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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

MICHAEL W. DOBBINS
CLERK, UNITED STATES OF AMERICA,
U.S. DISTRICT COURT

Plaintiff,

v.

MID AMERICA BANK, fsb,

Defendant.

CIVIL ACTION NO.

02 C 9458

JUDGE GOTTSCHALL

MAGISTRATE JUDGE LEVIN

CONSENT ORDER

I. INTRODUCTION

This Agreed Order is submitted jointly by the parties for the approval of and entry by the Court simultaneously with the filing of the United States' complaint and the defendant's answer in this action. The Agreed Order fully resolves the claims of the United States that the defendant Mid America Bank, fsb (the Bank) has violated the Fair Housing Act (FHA), 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§1691-1691f, by allegedly discriminating on the basis of race and national origin in the extension of residential real estate-related credit in the Chicago, Illinois, metropolitan area. The Bank denies that it has violated the FHA or ECOA at any time.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. Accordingly, the execution of this Agreed Order is not, and is not to be considered as, an admission or finding of any violation of the FHA or the ECOA by the Bank. Rather, the parties have entered

into this Agreed Order to resolve voluntarily the claims asserted by the United States in order to avoid the risks and burdens of litigation. The parties agree that full implementation of the terms of this Agreed Order provides a reasonable means of addressing the interests and concerns of both the United States and the Bank.

II. REMEDIAL ORDER

A. Nondiscrimination Injunction

The Bank, including all of its officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with any of them, is hereby enjoined from engaging in any act or practice which discriminates on the basis of race, color, or national origin in any aspect of a residential real estate-related transaction, in violation of the Fair Housing Act, 42 U.S.C. §§3604 and 3605, and in any aspect of a credit transaction, in violation of the Equal Credit Opportunity Act, 15 U.S.C. §1691(a)(1). This prohibition includes, but is not limited to, the consideration of race, color, or national origin in marketing, the selection of sites for branch or loan offices, the definition of an assessment area under the Community Reinvestment Act (CRA), 12 U.S.C. §§2901-2906, and the determination of geographic areas in which loan applications are solicited, except as set forth in this Agreed Order to remedy the violations alleged by the United States. The

Bank shall take the steps necessary to ensure that the Bank's marketing and solicitation of, and processing of applications for, all forms of home mortgage financing it offers provides all persons with an equal opportunity to apply for and obtain such credit, regardless of race, color, or national origin. Those steps include, but are not necessarily limited to, the remedial actions set forth in this agreed Order.

B. Overview

The Bank shall take all reasonable, practicable steps consistent with safety and soundness including, but not limited to, those specified below, to ensure that its residential loan products are marketed and made available in the designated census tracts¹ on no less favorable a basis than in majority white residential areas in order to improve its performance in meeting the residential credit needs of the residents of the designated census tracts.

Nothing in this Agreed Order requires the Bank to make any loan that is inconsistent with appropriate underwriting standards. Rather, it requires these actions as a remedy for Mid America's alleged past discrimination so that all persons will

¹ For the purposes of this Agreed Order, the term "designated census tracts" refers to the census tracts that the United States contends the Bank has redlined - i.e., census tracts with a majority African-American, Hispanic, or combined African-American/Hispanic population. These tracts are listed by number on Exhibit A hereto, based on 2000 census data.

have an equal opportunity to access and obtain credit from the Bank, without regard to the racial or ethnic composition of the area in which they reside or their property is located. The Bank retains the discretion to take any other actions which it believes are appropriate to achieve the goal of these remedial measures without the prior approval of the United States or this Court, except as specifically limited in this Agreed Order. All provisions of this Agreed Order are to be implemented in a manner consistent with the safety and soundness of the Bank.

The Bank's initial plan for achieving its remedial goals is set out as follows:

C. Community Reinvestment Act Assessment Area

As noted above, the Bank revised its CRA assessment area in December, 2001, to include all of Cook, DuPage, Kane, and Will Counties. The Bank shall continue to include the entirety of those four counties in its CRA assessment area. Nothing in this Agreed Order precludes the Bank from expanding its CRA assessment area in the future in a manner consistent with the provisions of the CRA and its implementing regulations.

D. Additional Branch Locations

Mid America's residential lending business has been generated primarily by the activities of loan officers based in either branch offices or two suburban loan production offices. The Bank anticipates this business model to continue for the

foreseeable future. The Bank commits itself to evaluate future opportunities for expansion, whether by acquisition or opening new offices, in a manner consistent with achieving the remedial goals of this Agreed Order.

The Bank shall open or acquire two (2) additional branch offices located in designated census tracts during the term of this Agreed Order, subject, where necessary, to obtaining local governmental permits and approvals and the approval of the Office of Thrift Supervision. Both of these new branches will provide the full range of services and hours of operation typically offered at the Bank's other branches, including, but not limited to, a full range of residential mortgage lending services. There shall be at least one full-time mortgage lending officer resident at each of the two new branches.

The Bank shall promptly evaluate possible locations for these new branches in the designated census tracts so as to better position itself to meet the credit needs of those areas. At least one of the new branches opened pursuant to the terms of this Agreed Order shall be located within a majority African-American census tract within the designated census tracts. The other new branch shall also be located within a designated census tract. The Bank shall present its preliminary proposal for the first of these new branches to the United States for its review within six (6) months of the date of entry of this Agreed Order.

The Bank shall open or acquire the first new branch under this remedial plan within eighteen (18) months of the date of entry of this Agreed Order. The Bank shall inform the United States in advance of the proposed location of the second new branch office in the designated census tracts and shall open or acquire that office within thirty (30) months of the date of entry of this Agreed Order. Nothing in this Agreed Order precludes the Bank from opening or acquiring additional branch offices in the designated census tracts or elsewhere. Nor does any provision of this Agreed Order require the Bank to consult with the United States or any of its agencies regarding its establishment or acquisition of any other branches or offices except as required by law.

E. Advertising and Outreach

The Bank shall undertake an advertising program specifically targeted to generate significant additional applications for residential real estate-related credit from qualified residents of the designated census tracts. This advertising program shall include, at a minimum, the following components, although the Bank remains free to undertake on its own initiative additional advertising efforts designed to achieve the same remedial goal:

(1) Print Media. In addition to any other advertising, the Bank shall advertise its full range of residential loan products, including any special products or services made available as part of its remedial efforts under this Agreed Order, in print media

directed at African-American and Hispanic readers, particularly those living in designated census tracts. During the term of this Agreed Order, the Bank will place a total of at least 1,200 column-inches of advertising during each one-year period in print media oriented to those minority readers. The Bank retains the discretion to determine the size, content, frequency, and placement of such advertising, provided that it meets the overall commitment of 1,200 column-inches for each one-year period. Within ten (10) days of the date of this Agreed Order, the Bank shall submit a list of the publications it will initially use for this purpose to the United States for approval.

(2) Radio. During the term of this Agreed Order, the Bank shall place a total of at least 380 thirty-second spots per one-year period on at least three Chicago-area radio stations whose programming is oriented toward African-American or Hispanic listeners. This program shall advertise the Bank's full range of residential loan products, including any special products or services made available as part of its remedial efforts under this Agreed Order. The Bank retains the discretion to determine the content, frequency, and placement of such radio spots, provided that it meets the overall commitment of 380 spots for each one-year period and that a minimum of 60% of these ads are placed on radio stations oriented to African-American listeners. Within ten (10) days of the date of this Agreed Order, the Bank shall submit a list of the stations it will initially use for this

purpose to the United States for approval.

(3) Promotional Materials. The Bank will create point-of-sale materials, such as posters and brochures, to advertise products and services it offers which it reasonably believes, based on the credit needs assessment described below, will be of interest to residents of the designated census tracts. The Bank will place or display these promotional materials in appropriate distribution locations throughout the designated census tracts.

Additionally, the Bank will develop a brochure describing, in addition to whatever standard products and services it chooses to include, those products and services it reasonably believes, based on the credit needs assessment described below, will be of interest to residents of the designated census tracts. Those products shall include, but are not limited to, those for first-time home buyers, those available through the Bank's participation in community lending or development initiatives, any special ones implemented under the terms of this Agreed Order, and its FHA and VA loan programs. The Bank shall distribute at least 3,000 of these brochures each one-year period for the duration of this Agreed Order by means including, but not limited to, direct mail, home buyer or credit counseling programs, community organizations, and real estate professionals doing business in majority minority census tracts. The Bank retains the discretion to vary the contents of such brochures in any manner which it reasonably believes will enhance their remedial

effectiveness.

(4) The Bank estimates that the cost of this targeted remedial advertising campaign will be approximately \$150,000 per year for the duration of this Agreed Order.

(5) All of the Bank's print advertising shall continue to contain an equal housing opportunity logotype, slogan, or statement as described in the United States Department of Housing and Urban Development's fair housing advertising guidelines formerly published at 24 C.F.R. Part 109, attached hereto as Exhibit B. The Bank will follow the guidance of Tables I and II of Appendix I in selecting appropriate type size and other standards for advertising. All of the Bank's radio and television advertisements shall include the audible statement "Equal Opportunity Lender". Alternatively, if a Bank television commercial includes a written statement appearing on the screen, the non-discrimination statement may also be so displayed, provided that it meets the requirements set forth in Appendix I and appears on the screen as long as any other written statement appears.

F. Credit Needs Assessment

The Bank shall promptly undertake additional efforts to assess the home mortgage residential real estate-related credit needs of the designated census tracts. This assessment shall include: (a) analysis of the most recent available demographic and socioeconomic data about the designated census tracts; (b) evaluation of the home mortgage residential credit needs of and

home mortgage lending opportunities in the designated census tracts identified by area non-profit and for-profit entities; (c) consideration of how the Bank's home mortgage residential real estate-related lending operations can serve the remedial goals of this Agreed Order; and (d) thorough review of the availability of relevant federal, state, and local governmental programs and evaluation of how participation in each of them would assist (or not) in achieving the remedial goals of this Agreed Order. The Bank may retain outside parties to provide expert analysis and assistance in performing this assessment.

In accomplishing this assessment, Bank representatives shall meet with representatives of at least five (5) Chicago-area community organizations significantly involved in promoting fair lending and/or home ownership or development in the designated census tracts. These meetings shall include consideration of how the Bank's home mortgage residential loan products and services meet the credit needs identified by those community organizations and how, if at all, they could be improved. For purposes of complying with this requirement, to the extent that Bank employees serve on the Boards of Directors of the community organizations in question, such issues can be addressed through discussions between the Bank employee and knowledgeable representatives of the organization. The Bank may also meet with representatives of any other public or private entities it chooses in undertaking this needs assessment.

The Bank shall present a written report of this special credit needs assessment, together with recommendations, if any, for those actions beyond those specified in this Agreed Order to be taken to meet those needs to counsel for the United States not later than six (6) months after the entry of this Agreed Order. For the term of this Agreed Order, the Bank shall thereafter annually meet with community organizations as part of an annual effort to evaluate and modify, if necessary or appropriate, its credit needs assessment and action plan in order to better meet the home mortgage residential credit needs of the residents of the designated census tracts.

G. Community Outreach

(1) The Bank shall continue to participate actively in both governmental and private lending and development initiatives which benefit the residents of the designated census tracts and shall not decrease the total annual monetary value of its participation below that for the calendar year 2001 for any one-year period during the term of this Agreed Order; it may, in its discretion, increase the total amount of such funding. The Bank may also exercise its discretion in deciding the specific programs in which it chooses to participate and the amount of funds it will contribute or make available to each. Barring unforeseen program changes, the United States and the Bank anticipate that it will continue to participate in programs such as the Fannie Mae Anti-Predatory Lending Initiative, the ACORN Community

Housing Program, the Community Investment Corporation, Neighborhood Housing Services Initiatives, and the Congressional Black Caucus With Ownership Wealth (WOW) Initiative. The Bank will continue to seek out and, at its discretion, participate in other community programs and fair lending initiatives, those which currently exist and those which may be developed in the future, which promote both fair lending generally and the remedial goals of this Agreed Order specifically in the designated census tracts.

(2) The Bank shall provide credit counseling, financial literacy, home-buying, and other related educational programs targeted at the residents of the designated census tracts. During the term of this Agreed Order, the Bank shall invest a minimum of \$500,000 to implement a comprehensive homebuyer education and counseling program targeted to the designated census tracts. At least one half of that amount shall be used to sponsor such programs offered by community organizations. The Bank, at its discretion, may use up to one half of that amount to implement its own similar internal education and counseling programs targeted to the residents of those areas. In measuring the amount of the Bank's investment for purposes of this requirement, funds that the Bank provides to community organizations pursuant to subparagraph G(1) shall not be included, unless such funds are specifically designated by the Bank for the purpose of homebuyer education and counseling programs.

(3) During the term of this Agreed Order, the Bank will conduct periodic programs - a minimum of six (6) per year - for real estate brokers and agents, developers, and public or private entities doing business in the designated census tracts to inform them of the products and services the Bank offers, including those detailed in this Agreed Order, and to otherwise develop business relationships with them. These programs shall be offered at locations reasonably convenient to the business operations of the attendees.

H. Staff

1. The Bank shall continue to employ a full-time Director of Community Lending (or equivalent title), holding the rank of Vice President, whose responsibilities will include, among others, overseeing the development of the Bank's residential lending business in the designated census tracts. The Director will supervise the activities of loan officers regarding the solicitation and origination of residential real estate-related loans in the designated census tracts, including the special loan programs identified in this Agreed Order; coordinate the Bank's involvement in community lending initiatives and outreach programs; serve as a resource to lending staff to encourage the origination of more residential real estate-related loans within the designated census tracts; and update the Bank's senior management on the progress of these initiatives at least semi-annually, including recommending changes in these programs to

million over five (5) years - when combined with the other financial commitments specified herein, will satisfy fully the claims of the United States for damages and other monetary relief in this case.

No provision of this Agreed Order, including this special financing program commitment, requires the Bank to make any unsafe or unsound loan. During the life of this Agreed Order, the Bank shall assess the effectiveness of this special financing program in achieving its remedial goal and, in its discretion, may recommend to the United States changes to increase its remedial effectiveness.

Under the terms of this special financing program, the Bank will offer residents of the designated census tracts residential real estate-related loan products at interest rates and/or on terms that are more advantageous to the applicant than would normally be provided. The Bank will thereby subsidize each such transaction by one or more of the following means: an interest rate below that which the Bank would normally charge, down payment or closing cost grants or assistance, or other financial aid. The terms of this special financing program are as follows:

(1) No loan originated under this program shall exceed the conforming loan limit applicable to Fannie Mae and Freddie Mac, as determined annually by the Federal Housing Finance Board (currently \$300,700). Subject to that upper limit for each borrower, the Bank may provide one or more of the following forms

of financial assistance to any qualified applicant:

(a) a loan for a home purchase, refinancing, or home improvement at an interest rate $\frac{1}{2}$ percent below the otherwise prevailing rate, provided that if the prevailing rate (APR) for any such loan exceeds 7% at any time during the term of this Agreed Order, the maximum interest rate subsidy shall be 1%, and if the prevailing APR exceeds 9%, the maximum subsidy shall be 2%;

(b) a home purchase loan at the Bank's prevailing mortgage prime interest rate for a conventional fixed-interest rate mortgage to a borrower who would ordinarily not qualify for such rates for reasons such as, for example, the lack of required credit quality, income, or down payment;

(c) a direct grant of a maximum of 2% of the loan amount for the purpose of down payment assistance;

(d) closing cost assistance in the form of a grant of a minimum of \$400 and a maximum of \$800; or

(e) any other form of financial assistance deemed appropriate by the Bank on a case-by-case basis, including that available from any programs or lending initiatives developed by the Bank or others, provided that any such programs do not conflict with the purposes of this Agreed Order.

The Bank retains the discretion to offer any one or more, or all, of the foregoing forms of financial assistance to qualified applicants on an individual basis as it deems appropriate under

the unique factual circumstances of a particular application. The Bank will exercise this discretion in a manner which maximizes the likelihood that **it** will originate a loan to a qualified applicant, consistent with applicable underwriting guidelines and safety and soundness standards.

(2) The Bank's investment of an average of \$2 million per year in this special financing program for five (5) years shall be determined by the costs it incurs for the provision of subsidized interest rates (based on an estimated average loan life of 7.5 years), down payment grants, closing cost assistance, and any other direct financial assistance to a borrower under any other of the Bank's fair lending programs or initiatives. With respect to loans made through the affordable lending initiative under subsection (1)(b), it is agreed that the cost to the Bank will be deemed to be the cost of an interest rate difference of 2% (based on an estimated average loan life of 7.5 years), regardless of whether the actual difference between the interest rate charged by the Bank and the otherwise applicable mortgage lending rate is different from 2%.

(3) If the Bank reaches the \$2 million investment level before the end of any one-year period, **it** may, in its discretion: (a) withhold any additional funding for this special financing program for the remainder of that period; or (b) consistent with safety and soundness considerations, exceed that figure for the year. If the Bank does not invest \$2 million in this program in

any one-year period, the balance shall be added to its commitment for the following year. If the Bank exceeds the targeted \$2 million investment in any one-year period, the excess will be credited toward the total \$10 million investment required by this Agreed Order. If, at the end of five years, the Bank has not expended the full amount of its \$10 million commitment, it shall extend this special financing program until it has expended the full amount. Once the Bank has met its targeted investment total of \$10 million, at whatever date after the entry of this Agreed Order that occurs, it will be deemed to have discharged its obligations under the special financing program.

(4) Although any resident of any of the designated census tracts may be eligible for assistance under this special financing program, the Bank shall take appropriate steps in its discretion to promote an equitable distribution of these investment funds widely among the designated census tracts. This discretion includes the authority to designate a certain amount of this funding at any time for residents of certain tracts within the entire area in order to prevent a disproportionate concentration of the Bank's investment under this program in a relatively small geographic area.

IV. EVALUATING AND MONITORING COMPLIANCE

For the duration of this Agreed Order, Mid America shall retain all records relating to its obligations thereunder, including its residential real estate-related lending, advertising,

outreach, branching, special programs, and other compliance activities as set forth herein. The United States shall have the right to review and copy such records upon request. This Agreed Order shall not be interpreted to require the Bank to deviate from its ordinary document retention procedures with respect to its business activities in areas other than those related to its obligations under the Agreed Order.

For the duration of this Agreed Order, the Bank shall annually provide to counsel for the United States the data it submits to the Federal Financial Institutions Examination Council (FFIEC) pursuant to the Home Mortgage Disclosure Act. The data will be provided in the same format in which it is presented to the FFIEC within thirty (30) days of its submission to the FFIEC.

In addition to the submission of any plans or reports specified above in this Agreed Order, the Bank shall make an annual report to the United States on its progress in fulfilling the remedial goals of this Agreed Order. Each such report shall provide a complete account of the Bank's efforts to comply with each requirement of this Agreed Order during the previous year, an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular remedial component fell short of meeting its goal for that year, and any recommendations for additional actions to achieve the remedial goals of this Agreed Order. The Bank shall submit this report each year for the term of this Agreed Order within ninety (90)

days of the close of the Bank's fiscal year. In addition, the Bank will attach to the annual reports representative copies of advertising and marketing materials disseminated pursuant to this Agreed Order, together with any changes in the publications or radio stations selected for such purposes.

The Bank has previously contracted with a Chicago-area fair housing organization to test for unlawful discrimination in its lending practices. For the duration of this Agreed Order, the Bank shall continue to contract with that organization, or a similarly qualified one, to test for any such unlawful discrimination. The Bank will review the testing results promptly after they are submitted to it by the organization and will use those results for any appropriate purpose, including to determine whether changes in its fair lending training are necessary or further training of individual employees is required.

V. ADMINISTRATION

This Agreed Order shall be binding on the Bank, and any of its officers, employees, agents, representatives, assignees, subsidiaries, and successors in interest.

The Agreed Order shall terminate in either (a) three months after the submission of the Bank's fifth annual report to the United States; or (b) if the Bank has not invested \$10 million in its special financing program in five (5) years from the date of entry of this Agreed Order, three months after the submission of the Bank's final annual report to the United States.

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- 21 -

Patrick J. Fitzgerald
United States Attorney

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days of the close of the Bank's fiscal year. In addition, the Bank will attach to the annual reports representative copies of advertising and marketing materials disseminated pursuant to this Agreed Order, together with any changes in the publications or radio stations selected for such purposes.

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V. ADMINISTRATION

This Agreed Order shall be binding on the Bank, and any of its officers, employees, agents, representatives, assignees, subsidiaries, and successors in interest.

The Agreed Order shall terminate in either (a) three months after the submission of the Bank's fifth annual report to the United States; or (b) if the Bank has not invested \$10 million in its special financing program in five (5) years from the date of entry of this Agreed Order, three months after the submission of the Bank's final annual report to the United States.

This Agreed Order may be modified at any time by either (a) written agreement of the Bank and the United States or (b) upon motion by either party and approval by the Court. The parties recognize that there may be changes in relevant and material factual circumstances during the term of this Agreed Order which may impact the accomplishment of its remedial goals. The parties agree to work cooperatively to discuss any proposed modifications to this Agreed Order which one or the other reasonably believes will enhance the achievement of its remedial goals.

In the event that any disputes arise concerning the interpretation of or compliance with the terms of this Agreed Order, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The United States agrees that if it reasonably believes that the Bank has violated any provision of this Agreed Order, it will provide the Bank written notice thereof and give it thirty (30) days to resolve the alleged violation before presenting the matter to this Court.

The Bank's compliance with the terms of this Agreed Order shall fully and finally resolve all claims of the United States as of the date of this Agreed Order relating to the Bank's alleged violation of the fair lending laws on the basis of race,

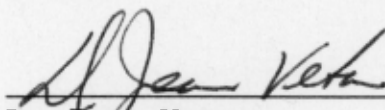
color, or national origin, including all claims for both equitable relief and monetary damages and penalties.

SO ORDERED, this _____ day of _____, 2002.

UNITED STATES DISTRICT JUDGE

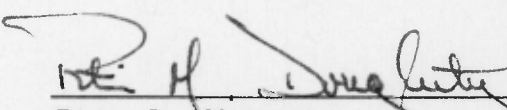
The undersigned hereby apply for and consent to the entry of this Order:

For Mid America Bank, fsb


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