BOARD OF GOVERNORS

OF THE

FEDERAL RESERVE SYSTEM

WASHINGTON, D.C. 20551

DIVISION OF SUPERVISION AND REGULATION

DIVISION OF CONSUMER AND COMMUNITY AFFAIRS

LEGAL DIVISION

SR 18-5

CA 18-7

September 12, 2018

**TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK**

SUBJECT: Interagency Statement Clarifying the Role of Supervisory Guidance

Applicability: This guidance applies to all institutions supervised by the Federal Reserve, including those with $10 billion or less in consolidated assets.

In response to recent inquiries suggesting that the differences between supervisory guidance and laws and regulations may be unclear, the Board of Governors of the Federal Reserve System and four other federal agencies[1] are issuing the attached statement to explain the role of supervisory guidance and to describe the agencies' approach to using guidance in their supervision of regulated institutions.

The attached statement explains that, unlike a law or regulation, supervisory guidance does not have the force and effect of law and that the agencies do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. During examinations and other supervisory activities, examiners may identify unsafe or unsound practices or other deficiencies in risk management, including compliance risk management, or other areas that do not constitute violations of law or regulation. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and

[1] The other federal agencies joining the Board of Governors of the Federal Reserve System in issuing the attached statement are the Bureau of Consumer Financial Protection, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency.

risk management practices, and other actions for addressing compliance with laws or regulations. Please refer to the statement itself for more specific details.

Reserve Banks are asked to distribute this letter to the supervised organizations in their districts and to appropriate supervisory staff. Questions regarding this letter should be directed to the following individuals:

- Division of Supervision and Regulation: Virginia Gibbs, Manager, Policy Implementation, at (202) 452-2521; or David Palmer, Senior Supervisory Financial Analyst, Risk and Surveillance, at (202) 452-2904.
- Division of Consumer and Community Affairs: Dana Miller, Acting Managing Counsel, at (202) 452-2751.
- Legal Division: Will Giles, Special Counsel, at (202) 452-3351.

In addition, institutions may send questions via the Board's public website.[2]

Michael S. Gibson	Eric S. Belsky	Mark E. Van Der Weide
Director	Director	General Counsel
Division of Supervision and Regulation	Division of Consumer and Community Affairs	Legal Division

Attachments:

- "Interagency Statement Clarifying the Role of Supervisory Guidance"

[2] See http://www.federalreserve.gov/apps/contactus/feedback.aspx

September 11, 2018

Interagency Statement Clarifying the Role of Supervisory Guidance

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency (together, the "prudential agencies") are responsible for promoting safety and soundness and effective consumer compliance at supervised institutions. The Bureau of Consumer Financial Protection ("Bureau," and, with the prudential agencies, the "agencies") is generally responsible for regulating the offering and provision of consumer financial products or services under the federal consumer financial laws. The agencies are issuing this statement to explain the role of supervisory guidance and to describe the agencies' approach to supervisory guidance.

Difference between supervisory guidance and laws or regulations

The agencies issue various types of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions, to their respective supervised institutions. A law or regulation has the force and effect of law.[1] Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that the agencies generally consider consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing agency efforts to clarify the role of supervisory guidance

The agencies are clarifying the following policies and practices related to supervisory guidance:

- The agencies intend to limit the use of numerical thresholds or other "bright-lines" in describing expectations in supervisory guidance. Where numerical thresholds are used, the agencies intend to clarify that the thresholds are exemplary only and not suggestive of requirements. The agencies will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.

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[1] Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.

- Examiners will not criticize a supervised financial institution for a “violation” of supervisory guidance. Rather, any citations will be for violations of law, regulation, or non-compliance with enforcement orders or other enforceable conditions. During examinations and other supervisory activities, examiners may identify unsafe or unsound practices or other deficiencies in risk management, including compliance risk management, or other areas that do not constitute violations of law or regulation. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

- The agencies also have at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the agencies to improve their understanding of an issue, to gather information on institutions’ risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.

- The agencies will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

- The agencies will continue efforts to make the role of supervisory guidance clear in their communications to examiners and to supervised financial institutions, and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.