HUD REVISES FAIR-LENDING REGULATIONS

New discrimination prohibited bases added for HUD programs
* * *
Last month the federal Department of Housing and Urban Development finalized some changes to its regulations relating to fair housing (or equal access to housing, using HUD's terminology). The changes impact HUD loan programs, including FHA-insured mortgage lending, and were effective on March 5, 2012.
The amendments add new definitions to the HUD regulations for "sexual orientation" and "gender identity." By
doing so, HUD has added sexual orientation and gender identity to its list of discrimination prohibited bases for HUD-sponsored housing practices.
(No, you didn't miss the new law that was enacted to prohibit discrimination on these bases. There wasn't one. HUD is doing this based on evidence that LGBlesbian, gay, bisexual, transgenderindividuals and families that have been denied access to housing.)

There are also many states and local jurisdictions that have passed laws that address sexual orientation and gender identity discrimination, either in employment or housing, or both.
New program definitions
The new definitions are added to 24 CFR General HUD Program Requirements and they need to be clearly understood.
"Gender Identity" means actual or perceived gender-related characteristics.
"Sexual Orientation" refers to homosexuality, heterosexuality or bisexuality.

There are also changes to the existing definitions of family, disabled family, elderly family, and near-elderly family to incorporate co-heads of families in addition to spouses and individual heads of families.
Where lenders come into the picture
HUD
amendments also specifically prohibit an FHA lender from taking into consideration sexual orientation and gender identity in determining the adequacy of a mortgagor's income.

HUD

was considering, but decided against (for now) imposing a data collection and reporting component to go along with the gender identity and sexual orientation prohibited bases. HUD decided not to require at this time a HMDA-like government-monitoring request and reporting process in which applicants would be asked to voluntarily disclose their sexual orientation and gender identity for reporting to HUD.

HUD said in the Feb. 3 Federal Register final rule announcement that it needs study the feasibility of such a system. However, in the interim, HUD said that its rules do not prohibit "mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity solely for compliance

reporting of sexual orientation or gender identity solely for complia with data collection requirements of state or local governments or other federal assistance programs." (Emphasis added.)

In

summary, the prohibited bases of sexual orientation and gender identity are now incorporated officially into HUD rules that impact FHA-insured loans and HUD programs. They are not included in general-scope federal fair housing laws or regulations.

However,

there may be state or local laws that apply to private-sector lending. It is probably a precursor to a more general application of the prohibited bases to all housing-related lending activities, especially if HUD finds further evidence that LGBT individuals and families are being subjected to discriminatory housing practices.

Ву

applying fair lending (in the broadest sense) to lending practices, financial institutions can possibly stave off more laws and regulations (with HMDA-like reporting as a bonus).

About Nancy Derr-Castiglione
"Lucy and Nancy's Common Sense Compliance" is blogged by both Lucy Griffin and Nancy Derr-Castiglione, both ABA Banking Journal contributing editors on compliance.
Nancy, a Certified Regulatory Compliance Manager, is owner of D-C Compliance Services, an independent regulatory compliance consulting services business that has provided expertise in compliance training, monitoring, risk assessment, and policies and procedures to financial institutions since 2002.
Previously, Nancy held compliance positions with Bank One Corporation and with United Banks of Colorado.
In addition to serving as a Contributing Editor of ABA Banking Journal, Nancy has served on the ABA Compliance Executive Committee; National and Graduate Compliance Schools board; conference planning committees, and the Editorial Advisory Board for the ABA Bank Compliance magazine. She can be reached at nancycastiglione@comcast.net
You can get word about these columns the week they are posted by subscribing to ABA Banking Journal Editors Report e-letter. It's free and takes only a minute to sign up for. Click here.