Statement of BancVue, Ltd.

Hearing on H.R. 3461, Financial Institutions Examination Fairness and Reform Act

Committee on Financial Services

United States House of Representatives

February 1, 2012

BancVue, Ltd. ("BancVue") is pleased to provide this statement in connection with the hearing on H.R. 3461, *Financial Institutions Examination Fairness and Reform Act*. BancVue supports community financial institutions and assists them in competing against large financial institutions by providing innovative products and services. For the reasons set forth below, BancVue strongly supports H.R. 3461 and encourages lawmakers to pass the legislation with two minor modifications.

Regulatory compliance continues to grow in complexity. However, lawmakers have long recognized the importance of consistency in the development and application of banking regulations. In fact, the *Federal Financial Institutions Examination Council Act of 1978* established the FFIEC to "prescribe uniform principles and standards for the Federal examination of financial institutions," "make recommendations to promote uniformity in the supervision" of financial institutions, and "promote consistency" in examinations.[1]

At BancVue, we support the compliance efforts of community financial institutions and want to assist them in meeting Federal regulatory requirements. Likewise, we believe that the Federal regulatory agencies strive to apply Federal regulatory requirements in an appropriate manner, and support their efforts to educate and cooperate with financial institutions regarding regulatory requirements. However, inconsistencies that have arisen in the application and enforcement of the Federal regulatory requirements have given rise to confusion, frustration, and counter-productivity for many financial institutions and examiners alike.

I. The Timeliness of Examination Reports provisions will improve the consistency and timeliness of the examination process.

While community financial institutions' experiences vary, the general view appears to be that examinations are continuing to get longer and less timely, with sometimes significantly extended time periods between the information request, the initial onsite visit, the conclusion of the onsite work, the exit interview and the completion of the final report. We believe that the requirements in the bill for an exit interview to be held within 9 months after commencement of the examination, and for the final examination report to be provided to the institution within 60 days

[1] Federal Financial Institutions Examination Council Act of 1978 § 1002, 12 U.S.C. § 3301 (1979).

after the later of the exit interview or the institution providing additional information, will improve the delays and timeliness issues that financial institutions are experiencing in examinations.

II. The establishment of the Office of Examination Ombudsman and Right to Appeal Before an Independent Administrative Law Judge will aid both regulatory agencies and financial institutions in understanding and applying the regulations in a consistent manner.

Over time, the regulatory requirements have become increasingly complicated and challenging to apply. Some complexities have arisen from the regulatory requirements themselves, while some have arisen from the inconsistent application and enforcement of the regulatory requirements between the agencies. For example, the Federal Reserve indicated in its Consumer Compliance Outlook publication that an overstated APR could result in a financial institution being required to redisclose its early Truth in Lending disclosure on mortgage loans.[2] However, after a considerable number of conversations with financial institutions, we have found no evidence that other agencies are applying the regulatory requirements in this manner.

Similarly, consistent application and enforcement of the regulatory requirements can become extremely difficult when one agency writes the rules but other agencies are required to enforce it. For example, there appeared to be significant variations in how the different agencies enforced the RESPA regulations written by HUD. Financial institutions that sought assistance in trying to comply with the RESPA rules were faced with the conundrum of getting advice from HUD, which did not examine them, or getting advice from their examining agency, in which case the response was often that the agency could not advise on another agency's regulation. The consolidation of the rulewriting responsibilities of consumer protection laws within the Consumer Financial Protection Bureau should simplify and streamline inconsistencies within the regulations. However, enforcement of the CFPB's rules by the primary regulatory agencies could cause considerable confusion about the proper interpretation and application of the regulatory requirements if efforts are not made to ensure consistency between the agencies.

Below are quotes from community financial institutions that have experienced difficulty with the application or enforcement of the regulatory requirements firsthand:

> "Our exam this past summer…was a dual exam between the Federal Reserve and the New York State Banking Department. The exam included Compliance, CRA and Fair Lending. The exam lasted 4-5 weeks (they came, left and then returned so the exact number of days is unclear) and the number of people ranged from 6-8. We had an excellent rating prior to this exam… The compliance examiners come in with unlimited budgets and correspondingly unlimited time to search our

[2] Ken Shim, *Mortgage Disclosure Improvement Act: Corrected Disclosure for an Overstated APR*, Federal Reserve Consumer Compliance Outlook (1st Quarter 2011).

files for errors that prove exactly what? That our people are guilty of clerical errors? As the forms become more numerous they are assured of finding more errors if only due to the size and complexity of the additional requirements. And it still comes back to the basic question of for what purpose? The cost has to be enormous in relation to what they could possibly find in our institution and thousands of similar institutions throughout the U.S." *Alden State Bank, Alden, NY*

"We have received examination criticism that was inconsistent with what prior examiners found, inconsistent with what was found in prior examinations by the same examining body, and inconsistent with guidance from our regulator. We did not attempt to get assistance from the senior exam staff at our regional agency office, appeal the findings, or get assistance from our ombudsman. The inconsistency of the examination has made it extremely difficult for us to understand what is expected of us and comply with the expectations of our examiner, [and] anticipate what will be considered to be noncompliant in upcoming examinations that was considered to be compliant in the past." *This institution has requested that we omit their name but has allowed us to provide it upon request.*

"We received a Document of Resolution (DOR) during our 2010 exam, requiring us to dramatically reduce activity in a portion of our business. While the issues cited were taken care of and outstanding concerns were far less when reviewed during our 2011 exam, the DOR remained in place, although with a slightly less severe outcome than the previous year. We specifically asked the examiners when the DOR would be lifted or what we need to do before it would be lifted. They replied that we couldn't get it lifted, that it will come down to the determination of the examiners to lift the DOR. There needs to be a framework in which a [financial institution] can prove they have remedied a situation to the point where the examiner has to lift the DOR, not simply go on the judgment of an examiner at some future point in time." *The institution has requested to remain anonymous.*

"My financial institution has not tried to appeal a decision from our regulator. The appeals process does not appear to us to be independent. The appeals process appears to be similar to being bullied in elementary school and your only appeal [is] to the bully's mother. As a result, we did not feel that it would help us resolve the dispute with our examiner…Typically in the past if the examiners found areas of concerns they would identify the area of concern and make suggestions on how to improve in these areas. Now, minor infractions are met with severe criticisms and or penalties…The exam process now seems to be totally adversarial…I am not opposed to a regulated financial system but the

players in our system need to work together to keep our system safe, sound and profitable. At this time one of the players in this system is not accountable to the others and this is creating problems that we will be a long time in overcoming unless we return to the sense of cooperation that we have had in the past." *The institution has requested to remain anonymous.*

Several financial institutions expressed a desire to comment but chose not to due to concerns about potential retaliation.

We strongly support Sections 3 and 4 of the bill because they should add an extremely important and often missing element of consistency between regulators in the examination process. Under the bill, the Office of Examination Ombudsman will be responsible for obtaining feedback from financial institutions about their examination experiences, investigating complaints about the examination process, conducting quality assurance of all examination types, processing certain supervisory appeals, and ensuring that examination procedures are consistent between the regulatory agencies. These critical responsibilities will help increase consistency within the examination process itself.

Further, the bill's appeals process for obtaining a hearing with an Administrative Law Judge provides an impartial, independent means for financial institutions to seek recourse for material examination issues, as well as a way for the Ombudsman to identify variations in how the agencies may be enforcing the regulations. This insight into potential enforcement inconsistencies, combined with the Ombudsman's responsibilities relating to consistent examination procedures, could provide an exceedingly effective means of improving consistency in the interpretation and application of the regulatory requirements.

III. BancVue Recommends Two Minor Clarifications to the Bill in Order to Strengthen its Effectiveness.

BancVue believes that H.R. 3461 will be very effective in improving the timeliness and consistency of the examination process. However, there are two clarifications that we believe will further improve the effectiveness of the proposed legislation.

a. Section 1014(d)(3) should be revised to require the Ombudsman to review all supervisory guidance, not just the examination procedures, of the Federal regulatory agencies.

While examination procedures are widely used when performing examinations, banking and credit union examiners also look to a variety of other agency guidance, such as:

- Interagency guidance;
- Supervisory guidelines; and
- Supervisory articles, bulletins and other publications.

As a result, inconsistencies can arise even when examination procedures are consistent between regulatory agencies. We recommend that the reference to examination procedures in Section 1014(d)(3) of the bill be modified to state that the Ombudsman shall "review examination procedures *and other supervisory material* of the Federal financial institutions regulatory agencies."

b. An additional provision should be added to Section 1015 to clarify that the Right to Appeal Before an Independent Administrative Law Judge is available without regard to whether a financial institution has utilized its regulator's intra-agency appeals process.

We interpret H.R. 3461 to provide financial institutions with the right to appeal all material supervisory determinations that are included in a final examination report, regardless if the institution sought relief through its primary Federal regulator's intra-agency appellate process. We do not encourage financial institutions to seeking relief through multiple channels in order to get a result that they desire. However, we are concerned that any administrative procedures that will be developed to implement the bill's right to appeal before an independent Administrative Law Judge could require a financial institution to meet additional requirements before exercising its right, such as seeking recourse with its primary Federal regulator before seeking relief through the appeals process. In order to reduce the risk that this important right to appeal will be inadvertently hampered when it is implemented, we recommend that a statement be added to Section 1015 indicating that a financial institution is not required to seek relief from its Federal regulatory agency prior to requesting a hearing with an Administrative Law Judge.

Thank you for the opportunity to express our support for H.R. 3461 and voice the experiences of some of the community financial institutions that we serve. We believe that the bill will be extremely effective in improving the examination experience as well as the consistency with which the Federal regulatory requirements are interpreted, applied, and enforced. Such consistency will provide financial institutions and examiners with more clarity, thereby improving examiners' ability to understand and communicate regulatory requirements and financial institutions' ability to meet them.