Rate discounts must be tracked amid renewed fair lending focus: panel

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With the Biden Administration looking to reinstate the disparate impact standard for fair lending enforcement, mortgage originators must place renewed focus on the clients that are and aren't getting mortgage rate discounts, a panel at the Mortgage Bankers Association's Spring Conference said Wednesday.

Those price concessions are commonly used by lenders and their loan officers to attract and keep borrowers in their origination pipeline at a time when mortgage rates are rising. But lenders must protect against unintended consequences for fair lending when offering them, said Michael McAuley, a principal at the consulting firm of Garrett, McAuley & Co.

Originators need to ensure they are unbiased in how they determine who gets a price discount and they must document the reason for granting one, said Michael Fontaine, the co-president and chief operating officer of Plaza Home Mortgage.

"You will get looked at in those areas, so make sure that you're factoring that in and that your compliance group and risk management practices are solid in that area," Fontaine warned.

In 2015, the U.S. Supreme Court determined that a lender can be found liable for racial discrimination even if that action is not intentional. Company managers may inadvertently create a disparate impact situation because they are giving non-protected classes a price concession but not others, McAuley said.

"It could simply be happening because you've got non-protected classes that know to negotiate or push back more, or they know their options," McAuley said. That group is likely to have more familiarity with the mortgage origination process and demand more regarding concessions, while a person in the protected class might not be as aware, he added.

"That's often where the disparate impact comes in. It's unintentional but it's significant and there," McAuley said.

McAuley recommends having a compliance officer track price concessions in addition to the normal reviews for profitability.

"Clearly, you should be running a fair lending analysis in the background, a regression analysis, a matched pair analysis at least once a year," McAuley said. "While the compliance officer on an ongoing basis [is] looking at the track record on the monthly concessions, be sure to look at concessions that are denied as well."

That’s something lenders often miss and it could cost them quite a bit if they are penalized for a potential fair lending issue, he added.

Guild Mortgage lets managers know how many subsidies loan officers have asked for year-to-date, so that the manager can ask "it is necessary? Why is it necessary?" said Terry Schmidt, its president. "Also, on every single subsidy we indicate what it was for, so we understand it."

But it is not just making a concession on the rate that can be a problem, Fontaine said. A lock extension can be a form of price concession. If a lot of these come from one particular source, it could indicate they are taking advantage of the system, especially if the lender doesn't charge anything or very little for it.

That's why lenders need to be aware of such patterns, said Eric Gates, the president of Apex Home Loans. The requests may be coming from one specific referral source. Loan officers may need to switch strategies and work with other sources that might provide leads that don't need massive concessions.