



March 16, 2023

Via email only: Craig.Cellini@Illinois.gov

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 2nd Floor
Springfield, IL 62786

Re: Comments on IL CRA Proposed Rules

We thank the Illinois Department of Financial and Professional Regulation (IDFPR) for their work drafting these proposed rules (NPR) and for this opportunity to comment.

Introduction

The undersigned organizations [and individuals] are part of the Illinois Community Reinvestment Act (CRA) Coalition, a group that has come together to develop and advocate for public policies that increase the availability of credit to low- and moderate-income (LMI) individuals, households, and businesses in LMI communities and communities of color. We advocated for passage of the Illinois CRA (IL CRA), and we are active in advocating for positive modernization of the federal CRA as well.

The members of the Illinois CRA Coalition Steering Committee have dedicated considerable time and energy into understanding the NPR with the aim of mobilizing coalition members to provide thoughtful and constructive comments. These comments reflect community-based feedback critical to ensuring that the CRA meets its intended goal – addressing historic redlining through increased access to banking and credit.

The IL CRA's inclusion of three critical sectors of the credit and mortgage markets are of singular importance as traditional banks continue to provide a smaller portion of credit and mortgage lending. The Coalition commends IDFPR's focus on equitable access to credit and financial services for LMI families and communities in development of the IL CRA rules, but there are some important deficiencies in the proposed rules that work counter to the goals of the law, and some glaring omissions that need to be addressed.

This letter will focus on five topics within the proposed rule: (1) the need for a racial equity lens in IL CRA assessments; (2) consideration of discriminatory practices in covered entities' IL CRA examinations; (3) restrictions on CRA credit for repeated purchases of loans; (4) prevention of predatory loans under a covered entities charter; and (5) data collection and reporting. We also discuss key NPR provisions that we support.

1. Need to Add Racial Equity Lens to Address Historic and Current Redlining

The IL CRA Coalition has been consistent throughout this process that the state CRA must explicitly have a racial equity lens in order to directly address historic and systemic redlining. Without this, the IL CRA repeats the same central flaw of the federal law, limits its ability to ensure equitable access to credit in all Illinois communities, and frustrates legislative intent.

As detailed in the Woodstock Institute's comment letter, the Illinois Legislative Black Caucus (ILBC) submitted comments on August 5, 2022, on proposed amendments to implementing regulations for the Federal CRA. Their comments are essential in setting the context and expectations from which this body of legislators drafted and shepherded through the IL CRA toward passage.

Our thoughts on CRA reform are informed, in large part, by the goals of the Illinois CRA, which we passed last year. The Illinois CRA was part of the Illinois Legislative Black Caucus (ILBC) 2020-21 legislative agenda. The "Black Caucus Agenda" was developed in the wake of high-profile instances of police violence against Black people and the unrest that ensued, as well as the COVID pandemic's disproportionate impacts on Black and Brown communities. Also inspiring the Black Caucus Agenda, and the Illinois CRA in particular, was a study by NPR affiliate WBEZ and City Bureau showing that, in Chicago, lenders have invested more in a single White neighborhood than all the Black neighborhoods combined.

Against this backdrop, *we expect the rules to implement the Illinois CRA to be race conscious and to establish a regulatory framework that explicitly and intentionally aims to reverse the profoundly negative consequences of redlining.* [emphasis added] Just as redlining was and is race conscious, addressing its impacts in a meaningful way must also be race conscious. At the core of the federal and state CRA is the concept of community. Nothing in either law instructs regulators to pretend that communities of color do not exist. There are zip codes in Chicago that are more than 95% Black. These zip codes are also among the most disinvested zip codes in Illinois. Addressing the needs of these communities requires reinvestment activities that are directly responsive to local needs.¹

The omission of an explicit racial equity lens in the NPR diverges from the legislative intent with which the IL CRA was passed and risks recreating the flaws of implementation of the federal CRA in terms of affirmatively addressing redlining.

Information about race, ethnicity and gender on all types of mortgage loans is currently available

¹ Illinois Senator Jacqueline Y. Collins, legislative champion of the Illinois CRA, comment letter to the Office of the Comptroller of the Currency on 2022 Notice of Proposed Rulemaking on the Community Reinvestment Act, August 5, 2022. Co-signed by Illinois Senators Napoleon Harris, III, Christopher Belt, Laura Fine, and Robert Peters.

through data collected and reported under the Home Mortgage Disclosure Act (HMDA). Similar information for small business loans will be made available through rules governing Dodd-Frank Section 1071 (a development which is also not addressed or mentioned in the NPR). As such, it is possible to add a racial equity lens to the existing regulatory assessment of the borrower and geographic distribution of lending activity based on income. The same procedures that allow an examiner to assess whether a covered entity is serving the needs of low- and moderate-income communities and individuals can be easily replicated for a similar assessment based on the racial and ethnic characteristics of those same communities and individuals.

To this end, the Coalition recommends making the following changes to the proposed rules:

1. Wherever the Secretary examines a covered entity's performance based on the income of geographies and borrowers, the racial and ethnic demographics of those geographies and borrowers should also be examined to ensure no discrimination is taking place;
2. If a financial institution is found to have violated any civil rights, equal protection, or consumer protection laws, and irrespective of whether the institution settles without admitting guilt, the institution should be immediately downgraded to "Substantial Noncompliance" in its current or next IL CRA assessment; and
3. If a fair lending investigation is pending, this should be noted during an IL CRA exam and appropriate follow-up actions taken once the investigation is concluded. Alternatively, the IL CRA exam should be kept open until the fair lending investigation is completed in order to take into account the investigation's findings.

If the rules are not updated to explicitly include a racial equity lens, IDFPR needs to be proactive in evaluating whether entities covered by the IL CRA have engaged in discriminatory or other illegal practices. The current system for identifying these practices does not do a satisfactory job of identifying instances where discriminatory activity has taken place. For the benefit of communities and covered entities, IDFPR needs to detail how they will conduct or verify fair lending assessments and monitor for other evidence of discriminatory practices. Absent further details, using data available through HMDA is an already-existing source to evaluate whether discrimination is occurring.

In addition, we urge IDFPR to affirmatively engage in fair lending assessments or evaluations, including sample testing of both lending and appraisal practices, to protect minority consumers and communities of color. Without this, the burden is placed on under-resourced community members and non-profits to identify when covered entities are engaging in discriminatory or other illegal practices. This places the burden in the wrong place.

2. Discriminatory Practices Impact on IL CRA Ratings

The standard for consideration of discriminatory or other illegal practices impacting institutions' ratings should be updated to be more expansive. The NPR utilizes language that is present in the current federal CRA rules but which was identified for update by the three regulatory agencies in the federal NPR issued in June 2022. The language as proposed by IDFPR only includes when "discriminatory or other illegal *credit* practices" [emphasis added] are identified. The NPR issued by the federal regulatory agencies recommended updating the rule to cover "any discriminatory or other illegal practices," as a means of ensuring that discriminatory practices related to deposit products or other products and services offered by the institutions are included. Regardless of

whether the federal regulators include this update in their final rule, IDFPF should include the more expansive standard to hold institutions accountable for discriminatory practices.

3. CRA Credit for Loan Purchases

The NPR fails to address a further issue that has also been identified as a shortfall of the federal CRA: CRA credit being given for repeated loan purchases. Because purchased loans are treated equally to originated loans under the federal CRA, a market has developed for the continuous and repeated purchase of loans eligible for CRA consideration. Failure to address this issue within the rules implementing the IL CRA could lead to similar issues faced at the federal level where “loan churn” plays a role in rating inflation. The continuous repurchase allows entities to buy and sell the same CRA-qualifying mortgages over the years and receive credit for those loans without providing meaningful new investment in LMI communities. Given the long loan term for most mortgages, the same loan can be counted on exams for multiple banks/mortgage lenders over many years. We recommend limiting qualifying loan purchases to only loans originated by that bank/mortgage lender or purchased from the originator. This will provide the necessary secondary market liquidity for lenders to originate more mortgages, while also incentivizing ongoing mortgage access to LMI households and people of color.

4. Predatory Loans

The NPR does not take sufficient steps to prevent predatory lending in LMI or minority communities. While the types of products offered directly by a covered entity are considered in IL CRA exams, entities can choose whether or not to include the activities of and products offered by affiliates in their exams. Some banks engage in indirect consumer lending through a non-bank partner making predatory loans, with partnerships structured to evade interest rate caps and consumer protection laws at the state level. These types of partnerships actively strip wealth from LMI communities and communities of color. The rules implementing the IL CRA should be updated to explicitly prevent covered entities from allowing their charters to be used as a mechanism by which third parties can provide predatory loans.

5. Data Collection and Reporting

As noted above, the NPR does not include any mention of Section 1071 data, which is an oversight that should be corrected in the final rule. This data, which will be available shortly, will provide HMDA-like data on small business loans and make it easier to assess small business and home mortgage lending performance based on race, ethnicity, gender, etc.

The NPR proposes to provide aggregate data on small business, small farm and community development lending activity by covered entities. However, this information should be provided at both the aggregate and disaggregate level. Aggregating the data provides no ability to ascertain the lending distribution to low-income and communities of color, which will impede third party organizations from conducting trends analysis that IDFPF does not perform, and eliminates any possibility of holding IDFPF accountable for the appropriate implementation and enforcement of the law. The data should be provided at the census tract level without a Freedom of Information Act request or process. Additionally, the management and availability of this data should remain within IDFPF and not outsourced to a third party.

We appreciate IDFPF’s focus on ensuring covered entities provide public access to IL CRA-

related materials. To enhance the public's ability to proactively engage covered entities providing access to credit and mortgages in their communities, we recommend that IDFPFR create a user-friendly list on its website of the state-chartered banks, credit unions and mortgage companies subject to the IL CRA, in addition to the quarterly list of upcoming exams referenced in the NPR.

6. Positive Aspects of NPR

We appreciate that IDFPFR recognizes the importance of equitable access to credit and financial services in LMI communities in Illinois and has incorporated factors and assessments in the rules to encourage access to those services. Once the omission of the racial equity lens is addressed, there are many items with which we agree are essential for a fair assessment of financial institution investments in Illinois communities.

The requirements for assessment area selection were kept clear and concise. Under the proposed rules, assessment areas are selected based on the physical presence of covered entities and/or where the institutions conduct a "substantial portion" of their lending. With the additional requirement that covered entities are not allowed to exclude LMI areas or make other discriminatory exclusions, the assessment area rules should ensure inclusion of communities most in need of investment under the IL CRA.

The Coalition is also in favor of several assessment factors measuring institutions' activities of meeting the needs of underserved communities within their assessment areas. These include the requirements that credit unions that deliver all or most of their services digitally to still meet the needs of their assessment areas; all institutions must meet the needs of the unbanked and underbanked within their assessment areas; consideration of service delivery methods for LMI communities and geographies; and consideration of the marketing and outreach conducted, and the services available based on income level of a geography. We also believe that consideration of support for minority-owned depository institutions (MDIs) and community development financial institutions (CDFIs), activities specifically included in the NPR, can help foster responsive and innovative loan products to create a more inclusive market for LMI borrowers who need additional support for credit access.

The Coalition specifically notes that people with disabilities and Veterans may be part of underserved communities, and that covered entities' activities to meet the needs of these particular populations should also be reviewed under the proposed assessment factors.

With the IL CRA seeking to increase investment in LMI communities, the Coalition was pleased to see assessment factors aimed at curbing displacement of LMI families and affordable housing. The inclusion of the assessment factors measuring the displacement of affordable housing and an institution's efforts to work with delinquent customers help to foster activities that meet the needs of communities. However, the Coalition does not believe sufficient detail about how these activities will be measured is included in the proposed rules, and therefore may have further comment once this factor is actually implemented.

In addition to these assessment factors, there are aspects of the NPR the Coalition believes should remain in place to ensure that the necessary focus of the implementing rules stay on the covered entities.

First, the cost of conducting exams should remain on the covered entities as a reasonable expense for doing business in the state. Even though some of the covered entities will undoubtedly argue that the costs as proposed in the rules are burdensome, the IL CRA was passed to correct disparities and harm caused by redlining practices that continue to affect LMI communities and communities of color throughout Illinois. To remove these fees from the institutions unfairly puts the costs back on the people of Illinois, who individually and collectively bear the direct and indirect costs of systematic disinvestment and discriminatory practices.

Second, some of the covered entities may claim that the proposed rule and state administered CRA exams are duplicative of the federal CRA and impose unnecessary costs upon them, and propose that their rating under the federal CRA be used to lower their responsibility under the IL CRA. However, the IL CRA was passed not just to cover institutions not regulated under the federal CRA, but also to address the failures of the federal CRA's implementation. With over 90 percent of banks receiving passing grades under the federal CRA, it is clear that those ratings suffer from inflation. An analysis conducted by Woodstock Institute demonstrates that 80% of recent fair lending-related violations by banks were not considered or mentioned by federal CRA regulators. Allowing federal CRA ratings to be considered in the implementation of the IL CRA would compound the limitations of the federal law.

Third, due to their more limited scope of business, some mortgage companies may argue that the IL CRA rules governing them are overly burdensome. However, the proposed rules for mortgage companies have been appropriately tailored to include companies who originate a reasonable number of loans, ensuring that the smallest entities are not subject to IL CRA exams. Additionally, while mortgage companies are subject to the demands of the secondary market and may argue that they are constrained with their ability to fully tailor lending guidelines, we believe that mortgage companies can meet their IL CRA obligations with products that fall within FHA guidelines and that lead to sustainable, affordable homeownership.

Finally, we note that the federal regulators are currently reviewing proposed rule changes to the federal CRA. To the extent that the IL CRA NPR references the federal CRA, we suggest that IDFPF be open to modifying the state rules once the federal CRA rules are finalized so that there are no areas or issues where the IL CRA is narrower than its federal counterpart.

Conclusion

The IL CRA's purpose and legislative intent is clear: to address the continuing racial disparities in lending and access to credit throughout Illinois. The above comments reflect the experiences of the undersigned organizations, based on their work with diverse individuals, small businesses, and communities throughout Illinois, and their belief that this law and its implementing rules - if well-executed - will finally begin to fulfill the long-denied promise of equity in access to credit for low- and moderate-income communities and communities of color.

We thank IDFPF for their current efforts in the implementation of the IL CRA and for your consideration of our comments.

Submitted by [names to be added in alphabetical order]:

Housing Action Illinois