

January 4, 2020

Chief Counsel's Office
Attention: Comment Processing
Re: Docket ID OCC-2020-0005
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Ann Misback, Secretary
Re: Docket No. R-1725 and RIN No. 7100-AF96
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attention: Comments
Re: RIN 3064-AF32
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Melane Conyers-Ausbrooks, Secretary of the Board
National Credit Union Administration
Re: Docket ID NCUA-[2020-0098]
1775 Duke Street
Alexandria, VA 22314

Comment Intake
Bureau of Consumer Financial Protection
Re: Docket No. CFPB-2020-0033, RIN 3170-AB02
1700 G Street NW
Washington, DC 20552

Re: Role of Supervisory Guidance

To Whom It May Concern:

The American Financial Services Association (AFSA)¹ welcomes the opportunity to write in support of the Office of the Comptroller of the Currency's, Federal Reserve System's, Federal Deposit Insurance Corporation's, National Credit Union Administration's, and the Bureau of Consumer Financial Protection's (collectively, the "Agencies") notice of proposed rulemaking (Proposed Rule) to codify the "Interagency Statement Clarifying the Role of Supervisory Guidance" issued by the Agencies on September 11, 2018 (2018 Statement).²

AFSA appreciates that the Agencies followed established law and stated that "unlike a law or regulation, supervisory guidance does not have the force and effect of law."³ At the same time, AFSA supports the Agencies' use of supervisory guidance to provide clarity to their respective supervised institutions regarding appropriate practices under federal consumer financial law.

In the 2018 Statement, the Agencies outlined their general approach to the role of supervisory guidance. Supervisory guidance is issued in the form of (but not limited to) interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions.

¹ Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

² 85 Fed. Reg. 70512.

³ FDIC Financial Institution Letter 49-2018, "Interagency Statement Clarifying the Role of Supervisory Guidance," Sept. 17, 2018. Available at: <https://www.fdic.gov/news/financial-institution-letters/2018/fil18049.pdf>.

We commend the Agencies for clarifying the term “criticize” to include “agencies issuing matters requiring immediate attention (MRA) and other supervisory criticisms, including those communicated through matters requiring board attention, documents of resolution, and supervisory recommendations.”⁴ However, we urge the Agencies to amend the Proposed Rule to include enforcement actions in the category of supervisory guidance.

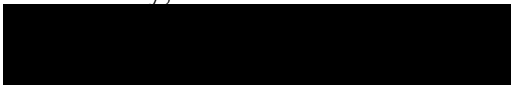
We agree with the Agencies’ clarification that they will not base supervisory criticisms on, nor will enforcement actions be issued because of, a “violation of” or “non-compliance with” supervisory guidance.

In addition, we agree with the Agencies “that supervisory criticism should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions,”⁵ as codified in the Proposed Rule. In the event an examiner issues supervisory criticism toward a financial institution, we respectfully request the action be directed privately with the regulated entity, as opposed to publicly.

We thank the Agencies for promulgating this rulemaking and their emphasis on the appropriate use of guidance in the supervisory process. Considering the significant amount of time public notice has been provided for the 2018 Statement and the subsequent petition, we urge the Agencies to finalize the proposed rule as soon as practicable to bind future rulemaking to the 2018 Statement.

Please contact me by phone, 202-776-7300, or email, cwinslow@afsamail.org, with any questions.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association

⁴ 85 Fed. Reg. 70519.

⁵ 85 Fed. Reg. 70515.