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Karen R. Pallotta
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AMERICAN CIVIL LIBERTIES
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TREASURER

Dear Ms. Pallotta:

We write regarding recent reports in the *New York Times* and complaints that we have received from the public indicating that some lenders deny mortgages to women and their families because the women are pregnant or on parental leave. Lenders have, inappropriately, pointed to your underwriting guidelines as one reason for denying mortgages to these women and their families. We understand that your institution is planning to address this problem by issuing a clarification of your guidelines. Additionally, we understand that you are coordinating with the United States Department of Housing and Urban Development (HUD), which has announced its intention to investigate these discriminatory lending practices. The undersigned organizations applaud this endeavor and seek the opportunity to lend our expertise and input as you address the issue.

Denial of loans on the basis of pregnancy or childbirth is illegal under both the Fair Housing Act and the Equal Credit Opportunity Act. This is reaffirmed in your underwriting guidelines. It is also a violation of federal law to deny a loan based on the stereotype that women who take parental leave are less likely to return to full-time employment. Nonetheless, according to the *Times*, some lenders deny mortgages to women who are pregnant or on maternity leave based on a misinterpretation of the guidelines in your Single-Family Selling and Servicing Guides. You now require lenders to obtain verbal verification of employment ten days prior to closing, to verify two years of employment history, and to document the likelihood of continued receipt of income for at least three years.

Evidence suggests that some lenders apply the income verification requirements in a manner that discriminates against pregnant women or women on parental leave. For example, lenders have denied women loans without even verifying their income (including paid sick leave, paid maternity leave, paid parental leave, or temporary disability) once they learned the women were on maternity leave. Lenders ask questions of applicants and may make judgments based upon stereotyped assumptions about women's commitment to returning to work following childbirth. In some cases, lenders have denied mortgages to women who are pregnant or on maternity leave based on the assumption that the women will not continue to work for three years or because the pay they receive while on temporary leave is insufficient to carry the mortgage. In other cases, lenders have used the temporarily lower income that women would receive during their leave, rather than their regular salary, as a basis for determining the borrower's ability to pay. Because women are more likely than men to take short-term unpaid or reduced-pay leave,¹ such practices have a disproportionate effect on women and may violate the prohibitions against discrimination based on sex, disability, or familial status.

Through our conversations with HUD, we understand that you do not intend your guidelines to be interpreted in this manner, and that you are planning to issue a clarification that would address these issues more directly and offer further guidance to lenders. Such a clarification is necessary in order to fulfill the mandate of civil rights protections in housing and credit. We hope that, in addition to issuing clarifying guidance, you will also develop suitable procedures for monitoring lenders' compliance and referring non-compliant lenders to the appropriate enforcement agencies. We would welcome the opportunity to provide input into this process, in order to ensure that all women and families applying for mortgage loans are treated fairly and in accordance with federal law.

¹ For example, one study conducted to measure the effects of the Family and Medical Leave Act found that more than three-quarters of women with young children took some leave during an 18-month period, compared with less than half of men with young children. The same study found that, in 2000, 13.5% of men took leave for family or medical reasons, compared with nearly 20% of women. Jane Waldfogel, "Family and Medical Leave: Evidence from the 2000 Surveys," *Monthly Labor Review* 17, 21 (Sept. 2001), available at <http://www.bls.gov/opub/mlr/2001/09/art2full.pdf>. Another study indicated that women take longer leaves than men and are more likely to take leave. See Naomi Gerstel & Amy Armenia, "Giving and Taking Family Leaves: Right or Privilege?" 21 *Yale J. L. & Feminism* 161, 167 (2009).

Thank you for your shared concern and for your attention to this matter. We will follow up with you within the next few weeks. In the meanwhile, please do not hesitate to contact us: you can reach Ariela Migdal, Staff Attorney, at (212) 519-7861, or Vania Leveille, Legislative Counsel, at (202) 715-0806.

Sincerely,

American Civil Liberties Union
A Better Balance: The Work and Family Legal Center
Center for Responsible Lending
MomsRising
National Fair Housing Alliance
National Partnership for Women and Families
National Women's Law Center

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