NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

May 18, 2018

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

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

Dear Sir or Madam:

I write as Superintendent of the New York State Department of Financial Services ("NYDFS") in response to the Consumer Financial Protection Bureau's Request for Information Regarding the Bureau's Supervision Program (the "Supervision Program"). I appreciate the opportunity to offer NYDFS's thoughts on this crucial and core tool of the Consumer Financial Protection Bureau (the "Bureau").

The NYDFS supervises approximately 3,800 institutions with assets of approximately $7 trillion, including state-chartered, domestic, and foreign banks operating in New York; U.S. and foreign insurance companies operating in New York; and licensed lenders, money transmitters, and other non-bank financial companies, some of which are also supervised by the Bureau. The NYDFS has worked cooperatively with the Bureau since its creation, including by coordinating examinations of institutions over which NYDFS and the Bureau share jurisdiction. Our partnership has shown the Bureau to be a leader in protecting financial markets and institutions and enforcing consumer financial laws.

I write to urge the Bureau to maintain its Supervision Program because it is an essential and important part of the Bureau's statutory mission of enforcing federal consumer financial laws. The Supervision Program is a principal means by which the Bureau ensures that the institutions subject to its jurisdiction have not violated federal law. Indeed, one of the Bureau's "primary functions," set forth in 12 U.S.C. § 5511(c), is "supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law". *Id.* at § 5511(c)(4). The Bureau is thus statutorily compelled to supervise the institutions subject to its jurisdiction.

The Bureau's Supervisory Program has not only been effective in identifying violations of federal consumer financial laws; it has also effectively provided guidance and instruction to institutions to help them proactively improve their internal compliance and control systems to avoid consumer harm and the business and regulatory risk that may result from it. The Supervisory Program gives the Bureau flexibility to rectify consumer compliance violations informally and/or confidentially, or by referral to the enforcement process when circumstances warrant. As a national regulator, the Bureau, acting through its Supervisory Program, has been an asset to financial institutions as well as co-regulators such as NYSDFS by setting certain benchmark expectations and standards by which financial institutions' compliance and control systems can be designed and measured.

Importantly, much of the Bureau's supervisory activities and powers did not originate with the Bureau, but were assumed from other federal regulatory bodies. The consumer protection-related supervisory powers of the Bureau as to its covered depository institutions "are largely the same or analogous" as those previously held by other federal regulators, including the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.[1] To impair or abandon the Bureau's Supervisory Program now would be to roll back federal supervisory procedures and practices that have protected customers of covered depository institutions for many decades.

In addition, while the Federal Trade Commission was formerly the primary federal regulator for non-depository institutions, the FTC "had little up-front supervisory" authority, and its powers were generally limited to "ex-post" enforcement.[2] By contrast, the Bureau's Supervision Program serves as a safety mechanism to prevent harm to non-depository institutions' customers before it occurs, and provides a flexible option for addressing consumer compliance failures short of public enforcement proceedings. Moreover, the extension of federal consumer financial supervision to non-depository institutions has helped level the playing field of regulation between depositories and non-depositories, resulting in increased fairness among financial institutions and equality of protection for their respective customers.

In short, the Supervisory Program enables the Bureau to efficiently carry out its statutory duty to supervise covered institutions' compliance with federal consumer financial laws. The Bureau's Supervisory Program is primarily a continuation and consolidation of supervisory powers and

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[1] David H. Carpenter, Cong. Research Serv., R42572, The Consumer Financial Protection Bureau (CFPB): A Legal Analysis (2014).
[2] *Id.*

practices previously held and exercised by other federal regulators as to covered depositories, and serves to equalize regulation and protection of covered non-depositories and their customers. Diminution of the Supervision Program may weaken, slow, or unnecessarily complicate the Bureau's important and leading role supervising compliance with federal consumer financial laws and protecting consumers in the financial marketplace. I urge the Bureau to maintain its robust Supervision Program.

Sincerely,

Maria T. Vullo
Superintendent
New York State Department of Financial Services