Illinois Mortgage Bankers Association

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March 5, 2023

Via Email: Craig.Cellini@illinois.gov

Mr. Craig Cellini
Rules Coordinator, Office of the General Counsel
Illinois Department of Financial and Professional Regulations
320 West Washington, 2nd Floor
Springfield, IL 62786

RE: Comments to January 12, 2024, Department of Financial and Professional Regulation's First Notice of Proposed Rulemaking to Implement the Illinois Community Reinvestment Act

Dear Mr. Cellini:

The Illinois Mortgage Bankers Association (IMBA) is grateful for the opportunity to again provide comments to the Illinois Department of Financial and Professional Regulation (IDFPR) on its January 12, 2024 Notice of Proposed Rules, Mortgage Community Reinvestment, 38 Ill. Adm. Code 1055 (the "Reproposed Rules"), to implement the Illinois Community Reinvestment Act, 205 ILCS 735 (ILCRA).

The IMBA and its members are committed to principles of fair lending and to equal access to credit for all borrowers, and we have been unequivocally committed to support the work of the government agencies responsible for the enforcement of fair lending laws in identifying and remediating discriminatory practices.

Since August of 2021, the IMBA has also been committed to engaging and supporting the IDFPR's efforts to implement the ILCRA, through IMBA's testimony and comments to prior rules proposals. In these comments the IMBA focuses on the concerns of its members that are non-depository independent mortgage bankers, and Illinois RMLA licensees (IMBs), with respect to the Reproposed Rules. These IMBs are mainly small businesses that are based, employ, and serve in communities throughout Illinois.

Specifically, in these comments we express our grave concerns that despite our engagement with the IDFPR in this rule making process, the Reproposed Rules:

(i) Continue to contain inappropriate provisions that would severely limit the ability of our IMBs to offer access to affordable mortgage credit to underserved markets and communities;

(ii) Continue to hold IMBs responsible for the decisions made by independent appraisers; and

(iii) Impose on mostly small business IMBs unfair and outsized examination fees that are inconsistent with fees paid by other supervised entities, such Illinois banks and credit unions.

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1. Inappropriate Limits on CRA credit to Only Loan Originations and Initial Loan Purchases

Sections 1055.220(a)(2) and 1055.220(c) of the Reproposed Rules, continue to impose inappropriate limitations on CRA credit that would severely limit the ability of IMBs to offer access to affordable mortgage credit to underserved Illinois markets and communities. The IMBA has (and other mortgage industry associations and stakeholders have) alerted the IDFPR to the issues posed by these provisions. However, in disregard to our concern, the IDFPR proposed them again in the Reproposed Rules. For the reasons stated below the IMBA requests the following revisions to Section 1055.220(a)(2) and deletion of Section 1055.220(c):

Revisions to Section 1055.220(a)(2):

> The Secretary considers originations and ~~initial~~ subsequent purchases of loans as reported by the covered mortgage licensee under HMDA, and under other annual reports and logs required to be retained by the covered mortgage licensee under the Residential Mortgage License Act of 1987. The Secretary will also consider any other loan data the covered mortgage licensee may choose to provide.

Complete deletion of Section 1055.220(c)

> ~~Third-party lending. No covered mortgage licensee may include a loan origination or loan purchase for consideration if another covered mortgage licensee or depository institution claims the same loan origination or purchase under this Part or the State or federal Community Reinvestment Act.~~

The reasons for the above amendments requested by the IMBA are as follows:

Under Section 1055.220(a)(2) of the Reproposed Rules states that:

> "The Secretary considers originations and initial purchases of loans as reported by the covered mortgage licensee under HMDA. The Secretary will also consider any other loan data the covered mortgage licensee may choose to provide."

This reproposed provision ignores, to the detriment of Illinois borrowers, the business model that allows IMBs to operate and through which to offer access to CRA creditable loans. The IMBs business model is to either: (i) broker loans to other lenders, or (ii) to make loans and then sell them to mortgage secondary market investors, such as, banks, credit unions, governmental sponsored entities (*e.g.*, Fannie Mae and Freddie Mac), or to other IMBs who aggregate and then sell them to large national institutional investors.

This business model is of necessity, because IMBs, whose vast majority are small businesses, do not have the financial ability to originate and hold loans in portfolio. Unlike banks and credit unions, who can use depositors' money to make and hold loans, IMBs must rely on limited short-term lines of credit to make

loans that must then be immediately sold to investors to replenish those lines to allow the IMBs to make more loans.

Since IMBs are not financially able to hold loans in their portfolios, they rely on depositories, GSEs and large national institutional investors that can hold CRA creditable loan assets in their portfolios, to develop CRA creditable loan products. These CRA creditable loans products' affordability to borrowers and their value to investors is tied to their status as CRA creditable loans.

The reproposed Section 1055.220(a)(2) would strip the CRA credit status from the loan after the initial purchase, which would reduce the value of the loan immediately after initial purchase. This would discourage end investors from creating CRA creditable products, which would limit the availability of such products to IMBs and ergo to Illinois borrowers.

The reproposed Section 1055.220(a)(2) would also not give IMBs CRA credit for brokering such loans, as brokered loans are not reported by the brokering IMBs under HMDA. Also, the reproposed Section 1055.220(a)(2) restrictions offer no solutions for bifurcated sales of a mortgage, and how CRA credit would be applied if an asset is sold separately from its servicing rights. This is a common practice when IMBs deliver loans to GSEs; the reproposed rules introduce uncertainty into what would be acceptable practice.

Likewise, Section 1055.220(c) prohibits including a loan for CRA consideration if another covered mortgage licensee or depository institutions claims the same loan. Section 1055.220(c) explicitly contradicts the provisions of Section 1055.220(a)(2) and raises all the problems discussed in connection with Section 1055.220(a)(2).

The IMBA is concerned that the limits placed by the revised 1055.220(a)(2) coupled with the outright prohibition in Section 1055.220(c) will promote unhealthy competition to retain CRA creditable loans between IMBs, depositories and aggregators that will result in less CRA creditable products being available to Illinois consumers. In addition, the IMBA is concerned that even if the prohibition in Section 1055.220(c) is deleted, the proposed Section 1055.220(a)(2) would discourage depositories and secondary market IMBs from creating CRA creditable loan programs, because once these CRA loans are purchased by the initial IMB or depository they will lose their CRA credit value, possibly making them unsellable loans in the secondary market.

In prior proposals of ILCRA rules, consumer advocates raised concerns over "loan churning" for CRA credit if subsequent purchasers received credit. However, such concern is misplaced because these advocates fail to appreciate the economics involved in bringing to market a CRA loan product. Again, the value of CRA loans products is in the ability to give the buyer of such loan products CRA credit. A CRA may be sold several times until they reach an end investor. Therefore, limiting such CRA credit for subsequent purchasers would remove the very basis for which there is a secondary market for CRA loan products, therefore reducing the availability of CRA loan programs, not increasing it. This result will be contrary to what the ILCRA is set to achieve. The IMBA submits that the benefits of providing CRA credit for IMBs who make, broker, and to any subsequent person who purchases a CRA credible loan downstream outweighs by far the misplaced "concern" of "loan churning" expressed by some consumer advocates. **We submit**

that neither the current Federal CRA, the new Federal CRA nor the Massachusetts community investment law, which the ILCRA was supposed to be modeled after, limit subsequent buyers from receiving CRA credit for loans they purchased.

Accordingly, the IMBA respectfully requests that IDFPR **delete the proposed Section 1055.220(c)** and **fix Section 1055.220(a)(2), as shown below,** to allow the person who makes, brokers, and any person who purchases a CRA creditable loan to each submit such loan for CRA credit consideration, as each such party is responsible for a unique function in the mortgage industry supply chain, and without each such function the availability of CRA creditable loans, particularly "Special Credit Program", would diminish.

The IMBA requests to revise Section 1055.220(a)(2) to include all subsequent purchasers and for the Secretary to consider, in addition to HMDA data, also reports and logs that are required to be retained by a covered mortgage licensee under the Illinois Residential Mortgage License Act of 1987, as such reports and logs include brokered loan information not reportable under HMDA. The following shows the revisions requested by the IMBA to Section 1055.220(a)(2) and to Section 1055.220(c):

Revisions to Section 1055.220(a)(2):

> The Secretary considers originations and ~~initial~~ subsequent purchases of loans as reported by the covered mortgage licensee under HMDA, and under other annual reports and logs required to be retained by the covered mortgage licensee under the and under the Residential Mortgage License Act of 1987. The Secretary will also consider any other loan data the covered mortgage licensee may choose to provide.

Complete deletion of Section 1055.220(c)

> ~~Third-party lending. No covered mortgage licensee may include a loan origination or loan purchase for consideration if another covered mortgage licensee or depository institution claims the same loan origination or purchase under this Part or the State or federal Community Reinvestment Act.~~

The IMBA believes that making the above revisions to the Reproposed Rules will promote the development of a more robust market for CRA creditable loan products by mortgage secondary market investors, and IMBs could then facilitate distribution of these CRA loan products through the IMBs' lending and brokering origination channels.

2. Inappropriately Holding IMBs Responsible for Decisions Made by Independent Appraisers

Section 1055.240(c)(1) of the Reproposed Rules, continues to hold IMBs accountable for alleged biased decisions of value made by independent appraisers. This is so even though the IMBA has (and other mortgage industry associations and stakeholders have) alerted the IDFPR (i) that federal makes it

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unlawful for IMBs from interfering in any way with the independence of appraisers, and (ii) that the action proposed by the IDFPR would be detrimental to Illinois borrowers. For the reasons stated below the IMBA requests the following revisions to Section 1055.240(c)(1):

Revisions to Section 1055.240(c)(1):

> Discrimination against applicants on a prohibited basis in violation, for example of the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f) or Fair Housing Act (42 U.S.C. 3601-19)~~, including, for example, relying on or giving force or effect to discriminatory appraisals to deny loan applications where the covered financial institution knew or should have known of the discrimination~~;

The reasons for the above amendments requested by the IMBA are as follows:

Section 1055.240(c)(1) of the Reproposed Rule, injects into the CRA rating an element that is completely outside the control of IMBs, namely appraiser bias. The IMBA acknowledges that appraiser bias is an issue that should be addressed, not only because it hurts consumers but also because it hurts the ability of its members to serve customers and make loans. However, we submit that the attempt to address appraiser bias through the ILCRA Reproposed Rules by imposing lower CRA rating to IMBs, is flawed and misplaced.

Due to frequent occurrences prior to the great recession, Congress, in the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, amended the federal Truth in Lending Act (TILA) by adding Section 15 USC 1639e, Appraisal Independence Requirements. Section 1639e(a), makes it unlawful for IMBs (and depositories) "to engage in any act or practice that violates appraisal independence". Section 1639e(b), makes it unlawful interference with appraisal independence to, among other things, directly or indirectly coerce intimidate, instruct, or influence appraisers or appraisal management companies for the purpose of getting a value needed for a mortgage transaction. Section 1639e(c), provides specific limited exceptions of issues that IMBs may raise with appraisers or appraisal management companies without violating the appraisal independence requirements, none of these exceptions allow contesting the appraised value on the basis of actual or suspected bias of the appraiser on a fair lending prohibited basis or otherwise. Section 1639e(e), mandates reporting if the IMB has "reasonable basis to believe an appraiser is...violating applicable law", which means that IMBs must have reasonable evidence of violation of law - not mere speculation or circumstantial evidence of it. Section 1639e(f), prohibits making loans in certain circumstances, but it does not prohibit making loans even if mandatory reporting requirement is triggered. As a result of the enactment of TILA Section 1639e, IMBs, generally, no longer have direct contact with appraisers, and the limited communication allowed under Section 1639e(c) is, generally, conducted indirectly through appraisal management companies.

Proposed Section 1055.240(c) through the problematic language in Section 1055.240(c)(1) would serve to reduce an IMB's CRA rating if the IDFPR determines that the IMB has relied in making or denying a loan on a "discriminatory appraisal" under fair lending laws. The fact that TILA's Appraisal Independence

Requirements (Section 15 USC 1639e), prohibits IMBs from contesting appraisals on the basis of fair lending violation (speculated or even explicit), is completely ignored by the proposed language in Section 1055.240(c)(1).

Moreover, Section 1055.240(c)(1) would require an IMB to deny a loan that can otherwise be done due to speculation of appraisal discrimination under fair lending laws. For example, an applicant of a protected class applies for a cashout mortgage loan and receives an appraisal for her property that is lower than the value the applicant believed the property was worth based on comparable properties sold in the applicant's neighborhood by non-protected class sellers. The applicant raises a concern that the appraisal is discriminatory. The IMB contests the value by providing comparable sales to the appraisal management company, as allowed under TILA's Section 1639e(c), but the contest is denied, and the appraised value remains the same. The appraised value is enough to make the loan and give the applicant a cashout amount that is acceptable to the applicant (even though it's not as much as the applicant wanted to get). Yet, based on the provisions of Section 1055.240(c)(1), the IMB would receive a lower CRA rating if it relies on a "suspected" discriminatory appraisal in making the loan. We submit that denying the loan under these circumstances, to avoid negative CRA rating, would not be for the benefit of the Illinois applicant or for the IMB. These are examples of the type of issues that arise due to the language of Section 1055.240(c)(1).

Accordingly, while well intentioned, the proposed Section 1055.240(c)(1), which purports to address appraisal discrimination, is flawed because penalizing IMBs with lower CRA ratings for speculated fair lending violation by appraisals, who are outside of the control of IMBs, would not change appraisers' behavior. Instead, the problematic language of proposed Section 1055.240(c)(1), would only result in unintended harm to Illinois applicants and IMBs. If the IDFPR wants to address appraisal discrimination under fair lending laws, it should do so as part of the rules and regulations governing appraisers in Illinois – not in the ILCRA for IMBs who have no control over appraisers' actions.

Accordingly, the IMBA respectfully requests that the IDFPR revise Section 1055.240(c)(1) as follows:

> Discrimination against applicants on a prohibited basis in violation, for example of the Equal Credit Opportunity Act (15 U.S.C. 1691-1691f) or Fair Housing Act (42 U.S.C. 3601-19)~~, including, for example, relying on or giving force or effect to discriminatory appraisals to deny loan applications where the covered financial institution knew or should have known of the discrimination~~;

3. <u>Impose on IMBs unfair and outsized examination fees that are inconsistent with fees paid by depositories</u>

The Reproposed Rule imposes unfair and outsized amount of examination fees on IMBs in comparison to the examination fees for banks and credit unions. The IDFPR, in its January 12, 2024, Notice of Proposed Rules, Credit Union Community Reinvestment, 38 Ill. Adm. Code 185 (CU CRA Rules) and Notice of

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Proposed Rules, Bank Community Reinvestment, 38 Ill. Adm. Code 345, proposed a progressive annual fee structure that according to the IDFPR is equitable.[1] The progressive annual fee would exempt credit unions and banks with assets under 10,000,000 from paying examination fees, and annual fees progress for such depositories from above 10,000,000 and up to over $10,000,000,000.

In contrast, the IDFPR did not propose a similar progressive annual fee structure based on assets. Instead, in Section 1055.460(a) the IDFPR proposed a fee structure for IMBs of $2,200 per day, without any caps, that is billed on following the completion of examination. It is the IMBA's understanding that the IDFPR is anticipating that CRA examination may take from several days to weeks or months. At $2,200 per day, and given the possibility for frequent examinations, IMBs, which are mainly small business, would face under this fee structure an unpredictable and unaffordable examination fees bill from the IDFPR. What is certain is that IMBs with similar assets positions to credit unions and banks will be charged significantly greater examination fees than their peers.

It is patently inequitable for the IDFPR to treat IMBs with similar assets positions differently than credit unions and banks. The IMBA request that a similar progressive annual examination fee structure be also extended to IMBs based on IMBs net assets, which are reported yearly to the IDFPR by IMBs as part of their filing of the "Annual Audit" (audited financials prepared in accordance with GAAP). Therefore, the IMBA requests the following revisions to be made to Section 1055.460(a):

Revisions to Section 1055.460(a):

> a) ~~Hourly Rate and Out-of-State Travel Expenses~~ Annual Fees. Each fiscal year, covered mortgage licensee shall pay an annual ILCRA fee to the Department based upon its total net assets as shown on its Annual Audit submitted to the Department pursuant to the Residential Mortgage License Act of 1987, at the following rate:
>
> 1) ~~Time expended in the conduct of any examination of a covered mortgage licensee pursuant to Section 35-15 of the ILCRA shall be billed by the Department at a rate of $2,200 per day. Fees will be billed following completion of the examination and shall be paid within 30 days after receipt of the billing.~~

TOTAL NET ASSETS	ILCRA ANNUAL FISCAL YEAR 2025 FEE	ILCRA ANNUAL FISCAL YEAR 2026 FEE
$1,000,000 or less	No charge	No charge
Over $1,000,000 and not over $10,000,000	No charge	No charge
Over $10,000,000 and not over $30,000,0000	$1,000	$1,050

[1] 38 Ill. Adm. Code 185.480(a) and 185.480(a)(1) (Credit Union Examination Fees); and, 38 Ill. Adm. Code 345.480(a) and 345.480(a)(1) (Banks Examination Fees).

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Over $30,000,000 and not over $50,000,000	$2,000	$2,100
Over $50,000,000 and not over $100,000,000	$3,000	$3,150
Over $100,000,000 and not over $350,000,000	$4,500	$4,725
Over $350,000,000 and over $500,000,000	$9,000	$9,450
Over $500,000,000 and not over $1,000,000,000	$13,000	$13,650
Over $1,000,000,000 and not over $10,000,000,000	$18,000	$18,900
Over $10,000,000,000	$24,000	$25,000

The IMBA submits that maintaining a uniform progressive annual examination fee for all types of covered entities under ILCRA would be the equitable way to distribute the burden of examination costs.

In closing, the IMBA strongly urges IDFPR to delay further rulemaking on ILCRA implementation until the issues industry has raised above are addressed. The IMBA, through its Affordable Housing, Risk, and Legislative committees look forward to continued participation and commentary on the Reproposed Rules. The IMBA hopes its commentary will promote a balanced approach to ILCRA that does not overburden our members, who are predominantly small businesses, with outsized cost of examination and compliance. Please contact us to further discuss the industry views provided in this letter.

Respectfully submitted,

Katina O'Connor, President
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cc: Illinois Joint Committee on Administrative Rules
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