



May 21, 2018

VIA EMAIL AND COURIER

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

**Re: Request for Information Regarding the Bureau's Supervision Program,
Docket No. CFPB-2018-0004**

Dear Ms. Jackson,

The Financial Services Roundtable,¹ the Consumer Bankers Association,² and the Consumer Mortgage Coalition³ (collectively, the Associations) appreciate the opportunity to comment on potential changes to the Bureau of Consumer Financial Protection's (the Bureau or CFPB) Supervision Program.

Since the Bureau was established in 2011, its supervisory processes have substantially matured and work relatively well in many respects, however, as described below, there are opportunities to enhance the efficiency and effectiveness of the Bureau's processes. Chief among these is further enhancing the relationship between the Bureau and the regulated entities, changes that ultimately benefit consumers. The Associations recommend various modifications to the Bureau's practices to foster working relationships and further our shared objectives of offering financial products and services to consumers that comply with applicable legal and regulatory requirements.

The relationship between the Bureau and industry has also been impacted by a lack of transparency and clarity. The Associations' members have been encouraged by recent improvements that the Bureau has made in the manner in which examinations have been

¹ The Financial Services Roundtable represents the largest banking and payment companies financing the American economy. Member companies participate through the Chief Executive Officer (CEO) and other senior executives nominated by the CEO.

² The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, the Consumer Bankers Association provides leadership, education, research, and federal representation for its members. Consumer Bankers Association members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

³ The Consumer Mortgage Coalition is a mortgage industry trade association committed to safely expanding access to credit and reducing costs to consumers by streamlining the rules and regulations governing the industry.

conducted. However, entities continue to face numerous, unnecessarily burdensome challenges and must devote substantial resources before, during, and after the examination. To assist the Bureau in more fully understanding these challenges, below we address those aspects of the Bureau's Supervision Program that we view as particularly problematic and offer suggestions for improving the entire examination cycle and eliminating various inefficiencies.

1. The timing, frequency, and scope of supervisory examinations.

The Associations recommend enhancements with respect to the scope, timing, and frequency of examinations to increase efficiency for both the examiners and the institutions under review and provide for more effective supervision process.

- **Improvements to the Scope of the Bureau's Supervisory Examinations**

Tailor the Examination to the Institution. Despite the Bureau's ability and authority to tailor its examinations to the size, geographic reach, product line, and other identifying factors of an individual institution, the Bureau has often taken a "one size fits all" approach. This is inefficient for the subject institution, resulting in unnecessary expense, and also inefficient for the Bureau, because it creates examinations that are overbroad and constrain resources that could more effectively be deployed elsewhere. Instead of formulaically requesting information, the Bureau's examiners should more carefully evaluate the examination's scope and engage in more thorough analysis pre-examination to assess whether the scope is appropriate based on the institution's size, complexity of operations, and the products it offers.

Focus on the Potential Risk Posed by the Institution when Tailoring the Examination. The scope of an examination should be determined in conjunction with a focus on the potential risks posed by the institution. To properly evaluate an institution's risk profile, the Bureau should determine not only the risk posed by the institution, but also the relative risks posed by the products and services offered, and the processes by which products and services are operationalized. Making this adjustment will allow the Bureau to better perform its consumer protection mandate by spending more time examining those institutions, products, and business practices that are likely to pose the most risk to consumers.

Solicit Feedback from the Institution Prior to Examination. The Bureau's current examination process frequently does not solicit sufficient feedback from the subject institution pre-examination, sometimes resulting in confusion, delay, and wasted or over-extended resources. Increased pre-examination communications and an open dialogue between the Bureau and the institution about the scope of the examination can ensure that the institution has adequate resources in place to assist with and complete the examination, and also to ensure that the examination's scope is appropriately calibrated given the size of the institution and the products offered.

Recognize the Challenges Posed by the Production of Compliance Management System (CMS) Documents. During a typical examination the Bureau will request all CMS-related documents, even if the examination only relates to a single product line. Producing CMS documents is generally more burdensome than producing other types of documents. The Bureau

should be mindful of this burden and tailor its requests for CMS documents to those related to the specific product line, division, or entity being examined.

- **Improvements to the Timing and Frequency of the Bureau’s Supervisory Examinations**

Examinations Should be Scheduled at Less Frequent Intervals. The Associations recommend a six month minimum interval between Bureau examinations to avoid overlap, reduce resource strain, and allow institutions to address and integrate supervisory feedback. For many institutions, examinations occur with sufficient frequency that an institution is often still working through issues related to previous examinations when a new examination begins. The seemingly endless examination cycle poses a challenge for institutions of all sizes as the process for preparing responses to examination questions—both before and during the onsite portion—is resource intensive and unduly strains business and compliance employees who may be devoted to examination-related issues for months on end. Frequent examinations also impair comprehensive consideration of implementation of new institution procedures and policies designed to address supervisory feedback resulting in inefficiencies for the Bureau and the institution.

These issues are avoidable through increased coordination and planning both internally and externally. Internally, the Bureau should ensure that before a new examination is commenced, all outstanding examinations have been completed. Externally the Bureau should coordinate with institutions to confirm that the institution has sufficient resources available to allow the examination to proceed efficiently. The Bureau should also refrain from commencing a new examination until it has an understanding of any ongoing efforts by an institution to address Bureau feedback from a prior examination. Where an institution is in the process of implementing relevant Bureau feedback, the Bureau should consider delaying an examination in order to allow the institution to fully implement necessary changes.

Expand the Bureau’s Use of Diagnostic Tests During Examinations. The Bureau’s diagnostic approach to examining for TILA-RESPA Integrated Disclosure (TRID) compliance, and its recent announcement regarding its approach to examining for compliance with new Home Mortgage Disclosure Act (HMDA) requirements, are helpful to institutions that devote significant resources toward implementing these rules in good faith. The complexity of many new rules makes it challenging to execute compliance efforts perfectly in the first instance. The Associations’ membership appreciate the Bureau’s diagnostic approach to examining for compliance with these new rules and encourage the Bureau to continue such efforts. Expanding the Bureau’s use of diagnostic tools, especially as examiners begin to assess compliance with the new mortgage servicing rules, would be particularly helpful to those institutions working to comply with the new rules.

2. *The timing, method or process used by the Bureau to collect information and documents from a supervised entity prior to the commencement of an examination. Typically, the Bureau sends an examination Information Request (IR) to a supervised entity prior to the commencement of an examination. An IR is a list of information and documents that the supervised entity is asked to provide to the Bureau for off-site review or to make available when examiners are onsite at the entity. An IR is typically sent to an entity at least 60 days prior to the onsite start of an examination.*

The Information Request (IR) process should be improved through greater cooperation with and communication between the Bureau, the supervised entity, and other interested regulators.

Increase Coordination with the Subject Entity and Other Regulators. The timing of the IR and the response date may not always permit the responding entity sufficient time to assemble the requested information. As a result, the Associations recommend that the Bureau issue requests no less than 90 days in advance of an examination and require delivery of materials at least 7 – 14 business days before onsite reviews. This will give institutions more time to prepare materials while still giving examiners adequate time to review those materials fully prior to onsite examination.

Relatedly, when feasible, the Bureau should coordinate with other federal and state regulators when requesting materials through the IR process. While a joint examination is often the most efficient way to proceed, the Associations recognize that joint examinations are not always feasible or appropriate, particularly between federal and state regulators. Notwithstanding, coordinating the information requests across multiple regulators can prevent unnecessary duplication of efforts on the part of the institutions, the Bureau and other regulators as well.

The Bureau's quarterly block scheduling approach has helped institutions address resource challenges associated with multiple supervising entities. However, greater external coordination between the Bureau and other regulators regarding timing blocks will assist institutions in managing examinations more effectively.

Provide Models IRs in the Supervision and Examination Manual. The Associations recommend that the Bureau include model IRs with baseline requests by subject in its Supervision and Examination Manual. The addition of these model documents would provide better forward guidance on the documentation expected of institutions, allowing for better institutional preparedness before receipt of an institution-specific IR.

3. *The type and volume of information and documents requested in IRs.*

In the experience of the Associations' members, the IR process often involves excessive, ambiguous, and overbroad requests. Below, the Associations set forth recommendations to make the IR process more efficient and less burdensome for both the institutions and the Bureau. Also described below are suggestions for revising the Bureau's treatment of potentially privileged materials in order to ensure that industry privilege concerns are adequately addressed when those materials are requested through an IR.

Utilize Clear, Narrowly Tailored IR Requests. The Bureau's requests are frequently overly broad, vague, and may make assumptions that are not consistent with the institution's actual operations. The Bureau also uses definitions that can be overbroad and may not be consistent with industry usage. In numerous instances the same requests have been sent to multiple institutions, and the receiving institutions have had the same questions regarding the scope and terms of the request. In the situation where multiple institutions have questions about the same specific request, the request should be clarified or enhanced, rather than recycling the same broad and unclear requests.

Along with a lack of clarity, IR requests are often unnecessarily broad. The scope of the Bureau's requests should be addressed at a pre-examination meeting to focus and tailor the requests, if necessary. It is also important for the Bureau to increase its engagement with institutions when preparing to perform analyses based on institution data. Two problems can arise when the Bureau requests an institution's data for its analyses, which can be avoided by early engagement with the institution. First, data may not be easily accessible, but there is alternate data that is a reasonable substitute. Early engagement with the institution in such cases would allow such situations to be identified and the request modified to seek the available alternate information. Second, there may be inherent limitations in the scope or reliability of an institution's data which would make it inappropriate for the Bureau to utilize such data in its analyses. This is because data often is captured by an institution's systems with a specific business purpose in mind, and therefore may not be captured in a manner appropriate for more general analysis, including those that the Bureau might undertake. In this instance, engagement with the institution prior to utilizing the data can prevent the Bureau from reaching mistaken conclusions.

Limit Requests to Materials Already in Existence. Examination requests should avoid requiring entities to create new documents or materials, aside from responses to direct questions from the Bureau, when similar information can be obtained by other means. The creation of new documents or compilations of information that are not already used in the normal course of business can place a significant strain on an institution's workforce and often is unnecessary in light of the fact that the requested information exists in an alternative format. Rather, the Bureau should seek to rely on existing information to the extent possible.

Work with Institutions to Cooperatively Resolve Privilege Issues. IRs routinely request documents that are covered by the attorney-client privilege or work product doctrine, such as reviews conducted by attorneys or consultants engaged at the direction of counsel. The Bureau should be more judicious in making these requests. Institutions must have open lines of communications with their attorneys to allow more informed decision making, and the Bureau should recognize and respect institutional privilege assertions. The Bureau should only request the voluntary production of privileged information when the information is critical to the examination and no other non-privileged source for the information exists.

Bureau requests for privileged information also have included not only written documentation in the possession of the entity but also documents in possession of attorneys. Moreover, in some instances these requests may specifically involve legal advice regarding

potential claims or issues raised by the Bureau. Requests seeking this material are inappropriate, interfere with an institution's right to counsel, and should no longer be issued.

4. *The effectiveness and accessibility of the CFPB Supervision and Examination Manual (Exam Manual). The Exam Manual provides internal direction to supervisory staff, including summaries of statutes and regulations and specific examination procedures for use by examiners in conducting exams. It is published on the Bureau's website to promote transparency and assist the public in understanding how the Bureau oversees supervised entities.*

Overall, the Exam Manual is a useful resource for supervised entities, though its effectiveness can be enhanced in several ways. First, the Exam Manual should be reviewed and updated more frequently to consistently ensure accuracy, timeliness, and appropriateness. For example, the Truth in Lending Act (TILA) section of the automobile finance portion of the Exam Manual includes references to TILA disclosures that do not apply to automobile finance. The Exam Manual should also be updated to provide examples of "abusive" acts similar to the guidance provided for "unfair" and "deceptive" acts or practices. Additionally, the Exam Manual should be updated routinely to incorporate Bureau Bulletins in addition to the summaries of statutes and regulations currently incorporated. To that end, the Exam Manual references some Bureau Bulletins, but does not include all of them. For example, the Exam Manual does not include the recent Bureau Compliance Bulletin 2017-01 which concerns phone pay fees. These modifications will allow the Exam Manual to better assist the industry with its compliance efforts and in preparing for examinations.

5. *The efficiency and effectiveness of onsite examination work. Typically, while onsite, examination teams may review documents and data, hold meetings with management, conduct interviews with staff, make observations, and conduct transaction testing.*

The efficiency and effectiveness of the Bureau's onsite examination work has improved over time; however, additional enhancements to the process are needed to increase consistency across examinations and ensure an appropriate level of cooperation with the institution while onsite.

Schedule and Coordinate Examinations to Reduce the Burden on the Supervised Entity. The Bureau should structure its onsite work in a way that is least disruptive to the entity. The Associations recommend that, where possible and requested by the institution, the Bureau plan to be onsite every other week instead of on a continual basis. Proceeding in this fashion will allow the institution time to catch up on examination requests and normal business during off weeks. Additionally, the Bureau should consider the resources required of the institution while the Bureau is onsite. Institutions are frequently required to staff senior personnel on examination teams and to hire consultants to assist with responses to examination requests. As a result, the Bureau should coordinate its examination questions and issues in an effort to be onsite for as brief a period of time as possible. The Bureau also should provide the institution with as much advance notice as it can of the materials the Bureau intends to review and the issues the Bureau intends to discuss, to allow the institution to coordinate its resources effectively.

Clearly Define the Roles of the Bureau's Examination Team Members and Communicate Those Roles to the Supervised Entity. In order to ensure that the examination proceeds smoothly, at the outset of an examination the lead examiner should establish a single point of contact on the examination team, inform the institution as to which examination team members have decision-making responsibilities, and explain to the institution the roles and responsibilities of the examination team. To the extent possible, examination teams should include experienced examiners, both with regard to the institution and the subject matter at issue, so the examination team can operate as efficiently as possible. Examination team members who are familiar with the institution provide base-level knowledge of the institution to the examination team, and team members who are familiar with the subject matter ensure the team is able to appropriately evaluate the institution's compliance with laws and regulations.

The Associations' members have observed that some examiners can become preoccupied with a particular issue that may or may not be viewed as relevant by the lead examiner. In order to avoid unnecessary work by the institution, lead examiners should be receptive to and act on feedback regarding examiners who reach beyond their roles or are otherwise disruptive to the examination process. The Associations' members also have found that examinations proceed best when all examiners are well prepared and have an understanding of the institution and the financial services it provides before they arrive onsite. As a result, prior to arriving onsite the examiners should familiarize themselves with the institution and its products. Further, examiners should allocate sufficient time to review materials provided in advance such that time spent onsite is more efficient and productive for all parties.

Utilize Targeted Follow-up Questions and Allow Sufficient Time for a Thoughtful Response. The Associations' members have observed that the Bureau's follow-up questions are often voluminous and repetitive. Institutions may be asked to respond to the same question even after a response is provided. In order to avoid unnecessary use of institution resources, follow-up questions should be better tracked and calibrated. Responses should also be carefully reviewed by the Bureau to ensure that further follow-up questions are asked only if necessary and to avoid duplication of effort. Additionally, in many instances, the Bureau does not allow a sufficient response time for follow-up questions, even where questions are complicated. Allowing additional time would result in more comprehensively researched responses which will be of greater use to the Bureau.

Increase the Effectiveness of Examination Meetings. Meetings provide an important opportunity for the institution to verify facts and to place issues raised by the Bureau in context. However, examination meetings are frequently not as productive as they should be. This is attributable, in large part, to the fact that the Bureau often does not advise the institution of the meeting until shortly before it is scheduled. This prevents the institution from identifying the correct employees to attend the meeting and adequately preparing. The institution should have sufficient information and time to ensure the correct people are identified to fully address the examiners' questions.

During examination interviews, the examiners should limit their questions to those within the employee's current or previous range of duties to avoid speculation. The Bureau also should schedule interim meetings throughout the course of the onsite portion of the examination to

allow the Bureau to raise potential findings and concerns identified to that point and permit the institution to address those potential findings or concerns. The more ongoing dialogue during the examination process, the more effective the examination process.

Schedule Closing Meetings and Provide Clear, Actionable Guidance. When utilized effectively, closing meetings provide an important opportunity for the institution to receive meaningful feedback from the Bureau. For that reason, the process for all exams should include a closing meeting prior to the Bureau issuing a supervisory letter or report. Whenever possible, closing meetings should provide clear guidance regarding the issues that the institution is expected to correct. The anticipated outcome of the examination also should be discussed during the closing meeting where possible. Moreover, as discussed above, the institution should be provided with interim updates on open issues prior to the closing meeting in order to allow the institution an opportunity to resolve issues and provide further explanation before the end of the exam.

- 6. The effectiveness of Supervision's communications when potential violations are identified, including the usefulness and content of the potential action and request for response (PARR) letter. A PARR letter provides an entity with notice of preliminary findings of conduct that may violate Federal consumer financial laws and advises the entity that the Bureau is considering taking supervisory action or a public enforcement action based on the potential violations identified in the letter. Supervision invites the entity to respond to the PARR letter within 14 days and to set forth in the response any reasons of fact, law or policy why the Bureau should not take action against the entity. The Bureau often permits extensions of the response time when requested.*

While the Associations acknowledge the important role PARR letters play in the Bureau's oversight process, as detailed below, the Associations recommend a number of enhancements and revisions to the PARR process. The Associations' primary recommendation is that the Bureau clearly convey the basis for the PARR letter to allow the institution to submit a fulsome, relevant response. It is critical that the Bureau clearly and timely provide institutions with an explanation of the basis for the letter. Additionally, it is important to ensure that PARR letters are utilized only when necessary and appropriate, in order to prevent escalation to enforcement in a situation that is more appropriately addressed through the supervisory process.

Issues Subject to a Potential PARR Letter Should be Addressed During the Examination Process if Possible. An institution may learn that the Bureau has identified a potential issue when it receives a PARR letter or is told that it will be receiving a PARR letter shortly without meaningful supervisory discussion of the Bureau's concerns in advance. This approach is frustrating for the institution and inefficient because it deprives the institution of the opportunity to learn about and resolve the issue during the examination process and to take advantage of the ongoing dialogue that takes place during an examination. Further, learning about an issue through a PARR letter unnecessarily escalates tension between the institution and the Bureau, and may cause what is ultimately determined to be a minor issue to be blown out of proportion. As a result, the Associations recommend that the Bureau's findings and concerns be shared with the institution during the onsite portion of the examination to allow the institution to rebut findings or concerns prior to a PARR letter being issued. This approach will help to create a more collaborative relationship between the Bureau and the institution, and will permit the

institution to investigate the Bureau's concerns and engage in a more open and effective dialogue regarding the issue, which will allow the Bureau to determine whether the issue is significant enough to warrant a PARR letter before one is issued.

The PARR Letter Should Include More Extensive Background on the Identified Issues. Typically, PARR letters lack written detail on the legal or factual basis for the concerns, leaving institutions to speculate with respect to the details of the alleged violations. This lack of information makes it more difficult for the institution to provide a fulsome, targeted, informed response to the Bureau. This is unfair to the institution and inefficient for the Bureau. The Bureau should fully explain the factual basis for its concerns, and in the event the Bureau requires additional information and detail from the institution to understand the issue, it should request that information before issuing the PARR letter. With regard to the legal basis for an identified issue, the Bureau should provide its analysis, with citation to specific, relevant legal standards, concerning the basis for the alleged violation.

The Bureau Should Permit an Adequate Response Time. The Bureau typically allows 14 days to respond to a PARR letter. This response time is generally the same regardless of the complexity or scope of the issues raised in the PARR letter. Thus, there is little proportionality in the default response time which is typically is too restrictive and does not allow institutions to provide a well-researched and considered response. To address these concerns, the Associations recommend that the Bureau allow no less than 30 days for submission of a PARR letter response. Additionally, instead of rigidly imposing the same timelines for all PARR letter responses, the Associations recommend that Bureau personnel set more flexible timelines, especially where the PARR letter contains a large number of alleged legal issues or claims that are complex. The Associations also recommend that the Bureau more consistently grant requests for extension of the PARR letter response deadline. To that end, initial requests for an extension should be granted, assuming the institution has provided a reasonable basis for the request.

The PARR Process Should be Utilized Selectively. PARR letters should only be used where the underlying law is clear and when the Bureau actually believes referral to enforcement is a reasonably likely outcome. In all other situations the Bureau should work to resolve the issue through the supervisory process. Many issues that have become the subject of PARR letters have been dealt with in supervision, and indeed, the institution may have been told that the PARR letter is unlikely to result in a referral. Receiving a PARR letter is a very significant event for an institution that requires an institution to devote significant time and resources to prepare a response. The Bureau's default stance should be to use PARR letters only when necessary.

The Associations further recommend that the Bureau refrain from using PARR letters where an institution has already self-identified and corrected an issue, unless the circumstances are egregious. In particular, PARR letters should not include issues previously identified and remediated by an institution through its compliance testing and internal audits. Including these issues discourages testing and auditing, and is unfair to institutions with robust compliance controls who are more likely to self-identify issues.

Any UDAAP Issues Included a PARR Letter Should be Explained in Detail. PARR letters frequently contain UDAAP allegations that lack a sufficient factual and legal foundation

or are based on small sample sizes and idiosyncratic facts. In order to remedy these issues and ensure that institutions are able to adequately address UDAAP allegations, the Bureau should explain in detail all examination findings that support a UDAAP claim and the facts that the Bureau believes satisfy the relevant legal standard. UDAAP allegations should be based on robust and representative samples and not selective data or unique borrower experiences, as a general matter. Moreover, the specific alleged legal issue—deception, unfairness, or abusiveness—often is not clearly identified. The Associations recommend that the specific type of alleged UDAAP, along with the factual points that the Bureau preliminarily believes supports each element of the legal test for the type of UDAAP at issue, be clearly stated in the PARR letter to allow the institution to fully understand the exact allegation and engage in the correct analysis when evaluating and responding to the UDAAP claim.

The PARR Process Should be Transparent. Institutions have little to no insight into the PARR process, the weight given to the arguments they have advanced, or why arguments have been accepted or rejected. In addition, there is little consistency or transparency with respect to the timing of the Bureau’s feedback, and indeed, such feedback may come formally in outreach from Enforcement if the matter is referred. Given the importance and gravity of the PARR process, institutions should be afforded greater insight into the Bureau’s consideration of and ultimate determinations following PARR letters.

In addition, the Associations recommend that the Bureau consider providing anonymized information about the issues the Bureau has addressed via the PARR process to the extent that such information is not already captured in Supervisory Highlights. The Bureau should also consider providing generalized descriptions of the issues it has referred to enforcement after initially issuing a PARR letter.

The Bureau Should Provide Regular Updates on its Evaluation of the PARR Response. The Associations’ membership regularly submit PARR responses and then wait months to receive feedback from the Bureau. In some instances the first thing an institution hears from the Bureau, even after a long delay, is a demand for further information to be provided on a short timeline. The Associations recommend that a formal process be established to provide regular updates on the Bureau’s evaluation of the PARR response. Updates can be provided by email and should be provided at least monthly.

7. The clarity, organization, and quality of communications that report the results of supervisory activities, including oral communications from examiners and Supervisory Letters and Examination Reports.

The Associations’ membership have observed that Supervisory Letters, and as discussed below, MRAs in particular, often lack specificity and do not clearly describe the issues included in the communication. The facts and legal basis underlying any issues identified in a Supervisory Letter should be more fully described to allow the institution to understand the Bureau’s findings, and to take appropriate action.

The Associations also have encountered some challenges with the Bureau’s oral communications. Frequently oral communications from the examiners are inconsistent with the final Supervisory Letter or Examination Report. While oral communications should be provided

for efficiency, it is also important that they are consistent with the Examination Report. Relatedly, Examination Reports should be customized to the entity in question and should not rely on template language that at times results in reports that are confusing and potentially irrelevant.

In addition to issues concerning the substance of the Bureau's communications, the timing of those communications also have been problematic. It is common for institutions to wait for feedback for an extended period of time due to internal delays within the Bureau. To correct this delay, the Bureau should set expectations and hold itself accountable regarding when Supervisory Letters, Examination Reports, and other feedback will be provided by the Bureau.

8. The clarity of matters requiring attention (MRA) and the reasonability of timing requirements to satisfy MRAs. An MRA is used to address violation(s) of Federal consumer financial law or compliance management weaknesses. MRAs often require a written response to the Bureau and will include a due date for completion.

Although the MRA process plays an important role in the Bureau's supervisory processes, MRAs are overused and the process surrounding addressing them is often inefficient. As a result, the Associations recommend several modifications to the MRA process to ensure that they are used only when appropriate and to reduce the burden and uncertainty associated with the process.

MRAs Should be Used Judiciously. The Bureau should exercise discretion carefully in determining which issues should form the basis for an MRA. MRAs are most appropriately used when the Bureau is presented with a clear, systemic violation or institutional behavior that is causing consumer harm. By way of example, it seems improper for the Bureau to issue an MRA in response to a technical violation unaccompanied by consumer injury or an isolated, non-systemic issue occurrence. In the latter scenarios the Bureau and the institution would be better served if the Bureau proceeded informally, rather than through the MRA process.

The Bureau also should refrain from using MRAs as a substitute for rulemaking or other formal guidance. Specifically, substantially similar MRAs should not be sent to multiple institutions for the purpose of making an industry-wide policy change. Instead, issues common to multiple institutions should be dealt with through the rulemaking process with its notice-and-comment period to allow institutions to work cooperatively with the Bureau to craft appropriate guidelines.

The MRA Process Should be Streamlined. In order to allow institutions to take effective action in response to an MRA, the Bureau should provide clear legal analysis and sufficient context regarding the basis of each MRA. The basis of the MRA is not always clear from the Examination Report, causing institutions to struggle to determine exactly what must be done to satisfy the MRA. This is particularly important given the length of time an institution is given to satisfy an MRA, and the fact that there may be personnel turnover in that time period.

The MRA process also can be simplified by more selective use of the requirement to provide written progress reports in connection with MRAs. Progress reports should be required if the process required to satisfy an MRA is lengthy and complex or is difficult to define at the

time the MRA is issued. In such cases, progress reports are helpful to both the institution and the Bureau as they provide a clear and efficient communication method regarding the resolution status of the MRA. However, requiring progress reports in more straight-forward circumstances can be inefficient as the information can be provided by the institution in a final report, and resources used in the interim to address the MRA more expeditiously.

The Bureau Should Provide Timely Feedback During the MRA Process. Although there is often a deadline for when the institution must submit documentation to the Bureau in satisfaction of the MRA, the Bureau seldom provides timely feedback regarding the materials that have been submitted. Often, institutions can go many months or more without receiving feedback from the Bureau, and assume that a lack of feedback means they are on track to resolve the MRA so it can be closed. To prevent confusion and avoid misunderstandings, the Bureau should provide earlier feedback, and a preliminary assessment of whether the documentation addresses, if not satisfies, the MRAs. Timely and responsive feedback from the Bureau would allow institutions to make necessary corrections during the remediation process and give institutions peace of mind that they are modifying practices in a manner that is consistent with Bureau expectations.

MRAs Should be Formally Closed When Resolved. Once the Bureau is satisfied that the institution has appropriately addressed the issues raised in the MRAs, the MRA should be formally closed to remove any doubt about its status. MRAs should not be left open based on the speculation that additional issues related to the MRA may come up at a later date, so the satisfied, but not yet closed MRA can be revived to address such issues. Instead, each MRA should be closed once it has been satisfied and any matters later discovered by the Bureau that require attention should be addressed in a subsequent, separate MRA.

9. The process for appealing supervisory findings.

The Bureau's appeals processes should be expanded, and institutions should be afforded greater insight into the appeals processes so they can make informed decisions about this vital process. This is important because the process is the only formal vehicle for institutions to challenge Bureau determinations that they feel have been made in error.

The Bureau Should Expand its Appeals Process. The appeals process should be expanded to ensure that institutions are permitted to appeal all important supervisory findings. Under present Bureau guidelines entities may appeal final Bureau compliance ratings that are less than satisfactory (3, 4, or 5), any underlying adverse finding, or adverse findings conveyed to an entity in a supervisory letter. However, entities may not appeal, among other things, preliminary supervisory matters, adverse findings contained in a supervisory letter or examination report related to a pending investigation, or referrals of information to other regulatory agencies. These non-appealable determinations and communications can raise significant issues for institutions, and therefore warrant an appeals process.

Entities Should be Permitted to Appeal a Referral to Enforcement. A referral to enforcement after a PARR response is a substantially adverse development in the supervisory relationship, and can result in significant negative repercussions for the institution. Upon referral, the institution will spend substantial resources working through the enforcement

process, whether public enforcement action is taken or not. The potential consequences of a referral to enforcement are so significant that an appeals process of the referral is warranted to preserve an institution's right to protect itself against the consequences of a referral that was inappropriately made. The Bureau should provide a forum, guidelines, and processes, likely separate from the existing supervisory appeals process, to allow institutions to appeal matters referred to enforcement.

The Bureau Should Provide the Results of Entity Appeals. In order to provide institutions with additional guidance concerning the appeals process, the Bureau should publish anonymized results of appeals. Prudential banking regulators provide this information and the Associations' members have found it very useful in making decisions about how best to proceed during the supervisory process. Publishing anonymized results of appeals will allow institutions to obtain the information needed to understand the appeals process and its results, while protecting the confidentiality of the appealing institution.

10. The use of third parties contracted by supervised entities to conduct assessments specified in MRAs, or to assess the sufficiency of completion of an MRA.

The use of third parties to conduct assessments is costly and the Bureau should only require their use where additional independence is clearly necessary due to the institution's inability to address the MRA on its own. In all other situations institutions should be able to rely on their internal audit and compliance functions to complete the MRA process.

In those instances where the Bureau determines that the use of a third party is required, the Bureau should provide timing, cost consideration, and other flexibility to the institutions tasked with bringing in a third party to assist with the MRA. Third party risk management dictates that the onboarding process be deliberate, and that third parties are chosen carefully. These onboarding and retention processes cannot be an exception to an institution's general third party risk management program and take time to complete. Providing institutions with flexibility for how to structure engagements with third parties will result in a stronger end result for institutions, consumers, and the Bureau.

11. The usefulness of supervisory highlights to share findings and promote transparency. The bureau periodically publishes supervisory highlights to apprise the public about its examination program, including the concerns that it finds during the course of its work.

Supervisory Highlights is useful for sharing examination findings and experiences, and for promoting transparency with respect to examinations. Institutions rely on *Supervisory Highlights* to make changes to their operations and compliance practices; therefore, the Bureau should provide as much information about examination findings as possible while preserving confidentiality. To that end, *Supervisory Highlights* should present anonymized cases with detailed legal analysis to provide greater insight into the Bureau's supervisory processes.

While *Supervisory Highlights* is an appreciated publication, however, it is important that it does not become a backdoor method for the Bureau to institute policy. *Supervisory Highlights* should not be the source of "guidance" or "interpretations" that effectively constitute new

regulatory obligations. For example, the Summer 2017 issue of *Supervisory Highlights* included an extended discussion interpreting false representations in connection with information provided by consumers in loan applications that would have been better suited for formal regulatory guidance.

12. *The manner and extent to which the Bureau can and should coordinate its supervisory activity with Federal and state supervisory agencies, including through use of simultaneous exams, where feasible and consistent with statutory directives.*

The Associations' membership have found that regulators often do not coordinate well, or at all, during simultaneous examinations. However, coordination among federal regulators can be beneficial in areas where multiple agencies address the same examination topics. For that reason, various federal regulators should be given the opportunity to participate in a coordinated examination effort utilizing harmonized data requests. To facilitate this process, schedules should be sent out and maintained by all relevant regulators.

In order to maximize the usefulness of joint exams, the participating agencies should identify a clear leader to ensure that the institution is aware of who is running the exam. The practice of appointing a lead agency is used in FFEIC IT examinations and the Associations' membership have found that joint examinations run more smoothly when a lead agency is identified. To the extent that differences of opinion arise between agencies, those differences should be resolved between the agencies themselves. Additionally, to the extent that violations are found during a coordinated exam, issues relating to any violations identified should be resolved by the regulators in concert so that the institution is not subject to separate actions by multiple regulators for the same issues.

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Thank you again for the opportunity to share our views with you on this important matter. The Associations welcome the opportunity to discuss any of the issues raised in this letter. Should you have any questions or if we can provide any additional information, please contact Richard Foster at Richard.Foster@FSRoundtable.org, Steven I. Zeisel at SZeisel@consumerbankers.com, or Anne C. Canfield at accanfield@michaelbeststrategies.com.

Respectfully Submitted,



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