DIAMOND AND ASSOCIATES

February 10, 2020

Office of the Comptroller of the Currency
Attn: Legislative and Regulatory Activities Division
400 7th St. SW, Suite 3E-218
Washington, DC 20219

Re: Docket ID OCC-2018-0008: Reforming the Community Reinvestment Act Regulatory Framework

Diamond and Associates is submitting this comment because the Office of the Comptroller of the Currency's (OCC) proposed regulatory reforms to the Community Reinvestment Act (CRA) would substantially harm the efficacy of the Low Income Housing Tax Credit (LIHTC) program.

Diamond and Associates is a skilled, successful provider of development advisory services focused upon the planning, packaging, financing, structuring, closing, construction, leasing, and sale of affordable multifamily residential properties. Since 1990, it has supported the development of over 10,500 completed affordable apartments, comprising $1.5 billion in development work, for seniors, families, and people who require supports. The firm serves non-profit, for-profit, and public development entities in Pennsylvania, New Jersey, Delaware, New York, Ohio, and West Virginia. Diamond and Associates has extensive experience with the LIHTC program, which is the primary source of financing for nearly all new production of affordable housing in the United States.

As a tax incentive, LIHTCs are ultimately claimed by an investor entity, which makes an equity contribution towards the low-income housing development. Developers typically choose the investor that offers the greatest price per credit, or ratio of equity investment to total value of tax credits. The LIHTC equity market varies both geographically and over time, but often the highest price per credit is offered by banks motivated by the CRA to invest in low-income housing. In fact, an estimated 85% of equity generated by LIHTCs is CRA-motivated investment.

Thus, in addition to its role of promoting investment, lending, and access to credit in low- and moderate-income communities, the CRA also results in the more efficient use of government resources, by generating a greater investment in affordable housing per federal tax credit. It should therefore be the policy of the federal government to maintain a strong incentive through the CRA for banks to invest in low-income housing.

The OCC's proposed regulations, however, do just the opposite. By lowering the threshold for compliance with the CRA, the new rule would reduce demand among banks for LIHTCs, thereby diminishing the effectiveness of the LIHTC program. This comment highlights two components of the proposed rule that would particularly damage the LIHTC market: the expanded definition of CRA activity, and the elimination of the requirement to pass CRA in each assessment area.

The OCC's proposed definition of CRA activity would result in the dilution of CRA-driven demand for LIHTCs. The original purpose of the CRA was to encourage activity that primarily benefits low- and moderate-income communities. But by allowing CRA credit for activity that has only the "partial" purpose of serving these communities, the new regulations will give banks less reason to make investments that more directly serve those with low and moderate incomes, such as investments in affordable housing. Similarly, the proposal's language identifying investments in stadiums and public infrastructure as automatically CRA-eligible would reduce the appeal of LIHTC investments as a way for banks to satisfy their CRA obligations. If banks determine any of the newly-eligible categories of investment to be more profitable than investment in affordable housing, the LIHTC market would consequently suffer.

Furthermore, the rule proposes that a bank need only achieve its CRA investment benchmarks in a "significant portion" of its assessment areas in order to receive a satisfactory or outstanding rating. The proposed definition of a "significant portion" is greater than 50%, meaning that a bank could be in compliance with CRA while making no CRA investments in nearly half of its assessment areas. This would lead to geographically disparate outcomes for those in need of affordable housing. Banks would be able to concentrate their CRA activity in their most profitable assessment areas, leading to disinvestment in low- and moderate-income communities in other regions. That shift would be reflected in the LIHTC market, as the price per credit offered to developments in less favored assessment areas would decrease. As stated previously, a lower price per credit means a less efficient use of federal resources. And should banks choose to shift CRA-motivated LIHTC investment away from certain regions entirely, the result would be fewer affordable units built in those regions for the same expenditure of tax credits.

You will likely read many comments from community-based organizations that outline the harm this proposed rule would do to low- and moderate-income communities. Please seriously consider all of them. These are the very communities on behalf of which the CRA was enacted, and to ignore their voices would be to violate the intent of the law.

Diamond and Associates submits this comment to complement the local expertise of such community-based organizations with our firm's experience as a regional provider of development advisory services related to the LIHTC program. Should this proposed rule be enacted, know that in addition to diminishing access to credit and causing disinvestment in low- and moderate-income communities, the rule would also reduce the efficacy of the LIHTC program in producing affordable units. We respectfully ask that if the OCC is to pursue its stated goal of modernizing the CRA, it do so without weakening the LIHTC program or reducing banks' obligations to low- and moderate-income communities.

Sincerely,

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