

Watching-and-Waiting: The Illinois Community Reinvestment Act

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On March 23, 2021, the Illinois Community Reinvestment Act (“IL CRA”) was signed into law. The stated purpose of the IL CRA is to ensure that covered financial institutions are equitably providing financial services across the state, including to low- and moderate-income neighborhoods, and areas where there is a lack of access to safe and affordable banking and lending services. Since that time, the Illinois Department of Financial and Professional Regulation (the “IDFPR”) has been working to finalize the IL CRA’s implementing regulations.

On December 16, 2022, the IDFPR issued proposed rules to implement the IL CRA (the “Proposed Rules”). Due to industry feedback and heightened public comment, on January 26, 2023, the IDFPR extended the public comment period to March 16, 2023. Below is a summary of the Proposed Rules and a description of material deviations from the obligations found under the federal Community Reinvestment Act of 1977 (the “Federal CRA”).

What financial institutions are required to comply?

The IL CRA applies to a covered financial institution. A “covered financial institution” is defined as including the following:

- a state bank chartered under the Illinois Banking Act;
- a savings bank chartered under the Illinois Savings Bank Act;
- banking offices of a foreign banking corporation, as defined in Section 2 of the Foreign Banking Office Act;
- a credit union incorporated under the Illinois Credit Union Act;
- an entity licensed under the Illinois Residential Mortgage License Act of 1987 and which lent or originated fifty (50) or more residential mortgage loans in the previous calendar year; and
- any other financial institution under the jurisdiction of the IDFPR as designated by rule by the IDFPR.

Pursuant to the Proposed Rules, the IL CRA will not apply to special purpose banks (e.g., bankers’ banks) that “do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operation.”

When will banks be required to comply?

The Proposed Rules require banks to comply within six (6) months from the effective date of the final rule that is adopted by the IDFPR (the “Implementation Period”). Thereafter, the IDFPR will not cause an IL CRA examination to be initiated for a period of one (1) year after the Implementation Period has ended. However, the IDFPR may conduct an IL CRA examination earlier to the extent that (i) the bank has received a rating from the federal banking agencies of “substantial noncompliance,” (ii) substantial evidence of discriminatory or other illegal credit practices has been found, or (iii) the IDFPR finds other sufficient cause.

How does the IL CRA differ from the Federal CRA?

The IDFPR has stated that the Proposed Rules are modeled on the federal banking agencies’ regulations under the Federal CRA. However, the Proposed Rules differ from the Federal CRA rules in a few key ways. The following chart provides a comparison of the material provisions of the IL CRA and Federal CRA, noting the key differences and similarities between the two laws.

	<u>FEDERAL CRA RULES</u>	<u>IL CRA – PROPOSED RULES</u>
<u>ASSESSMENT FACTORS</u>	In contrast to the IL CRA, the Federal CRA rules do not explicitly define “assessment factors” that the federal banking agencies will take into account in determining whether a bank is meeting its obligations under the Federal CRA.	<p>The Proposed Rules specifically list nine (9) factors that the IDFPF is required to consider in assessing a covered financial institution’s compliance with the IL CRA. Specifically, the IDFPF is required to consider the following:</p> <ul style="list-style-type: none"> • activities to ascertain the financial services needs of the community, including communication with community members regarding the financial services provided; • extent of marketing to make members of the community aware of the financial services offered; • origination of mortgage loans, including, but not limited to, home improvement and rehabilitation loans, and other efforts to assist existing low-income and moderate-income residents to be able to remain in affordable housing in their neighborhoods; • for small business lenders, the origination of loans to businesses with gross annual revenues of \$1,000,000 or less, particularly those in low- and moderate-income neighborhoods; • participation, including investments, in community development and redevelopment programs, small business technical assistance programs, minority-owned depository institutions, community development financial institutions, and mutually owned financial institutions; • efforts working with delinquent customers to facilitate a resolution of the delinquency; • origination of loans that show an under-concentration and a systemic pattern of lending resulting in the loss of affordable housing units; • evidence of discriminatory and prohibited practices; and • offering mortgage lending to unbanked and underbanked persons.
<u>PERFORMANCE TESTS</u>	The Federal CRA rules require banks to comply with lending, investment and services tests. In addition, for wholesale or limited purpose banks, a community development test is considered.	The Proposed Rules are substantially similar and no material deviations from the Federal CRA rules are noted.

	In each instance, the federal banking agencies review smaller financial institutions under the federal small bank performance standards.	We note that covered financial institutions continue to have the right to operate under an approved CRA strategic plan.
<u>ASSIGNED RATINGS</u>	The Federal CRA rules require the federal banking agencies to assess a bank's performance and assign a rating of "outstanding," "satisfactory," "needs to improve" or "substantial noncompliance."	The Proposed Rules are substantially similar and no material deviations from the Federal CRA ratings system are noted.
<u>EFFECT ON APPLICATIONS FILED</u>	<p>The Federal CRA rules require the appropriate federal banking agencies to take into account the record of performance under the Federal CRA in considering an application for:</p> <ul style="list-style-type: none"> • the establishment of (i) a domestic branch or (ii) a domestic branch or other facility that would be authorized to take deposits; • the relocation of the main office or a branch; • the merger or consolidation with or the acquisition of assets or assumption of liabilities of a bank requiring approval under the Bank Merger Act (12 U.S.C. 1828(c)); • the conversion of a state bank or savings bank to a national bank or federal savings association; • a bank holding company to become a financial holding company; and • acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)). 	<p>The Proposed Rules generally mirror the Federal CRA rules in operation. However, the Proposed Rules' language is slightly different in that the IDFPR is required to take into account the record of performance under the IL CRA in considering an application for:</p> <ul style="list-style-type: none"> • the relocation of the bank's main office or a branch, but only when express prior approval is otherwise required under applicable state law or administrative rule; and • the merger, consolidation, acquisition of assets or assumption of liabilities. <p>We note that a de novo bank will be required to submit with its application for a permit to organize a description of how it will meet its IL CRA objectives. The IDFPR will be required to take the description into account in considering the application and may deny or condition approval on that basis.</p>
<u>ASSESSMENT AREAS</u>	The Federal CRA rules require a bank to delineate one or more assessment areas so that the federal banking agencies may evaluate the bank's performance under the Federal CRA.	The Proposed Rules are substantially similar and no material deviations from the Federal CRA rules are noted.
<u>DATA COLLECTION, REPORTING AND DISCLOSURE</u>	The Federal CRA rules require a bank to collect, report and maintain certain loan applications and information.	The Proposed Rules are substantially similar and no material deviations from the Federal CRA rules are noted.
<u>THE PUBLIC FILE</u>	The Federal CRA rules require a bank to maintain a public CRA file that includes certain information.	The Proposed Rules are substantially similar and no material deviations from the Federal CRA rules are noted.

<p><u>PUBLIC NOTICE</u></p>	<p>The Federal CRA rules require a bank to publish and make available a CRA notice in its main office and each of the bank’s branches. This public notice must be made available in the form prescribed by the federal banking agencies. Click here for an example of such notice.</p>	<p>While similar in function, the Proposed Rules require a CRA notice to be published in the main office, each of the bank’s branches and on its website.</p> <p>In addition, the form of the IL CRA notice is separate and distinct from the form of Federal CRA notice. A copy of the IL CRA notice can be found by clicking here.</p>
<p><u>EXAMINATION – SCOPE</u></p>	<p>The Federal CRA rules do not specifically state that the federal bank agencies may review a bank’s entire books, records and operations in conducting an examination.</p> <p>However, the Federal CRA rules do authorize the federal banking agencies to take into account any evidence of discriminatory or other illegal credit practices in any geography or assessment area by the bank.</p>	<p>The Proposed Rules authorize the IDFP, in any examination, to review a bank’s entire books, records and operations.</p> <p>In addition, the IL CRA examination may also cover compliance with applicable state and federal fair lending laws, including, without limitation, the following state laws:</p> <ul style="list-style-type: none"> • Article 4 of the Illinois Human Rights Act (775 ILCS 5/Art. 4); • the Illinois High Risk Home Loan Act (815 ILCS 137); and • the Illinois Fairness in Lending Act (815 ILCS 120).
<p><u>EXAMINATION – SCHEDULE</u></p>	<p>The Federal CRA rules require the federal banking agencies to publish at least thirty (30) days in advance of the beginning of each calendar quarter a list of banks and savings associations scheduled for CRA examinations in that quarter.</p>	<p>The Proposed Rules are substantially similar and no material deviations from the Federal CRA rules are noted. However, the IDFP has the ability to establish alternative procedures or schedules for banks rated “outstanding” as of the most recent IL CRA or Federal CRA examination.</p>
<p><u>EXAMINATION – FREQUENCY AND COORDINATION FOR SMALL BANKS</u></p>	<p>The Federal CRA rules do not provide for any additional provisions concerning examination.</p>	<p>The Proposed Rules provide that the IDFP will coordinate its examinations under the IL CRA with those of the applicable federal banking agency.</p> <p>In addition, IL CRA examination frequency will be dependent upon the size of the bank. For banks with total assets <u>greater than \$250 million</u>, the following schedule will apply.</p> <ul style="list-style-type: none"> • for a bank that is assigned an “outstanding” or “satisfactory” rating in its most recent prior examination under the IL CRA, the next examination will be initiated within three (3) years of the issuance of the report of examination of its most recent prior examination under the IL CRA (“<u>ROE</u>”); • for a bank that is assigned a “needs to improve” rating in its most recent prior examination under the IL CRA, the next examination will be initiated within two (2) years of the issuance of the ROE; and

		<ul style="list-style-type: none"> • for a bank that is assigned a “substantial noncompliance” rating in its most recent prior examination under the IL CRA, the next examination will be initiated within one (1) year of the issuance of the ROE. <p>For banks with total assets of <u>\$250 million or less</u>, the following schedule will apply:</p> <ul style="list-style-type: none"> • for a bank that is assigned an “outstanding” rating in its most recent prior examination under the IL CRA, the next examination will be initiated within five (5) years of the issuance of the ROE; • for a bank that is assigned a “satisfactory” rating in its most recent prior examination under the IL CRA, the next examination will be initiated within four (4) years of the issuance of the ROE; • for a bank that is assigned a “needs to improve” rating in its most recent prior examination under the IL CRA, the next examination will be initiated within two (2) years of the issuance of the ROE; and • for a bank that is assigned a “substantial noncompliance” rating in its most recent prior examination under the IL CRA, the next examination will be initiated within one (1) year of the issuance of the ROE.
<p><u>EXAMINATION FEES</u></p>	<p>The Federal CRA rules do not include any provisions concerning examination fees.</p>	<p>The Proposed Rules require banks to pay, in connection with any IL CRA examination, the following fees:</p> <ul style="list-style-type: none"> • \$2,200 per day, which will be billed following completion of the examination and will increase 5% annually (it is unclear if this amount is a set rate or whether it is a cap for time actually expended); and • when out-of-state travel occurs in the conduct of any examination, the bank will be required to make arrangements to reimburse the IDFPFR for all travel expenses, including airfare, hotel and per diem incurred by an IDFPFR employee (collectively, the <u>Examination Fees</u>) <p>Importantly, in addition to the Examination Fees, banks will be required to pay the below fees.</p>

		<ul style="list-style-type: none"> Each bank will be required to pay to the IDFPR its pro rata share of the actual cost/deficit incurred by the IDFPR for administration of the IL CRA for all banks that exceed the Examination Fee amounts collected by the IDFPR (“<u>Deficit Fees</u>”). The Deficit Fees are to be calculated using the percentage of assets of each bank, as shown on the bank’s call report, in relation to the total assets of all banks covered by the IL CRA. Each bank with a current rating of “needs to improve” or “substantial noncompliance” may be assessed a surcharge (“<u>Surcharge</u>”). The Surcharge is to be calculated using the percentage of assets of each bank, as shown on the bank’s call report, in relation to the total assets of all banks subject to a Surcharge under the IL CRA. However, the aggregate Surcharge will be capped at 20% of the cost for the administration of the IL CRA which exceeds the Examination Fees paid.
<u>ENFORCEMENT</u>	A bank’s failure to comply with Federal CRA rules may subject it to enforcement action.	With respect to enforcement authority, the Proposed Rules operate similarly to the Federal CRA rules; however, in addition to potential enforcement action, the IDFPR has the authority to refer a non-compliant bank to law enforcement or an applicable administrative authority.

When might the Proposed Rules be finalized?

As noted above, due to industry feedback and heightened public comment, on January 26, 2023, the IDFPR extended the public comment period to March 16, 2023. In addition, the IDFPR indicated that it would be scheduling three public hearings, which are to be held on March 2, 2023 and March 8, 2023, with two hearings to occur on March 2, 2023, to invite further public comment from the industry and the public. The IDFPR is expected to confirm these dates in the coming days. Consequently, the Proposed Rules will not be finalized before these hearings are concluded and, in any event, prior to March 16, 2023.

How will federal banking agencies’ modernization efforts impact the Proposed Rules?

As many are aware, on May 5, 2022, the federal banking agencies issued an Advance Notice of Proposed Rulemaking with the goal of modernizing the Federal CRA. While no additional action has yet been taken at the federal level, it has been noted on more than one occasion by the federal banking agency heads that action is expected in 2023. As the Proposed Rules are modeled on the Federal CRA, to the extent the federal banking agencies finalize new CRA rules, we would expect the IDFPR to reengage in rulemaking activities to mirror federal changes.

The full text of the Proposed Rules can be found [here](#).

If you would like to discuss the matters addressed in this bulletin, please contact **Daniel C. McKay, II** at dmckay@vedderprice.com, **James W. Morrissey** at jmorrissey@vedderprice.com, **James M. Kane** at jkane@vedderprice.com, **Jennifer D. King** at jking@vedderprice.com, **Mark C. Svalina** at msvalina@vedderprice.com, **Mary Donohue** at mdonohue@vedderprice.com, **Kelly L. Miller** at klmiller@vedderprice.com or your Vedder Price attorney.