



*Advancing Economic Security
and Community Prosperity*

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Woodstock Institute thanks the IL Department of Financial and Professional Regulation (IDFPR) for the opportunity to provide written comments on the Notice of Proposed Rules (NPR) 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 low-income neighborhoods and communities of color. Our 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 IL-CRA.

On August 5, 2022, the Illinois Legislative Black Caucus (ILBC) submitted comments on proposed amendments to implementing regulations for the Federal CRA. Their comments are essential in setting the context and expectations from which this body of legislators drafted and shepherded the IL-CRA toward passage.

“ Our thoughts on CRA reform are informed, in large part, by the goals of the Illinois CRA, which we passed last year. The Illinois CRA was part of the Illinois Legislative Black Caucus (ILBC) 2020-21 legislative agenda. The ‘Black Caucus Agenda’ was developed in the wake of high-profile instances of police violence against Black people and the unrest that ensued, as well as the COVID pandemic’s disproportionate impacts on Black and Brown communities. Also inspiring the Black Caucus Agenda, and the Illinois CRA in particular, was a study by NPR affiliate WBEZ and City Bureau showing that, in Chicago, lenders have invested more in a single White neighborhood than all the Black neighborhoods combined.”

“Against this backdrop, we expect the rules to implement the Illinois CRA to be race conscious and to establish a regulatory framework that explicitly and intentionally aims to reverse the profoundly negative consequences of redlining. Just as redlining was and is race conscious, addressing its impacts in a meaningful way must also be race conscious. At the core of the federal and state CRA is the concept of community. Nothing in either law instructs regulators to pretend that communities of color do not exist. There are zip codes in Chicago that are more than 95% Black. These zip codes are also among the most disinvested zip codes in Illinois. Addressing the needs of these communities requires reinvestment activities that are directly responsive to local needs.”

Considering the absence of race in this NPR, it would seem that there is a disconnect between the legislative intent of the IL-CRA and the law’s proposed implementation and enforcement. The goal of the IL-CRA was not to cut and paste the failings of the Federal CRA and apply it to credit unions and mortgage companies throughout the state. That would result in little to

no change in standards for state-chartered banks and would just hold two additional sectors to the same historically weak standard. On the contrary, the goal of the law was to hold all three major segments of the mortgage industry to a *higher* standard of community reinvestment. We accomplish nothing for Illinois communities in need by following a model that has been proven time and again to be largely toothless.

The omission of race from this NPR undermines all other facets of the proposed rule. As stated by the ILBC, “... *we expect the rules to implement the Illinois CRA to be race conscious and to establish a regulatory framework that explicitly and intentionally aims to reverse the profoundly negative consequences of redlining.*” Addressing the effects of redlining requires rulemaking that is firmly rooted in a racial equity lens. This rule does not satisfy that expectation and should be re-written and re-submitted for comment with content that aligns with the goals and expectations of the law’s creators and champions.

Information about race, gender and ethnicity on all types of mortgage loans is currently available through data collected and reported under the HMDA. In fairly short order, similar information for small business loans will be made available through rules governing Dodd-Frank Section 1071 (which is also not mentioned in the NPR). As such, adding a racial lens to the existing regulatory assessment of the borrower and geographic distribution of lending activity based on income will not create excessive burden. The same examination procedures that allow an examiner to assess whether a covered institution is serving the needs of low- and moderate-income communities and individuals can be easily replicated for a similar assessment based on the racial and ethnic characteristics of those same communities and individuals.

While Federal regulatory agencies have responsibility for enforcing fair lending laws like the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA), a recent Woodstock Institute survey of redlining, racial discrimination, and consumer protection law cases and complaints found inconsistency in application of these laws. Of 104 claims between 1993 and 2001 that resulted in judgements, verdicts, consent orders and other sanctions or agreements for bank violations, 84 were brought for violations that CRA regulators did not identify or consider during their examinations. Violating anti-discrimination laws is inherently at odds with serving community needs under the CRA, but these banks still received passing ratings on their CRA exams. This emphasizes the need for IDFPR examiners to expand the scope of their assessments to include race. Additionally, 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 substantial non-compliance with the IL-CRA.

Additionally, IDFPR 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 formal complaints or enforcement actions.

A key area of concern by advocates and the financial industry alike as it relates to the Federal CRA is the issue of purchased loans and “loan churn.” Since the Federal CRA’s treatment of purchased loans as equal to originated loans, a market has grown for the continuous and repeated

purchase of loans eligible for CRA consideration. Under current procedures, a single loan can be bought and sold multiple times over its lifetime, appearing for consideration on many, many exams without providing new investment in the community. Federal bank regulatory agencies are proposing that CRA consideration should only be given for origination and the initial purchase of a loan. This issue is not mentioned or addressed in the NPR, and should be.

Another pillar of the ILBC's agenda that became law was the Predatory Loan Prevention Act (PLPA), which capped consumer loan APRs at 36% as a way to put an end towards the hundreds of millions of dollars being drained from Black, Brown and low-income communities throughout the state. In keeping with existing financial regulations in the state, the PLPA does not apply to state-chartered banks or credit unions. As such, the IL-CRA should be explicit that covered institutions will not be allowed to use their charters as a mechanism by which third parties can provide predatory loans.

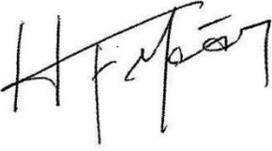
Finally, the availability and transparency of data used to assess the performance of covered institutions by the IL-CRA is critical towards the goal of checks, balance and accountability. Providing only aggregate data on small business, small farm and community development lending activity by covered institutions, as is currently proposed in the NPR, impedes the ability of organizations like Woodstock Institute to conduct independent and institution-level analysis on trends as needs arise. It also severely hinders the ability to hold IDFPR accountable for the appropriate implementation and enforcement of the law in the long term over multiple administrations. The data should be readily available at the census tract level without a Freedom of Information Act request or process. Additionally, the management and availability of this data should remain within IDFPR and not be outsourced to a third party, to ensure its ongoing availability and accessibility.

As mentioned previously, the omission of race from this NPR undermines all other facets of the proposed rule. However, there are important facets of the proposed rule that are positive but need additional clarification. First amongst those are the anti-gentrification considerations found in each of the rules for covered institutions. While displacement and anti-gentrification is a critically important issue for this new rule to address, the details associated with how it will be defined, assessed and enforced need to be clarified. Similarly, the NPR references rules by IDFPR on fair lending reviews, which do not exist yet to our knowledge. If implemented well, state-level fair lending review could have a significant, positive impact on historically disinvested communities. We will be very interested in seeing what these rules will entail and how they will overlap with the IL-CRA.

The passage of the IL-CRA arose in the context of Black Lives Matter; the COVID pandemic; 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 and City Bureau highlighting the vast lending disparities between Black and white neighborhoods in the City of Chicago. Illinois leaders, spearheaded by the ILBC and supported by the Governor, responded to these issues of deep racial disparities and racial injustice by enacting this critical piece of legislation. Combined with the PLPA, these laws made Illinois one of the strongest consumer financial protection states in the country. But important laws like these need proper infrastructure and enforcement to accomplish their goals. We believe that the NPR, as written, has much good to offer, but falls short in the most crucial aspect of what the legislature intended, the Governor signed and the citizens of Illinois deserve.

Again, Woodstock thanks IDFPR for your time and consideration in this rulemaking process. We look forward to the scheduled hearings on this rule and are available for any additional discussion regarding our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Mendez". The signature is stylized with a large initial "H" and a long horizontal stroke.

Horacio Mendez
President & CEO