



MORTGAGE BANKERS ASSOCIATION

May 21, 2018

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. BCFP-2018-0004

Dear Ms. Jackson,

The Mortgage Bankers Association (“MBA”)¹ appreciates the opportunity to comment on this Request for Information (“RFI”) from the Bureau of Consumer Financial Protection (the “Bureau” or “BCFP”). In addition to offering comments below on the Bureau’s supervision program, MBA would like to reiterate our belief in the need for a thorough reexamination of the Bureau’s operations and practices after a half decade in operation. MBA released *CFPB 2.0: Advancing Consumer Protection* in September 2017 (the “White Paper”) to outline key considerations for the Bureau as it begins to think about the next five years. In brief, MBA recommended that:

- BCFP end “regulation by enforcement” by issuing guidance to facilitate compliance rather than relying on fact-specific enforcement actions to announce new regulatory interpretations;
- BCFP communicate clearly when and how it plans to offer compliance guidance and acknowledge that it is bound by the guidance it releases; and
- BCFP provide more due process protections in its enforcement actions to ensure fairness and consistency.

These larger, thematic concerns run through all Bureau operations and therefore are a theme of all the RFIs that have been released to date. The RFI process can be a crucial starting point to gather the information necessary to determine how to best orient the BCFP’s future direction to ensure it serves consumers and creates access to financial opportunity. MBA applauds this and the additional RFIs to the extent that they are the beginning of this important conversation.

¹ The MBA is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation’s residential and commercial real estate markets, to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA’s Web site: www.mba.org.

The BCFP's supervisory program is an important component of the regulator's oversight of the mortgage market. When the BCFP launched its supervisory function, the examination process was chaotic, disorganized, and examiners often seemed to not understand the mortgage market or the regulations governing the market. The BCFP has made great strides in this area. While MBA still believes there is significant room for improvement in the supervisory process, it appreciates the time and effort the BCFP has put into enhancing the supervisory process. Unfortunately, the tone of examinations is all too often adversarial, which leads to subpar results for the BCFP, regulated institutions and, most importantly, consumers. Regulated institutions operating under constant threat of enforcement for even minor infractions must divert resources toward building compliance management system edifices that may please regulators, but have marginal impact, at best, for consumers. This means fewer resources are available to serve consumers, develop new products or invest in technologies.

In this letter, MBA sets forth general recommendations regarding the Bureau's deployment of its supervisory program, and then comments on each of the specific items set forth in the RFI.

I. General Observations Regarding the BCFP's Supervision Program

A. The Bureau's expectation of perfection during examinations has been, and remains, the enemy of the good, which is much to the detriment of consumers.

When structured correctly, the supervision process is a useful and constructive tool in a regulator's tool box. Examinations enable regulators to resolve compliance issues quickly without having to undergo the laborious and costly process that comes with regulating an industry through enforcement or litigation. The importance of supervisory efficiency is most pronounced where a compliance failure results in a technical infraction that, although it might be a violation of law or regulation, is isolated or does not result in direct or quantifiable consumer harm.

A well-structured supervision program does not need to be adversarial. Rather, it should encourage the free-flow of information between the regulator and the institution, both of whom should strive to get to the right, compliant result. One critical deficiency in the BCFP's supervision program is that institutions have the sense that *any* infraction uncovered during the examination could lead to an enforcement action. This fear is not unfounded, and arises generally from industry's experience with the Bureau's supervision program. Two supervision tactics are particularly concerning:

- Too often, institutions are cited for infractions uncovered by their own well-functioning compliance management systems, and
- PARR letters—letters threatening potential enforcement action—seem to include laundry lists of all infractions identified during an exam without regard to their actual severity.

This creates a perverse incentive whereby institutions are fearful of setting up well-functioning compliance testing programs, and conducting meaningful audits and self-assessments, due to the concern that these documents will provide a roadmap for regulators seeking to notch additional regulatory violations during an examination.

Consumers are directly and negatively impacted by the ramifications of this undercurrent of fear. Institutions operating under a constant threat of a potential enforcement action or formal supervisory action resulting from even the smallest infraction feel they must perform perfectly. While institutions aspire to attain 100 percent compliance with the myriad federal and state technical regulatory requirements that govern the mortgage industry, processes with as much human involvement as mortgage origination and mortgage servicing (especially default servicing) have error rates. The goal of the Bureau's supervision should be to ensure that companies have appropriate compliance risk management systems as opposed to the enormous expense of seeking perfect compliance. Indeed, this issue is one significant driver of the vast increase in the costs to originate and service mortgage loans. In our view, this concern is heightened in our industry—making mortgage loans—because it is associated with a lengthy, complex, document- and information-intensive transaction in which there are so many opportunities for the consumer's transaction—both the real estate acquisition and the loan—to change. Unfortunately those costs, both necessary and unnecessary, are passed on to the consumer.

The Bureau should not place institutions with very good, but not perfect compliance, under the threat of enforcement. An error rate slightly below perfection does not mean that the institution has engaged in a pattern or practice of non-compliance. Where humans are involved in a process, mistakes happen. Each consumer's situation is different. No set of procedures can cover every scenario that might be thrown at a mortgage originator or servicer. Conversely, a company may have a process or system breakdown despite its good faith efforts to comply with the law. These types of breakdowns absolutely must be remedied—indeed, a competent compliance management system will identify these faults and facilitate that process—but the threat of enforcement for every good faith lapse creates an unsustainable operating environment. Bureau examiners should be directed to put these issues in the broader context of the institution's overall compliance program. Rather than simply pointing out issues, having an institution guess at the proper solution, then critiquing the solution, the Bureau should train examiners on ways to work with institutions to develop compliance solutions.

The proliferation of mortgage regulations since enactment of the Dodd-Frank Act has made it more costly to originate and service a mortgage loan. This is particularly true for a loan in default. The expectation that institutions will have perfect operational execution further drives up the cost of mortgage lending. The cost of managing a routine exam has grown significantly due to the belief that institutions must deploy armies of compliance professionals, attorneys, and consultants to assist in preparation, exam management, and responding to the final result. The costs of managing the regulatory burden are resources that could be used to lower pricing, invest in innovation, or increase customer services—efforts that truly benefit consumers.

While changing the tone and environment around the supervisory process is difficult and time consuming, MBA is confident that adjusting the posture of its supervisory program will have a significant benefit to consumers while still facilitating a compliant, safe and vibrant mortgage market.

B. Greater reliance on guidance over enforcement will help improve the examination process.

As noted throughout MBA's comment letters submitted in response to the Bureau's RFI process, MBA strongly recommends that the Bureau end the practice of regulation by enforcement. Ending this practice will directly benefit examiners and institutions, as both will be able to follow the same, clear, set of rules. Where institutions have clear rules and guidance before an examination, the parties should be able to agree in principle to the institution's legal and regulatory requirements. Examiners could then focus on reviewing the institution's documentation and practices to assess whether the institution is following those agreed-upon requirements.

Policymaking through enforcement is not an effective way to implement complex regulatory requirements. Public consent orders apply to a single set of facts that are often contested. The public settlement documents may omit relevant facts, making it difficult to distinguish the settling entity's practices from those of other institutions. This makes it difficult for an examined institution to identify the appropriate corrective action and leaves the institution subject to the whim of the examiner.

MBA also recommends that the BCFP develop additional standards to clarify the thresholds for remediation during an examination. These thresholds should identify when a supervisory finding is material and might lead to enforcement. Outlining these thresholds will add further transparency to the examination process, benefiting institutions and the consumers they serve.

C. Take concrete action to formalize implementation of a truly "risk-based" examination process.

MBA encourages the BCFP to promulgate a rule to establish risk-based examination procedures. Such a rule will help ensure that Bureau supervision is in fact "risk-based." Many of the specific recommendations included in this letter are intended to support a risk-based supervision process. A truly risk-based supervision program would reduce the regulatory burden for institutions with lower risk profiles. It would also provide for a more efficient deployment of Bureau resources, thereby reducing the burden of the taxpayer. Unfortunately, despite these and other obvious benefits, the Bureau has not truly tailored its examination process to reflect a risk-based approach.

MBA recommends that the Bureau consider formalizing a multi-factor approach toward establishing its examination priorities—one that is similar to how the prudential regulators prioritize supervisory resources for community banks. This approach could consider: (1) the

institution's size or market share, without setting a hard exemption threshold; (2) complaint volume from consumers or other sources; (3) state-regulator referrals; and (4) material participation in higher risk products. Where the Bureau's decision to examine an institution is based on a particular risk factor, the Bureau could conduct a targeted examination focused on that particular concern rather than delivering the standard information request. Such a targeted approach would truly implement the goal of carrying out a risk-based supervisory process. Where the Bureau decides to examine an institution based on a particular risk, the Bureau should put the institution on notice of the particular factor that prompted the examination.

While this RFI provides a strong foundation for soliciting feedback regarding the supervisory process, the Bureau should create a process to ensure ongoing engagement with industry stakeholders on this important issue. For instance, the Bureau could implement MBA's recommendation to make supervisory appeals more transparent, thereby improving industry's understanding of the supervisory process. The Bureau could also create a formal Housing Finance Advisory Council to provide mortgage industry participants, regardless of size or business model, the ability to provide ongoing feedback to the Bureau.

Taken as a whole, the recommendations included in this letter will result in a risk-based examination program that ensures supervisory resources of the Bureau, as well as those of mortgage lenders and servicers, are deployed in an efficient and useful manner.

II. Recommendations on the Specific Items Raised by the Bureau in the RFI

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

The MBA appreciates that the BCFP has attempted to build a risk-based supervision program, which should in theory limit examinations, or the scope of examinations, to only those institutions and products that present a high risk to consumers. In practice, the MBA believes that the Bureau could further tailor its approach and offers the following specific recommendations for doing so:

- Formalize a supervisory program of diagnostic examinations for compliance with new regulations: Just before the Bureau's initial TRID regulations took effect, the Bureau announced it would take a diagnostic approach to examining institutions for compliance with the new requirements. Based on member feedback, it appears that the Bureau did in fact take this approach and was not punitive where an institution implemented the TRID requirements in good faith, even if there were isolated errors within the required disclosures. The Bureau, along with other regulators, announced a similar approach with respect to examining for compliance with the recently-effective HMDA rules. This was an appropriate position given the extent of new requirements under the rule. MBA appreciates the Bureau's diagnostic approach to examining for compliance with TRID and HMDA. These regulations are complex. While it is important to examine institutions for compliance with new regulations, the Bureau should continue to recognize good faith efforts towards compliance. This approach is particularly appropriate for

situations where compliance depends on properly programming central and supporting origination and servicing systems, as well as for technical violations of law with limited or isolated consumer harm.

- Conduct a pre-examination scoping meeting to tailor examinations to the risks actually presented by the institution: Based on member feedback, it appears that information requests made to mortgage originators and servicers are largely based on a request template. The requests often include items that are not applicable to the institution's business. This one-size fits all approach for examining mortgage originators and servicers does not make sense. It creates additional work for both the examiners and the examined. Conducting a pre-examination scoping meeting to better understand the institution, as well as requiring examiners to amend the standard information request in response to that meeting, would help reduce the burden of document production and provide the Bureau a more relevant set of materials to review.
 - Significantly reduce or narrow the scope of examination series: Members have been subject to a series of examinations, rather than a single comprehensive examination. For instance, the Bureau might schedule a mortgage origination examination, immediately followed by a HMDA examination, which is then followed by a fair lending examination. It is very challenging for members to manage this type of examination cycle. It can tie up business and compliance resources for as much as a year. The BCFP should institute a minimum period of at least six months between the presentation of the results from one examination and the initiation of the next examination. Should the Bureau feel a series of examinations is necessary, it should be sensitive to making duplicative or overlapping requests. Production requests should be limited to information that was not received during previous examinations.
 - Limit information requests for subsequent examinations: The Bureau has started to establish a track record with certain institutions and is now conducting follow-up examinations. Where the BCFP has had positive experiences with an institution's compliance risk management systems, this experience should inform the scope of future contacts. Rather than providing the same expansive information request, the BCFP should focus on key issues or areas of potential harm to consumers.
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.***

While the BCFP's process for initiating examinations is generally orderly and effective, the following steps would further improve this process:

- Extend response timeframes for multi-channel institutions and for data requests: The information requests submitted by the Bureau are comprehensive. Their fulfillment requires a significant amount of work from the supervised institution. Contacting an entity 60 days prior to the onsite start date is critical for planning and information gathering purposes. However, the Bureau should consider providing additional response time to institutions that are expected to produce a significant amount of documents or data sets. The Bureau's data requests are complicated and require close coordination amongst IT departments (if they exist), the line of business, and the compliance department, to ensure the data provided is responsive and accurate.
- Build additional examiner review time into the pre-examination timeframe: During the onsite portion of the examination, the compressed timeframe makes the pace difficult to manage as the institution is required to facilitate in person meetings and quickly respond to written examiner questions. For some examinations, it appears that examiners do not have sufficient time before they arrive onsite to effectively review the information provided by the supervised institution. We therefore recommend examiners be provided two to three weeks to review this information prior to conducting the onsite review. This extra time would also give examiners a chance to engage the institution with any additional questions they may have about the information produced before the onsite review.
- Publish standard information requests: Given the size and scope of information requests, it would be helpful for the Bureau to publish a standard information request for its mortgage origination and mortgage servicing examination modules. While the BCFP's examination handbook notes the topics that may be reviewed during the examinations, publishing the actual information requests will help institutions better prepare their materials in advance of an examination.
- Coordinate information requests with prudential and state regulators: As noted below, when done well, coordination with other regulators can help reduce the burden of document production. However, where information requests are not standard, or are overlapping but not perfectly aligned, an institution must manage multiple requests at the same time and ensure it is properly providing the requested information to two different parties. Where the Bureau is conducting an examination with another regulator, it is important that information requests—both initial and follow-up—are coordinated and phrased in the same manner.
- Create standards for "Quarterly Monitoring": The BCFP currently conducts regular quarterly monitoring of selected institutions; however, the contours of this practice are unknown and ill-defined. Although participation appears to be voluntary, it's understandably difficult for an institution subject to the Bureau oversight to turn down such an "invitation" to participate. It also appears that the substance of the monitoring varies by supervisory region. Information requests are made in an informal and imprecise manner. If the BCFP continues its quarterly monitoring program, it should standardized the process.

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

The BCFP's information requests are voluminous and extremely burdensome. To respond to these massive requests, institutions must collect documents and data from myriad areas within the company. They must also draft clear and concise narratives that accurately and consistently describe the institution's practices. The BCFP should take the following steps to reduce the cost and burden associated with responding to information requests:

- Conduct periodic reviews of information request items for clarity: Certain items in the Bureau's standard information requests are overly vague or broad. There are times when they do not make sense within the context of the examination. Institutions want to make sure that they respond completely and comprehensively to each item requested. Broad, vague, or confusing information requests make doing so difficult, creating significant anxiety for institutions. Where multiple institutions have questions about the same discreet request, the request should be clarified or enhanced. In addition, the Bureau should solicit periodic feedback from institutions to help identify and correct requests that are difficult to understand.
- Develop protocols for data requests: In some cases, the BCFP is able to effectively communicate with the supervised institution's IT department to facilitate a mutual understanding regarding what is available and what can be collected. However, there are times when the Bureau's staff fails to consider the obstacles institutions face in providing data exactly the way the Bureau wants it. The Bureau should formalize procedures and protocols around the collection of data during examinations. Request should be clear and targeted. This is particularly important for mortgage lenders or servicers with proprietary platforms rather than systems created by third parties.
- Continue efforts to protect sensitive information: MBA appreciates the Bureau's renewed focus on the importance of protecting personally identifiable information collected in the course of an examination. Our members share this sentiment and are committed to ensuring that this information is handled appropriately. Members invest significant resources to protect their information and data. It is critical that the Bureau also do its part to ensure continuity in the protection of information.
- Be mindful of collecting documents subject to the attorney-client privilege: The Bureau should exclude from its examination collections documents that are subject to the attorney-client privilege. Such an exclusion will enable institutions to have more open lines of communication with their attorneys, which will result in better decision making. While there may be times that it is a prudent supervisory decision to obtain access to attorney-client communications, the BCFP's practice has been to seek these materials as a matter of course. This should be the exception, not the standard. Where examiners collect documents subject to the attorney-client privilege, they should be mindful that retaining attorneys to advise on legal requirements reflects a prudent, and careful judgment on the part of that institution. This fact was underscored, and should be considered by examiners, in light of the decision in *BCFP v. Cashcall*, where the court

reduced the tier level of the civil money penalty because the institution sought legal counsel in structuring its practices in compliance with the applicable law.² The Bureau also should be mindful that privileged materials collected as part of the supervisory process should never be shared with the enforcement staff.

- 4. *The effectiveness and accessibility of the BCFP 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.***

The MBA believes that the Exam Manual is an effective and accessible resource that provides helpful summaries of statutes, regulations, and specific examination procedures. MBA members rely heavily on the Exam Manual to facilitate their own compliance. The BCFP should continue to maintain the Exam Manual in its current form. MBA does, however caution the Bureau to ensure that, when it drafts its manuals, it is adhering to existing regulations and guidance, and is not creating new regulations or policies through the Exam Manual. To the extent there are practices the Bureau believes constitute an unfair, deceptive, or abusive practice and require special attention during the examination process, the Bureau should indicate this in stand-alone guidance rather than within the Exam Manual.

Policy-making via Exam Manual is particularly prevalent in the mortgage servicing module. For example, the Bureau's Exam Manual refers to the requirements of the Servicemembers Civil Relief Act and federal bankruptcy law, neither of which are enumerated consumer financial protection laws. It is not appropriate for the Bureau to comment on law it is not statutorily authorized to interpret, administer or enforce. The servicing module also discusses a number of loss mitigation practices that do not come under Regulation X, such as how quickly the servicer converts the borrower from a trial to permanent modification. This practice is not governed by the loss mitigation procedure requirements set forth in 12 C.F.R. § 1024.41 and, if the Bureau believes that the timeliness of conversion may be implicated within UDAAP principles, it should issue a rule or guidance under its existing authority. Along these lines, MBA encourages the BCFP to issue guidance with respect to its "abusive" standard, and then incorporate that guidance into the Exam Manual. However, the Exam Manual should not, in and of itself, be used to issue new guidance on this standard.

- 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.***

² See Minutes Findings of Fact and Conclusions of Law, *BCFP v. CashCall, Inc.*, No. 2:15-cv-7522 (C.D. Cal Jan. 19, 2018).

As MBA noted in its White Paper, in the last six years the Bureau has acquired, trained and provided hands-on experience to a large number of examiners. These examiners are now much more experienced than the first generation of Bureau examiners. As a result, members are more likely to encounter teams of examiners with industry and subject-matter expertise, resulting in a supervisory function that is better prepared to provide useful guidance to regulated entities, thereby proactively preventing consumer harm. Although examinations are now much more orderly and organized, there are some areas for improvement with respect to onsite examination work. To improve the onsite portion of the examination, the BCFP should:

- Enhance oversight of examiner follow-up questions when onsite: When examiners are onsite, institutions are subject to a significant number of formal follow-up questions. Responding to these questions within the allotted time period is critical. It is therefore extremely burdensome for the examined entity to research an answer, confirm the accuracy of the answer, and have that answer reviewed by various level of the institution within 48 hours of being asked the question. When BCFP examiners ask duplicative and overlapping questions, it increases the burden on the institution without a corresponding benefit to the exam team. Greater flexibility on response times is also necessary when examiners pose a complex question that requires significant factual or legal research. Creating a more orderly process, and allowing flexibility for response times, would enable the institution to provide a more comprehensive answer in the first instance. This would reduce the chances for confusion later on in the process.
- Establish a protocol for conducting employee interviews: Meeting requests provide an important opportunity for the institution to verify facts and validate information provided in response to the information request. Unfortunately, examiners may not give the institution sufficient time to identify the correct employees and prepare for the interview. Before the interview, the institution should be given a clear meeting agenda as well as sufficient information and time so as to ensure the correct people are in attendance. Randomly selecting interview subjects from a list of every staff members from a particular division, a tactic occasionally utilized by Bureau examination teams, is not appropriate for a routine examination. Moreover, examiners should be limited to asking questions within the purview of the employee's range of duties. Examiners should not play "gotcha" by asking questions for which the individual is not prepared. Asking questions on topics outside of an employee's purview creates more work for the institution when additional meetings must be scheduled to correct the information provided in the prior meeting. Finally, absent abnormal circumstances,
- Direct examiners to be physically present during exams every other week during the onsite visit: In some recent examinations, exam teams have only been onsite every other week. This cadence has been helpful to institutions and allows those employees participating in the examination more space to tend to their other responsibilities. The Bureau should formalize this examination format in its operating procedures.
- Schedule more flexible time frames for onsite examination work: Because each institution is different, it can take examiners additional time to understand and navigate

the institution being examined. The BCFP should schedule additional time for examiners to receive an orientation and undergo training on the institution's systems.

- 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.***

MBA appreciates the structure of the Bureau's Advisory Review Committee ("ARC") as it provides a deliberate and rigorous process for determining whether matters raised during an examination will be resolved through a confidential supervisory action or through a public enforcement action. With that said, there are significant deficiencies in the PARR letter process leading up to the ARC that create unnecessary burdens on supervised institutions. These deficiencies seem to cut against concepts set forth in the 2017 update to the Federal Financial Institutions Examination Council Consumer Compliance Rating System ("CCRS").

Responding to PARR letters is an expensive, burdensome, and time-consuming exercise for supervised institutions. Although the response typically consists of synthesizing information and materials provided during the examination, it must be done in a meticulous and comprehensive manner. Each institution that receives a PARR letter treats it with a sense of urgency irrespective of the perceived import of the findings in the letter. Put another way, every PARR letter indicates that the Bureau is considering taking enforcement action against the institution, regardless of the issues that prompted the letter.

The Bureau should heighten its threshold for issuing PARR letters so as to more closely align with the new CCRS standards. With respect to violations of law and consumer harm, the CCRS requires examiners make a judgment call regarding the root cause, severity, duration, and pervasiveness of the violation or harm. The guidance clearly differentiates between minor legal violations that indicate weakness in the compliance management system but do not result in harm, and violations that are ongoing or pervasive with a considerable impact on consumers. The CCRS also makes clear that institutions should receive higher compliance ratings where their monitoring and testing functions effectively identify concerns which are then addressed by the institution.

The Bureau's practices around issuing PARR letters seem to differ from the concepts set forth in the CCRS. Indeed, it appears that supervision teams will issue a PARR letter when almost any violation is identified during an examination, and not just when the violation truly has the potential to result in an enforcement action. Creating a PARR letter with a long list of identified violations without assigning a weight to the identified violations unfairly paints the institution in

a negative light. This is particularly true where the basis for the violation is one file, or a one-off issue. Institutions, and the humans that work in them, are not immune from making one-off errors. The PARR letter should be reserved for raising systemic or pattern-or-practice issues rather than idiosyncratic, one-off matters.

MBA also is aware of instances where practices the institution has self-identified or disclosed during the examination are presented as violations in the PARR letter. Although it may be necessary to raise these in a PARR letter, failing to note that the violation was identified by the institution's compliance management system is frustrating and counterproductive. The CCRS clearly states that a well-rated institution is expected to have a system in place whereby "[m]anagement proactively identifies issues and promptly responds to compliance risk management deficiencies and any violations of laws or regulations, including remediation." The practice of an examination team including a violation in a PARR letter without proactively flagging for ARC that the issue was self-identified undermines confidence in the CCRS guidance. It undercuts one of the principle incentives for an institution to maintain a compliance monitoring and testing program.

In addition to these fundamental concerns regarding the PARR letter process, MBA also recommends the BCFP:

- Tailor the response deadline to the complexity of the PARR letter: PARR letters vary greatly in the number of issues raised and the complexity of those issues. However, the time that an institution has to respond to the PARR letter does not seem to vary. Institutions have the same amount of time to respond irrespective of the nature and complexity of the letter. The Bureau should consider providing institutions 30 to 45 days to respond, particularly where multiple issues are identified in the letter. To assemble a PARR letter response, an institution must research the facts at issue, research the law, draft the letter—often with the help of outside counsel—validate the facts in the letter, and obtain approval from varying levels of management and, perhaps, the board of directors. An institution facing a potential investigation should be given the time it needs to adequately respond to such serious charges.
- Provide additional details regarding the findings contained in the letter: Institutions would have an easier time responding to the PARR letter if the letter contained more information on the basis for the issue or issues raised. Oftentimes the true nature of the issue is communicated orally (if it is communicated at all) so the institution may not have a well-documented record of the issue to which they are responding. The Bureau also does not include in its PARR letters the legal foundation for its concerns. In particular, the Bureau should explain the examination findings and individual transaction files that support any UDAAP claims.
- Routinely communicate the status of PARR letters; resolve them expeditiously: Once an institution submits its response to the PARR letter, it can wait months to hear back from the examination staff. The Bureau should implement a process for providing institutions

with routine updates. Unresolved PARR letters that remain open for a significant amount of time create significant uncertainty for the business.

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.*

In recent years, there has been significant improvement in the clarity, organization and quality of communications from examiners, in supervisory letters and in examination reports. MBA does, however, believe the Bureau could take the following steps to further improve these communications:

- Give examiners clear guidance regarding what information can be shared orally with an institution so that there is no dissonance between what is written and what is orally communicated;
- Offer institutions an opportunity to preview draft Supervisory Letters and Examination Reports so that they can object to inaccurate or disputed facts serving as the basis of the Bureau's conclusions;
- Provide in Supervisory Letters and Examination Reports a clear legal analysis to support any citations of a legal violation;
- Where the examination period covers multiple years, the Supervisory Letter or Examination Report should expressly note where the institution has made enhancements to criticized processes;
- Require BCFP attorneys to review Supervisory Letters and Examination Reports for legal accuracy and clarity;
- Create a quality control process for ensuring that any template language used in a Supervisory Letter or Examination Report is accurate as applied to that institution; and
- Hold an examination exit meeting after the written results of the examination are provided so that the examiners can work with the institution to remediate any issues that were identified.

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.*

The Bureau's process for issuing and clearing MRAs can be significantly enhanced. While the Bureau's supervision team is extremely engaged during the life of an examination, the same rigor and attentiveness during the MRA process is often lacking. Institutions devote significant time and attention to addressing and resolving MRAs. The Bureau should take care to enhance its practices in this area. This should include a mandate regarding formal communications from

the Bureau to the institution regarding status, the content of the remediation effort, and formal communication regarding the clearing of MRAs.

Bureau MRAs are issued in concise statements that are not subject to review and discussion with the supervised institution. Although the statements may generally be supported by the contents of a Supervisory Letter, there is no direct additional context to the MRA. As a result, institutions can struggle to identify exactly what actions must be taken to satisfy the MRA. This is particularly important given the time needed to complete the MRA-clearing process and the fact that there may be personnel turnover at both the institution and the Bureau during that period. When drafting MRAs, the Bureau should ensure the MRA is specifically tailored to the facts at hand and is supported by an appropriate legal analysis.

There is a similar lack of clarity with respect to the Bureau's process for reviewing materials submitted in connection with the MRA. Although there is often a deadline for when the institution must submit documentation to the Bureau regarding its satisfaction of the MRA, the Bureau seldom provides timely feedback regarding the materials that have been submitted. Institutions may go months without receiving feedback from the Bureau. Earlier feedback, and a preliminary assessment of whether documentation previously submitted addresses, or satisfies the MRAs, would be helpful. Institutions may assume the Bureau has reviewed the MRA responses and supporting materials and that silence means there are no problems. However, institutions are just guessing. With such limited feedback provided to institutions with respect to satisfaction of the MRAs, it is unclear what purpose is served by the periodic written status updates required of institutions.

The Bureau also should publish clear guidance on its standards for issuing an MRA. Currently, it is unclear why certain examination issues are labeled "findings," while others rise to the level of an MRA. In developing a standard, the Bureau should require MRAs only in the event there is a finding of an actual material violation. The Bureau should not issue MRAs to address issues with compliance management systems that are not violations of law, or in response to non-systemic technical violations without actual consumer harm.

9. The process for appealing supervisory findings.

The ability to appeal supervisory findings is a critical right for regulated institutions that are concerned about the process, or results, of an examination. However, unlike the prudential regulators, the BCFP does not make the results of this process public. This lack of transparency makes it difficult for institutions to understand how to best utilize this process. The opacity of this process limits its effectiveness and usefulness. The BCFP should follow the practice of the prudential regulators and make public anonymized descriptions of actual appeals.

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 is costly and should only be required for circumstances where additional independence is clearly necessary due to lapses in an institution's existing oversight functions. Otherwise, institutions should be able to utilize their internal audit and compliance functions to assess the sufficiency of efforts to satisfy an MRA.

Where the Bureau does require the use of a third-party, it should ensure the institution has sufficient flexibility in retaining that third party so it can meet its regulatory obligations, including those related to prudent third-party risk management principles. Prudent engagement requires a careful and deliberate onboarding process. The onboarding and retention process cannot be an exception to an institution's general third-party risk management program. Providing timing and cost considerations, as well as additional flexibility for how an engagement can be structured 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.

The Supervisory Highlights publication is useful for sharing examination findings and experiences, which has the effect of promoting transparency with respect to examinations. However, Supervisory Highlights is not a substitute for offering clear guidance tied to specific regulations. It follows that the Bureau's position on the legal requirements of RESPA Section 8 or the loan originator compensation rules should not be announced in the form of an examination finding in the Supervisory Highlights. Clear and authoritative guidance that follows appropriate notice procedures is the appropriate vehicle.

For the issues that are included in Supervisory Highlights, the Bureau should provide as much information as possible about the examination findings and the supporting legal analysis. This should be done in a way which maintains institution confidentiality. If possible, Supervisory Highlights should focus on patterns of issues identified during examinations. Institutions rely on the publication to make changes to their own operations and compliance practices. One-off findings, while informative, are not nearly as helpful as trends which are more likely to include actionable information. Therefore, it is critical that they have as much information as possible so that they can make informed decisions.

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.

Where multiple agencies—federal or state—intend to conduct an examination, it is helpful if those agencies coordinate their examinations. However, there is a significant difference between a multi-agency examination and a multi-agency coordinated examination. Agencies conducting a joint examination should truly coordinate—they should establish a single point of contact, submit consistent requests for documents and information, and align their supervisory priorities. Where there is only some, but not total coordination amongst the agencies, the burden on the institution becomes greater than if the agencies had simply examined the institution separately. Divergent priorities and interpretations can have the effect of placing the regulated institution in the middle of a disagreement between regulators. This is an uncomfortable and inappropriate place for an institution to find itself. To the extent issues are uncovered, the approach to resolving those issues should be coordinated and consistent. Institutions should not be subject to punishment for the same issues by the different regulators.

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MBA appreciates the opportunity to provide our views on how to improve the Bureau's supervision processes. The RFI process begun by the BCFP addresses many of the concerns expressed by our members. We welcome the opportunity to continue to meet with you and your staff to discuss these proposals and any specific regulatory changes under consideration. Please feel free to direct any questions or comments to me directly, or to Pete Mills, Senior Vice President, Residential Policy and Member Engagement (pmills@mba.org), or Justin Wiseman, Managing Regulatory Counsel (jwiseman@mba.org).

Sincerely,



David H. Stevens, CMB
President and Chief Executive Officer