

Congress of the United States
House of Representatives

Washington, DC 20515

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HEALTH AND TECHNOLOGY

June 13, 2018

The Honorable Randal K. Quarles
Vice Chairman for Supervision
Federal Reserve Board of Governors
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Dear Vice Chairman Quarles:

I am writing with respect to the enforcement of agency guidance pursuant to the Congressional Review Act.

During your April 17th appearance before the House Financial Services Committee, I expressed my concerns that guidance was being treated by examiners as creating binding obligations on the institutions they supervise. I raised the issue because I frequently hear from banks that guidance is treated as though it were a rule, a process that has been referred to as “regulation by enforcement.” You responded by acknowledging that “in some instances, the practices of the banking regulators have blurred the role between guidance and rules.” You also expressed a desire to make sure that guidance is restored to its proper place and that it “doesn’t supplant the rulemaking process.”¹ In order to ensure that guidance is appropriately treated as guidance, I am writing to request that the Federal Reserve take several distinct actions.

First, the Federal Reserve should issue and publish a clear statement affirming that agency statements – for example, guidance documents, supervisory letters or examination manuals – that have not gone through notice and comment rulemaking do not establish binding legal standards, and thus shall not be the basis of enforcement actions or supervisory directives, such as the issuance of “Matters Requiring Attention” or “Matters Requiring Immediate Attention”². The statement should also clarify that any failure to adhere to guidance shall not, directly or indirectly,³ form the basis of any other adverse supervisory determinations, such as ratings downgrades. The Federal Reserve should also establish a standard practice by which similar clarifying language addressing each of these points is included in any subsequently issued guidance.

Finally, the Federal Reserve should undertake dedicated efforts to ensure that examiners are appropriately educated about the use and role of guidance; and held accountable when guidance

¹ <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403293>

² Recent examples of similar agency statements to this effect: <https://www.justice.gov/opa/press-release/file/1012271/download>; and <https://www.justice.gov/file/1028756/download>

³ This should include instances where an examiner purports that a determination is based on “safety and soundness,” with safe and sound practice equating with compliance with agency guidance.

is applied inappropriately. Taking these steps will help to ensure that the law is observed in practice, and that regulated entities are aware of their rights and responsibilities, without having to wonder whether the line between guidance and rule remains blurred.

Over the years, a significant number of agency guidance, handbooks and circulars have been issued. Almost none has been withdrawn or rescinded; similarly, almost none went through notice and comment rulemaking or was submitted to the Congress pursuant to the Congressional Review Act. Greater clarity around the appropriate use and interpretation of such guidance is of the utmost importance. I urge you to make it a priority and implement these recommendations in the most expedient manner possible.

I thank you for your consideration and look forward to prompt action on this matter.

Sincerely,



Blaine Luetkemeyer
Chairman

Subcommittee on Financial Institutions and Consumer Credit
House Financial Services Committee