August 5, 2022

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Re: Docket No. R-1769; RIN 7100-AG29

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Re: RIN 3064-AF81

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Re: Docket ID OCC-2022-0002

To Whom It May Concern:

Thank you for the opportunity to provide comments on the joint Notice of Proposed Rulemaking (NPR) on the Community Reinvestment Act (CRA). These comments are submitted on behalf of Cinnaire, a nonprofit tax credit syndicator and certified Community Development Financial Institution (CDFI) that raises capital for impactful affordable housing and community development efforts in the Midwest and Mid-Atlantic regions.

Cinnaire focuses on understanding the needs of our local communities, many of which have suffered from decades of disinvestment, the ongoing legacy of redlining and racial discrimination, and persistent economic challenges. As a nonprofit, we play an integral role in bringing capital to underserved rural and urban communities that mainstream financial institutions have a hard time reaching. Over twenty-eight years, Cinnaire has invested more than $4.9 billion in equity, loans, and other financial resources in the communities we serve. In addition to raising capital, we strive to be a flexible partner for our communities by leveraging our expertise, often providing co-development and technical assistance for our borrowers.

Cinnaire is driven by an unwavering belief that all people deserve the opportunities provided by living in healthy communities. CRA remains an indispensable driver of banks' interest in partnering with us to help make that vision a reality in the communities we serve. CRA considerations drive both the volume and geographic areas of our investors' affordable housing and community development activities as described below:

- **The Low-Income Housing Tax Credit.** CRA is particularly relevant to the continued success of the Low-Income Housing Tax Credit (Housing Credit), which we use to raise capital for affordable housing developments throughout our footprint. 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 3.6 million affordable homes, providing more than 8 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 an estimated 73 percent 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, including developments in rural areas where equity pricing is already relatively low, developments targeting lower income renters, and developments providing supportive services. Reductions in equity pricing put a particular strain on these most urgently needed developments.

- **Affordable Housing and Community Development Lending.** Similarly, CRA continues to be critical for our ability to raise debt capital for impactful affordable housing and community development projects that are responsive to the needs of the LMI communities we serve. As a CDFI, Cinnaire is working to bring capital and technical assistance to LMI communities, especially communities of color. For example, in both Detroit, Michigan, and Wilmington, Delaware, we are working with local partners to develop new affordable homeownership opportunities for communities of color to reduce the racial wealth gap and promote community stability. In both Detroit and Wilmington, we are also providing technical assistance and training to community-based developers, including underrepresented groups in the development industry such as minorities and women. This work is motivated by our acknowledgement of the history of racism and policies like redlining, the legacies of which we are working to address. CRA, which was enacted in response to redlining, is critical to our ability to raise debt capital for these efforts.

- **New Markets Tax Credit.** In addition, Cinnaire has received eight New Markets Tax Credit (NMTC) 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. We believe that it is critical to ensure that any changes to CRA regulations would not inadvertently reduce demand and thus lower pricing for NMTC. Reductions in NMTC pricing 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.

Overall, CRA has proved remarkably beneficial for LMI communities, including both urban and rural communities that have been historically overlooked by the mainstream financial sector. Cinnaire's ability to support our partners in these communities through tools like the Housing Credit, NMTC, and CDFI lending is proof of the CRA's success.

Key Recommendations

We appreciate the agencies' efforts to build on the success of CRA through a jointly issued NPR, which will provide greater clarity and consistency in bank evaluations. We share the agencies' stated goals of modernizing the rules of the road for CRA investment while encouraging banks to achieve the core purpose of the statute. There are several elements of the rule that will have a positive impact, including the recognition of the role played by CDFIs and clarity on activities for CRA evaluations.

At the same time, we are very concerned that certain elements of the NPR will result in a significant decrease in demand for proven tools that meet the needs of LMI communities. To address these concerns, we believe that the adoption of the recommendations below will help avoid this unintended consequence.

Retain the separate Investment Test or implement strong mechanisms to preserve particularly impactful equity investments in affordable housing and community development. We share the widely held view in the affordable housing and community development ecosystem that the proposed consolidation of both debt and equity into a Community Development (CD) Financing Test will severely undermine the impact of proven community development programs like the Housing Credit and NMTC. Compared to debt, equity investments are far more complex and specialized, more capital-intensive for banks to hold, less liquid, and riskier to banks, making them less attractive if measured equally. In addition, banks' fundamental business model is to lend money, not invest. In a combined test, this reality could further favor lending activities over more impactful equity investments that drive production of affordable housing and community facilities. Absent a mechanism to ensure a minimum level of equity investment, it is very likely that demand for these critical equity programs will be significantly curtailed.

Given these concerns, our strong preference is to retain an Investment Test as under the current CRA rules. Nevertheless, we recognize the commitment of the bank regulatory agencies to this new two-part test based on retail and community development activities and therefore propose the following modifications for your consideration:

- <u>Require a minimum volume of equity investment relative to the level of deposits for each rating category so that a separate rating is assigned based on equity volume.</u> As part of this recommendation, banks should not receive a higher score on the CD financing test than on this proposed equity investment test.
- <u>Investment in mortgage-backed securities (MBS) should be limited so that this easily utilized investment option does not overwhelm the CD financing test.</u> As you know, it has been common practice under the current rules for banks to purchase MBS to achieve their CRA goals and then

after a short hold, sell them, which means different banks often get credit for the same loans. That heightens our concern that MBS under the NPR will undermine the incentive banks have to make equity investments in affordable housing. To address this situation, we recommend that MBS not account for more than 20 percent of the institution level CD financing test and that there be a two-year holding period requirement, with retrospective review of the holding period applied to the next bank examination. In addition, we recommend that only the first and second purchase of MBS debt should be counted in the CD financing test. Finally, as suggested by Question 9 in the NPR, only the value of affordable loans in a qualifying MBS, rather than the full value of the security should be counted.

- <u>It is also critical that agencies monitor levels of equity investment compared to the current baseline, both for individual banks and nationwide, and take action to prevent reductions in equity investment.</u> We encourage examiners to review the mix of activities provided under a revised CD test in comparison to prior years and potentially downgrade banks that have significantly cut back their investment without reasonable explanation.

Provide banks credit for their state and regional areas, but do not give banks full credit for CRA investment made anywhere nationwide. We have a similar concern with the agencies' proposal to give banks consideration at the institution level for any qualifying activities conducted nationwide. We appreciate the need to allow banks to receive credit outside their facility-based assessment areas, assuming that they meet their local assessment area needs first. However, as an organization that focuses on understanding of the communities we serve, we are concerned that allowing full credit for community development activities taking place anywhere nationwide will incentivize banks to work with national syndicators and lenders that do not similarly work to meet the needs of the communities they serve.

Equally weight the Retail and Community Development tests and increase the rigor of the CD test. As currently proposed, the uneven weighting of the Retail and Community Development tests could also lessen demand among banks for impactful community development activities. We share the concern highlighted by other stakeholders that the proposed approach may render the CD test immaterial to a bank's ultimate rating, which would create a race to the bottom when coupled with peer-based performance evaluations. To address these concerns, we recommend rebalancing these two tests to put them on equal footing and ensure that community development performance remains an integral part of bank evaluations. We also recommend that banks should not receive a higher overall rating than the rating they receive for community development financing and services.

Improve Impact Review factors by including the Housing Credit and NMTC, while providing extra consideration for certain activities. We support the agencies' maintenance of a qualitative review that emphasizes particularly impactful activities. However, it is unclear how this qualitative review will work in practice and if these impact factors will meaningfully affect bank activity and mitigate problems posed by the elimination of the investment test. Given to need to do so, we recommend that the agencies

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include the Housing Credit and NMTC as factors for the Impact Reviews. In addition, we appreciate that the agencies recognized the impact of activities with CDFIs by including them as an Impact Review factor. We urge the agencies to recognize that some activities with CDFIs have an outsize impact by providing additional consideration for those activities, including grants, equity investments, and fixed-rate and/or long-term loans that extend beyond a bank's exam cycle.

Reconsider new bank size thresholds that could reduce community development financing. Another area of concern is the agencies' proposal to raise the bank size threshold and the potential impact that could have on community development financing, especially in smaller or rural markets. Under the NPR, small banks are defined as those with assets of up to $600 million and Intermediate Banks (ISBs) are those with assets of at least $600 million but less than $2 billion. Large banks are those with assets of at least $2 billion. These changes would reclassify 779 banks that are currently ISBs as small banks, meaning they would no longer have community development finance responsibilities. Reducing the number of banks that have community development responsibilities could have a negative impact on community development investment and financing, particularly in rural markets that already have access to less CRA-motivated bank capital.

Discourage banks from facilitating Qualified Contract and Right of First Refusal abuse. CRA is also an opportunity to respond to new, fundamental threats to the long-term affordability of multifamily housing supported by bank investments caused by two loopholes in the Housing Credit program. As a mission-based organization that prioritizes long-term affordability of developments financed by the Housing Credit, we are alarmed at the dramatic increase in these activities. To the extent that banks benefit from exploiting these loopholes, we strongly believe that this should be reflected in the scoring of Housing Credit investments and loans.

We endorse the comments and recommendations provided by the National Association of State and Local Equity Funds (NASLEF), an association of state and local based nonprofits organizations that raise equity capital for investment in Housing Credit properties. NASLEF's comments discuss ways to reform CRA rules to prevent banks from facilitating the use of two loopholes that undermine the mission of the Housing Credit program: 1) the Qualified Contract provision and (2) efforts by outside investors to prevent nonprofits from using their statutory right of first refusal to obtain full ownership of affordable housing properties after 15 years for a discounted price.

Incorporate consideration of race in CRA examinations. Finally, we are disappointed that the NPR does not propose taking race into account for the purpose of a CRA review. As the NPR acknowledges, Congress enacted CRA in response to redlining. We work with communities that continue to be harmed by the legacy of redlining, including low home values, low rates of homeownership, and a lack of access to quality affordable housing options. More than 45 years after the enactment of CRA, these impacts persist to this day and have compounded over time. We believe that reversing the legacy of discriminatory policies requires establishing clear goals for banks to increase investment and lending in communities of color. The agencies should not miss this opportunity to improve CRA's ability to encourage banks to play a more meaningful role in meeting the objectives envisioned by Congress.

CONCLUSION

The Community Reinvestment Act has fundamentally been successful at increasing the level of bank activity that serves LMI communities and has been essential to the success of the Low-Income Housing Tax Credit program, the New Markets Tax Credit program, and the growth of CDFI activities and partnerships in underserved communities. The future of affordable housing and community development activities in this country depends on CRA continuing to incentivize these efforts. With reasonable measures to improve on the NPR, we believe that this is an historic opportunity to build on the success of CRA and help create healthier communities.

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,

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Cinnaire