April 8, 2020

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

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

Re: Community Reinvestment Act Regulations
Docket ID OCC-2018-0008
Docket ID FDIC-RIN 3064-AF22

Midwest Housing Equity Group, Inc. ("MHEG") appreciates the opportunity to comment on the Community Reinvestment Act ("CRA") rule proposed by the Office of the Comptroller of the Currency ("OCC") and the 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 $2.2 billion of capital and helped create more than 19,000 safe, decent and affordable rental homes in the States of Nebraska, Kansas, Iowa, Oklahoma, Arkansas, South Dakota, Texas, Missouri, Colorado and Minnesota. 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 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 the OCC's and FDIC's consideration as it relates to the proposed CRA rewrite. Our core motivation is to ensure that the proposed CRA rewrite does no harm to affordable housing and community development investment, especially in rural communities.

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The Housing Credit is the primary financing tool for the development and preservation of affordable housing for all low-income households, including veterans, seniors, victims of domestic violence and persons with special needs. 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, CRA-motivated buyers purchased approximately $15 billion worth of Housing Credits in 2019 alone (85% of the total market).

Affordable housing investment and development is 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 <u>any</u> 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 appreciate the need to modernize CRA to address the expansion and changes in the banking industry and understand the need to update decades-old regulations. 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. 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 OCC and FDIC will avoid any CRA changes, both directly and indirectly, that will have an adverse impact on affordable housing investment moving forward.

<u>COVID-19 Considerations</u>.

We ask that the OCC and the FDIC consider the impact of the COVID-19 health crisis on the low- and moderate-income areas that the CRA directs banks to serve. While we don't yet know the full economic impact from the health crisis, the recent March unemployment numbers paint a clear picture that our country has a rough road ahead. COVID-19 is being felt by everyone around the country, but persons of low- and moderate- income residents are hit the hardest. Many of these people are front-line service workers in the travel, hospitality, retail and restaurant industry – the first folks laid off. Right now, the entire country needs our regulated financial institutions focused on economic recovery efforts, including (and especially) remaining committed to affordable housing investment and lending. <u>No matter how well intentioned, the proposed CRA rewrite will introduce uncertainty and unintended/unforeseen consequences into the banking system during the</u>

largest health and economic crisis in 100 years. That seems unnecessary and dangerous right now. We respectfully suggest that final consideration of these proposed rules be delayed until after our nation has fully recovered.

Concerns and Recommendations.

- **Elimination of the separate investment test for large banks and implementation of a aggregated activity presumptive rating.** 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 oppose the new presumptive rating system, which will be based largely on the ratio of a bank's qualifying activities to the value of the bank's retail domestic deposits. The replacement of the separate ending, investment, service and community development tests with a presumptive rating methodology 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. Tax credit investments are generally longer term, more complex and less liquid than debt financing. As such, banks will probably reduce or eliminate CRA investments in favor of debt products.

  Additionally, the proposal to significantly expand the qualifying activities for CRA credit in the community development category would allow banks to meet their obligations with less onerous and lower-impact investments. Under the proposal, a financial institution could easily achieve their required CRA community development metric through investments in mortgage backed securities (MBS), infrastructure investments, or community facilities that may only partially benefit low- and moderate-income communities and individuals. Instead, equity investments in affordable housing, supported by the Housing Credit, can be a game-changer for communities across this country. By providing safe and affordable housing and supportive resources for residents in neighborhoods, including rural areas, banks are not only fulfilling their CRA obligations, they are being good partners and stewards of the local communities that they invest in and support.

  By focusing primarily on the dollar volume, without also evaluating the type of investments (including number of transactions and originations) and the community impact, this dramatic change will favor larger and easier loans instead of more impactful and generally smaller investments, like affordable housing. We are concerned that the new regulations 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. We are also

concerned that the new regulations will drive any remaining 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 proposed CRA regulations encourage banks to chase the big dollar loans.

Recommendation: We strongly urge the preservation of a separate investment test for large banks. We recommend you restrict the list of qualifying activities that fit within the 2 percent community development minimum test. Those qualifying activities should include essential infrastructure and community facilities related activities only if they "primarily benefit" low- and moderate-income individuals. We also propose that the final rule includes 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.

- **Double CRA weighting for certain investments and loans for community development.** We appreciate the OCC and FDIC's acknowledgment of the importance of affordable housing investment and lending and loans to Community Development Financial Institutions (CDFIs), all of which have meaningful and direct impacts for low-income communities. However, we do not believe this 2for1 credit will increase bank activity in these areas. To the contrary, even assuming banks choose to continue their Housing Credit investments following the elimination of a separate investment test, it seems such investments will be reduced by half under this proposal. If banks needed $15 billion in Housing Credit investments annually prior to the rewrite (see CohnReznick's 2019 Housing Credit Market Recap), it follows that they'll only need $7.5 billion post-enactment (because they will receive $2 credit for every $1 invested). Even more troubling for our communities, it is likely that banks will pull much of that investment from rural communities, which many large financial institutions already struggle to understand and invest in.

  Recommendation: Instead of awarding double credit, 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. We propose you swap the "multiplier" for investments, loans to CDFIs, and affordable housing with a requirement that, in order to receive an outstanding or satisfactory rating, the bank must place a certain portion of its community development loans and investment in these favored activities, so that a minimum percentage of the deposits at the bank level must be provided as investments (excluding MBS and municipal bonds not issued by state and local housing finance agencies), loans to CDFIs, or loans for affordable housing. In addition, if the Agencies wish to retain some form of a 2for1 credit, we suggest such credit should only

apply to investments and loans made to rural communities (and should still include a "number of transactions" requirement to get the double credit).

- **Reviewing only balance sheets.** We are concerned that examining only balance sheets, and not originations, would allow a bank, once they meet their evaluation target, to limit or halt new CRA investment activity. This proposal is especially troublesome for Housing Credit investments, since they remain on balance sheets for 15 years. Also, by allowing banks to receive double credit for these investments for a longer period, it would reduce their incentive to continue investing in affordable housing. Furthermore, we are concerned that when a bank hits its 2 percent CD test, which will not be difficult for most banks, the bank will determine they no longer need to invest in the Housing Credit market year after year. This proposal will likely lead to dramatic fluctuations between periods of bank activity and investment, coupled with lulls depending on the banks' CRA evaluation cycle. 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 and, as previously noted, especially in rural America.

Recommendation: 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 OCC and FDIC to incorporate into the ratings 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.

Finally, we urge the OCC, FDIC and Federal Reserve to work together to develop and support a final interagency rule that provides a consistent regularly framework for all banks. By moving forward with a two-tiered system of evaluation, it will result in substantial confusion and limit the overall benefits and impact of CRA reform that this proposal was attempting to achieve.

We do appreciate that the proposal will ensure banks receive CRA credit for community development investments not only in the communities they have a physical presence, but also the surrounding geographies, to include the whole nonmetropolitan area of the state. We believe the assessment area provision, 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 health and economic crisis our nation is facing, combined with the ongoing housing crisis, we encourage the 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