

Illinois CRA Coalition Comments Sign On Letter 12-28-2021

The Illinois Community Reinvestment Act (CRA) Coalition consists of nonprofit organizations that have 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.

Need to Address Historic and Current Redlining

Before addressing the specific questions raised by the Illinois Department of Financial and Professional Regulation (IDFPR) related to the development of the IL CRA's implementing regulation, the Illinois CRA Coalition feels strongly that the role of racial discrimination must be overtly addressed in both the rulemaking and the enforcement process. At its core, the federal CRA was drafted and enacted with the singular goal to eliminate the practice of redlining by lending institutions. The only protected class that was incorporated into the assignment of areas posing an alleged unacceptable high risk—redlined areas—is race, not income.

In addition, while race and ethnicity are not a formal part of either the federal or IL CRA, factors regarding discrimination based on race and ethnicity can be added through the regulatory rulemaking process. A precedent for this was set with the 1975 Home Mortgage Disclosure Act (HMDA) which, when passed, had no mention of race or ethnicity. Race did not appear in HMDA until the 1980 requirement to produce aggregate tables of loans that include the racial composition of the census tracts where the properties were located.

Similarly, any potential claim that a lack of the specific inclusion of the words “race” or “ethnicity” in the state law does not support eliminating racial and ethnic analysis in the IL CRA evaluation process. As such, and at a minimum, the first elementary aspect of any IL CRA assessment should be an evaluation of the lenders' record under the Fair Housing Act (FHA), Equal Credit Opportunity Act (ECOA), and related non-discrimination regulations. A lender in violation of these provisions is, a priori, not meeting the needs of its community and should be found in non-compliance with the IL CRA.

Comments Relating to the Advance Notice of Proposed Rulemaking

These comments address the following topics as presented in the Advance Notice of Proposed Rulemaking (ANPR): (1) addressing assessment areas for financial institutions that have significant digital and mobile service channels; and (2) Section 35-10(c) factors used to assess covered financial institutions' compliance with the IL CRA. These comments add to and expand

upon the written testimony by various Illinois CRA Coalition members presented during the October 18, 2021 IDFPR hearing.

(1) Digital and Mobile Services and Assessment Areas

IDFPR seeks comments on whether the terms “office,” “branch,” and/or “other facilities” of the IL CRA should be defined to exclude locations outside of Illinois, or whether such terms should be defined to include any location that offers products and services to residents of this state, regardless of the physical location. IDFPR also seeks comment on whether the assessment area of entities that provide all or a majority of their products and services via mobile and other digital channels should include the entire state.

The IL CRA should ensure equitable access to financial products and services to all residents of the state, irrespective of where the financial product or service originates. As such, IDFPR should take a data driven approach to define the market for financial institutions that have significant mobile and digital service channels. Based on the specific business model, IDFPR can designate areas where high numbers of loans or deposits are located, then determine if these services are meeting the credit needs of the LMI borrowers and communities of color in those geographic areas. Redlining is a local phenomenon, which means that banks and financial institutions, including branchless banks or those that have online and branch operations, must have local assessment areas for evaluating their performance.

Much has been made of the fact that there are a variety of lending institutions that are covered by this law whose markets are defined by certain client characteristics rather than by geography. Related to this are institutions that do not have physical locations to define their market areas. However, federal and state regulatory agencies have been dealing with these kinds of entities for decades. For example, Massachusetts’ CRA law and regulation provide a model for how to cover mortgage companies that have a variety of delivery models including online delivery. The regulation applies a retail lending test and service test that is feasible and seems to have increased lending and community development financing to underserved communities as found in a recent National Community Reinvestment Coalition (NCRC) white paper.¹ Similarly, the federal CRA has created a variety of responsive methods from which to assess the wide variety of financial institutions covered by the federal law—from banks chartered under the Competitive Equality Banking Act (CEBA), industrial development banks, institutions who serve targeted individuals (like members of the military), and banks who have significant virtual lending and deposit-taking operations throughout the United States.

¹ Bruce Mitchell, PhD. and Josh Silver, *Adding Underserved Census Tracts As Criterion On CRA Exams*, NCRC, January 2020, <https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/>

IDFPR would need to define thresholds to determine an entity’s significance and relevance in particular markets to identify areas from which to assess performance under the IL CRA. If an institution has significant market share throughout the state, a statewide assessment area would be justified. If an institution has concentrated activity in one or a handful of markets, those should be the geographic context for assessing performance. Setting a threshold that is too high would exempt from oversight too many financial service providers that play a critically important role in the economic lives of LMI individuals and communities. Alternatively, setting a threshold that is too low may create a regulatory burden on small institutions. As such, the threshold should be flexible and responsive to each market, and capture those institutions that comprise the super-majority of financial service activity in a particular market. For example, if three institutions represent 85% of small business, mortgage, consumer and/or deposit activity in a market, it would not necessarily be a good use of resources assessing the performances of numbers 4, 5 and 6 in that market.

To fulfill the potential of the IL CRA, markets should be defined in a manner that incentivizes activities in urban, suburban and rural LMI communities and cumulatively captures 75% or more of an institution’s lending activity. Research by NCRC suggests that “loans per thousand residents” serves well to both identify underserved communities and as an incentive for lending in those communities.²

In addition, financial institutions with significant mobile and digital service channels should be assessed on whether they are meeting the needs of LMI households that may have limited technology literacy and/or broadband access, which includes older people, those who need banking services in languages other than English, and many low-income and rural areas of the state with limited internet access.

(2) Section 35-10(c) Factors

All of the assessment factors are important, with the following highlighted:

(a) Community Needs

In order for financial institutions to get an accurate understanding of community needs, they need to have robust engagement with community members and strong relationships with community-focused organizations including, but not limited to, regional planning agencies, community economic development organizations, neighborhood non-profit small business service providers and community-based nonprofit organizations.

² *How Can Geographical Areas On CRA Exams Work For Branchless Banks?* by Josh Silver, NCRC
<https://ncrc.org/how-can-geographical-areas-on-cra-exams-work-for-branchless-banks/>

Financial institutions can accomplish this in a number of ways, including building and maintaining relationships with community development organizations, HUD approved housing counseling agencies, and small business development services organizations, among others. These groups work directly with LMI communities and communities of color and have essential knowledge of what they need, from the beginning of loans/transactions, throughout the process, and beyond. By partnering with these organizations, covered financial institutions can demonstrate their commitment to and understanding of the unique community needs of where they are doing business. Regulatory assessment during the exam process should be done in a way that incentivizes the development and maintenance of these types of relationships.

Financial institutions should also be aware of community demographics, such as referencing regional plans, community initiatives, and quality of life plans (QLPs), and other such strategic community planning resources, as well as deep engagement with local organizations to understand community needs and ensure that their activities complement existing plans/initiatives.

As an example, Assessment Factor A from a previous version of the federal CRA connects directly to community engagement to understand community needs. It was removed in the last revision but is a useful guide for community needs assessment. Assessment Factor A assessed: “Activities conducted by the institution to ascertain the credit needs of its community, including the extent of efforts to communicate with members of its community regarding the credit services being provided by the institution.” This is an important assessment factor and should be part of the IL CRA regulatory process so long as it links community outreach activities to the financial institution providing financial products and services that are responsive to market needs.

When assessing financial institutions’ competency in understanding community needs, regulators should review the community engagement of institutions in launching innovative products as well as the impact and utilization of these products.

Specifically, issues regarding fees on products and services and their impact on communities should be reviewed. On the national level, the Federal Reserve Board has explicitly stated that discrimination and consumer violations in bank deposit accounts should be considered in fair lending reviews. We believe that the same level of attention should be given for financial institutions covered under IL CRA, given how excessive fees from financial institutions are most detrimental in communities of color, particularly those in low wealth census tracts. These fees also make customers most susceptible to predatory short-term loans whose interest rates can often turn an effort to cover a temporary financial shortfall into a long-term economic burden. Black and Hispanic households are the most likely to pay overdraft fees, while simultaneously

being the most likely to be underbanked or unbanked, representing a disproportionate share of the more than \$1B annually assessed in overdraft fees.

(b) Marketing and Outreach

Marketing and outreach are key to making sure that consumers know about and can evaluate available credit products and services. Assessment Factor B of the original federal CRA regulation assesses: “The extent of the institution’s marketing and special credit-related programs to make members of the community aware of the credit services offered by the institution.” This Factor is a useful model in evaluating how well financial institutions are marketing their products to LMI communities.

The creation of financial products that are responsive to LMI individual and local community needs must be paired with ensuring those products are accessible and actually utilized. This assessment factor is an important add-on to the assessment of local need, but will require IDFP to define “marketing” to include community outreach, technical assistance and financial education.

Financial institutions should market products in plain language and in culturally appropriate ways. Marketing and outreach should match the needs of targeted communities in terms of demographics, technology and language accessibility. For example, covered institutions could be assessed, among other indicators, on whether staff receive training for cultural competence and anti-bias in customer service and sales marketing, as well as whether data and studies are used to inform recommended ways to advertise and engage communities of color and LMI populations.

Finally, marketing should also attempt to match the channels in which people most receive information, such as online, local media, printed materials, etc., and venues most frequented by the communities. Predatory lenders are doing this effectively and meeting people where they are at physically and online. Legitimate financial institutions need to prioritize this to better meet the needs of LMI communities and communities of color.

(c) Origination of Mortgage Loans

Analysis of HMDA data is critical to assess compliance with both the federal CRA and with fair lending laws, including the Equal Credit Opportunity Act (ECOA) and Fair Housing Act (FHA). IDFP should independently assess whether there is adequate fair lending compliance under the IL CRA by analyzing HMDA data during a regulatory exam.

Institutions should also be evaluated on their participation in subsidized mortgage programs, including the U.S. Department of Housing and Urban Development (HUD) home mortgage

subsidies and programs, Federal Home Loan Bank programs such as Down Payment Plus, Illinois Housing Development Authority mortgage lending subsidies and programs, and others. IDFPFR should review mortgages and home loan products for their long-term affordability and accessibility to assess whether they are sustainable for LMI borrowers in terms of interest rates, fees, and mortgage insurance. Similarly, covered financial institutions should be evaluated on whether they directly or indirectly provide affordable home repair/rehabilitation assistance to help LMI homeowners and communities maintain their homes and sustain long term homeownership. Proactively, IDFPFR should also review HMDA data to evaluate whether institutions are lending in equitable numbers to borrowers of color in both mortgage originations and refinancing.

Covered financial institutions can demonstrate innovation and responsiveness to LMI credit needs through the creation and utilization of Special Purpose Credit Programs with more lenient underwriting guidelines to help borrowers with lower credit scores and other underwriting challenges access appropriate credit products. These products should be tied to a requirement for counseling with a HUD approved housing counseling agency. Communities of color often lack access to generational wealth and student debt disproportionately impacts these communities as well. Creating flexible products with more lenient underwriting guidelines is critical to reaching these communities, and the IL CRA rules should incentivize the use of such programs, particularly in areas of historic redlining and disinvestment.

Additionally, covered financial institutions should partner with Community Development Financial Institutions (CDFIs) to create responsive and innovative loan products to create a more inclusive market for LMI borrowers who need additional support for credit access. These products should include home purchase loans as well as rehabilitation and refinance products to help homeowners sustain their homes long term. However, CDFIs cannot fully take the place of covered financial institutions and the full suite of programs, resources, and services they provide to consumers.

Institutions should only receive state CRA credit for actual loan originations, not purchases on the secondary market, unless they are purchasing loans from a CDFI in Illinois. As noted above, indirect lending in LMI communities through partnerships with alternative lenders like CDFIs does not obviate a covered institution's responsibility to best serve their customers directly. This is addressed in more detail in the section regarding participation in community focused programs.

(d) Small Business Loans and Services

Small business lending should be evaluated in a similar manner to mortgage lending, particularly given the pending release of Dodd Frank Section 1071 small business lending data that will

provide information similar to HMDA. IDFPF should set the standard for national consumer financial protection towards small businesses by proactively creating the infrastructure to assess small business lending performance by covered financial institutions on a basis beyond just gross annual revenues to include disparate impact based on protected classes and prohibited basis. We also recommend that IDFPF review the soon-to-be-available 1071 small business data to evaluate whether institutions are lending in equitable numbers to borrowers of color.

Financial institutions should be evaluated on whether they offer flexible small business loans and lines of credit with affordable rates for LMI communities where historic racial redlining occurred. Innovative products and flexible underwriting standards should be responsive to the medical and student debt burden that is concentrated in underserved and historically redlined areas. This would help address the issues regarding the lack of generational wealth suffered by women- and minority-owned business owners that presents a barrier to accessing affordable loans and credit.

Additionally, covered financial institutions should provide products that facilitate initial working capital for start-ups as well as credit at various stages at the business cycle in LMI communities. Many small business start-ups scale and grow in their first five years, which also supports local neighborhood job creation and decreases unemployment rates in these communities.

Beyond the maximum revenue threshold, institutions should be assessed on their deployment of small business capital to micro (1-10 employees) and very small (10-25 employees) businesses in underserved communities that need up front working capital for bids and contracts, which is critical for small businesses to equitably compete in the market.

IDFPF should also assess covered financial institutions' ability to provide innovative small business products and transition loans for home-based businesses in underserved areas, and the level of partnerships they maintain with CDFIs. Finally, we strongly recommend that covered financial institutions be assessed on how they demonstrate active awareness and connections with Illinois Small Business Development Centers and other local community small business development service providers that provide no-cost assistance as part of inclusive, enhanced customer service. Institutions should be referring small business loan and credit applicants to these service organizations because they offer technical assistance that is not traditionally within the capacity of the covered financial institutions to provide directly.

(e) Participation in Community Focused Programs

While CDFIs and other alternative lenders play a critically important role in LMI communities, history has shown that financial institutions have used these institutions as substitutes for directly serving LMI clients instead of utilizing these institutions as a complement to further their reach

in economically depressed and historically underserved and under-resourced communities. A mortgage or small business loan from a CDFI is no substitute for a mortgage or small business loan as part of a broader suite of products, resources and services from a full-service financial institution, which can support homeowners and small business owners along their journey.

Financial institutions should be assessed on whether they are outsourcing financial products and services for LMI and historically underserved and under-resourced individuals, communities and/or small businesses to other institutions as a way to satisfy their regulatory obligations while not providing any direct services. This assessment can be done by reviewing the products, services and terms offered by the financial institution and its peers, assessing whether the institution has a valid business reason for limiting its product suite (if applicable), and comparing the distribution of similar products between moderate- and upper-income communities/individuals and low- and moderate-income communities/individuals, as well as with a similar racial and ethnic comparison. Efforts to make those products accessible in LMI and historically underserved and under-resourced communities should match efforts made in predominantly white, middle- and upper-income communities, regardless of whether a 3rd party is utilized. This is necessary to advance the principle of equity.

In many communities of color and LMI communities, predatory lenders have filled the spaces where banks and other covered institutions have been absent. Allowing a 3rd party to use a covered institution's charter to originate predatory loans should not be considered a "community-focused program" and instead should be considered counter to the goals of the IL CRA. Covered institutions should be encouraged to support HUD approved housing counseling agencies which offer credit and financial counseling, or other non-profit financial counseling. These nonprofit entities provide unbiased counseling for a variety of services that can improve the financial lives of LMI households and communities.

(f) Support for Delinquent Customers

Covered financial institutions should be evaluated on the outreach and services they provide to delinquent customers, including their efforts to identify customers who might be at risk of delinquency. As above, partnerships with HUD approved housing counseling agencies which offer credit and financial counseling, or other non-profit financial counseling, should be considered so that these services can be made available to help consumers understand options and receive guidance. Similarly, partnerships with and referrals to IL DCEO Small Business Development Centers should be encouraged so that these Centers can assist with business financial support and credit assistance resources for small businesses if and when cash flow challenges or delinquencies arise.

(g) Preservation of Affordable Housing Units and Small Business Corridors

Covered financial institutions should monitor their lending and investment practices to avoid displacement of housing accessible to LMI individuals and communities of color, particularly in hot real estate markets which were historically redlined. In these areas, community development and lending activities should reflect efforts to preserve affordable housing units and support the retention of LMI and diverse renters and homeowners, as well as have a symbiotic connection with the small business corridors that provide services and products to meet the needs of these households.

IDFPR should take special care in analyzing lending patterns in historically redlined areas and incentivize the preservation of affordable rental and homeownership opportunities as well as small business lending. IDFPR should also strengthen their relationship with the IL DCEO SBDC office and utilize SBDC office economic data on business corridors to map and analyze the interplay between housing and small business, especially in LMI and underserved and under-resourced areas.

As the financial industry evolves in its inclusion of socio-economic and environmental risk into their Enterprise-Wide Risk Management programs, this assessment factor will become more important. Understanding the positive and negative effects of the allocation of capital by a covered institution has a tangible financial impact on the capital adequacy of an institution. An institution found to be financing the gentrification of a historically underserved and under-resourced neighborhood will likely be highlighted in political discussions (i.e., Chicago's Lending Equity Ordinance), may find itself with negative media exposure, be subject to physical protests outside of its branches and, as a result, lose clients. As such, a socio-economic and environment risk assessment to determine whether products and services offered by the covered institution are helping or hurting LMI and underserved and under-resourced communities should be a part of the overarching assessment under the IL CRA.

(h) Evidence of Discriminatory & Prohibited Practices

We urge IDFPR to use data analysis to ensure that institutions are making credit available equitably. IDFPR should proactively monitor for disparate patterns and practices in lending activities across the state and in various localities through review of lending data, news stories, engagement with community organizations and other available data. There should not be an assumption of compliance based on the absence of complaints or enforcement actions. Finally, given the central importance of ensuring equitable lending and services, all covered financial institutions must be assessed on this factor.

(i) Other Factors

IDFPR seeks comments from interested parties on what, if any, adjustments or exceptions to the federal CRA rules may be necessary for their application. IDFPR also seeks comment on the potential suitability of the Massachusetts CRA rule for credit unions.

Massachusetts's CRA rule provides a good model for regulating credit unions under a state CRA law. Like products need like regulations, and credit unions providing mortgages should be assessed under the IL CRA just as are other covered institutions providing mortgages.

The federal CRA, as it stands today, and the pending reform of its implementing regulation, will provide the agency with a strong foundation to leverage. Formal reference to Regulation BB (the implementing regulation for the federal CRA), as the foundation for IDFPR's regulation implementing the IL CRA will provide consistency for covered institutions and the flexibility to build additional protections as warranted for the State of Illinois.

Finally, we would like to comment on a related, critical home lending issue, namely appraisals. Lenders play a key role in establishing property values based on the appraisals that they order and accept as the basis for a loan amount for both home purchases and refinances. This also affects entrepreneurs with capital needs who want to use home equity as an option to finance their small and microbusiness.

A report by Freddie Mac³ details the persistent appraisal gap in home valuations for homeowners in majority Black and Latinx census tracts. Based on data from more than 12 million appraisals for purchase transactions submitted to Freddie Mac through the Uniform Collateral Data Portal, it was shown that properties in Black and Latinx tracts receive appraisal values below contract price more often than those in predominantly white tracts, and that the higher the concentration of Black and Latinx people in a neighborhood, the wider the appraisal gap became. IDFPR should take this issue into consideration and consider ways to utilize the IL CRA to highlight and address these disparities here in Illinois.

Conclusion

The passage of the IL CRA arose in the context of Black Lives Matter, the tragic deaths of Laquan McDonald, George Floyd, and others, and the subsequent acknowledgement of the urgent need for racial justice, as well as a devastating report by WBEZ highlighting the vast lending disparities between Black and white neighborhoods in the city of Chicago. Illinois leaders, spearheaded by the Illinois Legislative Black Caucus, responded to these issues of deep

³ http://www.freddie.mac.com/research/insight/20210920_home_appraisals.page

racial disparities and racial injustice by enacting this critical piece of legislation. The above comments reflect the experiences of the undersigned non-profit organizations, based on their work with diverse individuals, small businesses, and communities throughout Illinois, and their belief that this law and its implementing rules will help fulfill the long denied promise of equity in access to credit for low- and moderate-income communities and communities of color.

Thank you for your consideration of our comments.

Submitted by:

Access Living

Chicago Area Fair Housing Alliance

Chicago Community Land Trust

Chicago Community Loan Fund

Chicago Rehab Network

Cobblestone Bakery and Caterer, LLC

East Side Heart & Home Family Center

Elevate

Habitat for Humanity of Champaign County

Hawk-Attollo

Housing Action Illinois

Housing Choice Partners

Human resources Development Institute

Legal Action Chicago

Madison County Urban League Inc

National Coalition for Latinxs with
Disabilities

Neighborhood Housing Services of Chicago

New Covenant CDC

NW HomeStart, Inc

Oak Park Regional Housing

Resistance Legal Clinic

Respond Now

Small Busines Majority

South Suburban Housing Center

Spanish Coalition for Housing (SCH)

The Resurrection Project

The Statewide Independent Living Council
of Illinois

Two Rivers Headstart CSBG program

Universal Housing Solutions CDC

Women Employed

Women's Business Development Center

Woodstock Institute