Illinois Department of Financial and Professional Regulation

Table of Contents

Bank Community Reinvestment Comment Responses (38 IAC Part 345)

The Illinois Community Reinvestment Act ("ILCRA") became law with the enactment of Public Act 101-657 on March 23, 2021. The purpose of the ILCRA is to ensure that covered financial institutions are equitably providing financial services, including low income and moderate-income neighborhoods, and areas where there is a lack of access to safe and affordable banking and lending services. The ILCRA is modeled off the federal Community Reinvestment Act ("federal CRA") but expands the scope of covered financial institutions to include credit unions and entities licensed pursuant to the Residential Mortgage License Act of 1987 which lent or originated 50 or more mortgages in the previous calendar year which are not covered pursuant to federal law. After the passage of the ILCRA, the Department conducted four public meetings and received feedback from industry, consumer advocates, and other stakeholders. The Department incorporated public feedback and suggestions in its Notice of Proposed Rules – Bank Community Reinvestment ("Proposed Rules") published in the Illinois Register on December 16, 2022. See Illinois Register, Pages 19794-19855.[1]

The Department has received over a dozen written comments in response to its Proposed Rules from banks, consumer advocates, and other stakeholders. On March 2, 2023, the Department held a public hearing on the Proposed Rules at which a number of individuals provided testimony relating to the Proposed Rules.[2]

The Department thanks each person and entity who provided comments and testimony relating to the Proposed Rules. The Department reviewed and carefully evaluated each comment received relating to the Proposed Rules. The Department also considered all testimony provided at the March 2, 2023, public hearing on the Proposed Rules. Below is the Department's response to the issues and concerns raised in the comments and testimony.[3] The Department has incorporated feedback and suggestions in the second notice draft of the Proposed Rules when recommendations were appropriate and consistent with the objectives of ILCRA and proper regulatory supervision. The Department is committed to working collaboratively with the Joint Committee on Administrative Rules ("JCAR") and stakeholders prior to adopting the Proposed Rules.

Unless otherwise indicated, a modification or a retraction of a proposed rule does not reflect that the Department agrees with the substance or reasoning of the comment or testimony.

I. Issues Raised by Consumer Advocates

A. Whether and how the ILCRA Proposed Rules should be race conscious to establish a regulatory framework that explicitly and intentionally aims to reverse the profoundly negative consequences of redlining.

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[1] The Department's Notice of Proposed Rules – Credit Union Reinvestment ("Credit Union Proposed Rules") and Notice of Proposed Amendment – Rules Governing the Request for Reconsideration of Examination Findings were also published in the Illinois Register on December 16, 2022.

[2] Public hearings on the Mortgage Proposed Rules and the Credit Union Proposed Rules were conducted on March 2, 2023, and March 8, 2023, respectively.

[3] While the Department reviewed and considered all comments received in their totality, the below response does not specifically address each and every issue and concern raised by commenters. Unless otherwise specified, all references to "commenters" includes witnesses from public hearings.

Numerous commenters stressed that ILCRA must explicitly have a racial equity lens in order to directly address history and systemic redlining. They pointed to the legislative intent of ILCRA as well as to the shortcomings of the federal Community Reinvestment Act. Several related comments are summarized below.

- The ILCRA requires review of the Illinois Human Rights Act as well as the federal fair lending laws in the evaluation of institutions covered by the ILCRA. As such, the law already requires the consideration of discrimination and incorporates directly in its text the laws that define race as a protected class.
- The requirement for banks to serve all communities provides room for the Department to incorporate race into the ILCRA performance context, performance tests, and ratings in specific circumstances in order to encourage institutions to rectify decades of redlining, as well as ongoing discrimination. This can be done to complement an analysis of bank performance based on income.
- IDFPR should incorporate the definitions used to reflect local economic conditions (including unemployment, poverty, and population changes) towards the purpose of identifying distressed or underserved communities, and to do so in a manner that includes all geographies within the State of Illinois that satisfy those conditions, irrespective of metropolitan, nonmetropolitan or income status of the geographies. Including this additional lens of analysis to the ILCRA examination procedure would assist in the identification and assessment of financial product and service disparities in the most vulnerable communities throughout Illinois. It would also provide a portion of the protections envisioned by the inclusion of race in the ILCRA to majority-minority communities. While not as effective or all-encompassing as a blanket inclusion of race in the ILCRA, it would be better than nothing.

The Department welcomes these comments. As noted in the revisions to the Proposed Rules, the Department intends to retain one or more qualified persons to design and conduct a study, and prepare and report findings and conclusions to the Secretary (1) to identify and describe geographies in Illinois experiencing ongoing discrimination or exhibiting significant disparities by race or other protected characteristics in access to relevant financial products or services, and (2) to develop methods and procedures to identify policies, procedures, patterns, or practices that have disparate impact or discriminatory effects. Following the publication of this study, the Secretary will incorporate the findings, conclusions and other results from the study into the examination process.

The Department's ILCRA examination procedure will identify and assess banking and financial product and service disparities consistent with the findings of the study. Specifically, part of the evaluation for receiving an outstanding rating will be whether an institution's activity does not show significant disparities in any geographies identified by a study as more broadly exhibiting disparities on account of race or other protected characteristics.

The revisions to the Proposed Rules also include performance criteria in the lending, investment and service tests, and evaluation criteria to the guidance for outstanding ratings under the lending, investment and service tests.

The study will also aid the Department in identifying evidence of discriminatory or prohibited practices during the ILCRA evaluation by developing methods and procedures that can be used to identify policies, procedures, patterns, or practices that have disparate impact or discriminatory effects based on race or other protected characteristics.

Finally, because the Department's revisions to the Proposed Rules will, following publication of the disparity study, allow ILCRA examiners to analyze evidence that disparities in certain geographies are caused by or coincide with policies or practices employed by a covered financial institution, it is unnecessary to modify the definitions of distressed or underserved communities as suggested by one commenter.

B. Whether IDFPR should proactively monitor for disparate patterns and practices in lending activities throughout the state and in various localities.

One commenter stated that the Department 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. In addition to incorporating the results of the disparity study concerning discriminatory credit practices into ILCRA examination procedure, the Department intends to engage in ongoing review and discussions with stakeholders to identify disparate patterns and practices, but believes it is not necessary to include this proposal.

C. Whether bank affiliates should be automatically included on ILCRA exams, and not optional at the bank's choosing.

Several commenters stated that affiliates are engaging in activity on behalf of the bank and as such should be automatically included on ILCRA examinations. They pointed to inclusion of affiliates by many of the largest banks during federal CRA examinations. For example:

- Since a sizable number of banks already include affiliates in their exams, a more expansive consideration of their activities on exams should not deter banks from including them and some banks may welcome heightened consideration. Automatic inclusion of affiliates also prevents covered institutions from cherry picking only the best performing affiliates and asking that only they be included on exams. Furthermore, the proposal to make the inclusion of affiliates optional gives banks and credit unions the ability to avoid evidence of discriminatory or illegal credit practices being factored into an evaluation of their ILCRA performance.

The Department notes that affiliates are not necessarily located in the same community as the Bank. Automatic inclusion of an affiliate has the potential to expand a bank's reach for ILCRA purposes without satisfying the community's needs. Moreover, the problem of cherry-picking affiliates is generally addressed under federal CRA, which requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered must include all loans of that type made by all of its affiliates in that particular assessment area. Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506, 48539-40 (July 25, 2016).

Based on banks' familiarity with the applicable federal limitations, and due to the breadth of the

proposal and the inclusion of additional information without a clear purpose, the Department believes that automatic inclusion of affiliates is premature. The Department may further evaluate the issue after completing its initial ILCRA examinations.

D. Including "Middle Income" in the assessment criteria.

One commenter recommended revising Section 345.200 ("Assessment Criteria") by allowing covered financial institutions to receive ILCRA credit for offering loans and community development to "middle income neighborhoods" (between 80% of AMI and up to 120% of AMI).

The Department appreciates the desire of financial institutions to serve middle income persons. However, this proposal is inconsistent with the ILCRA's specific focus on "low-income and moderate-income neighborhoods" and inconsistent with the federal CRA.

E. Data Collection of community development loans, investments and services, and of small business lending data.

Several commenters recommended that data on community development loans, investments, and services be reported where applicable on an individual activity level and on the census tract-level, that it be made available as part of the public file, and that management of this data remain within the Department.

The Department believes that this data should be reported on an individual activity and census tract-level and has revised the Proposed Rules accordingly. Banks generally have this information and also have the capability to geocode the applicable entities. To the extent that an institution may have limited resources to geocode, it may request a one-year waiver from the Department.

Regarding the commenters' request that the Department make the above data available as part of the public file, under the Department's control, the Department believes that the expense of this data management is not fully justified.

F. Whether the Department should collect small business lending data pursuant to Section 1071 of Dodd-Frank.

Several commenters recommended that the ILCRA include the collection of small business lending data as required by the Consumer Financial Protection Bureau's (CFPB) Final Rule adopted pursuant to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203. The CFPB's rule requires compliance on October 1, 2024, April 1, 2025, and January 1, 2026, depending on the financial institution's transaction volume for small businesses.

The Department believes that collection of small business lending data consistent with the CFPB's Final Rule is appropriate under ILCRA and has revised the Proposed Rules accordingly. Small businesses will be able to self-identify as women-, minority-, or LGBTQI+-owned, and lenders will be able to rely on the financial and other information provided by the small business. Importantly, loan officers will not be required to make their own determinations of an applicant's race, ethnicity, or any other demographic information.

Financial institutions would be required to report small business loan data under ILCRA to the

same extent and timing as the CFPB's Final Rule. Therefore, if pending litigation were to affect compliance requirements, including but not limited to timing, under the CFPB's final rule, the requirements under ILCRA would remain consistent.

G. Whether the Department should establish a Public Registry to facilitate comments on banks' ILCRA performance.

Several commenters recommended that the Department establish a public registry that community organizations can use to sign up as an organization with input on community needs and bank performance.

The Department is committed to collecting input from a diverse range of organizations, including organizations led by people of color and women. However, due to the number and prioritization of IT solutions necessary to implement ILCRA, the Department believes that creating this registry is not fully justified at this time.

H. Whether the Department should list Special Purpose Credit Programs as an example of innovative or flexible lending practices that would receive positive consideration in the performance criteria of the lending test.

Several commenters recommended that the ILCRA Proposed Rules list Special Purpose Credit Programs (SPCPs) as an example of innovative or flexible lending practices that would receive positive consideration in the performance criteria of the lending test.

Under Federal law, lenders are permitted to design and implement SPCPs to extend credit to a class of persons who would otherwise be denied credit or would receive it on less favorable terms, under certain conditions. In particular, the Equal Credit Opportunity Act, 15 U.S.C. § 1691(c) (ECOA) and Regulation B, 12 C.F.R. § 1002.8, permit creditors to offer or participate in SPCPs and other credit programs to meet special social needs through:

1. Any credit assistance program expressly authorized by Federal or state law for the benefit of an economically disadvantaged class of persons;

2. Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

3. Any special purpose credit program offered by a for-profit organization, or in which such an organization participates to meet special social needs.

12 C.F.R. § 1002.8(a)(1)-(3). The Department believes that special credit programs, including SPCPs, should be given consideration to the extent they conform with and are authorized by ECOA and Regulation B, and has revised the Proposed Rules to list them in Section 345.220(b)(5).

I. Whether and how the Department should modify the Fair Lending criteria for the effect of (a) a finding of any civil rights, equal protection or consumer protection

violations, (b) a pending Fair Lending investigation during the ILCRA examination, and (c) covered discriminatory practices.

(1) Several commenters recommended that if a financial institution is found to have violated any civil rights, equal protection, or consumer protection laws, and irrespective of whether the institution settles without admitting guilt, the institution should be immediately downgraded to "Substantial Noncompliance" in its current or next ILCRA assessment.

The Department appreciates the desire to provide certain consequences in the event nondiscrimination laws are violated. However, a settlement, by itself, is not evidence of a violation. Furthermore, an automatic downgrade could discourage financial institutions from entering into such settlements which would deprive communities and individuals of settlement benefits, whether through a change in in the financial institution's policies and procedures and/or monetary relief, that they may otherwise receive.

The Department believes the Proposed Rules provide the Secretary sufficient authority to require such a downgrade. Specifically, Section 345.280(c)(1) provides: "The Secretary's evaluation of a bank's ILCRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance." The rule further specifies that violations of a number of nondiscrimination laws are "evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation." Section 345.280(c)(1)(A)-(H).

(2) Several commenters recommended that the Proposed Rules be revised in the event that a fair lending investigation is pending during the ILCRA examination. Specifically, either (i) the pending fair lending investigation should be noted during the ILCRA examination and appropriate follow-up actions taken once the investigation is concluded or (ii) the ILCRA examination should be kept open until the fair lending investigation is completed.

The Department does not believe it is appropriate to comment on pending investigations in the ILCRA examination. If a pending fair lending investigation results in a less than satisfactory rating, federal CRA already requires that the bank "shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community" and "shall update the description quarterly." 12 CFR 345.43(b)(5). If the investigation does not result in a less than satisfactory rating, no follow-up is required. Regarding the alternative of keeping the examination open, due to the anticipated volume of ILCRA examinations, the Department believes it is important that the ILCRA evaluation be finalized.

(3) Several commenters recommended that Section 345.280(c) of the ILCRA Proposed Rules not be limited to "discriminatory or other illegal credit practices," and that the word "credit" be removed, consistent with the federal agencies' CRA Notice of Proposed Rulemaking [87 Fed. Reg. 33884, § __.28(d)(1)].

The Department appreciates the goal of broadening nondiscrimination language, but believes it is more appropriate to review and evaluate the language that is adopted in the final federal CRA rule and make necessary amendments at that time. The assessment factors lready encompass "evidence of discriminatory and prohibited practices." See Section 345.200(h).

J. Whether the ILCRA lending test and Appendix A should expressly include an assessment factor for discrimination by banks.

One commenter recommended that Section 345.220 (Lending Test) and Appendix A expressly refer to an assessment of a bank's record of discrimination and fair lending. The comment is premised on the text of Section 345.210 (Performance Tests), which requires the Secretary to apply the assessment factors set forth in Section 345.200 (Assessment Factors) to each of the lending, investment, and service tests. 345.210(a)(1). The commenter asserts that, because the lending test and Appendix A do not expressly refer to consideration of discrimination and fair lending, these assessments are somehow missing.

First, as addressed above, the Department believes that the revisions to the Proposed Rules address the substance of the comment by incorporating the proposed disparity study's conclusions and other results into the examination process—including a review of whether disparities are caused by a bank's policies or practices. See Response to Consumer Advocate Comments, Section A, above. The Department further notes that the existing language of the Proposed Rules achieves the commenter's goal. Section 345.220(b) states: "The Secretary evaluates a bank's lending performance *considering the assessment factors in Section 345.200* and pursuant to the following criteria." One of the assessment factors referenced here is "evidence of discriminatory and prohibited practices." Section 345.200(h). Likewise, Appendix A specifically provides that ratings may be adjusted "on the basis of evidence of discriminatory or other illegal credit practices." Appendix A, Section (a)(1).

K. Whether "community development needs" should be defined to include loan originations and other activities that reduce significant, existing racial disparities.

One commenter recommended defining the term "community development needs," which appears in Section 345.230 (Investment Test), Section 345.250 (Community Development Test), and Appendix A to include "loan originations and other activities that reduce significant, existing racial disparities in the number and volume of mortgage loans in the assessment area or majority-minority geographies within the assessment area."

As stated in Section I.A., above, the Department believes that the revisions to the Proposed Rules address the substance of the comment by incorporating the proposed disparity study's conclusions and other results relating to nondiscrimination into the examination process—including the Investment Test in Section 345.230. Further, the existing language of the Proposed Rules defines "community development" broadly. Many loans whose primary purpose is community development will, by virtue of addressing the needs of low- or moderate-income individuals, also reduce racial disparities in mortgage lending.

L. Whether the ILCRA should provide additional protections for the elderly, disabled, and veterans.

One commenter recommended that the Department include additional protections for lending practices relating to seniors and people with disabilities, because these populations are particularly vulnerable to predatory lending or scams. Another commenter stated that veterans are also a part of underserved communities whose needs should be met.

The Department appreciates the comment, but believes the broad nondiscrimination provisions in Section 345.280(c)(1) of the Proposed Rules will adequately protect the elderly, disabled, veterans, and other vulnerable populations.

M. Whether to weight loan purchases differently than loan originations, and to exclude second purchases.

Several commenters addressed the possibility of "loan churn" based on the treatment of purchased and originated loans under ILCRA. For example:

- 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 commenter recommended going a step further, by treating loan originations and purchases as separate product lines:

- Retail loan purchases should not be treated as the equivalent to loan originations. We recommend that purchases have some consideration on lending tests out of recognition that some banks have business models that involve large scale purchasing from brokers, but purchased loans should not receive the same weight as originated loans. Purchasing activity should be evaluated as a separate product line and receive less weight than originations on the lending test.

The Department appreciates the concern generally, and has revised the Proposed Rules to limit credit under the ILCRA to the origination of a loan and the initial sale or purchase of a loan. With respect to the proposal to weight loan purchases differently, the Department intends to monitor practices involving purchased loans in case further action is necessary.

N. Whether the ILCRA should expressly prohibit banks from using their charters to allow third parties to offer predatory loans.

Several commenters, observing the pattern of banks that engage in indirect consumer lending through non-bank partners to make loans structured to evade interest rate caps and consumer protection laws, recommended that the ILCRA Proposed Rules expressly prevent covered entities from allowing their charters to be used as a mechanism by which third parties can provide predatory loans.

The Department is not aware of any covered financial institutions (*i.e.,* Illinois state-chartered or licensed banks subject to the ILCRA) currently engaged in the practices described by commenters. Moreover, the Department believes the Proposed Rules are consistent with the statutory objectives of the ILCRA and provide sufficient authority to address lending products that fail to meet the

needs of the covered financial institutions' assessment area on a case-by-case basis, including predatory lending. Further evaluation is necessary to determine whether an explicit bright-line rule could be drafted that adequately accounts for all relevant federal and state laws in this area and accounts for differences in business models.

O. Whether the Department should create a user-friendly list of all entities subject to ILCRA.

One commenter recommended that the Department create "a user-friendly list on its website" of all entities subject to the ILCRA. Although the Department's website currently allows the public to identify banks (as well as credit unions and mortgage lenders) generally, it welcomes the request and is working to implement a list that is specific to ILCRA. Creating and maintaining such a list does not require a rule.

P. Publication of examination schedules

One commenter suggested that the ILCRA examination schedules should be published 60 days in advance instead of 30 days.

The requirement to publish the examination schedules at least 30 days in advance is consistent with the federal CRA and Proposed Rules. The examination schedule will depend on a number of factors that the Department may not be able to fully resolve more than sixty days before the examination. For example, examinations may need to be rescheduled to address staffing availability for both the Department and covered financial institutions. Furthermore, the Proposed Rules permit the Department to publish the examination schedule earlier if feasible. The Department intends to provide notice at the earliest possible time.

Q. Definition of community development.

One commenter stated that definitions of community development for banks should include activities that "directly and tangibly increase climate resilience in low income to moderate-income neighborhoods; or mitigate environmental harm in low-income to moderate-income neighborhoods."

Another commenter stated that the definition of community development should be revised to ensure that multifamily lending avoids displacement and contributes to the availability of affordable housing in order to receive community development credit. The commenter also recommended that the Department add that multifamily housing must be *permanently affordable*, kept in good condition, and targeted to households with low to moderate income in order to receive positive credit.

The Department believes the current definition of "community development" adequately includes climate resilience and affordable housing, and provides the flexibility necessary to fairly address the unique ways covered financial institutions serve their assessment area.

R. Anti-gentrification

Several commentators requested clarification on anti-gentrification considerations found in each of the Proposed Rules for covered institutions. The Department believes the Proposed Rules provide the flexibility necessary to fairly evaluate this issue.

S. Changes to the federal CRA

One commenter pointed out that Federal banking regulatory agencies are in the process of considering major revisions that may make ILCRA exams more rigorous and the Department should consider updating the Proposed Rules to align with any revisions and make exams more rigorous and comprehensive.

The Proposed Rules incorporate rules as they stand now with adjustments the Secretary deems necessary. The Department may amend the rules to address future changes to the federal CRA.

II. Issues Raised by the Banking Industry

A. Whether the Department should clarify the ILCRA Proposed Rules' definitions of unbanked and underbanked persons.

One commenter recommended clarifying the definitions of "unbanked" and "underbanked" as used in the ILCRA Proposed Rules. There was particular concern that the proposed definition of "unbanked" might exclude creative and effective programs that are clearly marketed to and designed for unbanked and underbanked populations, such as programs creating a limited checking account for the purpose of picking up and cashing government checks for a nominal fee. In the commenter's view, banks cannot verify whether an individual has a checking or savings account with another insured depository institution.[4]

The commenter does not identify the potential magnitude of programs that would fall outside the ILCRA's definitions of "unbanked" and "underbanked." The lack of specifics is problematic because the FDIC's definitions for purposes of federal CRA are quite similar. The FDIC defines an "unbanked" person as someone who does not hold either a checking or savings account with a federally insured banking institution. 2021 FDIC National Survey of Unbanked and Underbanked Households at 11. Unbanked people transact primarily in cash and store all their assets only in physical, offline formats. A person who is "underbanked" maintains a federally-insured checking or savings account but regularly uses alternative financial services such as payday lending. Id. People who are underbanked may be obligated to frequently use costly financial services like check cashing, payday lending, and money transfer services because they have limited access to better banking options.

B. Whether the ILCRA Proposed Rules should exclude from coverage banking offices of foreign corporations issued a certificate of authority in Illinois.

[4] The same commenter also requested clarification of other undefined terms in the Proposed Rules, such as "small business lender" in Section 345.200. However, that term is immediately followed by the phrase "loans to businesses with gross annual revenues of $1,000,000.00 or less," making clarification unnecessary.

Several commenters recommended excluding from coverage banking offices of foreign bank corporations issued a certificate of authority in Illinois—particularly when the foreign bank office already complies with federal CRA. First, they contend that because such banking offices were not expressly included in the ILCRA's statutory definition of a "covered financial institution," it is impermissible for the ILCRA Proposed Rules to include them in its scope. Second, although the commenters acknowledge that the assessment areas of such bank offices would be limited to areas within Illinois, they express concern with potential costs of examinations, as well as the travel expenses of Department examiners who could insist on inspecting books and records located in these institutions' offices outside the United States. Third, the commenters note that the Department's proposed rules for covered mortgage licensees do not apply to offices of foreign mortgage lenders or credit unions.[5]

The Department appreciates the comment, particularly the concern with the reasonableness of expenses for ILCRA examinations. The commenters' statutory construction argument is limited to whether banking offices of foreign bank corporations are expressly identified in the ILCRA statute. The commenters tacitly concede that these offices are within the scope of the statute's language: "any other financial institution under the jurisdiction of the Department." 205 ILCS 735/35-5. Nor do they deny that a "banking business" is being conducted at these offices. See 205 ILCS 5/2. Thus, there should be no surprise that these institutions are included in the Department's Proposed Rules.[6] Second, there is no justification to categorically prohibit travel expenses related to examinations of banking offices of foreign bank corporations. The Department has the authority to conduct safety and soundness examinations in foreign countries. No argument is put forth as to why ILCRA examinations should be treated differently. The Department further refers to its response in Section II.H., below.

C. Whether the ILCRA Proposed Rules should count investments made through a foreign bank office and clarify whether a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers is automatically considered a wholesale bank.

As an alternative if the Department does not adopt the preceding comment, one commenter recommended (1) counting ILCRA-eligible investments made by a foreign bank office through other offices and subsidiaries and (2) clarifying in Section 345.250(b) of the Community Development Test for Wholesale or Limited Purpose Banks that a bank not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers is automatically considered a wholesale bank and does not need to be designated as such.

The Department appreciates the suggestions contained in this comment. As to the first recommendation, the Department is unaware of a similar provision under federal CRA that permits this aggregation of investments. As to the second recommendation, the Department notes that federal CRA rules already have a procedure for designation as a wholesale or limited bank. See 12 C.F.R. § 345.25(b). The federal procedure similarly does not provide an exception for institutions not designated as wholesale.

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[5] There is no equivalent of the Foreign Banking Office Act for credit unions.

[6] The Department defers to the Illinois General Assembly on whether an amendment to the definition of "covered financial institution" is necessary and appropriate.

D. Whether the Department should include examples and adopt the federal agencies' illustrative list of qualifying activities that are eligible for ILCRA credit.

One commenter recommended including a list of qualifying activities for banks modeled on Appendix C to the proposed ILCRA Proposed Rules for credit unions. The commenter suggested that the list of examples could identify activities that clearly should qualify for credit, such as investments in the Federal Home Loan Bank of Chicago's Affordable Housing Program General Fund.

The Department has included in its revisions to the Proposed Rules a new Appendix C that contains a list of examples of lawful investments, deposits, membership shares, and grants which may be deemed to have the primary purpose of community development, based on Appendix C to the Credit Union Proposed Rules and the Office of the Comptroller of Currency's Illustrative List of Qualifying Activities (May 20, 2020).

E. Whether the Department should exclude bank affiliates from examination under the ILCRA.

One commenter, while acknowledging the ILCRA's consideration of lending and other CRA-eligible activities by a bank's affiliates, recommended excluding such affiliates from examination "as if they were independently covered by the Illinois CRA's requirements." The commenter cites what it believes is a lack of statutory authority, as well as inconsistency with the federal CRA, and the unworkability for many bank affiliates such as insurance and investment companies.

For the reasons stated in Section I.C., above, affiliates are *not* automatically included in ILCRA examinations. Rather, a bank must elect whether to choose to include affiliates.[7] Further, the claim that the Department lacks statutory authority to examine an affiliate under appropriate circumstances ignores the plain language of the ILCRA statute, which provides authority to examine "each covered financial institution"—that is, "any other financial institution under the jurisdiction of the Department." 205 ILCS 735/35-15(a), 35-5. The authority to examine affiliates under ILCRA is also consistent with the Department's general authority to examine affiliates under the Illinois Banking Act [205 ILCS 5/48(2)(a)] and Savings Bank Act [205 ILCS 205/9004(a)].

F. Whether the Department should remove from the ILCRA Proposed Rules' Lending and Community Development tests the requirement that banks monitor and keep records of members of a consortium have claimed CRA credit for a particular loan origination or purchase.

One commenter recommended removing from the Lending (Section 345.220(d)) and Community Development (Section 345.250(d)(2)) tests the requirement that banks "monitor and keep records of whether" members of a consortium and/or affiliates have claimed CRA credit for a particular loan origination or loan purchase. Failure to remove the monitoring requirement, the comment states, will cause banks "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

[7] Similarly, loans by an affiliate of a credit unions are evaluated at the option of the credit union. See Proposed Rules, Section 185.220(c).

the origination or purchase."

The Department appreciates the comment. However, the monitoring requirement is necessary to avoid a situation in which multiple participants or investors claim the same loan origination or purchase. The commenter would inappropriately place the burden on the Department, rather than the bank seeking ILCRA credit, to be informed about the actions of other members.

G. Whether the Department's fee structure for ILCRA examinations is reasonable.

Several commenters expressed concerns about the general costs of complying with ILCRA, where those costs could instead be deployed through additional lending and investment, marketing to low- and moderate-income communities, and promoting financial literacy. They also questioned the proposed annual increase of this fee by 5% each year. One commenter referred to the Department's fee structure as "excessive and vague in scope." Another commenter questioned what it characterized as "unlimited reimbursements for out-of-state travel expenses."

One commenter also posed a series of more specific questions about how the per-day examination fee would be applied:

- "[W]hat constitutes an examination day?"
- Is "spend[ing] a half hour answering a question … considered an examination day?"
- "What if the examiner reviews documents for multiple separate bank examinations on the same day?"
- "What proof will the Department provide to substantiate its billings?"

Regarding the general costs of compliance, the Department recognizes that the ILCRA will likely result in increased costs for Illinois banks. The Department believes the Proposed Rules minimize any burden while still fulfilling the statutory objectives of ILCRA. The Department has mitigated the costs and impact of ILCRA whenever possible, consistent with the statutory scheme.

Regarding the 5% annual increase in the examination fee, this increase is not arbitrary but necessary to cover the Department's anticipated costs over time. Most Department employees receive yearly cost of living wage adjustments and salary increases pursuant to the union contract or Illinois law. Other costs such as employee benefits also generally increase over time. The Department's fiscal team anticipates that total ILCRA costs will increase by approximately five percent a year annually. Accordingly, the examination fee must increase to cover these costs. However, the Department will amend the Proposed Rules to (1) limit the examination fee increase to "up to 5% per year" and (2) reflect that the annual assessment shall increase by no more than 5% annually. (Section 345.480(b)). The Department does not intend to increase the examination fee unless necessary to cover the Department's reasonable costs of the Proposed Rules.

As to the specifics of examination fees, including potential reimbursement for out-of-state travel by Department employees in conducting ILCRA examinations, the commenter overlooks that similar travel expenses for safety and soundness examinations have been reimbursed by banks for years. In the case of savings banks, this included per-hour examination fees until 2018. No claim is made that these similar practices caused undue financial hardship or confusion.

H. Whether the ILCRA Proposed Rules should limit travel by the Department's examiners.

One commenter recommended that Department examiners limit travel, particularly for the bulk of examination activities that easily could be conducted remotely. This commenter recommended more severe limitations on out-of-state and international travel.

The Department believes that travel should be limited to situations where it is necessary, particularly in the case of out-of-state and international travel. However, it is unnecessary to enshrine this principle in rule, particularly where commenters have failed to propose any reasonable limitation.

I. Whether the Department should extend the implementation period of the ILCRA Proposed Rules beyond 6 months.

Several commenters asserted that they desired a longer time period than the 6 months under Section 345.490 to comply with the Proposed Rules, in order to succeed in achieving the goals of the ILCRA. These commenters asserted that Illinois banks are already subject to federal CRA, and are in the process of complying with the small business loan reporting requirements of Section 1071 of Dodd-Frank.[8] They also asserted that past and present federal CRA laws permitted an implementation period of one year, and more.

The Department carefully considered the implementation timeline for the ILCRA examinations and believes the implementation period is reasonable and consistent with the statutory objectives of ILCRA. For the following reasons, the Department has not adopted this proposal.

First, the Department believes ILCRA is important and should be implemented as soon as practical. The Department will provide ample assistance and guidance to banks as they and the Department go through examinations for the first time. The Department views the ILCRA examination as an opportunity to provide Illinois state-chartered banks critical feedback which will help ensure their long-term success in meeting their ILCRA obligations and furthering the vital role banks play in our financial system.

Second, the length of the implementation period is sufficient due to the additional one-year period under Section 345.490(b), during which examinations will not be initiated (subject to certain exceptions).

Third, concerns raised by banks relating to the implementation period (e.g., how and when required data must first be submitted) can be addressed without unnecessarily delaying the first ILCRA examinations.

J. Whether the ILCRA Proposed Rules should align with federal CRA through modifying examination schedules and conducting joint examinations.

Several comments focused on the timing of ILCRA examinations under the Proposed Rules, and

[8] As noted in Section I.F., the Department's revisions to the Proposed Rules will require reporting of small business and farm loans consistent with the federal final rule for Section 1071.

coordination with federal CRA examinations. One commenter was concerned that, due to differing federal and Illinois examination cycles, a bank may experience both a federal CRA and ILCRA examination in consecutive years. Another commenter recommended that ILCRA examinations be required to follow the examination schedule of the federal CRA examiner, and if possible have the examinations conducted jointly.

The Department appreciates the comments. However, providing predictability in examination schedules is essential to ensuring the objectives of ILCRA are satisfied. The ILCRA statutory language also promotes "efficient regulation and effect[ing] cost reduction," 205 ILCS 735/35-25(c), but expressly maintains the Department's "authority … to independently conduct examinations." 205 ILCS 735/35-25(b). Although the Department intends to coordinate examinations with the federal CRA regulators in most cases, coordination will not be possible if the ILCRA rating assessment differs from the federal CRA rating—in which case, the examination cycle may change. Further, joint examinations will only be possible if the federal CRA regulator permits them.

K. Whether the ILCRA Proposed Rules should afford banks with "outstanding" or "satisfactory" ratings under the federal CRA as if these were ILCRA ratings.

Several commenters recommended affording banks with "outstanding" or "satisfactory" ratings under the federal CRA the same relief as if these were Illinois CRA ratings, particularly in the years before a bank has received any rating under the Illinois CRA.

The Department appreciates the comments. However, given the number of banks that receive these ratings under federal CRA, the proposal would have the effect of delaying many ILCRA examinations for several years.

L. Whether the ILCRA Proposed Rules should include an evaluation of banks' fair lending practices.

One commenter questioned the ILCRA Proposed Rules including an evaluation of a bank's fair lending. It noted that at the federal level, fair lending examinations are conducted outside of federal CRA. The Department appreciates the comment. However, we note that fair lending evaluations are an important part of ILCRA. The statute expressly provides authority for the Secretary to evaluate "compliance with applicable State and federal fair lending laws," and adopt applicable rules. 205 ILCS 735/35-15(a); 205 ILCS 735/35-35(ii).

M. Whether the ILCRA Proposed Rules should have enforcement provisions for other covered financial institutions who fail to comply with ILCRA.

One commenter observed a potential disparity in the ILCRA Proposed Rules for banks and the rules for other covered financial institutions relating to enforcement actions. The Department has proposed revisions to the Proposed Rules for covered mortgage licensees that would also make these institutions subject to enforcement actions or referrals, should they fail to comply with requirements of ILCRA.

Appendix A – ILCRA Comments

The Department reviewed and considered all comments received. Many commentators did not identify whether their comment related to the Bank Community Reinvestment Rules, Mortgage Community Reinvestment Rules, or Credit Union Community Reinvestment Act Rules. For this reason, below is a list of persons and entities who provided a comment relating to any of the proposed rules or testified at any of the public hearings.

Comments by Credit Unions and Credit Union Associations

- 1st MidAmerica Credit Union
- 2 Rivers Area Credit Union
- Abri Credit Union
- Access Credit Union
- ACME Continental Credit Union
- Advantage One Credit Union
- ALEC Credit Union
- Alliant Credit Union
- Archer Heights Credit Union
- Area Educational Credit Union
- Baxter Credit Union (BCU)
- Berean Credit Union
- Bethel Ame Church Credit Union
- Bloomington Municipal Credit Union
- BNSF Railway Credit Union
- Cambio Credit Union
- CAFCU (Corporate America Family Credit Union)
- Catholic & Community Credit Union
- CEFCU (Citizens Equity First Credit Union)
- Central Illinois Credit Union
- Chicago Municipal Employees Credit Union
- Chicago Post Office Employees Credit Union
- Community Plus Federal Credit Union
- Consumers Credit Union
- Cooperative Choice Network Credit Union
- Cornerstone Credit Union
- Credit Union1
- Decatur Earthmover Credit Union
- Deere Employees Credit Union
- DuPage Credit Union
- Elite Community Credit Union

- Faith Based Credit Union Alliance[9]
- Fellowship Baptist Church Credit Union
- Financial Plus Credit Union
- First Financial Credit Union
- Gale Credit Union
- GBCU (Galesburg Burlington Credit Union)
- GECU (Gas & Electric Credit Union)
- Governors Board of Credit Union Advisors
- GCS Credit Union (Granite City Steel Credit Union)
- Great Lakes Credit Union
- Healthcare Associates Credit Union
- Heartland Credit Union
- Heights Auto Workers Credit Union
- IAACU (IAA Credit Union)
- IHMVCU (IH Mississippi Valley Credit Union)
- Illinois Credit Union League
- Illinois Educators Credit Union (IECU)
- Imperial Credit Union
- Inclusiv
- Israel Methcomm Federal Credit Union
- Joliet Firefighters Credit Union
- KCT Credit Union (Kane County Teachers Credit Union)
- Land of Lincoln Credit Union
- Landmark Credit Union
- Maroon Financial Credit Union
- Maternity B.V.M. Credit Union
- MEA Credit Union
- Members Alliance Credit Union
- Members First Community Credit Union
- Mercer Credit Union
- Midwest Coalition of Labor Credit Union (MCL Credit Union)
- Midwest Members Credit Union
- Moline Municipal Credit Union
- MWRD Employees' Credit Union (Metropolitan Water Reclamation District)
- Northern Illinois Federal Credit Union
- Northwest Community Credit Union

[9] Representing the following credit unions: Fellowship Baptist Church, *Israel Methcomm, Park Manor Christian Church, *South Side Community, *Unified Homeowners, St. Mark, Berean, *CTAFC, *CTA 74th Street Depot, *CTA South, St. Helena Parish, Bethel, St. Gregor Parish, Imperial, Pilgrim Baptist, *Shiloh Englewood, *St. Martin De Porres Parish, St. Jude, and *Trinity UCC. Asterisks denote federal credit unions.

- Numark Credit Union
- Park Community Credit Union
- Park Manor Christian Church Credit Union
- Partnership Financial Credit Union
- Pilgrim Baptist Credit Union
- Pontiac Dwight Prison Employees Credit Union
- Rock Valley Credit Union
- Salem School System Credit Union
- Scott Credit Union
- Select Employees Credit Union
- Service Plus Credit Union
- Shiloh Englewood Federal Credit Union
- SIU Credit Union
- SIUE Credit Union
- Springfield Firefighter's Credit Union
- St. Helena Parish Credit Union
- Streator Onized Credit Union (SOCU)
- Staley Credit Union
- United Community Credit Union
- United Equity Credit Union
- U of I Community Credit Union
- Urbana Municipal Employees Credit Union
- Western Illinois School Employees Credit Union

Comments by Banks and Banking Associations

- BMO Financial Group
- Community Bankers Association of Illinois
- Illinois Bankers Association

Comments by Mortgage Lenders and Mortgage Lending Associations

- Community Home Lenders of America
- Greater Midwest Lenders Association of America
- Illinois Mortgage Bankers Association
- Mortgage Bankers Association
- Rocket Mortgage
- USA Mortgage Corporation

Comments by Consumer Advocates, Other Stakeholders, and Members of the Public

- Kenya Barbara
- Center for Disability & Elder Law

- Chicago Community Trust Group
- Comer Family Foundation
- Conant Family Foundation
- Field Foundation of Illinois
- Sandy Deters
- Housing Action Illinois (Kristin Ginger)
- Illinois CRA Coalition[10]
- Illinois Hispanic Chamber of Commerce
- Illinois People's Action
- National Community Reinvestment Coalition
- Neighborhood Housing Services of Chicago
- Polk Brothers Foundation
- Josh Silver
- Woods Fund Chicago
- Woodstock Institute

Credit Union Public Hearing Testimony

- Senator Jacqueline Collins[11]
- Ianna Kachoris – Chicago Community Trust
- Kerry Fearn – Area Educational Credit Union
- Martha Shine – Park Manor Christian Church Credit Union

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[10] Representing the following Non-Profit Organizations, Small Businesses, and Elected Officials: AIDS Foundation Chicago, Alderperson Andre Vasquez's Office, Chicago's 40th Ward, Alderwoman Maria Hadden, Chicago's 49th Ward, Alliance to End Homelessness in Suburban Cook County, Beau Group, LLC, BPI Chicago, Chicago Community Loan Fund, Chicago Community Trust, Chicago Housing Trust, Chicago Jewish Coalition for Refugees, Chicago Lawyers' Committee for Civil Rights, Chicago Rehab Network (CRN), Chicago Urban League, Claretian Associates, Community and Economic Development Association of Cook County, Inc. (CEDA), Corporation for Supportive Housing (CSH), Disability Resource Center, Economic Growth Corporation, Embarras River Basin Agency (ERBA), Garfield Park Community Development Corporation, Gorman and Company, Grass Roots Organizing Works, Greater Southwest Development Corporation, Habitat for Humanity Chicago, Habitat for Humanity DuPage & Chicago South Suburbs, Habitat for Humanity of Champaign County, Heartland Alliance, Hemp Heals Body Shop, HOPE Fair Housing Center, Housing Action Illinois, Housing Opportunities & Maintenance for the Elderly (H.O.M.E.), Illinois Network of Centers for Independent Living, Illinois People's Action, Jacqueline Collins, Former Illinois State Senator for the 16th District, James B. Moran Center for Youth Advocacy, Jewish Free Loan Chicago, Lake County Housing Authority, Latin United Community Housing Association (LUCHA), Law Center for Better Housing, Lawndale Christian Development Corporation, Legal Action Chicago, Manufactured Home Owners Association of Illinois, Mid Central Community Action, Neighborhood Housing Services of Chicago, North West Housing Partnership, Oak Park Regional Housing Center, Open Communities, Primed for Life, Inc., Progress Center for Independent Living, Rebirth of Greater Roseland, Renaissance Collaboration, Respond Now, Self-Help Federal Credit Union, Share Our Spare, Shelter Care Ministries, Shriver Center on Poverty Law, Small Business Minority, South Suburban Housing Center, Southern Illinois Center for Independent Living, Spanish Coalition for Housing, St. John's Episcopal Church, St. Louis Equal Housing & Community Reinvestment Alliance (SLEHCRA), Statewide Independent Living Council of Illinois, Tanzanian Midwest Community Association, The Resurrection Project, Tipping Point Consultancy, UIC Law Fair Housing Legal Support Center, Universal Housing Solutions CDC, Woodstock Institute, Working Family Solidarity, Youth Advocacy Foundation Inc. Also representing the following individuals: Judi L. Angell, Claire Bacon, Allison Fradkin, Susan Grossman, PhD, Katrina Stoutmire, Ocie Whitten.

[11] Senator Jacqueline submitted written comments in lieu of testimony.

- Steve Olson – Illinois Credit Union League
- Suzie Branch – Select Employees Credit Union
- Deborah Fears – Chicago Post Office Employees Credit Union
- Brian Laufenberg – IH Mississippi Valley Credit Union
- Victoria Johnson – Imperial Credit Union
- Joe Trosclair – Abbott Laboratories Employees Credit Union
- Jose Garcia – Northwest Community Credit Union
- Amber Scott – 1st MidAmerica Credit Union
- Joe Webb – Cooperative Choice Network Credit Union
- Meredith Ritchie – Alliant Credit Union
- Jody Dabrowski – Illinois Educators Credit Union
- Steve Bugg – Great Lakes Credit Union
- Diane Shelton – DuPage Credit Union
- Frank Padak – Scott Credit Union
- Mary Ann Pusateri – Partnership Financial Credit Union
- Matthew Parrott – SIUE Credit Union
- Gregg Brown – South Side Community Federal Credit Union
- Pete Fauth – Financial Plus Credit Union
- Darlyne Keller – Rock Valley Credit Union
- R. Michael Lee – KCT Credit Union
- Eugene Smith – Fellowship Baptist Church Credit Union
- Tom Kane – Illinois Credit Union League
- Mary Ann Egizio – Abri Credit Union
- Brent Adams – Woodstock Institute
- Emily Coffey – Chicago Lawyers' Committee for Civil Rights
- DeMario Greene, Chicago Community Loan Fund

Bank Public Hearing Testimony

- Senator Jacqueline Collins
- Carolyn Settanni – Illinois Bankers Association
- Horacio Mendez – Woodstock Institute
- Kevin Hill – National Community Reinvestment Coalition
- Kevin Jackson – Chicago Rehab Network
- Falon Young – Neighborhood Housing Services of Chicago
- Jerry Peck – Community Bankers Association of Illinois
- DeMario Greene, Chicago Community Loan Fund

Mortgage Public Hearing Testimony

- Senator Jacqueline Collins
- Jane Doyle –Woodstock Institute

- Bob Perry – Greater Midwest Lenders Association
- Adam Karno – Asset Mutual Mortgage
- Jerri Lynn Fox – USA Mortgage Corp.
- Nathan Durst – Home Mortgage Specialists Inc.
- Emily Coffey – Chicago Lawyers' Committee for Civil Rights
- Falon Young – Neighborhood Housing Services of Chicago
- Nathan Britsch – Illinois Mortgage Bankers Association