

Additional Questions from April 8 Webinar: (questions were answered by Sara Pratt, Esq)

Q: We have an apartment complex that does not allow people with pending charges to apply or they evict them is this legal?

A: Rejecting someone because of pending charges is no different from rejecting them because of an arrest. Under HUD's guidance and civil rights principles, this policy is overly broad and lacks a sufficient justification. It could easily be challenged as violating the Fair Housing Act.

Q: African Americans are often disproportionately arrested for non-violent drug crimes including manufacturing and delivering. If someone were to show that they were compliant with Drug and Alcohol treatment is this a way to bypass potential discrimination someone could face based on this assumption?

A: There are two parts to the answer. If a person has been convicted of manufacture or distribution of a controlled substance, that person is not protected by the Fair Housing Act, because the Act itself has an exemption that says someone who does that is not protected by the Act. Whether or not the person has successfully completed rehabilitation cannot change this language in the law.

Q: How do you balance what HUD Requires as far as criminal rejections and offer individual assessments?

A: The Fair Housing Act's analysis, as a federal statute, would overrule any preexisting HUD regulation or guidance that conflicted with the Fair Housing Act. (Years ago, HUD had discriminatory policies in regulations and handbooks, and courts rejected those policies under the Fair Housing Act.)

Q: How will the proposed Disparate Impact Rule impact this type of Regulation?

A: The answer to this question depends on whether HUD changes current disparate impact analysis in place in eleven courts of appeals, and how it changes it. Not all criminal background cases involve a disparate impact analysis; as Carolyn and Sara both noted, some cases arise out of treating applicants or tenants unequally.

Q: How can it be discrimination when income is not a 'protected class' under the PHRA? It might not be 'right', but not necessarily discrimination.

A: Some states and cities have already included source of income in their local fair housing laws. There are also some cases that hold that discrimination against applicants who have Housing Choice Vouchers discriminates based on race, because in some communities, voucher holders are disproportionately

people who are black. It is not the amount of the income that is at issue, it is the source of that income that is challenged.

Q: Is the burden of eligibility for rental* (based on criminal background check) for a person being added to a lease the same as for the initial lease signor(s)?

A: This is the landlord's decision.