



February 8, 2024

**Via Electronic Mail**

Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429  
Attention: James P. Sheesley, Assistant Executive Secretary

**Re: RIN 3064-AF94: Comments to Proposed Corporate Governance and Risk Management Guidelines for Covered Institutions with Total Consolidated Assets of \$10 Billion or More**

Ladies and Gentlemen:

Washington Federal Bank, dba WaFd Bank ("WaFd") appreciates the opportunity to comment on the notice of proposed rulemaking and issuance of guidelines for establishing standards for corporate governance and risk management for covered institutions with total consolidated assets of \$10 billion or more (the "Proposed Guidelines") published by the Federal Deposit Insurance Corporation (the "FDIC").

WaFd is a Washington state chartered, non-member commercial bank headquartered in Seattle, Washington. WaFd currently holds approximately \$22.6 billion in assets and operates in eight western states. WaFd's primary federal regulator is the FDIC and its state regulator is the Washington Department of Financial Institutions. WaFd is wholly owned by WaFd, Inc., a public company listed on the Nasdaq stock exchange and regulated by the Board of Governors of the Federal Reserve ("FRB").

WaFd is also a member of the Mid-Size Bank Coalition of America (the "MBCA"), which is a non-partisan financial and economic policy organization consisting of more than 100 banks with total assets between \$10 billion to \$100 billion. We understand that the MBCA is submitting a separate, comprehensive comment letter on the Proposal, and we fully support the positions and points taken by the MBCA in its letter.

WaFd believes in strong corporate governance and risk management practices, both of which are critical in promoting safety and soundness in the banking industry. However, for the following reasons we believe the Proposed Guidelines are flawed and will serve to weaken the corporate governance and risk management practices of banks:

- **The Proposed Guidelines are overly prescriptive and should be modified to a more principles-based approach.** As a whole, the Proposed Guidelines are extremely detailed and prescriptive which would undermine a board's ability to tailor its governance and risk management practices based on the size, complexity and nature of the institution. Further, the one size fits all approach inherent in the Proposed Guidelines would impose "check the box" requirements that would not necessarily contribute to effective governance or risk management. We believe the FDIC should



revise the Proposed Guidelines to take a more principles-based approach like the standards adopted by the FRB and Office of the Comptroller of the Currency (the "OCC").

- **The Proposed Guidelines force the board into the role of management.** The Proposed Guidelines impose managerial duties on the board by requiring it to "ensure," "establish," and "confirm" various items that are more appropriately handled by management. Requiring the board to actively participate in bank management blurs the distinction between the board's oversight role and management's responsibility for the day-to-day operations of the institution.
- **The Proposed Guidelines potentially conflict with existing state laws.** The Proposed Guidelines state that directors should consider "the interests of all its stakeholders, including shareholders, depositors, creditors, customers, regulators, and the public." This directive potentially creates conflicting obligations for directors under well-established corporate standards and state laws which generally focus on the prioritization of the corporation and long-term value for shareholders. In addition, it is difficult to comprehend how a board is expected to define the need to consider the interests of "the public" and balance that with its existing fiduciary obligations. If adopted, the conflicts created by the Proposed Guidelines would create heightened litigation risk and are likely to reduce the pool of qualified, willing applicants for bank directorships due to the increased liability exposure.
- **The reporting requirements in the Proposed Guidelines are vague and could destroy the attorney-client privilege.** The Proposed Guidelines require that "known or suspected" violations of law or regulation be promptly reported to law enforcement and federal and state agencies. This requirement is unclear in that it does not define the scope or materiality of the violation at issue. In addition, this requirement could potentially interfere with an institution's ability to conduct internal investigations or work with outside advisors or counsel in conducting privileged investigations. Further, other than bank agencies, required reporting to authorities may not be subject to confidentiality standards, which could result in the loss of the attorney-client privilege.
- **The independent director requirement is unprecedented and does not align with long-standing practices.** The Proposed Guidelines require a majority independent board but as written, an independent director on a bank's holding company's board would not necessarily be considered an independent director of the bank's board. This is a novel approach and does not align with the common practice of having a total overlap of directors of a holding company and a bank. It is also contrary to the OCC's guidelines which treat an independent holding company director as independent for the bank.
- **The "dominant policymaker" provisions are unclear.** The Proposed Guidelines caution against a board being influenced by a "dominant policymaker." Although the term "dominant policymaker" may make sense for a privately held or family-controlled company, its application to a non-member bank whose parent is publicly traded risks creating confusion.
- **The \$10 billion threshold for the Proposed Guidelines is too low.** The Proposed Guidelines would apply to banks with \$10 billion or more in total consolidated assets. This is much lower than the



OCC and FRB thresholds which are \$50 billion and \$100 billion, respectively. Again, setting such a low threshold implies a one size fits all approach is appropriate and fails to account for an institution's need to tailor its governance and risk management practices to align with the size, complexity, nature, and scope of its activities. It also does not account for the significant compliance burdens that would be imposed on smaller institutions, which would be expected to meet the same requirements as much larger banks.

- **The timeline for complying with the Proposed Guidelines is unreasonable.** If implemented, the Proposed Guidelines would be effective immediately, leaving covered banks no time to transition to the new requirements. Given the substantial burdens that would be imposed by the Proposed Guidelines, covered banks should be given at least two years to comply with the new regulation.

WaFd appreciates the opportunity to comment on the Proposed Guidelines and we hope that our comments will be considered.

Respectfully Submitted,

/s/

Brent J. Beardall, President and Chief Executive Officer