



TO: NCUA Board

DATE: October 20, 2020

FROM: Office of General Counsel
Office of Examination and Insurance

SUBJ: Proposed Rule – Role of
Supervisory Guidance

ACTION REQUESTED: Board approval by to issue the attached proposed rule for publication in the *Federal Register* with a 60-day comment period.

DATE ACTION REQUESTED: October 28, 2020.

OTHER OFFICES CONSULTED: None.

VIEWS OF OTHER OFFICES CONSULTED: N/A.

BUDGET IMPACT, IF ANY: None.

SUBMITTED TO INSPECTOR GENERAL FOR REVIEW: Yes.

RESPONSIBLE STAFF MEMBERS: Ian Marenga, Associate General Counsel, and Marvin Shaw, Staff Attorney, Office of General Counsel; Scott Neat, Associate Director, and Naghi Khaled, Policy Officer, Office of Examination and Insurance.

SUMMARY: The proposed rule is a joint interagency rulemaking among the NCUA Board, the Board of Governors of the Federal Reserve, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. The proposed rule would codify the Interagency Statement Clarifying the Role of Supervisory Guidance issued by the agencies on September 11, 2018 (2018 Statement). By codifying the 2018 Statement, the proposed rule is intended to confirm that the agencies will continue to follow and respect the limits of administrative law in carrying out their supervisory responsibilities. The 2018 Statement reiterated well-established law by stating that, unlike a law or regulation, supervisory guidance does not have the force and effect of law. Therefore, supervisory guidance does not create binding legal obligations for the public. The proposed rule would also clarify that the 2018 Statement, as amended, is binding on the agencies.

RECOMMENDED ACTION: Board approval of the attached proposed rule.

ATTACHMENT: Proposed rule.