

**Congress of the United States**  
**Washington, DC 20515**

January 18, 2019

The Honorable Joseph M. Otting  
Comptroller  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW  
Washington, D.C. 20219

Dear Comptroller Otting:

I am writing in regard to your recent Interagency Statement Clarifying the Role of Supervisory Guidance, issued September 11, 2018. As you know, I have been very interested in this topic and appreciate the prudential agencies' willingness to articulate the proper role of supervisory guidance. The statement makes several important clarifications that have the potential to alleviate the burden on financial institutions, make supervision more consistent, and end the process of "regulation by enforcement."

One of the most important declarations in the statement is that "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." While the statement makes clear the proper use of guidance, I have been concerned by reports that examiners continue to issue MRAs and other supervisory directives based off guidance documents, and that some matters requiring attention (MRAs) issued prior to the Interagency Statement may remain in place despite having been issued based on agency guidance.

While I appreciate your attentiveness and efforts related to this issue, I feel that there is still more to be done to effectuate true change consistent with your stated intent. To that end, I would encourage the agencies to engage in a formal rulemaking process to adopt the principles of the Interagency Statement as formal regulation. As part of that rulemaking process, you should make clear that any enforcement action or MRA must be based on violation of a statute, regulation or order. This clarity will help ensure that banks and examiners clearly understand what constitutes the grounds for enforcement actions, and what does not. To stop short of actual rule making would only encourage further regulation by "staff preference" — whereby the staff attempts to expand or stretch the actual text of the statute or rule so as to make the meaning fit what the staff believes the text *should* say, as opposed to what the words actually *do* say. Only by adhering to the actual text can Congress be assured that its intent is being followed through direct statutory application, or through notice and comment rulemaking authorized under the Administrative Procedure Act.

Taking these important steps will help ensure that the Interagency Statement, as well as the laws and regulations impacting financial institutions, are enforced consistently across institutions. The

financial system will benefit as institutions return their compliance focus to matters affecting safety and soundness.

Sincerely,

A handwritten signature in blue ink, appearing to read "Blaine Luetkemeyer", with a long horizontal stroke extending to the right.

Blaine Luetkemeyer  
Member of Congress