June 22, 2016

Ms. Judith Dupre
Executive Secretary
Federal Financial Institutions Examination Council
L. William Seidman Center, Mailstop: 7081a
3501 Fairfax Drive
Arlington, VA 22226-3550

RE: Docket Number FFIEC-2016-0001

Dear Ms. Dupre:

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to comment on the proposed uniform interagency consumer compliance (CC) Rating System, but finds the proposal insufficient for effectively holding financial institutions accountable for complying with consumer protection and fair lending law. NCRC is a coalition of 600 community organizations dedicated to increasing access to responsible credit and capital for minority and low- and moderate-income communities. In order to achieve our mission, we promote vigorous consumer protection and fair lending regulation of the financial industry.

Towards the beginning of its proposal, the regulatory agencies indicate that the reforms to the CC rating system will not set new or higher supervisory expectations. NCRC is incredulous at this statement. As the proposal itself acknowledges, profound changes have occurred since 1980 when the agencies adopted the current rating system. The agencies state that consolidation of financial institutions have "changed risk profiles." Indeed, when the four largest banks in the country each have more than \$1.7 trillion in assets and when the top 16 each have more than \$200 billion in assets, the risk profiles have grown.[1] As these institutions have evolved and grown much larger, they have experienced "major transformations in technology and business models...that have resulted in a broader set of risks to consumers" as the agencies acknowledge.[2] Therefore, regulatory expectations for consumer compliance must be set at a higher level and the consumer compliance rating system must be made more rigorous. NCRC is concerned that the proposal, as it stands, will not result in a rigorous compliance system.

---

[1] Data from the National Information Center of the FFIEC webpage, see http://www.ffiec.gov/nicpubweb/nicweb/HCSGreaterThan10B.aspx

[2] Uniform Interagency Consumer Compliance Rating System, Notice and Request for Comment, Federal Register, Vol. 81, No. 85, Tuesday, May 3, 2016, pp. 26554 3rd column and p. 26555, 1st column.

Use CRA as a Model

The central deficiency of the proposed CC rating system is that it is a secretive process that lacks opportunity for public input. The compliance of financial institutions to consumer protection and fair lending laws and regulations will improve only when strong mechanisms for public accountability exist. Consumers know firsthand whether financial institutions deal with them in a fair and honest manner. It is therefore essential to solicit the views of consumers regarding compliance with consumer and fair lending laws. As currently proposed, the CC Rating System lacks vital public input.

NCRC urges the financial institution regulatory agencies to adopt a rating system modeled after the Community Reinvestment Act (CRA) regulations. CRA establishes a public process in which the regulatory agencies invite comments while banks are being examined. In addition, under CRA, the federal agencies release quarterly exam schedules of banks that are about to be examined. This makes it easier for members of the public to prepare comments to be submitted to CRA examiners. The proposed CC Rating System must also establish a clear public notification system for upcoming exams.

The CRA exam narrative and an overall rating is publicly released, as well as several other ratings for specific geographical areas and for component tests. Likewise, the CC Rating System must culminate in the release of an exam and easily understood ratings for financial institutions. Moreover, CRA has a regular examination cycle of every two to three years for most financial institutions. This ensures that the financial intuitions are continually adhering to their reinvestment obligations. The proposal for the CC Rating System should include a similarly designed proposed examination cycle.

Exam Structure Would Fail to Achieve Proposed Principles

The proposed rating system articulates lofty principles that it aims to achieve. These principles are: ratings should be risk-based, transparent, actionable, and a motivation for compliance. The risk-based principle seeks to communicate clearly that institutions vary based on size and risk and that riskier institutions will receive more scrutiny. The transparency principle seeks to provide clear distinctions between rating categories. The actionable principle seeks to identify areas of strength and direct appropriate attention to areas of weakness in institutions' compliance records. Finally, the principle of motivating compliance seeks to provide an incentive for an institution to comply with consumer protection and fair lending laws.[3]

The fundamental reason why the proposed rating system would fail to achieve its principles is that it is not transparent. Significantly, the ratings would not be public. As a result, low ratings

---

[3] Uniform Interagency Consumer Compliance Rating System, Notice and Request for Comment, Federal Register, Vol. 81, No. 85, Tuesday, May 3, 2016, p. 26555, 3rd column.

would not effectively motivate improvements to performance and high ratings would not motivate the maintenance of good performance. Moreover, since the ratings are muddled and are not based on clearly described examination methodology, they will fail to send clear messages to the institutions of which aspects of their compliance systems need to improve in order to bolster compliance with consumer and fair lending laws.

As currently proposed, the ratings of one to five would not effectively delineate distinctions in performance.[4] Descriptive adjectives are clearer in describing differences in performance. For example, CRA ratings would be an improvement over numerical ratings. The ratings of outstanding, high satisfactory, low satisfactory, needs to improve, and substantial noncompliance are clearly more descriptive than the numbers one through five. These adjectives would be more likely to achieve the goal of transparency than numbers alone.

The agencies' decision to refrain from assigning numerical averages or specific ratings to the assessment factors will frustrate the principles of transparency, actionability, and motivating compliance.[5] As proposed, the agencies' group twelve assessment factors into three assessment categories: board and management oversight, compliance program, and violations of law and consumer harm. By not assigning numerical averages or weights of importance to these categories of assessment factors, the agencies are blunting the motivations of financial institutions to comply with consumer protection and fair lending laws. NCRC believes that the violations of law and consumer harm assessment category is the most important. Preventing violations of law and consumer harm is the entire purpose of the CC Rating System. Therefore, this category ought to count for 50 percent of the overall rating. Importantly, this approach has precedence. CRA exams for large banks provide a 50 percent weight for the lending test since the lending test is judged to be more important than the investment test or the service test of the CRA exam.

The two other assessment categories, board and oversight management and compliance program, would count for the other 50 percent of the overall rating. Compliance program factors are more important than board and oversight management because the compliance program establishes overall policies, procedures, and training that would be instituted throughout the entire institution. Compliance program factors should therefore count for 30 percent of the overall rating.

Board and oversight management reflects the commitment of the board and senior management to the compliance program and the resources that they devote to compliance. While this is a significant component for the rating system, it is less significant than the other two. As a result, it should receive a weight of 20 percent.

---

[4] Notice and Request for Comment, p. 26555, 2nd column.
[5] Notice and Request for Comment, p. 2655, 3rd column.

Providing the most weight for violations of law and consumer harm and the second most weight for the compliance program creates a results-driven performance evaluation that is consistent with the reforms to the CRA regulations over the years. NCRC believes it is more important to evaluate results than to evaluate processes.

While all examination regimes have some flexibility and room for discretion, too much vagueness will thwart the principles of transparency, actionability, and motivating compliance. The current proposal says that an institution can receive a less than satisfactory rating on some assessment factors and still be able to receive an overall passing score. This should not be the case for the most important assessment factors. For example, if a large bank fails its lending test, it automatically fails its CRA exam even if it passes its other tests. The same approach should be applied by the CC Rating System. If an institution fails on the assessment category of violations of law and consumer harm, it must fail its consumer compliance exam.

Just like CRA exams, the consumer compliance exams should also release ratings for each of the three assessment factor categories. Each assessment category should have the same ratings scale. Using the weights recommended by NCRC for each of the assessment categories, the ratings should be totaled to determine the overall rating. In addition to the ratings, examination narrative should be publicly released, just as in the case of CRA exams.

In addition to ratings, points should be assigned to each assessment category and to the factors within each category. For example, on a 100 point scale, 50 points would be assigned to the violations of law and consumer harm category to correspond with the weight of 50 percent recommended by NCRC. Within that category, there are four factors – root cause, severity, duration, and pervasiveness. Each of these factors could be assigned points and the total points for the highest possible score would equal 50. Since root cause is the most important, it could be assigned a scale of 1 to 20 while the other three factors could be assigned a scale of 1 to 10. Ranges of total scores for this assessment category would correspond to ratings. For example, Outstanding on the violations of law and consumer harm category would be achieved if the summed score for the four assessment factors was between 40 and 50.

Without a doubt, the proposal is too permissive regarding violations of consumer law. It would diminish an institution's incentive to comply with consumer and fair lending laws. For instance, the proposal states that the institution (being reviewed) may receive the highest rating even if there are violations of law. It is possible that a violation of a particular law may not be widespread throughout the institution or may not result in significant monetary losses for consumers. However, a violation of a law has still occurred. Therefore, an institution must never receive a one (or outstanding in NCRC's proposal) if they violate a law. This would still provide allowance for an institution receiving a two (or high satisfactory in NCRC's proposal). The nature, extent, and scope of harm to consumers of any violation of law must be clearly described in an exam so that members of the public can judge whether the final rating is justified.

The loose nature of the proposal regarding the importance of assessment factors is illustrated in a discussion about how the importance of assessment factors varies based on the size, complexity, and risk profile of an institution. NCRC agrees that the importance of assessment factors will differ for various institutions. However, in order to promote consistency of examination results, the proposal must create different types of exams for different institutions along the lines of the small bank, large bank, and limited purpose bank CRA exams. In this manner, the general public knows how various assessment factors are weighed for different types of institutions as soon as a member of the public opens up the exam. This creates more certainty and accountability of the examinations. The agencies must therefore go back to the drawing board and create different exams with different weights for different sized institutions presenting different compliance risks.

Finally, the proposal discusses examiner discretion regarding the weight(s) of assessment factors applied to various product lines. It offers an example in which weaknesses in policies and procedures or an audit program for review of mortgage lending would have more weight on an overall rating if a lender specializes in mortgage lending than if a lender makes a nominal amount of mortgages to accommodate customers.[6]

Weighing the importance of performance in various product lines occurs on CRA exams. Just like CRA exams, however, the examiner of compliance management systems must explicitly discuss weighting assigned to various product lines so that interested members of the public can review and comment on the appropriateness of the weights.

Particular Assessment Factors

Violations of Law and Consumer Harm – Fair Lending Law

The agencies must avoid basing the severity of a violation of consumer or fair lending law solely on the dollar amount of harm to consumers. In some cases, it is difficult to estimate the monetary harm of a violation, yet a violation could be devastating for communities. For example, the proposal discusses a violation of the Equal Credit Opportunity Act (ECOA) that results in a denial of an opportunity for an individual and, although it acknowledges the harm that could result from this violation, it suggests that there is no financial harm because a loan was not granted.[7] NCRC would contend that if an institution is systematically redlining and denying loans to credit worthy individuals based on the color of their skin, their ethnicity, their religion, or their gender, the harm could very well be catastrophic as entire communities may not be able to obtain access to credit. The final rule should acknowledge the breadth of the harm that can result from violations of ECOA, for both individual consumers and communities as a whole, and

---

[6] Notice and Request for Comment, p. 26559, 2nd column.
[7] Notice and Request for Comment, p. 26556, 2nd column.

include language that emphasizes the weight these violations would have on an institution's overall CC rating.

The agencies chose sensible factors for assessing violation of law such as root cause, severity, duration, and pervasiveness. But the agencies should not shy away from basing their judgment of violations that at first inspection seem to result in non-monetary harm. If redlining is widespread, it is certainly more pernicious than overcharging deposit accounts by a few dollars for an institution's customers. Yet, as the proposal is currently written, the redlining violation could likely be downplayed by examiners because no monetary value has been associated with it.

Compliance Program – Third Party Relationships

NCRC applauds the addition of third-party relationships in the assessment factors under the management oversight and compliance program category. Financial institutions have exploited third-party relationships in order to skirt consumer and fair lending law. Examples of this include funding and outsourcing marketing and underwriting responsibilities to payday lending outlets. Regulatory oversight of third-party relationships must be stringent.

In addition, we strongly approve of the guidance in the proposal that states, "The institution cannot outsource responsibility for complying with laws and regulations or managing the risks associated with third-party relationships."[8] This sends a strong message that the institution must assume legal and oversight responsibility over third-party vendors.

Compliance Program – Training

The final rule must include guidance regarding training programs in order to insure that they are comprehensive and adequately train employees to comply with consumer protection and fair lending law. The agencies must indicate that they will review internal training materials and external training materials produced by outside parties for accurate and timely compliance information. In addition, the agencies should encourage institutions to include reputable outside parties and nonprofit fair lending agencies as part of their compliance trainers. Nonprofit community-based organizations often provide fresh perspectives, experiences, and insights on fair lending compliance that does not occur to the staff of financial institutions.

Board and Management Oversight – Corrective Action and Self-Identification

The corrective action and self-identification assessment factor appropriately encourages a financial institution to proactively correct violations and to provide remediation for consumers impacted by violations. However, NCRC asks the agencies to add guidance in the final rule that corrective action cannot compensate for a consistent pattern of violations and then fixing the harms associated with the violations. A serial and repeated pattern of violations is indicative of

[8] Notice and Request for Comments, p. 26558.

deficient compliance management which must be fixed. Employing corrective action must not enable weak management. Without appropriate guidance from the regulatory agencies, lenders could get the impression that it would be acceptable for them to metaphorically poison the water with lead and then provide consumers with filters.

Violations of Law and Consumer Harm – Assessment Criterion for Ratings Four and Five

Three of the assessment factors under the violations of law and consumer harm category - severity, duration, and pervasiveness - have the same criterion and adjective descriptors for institutions receiving either a four or a five rating. This will result in a distinction between a four or five coming only from the other assessment factor of root cause. As outlined above, NCRC believes violations of law and consumer harm should be weighted most heavily in an institution's overall CC rating. Therefore, the differences in performance between a four and five (or for Needs to Improve and Substantial Noncompliance in NCRC's proposal) should be more clearly delineated.

Penalties for Noncompliance

A CC Rating System will fail to achieve the principles of actionability and motivation for compliance if it does not institute swift, severe, and certain penalties for failing performance. As a result, NCRC recommends that if a financial institution receives a rating of four or five, it must be assessed a hefty monetary penalty. In addition, NCRC recommends that if a financial institution receives a rating of three or higher, it must submit a remediation plan within a fixed time frame to the agencies subject to public input and review. A rating of three or higher reflects a weak compliance management system that would benefit from public review and comment, as well as, regulatory review, modifications, and approval of remediation plans. Finally, the agencies must not approve any mergers or acquisitions for institutions receiving a four or five. In the case of institutions receiving a three, any merger application would only be approved if the institution has an approved remediation plan.

CRA serves as a precedent for remediation plans. If a bank receives a rating of Needs to Improve or Substantial Noncompliance, it must submit a remediation plan to its federal bank regulatory agency.[9]

Coordination and Comprehensiveness

NCRC is pleased that the proposal includes the oversight of non-banks. In the holding company context, regulators must insure that the dirty work of violating laws has not been "outsourced" to a more lightly regulated non-bank affiliate as often happened in the heyday of subprime lending,

[9] Section 345.43 b5 of the CRA regulations, Content and availability of public file. See https://www.fdic.gov/regulations/laws/rules/2000-6500.html#fdic2000part345.44

just before the financial crisis. Moreover, non-banks have entered into relationships with banks to conduct lending and have been funded by banks. Non-banks must be separately examined. While important, it is not sufficient to only examine banks' management of relationships with third parties. The third parties themselves must be examined. Multiple agencies will need to compare notes and findings of the consumer compliance reviews in the cases of banks and non-banks that have relationships.

The multiple agencies collaborating on this proposed oversight of consumer compliance management systems must engage in heightened coordination. Fair lending reviews is one such area where close coordination is necessary. In the case of banks with assets over $10 billion, the Dodd-Frank Act confers upon the Consumer Financial Protection Bureau (CFPB) certain fair lending review responsibilities.[10] The CFPB and the bank regulatory agencies therefore must work together to insure that the CFPB's fair lending reviews properly inform CRA exams and CC ratings.

In addition to establishing an exam cycle recommended above, the CC Rating System should also include a triggering mechanism for an institution's reexamination. For example, if an institution fails a lending test, has a substantial decline in its CRA rating, a fair lending violation is discovered by a CRA examination or close to the time period of the CRA examination, or a violation in its Home Mortgage Disclosure Act (HMDA) reporting, its CC rating should be reassessed.

Aside from the vague reassurances that NCRC periodically receives about coordination in the timing of CRA and fair lending reviews by the agencies, we do not observe concrete evidence of coordination. Publicly releasing schedules of CRA, CC reviews, and fair lending reviews would be concrete evidence of such coordination!

Conclusion

As currently proposed, the CC Rating system will fall short of achieving the regulatory principles of transparency, risk-based judgments informing enforcement, actionability, and providing incentives for compliance. Because the CC rating system is secretive and opaque, it cannot hold institutions publicly accountable. Moreover, the CC rating system does not have, at its core, a public participation process in which members of the public can comment on financial institutions' compliance with consumer protection and fair lending laws. Public comments must inform institutions' ratings. Importantly, the ratings themselves do not clearly identify distinctions in performance because they are not based on a clear and carefully developed weighing system that emphasizes results, as opposed to process.

[10] CFPB has primary authority for ECOA enforcement while HUD is the primary enforcer of the FH Act.

If the proposed CC Rating system is revised to be more rigorous and participatory, it would become a valuable tool in holding financial institutions publicly accountable for compliance with consumer and fair lending laws. With the implementation of a more inclusive and participatory rating system, consumers could consult ratings before choosing institutions with which to conduct business.

Ratings would thus provide a clear business reason for motivating institutions to comply with consumer protection and fair lending laws. Also, like CRA exams, the CC Ratings and exams would be important tools in assessing whether proposed mergers and acquisitions pass a public benefits test and should be approved, denied, or approved with conditions.

In short, as proposed, NCRC does not see how a secretive CC rating system can do much to further the goals of fair and non-discriminatory treatment of consumers. But, if reformed in the manner suggested by these comments, the CC rating system can become a powerful motivator for compliance with consumer protection and fair lending laws and regulations.

If you have any questions, please contact myself of Josh Silver, Senior Advisor, on 202-628-8866. Thank you for the opportunity to comment.

Sincerely,

John Taylor
President and CEO

Organizations Signing onto NCRC's Letter on Consumer Compliance Rating System

Affordable Homeownership Foundation Inc. (FL)

Ariva (NY)

Baltimore Neighborhoods, Inc.

California Reinvestment Coalition

CASA of Oregon

Center for Fair Housing, Inc. (AL)

CFORM/Covenant Community Development Corporation (MS)

Chicago Urban League

Consumer Action

East Side Organizing Project (OH)

Empire Justice Center (NY)

Fair Finance Watch, Bronx NY

Fair Housing Center of Southwest Michigan

Fair Housing Council of Northern New Jersey

Frameworks Community Development Corporation (TX)

Global Network Community Development Corporation (IL)

Greenville County Human Relations Commission, SC

Hamilton County Community Reinvest Group (OH)

Hartford Community Loan Fund (CT)

Henderson and Company (NC)

Housing Education and Economic Development, Inc. (MS)

Maryland Consumer Rights Coalition

Metropolitan Milwaukee Fair Housing Council

Metro St. Louis Coalition for Inclusion and Equity

Metropolitan St. Louis Equal Housing and Opportunity Council

Multi Cultural Development Center (LA)

New Frontier CDC (NC)

New Jersey Citizen Action

Northwest Fair Housing Alliance (WA)

Northwest Indiana Reinvestment Alliance

Peoples' Self-Help Housing (CA)

Scott County Housing Council (IA)

The Ohio Fair Lending Coalition

Toledo Fair Housing Center

Woodstock Institute