
Nebraska Equal Opportunity Commission (NEOC) Program Overview

NIFA CONFERENCE

MARCH 21, 2017



VISION, DUTIES, AND RESPONSIBILITIES

- The Nebraska Equal Opportunity Commission (NEOC) was created by state statute in 1965 with a vision to eliminate unlawful discriminatory practices in the State of Nebraska.
- The principal function of the NEOC is to receive and neutrally investigate complaints of unlawful discrimination occurring anywhere within the State of Nebraska in the areas of:
 - Employment
 - Housing
 - Public Accommodations



OUTREACH AND OFFICE LOCATIONS

- The NEOC provides education and training to the general public, employers, and housing providers to help reduce incidents of intentional or unintentional discrimination.
- The NEOC has a variety of information available to educate and assist the general public, businesses, and schools on its website at www.neoc.ne.gov
- The NEOC has three office locations:
 - Lincoln
 - Omaha
 - Scottsbluff



LAWS ENFORCED

The NEOC is authorized to investigate and enforce the following statutes:

- Nebraska Fair Employment Practice Act (FEPA)
- Age Discrimination in Employment Act (Age Act)
- Equal Pay Act of Nebraska
- Nebraska Fair Housing Act
- Providing Equal Enjoyment of Public Accommodations (PA Law)



HOUSING DISCRIMINATION

- Falls under Nebraska Fair Housing Act
- Discrimination in housing on the basis of:
 - Race
 - Color
 - National Origin
 - Religion
 - Sex
 - Disability
 - Familial Status



HOUSING DISCRIMINATION

- Covered entities generally include:
 - Residential Property Owners
 - Property Managers
 - Realtors
 - Multiple Listing Services



HOUSING DISCRIMINATION

- Unlawful housing practices include discrimination in residential property such as:
 - In Advertisement
 - Acquisition (showing, negotiating or transmitting offers for sale or rental)
 - Financing
 - Possession (terms, conditions and peaceful enjoyment)



COMPLAINT PROCEDURE

- Charges of unlawful discrimination to employment, housing, or public accommodation must be filed with the NEOC in a timely manner.
- There is no fee to file a charge, which may be filed with any one of the NEOC's three offices.
- All of the laws enforced by the NEOC contain provisions barring retaliation. Anyone who has opposed any practice made unlawful by the statutes or who has participated in any manner in any proceeding to enforce the statutes is protected.



COMPLAINT PROCEDURE

- Failure to file a charge in a timely manner will result in the Commission not having jurisdiction to investigate the charge.
- From the last date of any alleged harm, the time limits for filing charges are:

Employment—FEPA or Age	300 days
Employment—Equal Pay	4 years
Housing	1 year
Public Accommodations	10 days

(NOTE: Federal filing deadlines may be different.)



RECENT HUD GUIDANCE

APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF
CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL
ESTATE-RELATED TRANSACTIONS (APRIL 4, 2016)



APPLICATION OF FAIR HOUSING ACT STANDARDS – CRIMINAL RECORDS

- Guidance released April 4, 2016 by HUD Office of General Counsel
- Describes how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions



BACKGROUND

- As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort
- United States prison population of 2.2 million adults is by far the largest in the world
- 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



BACKGROUND

- 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.
- Many encounter significant barriers to securing housing due to their criminal history
- African Americans and individuals of Hispanic/Latino heritage are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.
- Criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.



CRIMINAL RECORDS DISPARATE IMPACT

- A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.
- Where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.



THREE STEP ANALYTICAL FRAMEWORK

1. Evaluating Whether the Criminal History Policy or Practice Has a Discriminatory Effect
2. Evaluating Whether the Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest
3. Evaluating Whether There Is a Less Discriminatory Alternative



STEP I: DISCRIMINATORY EFFECT?

- Must prove that the policy results in a disparate impact on a group of persons because of their race or national origin
- National and local statistics can be used to show disparate impact
- Fact-specific and case-specific inquiry



STEP 2: NECESSARY TO ACHIEVE A NONDISCRIMINATORY INTEREST

- Burden shifts to the housing provider to prove that the challenged policy or practice is justified – that is, that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider.
- Safety and the protection of other residents can be a consideration, but must be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property.
- No bald assertions based on stereotypes/generalizations of individuals with arrest or conviction records.



STEP 2 (CONT'D)

- Exclusions based on prior arrests (no conviction)
 - Will not satisfy the burden that the policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest
 - An arrest alone does not constitute probative value that individual engaged in misconduct. (Supreme Court)
 - A housing provider who denies housing to persons on the basis of arrests not resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety and/or property.



STEP 2 (CONT'D)

- Exclusions Because of Prior Conviction
 - In most instances, a record of conviction (as opposed to an arrest) will serve as sufficient evidence to prove that an individual engaged in criminal conduct.
 - The housing provider must still be able to prove that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Blanket prohibitions on all criminal records will not be able to meet this standard.
 - Policy must be tailored to distinguish between types of criminal conduct that indicates a risk to resident safety. The policy should take into account the nature and severity of the conviction and the amount that has passed.



STEP 3: IS THERE A LESS DISCRIMINATORY ALTERNATIVE?

- This step comes into play only if a housing provider successfully proves that its criminal history policy or practice is necessary to achieve its substantial, legitimate, nondiscriminatory interest.
- Burden shifts back to plaintiff to prove that such interest could be served by another practice that has a less discriminatory effect.
- Individualized assessment of criminal record is less likely to have a discriminatory effect: this could include the facts or 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.



EXEMPTION – ILLEGAL MANUFACTURING OR DISTRIBUTION

- Section 807(b)(4) of the Fair Housing Act provides that the Act does not prohibit “conduct against a person because such person has been convicted ... of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).”
- A housing provider will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.
- Only applies to convictions not arrests, and is specific to manufacturing and distribution, not all drug-related offenses.



SUMMARY

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.

Arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification.

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.



SUMMARY

- 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.
- 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.
- Private landlords who have blanket bans on renting to people with criminal records are in violation of the Fair Housing Act.



CONCLUSION

Any questions?

