

---

## DON'T MOUTH OFF TO THE PRESS ABOUT EXAM RATINGS

Exam details are confidential, says former FDIC field examiner

&bull; &bull; &bull;

UNconventional Wisdom is a periodic guest blog, where authors hold up the so-called common wisdom to a fresh perspective. To propose a guest blog, email either William Streeter, editor in chief, or Steve Cocheo, executive editor

&bull; &bull; &bull;

By Michelle M. Lucci, CRCM, CAMS, a Risk Management Consultant at Bankers Toolbox, Austin, Texas. The firm provides software solutions to banks. Lucci is a former FDIC examiner dually commissioned in risk management and compliance. She has 25 years experience in financial services. [michellel@bankerstoolbox.com](mailto:michellel@bankerstoolbox.com) She writes a blog of her own called "Stress Is Good."

FDIC's Problem Bank List totaled 888 financial institutions as of March 31, 2011. That means there are many banks that have received unsatisfactory ratings and many bankers struggling to make things right in their institution. This is a very difficult and frustrating task.

Why is this banking crisis so different?

This is not the country's first banking crisis nor will it be the last. For me, one of the biggest differences between this crisis and the crisis of the 1990s is that bankers are airing their individual banks' difficulties with the regulators out in the open and in front of the public eye.

Why is this happening? Is it the preponderance of the news media in all its various forms? Or is it because the threat of retaliation by examiners is seemingly gone?

Maybe a little bit of both.

I routinely receive Google Alerts on various banking-related topics. At least twice a month I see an article written by a reporter who recently interviewed a community banker. In the article the banker has literally disclosed every aspect of his or her most recent regulatory examination and openly criticized the field examiners and their findings. It also appears that it has become commonplace for bankers to contact their congressional representatives, disclose the examination findings, discuss their objectives, and perhaps even testify in public before a congressional committee, which then publishes a written transcript of the testimony.

I think every human being understands the need to be heard. This need is elevated to even higher levels when it's a situation that you may feel is not under your control and that gravely impacts your livelihood, life's work, and the future of others employed by the institution.

However, as a former examiner, I still believe in the integrity and confidential nature of the examination process.

Talk Back! Do you agree with guest blogger Michelle Lucci?

Or do you think very differently? Share your views in the comment section following this article.

## Regulations and penalties

Federal regulators all have regulations in place that require that confidentiality. For national banks, refer to 12 CFR 4.37(b). For FDIC supervised institutions, the regulation is found in Part 309—Disclosure of Information. Here is an excerpt:

“Disclosure Prohibited—no person shall disclose or permit the disclosure of any exempt records, or information contained therein, to any persons other than those officers, directors, employees, or agents of the Corporation who have a need for such records in the performance of their official duties.”

To remind bankers of this confidentiality, the cover of the FDIC Report of Examination clearly states, in very large letters, “THIS REPORT OF EXAMINATION IS CONFIDENTIAL.”

The national bank examiners also include a similar comment in every report with reference to 12 CFR 4. Their comment also states that any disclosure of the information contained in the report, including the composite ratings, will result in a violation of the aforementioned regulation and is subject to Civil Money Penalties provided in 18 USC 641.

What else is included in the confidentiality provision?

After reading the excerpt above, one may not realize the full extent of the confidentiality provision. Let me remind you that it is far ranging and includes:

- Agendas for meetings with examiners

- Minutes of meetings with examiners.

- Comments made at exit meetings and board meetings with examiners.

After reading the list above, think back to your bank's last shareholder meeting. Did the bank President or CEO disclose the composite rating to the attendees? Did he or she also disclose the component ratings? This is a no-no.

Bank rating agencies may influence behavior

I have to think that some of this lack of compliance with the regulation, or maybe just this type of informality, comes from the publicly available bank rating agencies.

These agencies profit by taking the publicly available Call Report data and massaging it to include their analyst comments. They even go so far as to assign the bank a rating from 1-5 using a concept similar to the CAMELS rating system. Remember, these are not official and the rating for one component, the "M" for management, is only available in the official Report of Examination.

What you can do if you don't agree with examiners

Regulators have issued public guidance to assist bankers with the process of appealing ratings. The guidance first encourages bankers to discuss the matter with the examiner in charge, field supervisor, and regional office personnel. Then it details a formal appeals process (FDIC FIL-13-2011). The agencies also have an Ombudsman available who provides a confidential, neutral, and independent source of information and assistance.

So, what can bankers tell the press?

The best advice is to have a public relations plan.

This way a qualified professional can discuss the bank's condition and can help to position the message in a positive manner. Here are some examples:

- "The bank is working closely with regulators and has addressed (or is in the process of addressing) all the issues in the public action."

- If there is negative press from a public enforcement action or from a bank rating internet site, a positive message can reassure the public of the bank's safety and availability of federal deposit insurance protection in an effort to prevent a liquidity decline that could result in a much more difficult situation.

• It allows bank management the opportunity to acknowledge the various factors that lie outside their control, such as the economy, government regulations, etc. “Despite these elements, bank management has been taking positive action, such as recognizing loan losses, making adequate loan loss provisions, etc.”

These steps can go a long way towards rebuilding the reputation of a bank and may even attract new investors who see that the management team is willing to acknowledge their difficulties, deal with them, and rise above to create a brighter future.

Talk Back! Do you agree with guest blogger Michelle Lucci?

Or do you think very differently? Share your views in the comment section following this article.