

FAIR HOUSING NEWS

QUARTERLY NEWSLETTER FOCUSING ON FAIR HOUSING ISSUES

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HUD Issues Guidance on Fair Housing Act Protections for People with Criminal Records

From the National Low Income Housing Coalition:

On April 4, 2016, HUD Secretary Julian Castro announced that HUD has issued legal guidance from the Office of General Counsel regarding the likely violations of the Fair Housing Act when housing providers employ blanket policies in refusing to rent or renew a lease based on an individual's criminal history because such policies may have a disparate impact on racial minorities. The guidance states, "Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history based restrictions on access to housing are likely disproportionately to burden African-Americans and Hispanics."

The guidance states that when a housing provider's seemingly neutral policy or practice has a discriminatory effect, such as restricting access to housing on the basis of criminal history, and has a disparate impact on individuals of a particular race, national origin, or other protected class, the policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, non-discriminatory interest of the housing provider, or if the interest could be served by another practice that has a less discriminatory effect.

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Recent Developments

HUD REACHES AGREEMENT WITH ILLINOIS PROPERTY OWNERS, MANAGERS ACCUSED OF DISCRIMINATING AGAINST APPLICANTS WITH DISABILITIES

On May 19, 2016, the U.S. Department of Housing and Urban Development (HUD) announced that it has reached a \$630,000 agreement with a group of Illinois property owners and a management company resolving allegations they violated the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 by using rental screening policies that prevented applicants with mental disabilities from living in a supportive living complex the group owned.

“Discriminatory practices that target persons with disabilities not only violate their rights, they lock them out of decent, safe, affordable housing,” said Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “HUD remains committed to taking action when property owners and managers fail to meet their obligations under the Fair Housing Act.”

The case came to HUD’s attention after several individuals with mental disabilities filed complaints alleging they were denied residency at the property managed by Eden Management, LLC due to their disabilities. The individuals filed their complaints with the assistance of HOPE Fair Housing Center in DuPage County. HOPE conducted three tests at Eden and also filed a complaint with the Department.

Under the terms of the Conciliation and Voluntary Compliance Agreement, Eden will pay Complainants \$630,000, which includes relief and attorneys’ fees and costs. The agreement further requires Eden to make significant policy changes, including revising its admissions policy; and conducting fair housing training for employees. Furthermore, the company will develop a protocol to apply objective admissions criteria, notify all applicants of their due process rights, and refrain from asking applicants about the existence of mental disabilities or prescriptions during tours of the facility. Eden will also provide a letter to their top three referral sources encouraging individuals to apply regardless of mental disability.

In FY 2015, disability was the most common basis of complaints filed with HUD and its partner agencies, being cited as a basis for 4,548 complaints, or nearly 55% of the overall total.

HUD ANNOUNCES AGREEMENT WITH FIDELITY BANK TO RESOLVE ALLEGATIONS OF UNFAIR LENDING PRACTICES

On April 22, 2016, the U.S. Department of Housing and Urban Development (HUD) announced a \$1 million agreement between the Fair Housing Project of North Carolina Legal Aid and North Carolina-based Fidelity Bank to resolve allegations the mortgage lender engaged in unfair lending practices against minority applicants.

“Whether intentional or not, stark disparities exist in lending patterns and access to credit along racial and ethnic lines,” said HUD Assistant Secretary for Fair Housing and Equal Opportunity Gustavo Velasquez. “HUD remains committed to not only enforcing the law, but also facilitating productive relationships between lenders and advocacy groups that help make lenders more aware of their obligations under the Fair Housing Act.”

The Conciliation Agreement stems from a complaint that was filed by the Fair Housing Project, Legal Aid of North Carolina, Inc. in Raleigh, alleging that the bank denied or made housing and home mortgage loans unavailable because of race.

Under the agreement, Fidelity will make investments and community development loans in predominantly minority census tracts where at least 40% of these loans will specifically promote affordable housing. For this purpose, the Bank has committed to earmarking at least \$500,000 each year for two years, for a total of \$1 million.

In addition, Fidelity Bank will display a HUD Fair Housing poster at its Oberlin Road branch in Raleigh. The bank will also prominently display its non-discrimination policies at that branch in English and Spanish, and provide fair lending training to staff, including loan originators and employees engaged in loan processing and underwriting.

Last year, about one quarter, or 28%, of all fair housing complaints filed with HUD and its partner agencies, cited race as the basis for the complaint.



HUD Kicks Off New National Media Campaign

In April HUD launched a new national media campaign that help the public envision what communities with shared opportunity for all might look like. The new campaign is designed to further educate the public about their housing rights and the ideals behind HUD’s new Affirmatively Furthering Fair Housing (AFFH) initiative.

The campaign, which was developed in partnership with the National Fair Housing Alliance (NFHA), will include print PSAs in various languages, television PSAs in English and Spanish, online videos, and social media outreach.

“A core belief of our values as Americans is the idea that every person deserves a fair chance to secure safe and stable housing,” said HUD Secretary Julian Castro. “Your race, how you get around, the size of your family, whether you come from another country, if you are a man or a woman, or whatever your religious beliefs are should never hinder your housing goals. I am proud of the work our fair housing staff does every day in conjunction with our state and local partners to ensure that everyone’s fair housing rights are honored.”

Through an array of enforcement activities, fair housing policy initiatives, and education and outreach efforts, HUD’s Office of Fair Housing and Equal Opportunity continues to take action against individuals and housing providers that discriminate. Last year, HUD and its Fair Housing Assistance Program partner agencies received 8,293 complaints alleging discrimination based on one or more of the protected classes.

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Reasonable Modifications

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full use and enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas.

Under the Fair Housing Act, a person with a disability may request a reasonable modification provided that the request is reasonable and necessary. A housing provider can deny a request for a reasonable modification if: there is no disability related need for the modification; or the request is not reasonable, i.e., if the request would pose an undue financial or administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. If a housing provider deems a request to be unreasonable, it is required to engage in an interactive process with the person requesting the modification to agree upon an alternative modification.

The housing provider is responsible for paying the cost of the modification if they receive federal financial assistance. If not, the person requesting the reasonable modification is responsible for the cost of the modification. The requesting individual is also responsible for the maintenance and upkeep of the modification if it is exclusively used by the individual or if the modification is in a common area not normally maintained by the housing provider. If the modification is in a common area, normally maintained by the housing provider, then they are responsible for the maintenance and upkeep.

How to request a Reasonable Modification

When requesting a reasonable modification the tenant should do the following:

- 1) Indicate, in writing, that the individual qualifies as a person with a disability without revealing the nature or severity of the disability.
- 2) State where the individual lives and who owns or manages their dwelling.
- 3) Identify the requested modification. (e.g. installation of grab bars, or a ramp)
- 4) Describe why the modification is necessary for the full enjoyment of the premises.
- 5) Cite the applicable law that protects their rights.
- 6) Ask for a written response within a certain amount of time.
- 7) Sign and mail the request. Please keep a copy of the request for your records. Mail the request by certified mail.

The Fair Housing Law Center is available if you need assistance in requesting a Reasonable Modification.

Please contact us at 877-725-4472 or online at fhlaw.org.

TESTERS WANTED

Fair Housing Law Center, in conjunction with HUD, is looking for individuals to conduct fair housing investigations. This is a great opportunity to play a key part in fighting discrimination in Western and Central Pennsylvania and the West Virginia Panhandle.

Please contact us at 877-725-4472 or at www.fhlaw.org

Education Solutions for Non-Profits

Does your agency need Fair Housing training?

Through a grant from HUD, the Fair Housing Law Center offers free HUD approved fair housing training. If you are interested in having one of our staff members or partners give a free fair housing training, please contact Kristie Horrell at 724-225-6170.





HUD'S GUIDANCE ON USE OF CRIMINAL RECORDS

(cont. from pg.1)

Some landlords and property managers assert that the reason they have blanket criminal history policies is to protect other residents and the property. The guidance declares that “bald assertions based on generalization or stereotype that any individual with an arrest or conviction record poses a greater risk than those without records are not sufficient.” Landlords and property managers must be able to prove through reliable evidence that blanket policies actually assist in protecting residents and property.

The guidance also states that a housing provider with policies of excluding people because of a prior arrest without conviction cannot satisfy its burden of showing such a policy is necessary to achieve a “substantial, legitimate, non-discriminatory interest,” since an arrest is not reliable basis upon which to assess the potential risk to residents or property. In instances when a person has been convicted, the policy must be applied on a case-by-case basis considering the nature and severity of the conviction, what the individual has done since conviction, and how long ago the conviction took place.

In addition, the guidance discusses how a housing provider may violate the Fair Housing Act if the provider intentionally discriminates when using criminal history information in evaluating applicants and tenants. “This occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic. In these cases, the housing provider’s use of criminal records or other criminal history information as a pretext for unequal treatment of individuals because of race, national origin or other protected characteristic is no different from the discriminatory application of any other rental or purchase criteria.”

The guidance follows an FAQ regarding use of arrest records to disqualify people from receiving housing assistance and an earlier HUD Notice on the use of arrest records in screening applicants for federally assisted housing. This guidance applies more broadly than the previous guidance, as it applies to both federally assisted housing and housing on the private market. Additionally, because the guidance is a legal opinion from the Office of General Counsel, it trumps the opinions of individual departments within HUD.

A link to HUD’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions can be found on the Fair Housing Law Center’s website at fhlaw.org.

The original article from the National Low Income Housing Coalition can be found at www.nlihc.org/article/hud-issues-bold-fair-housing-guidance-use-criminal-records.

New Media Campaign

(cont. from pg.2)

During that period, the categories with the highest number of complaints were disability and race, respectively. HUD also focused on lending discrimination, as well as various forms of discrimination faced by women, families with children, and LGBT persons.

“Nearly 50 years after it was passed, the Fair Housing Act remains a powerful tool to ensure housing providers give every person an equal chance to find the home that is right for them, without prejudice or discrimination,” said Gustavo Velasquez, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “As we move to implement the AFFH rule in partnership with local jurisdictions, we are pleased to be entering the next level of fair housing where every family, regardless of zip code, has access to the resources and opportunities they need to get ahead.”

“This campaign is an important component of our efforts to both eliminate unfair barriers to housing opportunity and to establish vibrant, diverse, and inclusive neighborhoods in all communities,” said Shanna Smith, president and CEO of NFHA.

In particular the, new campaign reinforces the ideals behind the AFFH rule, which provides communities that receive HUD funding with the tools and support needed to meet their fair housing obligations.