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FAIR LENDING FREQUENTLY ASKED QUESTIONS

Fact Sheet #12

Published by the High Plains Fair Housing Center

What is fair lending? Fair lending prohibits lenders from considering your race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, or disability when applying for residential mortgage loans or associated services (such as appraisal). Fair lending guarantees the same lending opportunities to everyone. The federal Fair Housing Act makes it unlawful to engage in the following practices based on a protected group noted above:

- Refuse to make a mortgage loan or refinance a mortgage loan;
- Refuse to provide information regarding loans;
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees;
- Discriminate in appraising property;
- Refuse to purchase a loan or set different terms or conditions for purchasing a loan; and
- Discriminate in providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling or other financial assistance secured by residential real estate.

The U.S. Department of Housing & Urban Development (HUD) Office of Fair Housing and Equal Opportunity enforces the federal Fair Housing Act, and state and local enforcement agencies enforce fair housing laws that are substantially equivalent to the federal Fair Housing Act. There are other laws, including the Equal Credit Opportunities Act (ECOA), which also protect your rights, but are not enforced by HUD.

Frequently Asked Questions

When does lending discrimination occur? Whether you are purchasing or refinancing a home, lending discrimination can occur at any stage of the lending process. For example, if a lender refuses to make a mortgage loan because of your race or ethnicity, or if a lender charges excessive fees to refinance your current mortgage loan based on your race or ethnicity, the lender is in violation of the federal Fair Housing Act.

What are some of the warning signs of lending discrimination? The signs of lending discrimination may be blatant or subtle. They can occur in the marketing of mortgage loan products, mortgage loan transactions, terms and conditions of the loan, in the appraisal of a home, and in loan servicing.

In the marketing of mortgage loan products, be aware of:

- Aggressive solicitations of adverse terms of credit to targeted minority neighborhoods, racial or ethnic groups, and communities; or
- Racial steering to high cost lenders.

In the mortgage loan transaction, be aware of:

- Requiring that women, but not men, provide a co-signer for a loan.

In the terms and conditions of the mortgage loan that are more often imposed upon borrowers of a certain race or nationality or upon women, be aware of: (1) Unnecessary closing costs; (2) Recording fees; (3) Excessive prepayment penalties; or (4) Changing mortgage loan terms at closing without the consent of the borrower.

In the appraisal of a home, be aware of properties that are undervalued because of the race or nationality of either the borrower or the other residents in the surrounding neighborhood. In the servicing of the mortgage loan, be aware of collection or foreclosure practices being applied more harshly because of the race or nationality of either the borrower or the other residents in the surrounding neighborhood.

If I'm on paid maternity leave but plan to go back to work, can I be denied a mortgage? Since 2010, HUD has seen a steady stream of complaints alleging discrimination against borrowers who are on maternity leave. In these cases, lenders allegedly denied or delayed loans to working women because they were pregnant or on maternity leave. Sometimes, a lender allegedly treated women differently by requiring women to end their maternity leave and return to work in order to be approved for a loan. HUD enforces the Fair Housing Act which prohibits discrimination in lending based on sex (including gender identity and sexual orientation) or familial status (pregnancy or children in the family). The Act protects consumers from being discriminated against because a borrower is on maternity leave if she can demonstrate that she intends to return to work and can otherwise continue to meet the income requirements to qualify for the loan. HUD's Federal Housing Administration (FHA) requires its approved lenders to review a borrower's income to determine whether they can reasonably be expected to continue paying their mortgage. FHA-insured lenders cannot, however, inquire about future maternity leave. If a borrower is on maternity or short-term disability leave at the time of closing, lenders must document the borrower's intent to return to work, that the borrower has the right to return to work, and that the borrower qualifies for the loan taking into account any reduction of income due to their leave.

What must I provide to prove disability income for a mortgage? In the past, Social Security disability income recipients have faced extra challenges in providing proof that their disability payments are likely to continue. The Social Security Administration (SSA) provides these benefits for individuals with serious disabilities, but generally will not provide documentation regarding how long benefits will last. Some applicants have reported being asked by mortgage lenders or their agents for information about their disabilities or for statements from their physicians about the likely duration of their disabilities. ECOA and Regulation B prohibit creditors from discriminating in any aspect of a credit transaction against an applicant because all or part of the applicant's income derives from a public assistance program. The Fair Housing Act also provides protection due to disability.

Fair lending concerns may arise when a creditor requires additional documentation beyond that required by lawful applicable agency or secondary market standards and guidelines to demonstrate that Social Security disability income is likely to continue, such as information about the nature of an applicant's disability or a letter from an applicant's physician. Guidance provided by the Consumer Finance Protection Bureau states that verification of Social Security income may occur by means of "a Social Security Administration benefit verification letter (sometimes called a 'proof of income letter,' 'budget letter,' 'benefits letter,' or 'proof of award letter')." The Guidance explains that "[i]f the Social Security Administration benefit verification letter does not indicate a defined expiration date within three years of loan origination, the creditor *shall* consider the income effective and likely to continue."

The Guidance further notes that "[p]ending or current reevaluation of medical eligibility for benefit payments is not considered an indication that the benefit payments are not likely to continue." HUD has taken a similar approach for loans insured by the Federal Housing Administration (FHA), as has the Department of Veterans Affairs (VA) for loans it guarantees.

If I receive Section 8, can I still be qualified for a mortgage? Yes, if you meet requirements and your Public Housing Authority participates in this program. The Section 8/Housing Choice Voucher (HCV) Homeownership Program helps low-income consumers buy their first homes. The program is funded by HUD and administered by participating local Public Housing Authorities. If you're eligible for the program, it can provide you with monthly payments to help cover homeownership expenses. Under ECOA, it's against the law for a creditor to discriminate against applicants because of income from public assistance. Excluding or refusing to consider these vouchers as a source of income categorically, or accepting the vouchers only for certain types of mortgage loans, may violate ECOA.

References & Resources

Visit the HPFHC website for more Fair Housing resources: www.highplainsfhc.org

HUD's Fair Lending: Learn the Facts

CFPB Provides Guidance to Help Lenders Avoid Discrimination Against Consumers Receiving Disability Income

CFPB Guidance: Income from the Section 8 Housing Choice Voucher Homeownership Program shouldn't mean you don't qualify for a mortgage

The mission of the High Plains Fair Housing Center is to strengthen communities and to ensure equal access to fair housing in the region through training, education, enforcement, and advocacy. For more information, please contact:

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