

# Fair Housing Conference



U.S. Attorney's Office for the  
District of Idaho  
April 2012

## Laws Enforced by DOJ

- Fair Housing Act (FHA)
- Equal Credit Opportunity Act (ECOA)
- Titles II and III, Civil Rights Act of 1964
- Religious Land Use and Institutionalized Persons Act (RLUIPA)
- Servicemembers Civil Relief Act (SCRA)
- Americans with Disabilities Act (ADA)



## Fair Housing Act (FHA)

Prohibits discrimination on the basis of:

- race
- color
- religion
- sex
- disability
- familial status
- national origin



## Who is NOT protected?

- Age
- Marital Status
- Sexual Orientation
- Source of Income

State or local law may prevent  
discrimination on these  
grounds



## HUD Rule Aims to Cut Discrimination

A new rule took effect in March 2012 barring those who own or operate U.S. Department of Housing and Urban Development-funded housing from asking about an applicant's sexual orientation or gender identity.



## Equal Credit Opportunity Act (ECOA)

Prohibits creditors from discriminating against credit applicants on the basis of:

- race
- color
- religion
- national origin
- sex
- marital status
- age
- receipt of public assistance
- exercise of rights under CCPA



## Titles II & III, Civil Rights Act of 1964

Prohibits discrimination in certain places of public accommodation (hotels, restaurants, and places of entertainment) or in public facilities or services, because of:

- race
- color
- religion
- national origin



## Americans with Disabilities Act

- Prevents discrimination against individuals with disabilities in places that serve the public such as parking facilities, common areas, parks, local government facilities, hotels, restaurants, and medical facilities.



## Religious Land Use and Institutionalized Persons Act (RLUIPA)

Protects

- individuals
- houses of worship
- other religious institutions

from discriminatory or unduly burdensome zoning and landmarking laws



## Servicemembers Civil Relief Act (SCRA)

Provides protections for military members as they enter active duty, covering such issues as:

- Rental agreements, pre-paid rent, security deposits
- Eviction
- Installment contracts
- Credit card and mortgage interest rates
- Mortgage foreclosure, civil judicial proceedings
- Automobile leases
- Life and health insurance
- Income tax payments



## Fair Housing Act

- What it covers
- What it prohibits
- What to do if you believe you or someone you know is a victim of housing discrimination
- Roles of DOJ and HUD
- DOJ's enforcement activities
  - Remedies
  - Recent examples



## FHA Covers “Dwellings”

- Houses and townhouses
- Apartments and condominiums
- Student housing
- Homeless shelters (even if stays are short-term)
- Vacation time shares (even if stays are part-time)

Not covered by FHA:

- Hotels and other places of “temporary sojourn”



## FHA Prohibits

- Refusing to sell or rent after making bona fide offer
- Refusing to negotiate for sale or rental of dwelling
- Making unavailable or denying a dwelling
- Discriminating in “terms, conditions, or privileges” of sale or rental, or “in the provision of services or facilities”
- Making, printing, or publishing a statement or advertisement indicating a preference or limitation



## FHA Prohibits (cont'd.)

- Representing that a dwelling is not available when in fact it is
- Discriminating in residential real estate-related transactions or in the terms or conditions of such transactions
- Intimidating, threatening or interfering with any person for exercising her or his housing rights
- Criminal threats, use of force, intimidation or interference



## Retaliation

- The FHA also prevents retaliation for exercising FHA rights.

*Example: Retaliation for advising someone how to file a Fair Housing Claim*



## “Making Unavailable or Denying”

- Homeowner refuses to rent or sell to an African-American
- Landlord establishes a “no kids” policy at an apartment complex not specifically designed for older persons
- Town enacts or enforces zoning code to prevent group home for persons in recovery from alcohol or illegal drugs because of the residents’ disability
- Architect and developer design and construct multi-family housing without certain accessible features
- Landlord demands sexual favors before agreeing to rent apartment





## Sex Discrimination includes Sexual Harassment

- “Quid Pro Quo”
  - Special this month – 50% off the rent for sex with the landlord
- “Hostile Environment” – persistent physical and/or verbal unwelcome sexual advances
  - Would a reasonable person be offended?



## “Terms, Conditions, or Privileges”

- Landlord forces Hispanic renters to transfer to less desirable apartments or buildings to make room for non-Hispanic renters
- Landlord charges families with children higher rent
- Homeowners association allows ornaments on doors for some religions but not others
- Rental agent offers to waive security deposit for white “tester” but not for black “tester”
- Landlord refuses to designate a parking spot for a resident who requests a “reasonable accommodation” because of a disability



## Special Disability Provisions

- Landlords/Condo Associations must permit an individual with a disability, at his or her own expense, to make physical modifications to the premises
- Must make reasonable accommodations in rules, policies, practices or services to afford a person with a disability equal opportunity to use and enjoy a dwelling



## Examples

- Refusal to rent to someone with a service animal due to a “no pet” policy
- Refusal to designate a suitable parking space for a resident with a disability
- Dwellings built after 1991 with four or more units must have elevators or accessible ground floor units



## Examples of Criminal Violations

- Cross Burnings
- Arsons
- Assaults
- Threats
  - Homeowners
  - Prospective purchasers
  - Realtors
  - Visitors



## What to do if you believe you or someone you know is a victim of discrimination

- File a lawsuit within two years after the occurrence or termination of the alleged discriminatory act
- File a complaint within one year with HUD or equivalent state agency
- If possible criminal conduct, call local law enforcement immediately
- If you're not sure whether there is a violation, call HUD



## HUD's Role

- Receives individual complaints of housing discrimination
- Investigates and attempts to conciliate complaints
- Refers pattern or practice cases and land use or zoning cases to DOJ
- May issue a “charge” of discrimination if “reasonable cause” to believe discrimination occurred
- Hearing before administrative law judge unless complainant or respondent files notice of “election”
- If no “election,” HUD represents complainant in administrative proceedings



## HOW DOJ Gets Involved in Enforcing Fair Housing Act

- Files “election” cases from HUD; acts on behalf of complainant (who may intervene in suit)
- Investigates other HUD referrals for possible enforcement action
- Independent authority to initiate lawsuits alleging “pattern or practice” of discrimination or denial of rights to group of persons that raises issue of “general public importance”



## DOJ Enforcement Activities: Remedies

- Injunctive Relief (prevention and correction)
- Monetary Damages for Aggrieved Persons  
-- includes emotional distress
- Civil Penalties (\$55,000 for the first violation)



## Additional Sources of Information

Department of Justice, Civil Rights Division

[www.usdoj.gov/fairhousing](http://www.usdoj.gov/fairhousing)

[www.usdoj.gov/crt](http://www.usdoj.gov/crt)

Housing Discrimination Tip Line:

800-896-7743

[fairhousing@usdoj.gov](mailto:fairhousing@usdoj.gov)



## DOJ Fair Lending Basics

- **Fair Housing Act** prevents discrimination in terms and conditions or services in connection with the sale of housing
- **Equal Credit Opportunity Act** prevents discrimination in any aspect of a credit transaction
- **Servicemembers Civil Relief Act** provides relief to active service members



## DOJ Fair Lending Basics

### Types of Credit:

- mortgage and other housing-related
- auto, credit cards and other consumer
- small business



## How does DOJ get its Fair Lending cases?

- Federal Bank regulators referrals
- HUD referrals
- Federal agencies
- Advocacy organizations, individuals, media, academic studies



## Types of Cases under FHA and ECOA

- **Pricing** - higher fees
- **Steering** - steering to high cost products such as sub prime loans with high prepayment penalties
- **Redlining** - no loans to protected class
- **Reverse Redlining** - Predatory lending
- Targeting protected class for more expensive



## DOJ Pricing Cases

### *HMDA = Home Mortgage Disclosure Act*

- Most mortgage lenders must report each loan application
- Data is publicly reported

DOJ reviews and identifies lenders for investigation

- Proportion of higher-priced loans to minority borrowers
- Possible geographic patterns of high cost loans
- Racial or ethnic disparities in interest rates or denial rates

Consider non-HMDA information, including:

- Complaints to regulators or HUD
- Information about loan programs



## DOJ Pricing Cases

Full evaluation of pricing disparities may include:

- applicant credit characteristics
- data on individual loan terms
- discretion in pricing
- overages and fees
- loan products & channels
- information on similar loans in the same market





## DOJ Redlining Cases

Failure to provide lending services to minority areas:

- few or no branches
- little or no marketing
- Community Reinvestment Act assessment area excluding minority areas
- extremely low proportion of loans



## Countrywide Settlement

- More than 200,000 African-American and Hispanic borrowers who qualified for loans were charged higher fees or placed into subprime loans
- The settlement provides \$335 million in compensation for victims of Countrywide's discrimination from 2004 - 2008



## DOJ Redlining Settlements

All recent redlining settlements include:

- nondiscrimination provisions
- new branches in previously redlined areas
- outreach & consumer education
- training and changes to bank procedures
- monetary relief ranging from \$3 million to \$10 million in loan subsidies for previously redlined areas



## How to detect direct discrimination?

- Who are the borrowers? Look at race, gender, ethnic origin
- How and where did they hear about the loan? Home? Community center? Church?
- Did the lender speak to them in their native language?
- Did they understand the terms of the loan?



## Elements of a Fair Lending Case

- FHA and or ECOA violation
- Pattern or practice
- Either disparate impact or intentional discrimination
- Statistical evidence
- Courts apply Civil Rights Act standards



## Emerging Fair Lending Issues

- Mortgage servicing/loan modification programs and illegal schemes
- Concentrated foreclosures and “foreclosure rescuers”
- Discriminatory loan denial patterns



# Resources

[www.usdoj.gov/fairhousing](http://www.usdoj.gov/fairhousing)

[fairhousing@usdoj.gov](mailto:fairhousing@usdoj.gov)

202- 514-4713

or

800-896-7743

