FAIR HOUSING ACT (FHA)

OVERVIEW

Overview

The Fair Housing Act (FHA) provides fair housing throughout the United States by regulating many practices relating to housing. In particular, FHA makes it unlawful for any lender to discriminate in its housing-related lending activities against any person because of race, color, religion, national origin, sex, handicap, or familial status.

The FHA works in conjunction with the Equal Credit Opportunity Act (ECOA) to prohibit discrimination by anyone who is in the business of providing loans for housing. The Department of Housing and Urban Development has primary FHA regulatory and enforcement authority over credit unions. HUD FHA regulations are located at 12 CFR Parts 100, 103, and 110, and guidance on discriminatory advertising practices is located on the HUD website. Federal credit unions must also comply with NCUA Rules and Regulations Section 701.31, 12 CFR Section 701.31.

Non-Discrimination in Lending

A credit union may not deny a loan or other financial assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, nor may it discourage an application for such a loan, on the basis of the race, color, religion, handicap, familial status (having children under the age of 18), national origin, or sex of:

- The loan applicant or joint applicant;
- Any person associated with the loan applicant or joint applicant;
- The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling.

It is unlawful to discriminate because of race, color, religion, handicap, familial status, national origin, or sex in determining the:

- Amount;
- Interest rate;
- Duration; or
- Other credit terms.

Consideration of the following factors is not necessary to a federal credit union's business, generally has a discriminatory effect, and is therefore prohibited:

- Age or location of the dwelling;
- Zip code of the applicant's current residence;
- Previous home ownership;
- Age or location of dwellings in the neighborhood of the subject dwelling; or
- Income level of residents in the neighborhood of the dwelling.

A credit union may not rely on an appraisal that it knows or should know is based upon any prohibited bases or factors listed above.

Legal Interpretations

Because the FHA was broadly written by Congress, the courts have ruled a wide variety of lending practices illegal under the Act, including some that the Act itself does not specifically mention but which the courts determined are illegal because they violate implicit requirements and prohibitions. Examples of some prohibited practices include:

- Redlining on a racial basis. "Redlining" is the practice of denying loans for housing in certain neighborhoods even though the individual applicant may be otherwise eligible for credit.
- Making excessively low appraisals in relation to purchase prices, based on prohibited considerations (closely akin to redlining).
- Discouraging applications for credit on prohibited bases, as well as outright denials. Taken together, the FHA and ECOA produce a strong statutory prohibition against prescreening or discouraging applicants by housing sellers or lenders, even to the point of ensuring that their advertising policies do not have that effect.
- The use of excessively burdensome qualification standards for the purpose, or with the effect, of denying housing to protected applicants.
- Applying differing standards or procedures in administering foreclosures, late charges, penalties, or reinstatements, or other collection procedures.
- Racial notation or code on appraisal forms or loan forms (other than the information which §202.13 of Regulation B requires the credit union to retain for monitoring purposes).
- Use by initial interview personnel of scripts designed to discourage protected applications.
- Patterns of significantly greater or exclusive use of insured or guaranteed loan programs by protected groups or in certain areas. This may indicate illegal "steering" to this type of lending by the credit union.

Advertising

Credit unions may not directly or indirectly engage in any form of advertising of real estate related loans that implies or suggests the credit union discriminates.

Any credit union that advertises real estate related loans must prominently indicate in the advertisement, in a manner appropriate to the advertising medium and format used, that it makes such loans without regard to the prohibited bases. In addition, every credit union engaged in real estate lending must provide a notice of nondiscrimination in its lobby. The notice must be clearly visible to the general public and must contain the logotype and language appearing in HUD's FHA guidelines on advertising or, for federal credit unions, NCUA Rules and Regulations Section 701.31(d)(3).

Associated Risks

The following risk areas apply to the compliance area:

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with the FHA, and
- Reputation risk can occur when the credit union receives negative publicity or declined membership confidence as a result of failure to comply with the FHA.

Additional Information

Please refer to Section 701.31(e) of the NCUA Rules and Regulations for additional guidelines concerning nondiscrimination in lending. In addition, information is available on HUD's website at http://www.hud.gov .

Please note the ECOA and the Fair Housing Act should be read together in order to fully understand the scope of a credit union's fair lending obligations. For example, the bases of discrimination prohibited by the ECOA are similar, but not identical, to those prohibited by the FHA.

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OPERATIONAL REQUIREMENTS

Enforcement / Liability

Administrative Enforcement Authority [Section 810 of the FHA]

The Department of Housing and Urban Development (HUD) has responsibility for administrative enforcement for both federal and state-chartered credit unions.

Enforcement Mechanisms [Sections 810, 812, 813, and 814 of the FHA]

The Attorney General may bring a civil court action directly when reasonable cause exists to believe persons or entities are engaged in a pattern or practice of FHA violations. In addition, a person who claims to have been discriminated against may:

1) file a private civil action directly in federal court; or

2) file a complaint with HUD. HUD will investigate the complaint and it may attempt to resolve the grievance by means of conference, conciliation, and persuasion. If it finds a FHA violation, HUD may take administrative action against the violator or, when reasonable cause exists to believe that persons or entities are engaged in a pattern or practice of violations, may refer the case to the Attorney General for action in federal court.

Penalties and Liabilities [Sections 812, 813 and 814 of the FHA]

Administrative remedies available to HUD include permanent or temporary injunctions, restraining orders, or other relief including monetary damages and civil penalties. In civil court actions, the court may grant relief as it deems appropriate, including monetary damages, permanent or temporary injunctions, temporary restraining orders, or other similar remedy. Court-awarded monetary damages may include both punitive and actual damages.

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or because they have exercised, rights granted by certain sections of FHA [Section 818 of the FHA].