Fair Lending: Frequently Asked Questions

Fact Sheet #10

FAIR HOUSING CENTER *of* CENTRAL INDIANA

What is fair lending?

The federal Fair Housing Act prohibits lenders from discriminating against you due to your race, color, national origin, religion, sex/gender, familial status, or disability when applying for residential mortgage loans or associated services (such as an appraisal). For example, the federal Fair Housing Act makes it unlawful to engage in the following practices, *based on or impacting a protected group:*

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

The Act also includes protections in the home appraisal process and in obtaining or maintaining home insurance.

What are potential signs of lending discrimination?

Here are some examples of potential signs of lending discrimination. They may be blatant or subtle.

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

- aggressive solicitations of adverse terms of credit to targeted neighborhoods of color, racial or ethnic groups, or communities.
- racial steering to high-cost lenders.

Throughout the mortgage loan transaction, be aware of:

- requiring that women, but not men, provide a cosigner for a loan.
- requiring someone on maternity leave return to work before approving an application that they qualify for.

In the terms and conditions of the mortgage loan (when applied differently across protected classes), be aware of:

- unnecessary closing costs.
- excessive prepayment penalties or balloon payments.
- changing mortgage loan terms at closing.

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 receive Section 8, can I still qualify for a mortgage?

The Section 8/Housing Choice Voucher (HCV) Homeownership Program helps low-income consumers buy their first home. The program is 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 the Equal Credit Opportunity Act (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.

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 if a lender charges excessive fees to refinance your current mortgage loan based on your national origin, the lender is likely in violation of the federal Fair Housing Act.

This could also include the location of the home that you plan to purchase. For example, if a lender offers better mortgage terms to a homebuyer in a majority white neighborhood compared to a similarly situated homebuyer in a historically excluded neighborhood, this could violate fair housing laws.

How's your lender's performance?

The FHCCI has a free data portal to review how mortgage lenders across Indiana are performing in meeting their fair lending requirements, including as compared to their peers. Visit www.fhcci.org/data/.

For more information, check out the FHCCI's Education page on this topic:

https://www.fhcci.org/programs/education/lending/

Or scan the QR code:

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Other Lending-Related Laws

Home Mortgage Disclosure Act (HMDA) requires many financial institutions to collect, report, and publicly disclose mortgage lending activity.

Community Reinvestment Act (CRA) encourages financial institutions to help meet the credit needs of low- and moderate-income communities.

Truth in Lending Act (TILA) protects consumers against inaccurate or unfair credit practices.

Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating on the basis of race, color, religion, national origin, sex, marital status, age, and receipt of public assistance.

Indiana Home Loan Practices Act protects various aspects of home loans, particularly those considered "high-cost home loans," to protect consumers from predatory lending practices.

What should I do if I believe I'm a victim of housing discrimination?

Housing discrimination due to a protected class is unlawful, and you have the right to file a complaint. Contact the FHCCI with any questions or to learn of your options under law.

Pregnancy and/or Parental Leave

The federal Fair Housing Act prohibits discrimination in lending based on familial status, which includes discrimination due to pregnancy. The Act protects consumers from being discriminated against because a borrower is on maternity leave, for example, so long as they can demonstrate that they intend to return to work and can otherwise continue to meet the income requirements to qualify for the loan. The 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. For example, if a borrower is on maternity or short-term disability leave at the time of their loan 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, considering any reduction of income due to their leave. However, such requirements cannot be any more burdensome as it is for verifying *any* borrower's continued employment or any other form of leave.

Disability Income Verification

In the past, Social Security Disability Income (SSDI) recipients have faced unnecessary challenges in providing proof that their disability payments are likely to continue. The Social Security Administration (SSA) provides SSDI benefits for individuals with serious disabilities but generally does not provide documentation regarding how long benefits will last because they are ongoing to retirement age. However, 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. The federal Fair Housing Act provides protection from housing discrimination in lending transactions due to disability. ECOA and Regulation B also 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 (like SSDI).

Fair lending concerns may arise when a creditor requires additional documentation to demonstrate that SSDI is likely to continue, such as information about the nature of an applicant's disability or a letter from an applicant's physician, beyond that required by law, standards, or guidelines. Guidance provided by the Consumer Finance Protection Bureau states that verification of SSDI 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." Other lending laws have taken a similar approach.

FHCCI Mission Statement

The mission of the Fair Housing Center of Central Indiana (FHCCI) is to facilitate open housing for all people by ensuring the availability of affordable and accessible housing; promoting housing choice and homeownership; advocating for an inclusive housing market; working toward stable and equitable communities; and eradicating discrimination within Central Indiana, the State of Indiana, and nationally.

Contact us!

If you are experiencing barriers to housing, including issues with your lender or during the mortgage process, please reach out to the FHCCI:

317-644-0673
Toll-Free: 855-270-7280
Relay: 711

info@fhcci.org
www.fhcci.org

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