

Corporate Governance Update

DECEMBER 2020

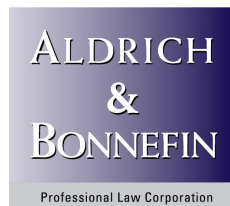
NEW INTERAGENCY PROPOSAL SEEKS PUBLIC COMMENT ON ROLE OF SUPERVISORY GUIDANCE

Recently, the CFPB, FDIC, FRB, NCUA and OCC (Agencies) jointly issued a notice of proposed rulemaking (NPR) which seeks public comment on the role of supervisory guidance in regulatory oversight. 85 FR 70512.

Specifically, the NPR seeks public comment on a proposed rule that would codify the September 2018 “Interagency Statement Clarifying the Role of Supervisory Guidance” (2018 Statement). The 2018 Statement provided that, unlike a law or regulation, supervisory guidance does not have the force and effect of law. As such, supervisory guidance does not create binding legal obligations for the public. The proposal would also clarify that the 2018 Statement is binding on the Agencies.

The proposal includes some additional clarifying amendments that would be incorporated as addenda to the 2018 Statement if it is codified. These amendments state 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. However, the Agencies have reiterated in the proposal that if the 2018 Statement is codified they will not issue an enforcement action on the basis of a “violation” of or “non-compliance” with supervisory guidance.

Public comments on the NPR are due by January 4, 2021.



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