

June 29, 2016

By electronic delivery to:
www.regulations.gov

Ms. Judith Dupre
Executive Secretary
Federal Financial Institutions Examinations Council
L. William Seidman Center
3501 Fairfax Drive
Arlington, VA 22226-3550

Re: Proposal to Revise the Uniform Interagency Consumer Compliance Rating System, Docket Number FFIEC-2016-0001

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Federal Financial Institutions Examinations Council agencies' (Agencies) proposed revisions to the Uniform Interagency Consumer Compliance Rating System (CC Rating System).² We support the decision to revise the CC Rating System to reflect the significant regulatory, supervisory, technological, and market changes that have occurred since the FFIEC adopted the existing consumer compliance evaluation process in 1980.

As the Agencies explain in the proposal, when the current rating system was adopted, examinations focused on transaction testing rather than on an evaluation of the sufficiency of an institution's compliance management system (CMS) to ensure compliance with federal consumer protection laws and regulations. ABA supports risk-based supervision; therefore, we welcome the CC Rating System's risk-based focus which expressly recognizes that CMS programs (and evaluations of those programs) should be commensurate with the size, complexity, and risk profile of the institution. In addition, we support the other goals that inform the proposed Rating System: the encouragement of coordination, communication, and consistency between the Agencies and the issuance of exam ratings that are transparent, actionable, and that incent compliance. We offer the following comments to advance these objectives.

¹ The American Bankers Association is the voice of the nation's \$16 trillion banking industry, which is composed of small, regional and large banks, which together employ more than 2 million people, safeguard \$12 trillion in deposits, and extend more than \$8 trillion in loans.

² 81 Fed. Reg. 26553 (May 3, 2016).

1. Avoid unnecessary duplication and potential inconsistency.

The proposal states that institutions with total assets of more than \$10 billion may receive a consumer compliance rating by their prudential regulator *and* the Bureau of Consumer Financial Protection (Bureau).³ Recognizing the potential for inconsistency, the proposal suggests:

When assigning a consumer compliance rating, as well as in other supervisory situations as appropriate, the prudential regulators will take into consideration any material supervisory information provided by the CFPB [sic], as that information relates to covered supervisory activities or covered examinations. Similarly, the CFPB will take into consideration any material supervisory information provided by prudential regulators in appropriate supervisory situations, including when assigning consumer compliance ratings.⁴

Assurances that each regulator will “consider” material supervisory information provided by another, however, do not ensure consistency, an express goal of the revised CC Rating System. Our members with assets of \$10 billion or more are concerned that they could receive different consumer compliance ratings from their prudential regulator and the Bureau, yet nothing in the proposal discusses how an inconsistent rating would be reconciled. Rather than providing clear, actionable feedback, the prospect of multiple, and potentially inconsistent ratings, risks undermining a bank’s effort to improve its compliance management program.

ABA believes that each institution should receive only one consumer compliance rating. For institutions with assets of \$10 billion or more, ABA urges the FFIEC to assign responsibility for the CC Rating to the appropriate prudential regulator, rather than the Bureau, and to encourage the prudential regulator to consider material supervisory information provided by the Bureau. This assignment would avoid inconsistencies, and it appropriately recognizes the fact that the Uniform Financial Institution’s Rating System assigns responsibility to the prudential regulator for evaluating the capability of an institution’s “management” under the CAMELS rating system. In order to assign a management rating, a prudential regulator conducts a comprehensive evaluation of the bank’s CMS applied across the bank. The Bureau, in contrast, has no direct role in the CAMELS rating process.

Moreover, the Bureau’s product-driven supervisory approach means that the Bureau is unlikely to conduct a comprehensive CMS examination. Since announcing its risk-based, product driven approach to examinations, it is our understanding that the Bureau rarely conducts a comprehensive CMS exam of banks subject to its jurisdiction. Therefore, we believe the proper role for the Bureau is to provide information about its assessment of the effectiveness of individual product-line CMS to the prudential regulators who will assign a comprehensive rating.

³ *Id.* at 26556.

⁴ *Id.*

Finally, the assignment of the CC Rating to the appropriate prudential regulator avoids unnecessary and burdensome duplication and promotes the efficient allocation of supervisory resources. Released from the responsibility of providing a comprehensive evaluation of the banks subject to its supervisory jurisdiction, the Bureau can focus its exam resources on the evaluation of the compliance management programs of the non-bank consumer financial service providers that it supervises.

2. Use oversight to ensure that the proposed CC Rating System will not result in new or increased supervisory expectations.

ABA appreciates the Agencies' commitment that the proposed revisions to the rating system "were not developed to set new or higher supervisory expectations for financial institutions and their adoption will represent no new additional regulatory burden."⁵ This assurance, we believe, is a necessary corollary to the risk-based foundation of the CC Rating System. The enumeration of twelve assessment factors – in particular, the descriptions of performance standards deemed appropriate to individual ratings – should not result in supervisory expectation "creep," or expectations for CMS program elements above and beyond those appropriate to an institution's size, complexity, and risk profile.

Adhering to this commitment in the field will demand oversight within each agency and across agencies by the FFIEC. We urge individual agencies to conduct a self-assessment, using as a baseline the previous consumer compliance rating issued under the prior system and comparing that rating to the new rating to ensure consistency and avoid inadvertent rating deflation. Also, to promote consistent application of the rating system across agencies, the FFIEC should conduct an assessment of examination results across Agencies. And in keeping with the proposal's commitment to transparency, we would encourage each Agency and the FFIEC to publish reports on these assessments.

3. Promote actionable ratings.

A foundational principle of the new CC Rating System is that assigned ratings are "actionable." To advance this goal (and facilitate the self-assessments described above), we urge the Agencies to require examiners to draft a summary explanation of each of the three assessment categories that comprise the CC Rating: "Board and Management Oversight," "Compliance Program," and "Violations and Consumer Harm." A summary should highlight the individual program elements and exam findings from each category that support the CC Rating. After all, a summary numerical rating does not convey actionable feedback, and without a summary reflecting those factors that the examiner relied upon, achieving consistency across examiners and agencies may not be possible.

ABA also appreciates the Agencies' recognition that actionable feedback should "identify areas of strength" as well as direct appropriate attention to specific areas of weakness.⁶ We want to underscore the importance of identifying successful aspects of a compliance management program and not just deficiencies. Doing so will further incentivize compliance and will

⁵ *Id.* at 26555.

⁶ *Id.* at 26557.

encourage the Board and senior management to continue to support the bank's consumer compliance program.

4. Clarify the proposal's discussion of "violations of law and consumer harm."

The third category of the proposed CC Rating System directs examiners to consider "violations of law and consumer harm." The proposal directs the examiner to evaluate the root cause, or causes, of the violation, its duration, and its pervasiveness as well as the severity of any consumer harm resulting from the violation. ABA appreciates the Agencies' acknowledgment that an institution may receive a 1 or 2 rating even when violations are present, assuming the bank's CMS is commensurate with the risk profile and complexity of the institution. Thus, the CC Rating system appropriately recognizes that successful compliance management is dynamic and corrective, not flawless.

On the other hand, the proposal states,

An institution may receive a less than satisfactory rating even when no violations were identified, based on deficiencies or weaknesses identified in the institution's CMS. For example, examiners may identify weaknesses in elements of the CMS in a new loan product. Because the presence of those weaknesses left unaddressed could result in future violations of consumer harm, the CMS deficiencies could impact the overall consumer compliance rating, even if no violations were identified.⁷

We agree that examiners should advise institutions of perceived weakness in the CMS for a single new consumer product or service, but it would seem punitive to reduce the overall CC Rating on the risk of *future* noncompliance and the risk of *future* consumer harm. An exam report comment or issuance of a matter requiring attention may be appropriate, but the CC Rating should not be downgraded. To do so may, for example, increase the regulatory risk and thereby discourage the development of innovative products and services. We urge the Agencies to clarify that newly identified CMS deficiencies affecting one product or service – particularly a new product – that have not resulted in a regulatory violation or consumer harm should not impact the overall consumer compliance rating.

In addition, we urge the Agencies to clarify that consumer harm is a trigger for a CMS deficiency only when it results from a violation of federal consumer protection laws and regulations. Consumer harm should not be untethered from a federal legal standard. We believe the use of the term "violations of law *and* consumer harm" (emphasis added) throughout the CC Rating System suggests incorrectly that *either* a violation *or* consumer harm may cause a CMS deficiency, and we urge the Agencies to replace this misstatement with a more appropriate wording, such as "violations of law and resulting consumer harm".

In a related vein, we encourage the Agencies to clarify the scope of their oversight responsibilities reflected by a CC Rating. A financial institution's CMS may encompass other sources of law or standards of conduct, but the authority of the FFIEC Agencies is limited to

⁷ *Id.* at 26559.

enforcing federal consumer protection laws and regulations and the consumer harm that may result from noncompliance.

Similarly, we encourage the Agencies to clarify that an examiner's evaluation of an institution's third-party management is limited to relationships with vendors that impact consumer financial products and services. It does not extend to the institution's broader vendor management program encompassing third-party relationships unrelated to consumer products and services.

Conclusion

ABA appreciates the opportunity to comment on the proposed Uniform Interagency Consumer Compliance Rating System. If you have any questions about these comments or would like to discuss anything further, please contact Virginia O'Neill at 202-663-5073 or voneill@aba.com.

Respectfully submitted,

A handwritten signature in black ink that reads "Virginia O'Neill". The signature is written in a cursive, flowing style.

Virginia O'Neill
Senior Vice President, Center for Regulatory Compliance