March 16, 2023

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: Proposed Rules to Implement the Illinois Community Reinvestment Act

Dear Mr. Cellini,

The Illinois Mortgage Bankers Association[1] and the national Mortgage Bankers Association (MBA)[2] in Washington, DC, appreciate this opportunity to provide the Illinois Department of Financial and Professional Regulation (IDFPR) the views of the real estate finance industry on the proposed rules[3] to implement Public Law 101-657 of 2021, the Illinois Community Reinvestment Act (ILCRA). Thank you also for the additional time granted to provide our organizations' response.

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[1] The Illinois Mortgage Bankers Association (IMBA) is the oldest state non-for-profit trade association of mortgage bankers. Since 1920, the IMBA has continuously promoted mortgage banking and real estate financing and safeguarded and protected Illinois borrowers and its members, which include non-depository mortgage bankers, community and national banks, credit unions, title and mortgage insurance companies, mortgage servicers and secondary market mortgage loan purchasers, including government sponsored entities such as Fannie Mae, Freddie Mac and the Federal Home Loan Bank of Chicago, and state agencies, such as the Illinois Housing Development Authority. The IMBA has undertaken such activities by promoting mortgage education of applicants, borrowers and its membership, by making known the mortgage industry views, practices, activities and products available to its members and to the general public, and by representing the interests of its members and Illinois borrowers before legislative authorities, regulatory bodies and the courts. www.imba.org

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[3] https://www.ilsos.gov/departments/index/register/volume46/register_volume46_issue_51.pdf

At the outset, it is important to restate specific core principles of our member companies with respect to the Community Reinvestment Act (CRA) that were expressed in our joint written testimony to IDFPR on August 26, 2021, and our comment letter on December 16, 2021 regarding IDFPR's Advanced Notice of Proposed Rulemaking (ANPR). First, our member companies unequivocally support all federal and state fair lending laws, as well as the work of the respective government agencies responsible for their enforcement. Our members are committed to providing fair and equitable access to credit and are working with government and private sector stakeholders to develop new products and strategies to reach underserved markets and communities.

Secondly, our associations believe that the general CRA construct is incompatible with the independent mortgage bank (IMB) business model and, more importantly, will be ineffective in achieving its intended goals. The federal CRA law is premised on the view that institutions that benefit from federal deposit insurance and take deposits from the communities in which they operate have an obligation to reinvest a portion of those deposits in these communities by providing banking services and meeting local credit needs. By contrast, IMBs do not take deposits from the communities they serve. Rather, IMBs access funds from global financial markets and other sources of capital at their own risk and lend those funds in local communities – thereby providing affordable mortgage credit to traditionally underserved communities and borrowers. They have a proven track record of strong and reliable lending to low- and moderate-income (LMI) borrowers and communities and are subject to the same consumer-facing regulations as depository institutions, which ensure sound underwriting and high-quality lending. In the case of states whose legislatures and governors have enacted these flawed policies, we urge regulators to mitigate compliance costs and achieve consistency among states' requirements.

In addition to these core beliefs, it is also important to note that since our previously submitted comments, the three federal agencies responsible for CRA oversight and examination – the Office of Comptroller of the Currency (OCC), the Federal Reserve (Fed), and the Federal Deposit Insurance Corporation (FDIC) – have launched a sweeping effort to modernize the CRA through a single, harmonized proposed rule that when finalized we expect will apply across all three prudential regulators. We urge IDFPR to delay implementing any final rules on state-chartered depository institutions already subject to these federal examinations until the federal rulemaking is completed. IDFPR should consider alignment with the final federal CRA rules before imposing additional Illinois-specific mandates on these companies.

A CRA rulemaking is hardly a straightforward matter. Federal regulators, for example, after years of consideration are now attempting to address how CRA can better foster an expansion of lending among minority and LMI households. Our member companies have made great progress in reaching these borrowers through federal affordable housing programs and proprietary efforts, and we appreciate this deliberative approach from the Fed, OCC, and the FDIC. Last year's efforts to revise the federal rules reflect an acknowledgement by the financial services community that the current CRA paradigm has failed to achieve the mortgage lending results policy makers had intended for it. Even a basic review of federal lending data clearly show that as a group federally regulated institutions already subject to CRA have done fewer and fewer mortgage loans in each of the last ten years. Instead, they have relied on non-mortgage lending to meet their CRA obligations. A patchwork quilt of state requirements that are not aligned with future federal CRA standards would be the worst result, and inevitably increase regulatory compliance costs that would be passed on to borrowers through higher origination costs and/or rates. Thus, despite well-meaning intentions, there is real potential for this regulation to make it harder for first-time homebuyers to access affordable mortgage credit.

For context at the state level, the cautionary approach was evidenced during 2022 in California after a bill introduced by the Chair of the Senate Banking Committee to mandate CRA for IMBs was amended to eliminate the mandate and instead require further study of the issue by the state's mortgage regulator. Before the Legislature adjourned last August, the Sponsor halted consideration of the legislation altogether, and an updated version of the bill has not yet been reintroduced this year deep into the state's legislative session.[4] Additionally, legislation very similar to the ILCRA was introduced in Maryland this year and in late February was withdrawn from consideration by the bill's sponsor and will not likely be considered during 2023.[5]

These are welcome developments for organizations like MBA and ILMBA who support a fair and careful consideration of the merits of CRA, which we believe is a costly policy and an ineffective tool for expanding LMI homeownership. Evaluating federal government housing data over the last decade caused these states to proceed more cautiously. Although the Illinois legislature acted without the benefit of deliberative regular-order hearings, these same data should be used by IDFPR to establish compliance standards that mitigate regulatory burdens and focus limited state resources. Such a cautious and well-informed approach can also avoid unnecessarily punishing the very institutions who have done the most to meet the home mortgage needs of LMI and minority borrowers and communities, first time buyers, and veterans during the last dozen years.

The IDFPR's proposed regulation to implement the ILCRA is generally divided into three components: regulations to cover state-chartered banks covered under the Illinois Banking Act and savings banks chartered under the Illinois Savings Bank Act; credit unions incorporated under the Illinois Credit Union Act; and, IMBs licensed under the Illinois Residential Mortgage Licensing Act (RMLA) of 1987 that "lent or originated 50 or more residential mortgage loans in the previous calendar year which are not covered pursuant to federal law. Our comments on state-chartered bank and state licensed lender portions of the rule follow.

[4] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1176

[5] https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0392?ys=2023RS

Independent Mortgage Banks (IMBs) Licensed Under the Illinois RMLA of 1987

As mentioned in the opening comments, while MBA and ILMBA opposed the statutory application of CRA to IMBs, where laws have unfortunately been enacted, we urge state regulators to achieve maximum possible alignment of CRA requirements. Our organizations are supportive of IDFPR's efforts to propose regulations that track very closely to existing Massachusetts requirements. As you know, though New York has passed a CRA law for IMBs, Massachusetts is the only other jurisdiction to have implemented a regulatory framework and MBA member companies have over the last decade invested in the requisite compliance procedures for CRA exams by the Massachusetts Department of Banking. Our organizations appreciate the efforts by IDFPR to align with the Massachusetts framework.

Our core recommendation for the ILCRA regulatory implementation focuses on establishing exam priorities for IMBs that will provide appropriate incentives and rewards for IMBs that have already demonstrated strong lending performance to LMI and minority communities. Specifically, the Department should:

- Weight IMB CRA exams most heavily on their lending activities (as opposed to service or investment tests);
- Establish a presumption of compliance for IMBs that meet or beat established benchmarks based on the overall statewide averages for lending to LMI borrowers or LMI communities; and
- Provide for extended examination cycles for IMBs whose prior-year federal Home Mortgage Disclosure Act (HMDA) data exceed those same statewide benchmarks.

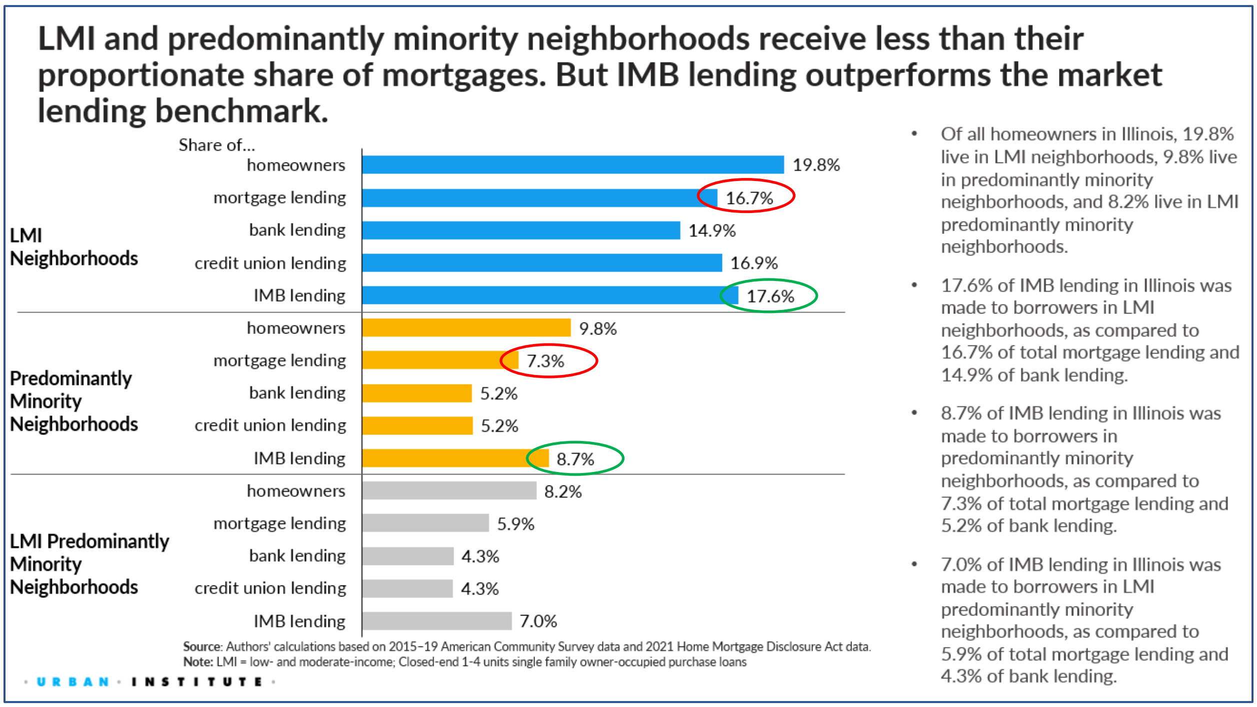
Specifically, that benchmark should be the proportion of home purchase loans originated by all lenders operating in Illinois to LMI borrowers (as defined by the Department using HMDA data) in the state. If a lender meets or exceeds the overall state proportion of home purchase loans to LMI borrowers for that year, they should receive a rating of "satisfactory" or higher.

By relying on clear and objective metrics, this approach also provides an incentive for lenders to strengthen their lending performance to meet or beat the established statewide benchmark. To support this proposal, MBA has worked with the nonpartisan Urban Institute (UI) to obtain state-level data on their February 2022 report, *Who Serves More People of Color in Mortgage Lending: Banks or Nonbanks?*[6] and Illinois is one of the states that they have included in a forthcoming report which MBA has received permission to share. The following chart provided by UI notes that 16.7 percent of total mortgage lending in the state went to borrowers in LMI neighborhoods during 2021. As a group, IMBs compared favorably and originated 17.6 percent of loans to borrowers in LMI neighborhoods. Thus, UI has in its report established the kind of benchmark for IMBs that IDFPR could use for IMB analysis for 2021 of 16.7 percent, and we

[6] https://www.urban.org/urban-wire/who-serves-more-people-color-mortgage-lending-banks-or-nonbanks

encourage the Department to consult with the report's authors to leverage their analysis for future years' calculations.[7]

The UI data also demonstrate how categories of institutions are serving other community reinvestment goals. For example, the data show that IMBs as a group also outperform the market benchmark for serving predominantly minority neighborhoods (defined as neighborhoods that are 70 percent or more minority households). Lending in predominantly minority neighborhoods accounted for 7.3 percent of all mortgage lending in the state, but IMBs originate nearly 9 percent of their loans in those areas. This kind of data could be used as supplemental benchmarks for IMBs seeking to demonstrate their commitment to community lending.



Even though lending by IMBs to LMI borrowers and communities in Illinois is a positive story, it will surely be the case that some IMBs will not meet or exceed this benchmark. We stress that the Department should not presume that a lender is noncompliant with the ILCRA requirements if they fail to clear this hurdle. Instead, IDFPR should use additional examination criteria and supplemental metrics (as suggested above) that assess other business activities that support the important goal of expanding mortgage credit and housing opportunities. While the proposed rule describes the kinds of activities that the Department will consider, what is needed is greater specificity regarding what is a sufficient level of effort or commitment. Our member companies engage in a variety of activities to support their lending businesses in the communities they serve (e.g., outreach, marketing, support for local housing counseling agencies and financial education, homebuyer fairs, etc.), and a final rule should provide more

[7] To review the forthcoming report, IDFPR should contact the Urban Institute's Laurie Goodman.

detail on how those activities will be evaluated, especially by those lenders who do not exceed the statewide benchmarks.

<u>Other comments on IMBs</u>

1. Section 1055.220 Lending Test (c) reads:

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

   Our IMB members note that this is a highly problematic provision of the proposal as it strikes at the heart of the IMB business model. IMBs that originate loans to LMI communities provide direct financing to those areas, but those loans could not be originated without an investor willing to purchase the loans. Quite often that purchaser is also an IMB (an "aggregator"). Many small community-based IMBs do not have the ability to sell directly to Fannie Mae or Freddie Mac, or issue Ginnie Mae securities backed by their FHA, VA and Rural Housing Service loans. IMBs that are aggregators often serve as the conduit for those loans into the federally backed secondary market programs that predominantly serve LMI, first-time, rural and veteran homebuyers. We strongly urge IDFPR to permit both the IMB originator and the IMB purchaser of an LMI area loan to count toward their ILCRA lending benchmark, as this goes to the heart of the success of the IMB business model in serving LMI borrowers and communities.

2. Section 1055.450 Examination Frequency (d) (1) (A) reads:

   Notwithstanding the provisions of this Section, the Secretary may 1) conduct an examination at any time upon finding: A) an Other State Regulator has rated the mortgage lender, as of its most recent examination, in "substantial noncompliance" or equivalent rating with that state's Community Reinvestment Act;

   We are concerned that this provision, for which we cannot find a precedent in Massachusetts' requirements, is out of the scope and authority of the Illinois regulator. Nor do we believe that another state's examinations on compliance with that state's requirements should compel a reexamination by IDFPR of that lender's compliance with Illinois law. Market conditions and demographics vary widely from state to state, and even among regions within a state. The foundation for establishing an examination CRA examination schedule should be based on a given state's laws and rules. Sufficient regulatory authority already exists in Illinois to hold lenders accountable for compliance with all Illinois law, and this provision should be removed.

3. The regulation proposes a very aggressive frequency for CRA examinations. IDFPR's plan to examine institutions once every three years (or once every five years if they scored an "outstanding") in addition to regular oversight examinations is excessive. Examination costs are not insignificant, and this cadence should be reconsidered and lengthened. As noted previously, we encourage IDFPR to extend exam cycles for IMBs whose prior year HMDA data demonstrate that they meet or beat or the statewide benchmark(s).

4. The proposed rule did not provide for the same number of examination scores as Massachusetts. Illinois's statute did not include a "highly satisfactory" score. We believe IDFPR should add this score to create greater opportunities for our member companies to achieve a positive result at the same time as providing the Department with maximum flexibility. For example, with the additional score, IDFPR could widen the timeframe that it needed to do the next/future exam for companies that achieve a highly satisfactory result. This is also consistent with our request for maximum continuity among the requirements mandated by different states noted above.

5. The terms "excellent" and "adequate" are used throughout the rule as an element of the CRA examination scoring rubric without much comment on what either term really means. We request greater expository comment on these terms to assist lenders and help remove uncertainty and subjectivity from efforts by our members to make good faith efforts to comply with IDFPR expectations.

6. Section1055.210(d) reads:

   Safe and sound operations. This Part does not require a mortgage lender to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Secretary anticipates mortgage lenders can meet the standards of this Part with safe and sound loans, investments, and services on which the mortgage lender can expect to make a profit. Mortgage lenders are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit and are suitable for low- and moderate-income geographies or individuals, only if consistent with safe and sound operations.

   The concept of lenders developing and applying "flexible underwriting standards" needs further discussion as an IMB business model generally does not result in the lender establishing underwriting criteria themselves. Rather, it is established by, or with, the secondary market investor. The rule should clarify that flexible standards must of consistent with "safe and sound operations *and secondary market investor guidelines*."

7. Section 1055.400 reads:

   Data Collection and Reporting

   a) *As part of its examination, the Secretary shall require a mortgage lender to collect and report for examination purposes additional data fields beyond what is required under HMDA. The mortgage lender shall be expected to test its data collection and reporting, including its HMDA data, as part of its routine internal controls to ensure compliance with all data reporting requirements as well as its own policies and procedures.*
   b) *Optional data collection and maintenance. At its option, a mortgage lender may provide other information concerning its lending performance, including additional loan distribution data.*

   This section noting that IDFPR proposes to mandate mortgage lenders collect and report extra data fields beyond what is required under HMDA needs far greater specificity. We believe HMDA data already provide the level of detail needed to assess lending in LMI areas and to LMI borrowers and does so with appropriate privacy protections for borrowers. What the data is and what it will be used should be clear before moving forward with a final rule to ensure it is necessary for the scope of work related to conducting a CRA exam. If additional data fields are needed, they should be proposed with specificity and justification, and industry should be provided an opportunity to comment. Our members report that data collection and maintenance tend to be a very large compliance cost and they are concerned that, without more specificity, this provision will add to those expenses. If new data is unrelated to core CRA needs, this provision should be removed from the final rule.

8. Section 1055.410 (a)(1) reads:

   Content and Availability of Public Information

   a) Information available to the public. A mortgage lender shall maintain the following information to be made available to the public upon request: 1) all written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the mortgage lender's performance in helping to meet the mortgage credit needs of the State, and any response to the comments by the mortgage lender, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the mortgage lender or publication of which would violate specific provisions of law;

   Our members are unclear on this proposal to maintain comments from the public for two years that relate to a mortgage lender's performance and making them available on request. Specifically, we are unclear how members of the community uninvolved in the CRA exam process will be able to determine a lender's ability to meet the state's credit needs as this would require a level of technical skill and knowledge best achieved through an institution's regulator. More clarity is needed before imposing this mandate.

9. Section 1055.240 discusses assigned ratings, and parapgraph (c), "Effect of evidence of discriminatory or other illegal credit practices," lists several pieces of state and federal legislation and regulation. While fair lending laws and rules are appropriate in a final rule, the inclusion of violations of: Section 8 of the Real Estate Settlement Procedures Act, the Truth in Lending Act provisions regarding a consumer's right of rescission; and the Residential Real Property Disclosure Act unnecessarily broadens the examination scope to areas CRA was not intended to address. As our member companies are already subject to other examinations for compliance with those rules, we urge that these references be removed from the final ILCRA regulation.

State-Chartered Banks Covered Under the Illinois Banking Act and Savings Banks Chartered Under the Illinois Savings Bank Act

Our review of the IDFPR's proposed CRA rule for state-charted banks shows that the Department made a deliberate effort to track federal requirements for these lenders as closely as possible. We support that approach but offer a few additional comments.

As noted earlier in this letter, the three prudential regulators responsible for federal CRA law and regulations have in the last year proposed a sweeping update to those rules. This is an important milestone in the history of the CRA and great care is being exerted to make this new regulation successful. As Federal Reserve Governor Lael Brainard noted last year "the last major revisions to the CRA regulations were made in 1995. The CRA is one of our most important tools to improve financial inclusion in communities across America, so it is critical to get reform right."[8]

These rules are not final, and given the complexity of this issue, it is possible these regulators may refine/amend their existing proposal in the final rule or even repropose the rule for additional comments. Regulators have even signaled this possibility. When the rule was released for comment in May 2020 Federal Reserve Governor Michelle W. Bowman stated:

> *While I support issuing the proposed rule for public comment,* ***there are significant unanswered issues posed by the proposal. Fundamentally, we do not know if the costs imposed under the proposal will be greater than the benefits.*** *I urge banks and community groups to comment on the proposed rule to provide information about core issues, such as whether the proposal will result in more or better investments in communities. Comments will better enable the Board, and other agencies, to evaluate how to craft a final rule that addresses these important issues. [emphasis added.]*[9]

[8] https://www.federalreserve.gov/newsevents/pressreleases/brainard-statement-20220505.htm

[9] https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20220505.htm

We also hope that the three agencies will ultimately agree on an aligned final CRA framework. It should be noted that there is precedent for disagreement. As IDFPR may recall, the release of the proposed federal CRA rule follows an effort by the OCC to move independently in 2020. Had the OCC not reversed its direction, such differing CRA standards had the potential to significantly complicate compliance and increase costs.

Given this evolving regulatory landscape, our organizations strongly encourage IDFPR's consideration of the potential for a divergent or conflicting outcome if it acts prior to a final revised CRA rule. Instead, the Department should move cautiously and continue to seek alignment with federal standards. This can best be achieved by referencing federal statute and rules and indicate that IL requirements for state-chartered banks will adhere closely to current and future iterations of federal CRA mandates.[10]

MBA and the IL MBA appreciate that IDFPR issued one of the most salient statements on the important benefits of state-federal alignment on CRA in its August 5, 2022 comments on the proposed federal rule:

> *Furthermore, as more states consider state-based CRA examinations, we urge federal regulators to consider codifying a partnership with state regulators to work on joint CRA examinations, when possible. As state regulators, we have long valued the partnership we enjoy with our federal counterparts. Within our dual regulatory structure, banking oversight has been improved through cooperation between federal and state regulators.* ***Making this partnership explicit within federal CRA rules would clarify to institutions that state examinations could be conducted in concert with federal CRA examinations so that resources could be shared and examination dates could be aligned—a benefit to both banking institutions and regulators [Emphasis Added]****.*[11]

We agree that such an alignment described by IDFPR accrues significant benefits to regulators. But it also offers significant economies of scale to industry as well. Reducing unnecessarily duplicative regulatory burdens will save our members' regulatory compliance costs. Importantly, these savings can be passed on to consumers, which will make a real difference to borrowers with lower credit scores and smaller downpayments. It also allows for investment and innovation in new ways to reach borrowers from underserved communities.

Programmatically, we note the following issues that could cause significant and costly disruption by moving too soon to implement Illinois's CRA law on state-chartered institutions who are already subject to federal CRA law and rules:

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[10] CRA was, enacted by Congress in 1977 (12 U.S.C. 2901) and implemented by Regulations 12 CFR parts 25, 228, 345, and 195,.

[11] https://www.fdic.gov/resources/regulations/federal-register-publications/2022/2022-community-reinvestment-act-3064-af81-c-408.pdf, page 3.

- The possible creation of a new Retail Lending Assessment Area, which will dramatically change the landscape for some banks;
- The proposed metrics under the new Retail Lending Test, which would lead to unintended consequences; and therefore, need to be re-tooled; and,
- The possible changes to the overall weighting assigned to the evaluation metrics (i.e., the 60% and 40% weightings assigned to the Retail Lending Test and Community Development Lending Test respectively).

In addition to pausing the implementation of IDFPR's CRA rulemaking for state-chartered banks until final federal rules are announced and implemented, we recommend that the Department consider how it prioritizes examinations. Given limited public sector resources and budgets, we believe IDFPR should begin by examining those institutions in Illinois who fail to score well on their federal CRA exams. Conversely, those Illinois-chartered banks that do well on their federal CRA reviews should receive greater regulatory relief from state-level CRA exams. Examples could include scheduling their exams less frequently or giving these companies some degree of credit on their state CRA exam in recognition for their positive federal CRA exam grades/scores.

Again, thank you for this opportunity to provide the views of our organizations' members on the proposed regulations to implement the ILCRA, and please let us know if you would like more information or have questions.

Respectfully,

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