"If it Walks Like a Duck . . .": The Demise of the Guidance Masquerade

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Recent determinations by the U.S. Government Accountability Office bring into question the validity of banking agencies' approach to "guidance" and are likely to have a chilling effect on the issuance of new guidance in the future. The authors of this article discuss the issue and implications.

The year 2017 may be when the pendulum reached the outer limits of expansion of regulation in financial services. For years now, the federal bank regulatory agencies have been promulgating rules and regulations masquerading as "guidance,"[1] thereby bypassing the safeguards of the Administrative Procedures Act[2] ("APA") and the Congressional Review Act ("CRA").[3] Such guidance has not generally been vetted through the rulemaking process yet is treated as if it had the force of regulation. Accordingly, guidance has not been subject to public comment, has not been measured against the same cost-benefit analysis required of rules and has escaped the potential for invalidation.

The pace at which banking agencies are issuing guidance increased considerably since the economic downturn. There have been well over 20 significant pieces of interagency guidance issued just since 2010, including those covering appraisal and evaluations, concentration risk, interest rate risk management and troubled debt restructurings. This does not even include the stand-alone "guidance" that agencies unilaterally issue in the form of financial institution letters (FDIC), bulletins (OCC and CFPB), and supervision and regulation letters (Federal Reserve).

Recent determinations by the U.S. Government Accountability Office (the "GAO") bring into question the validity of the agencies' approach to

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[1] We recognize that sometimes guidance is helpful and has even been requested by industry participants. Nonetheless, the volume and type of "guidance" issued over the past decade would be improved were it to receive the benefit of public comment or other procedural safeguards.

[2] 5 U.S.C. § 551 *et seq.*

[3] 5 U.S.C. § 801 *et seq*. The primary federal bank regulatory agencies include the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Federal Reserve"), and the Consumer Financial Protection Bureau ("CFPB").

"guidance" and are likely to have a chilling effect on the issuance of new guidance in the future. Instead, it is likely that new efforts to issue guidance will now need to go through more exacting standards for adoption. Thus, every Federal Reserve Supervision and Regulation Letter, FDIC Financial Institution Letter, OCC Banking Circular, CFPB Bulletin and even issuances such as examination manuals, as well as every rule, policy statement and guidance document, no matter how labeled, issued by any agency, may now be held to higher procedural standards.

APA AND CRA

Enacted in 1946, the APA governs the process by which federal agencies may propose and establish new regulations. Importantly, the APA guarantees the public an opportunity to participate in the rulemaking process. Subject to some exceptions, each agency is required to give public notice of substantive rules that it proposes to adopt and to grant interested parties an opportunity to comment.[4] The agencies are then to consider such input in designing regulations. In our government of checks and balances, the public's right to comment on proposed regulation is a significant protection.

However, the APA exempts certain types of agency pronouncements from the notice and comment requirements, including "interpretive rules" and "general statements of policy."[5] Courts have distinguished those two categories of rules by looking to whether a rule: (1) imposes any rights and obligations, and (2) genuinely leaves the agency and its decision-makers free to exercise discretion.[6] While it could be argued that some guidance is intended to have binding effect on agency discretion or severely restrict it, most guidance will generally not be subject to the APA rulemaking requirements. This is where the CRA comes in.

Enacted in 1996, the CRA requires all federal agencies, including independent regulatory agencies, to report to the GAO and Congress on new rules before they can become effective.[7] In addition to a summary of the proposed

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[4] 5 U.S.C. § 553.

[5] 5 U.S.C. § 553(b).

[6] *Texas v. United States*, 809 F.3d 134, 171 (5th Cir. 2015) (citations omitted). *See also GE v. EPA*, 290 F.3d 377, 382–83 (D.C. Cir. 2002) ("If a document expresses a change in substantive law or policy (that is not an interpretation) which the agency intends to make binding, or administers with binding effect, the agency may not rely upon the statutory exemption for policy statements, but must observe the APA's legislative rulemaking procedures.") (citation omitted).

[7] 5 U.S.C. § 801(a)(1)(A).

rule, the CRA requires an agency to submit a cost-benefit analysis of the rule and information relevant to specific procedural steps that the agency must follow.[8] Subsequently, Congress has 60 legislative session days from the "submission or publication date" of the rule to introduce a joint resolution of disapproval that, if passed by both houses of Congress and signed by the President (or passed by a two-thirds majority in both houses to overcome a presidential veto), overturns the rule.[9] The CRA establishes an expedited process by which a joint resolution of disapproval cannot be filibustered in the Senate and can be passed by the Senate by a simple majority vote.[10]

The threshold question for whether an agency action is subject to the CRA is whether the action is a "rule." The CRA adopts the APA's broad definition of rule, which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."[11] The CRA excludes certain types of rules from its coverage, such as those related to management of the agency itself but, unlike the APA, does not exclude interpretive rules and statements of policy.[12]

Thus, the CRA has much broader application when it comes to agency guidance, because guidance that is not subject to the APA notice and comment requirements will still be subject to the CRA congressional review requirements. The GAO has emphasized the CRA's important role as the APA's gap-filler in two recent decisions issued with respect to banking agency "guidance" documents. These decisions are discussed below.

THE PENDULUM SWINGS BACK

GAO Determinations

The foreshock for recent events started on March 22, 2013, when the OCC, Federal Reserve, and FDIC jointly issued *Interagency Guidance on Leveraged Lending* (the "Leveraged Lending Guidance"). The Leveraged Lending Guidance addressed regulatory limits on leverage relative to cash flow, how such

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[8] 5 U.S.C. § 801(a)(1)(B).

[9] 5 U.S.C. § 802. The CRA defines the "submission or publication date" of the rule as the later of the date on which Congress receives the agency's report related to the rule or the date the rule is published in the Federal Register, if it is published. *Id.* § 802(b)(2).

[10] 5 U.S.C. § 802(d).

[11] 5 U.S.C. § 804(3), *citing* 5 U.S.C. § 551(4).

[12] 5 U.S.C. § 804(3)(A)–(C).

loans would be underwritten and standards for evaluation, among other prudential requirements. On March 31, 2017, Senator Pat Toomey asked the GAO to evaluate whether the Leveraged Lending Guidance is a rule within the scope of the CRA, and, on October 19, 2017, the GAO decided that it is.[13]

Whether guidance is subject to the safeguards of the APA and CRA depends on whether the guidance is a rule, as defined by those statutes: "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."[14] The agencies argued that the GAO should defer to them as to whether the Leveraged Lending Guidance constituted a rule under the CRA—in fact, the Leveraged Lending Guidance explicitly stated that it should not be considered a rule under the CRA. The GAO disagreed and cited *Chamber of Commerce v. OSHA* for the proposition that "an agency's own label . . . is not dispositive."[15]

The agencies also attempted to argue that the Leveraged Lending Guidance simply described how they will apply their enforcement powers, did not establish legally binding standards that are certain and final, and did not affect the rights or obligations of third parties. The GAO agreed with the agencies that the Leveraged Lending Guidance was a statement of policy but declared that statements of policy are covered by the CRA. Congress, in adopting the CRA, stated that "[t]he committees intend [the CRA] to be interpreted broadly with regard to the type and scope of rules that are subject to congressional review."[16] Documents intended to be covered by the CRA were to include "statements of general policy, interpretations of general applicability, and administrative staff manuals and instructions to staff that affect the members of the public," according to Representative Hyde, who was the sponsor of the legislation.[17] The GAO also cited the statements of another principal sponsor of the legislation in support of the proposition that Congress intended the CRA to fill the gaps left by the APA relevant to agency guidance:

> Although agency interpretive rules, general statements of policy, guideline documents, and agency policy and procedure manuals may

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[13] *Applicability of the Congressional Review Act to Interagency Guidance on Leveraged Lending*, Gov't Accountability Office, B-329272 (Oct. 19, 2017), *available at* https://www.gao.gov/products/B-329272#mt=summary.

[14] 5 U.S.C. § 804(3); 5 U.S.C. § 551(4).

[15] 636 F.2d 464, 468 (D.C. Cir. 1980).

[16] *Supra* note 13 at 5 (*citing* 142 Con. Rec. E578 (daily ed. Apr. 19, 1996) (statement of Rep. Hyde)).

[17] *Id.*

> not be subject to the notice and comment provisions of section 553(c) of title 5, United States Code [(the APA)], these types of documents are covered under the congressional review provisions of the new chapter 8 of title 5 [(the CRA)].
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> Under section 801(a) [(CRA)], covered rules, with very few exceptions, may not go into effect until the relevant agency submits a copy of the rule and an accompanying report to both Houses of Congress. Interpretive rules, general statements of policy, and analogous agency policy guidelines are covered without qualification because they meet the definition of a 'rule' borrowed from section 551 of title 5 [(APA)], and are not excluded from the definition of a rule.

Approximately seven weeks later, on December 5, 2017, and again in response to a request from Senator Toomey, the GAO concluded that, like the Leveraged Lending Guidance, the CFPB's Bulletin, issued on March 21, 2013, on *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act* (the "CFPB Bulletin") is a rule subject to the requirements of the CRA.[18] In support of its contention that the CFPB Bulletin was not a rule under the CRA, the CFPB argued that there are two categories of general statements of policy: (1) those that are intended as binding documents, to which the CRA applies, and (2) those, like the CFPB Bulletin, that are non-binding and not subject to the CRA. In other words, the CFPB argued that the CRA does not apply to the Bulletin since it has no legal effect on regulated entities. The GAO unequivocally rejected this argument, asserting that general statements of policy are by definition not legally binding.[19] In response to the GAO's decision, Senator Toomey issued a press release stating that the "GAO's decision makes clear that the CFPB's back-door effort to regulate auto loans, which was based on a dubious legal justification, did not comply with the Congressional Review Act," and that he "intend[s] to do everything in [his] power to repeal this ill-conceived rule using the Congressional Review Act."[20] As of March 15, 2018, Senator Toomey had yet to follow through on this promise.

The GAO's determinations with regard to the Leveraged Lending Guidance and the CFPB Bulletin reaffirm Congress's intent that rules masquerading as policy statements or "guidance" should still be subject to the exacting

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[18] *Applicability of the Congressional Review Act to Bulletin on Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, Gov't Accountability Office, B-329129 (Dec. 5, 2017), *available at* https://www.gao.gov/products/B-329129.

[19] *Id.*

[20] *GAO to Toomey: CFPB Failed to Comply with Law on Indirect Auto Lending Regulation*, Pat Toomey (Dec. 5, 2017), *available at* https://www.toomey.senate.gov/?p=news&id=2066.

requirements of the CRA. The significance of these GAO determinations becomes even more salient when viewed in conjunction with the recent willingness of Congress to use the CRA to override agency rules that were properly reported to Congress under the CRA.

Congressional Disapprovals

While the GAO's actions alone might not mean much for the banking industry, those actions in conjunction with a Congress willing to wield the power provided by the CRA could have great effects. Although the CRA has been around for over two decades, 15 of the 16 resolutions of disapproval that have been enacted since 1996 were enacted in 2017 (the sixteenth occurred in 2001).[21] The most recent was also the first to overturn a rule submitted by a federal bank regulatory agency. On November 1, 2017, the president signed a joint resolution passed by Congress, acting under the authority provided by the CRA, invalidating the CFPB's final rule concerning arbitration agreements in contracts for certain consumer financial products and services (the "Arbitration Rule"), which had been issued by the CFPB on July 19, 2017. In response, the CFPB published a notice on November 22, 2017 removing the Arbitration Rule from the Code of Federal Regulations.[22]

A month after the Arbitration Rule's demise, on December 1, 2017, a bipartisan group of lawmakers introduced a joint resolution under the CRA to override the CFPB's final rule on *Payday, Vehicle Title, and Certain High Cost Installment Loans* (the "Payday Lending Rule"), which was published in the Federal Register on November 17, 2017.[23] While the fate of that resolution is still unknown, the Payday Lending Rule may very well face the same fate as the Arbitration Rule given the current state of Republican leadership in Congress. If so, the regulatory pendulum may truly be heading back toward the middle. A Congress finally willing to wield the power provided by the CRA in the financial sector now has the opportunity to consider a much broader range of potential regulatory action no matter how the federal banking agencies labeled such issuances.

QUESTIONS AND IMPLICATIONS

So what are the implications of these developments? The first sentence of the CRA states the following:

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[21] *Congressional Review Act FAQs*, U.S. GOV'T ACCOUNTABILITY OFFICE, https://www.gao.gov/legal/congressional-review-act/faq.

[22] 82, 224 Fed. Reg. 55500 (Nov. 22, 2017).

[23] H.J. Res. 122 (115th Cong.).

> *Before a rule can take effect*, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—
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> (i) a copy of the rule;
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> (ii) a concise general statement relating to the rule, including whether it is a major rule; and
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> (iii) the proposed effective date of the rule.[24]

Because the agencies that promulgated the Leveraged Lending Guidance and the CFPB Bulletin did not submit any of the three required items to Congress and the Comptroller General, it would appear that neither piece of guidance has "take[n] effect." Taken further, all "statements of policy"—which the GAO has deemed to be covered by the CRA—issued by the federal banking agencies are ineffective to the extent they were not reported to the Congress and the GAO in the manner required by the CRA.

Along the same lines, it would appear that Congress cannot yet act to override either the Leveraged Lending Guidance or the CFPB Bulletin, since the CRA contemplates that it do so only after the rule and required reports have been submitted.[25] On the other hand, there is precedent that suggests that with respect to any agency action that the GAO has determined to be a "rule" that should have been submitted under the CRA, Congress may respond by introducing a joint resolution of disapproval. Specifically, a 2016 report by the Congressional Research Service alleges that in the past, when the GAO has determined that an agency action satisfies the CRA definition of a rule, "the Senate has considered the publication in the Congressional Record of the official GAO opinions . . . as the trigger date for the initiation period to submit a disapproval resolution and for the action period during which such a resolution qualifies for expedited consideration in the Senate."[26] However, it is

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[24] 5 U.S.C. § 801(a)(1)(A) (emphasis added).

[25] *See* 5 U.S.C. § 802(a) ("For the purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report [containing a copy of the rule] . . . is received by Congress and ending 60 days thereafter . . .").

[26] Mauve P. Carey, Alissa M. Dolan & Christopher M Davis, Cong. Research Serv., R43992, *The Congressional Review Act: Frequently Asked Questions* 12 (2016), *available at* https://fas.org/sgp/crs/misc/R43992.pdf. *See also* Senator Toomey's statement in response to the GAO's decision regarding the Leveraged Lending Guidance: "GAO's decision makes clear the Interagency Guidance is a rule, as defined by the Congressional Review Act. Having established that, precedent suggests that Congress can exercise its authority to disapprove such a guidance." *GAO Agrees with Toomey: Lending Rule Subject to Congressional Review*, Pat Toomey (Oct. 19, 2017), *available at* https://www.toomey.senate.gov/?p=news&id=2016.

unclear what the source of authority is for the notion that Congress can use the CRA to disapprove a rule that hasn't been submitted in accordance with the CRA, or the notion that the GAO's decision automatically starts the clock on the CRA review period. Thus, relying on the plain text of the CRA, it appears that Congress can only override the Leveraged Lending Guidance and the CFPB Bulletin if the agencies submit them in the manner required by the CRA. Until then, both pieces of guidance are ineffective.

If those agencies should choose to submit either rule to Congress, it is not difficult to imagine the likely result. Given the current composition of Congress during 2018 and President Trump's general anti-regulatory rhetoric, there is a strong chance that both would face the same fatal fate as the Arbitration Rule. That begs the question: are all agency enforcement decisions issued under a Congressionally-disapproved "rule" invalid? The retroactivity question is a thorny one, but there is precedent that suggests the answer is *yes*.[27] At the very least, the GAO's decisions with respect to the Leveraged Lending Guidance and CFPB Bulletin call into question any enforcement action taken based on the concepts pronounced in those documents.

There are also questions regarding the availability of judicial review under the CRA. Interestingly, the CRA states that "no determination, finding, action, or omission under this chapter shall be subject to judicial review."[28] Several courts have found that this provision precludes judicial review of whether failure to report certain agency action to Congress violated the CRA.[29] Importantly, one of those courts is the D.C. Circuit, which other courts tend to treat as an authority on questions of administrative law given the frequency with which that court hears such issues.

On the other hand, a federal district court in Indiana held that 5 U.S.C. § 805 only bars review of the determinations, findings, actions, or omissions

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[27] *See NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014) (holding that the National Labor Relations Board was not operating with the requisite three-member quorum from January 2012 through July 2013 and thereby effectively invalidating all decisions issued during that time period).

[28] 5 U.S.C. § 805.

[29] *See, e.g., Montanans For Multiple Use v. Barbouletos*, 568 F.3d 225, 229 (D.C. Cir. 2009), *cert. denied*, 560 U.S. 926 (2010) (holding that § 805 "denies courts the power to void rules on the basis of agency noncompliance with the [CRA]": "The language of § 805 is unequivocal and precludes review of this claim—even assuming that the plan amendments qualify as rules subject to the Act in the first place"); *Forsyth Memorial Hosp. Inc. v. Sebelius*, 667 F.Supp.2d 143, 150 (D.D.C. 2009), *aff'd*, 639 F.3d 534 (D.C. Cir. 2011), *and rehearing on banc denied*, 652 F.3d 42 (D.C. Cir. 2011), *and cert. denied*, 565 U.S. 1158 (2012); *United States v. Amer. Elec. Power Serv. Corp.*, 218 F.Supp.2d 931, 949 (S.D. Ohio 2002).

made by Congress after a rule is submitted by an agency, and that the bar of judicial scrutiny does not extend to questions of agency compliance with the CRA's threshold requirements, including whether an agency rule that is in effect should have been reported to Congress in the first place.[30] The Indiana court's finding aligns with the legislative history of the CRA, which provides that "[t]he limitation on judicial review in no way prohibits a court from determining whether a rule is in effect. For example, the committees expect that a court might recognize that a rule has no legal effect due to the operation of subsections 801(a)(1)(A) or 801(a)(3)."[31]

A corollary question is whether the banking agencies could appeal a GAO decision deeming their guidance a rule—*e.g.*, could the CFPB appeal the GAO's determination that the CFPB Bulletin is a rule subject to the CRA? A plain-text reading of the judicial preclusion statute strongly suggests that the agencies would be precluded from making such a challenge. Even if one chooses to interpret the statute narrowly, as the Indiana district court did, the agencies would still likely be precluded from challenging a GAO determination. In *United States v. S. Ind. Gas & Elec. Co.*, the court found "the language of the CRA judicial review provision to be ambiguous" and "susceptible to two plausible meanings: (1) . . . Congress did not intend for courts to have any judicial review of an agency's compliance with the CRA; or (2) Congress only intended to preclude judicial review of Congress' own determinations, findings, actions, or omissions made under the CRA after a rule has been submitted to it for review."[32] After reviewing the purpose of the CRA, as well as its legislative history, the court determined the latter to be more convincing for the following reasons:

> Under the first interpretation . . . agencies could evade the strictures of the CRA by simply not reporting new rules, and courts would be barred from reviewing their lack of compliance. This result would be at odds with the purpose of the CRA, which was to provide a check on administrative agencies' power to set policies and essentially legislate without Congressional oversight. The CRA has no enforcement mechanism, and to read it to preclude a court from reviewing whether an agency rule is in effect that should have been reported would render

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[30] *United States v. S. Ind. Gas & Elec. Co.*, No. IP99-1692CMS, 2002 U.S. Dist. LEXIS 20936, at *11–*18 (S.D. Ind. Oct. 24, 2002).

[31] 142 Cong. Rec. S3686 (daily ed. April 18, 1996) (statement of Sen. Nickles); 142 Cong. Rec. E577 (daily ed. April 19, 1996) (statement of Rep. Hyde).

[32] *United States v. S. Ind. Gas & Elec. Co.*, 2002 U.S. Dist. LEXIS 20936, at *13.

the statute ineffectual.[33]

Thus, because the GAO has been delegated certain responsibilities with respect to the implementation and administration of the CRA, and because the GAO's determinations are determinations made under the CRA, they most likely fall within the scope of the CRA's bar on judicial review.

TAKEAWAYS

One thing seems clear: we have likely not seen the last of Senator Toomey. The GAO's evident willingness to make these types of determinations under the CRA will likely embolden and encourage him and his brethren to challenge other agency actions. For years, the federal banking agencies have used guidance, policy statements, and similar directives on a wide range of topics as a substitute for notice-and comment rulemaking. By evading even the less stringent requirements of the CRA, the agencies have inadvertently jeopardized hundreds, if not thousands, of pieces of guidance (not to mention the vast amount of time and resources that went into producing and enforcing these now-threatened pronouncements).

Agencies need to follow statutory rulemaking requirements, such as those of the CRA, to issue guidance. Because the GAO has firmly established that all agency statements of policy are covered by the CRA, the focus will now turn to the question of what exactly qualifies as a statement of policy. In its opinion on the CFPB Bulletin, the GAO cited the Supreme Court's definition of this term: "statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power."[34] Given the breadth of this definition, it is hard to imagine what type of guidance would not qualify as a statement of policy. And all of that is fair game for challenge.[35]

However, this will not be a panacea. As the CFPB has demonstrated, regulators have other avenues to change policy. The CFPB has certainly been willing to communicate its views to the industry by taking enforcement action. Still remaining are the penalty provisions under Section 8 of the Federal Deposit Insurance Act (FDIA), which give the regulators the authority to

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[33] *Id.* at *13–*14.

[34] *Supra* note 18 at 4 (*citing Lincoln v. Vigil*, 508 U.S. 182, 197 (1993) (*citing Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) (*quoting* U.S. Dep't of Justice, Attorney General's Manual on the Administrative Procedure Act at 30 n.3 (1947)))).

[35] Alternatively, the federal banking agencies may decide to preempt any challenges by reissuing guidance and reporting it to Congress and the GAO as required by the CRA. If they do so, then any guidance that survives will actually be of greater import.

impose civil money penalties for breaches of fiduciary duty, violations of law, and unsafe and unsound banking practices.[36] Even the latter—unsafe and unsound banking practices—is not the rubber band concept some may imagine it to be. Though it may appear that such practices are generally recognized using an "I know it when I see it" method (à la Justice Potter Stewart's view of pornography), both Congress and the courts have relied on a definition of the phrase that was provided to Congress by John Horne, the Chairman of the Federal Home Loan Bank Board at the time the phrase was first adopted as a statutory term:

> Generally speaking, an "unsafe or unsound practice" embraces any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk of loss or damage to an institution, its shareholders, or the agencies administering the insurance funds.[37]

To the extent that guidance is referenced or relied on in examination findings—*e.g.*, in a Matter Requiring Attention (MRA)—there may be more room for push back. While regulators do not generally rely on guidance as the basis for formal enforcement actions, relying instead on the "unsafe and unsound" concept, they are more likely to do so in examination findings. Our experience is that when bankers act consistent with safe and sound banking practices, then to the extent examiners cite technical violations of guidance, there is an opportunity to challenge not just the criticism, but the imposition of any new obligation that has considerable cost associated with it. Obviously it is easier to "go along to get along," but an understanding of the role of guidance in the federal system should give bankers the opportunity to evaluate the cost-benefit of their conduct.

It is not difficult to expect regulators to carefully weigh the prospects for rules after the midterm elections. Thus, CRA limitations on the promulgation of guidance may be ephemeral. Post 2018, if there is a Charles Schumer/Elizabeth Warren- or Nancy Pelosi-lead Democratic majority in either chamber, regulatory rulemaking may proceed unimpeded. As Nancy Pelosi is fond of saying, "they don't have the votes."[38] Regardless of the political fortunes of either party, "guidance" should be understood as providing advice regarding how regulators

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[36] 12 U.S.C. § 1818(i)(2).

[37] 112 Cong. Rec. 24984 (1966); *id.* at 26474.

[38] *See, e.g.,* Al Weaver, *Pelosi encourages members to vote for a government shutdown*, Washington Examiner (Feb. 8, 2018), http://www.washingtonexaminer.com/pelosi-encourages-members-to-vote-for-a-government-shutdown/article/2648537.

will enforce statute or regulation. To the extent guidance goes beyond the scope of the regulation, bankers have the opportunity to push back.