



**National Trust Community
Investment Corporation**

a subsidiary of the
National Trust *for* Historic Preservation



Comments to Reforming the Community Reinvestment Act Regulatory Framework
Agency: Office of the Comptroller of the Currency
Docket ID OCC-2018-0008

Chief Counsel's Office
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Community Reinvestment Act: Joint Notice of Proposed Rule Making
Docket ID OCC-2018-0008
FDIC RIN 3064-AF22

The National Trust for Community Investment Corporation (NTCIC) and its subsidiary National Trust Solar, LLC are pleased to submit comments in response to the Office of the Comptroller of the Currency's (OCC) and Federal Deposit Insurance Corporation (FDIC) January 2020 joint notice for proposed rulemaking; request for comment. The Proposed Rules are intended to build a new framework to transform or modernize the regulations that implement the Community Reinvestment Act of 1977 (CRA).

NTCIC is a national tax credit syndicator. We place tax credit equity investments to support sustainable communities nationwide. NTCIC works with qualified tax credits for federal and state historic, new markets, solar and low-income housing. NTCIC is wholly-owned by the National Trust for Historic Preservation.

Since its inception in 2000, NTCIC has raised over \$1.6 billion in capital for HTC, NMTC, solar ITC, and LIHTC investments for close to 200 transactions with over \$6 billion in total development costs. While we recognize the critical effect of real-estate investments on community development and public welfare, it is clear that investments in renewable energy services also have a profound impact on the health of our communities. The costs and benefits of producing and consuming energy are pervasive in every sector of the U.S. economy and in every neighborhood.

NTCIC provided comments to the original request for input focused on more fully recognizing investments in solar energy projects and other renewable electricity generation as "qualified investments" designed to promote the public welfare. Thank you for your thoughtful consideration of our comments. We are pleased to see that the Proposed Rules include an illustrative example of a community solar program that makes discounted electricity available in LMI census tracts.

We believe this kind of clarity is needed to allow community and other small-medium banks to take full advantage of the opportunity to support renewable and efficiency projects in their service areas. We also believe these investments are unlikely to curtail investments in other community development as they are related to essential services and related savings, rather than new or improved real estate.

We have included in this letter three more examples we feel fit the criteria as outlined in Section 25.04 for serving community development:

- 1) ...Investment that will finance the construction and operation of a solar energy facility that uses federal renewable energy tax credits and will provide reduced cost electricity to municipalities, thereby supporting municipal services (partially or primarily) in low-income census tracts, for example child care, education, health and housing services.
- 2) ...Investment that will finance energy efficiency and solar improvements to individual homes that are owned by LMI individuals. Such improvements will support the value of LMI housing stock and achieve material savings for the occupants.
- 3) ...Investment that will finance construction of a solar energy facility that uses federal renewable energy tax credits on a brownfield site that provides income to LMI and/or underserved areas and is consistent with a federal, state, local or tribal revitalization plan.

We feel these illustrative examples fit the letter and spirit of the Proposed Rule by offering tangible services to the communities in which they are located. As noted in our original submission, energy savings have a disproportionate and positive impact on low-income households. Savings achieved by municipalities are a non-tax source of revenue available to meet the needs of low-income communities served by the municipal government. And solar installations on brownfield sites are one of the few commercially viable activities for otherwise unusable land in what are often underserved non-metropolitan and low-income areas.

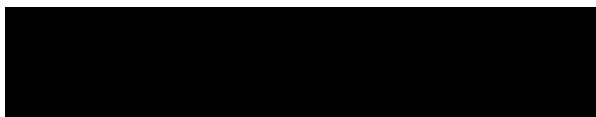
We have attached the matrix we use to compare the benefits of a solar installation to the criteria and goals of the CRA/PWI language in regulation. The deals in the attached matrix are live examples of the deals that would be covered by the addition of the illustrative examples we list above.

And finally, we echo the concern presented by our counterparts serving other community development tax credits regarding aggregating the applicable lending, investing, and services tests into a single test. The ability of financial institutions to achieve positive scores by redirecting three activities into one activity (for instance, redirecting “service” and “investment” activities into “lending”) could reduce the amount of equity investment available at a time when investors with tax appetite and equity are already scarce. We recommend that there should be a minimum floor for each category.

Conclusion

We urge the OCC and FDIC to include more positive examples of investments in renewable and energy efficiency projects that serve communities by achieving savings for residents in low-income neighborhoods and providing a source of revenue to support critical services for low-income census tracts. We look forward to working with you throughout this process and welcome the opportunity to stay engaged.

Sincerely,



Merrill Hoopengardner

President

National Trust Community Investment Corporation

PWI/CRA Initial Investment Qualification

Relevant Parties

Developer: XXX

Beneficiaries: Town of Montague, Town of W. Springfield, MA, related school districts and municipal services

Geography		Comments
Location of Installations	✓	Installation is on a brownfield site owned by the Town of Montague, MA.
Location of Off-Takers	✓	Towns of Montague and West Springfield, MA
Overlap with Bank Assessment Area	✓	Central MA
Benefits		Reference to OCC Guidelines
Savings to LMI Customers		
Physical Improvement of Property	✓	Capped landfill otherwise unsuitable for commercial activity.
Job Creation and Training		
Services	✓	Savings from reduced electricity costs and lease income available to support municipal services without new tax revenue.
Increasing Taxable Base		
CRA/PWI Qualifiers		Reference to OCC Guidelines
Business in LMI Census Tract	✓	Solar installation pays lease for use of municipal land in non-metropolitan area on brownfield site. Total revenue ~\$4MM over 20 years.
LMI Households		
Multifamily Housing Authorities		
Community Service Provider	✓	Savings from reduced electricity payments are targeted to school improvements and student welfare. Combined total savings = \$136,000 in year 1 and close to \$3MM over 20 years.
Designated Distressed Areas		
Post-industrial or contaminated site	✓	Capped landfill. Designated brownfield re-development site.
Evidence of Prior Qualification	✓	Evidence of other bank's qualification of CRA investment in similar projects with same developer. See Exhibit 2

Exhibit (1)

12 CFR § 25.12 - Definitions with excerpts from other OCC guidance

Attached and excerpted below

(g)Community development means:

- (1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;
- (2) Community services targeted to low- or moderate-income individuals;

(m)Income level includes:

- (1)**Low-income**, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.
- (2)**Moderate-income**, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

FROM OCC Q&A - July 2016:

Examples of ways in which an institution could determine that community services are targeted to low- or moderate-income persons include, but are not limited to:

- *The community service is conducted in a low- or moderate-income area and targeted to the residents of the area.*
- *The community service is a clearly defined program that benefits primarily low- or moderate-income persons, even if it is provided by an entity that offers other programs that serve individuals of all income levels.*

FROM OCC Q&A July 2016:

Examples of community development loans include, but are not limited to, loans to:

- *local, state, and tribal governments for community development activities;*
- *borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located;*
- *borrowers to finance renewable energy, energy-efficient, or water conservation equipment or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing or community facilities, such as a health clinic that provides services for low- or moderate-income individuals.*
- *For example, the benefit to low- or moderate-income individuals may result in either a reduction in a tenant's utility cost or the cost of providing utilities to common areas in an affordable housing development. Further, a renewable energy facility may be located on-site or off-site, so long as the benefit from the energy generated is provided to an affordable housing project or a community facility that has a community development purpose.*

FROM OCC Q&A July 2016:

Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents.

Exhibit (2)

The debt provider, XXX, is regulated by the FDIC and counts the loan toward their CRA position.

PWI/CRA Initial Investment Qualification

Relevant Parties:

Developer: XXX

Beneficiaries: LMI Customers, Bridgeport, CT Community, Installers

Geography		Comments
Location of Installations	✓	Installations are targeted around Bridgeport, Connecticut (2019-2020) and New Jersey (2020).
Location of Off-Takers	✓	Installation on individual homes.
Overlap with Bank Assessment Area	✓	CT and NJ
Benefits		Reference to OCC Guidelines
Savings to LMI Customers	✓	§ 25.12 Definitions (g)(1-2) and guidance from OCC. See Exhibit 1 Customers chosen on basis of i) LMI designation, and ii) estimates that physical upgrades and solar installations can lead to at least \$80 per month in savings.
Physical Improvement of Property	✓	Windows, doors, roofing, HVAC, insulation
Job Creation and Training	✓	Developer has full time job training program in Bridgeport, Connecticut for members of LMI community. Now 72 full-time positions in Bridgeport, with growth expected in 2020.
Services		
Increasing Taxable Base		
CRA/PWI Qualifiers		Reference to OCC Guidelines
Business in LMI Census Tract		
LMI Households	✓	1. § 25.12 Definitions (m)(1-2) See Exhibit 1 2. Affidavit of income level to qualify for Connecticut LMI incentive. See Exhibit 2
Multifamily Housing Authorities		
Community Service Provider		
Designated Distressed Areas		
Post-industrial or contaminated site		
Evidence of Prior Qualification	✓	Evidence of other bank's qualification of CRA investment in similar projects with same developer. See Exhibit 3

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FROM OCC Q&A July 2016:

Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents.

Exhibit 2

AFFIDAVIT CONFIRMING CUSTOMER QUALIFICATION FOR RSIP LMI INCENTIVE PROGRAM

The undersigned being duly sworn, deposes and says:

1. I, the undersigned, am over the age of eighteen (18) and understand and appreciate the obligations of an oath.
2. I am [Insert Approved Contractor's Title of Employment] _____ of [Insert Company Name] _____, an entity formed and existing under the laws of Connecticut, and an approved contractor under the Residential Solar Investment Program (RSIP) ("Approved Contractor").
3. _____ ("Customer"), a potential customer is interested in receiving the Low-to-Moderate Income incentive offered by the Connecticut Green Bank through the RSIP LMI Incentive Program.
4. I understand that Approved Contractor is responsible for verifying the income level of Customer and will make the determination as to whether Customer qualifies for the above mentioned incentive.
5. In order to ascertain the qualifications of Customer for the program, I have reviewed and have kept on file (check box):
 - a. Last two pay stubs for all members of the household who are 15 years old and older earning more than \$3500 a year and a list of the number of members in the household to confirm whether Customer's household income level qualifies per the RSIP LMI Incentive Program Guidelines;
 - b. W2 from the previous year calendar year; or
 - c. Documentation of Customer's current enrollment in one of the following programs: (check applicable item) ____
 - ____ Low Income Home Energy Assistance Program (LIHEAP)
 - ____ Home Energy Solutions – Income Eligible (HES-IE)
 - ____ Supplemental Security Income -Social Security (SSI)
 - ____ Supplemental Security Disability Insurance - Social Security (SSDI **not** SSD)
 - ____ Supplemental Nutritional Assistance Program (SNAP)
 - ____ Women, Infants, and Children (WIC)
 - ____ Temporary Family Assistance (TFA)
 - ____ Free and Reduced Price School Meals
 - ____ State-Administered General Assistance (SAGA) Medical Program
 - ____ Connecticut HUSKY
 - ____ Past two (2) consecutive years of Individual Tax Return (IRS Form 1040)
6. I Certify that as a result of this review, Customer has qualified for entrance into the LMI Incentive Program and acknowledge that improper certification of Customer shall subject Approved Contractor, amongst other things, to criminal or disciplinary action imposed by the Connecticut Green Bank pursuant to the Approved Contractor's participation in the RSIP and the LMI Incentive Program, including but not limited to, probation, suspension, or termination from program participation, and/or suspension or termination of incentive or loan payments.
7. I further certify that I am authorized to execute and deliver this affidavit on behalf of the Approved Contractor.

Signature of Approved Contractor Date

Signature of Customer Date

Printed Name

Printed Name

Signature of Customer Date

Printed Name

Exhibit (3)

XXX confirmed CRA credit for PosiGen investment based on two arguments:

- Number of LMI employees on-staff at PosiGen corporate level in New Orleans; and
- High percentage of installed solar projects in qualifying census tracts in New Orleans and Baton Rouge