

COMPLIANCE REVIEW



VCARH Training
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Title VI of the Civil Rights Act of 1964

“No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity **receiving Federal financial assistance.**”

Protected Classes

Program benefits and participation are made available without regard to:

- Race
- Color
- National Origin
- Age
- Sex
- Disability
- Gender Identity
- Religion
- Reprisal
- Political Beliefs
- Marital Status
- Familial or Parental Status
- Sexual Orientation
- Public Assistance Income
- Protected Generic information in employment, program or activity conducted or funded by the department



April 4, 2016

**Office of General Counsel Guidance on
Application of Fair Housing Act Standards to the Use of Criminal Records by
Providers of Housing and Real Estate-Related Transactions**

I. Introduction

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.¹ HUD's Office of General Counsel issues this guidance concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history.

II. Background

As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort.² The United States prison population of 2.2 million adults is by far the largest in the world.³ As of 2012, the United States accounted for only about five percent of the world's population, yet almost one quarter of the world's prisoners were held in American prisons.⁴ Since 2004, an average of over 650,000 individuals have been released annually from federal and state prisons,⁵ and over 95 percent of current inmates will be released at some point.⁶ When individuals are released from prisons and jails, their ability to access safe, secure and affordable housing is critical to their successful reentry to society.⁷ Yet many formerly incarcerated individuals, as well as individuals who were convicted but not incarcerated, encounter significant barriers to securing housing, including public and other federally-subsidized housing,

¹ 42 U.S.C. § 3601 *et seq.*

² Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems, 2012*, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

³ Nat'l Acad. Sci., Nat'l Res. Couns., *The Growth of Incarceration in the United States: Exploring Causes and Consequences 2* (Jeremy Travis, et al. eds., 2014), available at: <http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.

⁴ *Id.*

⁵ E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at 29, appendix tbls. 1 and 2, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>.

⁶ Bureau of Justice Statistics, U.S. Dep't of Justice, *Reentry Trends in the United States*, available at <http://www.bjs.gov/content/pub/pdf/reentry.pdf>.

⁷ See, e.g., S. Metraux, et al. "Incarceration and Homelessness," in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research, #9* (D. Dennis, et al. eds., 2007), available at: <https://www.huduser.gov/portal/publications/pdf/p9.pdf> (explaining "how the increasing numbers of people leaving carceral institutions face an increased risk for homelessness and, conversely, how persons experiencing homelessness are vulnerable to incarceration.").

justification for intentional discrimination by the housing provider will depend on the facts of a particular case.

The section 807(b)(4) exemption discussed in Section III.D., above, does not apply to claims of intentional discrimination because by definition, the challenged conduct in intentional discrimination cases is taken because of race, national origin, or another protected characteristic, and not because of the drug conviction. For example, the section 807(b)(4) exemption would not provide a defense to a claim of intentional discrimination where the evidence shows that a housing provider rejects only African American applicants with convictions for distribution of a controlled substance, while admitting White applicants with such convictions.

V. Conclusion

The Fair Housing Act prohibits both intentional housing discrimination and housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics. 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. While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.

Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction. Where a policy or practice excludes individuals with only certain types of convictions, a housing provider will still bear the burden of proving that any discriminatory effect caused by such policy or practice is justified. Such a determination must be made on a case-by-case basis.

Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics violates the Act.

Helen R. Kanovsky, General Counsel

Dissemination of Nondiscrimination Information and Public Notification

The borrower shall do the following:

- Display Posters
- Put a nondiscrimination statement in:
 - (a) Printed material and advertisements
 - (b) Broadcasts
 - (c) Other visual and aural media

Prominently Display ...

“AND JUSTICE FOR ALL”

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. Not all prohibitions of bases apply to all programs. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA (TS/ST) Center at (202) 720-2600 (voice and TDD).

El Departamento de Agricultura de los EE.UU. (USDA, según su ley) prohíbe la discriminación en todos sus programas y actividades a base de raza, color, origen nacional, género, religión, edad, impedimento, estado político, orientación sexual, estado civil o familiar. No todas las bases de prohibición aplican a todos los programas. Personas con impedimentos que requieren modo o alternativas de comunicación para obtener información acerca de los programas (Braille, tipografía agrandada, cintas de audio, etc.) deben ponerse en contacto con el Centro TS/ST de USDA, llamando al (202) 720-2600 (voz y TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, White House Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 725-3969 (voice and TDD). USDA is an equal opportunity provider and employer.

Para presentar una queja sobre discriminación, escriba a USDA, Director, Office of Civil Rights, Room 326-W, White House Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410, o llame al (202) 725-3969 (voz y TDD). USDA es un proveedor y empleador que ofrece oportunidades igual a todos.

USDA United States Department of Agriculture • Mission • Vision • Values Page 2.0 (11/16) 10/01/16

Non-Discrimination Statement

The non-discrimination statement must be included on all information materials and sources; including websites, forms, public releases, announcements of scheduled distributions and all other publications

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

Contact Information

For more information, contact the RMA Civil Rights Office at 202-690-3578 (main line).

Reasonable Accommodation for Persons with Disabilities

- Americans with Disabilities Act
- Section 504 of the Rehabilitation Act of 1973
- 7CFR Part 15b

Prohibits discrimination on the basis of disability in all services, programs and activities provided to the public by state and local governments. Reasonable accommodations that do not cause undue hardship must be provided.



Compliance Reviews

- Every 3 years

DATE OF REVIEW 	COMPLIANCE REVIEW (Nondiscrimination by Recipients of Financial Assistance through U. S. Department of Agriculture)	STATE
SOURCE OF FUNDS <input type="checkbox"/> Direct <input type="checkbox"/> Insured		COUNTY
		CASE NUMBER
		DATE LOAN OR GRANT CLOSED

TYPE OF ASSISTANCE <input type="checkbox"/> Housing Preservation Grant <input type="checkbox"/> RBEG <input type="checkbox"/> RBOG <input type="checkbox"/> B&I Loans	<input type="checkbox"/> Water and Waste Disposal Loan or Grant <input type="checkbox"/> Grazing Association <input type="checkbox"/> EO Cooperative <input type="checkbox"/> Community Facilities <input type="checkbox"/> RMAP	<input type="checkbox"/> RRH and LH Organization <input type="checkbox"/> Intermediary Relending Program <input type="checkbox"/> Rural Housing Site Loans <input type="checkbox"/> Cooperative Service <input type="checkbox"/> Other
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NAME OF BORROWER ORGANIZATION OR ASSOCIATION

ADDRESS OF BORROWER

I. STATISTICAL INFORMATION

(For the purpose of this report, the term "PARTICIPANTS" will be used to describe "USER," "MEMBERS," OCCUPANTS," "SITE PURCHASER" OR Potential Users for pre-loan closing compliance reviews, as applicable.)

A(B).

ETHNICITY	POPULATION		PARTICIPANTS			
	No.	%	THIS REVIEW		LAST REVIEW	
	No.	%	No.	%	No.	%
Hispanic or Latino						
Not Hispanic or Latino						
TOTAL		100%				
MALE						
FEMALE						

According to the paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0018 and 0570-0062. The time required to complete this information collection is estimated to average 8 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Multi-Family Housing Projects

Number of:

- Applicants on waiting list
- Tenants
- AFHM Plan

Demographic Information

*PLEASE HAVE THE FOLLOWING 2 PAGES COMPLETED FOR THE DAY OF REVIEW:

APPLICATIONS

RACE	NUMBER RECEIVED	NUMBER APPROVED NOTE: (Any Application NOT REJECTED)	NUMBER REJECTED
American Indian			
Asian			
Black			
Native Hawaiian			
White			
Hispanic			
TOTALS			

BREAK DOWN THE ABOVE APPLICATION NUMBERS

**All Applicants other than a single male or single female are considered family.*

	NUMBER RECEIVED	NUMBER APPROVED NOTE: (Any Application NOT REJECTED)	NUMBER REJECTED
Male			
Female			
* Family			
TOTALS			

EMPLOYEES

RACE	EMPLOYEES	Employees (MALE)	Employees (Female)
American Indian			
Asian			
Black			
Native Hawaiian			
White			
Hispanic			
TOTALS			

PARTICIPANTS/TENANTS

RACE	Number of Participants (Tenants)
American Indian	
Asian	
Black	
Native Hawaiian	
White	
Hispanic	
TOTALS	

Indicators of Non-compliance with Title VI

- **Statistical data--percentage of participants by race are out of proportion to percentage of racial population in the area.**
- **No outreach, or very little outreach by the borrower.**
- **Unequal quality of service**
- **No advertising--advertising is done through word of mouth, or in ways that did not reach minority community.**
- **No records on participants or applicants by race/ethnic group.**
- **Community contacts--no contacts made by borrower and community contacts revealed that minority community is not aware that the facility is Federally financed.**

Documentation For Compliance Review

Sunny Side Apartment Complex

	Eligible <u>Population</u>		<u>Participants</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
Total	<u>6,104</u>	<u>100%</u>	<u>48</u>	<u>100%</u>
White, Not of Hispanic Origin	2,886	47%	41	86%
Black, Not of Hispanic Origin	3,108	51%	5	10%
Hispanic	95	2%	1	2%
American Indian	1	0%	0	0%
Asian/Pacific Islander	14	0%	1	2%