

August 5, 2022

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Office of the Comptroller of the Currency, Department of Treasury
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation

Re: Docket ID OCC-2022-0002; Regulation BB; Docket No. R-1769, RIN 7100-AG29; RIN 3064-AF81 Joint Notice of Proposed Rulemaking; Request for Comments

Texas Appleseed is a public interest justice center working to change the unjust laws and policies that prevent Texans from realizing their full potential. Texas Appleseed promotes social, economic, and racial justice by developing and advocating for innovative and practical solutions to complex systemic issues. We appreciate the agencies' commitment to strengthening and modernizing the Community Reinvestment Act (CRA) and value the opportunity to provide comments.

Texas Appleseed's Fair Housing and Disaster Recovery Project's comments will focus on the expansion of community activity definitions to include recovery activated in designated disaster areas and disaster preparedness and climate resiliency, as well as related fair and affordable housing proposals and, are in addition to other comments provided by Texas Appleseed.

Texas Appleseed's Fair Housing and Disaster Recovery Project works with a network of housing advocates, policy experts, and grassroots community groups to ensure that Texas communities are rebuilt to be more resilient in the wake of a natural disaster and that Texas families have the opportunity to live in safe neighborhoods with equal access to educational and economic opportunity. Communities hit the hardest by natural and other types of disasters are too often low-to-moderate income (LMI) communities, and we recognize the need to remedy these systemic legacies of oppression and discrimination and to pave the way for a more safe and just future for all Texans.

The addition of two new disaster recovery-focused community development definitions - Recovery activities in designated disaster areas and Disaster preparedness and climate resiliency - is an important and appropriate change to the proposed regulation. However, we emphasize that no bank should receive consideration for any housing activity, including housing developed in conjunction with Federal, state, local, or tribal government programs that have a stated purpose or bona fide intent to promote affordable housing and activities involving Low-

Income Housing Tax Credits (LIHTC) if the majority of the beneficiaries are not LMI individuals. These activities should be pro-rated for the percentage of total housing units in the development that are affordable, but only after a minimum LMI benefit threshold has been met.

The Fair Housing Act and other Federal civil rights laws require regulators to address race and ethnicity, and other protected class statuses in CRA exams.

Just as the Community Reinvestment Act (CRA) itself was enacted to redress redlining, historical disinvestment, and historical and ongoing discrimination, the Fair Housing Act of 1968 (FHA) does not merely prohibit discrimination, it seeks to remedy the effects of past and present discrimination and segregation to create “truly integrated and balanced living patterns.”¹

Given the history and clear legislative intent of both these laws, claims that attempts to remedy disparities affecting marginalized populations, including people of color, would violate the FHA and other civil rights requirements are ahistorical, at best. Ensuring that all Americans have the choice to live in a safe, healthy, neighborhood with access to opportunity requires both building affordable housing in already high opportunity areas and remedying historical disinvestment in LMI areas.

¹ 114 CONG. REC. at 3422. (remarks of Senator Mondale) (1968) The legislative history of the FHA and the context in which it was passed, including the assassination of Dr. Martin Luther King, Jr. and the release of the Kerner Commission Report, which concluded that “[o]ur nation is moving towards two societies, one black, one white – separate and unequal”, make clear that the purpose of the Fair Housing Act is explicitly remedial. For example, see 114 Cong.Rec. 2281 (1968) (statement of Sen. Brooke) (a purpose of Title VIII is to remedy the “weak intentions” that have led to the federal government’s “sanctioning discrimination in housing throughout this Nation”); id. at 2526-28 (statement of Sen. Brooke) (reviewing history of federal fair housing efforts); id. at 9577 (statement of Rep. Cohelan) (decrying historical “neglect” of minorities id. at 2524 (statement of Sen. Brooke) (“Discrimination in the sale and rental of housing has been the root cause of the widespread patterns of de facto segregation which characterize America’s residential neighborhoods.”); and *Kerner Commission, Report of the National Advisory Commission on Civil Disorders* (Washington: U.S. Government Printing Office, 1968). The broad remedial and integrative purpose of the FHA has been affirmed repeatedly by the Supreme Court of the United States and numerous federal circuits as well. See, for example, *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205 (1972); *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995); and *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, 135 S. Ct. 2507 (2015). HUD is required by statute to affirmatively further fair housing. 42 U.S.C. §3608(d); 24 CFR §5.151 (“Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.”)

As the President's Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies states.

During the 20th century, Federal, State, and local governments systematically implemented racially discriminatory housing policies that contributed to segregated neighborhoods and inhibited equal opportunity and the chance to build wealth for Black, Latino, Asian American and Pacific Islander, and Native American families, and other underserved communities. **Ongoing legacies of residential segregation and discrimination remain ever-present in our society. These include a racial gap in homeownership; a persistent undervaluation of properties owned by families of color; a disproportionate burden of pollution and exposure to the impacts of climate change in communities of color; and systemic barriers to safe, accessible, and affordable housing for people of color, immigrants, individuals with disabilities, and lesbian, gay, bisexual, transgender, gender non-conforming, and queer (LGBTQ+) individuals.**²

Because of the role of government in engineering and perpetuating segregation and inequality, and in facilitating discrimination by private entities,

[t]he Federal Government has a critical role to play in overcoming and redressing this history of discrimination and in protecting against other forms of discrimination by applying and enforcing Federal civil rights and fair housing laws. It can help ensure that fair and equal access to housing opportunity exists for all throughout the United States . . . This is not only a mandate to refrain from discrimination but a mandate to take actions that undo historic patterns of segregation and other types of discrimination and that afford access to long-denied opportunities.³

² President Joseph A. Biden, "Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies", January 26, 2021. (emphasis added) Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>

³ *Ibid.* Continuing policies with a disproportionate negative impact on protected classes under the Fair Housing Act of 1968 and/or that perpetuate segregation, is, in fact, discriminatory and not merely a failure to take affirmative action to undo historic patterns. We note that the economic burden of complying with civil rights requirements, including CRA requirements, on banks and other covered entities are dwarfed by the vast sums of public money they receive. Lending institutions, for example, receive public subsidies and guarantees worth billions of dollars annually, from Federal Deposit Insurance Corporation (FDIC) depositor insurance to Freddie Mac and Fannie Mae secondary mortgage markets, and benefit disproportionately from the home mortgage interest tax deduction. The Emergency Economic Stabilization Act of 2008 alone provided \$700 billion in public funds to bail out banks, insurance companies, and hedge funds invested in mortgage-backed securities.

Oversight and enforcement are particularly critical at a moment when existing “inequity in access to housing and opportunity” has been “exacerbated by presently converging health, economic, and climate crises.”⁴ These converging health, economic, and climate crises are not separate from the impact of discrimination and disinvestment; they are a product of it. The CRA is a critical tool to ensure that historically disinvested and underserved communities can transform into areas of opportunity.

Disaster Recovery, Preparedness, and Climate Resilience

Texas Appleseed’s disaster recovery work has focused on the disproportionate impact of disasters on protected classes and addressing civil rights violations in disaster recovery programs. We have also worked with organizations addressing similar civil rights issues in disaster recovery programs in Louisiana, Mississippi, New Jersey, and Puerto Rico.⁵ Over and over we have seen how the failure to take affirmative actions to overcome the history of discrimination and disinvestment has left communities of color, populations with limited English proficiency, people with disabilities, and other members of protected classes not only unable to recover, but more vulnerable to future disasters. The proposed rule’s incorporation of disaster recovery, preparedness, and climate resiliency activities into the CRA’s definition of community development activities is an appropriate and important recognition that community development is inextricable from disaster and climate resilience.

“Disasters are often depicted as great levelers, victimizing rich and poor alike. The effects of disasters on populations are anything but random... The disaster vulnerability of individuals and groups is associated with a number of socioeconomic factors that include income, poverty, and social class; race, ethnicity, and culture; physical ability and disability; language competency; social networks and social capital; gender; household composition; homeownership; and age... The same factors that disadvantage members of society on a daily basis also play out during disasters.”⁶

⁴ 86 Fed. Reg. at 30,786.

⁵ See, e.g., *Texas Low Income Housing Information Service and Texas Appleseed v. State of Texas*, HUD Case Nos. 06-10-0410-8 (Title VIII) and 06-10-0410-9 (Section 109) <https://www.texasappleseed.org/sites/default/files/24-FairHousingComplaint.pdf> and Conciliation Agreement <https://www.texasappleseed.org/sites/default/files/ApprovedConciliationAgreement.pdf>; HUD Voluntary Compliance Agreement and Conciliation Agreement Re: the State of New Jersey and the New Jersey Department of Community Affairs (2014), https://www.lep.gov/sites/lep/files/resources/HUD_NJ_Agreement_5-30-14.pdf; Kelly Parker, “Settlement reached in Road Home discrimination challenge,” *The Louisiana Weekly*, July 11, 2011. Available: <http://www.louisianaweekly.com/settlement-reached-in-road-home-discrimination-challenge/>; HUD No. 10-54, “HUD Approves \$132 million Mississippi Disaster Plan,” November 15, 2010. http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-254

⁶ Kathleen J. Tierney, *The social roots of risk: Producing disasters, promoting resilience*, (Stanford, CA: Stanford Business Books, 2014), 141.

Equity, and the level of risk imposed by climate change, demand that we stop regarding disasters as discrete events when “they are lengthy historical processes that begin long before a hurricane makes landfall.”⁷ Pre-existing disparities in infrastructure, storm protection, and geographic and social vulnerability are exacerbated by disasters, and response and recovery programs, policies, and activities that do not affirmatively address these disproportionate impacts perpetuate inequity and increase the vulnerability of underserved groups and communities.⁸

Housing segregation and historical disinvestment has often forced communities of color into geographically vulnerable areas and denied them protective infrastructure, and a history of discriminatory zoning has often placed heavy industrial and environmentally hazardous land uses in those communities. This has not only increased their vulnerability to natural and man-made disasters, but depressed their property values, making it difficult for these families to move to safer areas. Homes in formerly redlined neighborhoods are at higher risk of flooding than homes in historically greenlined neighborhoods seven decades after the HOLC redlining maps were created.⁹ The impact of repeated disasters, for example, repetitive flooding, forces low- and moderate-income families into poverty, decreasing the resilience of these families and the communities they live in, and making it harder for them to recover from subsequent disasters. Many of these communities are also the most vulnerable to the increasing impact of climate change.

⁷ Roberto Barrios and Colette Pichon Battle, “Equity in Disaster Recovery, Mitigation and Adaptation” (2018). Available: https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Gender_Justice_Fall_2018/paper_-_colette_pichon_battle.pdf

⁸ See, e.g., Thomas Gabe, Gene Falk, Maggie McCarty, and Virginia Mason, Hurricane Katrina: Social-Demographic Characteristics of Impacted Areas, Congressional Research Service Report to Congress (November 5, 2005); Alice Fothergill and Lori Peek, Poverty and Disasters in the United States: A Review of Recent Sociological Findings, *Natural Hazards* 32: 89–110, 2004; and, Shannon Van Zandt, Walter Gillis Peacock, Wesley E. Highland, and Samuel D. Brody, “Mapping social vulnerability to enhance housing and neighborhood resilience”, *Housing Policy Debate* 22(1):29-55 (January 2012). See, also: Junia Howell and James R. Elliott, “Damages Done: The Longitudinal Impact of Natural Hazards on Wealth Inequality in the United States”. *Social Problems, Oxford University Press* (August 14, 2018). Available: <https://academic.oup.com/socpro/advance-article/doi/10.1093/socpro/spy016/5074453> and Rebecca Hersher, “How Disaster Recovery Favors the Rich”, *All Things Considered, National Public Radio* (March 5, 2019). Available: <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>

⁹ Kriston Capps and Christopher Cannon, “Redlined, Now Flooding: Maps of historic housing discrimination show how neighborhoods who suffered redlining in the 1930s face a far higher risk of flooding today.” Bloomberg City Lab, March 15, 2021. Available at: <https://www.bloomberg.com/graphics/2021-flood-risk-redlining/> (“Put another way, 8.4% of homes in historically redlined neighborhoods face high flood risks nationwide, compared to 6.9% of homes in historically greenlined neighborhoods. These patterns represent disparities in development compounded by decades of disinvestment.”)

Given the disproportionate vulnerability of LMI communities and communities of color to disasters and climate change, however, the proposed rule does not sufficiently target disaster recovery, preparedness, and climate resilience activities to benefit LMI and historically disinvested communities. This is particularly true given that the structure and administration of the American disaster recovery structure has historically, and continues to, direct disaster recovery and mitigation resources to higher-income and whiter communities with higher levels of homeownership.

For example, the National Advisory Council (NAC) November 2020 Report to the FEMA Administrator acknowledges that FEMA's disaster recovery and mitigation programs have historically disadvantaged lower-income communities, in violation of "the equity requirements of the Stafford Act" that authorizes those programs.¹⁰

The core definition of equity is to provide the greatest support to those with greatest need to achieve a certain minimum outcome. . . . By perpetually assisting larger communities that already have considerable resources, the smaller, less resource-rich, less-affluent communities cannot access funding to appropriately prepare for a disaster, leading to inadequate response and recovery, and little opportunity for mitigation. Through the entire disaster cycle, communities that have been underserved stay underserved, and thereby suffer needlessly and unjustly.¹¹

The NAC Report goes on to point out several specific ways in which Federal disaster recovery and mitigation programs disadvantage specific individuals and communities.

Damage assessments are based on property ownership, which immediately focuses on the wealthier parts of a community, and disadvantages renters and the homeless population. The Public Assistance Program most benefits communities that can afford to pay the required match and can navigate the complexities of the contracting agencies. The Individual Assistance Program is more accessible to those with time, income, and access. The National Flood Insurance Program inadvertently assists the wealthier segment of the population by serving only those who can afford to buy flood insurance.¹²

The bias of disaster recovery programs towards wealthier and whiter communities is clear. In counties that had at least \$10 billion in disaster damages between 1999 and 2013, white communities gained an average \$126,000 in wealth following the damage and recovery efforts,

¹⁰ NAC Report at 12.

¹¹ NAC Report at 11-12.

¹² NAC Report at 12.

but communities of color lost up to \$29,000 on average in personal wealth following events like hurricanes and wildfires.¹³ FEMA also routinely denies assistance applications of nonwhite and low-income survivors at dramatically higher rates than those of well-off white applicants. For example, following Hurricane Harvey in 2017, white residents of higher income neighborhoods received, on average \$60,000 of assistance, while black residents in low-income neighborhoods received, on average \$84.¹⁴ This pattern of inequity is repeated across FEMA programs, from post-disaster assistance for survivors to flood insurance and mitigation.¹⁵ Nor do FEMA funds cover all types of risk, especially the types of risk often experienced by poor, BIPOC, and other communities with high levels of social vulnerability. These include excess flooding that results from the accumulation of deferred maintenance of urban drainage systems, cumulative structure damage that results from a lack of access to FEMA assistance in past disasters and which affects future eligibility, excess flood risk that results from a lack of infrastructure in marginalized communities,¹⁶ and residual flood risk outside the FEMA flood zone. Similarly, FEMA mitigation programs only provide funds to entities and individuals that already have access to start-up capital or matching funds, which again privileges wealthier groups.¹⁷

¹³ Junia Howell and James R. Elliott, “Damages Done: The Longitudinal Impact of Natural Hazards on Wealth Inequality in the United States”. *Social Problems*, Oxford University Press (August 14, 2018). Available: <https://academic.oup.com/socpro/advance-article/doi/10.1093/socpro/spy016/5074453> and Rebecca Hersher, “How Disaster Recovery Favors the Rich”, *All Things Considered*, National Public Radio (March 5, 2019). Available: <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>

¹⁴ Cited by Diane Yentel in testimony before the House Transportation and Infrastructure Committee subcommittee on Economic Development, Public Buildings, and Emergency Management on July 28, 2020. At: <https://bit.ly/3hzpalq>

¹⁵ Even the process for obtaining a federal disaster declaration disadvantages lower-income and historically underserved populations. For example, in order to obtain a Major Disaster Declaration under Section 401 of the Stafford Act (42 USC §5170 et. seq., 44 CFR §206) from the President, the Governor or tribal government requesting the declaration must show that the disaster exceeds the ability of the state or tribal government to respond effectively. FEMA evaluates a number of factors to determine whether to recommend a major disaster declaration, including, in the case of Public Assistance, the estimated cost of the assistance (COA). (44 CFR 206.48(a)(1)) In December 2020, FEMA published a proposed rule that would have substantially changed how the COA is evaluated. (85 FR 80791, December 14, 2020). FEMA’s proposal to adjust the statewide per capita indicator based on a state’s total taxable revenue (TTR), which does not reflect the actual funds taxed by the state and is not even available for U.S. Territories. The result would be that disaster survivors in states that have chosen to eschew certain tax resources and have limited social safety net programs might be denied a federal disaster declaration, be subjected to an underfunded state-run disaster recovery program at best and be denied any disaster recovery assistance at worst. This imposes the most risk on low-income households – who already bear the brunt of disasters and receive the least amount of assistance afterward. For example, there was not a Stafford Act declaration for Individual Assistance for areas of Texas devastated by Hurricane Laura. Many of the most affected neighborhoods were predominantly low-income and/or occupied by families of color. There were no state programs that helped them rebuild. Many of the states with the weakest social safety nets in the deep South and along the Gulf Coast are both highly vulnerable to disasters and the impact of climate change and have large populations of historically excluded and underserved persons.

¹⁶ FEMA public assistance funds, for example, only restore infrastructure to its pre-storm condition.

¹⁷ See, e.g.: Thomas Frank, “How FEMA helps white and rich Americans escape floods”, POLITICO, May 27, 2022, Available at: <https://www.politico.com/news/2022/05/27/unfair-fema-climate-program-floods-00032080> ; and, Thomas Frank, “FEMA Flood Program Could Violate Civil Rights Law”, POLITICO, June 16, 2022. Available at:

The only disaster recovery program that specifically targets LMI individuals and communities is the Community Development Block Grant for Disaster Recovery (CDBG-DR) program. However, unlike FEMA or other statutorily authorized federal disaster recovery funding, CDBG-DR funds must be appropriated by Congress, allocated by the Department of Housing and Urban Development (HUD), and then administered by disaster affected states. These funds often don't reach disaster survivors until two to three years after a disaster, and HUD has frequently waived the 70% LMI benefit threshold to 50%.

In other words, the benefits of federal disaster recovery and mitigation investments continue to go, and have historically gone, to wealthier and whiter communities. Meaningful community development activities under §.13(h) and (i) must specifically target the disaster recovery, preparedness, and climate resiliency needs of low and moderate-income communities.

Specific Responses to Request for Feedback:

Question 1/Question 2. Yes, the agencies should consider partial consideration for any other community development activities. While investment in infrastructure and community facilities is critical to remediating historical discrimination and disinvestment, and ensure that all people have access to opportunity, these investments can also facilitate and accelerate displacement. Not only must community development activities directly benefit LMI residents and communities, but they must also reflect actual community needs and not a general belief that all investment in LMI areas is beneficial to their residents. There should be a minimum percentage of the activity that serves LMI individuals or geographies greater than 51 percent.

Question 3. Government programs that provide affordable housing should be required to meet, and verify, specific affordability standards. These programs should be required to provide housing affordable to residents at or below 30% of AMI and 50% of AMI, consistent with the level of need in the targeted area. While there has been a housing crisis for the lowest-income families for many years, this crisis has become dramatically more severe in the last two years. The largest deficit of housing units is those affordable to families who make 30% of AMI or less; government programs should be focused on meeting housing needs that the market cannot. The 2022 national Housing Wage is \$25.82 per hour for a modest two-bedroom rental home and \$21.25 per hour for a modest one-bedroom rental home; the federal minimum wage is \$7.25 per hour.¹⁸

<https://www.politico.com/news/2022/06/16/fema-flood-program-civil-rights-00037261>

¹⁸ See; National Low Income Housing Coalition, "Out of Reach: The High Cost of Housing", 2022. Available at:

Question 4. Yes, agencies should consider housing activities in conjunction with a government program that provide affordable housing in high opportunity areas, in nonmetropolitan counties, or in other geographies. However, this should not be limited to middle-income individuals, and in fact should be targeted to LMI individuals. If government programs are providing housing opportunities in low-poverty high opportunity areas only to individuals who are not LMI, they are not only contravening the purpose of these programs, but potentially violating the Fair Housing Act and other civil rights laws.

Question 5. We encourage the agencies to require contracts or land use agreements that ensure a specific level of affordability and length of affordability period, particularly for properties where a renovation is occurring.

Question 7. Yes, the proposed approach to considering naturally occurring affordable housing should be broadened to include single-family rental housing that meets the eligibility criteria proposed for multifamily rental housing in all geographies. In many communities – including metropolitan communities - single-family units have always been a major source of affordable rental housing, but broadening this approach now is vital as institutional investors buy an increasing percentage of single-family homes and turning them into rental units.¹⁹

Question 14/Question 15. Given our experience with disaster recovery and mitigation, which has included government plans to permanently displace public housing tenants in New Orleans and Galveston; the diversion of CDBG-DR economic revitalization funding to projects with minimal to no benefit to disaster affected LMI communities in Mississippi, New Jersey, and Texas, the diversion of CDBG-DR and CDBG-MIT infrastructure funds away from HUD-determined most impacted and distressed areas to smaller inland communities with less disaster damage or future disaster risk – and smaller populations of people of color – in Texas, we are concerned about the requirement that activities be conducted in conjunction with a government plan, program, or initiative. As the NPRM points out, the most impacted and vulnerable communities may be least likely to have these kinds of plans. State and local capacity and willingness to engage in effective planning – particularly in places where there is still resistance to recognizing climate change – may also disadvantage the most vulnerable communities. However, the requirement that activities be conducted “in conjunction with” plans instead of requiring that they be specifically identified in such plans provides necessary

<https://nlihc.org/oor>

¹⁹ See, e.g.: Jacob Vaughn, “As Institutional Investors Gobble Up Dallas Housing, Congress Investigates Trends Nationwide,” THE DALLAS OBSERVER, July 7, 2022. Available at: <https://www.dallasobserver.com/news/how-are-institutional-investors-affecting-the-housing-market-congress-is-investigating-14331313>

flexibility. For example, if activities are addressing the needs of communities that have been left out of existing plans, those activities could be characterized as “in conjunction” with those plans. Generally, plans should be based on data-driven risk assessment and prioritize activities in targeted census tracts with high levels of social vulnerability. As noted in our comments on the community engagement process, meaningful engagement with the most affected populations is a critical part of identifying community need.

All place-based definition activities – including recovery activities in designated disaster areas - should include an explicit focus of benefitting the targeted census tract(s). The proposed regulation appropriately excludes counties designated to receive only FEMA Public Assistance Category A and B and requires that activities do not displace or exclude LMI residents, but to qualify as community development activities disaster recovery activities must primarily benefit LMI residents. For example, expanding regional drainage capacity could be characterized as benefitting all residents of a designated disaster area, but historically disinvested LMI communities that do not have infrastructure to convey local floodwaters to the regional system would in fact be excluded from the benefits of the project. We do not dispute that residents at all income levels are affected by disasters, but as described above, not only are LMI and historically underserved communities disproportionately affected, but the majority of federal disaster recovery funds benefit higher income and whiter communities, and homeowners over renters. Like CDBG-DR funds, at least 70% of the activities should specifically benefit LMI areas and individuals.

Requiring a demonstration of how an activity would specifically benefit an LMI community would help address concerns about exclusion, but activities must also specifically address potential displacement. Disasters are often seen as an opportunity to remake communities by permanently excluding LMI individuals and redeveloping LMI communities for other populations. The transformation of New Orleans in the wake of Hurricane Katrina is still a preeminent example of using disaster recovery investment to permanently displace LMI Black families and destroy a significant percentage of the city’s affordable housing. Consideration of these activities should include whether the activity has specifically considered and addressed potential displacement. For example, even CDBG-DR funding only requires that 51% of rental housing units be affordable to individuals at or below 80% of AMI. Not only is affordable rental housing not rebuilt on a one-for-one basis, but the rebuilt housing is also often less affordable than the pre-disaster housing stock, resulting in displacement. Disaster survivors without the resources to repair or rebuild their homes immediately are often targeted by investors, who buy up homes and turn them into rental properties. Activities, for example, that ensure affordability is proportional to the income categories of existing or pre-disaster residents or

provide homeowners with repair or other alternatives to forced sale would help prevent displacement.

Question 16. Yes, certain housing activities should be included are eligible revitalization activities. Programs that provide home repair and mitigation for LMI homeowners who are both less likely to have resources to take advantage of programs like HMGP elevation and less likely to have insurance, qualify for SBA loans, or receive sufficient funding from FEMA would benefit from these activities. LMI renters are particularly underserved by disaster recovery programs, and affordable rental housing takes longer to rebuild.²⁰ LMI homeowners and renters who may rely on CDBG-DR programs to rebuild their homes or finance rebuilding affordable rental units often wait years for these resources; activities that ensure homes are repaired and rebuilt more quickly and that more affordable rental housing is rebuilt should be included as eligible revitalization activities. Low-income housing is both more likely to be located in vulnerable areas and less likely to be rebuilt, with devastating effects on local economies.²¹ While housing activities should be focused on LMI individuals, either in targeted areas or by rebuilding affordable rental housing in less hazardous areas.

Question 17. Essential community infrastructure projects and essential community facilities should benefit LMI residents in targeted census tracts. Historical disinvestment has deprived many LMI communities, particularly communities of color, of even basic infrastructure and community facilities. Ensuring that all communities have a minimum standard of infrastructure, including protective infrastructure, should take priority over enhancing infrastructure in areas that already have a standard level of investment. The communities most at risk from disasters and the effects of climate change should be targeted for eligible activities.

Question 18/Question 19. The majority of disaster recovery, preparedness, and climate resiliency activities should benefit LMI residents and communities. In addition to requiring a specific LMI benefit percentage, the agency should also consider criteria like the Social Vulnerability Index (SVI) and previous level of infrastructure investment to ensure that recovery activities in designated disaster areas benefits low- or moderate-income individuals and communities.

²⁰ Due to multigenerational systemic racism in policies around homeownership, families of color are disproportionately renters and not owners in most American communities.

²¹ See, e.g.; Shannon Van Zandt, "Disasters can wipe out affordable housing forever unless communities plan ahead – that loss hurts the economy", Texas A&M Today, February 10, 2022. Available at: <https://today.tamu.edu/2022/02/10/disasters-can-wipe-out-affordable-housing-forever-unless-communities-plan-ahead-that-loss-hurts-the-economy/>

Question 23. Yes, the agencies should consider including 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. For example, activities that rebuild affordable rental housing in less hazardous areas.

Question 37. Yes, low poverty rates are an important component of identifying high opportunity areas and limit the variability of definitions promulgated in state Qualified Allocation Plans. There are also a number of other opportunity or social vulnerability indexes that may be relevant.

Strengthening and modernizing the CRA must include reaffirming its original purpose; to remediate the historical and ongoing effects of discrimination and disinvestment.

Sincerely,

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