



**Public Feedback on New York State Department of Financial Services  
Proposed Guidance for New York State Regulated  
Banking and Mortgage Organizations Relating to Management of  
Material Financial Risks from Climate Change dated December 21,  
2022**

**December, 2023**

## List of Feedback Submissions

Institution	Name	Title
AmeriCU Credit Union	Daniel P. Belfield	Legal and Compliance
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director
Fulton Savings Bank	Pamela Caraccioli	President and CEO
Independent Community Bankers of America (ICBA)	Jenna Burke	Senior Vice President, Senior Regulatory Counsel
Institute of International Bankers / Securities Industry and Financial Markets Association (IIB/SIFMA)	Panayiotis Dionysopoulos	Senior Counsel and Head of Legal and Regulatory Practice Group ISDA
Mitchell Funding Of Valley Stream Inc.	Donna Mitchell	President
MSCI ESG Research LLC	Ryan Mensing	Executive Director, Government and Regulatory Affairs
Natural Resources Defense Council (NRDC)	Elizabeth Derbes	Senior Financial Regulation Attorney
New York Bankers Association (NYBA)	Brent G. Weitzberg	Vice-President of Government Relations
New York Credit Union Association	Genevieve Caputo	Director of Compliance
New York Mortgage Bankers Association (NYMBA) and Mortgage Bankers Association (MBA)	Christina Wiley	Executive Director
Public Citizen	Mekedas Belayneh	Policy Advocate
Risk Management Association	Fran Garritt	Director
Sabin Center For Climate Change Law	Eleonor Dyan Garcia	Fellow and Postdoctoral Research Scholar
	Cynthia Hanawalt	Senior Fellow and Associate Research Scholar

<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Question</b>	<b>Question #</b>	<b>Detailed Feedback</b>	
AmeriCU Credit Union	Daniel P. Belfield	Legal and Compliance	Timeline for implementation	V.1	As the proposed Guidance does not constitute a Final Rule, a timeline for implementation does not appear necessary. An important caveat to the foregoing is that a timeline will be necessary if the Department intends to review Regulated Organizations' different responses to the proposed Guidance as part of any annual exam. In such a case, we would request a minimum of one-year of notice. While a framework for risk assessing can be produced and implemented relatively rapidly, instituting any changes suggested by that risk assessment would likely take 6-12 months.	
AmeriCU Credit Union	Daniel P. Belfield	Legal and Compliance	Disclosure	V.3	While climate change is certainly not a new issue, the issue of the appropriate response of the Regulated Organizations is new and there is presently little other available guidance on how to approach the same, including a lack of guidance on a national scale. Accordingly, while data collection will likely serve a purpose in the future, at this time we believe a better question to ask is what kind of data is available, and whether that data is useful or accurate. For example, it is beginning to appear that federal flood zone classifications are no longer a good measure of the likelihood of flood, but there also is not presently a viable replacement. Accordingly, it may be prudent to expend the Department's resources and efforts to support the creation of new data classes that would be more accurate and assist with realistic risk assessing.	
AmeriCU Credit Union	Daniel P. Belfield	Legal and Compliance	Other aspects to consider	V.4	See General Feedback below.	
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section(s)</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
AmeriCU Credit Union	Daniel P. Belfield	Legal and Compliance	IV.B. Internal Control Framework	34	Clarification	What guidelines exist to allow the first line of defense to assess climate risk? The vendor software that appears to presently exist does not appear to function at the level that would be required. It is anticipated that vendors would not be able to develop appropriate software without more-detailed guidance.
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
AmeriCU Credit Union	Daniel P. Belfield	Legal and Compliance	General feedback	N/A	N/A	1. It may be helpful for the Department to publish a recommended format of risk assessment, or to point to an existing industry-provided risk assessment that the Department believes is a useful exemplar.

AmeriCU Credit Union	Daniel P. Belfield	Legal and Compliance	General Feedback	N/A	N/A	2. If the Guidance is intended to become part of the annual examination process, there should be an implementation timeline of no less than one year, as well as a further document outlining how the Department will approach the issue during an examination. This will assist Regulated Organizations with not only properly instituting their programs in response to the Guidance, but also with ensuring that they are appropriately prepared to provide requested information during the examination process, which will help avoid examination delays.
Institution	Name	Title	Question	Question #	Detailed Feedback	
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	Timeline for implementation	V.1	<p>IV. If the DFS nevertheless decides to apply the final guidance to all Regulated Organizations, we recommend that the DFS apply a longer and phased implementation timeline for Smaller Regulated Organizations.</p> <p>In response to Question 1 in the Proposal, we believe the DFS should prioritize implementation of the final guidance for Large Regulated Organizations, which have greater resources and capabilities than Smaller Regulated Organizations to address climate-related financial risks at an earlier stage, and allow Smaller Regulated Organizations to have a longer period to implement the final guidance.</p> <p>We also recommend that the DFS apply a phased implementation timeline with respect to any final guidance applicable to Smaller Regulated Organizations consistent with the following (and no shorter than the timeline applicable to Large Regulated Organizations):</p> <ul style="list-style-type: none"> <li>• at least 18 months for Smaller Regulated Organizations to implement any applicable final guidance related to corporate governance, internal control framework, and risk management process;</li> <li>• at least three years for Smaller Regulated Organizations to implement any applicable final guidance related to data aggregation and reporting; and</li> <li>• at least four years for Smaller Regulated Organizations to implement any applicable final guidance related to scenario analysis.</li> </ul> <p>Such a phased implementation timeline would be consistent with the proportionate approach described in the Proposal and would allow Smaller Regulated Organizations to learn and adapt from the experiences of Large Regulated Organizations.</p>	
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President &	Climate scenario analysis	V.2	<p>II. If the DFS nevertheless decides to apply the final guidance to all Regulated Organizations, the DFS should exempt Smaller Regulated Organizations from the scenario analysis requirements.</p> <p>Scenario analysis is a complex and data-driven exercise that is still at a nascent stage. At the federal level, the FRB only recently launched a pilot scenario analysis exercise for the six largest U.S. bank holding companies – all of</p>	

		General Counsel			<p>which have over \$1 trillion in total assets – with the goals of (1) learning about large banking organizations’ climate risk management practices and challenges and (2) enhancing the ability of large banking organizations and supervisors to identify, measure, monitor, and manage climate-related financial risks.<sup>8</sup></p> <p>It would not be consistent with the proportionate approach advocated by the DFS to impose mandatory scenario analysis requirements on Smaller Regulated Organizations at this stage. To conduct scenario analysis, Regulated Organizations would likely need to incur significant costs, including costs associated with engaging outside consultants and experts and potentially licensing scenario analysis models. In fact, a recent survey on the costs and benefits of climate-related disclosure activities by corporate issuers and institutional investors reported that climate scenario analysis and/or disclosure costs on average \$154,000 annually for 31 institutions that responded to the survey.<sup>9</sup> Compared to Large Regulated Organizations, Smaller Regulated Organizations do not have the same level of resources to deploy for exploring scenario analysis.</p> <p>Furthermore, there is a limited number of outside consultants and experts with the necessary expertise in scenario analysis. Applying the scenario analysis requirements to Smaller Regulated Organizations would drive up demand for these consultants and experts, further increasing the potential costs associated with conducting scenario analysis. Because scenario analysis is still nascent, the benefits that Smaller Regulated Organizations may gain from conducting scenario analysis at this stage are not commensurate with the significant costs associated with the analysis.</p> <p><sup>8</sup> See FRB, Pilot Climate Scenario Analysis Exercise, Participant Instructions (January 2023), <a href="https://www.federalreserve.gov/publications/files/csa-instructions-20230117.pdf">https://www.federalreserve.gov/publications/files/csa-instructions-20230117.pdf</a>.</p> <p><sup>9</sup> See The Sustainability Institute by ERM, <i>Costs and Benefits of Climate-Related Disclosure Activities by Corporate Issuers and Institutional Investors</i> (May 17, 2022), <a href="https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/costs-and-benefits-of-climate-related-disclosure-activities-by-corporate-issuers-and-institutional-investors-17-may-22.pdf">https://www.sustainability.com/globalassets/sustainability.com/thinking/pdfs/2022/costs-and-benefits-of-climate-related-disclosure-activities-by-corporate-issuers-and-institutional-investors-17-may-22.pdf</a>.</p>
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	Climate scenario analysis	V.2	<p>E. To the extent that the DFS decides to apply any scenario analysis requirements to Smaller Regulated Organizations, the final guidance should further tailor these requirements.</p> <p>As discussed above, we strongly believe it would be premature for the DFS to apply scenario analysis requirements to Smaller Regulated Organizations. However, if the DFS nonetheless decides to apply these requirements in any form, it should meaningfully tailor them in line with the proportionate approach envisioned by the Proposal. We appreciate and support the Proposal’s recognition that climate scenario analysis would typically differ from traditional stress testing and “may not be well suited to assess the potential impacts of transitory shocks to near-term economic and financial conditions or to factor into an organization’s regulatory capital requirements.”<sup>17</sup> We recommend that the final guidance retain and expand upon this important distinction. In particular, although conducting scenario analysis over longer-term time horizon may be feasible—for example, reviewing loan portfolios</p>

					<p>against alternative flood hazards scenarios to ascertain potential long-term exposures may be beneficial to understanding loan portfolio risks—the DFS should not develop supervisory expectations for longer strategic planning time horizons in other contexts where longer-term time horizon may not be appropriate, including in the context of traditional capital and liquidity stress tests.</p> <p>In response to Question 2 in the Proposal, we recommend that the DFS acknowledge in the final guidance that, to the extent any scenario analysis requirements apply to Smaller Regulated Organizations, these organizations should:</p> <ul style="list-style-type: none"> <li>• have the flexibility to tailor scenario analyses to their specific business activities and associated risks, including by initially limiting the scope of the scenario analyses to only certain business lines or portfolios that are potentially most prone to climate-related financial risks; and</li> <li>• be permitted to devote relatively more resources to shorter-term scenario analysis than medium- and longer-term scenario analysis, including by initially limiting the time horizon for scenario analysis to only shorter-term scenario analysis, considering the fact that results from shorter-term scenario analysis may provide more decision-useful information for Smaller Regulated Organizations and that, due to the significant complexities and uncertainties associated with medium- and longer-term scenario analysis, such analyses may result in significant higher costs to Smaller Regulated Organizations without providing corresponding benefits.</li> </ul> <p>We believe these recommendations are consistent with the Proposal’s statement that “[t]he development and implementation of climate scenario analysis should be commensurate with a Regulated Organization’s size, complexity, business activity, and risk profile”<sup>18</sup> and appropriately recognize that scenario analysis is still in a nascent stage.</p> <p><sup>17</sup> Proposal, Section IV, ¶ 56.  <sup>18</sup> Proposal, Section IV, ¶ 57.</p>
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	Disclosure	V.3	<p>D. The final guidance should clarify that it is not establishing any supplemental or external regulatory reporting specific to climate-related financial risk.</p> <p>In response to Question 3 in the Proposal, we do not believe any supplemental regulatory or other external reporting specifically directed at climate-related financial risk by Regulated Organizations is appropriate or necessary at the present time. As the DFS appropriately acknowledges in the Proposal, climate-related risk drivers may affect one or more of Regulated Organizations’ existing risk categories, such as credit risk, market risk, operational risk, liquidity risk, legal/compliance risk, and strategic risk. Accordingly, the final guidance should allow Regulated Organizations to have the flexibility to incorporate and address climate-related financial risks through their existing risk management practices, including their existing risk management data aggregation and reporting processes. We recommend that the DFS clarify that the final guidance does not impose stand-alone data aggregation and reporting requirements solely for climate-related financial risks.</p>

					<p>As the DFS appropriately acknowledges in the Proposal, climate-related risk drivers may affect one or more of Regulated Organizations’ existing risk categories, such as credit risk, market risk, operational risk, liquidity risk, legal/compliance risk, and strategic risk. <sup>16</sup> Accordingly, the final guidance should allow Regulated Organizations to have the flexibility to incorporate and address climate-related financial risks through their existing risk management practices, including their existing risk management data aggregation and reporting processes. We recommend that the DFS clarify that the final guidance does not impose stand-alone data aggregation and reporting requirements solely for climate-related financial risks.</p> <p><sup>16</sup> Proposal, Section IV, ¶ 45–53.</p>	
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	III.B. Proportionate Approach	20	Amendment	<p>I. We urge the DFS to apply the final guidance only to Large Regulated Organizations, consistent with the approach taken by the federal banking agencies. The Proposal appropriately acknowledges that Regulated Organizations do not all have the same level of resources to manage climate-related financial risks and should take a “proportionate approach” to manage these risks.<sup>2</sup> Notwithstanding that acknowledgement, however, the Proposal would subject all Regulated Organizations to the same requirements. The Proposal’s approach would impose significant costs and implementation challenges on smaller Regulated Organizations, including community banks like us, without commensurate benefits. This approach would also belie the tailored and risk-based approach taken by the federal banking agencies—namely, the Board of Governors of the Federal Reserve System (“FRB”), Federal Deposit Insurance Corporation (“FDIC”), and the Office of the Comptroller of the Currency (“OCC”)—in their respective proposals regarding climate-related financial risk, which only apply to banking organizations with more than \$100 billion in total assets.<sup>3</sup></p> <p>In order to both effectuate the proportionate approach described by the Proposal and align with the approach taken by the FRB, FDIC, and OCC, we urge the DFS to apply the final guidance only to Regulated Organizations with more than \$100 billion in total assets or that are part of holding/parent companies with more than \$100 billion in total assets (“Large Regulated Organizations”).</p> <p>A. Application of the final guidance should be tailored and risk-based.</p> <p>Regulatory oversight should match the level of risk an institution poses to the financial</p>

						<p>system. The “one size fits all” approach in the Proposal would impose significant compliance burdens on Regulated Organizations that are not Large Regulated Organizations (“Smaller Regulated Organizations”) without commensurate benefits. Community banks, which are typically smaller, already implement effective risk management practices that adequately protect them from climate-related financial risks. In addition, community banks are typically better situated to understand local risks, including risks related to climate change, compared to their larger counterparts, due to their proximity to their local markets and customers. In a recent Staff Report co-authored by staff of the Federal Reserve Bank of New York, the authors studied how banks fared against FEMA-level disasters from 1995-2018 and found that such disasters generally had “insignificant or small effects on bank performance and stability” and that “[i]n particular, loan losses and default risk at local banks do not increase significantly.”<sup>4</sup> Among the factors that the authors explored that might account for banks’ resilience, the authors noted that their research results support the proposition that local banks’ superior geographic knowledge mitigates their exposure to disastrous floods.<sup>5</sup></p> <p><sup>2</sup> Proposal, Section III, ¶ 20.</p> <p><sup>3</sup> See FRB, <i>Principles for Climate-Related Financial Risk Management for Large Financial Institutions</i>, 87 Fed. Reg. 75267 (Dec. 8, 2022); FDIC, <i>Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions</i>, 87 Fed. Reg. 19507 (Apr. 4, 2022); and OCC, <i>Principles for Climate-Related Financial Risk Management for Large Banks</i> (Dec. 16, 2021), <a href="https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-138a.pdf">https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-138a.pdf</a></p> <p><sup>4</sup> Kristian S. Blickle, Sarah N. Hammerling, and Donal P. Morgan, <i>How Bad Are Weather Disasters for Banks?</i> Fed. Reserve Bank of New York 1 (Jan 2022), <a href="https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr990.pdf">https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr990.pdf</a></p> <p><sup>5</sup> See <i>id.</i> At 2.</p>
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	I. Introduction, IV.A. Corporate Governance	6, 29	Clarification	<p>III. If the DFS nevertheless decides to apply the final guidance to all Regulated Organizations, we recommend that a number of changes and clarifications be made in the final guidance. The DFS should make several changes in the final guidance to provide Regulated Organizations greater clarity and to more accurately reflect its own policy objectives as articulated by the Proposal.</p>

						<p>A. The final guidance should recognize that “materiality” may differ in the context of climate-related financial risk relative to other contexts and Regulated Organizations should be afforded flexibility in defining their own “material” climate-related financial risks.</p> <p>The Proposal appropriately focuses on the management of “material” climate-related financial risks and aptly recognizes that a Regulated Organization’s assessment of materiality “may be based on the nature, scale, and complexity of its business.”<sup>10</sup> However, the Proposal does not define “materiality” or provide any guidance regarding the way in which Regulated Organizations may define the term.</p> <p>We recommend that the DFS clarify in the final guidance that the meaning of “material” in the context of climate-related financial risk management may differ from materiality in other contexts, such as that under the securities laws.</p> <p>Moreover, we recommend the DFS to clarify in the final guidance that there is no universal definition of “material” in the context of climate-related financial risk management, and that Regulated Organizations may utilize their existing risk management frameworks, which typically already include processes for identifying “material” risks for purposes of defining, monitoring and managing material climate-related financial risks. Providing this flexibility would be consistent with the Proposal’s requirement that material climate-related financial risks “should be clearly defined with thresholds for materiality clarified.”<sup>11</sup></p> <p><sup>10</sup> Proposal, Section I, ¶ 6  <sup>11</sup> Proposal, Section IV, ¶ 29</p>
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	IV.A. Corporate Governance	28	Amendment	<p>B. The final guidance should remove the potential designation of a board member or board committee responsible for managing climate-related financial risk as an example of sound governance.</p> <p>The Proposal notes that a Regulated Organization’s board and management “should have adequate understanding and knowledge to assess climate-related financial risks.”<sup>12</sup> Further, the Proposal cites as an example of sound governance “designating a board member or one or more committees of the board (or an equivalent function) to be responsible for the oversight of assessment and management of climate-related financial risks with clear and specific allocation of roles and responsibilities.”<sup>13</sup></p> <p>We recommend that the DFS remove the above example as an example of sound governance and acknowledge that the boards of Regulated Organizations have the flexibility to determine their own composition in a holistic way, taking into consideration board size and director expertise and experience, among other factors. Although the Proposal does not impose a requirement of designating a board member or board committee with climate responsibilities, we are concerned</p>

						<p>that examiners may view having such a designated board member or committee as a “best practice” for sound governance and develop supervisory expectations for the same, turning this example into a requirement in practice.</p> <p>Having a designated board member or committee with climate responsibilities may result in one or few directors assuming an outsized role with respect to climate-related financial risks and may inhibit the important roles all directors should play collectively in overseeing a Regulated Organization’s climate-related financial risks. In addition, such a requirement may result in undue emphasis being placed by boards on the oversight of climate-related financial risks over other material risks faced by Regulated Organizations, ultimately leading to less effective risk management oversight.</p> <p>In light of the focus from financial regulators and institutions on climate expertise among financial institutions’ directors, there is already an increasing demand for individuals with such expertise, making it challenging to recruit and retain such individuals. Supervisory expectations to have a designated board member(s) or committees with climate responsibilities would be even more difficult for Smaller Regulated Organizations to meet, compared to the Large Regulated Organizations, given their limited resources and potential unwillingness of highly demanded climate experts to serve on boards of smaller organizations.</p> <p><sup>12</sup> Proposal, Section IV, ¶ 28  <sup>13</sup> Id.</p>
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	IV.B. Internal Control Framework	34	Clarification	<p>B. The final guidance should provide additional clarity on the DFS’s supervisory expectations related to the first line of defense.</p> <p>The Proposal provides that “[t]he first line of defense—or the risk-taking function—should assess climate-related financial risks during client onboarding, credit application, and credit review processes.”<sup>14</sup> The Proposal further explains that this requires “sufficient awareness and understanding of how physical and transition risks impact clients, their business strategies, and their business environment”<sup>15</sup></p> <p>We recommend that the DFS provide additional clarity on its supervisory expectations related to the implementation of such guidance by Regulated Organizations. Without additional clarification, such guidance may be interpreted to mean that extensions of credit should be denied by Regulated Organizations on the basis of how physical and transition risks potentially impact clients. To unequivocally reaffirm that the final guidance is rooted in operational resiliency and not intended to choke off specific industries from the financial system, the final guidance should clearly state that the DFS does not expect Regulated Organizations to establish first line of defense measures that would categorically deny credit to certain sectors. Such an expectation could have unintended consequences on</p>

						<p>access to credit and is inconsistent with the overall goal of effective management of climate-related financial risks to enhance safety and soundness.</p> <p>We also urge the DFS to acknowledge in the final guidance that the incorporation of climate-related financial risk assessment during client onboarding, credit application, and credit review processes is still a new area that will continue to evolve, particularly considering significant limitations on climate data and modeling capabilities.</p> <p><sup>14</sup> Proposal, Section IV, ¶ 34  <sup>15</sup> Id.</p>
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	IV.C. Risk Management Process	45 - 53	Clarification	See response to V.3 above.
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	IV.E. Scenario Analysis	56, 57	Amendment	See response to V.2 above.
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	General Feedback	N/A	N/A	<p>Apple Bank appreciates the opportunity to provide comments on the proposed guidance (the “Proposal”) by the New York State Department of Financial Services (the “DFS”) for Regulated Organizations relating to the management of material financial risks from climate change. <sup>1</sup></p> <p>Apple Bank is the largest state-chartered savings bank in New York, with \$16.8 billion of assets as of December 31, 2022, and \$15.1 billion of deposits. We offer a variety of personal and business banking services, and operate from 84 full-service branch locations in the greater New York area, including Manhattan, Brooklyn, the Bronx, Queens, Staten Island, Long Island, Westchester,</p>

						<p>Rockland and Northern New Jersey. Since being founded in 1863, Apple Bank’s staff has lived and worked alongside our customers in the communities we serve, helping us to understand the local financial needs of our neighbors.</p> <p>We recognize that climate change poses potential risks to the safety and soundness of Regulated Organizations and the financial system, and we appreciate the DFS’s stated goal to support efforts by Regulated Organizations in assessing and managing their material climate-related financial risks. However, we are deeply concerned that, as proposed, the guidance would impose significant costs and implementation challenges on smaller Regulated Organizations without commensurate benefits. Accordingly, we are providing our views and recommendations on a few key issues we identified in the Proposal, which we hope will assist the DFS in finalizing its guidance. We believe we can provide helpful insights with respect to smaller banking organizations and welcome the opportunity to provide our assistance as the DFS staff works on finalizing its guidance.</p> <p><sup>1</sup> DFS, Proposed Guidance for New York State Regulated Banking and Mortgage Organizations Relating to Management of Material Financial Risks from Climate Change (Dec. 2022), <a href="https://www.dfs.ny.gov/system/files/documents/2022/12/dfs_proposed_guidance_banking_mortgage_climate_change_202212.pdf">https://www.dfs.ny.gov/system/files/documents/2022/12/dfs_proposed_guidance_banking_mortgage_climate_change_202212.pdf</a>. The Proposal defines “Regulated Organizations” to mean New York State-regulated banking organizations, New York State-licensed branches and agencies of foreign banking organizations, and New York State-regulated mortgage bankers and mortgage servicers. For purposes of this comment letter, the term “Regulated Organizations” has the meaning specified in the Proposal,</p>
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Apple Bank	Jeffrey L. Herbert	Senior Executive Vice President & General Counsel	General Feedback	N/A	N/A	<p>B. The DFS should avoid creating an uneven regulatory playing field.</p> <p>If the DFS applies its final guidance to all Regulated Organizations regardless of size, the DFS will create an uneven regulatory playing field between DFS-regulated Smaller Regulated Organizations, including New York state-chartered community banks, and their comparably-sized peers that are not regulated by the DFS, including national banks and non-New York state-chartered banks. As noted above, the federal banking agencies have each proposed to apply their respective climate guidance only to banking organizations with more than \$100 billion in total assets, and we are not aware of proposals by other state banking agencies that would apply to banking organizations with less than \$100 billion in total assets.</p> <p>Such competitive inequity would be particularly challenging for New York state-chartered community banks, which already face additional compliance burdens in certain other regulatory compliance areas compared to their non-New York state-chartered peers.<sup>6</sup> As the playing field becomes more uneven, certain New York state-chartered community banks may have no choice but to explore charter conversion.</p> <p>The Proposal appropriately acknowledges that the effects of climate-related financial risk drivers extend beyond individual organizations to the broader financial system and the economy and that the DFS will need to continue to coordinate with its state, federal, and international counterparts on climate-related financial regulation.<sup>7</sup> To ensure consistent supervisory expectations on the management of climate-related financial risks, we urge the DFS to adopt in the final guidance an asset size-based applicability threshold that is consistent with the threshold proposed by the federal banking agencies.</p> <p><sup>6</sup> See, e.g., 23 NYCRR Part 500 (establishing cybersecurity requirements for all DFS-regulated institutions).</p> <p><sup>7</sup> Proposal, Section II, ¶ 13.</p>
Institution	Name	Title	Question	Question #	Detailed Feedback	
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate	Timeline for implementation	V.1	In response to the Proposal's Question 1, we urge the DFS to coordinate with the federal banking agencies to establish a reasonable and consistent timeline for implementation of their respective guidance on climate-related financial risk management.	

		General Counsel				
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	Disclosure	V.3		In response to the Proposal's Question 3, we also do not believe that a new type of regulatory or other external reporting specifically directed at climate-related financial risk by Regulated Organizations is appropriate or necessary at the present time. Many Regulated Organizations are already engaged in voluntary reporting efforts through the Task Force on Climate-Related Financial Disclosures, as well as other industry-led reporting frameworks.
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.C. Risk Management Process	30	Amendment	<p>The final guidance should reflect that there is significant variability of potential climate-related financial risk outcomes over longer time horizons.</p> <p>First, the Proposal's Corporate Governance section notes that the board of directors should consider the relevant time horizons for materialization of climate-related financial risks and that some risks may stretch beyond the Regulated Organization's traditional capital or strategic planning horizon.<sup>6</sup> While this attention to longer-term time horizons is relevant in the context of climate change, it is important that the final guidance acknowledge that there is significant variability and uncertainty of potential outcomes over longer time horizons. As a result, any expectation that the board of directors develop an understanding of future impacts should take account of this variability and uncertainty. In addition, the DFS's expectations relating to longer-term strategic planning should allow for appropriate, risk-based flexibility to account for the significant variability of outcomes over multi-decade time periods. There is significant complexity and unpredictability over these longer time horizons due to, among other things, the high number of scientific, macroeconomic, financial, and other variables that can vary and must be taken into account when assessing climate-related financial risk. The DFS's supervisory expectations should be calibrated to the usefulness of strategic planning over a given time period and recognize that substantial uncertainty exists with respect to the impacts of climate-related financial risk over medium- and longer-term time horizons. In addition, while a longer strategic planning horizon may be appropriate in the context of climate-related financial risk, it is important that such expectations not be carried over to other strategic planning exercises and processes, particularly those relating to capital and liquidity, for which typical planning horizons have been and remain effective.</p>

						<sup>6</sup> Proposal, Section IV.A. (ii), ¶ 30.
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.E. Scenario Analysis	57	Clarification	<p>Second, the Proposal’s Scenario Analysis section notes that Regulated Organizations should consider using a range of climate scenarios over different time horizons in their scenario analyses.<sup>7</sup> Given the significant variability of outcomes over longer time horizons, supervisory expectations with respect to longer-term scenario analyses should allow for appropriate flexibility in approaches to developing and leveraging these analyses. Similarly, it would be useful for the DFS to acknowledge that relatively more resources and effort may be applied to shorter-term scenario analysis—where plausibility and degree of certainty is higher and therefore potentially more relevant for risk and business decision-making—and less to longer-term scenario analysis.</p> <p><sup>7</sup> Proposal Section IV.E, ¶57</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.A. Corporate Governance	32	Clarification	<p>The final guidance’s Policies, Procedures, and Limits section should retain the flexible approach in the Proposal and acknowledge it would be premature at this time to require Regulated Organizations to establish and apply quantitative limits or thresholds for climate-related financial risk.</p> <p>The Proposal provides that management of material climate-related financial risks should be embedded in policies and procedures and controls across all relevant functions and business units of the Regulated Organizations, in line with the strategy and risk appetite set by the boards of directors, and that policies, procedures, and limits should be modified when necessary to reflect the distinctive nature of climate-related financial risks. <sup>8</sup> While this portion of the Proposal does not prescribe how Regulate Organizations should organize and implement these policies, procedures, and limits, any final guidance should be clear that the use of quantitative limits and thresholds for climate-related financial risk as a risk management tool is likely to be premature for many Regulated Organizations at this time. <sup>9</sup> Rather, Regulated Organizations should be permitted to initially use their directional analysis to develop and inform their risk appetite and risk management frameworks prior to assessing whether any limits and thresholds would be appropriate. <sup>10</sup></p> <p><sup>8</sup> Proposal, Section IV.A.(iii), ¶32.  <sup>9</sup> In addition, requiring lending limits would not be appropriate at this time, as some Regulated Organizations already consider climate-related financial risks, particularly physical risks, in their credit underwriting processes as appropriate, and such limits could have unintended consequences on bank lending and access to credit.</p>

						<p><sup>10</sup> This recognition is particularly important because Regulated Organizations may be developing their respective approaches to climate-related financial risk management in a phased manner with multiple dependencies. For example, Regulated Organizations may have established different prioritizations and timelines for data collection and standardization or scenario analysis.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.A. Corporate Governance, IV.D. Data Aggregation and Reporting	31, 54	Clarification	<p>The final guidance’s Corporate Governance and Data Aggregation and Reporting sections should permit appropriate flexibility in the design of reporting.</p> <p>The Proposal’s Corporate Governance section states that senior management should be responsible for regularly reporting to the board of directors on the level and nature of material climate-related financial risks.<sup>11</sup> In addition, the Proposal’s Data Aggregation and Reporting section provides that Regulated Organizations should develop risk data aggregation capabilities and risk reporting practices that are capable of monitoring material climate related-financial risk and producing timely information to facilitate board of directors and senior management decision making. <sup>12</sup> This description could be interpreted to suggest that climate-related financial risk should be reported on as a standalone category of risk.</p> <p><sup>11</sup> Proposal, Section IV.A.(ii), ¶31.</p> <p><sup>12</sup> Proposal, Section IV.D.(ii), ¶54.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	III.B. Proportionate Approach, IV.A. Corporate Governance	20, 23	N/A	<p>The Proposal appropriately acknowledges that Regulated Organizations’ approach to managing climate-related financial risk should be proportionate and fundamentally risk-based, such that individual Regulated Organizations may tailor their risk management programs to the risks presented and calibrate that program to the risks identified.</p> <p>We strongly support the proportionate approach adopted by the proposal. <sup>13</sup> The Proposal appropriately recognizes that each Regulated Organization should manage its material climate-related financial risks in a manner proportionate to the nature, scale, and complexity of its businesses. <sup>14</sup> This not only means that supervisory expectations should be tailored to the <i>circumstances of each institution</i>—including to respect to its size, business model, and client portfolio- but also that Regulated Organizations should develop and deploy various capabilities to the extent proportionate with <i>risk management utility and effectiveness</i> of those capabilities, which may vary considerably. For example, supervisory expectations with respect to the scope and extent of data or scenario analysis capabilities should reflect the utility of those capabilities, as a risk management matter, which is likely to evolve considerably over time. The final guidance should</p>

						<p>retain this proportionate, risk-based approach, as described further below.</p> <p><sup>13</sup> Proposal, Section III.B.  <sup>14</sup> Proposal, Section IV, ¶23.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	I. Introduction	6	Clarification	<p>A. The final guidance should clarify that for purposes of the management of climate-related financial risks, individual Regulated Organizations will need to define “material” in the context of their individual circumstances and risk appetite framework. The Proposal states that it is intended to address “material” financial risks related to climate change faced by Regulated Organizations in the context of risk assessment, risk management, and risk appetite setting.<sup>15</sup> We suggest that the DFS clarify in the final guidance that the meaning of “material” for purposes of the management of climate-related financial risks is distinct from materiality in the context of securities laws and it is for the individual Regulated Organization to determine what is material in the context of its risk appetite and framework. For example, some important components of how Regulated Organizations may assess materiality for risk management could be the plausibility and certainty of risk (i.e., there will be potential risks that will be so speculative or distant as not to be material). This may be important for the DFS to recognize, as in practice supervisors may insist on deeming remote and uncertain outcomes driven by climate change as “material” in ways they would not for more traditional outcomes.<sup>16</sup></p> <p><sup>15</sup> Proposal, Section I, ¶6.</p> <p><sup>16</sup> It will also be important for the DFS to recognize that Regulated Organizations may not be in a position to evaluate the plausibility and certainty of the risk—and therefore make materiality determinations—at this time due to underlying data challenges. Relevant data must first be generated, translated, validated, analyzed, and weighted before materiality can be determined. As discussed in Section IV.A below, Regulated Organizations generally are in the early stages of this process.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	III.B. Proportionate Approach	21	Clarification	<p>The Proposal appropriately acknowledges that a Regulated Organization that is part of a group may leverage group-level policies, procedures, and processes for managing climate-related financial risks if certain conditions are met.</p> <p>We support the Proposal’s recognition that a Regulated Organization that is part of a group of affiliated entities or a holding/parent company structure may leverage the policies, procedures, and processes developed at the group level for managing climate-related financial risks if the</p>

						<p>conditions specified in the Proposal are met.<sup>17</sup> It would be untenable and counterproductive for the group of which a Regulated Organization is a part to be expected to manage climate-related financial risks one way at the Regulated Organization level and another at the holding company level, or one way in the United States and another abroad. The final guidance should continue to adopt the Proposal’s approach, which appropriately recognizes that effective management of climate-related financial risks is often a global, enterprise-wide endeavor that is routinely developed and coordinated at the group level.</p> <p><sup>17</sup> Proposal, Section III.B, ¶21</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	III.B. Proportionate Approach	22	Clarification	<p>With respect to FBOs that have U.S. operations subject to the DFS’s supervision, the final guidance should better reflect how FBOs operate and manage risks in the United States and acknowledge that such FBOs may be subject to home country requirements related to risk management and control and information sharing.</p> <p>The Proposal states that if an FBO performs risk management and control functions outside the United States, such functions, policies and procedures, and information systems should be sufficiently transparent to allow U.S. supervisors to assess their adequacy for the branch or agency in relation to the FBO’s climate-related financial risks.<sup>18</sup> We support the DFS’s recognition that a FBO may perform its risk management and control functions at the head office level. However, it is important for the DFS to recognize, and we recommend that the final guidance acknowledge, that an FBO’s head office level risk management and control functions and systems are necessarily subject to home country requirements and that an FBO may also be subject to home country requirements related to information sharing.</p> <p><sup>18</sup> Proposal, Section III.B, ¶22.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.C. Risk Management Process	38-39	Clarification	<p>The final guidance’s Risk Management Process section should acknowledge that an appropriate, risk-based approach may lead individual Regulated Organizations to focus on different aspects of their portfolios.</p> <p>The final guidance should recognize that it may be appropriate for Regulated Organizations, given their individual circumstances, to focus initially on developing data capabilities and reporting on sectors, components of certain value chains, or other parts of their portfolios that they deem may be more likely to be subject to material climate-related financial risks (e.g., portfolios subject to heightened physical risks or higher emissions sectors subject to heightened transition risks).<sup>19</sup></p>

						<p>Conversely, the final guidance should permit Regulated Organizations to determine that certain sectors or types of climate-related financial risks represent sufficiently de minimis risk that related reporting may not be useful or necessary.</p> <p><sup>19</sup> The banking sector, private sector generally, and regulatory agencies are developing data capabilities as well, and ability of individual Regulated Organizations to develop data capabilities in many ways depends on larger efforts.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.E. Scenario Analysis	57	Clarification	<p>The final guidance’s Scenario Analysis section should acknowledge that Regulated Organizations have the flexibility to conduct scenario analyses at appropriate, risk-based intervals. The Proposal’s Scenario Analysis section notes that the development and implementation of climate scenario analysis should be commensurate with a Regulated Organization’s size, complexity, business activity, and risk profile.<sup>20</sup> Consistent with this proposed guidance, Regulated Organizations should have the discretion to conduct scenario analysis at intervals that are appropriate to their size, business activity, and other factors, as appropriate. In addition, where the final guidance applies to Regulated Organizations that are branches, agencies or subsidiaries of FBOs, those Regulated Organizations should be given flexibility either to rely on the application of scenario analysis at the group level, or to apply the scenario analysis developed elsewhere within their groups to their relevant U.S. operations.</p> <p><sup>20</sup> Proposal, Section IV.E, ¶57.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.D. Data Aggregation and Reporting		Clarification	<p>The final guidance and its underlying expectations should reflect the fact that data and tools to measure and quantify climate-related financial risk remain nascent and not fully developed. The DFS’s final guidance should reflect the evolving nature and understanding of climate-related financial risks and the fact that existing data and tools to measure and quantify climate-related financial risk—and in particular, longer-term physical and transition risks—are only just emerging, and will need to undergo substantial exploration, refinement, and adaptation over time. Although data capabilities are improving, significant gaps in data sourcing, capture, standardization, and aggregation substantially affect the accuracy of projections and risk assessment.<sup>21</sup> Given these challenges, the DFS should give Regulated Organizations due flexibility to develop, adopt, implement, and refine both (i) data capabilities and methodologies and (ii) quantitative risk management tools that depend on that data, such as risk limits, risk appetites, or scenario analysis. For this same reason, we also believe that it is important that any final guidance acknowledge and affirm that, in many cases, Regulated Organizations may need to rely on qualitative assessments and judgments about climate-related financial risks, particularly in the</p>

						<p>near term while more sophisticated and standardized data and measurement tools are being developed.</p> <p><sup>21</sup> Climate-related data provided by borrowers and counterparties is often limited and not consistent or comparable. For example, while property, asset, and supply chain data are available for larger public clients, there are gaps when assessing smaller and privately held clients or those in less carbon-intensive sectors. Further, more importantly, we note that emissions data may not necessarily be indicative of risk.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.C. Risk Management Process, IV.D. Data Aggregation and Reporting	9, 40, 43	Clarification	<p>The final guidance’s Risk Management Process and Data Aggregation and Reporting sections should reflect the nascent state of relevant data. Given data gaps and the evolution of climate and risk transmission models, Regulated Organizations are generally in the data collection and risk identification and measurement stage and therefore it will be premature in many instances to integrate climate-related financial risk into medium- and longer-term strategic planning.<sup>22</sup> For example, an expectation that Regulated Organizations further incorporate climate-related financial risk into their capital and liquidity planning processes at this time would be inappropriate in light of the need for further maturation of the relevant quantitative tools.<sup>23</sup> At this time, given these challenges, scenario analysis should be considered an exploratory exercise that enables firms to identify key areas of the business model that could be impacted by climate risk (both transition and physical) events. As the Basel Committee on Banking Supervision recently determined, there is limited research and accompanying data that explore how climate-related financial risks feed into the traditional risks faced by banks.<sup>24</sup> The final guidance should establish an expectation that Regulated Organizations integrate climate-related financial risk into strategic planning only to the extent that the underlying data and methodologies are sufficiently developed and tested, and further should acknowledge that Regulated Organizations may employ qualitative approaches in the near term while data and methodologies remain under development.</p> <p><sup>22</sup> We also note that the integration of climate-related financial risk management into strategic planning is distinct from the integration of public commitments with respect to emissions or other environmental goals into strategic planning.</p> <p><sup>23</sup> Moreover, to the extent that Regulated Organizations are expected to incorporate climate-related financial risk into their capital planning process, it is critical that the capital planning framework maintains its existing parameters, especially as relates to time horizon, plausibility, and expected and unexpected losses. Regulated Organizations already incorporate short-term, evolving physical risk into capital planning, as is appropriate given the purpose and goals of capital planning.</p>

						<p><sup>24</sup> Basel Committee on Banking Supervision, Climate-related risk drivers and their transmission channels (April 2021), <a href="https://www.bis.org/bcbs/publ/d517.pdf">https://www.bis.org/bcbs/publ/d517.pdf</a>.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.E. Scenario Analysis	57	Clarification	<p>The final guidance’s Scenario Analysis section should reflect the relative immaturity of underlying data and methodologies. Banks are actively engaged in developing scenario analysis capabilities.<sup>25</sup> and any final guidance should recognize the exploratory nature of scenario analysis given the data gaps and the fact that models and methodologies are evolving. For example, even the internationally established reference scenarios have developed granularity only for a subset of sectors. The final guidance should permit Regulated Organizations to leverage the results of scenario analysis in a manner commensurate with the maturity of the underlying data and methodologies. Further, given that this work is in the early stages, Regulated Organizations should have sufficient flexibility to develop and implement scenario analysis and related data capabilities over time.</p> <p><sup>25</sup> For example, many banks are onboarding sophisticated acute physical risks models to quantify asset and exposure impacts under more severe physical risk scenarios (e.g., RCP8.5).</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.D. Data Aggregation and Reporting		Clarification	<p>The final guidance should acknowledge that it may be appropriate and beneficial for Regulated Organizations to support customers through their respective low-carbon transition plans.</p> <p>It is crucial that final guidance acknowledge and affirm that it is appropriate- and indeed, in many cases desirable- for Regulated Organizations to support and serve customer needs over the course of any climate-driven economic transition. This recognition is not only important to insuring an effective and orderly transition to a carbon-neutral economy, but it is also to be encouraged as a matter of safety and soundness, as giving Regulated Organizations the flexibility to support customers through that transition is likely to produce better outcomes for the Regulated Organizations in both the short and long run.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.C. Risk Management Process	46	Clarification	<p>A. The final guidance should not suggest that Regulated Organizations mitigate credit risk by establishing and managing to prescriptive lending limits.</p> <p>The Proposal states that Regulated Organizations should consider climate-related financial risks that exist or may arise in their underwriting and ongoing portfolio monitoring practices and encourages Regulated Organizations to continue extending credit in a manner consistent with their risk management frameworks.<sup>26</sup> Some banks already consider climate-related financial risks,</p>

						<p>particularly physical risks such as flooding, fire, and other severe weather-related risks, in their credit underwriting processes as appropriate, and banks are continuing to explore the impact of physical and transition risks on credit decisions as analytical approaches evolve and the climate data environment expands. It should also be noted that banks may already impose limits or certain thresholds for industrial or geographic sectors based on a variety of risk factors and it is not clear that any climate-related risk for such sectors would in any way alter or replace existing risk limits or thresholds; significantly more analysis is needed to make such assessments.</p> <p>As described above, however, the final guidance should clarify that the DFS does not expect Regulated Organizations to mitigate credit risk by establishing and managing to prescriptive limits on lending to certain sectors or otherwise. Such an expectation could have unintended consequences on bank lending and access to credit. The final guidance should recognize that Regulated Organizations are supporting these clients' transition to a low-carbon economy across a necessarily long-term horizon, and managing any climate-related financial risks of doing so within the construct of their internal risk appetite and management frameworks. It also would be helpful if the final guidance recognized that the integration of climate-related financial risk into the credit granting and monitoring process is nascent and will improve as climate-related financial risk measurement techniques mature.</p> <p><sup>26</sup> Proposal, Section IV.C.(v).(a), ¶46.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	III.A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	18	Deletion	<p>B. Although we believe that Regulated Organizations have an important role to play in addressing the impact of climate-related financial risks on financially vulnerable communities, it would be inappropriate for the DFS to impose supervisory expectations that require Regulated Organizations to minimize and affirmatively mitigate adverse impacts of climate-related financial risks on these communities without further clarification.</p> <p>We agree with the Proposal's statement that many low- and moderate-income communities and communities of color (collectively, "financially vulnerable communities") could be harmed disproportionately by climate change.<sup>27</sup> We believe that Regulated Organizations have an important role to play in supporting these communities in response to increased climate risks. We also believe that partnership with the government is crucial to this effort. We recommend that regulators work with the industry to analyze impacts on financially vulnerable communities and how they can be best addressed in accordance with existing banking laws and regulations. For example, the DFS's Industry Letter on CRA Consideration for Activities that Contribute to Climate Mitigation and Adaption provides helpful examples of financing activities supporting</p>

						<p>climate resiliency that may qualify for credit under the New York State Community Reinvestment Act (“CRA”).<sup>28</sup> As climate science and climate-related financial risk management practices evolve, the DFS should consider supplementing and clarifying its guidance on which types of activities designed to improve the climate resilience of financially vulnerable communities, for both individual properties and large-scale community projects, would be eligible for CRA credit. Further, given the importance of housing to CRA plans and the complexity of risk pricing and insurance impacts that may affect long-term value and wealth preservation in impacted communities, it is essential for the DFS to consult and coordinate with federal and state housing agencies, the federal banking agencies (i.e., the Board of Governors of the Federal Reserve System (“FRB”), the Office of the Comptroller of the Currency (“OCC”), and the Federal Deposit Insurance Corporation (“FDIC”)), and the Consumer Financial Protection Bureau to ensure transition externalities are addressed in a manner that balances safety, soundness, and fairness. Policy responses to the issue of climate-related financial risk could also be advanced through coordination with the federal and state housing agencies and government-sponsored enterprises to improve other relevant federal and state programs, such as flood insurance.</p> <p>With that said, we note that the Proposal also states that the DFS expects Regulated Organizations to “minimize and affirmatively mitigate adverse impacts” on financially vulnerable communities while managing climate-related financial risks to address safety and soundness concerns.<sup>29</sup> Although the Proposal does not further elaborate on this statement, we are deeply concerned by any suggestion that Regulated Organizations are subject to an affirmative obligation to minimize and mitigate the adverse impact of climate change on financially vulnerable communities, and we believe that it would be inappropriate for the DFS to impose such supervisory expectations on Regulated Organizations without further clarification. Given the vague and ambiguous nature of the statement, it is unclear whether it is intended to refer to Regulated Organizations’ obligations to comply with fair lending laws and other applicable consumer protection laws, regulations, and guidance, as discussed in more detail in Section III.A., ¶19 of the Proposal, or it is intended to create a new regulatory expectation that applies more generally. While of course all banks make risk management and other business decisions with a fundamental emphasis on the impact of those decisions on their ability to meet the needs and convenience of their customers and communities, the introduction of a sweeping regulatory expectation that a Regulated Organization must discharge an affirmative obligation to minimize and mitigate the adverse impact of climate change on financially vulnerable communities while implementing its climate-related financial risk management practices could undermine safety and soundness. In practice, it could require Regulated Organizations to sacrifice the effectiveness of their own risk management for the sake of minimizing and mitigating any adverse impact that such risk management practices may have on financial vulnerable communities. For all of these reasons, we urge the DFS to strike the last</p>
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					<p>sentence from Section III.A, ¶18 of the Proposal. We believe Section III.A., ¶19 of the Proposal is already sufficiently clear as to the DFS’s expectations that Regulated Organizations must manage climate-related financial risks prudently while continuing to comply with their existing obligations under applicable laws, including fair lending laws and other applicable consumer protection laws, regulations, and guidance.</p> <p><sup>27</sup> Proposal, Section III.A, ¶18.  <sup>28</sup> See DFS, Industry Letter: CRA Consideration for Activities that Contribute to Climate Mitigation and Adaptation (February 9, 2021), <a href="https://www.dfs.ny.gov/industry_guidance/industry_letters/il20210209_cra_consideration">https://www.dfs.ny.gov/industry_guidance/industry_letters/il20210209_cra_consideration</a>  <sup>29</sup> <i>Id</i></p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.E. Scenario Analysis	56	<p>Clarification</p> <p>We support the DFS’s recognition of the distinction between climate scenario analysis and regulatory stress testing.</p> <p>The Proposal notes that the relevant objectives, assumptions, time horizons, and possible responses of climate scenario analyses would typically be different from those applicable in traditional stress testing exercises, and that climate scenario analyses may not be well suited to assess the potential impacts of transitory shocks to near-term economic and financial conditions or to factor into an organization’s regulatory capital requirements.<sup>30</sup> We strongly support the DFS’s recognition of this distinction.<sup>31</sup></p> <p>As background, banks are investing in talent, data, and technology to build robust climate scenario modeling and analytical capabilities across all lines of business and risk types and running exercises across different parts of their portfolios to assess a range of plausible climate change outcomes. Scenario analysis frameworks are generally based on selecting discrete points along a spectrum of potential future global temperatures—leveraging output from organizations such as the International Energy Agency (“IEA”), Network for Greening the Financial System (“NGFS”), and Intergovernmental Panel on Climate Change (“IPCC”)—which represent baseline, strategic, and stress scenarios. Publicly available climate scenarios do not provide banks with the appropriate sectoral and regional granularity, however, to directly translate scenario output into readily consumable inputs for internal risk modeling. For banks, the value of climate scenario analysis can only be fully realized when the science-based or macroeconomic output (e.g., global oil price or oil demand from the transportation sector) is expanded into more granular financial impacts (e.g., electric vehicle vs. internal combustion engine sales volume or lithium demand from elective vehicle battery producers) that can be applied across a diverse set of client industries and sub-sectors. There is also a limited understanding of the Integrated Assessment Models that drive</p>

						<p>these scenarios, which makes it more challenging for banks and vendors alike to expand scenario output while staying within the bounds of the model.</p> <p>Given the significant work that is already underway within banks, as described above, and the extensive work that has already taken place through the IEA, NGFS, and IPCC – as well as other jurisdictions – we would recommend the DFS not develop its own bespoke scenarios for banks to use in scenario analysis at this point in time.<sup>32</sup> It may be helpful, however, for the DFS to provide guidance as to which of these or other external scenarios might be useful for Regulated Organizations to use as they build out their capabilities, and for the DFS to affirm that Regulated Organizations have the flexibility to make appropriate judgments on the implementation of these scenarios. It will also be important that the DFS coordinates with the federal banking agencies on any efforts being undertaken to develop climate scenarios and modeling capabilities. Notably, it is important that any expectations with regard to specific scenarios for integration into risk management frameworks focus on severe but plausible scenarios and not exaggerated scenarios that unrealistically frontload physical and transition risks.</p> <p><sup>30</sup> Proposal, Section IV.E, ¶56.</p> <p><sup>31</sup> The FSOC report on climate-related financial risk likewise distinguished scenario analysis from stress testing, noting that the former is “exploratory in nature” while the latter is linked to regulatory requirements such as loss-absorbing capital. FSOC Report on Climate-Related Financial Risk (Oct. 21, 2021), 90, <a href="https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf">https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf</a>. Similarly, the federal banking agencies’ proposed principles for climate-related financial risk management for large financial institutions also recognize the distinction between climate scenario analysis and regulatory stress tests. See FRB, Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 75267 (Dec. 8, 2022); FDIC, Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 19507 (Apr. 4, 2022); and OCC, Principles for Climate-Related Financial Risk Management for Large Banks (Dec. 16, 2021), <a href="https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-138a.pdf">https://www.occ.treas.gov/news-issuances/news-releases/2021/nr-occ-2021-138a.pdf</a>.</p> <p><sup>32</sup> As an example, the FRB did not develop its own climate scenarios but leveraged existing work conducted by the IPCC and the NGFS in prescribing specific climate scenarios used in its pilot climate scenario analysis exercise. See FRB, Pilot Climate Scenario Analysis Exercise, Participant Instructions (January 2023), <a href="https://www.federalreserve.gov/publications/files/csa-instructions-20230117.pdf">https://www.federalreserve.gov/publications/files/csa-instructions-20230117.pdf</a>.</p>
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Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	I. Introduction	10	Clarification	<p>VII. We urge the DFS to coordinate with domestic regulators and international bodies to ensure consistent supervisory expectations with respect to climate-related financial risk management, including coordinating with the federal banking agencies with respect to a reasonable and consistent timeline for implementation of their respective guidance on climate-related financial risk management.</p> <p>The Proposal appropriately recognizes that the effects of climate-related financial risk drivers extend beyond individual organizations to the broader financial system and the economy and the DFS will need to continue to coordinate with its state, federal, and international counterparts on climate-related financial supervision. <sup>33</sup>In particular, BPI urges the DFS to coordinate closely with the federal banking agencies, the Basel Committee on Banking Supervision, the Financial Stability Board, and other international regulatory colleagues to help ensure that the supervisory expectations for the management of climate-related financial risk, including with scenario analysis, are consistent with the United States and coordinate internationally. Such consistency and coordination will be crucial to avoid the potential for duplicative or conflicting requirements imposed on Regulated Organizations, which would not only be burdensome, but would also likely undermine rather than support Regulated Organizations’ abilities to manage climate-related financial risk.</p> <p>In response to the Proposal’s Question 1, we urge the DFS to coordinate with the federal banking agencies to establish a reasonable and consistent timeline for implementation for their respective guidance on climate-related financial risk management.</p> <p><sup>33</sup> Proposal, Section I, ¶10.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.A. Corporate Governance, IV.C. Risk Management Process	28, 29, 30, 31, 42	Amendment	<p>The final guidance’s Corporate Governance section should affirm that the board of directors’ role in climate-related financial risk management is effective oversight of senior management’s implementation of risk management.</p> <p>The Proposal notes that an effective risk governance framework is essential to a Regulated Organization’s safe and sound operation and outlines key responsibilities of the board of directors and management with respect to climate risk.<sup>34</sup> Although the Proposal generally appropriately acknowledges that the board should “oversee” the Regulated Organization’s risk-taking activities, while senior management should be responsible for “executing the organization’s overall strategic plan, managing material climate-related financial risks, and reporting to the board regularly on the level and nature of such risks,”<sup>35</sup> we are concerned that the Proposal appears to conflate the roles and responsibilities of the board and management in several ways that are incompatible with the</p>

					<p>board’s role to oversee management. First, the Proposal states that management and the board should “assess climate-related financial risks and their impact on the overall risk appetite of the organization.”<sup>36</sup> It is important for the final guidance to clarify that it is the proper role of management to assess risks, including climate-related financial risks, and that the board may reasonably rely on management’s risk assessment and seek to understand the nature and level of material risks and the Regulated Organization’s overall risk profile consistent with its oversight responsibilities. Second, the Proposal states that management and the board “should establish and implement plans to mitigate and manage [the] organization’s exposures to material climate-related financial risks and should review and assess the effectiveness of mitigation plans regularly.”<sup>37</sup> Management – not the board – should be responsible for establishing and implementing plans, though it may be appropriate for the board to approve and oversee the implementation of certain material plans. Third, the Proposal states that management and the board should “integrate climate-related financial risks into the organization’s risk appetite framework.”<sup>38</sup> The board should be required only to review and approve a Regulated Organization’s risk appetite framework. Fourth, the Proposal inappropriately states that the board should “ensure that credit management . . . is fully capable of and will be held accountable for implementing the organization’s business strategies and adhering to the risk governance framework that integrates climate-related financial risks” (emphasis added).<sup>39</sup> The board should be required to oversee credit management and hold management accountable but should not be required to “ensure” any performance result of credit management.</p> <p>It is important that the final guidance follow clear and longstanding legal and safety and soundness principles that clearly distinguish the roles and responsibilities of the board of directors and management, respectively, and not conflate the two. As discussed in an industry report issued by BPI,<sup>40</sup> a central tenet of effective corporate governance is the distinction between, and complementary nature of, the board of directors’ responsibility for oversight of the business and affairs of the bank, and management’s responsibility for the day-to-day operations of the organization. Any blurring of this distinction would detract from effective governance by potentially reducing the board of directors’ ability to perform its oversight role objectively and creating uncertainty as to roles and responsibilities.</p> <p>While the approaches taken by individual boards of directors will appropriately vary, we note the following relating to the core role of boards of directors and board committees: (i) directors should ask informed, probing questions of management, including with respect to the resources being dedicated to climate-related financial risk management; (ii) reporting to the board of directors by senior leaders with responsibility for climate-related financial risk oversight should generally relate to material risks, developments, policies, and/or other issues, consistent with the board of</p>
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					<p>directors’ role in guiding the strategic direction of the organization and providing effective and objective oversight of management’s performance; and (iii) the performance of core board of directors functions, such as oversight of risk management and control frameworks, at the various levels of the banking organization may be coordinated at the top-tier parent holding company level, taking into account the independent legal and governance responsibilities of subsidiary boards. In view of the foregoing, flexibility should be maintained to permit delegation to management on such matters as (i) organization of internal climate-related roles, responsibilities, and governance structures and/or (ii) review of any public statements to ensure consistency with internal strategies and risk appetites.</p> <p>Finally, as discussed in further detail in Section VIII.B below, we recommend the final guidance to clarify how board and senior management responsibilities should be applied with respect to FBOs that have U.S. operations subject to the DFS’s supervision, and to do so in manner that leverages established U.S. risk governance frameworks for FBOs (including through U.S. risk committees or other relevant committees or functions).</p> <p><sup>34</sup> Proposal, Section IV.A.(ii), ¶¶28–31.  <sup>35</sup> Proposal, Section IV.A.(ii), ¶31.  <sup>36</sup> Proposal, Section IV.A.(ii), ¶28.  <sup>37</sup> Proposal, Section IV.C.(iv), ¶42.  <sup>38</sup> Proposal, Section IV.A.(ii), ¶29. <sup>39</sup> Proposal, Section IV.A.(ii), ¶31.  <sup>39</sup> Proposal, Section IV.A.(ii), ¶31.  <sup>40</sup> See generally Bank Policy Institute, Guiding Principles for Enhancing U.S. Banking Organization Corporate Governance (Jan. 12, 2021 Exposure Draft Edition), <a href="https://bpi.com/wp-content/uploads/2021/01/BPI-Guiding-Principles-on-Enhancing-Banking-Organization-Corporate-Governance.pdf">https://bpi.com/wp-content/uploads/2021/01/BPI-Guiding-Principles-on-Enhancing-Banking-Organization-Corporate-Governance.pdf</a>. See also The Clearing House, The Role of the Board of Directors in Promoting Effective Governance and Safety and Soundness for Large U.S. Banking Organizations (May 2016), <a href="https://bpi.com/wp-content/uploads/2021/03/58463da32970443bb9e2ab796a0dc699.pdf">https://bpi.com/wp-content/uploads/2021/03/58463da32970443bb9e2ab796a0dc699.pdf</a>.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	III.B. Proportionate Approach	21, 22	<p>Clarification</p> <p>B. The final guidance’s Corporate Governance section should clarify that the board of directors (or equivalent function) may determine the oversight approach with respect to climate-related financial risks that is most appropriate in view of a Regulated Organization’s overall governance structure and avoid any requirement to designate climate-related financial risk management responsibilities to a board member.</p> <p>Regulated Organizations have different governance structures and assign responsibilities in</p>

						<p>different ways. There is no “one-size-fits-all” in the context of board governance. In order to ensure that climate-related financial risks are appropriately incorporated across a Regulated Organization’s board governance structure, the final guidance must be flexible enough to allow various structures. We recommend the final guidance to clarify that the board of directors (or equivalent function) may determine the oversight approach with respect to climate-related financial risks that is most appropriate in view of a Regulated Organization’s overall governance structure, taking into consideration the size of the board and the expertise, diversity and tenure of board members. For example, as a general governance matter, the board of directors of a Regulated Organization may determine that elements of risk oversight relating to climate are best housed within a committee (or an equivalent function) that focuses on climate. At the same time, the board of directors of another Regulated Organization may determine that it is most appropriate, consistent with the overall board structure, for oversight of this risk to be housed within the risk committee. Other institutions may adopt a different approach.</p> <p>In addition, we recommend the final guidance to clarify how board and senior management responsibilities should be applied with respect to FBOs that have U.S. operations subject to the DFS’s supervision, and to do so in a manner that leverages established U.S. risk governance frameworks for FBOs. Specifically, the final guidance should expressly permit FBOs to utilize designated committees and existing U.S. risk governance (e.g., a U.S. risk committee, or other relevant committee or function) to carry out the oversight of climate-related financial risks at the Regulated Organization (i.e., as part of the FBO’s U.S. operations). FBOs should also be able to rely on U.S.-based management to discharge the relevant U.S. climate-related financial risk obligations of senior management. This arrangement would be more consistent with the current U.S. risk governance framework and supervisory expectations for FBOs (including those from the FRB).</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.A. Corporate Governance	28	Deletion	<p>Consistent with the flexible approach recommended above, we urge the DFS to remove the statement from the Proposal stating that sound governance “may include designating a board member . . . to be responsible for the oversight of assessment and management of climate related financial risks with clear and specific allocation of roles and responsibilities.”<sup>41</sup> While BPI agrees that climate-related risk requires appropriate board oversight, we believe a proposed designated director on climate issues – even if only by way of an example – is problematic. Such an example may turn into a de facto requirement in practice because examiners may view it as “best practice” for sound governance. Boards are, by design, deliberative bodies tasked with oversight of numerous traditional and emerging risks, of which climate risk is only one. A de facto requirement of a designated board member for climate-related financial risks could suggest that boards without such a designated member are somehow deficient. Furthermore, appointment of a designated</p>

						<p>board member for climate-related financial risks comes with a significant risk that such a director would assume outsized responsibility and authority with respect to a critical risk that is the responsibility of the collective board to oversee.</p> <p>In addition, such a de facto requirement, which necessarily emphasizes climate expertise, would also come at a significant cost to Regulated Organizations’ ability to appoint directors with attributes they believe are appropriate for the overall oversight of the company, including oversight over other, and perhaps more immediate or significant, risks they face. Technical climate experts may not have other critical experience or capabilities complementing skill needs for the board on a collective basis. Supervisory expectations on Regulated Organizations to have a designated director with climate expertise could result in lower-quality directors, especially given that such an expectation would exacerbate an already high demand for climate expertise. In general, we believe that flexibility in board governance is particularly important in the banking sector.</p> <p><sup>41</sup> Proposal, Section IV.A.(ii), ¶28.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.C. Risk Management Process	35	Clarification	<p>C. The final guidance’s Internal Control Framework section should clarify that the compliance function or other independent risk management unit that may be assigned to oversee and support the Regulated Organization’s climate-related financial risk management efforts is responsible for assessing adherence to climate-related rules and regulations rather than ensuring adherence to climate-related rules and regulations.</p> <p>The Proposal inappropriately suggests that the compliance function, as part of the second line of defense, should “ensure adherence to relevant climate-related rules and regulations and ensure that internal policies and procedures are compliant with climate-related standards, directives, charters, or codes of conduct to which the Regulated Organization is subject, as well as applicable consumer protection laws, regulations, and guidance, including fair lending considerations” (emphasis added).<sup>42</sup> This portion of the Proposal overstates the scope of the compliance function’s responsibilities. The final guidance should clarify that the compliance function (or another appropriate control unit) should assess (rather than ensure) adherence to relevant climate-related rules and regulations and whether the internal policies and procedures are reasonably designed to be compliant with climate-related standards, directives, charters, or codes of conduct to which the Regulated Organization is subject, as well as applicable consumer protection laws, regulations, and guidance, including fair lending considerations.</p> <p><sup>42</sup> Proposal, Section IV.B, ¶35</p>

Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	IV.A. Corporate Governance	27	Clarification	<p>D. The final guidance should establish realistic expectations with respect to public statements.</p> <p>The Proposal states that the board of directors and management should ensure that any public statements about their climate-related strategies and commitments are consistent with internal strategies and risk appetite statements.<sup>43</sup> The final guidance with respect to public communications should recognize the aspirational nature of external commitments and the fact that these commitments and plans will need to adapt over time as data and methodologies improve and external circumstances change. In addition, the final guidance should recognize that Regulated Organizations are already subject to a variety of securities and/or consumer protection laws and regulations that regulate the manner in which they disclose information and market their products, and that Regulated Organizations are actively engaged with the authorities enforcing these laws and regulations to ensure their public statements meet applicable requirements. Therefore, the DFS should calibrate its expectations as to the granularity between external statements and internal risk appetite statements accordingly.</p> <p><sup>43</sup> Proposal, Section IV.A.(i), ¶27.</p>
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	General Feedback	N/A	N/A	<p>The Bank Policy Institute<sup>1</sup> appreciates the opportunity to comment on the proposed guidance by the New York State Department of Financial Services relating to material financial risks from climate change.<sup>2</sup></p> <p>BPI supports the DFS’s efforts to develop and articulate principles-based guidance for climate-related financial risk management, which can be helpful to both “Regulated Organizations”<sup>3</sup> and supervisors as they work to promote sound practices by Regulated Organizations to identify and manage the possible manifestations of physical- and transition-related risks of climate change on their business and operations.<sup>4</sup> Our members are actively evaluating climate-related financial risks and their potential impacts, and are devoting substantial resources to developing risk management capabilities to identify, measure, and mitigate these risks.</p> <p>I. Executive Summary</p> <p>Given BPI member banks’ experience in this space, we believe six overarching principles should guide the DFS in finalizing its climate-related financial risk guidance. These principles and</p>

						<p>associated recommendations are summarized below:</p> <ul style="list-style-type: none"> <li>➤ The principles-based nature of the Proposal appropriately reflects the diversity of climate-related financial risks to which Regulated Organizations may be exposed and the need for flexibility in the design and implementation of risk management approaches in this area.</li> <li>• The final guidance should reflect that there is significant variability of potential climate-related financial risk outcomes over longer time horizons.</li> <li>• The final guidance’s Policies, Procedures, and Limits section should retain the flexible approach in the Proposal and acknowledge it would be premature at this time to require banks to establish and apply quantitative limits or thresholds for climate-related financial risk.</li> <li>• The final guidance’s Corporate Governance and Data Aggregation and Reporting sections should permit appropriate flexibility in the design of reporting.</li> <li>➤ The Proposal appropriately acknowledges that Regulated Organizations’ approach to managing climate-related financial risk should be proportionate and fundamentally risk-based, such that individual Regulated Organizations may tailor their risk management programs to the risks presented and calibrate that program to the risks identified.</li> <li>• The final guidance should clarify that for purposes of the management of climate-related financial risks, individual Regulated Organizations will need to define “material” in the context of their individual circumstances and risk appetite framework.</li> <li>• The Proposal appropriately acknowledges that a Regulated Organization that is part of a group may leverage group-level policies, procedures, and processes for managing climate-related financial risks if certain conditions are met.</li> <li>• With respect to FBOs that have U.S. operations subject to the DFS’s supervision, the final guidance should better reflect how FBOs operate and manage risks in the United States and acknowledge that such FBOs may be subject to home country requirements related to risk management and control and information sharing.</li> <li>• The final guidance’s Risk Management Process section should acknowledge that an appropriate, risk-based approach may lead individual Regulated Organizations to focus on different aspects of their portfolios.</li> <li>• The final guidance’s Scenario Analysis section should acknowledge that Regulated Organizations have the flexibility to conduct scenario analyses at appropriate, risk-based intervals.</li> <li>➤ The final guidance and its underlying expectations should reflect the fact that data and tools to measure and quantify climate-related financial risk remain nascent and not fully developed.</li> <li>• The final guidance should acknowledge that, in the near term, climate-related financial risk metrics and reporting may be more qualitative in nature.</li> <li>• The final guidance’s Risk Management Process and Data Aggregation and Reporting sections should reflect the nascent state of relevant data.</li> </ul>
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Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	General Feedback	7	N/A	<p>II. The principles-based nature of the Proposal appropriately reflects the diversity of climaterelated financial risks to which Regulated Organizations may be exposed and the need for flexibility in the design and implementation of risk management approaches in this area.</p> <p>We strongly support the principles-based nature of the Proposal, which appropriately reflects that climate-related financial risks may vary significantly across Regulated Organizations and that there is likely to be considerable diversity in the specific risk management tools and approaches that individual Regulated Organizations deploy, particularly as efforts to identify and measure climate-related financial risks remain relatively nascent. We also support the Proposal’s acknowledgement that climate-related financial risk management processes may be incorporated into a Regulated Organization’s existing risk management framework.<sup>5</sup></p> <p>We encourage the DFS to retain this overall approach in the final guidance, and to avoid the types of prescriptive or detailed mandates that are likely to hinder Regulated Organizations’ abilities to explore, test, refine, and adapt how they manage climate-related financial risks over both the short and long term. For example, it is important that Regulated Organizations have sufficient flexibility to develop and adapt their internal risk taxonomies, to make decisions about how to incorporate climate-related financial risks organizationally within their existing risk management framework, and to determine the relative materiality of climate-related financial risk exposures to the Regulated Organization’s financial condition. To that end, our comments identify a number of specific areas where maintaining this principles-based approach is particularly important to provide Regulated Organizations with appropriate flexibility.</p> <p><sup>5</sup> Proposal, Section I, ¶7.</p>
Bank Policy Institute	Brett Waxman	Senior Vice President, Senior Associate General Counsel	General Feedback	N/A	N/A	<p>IV.A. The final guidance should acknowledge that, in the near term, climate-related financial risk metrics and reporting may be more qualitative in nature.</p> <p>Data gaps currently prevent Regulated Organizations from being able to develop the kind of precise metrics that are conducive to developing quantitative thresholds, limits, and KPIs and KRIs to generate, analyze, and validate the kind of data needed to support those metrics.</p> <p>Accordingly, it is important for the final guidance to recognize that policies, procedures, and any limits as they relate to climate-related financial risk, as well as reporting, initially may be more qualitative in nature and may rely less on standardized metrics, limits, and thresholds. The final guidance should acknowledge that the development of a comprehensive risk identification process based on quantitative metrics may appropriately pass through an extended transition state that is</p>

						short of the mature approach identified in the Proposal and may be useful only for limited purposes in the short-term.
Institution	Name	Title	Question	Question #	Detailed Feedback	
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director	<u>Timeline for implementation</u>	<u>V.1</u>	<p>Yes, we recommend that a timeline for implementation be established. Ceres believes that climate change risk permeates all aspects of the capital markets, similar to cyber security risks and the coronavirus pandemic, posing grave threats to in-scope institutions of all sizes and business models. Moreover, this risk is only increasing in terms of frequency and severity. As the systemic nature of climate-related financial risks and their impacts on financial markets have become clear, many in-scope institutions have stepped up their efforts in tackling climate change. However, much more needs to be done to maintain the safety and soundness of our financial institutions – especially in light of the unprecedented increases in physical climate risk in the United States. For example, according to NOAA, since 1980 there have been over 340-billion-dollar climate disaster events that have resulted in over \$2.4 trillion in damages. Moreover, according to a recent Deloitte study, the cost of the current climate crisis could end up costing the United States as much as \$14.5 trillion by 2070. Finally, the White House Office of Management and Budget (OMB) has estimated that by the end of the century, climate change could cost the federal government as much as \$2 trillion (about \$6,200 per person in the US) per year. These acute and progressive physical risks have the potential to seriously disrupt the bank and credit union markets as well as the communities they serve. For example, 90% of US counties have been hit with a climate disaster in the last decade and more than 80% of Americans experienced a heat wave. Climate impacts are already manifesting in the largest state economies. In just the last few years, California has experienced recording-breaking wildfires, in both number and size, that have taken hundreds of lives, bankrupted the state’s largest utility, left millions regularly without power and brought home insurability into question. Florida is facing rapidly rising sea levels and now-routine flooding that are eroding coastal property values and wiping out freshwater supplies. Insurance companies are also pulling out of Florida and Louisiana in addition to California. In light of these sobering statistics and existential risks, we respectfully recommend that the NYDFS establish that this Guidance be implemented by all in-scope financial institutions. For larger institutions we would recommend implementation as soon as possible. For smaller, resource-constrained institutions, we understand the need for some allowance, and so we suggest implementation should occur as soon as practicable. We note however that no in-scope institution – regardless of size or business model - can afford to delay the proper incorporation of climate risk management into their enterprise risk management processes much longer. For those, who would suggest excluding smaller institutions from being in-scope for the Guidance, we would point them to this 2022 World Bank report, “Climate Change Regulation: Bank Lending and Real Effects” based on a study of the Brazil Central Bank’s 2017 environmental risk management policy. One of the key findings is that if the regulation only applies to large banks, it puts smaller banks’ financial stability in jeopardy. This will happen in two ways. First, when large banks reduce their lending to the high-risk sectors, the smaller banks make up the difference</p>	

					<p>by providing more high-risk sector loans. Second, in the situation where large financial institutions keep their lending to the high-risk sectors, they tend to shorten the loan maturities, as a result, the smaller financial institutions fill this tenor gap exposing themselves to more instability factors. As a result, the growth in lending from small banks compensates for the contraction in the supply of large banks. In other words, the supply of finance for the high-risk sector does not drop but is redistributed from the larger banks to the financially more vulnerable smaller banks. Therefore, to achieve the goal of financial stability and climate-related financial risk management, a sound policy cannot cover only large in-scope institutions but also needs to cover smaller in-scope institutions.</p>
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director	Climate scenario analysis	V.2	<ul style="list-style-type: none"> <li>• We agree that there is a wide range of complexities in climate scenario analysis, and that smaller institutions may not have the resources to support a highly quantitative, multi-scenario climate scenario analysis program.</li> <li>• Ceres firmly believes that all financial institutions, irrespective of size or business model, would benefit greatly from some form of climate scenario analysis as part of its business-as-usual forward-looking enterprise-wide risk assessment protocols. This type of analysis should be useful in identifying potential risks lurking on the horizon, as well as informing management as to potential climate-relevant revenue-accretive opportunities that are available in the near future.</li> <li>• However, it is important that smaller in-scope institutions understand that climate scenario analysis can be performed either as a quantitative or qualitative exercise. Said more plainly, in-scope institutions do not need to deploy significant resources in support of overly technical computer modelling. Resource-constrained institutions could comply with this part of the Guidance by incorporating qualitative physical and transition climate risk scenarios into their existing annual forecasting or “war game exercises,” as relevant to their institutions.</li> <li>• In terms of support, many in-scope banks already have the ability – either in-house or via third-party consultants - to perform climate scenario analysis, and to incorporate those results into borrower-level probability of default (PD), loss given default (LGD) and internal risk rating (IRR) metrics.</li> <li>• However, for resource-constrained institutions, there are many free, public resources available to assist in-scope institutions in implementing climate scenario analysis. For example, the Taskforce on Climate-Related Financial Disclosure (TCFD), which believes that scenario analysis is a well-established method for developing strategic plans that are flexible and robust, provides in-scope institutions with a variety of tools and scenarios that they can use to inform their scenario analysis process.</li> <li>• Furthermore, the United Nations Principles of Responsible Investment (PRI) also provides extensive resources that in-scope institutions can use to develop climate scenario analysis capabilities.</li> <li>• The Network for Greening the Financial System (NGFS) also provides resources of varying complexity including a range of different climate scenarios and a list of climate relevant sectors for the transition.</li> <li>• FEMA publishes the National Risk Index (NRI), which provides geospatial physical risk data. Several other private companies and nonprofit organizations also provide geospatial physical risk data.</li> <li>• NGOs such as the Ceres Accelerator for Sustainable Capital Markets, provide thought leadership and guidance to financial institutions on best practices they could employ while conducting scenario analysis.</li> </ul>

					<ul style="list-style-type: none"> <li>We believe these existing resources are more than sufficient to allow in-scope financial institutions – again, regardless of asset size or business model - to meet this requirement of the Guidance.</li> </ul>
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director	Disclosure	V.3	<ul style="list-style-type: none"> <li>Yes, Ceres believes that existing regulatory reporting requirements should be supplemented to capture in-scope financial institutions' exposure to material climate-related financial risks – as well as their management of such risks. We also propose that this supplemental reporting be completed in-line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). We encourage the Guidance explicitly refer to TCFD in the text, not only in the footnote, as the international best practices, and consider also mentioning other widely accepted disclosure standards, such as SASB, ISSB, and the GHG Protocol.</li> <li>As the NYDFS is aware, many international regulators are already requiring that banks disclose their material climate-related financial risks.</li> <li>For example, the United Kingdom’s Climate-related Financial Disclosure guidance requires that in-scope companies (including banks) disclose material climate-related financial information to support investment decisions and to provide greater information to other stakeholders. UK CFD also asks banks to disclose this information using the Financial Stability Board’s (FSB) Task Force on Climate-related Financial Disclosures (TCFD) framework, as they believe it is “one of the most effective frameworks for companies to analyze, understand and ultimately disclose climate-related financial information.”</li> <li>Furthermore, on January 5th, 2023, the European Union’s Corporate Sustainability Reporting Directive (CSRD) entered into force. Similar to the UK CFD rule, EU CSRD is designed to ensure that bank investors and stakeholders have access to the information they need to assess investment risks arising from climate change and other sustainability issues – including a financial institution's exposure to material climate-related financial risks. Although the European Financial Reporting Advisory Group (EFRAG) is currently working to develop draft European Sustainability Reporting Standards (ESRSs) to guide the CSRD, it should be noted that the TCFD framework will be used as it relates to the climate portion of the disclosure rule.</li> <li>Finally, global investors have made clear that they are very interested in additional disclosure related to a bank’s material climate-related financial risks. In October 2022, Ceres analyzed the comment letters from 320 institutional investors who responded to the SEC Request for Comment regarding its proposed Climate Disclosure Rule. This group of asset owners and asset managers collectively own or manage more than \$50 trillion in assets. Of this group, 296 investors fully support that companies – including banks – disclose material climate-related financial risks and align their disclosures with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).</li> </ul>
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director	Other aspects to consider	V.4	<p>We congratulate NYDFS for designing this comprehensive proposed Guidance. In addition to the comments mentioned above, Ceres respectfully recommends that NYDFS consider the following aspects of climate-related financial risks to include in the Guidance:</p> <p>Although your proposed Guidance seeks to promote a principles-based approach to improving risk management and supervisory practices related to climate-driven financial risk, we would encourage that NYDFS consider making</p>

					<p>some, or all, of these prescriptive and enforcing them as mandatory requirements as opposed to voluntary best practices. It is important to note that the European Central Bank, the Bank of England, and other foreign financial regulatory agencies are already taking these steps. Furthermore, compliance with the Guidance should be reviewed as part of examinations of all supervised institutions along with whether in scope institutions are modifying their management strategies to conform with any public statements made regarding decarbonization of lending activity (i.e., net zero commitments).</p> <p>Ceres also recommends that future guidance assist in-scope institutions in factoring the climate change-related transition, physical, and reputational risks of their borrowers into their capital, loan pricing and credit allocation decisions. Furthermore, we believe it is important that in-scope institutions do so on a sector-by-sector basis, with consideration given to the unique transition risks (including legal and reputational) and physical risks inherent in each industry sector and client vertical. We note that some in-scope institutions have already developed climate-related financial risk management practices in line with this Guidance. These in-scope institutions typically treat climate risk in a manner analogous to credit risk. By this we mean that climate risk is quantified using sophisticated models, and borrower credit risk metrics (PD, LGD, IRR) and risk limits are adjusted to account for this risk. For in-scope institutions without the capability to properly measure and incorporate climate risk into their enterprise risk management processes (as described above), we suggest that future NYDFS Guidance treat climate risk more like operational risk. For example, this approach could involve requiring “resource constrained in-scope institutions” to pause increasing their exposure to high climate risk sectors altogether – in order to ensure the in-scope institution’s safety and soundness – until proper climate-related financial risk management practices are in place.</p> <p>Further, in-scope institutions must develop the ability to assess if climate-related transition and physical risks will cause certain assets (including trading book assets) to become illiquid to a point that they are effectively “stranded assets”. Future Guidance should assist in-scope institutions in developing plans to unwind such assets, or to set aside more capital against these potential “stranded assets”.</p> <p>For in-scope institutions to credibly assess the impacts of climate-related financial risk on LMI and other disadvantaged communities, Ceres recommends that in-scope institutions commit to principles of diversity, equity and inclusion and that in-scope institution board members and senior management are selected from a diverse and inclusive pool of candidates drawn from the communities that the financial institutions serve. Incorporating the principles of a just and inclusive economy is foundational to any effective climate risk management regime. We respectfully recommend that the NYDFS use the state CRA rules in support of this.</p> <p>Further, Ceres recommends NYDFS incorporate explicit considerations for climate resilience and race as interrelated stability risks which in-scope institutions must address. This could include activities that support climate resiliency such as explicitly targeting LMI and BIPOC communities for investments in urban infrastructure to boost extreme weather resilience; investments in renewable energy and water conservation projects for affordable housing to reduce utility payments; investments in flood resilience activities; and installation of air conditioning in multifamily</p>
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					<p>buildings to reduce heat risks and utility payments. Likewise, NYDFS should incorporate the insights and analysis produced by the Financial Literacy and Education Commission (FLEC) into its expectations on how in-scope institutions consider climate-related financial risks on LMI and other disadvantaged communities.</p> <p>Additionally, to properly address the impacts of climate-related financial risk mitigation strategies and financial products on households in LMI and other disadvantaged communities, in-scope institution board members and senior management should have proven climate risk management competence, training and experience. To ensure that board members have access to climate and ESG training, Ceres offers online training which pinpoints how corporate board members can embed ESG into their oversight role. We encourage all in-scope institution board directors to participate in appropriate continuing education on these vital issues.</p>	
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director	I. Introduction	9	Amendment	<p>The proposed Guidance currently states that “Regulated Organizations may need to incorporate climate-related financial risks into their risk frameworks based on partial or imperfect information”.</p> <p>Ceres disagrees with the characterization of this information as “imperfect”. All models and data have limitations and are based on certain assumptions - climate-related financial data is no different. We respectfully suggest using the term “evolving information,” or “best-available estimates” instead.</p>
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director	IV. Supervisory Guidance	27	Clarification	<p>Ceres respectfully suggests NYDFS add language to this section to ensure public statements about climate risk or opportunities avoid unscientific, unsubstantiated, or exaggerated claims as to the sustainability benefits or risk mitigation properties of a given product or strategy (i.e., “greenwashing”). For example, “in addition, the board and management should ensure that any public statements about their climate-related strategies and commitments are consistent with their internal strategies, and risk appetite statements, and refrain from making claims as to the climate-risk mitigating nature of products or strategies without third party assurances”.</p>
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director	IV. Supervisory Guidance	31	Clarification	<p>We suggest listing the last sentence in this paragraph “Regulated Organizations should build capacity and ensure appropriate board and management education on climate-related topics.” to be a new paragraph, emphasizing the need for and the importance of continuous capacity building</p>
Ceres Accelerator for	Steven M. Rothstein	Managing Director	IV.C. Risk Management Process	46	Amendment	<p>We respectfully suggest adding language to ensure that in-scope institutions also develop the capabilities to incorporate climate risk into Probability of Default (PD), Loss-Given-Default (LGD) and Internal Risk Ratings (IRR) metrics at a borrower or portfolio level.</p>

Sustainable Capital Markets						
Ceres Accelerator for Sustainable Capital Markets	Steven M. Rothstein	Managing Director	IV.C. Risk Management Process	47	Clarification	<p>The proposed Guidance currently states that “Regulated Organizations face market risk if the financial market has not priced in climate-related financial risks fully.”</p> <p>Recent literature on this subject, such as the Bank of International Settlements (BIS) report on Pricing of Climate Risk in Financial Markets makes clear that climate risk is not currently priced into most financial assets. As such, Ceres respectfully suggests that NYDFS clarify this sentence to reflect that this “mispriced” outcome is more likely than not to occur.</p>
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Question</b>	<b>Question #</b>	<b>Detailed Feedback</b>	
Fulton Savings Bank	Pamela Caraccioli	President and CEO	Timeline for implementation	V.1	Fulton Savings Bank (FSB) recommends that the DFS develop a uniform model risk assessment for all Regulated Organizations (RO's) to complete, prior to establishing a timeline. DFS should also aggregate the information and determine the nature and extent of its perceived risks associated with climate change.	
Fulton Savings Bank	Pamela Caraccioli	President and CEO	Climate scenario analysis	V.2	The climate scenario analysis should take institution size into consideration. The climate effect on smaller institutions versus larger institutions is highly dependent on the geography and climate within the institution's market area, particularly as it pertains to the 'physical risk.' Further, the economic impact of the 'transition risk' can have more effect outside the geographic market area, as commerce does not have geographical restrictions. However, there needs to be careful analysis of the profile of each RO's customers to determine the degree of impact of 'transition risk.'	
Fulton Savings Bank	Pamela Caraccioli	President and CEO	Disclosure	V.3	The disclosure of 'material financial risk' particularly given the lack of context for what constitutes 'material' is highly subjective. What is the definition of 'material' and how is materiality measured in terms of climate change? We have concerns about the availability of data and other information needed to realistically determine climate change loss as it relates to loan loss. What is the baseline used for materiality and can materiality be determined after a climate event? How does the RO's insurance coverage mitigate a material physical loss, as opposed to a loan loss which would probably not be an insured risk?	
Fulton Savings Bank	Pamela Caraccioli	President and CEO	Other aspects to consider	V.4	We have strong concerns around some basic language used throughout the guidance. The determination of what constitutes 'climate change' is both complicated and likely resource intensive beyond the capabilities of most RO's. Specifically, what is the definition of 'climate change' and how is 'normal' defined given the the dynamic nature and uncertainties of climate. For example, does a one-degree difference in temperature over 20 years constitute climate change?	

Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Fulton Savings Bank	Pamela Caraccioli	President and CEO	General Feedback	N/A	N/A	For the benefit of the DFS and all of its RO's, and for the sake of uniformity, consistency and achieving optimum results, DFS needs to produce a comprehensive uniform model risk assessment for climate change. The RO's need to know with some degree of certainty what is expected by DFS. The DFS also needs to analyze each RO on an individual basis and carefully analyze their business model.
Institution	Name	Title	Question	Question #	Detailed Feedback	
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	Timeline for implementation	V.1	<p>Community banks cannot immediately implement and comply with a sweeping new framework that is not required by community banks' primary federal regulators. The Guidance introduces an onerous and novel framework that will require community banks to incur significant expense to satisfy supervisory expectations. For example, the Guidance effectively requires New York state chartered community banks to perform scenario analysis - a complicated and sophisticated new exercise that the Federal Reserve has said it will require only the 6 largest banks in the United States to perform. It is both unreasonable and unrealistic for the Department to expect community banks to readily identify and pay third-party climate experts to perform scenario analysis or advise community banks how to implement the Guidance. Additionally, community banks do not have the resources of larger institutions and do not have the scale to absorb the fixed costs required by this proposal.</p> <p>ICBA strongly encourages the Department to fully exempt community banks with fewer than \$100 billion in assets from any finalized framework. However, if the Department finalizes its guidance and does not exempt community banks, the Department must specify an implementation period that provides community banks sufficient time to allocate significant expense to build and integrate necessary systems and identify the appropriate experts that community banks will have to hire for compliance. Given the complexities and expense that will be required (which the Department did not attempt to explain in a cost-benefit analysis), it would be unreasonable to adopt any implementation in the near term.</p>	
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	Climate scenario analysis	V.2	<p>The Board of Governors of the Federal Reserve System announced last year that the nation's 6 largest banks (Bank of America, Citigroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley and Wells Fargo) will participate in a pilot climate scenario analysis exercise that is expected to conclude at the end of 2023. Importantly, these megabanks have yet to complete even a single round of scenario analysis under the supervision of a federal prudential regulator. Nevertheless, the Department has taken the unusually aggressive step of going far beyond the proposals issued by federal bank regulators and has included scenario analysis in its Guidance - suggesting that all banks - including New</p>	

					<p>York state chartered community banks should perform this complex exercise. ICBA strongly urges the Department to exempt community banks with fewer than \$100 billion in assets from any express or implied supervisory guidance that would require them to perform scenario analysis. At the very least, the Department should wait until the 6 megabanks complete the Federal Reserve's pilot program, and regulators have more information about the findings from the pilot, as well as the challenges the megabanks experienced during the pilot.</p> <p>To perform scenario analysis, community banks would likely need to hire specialized third-party consultants and experts to perform the work. Community banks should not be forced use their limited budgets for tools designed to analyze remote climate risks (such as scenario analysis) versus tools designed to analyze and improve the bank's operations (such as independent audits or investments in IT security infrastructure). Community banks cannot afford to pay hundreds of thousands of dollars to third parties to perform climate scenario analyses, particularly if these analyses require community banks to forgo the expense of investing in other bank services, such as Risk and Compliance, IT infrastructure, cybersecurity defenses, or independent audits.</p> <p>Since most community banks will be subject to CECL this year, many of them will find it necessary to stress test their loan portfolios to make accurate estimates of future losses under the new accounting standard. Given that community bank portfolios are generally not as complex as large bank portfolios, and because community banks already perform numerous stress testing exercises, community banks simply do not need to perform yet another duplicative scenario analysis that does not have a measurable impact on business operations.</p> <p>ICBA is also concerned mandatory scenario analysis could force community banks to engage in an impossibly difficult exercise of forecasting for remote risks that may occur decades in the future, or which may never transpire. The longer the timeframes that are selected in scenario analysis for default and loss projections, the more speculative and expensive the analysis becomes, while the utility of the exercise, and the likelihood of any measurable changes to the business, are greatly reduced.</p>
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	Disclosure	V.3	<p>Community banks do not have comparable resources to the large banks that that hold hundreds of billions or trillions in assets and are thousands of times bigger; and community banks and their customers do not have a trove of climate-data readily at their disposal to collect, examine, or disclose. Given their finite resources, and inexperience with any climate disclosure framework, the Department should align with and follow the OCC, FDIC, and the Board of Governors of the Federal Reserve System by providing a full exemption from the Guidance to community banks with fewer than \$100 billion in assets.</p> <p>Some types of data, such as Scope 3 emissions data, present significant challenges to banks of any size - and especially community banks. For example, measuring Scope 3 emissions would require community banks to collect Scope 1 and 2 emissions throughout the entirety of the bank's value chain, i.e., all of the bank's customers, vendors, and third-party service providers. For community banks, gathering this information from their customers presents a</p>

					significant hurdle because their customers are not otherwise required to collect or maintain nebulous greenhouse gas (GHG) emissions data, are unlikely to know how to collect this data without hiring third-party expertise, and are likely unwilling or unable to pay additional expense to gather this data.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	Other aspects to consider	V.4	<p>I. Unlike the climate-related financial risk management frameworks proposed by the OCC, FDIC and Board of Governors of the Federal Reserve System, the Guidance does not exempt community banks with fewer than \$100 billion in assets.</p> <p>The Department's guidance does not align with frameworks proposed by community banks' primary federal regulators - the OCC, FDIC, and the Fed. Because community banks are not exempt from the Guidance, the Department is proposing a state regulatory framework that is unnecessarily punitive for community banks chartered in New York, as no other community bank in the nation is subject to any climate supervisory framework. And, because the Department has proposed a framework that is far more complex, onerous, and costly to implement than the federal proposals that exempt all community banks, the Department is incentivizing community banks to switch from their New York state charters to either another state or to national charters. Imposing a one size fits all framework on community banks by subjecting them to the same supervisory expectations, costs, and regulatory burdens as the nation's largest, globally active financial institutions may force many community banks to reevaluate whether there is any benefit to holding a New York charter.</p> <p>II. The Department made no effort to quantify the enormous costs this proposal will impose on community banks.</p> <p>Although the Department is framing this proposal as guidance - it appears clear that by embedding climate risk within every aspect of risk management, governance, and bank policy, the Department has, in fact, proposed a new set of supervisory requirements for New York state chartered community banks. Despite creating a sweeping new regulatory framework, however, the Department did not perform any cost-benefit analysis. In fact, the Department made no attempt to quantify how costly this proposal will be for community banks - cost is not mentioned anywhere in the proposal. Applying a one-size-fits-all framework, and its related costs, to the nation's largest, globally active institutions as well as to New York's smallest banks is unacceptably heavy handed - and failing to even acknowledge these costs constitutes an exceptional regulatory oversight.</p> <p>The costs of implementing climate-risk frameworks are not merely theoretical. For example, the SEC recently published a proposal addressing only one aspect of the agency's Guidance - climate disclosures - and the agency acknowledged that based on previous feedback from large cap firms about climate-related disclosure costs, by one estimate "headcount requirements ranged from 2 to 20 full-time equivalent employees . . . [f]ees for external advisory services ranged from \$50,000 to \$1.35 million annually, which generally included legal counsel and consulting services related to environmental engineering, emissions, climate science, modeling, or sustainability reporting." These costs are staggering and will wholly consume the limited budgets of community banks. Given the breadth of the Guidance, the Department should perform a cost-benefit analysis, and should specifically evaluate the</p>

					costs its proposal will have on community banks. ICBA believes the results of this analysis would confirm community banks should be exempt from the proposal's onerous requirements.	
					On the basis of costs alone, community banks cannot afford to hire an army of climate experts to comply with the Guidance. But additionally, it is not apparent, and the Department has failed to explain, where community banks, many of them located in rural areas, can find individuals qualified to perform this work. If finalized, the overwhelming and sudden demand from financial institutions competing to hire from a limited pool of qualified climate experts, consultants, accountants, compliance specialists and attorneys, will inevitably drive up the costs for these individuals' services and will force community banks to spend countless hours sourcing this talent and expertise.	
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	I. Introduction	1	Clarification	The sentence "climate change poses a wide range of potential and possibly significant risks to the safety and soundness of the financial system" should be clarified because the Department has not cited reports, studies, or empirical data to explain this sweeping conclusion. The Department should not finalize the proposed Guidance until it first collects and publishes empirical data to better understand whether, and the extent to which, climate risk is a safety and soundness risk to community banks or delete this language from the proposal. As stewards of their local communities, community bankers have every incentive to ensure their lending practices support the long-term prosperity of their local economies. Unlike large banks community banks cannot flourish without the success of their local communities because their customers and loan portfolios are geographically concentrated within the local markets these community banks serve. History has shown that because community banks are experts in managing their risks, community banks do not fail simply because climate-related financial risks exist. The Department should clarify that climate risks do not pose a safety and soundness concern for community banks that are properly implementing a risk management framework using existing tools.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	I. Introduction	1	Amendment	The last sentence of this paragraph should be amended to limit applicability of the Guidance to large New York state-regulated banking and mortgage institutions with \$100 billion or more in total assets. Community banks do not operate globally and therefore do not need additional climate risk regulation to support "global competition," as the Guidance incorrectly suggests.

Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	I. Introduction	3	Amendment	Because community banks have, for decades, capably demonstrated they can manage risk, including climate risk, using existing risk management frameworks, and to align with the proposals issued by the prudential bank regulators, the Guidance should be amended to apply only to large financial institutions (those with \$100 billion or more in total assets).
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	I. Introduction	9	Clarification	While ICBA appreciates the Department acknowledging that climate related financial risks are new and evolving, that there may be "partial or incomplete" information related to climate risk, and that institutions "may wish to take an iterative approach," this language is very broad and does not sufficiently explain the Department's supervisory objectives. This paragraph should be clarified to expressly state the Department will not criticize or take supervisory action against institutions that are taking an iterative approach and making adjustments to their risk management frameworks based on partial or incomplete information.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	II. Financial Risks from Climate Change	11	Amendment	To align with the climate risk proposals published by the prudential regulators, the phrase "climate change risks" should be amended to "climate related financial risks." This amended language should be applied to, and used consistently within, the entire proposal.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	II. Financial Risks from Climate Change	13	Deletion	The Department concludes, without offering supporting evidence or citations, that climate-related natural disasters "can lead to lower residential and commercial property values, lower household wealth, lower corporate profitability, and stress on social and economic systems, translating into financial and credit market losses that affect Regulated Organizations' balance sheets." Yet, reports published by the Federal Reserve Bank of New York and the Federal Deposit Insurance Corporation, do not support, and in fact contradict, this sweeping conclusion. In the absence of supporting data, (including the Department's failure to cite any specific examples where a severe weather event caused these outcomes), this paragraph should be deleted, or at the very least clarified with supporting data. See e.g. Staff Reports, Federal Reserve Bank of New York, How Bad are Weather Disasters for Banks, No. 990 (Nov. 2021) available at: <a href="https://www.newyorkfed.org/research/staff_reports/sr990">https://www.newyorkfed.org/research/staff_reports/sr990</a> . See also Federal Deposit Insurance Corporation, Report No. 2022-03, "Severe Weather Events and Local Economic and Banking Conditions" (June 2022) available at: <a href="https://www.fdic.gov/analysis/cfr/staff-studies/2022-03.pdf">https://www.fdic.gov/analysis/cfr/staff-studies/2022-03.pdf</a> .
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior	III.B. Proportionate Approach	20	Clarification	ICBA appreciates the Department recognizing that a proportionate approach to climate-related financial risk management is necessary, given varying size, complexity, geographic distribution, business lines, and investment strategies of financial institutions. The community bank model is

Bankers of America		Regulatory Counsel				fundamentally different from large too-big-to-fail banks, and they should not be subject to a "one size fits all" climate risk framework. However, the directive that "regulated organizations should take a proportionate approach to the management of the climate-related financial risks they face, appropriate to each organization's exposure to climate-related financial risks" is vague and unhelpful because the Department has not identified any asset thresholds or other criteria to help banks and examiners differentiate institutions of varying size and complexity to which a proportionate approach would apply. It is critically important that the Department clarify this language, and not allow examiner discretion to determine the asset size in which proportionate approaches apply - as this discretion will lead to arbitrary and inconsistent supervision. At a minimum, the Department should amend this paragraph to clarify that community banks with fewer than \$100 billion in assets are not subject to the proposal.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	IV. Supervisory Guidance	23	Clarification	The Department's directive that Regulated Organizations consider "forward looking risks" should be clarified and time bound. Otherwise, this sentence is too speculative, and could capture remote or immaterial climate-risks.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	IV.A. Corporate Governance	24	Amendment	The sentence that states "DFS expects that a Regulated Organization's governance framework will ensure that there is a process in place for identifying, measuring, monitoring, and controlling that organization's financial risks associated with climate change" seemingly applies to any and all conceivable climate risks, no matter how speculative or remote. This is an unrealistic supervisory expectation that will be extremely difficult for community banks to implement. DFS should not expect any institution to manage or assess remote climate risks for which the institution cannot have a material impact upon - this sentence should be amended to refer only to material risks.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	IV.A. Corporate Governance	25	Amendment	The language "potential impact of climate-related financial risk" should be amended to state "potential impact of material climate-related financial risk."
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	IV.A. Corporate Governance	29	Clarification	The Guidance directs financial institutions to clearly define thresholds for material climate-related financial risks but offers no guidance or data to explain how a bank is supposed to differentiate between material and immaterial climate risks, or define thresholds for materiality.

Independent Community Bankers of America	Jenna Burke	<b>Senior Vice President, Senior Regulatory Counsel</b>	IV.B. Internal Control Framework	34	Clarification	The Guidance directs financial institutions to "assess climate-related financial risks during client onboarding, credit application, and credit review processes." If the Department does not intend to facilitate "Operation Chokepoint," the Department should clarify and expressly state there will be no supervisory expectation to choke off legal but climate disfavored customers or industries.
Independent Community Bankers of America	Jenna Burke	<b>Senior Vice President, Senior Regulatory Counsel</b>	IV.C. Risk Management Process	37	Amendment	Climate-related financial risks should be amended to "material climate-related financial risks"
Independent Community Bankers of America	Jenna Burke	<b>Senior Vice President, Senior Regulatory Counsel</b>	IV.C. Risk Management Process	40	Clarification	The Guidance will require Regulated Organizations to develop appropriate key risk measurement tools - yet the Department fails to identify any tools, besides scenario analysis, that may be "appropriate" for an institution to use. This implies that scenario analysis is the only tool the Department considers "appropriate," and therefore, that scenario analysis is required. ICBA strongly opposes any express or implied supervisory mandate that community banks must perform scenario analysis - this is a complex and expensive exercise that should not be imposed on the state's smallest banks.
Independent Community Bankers of America	Jenna Burke	<b>Senior Vice President, Senior Regulatory Counsel</b>	IV.C. Risk Management Process	52	Deletion	The Department's directives that "Regulated Organizations should consider how climate-related financial risk and risk mitigation measures affect the legal and regulatory landscape in which they operate" including "possible changes to legal requirements and underwriting standards" and consideration for "applicable consumer protection laws, such as fair lending laws" are incredibly broad. Any language expressly stating banks should change their legal requirements and underwriting standards based on climate-related financial risks implicitly suggests the Department's guidance is designed to facilitate the choking off of legal but climate disfavored industries, and should be deleted from the proposal. This broad mandate is inappropriate for a guidance document, provides no useful information for financial institutions to implement, and should be removed from the proposal.
Independent Community Bankers of America	Jenna Burke	<b>Senior Vice President, Senior Regulatory Counsel</b>	IV.D. Data Aggregation and Reporting	54	Clarification	The Department's directive that Regulated Organizations "develop risk data aggregation capabilities" lacks specificity as to the types of data an examiner will expect a financial institution to collect. For example, the Guidance makes no mention of Scope 1, 2, or 3 data disclosure. ICBA strongly opposes any supervisory expectation for a bank to collect greenhouse gas emissions or other climate data directly from their customers (as would be required to disclose Scope 3 data). The Department should clarify the types of data it expects banks to collect and

						should expressly state there is no supervisory expectation that banks collect climate data from their customers.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	IV.D. Data Aggregation and Reporting	55	Deletion	The Department concedes "the required data for assessment of climate-related financial risks may not yet be captured by existing information technology infrastructure of financial institutions." Nevertheless, the Department directs financial institutions to "consider enhancing existing systems" to "make it possible to identify, collect, and centralize the data necessary to assess material climate-related financial risks." Community banks do not have the resources or expertise to build climate information technology systems in-house. Because this directive is unfeasible and wholly inappropriate to require of community banks, the smallest banks operating within the Department's jurisdiction, community banks should be exempt from this requirement, or this section should be deleted from the proposal.
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	IV.E. Scenario Analysis	56	Clarification	More specificity is needed to identify the institutions the Department expects to perform scenario analysis. While the Department says "the development and implementation of climate scenario analysis should be commensurate with a Regulated Organization's size, complexity, business activity, and risk profile" the Department has not specified any criteria to help banks and examiners understand when and to what extent scenario analysis must be performed among banks of varying size, complexity, business activity and risk profile. The Department can and should clarify that community banks are not required to perform scenario analysis.
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
Independent Community Bankers of America	Jenna Burke	Senior Vice President, Senior Regulatory Counsel	General Feedback	N/A	N/A	As relationship lenders, leaders within their communities, and champions of their small business and agricultural customers, community bankers understand the unique risks facing their communities and have every incentive to ensure these risks are appropriately managed. For decades, community bankers have proven they are protective custodians of their local communities, reliable financial first responders in the aftermath of severe weather events or global pandemics, and stewards of the environments in which they and their customers live and work.  Since the late 19th century, community banks have successfully implemented risk management practices, and in so doing, have weathered and survived every type of natural disaster, including catastrophic hurricanes, tornadoes, earthquakes, wind events, droughts, freezes, snowstorms, wildfires, landslides, volcanoes, and flooding. Community banks should never be subject to climate-related financial risk management frameworks, as these requirements are unnecessary, costly, and duplicative to the risk management principles they currently, and capably, implement.

					<p>And critically, because community banks are deeply invested in their communities, i.e. their limited geographic footprints, these small institutions cannot and should not be expected to minimize concentrations in their loan portfolios or abandon loan customers in response to remote, subjective, and speculative climate risk.</p> <p>I. The Guidance should not facilitate “Operation Chokepoint.”</p> <p>ICBA is concerned the Guidance, however well-intentioned the framework may be, will politicize the Department, jeopardize the independence of the agency, and discourage banks from doing business with legal but climate disfavored industries such as carbon-intensive industries. Because the Guidance broadly applies to every facet of risk management and does not provide sufficient detail to banks or examiners to differentiate material climate-related risk exposures from all conceivable climate-related risk exposures, there is a troubling possibility examiners could cite deficiencies in climate-related risk management at every bank in every examination, and do so in a non-uniform manner. As such, ICBA is concerned the Department could use the Guidance to implement “Operation Chokepoint” and pressure banks to terminate business relationships with clients engaged in lawful activity by “de-risking” their portfolios and declining basic banking services, such as deposit accounts and loans, to entire categories of industries the Department believes may present climate- related financial risk.</p> <p>Both the breadth and lack of specificity in this proposal leave open the possibility that any number of lawful industries could be choked off from the financial system for posing climate risk, including industries that are carbon-intensive, or consume large amounts of water, energy and other natural resources, or produce, supply, or consume fertilizer and chemicals, or generate waste, and list goes on. Given the degree of speculation involved in this analysis, and the lack of specificity from the Department, it is plausible an examiner could interpret the Guidance such that the only way to prepare for a speculative risk would be to take the extreme measure of eliminating the risk entirely. Banks should not be forced by their regulator to de-risk entire categories of business customers based on speculation that transition risks, no matter how remote, could arise related to the “changes necessary to limit climate change.”</p> <p>Further, while community banks typically are not the primary source of financing for large energy producing companies, they do provide the majority of small business credit in those communities where energy production, refinement, transportation and other ancillary businesses exist. Policies that would reduce access to credit to those businesses because they are connected to the fossil fuel industry would have devastating impacts on the local economies served by community banks.</p>
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						<p>including environmental factors such as industry, geographical, economic, and political factors.”</p> <p>Plainly stated, the qualitative and environmental factors community banks currently use to analyze the adequacy of ALLL already estimate and quantify climate-related financial risk. For example, if a bank is located in a market that is in severe drought, the bank will increase qualitative and environmental factors to account for this increased risk to the loan portfolio, which in turn results in an increase in the bank’s allowance estimate. Since community banks already consider qualitative and environmental factors as part of their “comprehensive, well-documented, and consistently applied ALLL analysis,” and since most community banks will be subject to CECL this year and be required to be forward looking with their estimates of loan losses, a separate risk management framework for climate risk is unnecessary.</p> <p>(4) Securing Insurance Policies to Offset Risk  With respect to their lending and investment activities, community banks are keenly aware of the importance of risk mitigation particularly during times of economic stress or extreme weather events. To mitigate climate, disaster, and concentration risks, community banks ensure their property loans have adequate flood insurance and their agricultural loans have adequate crop insurance. Crop insurance allows agricultural producers to recover from severe weather disasters and repay their farm loans.</p> <p>Additionally, community banks diversify their agricultural loan portfolios by utilizing the safety nets, insurance, and market protections for farmers and agricultural lenders authorized by the farm bill, including the Farm Service Agency’s Guaranteed Farm Loan Programs. The farm bill, adopted by Congress approximately every five years, provides an income safety net for commodity prices to bolster income for farmers and ranchers. The farm bill also offers farmers and ranchers several guaranteed farm loan programs. The guaranteed farm loan programs protect up to 90 – 95 percent of the loan principal, thus ensuring the repayment of most of the loan principal should farmers and ranchers become unable to repay their loans. These programs also help protect community banks against loan losses by providing tools to manage their concentration risks, which is particularly important to banks that specialize in agricultural lending.</p> <p>V. Community banks will face insurmountable challenges incorporating the Guidance into their risk management frameworks.</p> <p>a. Implementing an Overly Broad Framework</p> <p>One of the biggest challenges community banks would face in incorporating the Guidance into</p>
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						<p>their risk management systems is anticipating, measuring, forecasting, and analyzing all of the unknown and unquantifiable risks that could be captured under the proposal. The Guidance is incredibly broad and does not contain sufficient guardrails to ensure examiners cannot get carried away in criticizing financially healthy banks on the basis of remote, or highly speculative, or immaterial climate-related risks.</p> <p>The Guidance also does not contain detailed hypothetical or explanatory examples, time periods for forecasting, or even specify a common data set banks should use to analyze climate-related financial risks. ICBA is concerned that without any of these limits, the Guidance can broadly apply to every type of physical risk or transition risk imaginable, no matter how immaterial or remote, and banks could therefore be subject to undue regulatory scrutiny for minor deficiencies in their risk management programs that are only tenuously related to climate-risk.</p>
Institution	Name	Title	Question	Question #	Detailed Feedback	
Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA	Panayiotis Dionysopoulos, Carter McDowell & Bella Rozenberg	Senior Counsel and Head of Legal and Regulatory Practice Group ISDA	Timeline for implementation	V.1	<p>Regulated Organizations can benefit from the final guidance as they make progress toward developing and implementing appropriate climate-related financial risk management responses. However, as the Proposal recognizes, the development of climate-related financial risk management practices will be iterative and informed by improvements in data availability and the evolution of more advanced methodological capabilities.<sup>22</sup> Therefore, it would be premature for the NYDFS to establish today a timeline for implementation of practices that would rely on data and methodologies that are widely understood to be underdeveloped and unreliable. However, if the NYDFS were to adopt an implementation timeline once data and methodologies in this field are sufficiently improved, we suggest that it be organized in phases to afford Regulated Organizations the time needed to develop capabilities based on the improved data and methodologies. Further, Regulated Organizations may face challenges related to the allocation of internal resources and technological investment as they build capacity to come into conformance with the climate-related regulatory regimes of multiple domestic and international prudential regulators across multiple jurisdictions. Accordingly, in line with its efforts to “to coordinate with its state, federal, and international counterparts on climate-related financial supervision,”<sup>23</sup> and with the recognition that FBOs may take into account the requirements of home-country regulators, the NYDFS should give deference in its own phasing to the expectations of its federal and international counterparts that supervise Groups more broadly, thus allowing for a build out from the top down of climate-related financial risk management capabilities.</p> <p><sup>22</sup> See Proposal ¶¶ 9,43, 51.  <sup>23</sup> Proposal ¶ 10</p>	

<p>Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA</p>	<p>Panayiotis Dionysopoulos, Carter McDowell &amp; Bella Rozenberg</p>	<p>Senior Counsel and Head of Legal and Regulatory Practice Group ISDA</p>	<p>Climate scenario analysis</p>	<p>V.2</p>	<p>2. Recognizing that there is a wide range of complexity in climate scenario analysis, how can smaller institutions benefit from climate scenario analysis? What does appropriate climate scenario analysis look like for them? Which kind of support do they need in establishing these scenarios?</p> <p>As discussed in Section IV above we believe the final guidance should exclude smaller Regulated Organizations with assets below a reasonable threshold. As such, we do not believe the expectations of the NYDFS with respect to climate-related financial risk management in general and, with respect to scenario analysis in particular, should extend to smaller Regulated Organizations.</p> <p>To the extent, however, that the NYDFS believes the final guidance should apply to smaller Regulated Organizations, we agree with the Proposal that, “[t]he development and implementation of climate scenario analysis should be commensurate with a Regulated Organization’s size, complexity, business activity, and risk profile.”<sup>24</sup> As such, while many smaller Regulated Organizations may conduct scenario analysis exercises at the home office or enterprise level, for certain smaller Regulated Organizations, the technical and operational investments required to perform climate scenario analysis exercises may pose an outsized burden relative to their climate-related financial risk. Accordingly, given the Proposal’s emphasis on proportionality, we believe the final guidance should clarify that the NYDFS would not expect a smaller Regulated Organization to conduct climate scenario analysis exercises if the Regulated Organization is otherwise able to manage its climate-related financial risks.</p> <p><sup>24</sup> Proposal ¶ 10</p>
<p>Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA</p>	<p>Panayiotis Dionysopoulos, Carter McDowell &amp; Bella Rozenberg</p>	<p>Senior Counsel and Head of Legal and Regulatory Practice Group ISDA</p>	<p>Disclosure</p>	<p>V.3</p>	<p>III. The NYDFS should not propose additional or supplemental reporting requirements<sup>14</sup></p> <p>The reporting and disclosure of climate-related financial risk information is important and useful for regulators, customers, and investors alike. However, it is paramount that various reporting and disclosure frameworks be aligned. The IIB represents the U.S. operations of financial institutions headquartered in over 35 countries around the world. Many of the IIB’s member institutions are already engaged in producing climate-related reports and disclosures for their home jurisdictions, at the enterprise or other levels, consistent with widely adopted frameworks, such as the recommendations of the International Sustainability Standards Board or Task Force on Climate-related Financial Disclosures.<sup>15</sup> In addition, our member firms that are U.S. Securities and Exchange Commission (“SEC”) registrants will be subject to the SEC’s climate disclosure regime once it is finalized. These reports and requirements will provide comprehensive information regarding the climate-related financial risk of our member firms. Additional climate disclosure requirements from the NYDFS would be duplicative and confusing to investors and regulators. The costs of requiring climate disclosures at the level of an FBO’s state-licensed branch or agency would outweigh any benefit from such a production. In addition, to the extent that climate-related financial risk</p>

					<p>management is integrated into existing risk management frameworks, these risks should be captured in current regulatory reports. Accordingly, the NYDFS should not propose any additional or supplemental reporting requirements.</p> <p><sup>14</sup> This section is responsive to Feedback Question 3:</p> <p>The Guidance does not contain a provision regarding disclosure of material risks from climate change for Regulated Organizations. Should existing regulatory reporting requirements to be supplemented to capture Regulated Organizations’ exposure to material financial risks from climate change and their managements of such risks, and if so, what should be supplemental report look like?</p> <p><sup>15</sup> See exposure Draft IFRS S2 Climate-related Disclosures (Mar. 31, 2022), available here; Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017), available <a href="#">here</a>.</p>
Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA	Panayiotis Dionysopoulos, Carter McDowell & Bella Rozenberg	Senior Counsel and Head of Legal and Regulatory Practice Group ISDA	Disclosure	V.3	We believe the NYDFS should not propose any additional or supplemental reporting requirements for the reasons discussed in Section III, above.
Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA	Panayiotis Dionysopoulos, Carter McDowell & Bella Rozenberg	Senior Counsel and Head of Legal and Regulatory Practice Group ISDA	Other aspects to consider	V.4	<p>The Proposal states the NYDFS “expects Regulated Organizations to minimize and affirmatively mitigate adverse impacts on [low- and moderate-income (“LMI”) communities and communities of color] while managing climate-related financial risks to address safety and soundness concerns.” (“Paragraph 18”)<sup>25</sup> As the Proposal notes, the obligations of Regulated Organizations towards LMI communities and communities of color are comprehensively enshrined in existing state and federal law. (“Paragraph 19”)<sup>26</sup> As such, we read the expectations of the NYDFS in Paragraph 18 as referring to the existing obligations of Regulated Organizations discussed in Paragraph 19. Accordingly, we ask the NYDFS to consider whether inclusion of the final sentence of Paragraph 18 is merited given that it may result in confusion with respect to the expectations of the NYDFS.</p> <p><sup>25</sup> Proposal ¶ 18  <sup>26</sup> Proposal ¶ 19</p>

Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA	Panayiotis Dionysopoulos, Carter McDowell & Bella Rozenberg	Senior Counsel and Head of Legal and Regulatory Practice Group ISDA	III.B. Proportionate Approach	6, 21, 22, 31, 55	Clarification	<p>I. To more fully enable FBOs to manage climate-related financial risks in a manner consistent with how they govern their operations and risk management in the United States, the final guidance should provide additional clarity in several places</p> <p>We appreciate that even as it applies to a broad range of financial institutions, including New York State-regulated banking organizations, mortgage bankers and mortgage servicers, the Proposal seeks to address the unique structure of New York State-licensed branches and agencies of FBOs. We further appreciate that FBOs “may take into account home-country regulators’ requirements, as appropriate.”<sup>5</sup></p> <p>Further, the Proposal acknowledges that the “risk management process and control functions” of an FBO’s state-licensed branch or agency may be “performed outside of the United States” (“Paragraph 22”).<sup>6</sup> Paragraph 22 also advises that for a state-licensed branch or agency of an FBO that relies on risk management performed outside of the United States, “the FBO’s oversight function, policies and procedures, and information systems should be sufficiently transparent to allow U.S. supervisors to assess their adequacy for the branch or agency in relation to the FBO’s climate-related financial risks.”<sup>7</sup> FBOs share the objective of the NYDFS to ensure the safe and sound operations of their state-licensed branches and agencies and appreciate the flexibility that Paragraph 22 would afford FBOs. In line with the historical supervisory approach of the NYDFS of focusing on the Regulated Organization, we read Paragraph 22 as indicating that the supervisory expectations of the NYDFS with respect to the transparency of an FBO’s oversight function, policies and procedures, and information systems, would be limited to what is reasonably necessary to assess their adequacy in relation to the FBO’s New York State-licensed branch or agency.</p> <p>Our members also support the Proposal’s recognition that a “Regulated Organization that is part of a group of affiliated entities or a holding/parent company structure (‘Group’) may,” subject to certain conditions, “leverage the policies, procedures, and processes developed at the Group level for managing climate-related financial risk” (“Paragraph 21”).<sup>8</sup> We note, however, that an FBO’s state-licensed branch or agency’s climate-related financial risk management may also be developed or coordinated at organizational levels other than the Group level (e.g., oversight by a U.S. risk committee), consistent with its U.S. operating model and applicable U.S. regulatory</p>

requirements. Accordingly, we urge that the final guidance clarify that a state-licensed branch or agency of an FBO may rely on climate-related financial risk management policies, procedures, and processes developed not only at the Group level, but at other organizational levels as well, consistent with its U.S. operating model and applicable U.S. regulatory requirements.

The Proposal also states that if the conditions for a Regulated Organization to rely on Group-level policies, procedures, and processes are met, “references in this Guidance to a Regulated Organization’s board may also refer to the board of the parent/holding company of the relevant Group.”<sup>9</sup> However, as discussed further in Section II, the relevant board or designated equivalent body for an FBO’s U.S. operations may be at the level of its combined U.S. operations, not the Group level. Accordingly, the discussion of the board of the parent/holding company in Paragraph 21 should be broadened to enable an FBO to rely on the appropriate board or designated equivalent body responsible for oversight of climate-related financial risk management, which may be at the Group level or elsewhere. In addition, the final guidance should clarify that, consistent with the focus of the NYDFS on the Regulated Organization, the scope of the supervisory expectations of the NYDFS for the relevant board or designated equivalent body is limited to that body’s climate-related financial risk oversight responsibilities for the Regulated Organization.

Paragraph 21 and Paragraph 22 generally provide important guidance on how FBOs may meet the Proposal’s various expectations based on how they govern their operations and risk management in the United States, and in deference to home-country standards, as relevant. Accordingly, we request the final guidance expressly acknowledge that these expectations, such as the stated examples that Regulated Organizations “build capacity”<sup>10</sup> and “consider enhancing existing [information technology] systems,”<sup>11</sup> may be satisfied at the home office or other relevant organizational levels.

<sup>5</sup> Proposal ¶ 6

<sup>6</sup> Proposal ¶ 22

<sup>7</sup> Ibid

<sup>8</sup> Proposal ¶ 21

<sup>9</sup> Ibid

<sup>10</sup> Proposal ¶ 31

<sup>11</sup> Proposal ¶ 55

<p>Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA</p>	<p>Panayiotis Dionysopoulos, Carter McDowell &amp; Bella Rozenberg</p>	<p>Senior Counsel and Head of Legal and Regulatory Practice Group ISDA</p>	<p>I. Introduction, IV.C. Risk Management Process</p>	<p>5, 39, 42</p>	<p>Clarification</p>	<p>II. The final guidance should clarify that “equivalent bodies” to the boards of directors may include U.S. risk committees, and other board and management-level committees, and should further distinguish the responsibilities of the board from those of management</p> <p>We appreciate that the Proposal provides that “[r]eferences to boards of directors of Regulated Organizations throughout this document include equivalent bodies that perform the same functions as boards of directors.”<sup>12</sup> However, the final guidance should expressly permit FBOs to rely on designated committees and existing U.S. risk governance (including U.S. risk committees or other U.S. entities) to conduct board oversight of climate-related financial risks in the United States. In addition, FBOs should also be able to rely on U.S.-based management for the relevant U.S. climate-related financial risk obligations of senior management. This arrangement would be consistent with the existing U.S. risk governance frameworks of FBOs.</p> <p>Further, we urge that the final guidance better distinguish the responsibilities of a Regulated Organization’s board – or equivalent delegated body – from that of its U.S. management. For example, the Proposal assigns the board responsibilities with respect to identifying and controlling climate-related financial risks.<sup>13</sup> These and other similar responsibilities are better suited for U.S. management. Therefore, we urge that the final guidance define board responsibilities so that they are consistent with its role to oversee management’s efforts to identify, measure, monitor, and control climate-related financial risks.</p> <p><sup>12</sup> Proposal ¶ 5  <sup>13</sup> Proposal ¶ ¶ 39, 42.</p>
<p>Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA</p>	<p>Panayiotis Dionysopoulos, Carter McDowell &amp; Bella Rozenberg</p>	<p>Senior Counsel and Head of Legal and Regulatory Practice Group ISDA</p>	<p>III.B. Proportionate Approach</p>	<p>20</p>	<p>Amendment</p>	<p>III. The final guidance should exclude smaller Regulated Organizations based on a minimum asset threshold</p> <p>As noted above, we support the concept of proportionality as it is set forth in the Proposal and acknowledge the Proposal’s concern with respect to the climate-related financial risks that small financial institutions face.<sup>16</sup> That said, while the NYDFS has stated that it would take a proportionate approach to climate-related financial supervision, the expectations set out in the Proposal for the risk management capabilities of Regulated Organizations would still pose an outsized burden on smaller Regulated Organizations relative to their climate-related financial risks. Given the size</p>

						<p>and relative lack of complexity of smaller Regulated Organizations, we believe smaller Regulated Organizations can adequately manage their climate-related financial risks with traditional risk management practices. Additionally, we do not believe the climate-related financial risk of smaller Regulated Organizations pose a material risk to the safety and soundness of the financial system.</p> <p>As such, the final guidance should exclude smaller Regulated Organizations based on a minimum asset threshold.<sup>17</sup> This asset threshold should be based only on the assets of the Regulated Organization, which in the case of an FBO would be the New York State-licensed branch or agency of the FBO.</p> <p><sup>16</sup> See Proposal ¶ 20  <sup>17</sup> For example, federal prudential regulators have suggested an asset threshold of \$100 billion in their proposed climate-related financial risk management guidance. Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 75267 (Dec.8 2022), available here.</p>
Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA	Panayiotis Dionysopoulos, Carter McDowell & Bella Rozenberg	Senior Counsel and Head of Legal and Regulatory Practice Group ISDA	IV.E. Scenario Analysis	20, 21, 56, 57	Clarification	<p>IV. The final guidance should better reflect how climate scenario analysis is used by Regulated Organizations</p> <p>We agree with the high-level approach taken by the NYDFS with respect to climate scenario analysis and with the distinction that the NYDFS makes between scenario analysis and stress testing.<sup>18</sup> Climate scenario analysis exercises need to remain distinct from any prudential stress tests because they pursue fundamentally different objectives using different methodologies, indicators, and timeframes. We also appreciate the insight of the NYDFS that both qualitative and quantitative assumptions may be useful in informing climate scenario analysis exercises.<sup>19</sup></p> <p>Many of our members are conducting exploratory climate scenario analysis exercises at the enterprise level, often at the direction of home-country regulators and supervisors. In particular, the U.S. operations of FBOs often rely on home office or enterprise-level models and procedures for climate-related financial risk management, including for scenario analysis exercises. The Proposal appears to provide ample flexibility to conduct scenario analysis exercises at the home office or enterprise level.<sup>20</sup></p> <p>In line with the Proposal, many of our member institutions use or are developing climate scenario analysis exercises to “identify[] data and methodological limitations and uncertainty in management of [climate-related financial] risks.”<sup>21</sup> Accordingly, we ask that the final</p>

						<p>guidance further clarify that climate scenario analysis exercises are internal tools that Regulated Organizations can use to help them develop their climate-related risk management capabilities.</p> <p><sup>18</sup> Proposal ¶ 56.  <sup>19</sup> Proposal ¶ 57  <sup>20</sup> Proposal ¶¶ 21,22  <sup>21</sup> Proposal ¶ 57</p>
Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA	Panayiotis Dionysopoulos , Carter McDowell & Bella Rozenberg	Senior Counsel and Head of Legal and Regulatory Practice Group ISDA	III.A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	18, 19	Deletion	See response to V.4 above
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
Institute of International Bankers / Securities Industry and Financial Markets Association IIB/SIFMA	Panayiotis Dionysopoulos , Carter McDowell & Bella Rozenberg	Senior Counsel and Head of Legal and Regulatory Practice Group ISDA	General Feedback	N/A	N/A	<p>The Institute of International Bankers (the “IIB”)<sup>1</sup> and the Securities Industry and Financial Markets Association (“SIFMA”)<sup>2</sup> appreciate the opportunity to submit this letter in response to the request for feedback issued by the New York State Department of Financial Services (the “NYDFS”) on its Proposed Guidance for New York State Regulated Banking and Mortgage Organizations Relating to Management of Material Financial Risks from Climate Change (the “Proposal”).<sup>3</sup> The management of climate-related financial risk is an important issue, and one that is particularly significant for our members. As such, we welcome the opportunity to offer our perspectives.</p> <p>Our members recognize the global significance and importance of addressing climate-related financial risk. Many of our members are already in the process of incorporating climate-related risk drivers into their existing risk management frameworks at the enterprise level, across multiple jurisdictions. As such, we applaud the efforts of the NYDFS to coordinate with other domestic and international prudential regulators on climate-related financial supervision and appreciate that the</p>

						<p>Proposal is broadly compatible with other domestic and international climate-related financial risk management guidance.</p> <p>We also appreciate that the Proposal takes a principles-based approach to climate-related financial risk management and that it “is not intended to and does not instruct Regulated Organizations on the outcomes of their specific risk assessments, including how credit or investment decisions might evolve to account for climate-related financial risks.”<sup>4</sup> Specifically, we appreciate that the Proposal does not create new credit risk lending limits.</p> <p>Finally, we support the concept of proportionality as it is set forth in the Proposal and appreciate the comprehensive nature of the guidance in that it seeks to address the unique structure of New York state-licensed branches and agencies of foreign banking organizations (“FBOs”) and the way in which they operate in the United States.</p> <p>Notwithstanding this, there are certain provisions in the Proposal that can be clarified to more fully reflect how FBOs govern their operations and risk management here in the United States. We discuss these provisions in more detail below. In particular, we recommend that:</p> <ul style="list-style-type: none"> <li>• To more fully enable FBOs to manage climate-related financial risks in a manner consistent with how they govern their operations and risk management in the United States, the final guidance should provide additional clarity in several places.</li> <li>• The final guidance should clarify that “equivalent bodies” to the boards of directors may include U.S. risk committees, and other board- and management-level committees, and should further distinguish the responsibilities of the board from those of management.</li> <li>• The NYDFS should not propose additional or supplemental reporting requirements.</li> <li>• The final guidance should exclude smaller Regulated Organizations based on a minimum asset threshold.</li> <li>• The final guidance should better reflect how climate scenario analysis is used by Regulated Organizations.</li> </ul> <p><sup>1</sup> The IIB represents internationally headquartered financial institutions from over 35 countries around the world doing business in the United States. The IIB’s members consist principally of international banks that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States.</p> <p><sup>2</sup> SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of its industry’s nearly one million</p>
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						employees, SIFMA advocates on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. <sup>3</sup> New York State Department of Financial Services, Proposed Guidance of New York State Regulated Banking and Mortgage Organizations Relating to Management of Material Financial Risks from Climate Change (Dec. 21, 2022), available here. <sup>4</sup> Proposal ¶ 7
Institution	Name	Title	Question	Question #	Detailed Feedback	
Mitchell Funding Of Valley Stream Inc.	Donna Mitchell	President	Timeline for implementation	V.1	Yes, it should be handled over a specific time period of 2 to 4 years. This is to understand the vulnerability and resilience of the program and the dependent communities in using specific information to inform management. To develop, refine and disseminate climate products and services to our management partners meeting specific timing format and content to use this information for decision making. Building a capacity of managers to integrate science and local knowledge into management and raise awareness about climate change impacts and benefits.	
Mitchell Funding Of Valley Stream Inc.	Donna Mitchell	President	Climate scenario analysis	V.2	Scenario analysis is key. It allows a company to understand and quantify the risks and uncertainties it may face under different hypothetical future scenarios. A scenario analysis consists of multiple inputs. Companies examine many factors to help them predict possible outcomes. For instance and organization may consider how a decrease in available fuel can impact its deliver, turn around time, and number of goods sold. Weather classification schemes, regression models, weather generators, weather typing - strengths/weaknesses, assumptions, and comparison studies	
Mitchell Funding Of Valley Stream Inc.	Donna Mitchell	President	Disclosure	V.3	Yes, climate related financial risks and development risk management from works and capabilities to identify, measure, monitor and control those risks. Strategic and operational planning, operational resiliency, third party and related concentrations, credit risk management and allowances for credit losses.	
Mitchell Funding Of Valley Stream Inc.	Donna Mitchell	President	Other aspects to consider	V.4	Further clarification and reframing of due diligence, exposures, specialized lending, regulatory real estate exposure and internal ratings; rating criteria, ratings assignments, and liquidity coverage ratio.	

Institution	Name	Title	Question	Question #	Detailed Feedback
MSCI ESG Research LLC	Ryan Mensing	Executive Director, Government and Regulatory Affairs	Timeline for implementation	V.1	Recognizing the varying levels of complexity included in the Proposed Guidance, providing a timeline for implementation would stand to benefit the banking and mortgage industry and its stakeholders by providing a common baseline for expectations, and in prioritizing investments and capacity-building. MSCI points to the Guidance for New York Domestic Insurers on Managing the Financial Risks from Climate Change finalized in November 2021 that set out a phased-in approach based on the complexity of expectations. The timeline in the final guidance has facilitated the integration of climate risk across insurers' business and operations. In addition, MSCI encourages the DFS to consider any expectations and reporting obligations introduced in the final guidance in light of timelines set forth by federal banking and securities markets regulators (e.g., Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Securities and Exchange Commission), as well as global standard-setters.
MSCI ESG Research LLC	Ryan Mensing	Executive Director, Government and Regulatory Affairs	Climate scenario analysis	V.2	<p>Scenario analysis provides a powerful tool for financial institutions of all sizes to understand the implications of climate change for their portfolios, and MSCI agrees that climate scenario models, analysis or tools are of paramount importance to gauge the effects of climate change spread across various time horizons. However, one of the major challenges is the use of different scenario models and tools by financial institutions, meaning that results may not be comparable, which may be particularly difficult for both supervisors and, if disclosed, investors seeking to fully understand the balance sheet exposures to climate-related risks of financial institutions and the broader sector. Financial institutions are expected to determine which climate-related and environmental risks are material in the short-, medium- and long-term regarding their business strategy by using scenario analysis. Such subjectivity in defining relevant time horizons over which material climate-related risks will manifest may further complicate the development of climate scenario analysis models as well as the evaluation of results and interpretation of banks' resilience to climate-related risks.</p> <p>To enhance the transparency, consistency and comparability of results, we encourage the DFS to suggest that institutions use climate scenarios developed by the Network for Greening the Financial System (NGFS), of which it is a member. A single set of reference scenarios over a clearly defined time horizon would be meaningful. The NGFS Climate Scenarios have been developed to provide a common starting point for analyzing climate risks to the economy and financial system. (1) They bring together a global, harmonized set of transition pathways, physical climate change impacts and economic indicators to explore a range of plausible outcomes. Recent enhancements to the NGFS scenarios also seek to promote transparency in the market, and among the NGFS' strategic objectives in its next phase of work is providing users with methodological guidance. In its third iteration, the NGFS scenarios have been updated to incorporate country commitments to reach net-zero emissions and have been enriched with more sectoral granularity. (2) We also note that there are a range of tools and models currently available in the market to assist financial institutions with assessing their material climate risks and conducting forward-looking scenario analysis for certain lines of business. MSCI is able to support banks in this respect by providing access to over 900 climate change metrics and forward looking-indicators, such as MSCI's Climate Value-at-Risk. By calculating the</p>

					<p>financial risks from climate change per security and per scenario, Climate Value-at-Risk provides a framework that can help banks identify and understand these risks and take necessary action for effective risk management and regulatory reporting purposes. The MSCI Climate Value-at-Risk model has three main underlying components which can be used separately or in aggregate: a) Policy risk: This component aggregates future policy costs based on an end of the century time horizon. By overlaying climate policy outlooks and future emission reduction price estimates onto company data, the model provides insights into how current and forthcoming climate policies could affect companies.</p> <p>b) Technology opportunities: This component is based on company-specific data on the patents each company holds related to low-carbon technologies, providing insights into how companies' strategic investments could affect their future competitive positioning in a low carbon economy.</p> <p>c) Physical risks: This component estimates the impact and financial risk relating to several extreme weather hazards, such as extreme heat and cold and flood risk. An extensive asset location database comprising of over 400,000 company facilities has been overlaid with hazards maps. Based on sector-based vulnerabilities, each location's climate-related revenue loss for eight extreme weather hazards is computed with the help of damage and business interruption functions.</p> <p>Footnotes  (1) Scenarios Portal. Network for Greening the Financial System, September 6, 2022.  (2) NGFS Scenarios for central banks and supervisors. Network for Greening the Financial System, September 6, 2022.</p>
MSCI ESG Research LLC	Ryan Mensing	Executive Director, Government and Regulatory Affairs	Disclosure	V.3	<p>MSCI notes that the Proposed Guidance does not contain a provision regarding disclosure of material financial risks from climate change. However, without access to consistent, comparable and timely information on climate risks, banks, and capital markets participants broadly, cannot respond to the challenges presented by climate change. MSCI is able to support banks to assess their material climate risks by providing access to over 900 climate change metrics, including emissions data, fossil fuel exposure, clean tech solutions and forward-looking indicators to facilitate integration into traditional financial risk management. Still, we observe practical challenges in accessing climate-related information, stemming from inconsistent and incomparable data to overly broad boilerplate disclosure by companies. For this reason, we support a reporting and disclosure framework that encourages the publishing of quantitative data and metrics in order to supplement a qualitative statement of a bank's view of its climate risks and opportunities.</p> <p>We specifically support the efforts of the International Sustainability Standards Board (ISSB) to standardize sustainability disclosures that aim to capture issues that could be material. (1) The ISSB has consulted on its climate-related disclosures prototype, which build upon the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The framework published by the TCFD has already significantly advanced the convergence of climate-related reporting to be more robust and consistent. We further note that the November 2021 final guidance for insurers sets out the expectation for entities to engage with the TCFD framework and other similar initiatives in developing their approach to climate-related financial disclosures, and support such guidance for the banking sector.</p>

					<p>MSCI also encourages the alignment of expectations regarding content of climate-related disclosures with reporting requirements banking organizations are, and may become, subject to, including from the Securities and Exchange Commission and US federal banking regulators. (2,3) To allow for comparability, and regardless of the means of disclosure, we support the digital tagging of disclosed information in Inline XBRL.</p> <p>Available at msci.com - Sustainable Finance Consultation Responses:  (1) MSCI feedback on IFRS' Exposure Draft on Climate-related Disclosures.  (2) MSCI comments on SEC - The Enhancement and Standardization of Climate-Related Disclosures for Investors.  (3) MSCI comments on Federal Reserve Board proposed principles providing a high-level framework for the safe and sound management of exposures to climate-related financial risks for large banking organizations.</p>	
MSCI ESG Research LLC	Ryan Mensing	Executive Director, Government and Regulatory Affairs	Other aspects to consider	V.4	Please refer to additional comments in Section B. Feedback on the Proposed Guidance.	
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
MSCI ESG Research LLC	Ryan Mensing	Executive Director, Government and Regulatory Affairs	IV.C. Risk Management Process	44-53	Clarification	<p>MSCI underscores the importance of determining the materiality of climate-related financial risks notes the illustrative examples provided in [Proposed Guidance] Section C. Risk Management Process, specifically Section (v) Climate Risks as Drivers of Existing Risk Categories. According to our analysis of banking industry constituents of the MSCI ACWI Index, US banks lag their Canadian, EU, and UK counterparts on disclosed indicators such as conducting materiality assessments associated with climate change and performing climate sensitivity assessments prior to lending.</p> <p>(1) To align climate risk management practices across banking organizations, MSCI would support efforts to further align with the Basel Committee on Banking Supervision's principles for the effective management and supervision of climate-related financial risks.</p> <p>(2) We specifically believe it would provide a useful reference for banking organizations to cite the Basel Committee's frequently asked questions on climate-related financial risks, which provide a set of (non-exhaustive) examples to banks on how to incorporate climate into measurement and management of specific risk categories. (3)</p> <p>Footnotes  (1) Source: MSCI ESG Research, as of October 30, 2022. The banking industry is defined according to the Global Industry Classification Standard (GICS®), which is the industry -</p>

						<p>classification standard jointly developed by MSCI and S&amp;P Global Market Intelligence. For more information, see MSCI ESG and Climate Trends to Watch for 2023.</p> <p>(2) Principles for the effective management and supervision of climate-related financial risks. Basel Committee on Banking Supervision, June 15, 2022.</p> <p>(3) Frequently asked questions on climate-related financial risks. Basel Committee on Banking Supervision, December 8, 2022.</p>
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
MSCI ESG Research LLC	Ryan Mensing	Executive Director, Government and Regulatory Affairs	General Feedback	N/A	N/A	<p>MSCI (1) is a leading provider of climate risk data and analytics to the global investment community and has collected climate and environment, social, and governance (ESG) related disclosures from thousands of companies globally for over two decades and developed tools to assist asset owners and managers in their analysis of climate and ESG risks and opportunities to their portfolios.</p> <p>MSCI welcomes and is pleased to provide the above comments on the Proposed Guidance which is intended to support banking organizations in assessing and managing their material climate-related financial risks.</p> <p>MSCI particularly supports NYDFS' effort to align with the work of federal and international banking regulators, as well as the principle of proportionality applied by the Proposed Guidance. We acknowledge that financial institutions of all sizes may have material exposure to the physical and transition risks associated with climate change. Smaller banks with a less diversified portfolio and higher regional exposure may in fact be more vulnerable to climate-related risks than larger banks with a wider geographical footprint and diversified loan book. Where the aim is to have a more comprehensive understanding of climate-related risks, we believe in the benefits of a proportional approach as climate risk expertise increases, and climate risk management frameworks evolve.</p> <p>Please do not hesitate to contact us to discuss our submission.</p> <p>Footnote  (1) MSCI ESG Ratings, research and data are produced by MSCI ESG Research LLC.</p>

Institution	Name	Title	Question	Question #	Detailed Feedback
Natural Resources Defense Council	Sarah Dougherty Elizabeth Derbes	Senior Financial Regulation Attorney	Timeline for implementation	V.1	<p>Question 1: Timelines</p> <p>We encourage the Department to include concrete timelines for compliance in its final guidance, for both larger and smaller regulated institutions, with longer timelines for smaller institutions appropriate to their resources. Specific timeframes for compliance will assist large and small institutions in beginning internal preparations for compliance. Longer compliance timeframes may be appropriate for smaller institutions, which as discussed above are likely to have fewer internal resources to direct towards implementation, and smaller portfolios over which to spread fixed costs. At the same time, as also discussed above, smaller regulated institutions may be exposed to even greater climate-related financial risk than larger ones. The Proposed Guidance has put smaller institutions on notice that, like larger institutions, they soon will be required to include climate related financial risks that are relevant to their businesses in their risk management processes. It is not too soon to begin to require smaller institutions to confront and manage this risk. Indeed, if only larger institutions are required to begin to incorporate climate related financial risks into their risk management, this may have the unintended effect of shifting those risks to smaller banks, further increasing small bank exposure to climate risk. A recent study of a Brazilian policy requiring large, systemically important banks to incorporate environmental risks in their capital adequacy assessments demonstrates this possibility.<sup>14</sup> The authors found that the introduction of the policy led to a lending reallocation by large banks away from exposed sectors. In consequence, however, banks that were exempt from the policy increased their total credit volume and loan maturity to firms in exposed sectors. This lending expansion by smaller banks made up for the contraction of credit by larger banks. We therefore urge the Department to set out timeframes for all regulated institutions, so that even smaller institutions will begin to learn how to gather relevant data and to integrate climate-related financial risk into their existing risk management systems.</p> <p><sup>14</sup> Miguel et al., Climate Change Regulations: Bank Lending and Real Effects (English) (Dec. 2022), World Bank Group available at <a href="http://documents.worldbank.org/curated/en/099439412272229612/IDU04c8901a60c3dc04fb60a008036d83009b76f">http://documents.worldbank.org/curated/en/099439412272229612/IDU04c8901a60c3dc04fb60a008036d83009b76f</a></p>
Natural Resources Defense Council	Sarah Dougherty Elizabeth Derbes	Senior Financial Regulation Attorney	Climate scenario analysis	V.2	<p>Question 2: Scenario Analysis</p> <p>We strongly support the use of scenario analysis as a valuable tool for evaluating climate risk exposure.<sup>15</sup> We note that scenario analysis exercises are distinct from stress tests: they are exploratory in nature and do not involve potential capital consequences. (Stress tests, in their current form, are designed to assess whether banks have enough capital to continue lending during a severe recession.) By considering a range of possible future climate pathways and associated economic and financial developments, scenario analysis can assist firms and supervisors in</p>

					<p>understanding how climate-related financial risks may manifest and differ from historical experience.<sup>16</sup></p> <p>The Federal Reserve Board has recently launched a pilot climate scenario analysis exercise to be undertaken by six of the largest bank holding companies, and anticipates publishing insights gained from the pilot at an aggregate level, reflecting lessons learned about climate risk management practices.<sup>17</sup> The Department can use the insights derived from this pilot exercise to better understand how to strengthen climate scenario analysis for future implementation, and to craft climate scenario analysis requirements appropriate to larger and smaller regulated institutions, respectively.<sup>18</sup> Consistent with the “proportionate approach” that the Department has proposed, less onerous scenario analysis requirements may be appropriate for smaller institutions. At the same time, at least some of the smaller regulated institutions should begin to work with climate scenario analysis, in order to develop their understanding of this tool for assessing their loss exposure from climate-related risk.</p> <p><sup>15</sup>New York Dept. of Financial Services, supra n.1 at 12.  <sup>16</sup>Press Release, Board of Governors of the Federal Reserve System, Federal Reserve Board announces that six of the nation’s largest banks will participate in a pilot climate scenario analysis exercise designed to enhance the ability of supervisors and firms to measure and manage climate-related financial risks (Sept. 29, 2022), <a href="https://www.federalreserve.gov/newsevents/pressreleases/other20220929a.htm">https://www.federalreserve.gov/newsevents/pressreleases/other20220929a.htm</a>  <sup>17</sup><i>Id.</i>  <sup>18</sup>The Board has also recommended, in its report released today on the failure of Silicon Valley Bank, that it may be useful for bank supervisors to engage in “narrative based ‘pre-mortem’ exercises or reverse stress testing to think critically about idiosyncratic scenarios and tail events that could lead to acute distress at individual firms.” Board of Governors of the Federal Reserve System, <i>Review of the Federal Reserve’s Supervision and Regulation of Silicon Valley Bank</i> (April 2023), 97, available at <a href="https://www.federalreserve.gov/publications/review-of-the-federal-reservessupervision-and-regulation-of-silicon-valley-bank.htm">https://www.federalreserve.gov/publications/review-of-the-federal-reservessupervision-and-regulation-of-silicon-valley-bank.htm</a>. The Department similarly may wish to consider using this type of narrative-based exercise in its supervision of at least some categories of its regulated entities.</p>
Natural Resources Defense Council	Sarah Dougherty Elizabeth Derbes	Senior Financial Regulation Attorney	Insurance as Mitigant	V.4	<p>Question 4: Other Aspects of Climate-Related Financial Risks</p> <p>One adaptation technique that we wish to raise a cautionary flag about is the use of insurance (or financial derivatives) by borrowers or the bank itself as a central tool to shield the bank from climate risk. Casualty insurance is generally written on an annual basis. As a result, even if a borrower duly obtains casualty insurance at the outset of a loan, the premiums may increase with annual renewals—especially as climate-related extreme weather events worsen over time—and may become unaffordable, or coverage may even be discontinued. This risk is particularly</p>

					problematic for LMI or disadvantaged communities. In addition, insurance may be subject to counterparty risk, as insurance companies themselves are exposed to extreme weather events and fossil fuel transition risk in their own portfolios. These shortcomings apply as well to the use of financial derivatives, such as weather derivatives. Thus, while there may be a role for insurance or derivatives as an adaptation strategy, regulated institutions and their supervisors should be aware of these limitations.	
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Natural Resources Defense Council	Sarah Dougherty Elizabeth Derbes	Senior Financial Regulation Attorney	III.B. Proportionate Approach, IV.C. Risk Management Process, IV.D. Data Aggregation and Reporting	20, 41-53, 54, 55	Clarification	<p>Proportionate Approach</p> <p>We strongly support the Department’s proposal to apply its guidance to all regulated organizations, while requiring a proportionate approach to the management of climate-related risks that is appropriate to each organization’s level of resources and exposure to such risks. The largest institutions are likely to have more internal resources to develop the robust governance and operational procedures necessary to address climate-related financial risks, and in some cases to purchase data that can help them to consider fully the risk to their portfolios. Two factors (both noted by the Department in the Proposed Guidance<sup>1</sup>) stand out when considering how smaller institutions may be exposed to, and can manage, climate-related financial risk.</p> <p>First, the risk profile of smaller institutions is likely to be very different from that of larger institutions. They may have far greater concentration risk, including industry and geographic concentrations, without the risk-mitigating benefit of diversification that larger regulated organizations are likely to enjoy. For example, a large percentage of their loan portfolio may consist of loans to farmers with increasing drought risk, or to coastal property owners with worsening hurricane and flooding exposure. From an institutional safety and soundness perspective, it is important for regulated organizations and supervisors to identify these concentration risks. Portfolio diversification, especially geographic diversification, may be difficult without impairing the institution’s mission of serving the local community. This issue may be particularly acute for low-to-moderate income (LMI) or disadvantaged communities.</p> <p>Second, smaller institutions are likely to have fewer internal resources to address climate-related financial risk, and a smaller portfolio over which to spread fixed costs such as hiring personnel to analyze climate risk.</p> <p>There are nonetheless ways in which smaller regulated institutions, including mission-driven community banks, can address climate-related financial risks. As the Department moves forward</p>

						<p>with final guidance, it should consider requiring the following strategies that can be employed by any institution, but particularly by smaller institutions:</p> <ul style="list-style-type: none"> <li>• Incorporating climate-related risk data into existing internal risk reporting workstreams. Consistent with the Department’s proposal that regulated organizations measure and monitor climate-related risks through their existing risk management framework (“IV.C. Risk Management Process”), risk teams should be required to report to senior management on a quarterly or other appropriate periodic basis on indicators including, for example: <ul style="list-style-type: none"> <li>o Key risk indicators for climate-related physical, operational, and transition financial risks;</li> <li>o Risk indicators for climate-related reputational financial risks;</li> <li>o Liquidity risk (for undrawn facilities subject to climate-related financial risks);</li> <li>o Market risk based on transition scenario assessments (price shock);</li> <li>and o Portfolio exposure to high-emitting and green sectors <sup>2</sup></li> </ul> </li> </ul> <p>Both large and small regulated institutions can benefit from regular internal reporting of climate-related financial risks to their boards. This approach will encourage awareness of climate-related financial risks not only within risk management teams, but also at the level of senior management and the board. It will also encourage banks to take a portfolio-wide and business wide approach to understanding these risks, rather than focusing exclusively on climate-related financial risks relevant to individual loans.</p> <p>Consistent with the Department’s proposal for data aggregation (“IV.D. Data Aggregation”), to ensure that regulated institutions have the information necessary to make this kind of risk management meaningful, we encourage the Department to require regulated institutions to begin implementing the following practices, on timeframes designed for smaller and larger institutions consistent with the proportionate approach described in the proposed guidance:</p> <ul style="list-style-type: none"> <li>• Collecting climate-related information from borrowers for use in risk management. Borrowers will be acutely aware of their recent experience with extreme weather events and the impact of those events on their properties and businesses. This information would be relatively easy to collect and may be more locally focused than published data. We therefore encourage the Department to require all regulated institutions, large and small, to begin collecting this data on a short implementation timeframe.</li> <li>• Collecting climate-related information from databases. Publicly available and proprietary databases with up-to-date extreme weather information also can be used for management of climate-related financial risks. Public databases include NOAA’s Climate Data Online and the</li> </ul>
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						<p>National Digital Forecast Database generated by the National Weather Service and the National Centers for Environmental Prediction. The cost of proprietary data may pose a problem for smaller banks; the Department should consider ways to assist smaller banks in obtaining access to such data, if possible, coordinating with and leveraging resources of other parts of New York State government to do so. In addition, the Federal Reserve has both existing data and data collection resources within its system (including the District Banks) that can be marshalled to assist smaller banks. It may be particularly useful for the Department to coordinate with the work of the New York Federal Reserve Bank’s Community Development Group.<sup>3</sup></p> <p><sup>1</sup> New York Dept. of Financial Services, Proposed Guidance for New York State Regulated Banking and Mortgage Organizations Relating to Management of Material Financial Risks from Climate Change (Dec. 2022), 6.</p> <p><sup>2</sup> See, for example, European Central Bank, <i>Good practices for climate related and environmental risk management: Observations from the 2022 thematic review</i> (Nov. 2022), 39, available at <a href="https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.thematic_reviewcercompendiumgoodpractices112022~b474fb8ed0.en.pdf">https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.thematic_reviewcercompendiumgoodpractices112022~b474fb8ed0.en.pdf</a></p> <p><sup>3</sup> See <a href="https://www.newyorkfed.org/outreach-and-education/climate">https://www.newyorkfed.org/outreach-and-education/climate</a></p>
Natural Resources Defense Council	Sarah Dougherty Elizabeth Derbes	Senior Financial Regulation Attorney	III.A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	18, 19	Clarification	<p>Managing Climate-Related Risks While Providing Fair Lending to All Communities</p> <p>We applaud the Department’s emphasis in the Proposed Guidance on fair lending concerns. These concerns pose an important challenge to financial institutions (both large and small) in incorporating climate-related financial risks into their risk management frameworks. As explained below, there is a real danger that the adoption of enhanced climate risk mitigation measures by banks may result in disproportionate treatment of or impact on climate-burdened communities, including lower-income communities and communities of color. We urge the Department to consider additional regulatory actions to address these potential effects on disadvantaged communities.</p> <p>Fair lending laws prohibit banks from engaging in discriminatory lending practices.<sup>4</sup> There are two categories of discriminatory practices for fair lending purposes. Disparate treatment occurs when a lender treats a borrower differently based on a proscribed characteristic, such as race or sex. Disparate impact occurs when a facially neutral policy or practice disproportionately burdens a protected class of persons.<sup>5</sup> If a disparate impact exists, the lender must show that the policy or practice is justified by “business necessity.” Even if a business necessity exists, however, the lender may be liable if there are alternative policies that serve the same purpose with less discriminatory effect.<sup>6</sup></p>

						<p>Fair lending risk is especially acute where risks are distributed unevenly among potential borrowers in a manner that aligns with one or more protected characteristics, such as race. Climate change fits squarely within this category. A substantial and growing literature demonstrates that many climate-related risks, such as the risk of weather-induced disaster or sea level rise, may be disproportionately borne by lower income communities and communities of color.<sup>7</sup> A November 2021 Staff Report by the Federal Reserve Bank of New York surveyed this literature 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.”<sup>8</sup> The 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.”<sup>9</sup></p> <p>The close correlation between climate and race (among other factors) raises the possibility that bank policies and practices intended to mitigate climate risk may create fair lending liability through disparate treatment of or disparate impacts on borrowers of color. Moreover, even where bank practices do not give rise to legal liability under fair lending laws, they may unreasonably restrict access to financial services within climate-burdened communities.</p> <p>Of particular concern are measures that, by seeking to limit regulated institutions’ assumption of climate-related financial risks through their lending, may make it difficult for individuals and businesses in climate-burdened communities to obtain credit. This limitation on access to credit within already-disadvantaged communities can further reduce their capacity to respond to climate-related challenges such as weather-related disasters or sea level rise. Such measures may also expose lenders to fair lending risk under the disparate impact standard if a less discriminatory alternative exists. For this reason, NRDC recommends that the Department avoid policies that would seek to mitigate climate risk by restricting access to credit for individual low-income and minority households and small businesses.</p> <p>To ensure compliance with fair lending obligations and promote fair access to financial services, we recommend that the Department’s final guidance incorporate the following principles:</p> <ul style="list-style-type: none"> <li>• Banks should carefully and holistically assess their climate risk management policies and practices for potential disparate treatment or impact on the basis of race or other protected classes.</li> <li>• Banks should collect data on lending in climate-burdened communities to assess whether their lending practices may raise fair lending concerns. Banks should ensure that the data and models on which they rely to assess climate-related risk do not include built-in biases.</li> </ul>
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						<ul style="list-style-type: none"> <li>• Banks should provide fair lending training to all staff involved in assessing climate risk for lending purposes.</li> </ul> <p>The Department’s final guidance should make clear that the Department will scrutinize banks’ climate risk management practices in accordance with these principles. In addition, to help address potential disadvantages to underbanked communities that a risk management focus on climate-related financial risk may exacerbate, the Department also should consider recommending or requiring the following:</p> <ul style="list-style-type: none"> <li>• Banks should develop resources to suggest programs for borrowers to support investments in resilience. Regulated institutions can collaborate with local government agencies and non-profit organizations to identify and promote programs for borrowers to access federal, state, and local funding for grants to incorporate resilience measures. These programs can help individuals, businesses, and communities initiate planning and develop projects that will help them become more resilient to the effects of climate change. Many of these programs allocate a significant portion of their funding for locations where underserved populations reside. Regulated institutions can educate borrowers on these programs, and support them through the application process. By doing so, these institutions can help reduce climate risks in the associated loans.</li> </ul> <p>Some examples of programs available to individuals and businesses for funding climate resilience measures include:</p> <ul style="list-style-type: none"> <li>o U.S. Department of Energy Weatherization Assistance Program<sup>10</sup>: Provides funding to eligible low-income homeowners and renters to improve the energy efficiency of their homes, reduce energy costs, and improve indoor air quality.</li> <li>o FEMA Hazard Mitigation Assistance Programs<sup>11</sup>: Provide funding for projects that reduce or eliminate long-term risk to people and property from natural disasters, such as floods or earthquakes.</li> <li>o Housing and Urban Development Community Development Block Grant Disaster Recovery Funds<sup>12</sup>: Provides funding to assist communities in recovering from disasters by supporting a wide range of activities, including infrastructure repairs and housing rehabilitation.</li> <li>o U.S. Small Business Administration Disaster Assistance Loans<sup>13</sup>: Provides low-interest loans to businesses affected by natural disasters to help them recover and rebuild.</li> </ul> <p>The Department may also seek to coordinate with other federal and New York State agencies to identify and implement additional relevant programs that regulated institutions can use to this end.</p> <p><sup>4</sup> 15 U.S.C. § 1691(a); 42 U.S.C. § 3605(a). The Equal Credit Opportunity Act proscribes discrimination on the basis of race or color, religion, national origin, sex, marital status, age, source of income, or attempted exercise of consumer rights. The Fair Housing Act proscribes discrimination on the basis of race or color, national origin, religion, sex, familial status, or</p>
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						<p>handicap. Id.</p> <p><sup>5</sup> See Regulation B, 12 CFR Part 1002, Comment 6(a); 24 CFR 100 s 100.500.</p> <p><sup>6</sup> Id.; see also Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Interagency Fair Lending Examination Procedures (August 2009).</p> <p><sup>7</sup> See, e.g., Buchanan et al., “Sea Level Rise and Coastal Flooding Threaten Affordable Housing”, Environmental Research Letters 15, no. 12 (2020): 124020; Keenan et al., “Climate Adaptation Investment and the Community Reinvestment Act”, Community Development Research Brief 05 (2019): 01-30; Furman Center, Population in the U.S. Floodplains, <a href="https://furmancenter.org/files/Floodplain_PopulationBrief_12DEC2017.pdf">https://furmancenter.org/files/Floodplain_PopulationBrief_12DEC2017.pdf</a></p> <p><sup>8</sup> Avtar et al., “Understanding the Linkages between Climate Change and Inequality in the United States” 2, Federal Reserve Bank of New York, Staff Reports No. 991 (Nov. 2021), available at <a href="https://www.newyorkfed.org/research/staff_reports/sr991.html">https://www.newyorkfed.org/research/staff_reports/sr991.html</a></p> <p><sup>9</sup> Id.</p> <p><sup>10</sup> <a href="https://www.energy.gov/scep/wap/weatherization-assistance-program">https://www.energy.gov/scep/wap/weatherization-assistance-program</a></p> <p><sup>11</sup> <a href="https://www.fema.gov/grants/mitigation">https://www.fema.gov/grants/mitigation</a></p> <p><sup>12</sup> <a href="https://www.hud.gov/program_offices/comm_planning/cdbg-dr">https://www.hud.gov/program_offices/comm_planning/cdbg-dr</a></p> <p><sup>13</sup> <a href="https://www.sba.gov/funding-programs/disaster-assistance">https://www.sba.gov/funding-programs/disaster-assistance</a></p>
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Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
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Natural Resources Defense Council	Sarah Dougherty Elizabeth Derbes	Senior Financial Regulation Attorney	General feedback	N/A	N/A	<p>The Natural Resources Defense Council (NRDC) welcomes the opportunity to comment on the New York Department of Financial Services (Department)’s Proposed Guidance for New York State Regulated Banking and Mortgage Organizations Relating to Management of Material Financial Risks from Climate Change. NRDC is an international nonprofit environmental organization with more than three million members and online activists. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world’s natural resources, public health, and environment. NRDC has offices in New York City, Washington D.C., Los Angeles, San Francisco, Chicago, Montana, New Delhi and Beijing. Through its finance and legal experts, NRDC advocates for sensible financial regulation that allows our financial system to incorporate financial risks from climate change into day-to-day risk management.</p> <p>Background: Proposed Guidance to effectively confront global competition, New York State-regulated banking and mortgage institutions must understand and manage their operational resilience and safety and soundness while considering the financial risks they may face associated with climate change. The Department’s proposed guidance would advise these institutions on how</p>
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						<p>they can incorporate these risks into their existing corporate governance, internal control, and risk management frameworks, consistent with established risk appetites and business strategies. The proposed guidance builds on the Department’s October 29, 2020 guidance highlighting the impact of climate-related financial risks on its regulated institutions. That letter laid out the Department’s expectation that regulated institutions begin to integrate climate-related financial risks into their governance frameworks, risk management processes, and business strategies, and begin to develop their approach to disclosure of those risks. Additional guidance from the Department in this area can support efforts by regulated institutions to assess and manage their material climate-related financial risks, in furtherance of the Department’s prudential objectives to assess and promote the safety and soundness of its supervised institutions and to foster the resilience of the New York financial system.</p> <p>We applaud the Department’s thorough and measured approach to integrating the management of material climate-related financial risks into the operations of its regulated institutions. In particular, we strongly support the Department’s proposal to apply its guidance to all regulated organizations, while requiring a proportionate approach appropriate to each organization’s risk exposure and level of resources. We also strongly support the emphasis in the Proposed Guidance on fair lending concerns. We encourage the Department to include in any final guidance specific timelines for compliance for both larger and smaller regulated institutions.</p>
Natural Resources Defense Council	Sarah Dougherty Elizabeth Derbes	Senior Financial Regulation Attorney	General feedback	N/A	N/A	<p>Climate-related risks are increasing, and they pose critical financial risks for banks. The Federal Reserve Board of Governors’ report issued today on the failure of Silicon Valley Bank highlights among its conclusions that a “foundational piece of any risk-management framework is the ability to identify material risks,” and that severe consequences can flow from weak risk identification.<sup>19</sup> We urge the Department to ensure that New York’s regulated banking and mortgage institutions begin to identify their material climate-related financial risks, and incorporate the management of those risks into their existing corporate governance, internal control, and risk frameworks. We thank the Department for its consideration of these comments, and are happy to provide further information on request.</p> <p><sup>19</sup> Id. at 95-96.</p>

Institution	Name	Title	Question	Question #	Detailed Feedback
New York Bankers Association (NYBA)	Brent G. Weitzberg	Vice-President of Government Relations	Timeline for implementation	V. 1	<p>The New York Bankers Association (“NYBA”) respectfully submits that a timeline for implementing any provisions of the New York State Department of Financial Services’ (“DFS” or the “Department”) Proposed Guidance for New York State Regulated Banking and Mortgage Organizations relating to Management of Material Financial Risks from Climate Change (the “Proposed Guidance”) would at this stage be premature and therefore should not be included in any final Guidance adopted by the Department. As the Department is aware, methodologies for defining, identifying and quantifying climate change-related impacts are novel and complex, and in many cases are still in their infancy. These limitations apply not only to the direct impacts of climate change, but also to the manner in which climate-related risk interacts with traditional drivers of financial risk. The availability of comprehensive data remains limited, and the development of sound frameworks for analyzing the data that is available is complicated by the degree to which the measurement of climate-related financial risk over time remains contingent on key variables, including future technological developments and policy outcomes, that are presently unknown. The nascent state of effective data collection and analysis methodologies weighs strongly in favor of avoiding any timeline for implementing the Proposed Guidance. This rings especially true in light of the Proposed Guidance’s application to banks of all sizes in New York. The Proposed Guidance closely aligns with the Federal Reserve’s recently promulgated Principles for Climate-Related Financial Risk Management for Large Financial Institutions (December 8, 2022), which in turn mirrors climate-related financial risk guidance issued by the Federal Deposit Insurance Corporation (June 3, 2022), and by the Office of the Comptroller of the Currency (December 16, 2021). Crucially, however, the proposals advanced by the federal prudential regulators apply only to institutions having an asset base of \$100 billion or more, while the Department’s Proposed Guidance applies to banks of all sizes. The foundational challenges described above - all of which militate against imposing an implementation timeline for the Proposed Guidance – are likely to disproportionately impact New York’s smaller community banks, and implicitly, State-chartered banks, further reinforcing the need to refrain from including an implementation timeline for the Proposed Guidance. At a minimum, any contemplated implementation timelines should be staggered to acknowledge the varying levels of operational complexity associated with different provisions of the Proposed Guidance. This approach would be consistent with the Department’s general recognition in the Proposed Guidance that when adapting their risk frameworks to climate risk, it may be appropriate for banks to take an iterative approach that leverages further developments in methodologies and improved data quality.</p>
New York Bankers Association (NYBA)	Brent G. Weitzberg	Vice-President of Government Relations	Climate scenario analysis	V.2	<p>NYBA shares the Department’s view that climate scenario analysis can be a useful tool to help banks identify, measure and manage climate change-related financial risk. We similarly share the Department’s view that use of scenario analysis should be commensurate with an institution’s size, complexity, business activity and risk profile. The development and use of broadly accepted methodologies for climate scenario analysis, however, remains in the earliest stages. There is still little understanding of the economic models used to inform and shape scenario analysis, and a persistent lack of geographic and sectoral granularity in the analyses generated by currently available climate</p>

					scenario models. Once again, these obstacles fall with disproportionate weight on smaller community banks. Consequently, it is vital that any final guidance from the Department concerning the use of climate scenario analysis retains a principles-based approach that permits, in particular, smaller banks to tailor their use of such analysis to the specific complexities and risk factors present in their business. Moreover, any final guidance should expressly permit smaller banks to create their own climate scenario analysis models uniquely tailored to their risk.	
New York Bankers Association (NYBA)	Brent G. Weitzberg	Vice-President of Government Relations	Disclosure	V.3	NYBA respectfully submits that it would be premature to supplement existing regulatory reporting requirements to specifically address a Regulated Organization’s exposure to material financial risks from climate change. Given the still-evolving, and as yet unsettled, state of methodologies for identifying and measuring climate-related financial risk, specific disclosure requirements at this stage create significant risk of duplication and confusion, for both Regulated Organizations and regulators, as well as unnecessary costs. Moreover, avoiding specific reporting requirements remains consistent with provisions in the Proposed Guidance stating that Regulated Organizations should identify, measure, monitor and control climate-related financial risks through their existing risk managements frameworks.	
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
New York Bankers Association (NYBA)	Brent G. Weitzberg	Vice-President of Government Relations	I. Introduction; IV.B. Internal Control Framework; IV.C. Risk Management Process	7, 33-53	Clarification	NYBA appreciates the Department’s acknowledgment in the Proposed Guidance that its provisions are not intended to dictate specific risk assessment outcomes or the outcomes of a bank’s credit or investment decisions. We respectfully urge the Department to ensure that any final guidance hues to this principle by refraining from purporting to adopt any mandatory lending limits or other constraints on a bank’s ultimate credit decisions specific to climate-related financial risk. Imposing such restraints, particularly at this early stage in the development of reliable climate risk data and risk analysis methodologies, would risk, at best, significant and unnecessary distortions in the flow of loan capital and other forms of credit to New York communities, without necessarily contributing to the mitigation of climate-related financial risk.
New York Bankers Association (NYBA)	Brent G. Weitzberg	Vice-President of Government Relations	IV.C. Risk Management Process	19, 42, 43	Clarification	The Proposed Guidance states that its provisions do not modify a Regulated Organization’s obligations to comply with fair-lending laws and other applicable consumer protection laws, regulations and guidance. At the same time, Section IV.C(iv) of the Proposed Guidance notes that risk mitigation measures may include, for example, “risk-based pricing measures,” and other measures designed to mitigate climate-related financial risk. Regulated Organizations will likely need further clarity and guidance concerning the boundary, in particular, for permissible transaction-level risk mitigation efforts, to help avoid unnecessary confusion and to help minimize or eliminate any potential tension between these objectives.

<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
New York Bankers Association (NYBA)	Brent G. Weitzberg	Vice-President of Government Relations	General Feedback	N/A	N/A	NYBA acknowledges and agrees with the Department's endorsement in the Proposed Guidance of Regulated Organizations adopting a proportionate, risk-based approach to their management of climate-related financial risk. At the same time, we urge the Department to consider adopting the approach uniformly taken by federal prudential regulators in their proposed climate-risk guidance, and limit application of the Proposed Guidance to larger banks. At a minimum, to the extent the Department considers imposing a timeline for implementing the Proposed Guidance, it should stagger implementation requirements to permit smaller community banks additional time relative to their larger counterparts.
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Question</b>	<b>Question #</b>	<b>Detailed Feedback</b>	
New York Credit Union Association	Genevieve Caputo	Director of Compliance	Timeline for implementation	V.1	5 years. This is a massive undertaking and drain on resources. It will also allow time for more dialogue between the regulator and financial institutions.	
New York Credit Union Association	Genevieve Caputo	Director of Compliance	Climate scenario analysis	V.2	The methodology used for the climate scenario should be developed by the regulatory body to provide consistency among all institutions without the financial and resource strain and competitive disadvantage this regulation will place on them (and all financial institutions regulated by New York State)	
New York Credit Union Association	Genevieve Caputo	Director of Compliance	Disclosure	V.3	Not at this time.	
New York Credit Union Association	Genevieve Caputo	Director of Compliance	Other aspects to consider	V.4	As written the guidance is vague on what to include in such policies and practices. Additional clarity is needed as to specific steps that should be taken and not be taken to cause undue burdens on financially impacted areas. Specific requirements of Board and Senior Management as subject matter experts can cause an undue burden on smaller Regulated Organizations that depend on volunteer committees.	

<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
New York Credit Union Association	Genevieve Caputo	Director of Compliance	III.B. Proportionate Approach	20	Clarification	Additional guidance is needed as to understand the different requirements of varying sized Regulated Organizations.
New York Credit Union Association	Genevieve Caputo	Director of Compliance	IV. Supervisory Guidance	24	Clarification	This paragraph is vague as to measurements the Regulated Organization
New York Credit Union Association	Genevieve Caputo	Director of Compliance	IV.C. Risk Management Process	38	Clarification	Clarification needs to be made on how to identify risk and adhering to Fair Lending Requirements in LMI's, which have a higher risk of exposure.
New York Credit Union Association	Genevieve Caputo	Director of Compliance	IV.D. Data Aggregation and Reporting	54	Clarification	Will there be a standard reporting requirement
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Section</b>	<b>Paragraph Number(s)</b>	<b>Type of Feedback</b>	<b>Detailed Feedback</b>
New York Credit Union Association	Genevieve Caputo	Director of Compliance	General Feedback	N/A	N/A	The Guidance is a direct reaction to the belief that climate change is real and will cause irreputable damage to the environment over a short period of time. It also assumes natural disasters are a direct result of climate change. The risk financial institutions will face are those that are created from government regulations in the name of "climate-change" thereby causing undo harm on businesses that supply products and services that don't conform to the climate-change narrative and that have financial relationships with the affected financial institution. Natural disasters happen and financial institutions have disaster recovery and business interruption plans already in place to address these events. This Guidance is redundant, unproductive and a drain on the institution's valuable financial resources, which will increase costs that will eventually be passed on to the consumer and will take resources away from serving its consumers.

Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
NYMBA/MBA	Christina Wiley	Executive Director	III.B. Proportionate Approach	20	Clarification	<p>It is important to also recognize that the industry is not without deep experience in risk management. Thus, we urge the Department to leverage our members’ considerable efforts and familiarity in mitigating risks in both the residential and commercial and multifamily markets. This work represents multimillion dollar investments to develop methods and to operationalize them. Moreover, industry practices are not static, and lenders and servicers continuously monitor their best practices and improve them to enhance their respective institutional resilience.</p> <p>In developing any final policies, NYDFS should seek gradual implementation to mitigate transition risk. In a June 2017 report, the Financial Stability Board’s Task Force on Climate related Financial Disclosures (TCFD) noted “[t]ransitioning to a lower-carbon economy may entail extensive policy, legal, technology, and market changes to address mitigation and adaptation requirements related to climate change. Depending on the nature, speed, and focus of these changes, transition risks may pose varying levels of financial and reputational risk to organizations.” Given these concerns, our organizations greatly appreciate the comments provided during the Department’s January presentation which indicated that its process would be “proportionate and principles-based.” We believe NYDFS will greatly benefit from its current iterative approach and be able to refine and improve supervision over time in a manner that compliments and enhances existing risk management frameworks.<sup>4</sup></p> <p>Mortgage lending is unlike other forms of lending and is delivered to consumers in an already tightly regulated environment by institutions with different business models (e.g., bank versus nonbank). Great care should be taken to incorporate the unique needs of all types of real estate finance firms. As state regulators begin laying out their expectations for climate risk mitigation, our organizations have concerns regarding potential for divergent standards among the more than 50 different state mortgage regulators, who may also issue mandates significantly different from the federal counterparts. We thank NYDFS for recognizing these concerns in its January presentation and for its commitment to ongoing industry dialogue.</p> <p><sup>4</sup> “Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures,” June 15, 2017. Available at: <a href="https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report11052018.pdf">https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report11052018.pdf</a></p>

NYMBA/MBA	Christina Wiley	Executive Director	III. A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	18, 19	Clarification	<p>An important topic for the start of such a conversation with industry is the intersection, and potential conflict, of federal and state fair housing laws with regulator-mandated approaches to climate risk mitigation. Our members are unequivocally committed to obeying fair housing laws. They also mitigate risks in strict accordance with investor requirements, which can involve additional costs. For example, lending in flood prone areas requires that a borrower purchase flood insurance.</p> <p>The NYDFS proposal notes that “climate-related financial risks could have an unintended but disproportionate impact on financially vulnerable communities,” and that LMI and communities of color are harmed disproportionately by climate change and natural disasters. Critically, the Department then sets an expectation that regulated organizations must “minimize and affirmatively mitigate adverse impacts on these communities while managing climate-related financial risks.” This must be achieved while “continuing to ensure fair access to capital and credit. [Regulated organizations] should not base their risk management response to climate change on the concept or practice of disinvesting from low-income communities or communities of color by making credit or banking more difficult or expensive for members of these communities to obtain.”</p> <p>Residence in an area subject to increased climate risk is not a protected class under law and reducing exposure to potential loss or risk is a legitimate business necessity. Thus, it is imperative that NYDFS recognize that mitigation of climate risk in accordance with safe and sound operations for properties located in areas subject to such increased risk has the very real potential to make those properties less affordable. Our organizations respectfully request that the Department clarify that race-neutral efforts to meet NYDFS expectations with respect to climate risk mitigation would not have a prejudicial impact in any fair housing examination. The desired result of one set of regulatory expectations and requirements should not become the punishable offense of a separate set of state mandates. As the Department’s proposal represents a national first for a state, it is important that it accept the burden that comes with this role and foster a conversation on the underlying conflict between climate risk and fair lending standards outlined in the climate guidance. Much more discussion is necessary to address the challenges MBA and NYMBA members would face in continuing to expand lending to LMI borrowers and communities given these expectations.</p>
NYMBA/MBA	Christina Wiley	Executive Director	IV.E. Scenario Analysis	56, 57	Clarification	<p>Lastly, with respect to scenario analysis, it is important that the Department recognize that the development of some plausible scenarios for particular lines of business currently may be limited by available data and that lenders will need to be able to work with the methodologies and data that are reasonably available and refine them over time.</p>

Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
NYMBA/MBA	Christina Wiley	Executive Director	General Feedback	N/A	N/A	<p>Thank you for the opportunity to comment on the New York Department of Financial Services' (NYDFS) Proposed Guidance for New York State-Regulated Banking and Mortgage Institutions Relating to Management of Material Financial Risks from Climate Change. The Mortgage Bankers Association (MBA)<sup>1</sup> and the New York Mortgage Bankers Association (NYMBA)<sup>2</sup> are supportive of efforts to ensure financial institutions are prepared for the uncertainties of climate change and appreciate the leadership of policy makers like NYDFS in raising these complicated issues and the need for solutions. Our organizations represent all elements of the real estate finance industry, and our member companies operating in the state hope this represents the beginning of a conversation with stakeholders regarding how best to manage associated risks from climate change.</p> <p><sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,000 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: <a href="http://www.mba.org">www.mba.org</a>.</p> <p><sup>2</sup> The New York Mortgage Bankers Association, Inc. (NYMBA), is a 501(c)(6) not-for-profit statewide organization devoted exclusively to the field of real estate finance. NYMBA's rapidly growing membership is comprised of both bank and non-bank mortgage lenders and servicers, as well as a wide variety of mortgage industry-related firms. NYMBA encourages its members to engage only in sound and ethical business practices and informs its members of changes in the laws and regulations affecting the mortgage business. The association helps those engaged in or affected by the mortgage business to be better informed and more knowledgeable. It is dedicated to the maintenance of a strong real estate finance system. This involves support for a strong economy, a public-private partnership for the production and maintenance of single and multi-</p>

						family homeownership opportunities, and a strong secondary mortgage market. For additional information, visit <a href="http://www.nymba.org">www.nymba.org</a> .
NYMBA/MBA	Christina Wiley	Executive Director	General Feedback	N/A	N/A	<p>The Proposed Guidance released for comment during December 2022 is sweeping in its scope and represents, in our view, one of the first attempts by a state financial services regulator to circulate regulatory expectations specifically designed to mitigate these risks. As you probably are aware, federal regulators have sought input on these challenging issues for mortgage lenders and servicers in both residential and commercial-multifamily real estate finance. MBA has provided its views to these federal agencies in recent years. Most notably, on April 19, 2021, MBA submitted a letter to the Federal Housing Finance Agency (FHFA) in response to their request for comment on, Climate and Natural Disaster Risk Management at the Regulated Entities, which it released in January of that year.<sup>3</sup> MBA’s letter to FHFA voiced the real estate finance industry’s views with respect to addressing and mitigating the financial risks of climate change on a mortgage asset, and we attach them here to inform your policy development process. It is critical that NYDFS align its efforts with its federal counterparts. NYDFS should leverage the work of the federal agencies, such as FHFA, to the maximum extent possible to help produce a common approach on mortgage-specific topics. Addressing climate risk needs an aligned approach between state and federal financial regulators.</p> <p><sup>3</sup> <a href="https://www.fhfa.gov/Media/PublicAffairs/Documents/Climate-and-Natural-Disaster-RFI.pdf">https://www.fhfa.gov/Media/PublicAffairs/Documents/Climate-and-Natural-Disaster-RFI.pdf</a>  FHFA’s actions on this issue are critical as it continues to serve as the conservator of both Fannie Mae and Freddie Mac (the GSEs) who together hold risk for approximately half of the residential and multifamily mortgage originations in the United States. In its regulatory role, FHFA ensures that the GSEs and the Federal Home Loan Banks fulfill their mission of operating in a safe and sound manner so that they may continue to serve as a reliable source of liquidity and funding for affordable housing finance and community investment during all economic conditions.</p>
NYMBA/MBA	Christina Wiley	Executive Director	General Feedback	N/A	N/A	<p>As further outlined below, we urge the Department to do the following:</p> <ul style="list-style-type: none"> <li>• Leverage our members' expertise, existing risk-management systems, processes and governance.</li> <li>• Employ a principles-based approach rather than a prescriptive approach, leaving room for flexibility, tailoring and innovation.</li> <li>• Leverage and harmonize the Department’s approach to climate risk with the actions of other financial institution supervisors.</li> <li>• Be mindful of any conflicts or tradeoffs between our members’ need to manage climate risk and to provide financing to support affordable housing.</li> </ul>

						• With respect to scenario analysis, recognize that data may be limited, and our members may need to leverage assumptions or approximations in order to analyze scenario impacts.
Institution	Name	Title	Question	Question #	Detailed Feedback	
Public Citizen	Mekedas Belayneh	Policy Advocate	Timeline for implementation	V.1	<p>4. Provide a clear implementation timeline.</p> <p>The climate crisis is worsening, and transition risk is rising in unpredictable ways. An urgent implementation timeline from DFS will give financial institutions a framework to meet regulatory expectations as soon as possible. Recognizing this, the European Central Bank has set a deadline of 2024 for banks to fully incorporate climate change into their risk management frameworks. DFS should outline when it expects banks to incorporate climate risk management into board governance, internal controls, scenario analysis, and other frameworks. This will allow DFS to assess institutions' progress in meeting its expectations. Importantly, while resource-constrained financial institutions may need greater support, climate impacts will not wait. DFS should not delay its guidance, but rather should find ways to help smaller banks understand and implement it.</p>	
Public Citizen	Mekedas Belayneh	Policy Advocate	Disclosure	V.3	<p>3. Require public disclosures of material climate-related risks.</p> <p>DFS should echo its insurance guidance and set an expectation that financial institutions publicly disclose their climate-related risk and how they integrate climate risk management into their corporate governance and business strategies. This disclosure should provide transparency on how financial institutions determine the materiality of their climate risks. In addition, public disclosures should include how banks' existing loans are exposed to physical and transition risks. Publicly available information will facilitate greater engagement with customers and companies on climate risk. As noted in DFS's insurance guidance, these disclosures can be qualitative initially, until banks quantify risks into key metrics and risk thresholds. Since financial institutions already have this information as a part of their risk mitigation strategies, it should not create a significant additional burden.</p>	

Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Public Citizen	Mekedas Belayneh	Policy Advocate	III.A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	18, 19	Clarification	<p>Climate risk mitigation must not disproportionately impact marginalized communities. DFS emphasizes that low-and moderate-income (LMI) communities and communities of color are more exposed to climate-related disasters and environmental toxins due to a legacy of redlining and environmental racism. As a result, financial institutions mitigating their exposure to climate-related risks may inadvertently engage in “blue lining:” the reduction of investment, coverage, and lending in these at-risk areas, which exacerbates preexisting racial and economic disparities. To address these injustices, the guidance appropriately centers equity by explicitly warning banks against divesting from climate-impacted communities as a tool for risk management. This approach is based on financial institutions’ requirement to comply with fair lending laws as well as the availability of other avenues for promoting climate resiliency in at-risk communities, such as providing credit for related projects under New York’s Community Reinvestment Act (CRA). Also important for addressing these injustices is DFS’s extension of the climate guidance to promote the continued safety and soundness of community and agricultural banks, which marginalized and rural communities rely on for essential financial services.</p> <p>DFS can further promote its equity goals by providing greater clarity on how it will undertake fair lending reviews in climate-impacted areas and by advising institutions to promote diversity, equity, and inclusion in their senior leadership and board management. Lastly, DFS should encourage banks to establish policies and procedures to monitor the actions they are taking to promote climate mitigation and adaptation in at-risk communities while also documenting their progress in addressing disparate impacts.</p>

Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Public Citizen	Mekedas Belayneh	Policy Advocate	General feedback	N/A	N/A	On behalf of Public Citizen and 24 undersigned organizations and more than 500,000 members and supporters, we welcome the opportunity to comment on the New York State Department of Financial Services' ("DFS") Proposed Guidance for New York Regulated Banking and Mortgage Organizations Relating to Management of Material management. To achieve an equivalent level of protection for New York financial institutions, the final banking and mortgage organization guidance should incorporate these previous recommendations. Financial Risks from Climate Change. We particularly support DFS's focus on proactively mitigating the disproportionate impact of the climate crisis on low- and middle-income communities and communities of color and recognizing that climate change poses significant risks to all banks, irrespective of their size or business lines. Specifically, DFS's proposed guidance is the strongest regulatory caution to date against climate-related decisions to disinvest or raise the costs of credit in at-risk low and moderate-income (LMI) communities and communities of color. Additionally, DFS's guidance is the first to apply to all banks and mortgage companies, recognizing the need to take a proportionate approach to risk management based on their size and complexity. To solidify these accomplishments, DFS should strengthen its enforcement of fair lending laws and provide greater support to small financial institutions. Along with these important steps, DFS should do even more to confront the threats that banks and communities face. Physical and transition risks are rapidly worsening. In 2022, eighteen natural disasters resulted in \$165 billion in costs. Financial losses will only increase as natural disasters grow more severe and more frequent. Furthermore, the Inflation Reduction Act is rapidly transforming technological development and accelerating the adoption of renewable energy, which will only increase the risk that loans to carbon-intensive clients and similar assets will rapidly lose value. DFS's 2021 insurance guidance included more comprehensive risk mitigation recommendations. It included reducing financed emissions, assessing customers' transition plans, requiring public disclosure of climate risk and mitigation strategies, as well as providing regulated entities with a clear timeline for implementing climate risk management. To achieve an equivalent level of protection for New York financial institutions, the final banking and mortgage organization guidance should incorporate these previous recommendations.
Public Citizen	Mekedas Belayneh	Policy Advocate	General feedback	N/A	N/A	DFS must support small financial institutions' technological and data needs for managing climate-related risk.  DFS is the first U.S. regulator to propose including small financial institutions in its climate risk guidance. This action properly reflects that, regardless of size, financial institutions are exposed to

						<p>climate risks. Community and agricultural banks are especially critical for access to banking in already underbanked LMI and rural communities. Yet, worryingly, small and mid-sized banks are already falling behind large banks in adopting climate risk strategies.</p> <p>Because small banks are less diversified and geographically concentrated, they can have greater exposure to acute climate disasters and a rapid transition away from carbon-intensive industries. Whatever a bank’s history with managing severe weather events, its experience does not guarantee sound management of newly emerging risks. Climate change will increase the severity and frequency of climate disasters, as well as other potential economic shocks, many of which may be connected or correlated in complex ways. Small banks need new risk management tools to understand these interconnected climate risks. Without regulatory guidance and support, they may not move quickly enough or have the capability to address these new threats.</p> <p>DFS has the opportunity to set a gold standard for supporting small banks in integrating climate-related financial risk management. It can do so in part by developing in-house climate risk analysis and collecting climate risk data in coordination with federal regulators. DFS asks banks to take a proportional approach to their size and complexity. This means helping small financial institutions develop approaches to understanding their climate risks that do not rely on excessively technical modeling. Additionally, small banks can use tools and scenarios publicly available through the United Nations Principles for Responsible Investment (PRI) or Network for Greening the Financial System (NGFS ) that can be incorporated into their existing in-house risk management.</p>
Public Citizen	Mekedas Belayneh	Policy Advocate	General feedback	N/A	N/A	<p>DFS should apply key climate risk mitigation measures outlined in its insurance guidance to banks and mortgage organizations.</p> <p>1. <u>Reduce financed emissions to mitigate transition risk.</u></p> <p>Globally, regulators are recognizing the value of an orderly transition to bolster individual bank safety and soundness. Reducing financing greenhouse gas emissions is a straightforward approach to mitigating a bank’s own transition risk. This approach is already endorsed in DFS’s insurance guidance, which states, “Reducing financed and underwritten greenhouse gas emissions in line with science-based targets is also a way to mitigate the financial and consumer risks that climate change poses to insurance markets.” Bank financing of greenhouse gas emissions poses similar risks to credit markets and can benefit from the same approach. DFS should continue to recognize that reducing financed emissions is a fundamental part of the prudential oversight of climate-related financial risk.</p>

						<p>2. <u>Consider clients’ transition plans in climate risk evaluations.</u></p> <p>Ultimately, a financial institution’s transition risk is a function of the way the transition will affect its current and future clients. A prudent approach to managing risk means taking into account potential clients’ exposure to transition risk before making investments. DFS should adopt the expectations set forth in its insurance guidance and tell banks to ask clients about their low-carbon transition plans, engage with them on plans to develop sustainable business models, and urge them to develop transition plans in line with science-based targets.</p>
Public Citizen	Mekedas Belayneh	Policy Advocate	General feedback	N/A	N/A	<p>The proposed guidance is a crucial step on managing climate related risk, and DFS should expand on this foundation. DFS is in a unique position as the first supervisor of climate risk for small institutions that provide critical financial support to local communities. Because of this, DFS can serve as a model for U.S. regulators on how to effectively address climate-related financial risks at smaller financial institutions. We look forward to working with you on these next steps.</p>
<b>Institution</b>	<b>Name</b>	<b>Title</b>	<b>Question</b>	<b>Question #</b>	<b>Detailed Feedback</b>	
Risk Management Association	Fran Garritt	Director	Timeline for implementation	V.1	V.	<p>NYDFS should adopt a timeline for implementation that aligns with that of other regulators. In response to question one set forth in the Proposal, our members believe NYDFS should establish a phased or iterative timeline for implementation of climate risk management practices that is in line with other regulators’ approaches. We believe that this approach would promote greater consistency and efficiency in the implementation of climate risk management practices within and across financial institutions, particularly for Regulated Organizations that are subject to climate-related financial supervision of other regulators.</p>
Risk Management Association	Fran Garritt	Director	Disclosure	V.3	VI.	<p>NYDFS should not establish new reporting requirements for material climate-related financial risks. In response to question three set forth in the Proposal, our members do not believe NYDFS should establish new reporting obligations for material climate-related financial risks. While we appreciate NYDFS’s supervisory need for information regarding Regulated Organizations’ management of their material risks, we believe it would be</p>

						premature to require data without greater crystallization and convergence in reporting requirements across jurisdictions and that any future NYDFS reporting obligations should be incorporated into other reports to avoid unnecessary compliance burden. In addition, many of our members already publish or will publish reports based on the recommendations of the Task Force on Climate-related Financial Disclosures.
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Risk Management Association	Fran Garritt	Director	IV.A. Corporate Governance	5, 27, 42	Amendment	<p>The final guidance should further distinguish the role of the board from that of management by removing expectations of the board that are more appropriately within the purview of management. The Proposal suggests that both the board of directors and the management of a Regulated Organization are responsible for implementing climate-related financial risk management practices, such as by indicating that the “[t]he board and management should establish and implement plans to mitigate and manage [the organization’s] exposures to material climate-related financial risks and . . . review and assess the effectiveness of mitigation plans regularly.”<sup>7</sup> The Proposal also assigns the responsibility to “ensure that any public statements about [a Regulated Organization’s] climate-related strategies and risk appetite statements” to both the board and management.<sup>8</sup> We appreciate the Proposal’s clarification that references to boards of directors of Regulated Organizations include equivalent bodies that perform the same functions as boards of directors.<sup>9</sup></p> <p>We urge NYDFS to refine the expectations for the board to align with the board’s well-established and distinct role to oversee and hold management accountable for its implementation of the Regulated Organization’s risk management framework and strategic objectives. For example, NYDFS regulations, including the recently proposed amendment to the cybersecurity rules,<sup>10</sup> more clearly delineate the responsibilities of the board from those of management. Our members believe that the final guidance should take a similar approach by further differentiating between the responsibilities of board and management discussed in the Proposal, as this would align more closely with current and proposed NYDFS regulations. Distinguishing the board’s responsibilities from those of management also would align the final guidance with the climate-related financial risk management guidance recently proposed by the Federal Reserve Board.<sup>11</sup></p> <p><sup>7</sup> Proposal ¶ 42.  <sup>8</sup> Proposal ¶ 27.  <sup>9</sup> Proposal ¶ 5. See also Part II for a discussion regarding governing bodies in the context of at the “Group” and other levels of an organization.</p>

						<p><sup>10</sup> NYDFS, Proposed Second Amendment to 23 NYCRR Part 500 (Nov. 9, 2022), available here. The proposed amendment would add new subsections (c) and (d) to § 500.4, which addresses Chief Information Security Officers’ reporting obligations and the specific obligations of covered entities’ boards of directors, respectively.</p> <p><sup>11</sup> FRB, Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 75267 (Dec. 8, 2022).</p>
Risk Management Association	Fran Garritt	Director	III.B. Proportionate Approach	21	Clarification	<p>The final guidance should expand the flexibility afforded Regulated Organizations to leverage parent- or Group-level policies, procedures, and processes to other appropriate levels in their organizations.</p> <p>Our members appreciate NYDFS’s intent to provide flexibility to Regulated Organizations by allowing Regulated Organizations that are “part of a group of affiliated entities or a holding/parent company structure (“Group”)” to, subject to certain conditions, “leverage the policies, procedures, and processes developed at the Group level.”<sup>12</sup> We understand that this would encompass the ability to conduct scenario analysis at the Group level as well. However, the Consortia believe that, in light of the different governance structures used by Regulated Organizations for risk management, the Proposal should enable Regulated Organizations to leverage policies, procedures and processes developed at other appropriate levels in the organizations. The additional flexibility is relevant to a number of Regulated Organizations, and particularly large state-licensed branches and agencies of FBOs. Large FBOs subject to the Federal Reserve’s Enhanced Prudential Standards may organize aspects of their climate risk governance at the level of CUSO [Combined U.S. Operations].<sup>13</sup> { Domestic institutions with entities regulated by NYDFS may also organize their climate risk management in a way that similarly leverages or is reflected in the risk governance at other levels of the enterprise, not necessarily the ultimate parent.</p> <p>Accordingly, in furtherance of NYDFS’s approach, the Consortia recommend that the final guidance clarify that Regulated Organizations may rely on climate-related financial risk management policies, procedures, and processes developed at other organizational levels in addition to the Group level. To conform with the foregoing, we likewise recommend that the discussion of the board of the parent/holding company in paragraph 21 of the Proposal be revised to clarify that Regulated Organizations may rely on the appropriate Group-level board or other designated equivalent body responsible for oversight of climate-related financial risk management, which may be at the “Group” level or elsewhere, for example at CUSO. {see <a href="https://www.govregs.com/regulations/title12_chapterII-i2_part252_subpartM_section252.132">https://www.govregs.com/regulations/title12_chapterII-i2_part252_subpartM_section252.132</a>}</p> <p><sup>12</sup> Proposal ¶ 21.  <sup>13</sup> See, e.g., 12 CFR § 252.132.</p>

Risk Management Association	Fran Garritt	Director	III.A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	18-19	Amendment	<p>III. NYDFS should continue to consider ways to leverage the NY CRA to respond to the potential disproportionate impacts of climate change on LMI and other disadvantaged households and communities.</p> <p>The RMA Consortia agree with NYDFS’s statement that climate change could have disproportionate impacts on LMI and other disadvantaged households and communities. Our members support NYDFS making climate-related activities eligible for NY CRA credit, as indicated in their Industry Letter: CRA Consideration for Activities that Contribute to Climate Mitigation and Adaptation on February 9, 2021. Our members encourage NYDFS to continue considering ways to address potential impacts to LMI and other disadvantaged households and communities through the NY CRA.<sup>14</sup></p> <p><sup>14</sup> Proposal ¶¶ 18-19.</p>
Risk Management Association	Fran Garritt	Director	II. Financial Risks from Climate Change, General Feedback	12	Amendment	<p>IV. The definition of “physical risk” should be modified in the final guidance to clarify that certain descriptors are illustrative examples, rather than defining components of the definition.</p> <p>We appreciate the Proposal’s clarification that “illustrative examples . . . should not be viewed as mandatory or exhaustive, [and] are provided throughout the Guidance for explanation and clarification purposes.”<sup>15</sup> In light of this clarification, we do not view the Proposal’s granular descriptions regarding certain practices, for example regarding internal control frameworks, as articulating specific expectations for each Regulated Organization.<sup>16</sup></p> <p>However, our members recommend that the final guidance modify the definition of “physical risk,” changing the language from “including” to “such as,” to clarify that “increased flooding and coastal erosion, droughts that can disrupt agriculture production, and intensifying heat waves responsible for increased mortality risk” are illustrative examples rather than defining components of chronic shifts in weather.<sup>17</sup> Using “such as” would also more closely align the Proposal’s definition of “physical risk” with the definition articulated by the Basel Committee in its report on climate-related risk drivers and their transmission channels (April 2021), promoting consistency across all frameworks.</p> <p><sup>15</sup> Proposal ¶ 3.  <sup>16</sup> Proposal ¶¶ 33-36.  <sup>17</sup> Proposal ¶ 12.</p>

Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Risk Management Association	Fran Garritt	Director	General Feedback	N/A	N/A	<p>On behalf of its members, the Risk Management Association’s Climate Risk Consortia (“RMA Consortia”)<sup>1</sup> thanks the New York Department of Financial Services (“NYDFS”) for the opportunity to comment on its proposed guidance for New York State Regulated Banking and Mortgage Organizations Relating to Management of Material Financial Risks from Climate Change (“Proposal”).<sup>2</sup></p> <p>Launched in September 2021, the RMA Consortia seek to assist banks in integrating climate risk management throughout their operations, preparing the industry to help economies transition to a low-carbon future. The RMA Consortia, representing 42 leading banking organizations, also aim to advance climate risk management practices in the banking industry by facilitating the development of industry-wide taxonomies and standards.</p> <p>We support the high-level, principles-based approach of the Proposal and its broad compatibility with other climate-related financial risk management frameworks, both domestically and internationally. We also support NYDFS’s ongoing coordination with its state, federal, and international counterparts on climate-related financial supervision.<sup>3</sup> The RMA Consortia support the concept of proportionality as it is set out in the Proposal, and appreciate the Proposal’s recognition that Regulated Organizations may incorporate climate-related financial risks “into their existing frameworks, consistent with established risk appetites and business strategies.”<sup>4</sup> We also appreciate NYDFS’s focus on climate-related scenario analysis as opposed to traditional stress testing.<sup>5</sup> Furthermore, we appreciate that the Proposal recognizes that data quality and methodologies are evolving and the suggestion that the incorporation of climate-related financial risks by Regulated Organizations may be an iterative process.<sup>6</sup></p> <p>Given the importance of the Proposal, the RMA Consortia recommends that NYDFS make certain refinements in the final guidance so that it further aligns with how banking organizations currently manage their climate-related financial risks, as well as other risks. In particular, we make the following five recommendations, each of which we discuss in more detail below.</p> <ol style="list-style-type: none"> <li>1. The final guidance should further distinguish the role of the board from that of management by removing expectations of the board that are more appropriately within the purview of management.</li> <li>2. The final guidance should expand the flexibility afforded Regulated Organizations to leverage parent- or Group-level policies, procedures, and processes to other appropriate levels in their organizations.</li> </ol>

						<p>3. NYDFS should continue to consider ways to leverage the New York State Community Reinvestment Act (“NY CRA”) to respond to the potential disproportionate impacts of climate change on low to moderate income (“LMI”) and other disadvantaged households and communities.</p> <p>4. The definition of “physical risk” should be modified in the final guidance to clarify that certain descriptors are illustrative examples, rather than defining components of the definition.</p> <p>5. NYDFS should not establish new reporting requirements for climate-related financial risks.</p> <p>6. NYDFS should adopt a timeline for implementation that aligns with that of other regulators.</p> <p><sup>1</sup> The RMA Consortia consist of two groups: the Large Bank Climate Risk Consortium and the Regional Bank Climate Risk Consortium.</p> <p><sup>2</sup> New York State Department of Financial Services, Proposed Guidance for New York State Regulated Banking and Mortgage Organizations Relating to Management of Material Financial Risks from Climate Change (Dec. 21, 2022), available here.</p> <p><sup>3</sup> Proposal ¶ 10.</p> <p><sup>4</sup> Proposal ¶ 7. We understand that this means the discussion of audit, as a third line of defense, would be consistent with a risk-based auditing program, in line with a Regulated Organization’s existing approach to risk management.</p> <p><sup>5</sup> Proposal ¶ 56.</p> <p><sup>6</sup> Proposal ¶ 9.</p>
Risk Management Association	Fran Garritt	Director	General Feedback	N/A	N/A	<p>The RMA Consortia appreciate the opportunity to provide these comments and thank NYDFS for its efforts in developing guidance for financial institutions on climate-related financial risk management practices. The RMA Consortia look forward to continuing its engagement with NYDFS on these issues.</p>

Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	1 to 4	Clarification	<p>“Part I: Introduction, Paragraphs 1-4 (Clarification)”</p> <p>DFS has broad statutory authority to regulate New York State financial institutions, which includes the regulation of climate-related financial risk. The regulation of climate-related financial risk, as advocated by the Proposed Guidance, directly advances DFS’ policy goals and fits easily within DFS’ well-established scope of authority as provided by statute, and in accordance with recent case law that outlines the breadth of deference to DFS in its mandate to protect the public interest and to ensure the health and safety of the New York State financial and banking systems.</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	1 to 4	Clarification	<p>DFS derives its authority primarily from New York State’s Financial Services Law (“FSL”), with bolstering from the Banking Law and Insurance Law of New York.<sup>13</sup> The FSL provides that “the declared policy of the state is that the business of all banking organizations must be supervised and regulated through [DFS] in such manner as to insure the safe and sound conduct of such business, to conserve their assets, [...] and thus to maintain public confidence in such business and protect the public interest and the interests of depositors, creditors, shareholders, and stockholders.”<sup>14</sup> In addition, DFS’ mission statement provides that the agency seeks to “build an equitable, transparent, and resilient financial system that benefits individuals and supports business. [...] [DFS is] responsible for empowering consumers and protecting them from financial harm; ensuring the health of the entities we regulate; driving economic growth in New York through responsible innovation; and preserving the stability of the global financial system.”<sup>15</sup></p> <p>Legal authority is vested in the Superintendent, who “possess[es] the rights, powers, and duties in connection with financial services and protection.”<sup>16</sup> Under Section 301(b) of the FSL, the Superintendent has the “power to conduct investigations, research, studies and analyses of matters affecting the interests of consumers of financial products and services.”<sup>17</sup></p> <p><sup>13</sup> N.Y. FIN. SERV. § 301 (a) (McKinney).  <sup>14</sup> <i>Id.</i> § 102; <i>see also</i> N.Y. BANKING § 10 (McKinney).  <sup>15</sup> DFS, <i>Oversight</i>, <a href="https://perma.cc/MXW6-C3QX">https://perma.cc/MXW6-C3QX</a> (last visited Mar. 10, 2023).  <sup>16</sup> N.Y. FIN. SERV. § 202 (a) (McKinney).  <sup>17</sup> <i>Id.</i> § 301(b).</p>

Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	1 to 4	Clarification	<p>Of particular relevance to DFS’ efforts to require climate-related financial risk disclosures is Section 301(c) (1), which reads as follows: “taking such actions as the superintendent deems necessary to educate and protect users of financial products and services.”<sup>18</sup> Section 301(c) (1) thereby provides a consumer protection mandate that covers a broad range of permissible actions by DFS, and the Proposed Guidance clearly outlines the dangers posed directly to customers of financial institutions by climate change.<sup>19</sup> Without proper disclosure and risk assessment, management, and mitigation efforts, financial institutions cannot adequately warn their users of, or respond to, these risks. Harm to users could manifest in the form of increased premiums on insurance, the wholesale unavailability of insurance, and the lowering of property values, among other ills.<sup>20</sup> Should DFS seek to require climate-related financial risk disclosures, authority may also be found within the scope of Section 301(c) (1) in seeking to “protect users of financial products and services.”<sup>21</sup></p> <p><sup>18</sup> N.Y. FIN. SERV. § 301 (c) (1) (McKinney) (emphasis added).  <sup>19</sup> DFS Proposed Guidance, supra note 1, at Part II, Paragraphs 11-16.  <sup>20</sup> Id. at Part II, Paragraph 13.  <sup>21</sup> N.Y. FIN. SERV. § 301 (c) (1) (McKinney).</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	1 to 4	Clarification	<p>The language in the Proposed Guidance is consistent with this authority and overarching mandate. The Proposed Guidance’s recommendations to incorporate climate-related financial risk into risk assessment and scenario analysis strategies ensure the safety and soundness of New York State’s banking and financial services industries, <sup>22</sup> and encourage the productive operation of these institutions in the state.<sup>23</sup></p> <p><sup>22</sup> <i>Id.</i> § 102.  <sup>23</sup> <i>Id.</i></p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	1 to 4	Clarification	<p>In reviewing DFS rulemaking, courts in New York State will employ the test articulated in <i>Independent Insurance Agents &amp; Brokers of New York, Inc. v. New York State Department of Financial Services</i> (“Independent Insurance Agents”),<sup>24</sup> which delineates the factors that must be considered when determining whether an agency exceeded the scope of its delegated authority. These factors include: (1) if the agency did more than balance costs and benefits according to preexisting guidelines, and instead made value judgments entailing difficult and complex choices between broad policy goals to resolve social problems; (2) if the agency “wrote on a clean slate,” rather than merely filling in details of a broad policy, thus creating its own comprehensive set of rules without the benefit of legislative guidance; (3) if the legislature has unsuccessfully tried to reach agreement on the issue, which would indicate that the matter is a policy consideration for the</p>

						<p>elected body to resolve; and (4) if the agency failed to use special expertise or competence in the field to develop the challenged regulation.<sup>25</sup></p> <p><sup>24</sup> <i>Indep. Ins. Agents &amp; Brokers of New York, Inc. v. New York State Dep’t of Fin. Servs.</i>, 39 N.Y.3d 56, 200 N.E.3d 537 (2022).</p> <p><sup>25</sup> <i>Id.</i> at 549.</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	1 to 4	Clarification	<p>Applying that test, the breadth of DFS’ authority to regulate the New York State financial sector was affirmed in <i>Independent Insurance Agents, as well as in New York State Land Title Association, Inc. v. New York State Department of Financial Services (“NYSLTAI”)</i>.<sup>26</sup> The criteria applied in <i>Independent Insurance Agents</i> and NYSLTAI offer a framework within which the Proposed Guidance can be understood as a proper exercise of DFS authority. In both decisions, the state courts confirmed that DFS may use its statutory mandate to impose new requirements on financial institutions in order to protect consumers<sup>27</sup> and the public interest.<sup>28</sup> Notably, the financial risks caused by climate change are not categorically distinct from other types of risk already regulated by DFS. As with other forms of systemic market risk, climate-related financial risks threaten transaction and market integrity and increase the risk for market volatility, manipulation, and fraudulent practices. The stability of the New York State banking and financial system is thus directly affected by the physical and transition risks arising from climate change. The management and mitigation of these physical and transition risks contemplated in the Proposed Guidance is crucial to the fulfillment of DFS’ mandate to regulate systemic risk.</p> <p><sup>26</sup> <i>New York State Land Title Ass’n, Inc. v. New York State Dep’t of Fin. Servs.</i>, 169 A.D.3d 18, 92 N.Y.S.3d 49 (2019).</p> <p><sup>27</sup> <i>Indep. Ins. Agents</i>, 200 N.E.3d at 549.</p> <p><sup>28</sup> <i>New York State Land Title Ass’n, Inc.</i>, 169 A.D.3d 18 at 31, 34.</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	1 to 4	Clarification	<p>Importantly, the Proposed Guidance aligns squarely with the goals and mission statement of DFS as provided in Sections 102 and 301 of the FSL. By regulating climate-related financial risk, and by recommending that Regulated Organizations integrate climate risk considerations in their respective policies, risk assessments, and scenario analyses (as applicable), DFS fulfills its mandate to build a resilient, responsive financial system. This mandate is bolstered by case law that clearly affirms the agency’s mission to safeguard and strengthen New York State’s financial institutions and confirms DFS’ authority to regulate covered financial institutions and to foster long-term institutional stability.<sup>29</sup></p>

						<p><sup>29</sup> <i>Indep. Ins. Agents</i>, 200 N.E.3d at 549; <i>see also</i> <i>Brantley v. Mun. Credit Union</i>, No. 19 CIV. 10994 (KPF), 2021 WL 981334 (S.D.N.Y. Mar. 16, 2021) (reiterated the wide latitude of discretion conferred by Section 301 of the Financial Services Law).</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	10	Clarification	<p>As DFS shares overlapping supervisory authority with other state and federal agencies, the alignment of the Proposed Guidance with similar risk-management regulatory efforts is well-advised. DFS exercises supervisory and oversight authority over a number of banking, financial, and insurance entities, which include, but are not limited to: banks that do not have a national charter from the Office of the Comptroller of the Currency (“OCC”); domestic representative offices; foreign agencies, branches, or representative offices; trust companies; consumer credit reporting agencies; credit unions; licensed lenders; mortgage bankers, brokers, and loan originators and servicers; money service businesses, such as money transmitters, cryptocurrency exchanges serving New York residents or operating within the state; admitted insurance companies; and insurance brokers.<sup>30</sup></p> <p><sup>30</sup> <i>See</i> N.Y. FIN. SERV. § 104 (a) (4) (McKinney). <i>See also</i> DFS, <i>Institution Definitions and Descriptions</i>, <a href="https://perma.cc/6F59-PSWG">https://perma.cc/6F59-PSWG</a> (last visited Mar. 10, 2023) [hereinafter “DFS – Institutions”].</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	I. Introduction	4	Clarification	<p>Paragraph 4, Part I of the Proposed Guidance specifies that it applies to New York State regulated banking organizations, New York State-licensed branches and agencies of foreign banking organizations and New York State-regulated mortgage bankers and mortgage servicers—collectively known as Regulated Organizations. There is some agency overlap in the supervision of these organizations. For example, state-licensed branches and agencies of foreign banking organizations are also subject to supervision by the Federal Reserve Board.<sup>31</sup> State-regulated banking organizations, also known as commercial banks, may be categorized as community, regional, or national banks, and thereby may be subject to different additional oversight.<sup>32</sup> National banks are under the regulation and supervision of the OCC, an independent bureau of the Department of the Treasury,<sup>33</sup> while community and regional banks are also subject to Federal Reserve Board supervision.<sup>34</sup> State-licensed banks may choose to join the Federal Reserve System, though this is not required. State-licensed banks that choose not to join the Federal Reserve System are primarily regulated by the Federal Deposit Insurance Corporation (“FDIC”).<sup>35</sup></p> <p><sup>31</sup> DFS – Institutions, <i>supra</i> note 30.  <sup>32</sup> <i>Id.</i>  <sup>33</sup> Office of the Comptroller of the Currency (“OCC”), <i>About Us</i>, <a href="https://perma.cc/W8TZ-PG3U">https://perma.cc/W8TZ-PG3U</a> (last visited Mar. 10, 2023).</p>

						<p><sup>34</sup> Board of Governors of the Federal Reserve System, <i>Supervision and Regulation</i>, <a href="https://perma.cc/NLZ4-PK6V">https://perma.cc/NLZ4-PK6V</a> (last visited Mar. 10, 2023).</p> <p><sup>35</sup> Federal Deposit Insurance Corporation, <i>About FDIC – What We Do</i>, <a href="https://perma.cc/46B9-MRJM">https://perma.cc/46B9-MRJM</a> (last visited Mar. 10, 2023).</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	III.A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	4	Clarification	<p>This shared regulatory and supervisory authority indicates value in aligning the Proposed Guidance with other recommendations or guidance from federal agencies, such as the Federal Reserve Board’s draft Principles for Climate-Related Financial Risk Management for Large Financial Institutions (“Federal Reserve Draft Principles”), <sup>36</sup> the OCC’s draft Principles for Climate-Related Financial Risk for Large Banks (“OCC Draft Principles”),<sup>37</sup> and the FDIC’s draft Statement of Principles for Climate-Related Financial Risk Management for Large Financial Institutions (“FDIC Draft Principles”).<sup>38</sup> Importantly, the Proposed Guidance, Federal Reserve Draft Principles, OCC Draft Principles, and FDIC Draft Principles all aim to foster the same policy goals: the promotion of risk assessment frameworks that effectively integrate climate-related financial risk. This consistent incorporation by financial regulators of climate-related financial risk management in their respective guidance and/or principles embodies their shared interest in ensuring that all aspects of the U.S. financial system (from small stakeholders to large institutions) adopt resilient banking practices. Aligning the provisions of the Proposed Guidance with draft Principles of the Federal Reserve, OCC, and FDIC is a sensible regulatory strategy that will reduce compliance burdens and promote the effective standardization of climate-related financial risk management.</p> <p><sup>36</sup> Federal Reserve System, Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 75267 (Dec. 8, 2022) [hereinafter “Federal Reserve Draft Principles”].</p> <p><sup>37</sup> OCC, Principles for Climate-Related Financial Risk Management for Large Banks, <a href="https://perma.cc/BVW6-T3DU">https://perma.cc/BVW6-T3DU</a> (last visited Mar. 10, 2023) [hereinafter “OCC Draft Principles”].</p> <p><sup>38</sup> Federal Deposit Insurance Corporation, Statement of Principles for Climate- Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 19507 (Apr. 4, 2022) [hereinafter “FDIC Draft Principles”].</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate	III. Overarching Themes	20	Clarification	<p>Significantly, the Proposed Guidance also covers institutions that may not be regulated by federal agencies. The Federal Reserve Draft Principles, OCC Draft Principles, and FDIC Draft Principles are all intended for the largest financial institutions, specifically, those with over \$100 billion in total consolidated assets. The Proposed Guidance thus fills an important gap, consistent with DFS’ objectives to protect the public interest <sup>40</sup> and promulgate regulations that are “responsive to the needs of the banking industry and to the needs of the state’s consumers and residents,” <sup>41</sup> by</p>

		Research Scholar				<p>providing smaller institutions with tailored recommendations to address climate related financial risk considerations within their respective contexts.</p> <p><sup>40</sup> N.Y. FIN. SERV. § 102 (McKinney).  <sup>41</sup> <i>Id.</i> § 301 (emphasis supplied).</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	III.A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	4	Clarification	<p>Through the Proposed Guidance, state-regulated banks that are not members of the Federal Reserve system or are not under the supervision of the OCC, or have total assets less than the amount contemplated by the agencies’ Draft Principles, benefit from insights on how to manage climate-related financial risk and to conduct scenario analyses that are appropriate to the size of their assets. For example, banks located in New York State with less than ten branches may be particularly vulnerable to climate-related financial risk, as community banks and savings associations tied to narrower geographies may face exposure to certain climate risks that larger financial institutions with greater geographic diversity do not.<sup>42</sup> Failure to properly manage such types of risk can have devastating effects on the local communities these institutions serve.</p> <p><sup>42</sup> Ceres, <i>Financing A Net Zero Economy: The Consequences of Physical Climate Risks for Banks</i>, <a href="https://perma.cc/QDL2-LQ94">https://perma.cc/QDL2-LQ94</a> (last visited Mar. 16, 2023).]</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	III.A. Managing Climate-Related Financial Risks While Providing Fair Lending to All Communities	4	Clarification	<p>Ultimately, the Proposed Guidance is laudable for taking notice of the urgent need to support smaller financial institutions as they navigate the management of climate-related financial risk. And the Proposed Guidance gives life to DFS principles of inclusion and equity by ensuring that a fuller range of financial institutions serving smaller communities and businesses are armed with the tools and data needed to foster resilience in the financial system.</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate	IV.C. Risk Management Process	40	Clarification	<p>B. Comments on Proposed Guidance “Part IV.C – Risk Management Process, IV. D – Data Aggregation and Reporting, and IV.E - Scenario Analysis (Clarification)”</p> <p><b>Downscaled Climate Models Exist to Support Regulated Organizations’ Risk Assessments and Scenario Analyses</b></p> <p>We take this opportunity to highlight that downscaled climate models, data, and tools are</p>

		Research Scholar				<p>available for use by Regulated Organizations. Parts IV.C, IV.D, and IV.E of the Proposed Guidance focus on the risk management process, data aggregation, reporting, and scenario analysis tools that Regulated Organizations may use to assess climate-related financial risk. The Proposed Guidance places emphasis on identifying, measuring, monitoring, and controlling risk.<sup>43</sup> As the impacts of climate change are largely measurable from a scientific perspective, it may be helpful for Regulated Organizations to understand relevant climate modeling concepts, and the tools and data available to assess the impact of climate hazards on their businesses. An understanding of climate modeling may help Regulated Organizations to develop effective scenario analysis procedures, and accurately anticipate the types of climate risks they are vulnerable to, now and in the future.</p> <p>This section describes the use of climate models to generate knowledge of climate hazards. Modeling allows researchers to simulate and understand interactions between climate variables using physically-based representations of the climate system in numerical form. Through models, scientists can explore the effect of changes to external factors, like atmospheric GHG concentrations, on specific climate variables (e.g., surface temperatures) and the types of hazards associated with such GHG-induced effects (e.g., changes in rainfall patterns). Developing an understanding of the type of climate hazards present (e.g., in a given region, affecting a specific company) is a critical first step in assessing potential impacts of climate change. Using climate hazard data, companies can evaluate potential climate-related risks to their assets, operations, work force, and supply chains.</p> <p><sup>43</sup> DFS Proposed Guidance, <i>supra</i> note 1, Part IV.C.</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	IV.D. Data Aggregation and Reporting	54, 55	Clarification	<p>Research shows that past model predictions (e.g., of global average temperatures) have been highly accurate. One way to assess model accuracy is to compare previous model projections made years or decades ago to actual climate observations—a process referred to as “hindcasting.” One recent study used hindcasting to assess the performance of climate model projections published between 1970 and 2007.<sup>44</sup> The authors found that the climate models were “skillful in predicting subsequent GMST [global mean surface temperature] changes, with most models examined showing warming consistent with observations” and that there was “no evidence that the climate models [...] systematically overestimated or underestimated warming over their projection period.”<sup>45</sup> Another study analyzed global temperature and sea-level data over the past several decades and compared those records with projections published in the IPCC’s Third and Fourth Assessment Reports. The analysis showed that “global temperature continues to increase in good agreement with the best estimates of the IPCC, especially if we account for the effects of</p>

						<p>short-term variability due to the El Niño/Southern Oscillation, volcanic activity, and solar variability.”<sup>46</sup></p> <p><sup>44</sup> Zeke Hausfather, et al., <i>Evaluating the Performance of Past Climate Model Projections</i>, 47 GEOPHYSICAL RES. LETTERS 1 (2020).</p> <p><sup>45</sup> <i>Id.</i> at 1, 7-8.</p> <p><sup>46</sup> Stefan Rahmstorf, et al., <i>Comparing climate projections to observations up to 2011</i>, 7 ENVTL. RES. LETTERS 4 (2012).</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	IV.E. Scenario Analysis	57	Clarification	<p>Each component of the climate system—or a combination of components—can be represented by models of varying degrees of complexity.<sup>47</sup> There are three classes of climate models: 1. Energy balance models, which are the oldest and simplest type of climate model, estimate changes in the climate system from an analysis of the Earth’s energy budget (i.e., the balance of energy entering and leaving the Earth).<sup>48</sup></p> <p>2. Intermediate complexity models, which are similar to energy balance models but incorporate the effect of changes in the Earth’s land, oceans, and ice features on the climate.<sup>49</sup> Intermediate complexity models are used to project changes in climate over long time scales and large spatial scales.<sup>50</sup></p> <p>3. Comprehensive climate models (General Circulation Models and full Earth System Models), which are more sophisticated than energy balance and intermediate complexity models.<sup>51</sup> General Circulation Models are based on physical laws that describe the fully-coupled dynamics of the atmosphere and ocean, expressed through mathematical equations.<sup>52</sup> Earth System Models, also referred to as coupled carbon-cycle climate models, are similar to General Circulation Models but also incorporate the dynamics of the land surface, vegetation, the carbon cycle, and other elements of the climate system.<sup>53</sup> Both General Circulation Models and Earth System Models are built upon the fundamental laws of physics or the empirical relationships established from observations and, when possible, are constrained by fundamental conservation laws.<sup>54</sup></p> <p><sup>47</sup> <i>Id.</i></p> <p><sup>48</sup> Lauren Harper, <i>What are climate models and how accurate are they?</i> STATE OF THE PLANET BLOG (May 18, 2018), <a href="https://perma.cc/3QJ6-Q2UR">https://perma.cc/3QJ6-Q2UR</a>.</p> <p><sup>49</sup> <i>Id.</i></p> <p><sup>50</sup> <i>Id.</i></p> <p><sup>51</sup> <i>Id.</i></p> <p><sup>52</sup> Yang Chen, et al., <i>Future Increases in Arctic Lightning and Fire Risk for Permafrost Carbon</i>, 11 NAT. CLIMATE CHANGE 404, 215 (2021).</p>

						<p><sup>53</sup> <i>Id.</i></p> <p><sup>54</sup> <i>Id.</i></p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	IV.E. Scenario Analysis	57	Clarification	<p>There are more than forty scientific institutions worldwide that develop climate models.<sup>55</sup> In order to facilitate comparison of model results across these institutions, the Coupled Model Intercomparison Project (“CMIP”) serves as a framework for climate model experiments, allowing scientists to compare and assess climate models in a systematic way.<sup>56</sup> The most recent, sixth phase of CMIP model runs (“CMIP6”) provided many different types of simulations that were evaluated by the IPCC’s Sixth Assessment Report. As part of CMIP6, there are twenty-two specialized experiments—called Model Intercomparison Projects (“MIPs”)—which prescribe standardized experiment designs, time periods, output variables or observational reference dates to better facilitate the direct comparison of climate models.<sup>57</sup></p> <p><sup>55</sup> Zeke Hausfather, <i>CMIP6: The next generation of climate models explained</i>, CARBON BRIEF (Dec. 2, 2019, 8:00 AM), <a href="https://perma.cc/F69B-R3U6">https://perma.cc/F69B-R3U6</a>.</p> <p><sup>56</sup> Zeke Hausfather, <i>Q&amp;A: How do climate models work?</i> CARBON BRIEF, <a href="https://perma.cc/8LVD-HZ4Y">https://perma.cc/8LVD-HZ4Y</a> (Jan. 15, 2018, 8:30 AM).</p> <p><sup>57</sup> Chen, et al., <i>supra</i> note 52, at 182.</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	IV.E. Scenario Analysis	57	Clarification	<p>General circulation models generally divide the world up into grids in order to perform calculations. A typical model might have a grid cell size of sixty miles or more for one side of the cell, resulting in coarse-resolution projections that cover large geographic areas. These projections may not be sufficiently granular to enable companies to fully assess the impacts of climate change on specific assets and operations. Downscaling the output from global climate models to finer spatial scales can partially bridge this information gap. There are two main approaches to downscaling:</p> <ol style="list-style-type: none"> <li>1. Dynamical downscaling uses higher spatial resolution regional climate models to directly simulate regional climate processes and regional responses to global change.<sup>58</sup> The regional models usually cover a selected domain (such as the continental United States) and receive information from more coarsely resolved general circulation models at the boundaries of the regional domain.</li> <li>2. Statistical downscaling uses historically-based statistical relationships between the large-scale and local-scale climate to estimate future changes in local climate from large-scale general circulation model projections.<sup>59</sup></li> </ol>

						<p><sup>58</sup> Aristita Busuioc, <i>Empirical-statistical downscaling: Nonlinear statistical downscaling</i>, OXFORD RESEARCH ENCYCLOPEDIA OF CLIMATE SCIENCE (2021).</p> <p><sup>59</sup> <i>Id.</i> at 1.</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	IV.E. Scenario Analysis	57	Clarification	<p>Downscaling climate models can reveal useful information about an entity’s exposure to acute and slow-onset climate changes. Information regarding where climate hazards are likely to be felt may allow a company to assess which of its physical assets, operations, and portfolio are located in areas known to be vulnerable to climate hazards. Such an assessment may enable the company to better understand the nature and extent of any climate-related vulnerabilities. Companies can use climate models that produce a probabilistic assessment<sup>60</sup> of hazards within a given area to identify risks to assets in the affected region.<sup>61</sup> Downscaled climate projections have been published by various governmental and academic institutions:</p> <ul style="list-style-type: none"> <li>• The Department of Energy, National Aeronautics and Space Administration, and National Oceanic and Atmospheric Administration have jointly published zip-code-level temperature projections and county-level precipitation and sea level projections.<sup>62</sup> The U.S. Geological Survey has partnered with the College of Earth, Ocean, and Atmospheric Sciences at Oregon State University to develop a “Regional Climate Change Viewer” that includes downscaled projections for over 60 climate variables, including air temperature and precipitation.<sup>63</sup></li> <li>• The Bureau of Reclamation has partnered with multiple universities and non-governmental organizations to develop downscaled projections for temperature and precipitation at the watershed level. The projections are designed to enable assessment of climate change impacts on watershed hydrology, ecosystems, and water and energy demand across the U.S.<sup>64</sup></li> <li>• The Geospatial Innovation Facility at the University of California at Berkeley has developed Cal-Adapt, a web-based tool that provides projections for several climate variables, including temperature and precipitation, under two climate change scenarios on a 3.5 ´ 3.5-mile spatial grid.<sup>65</sup></li> <li>• The Climate Impact Lab has developed the Global Downscaled Projections for Climate Impacts Research, a globally downscaled version of temperature and precipitation from the most recent CMIP6 projections, with a resolution of approximately 15 miles.<sup>66</sup></li> <li>• The Department of the Interior and National Oceanic and Atmospheric Administration have developed a Climate Mapping for Resilience and Adaptation assessment tool, which integrates information from across the federal government to help people assess their local exposure to climate-related hazards.<sup>67</sup></li> </ul> <p>A particular focus of climate research has been to identify climate change responses that are robust across a wide range of different climate models, that are interpretable in terms of basic, well-understood physics (such as the decrease in snowpack associated with human-caused warming), and that have reliable multi-decadal observational records.</p>

						<p>As noted above, scientists can assess how well a climate model functions by comparing its outputs to observational data. However, observational data may sometimes be incomplete, or unavailable. Modeling climate impacts at fine geographic scales (e.g., regionally or locally) can result in additional sources of uncertainty due to downscaling or bias correction.<sup>68</sup> Researchers can address these uncertainties by articulating the nature and extent to which local climate predictions may differ from regional predictions modeled at a larger scale. Assume, for example, that researchers want to study the future climate impacts on a particular city in North America. While regional modeling may suggest that North America will experience an increase in average surface temperatures, an individual city may experience more or less warming than the average for the continent. This variation can be investigated by analyzing regional-scale climate processes and factors such as land use, aerosol concentrations, and small-scale natural variability in the area of interest. Uncertainties in the observational data can also be studied and may influence attribution of observed climate changes and/or impacts to specific causal factors. For example, the IPCC states that the scarcity of temperature recording stations can explain the overall low confidence in changes in surface air temperatures in the Antarctic region.<sup>69</sup></p> <p><sup>60</sup> Probabilistic assessments indicate areas where, for example, models show a higher chance of above or below average temperatures or precipitation. <i>See</i> National Oceanic and Atmospheric Administration, <i>Climate Models</i>, CLIMATE DATA PRIMER, <a href="https://perma.cc/HL6K-33Y4">https://perma.cc/HL6K-33Y4</a> (last visited Mar. 20, 2023).</p> <p><sup>61</sup> <i>See, e.g.,</i> ISIMIP, <i>The Inter-Sectoral Impact Model Intercomparison Project</i>, <a href="https://perma.cc/UV5DPBXQ">https://perma.cc/UV5DPBXQ</a> (last visited Mar. 20, 2023). Utilizing climate model output at a more granular level than the model itself operates—i.e., downscaled data—requires an acknowledgment that the local risk of exposure to an extreme event may differ from what the model predicts at a larger scale.</p> <p><sup>62</sup> <i>See Energy Data Gallery</i>, U.S. CLIMATE RESILIENCE TOOLKIT, <a href="https://toolkit.climate.gov/topics/energy/energy-data-gallery">https://toolkit.climate.gov/topics/energy/energy-data-gallery</a> (last updated Sept. 24, 2019).</p> <p><sup>63</sup> U.S. Geological Survey, <i>Regional Climate Change Viewer</i>, <a href="https://perma.cc/6FR9-5GBQ">https://perma.cc/6FR9-5GBQ</a> (last visited Mar. 20, 2023).</p> <p><sup>64</sup> U.S. Bureau of Reclamation et al., <i>Downscaled CMIP3 and CMIP5 Climate and Hydrology Projections</i>, <a href="https://gdo-dcp.ucllnl.org/downscaled_cmip_projections/#Welcome">https://gdo-dcp.ucllnl.org/downscaled_cmip_projections/#Welcome</a> (last visited Mar. 20, 2023).</p> <p><sup>65</sup> CAL-ADAPT, <i>About Cal-Adapt</i>, <a href="https://cal-adapt.org/about/">https://cal-adapt.org/about/</a> (last visited Mar. 20, 2023).</p> <p><sup>66</sup> Climate Impact Lab, <i>Introducing Our New Global Downscaled Projections for Climate Impact Research</i>,</p>
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Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	IV.D. Data Aggregation and Reporting	54, 55	Clarification	<p>The results of individual studies are typically expressed in terms of calibrated uncertainty and likelihood language. For example, the IPCC’s Sixth Assessment Report uses calibrated language to consistently evaluate and communicate uncertainties.<sup>70</sup> This methodology assigns qualitative expressions of confidence—such as very low, low, medium, high, and very high—based on the robustness of evidence for a finding and uses quantitative expressions—such as virtually certain (99-100% probability)—to describe the likelihood of a finding.<sup>71</sup> For example, the IPCC report states that “observed increases in areas burned by wildfires have been attributed to human induced climate change in some regions (medium to high confidence).”<sup>72</sup> Language of this kind is used to manage uncertainties in a rigorous, systematic way.<sup>73</sup> As in any scientific endeavor, some uncertainties are unavoidable, but researchers can frame results at an appropriate scale and use language that clearly communicates the extent to which modeling and observations produce results with a high level of confidence. Such techniques allow companies to effectively use model outputs to assess climate-related risks to their assets and operations. The case studies included below further demonstrate this point.</p> <p><sup>70</sup> Hans Pörtner, et al., <i>Technical Summary</i>, in CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY. WORKING GROUP II CONTRIBUTION TO THE IPCC SIXTH ASSESSMENT REPORT (Hans-Otto Pörtner et al. eds., 2022).</p> <p><sup>71</sup> <i>Id.</i> at 4.</p>

						<p><sup>72</sup> G.C. Hegerl, et al., <i>Understanding and Attributing Climate Change</i>, in CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GROUP I TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE SPM-8 (S. Solomon et al., eds., 2007).</p> <p><sup>73</sup> See Elisabeth A. Lloyd et al., <i>Climate Scientists Set the Bar of Proof Too High</i>, 165 CLIMATIC CHANGE 55 (2021) (“[C]limate scientists have set themselves a higher level of proof in order to make a scientific claim than law courts ask for in civil litigation in the USA, the UK, and virtually all common law countries.”).</p>
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	IV.E. Scenario Analysis	57	Clarification	<p>C. Conclusion</p> <p>As the IPCC has recognized, it is “unequivocal” that human activities are warming the planet, leading to “widespread and rapid changes” that pose significant economic and other risks.<sup>99</sup> The Sabin Center supports DFS’ Proposed Guidance as aligned with the agency’s statutory mandate and goals to safeguard the financial system, and as particularly meaningful advice to financial institutions not already subject to Federal Reserve, OCC, and FDIC Draft Principles. In all, the Proposed Guidance adds to a robust and rapidly -growing framework that supports the financial sector in addressing the impacts of climate-related financial risk, protecting the integrity of the financial markets, and building resilient businesses that can withstand climate risks for the benefit of consumers and the banking public.</p>
Institution	Name	Title	Section	Paragraph Number(s)	Type of Feedback	Detailed Feedback
Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	General Feedback	N/A	N/A	<p>Columbia Law School’s Sabin Center for Climate Change Law (“Sabin Center”) respectfully submits these comments to the New York State Department of Financial Services (“DFS”) in response to its request for public feedback on its proposal entitled “Proposed Guidance for New York State Regulated Banking and Mortgage Institutions Relating to Management of Material Financial Risks from Climate Change” (“Proposed Guidance”).<sup>1</sup></p> <p>The Sabin Center is an academic think tank at Columbia Law School that develops legal strategies to fight climate change. The Sabin Center trains students and lawyers in the practice of climate change law and provides the public with resources on key topics in climate law and regulation. It is affiliated with the Columbia Climate School, an interdisciplinary academic hub designed to advance new areas of climate inquiry, research, and impact across Columbia</p>

						<p>University.</p> <p>There is overwhelming scientific consensus on the fundamental reality of climate change: human activities are increasing atmospheric greenhouse gas (“GHG”) concentrations, which is causing global average temperatures to rise. In a 2021 report, the Intergovernmental Panel on Climate Change (“IPCC”) concluded that “[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land.”<sup>2</sup> The IPCC found that “[e]ach of the last four decades has been successively warmer than any decade that preceded it since 1850.”<sup>3</sup> The extent of future temperature increases will depend, in large part, on future GHG emissions. However, “warming above 2 degrees Celsius is “very likely” unless emissions decline rapidly prior to 2050.<sup>4</sup> Rising temperatures are already increasing the frequency and severity of many types of weather extremes, such as heatwaves and floods, and contributing to sea-level rise and other slow-onset phenomena.<sup>5</sup></p> <p>Numerous studies confirm that climate change poses significant financial risks to corporate entities, the federal government’s budget, and the financial system more generally.<sup>6</sup> Recently, the White House Council of Economic Advisers and Office of Management and Budget released a White Paper on the consideration and integration of climate risks into macroeconomic forecasting in relation to the presidential budget.<sup>7</sup> The White Paper recognized the importance of incorporating climate risk considerations into presidential macroeconomic forecasts, specifically, on how physical climate risks could affect longer-run gross domestic product (“GDP”) growth, with GDP growth, in turn, affecting federal revenues and spending.<sup>8</sup> In its 2021 report on Climate-Related Financial Risk, the Financial Stability Oversight Council (“FSOC”) noted that “[t]he intensity and frequency of extreme weather and climate-related disaster events are increasing and already imposing substantial economic costs.”<sup>9</sup> The FSOC recognized that, as the magnitude of climate hazards and associated costs increases in coming years, so too will risks to the financial system.<sup>10</sup> Thus, according to the FSOC, “climate-related financial risks are an emerging threat to the financial stability of the United States.”<sup>11</sup> The Climate-Related Market Risk Subcommittee of the Commodity Futures Trading Commission (“CFTC”) has similarly concluded that climate-related risks “are already impacting, or are anticipated to impact, nearly every facet of the U.S. economy.”<sup>12</sup></p> <p>The Sabin Center supports the Proposed Guidance as a valuable step in DFS’ effort to ensure its regulated institutions integrate climate-related financial risks into their risk management frameworks. In light of the urgency of the climate crisis, the timeline for implementation of the Proposed Guidance should be expeditious and concrete. The comments that follow highlight DFS’ legal mandate and authority to regulate climate-related financial risk, in support of the Proposed</p>
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Sabin Center For Climate Change Law	Eleonor Dyan Garcia and Cynthia Hanawalt	Fellow and Postdoctoral Research Scholar & Senior Fellow and Associate Research Scholar	General Feedback	N/A	N/A	<p>Companies Use Downscaled Climate Models to Assess Climate-Related Financial Risk. The case studies below highlight how companies can and do make use of the data and analytical techniques highlighted in these comments to assess climate hazards, evaluate potential impacts on their assets, operations, and supply chains, and communicate useful information about their exposure to physical climate related risks. A 2021 report from the United Nations Environment Programme Finance Initiative (“UNEP FI”) illustrates the range of data and analytical techniques available to assess climate hazards; evaluate potential impacts on assets, operations, and supply chains; and communicate useful information about exposure to physical climate-related risks. The report, titled The Climate Risk Landscape (“Landscape Report”) surveyed various climate risk assessment tools used by financial institutions to evaluate and disclose physical and transition risks associated with climate change. <sup>74</sup> The Landscape Report reviews nineteen commercially-available tools for assessing physical climate risk and eighteen commercially available transition risk assessment tools. <sup>75</sup> With respect to the former, the Landscape Report finds that existing tools can be used to evaluate acute risks associated with extreme weather events, flooding, wildfires, and landslides, as well as chronic risks associated slow onset climate change impacts, such as sea level rise. <sup>76</sup> The Landscape Report further notes existing tools are “being constantly updated to allow for more granular analysis that takes into account a broader, more plausible set of scenarios,” and enables financial institutions to “provide consistent and market ready disclosures.” <sup>77</sup> According to the Landscape Report, physical risk data is becoming easier to access in formats that are “easily usable by financial institutions.” <sup>78</sup> Following release of the 2021 Landscape Report, UNEP FI ran a pilot program in which forty-eight global banks and investors were given an opportunity to learn about, and trial, twelve commercially available climate risk assessment tools. <sup>79</sup> The tools modeled impacts under several RCP scenarios. The program participants included TD Asset Management Inc. (“TDAM”), which manages \$434 billion in assets on behalf of 3 million investors. <sup>80</sup> TDAM trialed emissions analysis, climate scenario alignment analysis, transition risk analysis, and physical risk analysis tools made available by Institutional Shareholder Services (“ISS”) ESG. <sup>81</sup> We focus here on the physical risk analysis tool, which TDAM used to “measure[ ] the potential financial impact of the six most costly natural climate hazards such as floods, droughts or wildfires on the value of” a global equity portfolio that held 195 securities from over thirty countries. <sup>82</sup> TDAM’s analysis showed that physical climate risks are projected to result in a 1.6 percent and 2.8 percent change in portfolio value by 2050 under the most likely and worst-case RCP scenarios, respectively, and that “80% of the climate value-at-risk of the portfolio can be attributed to just 30 securities.” <sup>83</sup> TDAM also used</p>

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the ISS ESG tool to evaluate the financial risks posed by specific climate impacts and found that wildfires and heat stress presented the greatest risk to its portfolio.<sup>84</sup> Another participant in the pilot program was Intesa Sanpaolo, an Italian bank that serves 13.5 million customers and has €341 billion in assets under management.<sup>85</sup> Intesa Sanpaolo worked with Risk Management Solutions, Inc. (“RMS”), which has developed over 300 catastrophe risk models that can be used to assess “how frequently a given location can be expected to be impacted” by a particular hazard (e.g., flooding in excess of six feet), as well as “the frequency and severity of the economic impact caused by” the hazard.<sup>86</sup> RMS used the models to quantify the flood risk of a sample of Intesa Sanpaolo’s mortgage portfolio in regions throughout Italy under RCP6.0 and RCP8.5.<sup>87</sup> Using RMS data, Intesa Sanpaolo calculated the impact on Loss Given Default and the Probability of Default to range from five to thirty-nine percent of the initial values.<sup>88</sup> Intesa Sanpaolo further estimated, under RCP8.5, the average annual loss would increase fifty percent over the baseline in the provinces of Rome and Naples by 2040.<sup>89</sup> A third pilot program participant was Desjardins Group, a financial cooperative with over seven million members and customers, and over \$397 billion in assets.<sup>90</sup> Desjardins partnered with The Climate Service (“TCS”), which used its Climonomics platform to evaluate physical and transition risks across fifty of Desjardins’ real assets.<sup>91</sup> The Climonomics platform models absolute climate risk, measured in millions of USD and relative climate risk, reported as percent of asset value.<sup>92</sup> The analysis of Desjardins’ assets revealed that fluvial flooding is the greatest physical risk to the assets under both RCP4.5 and RCP8.5 scenarios.<sup>93</sup> Drought was identified as the second greatest physical risk to the assets.<sup>94</sup> Desjardins was able to conduct asset-level risk analyses. For example, the analysis showed that a dairy farm located northeast of Montreal, Canada, would “face a modeled average annual loss (MAAL) of 6.7% to 8.5% for RCP4.5 and RCP8.5, respectively.”<sup>95</sup> The analysis further showed that “[t]he highest risks faced are from temperature extremes, followed to a lesser degree by fluvial flooding and drought at both RCP4.5 and RCP8.5 scenarios. The largest difference among the two is temperature extremes representing a 5.7% MAAL in RCP8.5 and 3.9% MAAL in RCP4.5.”<sup>96</sup>

Using the methods described above, companies can assess the physical risks they face from flooding, drought, and other climate change impacts. And as UNEP FI has noted, climate risk assessment methodologies are advancing rapidly, and new tools continue to become available.<sup>97</sup> UNEP FI predicts that physical risk models will continue to improve and provide increasingly “granular” data that will “allow [ ] more accurate risk analysis.”<sup>98</sup>

As the IPCC has recognized, it is “unequivocal” that human activities are warming the planet, leading to “widespread and rapid changes” that pose significant economic and other risks.<sup>99</sup>

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