



To: CTJG Members
From: SAGE Subcommittee
Date: June 15, 2021
Re: II.D. – Risk-based Approach to Regulation of a Sandbox

See below discussion outline providing proposed guidelines for collecting and analyzing data to assess risks of sandbox entities, discussed at the SAGE May 19, 2021 meeting.

- I. What Are the Possible Harms to Consumers of the Legal Services Provided by Sandbox Participants?
 - A. Potential Harms Identified in ATILS Report and Innovation Office Manual of the Utah Office of Legal Services Innovation:
 - The consumer (a) receives inaccurate or inappropriate legal services (ATILS Report) or (b) achieves an inaccurate or inappropriate legal result (Utah Office Manual).
 - The consumer fails to exercise legal rights through bad advice or incomplete information.
 - The consumer purchases an unnecessary or inappropriate legal service. The consumer pays an unnecessary or inappropriate amount for the legal service
 - B. Are these the appropriate harms to guide risk assessment? Are there others? To what extent should the ease or difficulty of measurement affect identification of the harms to be assessed? (E.g., how to measure whether a consumer failed to exercise legal rights “through ignorance,” particularly as compared to how the consumer would have acted without the services of the sandbox entity?)
- II. What Is the Appropriate Criterion for Assessing the Risk of Harm?
 - ATILS Report: “The relative rate or risk of harm compared to the experience a consumer would have received absent the legal services provided.”

- Utah Office Manual: “The likelihood that the average person will experience a harm using the applicant’s service **is not greater** than the likelihood that the average person who might use their service will experience harm without the service.”

III. Creating a Risk Assessment Matrix (ATILS Report Recommendation)

- A. Should risk assessment be based on the degree of lawyer involvement with the service provider? See Utah Manual, p. 7, identifying ten service models and assigning level of risk (low to high) based on degree of lawyer involvement, with more lawyer involvement assumed to pose less risk. Is the Utah assumption that lawyer involvement reduces risk valid? Will this approach deter innovation?
- B. Criteria for Identifying Information to Be Collected
 1. Relevance to risk of harm.
 2. Reporting burden on sandbox participants relative to the value of information reported.
 3. Collection burden on the regulatory body relative to the value of information collected.
 4. Review burden on the regulatory body relative to the value of information to be reviewed.
 5. Feasibility and burden of collecting information directly from consumers of sandbox services relative to the value of information that might be collected.
 6. Correlating information collected to risk posed by the sandbox entity.
 - Should reporting requirements be tied to the service model? See Utah Office Manual, pp. 10-13 (information to be reported and frequency of reporting by sandbox entity depend on degree of lawyer involvement in the entity).
- C. Manner of Collection
 1. Information to be provided by the sandbox applicant with the application.
 2. Information to be provided by a successful sandbox applicant after the applicant begins operations.
 3. Frequency of reporting by sandbox participant.
 4. Mechanics of reporting information.
 5. Use of sampling.
 6. Information to be collected directly by the regulatory body, e.g., through spot audits correlated with risk or through investigations triggered by consumer complaints.
 7. Mechanisms for collecting outcomes data.

D. Criteria for Regulatory Body Review and Analysis of Information Collected

1. Correlating level of review with severity of risk.
2. Balancing burden of review relative to value of information collected.