MEMORANDUM

TO: Public File - Joint Notice of Proposed Rulemaking – Community Reinvestment Act Regulations

FROM: Brandon Milhorn, Deputy to the Vice Chairman [redacted]

DATE: May 25, 2023

SUBJECT: Meeting with Representatives of MidFirst Bank

On May 25, 2023, I met with representatives of MidFirst Bank ("MidFirst") to discuss its comment letter on the Joint Notice of Proposed Rulemaking regarding regulations implementing the Community Reinvestment Act (87 Fed. Reg. 33,884).

The participants were Anika Stucky, Scott Reed, and Jason Reed, with MidFirst; King Mueller and Chris Brown, with Mindset (representing MidFirst).

I was the only FDIC participant.

Attachments: Letter from Members of Congress (16 May 2023)
MidFirst Bank Community Reinvestment Act Reform Policy Paper (March 2023)

May 16, 2023

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave., NW
Washington, DC 20551

The Honorable Martin Gruenberg
Chair
Federal Deposit Insurance Corporation
550 17th Street, NW,
Washington, DC 20429

Mr. Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th St SW,
Washington, DC 20219

Dear Chair Powell, Chair Gruenberg, and Acting Comptroller Hsu:

We write regarding your agencies' upcoming finalization of proposed rules designed to modernize the Community Reinvestment Act of 1977 (CRA). We write to urge the agencies to make a technical, but important clarification in the final rules to ensure that they do not disincentivize banks from participating in federal initiatives designed to reach low- and moderate-income (LMI) borrowers through federal loan assistance programs at the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Veterans Affairs (VA), the U.S. Department of Agriculture (USDA), and others. As you know, the CRA is one of the most important tools the Federal Government has to ensure the credit needs of all communities are met.

Government loan programs and the Ginnie Mae system are critical to supporting LMI borrowers. VA, USDA, HUD's Federal Housing Administration (FHA) and Section 184 Indian Home Loan Guarantee programs are focused on providing credit and home ownership access to borrowers who may not have access to other credit opportunities. For example, 2021 Home Mortgage Disclosure Act data indicates that 35% of all FHA loans originated in 2021 were loans to LMI borrowers, as compared to 23% of conventional loans. The benefits of these government-backed mortgages extend beyond origination, as these programs are designed with features to assist borrowers with financial difficulties that arise after origination. Servicers that specialize in these programs play an essential role in supporting affordable housing opportunities, as they must engage in specialized servicing actions that focus on early delinquency intervention and provide financial assistance options, such as loan modifications, forbearances, and deferrals. Participation in government loan programs and the Ginnie Mae program has historically been viewed favorably in CRA exams, as regulators have long recognized these programs' benefit to LMI borrowers and communities.

We are concerned that the proposed CRA rule does not provide a clear mechanism to account for purchases of seasoned, government-backed loans made to borrowers who were considered LMI at origination, but for whom updated income information is not available at the time a bank purchases the loans. In addition to purchases of seasoned, government-backed loans from third parties, banks that service government-backed mortgages securitized in Ginnie Mae mortgage-backed securities regularly purchase (or "buyout") delinquent loans from Ginnie Mae servicing pools in order to effectively manage their financial risk associated with the program. This buyout option is a critical incentive to engage in Ginnie Mae servicing, as the servicers are otherwise required to advance monthly principal and interest payments to security holders even when underlying payments from the borrowers are delinquent.

As written, the proposed rule could be interpreted to penalize banks that purchase seasoned, government-backed mortgages or act as servicers in the Ginnie Mae system, even though these activities clearly 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 the bank's overall home mortgage loans and would count both originated and purchased loans. As written, the proposed rule is unclear on how a bank participating in a government mortgage program should treat a loan to a borrower who was LMI at origination, but for whom the bank does not have updated income information at the time of purchase or buyout. If the rule required these loans to be treated as non-LMI loans, it could adversely affect the bank's CRA performance.

Any rule that makes the purchase of seasoned, government-backed loans or Ginnie Mae buyouts adversely affect a bank's CRA rating has the potential to 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 work in contravention to the goals of the CRA.

To address this issue, we encourage you to consider allowing the use of available borrower income from origination to determine LMI status in the borrower distribution metric and exclude purchased government-backed loans and buyouts from the metric altogether when income is not available. Alternatively, the agencies may wish to consider exclusion of purchased government mortgages and Ginnie Mae buyouts from the CRA borrower distribution metric altogether so that participation in a government mortgage program does not harm a bank's CRA performance.

Bank purchases and related servicing of government mortgages support home retention, promote financial inclusion, and contribute greatly to the objectives of the CRA. We respectfully request that the agencies recognize the importance of these mortgages to LMI communities by ensuring that the CRA framework does not penalize participation in government mortgage programs.

We appreciate your agencies' consideration of these comments and recommendations as you work to finalize the rule. We look forward to engaging with you and your staff on this important matter.

Sincerely,

[redacted]
Frank D. Lucas
Member of Congress

[redacted]
Emanuel Cleaver, II
Member of Congress

[redacted]
Blaine Luetkemeyer
Member of Congress

[redacted]
Rashida Tlaib
Member of Congress

[redacted]
Barry Loudermilk
Member of Congress

[redacted]
Wiley Nickel
Member of Congress

[redacted]
Steven Horsford
Member of Congress

Certain Aspects of the CRA Proposal Could Reduce Participation in Government Loan Programs

Government Mortgages and the Ginnie Mae Program Are Vital to Supporting LMI Communities

- Low- and moderate-income (LMI) borrowers and minority borrowers rely on mortgages insured or guaranteed by FHA, Department of Veterans Affairs, Department of Agriculture, or the Section 184 Indian Home Loan Guarantee Program (collectively "Government Mortgages") as a key source of affordable housing finance opportunities.
- The Ginnie Mae program links the United States housing market to global capital by bundling Government Mortgages into Ginnie Mae mortgage-backed securities. Ginnie Mae securities are generally considered the gold standard for investors because they are fully backed by the U.S. government.
- Servicers that specialize in Government Mortgages play an essential role in supporting affordable housing opportunities, as these programs are designed with features to assist borrowers with financial difficulties that arise after origination.
- Ginnie Mae and Government Mortgage servicing have historically been viewed favorably in CRA exams, as regulators have long recognized that these programs benefit LMI borrowers and communities.

How Proposed Revisions to CRA Could Penalize Participation in Government Loan Programs

- Servicers of Government Mortgages in a Ginnie Mae mortgage-backed security regularly purchase ("Buyout") delinquent loans from Ginnie Mae servicing pools in order to effectively manage their financial risk associated with the program. This Buyout option is a critical incentive to engage in Ginnie Mae servicing, as the servicers are otherwise required to advance monthly principal and interest payments to security holders even when underlying payments from the borrowers are delinquent.

- Under the CRA Proposed Rule, Ginnie Mae Buyouts and other purchased loans are to be included in a key metric used to evaluate a bank's performance in assisting LMI borrowers; however, that metric does not provide a clear mechanism to fairly account for purchased, seasoned loans to borrowers who were considered LMI at origination but for whom updated income information is not available at the time the loans are purchased.
    - The proposed Retail Lending Test includes a "borrower distribution metric" that is intended to measure the ratio of loans to LMI borrowers that a bank has originated and purchased, compared to all loans originated and purchased by the bank. This metric relies on the availability of borrower income to determine LMI status.
    - Although borrower income is often collected when a new mortgage is originated, there is generally no basis to collect or report borrower income at the time of Buyout or purchase of a seasoned Government Mortgage.
    - As such, despite the high percentage of Government Mortgages made to borrowers that were LMI at origination, purchased Government Mortgages (including Buyouts), generally will not be included in the numerator of the borrower distribution metric, but only in the denominator.
    - Consequently, purchased Government Mortgages will cause a low ratio in the borrower distribution metric and decrease a bank's Retail Lending Test rating. This translates to a penalty for each of a bank's purchases of Government Mortgages and Buyouts, even when the borrowers were considered LMI at origination. Large purchases of seasoned Government Mortgages or a significant number of Ginnie Mae Buyouts could cause a bank to fail the Retail Lending Test.
    - The risk of damage to a bank's CRA rating will discourage banks from participating in these loan programs, which will ultimately harm LMI borrowers.

Proposed Solutions

Minor clarifications to the proposed rule would prevent the borrower distribution metric from having negative, unintended consequences for purchases of seasoned Government Mortgages and Buyouts.

1. **Use available borrower income from origination to determine LMI status in the borrower distribution metric and exclude purchases of seasoned Government Mortgages and Buyouts from the metric altogether when income is not available.**
    a. The final rule should clarify that if borrower income was not reported under the Home Mortgage Disclosure Act,[1] a bank may provide documentation of the borrower's LMI status at origination for consideration during its exam.
    b. The final rule should further clarify that purchases of seasoned Government Mortgages and Ginnie Mae Buyouts should be excluded altogether from the borrower distribution metric, if income is not available for either the time of origination *or* the time of purchase.

2. **Exclude all purchased Government Mortgages and Ginnie Mae Buyouts from the borrower distribution metric altogether.**

3. **Explicitly instruct examiners to consider a bank's participation in Government Mortgage programs in all assessment areas and in the outside retail lending area as performance context when borrower income is not available or reported on the HMDA LAR.**

Bank purchases and related servicing of Government Mortgages support home retention, promote financial inclusion, and contribute greatly to the objectives of the CRA. Regulators should recognize the importance of Government Mortgages to LMI communities and ensure that participation in Government Mortgage programs is not penalized by the CRA framework. Any of the recommended solutions would be preferable to the proposed CRA revisions.

About MidFirst Bank

Headquartered in Oklahoma City, MidFirst Bank offers a full range of banking products and services. The bank's primary markets include Oklahoma City, Tulsa, western Oklahoma, Dallas, Houston, Phoenix, Denver, and the Colorado mountain region. The bank serves Southern California through 1st Century Bank. In addition to its traditional retail and commercial banking activity, MidFirst Bank has a substantial focus on residential mortgage loans, servicing the eleventh largest portfolio of FHA loans in the United States.

Through the purchase of seasoned loan portfolios and servicing rights related to Ginnie Mae mortgage-backed securities, MidFirst owns and manages a servicing portfolio of $28 billion—representing approximately 250,000 mortgage loans, 98% of which are Government Mortgages.

MidFirst's Participation in Government Mortgage Servicing Helps LMI Communities

Because of the complexities of servicing Government Mortgages, many lenders seek to sell these loans after a borrower becomes delinquent. MidFirst actively pursues opportunities to acquire such loans. MidFirst's acquisitions result in better home retention rates for borrowers.[2] Acquisition of Government Mortgages is a significant component of MidFirst's contributions to the communities it serves, as these programs play an essential role in providing affordable housing opportunities for LMI borrowers and minority borrowers. More than half of the loans serviced by MidFirst are related to borrowers who were considered LMI at loan origination. Additionally, based on 2021 HMDA data, 38% of MidFirst's purchased Government Mortgages were secured by properties in majority-minority census tracts and 24% were secured by properties in high-minority census tracts.[3]

[1] The Home Mortgage Disclosure Act ("HMDA") is the annual reporting mechanism used by regulators to evaluate banks' CRA and Fair Lending performance.

[2] For more than 10 years, MidFirst has achieved one of the highest FHA workout ratios and one of the lowest FHA foreclosure rates among the nation's largest FHA servicers.

[3] By contrast, only 17% of all banks' HMDA-reportable purchased loans were in majority-minority census tracts and only 8% were in high-minority census tracts.

What They're Saying

Center for Responsible Lending
"A number of lenders support the government loan programs by purchasing seasoned delinquent loans from other lenders and acting as special servicers, which helps borrowers maintain homeownership. To avoid penalizing these lenders, if the agencies continue to count loan purchases under the retail lending test, the lender should use the income of the borrower at origination of the loan and the area median income levels in use at that time to determine the borrower's LMI status. Similarly, if these lenders purchase mortgage servicing rights and subsequently buy delinquent loans out of Ginnie Mae securities, these loan purchases should be evaluated using the borrower and area incomes in effect at origination."[1]

Housing Policy Council[2]
"Without specific adjustments, the Proposal's treatment of purchased loans will have unintentional, yet material, negative impacts on activities meant to assist low- and moderate-income ("LMI") consumers"

"Tailoring of the treatment of purchased loans is needed to avoid unintended consequences and improve transparency…Despite the positive treatment of purchased loans under the Retail Lending Test, [HPC is] concerned that the Borrower Bank Metric would unintentionally penalize banks for participation in government lending programs."

"The lack of recognition of these activities does not align with the purpose of CRA (to assess banks' affirmative obligation to help meet the credit needs of their communities) and goals of the Retail Lending Test (using metrics and performance standards to evaluate a bank's lending to LMI borrowers, small businesses and small farms, and LMI neighborhoods in its assessment areas). Without refinement, the Borrower Bank Metric would not accurately reflect and evaluate a bank's lending to LMI borrowers, and it may significantly discourage lender participation in the critical USDA, VA, Section 184 Indian Loan, FHA, and Ginnie Mae Programs."

American Bankers Association
"To avoid discouraging bank participation in certain programs designed to assist troubled mortgage borrowers, we recommend that the agencies 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 denominator of the metric when income is not available."[3]

Mortgage Bankers Association
"Nevertheless, our concern is that the NPR could be read to include such repurchased loans (made to predominantly LMI borrowers) in the denominator under the bank metric calculation without clarifying that such repurchased loans should also be included in the numerator. Absent clarification, the rule would unintentionally penalize lenders for exercising an option provided by Ginnie Mae and that is necessary in some cases to keep borrowers in their homes. This would unfairly penalize banks involved with Ginnie Mae servicing for engaging in activities that are important to LMI borrowers and communities."[4]

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[1] https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-sh-comment-cra-notice-proposed-rulemaking-5aug2022.pdf

[2] https://www.novoco.com/sites/default/files/atoms/files/occ-cra-rulemaking-2022-0002-housing-policy-council-08042022.pdf

[3] https://www.aba.com/-/media/documents/comment-letter/craletter20220805.pdf?rev=38ed7edc652840dab60eb6be2c605a72

[4] https://www.novoco.com/sites/default/files/atoms/files/occ-cra-rulemaking-2022-0002-mba-08052022.pdf