Fair Lending & the Community Reinvestment Act for Housing Counselors

Housing Counselor Track
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Presenters

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FAIR LENDING TRAINING
Training Agenda

- Brief History: Lending Discrimination
- Fair Lending Laws: Key Features & Applications
- Fair Lending Red Flags
- Recent Case Examples
- Question & Answer
HOPE Fair Housing Center

- Established in 1968
- Headquartered in DuPage County
- Civil rights organization
- Non-profit 501(c)(3)
- Multiple programs designed to achieve equal opportunity in United States
Service Area

Legend:
- Counties served by HOPE
- Portions of these counties served by HOPE
Historic Chicago Segregation

MAP 1
Areas of Black Residence in Chicago

Gage Park

Source: Drawn from a map prepared by the Research Department, Chicago Urban League, May 1965.

Bases of Data: Areas of black residence defined as blocks in which 25 percent or more of the dwelling units were occupied by nonwhites in April 1950, April 1960, and December 1964.

Notes:
1. In 1950 and 1960, 97 percent of all nonwhites in Chicago were black.
2. Small nonresidential blocks, such as school playgrounds and parking lots, scattered within large areas of black residence were treated as black residential areas.
3. Areas of white residence were left unsubshaded.
4. This map is based upon data taken from the following sources: Chicago Urban League, Areas of Negro Residence in Chicago, April 1950, April 1956, August 1958 (February 1959); U.S. Census of Housing, 1960, Series HC(3)-133; City Blocks—Chicago, Illinois: Chicago Urban League, 1960 Areas of Negro Residence in Chicago (July 1962); field surveys conducted by the Research Department, Chicago Urban League, December 1964.
Mapping Inequality

- Gives online access to national collection of security maps created by HOLC (Home Owner’s Loan Corporation)

  - [https://dsl.richmond.edu/panorama/redlining/#loc=4/36.71/-96.93&opacity=0.8](https://dsl.richmond.edu/panorama/redlining/#loc=4/36.71/-96.93&opacity=0.8)
Valuation of neighborhoods, in descending order, from the most desirable residents to the least:

1) English, Germans, Scotch, Irish, Scandinavians
2) North Italians
3) Bohemians or Czechs
4) Poles
5) Lithuanians
6) Greeks
7) Russians, Jews (lower class)
8) South Italians
9) Negroes
10) Mexicans

Calvin Bradford: *An Analysis of Underwriting and Appraisal Practices*
Contract Selling

- Prior to the Fair Housing Act of 1968 African Americans could not get a mortgage due to bank redlining and racial discrimination.
- Contract selling became the only way an African American could become a “homeowner.”
- Involved higher fees than renting, and “buyers” could be evicted after missing a single payment.
- Contract seller would then move on to the next victim.

Further reading: *Family Properties: Race, Real Estate and the Exploitation of Black Urban America*
Fair Housing Now

Chicago segregation maps: 1960 and 2010

Greater Chicago Area: 1960
African American Population at Census Tract Level

Greater Chicago Area: 2010
African American Population at Census Block Group Level
The Federal Fair Housing Act

- Title VIII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act of 1988 together are called the Fair Housing Act (FHA)

- The FHA prohibits housing discrimination based on certain protected classes
The Seven Federally Protected Classes

- Race
- Color
- National Origin
- Religion
- Sex
- Handicap (Disability)
- Familial Status
Note on State and Locally Protected Classes

- Illinois Human Rights Act
  - Sexual Orientation
  - Ancestry
  - Marital Status
  - Gender Identity
  - Age (over 40)
  - Order of protection status
  - Military status

- Depending on the jurisdiction, additional protected classes may include source of income.
Fair Housing Act Regulations

It shall be unlawful to:

- Discriminate against any person in making available a residential real estate-related transaction or in the terms and conditions of such a transaction. 24 CFR 110(b)

- A real estate-related transaction means the making or purchasing of loans or providing other financial assistance for:
  - Purchasing, constructing, improving, repairing or maintaining a dwelling or
  - Secured by residential real estate
  - The selling, brokering, or appraising of residential real property. 24 CFR 100.115(a) and (b)
ECOA

The Equal Credit Opportunity Act (1974) (ECOA)

Prohibits discrimination in the lending process and in marketing

Prohibits discrimination (against loan applicants) on the basis of race, color, religion, sex, marital status, age, or income from public assit. – against loan applicants

Requires the provision of a reason for a loan denial (adverse action notice)
ECOA Appraisal Requirements

Dodd-Frank Act amended ECOA

- Require creditors to provide free copies of appraisals and other written valuations developed in connection with an application for a loan

- Require creditors to provide written notification that a copy of the appraisals/valuations will be provided:
  - Upon completion, but in no case later than 3 days prior to the closing of the loan
  - Whether the creditor grants or denies the applicant’s request for credit or the application is incomplete or withdrawn
An appraisal is an estimate or opinion of the value of a residential property in connection with the sale, purchase, financing, or refinancing of a dwelling.

The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

Discrimination is prohibited in appraisal services.

Example- using an appraisal when a person knows or reasonably should know that the appraisal improperly takes race, etc., into consideration. 24 CFR 100.135
The Home Mortgage Disclosure Act of 1975 (HMDA)

- Requires many depository and nondepository lenders to collect and publicly disclose information about housing-related loans and applications for loans

- including applicant/borrower characteristics

- HMDA is implemented by the Consumer Financial Protection Bureau

  - Regulation C (12 C.F.R. Part 1003), which includes commentary (12 C.F.R. Part 1003 Supp. I).
Housing-loan data that lenders must disclose under HMDA:

- show whether financial institutions are serving the housing needs of their communities;

- assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and

- assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.
The Community Reinvestment Act (CRA) of 1977

- The CRA requires all federally regulated depository institutions (except credit unions) to define a local community ("including low-and moderate-income neighborhoods")

- Places an affirmative obligation on lenders to serve all parts of this community
UDAAP - Sources of Law

- Section 5 of the Federal Trade Commission Act
- State UDAP laws
- Truth in Lending/Savings
- Dodd-Frank Act (Title X)
  - Added an “A” for “Abusive”
Areas for potential UDAAP

- Advertising and Solicitation
- Servicing and Collections
- Management and monitoring of employees and third party service providers

Lenders should monitor their own compliance in these areas and create processes for addressing complaints.
Advertising & Marketing

- Q & A about Inland Loan Officer
- Advertising & Marketing
  - Marketing Networks
  - Ad placement
  - Ad Content
Who Is Left Out?
Effective Advertisement
New HUD Guidance on Protections for Persons With LEP

- LEP discrimination can be a proxy for discrimination based on race or national origin.
- LEP refers to a person’s limited ability to read, write, speak, or understand English.
- A housing provider violates the Fair Housing Act when the provider’s policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.
Red Flags: Loan Interview

- Lender should:
  - Not make assumptions about a person’s financial qualifications, credit worthiness, loan preferences, neighborhood location, etc.
  - Be consistent with questions asked.
  - Establish a consistent procedure for determining needs for each borrower and select products consistent with those needs.
  - Provide the same types of incentives and services to borrowers.
Red Flags: Coaching the Borrower

- Does Lender consistently provide tips to borrowers?
  - E.g. – put the “gift” money in your checking account and put your entire paycheck in savings to show that you “saved” the down payment
  - Pay off this credit card, reduce your down payment slightly and your debt to income ratios will qualify you
Red Flags: Loan Application & Document Collection

- Multiple requests for the same information
- Failure to follow through
Red Flags: Underwriting

- Do you provide coaching or make exceptions?

- Homeowners’ Insurance, Mortgage Insurance and Appraisal – some of the first Fair Housing Cases in these areas came from lender referrals

- When automated underwriting sends something back, what extra steps do you take?

- BE CONSISTENT
Red Flags: Approval, Counter Offer, Conditions

- How are you documenting changes?

- When the borrower rejects a counter offer, do you send an adverse action notice?

- Does the counter offer result in product or line steering?
Recent Case Examples

Exhibit E
Hudson City Applications, 2009-2013: NY/NJ, Camden, and Bridgeport MSAs
The complaint alleged that from at least 2009 to 2013, Hudson City’s practices offered unequal access to credit based on the race/ethnicity of prospective borrowers’ neighborhoods.

Hudson City structured its business operations to systemically avoid providing credit services in predominantly minority neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania.

The bank located branches and loan officers, selected mortgage brokers, and marketed products to avoid and borrowers in predominantly Black and Hispanic communities.
Types of Discrimination

- Overt
  - Blatant unfair treatment of someone because of their membership in a protected class

- Disparate Treatment

- Disparate Impact
Disparate Treatment

• Application of practices, policies, and procedures in an inconsistent fashion

• May be intentional or unintentional

• Results in disparate or differing treatment
Disparate Impact

• Policy or practice that may appear neutral on its face but, when applied, has a disadvantageous impact on a group of people protected under fair housing law and the policy is not justified by a business necessity
Example 1

- A white couple applies for a loan to purchase a home. The loan officer provides them with information on a number of loan programs for which they may be eligible.

- A similarly qualified African American couple also applies for a loan to purchase a home. The loan officer discusses only FHA financing which at that time has a higher interest rate and higher mortgage insurance cost.
A Caucasian couple applied for an auto loan. The lender found negative information in the couple’s credit report. The lender discussed the credit report with them and determined that the negative information was incorrect. The lender advised the couple on how to get the incorrect information removed from their credit report. The couple took the appropriate steps and the information was removed. Their loan was approved.

A Latino couple applied for a similar loan with the same lender. Upon discovering negative information in that couple’s credit report, the lender denied the loan application on the basis of the derogatory information with no further communication attempted with the applicants.
Cases: Excessive Interest Rates/Fees (Discretionary Pricing)

- 2015 DOJ and CFPB joint complaint against Provident Funding Associates-- Alleges that Provident charged thousands of African-American and Hispanic borrowers higher fees on mortgage loans

- Resulted in increased loan prices for African-American and Hispanic borrowers

- Provident’s practice was to set a risk-based interest rate and then allow brokers to charge a higher rate to consumers.

  - Provident would pay brokers some of the increased interest revenue from the higher rates – payments known as yieldspread- premiums (YSPs)
  - Provident’s mortgage brokers had discretion to charge borrowers higher fees, unrelated to an applicant’s creditworthiness or the terms of the loan. This allowed brokers subjective, unguided discretion in determining the amount of their compensation as long as it remained below the applicable cap
Cases: Product Steering

U.S. v. Wells Fargo Bank (2012)

- Discrimination on the basis of race and national origin
- Discrimination against African American and Hispanic borrowers 2004-2009
- Steering into subprime mortgages and paid higher fees and rates
- Non-Hispanic white borrowers with similar credit profiles received prime loans
Wells Fargo $234.3 million Settlement includes:

- $59.3 million in compensation to African American and Hispanic retail subprime borrowers
- $125 million in compensation for wholesale borrowers who were steered into subprime mortgages or who paid higher fees and rates because of their race or national origin
- $50 million in direct down payment assistance to borrowers in communities around the country which were hard hit by the housing crisis
Cases: Disability Income


- Discrimination on the basis of disability
- Bank of America required loan applicants who receive Social Security Disability Insurance (SSDI) income to provide a letter from their doctor as part of the loan application
- In some cases, Bank of America also required loan applicants with disabilities to provide information about the nature and severity of their disability
- SSDI or SSI does NOT have a defined expiration date and is not subject the “two years” underwriting rule.
Deaf Bank of America customer paid $155,000 to settle claims it discriminated against her based on her disability when it denied her home loan request and refused to communicate via e-mail
- Policy of “no email” – you may need to make a reasonable accommodation for a person with a disability

DOJ ADA settlement with Patriot National Bank on allegations that it would not do business with a disabled individual over the phone using a telecommunications relay service
- Auxiliary aids include qualified sign language or oral interpreters, use of relay services, computer-assisted real time transcription, and, for simple communications, the exchange of written notes.

Be aware of other technologies such as caption phones, allow for a lag in communication time, including upon answering a phone
Cases: Pregnancy/Maternity Leave

- Bank of America paid $45,000 as part of HUD Conciliation Agreements resolving allegations the lender discriminated against pregnant women seeking mortgage loans

  - Allegations: Bank of America refused to refinance the mortgages of two couples in California and Texas, because the women were on maternity leave

- Refusing to approve a mortgage loan or provide mortgage insurance because a woman is pregnant or on family leave violates the Fair Housing Act’s prohibition against sex and familial status discrimination
Cases: Disparate Impact Case

U.S. v. Luther Burbank Savings (2012) (CA)

- $400,000 minimum loan amount policy
- Disparate impact on the basis of race and national origin
- Must invest in a $1.1 million special financing program, partnerships with community-based organizations that provide credit and financial services
- Spend $300,000 for outreach to potential customers and $150,000 on consumer education
- Conduct fair lending training for employees
- Prohibited from establishing a similar minimum loan amount policy
Further Questions, Resources

- HOPE Fair Housing Center:
  - www.hopefair.org
  - 630-690-6586

- Todd Fuller
  - Todd.Fuller@hopefair.org
  - Ext. 115

- Kamal Ganjalikhani
  - kamal@hopefair.org
  - Ext. 122
Fair Lending - Taking Action
The Chicago Area Fair Housing Alliance (CAFHA) is a consortium of fair housing and advocacy organizations, government agencies, and municipalities committed to the value of fair housing, diversity, and integration.
• How do I take the information I learned today and put them into action?

• How can I use this information to help my clients or consumers of my services?
Advocating for and with clients
Creating Referral Relationships
Fair Lending Tools for Counselors
Fair Lending Tools & Resources

- Consumer Financial Protection Bureau (CFPB)-
  - www.consumerfinance.gov
- Illinois Department of Human Resources (IDHR)-
  - https://www.illinois.gov/dhr/filingacharge/pages/housing.aspx
- State Attorney General
Submit a complaint
Have an issue with a financial product or service? We'll forward your complaint to the company and work to get a response from them.

Choose a product or service to get started
If you don't want to submit a complaint, you can tell your story.
Want to find others like you? Visit the complaint database to read about consumers' experiences, in their own words.

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<th>LOANS</th>
<th>PRODUCTS AND SERVICES</th>
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<td>Money transfer or virtual currency</td>
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<td>Other financial service</td>
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Fair Housing Partnerships

Advancing services through partnerships:

- Referrals to private fair housing enforcement agencies
- Legal fair housing training for staff, housing providers, and clients
- Coalition building
Fair Housing Enforcement Agencies

- Illinois Department of Human Resources
- Prairie State Legal Services
- Access Living
- Chicago Lawyers’ Committee for Civil Rights Under Law
- HOPE Fair Housing Center
- John Marshall Fair Housing Legal Support Center
- Open Communities
Community Participation & Affirmatively Furthering Fair Housing
Taking Action

• New HUD rule on Affirmatively Furthering Fair Housing discusses the importance of community input in the planning process.

• Housing counseling agencies can play a key role in getting the word out about community engagement sessions to the general public and can also provide input regarding the unique needs of the community during fair housing and other planning activities.
Community Participation

- HUD requires municipalities and other jurisdictions to provide opportunities for community participation.

- Understanding the fair housing landscape requires local knowledge.

- Fostering inclusive communities cannot happen without community input and support!
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Points to Consider

• What makes your community unique or gives it character?

• Core assets that shouldn’t change, vs. areas of improvement

• Development without displacement
Community Wants
Community Needs
Articulating Wants/Needs

• Providing comment at a public hearing is a powerful way to participate in the community planning process and address the community’s wants/needs.

• Step-by-step guidebook

• You don’t have to speak to have your voice heard.

• Written comment is an effective tool as well
Tips for Public Participation

• Preplan comments
• Working collaboratively
• Use of data and research
• Understand local rules
• Dealing with negative backlash
Dealing with Discriminatory Comments

- “Affordable housing will cause a decline in our property values.”
- “This project will place a burden on our schools.”
- “If we fund this, criminal activity will increase in our neighborhoods.”
- “We already have enough affordable housing—this would be a better fit for another community.”
- “You’re turning our neighborhood into a ghetto.”
- “This project will change the character of our community.”
- “We moved here to avoid urban problems.”
- “I’m just concerned about the safety of my children.”
**HAS, NEEDS, WANTS WORKSHEET**

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