Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

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Industry Letter: CRA Consideration for Activities that Contribute to Climate Mitigation and Adaptation

TO: All Banking Institutions Subject to the New York Community Reinvestment Act

Beginning in 2019, the New York State Department of Financial Services (the "Department") has focused on climate change as a systemic threat to the safety and soundness of the financial services industry. The Department was the first financial regulator in the United States to join the Network for Greening the Financial System, a coalition of central bankers and supervisors committed to managing climate change financial risks globally. The Department is also a member of the Sustainable Insurance Forum, an international network of insurance regulators. Additionally, the Department hired its first Director of Sustainability and Climate Initiatives, Dr. Yue (Nina) Chen, to engage with the industry and develop expert guidance in this critical area.

In the past year, the Department has issued a Circular Letter to the insurance industry and an Industry Letter to the banking industry to set expectations as to how these industries can best manage the financial risks from climate change. The Department is issuing this Industry Letter to describe circumstances in which banking institutions subject to the New York Community Reinvestment Act (the "New York CRA"), Banking Law § 28-b, and Part 76 of Title 3 of the New York Codes, Rules, and Regulations, may receive credit in connection with financing projects addressing climate change. More specifically, institutions subject to the New York CRA may receive credit for financing activities that reduce or prevent the emission of greenhouse gases that cause climate change ("climate mitigation"), and adapt to life in a changing climate ("climate adaptation") (together with climate mitigation, "climate resiliency").

Although no one is spared from the impact of climate change, climate change disproportionally affects disadvantaged communities, including low- and moderate-income ("LMI") communities which tend to be more susceptible to flooding and heat waves,[1] risks exacerbated by climate change. Compounding the problem, LMI communities also have fewer resources to recover from natural disasters which are, in turn, more frequent and severe due to climate change. Further, LMI communities tend to have higher percentages of minority populations, and therefore these effects of climate change are disproportionately borne by people of color.

LMI communities can benefit from climate mitigation actions, such as improving energy efficiency. LMI households on average face a higher energy burden than other communities, spending more on gas, electric, and heating fuel as a percentage of household income.[2]

According to the National Conference of State Legislatures, "if low-income housing was as energy-efficient as the average U.S. home, low-income customers' energy costs would decrease by about one-third."[3] Although LMI households stand to benefit from reduced energy costs that could be achieved with energy efficiency upgrades, many LMI consumers face barriers to such improvements, including lack of access to financing and lower rates of homeownership.[4] For example, rooftop solar energy systems are affordable and effective in reducing electricity bills but typically are procured by property owners.[5] Households and small businesses in LMI areas without the means to install solar energy systems directly on residential and business properties may still be able to save by participating in community solar programs where available.[6]

The federal and New York State Community Reinvestment Acts encourage banks to meet the credit needs of their communities, including LMI communities. The federal CRA establishes that banks have a "continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered." New York's CRA largely mirrors the federal CRA. Both were adopted in response to concerns about the redlining of poor and minority communities by banking institutions during the 1960s and 1970s.

The Department administers the New York CRA and its regulations, which authorize the Department to evaluate a banking institution's performance in its defined "assessment area," a geographic region based on the location of its branches and the areas in which the institution issues loans. Many factors govern whether an institution engages in a satisfactory level of lending, including: opportunities presented by a specific community (*i.e.*, demographic and economic factors); the institution's product offerings and business strategies; and institutional capacity and constraints. To evaluate a banking institution's performance, the Department applies various tests, depending on the type or size of the institution, such as the lending test, community development test, investment test, and service test.[7]

One way in which banking institutions are evaluated under the New York CRA is the extent to which their activity serves community development by revitalizing or stabilizing both LMI geographies and underserved nonmetropolitan middle-income geographies. This particular criterion has important implications for addressing climate risk. Ensuring access to credit in LMI communities and underserved nonmetropolitan middle-income geographies for climate resiliency actions may help mitigate climate change risks and at the same time revitalize or stabilize those geographic areas. Accordingly, banking institutions may be credited in their CRA examinations for financing certain climate resiliency activities that revitalize or stabilize these areas.

The following are examples of financing activities that support climate resiliency and may qualify for credit under the New York CRA. These activities may assume the form of community development lending or qualified investments that revitalize or stabilize or otherwise serve as community development in these geographic areas:[8]

- renewable energy, energy-efficiency and water conservation equipment or projects for affordable housing, to reduce utility payments for LMI tenants, or community facilities, including solar panels, geothermal heat pumps, battery storage, improving building envelope insulation, and lighting, window and appliance upgrades;

- community solar projects that provide energy to an affordable housing project or a community facility that has a community development purpose;
- microgrid or battery storage projects in LMI areas with high flood and/or wind risk, thereby reducing risks of power loss due to flooding and high winds;
- projects addressing flooding or sewer issues, or reducing stormwater runoffs such as new or rehabilitated sewer lines, levees, and storm drains that primarily benefit LMI geographies;
- flood resilience activities for multifamily buildings offering affordable housing, such as building elevation and relocation and installation of sump pumps; and
- installation of air conditioning in multifamily buildings offering affordable housing, to reduce heat risks and utility payments for LMI residents.

The above list is not intended to be exhaustive. Banking institutions may also receive community development credit for climate resiliency promoting investments or loans to Community Development Financial Institutions, New Markets Tax Credit-eligible Community Development Entities, Community Development Corporations (CDC), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions in support of the above-referenced activities in LMI communities or to LMI individuals. In addition to potential credit for community development lending, banking institutions' activities promoting climate resiliency may qualify for credit under the New York CRA under the lending test or as innovative investments. For example, a banking institution may receive credit under the lending test for climate mitigation and adaptation activities financed by a mortgage loan for a multifamily building that provides affordable housing. Offering or participating in a government-sponsored clean energy or energy efficiency program where loans under the program were made to LMI borrowers may be a basis for innovative lending credit.

Please direct any questions regarding this Industry Letter to Serwat Farooq, Deputy Superintendent, Consumer Examinations Unit, Consumer Protection and Financial Enforcement Division, at CRA@dfs.ny.gov.

Sincerely,

Linda A. Lacewell, Superintendent
New York State Department of Financial Services

[1] National Academies of Sciences, Engineering, and Medicine, Framing the Challenge of Urban Flooding in the United States, The National Academies Press, 2019; Hoffman, J., et al., The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas, Climate, January 13, 2020, 8(1), 12-26.
[2]Office of Energy Efficiency & Renewable Energy at the U.S. Department of Energy, Low-Income Energy Affordability Data Tool (last visited Jan. 26, 2021).
[3] Durkay, J., Energy Efficiency and Renewables in Lower-Income Homes, Legis Brief, Vol . 25, No. 06 (Feb. 2017).
[4] Energy Efficiency Financing for Low- and Moderate-Income Households: Current State of the Market, Issues, and Opportunities, State and Local Energy Efficiency Action Network (Aug. 2017).
[5] *Bovarnick, B. et. al.,* Research Review on Residential Solar Access: Barriers and Solutions for Low and Moderate Income Communities, Yale Center for Business and the Environment and Yale School of Forestry & Environmental Studies (2019).
[6] Solar Energy Industry Association, Community Solar (last visited Jan. 19, 2020).
[7] *See* 3 N.Y.C.R.R. § 76.7.
[8] Similar examples of activities that may qualify for CRA credit were cited in guidance issued jointly by the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency regarding the Community Reinvestment Act on July 25, 2016 (the "Interagency Q&A"). 81 Fed. Reg. 48506, 48528-29 (July 25, 2016) (§__.12(g)(4)(iii)—4 and §__.12(h)—1). DFS concurs with the Interagency Q&A's guidance on what climate resiliency promoting activities may qualify for CRA credit.