March 16, 2023

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 2nd Floor
Springfield, Illinois 62786

Re: **IDFPR Notice of Proposed Rules**
Bank Community Reinvestment
46 Ill. Reg. 19794 (December 16, 2022)

Dear Directors Rehwinkel and Menchaca,

The Illinois Bankers Association (IBA)[1] is writing on behalf of its members to comment on the Notice of Proposed Rules for banks covered by the Illinois Community Reinvestment Act (Illinois CRA). We very much appreciate the investments of time and energy committed by you and your agency's staff to draft the proposed rules and clarify the obligations of covered institutions under the Illinois CRA.

We appreciate the IDFPR's efforts to solicit input and provide guidance and clarity for banks and examiners. The IBA strongly supports the Illinois CRA's goals, and our members have dedicated immense resources in the years since the enactment of the federal CRA in 1977 to meet the credit needs of the communities they support and rely on, particularly in low- and moderate-income areas.

In recent years, our members have committed significant resources to following and implementing changes to the federal CRA rules. We provided comment letters in response to an advance notice of proposed rulemaking and proposed rulemaking from various groupings of federal banking agencies. The OCC finalized a CRA rule in 2020, followed by a swift rescission of that rule just six months later.

We urge the IDFPR to avoid the federal banking agencies' missteps. Instead, the IDFPR should take the time to meaningfully incorporate input from affected industries and other stakeholders and avoid issuing a final rule that is not truly final — due to controversy, litigation, or second-guessing that leads to rescission.

The final rule must minimize costs and unnecessary burdens to support the Illinois CRA's goals. Our members are ready to do more to invest in underserved communities. To support the shared goals of banks and the IDFPR, we think that the final Illinois CRA rule must minimize any unnecessary costs and regulatory burdens — particularly for an industry with a long record of CRA compliance and regular examinations (and the attendant costs and burdens) at the federal level.

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[1] The Illinois Bankers Association is a full-service trade association dedicated to creating a positive business climate for the entire banking industry and the communities we serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 52% of IBA members are community banks with less than $250 million in assets, and over 75% of IBA members are community banks with less than $750 million in assets. Collectively, the IBA represents nearly 90% of the assets of the Illinois banking industry, which employs more than 105,000 men and women in over 5,000 offices across the state.

Our members already spend many valuable resources on data collection and paperwork associated with federal CRA compliance. Much of this time and expense spent would be better deployed in our members' communities, through lending and investments, by marketing to low- and moderate-income communities, and in promoting financial literacy and other worthy causes. Any additional burdens imposed on the banking industry by the final Illinois CRA rule would worsen the loss of resources to paperwork, rather than community investments.

In light of our industry's long track record of federal CRA compliance, the IDFPR does not need to gather data and independently examine covered banks for Illinois CRA compliance. Instead, Illinois CRA examiners should use the data already submitted by covered banks to their federal regulators. This approach would allow the IDFPR to exercise its independent judgment in preparing separate Illinois CRA evaluations and separate Illinois CRA ratings for covered banks without imposing duplicative data submission requirements.

The final rule should adopt reasonable examination fees and limit expenses. Our members are extremely concerned about the proposed rule's billing rate of $2,200 per day for Illinois CRA examinations, an amount that automatically will be increased by 5% annually — in other words, starting at $11,000 for every week of an Illinois CRA examination and doubling that amount every fourteen years — regardless of the effects of inflation. Our members have not experienced such high billing rates for other IDFPR examinations. These extreme fees are particularly unnecessary for banks, as the IDFPR will have ample assistance from the federal banking regulators that should be partnering with the IDFPR on federal and Illinois CRA compliance.

Our industry must plan for paying enormous examination fees without knowing how many weeks examinations will require, and whether these fees cover the full gamut of pre-examination activities — whether $11,000 will be required for each week of pre-examination preparation and time spent in examination review, the issuance of findings, and negotiations over findings. Also, our members have reported that CRA examination timelines can nearly double from one examination to the next. We urge the IDFPR to reconsider these potentially astronomical fees and tie the annual increases to inflation, with a 5% cap, rather than locking in automatic, annual 5% increases.

Our members also are concerned about unlimited reimbursements for out-of-state travel expenses. Many of our member banks have offices outside of Illinois and outside of the U.S., and we are concerned and confused about the proposed rule's attempt to cover institutions and affiliates outside of the statutory bounds of the Illinois CRA (discussed in detail below). The final rule should require IDFPR examiners to limit travel, particularly for the bulk of examination activities that easily could be conducted remotely. Examiner travel outside of Illinois, and certainly international travel, should be severely limited.

Our members need a reasonable implementation period to achieve Illinois CRA compliance. The proposed rule provides only six months after the effective date of the final rule to comply with its requirements. The last thing our members want is to fall short of their goals to support the Illinois CRA and their communities, but an implementation period of just six months is simply too little time to digest the final rules and implement them. Also, it is unclear from the proposed rule how and when required data must first be submitted, how the IDFPR will provide a secure channel for transmitting and storing sensitive data containing nonpublic information, and other logistical questions.

At the same time, our members will soon be implementing a complete rewrite of the federal CRA rules, potentially requiring them to maintain two separate CRA systems and procedures to support differing CRA requirements at the Illinois and federal levels — on top of implementing new small business loan reporting requirements (under Dodd–Frank Act Section 1071) and a flood of new guidance and requirements from the federal banking agencies on an almost daily basis.

We believe the federal banking regulators have adopted more reasonable implementation periods. The OCC's final CRA rule from 2020 provided implementation periods of 2.5 to 3.5 years based on a bank's asset size, and the latest proposed federal CRA rules provided an implementation period of at least one year (which we urged the agencies to expand).

Examinations and examination schedules should be implemented with banks' federal CRA obligations in mind. We urge the IDFPR to coordinate with and gather all necessary information for CRA examinations from the federal banking agencies that conduct such examinations at the federal level. As mentioned above, we believe that the IDFPR's resources are best spent in evaluating and assigning ratings to covered banks, not in conducting duplicative and unnecessary examinations of banks.

As to examination frequency, our members appreciate and support the concept of relief for banks with "outstanding" or "satisfactory" ratings. However, we have some concern about differing examination cycles at the federal and Illinois levels, which could lead to banks experiencing two CRA examinations in consecutive years — one under the Illinois CRA and one under the federal CRA.

Also, banks with "outstanding" or "satisfactory" ratings under the federal CRA should be afforded the same relief as banks with "outstanding" or "satisfactory" ratings under the Illinois CRA, particularly in the years before a bank has received any rating under the Illinois CRA. For example, if a covered bank has achieved an outstanding rating under the federal CRA, it should be eligible for examination relief under the Illinois CRA while it awaits its first Illinois CRA rating.

The coverage of the proposed rule should adhere to the Illinois CRA's statutory limitations. The Illinois CRA applies only to "covered financial institutions," as defined in the statutory text. Leaving aside covered credit unions and mortgage lenders, the "covered financial institution" definition includes only a "bank chartered under the Illinois Banking Act, a savings bank chartered under the Illinois Savings Bank Act," and "any other financial institution under the jurisdiction of the Department as designated by rule by the Secretary." 205 ILCS 735/35-5.

The Illinois CRA administrative rules should not attempt to expand the IDFPR's authority outside of the law's statutory boundaries. The final category of covered entities — financial institutions under the jurisdiction of the IDFPR — should not be exploited as a catch-all to regulate any financial institution under the sun, without statutory authority or legislative intent.

However, the proposed rule for banks does just that, allowing the IDFPR to examine under and enforce the Illinois CRA against non-covered institutions without statutory authority. Despite the Illinois CRA's defined scope, the proposed rule would apply to "any affiliates" of a state-chartered bank or state-chartered savings bank. The proposed rule also applies to "a banking office of a foreign banking corporation issued a certificate of authority under the Foreign Banking Office Act." Neither of these additions to the statutory definition of a "covered financial institution" has a basis in the Illinois CRA's statutory text.

The unprecedented coverage of bank affiliates is unworkable, lacks statutory authority, and creates an uneven playing field for covered banks versus other covered entities. We believe that the proposed rule properly discusses the consideration of lending and other CRA-eligible activities by a covered entity's affiliates, a longstanding aspect of the federal banking agencies' CRA rules. However, the IDFPR does not have the statutory authority to directly examine a covered entity's affiliates as if they were independently covered by the Illinois CRA's requirements. The expansion of examination authority to directly examine affiliates is unprecedented, as the federal banking agencies do not have that

authority under their federal CRA rules. Applying the Illinois CRA's requirements to bank affiliates would be unworkable for many affiliates, such as insurance and investment companies.

Also, our members are very concerned that covered banks will be placed at a competitive disadvantage to covered mortgage lenders and credit unions, whose rules do not allow the IDFPR to examine those entities' affiliates and do not call for enforcement against their affiliates.

Similarly, there is no statutory basis for the addition of branches of a foreign banking corporation's banking office to the scope of covered entities. Foreign financial institutions are mentioned in the Illinois CRA statutory text only in the context of a covered entity's acquisition of such an institution. 205 ILCS 735/35-30. But the proposed rule expressly applies to banking offices of foreign bank corporations issued a certificate of authority in Illinois, with no basis in the law.

Although the assessment areas of such entities would be limited to areas within Illinois, our members are concerned about the lack of statutory authority for this extension to foreign entities and the potential costs of examinations and travel expenses for examiners with the authority to insist on inspecting books and records located in these institutions' offices in foreign countries. And again, the proposed rules for other covered entities do not mirror the rules for banks — neither foreign mortgage lenders nor foreign credit unions are covered in the proposed rules for mortgage lenders or credit unions.

The Illinois CRA rules should establish a level playing field for all covered entities. We have already noted multiple instances of major discrepancies in the way that covered banks are defined and how the Illinois CRA will be enforced against covered banks, versus covered mortgage lenders and credit unions. Each discrepancy among the three sets of rules for covered entities is troubling for reasons of fair competition and fair enforcement.

Another major discrepancy among the proposed rules is that mortgage lenders apparently would not be subject to the threat of enforcement actions, nor would they be subject to referrals to law enforcement or administrative authorities. The enforcement provisions for covered banks (proposed Section 345.500) and credit unions (proposed Section 185.500) do not appear in the proposed rules for mortgage lenders. Our hope is that this major discrepancy and other troubling discrepancies are mere oversights, not intended to select winners and losers based on a covered entity's industry.

The Illinois CRA rules should include examples and adopt the federal agencies' illustrative list of qualifying activities for banks. The proposed Illinois CRA rules for credit unions include a list of examples of qualifying activities in Appendix C that we believe should be adopted for all covered entities. This list of examples could also include activities that clearly should qualify for credit, such as investments in the Federal Home Loan Bank of Chicago's Affordable Housing Program General Fund. Additionally, the federal banking agencies have adopted a thoroughly-vetted illustrative list of qualifying activities that should equally qualify for CRA credit under the Illinois CRA.

Monitoring lending by consortium members will be difficult and add unnecessary costs. The proposed rules pile on new monitoring requirements to the existing federal CRA rules by mandating that banks "monitor and keep records of whether" members of a consortium or affiliates have claimed CRA credit for a particular loan origination or loan purchase. Particularly with respect to consortium participants, our members are unsure how they will comply with the requirement to monitor whether unaffiliated institutions claim CRA credit for particular loan originations or purchases, since such monitoring would require information that is not publicly available.

Unworkable requirements piled onto CRA lending originations and purchases will serve only as an incentive for covered entities to partner exclusively with non-covered entities in lending consortiums,

as the only way to guarantee that the other consortium members could not claim CRA credit for the origination or purchase.

The definitions of "unbanked," "underbanked," and other terms should be clarified. Our members are eager to serve unbanked and underbanked populations, offering programs such as BankOn-certified accounts and other products created within their institutions — for example, a program creating a limited checking account for the purpose of picking up and cashing government checks for a nominal fee. Such products are marketed to low-income areas and clearly are designed to serve unbanked and underbanked communities, and it appears these programs would be covered by the proposed definition of "underbanked."

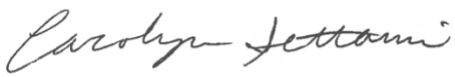
However, the proposed definition of "unbanked" appears to be very restrictive, as it requires an institution to demonstrate that an individual does not have a checking or savings account with an insured depository institution. In the example of a low-cost, limited checking account, this information is not collected from customers at account opening, and we are not aware of any public registries that would allow banks to verify that an individual does not have an account at any other insured depository institution. The definition of "unbanked" should be clarified so that it does not exclude creative and effective programs that are clearly marketed to and designed for unbanked and underbanked populations.

Also, the final rule should define any major undefined terms. For example, Section 425.200 uses the term "small business lender," and we recommend defining that term to avoid ambiguity.

The role of assessment factors should be clear in the final rule. Proposed Section 345.200 identifies "assessment factors" without explaining how these factors will be woven into the CRA tests laid out in other sections of the proposed rules. Clear standards and expectations regarding each assessment factor will help to redirect resources from compliance and paperwork to our communities.

Thank you for your consideration of our comments, and please let us know if you have any questions.

Very truly yours,



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