

RESCINDED

OCC Bulletin 2020-93| October 29, 2020

Role of Supervisory Guidance: Notice of Proposed Rulemaking

Replaced: See OCC 2021-8

Summary

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, and the National Credit Union Administration (collectively, the agencies) today approved a proposed rule that would codify the “Interagency Statement Clarifying the Role of Supervisory Guidance” issued by the agencies on September 11, 2018 (2018 statement). The 2018 statement confirmed that supervisory guidance does not create binding legal obligations for the public. The proposal would also provide that the 2018 statement, as amended, is binding on the agencies.

The comment period for the proposed rule ends on 60 days after its publication in the *Federal Register*.

Note for Community Banks

This proposed rule applies to the supervision of all OCC-supervised banks.¹

Highlights

In the proposal, the 2018 statement, as amended, would

- recognize well-settled administrative law by reaffirming that supervisory guidance, unlike statutes and regulations, does not have the force and effect of law.
- reiterate that examiners will not base supervisory criticisms on a “violation” of or “non-compliance” with supervisory guidance.

To

Chief Executive Officers of All National Banks, Federal Savings Associations, and Federal Branches and Agencies; Department and Division Heads; All Examining Personnel; and Other Interested Parties

- reaffirm that the agencies do not take enforcement actions on the basis of a “violation” of, or “non-compliance” with, supervisory guidance.
- explain that supervisory guidance can outline the agencies’ supervisory expectations or priorities and articulate the agencies’ general views regarding appropriate practices for a given subject area.
- provide that the agencies intend to limit the use of numerical thresholds or other “bright-lines” in supervisory guidance.
- make clear that supervisory criticisms should 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.

Further Information

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Related Link

- [“Role of Supervisory Guidance: Notice of Proposed Rulemaking” \(PDF\)](#)

¹ “Banks” refers to national banks, federal savings associations, and federal branches and agencies of foreign banking organizations.