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CFPB Bulletin 2015-02

DATE: May 11, 2015

SUBJECT: Section 8 Housing Choice Voucher Homeownership Program

The Consumer Financial Protection Bureau (Bureau) issues this compliance bulletin to remind creditors of their obligations under the Equal Credit Opportunity Act (ECOA)¹ and its implementing regulation, Regulation B,² to provide non-discriminatory access to credit for mortgage applicants using income from the Section 8 Housing Choice Voucher (HCV) Homeownership Program.³

The Section 8 HCV Homeownership Program was created to assist low-income, first-time homebuyers in purchasing homes. The program is a component of the Department of Housing and Urban Development's (HUD) Section 8 HCV Program, which also includes a rental assistance program. These programs are funded by HUD and administered by participating local Public Housing Authorities (PHAs).

¹ 15 U.S.C. § 1691 *et seq.*

² 12 C.F.R. pt. 1002 *et seq.*

³ For purposes of this bulletin, “Section 8 Housing Choice Voucher Homeownership Program” refers to the homeownership assistance program authorized by the Quality Housing & Work Responsibility Act of 1998 (Pub.L.105-276, approved October 21, 1998; 112 Stat. 2461), and the applicable implementing regulations, 24 C.F.R. §§ 982.625-982.643. The program is also referred to as the Voucher Homeownership Program, the Housing Choice Voucher Homeownership Option, or the Section 8 Homeownership Program.

Through the Section 8 HCV Homeownership Program, the participating PHA may provide an eligible consumer with a monthly housing assistance payment (HAP) to help pay for homeownership expenses associated with a housing unit purchased in accordance with HUD’s regulations.⁴ In addition to HUD’s regulations, the PHAs may also adopt additional requirements, including lender qualifications or terms of financing.⁵

The Bureau has become aware of one or more institutions excluding or refusing to consider income derived from the Section 8 HCV Homeownership Program during mortgage loan application and underwriting processes. Some institutions have restricted the use of Section 8 HCV Homeownership Program vouchers to only certain home mortgage loan products or delivery channels.

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 any public assistance program.”⁶ “Any Federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is ‘public assistance’ for purposes of the regulation. The term includes (but is not limited to) . . . mortgage supplement or assistance programs . . .”⁷ As such, mortgage assistance provided under the Section 8 HCV Homeownership Program is income derived from a public assistance program under ECOA and Regulation B.

Regulation B further provides that “[i]n a judgmental system of evaluating creditworthiness, a creditor may consider . . . whether an applicant’s income derives

⁴ 24 C.F.R. § 982.625(c).

⁵ 24 C.F.R. § 982.632(a).

⁶ 15 U.S.C. § 1691(a)(2); 12 C.F.R. §§ 1002.2(z), 1002.4(a).

⁷ 12 C.F.R. pt. 1002, Supp. I, § 1002.2, ¶ 2(z)-3.

from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.”⁸ However, “[i]n considering the separate components of an applicant’s income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant’s actual circumstances.”⁹

Disparate treatment prohibited under ECOA and Regulation B may exist when a creditor treats applicants differently on a prohibited basis, for example, when a creditor excludes or refuses to consider Section 8 HCV Homeownership Program vouchers as a source of income or accept the vouchers only for certain mortgage loan products or delivery channels. ECOA and Regulation B may also be violated if an underwriting policy regarding income has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on its face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact.¹⁰

An institution’s clear articulation of underwriting policies regarding income derived from public assistance programs; training of underwriters, mortgage loan originators, and others involved in mortgage loan origination; and careful monitoring for compliance with such underwriting policies can all help the institution manage fair lending risk in this area and comply with the requirements of ECOA and Regulation B. Such compliance will help increase access to credit for eligible Section 8 HCV Homeownership Program consumers and open the opportunity of homeownership to these low-income, first-time homebuyers.

⁸ 12 C.F.R § 1002.6(b)(2)(iii).

⁹ 12 C.F.R. pt. 1002, Supp. I, § 1002.6 ¶ 6(b)(5)-3(ii).

¹⁰ See 12 C.F.R. § 1002.6(a); 12 C.F.R. pt. 1002, Supp. I, § 1002.6, ¶ 6(a)-2. For more information about compliance with the fair lending requirements of ECOA and Regulation B, please refer to CFPB Bulletin 2012-04: Lending Discrimination (April 18, 2012), available at http://files.consumerfinance.gov/f/201404_cfpb_bulletin_lending_discrimination.pdf.