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August 4, 2022

RE: **Community Reinvestment Act Proposed Rulemaking [87 FR 33884]**

OCC: 12 CFR Part 25; Docket ID OCC-2022-0002; RIN 1557-AF15
Federal Reserve: 12 CFR Part 228; Regulation BB Docket No. R-1769; RIN 7100-AG29
FDIC: 12 CFR Part 345; RIN 3064-AF81

On behalf of Americans for Financial Reform Education Fund, The Greenlining Institute, and Public Citizen, we appreciate the opportunity to comment on the above referenced joint Notice of Proposed Rulemaking ("NPR" or "proposal") by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively "the agencies") to amend the regulations implementing the Community Reinvestment Act of 1977 (CRA), including updates to which activities qualify for CRA consideration, and how those activities are evaluated and inform bank ratings.

Our organizations are dedicated to furthering financial inclusion and climate justice in historically underserved communities, and we see tremendous opportunities in the CRA regulations to support communities in achieving shared priorities. By facilitating investment in climate resilience, the CRA regulations will be meeting the modern-day credit needs of communities across the country in addition to legacy strategies such as affordable housing and small businesses.

This thoughtful proposal would provide additional opportunities for investment that communities have been seeking, including opportunities to build climate resiliency, in addition to providing greater clarity and consistency for all stakeholders involved. **The agencies should strengthen the regulations to better ensure that communities most impacted by redlining and environmental injustice receive the intended benefits of the CRA.**

Our main recommendations, which are elaborated on below, in addition to responses for specific questions from the proposal, are:

(1) Adopt the NPR's proposed "disaster preparedness and climate resiliency" definition under "community development activities" and list additional eligible activities under the definition.
(2) Explicitly utilize race as a metric in CRA exams in order to ensure that historically redlined communities, and those most vulnerable to climate change, have improved access to sustainable credit and services.
(3) Encourage banks to increase community engagement and relationship building with climate and environmental justice organizations, including through the use of Community Benefits Agreements (CBAs).
(4) Scrutinize bank investments that have disproportionate impacts that further contribute to climate change and impair access to credit for communities as part of CRA exams.
(5) Do not raise the small and intermediate small bank asset thresholds.

Introduction: Climate, Race, and the CRA

Climate change is a risk multiplier that exacerbates racial and economic inequality,[1] and it is progressing at an alarming rate. Acute climate-related disasters, as well as chronic issues such as heat stress, sea level rise, and drought, disproportionately burden low- and moderate-income (LMI) communities and communities of color.[2]

Black communities, in particular, are more vulnerable to climate-related impacts as a result of decades of discriminatory housing policies and lending practices. According to the Center for American Progress, "For decades, legal forms of discrimination, racially biased housing policies, and racist lending practices have played a critical role in segregating people of color, particularly African Americans, into neighborhoods that face chronic disinvestment and higher levels of lead exposure, poorer air quality, and exposure to toxic chemicals due to their close proximity to landfills, hazardous waste sites, and other industrial facilities."[3] Among these practices include discriminatory "redlining" where access to capital

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[1] United Nations High Commissioner for Refugees. "Climate Change and Disaster Displacement." 2020. https://www.unhcr.org/en-us/climate-change-and-disasters.html

[2] EPA. "Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts. U.S. Environmental Protection Agency." EPA 430-R-21-003. 2021. https://www.epa.gov/cira/social-vulnerability-report

[3] Zonta, Michela and Caius Z. Willingham. "A CRA To Meet the Challenge of Climate Change," Center for American Progress. December 2020. https://www.americanprogress.org/article/cra-meet-challenge-climate-change/

was restricted from neighborhoods deemed "hazardous" to property values due to a high percentage of Black residents.[4] These same communities have experienced continued decades of disinvestment in critical infrastructure, leading to the persistent inequality we still see today.[5] This disinvestment includes a lack of dedicated greenspace, trees, and flood control mechanisms, to name a few, that now heighten the physical risks these communities face from climate change.[6] Further, higher levels of poverty and unemployment challenge these communities' financial capacity to withstand and adapt to these risks, and population loss related to climate migration decreases community coherence to respond.[7]

As banks begin to manage their own climate-related risks by reducing lending in areas most susceptible to chronic or acute climate disasters, such as in flood- or wildfire- prone areas, this so-called "bluelining" is leaving communities with even fewer resources to meet the ever-worsening impacts of climate change.[8] Climate vulnerabilities will continue to expand in scope and severity with time, causing a shift in the kinds of investments and financial services communities need in order to be prepared and protected.

Given the throughlines between racism, environmental burden, and climate vulnerability, the agencies must update CRA regulations with this reality in mind so that the banking system meets the changing credit needs of LMI communities and communities of color. The proposal takes important steps in the right direction, and should be strengthened to ensure that those most vulnerable to the impacts of climate change can access necessary, fair, and affordable capital and services to meet their financial needs.

Recommendation 1: Adopt the NPR's proposed "disaster preparedness and climate resiliency" definition under "community development activities" and list additional eligible activities under the definition.

We support the NPR's addition of the "disaster preparedness and climate resiliency" definition under "community development." We also support the proposed non-exhaustive list of climate-related eligible activities[9] under the proposed definition. Providing a list will help communities understand the kinds of climate-related investments for which they can seek financing, and simultaneously help banks clearly understand the activities for which they can receive CRA credit. The activities in this list will provide communities with more opportunities to actively participate in the transitioning economy through green investment.

We recommend that additional eligible activities be listed under this definition, to help communities understand which of their climate resilience needs qualify for CRA credit, and for banks to be aware of the

4 Badger, Emily. "How Redlining's Racist Effects Lasted for Decades." New York Times. August 2017. https://www.nytimes.com/2017/08/24/upshot/how-redlinings-racist-effects-lasted-for-decades.html

5 Mitchell, Bruce and Juan Franco. "HOLC 'Redlining' Maps: The Persistent Structure Of Segregation And Economic Inequality." National Community Reinvestment Coalition. March 2018. https://ncrc.org/holc/

6 Moran, Barbara. "Mapping Project Explores Links Between Historic Redlining And Future Climate Vulnerability." WBUR. March 2021. https://www.wbur.org/news/2021/03/05/haverill-merrimack-climate-redlining-maps

7 Zonta, Michela and Caius Z. Willingham. "A CRA To Meet the Challenge of Climate Change." Center for American Progress. December 2020. https://www.americanprogress.org/article/cra-meet-challenge-climate-change/

8 Jacobson, Lindsey. "Banks consider climate risk for home loans, a process called 'underwaterwriting' or 'blue-lining'." CNBC. September 2021. https://www.cnbc.com/2021/09/20/blue-lining-and-underwaterwriting-banks-consider-climate-change-risk.html

9 NPR at 33905. https://www.federalregister.gov/documents/2022/06/03/2022-10111/community-reinvestment-act

diversity of needs that may arise. The activities, deployed through both grants and loans, should be structured in a way that builds wealth and financial sustainability for LMI communities and communities of color and does not result in predatory lending practices.

Specifically, we recommend adding the following eligible activities, at a minimum, to those proposed in the NPR: (1) additional greening infrastructure such as green roofs; (2) community solar and microgrids; (3) community air monitoring programs; (4) operational support and capacity building for environmental and climate justice organizations; (5) electrification and water efficiency measures for residential homes including multifamily properties and manufactured home communities; (6) project pre-development (strictly for activities under this definition); and (7) electric vehicle incentives.[10] These activities should be subject to the same criteria outlined in Recommendation 2, including anti-displacement protections.

The California Strategic Growth Council is a state agency tasked with distributing money from the state's cap-and-trade auction to disadvantaged communities. For its Transformative Climate Communities Program, the Council offers a comprehensive list of community-driven climate projects that qualify for funding,[11] which is a helpful reference for developing the list of eligible activities under the "disaster preparedness and climate resiliency" definition.

Additionally, we emphasize the importance of the inclusion of "climate-related risks" in the proposed definition for "disaster preparedness and climate resiliency" and urge the agencies to keep the term in the final rule. This language can encompass diffuse or incremental environmental risks not typically understood as disasters, such as progressively hotter summer temperatures. The agencies should explain in the final regulations what is included under "climate-related risks." The definition should encompass not only natural hazards or weather-related events that can be directly attributed to climate change, but also environmental health threats that may be exacerbated by climate change.

Regarding the criteria for place-based initiatives, of which "disaster preparedness and climate resiliency" is one category, we support the proposal that activities must benefit residents of targeted census tracts. We also support the proposed criteria to ensure that activities must not lead to displacement or exclusion. To enhance this recommendation, the agencies should require banks to show evidence of community participation in decision making. Banks should also provide evidence of efforts to safeguard residents from displacement, with examples including tenant protections against rent increases as a result of building improvements, and local ordinances that provide anti-displacement protection. For more resources on anti-displacement strategies, we recommend again referencing the Transformative Climate Communities Program (Appendix C-2)[12] which offers a diversity of opportunities to implement strategies in different

[10] "Clean Vehicle Assistance Program." Beneficial State Bank. https://impact.beneficialstate.org/clean-vehicle-assistance-program/

[11] "Transformative Climate Communities." California Strategic Growth Council. https://sgc.ca.gov/programs/tcc/

[12] "Transformative Climate Communities Round 4 Program Guidelines FY 2021-2022." California Strategic Growth Council. https://sgc.ca.gov/meetings/council/2022/docs/20220428-Item5a_TCC_Guidelines_Round%204_Technical%20Amendment_Clean.pdf

contexts, as well as the ClimatePlan Commitment to Investment Without Displacement,[13] and the California Reinvestment Coalition Anti-Displacement Code of Conduct.[14]

One additional point across the community development category, under which "disaster preparedness and climate resiliency" falls, is for the agencies, within various tests, to consider the kinds of investments made and how much they actually benefit LMI individuals and communities as well as individuals and communities of color. For example, grant or philanthropic support, as well as low-cost capital, should be given more weight on CRA exams than traditional financing. We support the proposal to utilize the impact review process as an appropriate place to give grant activities more emphasis in the CRA exam, and recommend that this emphasis properly reflects the value of grants (and therefore no repayment obligation) to these community-driven projects.

Further, the impact review requirements in the final rule should also include long-term impact analysis of investments to ensure benefits have been truly realized. For example, ensuring there have not been high proportions of foreclosures or otherwise unintended consequences caused by projects will provide important incentives for banks to ensure they make safe investments that provide durable benefits for LMI communities and communities of color.

At the bottom of this letter we provide additional recommendations specific to questions from the NPR.

Recommendation 2: Explicitly utilize race as a metric in CRA examinations in order to ensure that historically redlined communities, and those most vulnerable to climate change, have improved access to credit and services.

The proposal explicitly references the practice of redlining and emphasizes the lasting impact of redlining on communities of color, including a persistent racial wealth gap, but does not include any questions or considerations for how to include race in CRA exams. The proposal states,"even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent and the typical White family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family."[15]

Historically, federal regulators and other government agencies have used LMI as a proxy for race, but recent studies have shown that this is insufficient for meeting the needs of communities of color. The Urban Institute found that LMI neighborhoods do not highly overlap with minority neighborhoods and that minority neighborhoods, both LMI and middle and upper income, do not receive their fair share of home loans from CRA-covered banks.[16] In the Greenlining Institute's studies of home lending in

[13] Wise, Ella. "Just released: ClimatePlan's Commitment to Investment without Displacement." April 2019. https://www.climateplan.org/just_released_climateplan_s_commitment_to_investment_without_displacement
[14] "Anti-Displacement Code of Conduct." California Reinvestment Coalition. https://calreinvest.org/about/code-of-conduct/#:~:text=This%20Anti-Displacement%20Code%20of,and%20practices%20to%20be%20avoided
[15] NPR at 33888. https://www.govinfo.gov/content/pkg/FR-2022-06-03/pdf/2022-10111.pdf
[16] Goodman, Laurie et al. "Should the Community Reinvestment Act Consider Race?" Urban Institute. January 2020. https://www.urban.org/sites/default/files/2022-04/should-the-community-reinvestment-act-consider-race_1.pdf

California, low-income white borrowers are more likely than low-income borrowers of color to receive a home loan proportional to their percentage of the population in several regions of the state.[17]

Racist public policies led to a need for Congress to pass the CRA, and the CRA's original intent was to affirmatively obligate banks to reinvest locally in neighborhoods that were historically deemed "too risky" due to the high percentages of immigrant and Black residents. As observed previously by the Federal Reserve Board's Vice Chair for Supervision, Michael Barr, the CRA should play an important role in providing increased access to capital for historically redlined communities, and in overcoming discrimination.[18] Therefore, explicit race-based criteria that hold banks accountable to serving communities and individuals of color are necessary to genuinely address decades of race-based disinvestment.

There are several opportunities, consistent with the Equal Protection Clause of the United States Constitution, that can improve CRA regulations by making them more race-conscious. A white paper co-authored by National Community Reinvestment Coalition (NCRC) and Relman Colfax PLLC proposes performance measures that examine lending by race to inform CRA ratings and would pass the strict scrutiny legal standard if that standard were applied.[19] The white paper outlines additional opportunities to incorporate race in the various subtests of the CRA exam and bases its recommendations on the legal grounds that the CRA aims to remedy proven discrimination. The agencies should look to these grounds as a basis for incorporating race into the final rule.

Home Mortgage Disclosure Act (HMDA) Data

The agencies should, as proposed, disclose data by race and ethnicity in large bank CRA performance evaluations, using data already reported under the Home Mortgage Disclosure Act (HMDA).[20] Including the bank's home mortgage loan originations and applications data as part of the CRA performance evaluation will increase public information about bank performance and the performance evaluations. The agencies should not only require banks to describe lending by race, but further have that information influence a bank's CRA rating. The agencies should, throughout the various subtests, scrutinize bank activities using this data to identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes of LMI people and people of color.

HMDA data is not currently disaggregated by ethnicities or lineages. Given the value of this data, we urge the CFPB[21] to update HMDA rules to require inclusion of disaggregated data on race and ethnicity. This practice can shed critical light on inequality. For example, disaggregating various ethnicities or lineages

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[17] Kim, Chase and Rawan Elhalaby. "Home Lending to Communities of Color in California 2020." The Greenlining Institute. February 2022. https://greenlining.org/publications/2022/home-lending-communities-color-california-2020/

[18] Barr, Michael S. "Credit Where It Counts: The Community Reinvestment Act and Its Critics."University of Michigan Law School. 2005. https://repository.law.umich.edu/articles/60/.

[19] Blower, Brad et al. "Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal." National Community Reinvestment Coalition. September 2021. https://ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/

[20] Responds to question 173; NPR at 34003. https://www.federalreserve.gov/consumerscommunities/files/cra-npr-fr-notice-20220505.pdf

[21] See e.g. Principle 4 of a "Response to the Consumer Financial Protection Bureau (CFPB or Bureau)'s Section 1071 Small Business Data Collection Notice of Proposed Rule Making." California Reinvestment Coalition. December 17, 2021. https://calreinvest.org/wp-content/uploads/2022/01/CA-Comments-on-Section-1071_Dec.-17.pdf

such as Japanese and Vietnamese under the broader racial categories of "Asian American" allowed economists studying wealth accumulation in Los Angeles County to track and analyze very large disparities in asset accumulation.[22] This level of specificity will allow regulators, depository institutions, and consumers alike to better understand the credit and services needs of diverse communities.

Climate Vulnerable Individuals and Communities

Important for this rulemaking, the communities most vulnerable to climate change are most likely to be communities of color and LMI communities.[23] Communities of color are disproportionately exposed to many climate risks, due in part to the discriminatory redlining practices that were the motivation for the original passage of the CRA.[24] The following definition from the California Governor's Office of Planning and Research[25] offers an example of the many intersecting factors that affect vulnerability:

> *Climate vulnerability describes the degree to which natural, built, and human systems are at risk of exposure to climate change impacts. Vulnerable communities experience heightened risk and increased sensitivity to climate change and have less capacity and fewer resources to cope with, adapt to, or recover from climate impacts. These disproportionate effects are caused by physical (built and environmental), social, political, and/ or economic factor(s), which are exacerbated by climate impacts.*

Climate vulnerability underscores the urgency of the agencies' responsibility to ensure communities of color can access the resources necessary to withstand these impacts and remedy past environmental injustice.

The agencies should attempt to align efforts related to assuring benefits to climate vulnerable communities with the White House Council on Environmental Quality and their implementation of the Justice40 Initiative, which aims to invest 40% of certain Federal infrastructure dollars into disadvantaged communities.[26] Banks have a crucial role to play in providing necessary capital to ensure infrastructure projects are successful, and aligning climate-related efforts in the CRA regulations with Justice40 efforts will facilitate smoother financing of critical resilience projects.

The final rule should outline publicly available data tools that banks should use to identify climate vulnerable communities, and encourage banks to build relationships with and drive investment to those communities. Alongside the implementation of the Justice40 Initiative is the creation of the Climate and Economic Justice Screening Tool (CEJST)[27] which, once finalized, will be utilized to define

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[22] De La Cruz-Viesca, Melany, Chen, Zhenxiang,Ong, Paul, Hamilton, Darrik, Darity Jr, William, "The Color of Wealth in Los Angeles" https://www.aasc.ucla.edu/besol/Color_of_Wealth_Report.pdf

[23] Morello-Frosch, Rachel and Manuel Pastor, James Sadd, Seth Shonkoff. "The Climate Gap: How Climate Change Hurts Americans & How to Close the Gap." University of Southern California. May 2009. https://dornsife.usc.edu/pere/climategap/

[24] "The Link Between Historic Redlining And Current Climate Risks." Enterprise Community Partners. August 2021. https://www.enterprisecommunity.org/blog/link-between-historic-redlining-and-current-climate-risks

[25] "Defining Vulnerable Communities in the Context of Climate Adaptation." California Governor's Office of Planning and Research. July 2018. https://opr.ca.gov/docs/20200720-Vulnerable_Communities.pdf

[26] "Justice40 A Whole-Of-Government Initiative." The White House. https://www.whitehouse.gov/environmentaljustice/justice40/

[27] "Climate and Economic Justice Screening Tool." White House Council on Environmental Quality. https://screeningtool.geoplatform.gov/en/

"disadvantaged communities" and to direct investment. This tool uses indicators including proximity to hazardous facilities, linguistic isolation, and proximity to traffic-generated pollution that effectively identify vulnerable communities.[28]

This approach is similar to that utilized in California to direct climate investments utilizing the CalEnviroScreen tool. This tool utilizes environmental, health, and socioeconomic information to calculate a score for every census tract in California. This is done by compiling data on 21 different indicators across the following categories: (1) Exposure; (2) Environmental Effect; (3) Sensitive Population; and (4) Socioeconomic Factors. The scores take into account the critical component of the "cumulative impact" that communities face.[29]

An analysis from the California Office of Environmental Health Hazard Assessment (OEHHA) found that while CalEnviroScreen does not factor in race, it identifies the disproportionate environmental impact faced by communities of color.[30] A notable finding in the analysis shows that the 10% of census tracts that scored the lowest on CalEnviroScreen (i.e. least impacted by environmental and socioeconomic burden), were 33% people of color and 67% white. Alternatively, the census tracts scoring in the top 10% of the tool (i.e. most impacted by environmental and socioeconomic burden) were 91% people of color and only 9% white. Overall, the analysis found that Latinos and African Americans disproportionately resided in highly impacted communities.

Examples of other tools that may assist the agencies and banks in identifying climate vulnerable communities that need CRA investment include the Environmental Protection Agency's (EPA's) Environmental Justice Screening and Mapping Tool (EJScreen),[31] and the Climate Vulnerability Metric prepared by researchers at UC Santa Barbara and the Rhodium Group.[32] The last tool is specific to California at the moment, but will be applied nationally in the future.

At the bottom of this letter, in our direct responses to the agencies' questions in the NPR, we offer additional recommendations related to incorporating disaster areas, with an emphasis on ensuring benefits center LMI communities and communities of color.

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[28] Sadasivam, Naveena and Clayton Aldern. "The White House excluded race from its environmental justice tool. We put it back in." Grist. February 2022. https://grist.org/equity/climate-and-economic-justice-screening-tool-race/

[29] "About CalEnviroScreen." California Office of Environmental Health Hazard Assessment. https://oehha.ca.gov/calenviroscreen/about-calenviroscreen

[30] "Analysis of Race/Ethnicity and CalEnviroScreen 4.0 Scores." California Office of Environmental Health Hazard Assessment. California Environmental Protection Agency. October 2021. https://oehha.ca.gov/media/downloads/calenviroscreen/document/calenviroscreen40raceanalysisf2021.pdf

[31] "EJScreen: Environmental Justice Screening and Mapping Tool." Environmental Protection Agency. https://www.epa.gov/ejscreen

[32] "Unequal climate impacts to the State of California: Developing a Climate Vulnerability Metric." Environmental Markets Lab UCSB, Rhodium Group. https://emlab.ucsb.edu/projects/unequal-climate-impacts-state-california-developing-climate-vulnerability-metric

<u>Recommendation 3:</u> Encourage banks to increase community engagement and relationship building with climate and environmental justice organizations, including through the use of Community Benefits Agreements (CBAs).

The final rule should include more explicit parameters related to community engagement and relationship building. The proposal does not do enough to expand community participation. The current CRA regulations do a poor job of encouraging and valuing community input, and are silent on how to engage climate vulnerable communities in particular. Community engagement and relationship building are critical components of meaningful implementation of the CRA regulations.

When this proposal is finalized, banks may become more active in investing in disaster preparedness and climate resiliency. For those investments to succeed, banks need to form community-level relationships. The final rule should include measures that promote relationship building between bank CRA officers and local environmental and climate justice organizations working in LMI communities and communities of color. One measure to ensure an inclusive approach is to require banks to describe, in public documents, their outreach to and engagements with organizations, including where and how these efforts were made and how banks responded. Agencies should indicate how input from communities was factored into the results of CRA performance evaluations. Along these lines, the agencies should establish a public registry or directory that community organizations can sign up for to be contacted about community needs and bank CRA performance.[33]

To better meet the proposal's stated goal of ensuring that investments are meeting identified community needs, the agencies should add opportunities for communities to have a say in what investments best suit their interests, within the boundaries of the CRA regulations. This can be accomplished through Community Benefits Agreements (CBAs), which historically are negotiated between financial institutions and community organizations with commitments related to investments, lending, and philanthropy.[34] The final regulations should require banks to publicly identify the organizations with which they are establishing CBAs, to ensure that banks are not cherry-picking organizations that would ask for less than what communities need, and what other organizations would request. The final regulations should additionally consider incentivizing the use of binding CBAs, since they are powerful tools for communities to outline their local financial needs. For example, the final rule should reflect that a CRA exam will include an evaluation of adherence to established CBAs.

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[33] Silver, Josh. "Initial Analysis Of The CRA Notice Of Proposed Rulemaking." NCRC. June 1, 2022. https://ncrc.org/initial-analysis-of-the-cra-notice-of-proposed-rulemaking/

[34] "NCRC Comment On Federal Reserve Board's Advance Notice Of Proposed Rulemaking Regarding The Community Reinvestment Act." National Community Reinvestment Coalition. February 2021. https://ncrc.org/ncrc-comment-on-federal-reserve-boards-advance-notice-of-proposed-rulemaking-regarding-the-community-reinvestment-act-february-2021/

<u>Recommendation 4:</u> Scrutinize bank investments that contribute to climate change and disproportionately impair access to credit for communities.

While proactive investments for climate resilience are helpful, failure to address the root causes of climate vulnerability only deepens the impacts communities will face in the future.[35] The CRA exam must address both sides of the coin. CRA regulations should incentivize banks to reduce activities that undermine goals of the CRA—including activities that further impair the abilities of communities of color to access credit and that challenge the rights of tribal communities to plan and pursue their own community development activities.

Bank financing of activities that significantly increase greenhouse gas emissions (GHG) and other environmental pollution, notably fossil fuel industry activities, increases the challenges that climate-vulnerable communities—particularly communities of color—face accessing safe and affordable credit and banking services. As climate-related harms fueled by these emissions damage property, gradually impair household and community financial conditions, and reduce services to these communities, banks, in turn, are becoming more reluctant to serve them. Banks are concerned, for example, that these impacts will compromise the abilities of these communities to repay loans. This has resulted in banks increasingly avoiding climate-vulnerable areas.[36]

Communities of color in this situation are left to bear the costs associated with both the physical impacts of climate change and the risk management measures that banks take. Many of these communities cannot practically avoid the climate change-fueled harms created by GHG emissions. They are limited in their ability to shift geographic locations, and are otherwise constrained financially and technically from building resilience and adapting to climate change.

Although financial regulators have indicated, in draft supervisory guidance,[37] that banks should seek to avoid disparate impacts to communities of color as banks pursue risk management measures, it is not clear that in the absence of more specific directives this will have much impact. In the context of climate change, this means that where banks are concerned about credit and other risks lending to a climate hotspot they can take measures—including, presumably, less lending or higher lending costs—to reduce risks. As a result, many communities that have not willingly assumed the financial risks related to climate change are forced to bear the costs of these risks. Given these realities, the most effective, and often likely only, approach to reducing disparate impacts is to reduce the underlying source of those impacts—greenhouse gas emissions.

[35] Pörtner, Hans-Otto et al. "Climate Change 2022 Impacts, Adaptation and Vulnerability Summary for Policymakers." Intergovernmental Panel on Climate Change. March 2022. https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf

[36] McDonnell, Tim. "How new flood risk maps could undermine marginalized neighborhoods." Quartz. Updated July 7, 2020. https://qz.com/1876202/new-flood-risk-maps-could-undermine-marginalized-neighborhoods/; see also, Berman, Michael, "Flood Risk and Structural Adaptation of Markets: An Outline for Action." Community Development Innovation Review, Federal Reserve Bank of San Francisco. October 17, 2019. https://www.frbsf.org/community-development/publications/community-development-investment-review/2019/october/flood-risk-and-structural-adaptation-of-markets-an-outline-for-action/

[37] "Risk Management: Principles for Climate-Related Financial Risk Management for Large Banks; Request for Feedback." Office of the Comptroller of the Currency. December 2021. https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-62.html

As bank financing of polluting activities disparately impacts access to credit by LMI communities and communities of color, regulators should scrutinize such activities and their disparate impacts, and consider how harms to these communities' access to credit should be taken into account in CRA exams. Fair lending reviews are already part of CRA exams, and disparate impact related to climate change should be incorporated into that existing framework.[38]

The final rule should also acknowledge that financed emissions can impact tribal communities, not only through climate change-related impacts to important tribal natural and cultural resources, but also through threats to tribal community development. The latter occurs, for example, when oil and gas infrastructure such as pipelines, are permitted to occur on tribal lands without the free, prior, and informed consent of tribal communities. A 2021 Memorandum of Understanding to promote the protection of tribal treaty rights acknowledges that U.S. agency decision-making and regulatory processes should be "consistent with the federal government's trust responsibility to federally recognized tribes and to fundamental principles of good government."[39] CRA regulations should maintain this trust responsibility by reducing points on CRA exams for banks that finance the building of infrastructure on tribal lands without tribal consent.

<u>Recommendation 5:</u> Do not raise the small and intermediate small bank asset thresholds.

The agencies should not raise the small and intermediate small bank asset thresholds as proposed. They should maintain the bank classifications as they currently stand in the CRA regulations. The agencies propose changing the definition of a small bank from those that have up to $346 million in assets to banks with up to $600 million in assets. The proposal would change the middle category from an "intermediate small bank" to an "intermediate bank" and would adjust the intermediate bank threshold to range from $600 million to $2 billion (the current intermediate small bank range is $346 million to $1.384 billion). This reclassification of banks, as proposed, would remove community development finance responsibilities from banks that would be reclassified as small banks and would remove service test requirements from banks that would be reclassified as intermediate banks.

The proposal, in reclassifying banks, would reduce the level of CRA responsibility for 20% of all banks, which is especially harmful when underserved communities in rural areas and smaller metropolitan areas rely on smaller banks for community development financing.[40] An NCRC map of the bank classification changes shows that the change from intermediate small bank to small bank disproportionately affects less

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[38] Steele, Graham. "ESG Carrots and Climate Sticks: Evaluating the Roles of Mandates and Incentives in Climate Financial Regulation." Duke University School of Law. July 2020. https://sites.law.duke.edu/thefinregblog/2020/07/14/esg-carrots-and-climate-sticks-evaluating-the-roles-of-mandates-and-incentives-in-climate-financial-regulation-2/

[39] "Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights." US Department of the Interior. November 2021. https://www.doi.gov/sites/doi.gov/files/interagency-mou-protecting-tribal-treaty-and-reserved-rights-11-15-2021.pdf

[40] Silver, Josh. "Here's Where Changes To CRA Asset Thresholds Will Undermine Community Reinvestment." National Community Reinvestment Coalition. June 30, 2022. https://ncrc.org/map-heres-where-changes-to-cra-asset-thresholds-will-undermine-community-reinvestment/

populated areas in the Midwest and South, parts of the country that can ill afford less community development financing.[41]

This could have a detrimental effect on communities that depend on smaller institutions to meet their banking needs.[42] The NCRC analysis found that 25% of the banks that would be redefined as small are located in rural counties - communities dealing disproportionately with wildfire and flooding challenges.[43] Banks should remain subject to their current level of responsibilities under CRA regulations based on assets, and meet the additional requirements of the proposal, to adequately meet the credit and services needs of individuals and households in LMI communities and communities of color.

Responses to questions posed by the agencies

14. Should any or all place-based definition activities be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefitting the targeted census tract(s)? If so, are there appropriate standards for plans, programs, or initiatives? Are there alternative options for determining whether place-based definition activities meet identified community needs?

Activities categorized as place-based should not be required to be done in conjunction with a government plan, program, or initiative.

If a disaster preparedness and climate resiliency project, or any other place-based project, is not able to demonstrate alignment or concurrence with a government plan, program, or initiative, there should be alternative opportunities to demonstrate readiness and suitability for investment. These criteria could include, but are not limited to, leveraged or other committed funds, site control, permits, project maps and designs, project schedules, or operations and maintenance plans. Such projects should also demonstrate meaningful community consultation. The agencies could require 2-3 other readiness criteria to be met in lieu of a government plan, program, or initiative. All place-based definition activities, whether government aligned or determined to be suitable for investment through readiness criteria, should be required to explicitly benefit LMI and people of color communities or individuals with opportunities to build wealth.

We have concerns that the requirement of a government plan, program, or initiative may exclude community-driven projects ready and worthy of investment. Local governments may not always have a program, plan, or initiative for the targeted census tracts. Smaller jurisdictions in particular often struggle to stay up-to-date on all planning requirements. It would be unfortunate for investment to be precluded from the very communities that may need it most because of lack of local government capacity.

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[41] Silver, Josh. " MAP: Here's Where Changes To CRA Asset Thresholds Will Undermine Community Reinvestment." National Community Reinvestment Coalition. July 2022. https://ncrc.org/map-heres-where-changes-to-cra-asset-thresholds-will-undermine-community-reinvestment/

[42] "Data Spotlight: Challenges in Rural Banking Access." Consumer Financial Protection Bureau. April 2022. https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf

[43] "Third National Climate Assessment: Rural Communities." U.S. Global Change Research Program. 2014. https://nca2014.globalchange.gov/highlights/regions/rural-communities

18. Should the agencies consider any additional criteria to ensure that recovery of disaster areas benefits low- or moderate-income individuals and communities?

The agencies should require that bank activities in designated disaster areas benefit LMI communities, communities of color, or both in order to be eligible for CRA credit. Currently, banks receive CRA credit for any activities conducted in a designated disaster area. However, these activities could largely benefit higher-income communities with more capacity to recover, as we have seen federal aid disproprotionately benefit wealthier communities and wealthier individuals within communities.[44]

19. Does the disaster preparedness and climate resiliency definition appropriately define qualifying activities as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks? How should these activities be tailored to directly benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas? Are other criteria needed to ensure these activities benefit low- or moderate-income individuals and communities?

The definition for disaster preparedness and climate resiliency is appropriate and should be codified as part of the final rule. See Recommendation 1.

Regarding evaluating benefits to priority communities and potential criteria, we recommend ensuring that activities provide a direct, meaningful, and assured benefit to LMI communities and communities of color and to LMI individuals and people of color within those communities. One example of how this could be undertaken is by adapting the following three step process, utilized by the California Air Resources Board for determining benefits to priority populations as part of California Climate Investments: (1) identify the priority population; (2) address a need; and (3) provide a benefit. The agency provides benefit criteria tables for a wide range of climate-related investments that could be adapted for the purpose of this rulemaking.[45] These criteria will help ensure that investments are meeting community-identified needs and directing benefits as intentionally as possible.

In addition to clearly identifying needs and benefits of LMI communities and communities of color, all activities eligible for CRA credit, including those under the disaster preparedness and climate resiliency definition, should be evaluated on other factors tailored to these communities. Some considerations include circumstances in which individuals or communities need grants rather than loans, whether loan structures are helpful or whether loans are even the right option or might be considered predatory, whether programs only work for higher income residents, and if community participation and input were provided.

[44] Hersher, Rebecca. "How Federal Disaster Money Favors The Rich." National Public Radio. March 2019. https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich

[45] "CCI Quantification, Benefits, and Reporting Materials." California Air Resources Board. https://ww2.arb.ca.gov/resources/documents/cci-quantification-benefits-and-reporting-materials

20. Should the agencies include activities that promote energy efficiency as a component of the disaster preparedness and climate resiliency definition? Or should these activities be considered under other definitions, such as affordable housing and community facilities?

Yes, we recommend that energy efficiency measures be included under the disaster preparedness and climate resilience definition. There will be instances in which energy efficiency improvements will benefit affordable housing and community facilities. When the benefits are multiple, the community development data collection can include data fields indicating whether the financing also promoted affordable housing, community facilities, or community infrastructure.

It is important to include energy efficiency under this definition to ensure a wide range of needs are counted as eligible activities. While this list should expressly be identified as non-exhaustive, it is important to provide an illustrative list to ensure both banks and communities have some clarity as to what will receive CRA credit. Eligible energy efficiency activities should encompass, among other measures: residential and commercial water and energy appliances and fixture replacements; weatherization; window replacement; heat pump purchase and installation; and solar photovoltaic installation.

We further recommend, for all activities, that the agencies clarify that only activities that include a dedicated component benefiting households in LMI and communities of color will be considered for CRA credit. A dedicated component could include any targeting measure or program design element intended to ensure participation of or benefits to priority residents beyond the location of the activity within a qualifying census tract. The agencies should also consider potential adverse impacts on LMI communities and communities of color of energy efficiency and weatherization activities, such as the potential to be priced out of existing homes or to fall into predatory situations. For example, the agencies could require lenders to demonstrate that owners of multifamily or any rental property will limit rent increases or abstain from selling the property for a defined period of time. Finally, for programs that provide financing to individual residents for energy efficiency and weatherization upgrades, rather than grants or direct installation, CRA credit should be given only if financing terms are safe, fair, and do not result in unsustainable consumer debt. For example, clear lessons have been learned from the problematic structure of the Property Assessed Clean Energy (PACE) program,[46] as well as the lack of consumer protection incorporated into the program, such as the problematic lien structure and foreclosure risks. These lessons offer the agencies important criteria for carefully assessing what financing models to award CRA credit.

21. Should the agencies include other energy-related activities that are distinct from energy-efficiency improvements in the disaster preparedness and climate resiliency definition? If so, what would this category of activities include and what criteria is needed to ensure a direct benefit to the targeted geographies?

[46] "PACE Energy Efficiency Loans: Good Intentions, Big Risks for Consumers." National Consumer Law Center. September 2016. https://www.nclc.org/issues/pace-energy-efficiency-loans.html

Yes, there are a number of energy-related activities that we believe should be included under the definition of disaster preparedness and climate resiliency. We recommend that activities that promote direct ownership of solar energy systems by residents of LMI communities and communities of color, as well as community-based organizations, should be considered eligible for CRA credit. This could include, for example, utility- or government-run programs that provide grants or no- or low-interest loans for residents of priority communities to install rooftop solar, for which banks could provide upfront capital. It could also include financing for solar projects that are directly owned by community-based groups, such as cooperatives or non-profit entities. For programs that provide financing rather than grants or direct installation, CRA credit should be given only for products with financing terms that are safe, fair, and non-predatory for recipients.

22. Should the agencies consider utility-scale projects, such as certain solar projects, that would benefit residents in targeted census tracts as part of a disaster preparedness and climate resiliency definition?

The agencies can consider awarding partial CRA credit for utility-scale projects if those projects can prove demonstrable financial benefits to LMI households and households of color. This CRA credit should be proportional to the percentage of financial benefit provided to LMI households and households of color. Utility-scale projects typically have access to other funding sources, including federal tax credits and other private financing.[47] However, these projects also have the opportunity to be transformative in communities via job creation, reliability, and energy bill savings for households. If a utility-scale project focuses on providing direct, meaningful, and assured benefits to LMI households and households of color and documentation can verify this targeting, it should receive consideration for CRA credit.

It is important for this CRA credit to be proportional to the benefit provided, not the entire scale of the project. Unintended consequences of having banks meet their entire CRA-related obligation with funding a handful of very large, utility-scale projects would not best serve the purpose of the CRA. However, if CRA credit can be given proportionate to the dollar amount benefit to LMI households or households of color, and all other criteria required under the disaster preparedness and climate resiliency is met, then CRA credit should be considered.

23. Should the agencies include a prong of the disaster preparedness and climate resiliency definition for activities that benefit low- or moderate-income individuals, regardless of whether they reside in one of the targeted geographies? If so, what types of activities should be included under this prong?

Activities should be considered for CRA credit, as long as the activities are clearly benefiting LMI and/or people of color individuals or households, regardless of whether they reside in one of the targeted geographies. This is because there are likely to be geographies where the census tract may be, on average,

[47] Mendelsohn, Michael and Claire Kreycik. "Federal and State Structures to Support Financing Utility-Scale Solar Projects and the Business Models Designed to Utilize Them." National Renewable Energy Laboratory. April 2012. https://www.nrel.gov/docs/fy12osti/48685.pdf

more moderate or higher income but include pockets of communities and individuals in need of investment.

24. Should the agencies qualify activities related to disaster preparedness and climate resiliency in designated disaster areas? If so, are there additional criteria needed to ensure that these activities benefit communities with the fewest resources to address the impacts of future disasters and climate-related risks?

Activities should not be eligible for CRA credit simply because they are in designated disaster areas. Federal disaster zones often include higher-income census tracts with sufficient capital to finance climate resilience and disaster preparedness activities, or at least substantially lesser need than the LMI communities and communities of color.

Question 50. The proposed asset thresholds consider the associated burden related to new regulatory changes and their larger impact on smaller banks, and it balances this with their obligations to meet community credit needs. Are there other asset thresholds that should be considered that strike the appropriate balance of these objectives? Question 51. Should the agencies adopt an asset threshold for small banks that differs from the SBA's size standards of $750 million for purposes of CRA regulations? Is the proposed asset threshold of $600 million appropriate?

The agencies should not raise the small and intermediate small bank asset thresholds as proposed, but should keep them as they have been under current CRA regulations. See Recommendation 5 above.

In this respect, the proposal goes backwards with no justification about how any reduction in burden for these banks would somehow offset the loss of reinvestment activity from a public benefits perspective. The banks impacted have been engaging in community development or service provision for several years without any apparent deleterious impacts. At the very least, the agencies' proposal should expect the same range of reinvestment activity as currently required by CRA regulations for all intermediate small banks and large banks.

Conclusion

This proposal is a welcome step forward in creating a consistent approach across all three regulatory agencies and we appreciate the opportunity to comment in support of finalizing and strengthening the CRA regulations. It is critical that the agencies better address the challenges of communities of color in addition to LMI communities, as originally intended under the CRA, and that those communities have access to safe and affordable investments in climate resilience as they are most likely to be impacted by the ongoing climate crisis. For more information, please contact Monica Palmeira at monica.palmeira@greenlining.org.

Sincerely,

Americans for Financial Reform Education Fund
The Greenlining Institute
Public Citizen