



**WOODSTOCK
INSTITUTE**

*Advancing Economic Security
and Community Prosperity*

December 29, 2021

Board of Directors

Chair

Byna Elliott
JP Morgan Chase

Vice-Chair

Bobbi Ball

Treasurer

Manuel Jimenez
Marquette Bank

Secretary

Michael Seng
John Marshall Law School

Members

Natalie Abatemarco
Citi Community Development

Ravi Aurora
MasterCard

Calvin Bradford
Calvin Bradford & Associates, Ltd.

Eva Brown
U.S. Bank

Louis Caditz-Peck
Lending Club

Thomas FitzGibbon, Jr.
Evergreen Bancgroup

Staci Glenn Short
Huntington Bank

Jesus Hernandez, PhD
JCH Research

Vivienne Lee
Common Future

Juan Carlos Linares
Association House of Chicago

Horacio Mendez
Woodstock Institute

Matthew Roth
IFF

Audra Wilson
Shriver Center on Poverty Law

Founder

Sylvia R. Scheinfeld
1903-1990

67 E. Madison, Suite 2108
Chicago, Illinois 60603-3014
Phone: (312) 368-0310
Fax: (312) 368-0316
www.woodstockinst.org

Craig Cellini
Rules Coordinator
Illinois Department of Financial and Professional Regulation
329 West Washington, 3rd Floor
Springfield, IL 62786
Via Email: Craig.Cellini@Illinois.gov

Woodstock Institute thanks the IL Department of Financial and Professional Regulation (IDFPR) for the opportunity to provide written comments on the Advanced Notice of Proposed Rulemaking (ANPR) under the Illinois Community Reinvestment Act (IL-CRA). Woodstock conducts research and advocates for consumer financial protection and community economic development. Our work seeks to combat structural inequities and improve the quality of life in lower-income neighborhoods and communities of color. Our almost 50-year history includes leadership in the drafting and passage of the Home Mortgage Disclosure Act (HMDA) in 1975 and the Federal Community Reinvestment Act (CRA) two years later as well as the advocacy surrounding the recent passage of the Predatory Loan Prevention Act (PLPA) and the IL-CRA earlier this year.

The issues associated with the drafting of implementing rules from which to enforce the IL-CRA are not dissimilar to those facing the Federal bank regulatory agencies as they strive to modernize the Federal CRA. Illinois has the opportunity to shape and lead that discussion and address the challenges of defining “community” in an increasingly virtual world, of incorporating the growth and scale of lenders that exist outside the regulatory scope of the Federal CRA, and rectifying some of the unintended consequences associated with the current Federal CRA regulation in advance of reform efforts.

Before addressing the specific questions raised by IDFPR related to the development of the IL-CRA’s implementing regulation, the role of racial discrimination must be overtly addressed in both the rulemaking and the enforcement process.

Incorporating Race into the IL-CRA - 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 is incorporated into the redlining assignment of areas posing an alleged unacceptable high risk 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. 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), the Equal Credit Opportunity Act (ECOA) and related non-discrimination regulations. If a covered institution is found to have substantively violated any Fair Lending, civil rights, equal protection or consumer protection laws, and irrespective of whether the institution settles without admitting guilt or if the violations are old but were just recently surfaced, the institution is, a priori, not meeting the needs of its community and should be found in non-compliance with the IL-CRA.

Race and ethnicity are just one of many ways from which to identify the characteristics of the communities being served by lending institutions. Given that communities are the foundation from which performance should be assessed and measured, it is therefore critical to understand and define community for the diverse industry of lending institutions serving IL.

Defining Community - As the physical location of financial service providers becomes less important to consumers, it will become more important for regulatory agencies like IDFPR to evolve and refine the definition of markets and/or assessment areas for consumer protection laws like the IL-CRA. The champions behind the drafting and passage of the IL-CRA wanted to ensure equitable access to responsible financial products and services to all residents of the State, irrespective of where the financial product or service originates out of. As such, the origin of the product is not as important as the impact the product has at the local level, so the growing virtual financial world must be held accountable for its impact at the community level.

Much has been made of the fact that there are a variety of lending institutions that are covered by the IL-CRA 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. Federal and State regulatory agencies have been dealing with these kinds of entities for decades, and 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.

While formal methodology hasn't been created at the Federal level to assess the market for non-traditional lenders, countless exams of these institutions have established strong and important precedents that can be leveraged here in IL. These range from the CRA methodologies used to examine Citicorp, CapitalOne, USAA Federal Savings Bank or Bank of the Internet in San Diego. Using these, and countless other examples of how the CRA is applied to non-traditional lenders, we see how data can be used to identify the location of lending and deposit-taking activity and thus define a market from which to assess CRA performance.

Thresholds to determine significance and relevance would need to be defined in order 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 could be justified. If an institution has concentrated activity in one or a handful of markets, those should set the geographic context for assessing performance. Setting a threshold that is too high would exempt too many financial service providers from oversight. 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 collectively comprise the super-majority of financial service activity in a particular market.

Consideration surrounding the definition of “community” should also be given to those geographies that have limited access to financial services. Rural and non-metropolitan communities are increasingly underserved by the financial industry. To fulfill the intent of the IL-CRA, markets

should be defined in a manner that incentivizes access and activities in unbanked and underbanked markets.

With a communities defined, the next step is to ascertain the efforts made by each covered institution to understand the financial service needs of its markets, and to use that knowledge to make appropriate and responsive products accessible, availability and adequately utilized. These are the factors from which IDFPR can assess covered financial institutions' compliance with the IL-CRA.

Factors to Assess Compliance – “Assessment factors” harken back to the early days of the Federal CRA regulation but are relevant today given the unintended consequences associated with the revision of the regulation in the mid 1990s. The narrative for the original CRA assessment factors aligned with the process associated with the development and deployment of products: (a) defining the market; (b) understanding community needs and how it relates to the business model of the institution; (c) developing responsive and responsible products by which to meet those needs in a financially sustainable manner; (d) marketing and selling the product; and (e) assessing the effectiveness of the business model and products, pivoting when necessary, and partnering with organizations to fill gaps as needed.

Knowing the Market - 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 precedent should be replicated as an important assessment factor in the IL-CRA process so long as it connects to the actions taken by the institution to use these activities towards the provision of responsible financial products and services that are responsive to market needs.

Covered institutions can demonstrate their efforts to ascertain the credit needs of its communities through a number of ways including, but not limited to: building and maintaining relationships with community development organizations, housing counseling agencies and small business technical assistance providers that work directly with low- and moderate-income (LMI) and underserved communities; and awareness and utilization of demographic information, regional plans and community initiatives.

While it is important to know the market and to use that information to create responsive and responsible products, it is equally important to ensure that the community knows about those products and has access to them. As a result, and referencing the original Federal CRA regulation, Assessment Factor B is relevant in this case.

Marketing and Outreach – Assessment Factor B of the original CRA 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 an important add-on to the assessment of local needs but will require IDFPR to evolve its thinking of what constitutes “marketing” to include outreach, technical assistance and financial education. It will also require an assessment of whether the marketing and outreach is responsive to community demographics, technological proficiency and access, and specific language and cultural characteristics.

The assessment of lending activity represents the desired outcome associated with IL-CRA compliance. Understanding the market, knowing what it needs, developing responsive products, and making information about those products and how to access them readily available should result in lending data that shows equitable distribution and appropriate approval rates.

Mortgage Lending - The analysis and assessment of data provided through HMDA is critical to assess compliance with both the CRA and Fair Lending Laws. It should be within the purview of IDFPF to conduct its own assessment and/or agree or disagree with Federal regulatory assessment of Fair Lending compliance based on HMDA and other available lending information. The agency should use its own judgement of Fair Lending compliance in assessing the performance of an institution under the IL-CRA and, as stated previously, any covered institution found to have substantively violated any Fair Lending, civil rights, equal protection or consumer protection laws, and irrespective of whether the institution settles without admitting guilt or if the violations are old but were just recently surfaced, should be found in non-compliance with the IL-CRA.

In assessing mortgage lending performance by covered institutions, particular consideration should be given to an institution's utilization of local, state and Federal programs including, but not limited to: U.S. Department of Housing and Urban Development home mortgage subsidies and programs; Federal Home Loan Bank subsidies and programs; and Illinois Housing and Development Authority lending subsidies and programs. IDFPF should review home loan products for their long-term affordability and accessibility to assess whether they are sustainable for 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 and underserved homeowners and communities maintain their homes and sustain long-term homeownership. Proactively, IDFPF should also review HMDA data to evaluate whether institutions are lending in a manner that causes displacement of LMI individuals and people of color, and whether they are lending in equitable numbers to borrowers of color in both home purchase and refinancing. Additionally, covered financial institutions should only receive consideration for loan originations, and not purchased on the secondary market unless those purchases are from a Community Development Financial Institution (CDFI) serving IL.

Small Business Lending - Small business lending should be evaluated in a manner similar to mortgage lending, particularly given the pending release of Dodd-Frank Section 1071 small business lending data that will provide information on small business loans in a manner similar to HMDA. IDFPF has an opportunity to set a national standard for consumer financial protection towards small businesses by proactively creating the infrastructure from which to assess small business lending performance on a basis beyond just gross annual revenues to include disparate impact based on protected classes and prohibited basis.

In assessing small business lending performance by covered institutions, particular consideration should be given to an institution's utilization of local, state and Federal resources including, but not limited to: U.S. Small Business Administration products and programs including micro-lending, 7a and 504 loan products; Small Business Development Corporations; Community Development Corporations; and Women's Business Centers.

Covered institutions should be evaluated on whether they offer flexible small business loans and lines of credit with responsible interest rates for LMI communities and communities of color where historic redlining occurred. This could include the creation of Special Purpose Credit Programs that expand the credit underwriting parameters for the benefit of historically underserved communities and borrowers.

Direct vs. Indirect Lending - Covered financial institutions should be granted consideration for partnerships with CDFIs that create responsive and innovative loan products and services not offered by traditional lenders. However, while CDFIs and other alternative lenders play a critically important role in LMI and historically redlined communities, history has shown that financial institutions have used these institutions as substitutes for directly serving these communities instead of utilizing CDFIs as a complement to further their reach into 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 the entirety of their financial journey.

Covered 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) in certain communities, and comparing the distribution of similar products between moderate- and upper-income communities and low- and moderate-income communities. 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.

Similarly, 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 or to circumvent State of IL law is counter to the goals of the IL-CRA and should be discouraged and penalized.

We also encourage IDFPFR to include incentives in the final rule for larger covered financial institutions to support the smaller lenders who are vital to the very communities that the IL-CRA has in mind to support. State-chartered financial institutions already receive positive Federal CRA regulatory consideration for their support of community development and minority depository institutions; the IL-CRA should mirror this incentive.

Discriminatory Practices – We urge IDFPFR to use data analysis and literature/news scans to ensure that institutions are making credit available equitably. The agency should proactively monitor for disparate patterns and practices in lending activities throughout the state and in various localities through review of lending data, news stories, engagement with community organizations and other available information. There should not be a presumption of compliance based on the absence of complaints or enforcement actions. Finally, given the central importance of ensuring equitable access and utilization of financial products and services, all covered financial institutions must be assessed on this factor.

Examination Procedures – For those covered financial institutions who fall under both the Federal and State of IL CRA, the **frequency and scope** of the exams should be aligned to minimize regulatory burden. For other covered financial institutions, the frequency and scope should be based on performance. Those institutions who receive an Outstanding rating and are not involved in a merger or acquisition should have a longer period of time between exams than those who are either going through a merger/acquisition or received a less than Satisfactory rating in their last exam.

An assessment should also be made regarding the **costs and fees** associated with regulatory enforcement of the IL-CRA. A number of tiers should be created that differentiates and categorizes all covered financial institutions by a combination of size and complexity. The top tier should pay the lions share of the costs associated with statewide regulatory enforcement, with the bottom tier exempt from any fees or surcharges. Those institutions who fall between the top tier and the bottom tier should pay fees and surcharges based on a sliding scale adjusted by their size and complexity, with fees/surcharges diminishing along with size/complexity. Non-profit status should not exempt an institution from fees or surcharges, or from compliance with this law. “Like” products require “like” regulatory oversight, irrespective of the charter, purpose or mission of the lending institution.

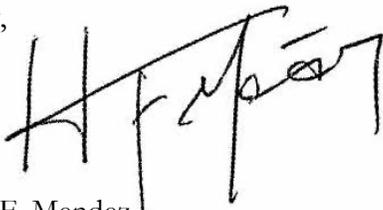
Similarly, and related to the point of tailoring costs and fees to better reflect the diversity of the industry, we strongly advise IDFPR to develop **streamlined CRA examination procedures** for some of the smaller lenders who support the very communities the CRA has in mind. This is particularly the case for small, volunteer-run, faith-based Credit Unions. The State of Massachusetts provides us with a template of what this could look like. In some cases, the CRA exam of institutions like these consist of a single page of information that is easy to compile and does not create a burden or cost to the institution.

State-chartered member (Federal Reserve System - Fed) and non-member (Federal Deposit Insurance Corporation - FDIC) financial institutions should have CRA exams that include IDFPR examiners alongside the Fed and FDIC examination team. Looking at the same data in the same manner at the same time reduces regulatory burden and allows the State to either concur with the findings of these agencies, advocate for different findings based on the interpretation of the data by IDFPR examiners or differ in their finding and release a separate evaluation. With this in mind, any changes to the **Federal CRA regulation** should be reflected in the parameters of how IDFPR assesses state-chartered financial institutions. As such, the final IL-CRA rule should reference Federal Financial Institutions Examination Council (FFIEC) CRA guidelines with the provision that IDFPR has the authority to add or subtract factors as needed and justified. Many of those factors and expectations can be set forth up front and ahead of the Federal CRA reform effort in order to both maximize the opportunity for feedback and also to inform the Federal discussion.

Lastly, we urge IDFPR to focus on making the findings of each IL-CRA exam easily accessible to the public in a timely manner not to exceed 120 days after the close of the exam. Each exam report should be in-depth and comprehensive as to the information used to evaluate the institutions’ performance so as to inform the public on the details of how a rating was determined.

Woodstock Institute wholeheartedly supports IDFPR’s mission to advance equity in the provision of and access to financial services. We hope our comments to the ANPR, and our continuing advocacy as rules are published for comment, will help the agency achieve its goal. As such, we are available to assist with any additional relevant input as needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Mendez', written over a horizontal line.

Horacio F. Mendez
President and Chief Executive Officer