West Virginia University

Bridge Initiative for Science and Technology Policy, Leadership, and Communications

Science and Technology Note

What are Regulatory Sandboxes?

November 2023

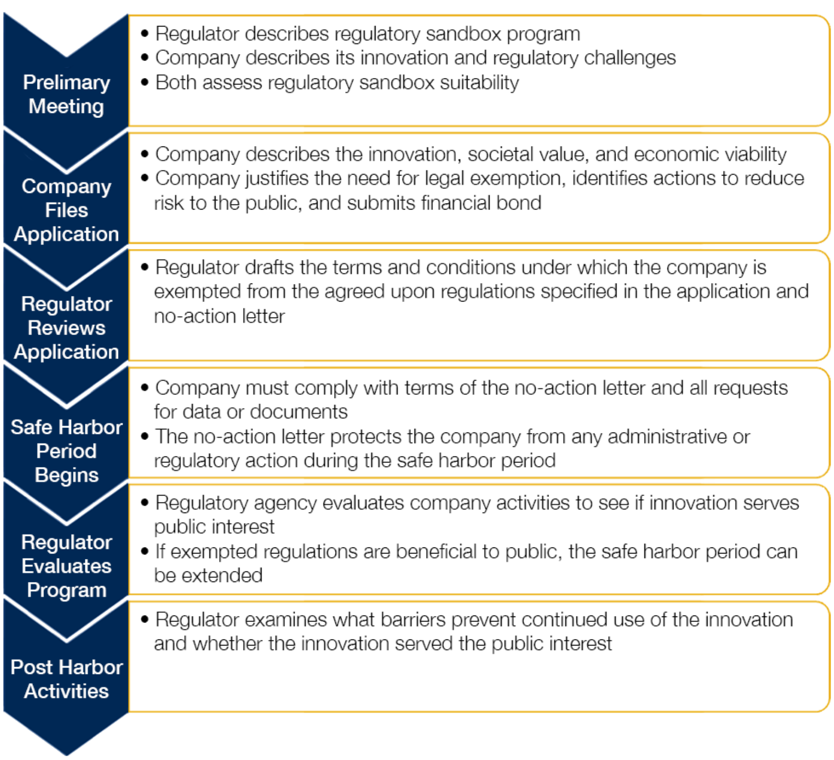
This Science and Technology Policy Note provides an overview of West Virginia's current regulatory sandboxes. A regulatory sandbox is a framework that allows companies to be exempted from specific regulations to test a new product that otherwise wouldn't be allowed by law.

West Virginia's Fintech Sandbox

In 2020, West Virginia established a financial technology (fintech) regulatory sandbox via House Bill 4621 codified as W.Va. Code §§ 31A-8G-1-8. The goals of this sandbox include

1. testing of innovative financial products or services;
2. analysis of regulatory, supervisory, and consumer protection statutes and rules in the use of financial technology; and
3. 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. (W. Va. CSR §106-21-3)

Illustrative Regulatory Sandbox Life Cycle



Research Highlights

- The goal of regulatory sandboxes is to increase the speed with which innovative products and services reach the marketplace by allowing for an experimental period while still maintaining economic, environmental, and consumer safeguards.
- To maximize potential benefits, sandboxes should be promoted, funded, and granted at least six months for implementation.
- The West Virginia Legislature established a regulatory sandbox for the financial technology sector in 2020 and for the insurance sector in 2021.

If successful, when the two year regulatory sandbox program ends, the organization can decide whether or not to move forward under the existing regulatory regime. As of October 2023, five applications have been reviewed, with one being accepted.

West Virginia's Insurance Sandbox

In April 2021, House Bill 222 (W. Va. Code §33-60 established a regulatory sandbox for the insurance industry. Interested companies fill out an application that provides a detailed description of the proposed innovation and its economic viability, addresses how it offers value to consumers and serves the public, and explains reasonable risk and consumer protections. If approved, the insurance commissioner drafts a no-action letter that specifies the regulations the company is exempt from and additional terms and conditions of the sandbox. These may include requirements to share documents and data with the commissioner, if requested. Once accepted, the sandbox period lasts three years, with an option for a one-year extension. During the program, companies must comply with all terms and conditions of the no-action letter to be protected from enforcement actions.

Opportunities and Challenges in the Implementation of Regulatory Sandboxes

Opportunities	Challenges
Allows innovators to test products, services, business models, and delivery mechanisms on a small scale	Requires resources and capacity, as well as engagement with multiple stakeholders
Provides regulator with insight into the market and product or service developments, trends, and emerging risks	Not suitable for small markets, as few applicants may apply to the Sandbox
Creates open and active dialogue between regulators and firms and brings agility to the regulatory and supervisory framework	Risk of being seen as picking winners
Provides more direct control over risks	Risk of an inappropriately designed framework without a clear objective in mind might result in limited or inappropriate applications
Provides a dynamic, evidence-based regulatory environment in which to learn and evolve with emerging technologies	Outcomes might be difficult to measure if objectives are not defined at the outset

Source: modified from World Bank, 2020

Who Supports and Opposes Regulatory Sandboxes?

Sandboxes typically focus on technological innovations in a specific economic sector, such as the energy, legal, insurance, wetlands restoration, health care, and transportation sectors.

Stakeholders' interest in a sandbox will vary relative to its sector. Sandboxes may include businesses, industries, consumers, residents, and non-governmental organizations. Firms typically will support sandboxes because they can potentially increase the speed with which their innovation enters the marketplace and enhances their understanding of the regulatory environment (World Bank, 2018).

One challenge, however, is that they may favor one company or technology over another, which can lead to opposition. Some environmental groups favor regulatory sandboxes if they help advance the restoration of natural resources, like wetlands. In some states, attorneys general have opposed the use of regulatory sandboxes, expressing concern that, at the federal level, the sandboxes provide a "blanket safe harbor, including exemptive relief" from state and federal supervisory and enforcement actions. (JDSupra, 2019)

Regulatory Sandbox Model Policy Options

Arizona's regulatory sandbox, the nation's first and most successful, offers valuable examples for West Virginians. It was created in 2018, focusing on money transmission, consumer lending, and investment advice, and it now has been expanded to a general sandbox. To date, twelve companies have finished the program, and two are currently active. After discussions with both the Arizona and West Virginia sandbox teams, several areas for potential improvement in the implementation of regulatory sandboxes were identified:

- These programs are low cost solutions: both the Arizona and West Virginia programs were able to operate with less than one full-time employee, but providing funding for additional staff would make implementing the program easier.
- The agency in charge of the program should leverage the expertise of staff attorneys to review sandbox applications.
- To prevent the potential for abuse, waivers should not be granted for non-innovative products that grant a competitive advantage over other companies in the industry.
- Promotion from the government would bring attention to the program and increase applications that are innovative. This prevents the program from giving a competitive advantage to an existing company and cuts down on meetings with companies who are not eligible for the program (e.g., issues with the Utah sandbox).
- For smooth implementation, agencies would prefer at least 6 months to set up the program and hire/reassign staff.

This Science and Technology Note was written by Colin Dunn, JD candidate at WVU College of Law, and Dr. Deborah D. Stine of the Science & Technology Policy Academy on behalf of West Virginia University's Bridge Initiative for Science and Technology Policy, Leadership, and Communications. Please see https://scitechpolicy.wvu.edu/ or contact scitechpolicy@mail.wvu.edu for more information. This Science and Technology Note is intended for informational purposes and does not indicate support or opposition to a particular bill or policy approach.