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DISSEMINATION BRANCH
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Attention Docket No. 2000-34

This is in response to the Responsible Alternative Mortgage Lending ANPR dated April 5, 2000. MidFirst Bank requests that any changes the OTS might propose or adopt regarding its mortgage regulations not reduce existing authorities available to OTS regulated savings associations. MidFirst concurs with Director Seidman's May 24, 2000, comment during the House Committee on Banking and Financial Services hearing when she stated "But we believe it is important to gather what information is available before taking any action." As such MidFirst prefers that available data be collected and analyzed prior to drafting changes to regulation.

The ANPR's summary paragraph states that the purpose of the mortgage regulations to be "encouraging the safe and sound, efficient delivery of low-cost credit to the public free from undue regulatory duplication and burden." Eliminating or limiting the existing authorities would be counter to this stated purpose. The authorities granted pursuant to the Alternative Mortgage Parity Act (the "Act") (specifically, prepayment fees, adjustable rate loans, and late charges) allow for increased mortgage loan options in a more efficient manner. The increased loan options and efficiencies serve as a catalyst in promoting credit at a lower cost than would perhaps otherwise be available. Lower-cost credit allows more applicants to credit qualify which in turn allows more individuals the opportunity to own a home.

MidFirst opines that the most prudent response to predatory lending is not a reduction or modification of existing lending authorities available to savings associations and contained in 12 CFR 560. The concerns raised in the ANPR relate primarily to the incidence of predatory lending due to inadequate oversight of the lending function of some non-OTS regulated lenders. To penalize savings associations that are subject to recurring and thorough regulatory oversight and well established regulation for the actions of entities outside the reach of OTS is unreasonable.

MidFirst does not object to the level playing field opportunities created under the Act; however, MidFirst notes that the stated Congressional intent in passing the Act was to create lending parity. The absence of consistent and uniform regulatory oversight of all lenders acting pursuant to authorities granted in the Act and in OTS regulation implementing the Act is counter to the parity objective. The concerns raised by the ANPR should more appropriately target the disproportionate regulatory oversight and not the lending authorities themselves.



Furthermore, existing statutes and regulations offer the public and enforcement agencies with adequate avenue to take action against a lender engaging in predatory practices. The Fair Housing Act, Equal Credit Opportunity Act, and Unfair and Deceptive Trade Practices Act are examples of available enforcement options; each of these acts is equally applicable to OTS regulated entities and to entities following OTS lending regulation but outside of OTS's regulatory oversight. Modifying a lending authority to preclude a lending practice otherwise prohibited is inefficient and unreasonable.

MidFirst worries that a requirement for additional disclosures would only serve to further overwhelm and confuse many borrowers during the closing process and thereby be counterproductive to the objective of borrower awareness. MidFirst concurs that the level of sophistication and understanding of mortgage products may vary significantly from borrower to borrower and that a lender must maintain some responsibility in ensuring that a product reasonably meets the needs and limitations of a particular borrower. MidFirst also firmly believes that reasonable disclosures are necessary so as to afford the borrower the opportunity to understand the borrowing relationship and credit terms. However, statute or regulation should not extend so far as to obviate any responsibility of the borrower. Furthermore, borrowers are motivated by different factors. Care must be given in establishing regulations to address predatory lending so that access to a variety of credit products is not curtailed.

Should OTS Modify Its Regulations Implementing the Alternative Mortgage Parity Act?

MidFirst disagrees with the need to modify the loan authorities currently implementing the Act as well as those authorities that OTS has deemed to be subject to the Act. MidFirst maintains that the relevant issue should be the inequity with regulatory oversight and enforcement. Further, MidFirst points out that while parity was Congress's intent, parity is not achieved when state law is more lenient than is OTS regulation; in such cases, state chartered lenders have greater flexibility than do OTS entities. Parity is also not achieved when the enforcement of a single lending authority is performed by differing agencies. MidFirst encourages a review of potential options to maintain existing lending authorities but to provide for a more consistent method of regulatory oversight for OTS and non-OTS lenders.

Should OTS Adopt Regulations on High-Cost Mortgage Loans?

MidFirst disagrees with the need for additional disclosures regarding the cost of loans. Regulation Z requires adequate disclosure to the applicant and to the borrower for them to know the cost of the credit and to comparison-shop other lenders. MidFirst believes that increasing the number of disclosures would only exacerbate the existing disclosure/information overload and increase customer confusion. Since APR and other terms are currently required disclosures and since the APR is to be displayed in a highlighted manner, the customer has ample opportunity to notice, consider, and inquire about the APR and how it is calculated. The customer also has the APR to use as a comparison to loans offered by other lenders. The cost information is provided and it is up to the customer to make the final determination if it is reasonable and acceptable to the customer.

Since MidFirst opines that additional disclosures are not necessary, MidFirst disagrees with the need to impose restrictions on certain fees, refinancing, prepayment penalties, balloon payments, negative amortization loans, post-default interest rates, and so on. Each of these items can be used by a lender to develop a particular loan product that meets loan demand in a more efficient



and less costly manner for a particular market. By being more efficient, the cost of providing the credit is better managed and the cost to the customer can be lower. For example, by requiring a post-default interest rate, the lender establishes an incentive for the borrower to remain current and is able to cover costs of collecting on the debt; as a result, the cost of credit to customers remaining current should be lower since customers abiding by loan terms do not need to subsidize the costs of managing delinquent loan accounts.

Should the OTS require lenders to determine the suitability of a mortgage loan product for a particular borrower?

To some extent, lenders currently perform a suitability analysis of the loan applicant by listing and explaining available loan products and in underwriting the application. However, lenders have been encouraged by regulators to centralize and objectify the lending process in order to decrease risks relative to disparate treatment and steering. MidFirst is concerned that a specific suitability analysis requirement would add elements of subjectivity which may increase such risks.

Is Differential Regulation Appropriate?

MidFirst does not object to consistent regulation for all lenders provided the regulation is consistently and uniformly enforced. The current system would appear to create inequities in the enforcement area, and therefore consideration needs to be given to what improvements can be achieved. MidFirst also cautions against expanded regulatory requirements designed to limit predatory lending of state chartered lenders which has an ancillary effect of increasing the burden or impairing the effectiveness of OTS entities vis-à-vis non-OTS lenders and for whom the Act does not apply.

Should OTS impose Certain Due Diligence Requirements?

MidFirst believes some level of credit risk due diligence must be performed prior to purchasing whole loans or loan participations as a prudent risk management procedure. However, MidFirst disagrees with the concept of imposing a specific due diligence requirement in relation to predatory lending. MidFirst believes that this would result in a purchaser being required to enforce predatory lending provisions. Unlike an originating lender, a loan purchaser is not as familiar with the unique characteristics of each loan and each borrower, and it would be unreasonable to require a loan purchaser to defend the specific terms offered and the factors considered in originating a loan. Establishing a predatory lending due diligence requirement would require a review significantly greater than a sampling of the loans in a pool. This expanded due diligence would require determining justification of underwriting decisions and loan terms as well as identifying the local market factors influencing the loan decision and loan terms. Both the number of loans reviewed and the time spent reviewing each loan would increase. This concept would unjustly extend and transfer potential liability from the seller to the purchaser, add additional uncertainty to the acquisition, and reduce the liquidity of the loans.

Establishing a due diligence concept in relation to predatory lending would therefore increase the regulatory burden on the purchaser, establish an unquantifiable variable influencing the price of the purchased loans, impair the efficient operation of the secondary loan market, and transfer all or part of the liability for engaging in predatory lending to an entity not performing the purported predatory practice. Extending this requirement to Mortgage Backed Security (MBS) acquisitions



is even more unreasonable since the MBS market is designed to create a commodity-like instrument that is readily and quickly identified, understood, priced, and sold; by adding the predatory lending variable to the equation distorts and impairs the commodity characteristics of an MBS.

While MidFirst is certainly not advocating that potential loan purchasers turn a blind eye to predatory lending factors, MidFirst believes that adequate enforcement provisions already exist to prevent predatory lending and is concerned about the increased regulatory burden and risk associated with a due diligence concept.

In conclusion, MidFirst encourages the OTS to collect and review in detail data regarding predatory lending prior to drafting a final proposal. MidFirst looks forward to responding to additional OTS inquiries in this area as they are made.

Sincerely,

A handwritten signature in black ink that reads 'Charles R. Lee'.

Charles R. Lee
Vice President