If a sandbox participant offers a product or service that would normally require a license in more than one program or body of law, the Commissioner shall use the procedural laws and rules most applicable to the product or service at issue.

**§106-21-6. Partnership with Existing Financial Institution.**

6.1. The Commissioner or his or her designee shall make available a list of existing financial institutions upon request of an applicant.

6.2. An applicant shall attest on its application that it has either entered into a partnership with an existing financial institution to access the market in West Virginia to test an innovative product or service or demonstrate that it has in good faith attempted to establish a partnership with an existing financial institution in this state.

**§106-21-7. Disclosures Related to Activity in Other Sandbox Jurisdictions.**

7.1. Applicants must disclose whether they have conducted a similar test of the same product or services or a similar product or services in another regulatory sandbox jurisdiction.

7.2. An applicant must also submit the following information as a part of the application process:

7.2.1. A copy of any approved or denied application by the applicant to another regulatory sandbox jurisdiction, if any.

7.2.2. A statement concerning whether the applicant's regulatory sandbox efforts elsewhere, if any, were successful or not, or remain ongoing.

7.2.3. A statement by the applicant describing any complaints tied to its regulatory sandbox efforts elsewhere, if any, and their status or resolution.