

July 5, 2016

Ms. Judith Dupre
Executive Secretary
Federal Financial Institutions Examination Council
L. William Seidman Center
3501 Fairfax Drive
Arlington, VA 2226-3550

*Re: Uniform Interagency Consumer Compliance Rating System
Docket Number FFIEC-2016-0001*

Dear Ms. Dupre:

The American Financial Services Association (“AFSA”)¹ appreciates the opportunity to comment on the proposed changes to the Uniform Interagency Consumer Compliance Rating System (“CC Rating System”) published by the Federal Financial Institutions Examination Council (“FFIEC”).

While, in general, AFSA supports the FFIEC’s longstanding policy of seeking uniformity in the examination of financial institutions, the addition of the Consumer Financial Protection Bureau as a member on the FFIEC raises unique issues about the applicability of examination standards to non-depository financial institutions whose primary state regulators often have no direct voice on the FFIEC. AFSA is also concerned that additional clarification is need to ensure that the proposed changes are consistent and transparent.

Statement of Interest

AFSA member companies provide approximately 30 percent of all consumer credit and offer many types of credit products, including credit cards, vehicle loans and leases, personal installment loans and mortgages. While depository financial institutions play a vital role in the economy and the consumer credit market, Federal Reserve Board statistics show that the majority of non-mortgage consumer credit is provided by finance companies and others who raise funds through securitization. Most of AFSA’s member companies are state-licensed and regulated and we believe their regulators should have input in and recognition by the FFIEC.

AFSA members have worked effectively with state regulators in complying with both state and federal consumer protection laws. These state regulators have a familiarity with local and regional situations and issues faced by lenders. This knowledge, along with their geographic

¹ Founded in 1916, the American Financial Services Association is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, direct and indirect vehicle financing, mortgages, payment cards and credit for non-vehicle retail customers.

proximity to a given lender and financial market, means that state regulators are often the first to identify emerging issues, practices or products that may need further investigation or may pose additional risk to the financial industry.

While the FFIEC has traditionally concerned itself with insured banks, this proposal extends to a number of non-bank lenders represented by AFSA. As a member of the FFIEC, the CFPB will use the rating system to assign a consumer compliance rating, for institutions with total assets of more than \$10 billion, as well as for non-banks, for which it has jurisdiction regarding the enforcement of federal consumer financial laws as defined under the Dodd-Frank Act (12 U.S.C. 5481 et seq.).

Thus, AFSA has a keen interest in the outcome of this rulemaking.

State-Licensed Lenders Should Have a Strong Voice on the FFIEC

Currently, the FFIEC receives input from the State Liaison Committee (“SLC”) which is charged with representing state supervisory interest and the SLC Chairman serves as a voting member of the FFIEC. The SLC includes representatives from the Conference of State Bank Supervisors (“CSBS”), the American Council of State Savings Supervisors (“ACSSS”), and the National Association of State Credit Union Supervisors (“NASCUS”), who each appoint one member.

Non-depository consumer lenders, however, do not always fall under the jurisdiction of state bank supervisors. According to an informal survey conducted by AFSA, there are at least 15 states where a state agency other than the state bank supervisor currently has either partial or full jurisdiction over the financial activities of nonbanks doing business in that state. For example, in Texas, the Office of the Consumer Credit Commissioner regulates non-depository consumer lenders, and in Colorado, the state Attorney General regulates such entities. In addition, states periodically reorganize their regulatory regimes – raising the issue of whether a non-depository consumer lender currently under a state’s banking agency would have any input into the FFIEC process if at state changes its regulatory regime in the future. The agencies are represented by the National Association of Consumer Credit Administrators (“NACCA”)² which has *no* direct representation on the SLC.

We recommend that, when changing examination policies impacting these state-licensed and regulated companies, the FFIEC should:

- add NACCA to the SLC or, at a minimum, formally seek input from the agencies NACCA represents;
- determine the number of state-licensed or supervised entities to which any change will apply;

² NACCA was formed in 1935 to improve the supervision of grantors of consumer credit and to facilitate the administration of laws governing these companies. NACCA presently has members from 49 states, the District of Columbia, Puerto Rico and Alberta, Canada. Its members primarily license and regulate non-depository institutions such as finance companies, mortgage companies, small loan companies, pay day lenders, pawnbrokers, and other similar types of industries. *See*: www.naccaonline.org

- describe the projected reporting, recordkeeping and other compliance requirements of any change as it impacts these entities; and
- identify the examination process and standards relating to state-licensed entities which new FFIEC examination standards regulation may duplicate, overlap, or conflict.

The CC Rating System Should Be Consistent and Transparent

The Supplemental Information to the proposed revisions states “the primary purpose of the proposed CC Rating System is to ensure that all institutions are evaluated in a comprehensive and consistent manner ...” (Emphasis added). The Supplemental Information later states the FFIEC has developed four principles “to serve as a foundation” for the rating system. One of these principles is transparency. Transparency is defined as providing “clear distinctions between rating categories to support consistent application by the Agencies across supervised institutions. Reflect the scope of the review that formed the basis of the overall rating.” (Emphasis added)

As structured, AFSA is concerned that the proposed CC Rating System does not achieve the primary purpose of consistency nor the principle of transparency. The distinction between the rating categories is totally subjective for each of the assessment factors. For example, with the Policies and Procedures assessment factor a 2 rating is defined as “compliance policies and procedures and third-party relationship management programs are adequate to manage the compliance risk in the products, services and activities of the financial institution.” For a 3 rating the only difference is the word “inadequate” is used instead of “adequate.” There is no guidance as to what makes policies and procedures adequate or inadequate. That is left to the opinion of the individual examiners, whose level of experience in the field can vary greatly. Without objective criteria to assist in distinguishing among the ratings for each assessment factors, the ratings for the same set of facts could vary from exam team to exam team and from financial institution to financial institution. Even under the same regulatory state agency, inconsistency among examiners is not uncommon.

Even if objective criteria were given to assist examiners and financial institutions in distinguishing among the various rating categories, the FFIEC invites regulators to eschew consistency and transparency by making the following statement:

“The consumer compliance rating reflects a comprehensive evaluation of the institution’s performance under the CC Rating System by considering the categories and assessment factors in the context of size, complexity, and the risk profile of an institution. It is not based on a numeric average or any other quantitative calculation. Specific numeric ratings will not be assigned to any of the twelve assessment factors. Thus, an institution need not achieve a satisfactory rating in all categories in order to be assigned an overall satisfactory rating. Conversely, an institution may be assigned a less than satisfactory rating even if some of its assessments were rated as satisfactory.”

In other words, a financial institution’s consumer compliance rating is based on the subjective judgment of the team conducting an examination at any particular point in time. Based on the above it is possible that a financial institution could meet the definitions for a 2 rating in almost

all (or, potentially, all) of the assessment factors and still not receive a satisfactory rating. It is also entirely possible that two financial institutions, from an objective standpoint, are exactly the same on all the assessment factors and each receive a different consumer compliance rating. How then is it possible to achieve any level of consistency or transparency?

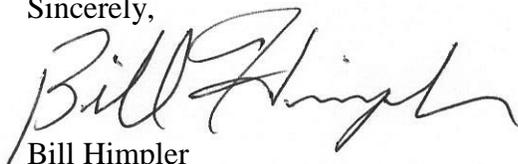
We recommend that rating be clarified so that institutions which are principally engaged in the same line of business — such as consumer finance companies or specialty monoline banks — are rated as peers.

We also suggest that the FFIEC consider requiring examiners to include a written, summary explanation of the three assessment categories that comprise the CC Rating. A summary explanation would advance the goal of the FFIEC to prevent consumer harm and ensure compliance. Without a summary explanation, a financial institution might be unable to identify areas of improvement. In addition, a summary explanation would help achieve consistency across examiners.

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AFSA appreciates the opportunity to share our views and would be happy to discuss them further. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive, flowing style.

Bill Himpler
Executive Vice President
American Financial Services Association