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FFIEC Consumer Compliance Comment Letter

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July 5, 2016

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
Uniform Interagency Consumer Compliance Rating System

Dear Ms. Dupre:

The Federal Financial Institutions Examination Council (FFIEC) issued a notice and request for comment regarding the Uniform Interagency Consumer Compliance Rating System (CC Rating System). The FFIEC is seeking to revise the CC Rating System "to reflect the regulatory, examination (supervisory), technological, and market changes that have occurred in the years since the current rating system was established." 81 F.R. 26553. It is a positive development that the federal government is seeking to implement a consistent approach to consumer protection across a broad swath of the financial services industry. Nonetheless, the proposed CC Ratings System can be refined to further improve consumer protection in the financial services industry.

One of the CC Rating System's categories is Violations of Law and Consumer Harm. The request for comment notes that over the last few decades, the financial services industry has become more complex, and the broad array of risks in the market that can cause consumer harm has become increasingly clear. Violations of various laws – including the Fair Housing Act and other fair lending laws, for example – may cause significant consumer harm that should raise supervisory concerns. Recognizing this broad array of risks, the proposed revisions directs examiners to consider all violations of consumer laws based on the root cause, severity, duration, and pervasiveness. This approach emphasizes the importance of various consumer protection laws, and is intended to reflect the broader array of risks and potential harm caused by consumer protection violations. 81 F.R. 26556.

This is all to the good. Prior to the Subprime Crisis, a big part of the problem was that financial services companies used regulatory arbitrage to avoid scrutiny. Lots of mortgage lending migrated to nonbanks that did not need to worry about unwanted attention from the regulators that scrutinized banks and other heavily regulated mortgage

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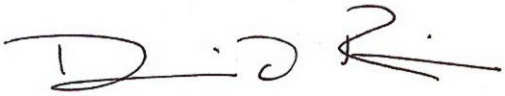
lenders. (To be clear, Alan Greenspan and other federal regulators did not do a good job of scrutinizing the banks. But let's leave that for another day.) With the CFPB now regulating many nonbanks and with an updated CC Rating System in place, we should expect that regulatory arbitrage will decrease in the face of this coordinated regulatory action.

I would note, however, an ambiguity in the "Violations of Law and Consumer Harm" category, an ambiguity that should be cleared up in favor of additional consumer protections. The category title, "Violations of Law and Consumer Harm," implies that there are some types of consumer harm that are distinct from violations of law and that is obviously true. The discussion of the category emphasizes this by stating that it encompasses "the broad range of violations of consumer protection laws *and evidence of consumer harm*." 81 F.R. 26556 (emphasis added). And the text of the guidance itself states this as well, indicating that the category's assessment factors "evaluate the dimensions of any identified violation *or consumer harm*." 81 F.R. 26558 (emphasis added).

But the remainder of the discussion of this category only focuses on violations of law and pays little attention to "the broad array of risks in the market that can cause consumer harm" that are not also violations of law. 81 F.R. 26556. Indeed, the four assessment factors for this category are all premises on causes of identified "violations of law." This is a significant failing for the CC Rating System because of the many types of consumer harm that are not clear violations of law. As proposed, the "Violations of Law and Consumer Harm" category appears to be as much about protecting the bank from legal liability from lawsuits brought on behalf of consumers as it is about addressing the legitimate interests of the consumers of financial services.

As we sort out the after-effects of the Subprime Crisis, we have seen many situations where there was no clear violation of law but homeowners suffered from outrageous industry practices. For instance, many borrowers are suffering needlessly at the hands of their mortgage servicers. Some servicers are under-resourced, intentionally or not, and continue to treat their borrowers with a maddening disregard. In some cases, this outrageous behavior does not amount to a clear violation of law, but is behavior that reflects most badly on the parties engaged in it. The CC Rating System should both acknowledge this type of harm and address it to maximize the benefits that can flow from this forthcoming revision to it.

Sincerely,



David Reiss[1]

[1] This comment letter is adapted in part from my posts to REFinBlog.com. Aaron Dadouch assisted in the preparation of this comment letter.