

Background Checks What You Need to Know

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For Discussion

- How do you currently consider criminal records or run background checks?
- What are your biggest questions or concerns regarding criminal background checks?

Agenda

- Overview of the Issue
- What You Need to Know as a Housing Provider
- Implementing Best Practices

Chicago Area Fair Housing Alliance



The Chicago Area Fair Housing Alliance (CAFHA) is a consortium of fair housing and advocacy organizations, government agencies, and municipalities committed to the value of fair housing, diversity, and integration.

Taking a Step Back

- Background checks as a best practice
- Safety and liability
- Challenging this narrative



Impact

- Having a criminal record alone does not lead to unsuccessful tenancy
- Having a criminal record is as common as having a college degree
- Must consider inequalities within the criminal justice system

1 in 3 Americans has an arrest record



Housing policies that ban people with records harm people of color and people with disabilities the most

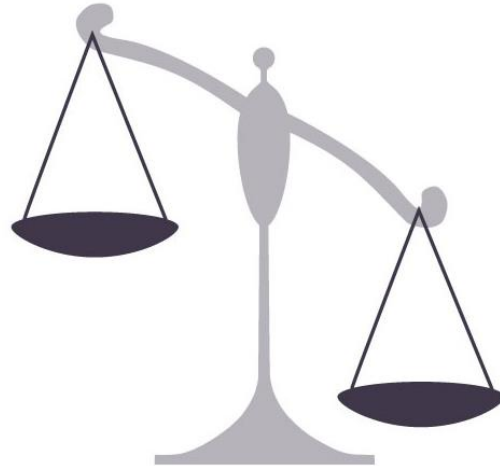


Consider that...

- People of color make up 37% of the U.S. population but 67% of the prison population.
- Black men are 6X as likely to be incarcerated as white men and Hispanic men are more than 2X as likely to be incarcerated as non-Hispanic white men.
- People of color face disproportionately stiffer criminal penalties and are more likely to have a record used against them when searching for housing.

Understanding criminal records

- Arrests do not equal convictions
- Treating all convictions the same is problematic
- Think about timing



Fair Housing & Criminal Background

Federal Fair Housing Act

- Passed by Lyndon B Johnson in 1968
- Intended to protect buyer or renter from discrimination



Federally Protected Classes

- Race
- Color
- Religion
- Sex (including sexual harassment)
- National Origin
- Familial status
- Disability



April 2016 HUD OGC Guidance

- Applies discriminatory effect/disparate impact test and discriminatory treatment/intent test to criminal records practices and policies
- Cannot use arrest alone or impose blanket criminal record bans to deny admission
- HUD recognizes “the troubling relationship between housing barriers for individuals with criminal records and homelessness”

Problematic Screening Policies

- Arrests as basis for denial
- Look-back periods
- Lists on criminal activity
- Inability to refute background check inaccuracies
- **Resource:** Shriver Center Report- Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing (2015)

What Does the Guidance Say?

- Criminal activity and “reasonable time”
- Individualized assessment & assessment of risk
- Reasonable accommodations and persons with disabilities

Disparate Impact

A policy may be considered discriminatory if it has a disproportionate “adverse impact” against any group based on race, national origin, color, religion, sex, familial status or disability when there is no legitimate non-discriminatory business need for the policy.

Examples of Discrimination

- Differential treatment
- Disparate Impact



Points to remember

- Additional factors must be considered
- Practices of housing providers
- Selective use of criminal history



Implementing Best Practices

Best Practice

SHOULD NOT

- Consider juvenile records.
- Consider records that have been sealed, expunged, or pardoned.
- Consider arrest records.
- Utilize blanket criminal record bans
- Offer different terms or conditions (such as higher rents or security deposit) based on criminal background screening.

Best Practice

SHOULD

- Review other aspects of an application before reviewing criminal records..
- Consider individual factors and circumstances
- Utilize a reasonable “look back” period
- Allow applicants to provide “mitigating” evidence

Questions

