



Justice we can believe in

We write on behalf of IAALS, the Institute for the Advancement of the American Legal System at the University of Denver, to comment on the Closing the Justice Gap (CTJG) Working Group recommendations concerning the scope of the regulatory sandbox.

We appreciate the opportunity to comment.

I. Scope of Regulatory Sandbox

In Section A of the April 2, 2021, memorandum “Consideration of Recommendations from the Scope Subcommittee on the Scope of a Regulatory Sandbox,” the purpose of the sandbox is described as intending “to identify objectively regulatory barriers that prohibit expanding such access and whether the potential benefits of any increased access to legal services afforded by the innovation(s) substantially outweigh any identifiable harm(s) to consumers.”

A. Purpose of the Sandbox to Identify Regulatory Barriers

First, this broad charge seemingly assigns to the sandbox the proactive role of policymaker across sandbox proposals as opposed to the reactive regulatory role of assessing individual submissions. The California Supreme Court has purview over regulatory policymaking, and while the Working Group is still discussing the high-level structure and oversight of the sandbox, none of the possible options (See Memorandum “Possible Options for Governance Structure of the Sandbox,” April 2, 2021) envision that the Court will delegate a policymaking role to the sandbox alongside its role as regulator.

The sandbox should evaluate each applicant on a case-by-case basis, determining whether they have a credible plan to provide competent legal services that do not present undue risk of harm. After admission, the role of the sandbox should be to monitor providers and to guard against consumer harm as it may arise. It is the function of external evaluators reporting to the policymaking body (the California Supreme Court or its delegate) to create broad policy around rules reform.

B. Requirement to Show that Benefit(s) Substantially Outweigh Harm(s)

Second, the requirement that the “potential benefits” of an innovation “substantially outweigh any identifiable harm(s) to consumers” is overly broad, burdensome, and unnecessary. Incorporating an assessment of benefits places a substantial burden on sandbox applicants to prove (and/or the regulator to verify) something in the abstract and against an arbitrary and undefined measure of “benefit.” This is a steep obstacle to entry and runs the risk of excluding viable products, services, and providers.

Furthermore, this requirement implicitly assumes that we are making this assessment from a neutral status quo. We know that this is not the case. The status quo is an identifiable harm, and for millions of consumers the very existence of an option other than nothing is a benefit.

We encourage California to follow Utah’s singular focus on consumer harm in assessing sandbox applicants and to allow external evaluators to take on the complicated task of assessing discrete and systemic benefits that emerge from the sandbox and its applicants.

II. Limits on Sandbox Offerings

Section C of the April 2, 2021, memorandum “Consideration of Recommendations from the Scope Subcommittee on the Scope of a Regulatory Sandbox” details potential limitations on sandbox offerings. IAALS strongly discourages the CTJG Working Group from pursuing these or any explicit limitations on products, services, and providers.

The justice gap is not an issue limited to low- to no-income individuals. While the memorandum acknowledges that members of the middle class and small businesses should be included in the definition of underserved, it would be extremely difficult to place definitive boundaries around these categories. National research organizations have long had difficulty nailing down the contours of the US middle class, and any designations made by the California sandbox to define this group will be arbitrary and overly restrictive.

Furthermore, as has so often been the case, for-profit legal services entities serving BigLaw, Fortune 500 companies, and wealthy individuals have an important role to play in access to justice for unserved and underserved communities. Companies with sophisticated software donate product licenses to legal aid organizations, law schools, non-profits, and others who serve low-income individuals. Because of the resources required to develop scalable, successful legal services solutions, companies are often driven by necessity to focus on the B2B space. This does not mean that their impact in the B2C space will not be substantial.

Finally, the California sandbox will evaluate applicants on a case-by-case basis. If a service or product proposal comes before the sandbox that for some reason is deemed an inappropriate, unwelcome, or harmful innovation, regulators have the discretion to reject the proposal. There is no need for a blanket policy limiting applicants at the outset.

III. IAALS Applauds Working Group Progress

IAALS, as a long-time supporter of California’s regulatory reform work, applauds the CTJG Working Group and its members for continuing the incredible work of the Task Force on Access Through Innovation of Legal Services. Given the size of California’s market and the concentration of talent within the state’s borders, the work of this group stands to benefit millions and pave the way for national legal innovation.

Thank you.

Natalie Anne Knowlton
Director of Special Projects

Michael Houlberg
Manager

Zachariah J. DeMeola
Director of Legal Education &
the Legal Profession