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*Via electronic submission*

May 21, 2018

The Honorable J. Michael Mulvaney  
Acting Director  
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 Acting Director Mulvaney:

The Independent Community Bankers of America (ICBA)<sup>1</sup> welcomes the opportunity to provide comment on the Bureau of Consumer Financial Protection's (BCFP or Bureau) request for information (RFI) regarding its supervision program. The Bureau is publishing this RFI as part of its efforts to assess the efficiency and effectiveness of its supervision program, and to determine whether any changes to the program would be appropriate. Reiterating comments made in response to previous RFIs, ICBA appreciates this effort.

### **Background**

The BCFP is authorized to supervise banks with more than \$10 billion in total assets,<sup>2</sup> as well as non-bank entities that engage in offering or providing consumer financial products or services, including non-banks that provide mortgage-related products, payday loans, and private student loans.<sup>3</sup> Although prudential regulators maintain consumer compliance examination authority over banks with less than \$10 billion in assets, the Bureau may still include its examiners on a

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<sup>1</sup> The Independent Community Bankers of America®, the nation's voice for nearly 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With nearly 52,000 locations nationwide, community banks employ 760,000 Americans, hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).

<sup>2</sup> 12 U.S.C. § 5515.

<sup>3</sup> 12 U.S.C. § 5514.

sampling basis at examinations of smaller banks to assess compliance with the requirements of Federal consumer financial law.<sup>4</sup> However, ICBA is currently unaware of any instance where the Bureau has exercised this authority for banks with less than \$10 billion in assets.

## ICBA Comments

### Executive Summary

A well-tailored examination can be minimally invasive while still helping the supervised entity to identify potential problems early and before they grow. To achieve this, ICBA recommends the following:

- add a fourth supervision principle – efficiency – achievable through increased collaboration and coordination with other regulators,
- increase pre-examination planning and communication in advance of on-site visits to reduce the likelihood of bank delays and confusion in providing information,
- tailor Information Requests to the supervised institution, based on the size, complexity and scope of activities of the institution being examined,
- analyze compliance management systems in a flexible manner, based on the size and complexity of the institution being examined,
- adjust communication practices to reduce redundant meetings and inquiries,
- rescind a 2016 BCFP proposal that would expand information sharing with agencies that have no jurisdiction over the supervised financial institution,
- submit formal notices of “no action” when a corrective measure is satisfactory, or in the alternative, a notice that sufficiently identifies the shortcomings of the corrective action,
- establish a minimum time frame between each onsite exam, such as no more often than every 18 months,
- increase the role of the Ombudsman in guiding supervised entities through the appeals process, and
- adopt post-examination surveys that banks can opt to complete.

### Supervision Principles

According to its Supervision and Examination Manual, the Bureau ascribes three principles to its supervision process: (1) consumer-focus; (2) data driven; and (3) consistency. Operating under its consumer-focus principle, the Bureau’s supervision hinges on an entity’s ability to detect, prevent, and correct practices that present a significant risk of causing consumer harm. The

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<sup>4</sup> 12 U.S.C. § 5516.

Bureau also heavily relies on analysis of available data about the activities of entities it supervises, the markets in which they operate, and risks to consumers posed by activities in these markets. Finally, the Bureau strives to maintain consistency by establishing the same procedures at all supervised entities.

Although these three principles provide a solid foundation for BCFP exams, ICBA recommends that a fourth principle be introduced: *efficiency*. Federally-insured depository institutions already must endure exams by multiple agencies, including safety and soundness exams and community reinvestment exams. Given the multitude of examinations, it is essential that each agency collaborate and coordinate with one another and conduct an exam that creates the least disruption possible. ICBA recommends that the Bureau add efficiency as a fourth principle, achievable through increased collaboration and coordination with other regulators.

### **Supervisory Process**

The Bureau explains that its supervisory process mainly comprises four stages: (1) pre-examination scoping, (2) the examination visit, (3) communication of conclusions and required corrective action, and (4) continued monitoring.

#### Pre-Examination Planning

The objective of pre-examination planning is to collect information necessary to determine the examination's scope, resource needs and work plan. As part of this process, the Bureau issues Information Requests (IRs) which are tailored lists of information and documents to be reviewed by the Bureau. While IRs are intended to set the scope of the exam, ICBA is aware of instances when the supervised bank does not receive enough guidance from the examination team prior to its onsite visit, creating delays and confusion when the request is made onsite. ICBA recommends increased pre-planning and communication in advance of the onsite visit to reduce the likelihood of delays and confusion.

Additionally, IRs are sometimes too expansive and inquire about activities or products that the supervised bank does not engage in or offer. The IRs seem to be generic and boilerplate-like. ICBA suggests that these requests be tailored to the supervised institution, based on its size, complexity and scope of activities.

#### Examination Visit

During an examination visit, BCFP examiners generally go onsite to observe, conduct interviews, and collect and review documents and information. The team will also draw conclusions about the entity's compliance management system (CMS). BCFP examiners review the CMS to evaluate a bank's adherence to consumer compliance requirements, intended to ensure that supervisory resources are appropriately focused on areas exhibiting risk of consumer harm.

ICBA advocates that the Bureau's CMS analysis be flexible, based on the size and complexity of the institution being examined, with reasonable expectations of compliance.

Also, during the examination visit, Bureau staff will interview and meet with the bank's management team and certain members of the staff on a periodic basis. This process sometimes results in fragmented and redundant questions, or instances where earlier efforts at communication would have reduced the time of Bureau staff onsite. ICBA urges the Bureau to adjust its practice so that the examination team keeps both the appropriate bank representative and examiners apprised of all communications.

#### Communication of Conclusions and Required Corrective Action

At the conclusion of the exam, Bureau staff will conduct an exit interview and compile the examination report. Occasionally, the Bureau will require the bank's board of directors to attend the exit meeting to discuss the examination and final report.

At the meeting, the Bureau will discuss examination findings, Matters Requiring Attention (MRAs), expected corrective actions, and any recommended enforcement actions. MRAs include specific expectations and the expected time frame for implementation, as well as the underlying findings and data that support the conclusions. MRAs are intended to be sufficiently detailed so as to present a compelling case.

MRAs also include "required corrective actions," which identify actions that the bank must pursue to ameliorate the deficiencies alleged in the MRA. Although banks attempt to comply in good faith with the corrective actions outlined in MRAs, the absence of a formal closure notice, such as a "no further action" notice, makes it difficult for banks to determine whether their corrective measures sufficiently address the identified deficiencies. A bank acting in good faith might be under the impression that they have complied with the corrective action, only to find out during the subsequent exam that the Bureau is not satisfied. This whipsaw effect is unfair. ICBA recommends that the Bureau submit a formal notice of "no action" when a corrective measure is satisfactory, or in the alternative, a notice that sufficiently identifies the shortcomings of the corrective action.

#### Continued Monitoring

The Bureau's Examination and Supervision Handbook describes the intervals between active examinations as "continued monitoring." Part of the Bureau's continued monitoring requires the use of a Supervision Plan, which is revised periodically for large depository institutions depending on the organization's risk profile. Among other things, the Supervision Plan contemplates the frequency by which BCFP will visit the supervised entity. The frequency of onsite visits hinges on the perceived risk of the entity.

While onsite visits are certainly burdensome, post-exam actions can be just as burdensome. These post-exam measures can reasonably take months to implement during the Bureau’s “continued monitoring” phase. Depending on whether the monitoring phase is short or long, banks can still be implementing changes from the previous exam just as the Bureau is starting the process for the subsequent exam. To minimize that burden, ICBA recommends that the Bureau establish a minimum time frame between each onsite exam, such as no more often than every 18 months.

### **Referral of Matters of Information to Other Agencies**

During the course of a routine examination, Bureau staff may come across information that they believe is indicative of an illegal practice, but which is outside the purview of the BCFP’s jurisdiction. The Bureau has statutory authority to share that information with the appropriate prudential, other Federal, or state regulator agencies that might have jurisdiction over the alleged violation.<sup>5</sup>

Under this authority, the Bureau proposed in August 2016 to greatly expand information sharing with agencies that have no jurisdiction over the subject financial institution.<sup>6</sup> The proposed rule also intended to give the Bureau discretion to disclose confidential information to entities other than federal or state agencies. In response, ICBA advocated that such an amendment would directly contravene statutory limits. ICBA reiterates its comments made in response to the 2016 proposal and asks the Bureau to take this opportunity to formally rescind the proposed amendments.

### **Increased Utilization of Appeals Process**

If a bank disagrees with its compliance ratings of three or worse, or if the bank disputes the underlying adverse findings of the final report, the bank can make a formal appeal. The process stipulates that the supervised bank has 30 business days to appeal an examination report.

Upon receipt of the appeal, the Bureau will appoint a committee composed of individuals that were not involved in the matter being appealed. Among other acts, the committee will review the supervised entity’s written appeal and hear an oral statement from the supervised entity, if

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<sup>5</sup> 12 U.S.C. § 5512(c)(6).

<sup>6</sup> 81 Fed. Reg. 58309 (Aug 24, 2016).

requested. According to a 2015 bulletin that set out the procedure, the committee will only consider the facts as dictated by the examination team.

Once the committee decides to affirm, modify or set aside the supervisory finding, it will submit its written recommendation to the Associate Director, who makes the final decision. No other opportunity for appeal currently exists beyond the Associate Director. However, even in the best designed appeals process, supervised entities will fear retribution if they appeal an examiner's findings. ICBA recommends the Ombudsman play more of a role in guiding supervised entities through the appeals process. The Ombudsman's role is intended to facilitate resolution of any process-related issues before an appeal is filed with the CFPB and will address process-related issues during the appeal.

Additionally, to identify potential issues of inconsistency among examination teams, ICBA recommends that the BCFP adopt post-examination surveys that banks can opt to complete. These surveys could help the central office keep examination teams accountable but could also be used by the Ombudsman to proactively identify areas or issues that should have been appealed but were not due to the fear of examiner reprisal.

## Conclusion

ICBA appreciates this opportunity to recommend ways for the Bureau to increase the efficiency and effectiveness of its supervision program. We are hopeful that these recommendations will aid the Bureau in its efforts. Should you have any questions or would like to discuss anything further, please do not hesitate to contact me at [michael.emancipator@icba.org](mailto:michael.emancipator@icba.org) or at 202-659-8111.

Sincerely,

/s/

Michael Emancipator  
Assistant Vice President and Regulatory Counsel