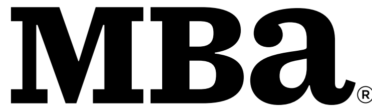

MORTGAGE BANKERS ASSOCIATION

March 6, 2024

Mr. Craig Cellini
Rules Coordinator, Office of the General Counsel
Illinois Department of Financial and Professional Regulations
320 West Washington, 2nd Floor
Springfield, IL 62786

Subject: January 12, 2024, Department of Financial and Professional Regulation's Second Notice of Proposed Rulemaking for the Illinois Community Reinvestment Act

Dear Mr. Cellini,

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to again provide comments to the Illinois Department of Financial and Professional Regulation (IDFPR) on the implementation of Public Law 101-657 of 2021, the Illinois Community Reinvestment Act (ILCRA). MBA and our member companies are committed to providing fair and equitable access to credit, and they continue to work with government and private sector stakeholders to develop new products and strategies to reach underserved markets and communities. MBA also appreciates IDFPR's extension of the comment period until March 6th as well as the opportunity to discuss MBA member views during a recent meeting.

MBA has been committed to supporting IDFPR efforts to implement the ILCRA, however this re-proposal still contains problematic elements that would increase the cost of compliance which ultimately severely limits the ability of well-regulated independent mortgage bankers (IMBs) to continue offering access to affordable

---

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 300,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

mortgage credit in Illinois. For several years, the aim of our organization has been to work with IDFPR to avoid such profound unintended consequences by urging that the final rules follow the contours of Massachusetts regulation, the only state with a final rule on this matter related to IMBs. It was encouraging in the early stages of IDFPR's efforts that they featured Massachusetts Banking Department staff in their stakeholder meetings and that the December 2022 proposed rule followed so closely to the Massachusetts language. Our hope has been, and continues to be, that this approach would streamline requirements for industry and minimize costs for both industry and IDFPR – especially in the case of IMBs given the unnecessary and duplicative nature of applying multiple CRAs to these companies which do not receive deposits and therefore do not have a business model that justifies imposition of this burdensome regulatory regime.

Indeed, we have made these points in testimony and written comments on four separate occasions beginning in August 2021 and in meetings with IDFPR staff.[2] MBA remains concerned about IDFPR's lack of other substantial changes from the prior second notice proposed rules. Mostly significantly these include:

- The need to fully consider and incorporate newly finalized federal CRA rules related to state chartered community banks;
- Revised language that proposes to hold lenders accountable for decisions made by independent appraisers;
- Limited effort to address regulatory burden and to use objective measurement standards, including rejecting MBA's suggestion to use on CFPB's Home Mortgage Disclosure Act (HMDA) as the independent objective metric for assessing lending activities and establishing annual examination priorities;
- Establishment of an unnecessarily narrow approach that could upend lending to low- and moderate- income (LMI) borrowers by limiting CRA credit provided to both the lender and the purchaser in the correspondent lending channel; and,
- The need for more analysis regarding the cost of implementation.

Moving Forward on State CRA Rules For Community Banks without Considering New Federal Rules for these Institutions is Unfair

---

[2] https://www.mba.org/docs/default-source/policy/state-relations/mba_and_il_mba_testimony_to_il_dfpr_august_26_2021.pdf?sfvrsn=af5c36e4_1; https://www.mba.org/docs/default-source/policy/state-relations/mba_imba_comments_on_idfpr_cra_anpr_12-16-21.pdf?sfvrsn=8b5818a9_1; https://www.mba.org/docs/default-source/policy/state-relations/il-cra-npr-comments-final-signed-3.16.23.pdf?sfvrsn=1c918171_1; and, https://www.mba.org/docs/default-source/policy/state-relations/mba-comments-on-idfpr-cra-snpr-11.3.23.pdf?sfvrsn=edfcc184_1

MBA continues to be troubled by the IDFPR moving forward at this time with rules related to our depository community bank members without adjustments considering the finalized federal interagency CRA rules. The new federal rules represent a coordinated multiyear effort of three separate agencies with nearly half a century of CRA examination experience – the Office of Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation. We reiterate our strong and common-sense recommendation that any Illinois rulemaking currently underway apropos to state chartered banks that are already subject to federal CRA rules should reflect the current update to those rules, which were only made public on October 24, 2023. To avoid significant and unnecessary disruption, IDFPR must also provide time for the new federal interagency regulations to be fully implemented. Leveraging these new rules will minimize demands and costs on IDFPR and our member companies alike. IDFPR moving forward at this time is unfair to these companies. The Department should not choose to meet a self-imposed timeline over good public policy aimed at reducing conflicting and divergent state-federal requirements.

At the very least, IDFPR should conduct an analysis comparing the final federal rules with the proposed Illinois rules for those institutions that will be subject to both, and then release those details with any final regulation.

Holding Lenders Accountable for the Decisions Made by Independent Appraisers is Inappropriate and Without Legal Support

The re-proposed rules continue to include language that would begin holding lenders accountable for bias by independent appraisers or actions of appraisal bias lenders "should have known" about. It is critical to again clearly state that such a sweeping and subjective provision runs entirely in conflict with federal rules separating lenders and appraisers to avoid even the appearance of lender or other interested party influence in the valuation of residential real estate. For example, Congress has intentionally established firm boundaries between appraisers and lenders and mortgage brokers in the form of "appraiser independence" requirements in the Dodd-Frank Consumer Protection Act. Similar requirements also exist in the policy mandates of the federal government's housing programs. Appraiser independence is part of Fannie Mae and Freddie Mac (the "GSEs") policy and lender handbooks, and not only must lenders comply with these mandates, but they must also promptly refer any violations to the applicable state appraiser certifying and licensing agency or other regulatory body. Moreover, they must:

> *…adopt written policies, procedures, and disciplinary rules and implement adequate training programs to ensure compliance with these Appraiser Independence Requirements. Additionally, the Seller must ensure that any third parties, including but not limited to appraisal management companies or*

Correspondent lenders, involved in the origination of a Mortgage or the sale and delivery of a Mortgage to Fannie Mae are also in compliance with these Appraiser Independence Requirements.

…

(2) Restricted parties [originators or anyone compensated in transaction] are prohibited from:

> *(a) Ordering, managing, or defining the scope of work for an appraisal assignment;*
>
> *(b) Selecting, retaining, recommending, or influencing the selection of any appraiser for a particular appraisal assignment or for inclusion on a list or panel of appraisers approved or forbidden to perform appraisals for the Seller; or*
>
> *(c) Having any substantive communications with an appraiser or appraisal management company relating to or having an impact on valuation.*

Notwithstanding the foregoing, any party, including any Restricted Party, may request an Independent Party to provide additional information or explanation about the basis for a valuation, or to correct factual errors in an appraisal report.[3]

Any actions taken by the lender to root out any potential bias could be seen as coercion or persuasion in violation of the Dodd Frank Act, investor guidelines, and Federal regulations like Regulation Z:

> *(1) Coercion. In connection with a covered transaction, no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.*[4]

Section 1055.240(c)(1) of the re-proposed rules continue to wrongfully place liability on the lender for any potential bias found in the appraisal process. While some instances of bias may be overt and evident to the lender, it is far more likely the lender may not have any indicators of bias. Considering the established boundaries outlined above, the proposed regulations should be amended to remove this liability. Well established, robust, and vigorously enforced state and federal fair lending and fair housing laws already in practice provide avenues for regulators to hold lenders and other organizations involved in loan origination accountable for any known bias in the

---

[3] https://singlefamily.fanniemae.com/media/4711/display#:~:text=The%20Seller%20must%20separate%20its,of%20the%20Seller's%20appraisal%20functions

[4] 12 CFR § 1026.42

mortgage process. MBA suggests the proposal be amended to the language of the original proposed rules by striking the following:

> *(1) Discrimination against applicants on a prohibited basis in violation, for example of the Equal Credit Opportunity Act or Fair Housing Act~~, including, for example, relying on or giving force or effect to discriminatory appraisals to deny loan applications where the covered financial institution knew or should have known of the discrimination~~;*

Importance of Relying on HMDA Data

MBA continues to be concerned that IDFPR is considering using sources of data other than the federal Consumer Financial Protection Bureau (CFPB) Home Mortgage Disclosure Act (HMDA) data set in its evaluation of our member companies. We strongly oppose the use of any other data set to evaluate mortgage lending during a CRA exam. We believe that the annual HMDA data set offers the best tool for establishing not only clear and objective metrics, but also an incentive for lenders to strengthen their already robust lending to Illinois' LMI borrowers. Moreover, using or creating alternative data sets rather than HMDA (which is available for free from the CFPB) is likely to be an unnecessarily expensive cost for IDFPR and industry alike. Thus, data alignment also has a virtue with respect to Illinois taxpayer interests.

As stated in our December 2022 letter in response to the Advanced Notice of Proposed Rulemaking and again in our response to the Second Notice of Proposed Rulemaking, IDFPR should comply with the important aspects of the Illinois Administrative Procedures Act (APA). Notably, the APA's requirement for the IDFPR to consider efforts to:

- Consolidate or simplify the rule's compliance or reporting requirements; and
- Establish performance standards to replace design or operational standards.[5]

Consistent with the above requirements, we again urge IDFPR to:

1. Develop performance-based metrics/standards that are readily available from unbiased federal HMDA data; and,

2. Prioritize CRA examinations in Illinois in a manner that devotes examination resources to those institutions that do not meet those clearly verifiable performance benchmarks. The HMDA data set is reported annually and is publicly available to regulators, industry, and consumers advocates. Given the limited resources of federal and state government agencies, IDFPR should

[5] 5 ILCS 100/5-30

establish a CRA examination regime that eliminates duplicative activity or subjective mandates, and instead relies on marketplace results as its foundation.

MBA suggests IDFPR work with an independent research group – one that does not engage in policy advocacy such as the Urban Institute – to objectively identify statewide averages in Illinois for lending to LMI borrowers. Our core recommendation remains that regulatory implementation should focus on establishing exam priorities for IMBs that will provide appropriate incentives and rewards for IMBs that have already demonstrated strong lending performance to LMI and minority communities. Specifically, IDFPR should:

- Weight IMB CRA exams most heavily on their lending activities (as opposed to service or investment tests);
- Establish a presumption of compliance for IMBs that meet or exceed established benchmarks based on the overall statewide averages for lending to LMI borrowers or LMI communities; and,
- Provide for extended examination cycles for IMBs whose prior-year federal HMDA data exceed those same statewide benchmarks.

Specifically, the benchmarks should be the proportion of home purchase loans originated by all lenders operating in Illinois to LMI borrowers (as defined by IDFPR using HMDA data) in the state. If a lender meets or exceeds the overall state proportion of home purchase loans to LMI borrowers for that year, they should receive a rating of "satisfactory" or higher. IDFPR can easily access the Urban Institute most recent analysis, *An Assessment of Lending to LMI and Minority Neighborhoods and Borrowers; Performance of Independent Mortgage Banks in the Context of CRA Reform,*[6] via its Housing Finance Policy Center at http://www.urban.org/.

Inappropriate Limits on CRA Credit to Only Loan Origination and Initial Sale of Loan

These re-proposed rules continue to strictly limit only a loan's origination and initial sale to an investor as counting towards CRA credit. It is vital to first provide context on the IMB business model and its remarkable success in delivering credit to LMI borrowers in a well-regulated marketplace. The language on this limitation, it is important to note, is also confusing and perhaps contradictory.

IMB's use a combination of their own capital, plus short-term borrowings, known as "warehouse lines," to originate residential mortgages. The warehouse lines are short-term credit facilities secured by the funded loans until the loans are sold to an investor –

---

[6] https://img03.en25.com/Web/MortgageBankersAssociation/%7Bfdbd5a9f-27ab-4aff-ab1d-36e88e482bce%7D_URBAN_2023_LMI_and_Minority_Neighborhoods_FINAL.pdf

typically in one to three weeks. The vast majority of IMBs' loans are sold to larger lenders ("aggregators"), directly to the GSEs, or issued as securities guaranteed by Ginnie Mae. Aggregators include banks and other financial institutions that either hold loans in their portfolios or sell into the agency market. Also, some IMBs sell into private-label securitizations.

The federal CRA does not restrict the credit for loans to avoid disrupting the access to liquidity from the secondary mortgage market. In fact, the recent finalized changes to the federal CRA included responses to comments relating to the credit of loans purchased. Critically, the final rule did not place a limitation, but instead it includes a case-by-case determination of whether a bank is using loan purchases to enhance their CRA performance. These rules allow for discussion of purchases or patterns in question, but do not outright limit the practice.[7]

The purchases of these loans keep the liquidity in the mortgage market and help first-time home buyers. Mortgage lending has largely shifted to IMBs since the 2008 crisis, but banks play a pivotal role in providing the liquidity to keep funds available for IMBs to continue to lend. Without this movement in the secondary market, the small IMB companies who are serving the very communities CRA aims to assist will suffer the most. The proposed limitation would also have the direct effect of limiting sources of capital for IMBs overall. The result is likely to increase the cost of credit and reduce credit availability among Illinois LMI borrowers.

MBA also wishes to address misconceptions around the impact the limitations included in the re-proposed rules would have on the share of originations from IMBs to depository institutions. The notion these limitations could result in an increase in direct lending from depository institutions is incorrect and contradicts the considerations taken under the federal CRA reform rulemaking as stated previously. The main impact any limitations would have is a potential decrease in available liquidity for IMBs to continue to lend to the communities in need. The placement of these restrictions on IMBs alone is a misplaced effort that will result in market disruptions, ultimately to the detriment of the Illinois consumers.

MBA is also concerned that the re-proposed rules include conflicting requirements around the credit for CRA loans in the secondary market. In Section 1055.220 (a)(2) it clearly states the origination and initial purchase qualify for CRA credit, however in subsection (c) *Third Party Lending* it states one cannot count the origination and subsequent purchase for the same loan. It appears the intent of this section is to show that an organization cannot count the origination or purchase respectively more than

[7] https://www.federalregister.gov/documents/2024/02/01/2023-25797/community-reinvestment-act

once, but the language interpretation restricts it to one credit across the board. MBA requests IDFPR strike (c) and add subparagraph (A) detailed below:

> *(a)(2) The Secretary considers originations and initial purchases of loans as reported by the covered mortgage licensee under HMDA. The Secretary will also consider any other loan data the covered mortgage licensee may choose to provide.*
>
> *(A) Any loans arranged by a covered mortgage licensee that does not fund its own loans may be claimed by that covered mortgage licensee and by the funding covered mortgage licensee or depository institution for origination credit.*
>
> ~~*(c) Third-party lending. No covered mortgage licensee may include a loan origination or a loan purchase for may not be included for consideration if another covered mortgage licensee or depository institution claims the same loan origination or purchase under this Part or the state or federal Community Reinvestment Act.*~~

More Analysis Necessary Regarding the Cost of Implementation

The financial burden of implementing the Illinois CRA regulatory framework for credit unions, state-chartered banks, and IMBs will be significant. That cost burden is effectively the cost of any new data collection (i.e., not relying on HMDA) and the invoice for each IMB operating in the state will receive following their CRA examination. These payments will be in addition to the invoice IDFPR will deliver to any institution also subject to a supervisory examination. The re-proposed rules describe the calculation of those CRA exam fees as pro rata calculation follows:

> *Each mortgage lender's pro rata share of an assessment shall be the percentage that the total number of loans shown on the mortgage lender's Mortgage Call Report bears to the total number of loans of all mortgage lenders covered by the ILCRA. Each mortgage lender's pro rata share of a surcharge shall be the percentage that the number of loans shown on the mortgage lender's Mortgage Call Report bears to the total number of loans of all mortgage lenders subject to a surcharge and covered by the ILCRA.*[8]

IDFPR stated that it will bill IMBs $2,200 per day for CRA exams, for which it expects payment within 30 days after receipt of the billing. However, despite these specifics, IDFPR has not disclosed the expected length of exams and associated costs and the

[8] Part 1055, Section 1055.460 (b)

anticipated impact on individual IMBs or the entire sector. These costs will disproportionately impact smaller lenders among our member companies, and it is only fair that IDFPR provide a clearer analysis of this new expensive burden of doing business in Illinois.

IDFPR has provided a far too vague cost projection of the impact on our member companies. The key passage – 2 (b) – from IDFPR's attached *Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking* is:

> *If an economic effect is predicted, please briefly describe how the effect will occur.*
>
> *The rulemaking will result in additional costs for Illinois-licensed mortgage lenders. The rulemaking creates an ILCRA examination fee and breakeven assessment to cover the Department's reasonable costs for implementing ILCRA as to covered mortgage licensees.* ***There will also be other expenses incurred by the mortgage lenders outlined below to comply with the ILCRA rulemaking. The dollar amount of cost per mortgage lenders is variable but will primarily depend on the length and frequency of cost of ILCRA exams. Generally, larger mortgage licensees will incur more costs than smaller licensees because they be examined more often and for more days.*** [Emphasis added] [9]

Please note that no additional estimated examination cost details were provided in this document apropos to the comment "outlined below." Consequently, it is unfair for IDFPR to assume licensees will be able to pay any unspecified additional examination costs, especially in the context of a 30-day time frame for remittance.

We remind IDFPR that unreimbursed costs are not easily absorbed by our member companies. And, as clearly predicted by IDFPR in the paragraph above, these costs will increase with the currently proposed ILCRA regulatory framework. IDFPR's vague cost estimates make it impossible for our IMB members to budget for the new law's significant additional financial burden, and ultimately this will lead to increased costs for all Illinois borrowers. This result is avoidable -- at a minimum, the Department has an obligation to provide an estimated time range for a typical CRA exam and an exam frequency, based on size categories of lenders.

Moreover, we again urge IDFPR to leverage alignment with Massachusetts law and rules, as it stated it would, in crafting the regulatory framework for implementing the ILCRA. Since its inception, MBA members have reported the Massachusetts'

[9] IDFPR *Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking*, attached.

Department of Banking has never imposed such a steep financial burden on its licensed IMBs for CRA exams.

Proposed Disparity Study

In closing, MBA recognizes and thanks the IDFPR for removing from the reproposal the proposed Disparity Study. However, it is important to note that this provision was added after the public comment period concluded and was aimed at including a race-based lending review. For both reasons, the proposed study is inappropriate. IDFPR should never have introduced new proposed policy after the formal public comment period without opening up the rule to a fresh notice and comment period. Also, as we have stated in our November 2023 letter, our organization continues to object to any effort, by IDFPR or other stakeholders, to transform the LMI lending metric for CRA exams into one based on the race of the borrower.

In closing, we reiterate that IDFPR should delay further rulemaking on CRA implementation until the issues industry has raised are addressed. Please contact us to further discuss the industry's views provided in this letter.

Respectfully,

Pete Mills
Senior Vice President
Residential Policy and Strategic Member Engagement
pmills@mba.org

Attachment: *Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking*
CC: Illinois Joint Committee on Administrative Rules jcar@ilga.gov

- Kimberly Schultz, KimberlyS@ilga.gov
- Kevin Kulavic, KevinK@ilga.gov

AGENCY ANALYSIS OF ECONOMIC AND BUDGETARY EFFECTS OF PROPOSED RULEMAKING

Agency: Illinois Department of Financial and Professional Regulation (IDFPR)

Part/Title: Mortgage Community Reinvestment, 38 Ill. Adm. Code 1055

Illinois Register Citation: Published at Volume 46 Ill. Reg. 19862 on December 16, 2022

Please attempt to provide as dollar-specific responses as possible and feel free to add any relevant narrative explanation.

1. Anticipated effect on State expenditures and revenues.

   (a) Current cost to the agency for this program/activity.

   $ N/A

   There are currently no rules in place.

   (b) If this rulemaking will result in an increase or decrease in cost, specify the fiscal year in which this change will first occur and the dollar amount of the effect.

   This rulemaking implements the Illinois Community Reinvestment Act ("ILCRA") Act [205 ILCS 735]. Once adopted, the Department of Financial Institutions and Professional Regulations will be conducting ILCRA examinations of all Illinois-licensed mortgage lenders. The Department needs additional staff to fulfill the statutory mandate set forth by ILCRA and implement the rulemaking resulting in additional costs. The rulemaking creates an ILCRA examination fee and breakeven assessment to cover the Department's reasonable costs of implementing ILCRA as to covered mortgage licensees. While the Department hopes to retain qualified persons on a pro bono basis to design and conduct a study (1) to identify and describe geographies in Illinois exhibiting significant disparities by race or other protected characteristics in access to relevant financial products or services, and (2) to develop methods and procedures to identify policies, procedures, patterns, or practices that have disparate impact or discriminatory effects, there could potentially be direct and indirect costs relating to the study. The rulemaking will result in an increase in costs upon adoption.

   (c) Indicate the funding source, including Fund and appropriation lines, for this program/activity. N/A

   (d) If an increase or decrease in the costs of another State agency is anticipated, specify the fiscal year in which this change will first occur and the estimated dollar amount of the effect. FY N/A $ N/A Agency N/A

(e) Will this rulemaking have any effect on State revenues or expenditures not already indicated above? Specify effects and amounts. No

2. Economic effect on persons affected by the rulemaking.

(a) Indicate the economic effect and specify the persons affected:

Positive ☐ Negative ☒ No effect ☐

Persons affected ____________________

Dollar amount per person ____________________

Total Statewide cost ____________________

See below.

(b) If an economic effect is predicted, please briefly describe how the effect will occur.

The rulemaking will result in additional costs for Illinois-licensed mortgage lenders. The rulemaking creates an ILCRA examination fee and breakeven assessment to cover the Department's reasonable costs of implementing ILCRA as to covered mortgage licensees. There will also be other expenses incurred by the mortgage lenders as outlined below to comply with ILCRA and rulemaking. The dollar amount of cost per mortgage lenders is variable but will primarily depend on the length and frequency of ILCRA exams. Generally, larger mortgage licensees will incur more costs than smaller mortgage licensees because they will be examined more often and for more days.

(c) Will the rulemaking have an indirect effect that may result in increased administrative costs? Will there be any change in requirements such as filing, documentation reporting or completion of forms? Compare to current requirements.

Yes. There will be indirect costs for covered mortgage licensees. For example, mortgage licensees may need to purchase additional software and hire additional personnel to comply with ILCRA.