

July 5, 2016

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

Submitted via <http://www.regulations.gov>

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

Dear Ms. Dupre:

Americans for Financial Reform (“AFR”) and the Committee for Better Banks (“CBB”) appreciate the opportunity to comment on the Federal Financial Institutions Examination Council (“FFIEC”) notice of proposed revisions to the Uniform Interagency Consumer Compliance Rating System (“CC Rating System”).¹ AFR is a coalition of over 200 national, state, and local groups who have come together to advocate for reform of the financial industry. Members of AFR include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.² CBB is a coalition of bank workers, community and consumer advocacy groups, and labor organizations coming together to improve conditions in the bank industry. CBB works for just wages and job security for front-line bank workers and an end to unreasonable sales goals that harm both workers and consumers.

AFR and CBB write to comment on three issues related to the CC Rating System: (i) the continuing shift in emphasis in consumer examinations and ratings from transactional testing to compliance processes; (ii) the importance of financial institutions’ management and compensation of front-line bank employees in incentivizing (or disincentivizing) consumer compliance; and (iii) the public disclosure of CC Ratings.

¹ 81 Fed. Reg. 26553.

² Some of these organizations may submit separate comments in response to this notice, and AFR requests that the FFIEC give those comments full consideration. As noted below, AFR’s member organizations support AFR’s overall principles and are working for an accountable, fair, and secure financial system. However, these organizations have not specifically joined this comment.

Compliance Management Systems

The notice notes that the “proposed revisions emphasize the importance of institutions’ compliance management systems (CMS), in particular, risk control processes designed to manage consumer compliance risk which are needed to support compliance and prevent consumer harm.”³ This change recognizes that agencies have shifted from “examinations focused more on transaction testing for regulatory compliance” toward evaluation of the institutions’ CMS.⁴

While institutions’ CMS are undoubtedly important and the proper subject of examiner attention, it is equally essential that examiners determine how an institution’s CMS operate in practice. For example, examinations should continue to employ transaction testing to ensure that existing systems are effectively shaping the institutions behavior. In addition, examiners could survey front-line bank workers who are actually responsible for interactions with retail banking customers to test whether CMS – including training – function in practice and whether those systems in fact ensure compliance in interactions with individual consumers.

Management and Compensation of Bank Workers

Before the enactment of the Dodd-Frank Act,⁵ the then-existing federal bank regulators acknowledged that “[i]ncentive compensation practices in the financial industry were one of many factors contributing to the financial crisis”⁶ In recognition of that critical role, the federal regulators jointly adopted “Guidance on Sound Incentive Compensation Policies” (“Compensation Guidance”).⁷ Under the Compensation Guidance, examiners must determine whether a financial institution’s incentive compensation system:

- appropriately balances risk and reward;
- is compatible with effective controls and risk-management; and
- is supported by strong corporate governance.⁸

³ 81 Fed. Reg. at 26554.

⁴ 81 Fed. Reg. at 26555.

⁵ Section 956 of the Dodd-Frank Act also required federal financial regulators to mandate that executive bonus systems take into account long-term risk, thereby recognizing the importance of compensation structures for compliance and risk. The regulators are currently accepting comment in response to their proposed notice of proposed rulemaking to strengthen the existing rule under that requirement. 81 Fed. Reg. 37670 (June 10, 2016).

⁶ 75 Fed. Reg. 36395, 36396 (June 25, 2010).

⁷ *Id.*

⁸ *Id.* at 36398.

At core, that policy recognized that the incentives created by financial institutions' compensation systems are appropriately within the purview of bank regulators. Specifically, the Compensation Guidance recognized that "sound compensation practices are an integral part of strong risk-management and internal control functions."⁹ These practices therefore fit well within the CC Rating System's focus on CMS.

While the Compensation Guidance is framed to focus principally on executive and trader compensation and prudential regulation, the principles outlined apply with equal force to the consumer compliance and front-line bank workers. Notably, the Compensation Guidance specifically references "compliance risks"¹⁰ and recognizes that the compensation principles apply to "non-executive employees who . . . *as part of a group*[]" have the ability to expose the organization to material amounts of risk"¹¹

A recent report details the existence of problematic sales quotas and bonus systems for front-line bank workers and the risks these systems present for consumer compliance.¹² In particular, the report exposes a system of aggressive sales quotas that undermine compliance by creating sales and collection requirements that often cannot be met without skirting compliance. For example, workers and managers may ignore red flags such as incomplete forms, or branch workers may be pressured to recommend inappropriate financial products to a customer or not to fully-disclose orally the terms of a financial product. Importantly, these types of compliance risks are extraordinarily difficult for examiners to detect through reviewing institution policies or transaction files. These problems are compounded by harsh enforcement of the quotas (including threats of termination) and compensation systems that combine low base wages with production bonuses, making hitting bonus thresholds essential for bank workers to earn a living wage.

Local governments have begun to recognize the link between the management of bank branch workers and regulatory compliance. In Los Angeles, the City Attorney has sued Wells Fargo under the California consumer protection statute.¹³ An important allegation of the complaint is that Wells Fargo's production quotas incentivized consumer protection violations, including fraudulently opening consumer accounts and making inaccurate disclosures about the financial products being sold.

⁹ *Id.* at 36407.

¹⁰ *Id.* at 36407.

¹¹ *Id.* at 36406 (emphasis added).

¹² Anastasia Christman, National Employment Law Project, *Banking On the Hard Sell: Low Wages and Aggressive Sales Metrics Put Bank Workers and Customers At Risk* (June 9, 2016), available at <http://www.nelp.org/publication/banking-on-the-hard-sell-low-wages-aggressive-sales-metrics-put-bank-workers-customers-at-risk/>.

¹³ *California v. Wells Fargo & Co.*, No. BC-580778 (L.A. Cty. Ct., Cal.).

Consumer compliance regulators should take a similar approach by examining whether a financial institution's compensation and management practices, including sales quotas, increase consumer compliance risk.

Public Disclosure of CC Ratings

AFR and CBB agree with National Community Reinvestment Coalition's position that CC Ratings should be publically disclosed by the supervisory agencies. Public disclosure of CC Ratings would both facilitate consumer choice and encourage compliance with consumer regulation.

Federal prudential regulators have previously asserted in guidance that disclosure of CAMELS ratings without agency consent is a criminal offense.¹⁴ While this guidance did not explicitly consider consumer compliance examination ratings, the guidance could be fairly read to encompass all supervisory information, including CC Ratings.

CC Ratings should be publically disclosed to inform consumers of the compliance records of depository institutions.¹⁵ Doing so would further consumers' capacity to choose financial institutions that they believe – based on examiners' informed judgments – are most likely to treat them fairly. This information would supplement the CFPB's consumer database, which is currently the most comprehensive public source of information about consumer compliance, to assess a bank's compliance record. Consumer-driven decisions to prefer banks with strong compliance records would create a financial incentive for institutions to prioritize consumer compliance. This economic incentive is particularly critical for consumer issues because a CC Rating lacks the direct financial impact of a CAMELS (safety-and-soundness) rating, which is directly linked to an institution's deposit insurance assessment.¹⁶

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¹⁴ Interagency Advisory on the Confidentiality of the Supervisory Rating and Other Nonpublic Supervisory Information (Feb. 28, 2005), *available at* <https://www.fdic.gov/news/news/press/2005/pr1805a.html>.

¹⁵ By statute, agencies retain discretion to voluntarily release supervisory ratings. 12 U.S.C. § 1817(a)(2)(C)(iii).

¹⁶ *See generally* Federal Deposit Insurance Corporation, Financial Institution Letter, FIL-8-2011, Assessments: Final Rule (Feb. 9, 2011), *available at* <https://www.fdic.gov/news/news/financial/2011/fil11008.pdf>

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Your consideration of these comments is appreciated. For questions, please contact Lisa Donner, Executive Director of Americans for Financial Reform, at lisa@ourfinancialsecurity.org or (202) 466-1885.

Sincerely,

Americans for Financial Reform
Committee for Better Banks

Following are the partners of Americans for Financial Reform

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute

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- Essential Action
- Green America
- Greenlining Institute
- Good Business International
- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good

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- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalists for a Just Economic Community

State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation, NY

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- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville AR
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY

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- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis MN
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development

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- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Phoenix AZ
- UNET