Office of the Comptroller of the Currency
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Washington, D.C., 20219

Comments on Community Reinvestment Act Regulations Docket ID OCC-2018-0008

To Whom It May Concern:

I respectfully submit the following comments in response to the Office of the Comptroller of the Currency's (OCC) January 9, 2020 joint notice of proposed rulemaking soliciting comments pertaining to the proposed updates with regard to the administration of the Community Reinvestment Act of 1977 (CRA).

As a legal and accounting professional with direct experience in the U.S. renewable energy finance industry, I support and encourage this effort by the OCC. Any policy revisions which better enables the investment in renewable energy, and in particular, wind and solar, also better aligns the Agencies with the energy future of America. Especially when such policies remove unnecessary market barriers and also help educate both the banking community as well as the public on the benefits of renewable energy.

I therefore strongly support both the intent and the content of the proposed rules and strongly support the effort of the drafters to recognize the importance of renewable energy in serving low and moderate income (LMI) communities, subject to the additional proposed amendments described in detail below.

In furtherance of that end, I hereby suggest specific modifications to the proposed rule, and offer important amendments, so that the rules, as proposed, do not inadvertently restrict the applicability of the proposed changes to too specific a set of circumstances: namely, energy generation owned or operated by "utilities[2]."

As written, the proposed guidance could create some misunderstanding on the part of those not familiar with the electrical energy industry and infrastructure in America. Accordingly, and instead, the proposed rules should include additional language which will clearly align with the current reality of a modern-day mix of energy resources and providers.

Specifically, the traditional industry model of a central located "public" utility thermoelectric, or hydro-power plant, coupled with a transmission and distribution (T & D) network, is gradually being supplanted with community based local or on-site "distributed generation" renewable energy.

[2] For purposes of these comments, the term "utilities" should be understood in its broadest sense, and should generally include investor owned utilities (IOUs), municipal utilities, COOPs, regardless of whether such utility is "regulated" or "unregulated." In the case of "unregulated" or "unregulated subsidiaries" of regulated utilities, my comments would apply equally, given that obtaining renewable energy from even an unregulated utility or sub isn't always, or often either an available or even the most desirable option for energy users. In many cases, Independent Power Producers (IPPs) may offer better near, mid, and long-term energy options than that made available by a "utility."

Thus, today, the nation is in the midst of moving far beyond the historic centrally located public utility model that held prominence in the past 100 years.

As such, (and regardless of whether the utility is an IOU, COOP, or some form of municipal utility) today's energy consumers have an ever-growing choice for how they obtain their electrical or thermal energy. In particular, the adoption of residential solar, community solar, commercial/industrial solar (C & I), small wind, geothermal heating and cooling and other technologies described in IRC §§ 45 and 48, as well as other new technologies, are becoming more ubiquitous every day.

Accordingly, the proposed guidance should be amended to include changes to the language in the proposed definition of "essential infrastructure," and include a wider variety of examples given how the rule is likely to be implemented in light of the progress anticipated with regard to these "new" non-utility energy generation or storage technologies in the non-utility, independent power producer (IPP) context.

Finally, on this discrete point, it should be noted that most of the IPP energy sector, particular that of solar energy, is comprised largely of American small business and small employers. Employers of blue-collar workers, many that meet the definition of LMI individuals or who reside in LMI areas.

As such, guidance that acknowledges the non-utility aspect of the energy sector will better match the policy demographic of the proposed guidance.

Specific Comments on Proposed Rulemaking

The express inclusion of investments in renewable energy facilities as an example of a qualifying CRA activity is extremely important.

This type of express clarity by example must survive in the final guidance.

All recognize that the primary purpose of the CRA is to promote the public welfare, so the acknowledgement that investments in renewable energy facilities, and specifically wind and solar energy facilities both benefit and serve LMI census tracts, goes a long way toward fulfilling that purpose and enabling the nation to advance technologically. Especially given that both the immediate and long term value of renewable energy will benefit residents of LMI areas and LMI individuals.

Unlike other forms of energy generation, the production of renewable energy serves a number of long lasting, if not permanent, public welfare objectives.

As such, this specific regulatory modernization is precisely the type of update that is necessary for the nation in order that it may advance technologically on the energy front whilst simultaneously ensuring LMI individuals are equal beneficiaries of cleaner air, cleaner water, better health, and increased economic equity and opportunity.

Therefore, as proposed, these energy related changes will either save or create jobs in LMI communities, provide access to lower or stable energy costs, reduce CO2 emissions and other pollution, conserves water and will have tremendous (even life-changing impacts) on the health if LMI communities compared to many other energy fuels currently in use.

In prior Docket filings, myself and other intervenors have provided the Agencies with compelling data and examples on many of these benefits, and I respectfully attach my prior original submission herein and incorporate same for purposes of my comments under this Docket. To this end, please see the prior filing at:

https://www.fdic.gov/regulations/laws/federal/2014/2014-community_reinvestment-c_18.pdf.

Please review the other comments on this point as well.

Suggested Clarifications

Definition of Essential Infrastructure

The first instance where greater clarity would further the goals of the proposed rule is in the definition of "essential infrastructure."

As proposed, the definition may inadvertently convey the erroneous impression that only one business-type in the energy sector -- utilities -- contribute to energy supply and distribution in America today.

For example, in section 25.03, page 1241 where "essential infrastructure" is defined, it reads:

> *"(2) Essential telecommunications infrastructure, mass transit, water supply and distribution, utilities supply and distribution, sewage treatment and collection, and industrial parks".*

Unfortunately, the word "utility" is often a colloquial term (or an official/legal definition) of only one specific type of energy provider.

Therefore, if taken as an official definition in this guidance, it's use as a term would exclude the many non-utility providers that supply or distribute essential and clean and affordable energy to LMI communities across the country.

For example, rural farms now utilize microgrids (see e.g., the federal REAP program).

Furthermore, communities can now also generate energy through rooftop solar (known as residential solar or community solar), and community centers could develop solar or small wind or ground-sourced heating or cooling projects to provide for their own energy needs.

All of the above "distributed" energy projects are typically accomplished with non-utility energy providers.

Each of these non-utility energy generation sources are significantly contributing to the well-being of their communities by improving air quality and providing access to renewable, carbon-free and more secure and affordable energy.

Moreover, as electric vehicles grow in usage in LMI areas and for LMI individuals, the shift from the motor-fuel sector to the electric sector will necessitate more on-site electrical generation by non-utility providers.

Therefore, one way to address this issue would be strike the term "utility" and replace it with the term "energy."

An alternative suggestion would be to add to the definition a new item following the phrase "utilities supply and distribution."

For example, you could add "renewable energy production and distribution."

Either of these changes would be consistent with the intent of the proposed rule and the language on page 1210, where renewable energy is currently given as an example of the "rehabilitation, improvement, or construction of… essential infrastructure".

Clarity on Examples of Qualifying Activities

The second instance where greater clarification is required is on page 1232, section 25.04(c)(6)(ii). Here, additional minor clarifications would also be helpful to ensure that the intent will not be misconstrued by those less familiar with energy project finance.

As drafted, it states:

> *Public welfare investment, under 12 CFR part 24, that will finance construction of a solar energy facility that uses federal renewable energy tax credits and will provide access to reduced cost electrical utilities to LMI census tracts.*

I would respectfully suggest that the definition be amended to read "finance the construction *or purchase* of a solar energy facility."

This change would offer clarity and breadth of coverage to the regulated institutions that may initially be unfamiliar with tax equity energy finance and that may wish to first gain entry into this area of finance before later considering a tax equity transactions. The ability to first gain experience with the industry sector with non-tax credit financing could help such institutions later enter into tax equity transactions. But the institutions should have clarity on BOTH types of transactions involving solar.

> I also suggest that the example be amended to read "provide access to *renewable or* reduced cost *energy* ~~utilities~~ in LMI census tracts."

Inclusion of the words “renewable or” would ensure that costs are not the exclusive arbiter of CRA eligibility.

It should be noted that in some LMI areas, communities may choose to renewable energy as a means to address appalling instances of pollution, income inequality, or low job creation rates, and therefore “cost” should not be the sole determinant, particularly in those cases where the cost differential may be modes or where the externality costs of conventional thermoelectric generation fuel sources are not reflected in the purchase price of energy.

Therefore, by including the words “renewable or” it would ensure that essential LMI policy priorities will not be limited by a singular metric.

Additionally, and following similar logic, eliminating the term “utility” also acknowledges that renewable energy, in particular distributed, commercial and community solar energy is physically produced and directly delivered within LMI communities in many ways, but it is not always realized through utility ownership, nor receipt of a utility bill.

Once again, the above clarification is suggested in order to avoid any inadvertent limitations in the scope of the proposed rule.

With the above in mind, I respectfully suggest these amendments which would then result in the text below, but which leaves intact the original text, yet which broadens the example to include both tax credit and non-tax credit financings as well as the other changes articulated above.

Proposed Example:

> *Public welfare investment, under 12 CFR part 24, that will finance construction or purchase of a solar energy facility, including those that use federal renewable energy tax credits, or those that do not use tax credits, and will provide access to renewable or reduced cost electrical energy to LMI census tracts.*

Publication in the Federal Register

Given the importance of enabling the regulated institutions to actively adopt the updated guidance, the publication of clear examples in the Federal Register is essential for active and robust adoption of such guidance.

Accordingly, it is essential that the OCC and/or the agencies publish a qualifying list of CRA activities in the Federal Register.

Publication would help ensure the goals and parameters of the CRA are clearly understood, and ensure that the new rules are publicized widely in the public domain, and as transparently as possible.

While additional publication via the internet is also required and important, I fear that if such examples are only available on-line and generally only known to the CRA initiated, the ability of the LMI community to encourage its regulated institutions to encourage renewable energy investment will be constrained.

In addition, publication in the federal register will also reduce underwriting and regulatory compliance time and costs simply because a clear statement in the official record exists and can be easily found, cited, and understood on its face.

Studies have also shown that such clarity does, particularly in cases of other industry sectors, increase the ability of bank customers to increase their ultimate funding amounts needed for those projects that are benefitting LMI individuals. All because the examples are clear, and easily found in the public domain.

Conclusion

Adding renewable energy, particularly wind and solar projects, as well as other renewable energy generation, to the preapproved list of qualified investments will greatly accelerate the essential goal of expanding renewable energy deployment in LMI areas. Expanding the focus beyond that of the "utility" would also better reconcile the proposed policy with todays energy industry reality and enable the proposed guidance to keep pace with future energy sector advancements. Finally, publication of clear example of approved renewable energy investments would provide the highest level of transparency for all parties concerned.

I therefore strongly support this effort by the OCC and/or the Agencies, specifically the effort to include these proposed clarifications set forth above, as part of its reform and modernization of the Community Reinvestment Act .

Thank you.

Respectfully submitted this 8th day of April, 2020

[redacted]

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