



IDFPR

Illinois Department of
Financial and Professional Regulation

www.idfpr.com

JB PRITZKER
Governor

MARIO TRETO, JR.
Acting Secretary

****Please note the exact times and locations for the September and October meetings****

August 31, 2021

Illinois Department of Financial and Professional Regulation Illinois Community Reinvestment Act: Advance Notice of Proposed Rulemaking

On March 23, 2021, Governor JB Pritzker signed the Illinois Community Reinvestment Act into law (Public Act 101-657, codified at 205 ILCS 735). The Illinois Community Reinvestment Act (“ILCRA”) became effective on that date. Sections 35-10, 35-15, and 35-35 of the ILCRA set forth the rulemaking requirements and authority of the Department of Financial and Professional Regulation (“Department”). The Department is gathering information from the public before promulgating any rules and invites all interested parties to participate by submitting written comments to this Advance Notice of Proposed Rulemaking (“ANPR”).

In this ANPR, the Department has outlined subject areas for potential rulemaking organized into the following sections: general provisions, bank community reinvestment, credit union community reinvestment, and mortgage lender community reinvestment. The Department requests feedback on specific issues included throughout the ANPR as well as any other rulemaking issues identified by interested parties. Anyone interested may respond to the ANPR by submitting comments aimed at developing and improving the Department’s rulemaking under the ILCRA. Interested parties may comment on any aspect of potential rulemaking, however, the Department is not requesting comments on the provisions of the ILCRA itself.

In all cases, the most useful comments to the Department will be based on legal and policy analysis and include proposed specific wording or solutions to identified issues. Comments may be submitted by email to Craig.Cellini@illinois.gov, by fax to 217/557-4451 or by mail to Illinois Department of Financial and Professional Regulation, Attn: Craig Cellini, 320 West Washington, 3rd Floor Springfield, IL 62786.

The Department requests that all comments be within 120 days of the date of issuance of this ANPR. During this comment period, the Department intends to meet with the public and stakeholders at four public meetings. The first will focus on issues related to State banks and savings banks, the second will focus on residential mortgage lenders and originators, the third will focus on credit unions, and the last meeting will focus on consumer and public interest issues. All meetings will be open to the public, and the Department encourages stakeholders and the public generally to attend. Information on the public meetings including dates, times, and locations, for

the first two meetings can be found at the end of this notice. Information for the third and fourth meetings will be provided on a later date.

While the Department will review all comments, and all comments will become part of the public record, the Department will not respond to comments made during the ANPR time period. After the Department has evaluated the comments and incorporated them into formal proposed rules, it will publish such formal proposed rules in the Illinois Register for further comment in accordance with the Illinois Administrative Procedure Act (5 ILCS 100).

A) General Provisions

1) Authority, Purposes, and Scope

The ILCRA imposes a continuing and affirmative obligation to serve the credit needs of low- and moderate-income Illinoisans on entities not already covered by the federal Community Reinvestment Act (“FedCRA”) including Illinois state-chartered credit unions and residential mortgage lenders and originators. ILCRA also applies to State banks and savings banks established under Illinois law, which are already covered by the FedCRA. ILCRA does not apply to national banks chartered by the U.S. Office of the Comptroller of the Currency. The Department takes note that the federal agencies responsible for administering the FedCRA, including the FDIC and the Federal Reserve, recently have or currently are considering revisions to their rules implementing the FedCRA (the “federal CRA rules), and the Department invites comment on how the Department should take into account any pending reforms to the federal CRA rules.

2) Definitions [ILCRA Sections 35-5, 35-10(a)]

Many covered financial institutions subject to the ILCRA have interstate networks of offices, branches, and other facilities. The Department seeks comments on whether the terms “office,” “branch,” and/or “other facilities” under Section 35-10(a) of the ILCRA should be defined to exclude locations outside of Illinois or whether such terms should be defined to include any locations that offers products and services to residents of this State, regardless of the physical location. Many other covered financial institutions offer and provide products and services electronically, via mobile and other digital channels, to Illinois residents from locations outside the State. Under Section 35-10(a) of the IL CRA, “each covered financial institution that provides all or a majority of its products and services via mobile and other digital channels shall have a continuing and affirmative obligation to help meet the financial services needs of deposit-based assessment areas, including areas contiguous thereto, low-income and moderate-income neighborhoods, and areas where there is a lack of access to safe and affordable banking and lending services....” The Department seeks comment on whether the assessment areas of these entities should include the entire State.

Among other covered financial institutions, the ILCRA applies to entities subject to the Residential Mortgage License Act (“RMLA”) (205 ILCS 635) which lent or originated 50 or more residential mortgage loans in the previous calendar year. ILCRA does not define “lent” or “originated”. Under RMLA Section 1-4(g), a “lender” is one “who either lends or invests money in residential mortgage loans.” RMLA does not define “originator,” but rather uses the term “mortgage loan originator.” The Department seeks comment on whether, and how, the ILCRA rules should define these terms.

3) Assessment Factors [ILCRA Sections 35-10(b), 35-15(c)]

As required by the ILCRA, the Department intends to propose a rule that references the factors set forth in Section 35-10(c) and requires examinations and evaluations under Section 35-15(b) to specify and assess those factors. The Department seeks comment from interested parties on how the Section 35-10(c) factors may be best used to assess covered financial institutions’ compliance with ILCRA.

4) Examination Priority and Fees [ILCRA Sections 35-15, 35-25]

ILCRA authorizes the Department to adopt rules regarding the frequency and scope of examinations of covered financial institutions. The Department also has the authority to work jointly with federal financial institution regulators. The Department may propose a rule setting forth prioritization factors such as “the covered financial institution has not been previously subject to a federal CRA examination” and “the covered financial institution is most recently rated in substantial noncompliance with either ILCRA or FedCRA.” The Department seeks comment from interested parties on other prioritization factors that may be suitable. Further, regarding supervision and enforcement, the Department seeks comment on whether Illinois residents would be better protected by a broad approach to examination and supervision of all covered financial institutions focused on informal enforcement actions or by a narrower, complaint-driven approach focused on a limited number of adversarial enforcement actions.

ILCRA also authorizes the Department to adopt rules on fees to cover the costs of implementing the ILCRA, including, but not limited to, conducting examinations and enforcement. The Department will determine the projected costs of implementation. The Department seeks comment from interested parties on potential fee structures that would efficiently and fairly cover such costs. For example, regulatory fee structures commonly include periodic assessments based on the asset size of the institution, hourly examination fees, or a combination of the two. In addition, fees commonly include additional assessments to cover funding shortfalls and reimbursements to address funding overages. Further, individual fees could be adjusted based on the institution’s performance rating. Finally, because the Department must review an institution’s ILCRA performance when considering a variety of corporate applications, additional fees could be assessed as surcharges on corporate applications.

B) Bank Community Reinvestment

ILCRA applies to State banks and savings banks established under Illinois law (205 ILCS 5 and 205 ILCS 205). Section 35-10(b) of the ILCRA requires the Department to promulgate rules that incorporate rules promulgated under the FedCRA but permits the Department to make necessary adjustments and exceptions. To comply with this requirement, the Department intends to adopt ILCRA rules that closely track the federal CRA rules that apply to State banks and savings banks, namely, Part 345 of the Rules of the Federal Deposit Insurance Corporation and Regulation BB of the Board of Governors of the Federal Reserve. The federal CRA rules address the general topics listed below. The rules are codified, respectively, at 12 CFR Part 345 and 12 CFR Part 228 and may be reviewed in their entirety at the agencies' respective websites. As part of its rulemaking process, the Department seeks comment from interested parties on what, if any, adjustments, or exceptions to the federal CRA rules may be necessary for State banks and savings banks established under Illinois law.

- 1) Standards for Assessing Performance
 - a) Performance test, standards, and ratings, in general
 - b) Lending test
 - c) Investment test
 - d) Service test
 - e) Community development test for wholesale or limited purpose banks
 - f) Small bank performance standards
 - g) Strategic plan
 - h) Assigned ratings
 - i) Effect of CRA performance on applications
- 2) Records, Reporting, and Disclosure Requirements
 - a) Assessment area delineation
 - b) Data collection, reporting, and disclosure
 - c) Content and availability of public file
 - d) Public notice by banks
 - e) Publication of planned examination schedule

C) Credit Union Community Reinvestment

The ILCRA applies to credit unions established under the Illinois Credit Union Act (205 ILCS 305). Section 35-10(b) of the ILCRA requires the Department to promulgate rules that incorporate rules promulgated under the FedCRA while permitting the Department to make necessary adjustments and exceptions. To comply with this requirement, the Department intends to adopt ILCRA rules that track the federal CRA rules under Part 345 of the Rules of the Federal Deposit Insurance Corporation and Regulation BB of the Board of Governors of

the Federal Reserve. The federal CRA rules address the general topics listed below. The rules are codified, respectively, at 12 CFR Part 345 and 12 CFR Part 228 and may be reviewed in their entirety at the agencies' respective websites. As part of its rulemaking process, the Department seeks comment from interested parties on what, if any, adjustments or exceptions to the federal CRA rules may be necessary for their application to credit unions. The FedCRA does not include credit unions and the FedCRA is not administered by the National Credit Union Administration.

The Department recognizes the importance of tailoring the ILCRA to address factors unique to credit unions in the absence of existing guidance. The Department notes that Illinois will be the third state nationally and the first state in the Midwest, to apply a state CRA law to credit unions. As part of its rulemaking process, the Department seeks comment from interested parties regarding the general topics listed below and on ways to evaluate how credit unions can better meet the core purpose of the ILCRA in a manner that will be efficient and reflect the unique characteristics of credit unions. The Department also seeks comment on the potential suitability of the Massachusetts CRA rules for credit unions. Those rules are codified at 209 CMR 46 and may be reviewed in their entirety on the website of the Massachusetts Division of Banking.

- 1) Standards for Assessing Performance
 - a) Performance test, standards, and ratings, in general
 - b) Lending test
 - c) Investment test (not required in Massachusetts for credit unions but may be considered to improve the overall rating)
 - d) Service test
 - e) Alternative examination procedures
 - f) Assigned ratings
 - g) Effect of CRA performance on applications
- 2) Records, Reporting, and Disclosure Requirements
 - a) Assessment area delineation
 - b) Data collection, reporting, and disclosure
 - c) Content and availability of public file
 - d) Public notice by credit unions
 - e) Publication of planned examination schedule

D) Mortgage Lender Community Reinvestment

The ILCRA applies to entities subject to the Residential Mortgage License Act (RMLA) (205 ILCS 635) which lent or originated 50 or more residential mortgage loans in the previous calendar year. Section 35-10(b) of the ILCRA requires the Department to promulgate rules that incorporate rules promulgated under the FedCRA but permits the Department to make necessary adjustments and exceptions. To comply with this requirement, the Department intends to adopt ILCRA rules that track the federal CRA rules under Part 345 of the Rules of the Federal Deposit Insurance Corporation and Regulation BB of the Board of Governors of the Federal Reserve. The federal CRA rules address the general topics listed below. The rules

are codified, respectively, at 12 CFR Part 345 and 12 CFR Part 228 and may be reviewed in their entirety at the agencies' respective websites. As part of its rulemaking process, the Department seeks comment from interested parties on what, if any, adjustments or exceptions to the federal CRA rules may be necessary for their application to residential mortgage lenders and originators. The Department recognizes the importance of tailoring the ILCRA to address factors unique to residential mortgage lenders and originators in the absence of existing guidance. The Department notes that it is only the second state to apply a state CRA law to residential mortgage lenders and originators—the State of Massachusetts being the first. Therefore, the Department also seeks comment on the potential suitability of Massachusetts CRA rules for residential mortgage lenders. Those rules are codified at 209 CMR 54 and may be reviewed in their entirety on the website of the Massachusetts Division of Banking.

- 1) Standards for Assessing Performance
 - a) Performance test, standards, and ratings, in general
 - b) Lending test
 - c) Service test
 - d) Alternative examination procedures
 - e) Assigned ratings
 - f) Effect of CRA performance on applications

- 2) Records, Reporting, and Disclosure Requirements
 - a) Data collection and reporting
 - b) Content and availability of public file
 - c) Public notice by mortgage lenders
 - d) Publication of planned examination schedule

NOTICE OF PUBLIC MEETINGS

Meeting Information

Date: First Meeting – August 6, 2021
Re: Potential rules relating to State banks and State savings banks
Time: 9:30 a.m.
Location: The Illinois Emergency Management Agency, 2200 S. Dirksen Parkway, Springfield, Illinois 62703

Date: Second Meeting - August 26, 2021
Re: Potential rules relating to residential mortgage lenders and originators
Time: 9:30 a.m.
Location: Illinois Department of Financial and Professional Regulation, 320 W. Washington Street, Springfield, Illinois 62701

Date: **Third Meeting – September 20, 2021**
Re: Potential rules relating to credit unions
Time: **9:30am**
Location: **100 W. Randolph Street, Chicago, Illinois 60601, 9th Floor Room 9-040**

Date: Fourth Meeting – October 18, 2021
Re: Potential rules relating to consumer and public interest issues generally
Time: 9:30am
Location: 100 W. Randolph Street, Chicago, Illinois 60601, 9th Floor Room 9-040

Web-Ex will be available for those not able to attend the meetings in person.

Other Pertinent Information

The meetings will be held for the sole purpose of gathering public comments relating to potential ICRA rulemaking. Persons interested in presenting testimony at these meetings are requested to comply with the following:

- 1) If you wish to provide oral testimony, submit a written copy of the testimony being provided at least 24 hours in advance of the time of the meeting.
- 2) Oral testimony shall not exceed an aggregate of 10 minutes for the presentation.
- 3) No person will be recognized to speak for a second time until all persons wishing to testify have done so.
- 4) Those individuals who are unable to attend the public meeting but wish to comment should submit written comments by mail, fax, or email.
- 5) In-person capacity may be capped. All individuals who cannot attend in person may attend via Web-Ex.

Name and Address of Agency Contact Person:

Craig Cellini, Rules Coordinator
Department of Financial and Professional Regulation
320 West Washington, 3rd Floor
Springfield, IL 62786
217/785-0810
Fax #: 217/557-4451
Craig.cellini@illinois.gov