



July 29, 2022

Submitted electronically via regulations.gov

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

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

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

Re: MidFirst Bank Comments on Community Reinvestment Act Proposal (Docket ID OCC-2022-0002; Docket No. R-1769, RIN 7100-AG29; RIN 3064-AF81)

To whom it may concern:

MidFirst Bank appreciates the opportunity to comment on the joint notice of proposed rulemaking issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation regarding the Community Reinvestment Act of 1977 ("CRA").

MidFirst is a federally-chartered savings association with banking centers in five states. In addition to its traditional retail and commercial banking activities, MidFirst services approximately 250,000 residential mortgage loans securing properties throughout the United States, more than 98% of which are insured or guaranteed by the Federal Housing Administration ("FHA"), Department of Veterans Affairs ("VA"), the United States Department of Agriculture ("USDA"), or the Section 184 Indian Home Loan Guarantee Program. MidFirst acquires these loans through purchases of seasoned loan portfolios and servicing rights related to Government National Mortgage Association ("Ginnie Mae") mortgage-backed securities. Participation in the FHA, VA, USDA, and Section 184 mortgage loan programs and the Ginnie Mae system is a critical way MidFirst contributes to the communities that it serves, and regulators have long recognized this contribution in MidFirst's CRA evaluations.

The purchase and servicing of seasoned, government-backed loans is one of MidFirst's most significant lines of business, and we are concerned that the proposed rule could be interpreted to penalize this activity. In particular, we are concerned that the proposed rule does not provide a clear

mechanism to account for purchased, seasoned loans made to borrowers who were considered low- or moderate-income (“LMI”) at origination, but for whom updated income information is not available at the time MidFirst purchases the loans. As proposed, the rule could be interpreted to exclude such loans from the numerator of the borrower distribution metric that is a component of the proposed Retail Lending Test. If seasoned, purchased loans to LMI borrowers **are not counted** in the numerator of the borrower distribution metric but **are counted** in the denominator, the rule could produce artificially low scores on the borrower distribution metric and make it impossible for MidFirst to achieve a satisfactory CRA rating under the business model it has pursued successfully for decades—despite the direct benefits MidFirst’s business model and servicing activities provide to thousands of LMI borrowers and the communities in which they live. This result could also discourage other banks from participating in the same government loan programs that would help countless more LMI borrowers.

Part I of this letter provides an overview of government mortgage loan programs and explains how MidFirst’s and other banks’ participation in those programs supports LMI borrowers. Part II describes why the proposed rule could be interpreted to penalize, and therefore discourage, participation in government loan programs. Finally, Part III identifies several options for how the agencies could make minor, targeted clarifications to ensure that the final rule does not have these negative, unintended consequences.

I. Government loan programs and the Ginnie Mae system are critical to supporting LMI borrowers.

A. Government loan programs make home ownership possible for many LMI borrowers.

FHA, VA, USDA, and Section 184 loan programs are focused on providing access to credit and home ownership to borrowers who may not have access to other credit opportunities. These programs provide access to credit by significantly reducing or eliminating down payment requirements, lowering the minimum credit score needed to obtain a loan, allowing flexibility in debt-to-income ratios for certain borrowers, lowering closing costs, and/or providing credit opportunities more quickly following a bankruptcy or foreclosure. Many LMI borrowers achieve the goal of homeownership through the FHA, VA, USDA and Section 184 loan programs. For example, HMDA data shows that 35% of all FHA loans originated in 2021 were loans to LMI borrowers, as compared to 23% of conventional loans.

The benefits that these government loan programs provide to LMI borrowers do not end once a loan closes. The government programs are designed with features to assist borrowers with financial difficulties that arise throughout the term of the loan. Servicers of government-backed loans must engage in specialized servicing actions that focus on early delinquency intervention and provide financial assistance options, such as loan modifications, forbearances, and deferrals. These financial assistance options make loans more affordable for borrowers in distress, helping borrowers resolve delinquent payments and avoid foreclosures. These specialized servicing actions necessitate more interaction with the borrower throughout the term of the loan and require more personnel and other resources than is typically required when servicing a conventional loan. The loss mitigation assistance that servicers

provide in connection with FHA, VA, USDA, and Section 184 loans is crucial in helping borrowers retain their homes and recover from unexpected circumstances that cause financial distress.

B. Ginnie Mae provides liquidity and stability for the government mortgage loan programs.

Ginnie Mae plays a vital role in ensuring that government loan programs remain available to LMI borrowers. Ginnie Mae's stated mission "is to link the United States housing market to the global capital markets, thus providing low-cost financing for federal housing programs." The primary way that Ginnie Mae supports the free flow of capital into the housing market is by packaging government-backed loans into bonds known as mortgage-backed securities. The sale of mortgage-backed securities helps provide fresh capital for the mortgage industry to make more loans and support the mission of affordable housing. Affordable housing is a reality for millions of Americans because of the Ginnie Mae program and the credit opportunities it supports under the FHA, VA, USDA, and Section 184 programs.

Ginnie Mae requires the servicer of the loans in a mortgage-backed security to advance monthly principal and interest payments to security holders, even when the underlying loan becomes delinquent. These advances for delinquent payments are one of the most costly components of Ginnie Mae servicing. To help servicers manage these costs, Ginnie Mae allows servicers to purchase a loan out of the security once it becomes 90 days delinquent, in a process commonly referred to as a "buyout." Following a buyout, the servicer's obligation to advance delinquent principal and interest is extinguished, making the ability to perform buyouts one of the most critical financial incentives for banks to engage in Ginnie Mae servicing activities. Moreover, buyouts provide servicers more financial flexibility to offer loan modifications, forbearance plans, and other loss mitigation solutions to financially-distressed borrowers.

C. MidFirst's participation in government mortgage programs directly benefits LMI borrowers.

MidFirst has spent more than thirty years developing an expertise in government loan servicing and has consistently ranked as one of the top performers on FHA's scorecard ranking servicers on loss mitigation and foreclosure prevention activity. Because of the complexities of government loan servicing, other lenders actively seek to sell their delinquent government-backed loans while MidFirst actively seeks opportunities to acquire them. MidFirst's acquisitions result in better outcomes for delinquent borrowers and for government loan programs because MidFirst's servicing operation is better equipped to engage in loss mitigation and foreclosure prevention activities. Moreover, as a routine part of its servicing activities, MidFirst engages in Ginnie Mae buyouts to manage its principal and interest advance obligations and to offer loan modifications and other loss mitigation assistance to financially-distressed borrowers.

MidFirst's participation in government loan programs and the Ginnie Mae system results in direct, tangible financial assistance to tens of thousands of distressed LMI borrowers. More than 40% of the loans in MidFirst's portfolio are loans that were made to borrowers who were LMI when the loans were originated, and MidFirst's servicing expertise has directly benefited these LMI borrowers through

successful loss mitigation outcomes. Between 2017 and 2019, MidFirst performed nearly 26,000 modifications of government-backed loans. These loan modifications have been overwhelmingly successful. As of June 30, 2022, more than 84% of these loans are current, paid in full, or 60 or fewer days delinquent, and only 3.4% have completed foreclosure.¹ MidFirst's loan purchases and related servicing activities support home retention, promote financial inclusion, and contribute greatly to the objectives of the CRA.

II. Without clarification, the proposed rule could be understood to penalize participation in government loan programs and the Ginnie Mae system.

As written, the proposed rule could be interpreted to penalize MidFirst and other banks that purchase seasoned, government-backed mortgage loans or act as servicers in the Ginnie Mae system, even though these activities greatly align with the CRA's important objectives. Our concern arises from the design of the borrower distribution metric, which would measure a bank's home mortgage loans to LMI borrowers as compared to all of the bank's home mortgage loans, and would count both originated and purchased loans. The proposed rule is not clear on how the metric would account for purchased, government-backed loans or Ginnie Mae buyouts where borrowers were LMI at origination, particularly when the purchase or buyout occurs more than a year after origination and updated income information for the borrower is not available at the time of purchase or buyout.

Purchases of seasoned, government-backed loans and Ginnie Mae buyouts are reported on the HMDA LAR, but updated information about borrowers' income generally is not available at the time of purchase or buyout.² Although borrowers provide income information at the origination of a purchase-money government-backed loan, borrower income is not collected in connection with the purchase or buyout, nor is it collected when the borrower refinances the loan under some refinance options offered by FHA, VA, USDA, and Section 184 programs. But, as explained above, HMDA data on mortgage loan originations shows that a significant portion of government-backed loans were made to LMI borrowers, and based on MidFirst's analysis of its own portfolio, an even larger portion of the seasoned, delinquent loans that MidFirst purchases were made to borrowers who were LMI at origination of the loan.

The proposed borrower distribution metric appears to include seasoned, government-backed loan purchases and Ginnie Mae buyouts in the denominator, which would capture all of a bank's

¹ Loans modified between 2017 and 2019 have two and one-half years of post-modification performance history. The approximately 56,000 loans MidFirst modified between 2020 and 2022 have exhibited even less post-modification delinquency.

² Form loan documents used in the government loan programs do not contain any contractual requirement for borrowers to provide lenders with updated income information during the term of the loan. Although servicers may collect some income information in connection with certain loss mitigation options available through government loan programs, the loss mitigation assistance is not reported on the HMDA LAR, nor does the income collection necessarily coincide with the HMDA reporting of the purchase or buyout of the loan.

originated and purchased loans in a given retail loan category.³ In contrast, the proposed rule is not clear on whether the numerator of the metric would include loans that were made to borrowers who were LMI at origination if updated income information is not available. Counting these loans in the denominator of the borrower distribution metric but not the numerator would lead to an artificially low borrower distribution metric for a bank like MidFirst. Because of the weighting of this metric across MidFirst's assessment areas and outside retail lending area and the importance of the Retail Lending Test to the overall rating, an artificially low borrower distribution metric could potentially render MidFirst incapable of achieving a satisfactory overall CRA rating.

Any rule that makes the purchase of seasoned, government-backed loans or Ginnie Mae buyouts adversely affect a bank's CRA rating would drive banks away from government loan programs and the Ginnie Mae system. This result would ultimately limit the availability of credit to LMI borrowers, reduce LMI borrowers' access to loss mitigation assistance, and frustrate the goals of the CRA. We do not believe the agencies intended these consequences.

III. Minor clarifications would prevent the borrower distribution metric from having negative, unintended consequences for purchases of seasoned, government-backed loans and Ginnie Mae buyouts.

We have identified three options for targeted, limited clarifications that the agencies could make in the final rule to avoid the adverse—and likely unintended—consequences discussed above.⁴

A. Use the borrower's income at origination, when available, to determine LMI status in the borrower distribution metric, and exclude purchased, government-backed loans and Ginnie Mae buyouts from the metric when income is not available.

The option that would cause the least disruption to banks' incentives to purchase seasoned, government-backed loans to LMI borrowers would involve making two clarifications.

First, the final rule should clarify that when a bank purchases a seasoned, government-backed loan or buys a loan out of a Ginnie Mae pool, and the only income information available is the borrower's income at origination of the loan, the bank should use the income at origination for purposes

³ As proposed, Appendix A states that "The [Agency] calculates the Borrower Bank Metric for each major product line, excluding multifamily loans, in an applicable geographic area as follows . . . For closed-end home mortgage loans, by dividing the total number of the bank's originated and purchased closed-end home mortgage loans to low-income borrowers or moderate-income borrowers, respectively, in the geographic area by the total number of the bank's originated and purchased closed-end home mortgage loans in that geographic area overall."

⁴ The options discussed below focus on the treatment of purchased, government-backed home mortgage loans, as we believe that there are particularly compelling policy reasons to address how these loans are counted in the borrower distribution metric when income at the time of purchase and/or origination is not available. We recognize that the agencies could apply any of these options more broadly to *all* purchased loans for which income at the time of purchase and/or origination is not available, and we would not be opposed to such an approach.

of the borrower distribution metric. Relatedly, the final rule should clarify that if a bank did not report income on the HMDA LAR in connection with the purchase or buyout, the bank may, nevertheless, provide documentation supporting the borrower's LMI status at origination during its CRA exam. Even though a borrower's income at origination may pre-date the purchase being evaluated during the exam, the origination income is likely the only income data available and is the only way to determine the LMI status of the loan. Using LMI status at origination for seasoned loan purchases and Ginnie Mae buyouts in the borrower distribution metric would appropriately recognize the value of banks' participation in government loan programs that are integral to LMI borrowers achieving the goal of homeownership and the availability of loss mitigation assistance during the term of the loan to help them retain their homes.

Second, the final rule should clarify that when a bank purchases a seasoned, government-backed loan or buys a loan out of a Ginnie Mae pool, and income information is not available for either the time of origination *or* the time of purchase, the loan should be excluded altogether from both the numerator and the denominator of the borrower distribution metric. This clarification would ensure that the final rule does not disincentivize the purchase of loans that were originated as refinances through government loan programs. As noted above, some refinances do not require borrowers to provide income information at origination or during the loan's term. Without income data, there is no way to confirm a borrower's LMI status, even though borrowers obtaining these government-backed loans are more likely to be LMI than borrowers obtaining conventional loans. Excluding government-backed loans without reported income from the metric would help ensure continued, meaningful lender participation in these programs and the continued availability of credit to LMI borrowers.

B. Exclude purchased, government-backed loans and Ginnie Mae buyouts from the borrower distribution metric altogether.

A second, simpler option would be to exclude purchases of seasoned, government-backed loans and Ginnie Mae buyouts from both the numerator and the denominator of the borrower distribution metric if the bank does not report the borrower's income on its HMDA LAR in connection with the purchase or buyout.

While simpler than the first option, this option would not incentivize or reward the purchase of seasoned, government-backed loans to LMI borrowers or buyouts of loans to LMI borrowers. Nevertheless, this option would, at least, avoid unnecessarily and unintentionally penalizing business models that involve purchasing and servicing government-backed loans. Moreover, this option would not penalize banks for purchasing and servicing loans that were originated as refinances through the government loan programs that do not require borrowers to provide income.

C. Ensure the performance context factors explicitly allow examiners to consider a bank's participation in government loan programs.

As a third option, the final rule could revise the Retail Lending Test's performance context factors to consider the effect of purchases of seasoned, government-backed loans and Ginnie Mae

buyouts for which income is not available if those activities produce an artificially low borrower distribution metric.

The proposed rule identifies certain performance context factors examiners may use when evaluating a bank's retail lending performance. Unfortunately, the performance context factors are written too narrowly to address the issues identified in this letter. As currently written, an examiner would be allowed to consider whether there is missing or faulty data that would be necessary to calculate the relevant metrics and prevent the examiner from calculating a recommended conclusion, but an examiner may consider this only in a facility-based assessment area.⁵ Any final rule should (i) expand the application of this "missing or incomplete data" performance context factor to permit its use in any assessment area and the outside retail lending area, and (ii) clarify that the factor is appropriate to use when the bank does not report borrower income on the HMDA LAR in connection with the bank's purchase of a seasoned, government-backed loan or a Ginnie Mae buyout.

Allowing for consideration of purchased, seasoned, government-backed loans and Ginnie Mae buyouts for which income is not available in the performance context factor would help ensure that banks participating in government loan programs, particularly in post-origination loan servicing, are able to demonstrate the benefits of their activities to LMI borrowers. As an alternative, the agencies could revise the performance context factors to allow examiners to adjust the weighting of the borrower distribution metric when purchases of seasoned, government-backed loans and/or Ginnie Mae buyouts for which updated income is not available produce an artificially low distribution metric.

* * * * *

We appreciate your consideration of our comments. We stand ready to work with the agencies to find appropriate ways to mitigate the proposed rule's potential unintended consequences for MidFirst's mortgage servicing business, for LMI borrowers, and for the government loan programs and the Ginnie Mae system more generally. Given the significance of these potential negative effects, addressing this issue is one of our highest institutional priorities.

Do not hesitate to contact me at 405.767.7000 or todd.dobson@midfirst.com if you have any questions or would like to discuss this letter.

Respectfully submitted,

A solid black rectangular box redacting the signature of Todd Dobson.

Todd Dobson
President

⁵ See section _.22(e)(4) of the proposed rule text.