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Re: Community Reinvestment Act Proposed Rule

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

The Natural Resources Defense Council (NRDC) thanks the Board of Governors of the Federal Reserve System, the Department of the Treasury, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (the "agencies") for the opportunity to comment on the proposed revisions to the Community Reinvestment Act (CRA) regulations. NRDC is an international nonprofit environmental organization with more than 3 million members and online activists. Since 1970, our lawyers, scientists, economists, and other environmental specialists have worked to protect the world's natural resources, people, and environment. NRDC has offices in New York City, Washington D.C., Los Angeles, San Francisco, Chicago, Montana, and Beijing.

Our comments address the agencies' proposal to add "disaster preparedness and climate resiliency" (hereafter, DPCR) activities as a new category of community development activities eligible for CRA credit. NRDC strongly supports this change. As the agencies correctly note, low and moderate income (LMI) communities in the United States "are especially vulnerable to the impact of natural disasters and weather-related disasters, as well as climate-related risks."[1] A November 2021 Staff Report by the Federal Reserve Bank of New York surveyed the literature on climate risk and concluded that "regions of the United States that are home to above-average shares of low-income and minority groups are likely to suffer the greatest meteorological effects of climate change."[2] The Staff Report also found that "low-income and minority Americans are limited in how they may adapt to climate change because they have less access to insurance and are less likely to have access to credit when needed."[3]

The disproportionate exposure of LMI communities to climate-related risks, as well as the disproportionate impact climate-related risks pose on LMI households and communities of color, threatens to undermine the CRA's goal of improving access to credit and financial services within LMI and underserved communities.[4] Communities impacted by weather-related disasters experience "significant and persistent reductions in credit scores," which may lead to loss of access to credit.[5] The negative credit impacts of disasters are also most severe in communities that are already struggling financially, including low-income communities and communities of color—suggesting that climate change may exacerbate existing inequalities related to access to credit.[6]

As climate impacts accumulate, financial institutions may become less willing to extend credit within impacted communities or may withdraw from these areas entirely. Perversely, this problem may be exacerbated as financial regulators and lenders take necessary steps to better incorporate and manage climate risk, especially if there are not

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[1] 87 Fed. Reg. 33884, 33905 (June 3, 2022).
[2] Ruchi Avtar, Kristian Blickle, Rajashri Chakrabarti, Janavi Janakiraman, and Maxim Pinkovskiy, Understanding the Linkages between Climate Change and Inequality in the United States, Federal Reserve Bank of New York (November 2021), 4, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr991.pdf.
[3] Id.
[4] 12 U.S.C. 30 §§ 2901(a)(3), 2903(a)(1).
[5] Caroline Ratcliffe, William J. Congdon, Alexandra Stanczyk, Daniel Teles, Carlos Martín, and Bapuchandra Kotapati, Insult to Injury: Natural Disasters and Residents' Financial Health, Urban Institute (April 2019), 19, https://www.urban.org/sites/default/files/publication/100079/insult_to_injury_natural_disasters_2.pdf.
[6] Id. at vi, 23-24 (finding that "people living in communities of color hit by medium-sized disasters experienced an average 31-point decline in credit score, compared with a 4-point decline for affected people in majority-white communities").

corresponding policy adjustments to drive investments in adaptation and resiliency in vulnerable communities.[7]

Though it is not a panacea, allowing banks to receive CRA credit for DPCR activities is an appropriate step to mitigate the emerging risk that climate change poses to access to credit in LMI communities. The agencies also correctly recognize the need to ensure that DPCR investments directly benefit residents, including LMI residents, and do not result in exclusion or displacement of LMI residents. Our comments provide recommendations on how to ensure direct benefits and avoid exclusion or displacement of LMI residents, including for specific categories of DPCR activities.

NRDC also supports calls by the National Community Reinvestment Coalition (NCRC) and others for the agencies to expressly consider race when assessing lender performance under the CRA. Although race is not mentioned in the statutory text, the CRA was enacted in part to combat the explicitly race-based practice of redlining. Since then, racial disparities in access to credit generated by redlining and other discriminatory lending practices have remained stubbornly persistent.[8] And climate change threatens to widen the gap still further. As noted above, communities of color are disproportionately exposed to many climate risks, due in part to the very discriminatory practices that were the motivation for the CRA.[9] Communities of color

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[7] See, e.g., Natural Resources Defense Council, Re: Public consultation on Principles for Climate-Related Financial Risk Management for Large Banks, Comment on proposed Principles for Climate-Related Financial Risk Management for Large Banks, Office of the Comptroller of the Currency, (February 16, 2022), 3-6, https://www.regulations.gov/comment/OCC-2021-0023-0113 (noting that "there is a real danger that the adoption of enhanced climate risk mitigation measures by banks may result in disproportionate treatment of or impact to climate-burdened communities, including lower-income communities and communities of color").

[8] See, e.g., Bruce Mitchell and Juan Franco, HOLC "redlining" maps: The persistent structure of segregation and economic inequality, National Community Reinvestment Coalition (March 2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf (finding that 74 percent of the neighborhoods graded as high-risk or "Hazardous" by the Home Owners' Loan Corporation during the redlining era are low-to-moderate income today, while nearly 64 percent are minority neighborhoods).

[9] See, e.g., Enterprise Community Partners, The Link Between Historic Redlining and Current Climate Risks, Enterprise Blog (August 5, 2021), https://www.enterprisecommunity.org/blog/link-between-historic-redlining-and-current-climate-risks; Lily Katz, "A Racist Past, a Flooded Future: Formerly Redlined Areas Have $107 Billion Worth of Homes Facing High Flood Risk—25% More Than Non-Redlined Areas," Redfin News (March 14, 2021), https://www.redfin.com/news/redlining-flood-risk/; Jeremy S. Hoffman, Vivek

are also more severely impacted financially when disasters do strike.[10] NCRC's comments provide a thorough overview of opportunities to incorporate race in CRA exams without running afoul of constitutional equal protection rules.[11]

I. Definition and eligibility requirements (Questions 14, 19, 23, 24)

The proposed rule defines DPCR activities as "activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks." We encourage the agencies to include substantially similar language in the final rule. (Question 19.) In general, however, we recommend that federal agencies avoid using the term "natural disaster" when possible (e.g., when not needed for consistency with other statutes or regulations). Scholars and advocates widely agree that the framing of a "natural" disaster shifts responsibility away from the human choices that put people and communities in harm's way and the institutions that fail to address the resulting inequities and vulnerabilities.[12] Instead, we recommend using clear and specific terminology as appropriate to refer to natural

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Shandas, and Nicholas Pendleton, The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas, Climate 8(1):12 (January 2020), https://doi.org/10.3390/cli8010012; Li Dongying, Galen D. Newman, Bev Wilson, Yue Zhang, and Robert D. Brown, Modeling the relationships between historical redlining, urban heat, and heat-related emergency department visits: An examination of 11 Texas cities, Environment and Planning B: Urban Analytics and City Science 49(3):933 (August 2021), https://doi.org/10.1177%2F23998083211039854; Angel Hsu, Glenn Sheriff, Tirthankar Chakraborty, and Diego Manya, Disproportionate Exposure to Urban Heat Island Intensity across Major US Cities, Nature Communications 12(1):2721 (May 2021), https://doi.org/10.1038/s41467-021-22799-5.

[10] Ratcliffe et al. (2019) at 23-24.

[11] See National Community Reinvestment Coalition, Comments on Community Reinvestment Act Proposed Rule. See also Brad Blower, Josh Silver, Jason Richardson, Glenn Schlactus, and Sacha Markano-Stark, Adding Robust Consideration of Race to Community Reinvestment Act Regulations: An Essential And Constitutional Proposal, NCRC (September 2021), https://ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/.

[12] See, e.g., Neil Smith, "There's No Such Thing as a Natural Disaster," Social Science Research Council (June 11, 2006), https://items.ssrc.org/understanding-katrina/theres-no-such-thing-as-a-natural-disaster/; Gregory Squires and Chester Hartman, eds., There is No Such Thing as a Natural Disaster: Race, Class, and Hurricane Katrina, New York: Routledge (2007).

hazards, exposure, and vulnerability.[13] In this instance, the term "natural hazards" may more precisely capture the agencies' intended meaning.

It is particularly important that the final definition include the term "climate-related risks," as proposed, since this language can encompass diffuse or incremental environmental risks not typically understood as disasters (such as progressively hotter summer temperatures). The agencies should also consider issuing additional guidance explaining what is included under "climate-related risks." Ideally, the definition should encompass not only natural hazards or weather-related events that can be directly attributed to climate change, but also environmental health threats that may be exacerbated by climate change, such as infectious disease outbreaks or air or water quality issues. To promote consistency, the agencies should further specify that the definition includes, but is not limited to, hazards or events recognized under existing federal law, such as the Stafford Act.[14]

Under the proposed rule, DPCR activities also must meet three criteria to qualify for CRA credit: (1) the activities must "benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts"; (2) the activities must "not displace or exclude low- or moderate-income residents in the targeted census tracts"; and (3) the activities "must be conducted in conjunction with a federal, state, local, or tribal government plan, program, or initiative focused on disaster preparedness or climate resiliency that includes an explicit focus on benefitting a geographic area that includes the targeted census tracts."

NRDC strongly supports the first two criteria. A growing body of research documents the risk that DPCR investments may adversely impact lower-income and vulnerable residents, under certain circumstances.[15] Most straightforwardly, lower-

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[13] See Omar-Dario Cardona, Maarten K. van Aalst, Jörn Birkmann, Maureen Fordham, Glenn McGregor, Rosa Perez, Roger S. Pulwarty, E. Lisa F. Schipper, and Bach Tan Sinh, Determinants of risk: exposure and vulnerability, In Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation, Cambridge: Cambridge University Press (2012), 69-70, https://www.ipcc.ch/site/assets/uploads/2018/03/SREX-Chap2_FINAL-1.pdf (providing a robust conceptual explanation of how physical hazards, exposures, and vulnerabilities combine to create disaster risk).

[14] See 42 U.S.C. § 5122(2).

[15] See, e.g., Kelsea Best and Zeynab Jouzi, Climate Gentrification: Methods, Gaps, and Framework for Future Research, Frontiers in Climate 4:828067 (2022) (surveying 12 recent papers on climate gentrification); see also Galia Shokry, Isabelle Anguelovski, James J.T. Connolly, Andrew Maroko, and Hamil Pearsall, "They Didn't See It Coming": Green Resilience Planning and Vulnerability to Future Climate Gentrification, Housing Policy Debate 32(1):211 (2022); Jesse M. Keenan, Thomas Hill, and Anurag

income residents may be involuntarily displaced if climate- or disaster-related investments directly reduce the availability of local affordable housing; for example, if affordable housing is demolished to make space for climate resiliency infrastructure. Involuntary displacement may also occur when investments contribute to rising local property values, increasing property taxes and rents and driving out housing insecure residents. In the worst case, "measures that are meant to reduce vulnerability to climate risks and impacts may do so for some even while exacerbating vulnerability to gentrification and displacement … for other, socially vulnerable residents."[16] Requiring DPCR activities to benefit and not exclude or displace LMI residents will, as the agencies suggest, help "ensure that qualifying activities do not have a detrimental effect on low- or moderate-income individuals or communities or on other underserved communities."[17] We provide additional recommendations on how regulators and financial institutions can target benefits and avoid exclusion or displacement in Section III, below.

We note that the prohibition against displacement should only include *involuntary* or *forced* displacement. DPCR activities that assist LMI residents to voluntarily relocate or enable planned community retreat from highly climate-impacted areas should not be excluded from consideration for CRA credit simply because they facilitate relocation.

We urge the agencies to reconsider the third criteria, that DPCR activities be conducted in conjunction with a government plan, program, or initiative with an explicit focus on benefitting the targeted census tract. (Question 14.) This requirement could exclude DPCR activities in places where disaster or climate planning efforts have been lackluster or where existing plans fail to appropriately identify communities in need. At the same time, improved cooperation between financial institutions and governments can bring many benefits, including the coordination of DPCR activities with complementary activities (such as affordable housing) that can mitigate the risk of exclusion or displacement. We therefore encourage the agencies to consider alignment with government planning efforts at the impact assessment stage. Where the government plan, program, or initiative includes a focus on promoting affordable housing or anti-displacement activities within the targeted tracts, alignment should also be considered as probative evidence that the activity will not exclude or displace LMI residents.

NRDC agrees with the agencies' decision not to award CRA credit for DPCR activities in federally designated disaster zones. (Question 24.) Federal disaster zones often include higher-income census tracts with sufficient capital to finance DPCR

Gumber, Climate gentrification: from theory to empiricism in Miami-Dade County, Florida, Environmental Research Letters 13:054001 (2018).

[16] See Shokry et al. (2022) at 211.

[17] 87 Fed. Reg. 33884, 33903 (June 3, 2022).

activities, or at least substantially lesser need than the LMI communities that are the proper focus of the Act. Moreover, any immediate recovery needs in these areas are already addressed through the existing disaster recovery activities category.

II. Scope of eligible activities (Questions 21, 22, 31)

NRDC encourages the agencies to consider a wide range of activities beyond energy efficiency and weatherization as potentially eligible for CRA credit under the DPCR category. (Question 22.) For example, eligible activities might include financing for programs that offer home repair and improvement loans to improve disaster and climate resiliency, such as flood-proofing or water efficiency; financing or technical support for LMI rooftop solar programs or community-owned solar projects; and investments in neighborhood-based initiatives such as neighborhood greening, cool roofs and surfaces, resilience hubs, microgrid projects, green stormwater infrastructure, and holistic neighborhood climate planning efforts or needs assessments. Financing or funding to provide matching funds for federal, state, or private grants related to DPCR activities—such as Federal Emergency Management Agency (FEMA) grants—should also be potentially eligible for credit.[18]

We support the agencies' decision to categorize energy efficiency and weatherization as DPCR activities, rather than affordable housing activities. (Question 21.) Although energy efficiency and weatherization can help address housing affordability, they also provide substantial climate resiliency benefits which should be duly considered. In addition, from both a climate resiliency and cost savings perspective, energy efficiency and weatherization are often most effective when deployed together with other distributed energy technologies such as whole-home electrification, distributed generation (e.g., rooftop solar), and demand response.[19] Classifying energy efficiency and weatherization in the DPCR category will facilitate initiatives that co-optimize use of energy efficiency and weatherization with complementary DPCR activities.

In general, the agencies should take a broad view of what counts as an eligible energy efficiency and weatherization activity. For example, the category should include the installation of efficient cooling systems to replace window and through-the-wall air

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[18] Grants from the FEMA usually will provide 75 percent of a project's cost and requires that the remaining 25 percent come from a non-federal source of funding. Financing from financial institutions covered by CRA could help provide such a match for FEMA grants, or any grant requiring matching funding.

[19] For example, weatherization improvements can be paired with rooftop solar and/or home energy storage to deliver deeper energy savings and improve resiliency in the event of power outages. Or, weatherization improvements can be combined with whole-home electrification to improve indoor air quality and resident health outcomes while reducing the household's financial exposure to volatile fossil fuel prices.

conditioners or provide cooling in homes that did not previously have access.[20] It should also include home electrification/decarbonization measures, where such measures provide climate resiliency benefits to residents such as improved indoor air quality or reduced or stabilized home energy costs. We further recommend that the scope of energy efficiency and weatherization explicitly incorporate water efficiency measures, whether alone or in combination with energy measures. Making more efficient use of drinking water is an essential component of climate resiliency, as climate-driven changes in the hydrological cycle jeopardize the reliability of public water supplies. Measures that reduce hot water use have long been a staple of energy efficiency programs, but substantial savings of water and customer bill savings also result from cold water savings, such as toilet replacement and turf grass removal.

NRDC encourages the agencies to follow through on their suggestion of issuing additional guidance with a non-exhaustive list of eligible and ineligible DPCR activities. (Question 31.) We agree with NCRC that this list should be principles-based, focusing on examples that illustrate broader principles applicable to a range of activities. The agencies should avoid issuing a "laundry list" of eligible activities, since this may unintentionally discourage financial institutions from investing in innovative activities that do not appear on the list. We also second NCRC's suggestion that the agencies develop a publicly available, interactive database of approved community development activities. Such a database could improve the transparency of agency decision making while allowing financial institutions, community-based groups, and other interested parties to identify and replicate successful initiatives. The database could also provide information on how to access technical assistance for DPCR initiatives.

III. Targeting benefits and avoiding exclusion and displacement (Questions 1, 2, 15)

As noted above, NRDC strongly supports the proposed requirements that DPCR activities must benefit and not exclude or displace LMI residents. Below, we offer recommendations as to how regulators and financial institutions can ensure that DPCR activities meet these requirements, including for specific categories of activities.

The risk of adverse impacts from climate resiliency investments is most acute when planning processes fail to consider the perspectives and needs of vulnerable populations.[21] Meaningful community involvement in DPCR activities, particularly by

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[20] In many cases, efficient cooling devices can be installed as part of a whole-home retrofit without raising energy usage; however, adding needed cooling capacity should be eligible even if it does increase energy usage, for resiliency and health and safety reasons.

[21] See Best and Jouzi (2022) at 6 (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").

environmental justice groups and others representing climate-vulnerable populations, is therefore essential to ensure that these activities benefit and do not exclude or displace LMI residents. The agencies should require financial institutions to submit documentation of community engagement efforts during the CRA examination process, including any changes made in response to community requests. In some cases, it may be necessary for financial institutions to provide financial support or technical assistance to ensure robust participation from under-resourced community groups. Examiners should also afford significant weight to comments or objections submitted by community groups, particularly those representing LMI residents or climate-vulnerable populations.

One means of community engagement is through negotiated community benefits agreements (CBAs). A CBA is a formal, negotiated agreement between a financial institution and community groups that spells out how the lender will meet its CRA obligations, often including through community development activities. The agencies should consider steps to encourage and formalize the use of CBAs, including for DPCR activities. For example, the agencies could adopt a rebuttable presumption that DPCR activities undertaken pursuant to a CBA directly benefit and do not exclude or displace LMI residents.[22] Leveraging CBAs in this way is appealing because it would allow community groups to define what measures are most likely to deliver benefits and avoid exclusion or displacement.

The agencies should also take steps to promote co-development of DPCR activities with affordable housing and other activities likely to mitigate the risk of displacement.[23] Such activities might include commitments to provide jobs or workforce training to residents; philanthropic support for organizations engaged in anti-displacement work, such as tenants' groups, legal services, fair housing initiatives, and policy organizations; and financing for local government efforts to fight displacement, create affordable housing, and respond to homelessness. In addition, where a DPCR activity is undertaken in conjunction with a government plan, program,

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[22] The presumption should be rebuttable to ensure that CBAs are truly reflective of community needs. For example, if community members submit objections alleging that the signatories to a CBA were not representative of the interests of LMI residents or provide evidence that a particular project would in fact displace LMI residents, examiners would be permitted to consider that evidence when evaluating whether the activity should qualify for CRA credit.

[23] The California Reinvestment Coalition has developed a voluntary "Code of Conduct" that includes best practices for how banks can invest in low-income neighborhoods without causing displacement. See California Reinvestment Coalition, "How Banks, Private Equity, and Wall Street Can Stop Contributing to Displacement," https://calreinvest.org/about/code-of-conduct/#:~:text=Anti-Displacement%20Best%20Practices.,of%20displacement%20occurring%20in%20communities.

or initiative that includes a focus on promoting affordable housing or anti-displacement activities within the targeted census tracts, that should be considered probative evidence that the activity meets the non-displacement requirement.

NRDC encourages the agencies to develop additional guidance on how financial institutions can meet the requirements for specific categories of DPCR activities. (Question 15.) This could be accomplished through the principles-based list described above or through separate guidance. We provide recommendations below for three categories of DPCR activities: energy efficiency and weatherization, solar energy generation, and neighborhood-based resiliency projects.

Energy efficiency and weatherization

Energy efficiency and weatherization can provide many benefits including reduced home energy costs, improved thermal comfort, better resident health outcomes, and enhanced resiliency to weather-related disasters. However, many energy efficiency and weatherization programs struggle to reach those most in need, including lower-income residents. It should not be simply assumed that a program will benefit LMI residents, even if it is theoretically open to all. For example, a program that provides low-cost loans to homeowners for weatherization improvements may have little benefit for LMI residents if most LMI residents in the census tract live in rental housing. Similarly, rebates, discounts, or tax credits for purchases of high-efficiency appliances offer little benefit to LMI households that lack disposable income to make discretionary purchases, even at discounted prices.

NRDC encourages the agencies to clarify that only energy efficiency and weatherization activities that include a dedicated LMI component will be considered for CRA credit. A dedicated LMI component would include any targeting measure or program design element intended to ensure participation of or benefits to LMI residents *beyond* the location of the activity within a qualifying census tract. This could include, for example, a dedicated set-aside for LMI residents or for affordable multifamily buildings; a targeted outreach plan to recruit LMI residents to participate; or a "direct install" program design whereby inefficient appliances and equipment are replaced at no cost to income-qualified households.

In addition, where an energy efficiency or weatherization program is open to both non-LMI and LMI residents, regulators should award partial credit based on the percentage of benefits going to LMI residents. This could be determined through the participation rate of LMI households or through the percentage of program dollars allocated for LMI residents (for programs with a dedicated LMI set-aside).

Examiners and lenders should also consider potential adverse impacts of energy efficiency and weatherization activities.[24] For example, financing for multifamily weatherization upgrades may have little benefit for residents if building owners capture the energy savings or simply raise the rent after installing the upgrades. In the worst case, multifamily energy efficiency investments can drive displacement if they encourage the owner to seek higher-income tenants or to sell the property. Lenders can guard against these outcomes by including affordability restrictions and renter protections in financing agreements. For example, lenders could require building owners receiving financing to agree to limit rent increases, to abstain from selling the property for a defined period (for example, 15 years), and to comply with state and local renter protection laws. [25] Similarly, it is critical that lenders do not provide financing to building owners or developers whose business models rely on evicting existing residents or businesses. Examiners should conduct due diligence on financing counterparties for harmful or illegal business practices and should deny CRA credit for transactions involving abusive landlords or developers. Due diligence should involve checking with tenants and advocacy groups for information about known bad actors.

Finally, for programs that provide financing to individual residents for energy efficiency and weatherization upgrades, rather than grants or direct installation, examiners should conduct due diligence to ensure that financing terms are fair and do not result in unsustainable consumer debt.[26]

Solar energy generation

There are a variety of development models for solar energy generation. NRDC recommends that activities that promote direct ownership of solar energy systems by

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[24] The challenges of delivering the benefits of energy efficiency to residents of multifamily housing noted here are also present for electrification and water efficiency measures, and similar strategies to avoid displacement should be employed.

[25] As an alternative to an absolute restriction on sale, financing agreements could restrict the property owner from selling unless the purchaser agrees to assume the affordability restrictions that apply to the original owner. This approach is sometimes taken for multifamily weatherization projects funded through the Department of Energy's Weatherization Assistance Program.

[26] For example, consumer advocates have found evidence of misrepresentation and abuse in some Property Assessed Clean Energy (PACE) financing programs, sometimes leading to unsustainable debt and foreclosure. For recommendations on consumer protections for PACE programs, see National Consumer Law Center, Property Assessed Clean Energy (PACE) Loans: State and Local Consumer Protection Recommendations (November 2019), https://www.nclc.org/images/pdf/energy_utility_telecom/pace/ib-pace-nov2019.pdf.

LMI residents and community-based organizations should be considered as presumptively eligible for CRA credit. This could include, for example, utility- or government- run programs that provide grants or no- or low-interest loans for LMI residents to install rooftop solar. It could also include financing for solar projects that are directly owned by community-based groups, such as cooperatives or non-profit entities. For programs that provide financing rather than grants or direct installation, examiners should conduct due diligence to ensure that financing terms are fair and beneficial for recipients.

By contrast, NRDC recommends that utility scale solar projects should not qualify for CRA credit. Although utility scale solar can provide generalized benefits, such as improved regional grid resiliency, these benefits are not sufficiently directed to LMI communities to warrant CRA credit. Financing for utility scale projects is also more likely to be available through conventional means.

The agencies should carefully consider under what circumstances, if any, non-utility scale commercial solar projects such as third party-owned rooftop solar or commercial community solar should qualify for CRA credit.[27] Some commercial solar development models can provide ancillary benefits to residents, for example through solar "subscription" programs that result in modest energy cost savings. In practice, however, LMI residents may be effectively excluded from participation in such programs due to stringent credit screening requirements and other barriers. Robust consumer protections are also needed to ensure that financial products marketed to LMI residents are beneficial and not exploitative.

<u>Neighborhood-based resiliency projects</u>

A third category comprises neighborhood-based resiliency projects, such as neighborhood greening or cooling initiatives; microgrid projects; climate resilience hubs; green stormwater infrastructure; and holistic neighborhood climate planning efforts or needs assessments. Neighborhood-based resiliency projects can directly benefit LMI residents. For example, neighborhood greening projects that reduce ambient outdoor temperatures can benefit heat-vulnerable residents living in less energy-efficient affordable housing, residents who use public transportation or other car-free travel modes, and outdoor workers. As with other DPCR activities, however, there is also a risk that neighborhood-based projects may contribute to gentrification-

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[27] Third party-owned rooftop solar refers to arrangements whereby a private developer pays some or all of the up-front cost of installing a rooftop solar system on a resident's house and collects a revenue stream from the generated electricity. The resident enjoys modest cost savings through a contractual arrangement with the developer and the utility. Commercial community solar refers to arrangements that allow residents to reduce their monthly energy costs by "subscribing" to a share of the power generated from a solar facility located elsewhere.

driven displacement—especially since these projects may result in neighborhood beautification or other publicly shared benefits.

It is therefore important that financial institutions take proactive steps to ensure that neighborhood-based projects benefit and do not displace or exclude LMI residents. Lenders can use the strategies outlined at the beginning of this section, such as engaging in inclusive, participatory planning processes; incorporating a focus on affordable housing development; financing projects that have an explicit commitment to local hiring or workforce training; providing philanthropic support for groups doing anti-displacement work; and/or financing anti-displacement efforts by local government. The agencies should require financial institutions to document the steps they take to comply with the eligibility requirements and to provide this information to examiners during CRA reviews.

Some larger-scale resiliency projects, such as green stormwater infrastructure projects, may extend across multiple neighborhoods that include both LMI tracts and non-LMI tracts. For such projects, the agencies should consider awarding only partial credit based on the percentage of investment dollars or benefits allocated to qualifying census tracts, potentially with a floor of 25 percent of total dollars or benefits earmarked for LMI tracts (Questions 1, 2).

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We thank the agencies for their consideration of our comments. If you would like to discuss any aspect of our response or if we can be of further assistance, please contact Sarah Dougherty, sdougherty@nrdc.org.

Sincerely,

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