April 8, 2020

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

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Community Reinvestment Act Regulations
OCC – Docket ID#: OCC-2018-0008
FDIC –RIN 3064-AF22

To Whom It May Concern:

Thank you for the opportunity to provide comments on the Notice of Proposed Rulemaking on the Community Reinvestment Act (CRA) of 1977. These comments are submitted on behalf of Cinnaire, a certified Community Development Financial Institution (CDFI) that raises capital for impactful affordable housing and community development efforts. Cinnaire operates in nine states in the Midwest and Mid-Atlantic regions, with a focus on underserved rural and urban communities that mainstream financial institutions have a harder time reaching. Over twenty-seven years, Cinnaire has invested more than $4.3 billion in equity, loans, and other financial resources in the communities we serve.

Cinnaire is driven by an unwavering belief that all people deserve the opportunities provided by living in healthy communities. To achieve that vision, we raise capital using a range of sources, including equity for affordable housing development through the Low-Income Housing Tax Credit, financing through the New Markets Tax Credit (NMTC) and Historic Credit, and a variety of loan products for projects in low- and moderate-income (LMI) communities. In addition to raising capital for these purposes, we strive to respond to the needs of these communities by leveraging our expertise, often providing co-development and technical assistance for our borrowers. Working with both investors and LMI communities, we play a vital role helping the financial system deliver on the promise of CRA and ensuring that LMI communities that have suffered from a history of neglect and discrimination are brought into the economic mainstream.

CRA is critically important to our ability to raise capital and thus make the impact we do in the communities we serve. Banks that we work with tell us that CRA considerations drive both the volume and geographic areas of their affordable housing and community development activities. There is no question that current CRA regulations can be improved, especially by updating assessment areas and providing certainty for the activities that will qualify for CRA credit. We appreciate the proposed rule's efforts to address those issues. After a careful analysis of the proposed rule, however, we believe that the proposed rule would result in major unintended consequences that would significantly undermine our ability to serve the most vulnerable communities.

CRA is particularly relevant to the continued success of the Low-Income Housing Tax Credit (Housing Credit). The Housing Credit is the most important federal program for affordable housing development and preservation; since its establishment in 1986, it has helped finance more than 3 million affordable homes, providing more than 7.2 million low-income households with homes they can afford. CRA helps drive healthy competition among Housing Credit investors: Commercial banks, driven by CRA requirements, provide 80% or more of the equity capital for the Housing Credit program. As a result, potential changes to the pool of investors in the Housing Credit program could have a major impact on affordable housing development in our footprint.

A core mission of Cinnaire is to finance the most challenging affordable housing projects, often working with rural developers where equity pricing is already lower. Our bank clients include intermediate small banks evaluated under the community development ("CD" test), large banks evaluated under the lending, investment and service tests, and wholesale and limited purpose banks evaluated under the CD test.

As millions of Americans are being told to "stay at home," it has never been clearer how essential it is for all individuals and families to have access to safe, affordable, and decent housing. At the same time, our nation faces a severe and growing shortage of affordable housing. A recent report from the Harvard Joint Center for Housing Studies noted that "rising demand and constricted supply have reduced the stock of low- and moderate-cost rental units, leaving modest-income Americans caught in the middle." The report also noted that "a majority of lowest-income renters spend more than half of their monthly income on housing," which has led to increases in homelessness. The Housing Credit is our nation's foremost and most effective way to raise capital for creating and preserving affordable housing developments for low-income Americans. Any changes to CRA that would reduce banks' demand for investing in the Housing Credit could disrupt the affordable housing market and significantly decrease our ability to provide homes to low-income households who need them.

We appreciate the proposed rule's emphasis on clarity and efforts to modernize outdated rules, such as assessment areas, and the need for greater transparency and consistency. However, we are deeply concerned that the cumulative effect of the proposed rule's evaluation framework will result in drastically less capital becoming available for affordable housing and community development financing, resulting in far fewer affordable units being created or preserved in LMI communities. In this comment letter, we will describe the ways that we anticipate the proposed rule would affect our ability to raise and deploy capital in the communities we serve. We also provide suggested revisions to the proposed rule that would ameliorate potential negative impacts.

**Anticipated Impacts and Concerns**
The proposed rule is complex and will affect various investors in different ways. However, based on our analysis of the proposed rule and our investors' CRA obligations, we anticipate the following effects of the proposed rule:

- **The new performance evaluation framework will diminish interest in impactful investments.** The proposed rule's new performance evaluation process, including a metric comparing the dollar volume of a bank's CRA activities to its deposits, will encourage banks to focus on large, low-cost, and less complex transactions. As a result, we anticipate less investor interest in the high-impact activities we support, which are typically more complex, innovative, and responsive to our communities' unique needs. Large projects could easily dwarf investments in affordable housing and community development activities in LMI communities, making them an afterthought for large banks, not a focus.

- **Elimination of the investment test will exacerbate this dynamic.** The vast majority of our investors in the Housing Credit, the New Markets Tax Credit, and the Historic Tax Credit are motivated by CRA. Nationwide, it is estimated that 85% of Housing Credit investors are CRA-motivated banks. This demand is driven largely by the current investment test for large banks. We are concerned that, without a separate investment test or similar motivation, Housing Credit investments would become a much less appealing way of meeting CRA obligations relative to other easier options. Tax credit investments are generally longer term, more complex, and less liquid than debt financing.

- **The range of qualifying activities is too broad and will hurt demand for more impactful activities.** We appreciate the proposed rule's efforts to clarify what activities will qualify for CRA credit. However, we are concerned that the list is overly broad and could jeopardize smaller activities. In particular, it is likely that banks will prioritize activities such as essential infrastructure, municipal bonds, and mortgage-backed securities that will allow them to reach their community development ratios more quickly and easily than smaller, more impactful investments. In the context of the new performance evaluation framework, the range of activities that qualify will encourage banks to focus on larger, less complex transactions that only partially benefit LMI communities, likely at the expense of more impactful, smaller dollar projects that primarily benefit LMI communities and have a major impact.

- **Double weight for certain activities will not provide sufficient motivation for banks in the context of the performance evaluation activity options.** We appreciated the proposed rule's acknowledgement that certain activities – such as Housing Credit investments, CDFI lending, and other affordable housing activities – should be encouraged. The proposed rule attempts to do so by adjusting the quantified value of such activities by a multiple of two for evaluation purposes. Unfortunately, it is unlikely that this weighting will provide enough incentive for banks to seek out these activities, which are more complex, smaller, and less liquid than the many other activities and investment types that would count toward the Community Development minimum. In addition, this double weighting could have the unintended consequence of encouraging banks to do less, not more, of these activities.

- **The proposed rule's balance sheet approach could inadvertently penalize tax credit investments**. The proposed rule would examine a bank's balance sheet, as opposed to new originations. We are concerned that this framework would encourage banks to limit or halt new investment activity once they meet their ratio targets. The Housing Credit would be particularly vulnerable to this reaction because the credit would stay on a bank's balance sheet, earning double credit, for a long duration (typically 15 years). In addition, reviewing only the balance sheet means that the full Housing Credit Commitment would not count, even though the full commitment is accounted for in reserves at the time of commitment.

- **Diminished investor interest in New Markets Tax Credits.** Cinnaire has been awarded several rounds of New Markets Tax Credit allocations, resulting from our strong track record of investing in high-impact projects that meet the needs of the LMI communities we serve. Our activities range from vocational training facilities for individuals with developmental disabilities to retention of quality jobs in low-income communities. For the reasons outlined above, we anticipate that the proposed rule would result in reduced demand and thus lower pricing for NMTCs. This will stretch resources and make it more difficult for Cinnaire to fill financing gaps in worthy projects that have a high impact in the communities we serve.

- **Assessment area changes will result in unintended consequences.** We appreciate the proposed rule's effort to modernize assessment areas, which are outdated and often result in the misallocation of capital. We often find it more difficult to arrange equity financing in rural areas outside a metropolitan area where banks have high CRA requirements but face a saturated market. We continue to encounter banks that resist statewide investments because of uncertain treatment under CRA. However, we are concerned that the new deposit-based approach in the proposed rule will create new hotspots in large, higher-income markets where there is already strong CRA-driven activity. The proposed rule's allowance for banks to fail examinations in 50 percent of their assessment areas will exacerbate this dynamic. This will be particularly harmful to rural areas, which is a significant focus for Cinnaire. Incentives for banks to lend in rural areas need to be strengthened, not reduced.

- **The effectiveness of federal affordable housing and community development programs will be diminished.** Federal programs such as LIHTC, NMTC, and the Historic Credit enable us to bring capital to critically important developments in the very communities that CRA aims to serve. Due to the concerns outlined above, the proposed rule will likely diminish the effectiveness of these programs for taxpayers. Due to reduced investor demand for the Housing Credit, for example, we anticipate lower credit pricing, which will result in higher project debt and rent levels to address equity gaps, leading to lower levels of unit production due to an increase in required credits per project. We anticipate that the proposed rule will result in significantly less capital flowing through these proven, effective programs that help banks achieve their obligations under CRA.

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ADVANCING COMMUNITIES

**Recommendations**
We believe that updating CRA regulations is a tremendous opportunity to support LMI communities and create opportunities for LMI individuals. For that reason, we support the intent of proposed rule to give banks more certainty and provide greater flexibility for assessment areas to ensure the efficient flow of capital. However, we believe the unintended consequences of the proposed rule will far outweigh potential benefits.

Unfortunately, there is not currently enough data available to know whether the presumptive ratios in the rule will continue the levels of investment in LMI communities that are necessary to achieve CRA's statutory objectives. To adequately determine the impact of the proposed metrics, the OCC and FDIC should develop and share the data requested after the proposed rule was released, and then re-publish a proposed rule that gives all stakeholders and the public a better understanding of the full impact of the proposed presumptive ratios.

Absent a re-examination of the proposed rule, we believe that, should you move forward, several changes are essential to mitigate any potential negative impacts on the communities that need CRA most. Those changes include, but are not limited to:

- **Limit the activities eligible for Community Development (CD) credit.** As noted above, the list of items that qualify for community development credit is overly broad. We recommend removing activities that only partially benefit LMI communities such as essential infrastructure and mortgage-backed securities.

- **Enhance the CD test.** The proposed rule requires different thresholds to be met for various ratings, including 6% for a Satisfactory rating and 11% for an Outstanding rating, with two percent being made from community development loans and investments. Without data, it is impossible to know whether these thresholds are appropriate. As a result, the best way to move forward would be re-proposing the rule based on the available data. However, should you proceed with a ratio-based approach, we strongly encourage that these thresholds be enhanced.

- **Create an alternative method to encourage investment in certain activities, such as a minimum level of investment.** We appreciate the proposed rule's intent to provide an incentive to banks to engage in certain activities, such as those with CDFIs, affordable housing-related CD loans, and Housing Credit investments, by granting them double credit for CRA purposes. However, this double credit is likely to have the unintended consequence of providing an incentive to banks to do less of these activities. Instead, the proposed rule should take steps to ensure a minimum level of investment in these activities.

- **Consider originations of loans or investments in affordable housing, including the Housing Credit, in addition to balance sheet activity.** We understand the proposed rule's attempts to address inefficient activities that may arise from the current origination-based framework. However, the move to a balance sheet approach also has downsides, possibly encouraging banks to reduce any new activities and therefore become less responsive to local communities, as CRA intends. This dynamic could discourage Housing Credit investment, in particular, since these investments would stay on balance sheets for longer periods, earning double credit under the proposed rule. Special consideration should be given to impactful activities, such as affordable housing investments and loans, that would be more vulnerable under a balance sheet approach.

- **Adjust assessment areas to promote the efficient allocation of capital.** We often find it more difficult to arrange equity financing in rural areas outside a metropolitan area where banks have high CRA requirements but face a saturated market. As a means of encouraging greater CD activity in rural areas, we recommend creating statewide assessment areas for the community development loans and investments that the proposed rule would double count. In addition, to mitigate potential negative consequences for rural areas, we urge you to significantly increase the standard for the percentage of assessment areas in which a bank can fail.

Finally, we urge you to work with the Federal Reserve on a new proposed rule based on data and comments that you have received. Despite its flaws, CRA is currently working to encourage the financing of desperately needed affordable housing and community facilities in the regions we serve. Drastic revisions to CRA, such as the adoption of a metric-based framework, would be an enormous change. Certainty is important not only for our communities, but also banks, which will find it more difficult to make long-term investments when federal regulations may change. The rules of the road need to have wide acceptance among stakeholders so that banks and communities can plan effectively.

Thank you again for the opportunity to comment on the proposed rule. We would be happy to provide any additional information or expertise based on our experience working with financial institutions and the communities intended to be served by CRA.

Respectfully submitted,

James L. Logue III
Executive Vice President – Policy and Government Relations