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**AGENDA**  
**9:00 AM – 12:00 PM PT**

**9:00 – 9:10: Introduction & Course Overview**  
**9:10: Part I: HUD's Proposed Fair Housing Rules**  
 9:10 – 10:00: Affirmatively Furthering Fair Housing (AFFH)  
 Questions, Poll #1  
**10:00 – 10:10: Break**  
 10:10 – 10:40: Disparate Impact Discrimination  
 Questions, Poll #2  
**10:40: Part II: Sales & Lending Discrimination Update:**  
 10:40 – 11:00 Testing  
**11:00 – 11:10: Break**  
 11:10 - 11:30: Steering & Discriminatory Practices by Real Estate Brokers  
 Questions, Poll #3  
 11:30 – 12:00: Regional Sales and Lending Discrimination  
 Guest Lecturers: Intermountain Fair Housing Council

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**Fair Housing for Real Estate Professionals: Update Your Knowledge**

**COURSE OVERVIEW**  
9:00AM – 9:05 AM

- **School:** Washington REALTORS®
- **Number of clock hours:** 3
- **Instructor:** Marley J. Hochendoner, J.D., Executive Director, Northwest Fair Housing Alliance
- Educational requirements under ch. 18.85 RCW or ch. 308-124H WAC which will be met upon completion of course:
  - ch. 308-124H-820(5): Provide practical information related to the practice of real estate in any of the following real estate topic areas:
  - (b) Open curricula:
  - (j) Legal aspects and
  - (ix) Current Trends and issues.

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### Instructional Materials

- [US Dept. of HUD Disparate Effects Rule \(pub. 2013\)](#)
- [US Dept. of HUD proposed rule: Disparate Impact Rule Standard \(pub. 8/19/19\)](#)
- [US Dept. of HUD final rule: Preserving Neighborhood and Community Choice \(pub. 8/7/2020\)](#)
- NWFHA Video: [Systemic Residential Race Discrimination in Spokane - A 6 Minute History](#)

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### Part I: HUD's New & Proposed Fair Housing Rules

- Take a closer look at current and proposed rules re:
  - HUD Disparate Impact Standard
  - Affirmatively Furthering Fair Housing
- 1.5 Clock Hours – *Registered trainees must attend both Part 1 and Part 2 to receive clock hour credit* (WAC ch. 308-124H-860(2))
- Instructor: *Marley Hochendoner, NWFHA*
- Upon completion, the student will be able to:

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### Affirmatively Furthering Fair Housing (AFFH)

- Know the Fair Housing Act mandate for HUD to Affirmatively Further Fair Housing
- Learn causes and ongoing impediments to home ownership and mortgage lending for people of color, including:
  - redlining
  - restrictive covenants
  - real estate association bylaws re: integrating neighborhoods
- Understand HUD's requirements for federal entitlement communities to AFFH
  - Know history of Affirmatively Furthering Fair Housing implementation
  - Learn HUD's new Rule, *Preserving Neighborhood and Community Choice* pub. 8/7/2020

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**Disparate Impact Discrimination**

- Know the elements to prove the legal theory of disparate impact discrimination
- Learn examples of policies and practices of real estate brokers and mortgage lenders that may result in disparate impact discrimination
- Learn the contents of HUD's proposed Disparate Impact Rule Standard, published 8/19/19

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**Part II:  
Sales & Lending Discrimination Update**

- 1.5 Clock Hours - *Registered trainees must attend both Part 1 and Part 2 to receive clock hour credit* (WAC ch. 308-124H-860(2))
- Instructor: *Marley Hochendoner, Executive Director, NWFHA*
- Guest Instructors (WAC ch. 308-124H-970):
  - *Intermountain Fair Housing Council*
- Upon completion, the student will be able to:

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**Fair Housing Compliance Investigation**

Understand the purpose and methodology of testing

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### Steering and Other Discriminatory Practices by Real Estate Brokers

- Learn fair housing violations by real estate brokers commonly identified through testing
- Know what steering is
  - Know how to avoid steering
  - Know how to respond to questions about the neighborhood, involving demographics, crime, and schools
- Learn examples of prohibited different treatment
- Learn how to respond to discriminatory directives from sellers

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### Regional Sales and Lending Discrimination

- Learn examples of regional sales and lending discrimination violations
- Know where to report regional sales or lending discrimination

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### Part I: HUD's New & Proposed Fair Housing Rules

- Take a closer look at the current and proposed:
- HUD Disparate Impact Rule
  - Affirmatively Furthering Fair Housing Rule

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**Affirmatively Furthering Fair Housing (AFFH)**



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**Affirmatively Furthering Fair Housing (AFFH)**

- The Fair Housing Act mandate for HUD to AFFH through its programs
- HUD's requirements for federal entitlement communities to AFFH



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**Analysis of Impediments to Fair Housing Choice**

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**Sec. 808(e)(5) of Fair Housing Act**

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requires Sec. of HUD to administer HUD's housing and community development programs in manner to affirmatively further fair housing (AFFH)



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**Consolidated Plan / Fair Housing Planning**

1995 - HUD published a rule consolidating:

- Comprehensive Housing Affordability Strategy (CHAS),
- the community development plan (req'd for CDBG program)
- reporting reqts. for 4 CD formula grant programs (CDBG, HOME, ESG, and HOPWA)

Into a single plan— the **Consolidated Plan**

As part of Con. Plan, grantees submit AFFH certification which requires them to undertake Fair Housing Planning

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Rejection of Certification = loss of grant \$

If HUD determines the AFFH certification is inaccurate, HUD will reject the certification

Rejection renders the Con. Plan substantially incomplete and constitutes grounds for HUD to disapprove the Con. Plan.

*A jurisdiction cannot receive its CDBG, HOME, ESG, or HOPWA program grants until Con. Plan is approved*

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**“Affirmatively Furthering Fair Housing”**

- **1994:** Pres. Clinton Exec. Order directed HUD to issue AFFH regs. to “describe a method to identify impediments in programs or activities that restrict fair housing choice”
- **1994:** HUD promulgated rule dictating a grantee would fulfill its AFFH obligation by conducting an **analysis of “impediments to fair housing choice”** within its jurisdiction” and “**taking appropriate actions to overcome** the effects of any impediments”
- **1996:** HUD issued **Fair Housing Planning Guide** - <https://www.hud.gov/sites/documents/FHPG.PDF>

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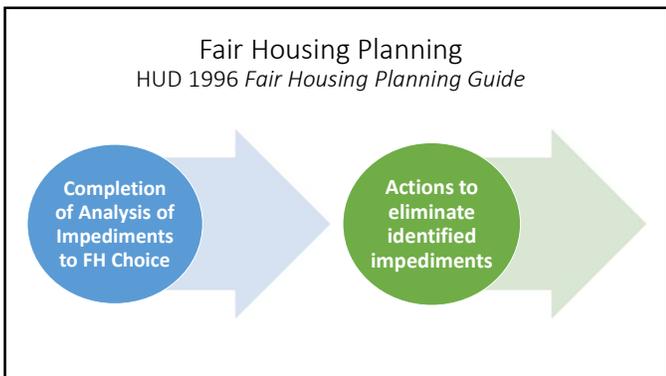
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**ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING**

**Opportunity to Inform Local Housing Policy and Development**

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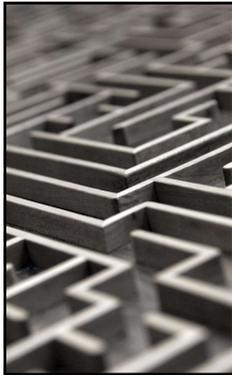
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Impediments to fair housing choice are:

Any actions, omissions, or decisions

- taken because of protected class which restrict housing choices or availability of housing choices; or
- which have the effect of restricting housing choices or the availability of housing choices on basis of protected class

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**Examples:**  
Analyses of Impediments to Fair Housing in WA

<http://nwfairhouse.org/library:>

- [WA Dept. of Commerce](#)
- [City of Spokane](#)
- [City of Everett](#)
- [Snohomish County](#)

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**Snohomish County:  
Homeownership and Rental Rates by Race / Ethnicity**

Hispanic and black people in the County Consortium are more likely to be renters than homeowners.

2.2% of housing units are occupied by black people

- only 1.35% of owner occupied units are black households
- 4% of renter occupied units are occupied by black people.

Hispanics have 6% occupancy of all households

- 4.2% owner occupancy rate
- 9.8% renter occupancy rate, while comprising

White households occupy 80% of all housing units

- 83% ownership rate
- 73% rental rate.

Asians divided nearly equally between renters and homeowners, with slight edge in favor of homeownership.

Source: Data and Mapping Tool, <https://egis.hud.gov/affht/>

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**Racial Housing Discrimination: Spokane Past and Present**

- An overview of one city's legacy of systems of race discrimination that controlled access to housing opportunities
- NWFHA's 2019 produced video, "[Systemic Residential Race Discrimination in Spokane - A 6 Minute History](#)"

Overview of Spokane demographic, mapping, racial disparity indicators, and fair housing complaint data



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**WHY DO WE LIVE WHERE WE LIVE?**

systemic  
institutional  
individual  
racism

determined where people of color could live

*Every community has a history –  
unique yet similar*

**Systems of Racism**

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**“According to a 1945 survey, nearly half of Spokane’s homeowners said they would sell their home if a Japanese family moved onto the same block.”**

Anna Harbine, “Welcome to the Japanese Americans of Spokane Tour,” *Spokane Historical*, accessed September 23, 2019, <https://spokanehistorical.org/items/show/566>

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### Early African American Residents and Segregation

"The funny thing is, the original 300 (the black pioneers), they lived all over Spokane," said (Carl) Maxey. "The dominant number lived in the East Side area, but, by far, it couldn't be said that there was just one area. The original pioneers were spread all over, which was very much different from other cities." The pioneer families were accepted in their neighborhoods, by most accounts. But when it came to new families, that was a different story.

Segregation in Spokane, Longtime Black Residents Recount the Injustices and the Victories, *COLUMBIA*: Winter 2000-01; Vol. 14, No. 4, *By Jim Kershner*, <https://spokaneraacism.wordpress.com/2008/01/27/segregation-in-spokane/>

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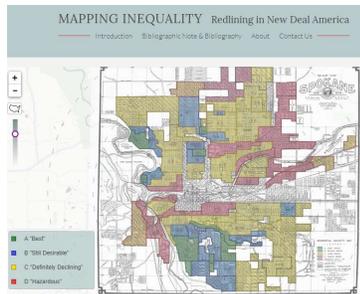
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### REDLINING SPOKANE 1938



Source: Mapping Inequality, <https://dsl.richmond.edu/panorama/redlining/#loc=14/47.6350/-117.3221&opacity=0.8&city=spokane-wa&adview=full>

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### Steering by Real Estate Agents

National and local real estate associations bylaws and codes of ethics:

"A Realtor should never be instrumental in introducing into a neighborhood ... members of any race or nationality, or any persons whose presence will be detrimental to property values in that neighborhood."

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Jerrelene Williamson, and her husband were looking to buy a home in the late 1950s.

“They bought their first home off East Sprague. A decade or so later, they moved to a neighborhood in the **Spokane Valley**. They would learn much later that the **real estate company had approached the neighbors and asked them if it was OK to sell the home to a black family.**”

<http://www.spokesman.com/stories/2016/dec/04/whites-only-covenants-still-exist-in-many-mid-cent/#/0>

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1961:

Frank Hopkins, owner of Ebony Cafe, told the *Spokesman-Review* in 1961 what happened when he bought a house on the **north side**, outside of an established black area. **Just as he was about to move in someone broke out 28 windows in one night. “I just had to let it go,” he said.**

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Reverend J. C. Brooks of Bethel African Methodist Episcopal Church in Spokane told the *Spokesman-Review* that **a black person looking for a house would be steered to the “area for Negroes,”** which he said was bounded by Division on the west, Altamont on the east, Ninth on the south, and Sprague on the north. Today it is called the **East Central neighborhood.**

*Segregation in Spokane, Longtime Black Residents Recount the Injustices and the Victories, COLUMBIA: Winter 2000-01; Vol. 14, No. 4, By Jim Kershner, <https://spokaneracism.wordpress.com/2008/01/27/segregation-in-spokane/>*

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**Early Fair Housing Enforcement**

**1957:**

- US Commission on Civil Rights created
- WA State Board Against Discrimination (WSBAD) created
- WA Law Against Discrimination expanded to cover: publicly-assisted housing because of race, creed, color, or national origin

**1961:**

- WSBAD Investigation: *Mrs. Willie Williams v. Walter L. Gainor Co., and its agent, A.H. Smick: refused to show Willie and John a house for sale*
- WSBAD found unfair practice committed.
  - Requested Respondent to display antidiscrimination poster and comply with state law.
  - WSBAD had no authority to force RP to do anything

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**1963:** WA Advisory Committee to the US Commission on Civil Rights (included Carl Maxey) sent report to WSBAD:

- influx of African Americans into WA (7,424 in 1940; 48,783 in 1960) would increase racial tensions unless state and federal govt. implemented remedial legislation, guaranteeing equal opportunity for all people regardless of race, religion, or national origin
- **Blacks experience major barriers in securing home loans compared to other racial groups in Spokane**, and thus continued to live in the low-income **eastside** area.
- **Realtors confined blacks to inferior, impoverished neighborhoods**

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**Fair Housing Laws**

1968: **Fair Housing Act** establishes protected classes and abolishes red lining

1969: **WA Law Against Discrimination** amended to include real estate transactions

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Causes and ongoing impediments to home ownership and mortgage lending for people of color

*If we don't know where we've been, it's hard to plan where we're going*

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### BLACK POPULATION 1960

<http://theioahistory.com/digital-resource/feature/race-and-violence-in-washington-state/>

Source: Race and Violence in Washington State, Report of the Commission on the causes and prevention of civil disorder, 1968. <http://iindy.historyl.com/item.php?id=649833>

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### PEOPLE OF COLOR – 2015

Race/ethnicity • Spokane City, WA

Percent population by tract, 2015 (For People of Color)

Source: [http://nationalequityatlus.org/indicators/false/Percent\\_population:41391/Spokane\\_City\\_WA/false/geotype:census\\_tract/geo\\_parents.city100:53101/value1:2015/value2:7/](http://nationalequityatlus.org/indicators/false/Percent_population:41391/Spokane_City_WA/false/geotype:census_tract/geo_parents.city100:53101/value1:2015/value2:7/)

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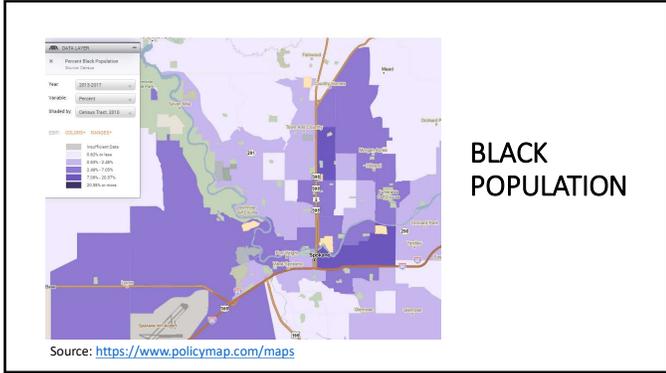
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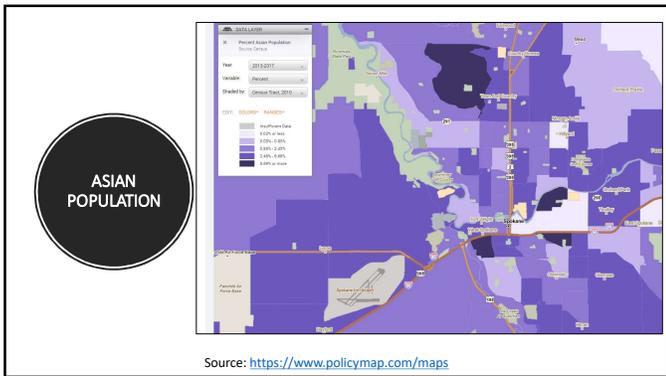
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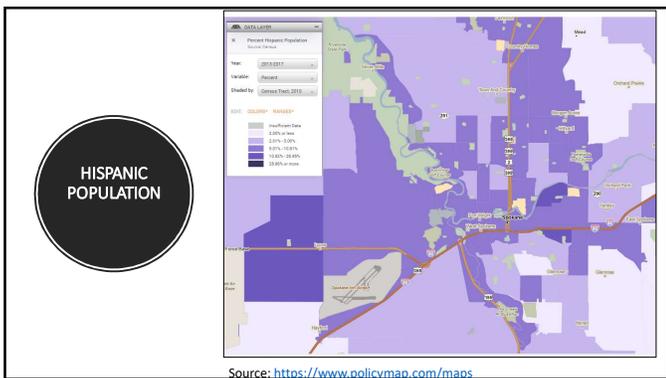
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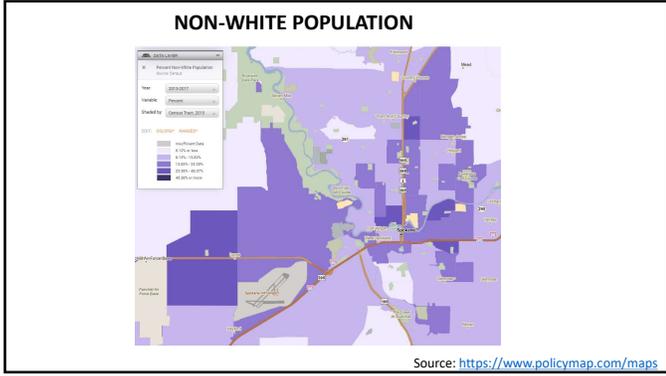
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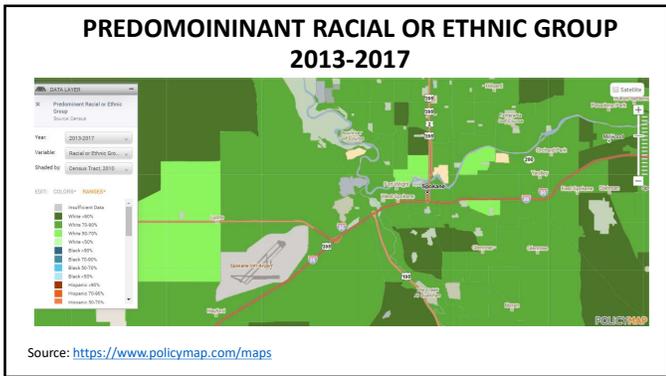
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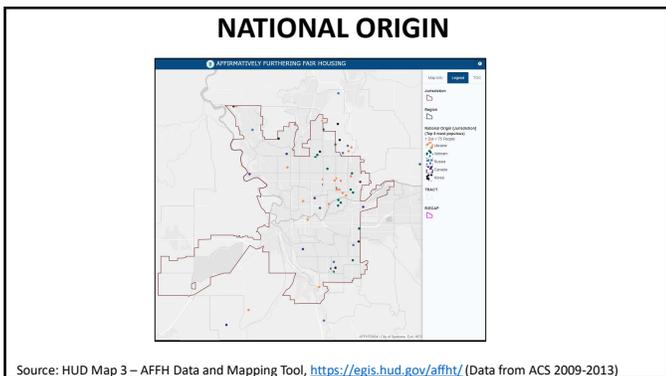
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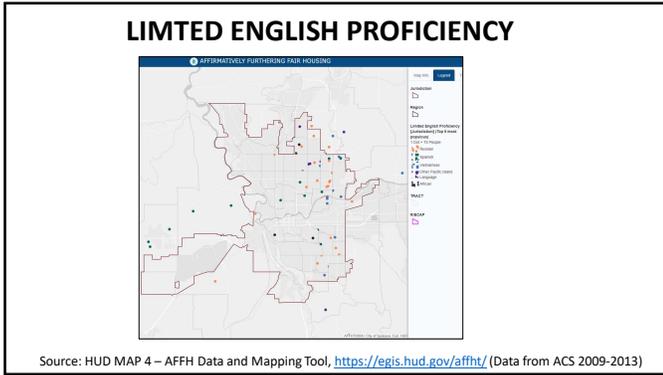
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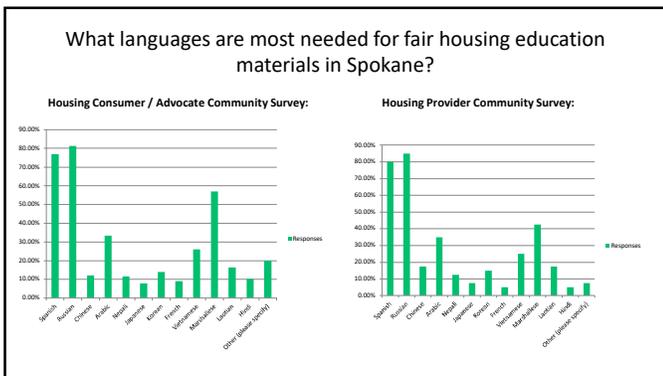
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### Race and Ethnicity Dissimilarity Index

HUD AFFH-T Table 3 – Racial/Ethnic Dissimilarity Trends								
	(Spokane, WA CDBG, HOME, ESG) Jurisdiction				(Spokane-Spokane Valley, WA) Region			
Racial/Ethnic Dissimilarity Index	1990 Trend	2000 Trend	2010 Trend	Current	1990 Trend	2000 Trend	2010 Trend	Current
Non-White/White	20.56	16.62	15.83	18.76	26.99	22.75	20.65	24.13
Black/White	33.69	25.25	21.97	28.10	42.73	36.62	31.05	38.23
Hispanic/White	17.46	15.10	14.34	17.05	19.18	19.18	18.70	21.09
Asian or Pacific Islander/White	17.58	15.30	16.88	25.23	26.96	21.94	21.90	29.03

Source: HUD AFFH Data and Mapping Tool, <https://egis.hud.gov/affht/> (Data from Decennial Census 2010, 2000)

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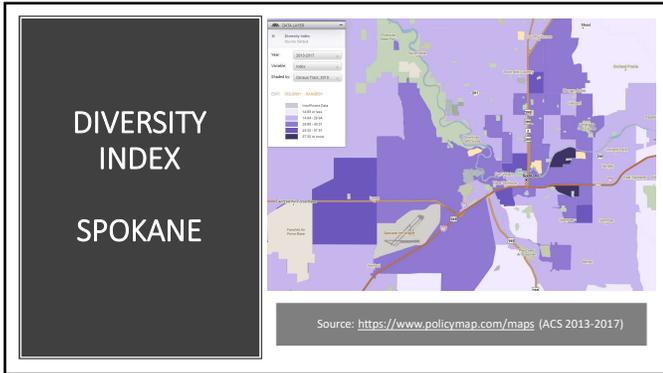
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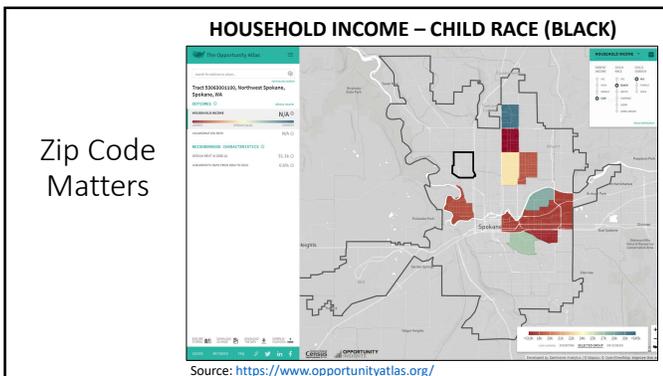
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**HUD AFFH-T Table 16 – Homeownership and Rental Rates by Race/Ethnicity**

Race/Ethnicity	(Spokane, WA CDBG, HOME, ESG) Jurisdiction		(Spokane-Spokane Valley, WA) Region	
	Homeowners	Renters	Homeowners	Renters
	#	%	#	%
White, Non-Hispanic	45,525	91.6%	31,405	83.7%
Black, Non-Hispanic	620	1.3%	1,185	3.2%
Hispanic	1,290	2.6%	1,740	4.6%
Asian or Pacific Islander, Non-Hispanic	1,040	2.1%	1,235	3.3%
Native American, Non-Hispanic	435	0.9%	825	2.2%
Other, Non-Hispanic	780	1.6%	1,130	3%
Total Household Units	49,685	-	37,520	-
			137,610	-
				73,130
				-

Source: Data and Mapping Tool, <https://egis.hud.gov/affht/>

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## MEASUREMENTS OF OPPORTUNITY

### Opportunity indexes & Disparity Indicators:

- ✓ Low Poverty Index
- ✓ School Proficiency Index
- ✓ Labor Market Index
- ✓ Transit Index
- ✓ Low Transportation Cost Index
- ✓ Jobs Proximity Index
- ✓ Environmental Health Index
- ✓ Criminal Justice System

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## Preserving Community and Neighborhood Choice - Final Rule

- HUD's proposed Rule, published 1/7/20
- **Final Rule: *Preserving Community and Neighborhood Choice*, pub. 8/7/2020**
  - See Handout
  - Effective: 9/8/2020
  - Repeals 2015 AFFH Rule and 1994 AI reqts. where they appear in regulation

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## Preserving Community and Neighborhood Choice - Final Rule

### Justification for new rule:

- **Federalism:** fed. agencies addressing matters traditionally w/in authority of States should take narrow view of scope of their power
- **Preserving local control:** states and local jurisdictions have traditionally regulated zoning and development policy, not the fed. govt.

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### Preserving Community and Neighborhood Choice - Final Rule

#### § 5.150 Affirmatively Further Fair Housing; Definition.

(a) The phrase "fair housing" in 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), and 1437c-1(d)(16) means housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as req'd under civil rights laws.

(b) The phrase "affirmatively further" in 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), and 1437c-1(d)(16) means to take any action rationally related to promoting any attribute or attributes of fair housing as defined in the preceding subsection.

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### Preserving Community and Neighborhood Choice - Final Rule

#### § 5.151 AFFH Certifications.

A HUD program participant's certification that it will affirmatively further fair housing is sufficient if the participant takes, in the relevant period, any action that is rationally related to promoting one or more attributes of fair housing as defined in section 5.150(a).

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### AFFH Proposed Rule

#### NAR Comment Letter to HUD Re Affirmatively Furthering Fair Housing Proposed Rule, 3/13/20:

- In 2015, and ... 2018, NAR recommended revisions to the Fair Housing Assessment Tool accompanying [the] 2015 rule to address several flaws that made the tool less than useful for the purposes it was designed.
  - Specifically, NAR proposed changes that would emphasize greater community participation and local decision-making in identifying and prescribing solutions to fair housing issues.
- Despite these criticisms, NAR supported the underlying objectives and the substance of HUD's 2015 rule. With these changes to the Fair Housing Assessment Tool, NAR believed then and believes now HUD could effectively implement the 2015 rule.

<https://www.nar.realtor/political-advocacy/nar-comment-letter-to-hud-re-affirmatively-furthering-fair-housing-proposed-rule>

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**AFFH Proposed Rule**

*NAR Comment Letter to HUD Re Affirmatively Furthering Fair Housing Proposed Rule, 3/13/20:*

- Over the last 100 years, **NAR has evolved from an organization in the 1920s that wrongly supported an ethical code prohibiting integration to one that is a leading advocate for strong fair housing rights.**
- By the 1970s, NAR was working directly with HUD to develop active programs and policies designed to promote and protect fair housing rights. Supporting inclusive communities is a standard for every REALTOR® to follow.
- In 2020, NAR launched its **ACT! initiative** which reinforces the commitment of our 1.4 million members to ongoing accountability, culture change, and training in support of this work.

<https://www.nar.realtor/political-advocacy/nar-comment-letter-to-hud-re-affirmatively-furthering-fair-housing-proposed-rule>

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**Preserving Community and Neighborhood Choice - Final Rule**

*"NAR Admonishes HUD Action to Weaken Fair Housing", 7/24/20:*

- "The [NAR] is disappointed that HUD has taken this step, which significantly weakens the federal government's commitment to the goals of the Fair Housing Act," NAR President Vince Malta said in a statement.
- "The viability of our 1.4 million members depends on the free, transparent, and efficient transfer of property in this country, and **NAR maintains that a strong, affirmative fair housing rule is vital to advancing our nation's progress toward thriving and inclusive communities.**
- With the **pandemic's disproportionate impact on people of color** reminding us of the costs of the failure to address barriers to housing opportunity, NAR remains committed to ensuring no American is unfairly denied this fundamental right in the future."

<https://magazine.realtor/daily-news/2020/07/24/nar-admonishes-hud-action-to-weaken-fair-housing>

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**QUESTIONS?**  
**Poll #1**



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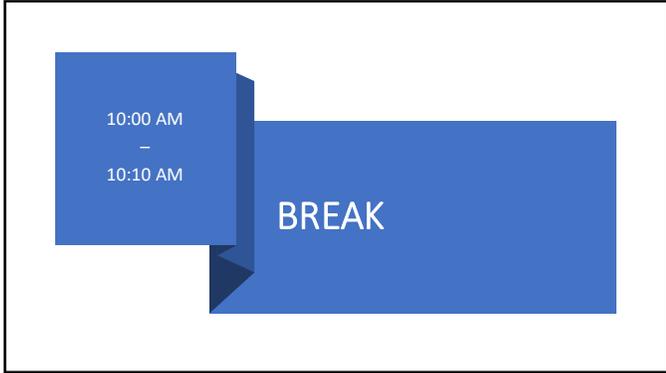
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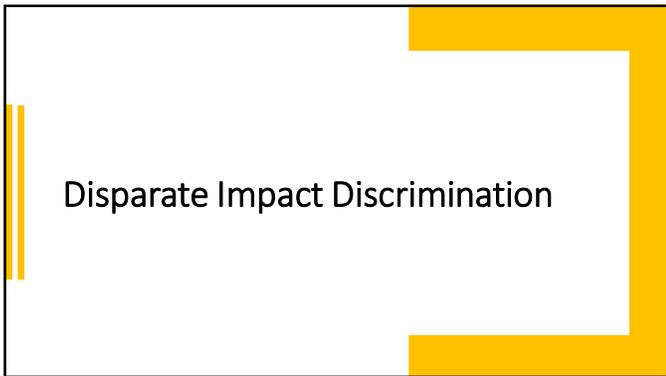
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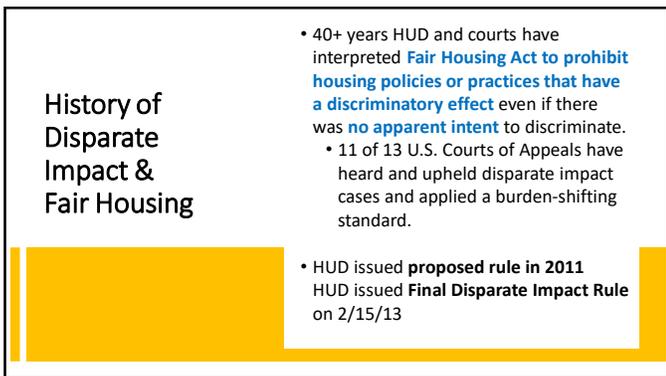
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**Disparate Impact Rule (2/15/13)**

An unjustified discriminatory effect is established according to a **3-part burden shifting test**:

- (1) **Plaintiff makes an allegation:** burden of proving that a practice **caused, or predictably will cause, a discriminatory effect**;
- (2) **Defendant offers a rebuttal:** burden of proving the practice is **necessary to achieve a substantial, legitimate, nondiscriminatory interest**; and
- (3) **Plaintiff responds:** if the defendant satisfies its burden, the plaintiff may still prevail by proving that the substantial, legitimate, nondiscriminatory interest supporting the practice **could be served by another practice that has a less discriminatory effect**.

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**Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015).**

- **Facts:** Dallas, TX: housing authorities distributing housing tax credits to build low-income housing, in mostly black areas.
- **Allegation:** created a disparate impact on access to opportunities.
- **Supreme Court:**
  - **disparate impact claims are cognizable under the Fair Housing Act**
  - Court referenced HUD's 2013 Disparate Impact Rule.

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**Did Court follow HUD's 2013 Disparate Impact Rule?**

- **HUD asserts:**
  - Court did not follow the 2013 disparate impact rule
  - **Court undertook its own analysis** of standards for, and constitutional questions and necessary limitations regarding disparate impact claims
- **Fair housing advocates contend:** Court implicitly endorsed the rule by not questioning it

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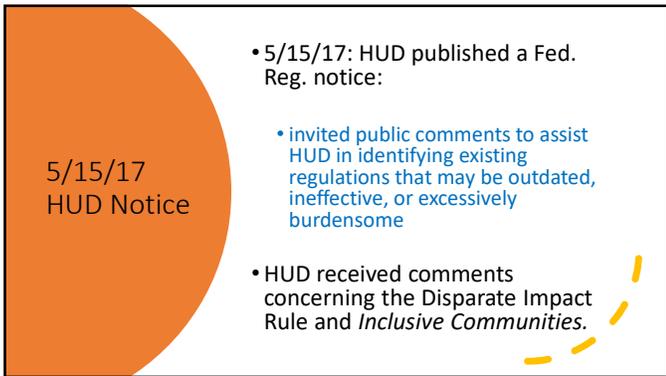
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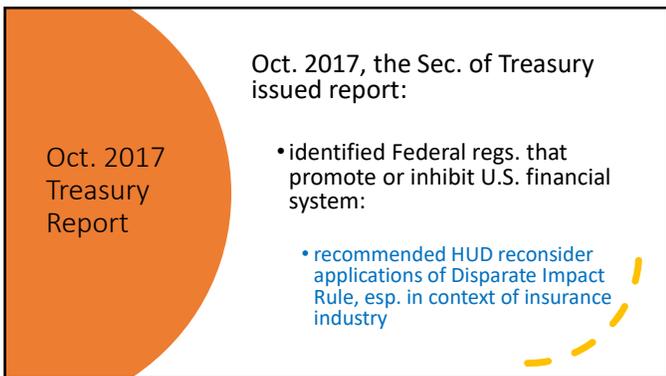
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6/20/18:  
HUD  
Advance  
Notice of  
Proposed  
Rulemaking

HUD published advance notice of proposed rulemaking **inviting comments on possible amendments to HUD's Disparate Impact Rule**, including

- the rule's burden-shifting approach
- definitions
- causation standard, and
- whether it required amendment to align with the decision of the Supreme Court in *Inclusive Communities Project, Inc.*

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HUD's **proposed**  
Disparate Impact  
Rule Standard

Pub. 8/19/19:

- In response to comments rec'd on HUD's 5/15/17 notice and 6/20/18 ANPR, this rule **proposes to replace HUD's current discriminatory effects standard** at § 100.500 with a **new standard** and incorporate minor amendments to §§ 100.5, 100.7, 100.70, and 100.120.

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8/19/19: HUD  
published  
proposed Rule

**Rationale:**

- bring HUD's disparate impact rule into closer alignment with the analysis and guidance provided in *Inclusive Communities* as understood by HUD, and
- codify HUD's position that its rule is **not intended to infringe upon any State law for purpose of regulating the business of insurance**

*Comment Deadline:* Oct. 18, 2019

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8/19/19: HUD Proposed Rule

Replaces 2013 Rule's 3-part burden shifting test with **5 point evidentiary test for Plaintiff:**

1. Prove the policy is "arbitrary, artificial, and unnecessary" to achieve a valid interest;
2. Demonstrate a "robust causal link" between the practice and the disparate impact;
3. Show that the policy negatively affects "members of a protected class";
4. Indicate that the impact is "significant"; and
5. Prove that the "complaining party's alleged injury" is directly caused by the practice in question

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8/19/19: HUD Proposed Rule

Only if the plaintiff makes the *prima facie* case, does the burden shift to the defendant to rebut the disparate impact claim.

- Provides defenses that may be used
- Provides 3 methods by which a defendant could defeat a claim based on use of algorithmic model
  1. a model isn't the cause of the harm
  2. show that a model or algorithm is being used as intended, and is the responsibility of a third party
  3. call on a qualified expert to show that the alleged harm isn't a model's fault

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HUD's **proposed** Disparate Impact Rule Standard

Pub. 8/19/19:

**Lenders Oppose Federal Effort to Weaken Housing-Discrimination Rule, WSJ, 7/13/20:**

- "Banks and mortgage lenders are urging the Trump administration to scrap a plan to water down an Obama-era regulation aimed at combating discrimination in housing, saying it is inappropriate amid the national reckoning on race."
- Bank of America Corp. and Quicken Loans Inc. oppose the rule change
- <https://www.wsj.com/articles/lenders-oppose-federal-effort-to-weaken-housing-discrimination-rule-1159467932>

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**Purpose & methodology of testing**

- Fair housing **audit testing**: controlled method for measuring and documenting variations in the quality, quantity and content of info. & services offered or given to home seekers by housing service providers.
- **Testing is a method of uncovering and detecting discrimination**: In 1982, the U.S. Supreme Court confirmed the importance and validity of fair housing testing, in a unanimous decision.

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**Steering and Other Discriminatory Practices by Real Estate Brokers**

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**Prohibited Practices**

- Denying or limiting use of real estate services
- Falsely denying availability
- Refusing to show
- Failing to accept or consider a bona fide offer
- Delaying or failing to process an offer for sale or rental
- Making, printing, or publishing a discriminatory statement
- Advertising housing as available to only certain buyers
- Representing that discriminatory deed or covenant provisions will preclude a sale or rental
- Enforcing discriminatory deed or covenant restrictions

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Prohibited Practices

- Using different provisions in leases or sales contracts, such as those related to security deposits, down payments, closing requirements
- Using different qualification criteria or standards.
- Imposing different sales prices
- Limiting the use of privileges, services or facilities.
- “Blockbusting” – persuading someone to sell housing by saying minorities are moving in

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Prohibited Practices

- Denying or making different home loan terms
- Discriminatory appraisals
- Discriminatory provision of homeowners’ insurance
- Exclusionary land use practices
- Discharging or taking adverse action against an employee, broker, or agent because he or she refused to participate in discriminatory acts.

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**STEERING**

24 CFR Part 14, Sec. 100.70(a).

It shall be unlawful, because of (protected class), to restrict or attempt to **restrict the choices** of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to **perpetuate, segregated housing patterns**, or to **discourage or obstruct choices** in a community, neighborhood or development.

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Steering:

“discouraging any person from inspecting, purchasing or renting a dwelling because of race or national origin, or because of (the protected class) of persons in a community, neighborhood or development” (24 C.F.R. § 100.70(c)(1)).

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Steering:

- “discouraging the purchase of a dwelling, by exaggerating drawbacks or failing to inform any person of desirable features” (24 C.F.R. 100.70(c)(2)), &
- “communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents ...” (24 C.F.R. 100.70(c)(3)).

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*Steering - Race*

- **US v. Coldwell Banker Joe T. Lane Realty, Inc. (N.D. Ga. 2010)**
- lawsuit originated from a complaint filed by the Nat. Fair Housing Alliance with HUD.
- Testing of Coldwell Banker Joe T. Lane Realty Inc. revealed real estate agent steered white testers towards predominately white areas and away from predominately African-American areas.
- Before showing the tester any homes, agent told tester he did not know where to take the tester because he could not tell from talking on the telephone whether the tester was white.
- Alleges Coldwell Banker Joe T. Bank Realty is vicariously liable for Mr. Foreman's conduct.
- Consent order required that Defendants pay \$160,000

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**How to respond to questions about the neighborhood, involving demographics, crime, and schools**

National Association of Realtors 2014 website: "Discussions about schools can raise questions about steering if there is a correlation between the quality of the schools and neighborhood racial composition."

**Agents may provide info. so long as it is strictly factual – and provided equally to customer**

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Fair housing violations by real estate brokers commonly identified through testing

*Long Island Divided*, Newsday Report: <https://projects.newsday.com/long-island/real-estate-agents-investigation/>

By Ann Choi, [Keith Herbert](#), [Olivia Winslow](#) and project editor [Arthur Browne](#) *This project was reported by Ann Choi, Bill Dedman, Keith Herbert and Olivia Winslow and edited by Arthur Browne. Data analysis by Choi. Strategic planning and methodology by Dedman.* Published: Nov. 17, 2019

• 3-year Newsday Investigation

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**Methodology**

- NY City line to Hamptons, Long Island Sound to S. Shore.
- Divided region into 10 zones: included 83% of L.I.'s pop., 80% of white pop. & 88% of minority pop.
- included areas w/ affordable homes, mansions, & areas where large groups of minorities live close to white pops.
- Tests conducted all 10 zones
- confirmed agents had houses to sell from Zillow - draws from MLS of Long Island

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**Agents Tested**

- 93 agents tested
- provided 5,763 listings
- 12 brands
  - represented over 50% of L.I.'s home sellers in 2017
- 2 of 12 firms tested showed no evidence of disparate treatment

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**Methodology**

- 25 testers trained
- White tester paired with black, Hispanic, or Asian tester
- Tests recorded by hidden cameras – permitted in NY – 240 hours recorded

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**Methodology**

- 86 paired tests
  - 39 tests paired black and white testers
  - 31 tests paired Hispanic / white testers
  - 16 tests paired Asian / white testers
- Listings reviewed and mapped, showing areas preferred for different types of testers

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**Evaluation of Test Results**

Two nationally recognized experts evaluated test results

- Fred Freiberg, co-founder Fair Housing Justice Center. Led national testing program for US DOJ, and 2 nat'l paired testing programs for the Urban Institute. Has coordinated more than 12,000 tests.
  - Paid to help organize testing and train testers but not paid to evaluate test results
- Robert Schwemm, Prof. of Law U. of KY College of Law. Author, "Housing Discrimination: Law and Litigation"
  - Assisted unpaid

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**Evaluation of Test Results**

- Two experts were separately provided summaries of tests that appeared to show unequal treatment; transcripts of comments made by agents; maps of the listings suggested to testers; and the average percentage of the white pop. in the tracts where the listings were
- A violation was only counted if both experts saw a fair housing violation

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11:00 AM  
-  
11:10 AM

**BREAK**

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**TEST RESULTS**

40% of tests showed evidence of disparate treatment of minority testers vs white testers

- 19% of the time against Asians
- 39% of the time against Hispanics
- 49% of the time against Blacks

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**Unequal Treatment In Service**

In 7 tests (8% of total): agents imposed **more conditions** on minorities compared to white testers = denial of service

- 5 black / white tests
- Most commonly, agents **refused to provide house listings or tours** to minority testers unless they **met financial qualifications** not imposed on white testers

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**Test Examples: More Stringent Reqts.**

- Agent takes white tester on tours w/o requesting ID but asks black tester for ID.
- Agent refuses to show homes to black tester unless tester signs exclusive broker's agt. – hours before she invites white tester on tours w/o requiring agt.
- Agent offers to drive white tester to tours, provides 79 listings and escorts tester to houses w/out proof of financial standing. Agent tells black tester she must produce mortgage prequalification.

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Test Examples: More Stringent Reqts.

- Agent tells Hispanic tester that he helps customers only after they sign an exclusive broker's agt. and secure mortgage preapprovals. Agent provides listings and tours to white tester w/o requiring either.
- Agent tells black and white testers that he provides listings and tours only to customers who have mortgage preapproval – then bends policy for white tester
- In one test, imposed more stringent reqts. on Hispanic tester than white tester = denial of equal service

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Unequal Treatment In Service

- Agents provided white testers an average of 50%+ **more listings** than paired black testers – 39 vs. 26
- Agents gave both Hispanic and white testers ave. of 42
- Agents gave Asians 18 and paired white testers 22

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Test Examples: # of listings

Provided **Hispanic testers 12% fewer listings** than white testers, w/ gap larger in overwhelmingly white communities. There, agents **gave white testers 7x more homes to consider** than provided to Hispanic tester

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**Steering By Listings Provided**

- 5,763 listings from 93 agents mapped
- 24% of tests: agents steered whites and minority testers to different communities through house listings
  - 28% of black/white tests (11 of 39 tests): black testers directed to different neighborhoods than white testers
- Some agents provided listings to white and minority buyers matching pop. of the areas.
  - E.g.: 8 of 10 Merrick residents are white. Agents gave more than 8 out of 10 listings in Merrick to white testers and less than 2 out of 10 to minority testers.
- agents gave black testers their smallest share of listings in areas w/ the highest % of white residents, and their biggest share where whites were less populous
  - Where whites were 20% or less of the pop. in a community, agents gave 70% of the listings to minority testers
  - When whites were 56% or more of the pop., agents gave most of the listings in those communities (63%) to whites

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**White / Hispanic Tests**

- Focused Hispanic testers on houses in 18 tracts. Picked listings in these areas for Hispanic testers at double the rate they did for white testers. 11 of the 18 tracts show growing Hispanic pops.

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**Steering By Comments**

Agents shared race, ethnicity or religion of communities with white testers, but not minority testers

- In 3 tests agents either spoke about steering to white tester but not black tester, or volunteered info. about the ethnicity of communities only to white testers.
- Eg: Agent to white tester: "But you don't want to go there. It's a mixed neighborhood," "You have white, you have black, you have Latinos, you have Indians, you have Chinese, you have Koreans; everything."
- Agent made no such comments to Asian tester

**Agents should provide equal guidance to customers about neighborhoods**

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Test Examples: Steering Comments to White Testers

- Agent tells a white tester that she would not look in areas that surround a predominantly minority community, while telling a Hispanic tester she would concentrate on that community
- Agent tells a white tester he “might be more comfortable in a certain demographic area,” says she is barred from talking about demographics – but adds her colleague will educate the customer, whom she describes as a “stand-up guy”

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Test Examples: Steering Comments to White Testers

- Agent warns white tester about gang violence in Brentwood – but directs black tester toward Brentwood, a predominantly minority community
- Agent warns white tester to avoid Freeport – but suggests the predominantly minority area could be a good choice for a black tester

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Test Examples: Steering Comments

- Agent complains to white tester that fair housing laws bar him from warning buyers away from certain communities, offers the tester choices in predominantly white areas, and directs a Hispanic tester to predominantly minority communities.
- Agent suggests 5 Plainview homes to white tester – but tells black tester that houses with same market value there are out of his price range

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### Avoiding Communities of Color

Agents w/ L.I.'s biggest brokerages had 200+ opportunities to suggest houses to paired testers in 8 overwhelmingly black and Hispanic communities

- The 8 communities were 73% - 97% minority.
- houses were on the market from \$400-\$500k, but agents directed all but a small no. of testers to communities w/ larger % of white residents.
- Agents recommended homes there only 15 times, usually to minority testers

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### Branch Locations

93 agents tested worked for 12 companies that dominate the L.I. market

- 218 branch offices in Nassau and Suffolk counties
- No offices in the 8 communities where most L.I. minorities live
- Ave. white pop. in towns where top real estate brands have offices ranges from 75% to 86%

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QUESTIONS?  
Poll #3



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## Regional Sales & Lending Discrimination

Examples of regional sales and lending discrimination violations:

Intermountain Fair Housing Council:

- *Issa Ntakarutimana*
- *Monica Fabbri*
- *Alison Brace*

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## NWFHA Sales Testing

7 sales audit tests for different treatment based on race or national origin (Hispanic):

- (5) in 2014
- (2) in 2017
- none indicated discrimination

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Bellevue
Cashmere *Central Valley /
Bellingham
Clarkston
Coville
Ellensburg
Kennewick
Kirkland
Lacey
Lakewood
Lynnwood
Mill Creek
Moses Lake
National
Plasco
Pullman
Puyallup
Richland
Seattle
Shelton
Spokane
Spokane Valley
WA
Sunnyside
Tacoma
Walla Walla
Wenatchee
Yakima

## NWFHA Lending Testing WA: 2014 - 2017

Disability	<b>Discrimination</b>	18 of 131
Sex / Familial Status		(13.7%)
National origin	Differences / Possible	22 of 131
Race	Discrimination	(16.8%)
Sex	Inconclusive	16 of 131
Race		(12.2%)
	No	75 of 131
	Discrimination	(57.3%)

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### NWFHA Lending Testing in **Spokane**

- 2016-2017: 16 audit tests for lending discrimination at financial institutions based on **Hispanic or Middle Eastern nat'l origin**.
  - 37.5% showed differences in terms or treatment
- 2017: sex discrimination lending testing based on **paid maternity income**. 1 of 5 tests in Spokane showed discrimination
- 2014: lending testing based on **disability-related SSDI income**. **All 4 subjects in Spokane had discriminatory policies**.
  - By 2017, testing found no discrimination on this basis in 7 tests in Spokane.

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#### WHO ARE WE?

IFHC is a nonprofit organization whose mission is to ensure open and inclusive housing for all people. The IFHC's purpose is to advance equal access to housing for all persons without regard to race, color, sex, religion, national origin, familial status, gender identity, sexual orientation, source of income, or disability. The IFHC attempts to eradicate discrimination through education of the fair housing laws, housing information and referrals, housing counseling and enforcement including filing complaints under the Fair Housing Act.



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#### ALISON BRACE

**Ms. Alison Brace** is the Legal Coordinator and EOI Project Director for Intermountain Fair Housing Council. She joined Intermountain Fair Housing Council in October 2013, where she conducts intakes, investigates allegations of discrimination, coordinates, plans and participates in education and outreach, and handles enforcement of claims. Ms. Brace has helped create, organize panels and presented at the Council's annual fair housing presentations in the Treasure Valley since 2016. She has also presented the Idaho track at the Inland Northwest Fair Housing Conference in Spokane since 2017. Ms. Brace has helped organize and present at regional annual fair housing trainings since 2017, including Pocatello, Idaho Falls, and Coeur d'Alene. In 2019, she was the lead trainer for the Moscow and Lewiston annual fair housing trainings. In addition, Ms. Brace presents at many trainings locally in the Treasure Valley areas, including presentations to housing providers and consumers, trainings for staff at advocacy organizations, and refugee resettlement agencies among others.

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**MONICA FABBI**

**Monica Fabbi** has been an investigator at the Intermountain Fair Housing Council since March 2016. Since joining IFHC, Monica has advocated for clients for reasonable accommodations, rights as protected classes including families with children, religion, race, color, sex, and people with disabilities in single-family dwellings, apartments, mobile homes, tiny homes, and to people without shelter. Monica also provides education to cities, housing providers, and individuals through written comments, testimony at city land use meetings, community gatherings, and informational events through IFHC. Additionally, Monica works with outside counsel on federal court cases for IFHC and bona fide complainants.

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**ISSA NTAKARUTIMANA**

**Issa Ntakarutimana** has been with Intermountain Fair Housing Council (IFHC) providing translation services and working as a testing ambassador since 2012. In 2016, Mr. Ntakarutimana started a new position working as a Fair Lending Testing Coordinator and Housing Specialist. Mr. Ntakarutimana speaks Swahili, Kirundi, and Kinyarwanda, offering valuable translating services in addition to his work as a Fair Housing Specialist. Issa currently works as an Intake Specialist/Investigator. He is a vital part of the education and outreach team, providing trainings, education, and community outreach to all Idahoan and the surrounding areas.

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**SALES & LENDING TESTING**

Investigation enforced the Fair Housing Act based on the seven protected classes

1. Color
2. Disability
3. Familial status (i.e., having children under 18 in a household, including pregnant women)
4. National origin
5. Race
6. Religion
7. Gender

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OVERALL SUMMARY OF TESTING

Intermountain Fair Housing Council (IFHC) in collaboration with the Northwest Fair Housing Alliance (NWFHA). The investigation took place in the year 2016 through 2017 and 2018. During this process, banks and mortgage lenders were investigated. 4 total paired testers were sent out to Movement Mortgage, 2 testers of color, and 2 Caucasian testers. Movement Mortgage LLC was found making discriminatory practices based on race and color.

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NUMBER OF TESTS AND DIFFERENCES BETWEEN CAUCASIAN AND BLACK TESTERS

- In 2016 and 2017 IFHC conducted 10 sites tests, 14 phone tests, and 40 email tests.
- In 2018 and 2019 IFHC continued testing for the supported tests. Including Movement Mortgage and tested 9 mortgage lender and banks.

**Differences:**

- The results in the tests indicated that Caucasian tester were provided with more advice and counseling about the loan process and specific loan products.
- Caucasians received an invitation to in-person meeting versus steered to online application.
- Caucasians received better interest rates than black applicants.
- The agents were more likely to do email follow-up with Caucasian testers than black testers.
- Black testers were given the least amount of coaching advice and counseling opposed to Caucasians.
- A lot of the meetings with Caucasian testers were longer compared to African testers.

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SUMMARY OF HUD COMPLAINT AND RELIEF OBTAINED IN CONCILIATION

- Based on these tests, IFHC found Movement Mortgage treating Caucasian individuals differently than those of color, despite individuals of color having better qualifications including: better credit score, a better job, more money for down payment, etc.
- Movement Mortgage LLC violated Secs. 804(a), 804(b), and 805 of the federal Fair Housing Act in the provision of its home loan services.
- In settlement of the discriminatory practices caused by its loan officer, Movement Mortgage, agreed to pay the sum of \$14,000.00.
- In the relief to the public interest, the loan officers for Movement Mortgage agreed to attend fair lending training conducted by HUD's Office of Fair Housing and Equal Opportunity or an appropriate agency or facility approved by the Department.
- Movement Mortgage also agreed to adopt an affirmative marketing plan with policies and procedures to advance minority homeownership and increase awareness of fair lending requirements in the provision of its home loan services.

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THE WHERE, WHAT, WHO, HOW, OF REASONABLE MODIFICATIONS UNDER THE FAIR HOUSING ACT (FHA OR THE ACT) AS APPLIED TO SALES

- Who is a covered provider by the FHA?
- Where can you read the FHA and have it clarified?
- What does the FHA mandate?
- How are Reasonable Modifications different from Reasonable Accommodations?

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WHERE?

- You can find the actual Fair Housing Act 42 U.S.C. 3600 et. al. <https://www.govinfo.gov/content/pkg/USC-ODE-2007-title42/pdf/USCODE-2007-title42-chap45.pdf>
- It is further defined by CFRs which are rules that HUD publishes and have the weight of law, they are listed here: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/regs/fedreg](https://www.hud.gov/program_offices/public_indian_housing/regs/fedreg)
- When HUD publishes a CFR or the court makes a ruling on a CFR HUD and or the DOJ issues Joint Statements: [https://www.hud.gov/sites/documents/DOC\\_7502.PDF](https://www.hud.gov/sites/documents/DOC_7502.PDF)

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42 U.S.C. 3603 states:  
 There is an exception for single home sellers if they sell "without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person...." *emphasis added.*

WHO IS A COVERED PROVIDER? (WHO IS BOUND BY THE LAW?)

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WHO - CONTINUED

For the purposes of subsection (b) of this section[3603], a person shall be deemed to be in the business of selling or renting dwellings if— (1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or (2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or (3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

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UNDER THE  
JOINT  
STATEMENT  
...

"Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions." the Joint Statement specifically uses a "builder" in an example on page 15.

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WHAT DOES THE FHA MANDATE?

42 U.S.C. §3604 (f) states:  
 "For purposes of this subsection, discrimination includes— (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord...."

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**CLARIFIED BY THE  
JOINT STATEMENT:**

"The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises... The Act also makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling."

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**HOW ARE MODIFICATIONS  
DIFFERENT FROM  
ACCOMMODATIONS?**

"Under the Fair Housing Act, a reasonable modification is a structural change made to the premises whereas a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service."

With the exception of federally funded housing programs and properties accommodations are funded by the housing provider while modifications are funded by the person with a disability.

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Certain defenses are contemplated in the Joint Statement on Accommodations that are not contemplated by the Joint Statement on Modifications.

Since the financial burden of the modification is exclusively on the person with a disability the Joint statement does not mention the financial burden as a reasonability factor/defense for denying a reasonable modification.

Likewise the Joint Statement does not contemplate Administrative burden and fundamental alteration as a reasonability factor/defense, likely because modification are need not be administered for a long period and only need to be addressed at install and removal.

While no extra deposits can be assigned to reasonable accommodations, the Joint Statement on Modifications does allow for assurances that the modification will not cost the provider money in the form of money set aside by the person with a disability in an escrow account for removal of a modification.

**HOW  
REQUEST  
RA/RM?**

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**Where to report regional sales or lending discrimination**

**Washington:**

- Washington State Human Rights Commission
- Northwest Fair Housing Alliance – E. & Central WA
- Fair Housing Center of WA – W. & Central WA
- HUD, Region X – Seattle, WA

**Idaho:**

- Intermountain Fair Housing Council
- HUD, Region X – Seattle, WA

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**CONTACT IFHC:**

- Fighting discrimination by buyers, sellers, landlords, HOAs, cities, insurance companies, and neighbors
- Sample forms and position statements
- Resources on building housing for people at all levels of income
- Preventing and alleviating homelessness
- Promoting new and inclusive housing
- Providing training opportunities for landlords, property managers, government agencies, homeowners' associations, real estate agents, and residents

Intermountain Fair Housing Council  
 Concilio de Vivienda Justa  
 4696 W Overland Rd, Ste 140  
 Boise, ID 83705  
 Phone: 208-383-0695  
 Fax: 208-383-0715  
[contact@ifhcidaho.org](mailto:contact@ifhcidaho.org)

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THANK YOU!



Northwest Fair Housing Alliance:  
[www.nwfairhouse.org](http://www.nwfairhouse.org)  
(509) 325-2665  
Marley Hochendoner, Director:  
[execdir@nwfairhouse.org](mailto:execdir@nwfairhouse.org)  
(509) 209-2667



WASHINGTON  
REALTORS®

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