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December 23, 2020

Chief Counsel's Office
Attn: Comment Processing
Office of Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Email: regs.comments@occ.treas.gov
Docket ID OCC-2020-0005

Ann Misback, Secretary
Federal Reserve System
20th Street & Constitution Ave. NW
Washington, DC 20551
Email: regs.comments@federalreserve.gov
Docket No. R-1725 and RIN 7100-AF96

Robert E. Feldman, Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Email: comments@fdic.gov
RIN 3064-AF32

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552
Email: 2020-NPRM-SupervisoryGuidance@cfpb.gov
Docket No. CFPB-2020-0033

Re: Role of Supervisory Guidance Notice of Proposed Rulemaking

Dear Madam or Sir:

The Iowa Bankers Association (IBA) is a trade association representing 98 percent of the approximately 300 state- and national-chartered banks and federal thrifts operating in the state of Iowa. The IBA submits this letter to the Agencies in response to Notice of Proposed Rulemaking related to the Role of Supervisory Guidance. We thank the Agencies for the opportunity to express our support of the codification of the 2018 Interagency Statement Clarifying the Role of Supervisory Guidance.

The Agencies issued the Interagency Statement Clarifying the Role of Supervisory Guidance on September 11, 2018 (2018 Statement) to explain the role of supervisory guidance and describe the Agencies' approach to supervisory guidance. The 2018 Statement reaffirms the Agencies' understanding that supervisory guidance does not create binding, enforceable legal obligations and describes the appropriate use of supervisory guidance by the Agencies.

This proposal would codify the 2018 Statement, with clarifying changes, as an appendix to the proposed rule text and would supersede the 2018 Statement. The Agencies reiterate in the proposal that examiners will not base supervisory criticisms on a "violation" of or "noncompliance with" supervisory guidance. The Agencies note however, that 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 reiterate that they will not issue an enforcement action on the basis of a "violation" of or "non-compliance" with supervisory guidance. The proposal would provide that the proposed Statement is binding on each respective supervisory agency.

IBA members generally support the proposed Statement and offer the following in response to the Agencies' request for comments:

- The Agencies ask if the proposed Statement sufficiently and clearly details the types of agency communications that constitute supervisory guidance.

IBA members generally agree the proposed Statement clearly differentiates between supervisory guidance and laws or regulations in Appendix A, going so far as to provide several examples of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions. Our members do suggest however, the Agencies further clarify these are illustrative examples only and that supervisory guidance is not limited to the examples provided in the proposed Statement. Doing so will alleviate any future confusion as to whether a new issuance by the Agencies constitutes "supervisory guidance" – such as the Bureau's recent issuance of several "compliance aids." Emphasis should be added that regardless of the title given to the supervisory guidance, it does not carry the force and effect of a statute passed by Congress or a regulation that generally is effective only after it is proposed to the public, the Agencies responds to comments on the proposal, and a final rulemaking document is issued.

- The Agencies also ask if examiners should reference 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 when criticizing (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, supervisory recommendations, or otherwise) a supervised financial institution.

The proposed Statement declares that examiners will not criticize (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations) a supervised financial institution for, and the Agencies will not issue an enforcement action on the basis of, a "violation" of or "non-compliance" with supervisory guidance. In the next statement however, the proposed Statement provides that 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.

IBA members believe supervisory criticisms should be specific and that matters requiring attention, memoranda of understanding and any other formal written mandates or sanctions should be based only on a violation of a statute or regulation. Our members find the proposed statements noted above to be somewhat contradictory: first stating written supervisory formal actions will not be based upon non-compliance with supervisory guidance but then providing in the very next sentence, supervisory guidance may be referenced in writing within such formal actions by examiners to provide examples of appropriate conduct, risk management practices, etc. Our members are concerned such ambiguity will be interpreted by Agency examiners as permission to indicate best practices identified in supervisory guidance as mandated action items to resolve a violation of statute or regulation or as the basis for violation of statute or regulation when the actual statute or regulation is not clear. This concern is further augmented by a statement in the preamble to the proposed Statement noting the Agencies have different supervisory processes, including for issuing supervisory criticisms and are not proposing revisions to their respective supervisory practices relating to supervisory criticisms. Thus, the ambiguity could lead to inconsistent application of supervisory guidance across the Agencies.

IBA members believe the appropriate time to reference supervisory guidance is NOT in written formal actions with financial institutions but instead when institutions seek input on matters covered by the supervisory guidance document. It would also be appropriate to discuss supervisory guidance during the pre-exam process, while examiners are onsite during the course of an exam or even as a discussion item during exam exit meetings. As stated in the preamble discussion, the objective of supervisory guidance is to outline *general supervisory expectations or priorities* and articulate *general views* regarding appropriate practices for a given subject area. When

guidance is memorialized in written formal guidance, it is given the appearance of having the same regulatory weight as the law or regulation itself. It is important to remember, supervisory guidance is general in nature; not specific to each bank's geography, systems, products, controls or risk tolerance. It would seem if the supervisory guidance is referenced in written formal actions, it failed to meet the agencies' over-riding objectives to outline *general* supervisory expectations or priorities and articulate *general views* regarding appropriate practices and instead becomes a mandate to resolve matters requiring written formal actions.

Finally, the Agencies also note in the Appendix their intent to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward. IBA members further request the Agencies memorialize their intent to review existing guidance on the same topic PRIOR to issuing new guidance and when appropriate, rescind outdated guidance.

In summary, IBA members appreciate the Agencies' efforts to clarify the role of supervisory guidance in their communications with examiners as well as supervised financial institutions. Supervisory guidance plays an important role in clarifying the application of complex laws and regulations, many of which have not kept pace with technological advances made in the financial services industry. However, such guidance should never supersede or expand the scope, purpose or requirements of laws or regulations which have been carefully vetted by industry stakeholders through the formal rule-making process.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronette Schlatter".

Ronette Schlatter, CRCM
Senior Compliance Analysts III
Iowa Bankers Association
rschlatter@iowabankers.com