

Background

The Federal Financial Institutions Examination Council (FFIEC) has finalized a new [Uniform Interagency Consumer Compliance Rating System](#) (CC Rating System) to be effective on March 3, 2017. The new system updates a compliance rating system first announced in 1980 and follows comments on proposed changes published on May 3, 2016. The intention of the new CC Rating System announced on November 7, 2016 is to provide multiple federal financial regulators with a common framework for evaluating compliance programs, with a particular emphasis on managing risk of consumer harm. The federal agencies involved in designing the new system are: the Federal Reserve System (the Fed), the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC) and the State Liaison Committee (SLC).

The FFIEC announces that the new revisions are intended to better reflect current compliance approaches and to align compliance evaluation with risk-based, tailored examination processes. It states that the primary purpose of the CC Rating System “is to ensure that regulated financial institutions are evaluated in a comprehensive and consistent manner and that supervisory resources are appropriately focused on areas exhibiting risk of consumer harm and on institutions that warrant elevated supervisory attention.”

This new articulation does not appear to significantly change what the federal financial regulators are looking for in compliance programs, but it does provide a uniform lens through which regulated entities and regulators can look at and evaluate compliance programs. Thematically, the new guidelines are also informative about the general design of effective compliance programs, with a particular emphasis on consumer issues.

We have found that an effective compliance program is an important factor in mergers and acquisitions. Institutions that do not receive the strongest ratings (a one or a two rating) will likely face greater scrutiny in M&A transactions.

Foundational Principles

The FFIEC articulates four underlying principles for compliance programs. Those principles state that a compliance program should:

1. Be risk-based
2. Be transparent
3. Be actionable
4. Incent compliance

The system uses a five-point rating scale to evaluate three elements of a compliance program: Board and Management Oversight, Compliance Program and Violations of Law and Consumer Harm. On the five-point scale, one is the best rating possible, suggesting a strong compliance system that prevents violations of law and consumer harm. A rating of five is the least favorable rating, suggesting a compliance program that is critically deficient at managing risk and/or preventing consumer harm.

Program Elements

There are specific areas of regulatory focus within each of the three broad elements to be evaluated.

<p>Board and Management Oversight</p>	<ul style="list-style-type: none"> • Oversight of and commitment to the compliance program • Effectiveness of organization change management processes • Comprehension, identification and management of risks • Self-identification of compliance issues and corrective actions
<p>Compliance Program</p>	<ul style="list-style-type: none"> • Whether the institution’s compliance policies and procedures are appropriate to its risks • The degree to which compliance training is current and tailored to risk and staff responsibilities • Sufficiency of monitoring and audit • Responsiveness and effectiveness of complaint resolution process
<p>Violations of Law and Consumer Harm</p>	<ul style="list-style-type: none"> • Root causes of violations • Severity of harm • Duration of time of violations • Pervasiveness of violations

Ratings Definitions

The new ratings system includes a set of definitions to guide examiners in applying the assessment factors listed above. These definitions specify the types of controls and approaches associated with sound compliance management systems. Institutions subject to compliance examinations should study these definitions for insight into the expected scope of examinations.

Relationship to Federal Sentencing Guidelines for Effective Compliance Programs

Many compliance programs are designed using the Federal Sentencing Guidelines as the roadmap for effective compliance program structure. The new CC Rating System does not appear to conflict with that roadmap. If a program is effective under the guidelines, it is likely to be considered effective under the CC Rating System. However, the new CC Rating System should provide guidance to Compliance professionals about specific areas of particular importance to their federal financial regulators, including a regulatory focus on consumer compliance elements.

With 46 offices in 21 countries, we operate a leading Financial Services Practice, composed of more than 240 professionals who provide integrated legal, regulatory and public policy representation to every segment of the financial services industry. If you would like to discuss designing or evaluating your organization's compliance program, contact your principal firm lawyer or one of the individuals below.

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