



STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE  
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**TO:** Consolidated Homeless Grant Lead Grantees  
Emergency Solutions Grant Grantees  
Office of Youth Homelessness Grantees

**FROM:** Tedd Kelleher, Senior Managing Director, Housing Assistance Unit  
Kim Justice, Executive Director, Office of Homelessness Youth

**SUBJECT:** Fair Housing Act and Non-Discrimination

We want our grantees to be aware that their programs must comply with all federal, state and local nondiscrimination laws, regulations and policies as stated in the general terms and conditions. This includes the Washington State Law Against Discrimination ([RCW 49.60](http://www.wa.gov/rcw/49.60)) and the Fair Housing Act and its amendments (<https://www.justice.gov/crt/fair-housing-act-2>).

On April 4, 2016, the Department of Housing and Urban Development (HUD) released guidance that criminal record bans by providers and operators of housing may be in violation of the Fair Housing Act ([https://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASandCR.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf)). Blanket bans on individuals with a criminal history have a disproportionate impact on African American and Hispanic populations because of systemic discrepancies in the criminal justice system.

This long awaited guidance opens up housing opportunities for individuals with criminal backgrounds and outlines steps to assess if criminal history used to deny housing is discriminatory. The Fair Housing Act does not prohibit housing providers from considering an individual's criminal background, but a legally sufficient reason for keeping someone out of housing must exist, and broad bans are likely to lack that justification.

While the HUD guidance is specific to criminal background bans, it is important for housing providers to examine all program eligibility criteria to determine if criteria may have discriminatory impact. In June 2015 the Supreme Court issued a decision that confirms that housing discrimination does not need to be intentional to be illegal ([http://www.supremecourt.gov/opinions/14pdf/13-1371\\_m64o.pdf](http://www.supremecourt.gov/opinions/14pdf/13-1371_m64o.pdf)).

Washington's Law Against Discrimination prohibits practices of discrimination against people because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age,

honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. Note that sexual orientation is defined in this law as "...heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth."

(<http://app.leg.wa.gov/RCW/default.aspx?cite=49.60.040>)

The Fair Housing Act prohibits practices of discrimination based on race, color, national origin, religion, sex, disability or family status. Disability includes mental disorders and illness.

For more information, contact the Washington State Human Rights Commission at (800) 233-3247.