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Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

**RE: "Community Reinvestment Act," 87 Fed. Reg. 33,884 (June 3, 2022): OCC
Docket ID OCC-2022-0002; Board Docket No. R-1769; FDIC RIN 3064-AF81**

The Solar Energy Industries Association (SEIA) is the national trade association of the U.S. solar energy industry. Our members promote the environmentally responsible development of distributed and utility-scale solar energy and storage. We are committed to working with federal agencies, environmental and conservation organizations, Tribal governments, state agencies, and other stakeholders to achieve this goal. On behalf of our member companies, SEIA appreciates the opportunity to provide these comments on the Office of the Comptroller of the Currency's ("OCC"), the Board of Governors of the Federal Reserve System's, and the Federal Deposit Insurance Corporation's (collectively, the "Agencies") joint proposed rule, "Community Reinvestment Act," 87 Fed. Reg. 33,884 (June 3, 2022) ("proposed rule").

SEIA is committed to building a strong solar industry to speed the country's energy transition and address the climate crisis. As the national trade association for the U.S. solar energy industry, which employs more than 230,000 Americans, we represent nearly 1,000 organizations that manufacture, install, and support the development of solar energy. We firmly believe that the clean energy transition must be based on principles of equity and opportunity. These values are infused throughout our organization and ones we are actively working to advance within our industry.

Environmental protection, including reducing the impacts of the power sector on historically overburdened communities, is a paramount concern for the solar energy industry. Solar energy is clean, abundant, and the United States has some of the richest solar resources in the world. Deploying more solar energy reduces carbon emissions and other harmful pollutants, which have disproportionately impacted low- and moderate-income ("LMI") neighborhoods and communities of color, in comparison to fossil fuel-based energy sources. It is an energy solution that provides clean, reliable electricity, increases consumer choice, and helps consumers and business owners save money on their utility bills. Critically, solar energy helps our nation address the threats of climate

change, which imposes billions of dollars of additional costs on LMI communities every year.

I. Introduction

SEIA and its members support the Agencies' efforts to streamline and expand qualifying investment activities under the Community Reinvestment Act ("CRA"), as we have written previously in comments to the Agencies.¹ We also strongly support the goals of the CRA to ensure that regulated banks serve the communities in which they do business, including meeting the credit needs of LMI neighborhoods.

While we are encouraged that the proposed rule contemplates the inclusion of clean energy-related lending – especially clean energy tax equity investment – as community development activity, the agencies can and should go much further. As the Agencies acknowledge in the preamble, climate change poses unique risks to LMI communities, many of which have already borne disproportionate burdens related to the emissions-generating activity that causes climate change. This is because LMI communities suffer disproportionate impacts of the natural disasters and extreme heat caused by climate change. As has been well-documented, this is due to inadequate housing, infrastructure,² ability to contend with potential losses of income,³ and resources to address health impacts⁴ due to extreme weather, among other factors. By spurring more investment and lending for localized clean energy deployment, such as rooftop solar systems and solar heating and cooling for residential and commercial buildings, community solar projects, utility-scale solar facilities, associated energy storage projects, and others, a final rule can create jobs and local business opportunities while reducing the emissions that contribute to extreme weather, all while increasing access to credit.

The solar industry is deeply committed to helping our nation meet the renewable energy targets set forth by President Biden in a just and equitable manner. In order to modernize

¹ See, e.g., SEIA Comments in Docket ID OCC-2020-0003, available at <https://www.regulations.gov/comment/OCC-2020-0003-0014> (Aug. 3, 2020); SEIA Comments in Docket ID OCC-2013-0003, available at <https://www.seia.org/sites/default/files/resources/SEIA%20Comments%20on%20Interagency%20CRA%20Q%26As%20-%2005.17.2013.pdf> (May 17, 2013).

² See, e.g., Eleanor Kruse and Richard V. Reeves, "Hurricanes Hit the Poor the Hardest," THE BROOKINGS INSTITUTION (Sept. 18, 2017), available at <https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/>; U.S. GLOBAL RESEARCH PROGRAM, Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States, available at <https://nca2018.globalchange.gov/>; Bev Wilson, "Urban Heat Management and the Legacy of Redlining," 86 J. OF THE AMER. PLANNING ASSOC. 443, (2020), available at <https://www.tandfonline.com/doi/full/10.1080/>.

³ Patrick Sisson, "In Many Cities, Climate Change Will Flood Affordable Housing," BLOOMBERG (Dec. 1, 2020), available at <https://www.bloomberg.com/news/articles/2020-12-01/how-climate-change-is-targeting-affordable-housing>.

⁴ See Eleanor Kruse and Richard V. Reeves, *supra* n.3.

the grid and address the climate crisis, solar energy must account for at least 30% of U.S. generation by the end of this decade and 40-50% by 2035. That means roughly *quadrupling* our current pace of installations by 2030. We are in a race against time, and the proposed rule, with some modifications, can supercharge the nation's capacity to combat climate change in the very communities suffering the most from it.

Given the significant role in power sector decarbonization that solar energy will have, we believe that every tool in the toolbox – including the CRA – should be used to spur its development. Moreover, in light of recent high-profile extreme weather events impacting the U.S. power sector,⁵ the Agencies' proposed rule should yield as a co-benefit greater grid reliability, upon which the entire U.S. economy depends. Climate change represents one of the greatest risks to the banking sector⁶ and LMI communities alike, and promoting clean energy investment activities that will abate the GHG emissions that cause climate change represents a rare opportunity to simultaneously advance three top administration priorities: advancing environmental justice, combatting the climate crisis, and reinforcing the backbone of the U.S. economy.

II. The Proposed New Definition of “Community Development Purposes” Should Be Expanded

At least two sub-categories of the revised definition of “community development purposes”⁷ – “essential community infrastructure” and “disaster preparedness and climate resiliency” – should be expanded to include clean electricity generation as well as solar heating and cooling.

A. Utility-scale Solar Projects, Among Others, Should Be Included in the Definition of “Disaster Preparedness and Climate Resiliency”

The solar industry, like other industries and the economy overall, seeks regulatory certainty and durability. For these and other reasons, in response to Question 22 in the preamble,⁸ we strongly recommend that the Agencies include utility-scale solar projects

⁵ See, e.g., North American Electric Reliability Corporation, “Extreme Weather Heightens Reliability Risks this Summer” (May 18, 2022), available at <https://www.nerc.com/news/Headlines%20DL/May%2018%202022%20SRA%20Announcement.pdf>.

⁶ According to the Swiss Re Institute, the world stands to lose 10% of total economic value by mid-century if climate change remains on its current trajectory due to physical factors such as severe weather events, shifting coastlines, and changes to agricultural and living conditions. “The Economics of Climate Change” (Apr. 22, 2021), available at <https://www.swissre.com/institute/research/topics-and-risk-dialogues/climate-and-natural-catastrophe-risk/expertise-publication-economics-of-climate-change.html>. Today, the world's 215 largest companies face nearly \$1 trillion in costs due to physical climate risks. CDP, “World Biggest Companies Face \$1 Trillion in Climate Change Risks” (June 4, 2019), available at <https://www.cdp.net/en/articles/media/worlds-biggest-companies-face-1-trillion-in-climate-change-risks>. These estimates should give any business lender significant pause.

⁷ Proposed rule §__.13(a)(2).

⁸ 87 Fed. Reg. 33,907.

that would benefit residents in LMI census tracts as part of a “disaster preparedness and climate resiliency definition,” §__.13(j).

Many solar projects of large “utility scale” are already located in LMI areas of the U.S., and the failure of existing CRA regulations to expressly codify the benefits of investing in or lending to solar energy projects, ironically, does a disservice to such regions. Indeed, these areas would strongly benefit from expanded capital investment in new solar energy construction and operation, in addition to the displacement of fossil fuel burning power plants, which also tend to be located in LMI areas. Investing and reducing pollution in these areas through solar energy will have multiple positive economic impacts in LMI areas across the entire U.S.

The Agencies have historically supported a general policy of increased investment and lending to renewable energy projects by regulated institutions.⁹ Regulated financial institutions are both a natural and necessary source of investment capital needed to advance America’s energy independence, the reliability and resiliency of the nation’s electric grid, and job creation in the solar energy sector. Today, these investments total around \$20 billion annually. Therefore, expanding the definition to include utility-scale solar energy projects will help regulated institutions comply with the regulations while better serving the U.S. economy overall.

The proposed rule should also be broadened in order for the Agencies to fully comply with President Biden’s Executive Order 14008¹⁰ as it concerns “places that have suffered the most from persistent pollution, including low-income rural and urban communities, communities of color, and Native communities,” served by regulated institutions. Thus, a final rule should clearly state that direct investment and lending for solar projects is an approved activity under the CRA. Clearly stating this policy in the final rule will ensure that CRA regulations are properly tailored to serve LMI areas in a durable fashion while advancing the other goals of Executive Order 14008, such as meeting the nation’s growing economic and energy needs. Without this expansion, investment in and lending related to solar projects will be reduced, exacerbating the economic disadvantages of LMI areas within regulated financial institutions’ service areas and regions.

Including utility-scale solar projects in the definition of “disaster preparedness and climate resiliency” would also align the Agencies’ CRA regulations with parallel programs administered by other agencies. Specifically, the Federal Emergency Management Agency (“FEMA”) has funded solar microgrids under its Hazard Mitigation Grant Program, and solar projects are eligible for funding under the Building Resilient

⁹ See, e.g., OCC, “Energy Lending,” available at <https://www.occ.treas.gov/topics/supervision-and-examination/credit/commercial-credit/energy-lending.html>.

¹⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

Infrastructure and Communities program (“BRIC”).¹¹ FEMA has recognized that BRIC funding for solar microgrid projects can help “mitigate disturbances caused by natural disasters and allow for faster system response and recovery,” which is directly aligned with the proposed rule’s definition of “activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate related risks[...] for example, [] severe storms, droughts, flooding, and forest fires.”¹² Aligning CRA definitions with other government agency programs will promote greater adoption of both programs and reduce administrative burdens and confusion.

For these reasons, the definition should be amended¹³ to include, at a minimum, the following:

Solar energy generation facilities eligible for the tax credit under Internal Revenue Code Section 48 as if such provisions remained in effect at the date of such investment or lending, and including the investment in, or lending with respect to, the land or interests in such land that is essential to the function of generating energy at such facility.

The definition should also include other types of renewable energy projects, including those described in the introduction and those contemplated under sections 45 and 30C of the Internal Revenue Code.

The preamble rightly acknowledges that LMI communities are more likely to be located in areas or buildings that are particularly vulnerable to disasters or climate-related risks, such as flooding. They may also be more vulnerable to loss of income and displacement costs. LMI communities are disproportionately affected by the health impacts associated with natural disasters and, increasingly, climate-related changes to their surrounding environment (extreme heat, damaging storms). Expanding “disaster preparedness and climate resiliency” activities to include solar energy projects would clearly “assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks.” Ameliorating the effects of climate change on LMI communities is an exigent moral imperative.

¹¹ See, e.g., “Hazard Mitigation Assistance Grant Funding for Microgrid Projects,” available at <https://www.fema.gov/fact-sheet/hazard-mitigation-assistance-grant-funding-microgrid-projects>. President Biden recently announced \$2.3 billion in additional funding for BRIC specifically in order to “help communities increase resilience to heat waves, drought, wildfires, flood, hurricanes, and other hazards by preparing before disaster strikes.” “President Biden’s Executive Actions on Climate to Address Extreme Heat and Boost Offshore Wind” (July 20, 2022), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/20/fact-sheet-president-bidens-executive-actions-on-climate-to-address-extreme-heat-and-boost-offshore-wind/>.

¹² 87 Fed. Reg. 34,020, 33,905.

¹³ In addition to adding this definition to 5 C.F.R. § __.13(j), the Agencies should also add it as a new 5 C.F.R. § 24.6(e) for additional clarity.

B. “Essential Community Infrastructure”

The proposed definition of “essential community infrastructure,” §__.13(f), is arbitrarily and unnecessarily limited to just a few types of infrastructure investments (specifically, broadband, telecom, transit, water, sewer). Electricity generation and solar heating and cooling clearly fit within this category because all of these are services essential for life typically provided by a monopoly utility or municipality. The preamble contains no justification for a more limited definition.

However, the agencies should limit the inclusion of electricity generation to “clean electricity generation, defined as generation from solar, wind, hydro, geothermal, or other non-nuclear generation that does not produce greenhouse gas emissions.”¹⁴ Limiting the definition furthers parallel policy goals of emissions reduction and avoids exacerbating existing burdens on LMI communities due to historic pollution.

C. Other Types of Solar and Storage Investments

In response to Question 21 in the preamble, the other types of energy-related activities that should be included are rooftop solar systems for residential and commercial buildings, solar heating and cooling, community solar projects, and associated energy storage projects. Criteria to ensure geographic benefits could include where the equipment is physically located and whether the project employs individuals from an LMI community or includes developers or contractors from the LMI community. The Agencies should also consider similar expansion of other categories of “community development purposes,” such as “essential community facilities” or recovery activities.

III. SEIA Supports the Proposed “Primary Purpose” Definitions

While SEIA generally supports the proposed “primary purpose” definitions, §__.13(a)(1), pro rata consideration for non-housing community development activities should be included in a final rule. For example, a qualified climate resiliency project may serve a broad area where LMI census tracts comprise a minority of total census tracts. Such activity would provide benefits to some LMI individuals even though an overall project may directly focus on resiliency rather than LMI census tracts or individuals. In the context of climate resiliency and clean energy-related essential infrastructure specifically, expanding the primary purpose definition to include pro rata consideration beyond housing will reinforce other public policy initiatives aimed at reducing burdens on LMI communities, such as reducing emissions.

¹⁴ Nuclear power in particular represents a major consumptive use of water (as does fossil fuel-fired thermal generation), which will come under increasing supply pressure as climate change worsens.

In response to Question 1 in the preamble, the Agencies should consider partial consideration for other community development activities (for example, financing clean energy infrastructure and climate resiliency). The preamble contains no justification for limiting pro rata or partial consideration, and expanding it will serve important related public policy considerations.

In response to Question 2 in the preamble, if partial consideration is extended to other types of community development activities with a primary purpose of community development, there need not necessarily be a minimum percentage of the activity that serves LMI individuals or geographies. Any specific number will be arbitrary, and demonstrating a certain percentage of benefit would likely present administrability issues. Rather, agencies could consider a number of factors, including percentage of activity that serves LMI communities; whether and to what extent the activity reinforces parallel policy goals like reducing environmental burdens on LMI communities; whether it enhances local economies through job creation; and whether the proposed loan recipient is part of an LMI or other historically disadvantaged community. Because clean energy facilities cited in any given location provide incremental benefits to Americans everywhere, they are unique examples of commercial activity whose benefits are not necessarily bound by geography or have limited portability.

IV. Conclusion

SEIA appreciates the Agencies' efforts to harmonize, streamline, and broaden the CRA regulations to ensure meaningful expansion of access to credit in LMI communities. As described above, this effort also represents an incredible opportunity to minimize the harmful effects of fossil fuel combustion, climate change, and extreme weather on these same LMI communities, including rural communities, communities of color, and Native communities, while boosting local economies and the national economy. Time is of the essence to fight the climate crisis, and we are encouraged by the Agencies' efforts to clarify the clean energy rules of the road for regulated institutions. We look forward to reviewing a final rule.

Thank you for the opportunity to provide these comments. If you have any questions, please contact Ben Norris at (202) 556-2909 or bnorris@seia.org.

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Sincerely,

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