



November 22, 2021

Via email: Craig.Cellini@illinois.gov

Mr. Craig Cellini
Illinois Department of Financial and Professional Regulation
320 W. Washington
3rd Floor
Springfield, Illinois 62786

Re: **IDFPR Rulemaking to Implement Illinois CRA:
Comments Addressing Elements to Include in Rule**

Dear Mr. Cellini:

The Illinois Credit Union League welcomes the opportunity to provide the following comments to the Illinois Department of Financial and Professional Regulation (“IDFPR” or “Department”), in response to its Advance Notice of Proposed Rulemaking (“ANPR”) dated August 31, 2021. The ANPR was issued in relation to rulemaking the Department is required to promulgate pursuant to Public Act 101-0657 effective March 23, 2021, to implement the Illinois Community Reinvestment Act (“Illinois CRA”). As stated in the ANPR, the Department desires to gather information from the public, before beginning the formal CRA rulemaking process. This letter is submitted to assist the Department in achieving its stated goal of developing and improving the rulemaking.

A. Statement of Position.

In reviewing the provisions of the Illinois CRA and the existing CRA regulatory standards adopted at the federal level (FDIC, OCC and Federal Reserve Board) and the states that have implemented a CRA, there is a commonality in approach. That commonality extends to definitions; standards for assessing performance through the use of lending, service and investment tests; and reporting and disclosure requirements. Illinois credit unions may best be served if those common features are considered by the Department in crafting its new rule that implements the Illinois CRA.

Specifically, the Massachusetts CRA Rule (209 CMR 46.00 et seq.) presents a reasonable model for Illinois to draw upon, as Illinois develops its own Illinois CRA rule. The Department has already been communicating with the Massachusetts regulatory agency, given that Massachusetts has maintained a state-based CRA evaluation process for credit unions the past 37 years. The Massachusetts approach substantially tracks the federal approach, including a protocol that applies different standards to intermediate small and small financial institutions. However, it also establishes credit union specific provisions that address the unique structure of credit unions. It presents a viable and credible option, as the Department considers how best to balance the new regulatory burden Illinois CRA will impose on Illinois credit unions with the successful implementation of the goals of Illinois CRA.

B. Background.

The Illinois Credit Union League (“League”) is the professional association that serves approximately 230 Illinois-chartered and federally-chartered credit unions doing business in Illinois owned by over 3.4 million consumers as members. It provides legislative and regulatory advocacy, compliance support, educational development and training opportunities and other services to help those credit unions more efficiently offer financial services and products to their members.

The League understands the intent of Illinois CRA is to encourage covered state-chartered financial institutions to meet the financial service needs of all segments of the communities in which they maintain offices (consistent with the safe and sound operation of the financial institution and, for credit unions, consistent with their common bonds), including low and moderate income neighborhoods (see Illinois CRA, Section 35-10; 205 ILCS 735/35-10). In implementing this statutory mandate, it is important to keep in mind that credit unions are not subject to federal CRA, because as not-for-profit member-owned financial cooperatives, Congress has recognized and continues to recognize they already achieve the objectives of federal CRA. The statutory and regulatory framework under which they operate mandates that they implement a mission of serving persons of modest means.

The General Assembly acknowledged that essential point with its mandate that the Department promulgate its CRA rule consistent with the common bonds of credit unions, which goes to the very core of how credit unions legally function as member cooperatives. Further, the Department also recognized that point in its ANPR that “the Department recognizes the importance of tailoring the Illinois CRA to address factors unique to credit unions in the absence of existing guidance.” The Department also noted in its ANPR that while it intends to adopt a CRA rule that tracks the FDIC CRA rules, “adjustments or exceptions to the federal CRA rules may be necessary for their application to credit unions”. Accordingly, the Illinois CRA rule should explicitly implement the statutory mandate and Department’s acknowledgement that the regulatory standards must accommodate the unique field of membership restrictions under which credit unions operate.

C. Illinois Administrative Procedure Act.

It is important to note that the Illinois Administrative Procedure Act (“IAPA”; 5 ILCS 100/1-1 et seq.) requires the Department to consider statutorily specified mitigation methods to reduce the impact of the CRA rulemaking on not-for-profit corporations (all Illinois credit unions) and small businesses (many Illinois credit unions). 5 ILCS 100/5-30. The Department is mandated to consider each of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives that are the basis of the proposed rulemaking:

- (1) Establish less stringent compliance or reporting requirements;
- (2) Establish less stringent schedules or deadlines for compliance;
- (3) Consolidate or simplify the rule’s compliance or reporting requirements;
- (4) Establish performance standards to replace design or operational standards; and
- (5) Exempt small businesses and not for profit corporations from any or all requirements in the rule.

The IAPA defines a “not-for-profit corporation” as a corporation organized under the Illinois General Not For Profit Corporation Act of 1986, while the Illinois Credit Union Act (“ICUA”) defines a “credit union” as cooperative non-profit associations incorporated under the ICUA, another state or the United States of America. Based on that definitional distinction, one might argue the mitigation methods identified in the IAPA are not available to credit unions. However, notwithstanding that definitional distinction, the IAPA elements for a not-for-profit corporation are identical to the IAPA elements for a small business (i.e., not dominant in its field and employs fewer than 50 full-time employees or has gross annual sales of less than \$4 million). 132 out of the 179 Illinois credit unions (74%) have less than \$4 million in gross annual sales (income), and 148 out of the 179 (83%) have fewer than 50 full-time employees. So, even if the IAPA mitigation methods for reducing the impact of the CRA rulemaking don’t apply to all Illinois credit unions as not-for-profit entities (which we believe they do), they clearly apply to 83% of all Illinois credit unions as small businesses. The Department should take this IAPA status of credit unions into account, as it implements its goal of tailoring the Illinois CRA rule “to address factors unique to credit unions”.

D. Massachusetts CRA Rule.

Drawing upon the Massachusetts CRA Rule and its regulatory experience, applying the methods required under the IAPA to reduce the impact of the Illinois CRA rulemaking on credit unions as not-for-profit corporations and small businesses, and adhering to the Illinois CRA mandate of taking into account the common bond membership structure of credit unions, elements that should be considered in drafting an IDFP rule to implement the Illinois CRA for Illinois credit unions include:

- (1) **Separate CRA Rule for Credit Unions.** There should be a CRA rule separate and specific to credit unions and the establishment of categories of credit unions by asset size (e.g., small and small intermediate), and identification of distinct and less burdensome performance standards for those small and small intermediate credit unions.
- (2) **Credit Union FOM as Assessment Area.** Taking into account the Illinois CRA statutory references to consideration of credit union common bonds, provide that a credit union whose field of membership does not include a community common bond may delineate its field of membership as its assessment area.
- (3) **Investment Test Exemption.** Exempt all credit unions from any investment test, but permit a credit union to use that test to improve its rating if it achieved at least a “satisfactory” rating under the lending and service tests.
- (4) **Credit Union Peer Groups.** Evaluation methodology that includes peer comparisons should be limited to the credit union industry and exclude the banking industry.
- (5) **Lending Test Flexibility.** Provide that the lending test is based on home mortgage lending, but if consumer lending constitutes a substantial majority of the credit union’s business, then that book of business will be evaluated.
- (6) **Data Collection, Reporting and Disclosure Exemption.** Exempt credit unions from the data collection, reporting and disclosure requirements for small business loans.
- (7) **Evaluation Categories.** In connection with CRA evaluations:
 - (a) Provide more flexibility for small credit unions to be eligible for higher ratings;

- (b) Establish five (5) categories of ratings by adding the category of “high satisfactory” between “outstanding” and “satisfactory” (as the Massachusetts rule recognizes, “high satisfactory”, which is a step up from “satisfactory”, counterbalances the “needs to improve” rating, which is a step below “satisfactory” and establishes an incremental step for a credit union to highlight its CRA performance); and
 - (c) Consider the advantages and disadvantages of using a matrix with an objective scoring system to assign ratings.
- (8) **Lending Evaluation Tied to Common Bond.** Evaluate the credit union’s record of lending to borrowers of different income levels, by taking into account the credit union’s particular common bond(s).
- (9) **Appendix of Activities and Services that Generate CRA Credit.** Incorporate an appendix of illustrative examples of credit union activities, services and investments that will generate CRA credit. Illustrative examples include, without limitation, the (i) establishment of charitable donation accounts and donor advised funds that benefit charitable organizations within the credit union’s assessment area; (ii) establishment of foundations and other affiliated companies that provide programs and services to meet the credit needs of low to moderate income geographies and individuals within the assessment area; and (iii) provision or support of community development services that benefit the assessment area.
- (10) **Transitional Period for Implementation of Rule.** Establish a transitional period after the promulgation of the CRA Rule to address compliance, affording smaller credit unions a longer time frame in recognition of their limited resources; and establish a multi-year CRA exam/evaluation cycle, with the credit union option to request a mid-cycle review to evaluate whether a less than satisfactory rating may be modified. Also, for a three (3) year period following its promulgation, establish an annual review process of the Illinois CRA rule to evaluate its reasonableness and fairness and pursue amendments as necessary to address shortcomings.

A transitional period and annual review process are particularly critical. That is because the federal CRA rules, upon which the Massachusetts CRA is based and which are to be incorporated into the Illinois CRA rule per Illinois CRA Section 35-10(b), are in the process of being updated by the federal agencies.

E. IDFPR ANPR.

In reviewing the ANPR, the following additional elements should be considered in drafting an IDFPR rule to implement the Illinois CRA for Illinois credit unions:

- (1) In its ANPR, the Department seeks comment on whether the terms “office”, “branch” and/or “other facilities” under Section 10(a) of Illinois CRA should be defined to exclude locations outside of Illinois or include any locations that offer products or services to residents of this State, regardless of physical location.

For credit union activity out-of-state, the terms “offices, branches, and other facilities” in Illinois CRA Section 35-10(a) should be limited in definitional scope to mean physical branch facilities and service centers established by a credit union that are located outside of Illinois from which members of the credit unions are served. That definitional approach is consistent with the Department’s existing rule addressing the registration of out-of-state credit unions, which implements the reciprocity standards in Section 7 of the Illinois Credit Union Act ((205 ILCS 305/7)). The registration and fee provisions set forth in that rule are limited to physical branches and service centers located in Illinois. The proposed

definitional approach also helps avoid constitutional issues relating to a lack of a substantial nexus with those other jurisdictions.

However, to improve their CRA ratings, credit unions should be permitted to include in their Illinois CRA regulatory evaluations the success of their operational platforms in addressing the lending and service needs of their out-of-state members, even if the credit union maintains no brick-and-mortar branch in another state. Since the Illinois CRA standard to which the Department's request for comment explicitly mandates consistency with a credit union's common bond (Illinois CRA, Section 35(a)(10)), the definitional scope of the subject terms must be limited to residents of the other state who are members served by the physical branch, not merely residents of the state.

- (2) In its ANPR, the Department states it may propose a rule setting forth prioritization factors such as "the covered financial institution has not been previously subject to a federal CRA examination".

All banks have been subject to federal CRA examinations, but no credit unions have been, since Congress has repeatedly recognized that credit unions as not-for-profit member-owned financial cooperatives already meet the financial service needs of their members. The statutory and regulatory framework under which they operate mandates that they fulfill a mission of serving persons of modest means with a consumer-focused model. Credit unions are already fulfilling the goal and objectives that establish the foundation for the federal CRA as well as the Illinois CRA.

Any Illinois CRA examination prioritization factors adopted by IDFPF should exclude the fact that Illinois credit unions are not subject to federal CRA. Credit unions have not been subject to federal CRA, because of the consistent fulfillment of their mission to serve their membership, which includes low to moderate income individuals. The fact credit unions have successfully achieved the goals of CRA without a statutory mandate should not be used to generate a prioritization for CRA examinations under the new Illinois CRA.

- (3) In its ANPR, the Department seeks comment on whether a credit union that provides a majority of its products via mobile or digital channels should have a continuing obligation to help meet the financial service needs of deposit-based assessment areas, including the entire state in which the assessment area is located.

For credit unions that provide all or a majority of their services via mobile and other digital channels, their continuing and affirmative obligation should be to help meet the financial service needs of their members, not the entire state. The Illinois CRA mandates that such credit unions must fulfill their obligation to meet the financial services needs of their deposit-based assessment areas, including low to moderate income neighborhoods, **consistent with their common bonds**. (Illinois CRA, Section 35(10(a))). Accordingly, credit unions with an associational or occupational common bond and no community common bond should not be expected to address CRA performance standards based upon geographic areas. Alternatively, if CRA performance standards based upon community areas or neighborhoods are established for those credit unions, a deposit and service materiality threshold must be included so the standards have no applicability in remote geographic areas where they have very little membership activity.

- (4) In its ANPR, the Department seeks comment on whether there should be a broad approach to examination and supervision focused on informal enforcement actions or a narrower complaint-driven approach focused on a limited number of adversarial enforcement actions.

For credit unions, supervision and enforcement should be based on the IDFP regulatory examination consistency and due process standards established under the protocol adopted in 2014 (P.A. 98-0784 eff. July 24, 2014 amending Illinois Credit Union Act (ICUA) Section 9 by adding subsection 3.5 (205 ILCS 305/9(3.5); 38 II Adm. Code Section 190.25; and accompanying regulatory guidance), rather than a broad and informal enforcement approach or a narrow and complaint-driven adversarial enforcement approach. "Regulation by enforcement" was an approach previously utilized by the federal Consumer Financial Protection Bureau and it generated many problems and unintended consequences.

- (5) In its ANPR, the Department seeks comment on potential fee structures to cover the cost of implementing Illinois CRA.

Fee structures for CRA examinations should be reasonable and fair. The existing regulatory fee structure for credit union safety and soundness examinations conducted by the Department is based on the asset size of the credit union (ICUA, Section 12). However, the regulatory fee structure provides a volume-based discount (as assets rise, the various tiers of fees establish a lower fee rate per each \$1,000 of assets). To assist smaller credit unions meet the new regulatory and economic burden of CRA examinations, an asset-based fee structure should be based on a "fill-a-tier" approach. New fees associated with the implementation of Illinois CRA will impact the dollars that are available for credit unions to reinvest in their communities.

- (6) In its ANPR, the Department seeks comment on the potential suitability of the Massachusetts CRA rule for credit unions.

As noted above, we believe the Massachusetts CRA rule is a reasonable model for Illinois to draw upon. However, the ANPR fails to reference two key elements of the Massachusetts rule – the inclusion of a (i) section addressing small institution performance standards, and (ii) section authorizing a credit union to alternatively elect a strategic plan to address the credit needs of its assessment area in lieu of having its performance evaluated under the lending and service tests. Further, the Illinois CRA rule should provide a simplified and expedited evaluation for credit unions that have received federal certification as a community development financial institution (CDFI) or a minority deposit institution (MDI).

The League would like to thank the Department for the opportunity to comment on the proposed CRA rulemaking and offer its view on how the rule should be tailored to enable credit unions to best fulfill the goals of Illinois CRA. Credit unions embrace those goals, because they are totally consistent with the structure, mission and operational orientation and practice of credit unions as not-for-profit member-owned financial cooperatives.

Respectfully submitted,

ILLINOIS CREDIT UNION LEAGUE



By: _____
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