August 5, 2022

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

Board of Governors of the Federal Reserve System
Ann E. Misback, Secretary
20th Street and Constitution Avenue, NW
Washington, DC 20551

Federal Deposit Insurance Corporation
James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064-AF81
550 17th Street, NW
Washington, DC 20429

Re: Community Reinvestment Act (Docket ID OCC-2022-0002 (OCC); Docket No. R-1769 and RIN 7100-AG29 (Federal Reserve); and RIN 3064-AF81 (FDIC))

Midwest Housing Equity Group, Inc. ("MHEG") appreciates the opportunity to comment on the Community Reinvestment Act ("CRA") Notice of Proposed Rulemaking (NPR) issued by the Federal Reserve Board of Governors (Federal Reserve), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC).

Background

MHEG is a Nebraska nonprofit corporation formed in 1993. Our mission is to change lives for a better tomorrow by promoting the development and sustainability of quality affordable housing. We accomplish our mission primarily through the syndication of Federal Low-Income Housing Tax Credits ("Housing Credits"). Since inception, we have raised $2.7 billion of capital and helped create more than 22,000 safe, decent and affordable rental homes in the States of Nebraska, Kansas, Iowa, Oklahoma, Arkansas, South Dakota, Texas, Missouri, Colorado, Minnesota and Montana. We have invested approximately $1 billion of that amount in communities of 50,000 or fewer people. Those dollars have helped create and preserve almost 10,000 quality rental homes in rural America. Across the entire portfolio, our average

515 N. 162nd Avenue, Suite 202, Omaha, NE 68118 | P 402 334 8899 | F 402 334 5599 | mheginc.com

development is comprised of just 30 units and many of our investments are in 6-, 10- and 12-unit properties. We are honored to play a key role in providing affordable housing across our footprint.

As the foregoing indicates, we are committed to helping the Midwest, particularly the rural Midwest, meet its affordable housing needs. It is against that backdrop that we respectfully offer a few points for consideration as it relates to the NPR. Our core motivation is to ensure that any CRA regulatory rewrite does no harm to affordable housing and community development investment, especially in rural communities.

Importance of Housing Credit Investment

The Housing Credit is the primary financing tool for the development and preservation of affordable housing for all low-income households. This includes veterans, seniors, victims of domestic violence and persons with special needs. As a great example of a successful public-private partnership, it has financed more than three million affordable homes since 1986. The CRA and its regulations provide a strong motivation and incentive for regulated financial institutions to purchase Housing Credits. According to the accounting firm CohnRenzick, total Housing Credit investment reached $22.4 billion in 2021 and approximately 85 percent, or $19 billion came from CRA-motivated banks.

Affordable housing investment and development are critical to any community's growth and success. Without a safe place to call home, it is impossible to focus on the other factors that lead to a productive and happy life: nutrition, health care, education and career. Additional second- and third- factor benefits of affordable housing development are also well documented: increased economic activity, job creation, improved property values, lower incarceration rates and increased tax revenue. These benefits are even greater in rural communities, many of which haven't seen any housing development, affordable or otherwise, in many years. Any CRA changes that reduce regulated financial institutions' motivation and incentive to purchase Housing Credits will adversely impact the development of critically needed affordable housing. As with so many other societal goods, this adverse impact will hit our rural communities the hardest.

The CRA was enacted in 1977 to ensure that banks help meet the credit needs of the communities in which they operate, especially low- and moderate-income areas. We understand the need to update and modernize CRA regulations to address the expansion and changes in the banking industry. At the same time, it is important to remember that the CRA is the primary driver of regulated financial institutions' investment in affordable housing, particularly the Housing Credit. Additionally, we ask that the banking agencies consider the likely impact to Housing Credit production from rising interest rates and the implementation of the global minimum tax. High interest rates increase the cost of funds, along with increased costs to build and supply chain issues are creating serious head winds right now for affordable housing development. Furthermore, the current economic challenges from significant inflation are felt by everyone around the country, but persons of low- and moderate- income are hit the hardest. Right now, the entire country needs our regulated financial institutions focused on addressing the weakening economy, including (and especially) remaining committed to affordable housing investment and lending. We hope the final rule can expand and strengthen the goals of CRA to ensure financial institutions are better

responding to community needs, including affordable housing. The need for safe, decent and affordable housing continues to grow across the nation, including both the Midwest and rural communities. For that reason, we hope the agencies' will avoid any CRA changes that will have an adverse impact on affordable housing investment moving forward.

Primary Concerns and Recommendations

We oppose the proposed elimination of the separate investment test for large banks. Under the current CRA scoring, 25 percent of the CRA score is derived from bank investments. This relationship provides a strong incentive for banks to invest in the Housing Credit, which in turn has ensured that these financial institutions remain key partners in financing most Housing Credit investments.

We believe the proposed Community Development Financing Subtest will diminish Housing Credit investments by combining loans and investments into one test. We have significant concerns with the proposed rating system, which will be based largely on the ratio of a bank's community development investments (CD loans + CD investments) to the value of the bank's deposits. The replacement of the separate ending, community development investment test with a single community development test is a significant shift away from the current model of evaluating CRA activity (including evaluating the number of investments made or loans originated in addition to the total amount). The shift under the proposed rule to combine investments and debt financing into one bucket for evaluation has the strong likelihood of making Housing Credit investments a much less appealing way of meeting CRA obligations. Specifically, the proposal for a combined Community Development Financing Subtest with just 30 percent weighting, only a slightly higher weight than the previous separate investment test will decrease the incentive for banks to invest in the Housing Credit. Adding community development loans to the pot of qualifying activities will only serve to exacerbate the problem. We are especially concerned that regional banks, which are key partners in affordable housing, will significantly reduce Housing Credit investment or exit the Housing Credit market entirely if they are not adequately incentivized to invest. Tax credit investments are generally longer term, more complex and less liquid than debt financing. Additionally, under the Basel III regulatory framework, banks are generally required to retain more Tier 1 capital for equity investments compared to seasoned multifamily loans. As such, banks will likely reduce or eliminate CRA-qualifying investments in favor of debt products. Specifically, this substitution effect of loans over investments will regrettably reduce affordable housing production and preservation. We are worried that the NPR will decrease the motivation for financial institutions to invest in the Housing Credit at a time when our nation needs affordable housing investment the most.

In addition, by focusing primarily on the dollar volume of transactions, without also evaluating the number of transactions and originations, the NPR favors larger and easier loans instead of more impactful and generally smaller investments and loans. We are concerned that the NPR will drive CRA-driven investment and lending out of rural America and into large metropolitan areas, as the regulated financial institutions seek to satisfy their CRA obligations through the lowest number of transactions possible. Put another way, most rural communities don't need $30, $40 or $50 million

transactions. It's the $2, $3, $5 and $10 million transactions that move the needle. But the NPR encourage banks to chase the big dollar loans.

Recommendation: **First and foremost, we strongly urge the preservation of a separate investment test for large banks.** However, if a separate investment test is not retained, we urge including powerful guardrails to prevent large reductions in community development investment volume, including the Housing Credit. Any rewrite should include a requirement that a reasonable number of transactions and originations be maintained and considered under the community development test, similar to the requirement on the retail lending side for CRA evaluation scoring, in order to limit the moral hazard of banks pursuing the largest loans and avoiding rural America. The final rule could also encourage and incentivize large banks to still meet a minimum threshold of investment activity under the Community Development Financing Subtest score. We believe creating a minimum volume threshold for these activities will achieve a more beneficial outcome for the targeted community development activities, including affordable housing. Additionally, due to the importance of long-term investments like the Housing Credit, we want to ensure that those critically important investments in affordable housing are not inadvertently reduced. For that reason, we ask the final rule to incorporate into the evaluation a measurement of whether banks have increased, maintained or decreased originations of affordable housing loans and investments significantly at the bank level relative to the prior assessment period. Since community development cannot flourish in any local community or assessment area without a major commitment to providing ample affordable housing resources, we respectfully ask that any CRA evaluation changes do not harm Housing Credit investment.

Recommendation: **Equal Weighting of the Retail and Community Development Tests.** We are concerned with the NPR proposal to weight 60/40 (retail/community development) because it will incentivize banks to focus largely on the retail test instead of concentrating on achieving a high score on the community development portion, which includes investment in the Housing Credit. For that reason, we urge equal weighting of the retail and community development tests. In addition, we recommend including an Investment Subtest within the Community Development Test to help continue incentivizing equity investments. To integrate the banking agencies' goal of increasing CRA activities overall, the Investment Subtest could be weighted at 20 percent, which is 5 percent lower than the current Investment Test. Furthermore, banks should not receive a satisfactory rating unless they achieve at least a satisfactory rating on the community development financing and services tests first.

Recommendation: **Include an Equity Metric and Benchmark.** Should an Investment Subtest not be created, we recommend incorporating into the evaluation process strong parameters to prevent a substitution effect of loans over investment. It is critically important that equity investments remain prioritized. We suggest that the Equity Metric would be structured like the institution-level Community Development Financing Metric but would measure only community development equity investment (which would not include Mortgage-Backed Securities) in the numerator and deposit base in the denominator. An Equity Benchmark would be used to compare this metric to peer institutions. We suggest that the Equity Metric and Benchmark are integrated into the institution-level community development test or subtest conclusion, much like the current

proposal integrates the Community Development Financing Metric and Benchmark. Without an explicit emphasis on equity investments, we worry that the substitution effect will likely lead to dramatic fluctuations of bank activity and investment. Unfortunately, the real-life implication of this impact is that if a consistent demand for Housing Credit investment is reduced, it will limit our ability to meet the affordable housing needs across the country, especially as previously noted, in rural America.

Recommendation: **Include the Housing Credit as an Impact Review Factor.** We appreciate and support the inclusion of impact review factors to incentivize high-impact activities, but we believe it is tough to fully determine from the NPR how the impact scores will be used. Additional clarification could be helpful. We also endorse ensuring that the impact score evaluation is more clearly tied to the primary evaluation, instead of largely being used as a secondary metric. Based on the NPR, it appears that impact review factors will primarily be considered only after evaluating a bank's financing subtest. Rather, by more effectively incorporating the impact review factors into the primary evaluation, we believe it will more efficiently incentivize banks to focus on truly responsive and impactful activities. Housing Credit investments are generally longer term, more complex and high impact. Additionally, Housing Credits, which are allocated competitively based on state-specific affordable housing needs, makes certain that only the developments considered to be most impactful and essential are awarded Housing Credits. Since Housing Credits are administered by each State Housing Finance Agency, we suggest incorporating their guidance and judgement into how Housing Credit investments are evaluated. For that reason, we strongly believe that the Housing Credit should be specifically named as an impact review factor. We support the goal of providing greater transparency and consistency in the proposal. The inclusion of the Housing Credit as an impact review factor could help lessen the harmful impact of the transition to the combined Community Development Financing Subtest.

Additional Recommendations

We support the agencies' goal of trying to alleviate CRA hot spots and deserts, and we appreciate that the NPR proposes to allow consideration of community development activities conducted anywhere nationwide outside of facility-based assessment areas. While we believe this proposal is certainly a step in the right direction, there is still room to provide additional certainty and clarity, while also better addressing the inconsistencies between CRA hot spots and deserts. When evaluating community development investments outside of assessment areas, it is important to ensure intentionality through a previous focus, emphasis, or expertise to that region. Also, while the proposed flexibility might address some CRA gaps, unfortunately, the elimination of the separate Investment Test will limit any potential benefit.

Recommendation: To specifically address CRA deserts, particularly in rural areas, we suggest allowing banks to receive credit, at the assessment area level, for Housing Credit investments made anywhere within a state in which a bank has one or more assessment areas. We think that it would provide more certainty to a bank if it were clear that such investments would be treated as serving the assessment area(s) in that state. We firmly believe our recommendation would better incentivize affordable housing investment in underserved communities, like the Midwest and rural America.

Continue Recognizing Allocation Letters to Allocate Consideration for Funds with Multiple Investors (Questions 117-118)

Currently, CRA consideration for Housing Credit investments in funds with multiple investors and multiple property investments in various markets – which make up roughly 70% of Housing Credit equity is geographically allocated to investors based on letters between tax credit syndicators that administer the funds and the bank investors in those funds. There is a very thorough "allocation letter" (a.k.a. "side letter") process to make sure that (1) there is no duplication of banks receiving geographic credit for the same project unless the total amount for that specific project is specifically split among designated banks, and (2) that a bank receives geographic allocations of specific projects only up to the total amount invested by that bank. We believe the banking agencies should continue to allow banks appropriate flexibility in the geographic allocation of community development investments by recognizing allocation letters.

We are concerned that the NPR could require a different approach that would diminish the ability of banks to receive their intended CRA consideration for Housing Credit investments made in syndicated funds. Specifically, Section 14 of Appendix B could require all community development dollars to be geographically allocated at the county level in instances where a bank makes an equity investment, for which it is legally liable for the entire amount from the date of closing, but the fund does not call all the capital in the first year. This proposal does not look prospectively to provide how to allocate dollars during the time period that a bank is legally obligated to advance capital when called, but the fund has not yet called and/or deployed 100% of the bank's total investment amount. This is often the case for Housing Credit Investments and other funds that deploy capital over a period of several years.

Recommendation: We suggest that the banking agencies revise Section 14.a to specifically include the widely established and accepted practice of geographic allocation by allocation letters. We also recommend that the allocations be based upon the committed capital for investment and not on the timing in which such capital is actually invested in a particular project.

We believe the proposal to expand and enhance assessment area consideration, combined with our recommendations, could provide a reasonable path forward to ensure CRA continues to play a vitally important role in the success of both the Housing Credit program and affordable housing development, especially in rural America.

In short, changes to the CRA that reduce regulated financial institutions' demand for the Housing Credit could significantly decrease our ability to provide safe, decent and affordable rental homes to low-income households in rural America. Given the economic crisis our nation is facing, combined with the ongoing housing crisis, we encourage the Federal Reserve, OCC and FDIC to avoid any changes through CRA reform that could negatively impact regulated financial institutions' affordable housing investment.

Thank you again for the opportunity to comment on the proposed CRA regulations. We hope our Midwest and rural perspective is helpful. As you consider our recommendations, please let me know if I can provide additional information or if we can be of assistance.

Kindest regards,

John Wiechmann
President/CEO