

In true Montana spirit, the Chuckwagon...the newsletter to fill your fair housing appetite.



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Tales Roun' the Campfire

Released April 4, 2016 - U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT - 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

The federal Fair Housing Act as Amended in 1988 and the Montana Human Rights Act prohibit discrimination in the sale, rental, or financing of dwelling units, and in other housing-related transactions and activities necessary for the use and enjoyment of housing on an equal opportunity basis. In the state of Montana, housing discrimination is prohibited on the basis of race, color, national origin, religion, sex, familial status, disability, marital status, age, and creed, and because of sexual orientation and gender identity in the communities of Missoula, Helena, Butte and Bozeman.

On April 4th, HUD's Office of General Counsel issued guidance clarifying how the federal Act applies when using criminal history as a qualification criteria. This guidance applies to all housing providers and all 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.

The guidance states that criminal history-based restrictions violate the Fair Housing Act if:

- Without justification, the restriction has a discriminatory effect;
- A housing provider treats individuals with comparable criminal histories differently based on protected class status.

HUD has deemed the use of criminal histories unlawful if the use of this information is unnecessary to serve a "substantial, legitimate nondiscriminatory interest . . . or if such interest could be served by another practice that has a less discriminatory effect."

Housing providers should evaluate the potential discriminatory effect of a policy that includes the use of criminal histories in reviewing eligibility for a dwelling or housing related transactions and services. When designing and implementing the policy ask in what manner the practice actually or predictably may result in a disparate impact. Justification of the policy or practice should be based on nondiscriminatory interests supported by evidence obtained from reliable sources.

Useful in evaluating the impact of a policy is the referral to data available from federal, state and local agencies, such as the Census Bureau, State of Montana, and city governments. In this particular analysis, review of data from the Montana Department of Corrections 2015 Biennial Report may be valuable, as will national and local data and studies regarding arrests, incarceration rates, and information analyzing re-offending rates. In addition, providers of housing-related services should refer to applicant data, service files, local demographic data, and local and national criminal justice data.

HUD's guidance indicates that prior arrests without a conviction **can not** be considered in the denial of an applicant. When considering the use of prior conviction history, review the record for recidivism and conduct since conviction, the passage of time since the criminal conduct occurred, and distinguish between conduct that demonstrates risk versus conduct that demonstrates no risk.

To minimize the costs associated with application review, housing providers are encouraged to review other application qualifications first. If an applicant household does not meet criteria such as those associated with credit and reference histories, the review and analysis of a criminal history may be unnecessary.

HUD's guidance indicates: "As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort. The United States prison population of 2.2 million adults is by far the largest in the world. 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. Since 2004, an average of over 650,000 individuals have been released annually from federal and state prisons, and over 95 percent of current inmates will be released at some point. 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. Yet many formerly incarcerated individuals, as well as individuals who were convicted but not incarcerated, encounter significant barriers to securing housing . . ."

According to data released from the Bureau of Justice Statistics, 358 persons were incarcerated per every 100,000 residents in Montana in 2013. From 2010 to 2014, adult male incarceration rates for the state increased 5.3% compared to a 28.4% increase for females. In June 2014 the number of adult offenders under the state's Department of Corrections jurisdiction was 15,413. Seventeen percent were in prison, 74% in community corrections, and 9% were in other custody or supervision programs. Eighty percent of adults currently under correction supervision in

Montana are Caucasian. While comprising less than 7% of Montana's population, Native Americans represent 17% of the correction supervision population. Four percent currently under correction supervision in Montana are African American, Asian or other race and/or ethnicity.

Montana Fair Housing applauds HUD's release of this guidance - particularly as we celebrate Fair Housing Month!!!

Discrimination in housing occurs when a housing provider makes a decision about a consumer's eligibility for services based on the consumer's protected class status.

A housing provider cannot deny a household services nor place different terms and conditions on that household **BECAUSE OF** membership in a protected class.

Federal protected classes include: Race, Color, National Origin, Religion, Sex (including sexual harassment and protections for victims of Domestic Violence), Familial Status (presence of children under the age of 18 or pregnancy), and/or Disability (Mental or Physical, including requests for reasonable accommodations and reasonable modifications). Fair Housing laws require owners, developers, architects, and contractors to design and construct multi-family housing of four or more units to be adaptable and accessible for persons using a wheelchair for mobility, if constructed for first occupancy after March of 1991.

In the state of Montana, in addition to the federally protected classes, it is a violation of the state's Human Rights Act to discriminate in housing related transactions based on marital status, age, and/or creed. In the cities of Butte, Missoula, Bozeman and Helena, a housing provider cannot discriminate against a household because of gender identity or sexual orientation.

For More Information about Discrimination in Housing, or to File a Complaint, contact:

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