



1700 G Street NW, Washington, D.C. 20552

April 9, 2024

Via electronic submission

Illinois Joint Committee on Administrative Rules
700 Stratton Building
Springfield, Illinois 62706

Dear Members of the Joint Committee on Administrative Rules:

On behalf of the Consumer Financial Protection Bureau (CFPB), I am pleased to submit this comment regarding the Illinois Department of Financial and Professional Regulation's (IDFPR's) proposed rules for the state's Community Reinvestment Act (CRA).

By way of background, I serve as the CFPB's Deputy Director. I also serve as the CFPB's representative on the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. Since April 1, 2022, I have served as Chair of the Appraisal Subcommittee, which has recently held the fourth in a series of hearings on appraisal bias.

The CFPB's work intersects with topics related to state Community Reinvestment Acts in a number of ways. The CFPB has conducted extensive analysis and research on access to credit across a range of products, including mortgage lending, small business lending, and others. One recent analysis of note is the CFPB's report on state CRA laws, which highlighted the importance of these laws to ensure that financial institutions' lending, services, and investment activities meet the credit needs of their communities.¹ The report also identified how an institution's compliance with federal consumer financial protection laws are incorporated into state CRA evaluations. Additionally, the CFPB has regulatory authority with respect to the

¹ Consumer Financial Protection Bureau, "State Community Reinvestment Acts: Summary of state laws," (Nov. 2, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-new-report-on-state-community-reinvestment-laws/>

nation’s mortgage lenders and supervisory and enforcement authority over many such lenders, both depository and non-depository, for compliance with applicable consumer protection laws.

The CFPB has authority to interpret and issue rules under the Equal Credit Opportunity Act (ECOA) and to enforce the statute’s requirements. And the CFPB has a statutory objective to ensure federal consumer financial laws are enforced consistently. As such, the CFPB’s views concerning the applicable legal standards for discrimination under ECOA may be of assistance to the Joint Committee on Administrative Rules.

In particular, the CFPB submits this comment in support of the proposed appraisal-related changes to 38 IAC 345.280(c)(1)(A) (Bank Community Reinvestment), 38 IAC 185.280(c)(1)(A) (Credit Union Community Reinvestment), and 38 IAC 1055.240(c)(1) (Mortgage Community Reinvestment Act). These provisions state that a lender “relying on or giving force or effect to discriminatory appraisals to deny loan applications where the covered financial institution knew or should have known of the discrimination” is an example of a violation of ECOA. As explained below, these provisions accurately describe ECOA.²

The CFPB, in conjunction with the U.S. Department of Justice, has stated that “[a] lender violates both the [Fair Housing Act (FHA)] and ECOA if it relies on an appraisal that it knows or should know to be discriminatory,” and “even beyond the appraisal context, an entity violates the FHA and ECOA if it enables, gives force to, or participates in a course of conduct that it knows or should know to be discriminatory.”³ Hence, to the degree that discrimination is a relevant factor for determining a financial institution lender’s rating under a state CRA or other law, it is appropriate to consider whether there is evidence of the lender’s reliance on an appraisal that it knows or should know to be discriminatory, and, beyond the appraisal context, whether a lender enables, gives force to, or participates in a course of conduct that it knows or should know to be discriminatory.

² The provisions also state that this conduct is an example of a violation of the Fair Housing Act (FHA). The U.S. Department of Justice, in its joint statement filed with the CFPB in *Connolly v. Lanham*, similarly emphasized that the FHA “places liability on at least two actors: (i) the appraiser who provides the valuation, and (ii) the lender who denies refinancing, thus giving force to the appraisal.” Further, the district court subsequently held in that case that the “FHA’s implementing regulations make clear that a lender who relies on a discriminatory appraisal may be directly liable under the FHA.” *Connolly v Lanham*, No 1:22-cv-02048-SAG, ECF 47, (D. Md., filed Aug. 2, 2023) at 12, (citing FHA implementing regulations at 24 C.F.R. § 100.7(a)(1)(iii)).

³ *Connolly v Lanham*, No 1:22-cv-02048-SAG, ECF 47, Statement of Interest of the United States (D. Md., filed Mar. 13, 2023), available at <https://www.consumerfinance.gov/compliance/amicus/briefs/connolly-mott-v-lanham-et-al/>.

The CFPB also has authority over the Truth in Lending Act's (TILA) Appraisal Independence Rule and has pointed out that it does not conflict with a lender's obligations to comply with civil rights laws, including ECOA. Specifically, CFPB has noted that TILA permits a creditor to "ask[] an appraiser to . . . [c]onsider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal[,] or "[c]orrect errors in the appraisal report."⁴ A [creditor/lender] may also "[o]btain[] multiple valuations for the consumer's principal dwelling to select the most reliable valuation,"⁵ and, more generally, take "action permitted or required by applicable Federal or state statute, regulation, or agency guidance,"⁶ such as not relying on an appraisal that is inaccurate or violates the law.⁷

Owning a home is one of the most effective ways to build intergenerational wealth. Obtaining an accurate estimate of home value is a critical step in mortgage origination and refinancing. A biased home appraisal is not only inaccurate but can worsen racial inequities and distort the housing market.

States play a critical role in the oversight of appraisals, promoting reinvestment by financial institutions, and they have the unique ability to tailor reinvestment obligations to the needs of their states. By adopting the proposed provisions discussed herein, the state of Illinois would be acting in accordance with existing legal standards for discrimination and utilizing its available tools to ensure a fair marketplace.

The CFPB welcomes the opportunity to submit this comment and to work together in the future.

Sincerely,


Zixta Martinez
Deputy Director

⁴ 15 U.S.C. § 1639e(c).

⁵ 12 C.F.R. § 1026.42(c)(3)(iv).

⁶ 12 C.F.R. § 1026.42(c)(3)(vi).

⁷ *Supra*, note 3.