COALITION FOR COMMUNITY SOLAR ACCESS

January 16, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Michael S. Barr
Vice Chairman for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington D.C. 2049-9990

Mr. Michael J. Hsu
Acting Comptroller of the Currency
The Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

RE: Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity. (Docket ID OCC–2023–0008; Docket No. R–1813; RIN 7100–AG64; RIN 3064–AF29).

The following comments are provided by the Coalition for Community Solar Access (CCSA) in response to the proposed *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity.* The Coalition for Community Solar Access (CCSA) is a national coalition of businesses and nonprofits working to expand customer choice and access to solar for all American households and businesses through shared solar programs. CCSA is composed of over 100 member companies and nonprofits working together to expand access to clean, local, and affordable energy.

CCSA appreciates the opportunity to submit the comments in response to the Notice of Proposed Rulemaking (NOPR) for the finalization of Basel III rules jointly released by the Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation. CCSA and our members are ready and available to be a further resource and answer questions on our comments as final rules are proposed and promulgated.

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Summary

CCSA appreciates the effort put forth by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation ("FDIC") (jointly, "the Agencies") to implement the Basel III accord and to provide long-term stability to the global financial and banking system. However, the proposed rules from the Agencies to increase the risk weighting for renewable tax equity to 400% from 100% present such an extreme risk to renewable tax equity investments that it will become prohibitively expensive for banks to extend tax equity financing and severely constrain the renewable tax equity market, impacting solar development in low-income and underserved communities.

The threat to clean energy development comes at a moment in time when the Administration is also in the process of implementing the Inflation Reduction Act (IRA) and industry and states alike are clamoring to take advantage of the many provisions and incentives the IRA offers. Programs like the Low-Income Communities Bonus Credit program that are designed to incentivize clean energy business development and economic growth in low-income communities are already catalyzing solar development in underserved communities, and will continue to drive solar development over the life of the program.

Community solar represents a key resource in the equitable transition to a clean energy future, particularly as it can provide the benefits of solar to low-income communities and to households that are not ideal candidates for rooftop solar. However, if the rules are implemented as proposed, expansion of community solar may be significantly curtailed in low-income and underserved communities.

The following comments focus on the impact the proposed rules would have on the community solar market, and how they would significantly impact solar development in low-income communities and undermine the clean energy and climate equity goals of the Administration.

Climate Action and the Justice40 Initiative Are A Priority For The Biden Administration. President Biden has clearly shown that a top priority for his administration is taking action on climate change, reducing greenhouse gas emissions, and expanding the U.S. clean energy economy. The Administration's climate agenda is rooted in climate justice, introducing new programs and initiatives to ensure low-income and underserved communities benefit from the clean energy transition and from the traditional benefits of clean energy. New measures like the Justice40 Initiative is one key example of the Administration's focus on climate equity. The Justice40 Initiative established a goal that at least 40% of the overall benefits from federal investments in climate and clean energy would flow to communities that are, or have been, historically marginalized, underserved, and overburdened by pollution.

The Justice40 Initiative is a key driver for the goals of many of the programs established under the IRA, and signals a commitment by the Administration to deliver benefits to low-income and underserved communities. The Initiative shows further dedication from the Administration to serve these communities in addition to the IRA's historic clean energy investments to maximize benefits to disadvantaged communities and promote equity and environmental justice, including

bonus tax credits that incentivize clean energy development in low-income communities, like the Low-Income Communities Bonus Credit Program; and grant programs developed to provide financial assistance to states and nonprofit organizations to develop or expand new clean energy programs, like the Solar For All program.

To meet the Administration's climate goals, the U.S. needs to accelerate the deployment of commercially-available clean energy technologies, and the IRA enables this needed acceleration with incentives like the revamped clean energy investment and production tax credits, and bonus tax credits. Potential regulatory rules that threaten to hinder growth in the clean energy economy will undermine the goals of the Justice40 Initiative, and the goals of nascent IRA programs that will deliver benefits to low-income and underserved communities.

The goals of the Justice40 Initiative Will Not Be Achieved Without Community Solar.
Community solar refers to local solar facilities shared by multiple community subscribers who receive credit on their electricity bills for their share of the electricity produced. The community solar model is the most cost-effective way to equitably deploy solar energy at scale. It provides homeowners, renters, and those living in multi-family housing access to the benefits of solar energy regardless of the physical attributes or ownership of their home or business.

Community solar has been identified by the administration as a key method to provide and expand solar benefits to low-income and underserved communities. For example, Treasury is reserving a sole Category for community solar in the Low-Income Communities Bonus Credit program (Category 4)[1], and prioritizing the community-owned, community solar model in the application selection process of the program over both traditional community solar and rooftop models. Community solar is also a favored model for meeting the benefits of the Solar For All program currently being administered by the Environmental Protection Agency (EPA). Community solar is not only a favored model to provide benefits to low-income communities, it will also help the Administration reach its clean energy goals, especially the goals outlined in the Justice40 Initiative.

The IRA Tax Incentives Catalyze Long-Term Development of Solar.
The IRA is already incentivizing clean energy development with clean energy businesses, nonprofits, states and municipalities taking advantage of the programs the legislation has to offer. The new bonus tax credits offer particular incentives for community solar developers who are in a unique position to expand development and offer savings to low-income communities. The new tax credits and corresponding requirements for prevailing wage and apprenticeships (PWA) will support growth in both existing and emerging markets.

Solar businesses have shown an overwhelming interest in the Low-Income Communities Bonus Credit program, with Treasury reporting it received over 46,000 applications within the first 30 days of the 2023 program year. The Low-Income Communities Bonus Credit program is intended to incentivize clean energy development in disadvantaged populations and communities with environmental justice concerns. The program allocates 1.8 GW DC annually for certain solar and wind projects in low-income communities and Indian lands that meet certain environmental justice criteria in 2023 and 2024. The program is only exclusive to solar and wind

[1] https://www.federalregister.gov/d/2023-17078/p-122

technologies in 2023 and 2024, and will open to other qualifying resources in 2025 when the bonus credit would apply to all generation facilities (and energy storage systems under ITC) that have an anticipated greenhouse gas emissions rate of zero. This limited window is critical to the advancement of the developing community solar market and its ability to provide equitable access to the clean energy transition. Such overwhelming interest in the program shows both the demand and desire to expand solar to low-income communities, and the program has only just begun.

The Proposed Rules Undermine the Goals of the Inflation Reduction Act.
As mentioned, new bonus credits from the IRA have catalyzed clean energy development across the country and mobilized private capital. The tax credits offer long-term incentives that contribute to the long-term stability of community solar and community solar development in low-income communities.

While the tax incentives in the IRA are prompting clean energy development, tax equity agreements are still essential to clean energy development. The American Council on Renewable Energy (ACORE) reports that tax equity typically provides between one-third and two-thirds of the capital stack for renewable energy projects. However, existing tax equity is insufficient to meet growing demands. The current tax equity market is estimated to be $20 billion and will need to increase to $50 billion by mid-decade to meet the growing demand for tax equity. Moreover, while the IRA provides new tax credit monetization options through transferable tax credits and direct pay, tax equity is expected to remain the most common and preferred option for project developers. The proposed rules released from the Agencies proposing to increase the risk weight for tax equity for renewable energy from 100% to 400%, threatens to stop or stall solar development in low-income and underserved communities.

Renewable tax equity investments historically have lower risk profiles and should not be grouped together with riskier investments. Clean energy equity investments are relatively low risk for several reasons: there is limited downside exposure as the tax equity investment will receive most of its return from more predictable tax credits and other tax benefits, as well as other protective features; and tax equity agreements function more like a loan instead of like true equity investments. OCC recognized that tax equity has loan-like characteristics and codified the process for banks to participate in tax equity financing under the general lending authority through Section 12 CFR § 7.1025.[2] Moreover, the risk profile of renewable energy investments is substantially similar to low-income housing credit investments which are included in the 100% risk weight category. Clean energy investments should be afforded the same treatment.

ACORE also reports that by quadrupling the risk weight for clean energy tax equity investments to 400% from the 100% risk weight it typically receives, the $20 billion in planned renewable tax equity investments would be put at risk as early as 2024.[3] An anonymous survey sent to CCSA membership revealed that community solar development would be impacted both in states where the community solar market is looking to expand and in states that currently have large

[2] https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-15.html
[3] https://www.regulations.gov/comment/OCC-2023-0008-0044

community solar markets, including: California, Colorado, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Virginia, Washington, and Wisconsin.

As community solar is a key focus and favored model by the Administration for meeting its clean energy and climate equity goals, additional, near-term guidance is essential. CCSA urges the Agencies to issue near term guidance to send a signal to the banking community that tax equity for renewable energy will remain in the 100% risk weight category and that risk weighting for these investments will not increase to 400%. This guidance should be issued as part of a Supplemental Notice or other public facing statement in advance of the final rulemaking to calm an anxious market that is already starting to pull back on these investments.

CCSA understands that the grouping of renewable energy tax equity into the 400% equity-exposure risk weight category was unintentional. Indicating that renewable energy tax equity was not intended to be given a 400% risk weight and will continue to receive a 100% risk weight, will help to provide assurance to the renewable tax equity market and certainty to clean energy developers. These investors and developers are already preparing to – or are already in the process of – taking advantage of the many incentives in the IRA. Near term guidance will avoid significant delays in planned clean energy development which is set to serve low-income and underserved communities in the next year.

Conclusion

We appreciate the efforts by the Agencies to strengthen the resilience of the U.S. banking system and reduce risk. We look forward to continuing to work with you as you finalize rules for the implementation of Basel III, and thank the Agencies for their due diligence in ensuring the rule is implemented as intended while avoiding the unintended consequence of significantly curtailing renewable tax equity investments.

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