

August 4, 2022

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Via Email to comments@fdic.gov

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Re: RIN 1557-AF15; Docket ID OCC–2022–0002; Docket No. R–1769 & RIN 7100–AG29 – Response to Request for Comment on [Notice of Proposed Rulemaking: Community Reinvestment Act](#)

Dear Acting Chair Gruenberg, Acting Comptroller Hsu, and Chair Powell:

It is a pleasure to submit comments on behalf of [Ceres](#), the [Ceres Accelerator](#) for Sustainable Capital Markets, and the Ceres [Just and Inclusive Economy Team](#) (JIE). Ceres is a nonprofit organization with over 30 years of experience working on climate change with the world’s leading investors and companies to drive sustainability in the bottom line and through ambitious federal and state climate and clean energy policy.

The Ceres Accelerator works to transform the practices and policies that govern capital markets in order to reduce the worst financial impacts of the climate crisis. It spurs capital market influencers to act on climate change as a systemic financial risk, driving the large-scale behavior and systems change needed to achieve a just and sustainable future and a net zero emissions economy. The JIE Team works to incorporate principles of justice, equity and inclusions into Ceres’ programmatic work.

Ceres works with leading global investors and companies. Our Investor Network is currently over 220 investors that collectively manage over \$60 trillion in assets. Ceres is a founding partner of the [Net Zero Asset Managers Initiative](#) and the [Paris Aligned Investor Initiative](#), which includes investors focused on sustainable investments within their portfolios and other assets. Our Company Network includes approximately 60 of the largest global companies with whom we work on an in-depth basis on climate strategy and disclosure, among other issues. While our Company Network includes several of the nation’s largest banks as members, we are responding on behalf of Ceres and the Ceres Accelerator.

As part of our [2022 Climate Risk Scorecard: Assessing U.S. Financial Regulator Action on Climate Financial Risk](#) and consistent with recommendations from the 2021 FSOC [Report on Climate-Related Financial Risk](#), Ceres reviewed the Federal Reserve (Fed), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation’s (FDIC) work assessing climate risks to “financially vulnerable communities.” This interagency notice of proposed rulemaking (NPR) on modernizing the Community Reinvestment Act (CRA) was a major factor in our review of these agencies’ progress in this area. Because climate risk disproportionately affects low- and moderate-income (LMI) communities, communities of color, Native American communities, and other disadvantaged or underserved communities, we were encouraged to see incorporation of climate risk impacts on vulnerable communities in the NPR.

Ceres has previously advocated for the inclusion of climate resiliency and racial justice in the CRA. In a February 2021 comment to the Fed’s advance notice of proposed rulemaking to modernize its CRA rules, [we provided eight suggestions](#) to strengthen CRA through explicit consideration of race and climate resilience. In October 2021, [we submitted a comment strongly supporting](#) the OCC’s proposal to replace its 2020 CRA rules. In that comment, we further urged publication of interagency regulations that respond to climate challenges rooted in systemic racial inequalities, including climate vulnerability and environmental justice, that are primarily confronted by LMI communities of color. As members of the National Community Reinvestment Coalition (NCRC), we have also signed on to various NCRC-led public comments related to CRA alongside many other undersigned organizations.¹

The NPR includes a number of positive developments responsive to comments that Ceres has raised, including:

- A revised definition of “community development” that includes disaster preparedness and climate resiliency.
- CRA consideration for qualifying community development activities provided as part of a proposed illustrative and non-exhaustive list of activities, creating more direction for engaging in more such activities.

¹ See NCRC letter responding to the OCC’s proposal to replace its 2020 CRA rules: <https://www.regulations.gov/comment/OCC-2021-0014-0038>; NCRC position paper on CRA modernization: <https://ncrc.org/position-paper-on-cra-reform/>; NCRC comment letter on Figure Bank’s Charter Application: <https://ncrc.org/ncrc-comment-letter-on-figure-banks-charter-application/>.

- An increased focus on benefits to LMI communities and individuals with an acknowledgment that activities cannot displace or be detrimental to these individuals and communities.
- A focus on measuring the impact of community development activities, as well as establishing benchmarks and metrics to assess the strength of community development financing.
- Increased data collection and reporting.

We appreciate the inclusion of the above issues in the NPR and are eager to engage on these topics to ensure they are thoughtfully included in the final regulation.

We congratulate the Fed, OCC, and FDIC for designing this joint proposal to modernize CRA. The three agencies working together on this regulation is important for the marketplace to receive consistent messages and requirements. The NPR is a welcome step in establishing consistency across all three regulatory agencies. As acting Comptroller of the Currency Michael J. Hsu evoked during a recent Urban Institute panel discussion featuring Vice Chair of the Federal Reserve System Lael Brainard and acting Chairman of the Federal Deposit Insurance Corporation Martin J. Gruenberg, “there’s this saying, faster alone, farther together, and I think that that’s reflected here.”²

In addition, we commend the Fed, OCC, and FDIC for elevating the importance of climate resiliency as an issue area in the NPR, and appreciate the inclusion of the questions related to climate resiliency and disaster preparedness. We were encouraged to hear FDIC Acting Chairman Martin Gruenberg reinforce the inclusion of disaster and climate resilience in the NPR as one of the “ten important provisions in the proposed rule” during his speech at the 2022 Just Economy Conference.³

Although the NPR reflects many important proposals, we believe there are areas the agencies should strengthen to produce an effective final rule. Climate change exacerbates racial and economic inequality and frustrates the purpose of the CRA to end the nation’s long and painful history of lending discrimination against and the resulting disinvestment in communities of color and other financially vulnerable communities. We urge the agencies to strengthen the NPR by explicitly prioritizing racial equity and strengthening the crucial environmental and climate provisions.

² *Modernizing the Community Reinvestment Act: Ensuring Banks Meet the Credit Needs of Their Communities*, URBAN INST. (June 3, 2022), <https://www.urban.org/events/modernizing-community-reinvestment-act-ensuring-banks-meet-credit-needs-their-communities>.

³ *Martin Gruenberg Keynote Address At 2022 Just Economy Conference*, NAT’L CMTY. REINV. COAL. (June 13, 2022), <https://ncrc.org/ncrc-just-economy-conference-keynote-address-by-martin-gruenberg/>.

Below, we provide detailed comments to the proposed rule and responses to the questions posed regarding disaster preparedness and climate resiliency activities. The following high-level summary of these recommendations include:

- (1) **Explicit Inclusion of Race:** CRA exams must explicitly consider the race of the borrower and community. Examiners should **explicitly use race as a metric** in order to ensure that historically redlined communities, and those most vulnerable to climate change, have improved access to credit and services.
- (2) **Climate and Environmental Justice Indicators:** Climate-related financial risk poses an increasing and disproportionate threat to financially vulnerable and historically marginalized communities, particularly communities of color. Banks should leverage available data tools to **understand where climate vulnerable communities are** found within assessment areas and work towards driving investment to those communities.
- (3) **Revised Definition of Community Development Activities:** We support the NPR’s addition of the **disaster preparedness and climate resiliency** definition under community development (CD) activities and an expanded, though non-exhaustive, list of eligible climate-related activities. We propose additional eligible activities for inclusion under the definition. Enhancements to community development definitions are needed to more effectively target activities to communities in need.
- (4) **Measuring Impact of Community Development Activities:** Impact reviews must measure the impact of CD activities, as well as establish benchmarks and metrics to assess the **strength of community development financing**. Improvements to exam rigor and more objectivity in performance measures are needed to reduce ratings inflation, as well as data collection and reporting improvements to provide more insight into bank records of meeting credit and community needs.
- (5) **Community Benefit Agreements:** Public input mechanisms in CRA exams and application reviews must be robust and include consideration of community benefit agreements (CBAs). The final rule should encourage banks to increase community engagement and relationship-building with climate and environmental justice organizations, including through the use of CBAs.
- (6) **Avoid Adverse Impacts to LMI Communities:** Community development activities receiving CRA credit should not be detrimental to LMI individuals and communities. Careful consideration of activities that contribute to demonstrable adverse impacts or disproportionate consequences in LMI census tracts – such as displacement, predatory

financing,⁴ and increased environmental health hazards – **should not receive credit**, and should result in ratings downgrades.

- (7) **Changes to Assessment Areas**: Assessment area changes must sufficiently capture online lending and deposit activity, with particular care given in smaller metropolitan areas and rural counties.
- (8) **No Changes to Asset Threshold**: The final rule should not raise the small and intermediate small bank asset thresholds. The proposed asset threshold and bank classification changes would **significantly decrease CRA responsibility for 20% of all banks**, reducing community development financing and branching in LMI communities.

I. INTRODUCTION

A. Research and Data Demonstrate the CRA’s Benefits

Studies demonstrate that the CRA is making a beneficial difference in leveraging loans, investments, and services in LMI communities. According to analysis by NCRC, banks made more than \$2.58 trillion in home loans to LMI borrowers and \$856 billion in loans to small businesses between 2009 and 2020.⁵ Since its passage in 1977, the CRA has driven \$6 trillion in loans and investments to LMI communities.⁶ Research from the Federal Reserve Bank of Philadelphia shows that the CRA increases small business lending in LMI communities,⁷ and research by the Fed’s current Vice Chair for Supervision Michael Barr demonstrates how the CRA has been effective in enhancing credit for LMI and minority borrowers “at relatively low cost” and contributes to “overcom[ing] market failures.”⁸

In conjunction with increased activity, CRA lending practices have also been implemented in a safe and sound manner. Economists Robert Avery and Kenneth Brevoort found that CRA-covered

⁴ See *Fair Lending*, OFF. OF THE COMPTROLLER OF THE CURRENCY (2022), <https://www.comptrollerofthecurrency.gov/topics/consumers-and-communities/consumer-protection/fair-lending/index-fair-lending.html>.

⁵ *CRA Qualified Lending 2009-2020*, NAT’L CMTY. REINV. COAL. (Apr. 20, 2022), <https://public.tableau.com/app/profile/ncrc.research/viz/CRAQualifiedLending2009-2020/Dashboard1>.

⁶ MANUAL: CRA 101, NAT’L CMTY. REINV. COAL. (2017), https://ncrc.org/wp-content/uploads/2017/11/CRA-101_b.pdf#page=5.

⁷ Lei Ding, EFFECTS OF THE COMMUNITY REINVESTMENT ACT (CRA) ON SMALL BUSINESS LENDING, FED. RES. BANK. OF PHIL. WP 18-27 (Dec. 2018), <https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2018/wp18-27.pdf?la=en>.

⁸ Michael S. Barr, CREDIT WHERE IT COUNTS: THE COMMUNITY REINVESTMENT ACT AND ITS CRITICS, N.Y.U. L. REV. 80, NO. 2, 513-652 (2005), <https://repository.law.umich.edu/articles/60/>.

home lending is safer and more sound than non-CRA covered lending.⁹ According to their analysis, when a larger share of lending was issued by CRA-covered banks than by mortgage companies, neighborhoods experienced lower delinquency rates and less risky lending. A Federal Reserve study likewise reported that CRA-related mortgage loans had delinquency rates lower than average across all 2006 mortgages and significantly lower than those of subprime loans.¹⁰

B. Despite Progress, Lending and Wealth Disparities Persist

Despite progress driven by CRA, lending disparities remain a stark issue and contribute to economic inequality. Analysis by NCRC shows continuing disparities in loan denials by race, and when people of color received home loans, their equity accumulation was less.¹¹ Investigative reporters Emmanuel Martinez and Lauren Kirchner found that loan applicants of color were 40% to 80% more likely to be denied than white counterparts with the disparity reaching 250% in some metropolitan areas.¹² 2020 research also identified lending disparities between black and white business startups, with black startups being denied loans at much higher rates than white startups.¹³

While homeownership serves as an important avenue for building wealth¹⁴ and the transfer of wealth across generations,¹⁵ disparities risk enduring across family life cycles. In 2017, the Urban

⁹ Robert B. Avery and Kenneth P. Brevoort, THE SUBPRIME CRISIS: IS GOVERNMENT HOUSING POLICY TO BLAME?, THE REV. OF ECON. AND STATS. VOL. 97, NO. 2, 352-363 (May 2015), <https://www.jstor.org/stable/43556179>.

¹⁰ FEDERAL RESERVE BULLETIN MORTGAGE MARKET CONDITIONS AND BORROWER OUTCOMES: EVIDENCE FROM THE 2012 HMDA DATA AND MATCHED HMDA-CREDIT RECORD DATA, FED. RES. BULLETIN VOL. 99, NO 4. (Nov. 2013), https://www.federalreserve.gov/pubs/bulletin/2013/pdf/2012_HMDA.pdf.

¹¹ Jason Richardson, Joshua Devine, Jamie Buell and Dedrick Asante-Muhammad, NCRC 2020 HOME MORTGAGE REPORT: EXAMINING SHIFTS DURING COVID-19, NAT'L CMTY. REINV. COAL. (Jan. 2022), <https://www.ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid>.

¹² Emmanuel Martinez and Lauren Kirchner, *The Secret Bias Hidden in Mortgage-Approval Algorithms*, THE MARKUP (Aug. 25, 2021), <https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms>.

¹³ Robert W. Fairlie et al., BLACK AND WHITE: ACCESS TO CAPITAL AMONG MINORITY-OWNED STARTUPS, NAT'L BUREAU OF ECON. RES. WP No. 28154. (Nov. 2020), https://www.nber.org/system/files/working_papers/w28154/w28154.pdf.

¹⁴ Alanna McCargo and Jung Hyun Choi, CLOSING THE GAPS: BUILDING BLACK WEALTH THROUGH HOMEOWNERSHIP, URBAN INST. (Nov. 2020), https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership_1.pdf.

¹⁵ Jung Hyun Choi, Jun Zhu and Laurie Goodman, INTERGENERATIONAL HOMEOWNERSHIP: THE IMPACT OF PARENTAL HOMEOWNERSHIP AND WEALTH ON YOUNG ADULTS' TENURE CHOICES, URBAN INST. (Oct. 2018), https://www.urban.org/sites/default/files/publication/99251/intergenerational_homeownership.pdf.

Institute quantified a 30% homeownership gap between white Americans and Black Americans.¹⁶ Across the U.S., households of color hold a smaller share of housing wealth and own homes of lower value.¹⁷ Studies of 61 metro areas reveal modern-day redlining still being practiced.¹⁸ Analysis of Chicago showed that “68.1% of dollars loaned for housing purchases went to majority-white neighborhoods, while just 8.1% went to majority-black neighborhoods and 8.7% went to majority-Latino neighborhoods.”¹⁹

Lower levels of business ownership among Black households also contributes to the racial wealth gap.²⁰ According to a 2020 Brookings report “Black people represent 12.7% of the U.S. population but only 4.3% of the nation’s 22.2 million business owners.”²¹ Black entrepreneurs are prevented from establishing, expanding, and growing businesses due to limited access to capital.²² Discrimination in lending contributes significantly to racial disparities in small business survival rates, with borrowers of color confronting discrimination throughout various stages of the lending process. An NCRC investigation found that African American testers applying for Payroll Protection Program (PPP) loans for their small businesses during the pandemic were likely to receive less information or encouragement to apply than white testers.²³ Black- and Latin

¹⁶ A REVIEW OF THE STATE OF AND BARRIERS TO MINORITY HOMEOWNERSHIP: STATEMENT OF ALANNA MCCARGO, VP FOR HOUSING FINANCE POLICY, BEFORE THE SUBCOMM. ON HOUS., CMTY. DEV., AND INS., COMM. ON FIN.L SERVS., U.S. HOUSE OF REPS. (May 8, 2019), https://www.urban.org/sites/default/files/publication/100210/mccargo_alanna_barriers_to_minority_homeownership_testimony_0.pdf.

¹⁷ *Tracking Homeownership Wealth Gaps: Is Housing Wealth Equitable in Your City?*, URBAN INST. (Nov. 24, 2021), <https://apps.urban.org/features/tracking-housing-wealth-equity/>.

¹⁸ Aaron Glantz and Emmanuel Martinez, *For people of color, banks are shutting the door to homeownership*, REVEAL NEWS (Feb. 15, 2018), <https://revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>.

¹⁹ Linda Lutton et al., *Where Banks Don’t Lend*, WBEZ CHI. (June 3, 2020), <https://interactive.wbez.org/2020/banking/disparity/>.

²⁰ Kristen Broady et al., *An analysis of financial institutions in Black-majority communities: Black borrowers and depositors face considerable challenges in accessing banking services*, BROOKINGS. (Nov. 2, 2021), <https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/>.

²¹ Andre Perry, Jonathan Rothwell, and David Harshbarger, *FIVE-STAR REVIEWS, ONE-STAR PROFITS: THE DEVALUATION OF BUSINESSES IN BLACK COMMUNITIES*, METRO. POL. AT BROOKINGS. (Feb. 2020), https://www.brookings.edu/wp-content/uploads/2020/02/2020.02_DevOfBizInBlackCommunities_Perry-Rothwell-Harshbarger-final.pdf.

²² Robert W. Fairlie and Alicia M. Robb, *DISPARITIES IN CAPITAL ACCESS BETWEEN MINORITY AND NON-MINORITY-OWNED BUSINESSES: THE TROUBLING REALITY OF CAPITAL LIMITATIONS FACED BY MBES*, U.S. DEPARTMENT OF COMMERCE, MINORITY BUSINESS DEVELOPMENT AGENCY (Jan. 2010), <https://www.mbda.gov/sites/default/files/migrated/files-attachments/DisparitiesinCapitalAccessReport.pdf>.

²³ Anneliese Lederer et al., *LENDING DISCRIMINATION WITHIN THE PAYCHECK PROTECTION PROGRAM*, NAT’L CMTY. REINV. COAL. (July 15, 2020), <https://ncrc.org/lending-discrimination-within-the-paycheck-protection-program/>.

American-owned businesses also had less access to loan modifications. Ultimately, only around 1 in 10 Black and Latinx businesses received assistance they requested under the PPP.²⁴

These persistent lending disparities exacerbates the racial wealth gap. Research from the Fed reveals that the typical White family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family.²⁵ As Mehrsa Baradaran notes in her book, *The Color of Money: Black Banks and the Racial Wealth Gap*, “[w]hen the Emancipation Proclamation was signed in 1863, the black community owned less than 1 percent of the total wealth in America. More than one hundred and fifty years later, that number has barely budged.”²⁶

Although discrimination in lending persists, NCRC reports that 98% of banks pass their CRA exams.²⁷ Federal Reserve Board Governor Lael Brainard delivered a speech in 2020 acknowledging the existing CRA’s shortcomings in fulfilling its mandate:

Even with these critical laws, the legacy of discriminatory lending and systemic inequity in credit access remains in evidence today. The typically minority neighborhoods demarcated in red in the old color-coded maps tend to be characterized by worse economic performance and opportunity even today. Beyond these specific neighborhoods, research and surveys indicate that there are ongoing racial disparities in access to credit.²⁸

Governor Brainard highlights the importance of strengthening CRA to address economic disparities and uphold the spirit of the rule. During a recent Urban Institute panel discussion featuring acting Comptroller of the Currency Michael J. Hsu and acting Chairman of the Federal Deposit Insurance Corporation Martin J. Gruenberg, Governor Brainard set a promising tone for what this NPR can achieve for a modernized interagency CRA rule:

“This is a once in generation opportunity. As was noted, the CRA hasn’t had a substantive rewrite for a quarter century, and we believe that the proposal we put

²⁴ *Federal Stimulus Survey Findings*, GLOBAL STRATEGY GROUP FOR COLOR OF CHANGE AND UNIDOS US. (May 18 2020). <https://theblackresponse.org/wp-content/uploads/2020/05/COC-UnidosUS-Abbreviated-Deck-F05.13.20.pdf>.

²⁵ Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS NOTES. WASH.: BD. OF GOVS. OF THE FED. RES. SYS. (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

²⁶ Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap*, BELKNAP PRESS (2019), <https://www.hup.harvard.edu/catalog.php?isbn=9780674237476>.

²⁷ Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, NAT’L CMTY. REINVESTMENT COAL. (May 27, 2020), <https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>.

²⁸ Governor Lael Brainard, *Strengthening the CRA to Meet the Challenges of Our Time*, BD. OF GOVS. OF THE FED. RES. SYS. (Sept. 21, 2020), <https://www.federalreserve.gov/newsevents/speech/brainard20200921a.htm>.

out will strengthen the CRA, make it updated for today’s banking system, today’s communities, and the future of banking and the way communities develop by strengthening credit, strengthening investments, and strengthening banking services in those communities that have traditionally faced the greatest challenges...”²⁹

In tailoring the CRA regulation to reflect progress of the modern banking system, it must also capture the ongoing challenges faced by LMI communities.

C. Banking Deserts and Lack of Access to Financial Services Risk Exacerbating Racial Wealth Disparities

While the CRA promotes the flow of capital to LMI communities, “unbanked” households continue to be a persistent reality that underscores the challenges of accessing and receiving financial services. The Cleveland Fed, which categorizes the “unbanked” as households with “no checking or savings account at a bank or credit union,” quantifies the rate of “unbanked” U.S. households as 5.4% in 2019, but highlights racial disparities across this group given that, “The likelihood of being unbanked was even higher for some segments of the population, such as low-income and racial and ethnic minority households.”³⁰ A 2019 FDIC survey reinforces such findings by quantifying that unbanked rates for Black and Hispanic households were higher by 2.5% than for White households. Overall, data analysis from the FDIC surveys of unbanked populations show less access to banking for people of color.³¹ The consequences of this unfortunate reality contribute to lasting challenges for these communities to be able to save and build wealth.³²

The closure of bank branches contributes to some of the challenges behind unbanked rates in LMI communities and communities of color. Although the landscape of retail banking demands undergoes expected shifts and changes over time, research suggests trends in the communities where they appear to be closing most often, given that banks in majority black communities

²⁹ *Modernizing the Community Reinvestment Act: Ensuring Banks Meet the Credit Needs of Their Communities*, URBAN INST. (June 3, 2022), <https://www.urban.org/events/modernizing-community-reinvestment-act-ensuring-banks-meet-credit-needs-their-communities>.

³⁰ Paola Boel and Peter Zimmerman, UNBANKED IN AMERICA: A REVIEW OF THE LITERATURE, FED. RES. BANK OF CLEV. (May 26, 2022), <https://www.clevelandfed.org/en/newsroom-and-events/publications/economic-commentary/2022-economic-commentaries/ec-202207-unbanked-in-america-a-review-of-the-literature.aspx>

³¹ HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES, 2019 FDIC SURVEY, FED. DEP. INSUR. CORP. (Oct. 2020), https://economicinclusion.gov/downloads/2019_FDIC_Unbanked_HH_Survey_Report.pdf.

³² Kristen Broady et al., *An analysis of financial institutions in Black-majority communities: Black borrowers and depositors face considerable challenges in accessing banking services*, BROOKINGS. (Nov. 2, 2021), <https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/>.

decreased by 14.6% compared to 9.7% in other communities.³³ As a result, Brookings explains that “Black and Latino or Hispanic people are more likely than white people to depend on high interest financial services like check cashing counters and payday lenders because there are fewer banks in Black and Latino or Hispanic neighborhoods.”³⁴ Analysis by the New York Fed further explains that when branches close, individuals thereby lose access to small business loans and mortgages thwarting necessary investment and entrepreneurship.³⁵

Some bank branch closures stem from an industry shift to digital banking. Recent reports show that “U.S. banks closed a record number of retail branches in 2021 as customers increasingly turn to digital banking and the industry consolidates.”³⁶ In 2021, there were 196.8 million digital banking users in the U.S., comprising 75.4% of the population.³⁷ Although technology and mobile banking can help to address access challenges related to distant proximities to brick-and-mortar bank branches,³⁸ this technology shift poses challenges in broadband and technology access since “those who lack financial resources, internet access or transportation required to bridge the physical and digital distance, brick-and mortar bank branches are vital- particularly for low-income, inner city areas.”³⁹ Bank branches still play an important role in providing access to financial services. According to an FDIC Survey of Household use of Banking and Financial Services, “[p]hysical access to bank branches remains important despite the increase in the use of mobile banking and the decline in the use of bank tellers for account access. Households may rely

³³ Zach Fox et al., *Bank branch closures take greatest toll on majority-black areas*, S&P GLOBAL MARKET INTELLIGENCE. (July 25, 2019), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/bank-branch-closures-take-greatest-toll-on-majority-black-areas-52872925>.

³⁴ Kristen Broady et al., *An analysis of financial institutions in Black-majority communities: Black borrowers and depositors face considerable challenges in accessing banking services*, BROOKINGS. (Nov. 2, 2021), <https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/>.

³⁵ Donald P. Morgan et al., *Banking Deserts, Branch Closings, and Soft Information*, FED. RES. BANK. OF N.Y. (Mar. 7, 2016), <https://libertystreeteconomics.newyorkfed.org/2016/03/banking-deserts-branch-closings-and-soft-information/#.Vt5LhtBYG53>.

³⁶ Hannah Miao, *U.S. banks close record number of retail branches in 2021, Wells Fargo shutter most*, CNBC (Jan. 21, 2022), <https://www.cnbc.com/2022/01/21/banks-close-record-number-of-branches-in-2021-led-by-wells-fargo.html>.

³⁷ *US digital banking users will surpass 200 million in 2022*, BUSINESS INSIDER. (May 10, 2021), <https://www.businessinsider.com/current-state-of-online-banking-industry>.

³⁸ Terri Friedline and Mathieu Despard, *Life in a Banking Desert*, THE ATLANTIC (Mar. 13, 2016), <https://www.theatlantic.com/business/archive/2016/03/banking-desert-ny-fed/473436/>.

³⁹ Kristen Broady, Mac McComas, and Amine Ouazad, *An analysis of financial institutions in Black-majority communities: Black borrowers and depositors face considerable challenges in accessing banking services*, BROOKINGS (November 2, 2021), <https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/>.

on bank branches not only to access an account but also for a variety of other activities, such as resolving a problem or asking about products or services.”⁴⁰

D. Inclusion of Climate Resiliency Activities is Crucial

This is a critical moment, and environmental and climate justice need to be at the forefront of government policy and investments. The most recent IPCC report found that to cap global warming at 1.5 degrees Celsius, we must reach net zero emissions globally by the early 2050s, with emissions peaking by 2025. However, even if we meet this goal, we face a great acceleration and intensification of climate impacts such as hurricanes, wildfires, sea level rise, floods, and droughts. This risk is only increasing in terms of frequency and severity. According to NOAA, in 2021 there were 20 separate weather and climate disaster events where losses exceeded \$1 billion.⁴¹ These climate disasters killed 688 people and cost the United States more than \$145 billion last year.⁴²

These acute and progressive physical risks have the potential to seriously disrupt the financial market as well as the communities they serve. For example, more than 40 percent of Americans live in counties hit by climate disasters in 2021 and more than 80 percent of Americans experienced a heat wave.⁴³ Climate impacts are already manifesting in the largest state economies. In just the last few years, California⁴⁴ has experienced record-breaking wildfires, in both number and size, that have taken hundreds of lives, bankrupted the state’s largest utility, left millions regularly without power and brought home insurability into question. In fact, the Western states are facing a 1,200-year mega-draught. Florida is facing rapidly rising sea levels and now-routine flooding that are eroding coastal property values and wiping out freshwater supplies.⁴⁵

Moreover, due to decades of systemic underinvestment in energy, transit, housing, and water infrastructure; disproportionate pollution burden and environmental injustices; inequitable employment opportunities; and human rights violations, the demographics that are

⁴⁰ HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES, 2019 FDIC SURVEY, FED. DEP. INSUR. CORP. (Oct. 2020), https://economicinclusion.gov/downloads/2019_FDIC_Unbanked_HH_Survey_Report.pdf.

⁴¹ *Billion-Dollar Weather and Climate Disasters*, NOAA (Oct. 10, 2022), <https://www.ncei.noaa.gov/access/billions/>.

⁴² Ayelet Sheffey, *Climate disasters killed 688 people and cost the US more than \$145 billion last year*, BUSINESS INSIDER. (Jan. 11, 2022), <https://www.businessinsider.com/climate-disaster-death-toll-688-people-cost-145-billion-2021-2022-1>.

⁴³ Sarah Kaplan and Andrew Ba Tran, *More than 40 percent of Americans live in counties hit by climate disasters in 2021*, THE WASHINGTON POST. (Jan. 5, 2022), <https://www.washingtonpost.com/climate-environment/2022/01/05/climate-disasters-2021-fires/>.

⁴⁴ *Wildfires destroy thousands of structures each year*, HEADWATERS ECONOMICS, (Nov. 2020), <https://headwaterseconomics.org/natural-hazards/structures-destroyed-by-wildfire/>.

⁴⁵ Bill Lambrecht, *Salt levels in Florida’s groundwater rising at alarming rates; nuke plant is one cause*, HOWARD CENTER FOR INVESTIGATIVE JOURNALISM. (Nov. 23, 2020), <https://cnsmaryland.org/2020/11/23/salt-levels-in-floridas-groundwater-rising-at-alarming-rates-nuke-plant-is-one-cause/>.

disproportionately impacted by these climate disasters are people of color,⁴⁶ girls and women,⁴⁷ and the financially vulnerable.⁴⁸ As a result of climate change and historic injustices, these communities are more likely to experience adverse health impacts,⁴⁹ including poor air quality.⁵⁰ An analysis of 108 U.S. cities found that poor urban neighborhoods are disproportionately hotter than wealthier urban neighborhoods,⁵¹ in some cases by nearly 13 degrees. California's record wildfires caused poor air quality for everyone, but African Americans, who are more likely to have asthma, suffered more.⁵²

Communities of color are also more likely to confront environmental hazards from the disproportionate siting of fossil fuel projects.⁵³ Numerous studies have shown that high-polluting power plants and refineries are more often sited closer to Black communities than white communities, in part because of historic redlining practices.⁵⁴ A recent report by the Center for American Progress found that tracts with low levels of retail lending were neighborhoods exhibiting high levels of environmental risk including exposure to cancer, diesel particulate matter, land surface temperature, and hazardous waste facilities.⁵⁵ Additionally, the report found that areas

⁴⁶ CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS, EPA (July 21, 2022), <https://www.epa.gov/cira/social-vulnerability-report>.

⁴⁷ Daisy Dunne, *Mapped: How climate change disproportionately affects women's health*, CARBON BRIEF (Oct. 9, 2020), <https://www.carbonbrief.org/mapped-how-climate-change-disproportionately-affects-womens-health/>.

⁴⁸ FSOC REPORT ON CLIMATE-RELATED FINANCIAL RISK, FINANCIAL STABILITY OVERSIGHT COUNCIL. (2021), <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf#page=24>.

⁴⁹ DISPARITIES IN THE IMPACT OF AIR POLLUTION, AMERICAN LUNG ASSOCIATION. (Apr. 20, 2020), <https://www.lung.org/clean-air/outdoors/who-is-at-risk/disparities>.

⁵⁰ Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, and Jennifer Richmond-Bryant, DISPARITIES IN DISTRIBUTION OF PARTICULATE MATTER EMISSION SOURCES BY RACE AND POVERTY STATUS, AMERICAN JOURNAL OF PUBLIC HEALTH. (Dec. 16, 2017), <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.304297>.

⁵¹ Jeremy S. Hoffman et al., THE EFFECTS OF HISTORICAL HOUSING POLICIES ON RESIDENT EXPOSURE TO INTRA-URBAN HEAT: A STUDY OF 108 US URBAN AREAS, CLIMATE 8(1), 12 (Jan. 13 2020), <https://doi.org/10.3390/cli8010012>.

⁵² Lee Romney, *Poverty and Racism Leave People More Vulnerable to Wildfire Smoke*, KPBS. (Sept. 7, 2020), <https://www.kpbs.org/news/2020/sep/07/poverty-and-racism-leave-people-more-vulnerable-wi/>.

⁵³ David J. X. Gonzalez, HISTORIC REDLINING AND THE SITING OF OIL AND GAS WELLS IN THE UNITED STATES, J. OF EXPOSURE SCI. & ENVT'L EPIDEMIOLOGY (Mar. 2022), <https://www.nature.com/articles/s41370-022-00434-9.pdf>.

⁵⁴ Daniel Cusick, *Past Racist "Redlining" Practices Increased Climate Burden on Minority Neighborhoods*, SCI. AM. (Jan. 21, 2020), <https://www.scientificamerican.com/article/past-racist-redlining-practices-increased-climate-burden-on-minority-neighborhoods/>.

⁵⁵ Michela Zonta and Caius Z. Willingham, A CRA TO MEET THE CHALLENGE OF CLIMATE CHANGE: ADVANCING THE FIGHT AGAINST ENVIRONMENTAL RACISM, CNTR. FOR AM. PROGRESS (Dec. 2020), <https://www.americanprogress.org/wp-content/uploads/2021/08/CRAclimate-report1.pdf>.

with high exposures to environmental hazards and heat are also areas that feature smaller share of total loans across the metropolitan areas they examined.

Climate risk is an existential threat and, as recently detailed by both the Financial Stability Oversight Council (FSOC)⁵⁶ and Commodity Futures Trading Commission (CFTC)⁵⁷ in separate reports on climate-related financial risk, is one that poses an increasing and disproportionate threat to financially vulnerable and historically marginalized communities.⁵⁸ As stated in the FSOC report:

Black and African American individuals are 40 percent more likely⁵⁹ than non-Black and non-African American individuals to live in areas with the highest projected increases in mortality rates due to climate-driven changes in extreme temperatures. Black and African American individuals are also notably more likely to live in areas with the highest projected increases in childhood asthma diagnoses due to climate-driven changes in particulate air pollution. Hispanic and Latino individuals and American Indian and Alaska Native individuals were substantially

⁵⁶ REPORT ON CLIMATE-RELATED FINANCIAL RISK, FIN. STABILITY OVERSIGHT CNCL. (Oct. 2021), <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf#page=24>.

⁵⁷ MANAGING CLIMATE RISK IN THE U.S. FINANCIAL SYSTEM, U.S. COMDTY. FUT. TRAD. COMM'N (Sept. 2020), <https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf>.

⁵⁸ See also, e.g., Ihab Mikati et al., DISPARITIES IN DISTRIBUTION OF PARTICULATE MATTER EMISSION SOURCES BY RACE AND POVERTY STATUS, AMERICAN JOURNAL OF PUBLIC HEALTH (Apr. 2018), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304297>; A TOXIC RELATIONSHIP EXTREME COASTAL FLOODING AND SUPERFUND SITES, UNION OF CONCERNED SCIENTISTS (July 2020), <https://www.ucsusa.org/sites/default/files/2020-07/a-toxic-relationship.pdf>; Tim Donaghy, RESEARCH BRIEF: ENVIRONMENTAL JUSTICE ACROSS INDUSTRIAL SECTORS, GREENPEACE (Apr. 2021), <https://www.greenpeace.org/usa/wp-content/uploads/2021/04/RSEI-Sectoral-Analysis-Report.pdf>; FUMES ACROSS THE FENCE-LINE, NAACP & CLEAN AIR TASK FORCE (Nov. 2017), https://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf; ANALYSIS: MOST OIL WELLS APPROVED BY GOV. BROWN ARE IN LOW-INCOME AREAS, COMMUNITIES OF COLOR, CENTER FOR BIOLOGICAL DIVERSITY (Aug. 2018), https://www.biologicaldiversity.org/news/press_releases/2018/california-oil-drilling-08-16-2018.php; Brian Bienkowski, *Fracking's Costs Fall Disproportionately on the Poor and Minorities in South Texas*, ENVIRONMENTAL HEALTH NEWS (Feb. 17, 2016), <https://insideclimatenews.org/news/17022016/poor-minorities-carry-burden-fracking-waste-south-texas-eagle-ford-shale/>; DRILLING IN CALIFORNIA: WHO'S AT RISK? NRDC (Oct. 2014), <https://www.nrdc.org/sites/default/files/california-fracking-risks-report.pdf>; Rachel Morello-Frosch et al., THE CLIMATE GAP: INEQUALITIES IN HOW CLIMATE CHANGE HURTS AMERICANS & HOW TO CLOSE THE GAP, USC PROGRAM FOR ENVIRONMENTAL AND REGIONAL EQUITY (May 2009), <https://dornsife.usc.edu/per/climategap/>; *The Green Economy Doesn't Have to Leave Communities of Color Behind*, THE ATLANTIC: RE:THINK & CITI (2020), <https://www.theatlantic.com/sponsored/citi-2020/environmental-justice/3541/>.

⁵⁹ CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS, ENV'T'L PROT. AG. (July 21, 2022). <https://www.epa.gov/cira/social-vulnerability-report>.

more likely than non-Hispanic and non-Latino individuals to live in areas with the highest projected labor hour losses in weather-exposed industries due to climate-driven increases in high-temperature days. American Indian and Alaska Native individuals are much more likely than non-American Indian and non-Alaska Native individuals to live in areas where the highest percentage of land is projected to be inundated due to sea-level rise...

The adverse effects of climate change on financially vulnerable populations may generate long-term impacts on delinquent debts, bankruptcies, credit scores, employment, incomes, and wealth, exacerbating⁶⁰ existing inequities. Financially vulnerable households, businesses, and communities are less likely⁶¹ to have the resources to protect and guard against damage to their properties or adequately deal with loss of income from an adverse climate or weather event. Recovery in the aftermath of a disaster is likely to be more difficult and to take longer for these households, businesses, and communities. Such hardships can adversely affect the economic and financial strength of regions of the country and aspects of the financial system... [A]ctions to address climate-related financial risks could [also] disproportionately impact financially vulnerable communities, exacerbating existing inequities. For instance, as a result of direct adverse climate-related impacts, they could face higher insurance and credit costs or be unable to obtain insurance or credit.

While climate change affects us all, like the global pandemic and resulting economic crisis, it has a disproportionate impact on low-income communities and communities of color. Financial regulators can no longer afford to look at these issues in isolation. Each feeds into the other, with significant populations – especially communities of color – bearing the most severe burdens. The interplay between climate change as a systemic financial risk to the U.S. economy, systemic racism, and Covid-19 pandemic recovery illustrates how none of these issues exist in isolation. Financial regulators are uniquely positioned to take meaningful, coordinated steps to protect capital markets and the economy from climate-related shocks. Bolder and more immediate action is necessary in order to address these issues.

⁶⁰ Caroline Ratcliffe et al., INSULT TO INJURY: NATURAL DISASTERS AND RESIDENTS' FINANCIAL HEALTH, URBAN INST. (Apr. 2019), https://www.urban.org/sites/default/files/publication/100079/insult_to_injury_natural_disasters_2.pdf.

⁶¹ Kelly D. Edmiston, FINANCIAL VULNERABILITY AND PERSONAL FINANCE OUTCOMES OF NATURAL DISASTERS, FED. RES. BANK OF KANSAS CITY (Sept. 2017), <https://www.kansascityfed.org/documents/3809/pdf-Financial%20Vulnerability%20and%20Personal%20Finance%20Outcomes%20of%20Natural%20Disasters.pdf>.

II. SUMMARY OF HIGH-LEVEL RECOMMENDATIONS

A. Explicit Inclusion of Race

CRA exams should explicitly consider the race of the borrower and community. Examiners should explicitly use race as a metric in order to ensure that historically redlined communities, and those most vulnerable to climate change, have improved access to credit and services.

An NCRC national level analysis showed continuing disparities in loan denials by race and when people of color received home loans, their equity accumulation was less.⁶² NCRC asserted in a paper co-authored with the law firm Relman Colfax PLLC that it is possible for changes to the CRA to comply with legal standards if the CRA examined lending by race and ethnicity in geographical areas experiencing ongoing discrimination.⁶³ The paper recommended that on an interagency basis, the federal bank agencies should conduct periodic statistical studies and identify metropolitan areas and rural counties that either experience ongoing discrimination or exhibit significant racial disparities in access to credit. By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes.

See Section III for further discussion of this recommendation.

B. Climate and Environmental Justice Indicators

Climate impacts – both the causes and the consequences – fall harder on communities of color. The social and economic resources available to a community and its underlying vulnerabilities are key factors in how hard it is impacted by a disaster. As a result, these communities are more likely to confront environmental hazards and financial hardship.⁶⁴

Banks should leverage available information to understand where climate-vulnerable communities are found within assessment areas and work towards driving investment to those communities. To that end, the agencies should consider issuing public guidance linked to proposed § __.13(i) that would serve as the reference standard, outlining vetted tools and data the banks should use when making CD decisions under this section. Understanding the risk of a hazard – as well as a community’s exposure and vulnerability to that hazard – is critical to risk management efforts and adaptation strategies, and data is essential to understanding that lending landscape.

⁶² NCRC 2020 HOME MORTGAGE REPORT: EXAMINING SHIFTS DURING COVID-19, NAT’L CMTY. REINV. COAL. (Jan. 2022), <https://www.ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid/>.

⁶³ Brad Blower et al., ADDING ROBUST CONSIDERATION OF RACE TO COMMUNITY REINVESTMENT ACT REGULATIONS: AN ESSENTIAL AND CONSTITUTIONAL PROPOSAL, NAT’L CMTY. REINV. COAL. (Sept. 2021), <https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/>.

⁶⁴ See *supra* Section I(D), *infra* Section III.

Several methodologies for targeting communities that are most vulnerable to climate change already exist. For example, the Center for American Progress conducted an analysis focusing on the Baltimore metropolitan statistical area to illustrate “how race and environmental and climate factors could be incorporated into a set of revised criteria for Community Reinvestment Act examinations” and “boost investment in low-income communities of color.”⁶⁵ The analysis identified these targets by combining available environmental indicators with income and race data, as well as current disinvestment patterns.

Moreover, the Environmental Protection Agency (EPA) and the White House Council on Environmental Quality (CEQ) each have their own interactive environmental justice tool, the Environmental Justice Screening and Mapping Tool (EJScreen)⁶⁶ and the Climate and Economic Justice Screening Tool (beta version),⁶⁷ respectively.⁶⁸ Additionally, the Centers for Disease Control and Prevention (CDC) maintains a Social Vulnerability Index that is used to assess a community’s capacity to prepare for, respond to, and recover from human and natural disasters.

Ceres recommends that the agencies issue a guidance document – similar to the illustrative list of activities – that would help banks identify vulnerable communities and build relationships to drive investment to those communities. The guidance should include recommended tools such as those described above, as well as recommended databases on social vulnerability, financial risk, and geographic hazards, such as FEMA’s flood maps and National Risk Index datasets, NASA’s Disasters Data Pathfinder, and First Street Foundation data and models.⁶⁹

These resources would help banks identify communities that are most exposed and vulnerable to disasters and climate events, and thus most in need of capital for disaster preparedness and climate

⁶⁵ Michela Zonta and Caius Z. Willingham, *A CRA TO MEET THE CHALLENGE OF CLIMATE CHANGE: ADVANCING THE FIGHT AGAINST ENVIRONMENTAL RACISM*, CNTR. FOR AM. PROGRESS (Dec. 2020), <https://www.americanprogress.org/wp-content/uploads/2021/08/CRAclimate-report1.pdf>.

⁶⁶ *EJScreen: Environmental Justice Screening and Mapping Tool*, U.S. ENVT’L PROTC. AG. (Apr. 2022), <https://www.epa.gov/ejscreen>.

⁶⁷ *Climate and Economic Justice Screening Tool (BETA)*, W.H. CNCL. ON ENVT’L QUAL. (Feb. 2022), <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>.

⁶⁸ California has its own EJ screening tool, CalEnviroScreen, which compiles data on 21 indicators across four categories: (1) Exposure; (2) Environmental Effect; (3) Sensitive Population; and (4) Socioeconomic Factors. Scores for each census tract also take into account the cumulative impact of multiple indicators, as communities often face multiple stressors that interact and compound harm. Although CalEnviroScreen does not factor in race, it identifies the disproportionate environmental impact faced by communities of color. *CalEnviroScreen*, CAL. OFF. OF ENVT’L HEALTH HAZARD ASSESS. (2022), <https://oehha.ca.gov/calenviroscreen>.

⁶⁹ Although it may be helpful to have banks use the same tool to assess vulnerable communities, the agencies may still want to include multiple recommendations until a determination on the best available tool for the purposes of CRA use can be made.

resiliency activities.⁷⁰ This guidance should also be regularly updated to reflect the best available science, updated climate and financial risk models, and new data tools as they become available.

See Sections III, V(F), and V(Q) for further discussion of this recommendation.

C. Revised Definition of Community Development Activities

We support the NPR’s addition of the disaster preparedness and climate resiliency definition under community development activities and an expanded, though non-exhaustive, list of eligible climate-related activities. We propose additional eligible activities for inclusion under the definition. Enhancements to community development definitions are needed to more effectively target activities to communities in need, such as inclusion of climate mitigation, future impacts of climate, greater CBA incorporation, provisions to prevent disparate impacts to LMI communities, and provision of partial credit for certain CD activities.

See Section V, and V(F) in particular, for further discussion of this recommendation.

D. Measuring Impact of Community Development Activities

Impact reviews must measure the benefits of CD activities, as well as establish benchmarks and metrics to assess the strength of CD financing. Improvements to exam rigor and greater objectivity in performance measures are needed to reduce ratings inflation, as well as data collection and reporting improvements to provide more insight into bank records of meeting credit and community needs. According to NCRC, approximately 98% of banks pass their CRA exams with just less than 10% receiving an “Outstanding” rating and almost 90% of them receiving a rating of “Satisfactory.”⁷¹ The CRA has successfully leveraged more loans, investments, and services for LMI communities, but it would be more effective in doing so if the ratings system more accurately revealed distinctions in performance.⁷² More banks would be identified as significantly lagging behind their peers, which would motivate them to improve their ratings and increase their reinvestment activity.

⁷⁰ Most currently available data tools do not explicitly factor in race, although they may include indicators that identify communities of color. In the event that the final rule does not require use of race as a metric, we urge the agencies to encourage use of tools and data that factor in race and ethnicity. Communities of color are more likely than other vulnerable populations (such as those with low income, no high school diploma, or over the age of 65) to live in areas with the highest levels of climate change impacts. *See, e.g., CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS*, U.S. ENV’T’L PROTECTION AG. (2021), https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf.

⁷¹ Josh Silver and Jason Richardson, *Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data*, NAT’L CMTY. REINV. COAL. (May 27, 2020), <https://ncrc.org/do-cra-ratings-reflect-differences-in-performance-an-examination-using-federal-reserve-data/>.

⁷² Lei Ding and Leonard I. Nakamura, ‘DON’T KNOW WHAT YOU GOT TILL IT’S GONE’ — THE EFFECTS OF THE COMMUNITY REINVESTMENT ACT (CRA) ON MORTGAGE LENDING IN THE PHILADELPHIA MARKET, FED. RES. BANK OF PHIL. (June 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2991557.

See Sections V(A), (B), (E), (F)(4), and (L) for further discussion of this recommendation.

E. Community Benefit Agreements

Community input in CD activities mechanisms must be robust and include consideration of community benefits agreements (CBAs). The risk of disparate impacts from CD activities increases when the planning process fails to consider the perspectives and needs of the communities in which the activities take place. The final rule should encourage banks to increase meaningful community engagement and relationship-building with climate and environmental justice organizations, including through the use of CBAs. Examiners should also evaluate a bank's compliance with an existing CBA, as well as the community's satisfaction with their participation in the CBA, during CRA exams and application reviews. This would help fulfill the CRA's purpose of directing investments towards historically redlined communities and combat the impact of this discrimination on generations of LMI populations.

See Section V(F)(2) for further discussion of this recommendation.

F. Avoid Adverse Impacts to LMI Communities

Community development activities receiving CRA credit should not be detrimental to LMI individuals and communities. Careful consideration of activities that contribute to demonstrable adverse impacts or disproportionate consequences in LMI census tracts – such as displacement, predatory lending, and increased environmental hazards – should not receive credit, and should result in ratings downgrades. CRA exams and application reviews should include careful consideration of activities that contribute to adverse effects or disproportionate consequences for LMI populations. To assist in this assessment, banks should provide documentations that there was no disparate or disproportionate impact on LMI communities and residents.

Similarly, banks should not receive partial credit for activities that benefit but are not targeted to LMI tracts, including disaster preparedness and climate resiliency. A bona fide intention alone should not qualify an activity as community development, as it could easily lead to abuse and diversion of resources away from LMI communities or LMI-targeted projects. Partial consideration should only be considered for large-scale, essential infrastructure projects that target LMI census tracts, span several census tracts, the LMI tracts comprise a over a majority of the financing or benefit, and there is a demonstrable benefit to those communities and/or residents.

See Sections V(D), (F)(4), (H), (I), (K) for further discussion of this recommendation.

G. Changes to Assessment Areas

Assessment area changes must sufficiently capture online lending and deposit activity.⁷³ While the CRA is helpful with some of the economic disparities our society faces, it does not address some

⁷³ See also NPR at 33,909, 33,918, 33,922, 33,965, 33,982-83, Questions 27, 39-48, 90-103, 127-130.

of the underlying issues relating to access to capital for communities of color and other marginalized communities. As outlined by the Cleveland Fed:

In 2019, 5.4 percent of US households were unbanked, meaning that no one in the household had a checking or savings account at a bank or credit union (FDIC 2020). The likelihood of being unbanked was even higher for some segments of the population, such as low-income and racial and ethnic minority households.⁷⁴

Their analysis also indicted that while there has been a “general improvement over time,” there is still “a lower rate of access to banking services [in the U.S.] than [in] most other developed countries.”

A recent study showed that U.S. banks also closed a record number of retail branches in 2021 as more customers turn to digital banking. According to S&P Global Market Intelligence data, U.S. banks closed nearly 4,000 branches and opened more than 1,000 branches last year – a net of 2,927 branch closures.⁷⁵ As the industry consolidates and customers increase their usage of digital banking, this will highlight another difference with LMI communities where there is generally less access to internet and fewer financial literacy education opportunities.⁷⁶ This trend could be another factor in the greater financial marginalization of already vulnerable communities.

As described above, LMI populations are disproportionately unbanked and under-banked, and generally have lower financial literacy and comfort with digital banking transactions.⁷⁷ Branches continue to play an important role in providing access to financial services for vulnerable communities. In order to replace the informal counseling provided by branch personnel, banks increasing their digital footprint should become more creative in offering counseling and

⁷⁴ Paola Boel and Peter Zimmerman, UNBANKED IN AMERICA: A REVIEW OF THE LITERATURE, FED. RES. BANK OF CLEVE. (May 2022), [https://www.clevelandfed.org/en/newsroom-and-events/publications/economic-commentary/2022-economic-commentaries/ec-202207-unbanked-in-america-a-review-of-the-literature.aspx#:~:text=In%202019%2C%205.4%20percent%20of,credit%20union%20\(FDIC%202020\).&text=The%20likelihood%20of%20being%20unbanked,racial%20and%20ethnic%20minority%20households.](https://www.clevelandfed.org/en/newsroom-and-events/publications/economic-commentary/2022-economic-commentaries/ec-202207-unbanked-in-america-a-review-of-the-literature.aspx#:~:text=In%202019%2C%205.4%20percent%20of,credit%20union%20(FDIC%202020).&text=The%20likelihood%20of%20being%20unbanked,racial%20and%20ethnic%20minority%20households.)

⁷⁵ Zach Fox and Umer Khan, *US bank branch closures increase 38% to new record high in 2021*, S&P GLOBAL MKT. INTL. (Jan. 20, 2022), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-bank-branch-closures-increase-38-to-new-record-high-in-2021-68483121>.

⁷⁶ PERSONS IN LOW-INCOME HOUSEHOLDS HAVE LESS ACCESS TO INTERNET SERVICES, U.S. DEP’T OF HEALTH AND HUM. SERVS. OFF. OF THE ASSIST. SEC’Y FOR PLANNING AND EVAL. (Mar. 2021), <https://aspe.hhs.gov/reports/low-income-internet-access>; THE STATE OF U.S. FINANCIAL CAPABILITY: THE 2018 NATIONAL FINANCIAL CAPABILITY STUDY, FINRA INVEST. FOUND. (June 2019), <https://finrafoundation.org/sites/finrafoundation/files/NFCS-2018-Report-Natl-Findings.pdf>; Marco Angrisani et al., THE RACIAL/ETHNIC GAP IN FINANCIAL LITERACY IN THE POPULATION AND BY INCOME, CONTEMPORARY ECON. POLICY (June 2019), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/coep.12507>; Leora Klapper et al., FINANCIAL LITERACY AROUND THE WORLD: INSIGHTS FROM THE STANDARD & POOR’S RATINGS SERVICES GLOBAL FINANCIAL LITERACY SURVEY, GLOBAL FIN. LIT. CNTR., (May 2016), https://gflec.org/wp-content/uploads/2015/11/3313-Finlit_Report_FINAL-5.11.16.pdf?x70470.

⁷⁷ See Section I(C).

technical assistance. Recent CBAs have included office hours for bank staff at community-based organizations to provide counseling to LMI populations. CD service of this nature is likely to increase in importance over the coming years and thus should be encouraged by a CD service test and assessed in impact reviews.

The agencies should also consider creating deposit-based assessment areas. The agencies recognize that online lenders should have local obligations and should be evaluated on a local basis, and the same requirements should apply to online institutions offering deposits. Although the agencies may not have had the data to develop such an assessment area in time for this NPR, they should commit to the approach NCRC set out. NCRC suggests requiring banks, including online ones, to designate deposit-based assessment areas beyond branch networks that have a threshold level of an institution's deposits (such as 5% or 10%). Otherwise, NCRC suggests the agencies commit to revisiting this important issue in a couple of years when new data on deposits required by the rule has occurred.

Additionally, Ceres supports NCRC's recommendation that the agencies expand the assessment area proposal to include partnerships with banks and non-banks for retail lending. When a bank partners with more than one non-bank, the lending of all the non-banks needs to be totaled together for calculating if the threshold is exceeded for purposes of creating assessment areas. Likewise, the proposal to require banks with 10 or more assessment areas to receive at least a "Low Satisfactory" rating in 60% of the assessment areas to pass their exam overall may not be enough to ensure banks serve smaller urban areas and rural communities. Ceres supports NCRC's recommendation to require banks achieve at least a "Low Satisfactory" rating of 60% in each individual large metropolitan, small metropolitan and rural assessment areas.

H. No Changes to Asset Threshold

The final rule should not raise the small and intermediate small bank asset thresholds. The proposed asset threshold and bank classification changes would significantly decrease CRA responsibility for 20% of all banks, likely reducing community development financing and branching in LMI communities.⁷⁸

As a result of this proposal, over 770 banks that are now intermediate small banks would be reclassified as small banks. These banks would no longer have CD finance responsibilities, resulting in a loss of considerable amounts of CD finance. Based on an NCRC study, community development finance would decline by an estimated \$1.214 billion.⁷⁹ Likewise, 201 banks would

⁷⁸ Josh Silver, *Here's Where Changes to CRA Asset Thresholds Will Undermine Community Reinvestment*, NAT'L CMTY. REINV. COAL. (June 30, 2022), <https://ncrc.org/map-heres-where-changes-to-cra-asset-thresholds-will-undermine-community-reinvestment/>.

⁷⁹ INTERMEDIATE SMALL BANKS: THE FORGOTTEN BUT SIGNIFICANT RESOURCE FOR AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT, NAT'L CMTY. REINV. COAL. (Nov. 2017), <https://www.ncrc.org/intermediate-small-banks-forgotten-significant-resource-affordable-housing-community-development/>.

be reclassified from large banks to intermediate small banks. These banks would no longer have a service test requiring them to pay attention to the branching and service provision in LMI communities.

These changes lack justification in the NPR. The banks impacted have been successfully performing these activities for several years. The agencies' proposal to change these provisions should at the very least expect the same range of reinvestment activity as CRA currently does for all intermediate small and large banks. In this regard, the proposal goes backwards without explaining how any reduction in burden for these banks would somehow offset the loss of reinvestment activity from a public benefits perspective. We urge the agencies to eliminate this aspect of the NPR as it would reduce reinvestment activity, while acknowledging that allowing a more streamlined approach for small and intermediate small banks might relieve some compliance burdens on smaller institutions and CDFIs.

III. THE FINAL RULE SHOULD EXPLICITLY INCORPORATE RACE

Race is the most important predictor of the distribution of environmental hazards and burdens.⁸⁰ Structural and systemic inequalities such as environmental regulation, zoning decisions, and redlining often influence the placement of major pollution sources, including transportation infrastructure and industrial facilities. The decisions made by government entities and industry generally ignore those who experience the environmental and health consequences of these decisions. Often, those are Native Americans, Black Americans, Latino Americans, Arab Americans, Asian Americans, and Pacific Islander Americans. For example, a 2021 study funded by the EPA found that people of color are 2.4 times more likely⁸¹ to be exposed to heavy pollution than whites among different income levels. The causes and consequences⁸² of climate change also

⁸⁰ See, e.g., Kyle Crowder and Liam Downey, INTER-NEIGHBORHOOD MIGRATION, RACE, AND ENVIRONMENTAL HAZARDS: MODELING MICRO-LEVEL PROCESSES OF ENVIRONMENTAL INEQUALITY, AM. J. OF SOCIOLOGY 115(4): 1110-49 (Jan. 2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2908425/>; Lara Cushing et al., RACIAL/ETHNIC DISPARITIES IN CUMULATIVE ENVIRONMENTAL HEALTH IMPACTS IN CALIFORNIA: EVIDENCE FROM A STATEWIDE ENVIRONMENTAL JUSTICE SCREENING TOOL, AM. J. OF PUB. HEALTH VOL. 105, NO. 11 (Nov. 2015), <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.2015.302643>; Lara P. Clark et al., CHANGES IN TRANSPORTATION-RELATED AIR POLLUTION EXPOSURES BY RACE-ETHNICITY AND SOCIOECONOMIC STATUS, ENV'TL HEALTH PERSPECTIVES VOL. 125, NO. 9 (Sept. 2017), <https://ehp.niehs.nih.gov/doi/pdf/10.1289/EHP959>; Robert Bullard et al., TOXIC WASTES AND RACE AT TWENTY, 1987-2007, A REPORT PREPARED FOR UNITED CHURCH OF CHRIST, JUSTICE AND WITNESS MINISTRIES (Mar. 2007), <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>.

⁸¹ See Christopher W. Tessum, PM2.5 POLLUTERS DISPROPORTIONATELY AND SYSTEMICALLY AFFECT PEOPLE OF COLOR IN THE UNITED STATES, SCI. ADV. VOL. 7, NO. 18 (Apr. 2021), <https://www.science.org/doi/10.1126/sciadv.abf4491>.

⁸² See Daniel Cusick, *Past Racist "Redlining" Practices Increased Climate Burden on Minority Neighborhoods*, SCI. AM. (Jan. 21, 2020), <https://www.scientificamerican.com/article/past-racist-redlining-practices-increased-climate-burden-on-minority-neighborhoods/>.

disproportionately burdens communities of color,⁸³ which are less likely to receive financial assistance after natural disasters or investment in climate resiliency or solutions.⁸⁴ Additionally, communities of color who are not low- or moderate-income will be excluded from designation under the rule (and the resources that come with that designation) despite being exposed to many of the same financial and climate burdens.

The proposed rule does not make explicit mention of race, an omission that needs to be rectified if banks are to be held to the requirement to serve all communities. Maps devised by the Homeowners' Loan Corporation (HOLC) were heavily influenced by the racial composition of neighborhoods, setting a foundation for racist assumptions to guide public and private lending. These redlined tracts still see lower levels of investment today, and direct efforts to change this pattern should be a priority in the new rule. This rulemaking is an opportunity to incorporate race into CRA exams and rectify historical racial disparities in lending.

In a recent white paper co-authored with Relman Colfax PLLC, NCRC recommended that performance measures examining lending by race contribute to CRA ratings under a variety of approaches that would pass the strict scrutiny legal standard (if that standard were applied, though we also noted it need not be).⁸⁵ CRA history establishes a precedent for borrower race to be considered by CRA exams. Before the CRA regulatory reforms in 1995, exams utilized data analysis regarding applications from and loans to people of color as part of Factor D, which considered special purpose credit programs.⁸⁶ Changes to the CRA rule would be constitutional – in addition to advancing the CRA's statutory purpose – if exams evaluated lending by race and ethnicity in geographical areas experiencing ongoing discrimination or exhibiting significant racial disparities in lending.

Additionally, we support NCRC's recommendation that the agencies consider developing a category of underserved tracts for the subtests of the CRA exam.⁸⁷ NCRC explains that underserved tracts would be identified via a metric of loans per capita, using households as the denominator in home lending and small businesses as the denominator for small business lending. Tracts in the lowest quintile of loans per capita would be designated as underserved. The study

⁸³ See Stephanie Gagnon, *The Link Between Systemic Racism and Climate Change in the U.S.*, CLIMATE SCORECARD (Sept. 5, 2020), <https://www.climatescorecard.org/2020/09/the-link-between-systemic-racism-and-climate-change-in-the-us/>.

⁸⁴ See Katie Fike, *Natural Disasters, FEMA Aid Widen Racial Wealth Gap*, U. PITT. NEWS SERVS. (Aug. 27, 2018), <https://www.news.pitt.edu/news/natural-disasters-fema-aid-widen-racial-wealth-gap>.

⁸⁵ See Brad Blower et al., *ADDING ROBUST CONSIDERATION OF RACE TO COMMUNITY REINVESTMENT ACT REGULATIONS: AN ESSENTIAL AND CONSTITUTIONAL PROPOSAL*, NAT'L CMTY. REINV. COAL. (Sept. 2021), <https://www.ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/>.

⁸⁶ For example, see the CRA exam of Signet Bank, available at: <https://www.federalreserve.gov/dcca/cra/1996/460024.pdf>.

⁸⁷ See Bruce Mitchell et al., *Adding Underserved Census Tracts As Criterion On CRA Exams*, NAT'L CMTY. REINV. COAL. (Jan. 14, 2020), <https://ncrc.org/adding-underserved-census-tracts-as-criterion-on-cra-exams/>.

found that across the nation, 57% of underserved tract residents were people of color. While most of the underserved tracts were LMI, 1,265 or almost 13% were middle- and upper- income⁸⁸ and also predominantly minority. Using underserved tracts on CRA exams would therefore be another way to increase the focus on communities of color that are not necessarily LMI but receive low levels of lending as a result of the legacy of redlining.

Further, using underserved tracts on CRA exams would have concrete benefits such as remediating health and environmental hazards in those areas by spurring reinvestment, removing hazards and adding greenspace. While overlap would occur among the LMI tract category and the underserved tract category, adding the underserved category to CRA exams would draw bank attention to economically disadvantaged neighborhoods as indicated by the lowest lending levels. These neighborhoods are less likely to be experiencing gentrification and are in need of more private market activity, which is essential for revitalization.

The NCRC white paper identified several other methods for increasing the attention of CRA exams on communities of color. For example, CRA regulations should mandate that assessment areas cannot arbitrarily exclude communities of color just as assessment areas currently cannot capriciously exclude LMI tracts. In addition, on the proposed Retail Services and Products Test, CRA exams should consider innovative Special Purpose Credit Programs that target formerly redlined communities. Finally, CRA exam performance context analysis should identify communities of color in the assessment areas that are underserved and whose needs should be addressed by institutions in the area.

The comprehensive evaluations of people of color and underserved tracts recommended by NCRC would be more effective in rectifying systemic discrimination than the indirect methods in the NPR. However, should this method not be adopted, Home Mortgage Disclosure Act (HMDA) data must be incorporated into CRA exams. The agencies proposed use of HMDA data to produce exam tables of lending by race, but did not incorporate those findings into banks CRA exam ratings. In order to effectively address ongoing discrimination or racial disparities in lending, these findings must have bearing on bank ratings. As described in the NCRC white paper, this can be achieved under current legal standards and should included be in the final rule. Additionally, race and ethnicity data should be incorporated into data on small business lending and should be used as a screen for fair lending reviews. By including race and ethnicity across multiple aspects of CRA examinations, the CRA can better address persistent racial disparities.

IV. INCLUSION OF NATIVE LAND AREAS

Ceres commends the Fed, OCC, and FDIC for the explicit inclusion of questions related to Native Land Areas in the NPR and for elevating the importance of considering Indigenous Peoples and Native American communities as part of CRA. In developing these sections of the final rule, we strongly recommend that the agencies closely collaborate and consult with leaders of Native

⁸⁸ Josh Silver and Jason Richardson, *NCRC Proposal For Underserved Tracts Would Increase Lending In Communities Of Color By Billions Of Dollars*, NAT'L CMTY. REINV. COAL. (July 2020), <https://ncrc.org/ncrc-proposal-for-underserved-tracts-would-increase-lending-in-communities-of-color-by-billions-of-dollars/>.

American organizations and individuals for their guidance and recommendations on how to most impactfully incorporate these considerations into CRA and capture priority areas. Likewise, the final rule should ensure that banks sufficiently engage with these communities and leaders throughout a CD activity process to prevent adverse impacts or infringement on tribal rights. While not an exhaustive list, we defer to the direction of organizations such as the Native American Finance Officers Association (NAFOA),⁸⁹ the Native CDFI Network,⁹⁰ and the Indian Country desk at the Federal Reserve Bank of Minneapolis.⁹¹

V. RESPONSES TO REQUEST FOR FEEDBACK ON DISASTER PREPAREDNESS AND CLIMATE RESILIENCY ACTIVITIES

Until this proposed rule, the CRA has only tacitly addressed disaster recovery, and has failed to address community climate and disaster resilience. We commend the agencies for explicitly including these issues, and hope the final rule further strengthens these additions. Below, we answer the questions posed by the agencies regarding the inclusion of disaster preparedness and climate resiliency activities.

A. *Question 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)?*

The agencies propose reconfiguration of revitalization and stabilization activities to be in one of six categories in order to expand the range of activities qualifying for CRA consideration. Inclusion of these categories, including disaster preparedness and climate resiliency should help qualify new and needed activities for CRA consideration. The agencies propose that the six activities share four common elements: (1) They must benefit LMI census tracts and distressed or underserved nonmetropolitan middle-income census tracts; (2) They must benefit residents, including LMI residents of the targeted areas; (3) They must not displace LMI residents; and (4) They must be conducted in conjunction with a public sector program, plan, or initiative.

Ceres commends the Agencies for developing standards to ensure that place-based community development (CD) activities benefit LMI census tracts or individuals. Geographic targeting to underserved areas is necessary to maintain CRA's focus on formerly redlined and disadvantaged communities. The benefits must also be directed to the most vulnerable and disadvantaged residents of the communities including LMI residents. Moreover, it would be contrary to the goals of CRA to displace LMI residents as a byproduct of these activities. The agencies had a laudable goal of encouraging collaboration among banks and local government agencies, which is not as common as it should be. Combining public subsidies and support with bank financing would generally make community development activities more effective in targeting LMI populations.

⁸⁹ See <https://nafoa.org/>.

⁹⁰ See <https://nativecdfi.org/>.

⁹¹ See <https://www.minneapolisfed.org/indiancountry>.

However, it is not possible to predict whether an activity that meets the other three elements will have a government plan targeted to the particular community development activity. This would prevent CD activities where banks are unable to find a government partner, frustrating the goals of the CRA and preventing disaster preparedness and climate resiliency projects. Ceres therefore urges the agencies to reconsider the requirement that the place-based activities be conducted in conjunction with a government, plan, program or initiative. Instead of a requirement, Ceres supports NCRC's suggestion that collaboration with public agencies should bolster a bank's performance on the impact reviews of the proposed CD tests. The proposal to collect CD data can include data fields such as whether the project incorporated collaboration, the extent of collaboration, whether it was consistent with an initiative, or used public sector subsidies. More extensive collaboration resulting in impactful CD would earn higher points on an impact review.

B. *Question 15: How should the proposals for place-based definitions focus on benefitting residents in targeted census tracts and also ensure that the activities benefit low- or moderate income residents?*

Ceres strongly supports the idea that consideration should only be given to activities for which there is no displacement of LMI residents. There are far too many examples of “urban redevelopment” that have been done at the expense of LMI residents who are forced to leave their homes and neighborhoods. The agencies should provide further clarification on what constitutes displacement of LMI communities and individuals. A final rule that does not adequately protect against displacement would not uphold the CRA's requirement that banks serve the needs of LMI populations. For example, financing housing that may initially be affordable but lacks a plan to prevent rapid rent increases that pushes out LMI tenants is not serving the community's needs for housing. Likewise, other harmful projects such as refineries and waste facilities that are disproportionately placed in LMI neighborhoods and communities of color must not receive credit under the new definition of community development, as such projects would result in the displacement of and other disproportionate impacts on LMI populations by creating unhealthy conditions in these neighborhoods.⁹²

To ensure activities under the place-based definitions focus on and benefit LMI tracts and residents, data on the number of LMI residents benefiting from the revitalization activities should be part of CD data submissions and considered on impact reviews. For example, a bank can document that the activities did not displace LMI residents and that any new large-scale CD activities did not reduce affordable housing units or displace small businesses or farms. In its documentation, the bank could include attestations from public sector or nonprofit partners that displacement did not occur. CBAs would also be an important tool to ensure CD activities are targeted to and benefit LMI communities, while providing the bank guidance and support to this end.⁹³ It is important that LMI communities be involved in the planning and decision-making of significant new projects in their communities.

⁹² See *supra* Section II(B).

⁹³ See *infra* Section V(F)(1).

Additionally, Ceres recommends that the agencies issue a guidance document – similar to the illustrative list of activities – that would help banks identify vulnerable communities and build relationships to drive investment to those communities. The guidance should include recommended tools such as the Council on Environmental Quality’s Climate and Economic Justice Screening Tool. The guidance should also contain recommended databases on social vulnerability, financial risk, and geographic hazards, such as FEMA’s flood maps and National Risk Index datasets, NASA’s Disasters Data Pathfinder, and First Street Foundation data and models.⁹⁴

C. *Question 16:* Should the agencies include certain housing activities as eligible revitalization activities? If so, should housing activities be considered in all, or only certain, targeted geographies, and should there be additional eligibility requirements for these activities?

In general, housing development should be in the affordable housing part of CD. However, Ceres recommends that certain housing activities be included as eligible revitalization activities. This could include housing that is built, repaired, or rehabbed with green building materials, meets LEED certification, is made more energy efficient, or is powered by renewable energy. If revitalization activities are targeted to disaster areas and focused on LMI census tracts, only LMI census tracts within the disaster area should qualify for CRA credit. Any revitalization activities focused on housing should be carefully monitored so it is clear whether disparities in non-housing resources and investments are being adequately addressed, and to prevent displacement of LMI populations.

D. *Question 17:* Should the agencies consider additional requirements for essential community infrastructure projects and essential community facilities to ensure that activities include a benefit to low- or moderate-income residents in the communities served by these projects?

Ceres supports the examples provided by the agencies of community infrastructure and essential community facilities designed to benefit LMI neighborhoods or residents. Ceres further supports the primary purpose standard for essential facilities under which a majority of the dollars benefit LMI people. As this standard might be more difficult to apply to large-scale infrastructure, Ceres supports allocating partial credit.⁹⁵

However, Ceres encourages the agencies to consider such projects holistically. The agencies should require banks to consider whether a project will contribute to climate events, environmental hazards, or other risks that would harm the community, such as displacement or negative health effects.⁹⁶ For example, if a bank provides funding to build a new school, but that school would be

⁹⁴ Although it may be helpful to have banks use the same tool to assess vulnerable communities, the agencies may still want to include multiple recommendations until a determination on the best available tool for the purposes of CRA use can be made.

⁹⁵ See *supra* Section II(F), *infra* Section V(I).

⁹⁶ See *supra* Sections V(F)(3), (4).

located in a flood zone or in an areas where flood events are projected to increase, this activity should not receive CRA credit. Such direct climate and environmental impacts should be considered so as to prevent future displacement of and harm to LMI communities. Other examples include citing of a new utility that will bring new jobs, but will also increase air or water pollution in nearby LMI census tracts, or expansion of an electric grid without provisions ensuring resiliency during heat waves or winter storms.

This consideration may require a cost-benefit analysis of the activity's positive and negative impacts, assessing the long-term economic well-being of the LMI residents and community as a whole. Any such process should involve focused community engagement to ensure the community has all of the relevant facts. CBAs would be a valuable tool to ensure the impacted communities are well-informed and consent to the final outcome.⁹⁷

Additionally, the agencies should consider encouraging banks to weigh whether financing a particular activity will significantly contribute to greenhouse gas emissions and other environmental pollution, even if the project or facility resulting from that activity will not lead to direct impacts on the local LMI community in which the activity is taking place. As events and risks related to financed emissions damage property, impair household and community financial conditions, and reduce services to these communities, banks and insurance companies are becoming more reluctant to serve climate-vulnerable areas, which are disproportionately LMI communities and communities of color, or are increasing risk and rates for borrowers.⁹⁸ This “bluelining” – also referred to as climate or environmental redlining – compounds the burdens LMI communities already face from climate events and historic redlining.⁹⁹

For example, banks in flood-prone coastal areas are much more likely to repackage a mortgage to sell on the financial market, transferring the risk of climate-induced default off the lenders' books and leaving the borrowers with a greater financial risk than they signed on for.¹⁰⁰ Insurance

⁹⁷ See *infra* Section V(F)(2).

⁹⁸ See *supra* Section I(D).

⁹⁹ See, e.g., Hadley Barndollar, 'By design or neglect': Flood, climate hazards threaten MA's redlined neighborhoods, WICKEDLOCAL.COM (June 17, 2021), <https://www.wickedlocal.com/story/regional/massachusetts/2021/06/17/redlining-flood-risk-affordable-housing-neighborhoods-massachusetts-low-income-areas/7324821002/>; Michael D. Berman, FLOOD RISK AND STRUCTURAL ADAPTATION OF MARKETS: AN OUTLINE FOR ACTION, FEDERAL RESERVE BANK OF SAN FRANCISCO COMMUNITY DEVELOPMENT INNOVATION REVIEW, VOL. 14, ISS. 1 (Oct. 2019), https://www.frbsf.org/wp-content/uploads/sites/3/CDIR_vol_14_issue_1_.pdf#page=15 (a former chair of the Mortgage Bankers Association notes that a decline in property value due to increasing flood risks is likely to permeate the financial system, impacting the availability of mortgages and insurance in those areas with a disproportionate adverse impact on LMI communities).

¹⁰⁰ See, e.g., Peyton J. Klein, UNDERWATER MORTGAGES FOR UNDERWATER HOMES: THE ELIMINATION OF SIGNALS IN THE COASTAL LENDING MARKET, VANDERBILT L. REV. VOL. 74 (Oct. 2021), <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=4782&context=vlr>; Bennett McIntosh, *Coastal Banks Shed Risky Mortgages – Putting the Financial System at Risk*, HARVARD MAGAZINE (July 1,

companies are also pulling out of areas with high climate-related disaster risk, while increasing rates in others.¹⁰¹ Nonrenewal of insurance policies leave LMI residents particularly vulnerable, as their remaining options are to proceed with no insurance or to enroll in state insurance that is generally more expensive and provides less coverage. Banks, like insurers, will likely increasingly conclude that the safest approach is to stop extending credit and coverage in communities most vulnerable to climate change, compounding the lack of resources available for climate resilience, mitigation, and recovery.

To combat these issues, the agencies should encourage banks to consider how their financing of activities that contribute to climate change will impact LMI communities access to safe and affordable credit and banking services. As with the above recommendation, this may require weighing the activity's positive and negative impacts, assessing the long-term economic well-being of the LMI residents and community as a whole.

The agencies should examine whether and how to assess these climate impacts and resulting impaired access to credit during a CRA exam, considering the long-term economic well-being of the LMI residents as well as community involvement in the activity. Moreover, the agencies should negatively assess CD activities that contribute to bluelining.¹⁰² These considerations would be appropriate as the CRA should be targeted to financing that may not occur were it not for the incentives supplied by the CRA.

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

Activities in designated disaster areas are eligible for CRA credit regardless of the presence of LMI tracts. This could result in dilution of limited resources intended to benefit LMI communities, providing credit to banks for activities that provide no benefit to these communities. Ceres therefore recommends that the impact review of the CD finance test consider data provided by a bank on the extent to which LMI individuals and communities benefit from bank financing of

2020), <https://www.harvardmagazine.com/2020/07/coastal-banks-are-selling-off-mortgages-threatened-by-rising-seas>.

¹⁰¹ See, e.g., Kevin Simauchi, *Insurance Meltdown Leaves Homeowners Without Policies and at Risk*, BLOOMBERG (Oct. 10, 2020), <https://www.bloomberg.com/news/articles/2022-07-01/insurance-meltdown-sets-louisiana-florida-homeowners-scrambling>; Sean Rayford, *Louisiana's insurance market is collapsing, just in time for hurricane season*, GRIST (June 24, 2022), <https://grist.org/housing/louisiana-homeowner-insurance-hurricane-season/>; Christopher Flavelle, *As Wildfires Get Worse, Insurers Pull Back From Riskiest Areas*, N.Y. TIMES (Aug. 20, 2019), <https://www.nytimes.com/2019/08/20/climate/fire-insurance-renewal.html>; Jake Bittle, *As wildfires worsen, more California farms are deemed too risky to insure*, GRIST (July 28, 2021), <https://grist.org/agriculture/as-wildfires-worsen-more-california-farms-are-deemed-too-risky-to-insure/>; Kim Baldonado, *Insurance Companies Dropping Customers in High-Risk Fire Areas Due to Increasing Number of Wildfires*, NBC LOS ANGELES (Sept. 27, 2021), <https://www.nbclosangeles.com/news/local/insurance-companies-dropping-customers-in-high-risk-fire-areas-due-to-increasing-number-of-wildfires/2701908/>.

¹⁰² See *infra* Section V(F)(1).

disaster recovery activities.¹⁰³ A bank's score on the impact review would be bolstered by disaster recovery financing that targets a higher percentage of LMI individuals and communities. Additionally, CBAs could be used to further enhance and ensure disaster recovery activities are targeted to and benefit LMI communities.¹⁰⁴

F. *Question 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 NPR indicates that disaster preparedness and climate resiliency activities must benefit LMI census tracts. However, it does not indicate whether financing or project efforts must directly benefit LMI individuals in those tracts. The final rule must ensure that financing reaches those LMI households within LMI-designated tracts. The proposed solution to create a separate prong to specifically focus on LMI individuals, regardless of census tract, is a strategy that would better target financing activity within LMI tracts, while also increasing the rule's reach to individuals outside of LMI tracts. Ceres supports a final rule that specifies that CD activities must directly benefit LMI individuals within an LMI tract.

To ensure disaster preparedness and climate resiliency activities directly benefit LMI individuals and communities in the targeted census tract, the final rule should: (1) **include climate and natural disaster mitigation in the definition**; (2) **encourage and formalize CBAs**; (3) **consider future impacts of climate change on LMI communities**; and (4) **not give credit for CD activities that result in disparate impacts on LMI communities**.

1. The Final Rule Should Include Climate and Natural Disaster Mitigation

New York is one of a small number of states that actively examine banks for compliance with state CRA requirements. The New York State Department of Financial Services (NYDFS) has also been a leader in acknowledging the risks posed by climate change to financial institutions and the need for banks and insurance companies to take steps to assess and mitigate such risks. In February 2021, NYDFS released a letter to New York state-chartered banks (Industry Letter) describing how climate resiliency activities could receive consideration as a CD activity during their CRA examination by NYDFS, defining "climate resiliency" in much broader terms than the federal

¹⁰³ See also *infra* Section V(F)(4).

¹⁰⁴ See *infra* Section V(F)(2).

CRA NPR.¹⁰⁵ NYDFS places emphasis on both efforts to reduce greenhouse gas emissions and efforts to adapt to climate change, stating:

[I]nstitutions subject to the New York CRA may receive credit for financing activities that reduce or prevent the emission of greenhouse gases that cause climate change (“climate mitigation”), and adapt to life in a changing climate (“climate adaptation”) (together with climate mitigation, “climate resiliency”).

The NPR focuses primarily on adaptation, defining disaster preparedness and climate resiliency CD activities as efforts to “prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks.” Ceres encourages the agencies to consider broadening the scope of their definition to incorporate climate mitigation.

This definition could include activities that target direct emissions that cause climate change and damage public health (such as replacing conventional CO₂-emitting fossil fuel energy technologies or systems with low- or zero-emissions technology such as wind, solar energy efficiency measures; or new stack scrubber and flaring mitigation technologies and practices), or activities that target less direct emissions that cause climate change and damage public health (such as renewable energy facilities; electric buses; improved public transit; retrofitting urban environments to encourage less car usage while increasing walkability, accessibility, and mitigate climate-related hazards such as flooding; or urban heat island alleviation).

Mitigation activities should be qualified upon providing a demonstrable benefit to the impacted LMI tract, such as decreased energy prices, or protecting against harm, including by promoting the health of that tract. To ensure these activities are directed towards the intended communities and do not harm those communities, data on the number of LMI residents and communities benefiting should be part of CD data submissions and considered on impact reviews.¹⁰⁶

2. *The Final Rule Should Encourage and Formalize CBAs*

The current NPR does not do enough to expand community participation. As described below,¹⁰⁷ the risk of disparate impacts from disaster preparedness and climate resiliency activities increases when the planning process fails to consider the perspectives and needs of the communities in which the activities take place.¹⁰⁸ Meaningful relationship building and community involvement in CD

¹⁰⁵ INDUSTRY LETTER: CRA CONSIDERATION FOR ACTIVITIES THAT CONTRIBUTE TO CLIMATE MITIGATION AND ADAPTATION, N.Y. DEP’T OF FIN. SERVS., (Feb. 9, 2021), https://www.dfs.ny.gov/industry_guidance/industry_letters/il20210209_cra_consideration.

¹⁰⁶ See NPR at 33,915, Question 34; see also *infra* Section V(F)(4).

¹⁰⁷ See *infra* Sections V(F)(3), (4).

¹⁰⁸ See Kelsea Best and Zeynab Jouzi, CLIMATE GENTRIFICATION: METHODS, GAPS, AND FRAMEWORK FOR FUTURE RESEARCH, FRONTIERS IN CLIMATE VOL. 4, ART. 828067 (Mar. 2022), <https://www.frontiersin.org/articles/10.3389/fclim.2022.828067/full> (surveying 12 recent papers on climate

activities, such as by groups representing the vulnerable populations, is critical to ensuring meaningful implementation of the CRA regulations.

However, the NPR is silent on how banks should participate in such community engagement. In particular, the NPR fails to ensure that communities have a mechanism by which to hold banks accountable to their CRA obligations, and that CD activities benefit without adversely impacting LMI communities and communities of color. The final rule should therefore include more explicit parameters related to community engagement and relationship building, including in the context of disaster preparedness and climate resiliency CD activities.¹⁰⁹ The agencies should encourage and formalize the use of binding community engagement practices, as they are powerful tools for communities to outline their local financial needs.

For example, the final rule should reflect that CRA exams will include an evaluation of adherence to established community benefits agreements (CBAs). Historically, communities and banks have voluntarily entered into CBAs,¹¹⁰ which allow communities to formalize and negotiate agreements that detail how a bank will meet its CRA obligations for a given CD activity. While the final rule does not need to outline a framework for CBAs, it is important that it indicate key factors within CBAs. Specifically, CBAs under § __.13 should include discussion of climate, geography, income, and race, and demonstrate the opportunities provided for communities to have a say in what investments best suit their needs. A CBA should allow community groups to define what measures are most likely to deliver benefits and avoid exclusion or displacement.

The final rule should also require banks to publicly identify the organizations with which they are establishing CBAs. This would help ensure that banks are engaging with organizations that best represent the community, and not cherry-picking organizations that would ask for less than what that community needs and what other organizations would request. Likewise, banks should describe their outreach to and engagements with organizations, including where and how these efforts were made, how banks responded, and any changes made in response to community requests.

Additionally, CRA examiners should review bank compliance with existing CBAs in during CRA exams and application considerations. Examiners should afford significant weight to comments or objections submitted by community groups, particularly those representing LMI residents or climate-vulnerable populations. This would further ensure accountability, providing communities

gentrification and noting that “where local residents have no voice in local governance, they cannot effectively advocate for their benefits, and consequently their needs can be overlooked”).

¹⁰⁹ See also NPR at 33,993, Question 146.

¹¹⁰ See Alexandria Robinson, *Explainer: How NCRC Brings Banks And Local Leaders Together For Community Benefits Agreements*, NAT’L CMTY. REINV. COAL. (Sept. 11, 2019), <https://ncrc.org/explainer-how-ncrc-brings-banks-and-local-leaders-together-for-community-benefits-agreements/>.

with a method of recourse should a bank not uphold their commitments as well as enhancing the agencies' approach in considering the effect of CRA performance on bank applications.¹¹¹

3. *The Final Rule Should Consider Future Impacts of Climate Change When Qualifying a CD Activity*

As discussed above, the proposed definition for climate resiliency and disaster CD activity appears to focus mainly on adaptation (efforts to “prepare for, adapt to, and withstand... climate-related risks”) rather than mitigation.¹¹² The agencies should also consider the future impacts of climate change when determining whether an activity qualifies as a CD activity.¹¹³ Providing guidance in this area could also help clarify potential conflicts for industry sponsoring these projects. For example, should repetitive loss homes that are damaged after a flood or homes that are in areas of high flood risk qualify for rehabilitation as a CD activity if climate change or increasing natural disasters in the area makes the likelihood of similar or worse damage in the future is high?

Other examples the agencies and banks should consider include: fortifying or rehabilitating homes or other infrastructure that are affordable now, but might not be in the future due to climate change or increased natural disasters; building new homes or other infrastructure in areas that will be impacted by climate change or increased natural disasters in the future; providing assistance for loans, insurance, mitigation for environmental hazards, or energy efficiency upgrades to homes or other infrastructure in areas that will be impacted by climate change or increased natural disasters in the future; funding new or rehabilitating existing affordable housing developments that don't factor in green building practices; funding small farms that do not use sustainable practices; or CD activities that create jobs for LMI communities but the activity finances a project that contributes to climate change or compounding local socioenvironmental harms.

Yet, as described below,¹¹⁴ the activities that do qualify as CD in such areas shouldn't result in displacement or other disparate impact on the communities, such as forced home buyouts or pricing out LMI residents. Some activities could also prevent or hinder insurability, either by insurers pulling out of the market or rate becoming unaffordable. Currently, there are few policies or programs to help build financial resilience to natural disasters or climate events among LMI communities, which require sufficient liquid resources for recovery.¹¹⁵ LMI households struggle

¹¹¹ See also NPR at 33,993, Question 146. Section 25.31(d) states that a bank's “record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.”

¹¹² See *supra* Section V(F)(1) (Ceres encourages the agencies to look to the definition of “climate resiliency” from the NYDFS to include “climate mitigation efforts”).

¹¹³ See NPR at 33,898, 33,907, Questions 8, 17, and 19.

¹¹⁴ See *infra* Section V(F)(4).

¹¹⁵ See, e.g., WRITTEN TESTIMONY OF CAROLYN KOUSKY, EXECUTIVE DIRECTOR OF THE WHARTON RISK CTR., UNIV. OF PENN., AT THE U.S. HOUSE OF REPRESENTATIVES COMM. ON FIN. SERVS. HEARING ON REAUTHORIZATION & REFORM OF THE NAT'L FLOOD INS. PROG. (May 25, 2022), <https://www.congress.gov/117/meeting/house/114847/witnesses/HMTG-117-BA04-Wstate-KouskyC-20220525.pdf>.

with access to all four primary sources for such funds: savings, insurance, credit, and aid. While these risks threaten to make insurance more expensive and less available while stressing federal and state aid budgets,¹¹⁶ greater investments in risk reduction can reduce the financial burden on LMI households and businesses. As environmental hazard risks decrease, it is easier and cheaper to insure against those risks. Pre-disaster evaluation, planning, and prioritization of where CD activities will occur can assist implementation of risk reduction, which will help mitigate both future impacts of climate change as well as burdens on the LMI communities experiencing those impacts.

Ceres believes that some or all of the above should be considered in making CD qualifying decisions. However, agency deliberations on any such guidance should involve careful policy deliberations that encompasses community needs as well as the best available climate and environmental science. In deciding whether activities that consider future impacts will qualify, or whether activities that do not consider these future impacts should fail to qualify, the agencies should incorporate comprehensive discussions with community development organizations to protect against climate and weather redlining. A final decision to qualify such a specific activity must also incorporate those views and needs, as should the bank's decision to implement such an activity in the first place.¹¹⁷

4. *The Final Rule Should Not Give Credit for CD Activities that Result in Disparate Impacts to LMI Communities or Climate Redlining*

CD activities receiving CRA credit should not be detrimental to LMI individuals and communities.¹¹⁸ Although the proposed definition of disaster preparedness and climate resiliency activities states that these activities must “not displace or exclude low- or moderate-income residents in the targeted census tracts,”¹¹⁹ other forms of incidental harm may occur if precautions are not taken. It is imperative that LMI communities are not adversely effected by such activities, even if displacement or exclusion does not occur. As described above, LMI communities and communities of color disproportionately experience the overall effects of climate change and environmental hazards, as well as the localized burdens that contribute to these impacts and their consequences.¹²⁰

Redlining and historical discrimination has resulted in disproportionate placement of harmful infrastructure such as fossil fuel and waste facilities in LMI communities and communities of

¹¹⁶ According to the Government Accountability Office, the federal government spent at least \$450 billion on disaster assistance between 2005 and 2019. *Climate Change: Opportunities to Reduce Federal Fiscal Exposure*, U.S. GOV'T ACCOUNTABILITY OFF. (June 11, 2019), <https://www.gao.gov/products/gao-19-625t>.

¹¹⁷ See *supra* Section V(F)(2).

¹¹⁸ See also Notice of Proposed Rulemaking: Community Reinvestment Act, 87 Fed. Reg. 33,884, 33,907, Question 15 (NPR).

¹¹⁹ See NPR at 34,020, § __.13(h).

¹²⁰ See *supra* Section I(D).

color, which increase air pollution and other environmental toxins in those communities.¹²¹ African Americans are more likely to live in close proximity to refineries, and are overwhelmingly more likely to live in communities next to commercial facilities whose noise, odor, traffic, or emissions directly affect the population.¹²² LMI communities and communities of color are also more likely to live in areas with low land cover and high-heat risk, a problem that is greatly exacerbated by climate change and contributes large racial disparities in heat-related deaths.¹²³

CRA exams and application reviews should explicitly include careful consideration of activities that contribute to adverse effects or disproportionate consequences in LMI census tracts – such as displacement, predatory lending, and increased environmental hazards. Awareness of disparate impacts is crucial, as facially neutral factors or CD activities that appear to provide a benefit to a community may nonetheless produce discriminatory results. Banks should also take reasonable steps to provide limited English proficiency (LEP) persons meaningful access to the CD activities and through the process to ensure LEP communities understand the activity and are not adversely affected by the activity. This can include translations and interpretations of grants, CBAs, meeting minutes, contracts, and conversations. Activities that result in disparate impacts should not receive CRA credit, and should have a negative impact on a banks' CRA rating.

Likewise, data on the number of LMI residents and communities benefiting from climate resiliency and natural disaster preparedness activities should be part of CD data submissions and considered on impact reviews.¹²⁴ In order to demonstrate that there was no disparate or disproportionate impact on LMI communities and residents,¹²⁵ the bank can document that the activities did not have such an impact through, for example, attestations from community partners and the public sector businesses engaged for the project. Data on a household or individual level would better ensure that CRA credit is earned only for projects that serve to

¹²¹ See, e.g., Seth Borenstein, *Climate change up close: Southern, poor counties to suffer*, AP (June 29, 2017), <https://apnews.com/article/nv-state-wire-mo-state-wire-ar-state-wire-mi-state-wire-tx-state-wire-d45a658e7b894f61a0627975da023e41>; Solomon Hsiang et al., ESTIMATING ECONOMIC DAMAGE FROM CLIMATE CHANGE IN THE UNITED STATES, SCIENCE 356 (6345), 1362-1369 (2017), <https://spia.princeton.edu/system/files/research/documents/Sol%20Hsiang.%20Estimating%20economic%20damage%20of%20climate%20change%20in%20the%20US.pdf>.

¹²² See, e.g., FUMES ACROSS THE FENCE-LINE, NAACP & CLEAN AIR TASK FORCE (Nov. 2017), https://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf

¹²³ See, e.g., Bill Jesdale et al., THE RACIAL/ETHNIC DISTRIBUTION OF HEAT RISK-RELATED LAND COVER IN RELATION TO RESIDENTIAL SEGREGATION, ENVIRONMENTAL HEALTH PERSPECTIVES VOL. 121, No. 7 (July 2013), <https://ehp.niehs.nih.gov/doi/10.1289/ehp.1205919> (“Land cover was associated with segregation within each racial/ethnic group... [N]on-Hispanic blacks were 52% more likely..., non-Hispanic Asians 32% more likely..., and Hispanics 21% more likely ... to live in [heat risk-related land cover] conditions compared with non-Hispanic whites.”).

¹²⁴ See also NPR at 33,915, Question 34.

¹²⁵ See, e.g., Jesse Keenan et al., CLIMATE ADAPTATION INVESTMENT AND THE COMMUNITY REINVESTMENT ACT, HARVARD U. & THE FED. RES. BANK OF SAN FRAN. (June 2019), <https://www.frbsf.org/community-development/wp-content/uploads/sites/3/climate-adaptation-investment-and-the-community-reinvestment-act.pdf>.

directly improve disaster preparedness and climate resiliency for the most vulnerable populations. Other examples to document non-disparate impact would be activity-specific, such as calculating the number of LMI residents, affordable housing units, and small businesses before and after a community infrastructure project to improve energy efficiency.

Additionally, if a bank elects to have an affiliate's activities considered for CRA lending purposes, all loans of all types and in all areas should be considered.¹²⁶ If some affiliate activity harms LMI communities or are discriminatory, the bank should not have the option to exclude those activities from consideration and those activities should have a negative effect on the bank's CRA rating.

For example, a \$1.1 billion flood wall proposal in Charleston, South Carolina to protect vulnerable coastal land in higher income areas is projected to reduce the risk of damage from storm surge by more than 10 times its price tag.¹²⁷ However, it may leave the surrounding LMI communities more vulnerable to flooding than they are now. The options for the impacted communities under the proposal are unclear, but may include raising houses above flood-level, floodproofing buildings, or offers to buy out affected properties. But these solutions were not formed with input from the community and would likely result in further displacement as "the places [where flooding is]n't as bad are a lot less affordable." Residents cite as the source of this disconnect a lack of community engagement in the early stages of the proposal. And when community engagement did occur, it was "offered ... through methods that many in the [impacted communities] were unable to access [during the pandemic], like virtual webinars."

Although not a CD activity, this example shows not only the importance of working with the impacted community on climate resiliency and natural disaster preparedness projects,¹²⁸ but the potential for such projects to result in redlining that adversely impacts the very communities the CRA was intended to benefit.

The illustrative list of eligible CRA activities included in the final rule should clearly describe activities that are harmful to communities as well as those that benefit communities, ensuring banks are aware of which will qualify for credit and which will not. Similarly, the public database proposed by the NPR collecting CD data from large banks should include data fields concerning the numbers and percentages of LMI families or households benefiting from these activities.¹²⁹ Other data fields could capture benefits and detriments, such as improvements in energy efficiency or decreases in neighborhood heat associated with greenspace. Over time, such

¹²⁶ See also NPR at 33,927, Question 54.

¹²⁷ See John Ramsey, *As Charleston sea wall plan heads through Congress, local doubts linger*, THE POST AND COURIER (July 16, 2022), https://www.postandcourier.com/environment/as-charleston-sea-wall-plan-heads-through-congress-local-doubts-linger/article_529ea92c-fca3-11ec-a327-a3ecfc994d25.html; Skyler Baldwin, *Proposed sea wall project could leave low-income areas vulnerable*, CHARLESTON CITY PAPER (Sept. 29, 2021), <https://charlestoncitypaper.com/proposed-sea-wall-project-could-leave-low-income-areas-vulnerable/>.

¹²⁸ See *supra* Section V(F)(2).

¹²⁹ See also NPR at 33,912, 33,915, Questions 33, 34.

data would allow examiners to gain a better sense of which activities are most impactful based on standard measures associated with an activity.

Ceres strongly supports only providing CRA credit for activities where there is no disparate or disproportionate impact on LMI communities and residents, and further that activities that do have disparate or disproportionate impact on LMI communities and residents results in a negative impact on the CRA exam rating.

G. *Question 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?*

Activities that promote energy efficiency are important in reducing costs to consumers. Energy efficiency activities may include weatherization, insulation, sealing ducts, energy storage, dynamic HVAC optimization scheduling programs, and replacement of roofing, appliances and fixtures, windows, heating and cooling systems, hot water heaters, and light bulbs and fixtures. Utility and municipal financing could qualify where the loans benefit LMI tracts if such loans are favorable to the borrower – whether an LMI individual, community organization, or municipality.¹³⁰ If the agencies decide to qualify such “pay-as-you-go” loans, there should be a requirement to include strict consumer protection provisions so as to avoid predatory lending. These examples and others should be included in the non-exhaustive, illustrative list of qualifying CD activities the agencies will publish with the final rule.

Ceres strongly supports the inclusion of energy efficiency activities as components of both definitions. Energy efficiency activities fit well under both the disaster preparedness and climate resiliency definition as well as the affordable housing and community facilities definition, as such improvements will benefit affordable housing, community facilities, and LMI individuals by reducing energy costs and consumption, provide extended safe hours in times of extreme temperatures, and protect against events such as blizzard-induced blackouts. However, consideration for such activities must be conditioned on whether they benefit LMI individuals or communities. If a given activity benefits both definitions, the CD data collection will indicate such, boosting the bank’s performance in its impact review.

¹³⁰ See, e.g., David Tucker, *Financing Energy Efficiency for Municipal Electric Utility Customers in North Carolina*, UNC ENV’T L. FIN. CTR. (June 9, 2016), <https://efc.web.unc.edu/2016/06/09/financing-energy-efficiency-nc/>.

H. *Question 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?*

Energy-related activities that are distinct from energy-efficiency improvements and should be included in the disaster preparedness and climate resiliency definition include renewable energy projects. These activities are important to mitigating future climate-related events, such as heat wave-induced blackouts, and reduce peak demand by generating electricity that translates into lower energy usage from the utility and a lower energy bill for the consumer. Renewable energy sources such as solar and wind should be considered under energy-related activities if its use is intended to and would benefit LMI individuals and/or LMI communities. This includes distributed renewable energy, distributed storage, and demand response technologies, which would help resiliency at both the individual user level and the system level by avoid system overload during severe seasonal peaks.

Ceres strongly supports the inclusion of other energy-related activities as components of both the disaster preparedness and climate resiliency definition as well as the affordable housing and community facilities definition, as such improvements could benefit affordable housing, community facilities, and LMI individuals and communities. However, consideration for such activities must be conditioned on whether they benefit LMI individuals or communities. To ensure direct benefit to targeted LMI tracts, banks should prepare documentation from CRA exams that identifies the individuals and/or communities that benefitted from these activities using verifiable data, such as the number of households that receive solar energy and a demonstrable decrease in those energy bills. Similarly, if an activity only partially benefits an LMI tract, the bank should only receive partial consideration for that activity.¹³¹

I. *Question 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?*

Utility-scale projects are important to addressing the overarching problem of climate-related disasters that disproportionately affect LMI communities and communities of color. Provided these activities do not displace LMI individuals, such projects would not only have the benefit of fostering climate resiliency in the area, but would also provide jobs.

¹³¹ See *supra* Section II(F), *infra* V(I). In order to prevent abuse and diversion of resources from LMI communities and LMI-target projects, partial consideration should only be considered for large-scale, essential energy-related infrastructure that targets LMI census tracts, spans several census tracts, the LMI tracts comprise at least a majority of the financing, and there is a demonstrable benefit to those communities and/or residents. If an activity does not meet these requirements, it will not qualify. If it does, only the percentage financing LMI tracts will qualify as community development.

However, to avoid diluting limited resources, such projects should specifically target LMI census tracts, have a demonstrable and documented benefit to those communities, and comprise a majority of the project financing. As described above,¹³² if a utility-scale project does not meet these requirements, it should not qualify as a CD activity, and where such a project does meet these requirements, only partial credit should be given (i.e. only the percentage benefitting LMI tracts should qualify). Moreover, as explained previously,¹³³ utility-scale projects should not qualify, and should have a negative impact on CRA ratings, if the project results in a disparate or disproportionate impact on LMI communities or individuals.

J. *Question 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?*

LMI individuals in middle- and upper-income census tracts also need assistance to prepare for natural disasters and climate-related events. While the communities in which these individuals live may have more resources than LMI communities to address the effects of severe weather, these individuals may not with respect to their own homes. These activities could include measures to improve energy efficiency and access to affordable, sustainable building materials for rehabilitation or home improvements. In order to prevent dilution of resources intended for LMI communities, this prong should only benefit individual LMI persons or households. Such qualification should include strict constraints and require documentation of the benefit recipients to avoid abuse and dilution of limited resources.

K. *Question 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?*

The agencies could qualify activities related to disaster preparedness and climate resiliency in designated disaster areas, with strict and defined constraints on that qualification to avoid abuse and dilution of limited resources. LMI individuals in middle- and upper-income census tracts can benefit from economic development to improve prepare for natural disasters and climate-related events. Additionally, areas that are today designated as disaster areas are rapidly evolving as weather- and climate-related disaster increase in intensity, frequency, and range. Allowing consideration for resiliency activities would cover LMI individuals and communities that may

¹³² See *supra* Sections II(G), V(H).

¹³³ See *supra* Section V(F)(4).

otherwise be excluded.¹³⁴ However, the agencies should require evidence that these activities will reach those individuals and communities that are the most resource-constrained.

As with the energy-related and utility-scale activities, such projects must specifically target LMI census tracts, have a demonstrable and documented benefit to those communities, and LMI tracts must comprise a high percentage the project financing, such as 70%. Moreover, such projects should only receive partial credit, with only the percentage benefitting LMI tracts qualifying. For example, if an activity benefits ten census tracts and only seven of those tracts are LMI, then 70% of the financing would qualify as a CD activity, not 100%. Full credit would inflate the CD ratio in the proposed CD financing test and would encourage banks to finance disaster preparedness and climate resiliency activities that do not explicitly benefit LMI communities as contemplated under this definition.¹³⁵

Because activities in designated disaster areas are eligible for CRA credit regardless of the presence of LMI tracts, the threshold for qualifying disaster and climate resiliency projects in designated disaster areas should be high and carefully monitored. To further combat the potential for abuse in this area, the agencies should include multiple examples of such activities in the illustrative list that will be published with the final rule.

L. *Question 31: Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?*

In addition to the activities described through Section IV, the New York CRA provides concrete examples of activities that support climate resiliency and would receive credit from NYDFS during a CRA exam. The non-exhaustive list includes:

- renewable energy, energy-efficiency, and water conservation equipment or projects for affordable housing, to reduce utility payments for LMI tenants, or community facilities, including solar panels, geothermal heat pumps, battery storage, improving building envelope insulation, and lighting, window, and appliance upgrades;
- community solar projects that provide energy to an affordable housing project or a community facility that has a community development purpose;
- microgrid or battery storage projects in LMI areas with high flood and/or wind risk, thereby reducing risks of power loss due to flooding and high winds;

¹³⁴ The agencies could also consider only qualifying these activities if they benefit specifically low-income individuals or communities, as opposed to LMI individuals or communities. Another option could be to restrict qualification to activities serving underserved tracts as proposed by NCRC. *See supra* Section III; *see also* Silver, *NCRC Proposal For Underserved Tracts Would Increase Lending In Communities Of Color By Billions Of Dollars* (July 2020).

¹³⁵ *See* NPR at 34,020, § __.13(i) (“The activities benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts”).

- projects addressing flooding or sewer issues, or reducing stormwater runoffs such as new or rehabilitated sewer lines, levees, and storm drains that primarily benefit LMI geographies;
- flood resilience activities for multifamily buildings offering affordable housing, such as building elevation and relocation and installation of sump pumps; and
- installation of air conditioning in multifamily buildings offering affordable housing, to reduce heat risks and utility payments for LMI residents.¹³⁶

For many banks, climate resiliency finance will be unfamiliar territory. In order to encourage participation by banks of all sizes, it is important to have a list of activities that would receive CRA consideration. We support the NPR’s proposal to release a publicly available illustrative, non-exhaustive list of activities eligible for CRA consideration in conjunction with the release of the revised regulations, and encourage the agencies to include examples of climate resiliency activities such as those provided by NYDFS.

M. *Question 34.* For the proposed impact review factors for activities serving geographic areas with high community development needs, should the agencies include persistent poverty counties, high poverty census tracts, or areas with low levels of community development financing? Should all geographic designations be included or some combination? What considerations should the agencies take in defining these categories and updating a list of geographies for these categories?

The NPR proposes consideration of the impact and responsiveness of a bank’s community development activities using ten factors.¹³⁷ Among these are whether the activities: “(1) Serve persistent poverty counties, defined as counties or county-equivalents that have had poverty rates of 20 percent or more for the past 30 years, as measured by the most recent decennial censuses; [or] (2) Serve geographic areas with low levels of community development financing.” The factors also include whether an activity serves low-income individuals and families. Ceres strongly supports giving emphasis to activities that serve the poorest communities and individuals that are often communities of color. These communities are also often the most vulnerable to the effects of climate change, including flooding caused by natural hazards. Community development activities in these areas can often have the greatest impact.

¹³⁶ INDUSTRY LETTER: CRA CONSIDERATION FOR ACTIVITIES THAT CONTRIBUTE TO CLIMATE MITIGATION AND ADAPTATION, N.Y. DEP’T OF FIN. SERVS., (Feb. 9, 2021), https://www.dfs.ny.gov/industry_guidance/industry_letters/il20210209_cra_consideration.

¹³⁷ See NPR at 34,021, § __.15.

NCRC previously found that underserved counties as measured by low levels of retail lending had disproportionately high percentages of African Americans.¹³⁸ It is likely that this would be the case as well in counties with low levels of community development financing. Therefore, it is probable that focusing on areas with low levels of community development would target several areas with high percentages of people of color. To the extent a county might not have persistent poverty but a census tract(s) within a county has persistent poverty, Ceres would support looking at high poverty census tracts.

N. Question 55. The agencies request feedback on the proposed performance context factors in § __.21(e). Are there other ways to bring greater clarity to the use of performance context factors as applied to different performance tests?

Under proposed § __.21(e), the agencies will consider the performance context when evaluating a bank's performance. This includes "[d]emographic data on income levels and income distribution, nature of housing stock, housing costs, economic climate, or other relevant data pertaining to the geographic areas in which the bank is evaluated." This could be useful in ascertaining the extent to which banks are responding to community needs.

The agencies should ask specific questions about the most pressing needs and which types of financing are offered or not offered by banks in response to those needs. This would be the best way to obtain the most useful performance context information for evaluating bank performance and the banks' responsiveness to needs. When considering the "economic climate," Ceres encourages the agencies to consider information about past disasters or other climate impacts in the community and their economic impact on low- and moderate-income communities and individuals.

O. Question 161. How might the format and level of data required to be reported affect the burden on those banks required to report community development financing activity data, as well as the usefulness of the data? For example, would it be appropriate to require reporting community development financing data aggregated at the county-level as opposed to the individual activity-level?

Ceres supports reporting CD data at the individual activity-level as the agencies proposed. Large banks will have to collect individual activity-level data whether it is reported at the activity-level or whether it is aggregated at the county-level. Reporting at the activity-level will give the agencies and the public more granular data to compare to other banks. This would allow the agencies to calculate the number and percentages of CD loans and investments that meet one of the impact

¹³⁸ Josh Silver and Bruce Mitchell, *How To Consider Community Development Financing Outside Of Assessment Areas By Designating Underserved Counties*, NAT'L CMTY. REINV. COAL. (Jan. 29, 2020), <https://ncrc.org/how-to-consider-community-development-financing-outside-of-assessment-areas-by-designating-underserved-counties/>.

factors such as whether the CD finance was conducted in conjunction with a public agency or whether it was in a persistent poverty county.

In addition, given that these banks will be required to report the community development purpose to the agencies, Ceres encourages the Agencies to disclose the purpose data under § __.42(g)(4), even if such data are published at the aggregate level. This will allow the public to have greater insight into how community development financing dollars are allocated and to compare trends over time. In addition, Ceres supports NCRC's call for data to be made available on a census tract level so that members of the public can determine which neighborhoods are receiving an adequate amount of CD finance and which neighborhoods need more CD finance.

P. *Question 173: Should the agencies disclose HMDA data by race and ethnicity in large bank CRA performance evaluations?*

Ceres strongly supports the Agencies' proposal to disclose HMDA data by race and ethnicity in large bank CRA performance evaluations. However, the agencies have stated they do not intend to use such data to form a conclusion or to impact the CRA rating of the bank. **We urge the agencies to reconsider and use such data to form conclusions of large banks' performance in meeting the credit needs of their communities, particularly LMI areas.** There is often a high correlation between LMI neighborhoods and communities of color. If banks fail to meet the needs of minority communities in LMI areas, they are not meeting the needs of the communities they were chartered to serve, and are not fulfilling the purpose of the CRA.

By way of comparison, the Massachusetts Division of Banks (Division), which has had CRA requirements for banks since before the federal CRA was passed, implemented fair lending requirements as part of its CRA examinations nearly 30 years ago. Under a Regulatory Bulletin first issued in 1993, the Division sets out its expectations for all banks, credit unions, and mortgage companies with regard to discrimination in credit and how the Division incorporates fair lending into the CRA examination and ratings.¹³⁹ Since its release, the Division has examined banks for compliance with fair lending policy, including assessing not only how well an institution has worked to detect and eliminate discriminatory practices as well as proactively encourage applications from minority communities, but also assessing the institution's HMDA data by race and ethnicity. Application flow is listed annually by the institution by race and ethnicity and compared to the aggregate data by all lenders in the assessment area. The Division then makes an assessment of how well the institution has performed against the aggregate and uses that in forming an overall conclusion of the institution's fair lending performance which then impacts the CRA rating.

The agencies propose to disclose the number and percentage of a large bank's home mortgage loan originations and applications by race and ethnicity, using HMDA data, and "compare such data to the aggregate mortgage lending of all lenders in the assessment area and the demographic data in

¹³⁹ REGULATORY BULLETIN 1.3-106: COMMUNITY REINVESTMENT AND FAIR LENDING POLICY, MASS. DIV. OF BANKS (last updated 2013), <https://www.mass.gov/regulatory-bulletin/13-106-community-reinvestment-and-fair-lending-policy>.

that assessment area.” This proposal is very similar to what the Division has done for nearly 30 years. Ceres urges the agencies to follow the Division’s lead and make a determination on how well the bank has performed in meeting the needs of minority applicants, particularly in LMI communities in the bank’s assessment areas.

Q. *Question 175: Is there additional data the agencies should provide the public and what would that be?*

Ceres recommends that certain data reporting requirements that the agencies have proposed for banks with assets above \$10 billion instead be applicable for all large banks, and that all of this data collection be publicly reported. In addition, the agencies should develop a well-defined list of economic and demographic indicators for metropolitan areas and rural counties, such as housing cost burdens, vacancy rates, unemployment rates, and percent of households in poverty that can be used by the public to help develop comments regarding performance context. The demographic indicators should include racial and ethnic breakdowns as well as homeownership and small business ownership rates by race and ethnicity.

Likewise, the agencies should issue a regularly-updated guidance document that would help banks identify vulnerable communities and build relationships to drive investment to those communities. The guidance should include recommended tools such as the EPA’s EJScreen, the CEQ’s Climate and Economic Justice Screening Tool (beta version), respectively, and the CDC’s Social Vulnerability Index. Databases on social vulnerability, financial risk, and geographic hazards, such as FEMA’s flood maps and National Risk Index datasets, NASA’s Disasters Data Pathfinder, and First Street Foundation data and models should also be included in the publicly-available guidance. These resources would help identify communities that are most exposed and vulnerable to disasters and climate events, and thus most in need of capital for disaster preparedness and climate resiliency activities.¹⁴⁰

R. *Question 176: Should the agencies publish bank-related data, such as retail lending and community development financing metrics, in advance of an examination to provide additional information to the public?*

The agencies should publish this data in advance of examination because it would facilitate public comments on bank CRA performance.

S. *Question 177: Should the agencies ask for public comment about community credit needs and opportunities in specific geographies?*

The agencies should ask about community needs and opportunities in specific geographical areas. The questions should be specific enough so that answers are not general, such as there is a need for flood resilience. That way, examiners can probe whether banks have designed programs or products targeting clearly identified needs. Likewise, agency staff should ask about support offered to community-based nonprofit organizations. Again, the questions should not be general

¹⁴⁰ See *supra* Section II(B).

such as whether funding is adequate, but should ask about certain types of financing from grants to line of credit. That way, CRA examiners can probe for targeted responses on the part of banks.

The agencies should be as solicitous about questions on CRA performance of banks as they are about credit needs. Both set of questions are important to for agencies to obtain the full picture concerning the extent to which banks are responding to community needs. These comments should be published publicly. The agencies should also conduct sufficient outreach into communities and engage with appropriate community leaders in order to ensure that responses are actually reflective of community wants and needs.

VI. CONCLUSION

We thank the FDIC, OCC, and Fed for their work in updating the CRA regulations. Leadership on this critical issue is deeply valued. We would be pleased to discuss any questions you may have on our feedback. In addition to the undersigned, you may also contact our Manager of Banking Financial Regulation, Kelsey Condon (kcondon@ceres.org) at your convenience.

Sincerely,

Steven M. Rothstein

Managing Director
Ceres Accelerator

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