

FACT SHEET: FAIR HOUSING & CRIMINAL BACKGROUND SCREENING

What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act (FHA) and Michigan laws protect people from discrimination in housing based on protected classes. **Protected classes** include race, color, religion, sex, sexual orientation, gender identity, national origin, familial status, disability, marital status, and age. **Housing discrimination** means unfair treatment because of a protected class. Discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance.



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How does fair housing apply to criminal background screening?

Unfair criminal background screening can be housing discrimination. Screening based on criminal records should only consider convictions that indicate real and current risk to people or property. Screening criteria should be applied equally. People have the right to explain circumstances of their conviction and what they've done since.

In June 2022, U.S. Department of Housing and Urban Development (HUD) published updated [guidance](#) on how the FHA applies to criminal background screening. It explains that racial and ethnic disparities caused by bias in the U.S. criminal justice system extend to housing. This is why criminal background screenings in housing often impact Black and Hispanic people the most. That makes it a fair housing issue.

HUD guidance specifically addresses when a housing provider's actions could violate the FHA. It recommends that private housing providers **consider not using criminal history to screen tenants** for housing. It indicates that criminal history is not a good predictor of [housing success](#). The guidance offers best practices for housing providers (see next page).

What are the rights of people with disabilities?

People with disabilities can make requests for reasonable accommodations to criminal background screening criteria. **Reasonable accommodations** are changes to rules, policies, practices or services of a housing provider that are necessary because of a disability. For example, asking for an exception where (1) a disability contributed to the criminal conduct AND (2) there is evidence that it won't happen again. Evidence could be improvements from ongoing therapy or treatment.

All reasonable accommodations should be evaluated on a case-by-case guidance. Consult the HUD [guidance on reasonable accommodations](#).

Resources

HUD Guidance: www.hud.gov/program_offices/fair_housing_equal_opp/fheo_guidance

More resources available from the Fair Housing Center at www.fhcwm.org/publications

HUD RECOMMENDED BEST PRACTICES: CRIMINAL BACKGROUND SCREENING

Procedures

- Per HUD guidance, consider not using criminal history to screen tenants for housing.
- Check for state or local laws or that may limit ability to run criminal background checks.
- Check for any applicable program requirements, regulations, or restrictions.
- Avoid third-party screening companies that use biased algorithms.
- Have a written criminal background screening policy that is available to all applicants.
- Delay considering criminal history until after verifying financial and other qualifications.
- Treat comparable criminal histories similarly.
- Before denying an applicant or evicting a resident, provide them the criminal record and give them opportunity to correct wrong information or explain extenuating circumstances.
- Only evict for criminal activity as a last resort and after an individualized assessment.
- Never evict a person or family because they have been victims of a crime.
- Do not ban a tenant's invited guest from visiting based on the guest's criminal involvement.
- **Document** any screening completed, circumstances considered, and decisions made.

Policies

- Consider the nature, severity (i.e. felony or misdemeanor), and recency of criminal conduct.
- Ensure policy can be justified with reliable evidence showing that it actually assists in protecting resident safety and/or property.
- Accurately distinguish between criminal conduct that indicates a **demonstrable risk to resident safety and/or property** (i.e. homicides, sexual assault, arson, etc.) and criminal conduct that does not (i.e. gambling, prostitution, tax crimes, cyber-crimes, etc.).
- Avoid automatic denials, blanket bans (i.e. "no felonies") and consideration of arrests.
- Consider the amount of time that has passed since the criminal conduct occurred.
- Provide for an **individualized assessment** of relevant mitigating information. Consider the circumstances surrounding the criminal conduct, the age of the individual at the time of the conduct, evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct, and evidence of rehabilitation efforts.
- Consider requests for reasonable accommodation on the basis of disability.

For more information call Fair Housing Center of West Michigan (616-451-2980) or visit www.fhcwm.org.

| Please note that this fact sheet is not intended to be used as legal advice. |

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