CFPB Continues Crackdown on Fair Lending: Marketing Materials Targeted

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In a recent guidance bulletin, the Consumer Financial Protection Bureau reminded mortgage lenders to heed their Equal Credit Opportunity Act (ECOA) obligations when considering applicants receiving public assistance income. ECOA prohibits lenders from discriminating against any credit application because all or part of the applicant's income comes from any public assistance income, such as Social Security disability income, and its prohibitions encompass activities before, during, and after the extension of credit. Thus, marketing materials are covered by ECOA. During recent CFPB examinations, multiple ECOA violations were found in credit provider marketing materials. For example, materials impermissibly contained statements regarding public assistance income or discouraged applicants who receive such income from applying for credit. The CFPB has warned that "[a] blanket practice of denying any applicant who relies on public assistance income, or a specific form of public assistance income, without an assessment of an applicant's particular situation violates the [ECOA and its implementing Regulation B]." The CFPB directed the offending lenders to "identify applicants who were wrongly denied on the basis of their protected income source, as well as potential applicants who were discouraged by marketing materials," to give those deterred by the marketing materials the opportunity to reapply, and to provide remuneration for consumers who were wrongly denied credit and subsequently lost their homes. Fair lending is a key focus of the CFPB, since ensuring fair and equal access to credit is one of its mandates. ECOA is enforced by the Department of Justice (DOJ) but the CFPB is actively involved in supervising and examining for violations, and working with the DOJ to penalize violators and assess heavy monetary penalties. Two consent orders entered in 2013 against lenders found to have charged higher rates to minority applicants collectively awarded over $125 million in restitution and penalties, $98 million in damages and penalties against a bank financing auto loans, and $35 million against a mortgage lender. In late 2014, a credit card bank, found to have violated ECOA by excluding customers with "Spanish-preferred" indicators on their accounts from certain credit card product offers, was ordered to pay consumers a steep $169 million in monetary compensation found by the CFPB to represent the value of the excluded offer, plus interest, and indirect damages. In addition to DOJ-CFPB enforcement actions, lenders who violate ECOA may also be subject to civil liability for actual and statutory damages (up to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the lender's net worth in class actions). In the home mortgage market, the CFPB has also entered enforcement orders for violation of the Home Mortgage Disclosure Act (HMDA), which requires depositary institutions and other mortgage lenders to publicly disclose certain information about mortgage applications and rejected applications, noting that inaccurate HMDA data impedes its efforts to detect ECOA violations and stop home mortgage lending discrimination.

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Consumer Finance