



May 30, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

RE: Tenant Screening, P235400

To Whom It May Concern:

The National Disability Rights Network (NDRN)* thanks the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) for seeking input on this critical issue through this Request For Information (RFI). NDRN hopes through our comments today to highlight the need to eliminate or lessen the constant use of processes, such as looking at criminal records or housing eviction records, automatically in all situations.

Unfortunately, a large percentage of people with a criminal record are also individuals with disabilities. Persons with disabilities already historically have a difficult time finding needed and accessible housing. The existence of background checks on people with criminal records only works to exacerbate the problem. Below are our answers to some of the posed questions where we feel we can provide critical insight and information:

Question 4. What (if any) information should landlords and property managers be required to provide to prospective tenants in advance of collecting rental applications and fees?

Landlords should be required to disclose to prospective tenants in advance of collecting any applications or fees any criteria they use in accepting or assessing a tenant.

Landlords must be upfront in describing to interested tenants any background sources they will use to screen potential renters. Currently, many tenant applicants are automatically turned away from housing opportunities because of instances of prior evictions or a criminal history. As a result, these individuals have a significant challenge in procuring safe, adequate, and affordable housing. This creates a significant barrier to housing for individuals who already face numerous barriers in obtaining housing.

If the applicant is made aware of such criteria, the applicant can make more informed choices about where to apply. The person will be able to limit application submissions to places that abstain from such profiling. This will enable the applicants to only spend their time applying to housing units they have a more likely chance of being accepted. Additionally, many housing units require a fee when applying. This can become costly for low-income applicants who are forced to apply to numerous buildings.

If a tenant knows where they will not be accepted, they can spend their money more wisely. Furthermore, if such criteria are put out openly, an applicant with a limiting background has a better opportunity to reach out to the landlord and explain the details of their former eviction. For instance, perhaps a significant life event led to the eviction and is less likely to occur again. If such criteria are publicized, the tenant candidate has a greater opportunity to speak out in advance to defend themselves.

Question 5. Are there mechanisms that could make the tenant selection process more objective?

Yes, more objectivity is necessary to prevent discrimination in any form, whether a landlord is cognizant of such discrimination or not.

The proposal that tenants are considered in the order that applications come in is a fair suggestion. Numerous characteristics can cause discriminatory bias when choosing a tenant, whether the landlord acknowledges such a bias or not. Characteristics such as gender, race, or disability may sway a landlord to rent the unit to another applicant if the

landlord is uncomfortable with someone based on race or disability. Instead, the applicants should simply be based on a first come, first served basis to prevent any conscious or subconscious bias.

Relatedly, applications should eliminate all questions that identify characteristics that might bias the landlord. For instance, no question should be asked about a tenant's criminal history. Additionally, questions that inquire about race, disability, or gender should also be eliminated from at least the first application to make the process as neutral as possible.

Question 12. Should landlords and property managers be required to return prospective tenants' application-related fees if the prospective tenant is not considered for the housing (e.g., because the landlord chose another applicant before considering the prospective tenant's application)?

Yes, any fees procured by an applicant should be returned if the landlord chooses not to investigate and/or rent to the applicant.

As previously discussed, many background assessments immediately weed out applicants based on criminal or eviction histories. Because the assessment is done automatically, often through a third-party system, the applicant never has the opportunity to defend themselves. As a result, the applicant is often going to pay a fee where they will never obtain housing. In other words, it is likely that the applicant will pay fee after fee with little chance of procuring housing.

To make the already unbalanced system a bit better, the applicant should be paid back for the application fee. Otherwise, the landlord could simply make it a business to collect as many application fees as possible with little chance of ever renting the unit out to any of the applicants. A fee should be used to hold a spot, not as a tool to collect money from individuals who are unlikely to gain housing. Additionally, fees should not be collected to run background assessments if, as previously discussed, the applicant does not know what is being checked.

Question 18. What are the potential benefits and harms of considering criminal records in making housing decisions?

It is often that individuals leaving incarceration do not have housing in the community. Consequently, recidivism is higher for formerly incarcerated persons who do not have ready access to housing. As a result, continuously basing a tenant's ability to rent on his or her criminal history can have significant effects. Likewise, rehabilitation can be slowed, as a person without a place to live is less likely to gain employment. However, employment is a requirement of many parole programs.

Question 21. Are there steps regulators can or should take with respect to the use of criminal records in tenant screening?

A tenant's criminal history should rarely, if ever, be used to screen out tenants. As previously mentioned, recidivism is more likely to occur if a person does not have a place to live. Policies that push individuals out of safe and affordable housing only work against community safety. As a result, policymakers should reassess any laws or regulations that screen out tenant applicants with criminal histories, especially if the conviction at hand has no direct linkage to financial crimes. For instance, if a formerly incarcerated individual has a drug offense on their record, one of the most common in the United States, the criminal history should play no part in denying a tenant a place to rent.

Question 23. What are the potential benefits and harms of considering eviction records in making housing decisions?

Simply denying a place to live to a tenant with an eviction history without looking specifically at the context of the situation or situations makes a blanket assumption about a person or group of people without understanding the unique circumstances of an individual's experience. It is important that the unique situation of each applicant is assessed before a blanket assumption is made. For instance, during the COVID-19 pandemic, many people faced eviction because they lost their jobs and could not pay rent or mortgages. If such an individual then had a record of an eviction, a quick background check could leave out many key details behind the cause of the eviction. More steps need to be taken to fully understand all the circumstances behind an applicant's eviction record.

Thank you again for the opportunity to submit these comments. If you have any questions, please reach out to Claire Stanley, Public Policy Analyst, at Claire.stanley@ndrn.org.

Sincerely,

A handwritten signature in blue ink that reads "Marlene Sallo". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Marlene Sallo
Executive Director
National Disability Rights Network

* NDRN is the non-profit membership association of Protection and Advocacy (P&A) agencies located in all 50 States, the District of Columbia, and the United States Territories. In addition, there is a P&A affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest.

P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A Network comprises the nation's largest provider of legally based advocacy services for people with disabilities. NDRN and the P&A Network advocate for many people with disabilities with a connection to housing related issues.