

FAIR LENDING AND THE COMMUNITY REINVESTMENT ACT

Sponsored by:



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Presenters

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FAIR LENDING TRAINING

AUGUST 3, 2016

Presented by:
Anne Houghtaling
HOPE Fair Housing Center



Training Agenda

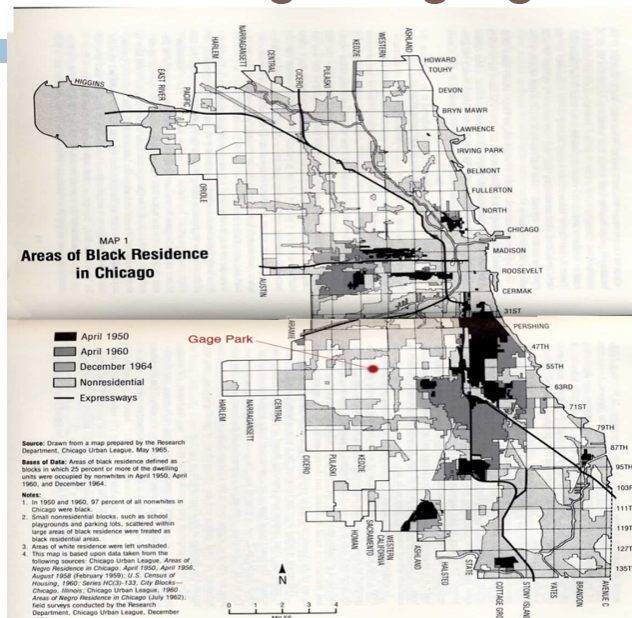
- Brief History: Lending Discrimination
- Fair Lending Laws: Key Features & Applications
- Fair Lending within the Mortgage Lending Process
- Recent Case Examples
- Extended Learning Opportunities
- Question & Answer

HOPE Fair Housing Center

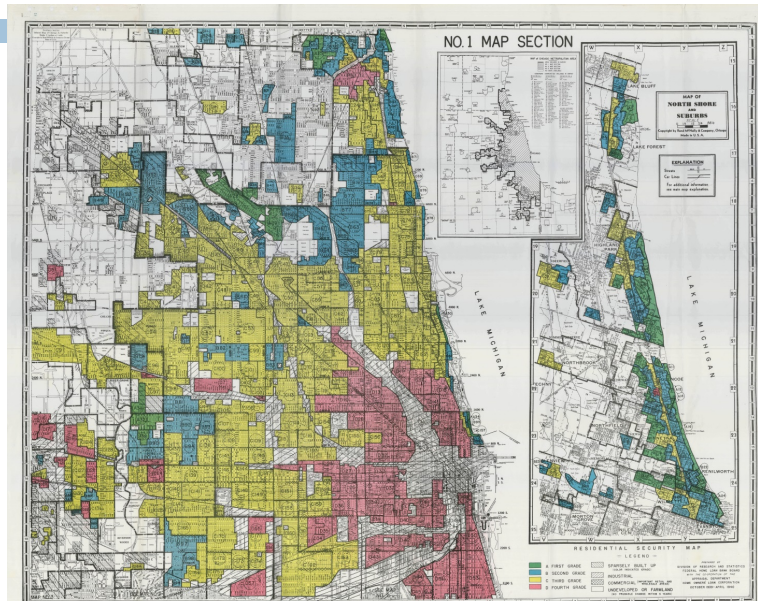


- Established in 1968
- Headquartered in DuPage County
- Civil rights organization
- Non-profit 501(c)(3)
- Multiple programs designed to achieve equal opportunity in United States
- HOPE's staff members are highly experienced

Historic Chicago Segregation



HOLC Map of Chicago (1939–1940)



Homer Hoyt, Chicago Economist (adopted nationally)

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*

Impact on Neighborhoods

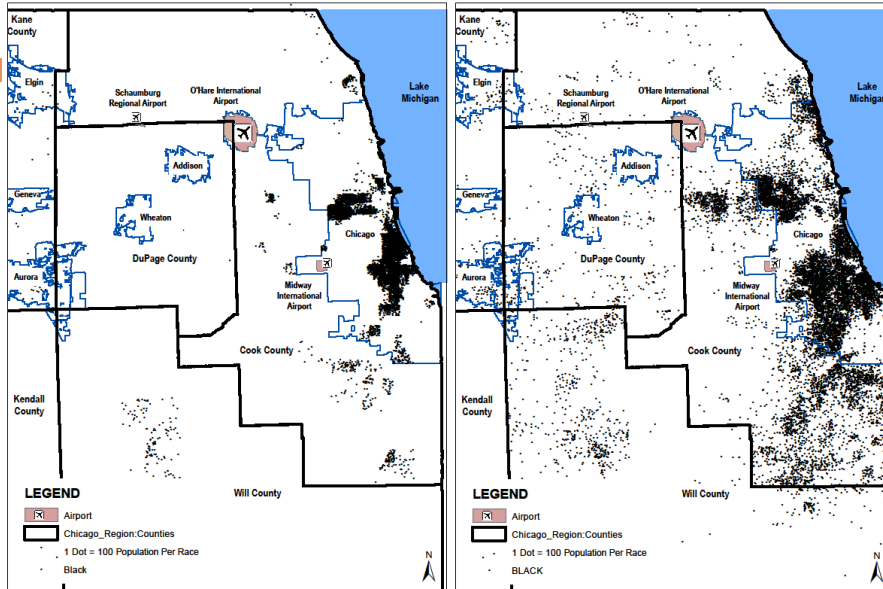
African-American Neighborhood



White Neighborhood



Fair Housing Now



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

- Some state and local jurisdictions prohibit housing discrimination based on additional protected classes
- Depending on the jurisdiction, additional protected classes may include
 - Source of income
 - Sexual orientation
 - Age
 - And others

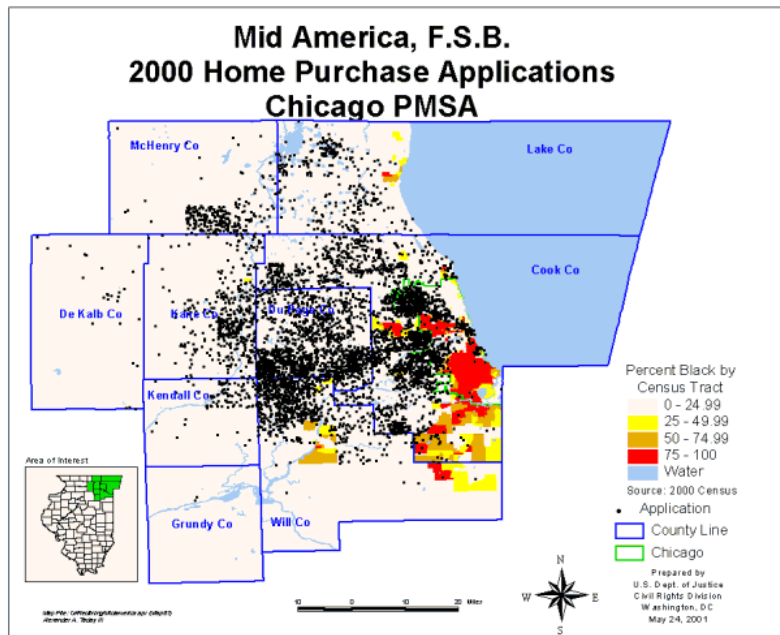
Fair Housing Act Regulations

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 asst.** – 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

ECOA Appraisal Requirements

- This amendment and the CFPB Final Rule are effective as of January 18, 2014
- Prior to this amendment, creditors were required only to provide copies of appraisals upon an applicant's request

Fair Housing Act Regulations

Appraisals and unlawful discrimination

- An appraisal is an estimate or opinion of the value of a residential property in connection with the sale ... 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)

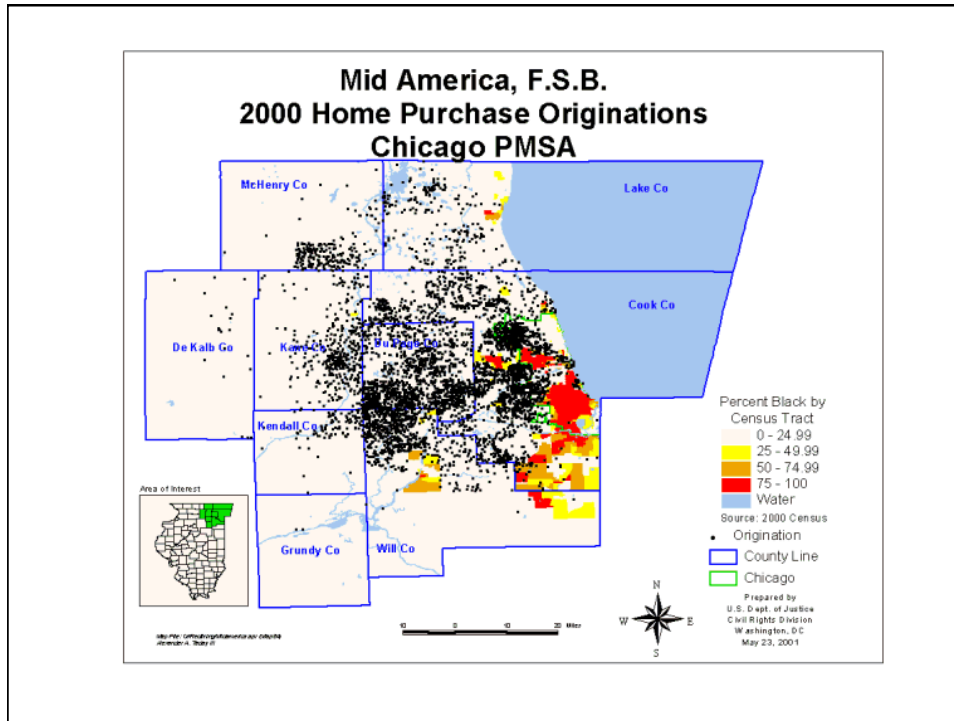
- Requires many depository and nondepository lenders to collect and publicly disclose information about housing-related loans and applications for loans
- including applicant/borrower characteristics
- HMDA is implemented by the Consumer Financial Protection Bureau
 - Regulation C (12 C.F.R. Part 1003), 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.

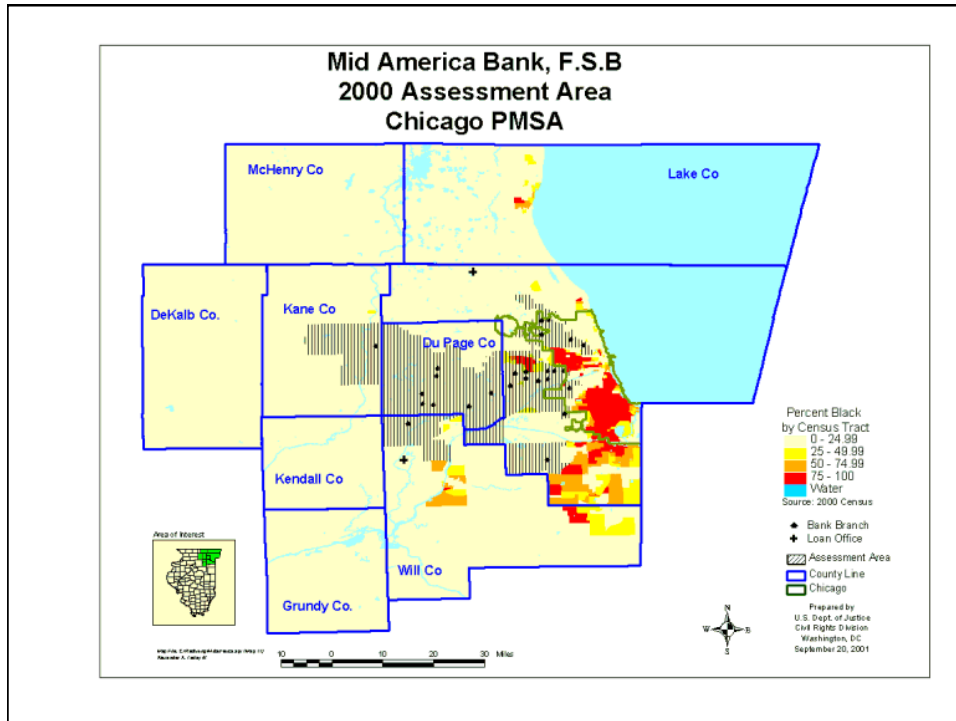
Reporting Requirements

- Loan Categories
 - Home Purchase
 - Home Improvement
 - Refinancing
- Data Points:
 - Loan characteristics: type and amount
 - Property characteristics: location and type
 - Disposition of the application: whether it was denied or resulted in an origination; and
 - Applicant characteristics: ethnicity, race, sex, and income



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”

Unfair Practices

- Causes/Likely to Cause Substantial Injury to Consumer
 - ▣ Normally involves monetary harm, can be RISK of concrete harm
- Consumers cannot reasonably avoid injury
 - ▣ The fundamental question is whether the act or practices interferes with a consumer's decision making, not whether the consumer could have made a better choice.
- The act/practice is not outweighed by other benefits to consumers or competition
 - ▣ Public Policy may also be considered in the analysis

Deceptive

- Misleads or likely to mislead consumer
- Consumer's interpretation is reasonable under the circumstances
- The misleading representation, omission or practice is material.

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



Loan Interview

- Do 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

Coaching the Borrower

- Do you 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

Loan Application & Document Collection

- Multiple requests for the same information
- Failure to follow through

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

Hudson City Bank (Redlining)

- 2015: Redlining Complaint and proposed Consent Order
- DOJ and CFPB against Hudson City Savings Bank (Hudson City)
- 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



IMPLICIT BIAS

- Also known as “hidden bias” or “unconscious bias,” implicit bias is a theory to explain why discrimination persists, even though people oppose it.
- Our social behavior is not completely under our conscious control, but driven by learned stereotypes that operate unconsciously when we interact with other people. (Anthony Greenwald and M.R. Banaji)

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AS AN INDIVIDUAL

- Be aware
 - Take an IAT
 - Learn about your own implicit biases
- Be motivated
 - Learn new information and engage in activities to counter stereotypes (Ex. Having conversations across cultural boundaries or even a screen saver with counter-stereotypic images)
- Be Proactive about not acting on your biases
 - Example- A federal judge realized that he might be making biased judgments based on the photo of the Defendant in the pre-sentence report, so he began having the pictures taken out before he reviewed them.
 - Can you think of any way that this could apply in the housing context?

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IN OUR INTERACTIONS

- De-biasing Interventions often involve contact with out-group members. Focusing on similarities between yourself and the group that you are biased against can go a long way in reducing the effects of that bias
- Devine's 5 strategies of De-biasing:
 - Stereotype replacement
 - Counter-stereotypic imaging
 - Individuating
 - Perspective taking
 - Contact

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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

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

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

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Product Steering (Cont.)

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

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Disability Income

U.S. v. Bank of America, N.A. (2012)

- 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.

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Deaf/Hard of Hearing Communications

- 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

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

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

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Implicit Bias Test Link

Includes tests for race, gender, disability,
national origin, religion, etc.

<https://implicit.harvard.edu/implicit>

Quiz

- A single woman applies to ABC bank for a loan to purchase a home. Loan officer informs her that the origination fee is 2.5% of the amount borrowed. She has excellent credit and is well qualified for the loan she applies for.
- A single man also applies to ABC bank for a loan to purchase a home. Loan officer informs him that the typical origination fee is 2.5% of the amount borrowed but that many borrowers can and do negotiate a lower fee. The loan officer also tells him that the interest rate posted on the bank's website can be reduced for borrowers with excellent credit scores.

Quiz

- 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 Muslim 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.

Quiz

- A city housing program established a below-market interest rate loan program to provide mortgage loans to persons purchasing houses in census tracts with 25% or greater poverty rates
- The city denied a loan request because to applicants who were purchasing a home that was in a census tract where the poverty rate was 12%

Quiz

- 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 .

Fair Lending- Taking Action

8.3.16



- How do I take the tools I learned today and put them into action?
- How can I use this information to help my clients or consumers of my services?

Fair Lending Tools
for Counselors

Creating Referral
Relationships

Advocating for
and with clients

Train-the-Trainer

Incorporate Fair Lending into your Program
Educate Borrowers
At Homebuyer Workshops
During one-on-one counseling sessions

Loan Estimate Explainer

<http://www.consumerfinance.gov/owning-a-home/loan-estimate/>

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FICUS BANK
4321 Random Boulevard • Somecity, ST 12345

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED	7/15/2013	LOAN TERM	30 years
APPLICANTS	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345 456 Somewhere Avenue Anytown, ST 12345	PURPOSE	Purchase
PROPERTY	Anytown, ST 12345	PRODUCT	Fixed Rate
SALE PRICE	\$180,000	LOAN TYPE	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/>
		LOAN ID #	123456789
		RATE LOCK	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, until 4/16/2013 at 5:00 p.m. EDT <small>Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on 3/4/2013 at 5:00 p.m. EDT.</small>

Loan Terms	Can this amount increase after closing?
Loan Amount	\$162,000 NO
Interest Rate	3.875% NO
Monthly Principal & Interest <small>See Projected Payments below for your Estimated Total Monthly Payment</small>	\$761.78 NO
Prepayment Penalty	YES <small>• As high as \$3,240 if you pay off the loan during the first 2 years</small>
Balloon Payment	NO

- Check spelling of your name +
- Check loan term, purpose, product, and loan type +
- Is your rate locked? +
- Check that the loan amount is what you are expecting +
- Is your interest rate fixed or adjustable? +

Closing Disclosure Explainer

<http://www.consumerfinance.gov/owning-a-home/closing-disclosure/>

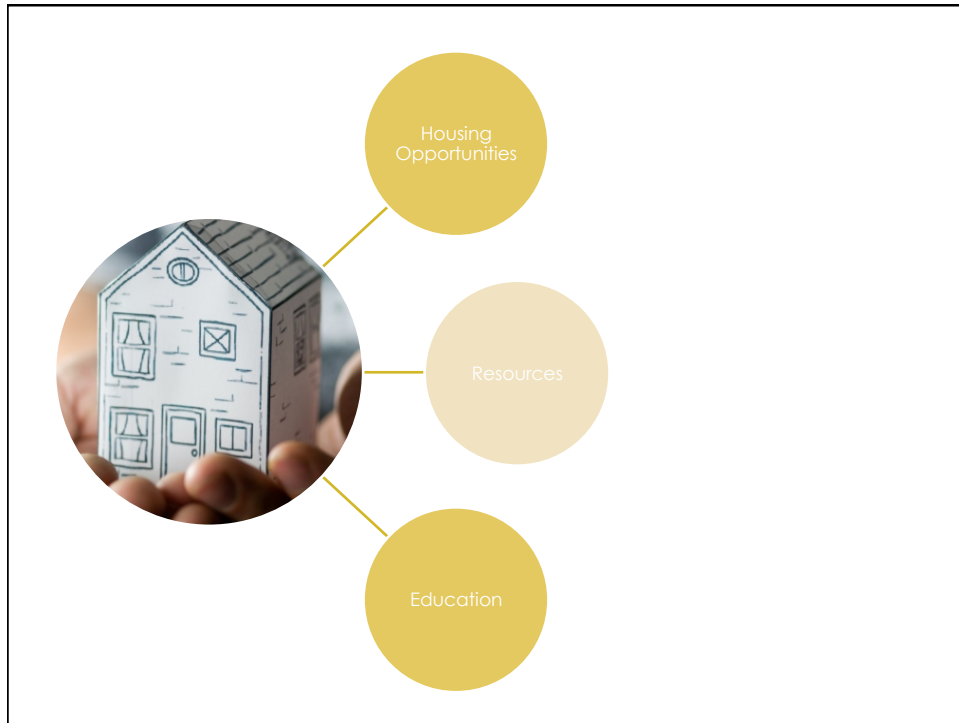
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Closing Disclosure
This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	Borrower	Loan Term
4/15/2013	Michael Jones and Mary Stone	30 years
Closing Date	123 Anywhere Street	Purpose
4/15/2013	Anytown, ST 12345	Purchase
Disbursement Date	Seller	Product
4/15/2013	Steve Cole and Amy Doe	Fixed Rate
Settlement Agent	321 Somewhere Drive	Loan Type
Epicon Title Co.	Anytown, ST 12345	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/>
File #	Lender	Loan ID #
123456	Ficus Bank	123456789
Property		MIC #
456 Somewhere Ave		00054321
Anytown, ST 12345		
Sale Price		
\$180,000		

Loan Terms	Can this amount increase after closing?
Loan Amount	\$162,000 NO
Interest Rate	3.875% NO
Monthly Principal & Interest <small>See Projected Payments below for your Estimated Total Monthly Payment</small>	\$761.78 NO
Prepayment Penalty	YES <small>• As high as \$3,240 if you pay off the loan during the first 2 years</small>
Balloon Payment	NO

- Check the spelling of your name +
- Check that loan term, purpose, product, and loan type match your most recent Loan Estimate +
- Check that the loan amount matches your most recent Loan Estimate +
- Check your interest rate +
- Does your loan have a prepayment penalty? +



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

- Access Living
- Chicago Lawyers' Committee for Civil Rights Under Law
- HOPE Fair Housing Center
- John Marshall Fair Housing Legal Support Center
- Open Communities
- Prairie State Legal Services

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.



The Regional Collaborative

- CAFHA
- Chicago Lawyers' Committee for Civil Rights Under Law
- Hope Fair Housing Center
- Open Communities
- Sargent Shriver National Center on Poverty Law
- South Suburban Housing Center

Community Participation Quick Tips

- Think about ways to present
- Learn about local rules
- Plan what you will say
- Speak clearly and conversationally
- Stay calm
- Offer to follow up
- Remember your ideas are important

What Can Public Comment Do

- Open up potential funding sources
- Create a conversation about mortgage issues still present within our communities
- Connect with new groups/people
- Influence community spending to break down the barriers of segregation

What Can We do For You

- Provide support
- Provide statistical information and data
- Help organize coalitions to address issues
- Help you use your voice to make real change