



March 30, 2017

Brian Sperber, Legislative & Regulatory Council
Fair Employment and Housing Council
Department of Fair Employment & Housing
320 West 4th Street, 10th Floor
Los Angeles, CA 90013

RE: Notice of Proposed Rulemaking and Public Hearing 10:00 AM March 30th on Title 2.
Department of Fair Employment and Housing – Housing Regulations Regarding the
Discriminatory Effect; Discriminatory Land Use Practices; and Use of Criminal History Records

Dear Mr. Sperber:

The National Consumer Reporting Association has represented the housing consumer reporting industry since 1992, providing products and services to hundreds of thousands of mortgage lenders, and landlords. As such, we are uniquely positioned to provide the following comments for consideration during the Council's proposed rulemaking with respect to the use of criminal records in rental screening.

Existing regulation and local ordinance in California show that restricting property managers/landlords use of criminal records in screening rental applications will have a negative impact on the very communities your counsel aims to assist. The disparate impact discriminatory effect the counsel outlines in §11098.04.1 Practices with a Discriminatory Effect allow for a legally sufficient justification in (d), which is the safety of the other residents and employees of the rental property.

National Consumer Reporting Association

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Violent criminals (including individuals with a history of sex crimes, gang activity and drug-related homicide) pose a serious threat to our neighborhoods and communities across the country. This is why there are federal requirements from the Department of Housing and Urban Development (HUD) for residents of the Section 8 Voucher Choice Assistance program.¹

In January 2016, the City of Hesperia, CA enacted the Hesperia Crime Free Rental Housing ordinance,² which increased the use of criminal records with the help of the Hesperia city police department as a central player in the process. Absent proper screening procedures property managers/landowners would be putting innocent people they rent to in a precarious situation of compromised safety in the units they rent. Property managers/landlords in Hesperia are held by HUD's Section 8 requirements and obligated now under local ordinances to be accountable for the character of their tenants.

In this voluntary Crime Free Rental Housing Program, property managers are smartly required to deny leases to applicants with certain heinous convictions. Impeding their access to criminal record data will make compliance with federal and in this instance local ordinance extremely difficult or even impossible to comply with.

Managers/landlords with the ability to properly screen rental applicants for criminal records are in a better position to seek a balance between fair access to housing and safe housing. They have the appropriate resources at both the state and federal level in applying the proper terms for their screening polices from sources such as the California Apartment Association's Criminal Background Checks: Questions and Answers Use³ and the National Multifamily Housing Counsel and the National Apartment Association's joint white paper, Criminal Conviction Screening Policies: Best Practices to Avoid Disparate Impact Liability⁴.

We urge the counsel to avoid any hindering of the freedom of landowners to screen their tenants. Without the ability to conduct screening, property owners and existing residents are at risk from new tenants who may have violent criminal history. While everyone deserves a place to live, not everyone deserves the right to reside at any location they please at all points in their life.

It is not unreasonable to expect that those who have been processed through our legal system due to criminal activity and/or incarcerated for violent crimes would have somewhat limited housing options, in particular if based on certain crimes against others' property, other persons, or illegal substance involvement.

¹ <https://portal.hud.gov/hudportal/documents/huddoc?id=12-28pihn12-11hsgn.pdf>

² <http://www.desertnewspost.com/hesperias-crime-free-rental-housing-ordinance-now-in-effect/>

³ <https://caanet.org/app/uploads/2015/12/Criminal-Screening-QA.pdf>

⁴ http://aagdallas.com/assets/files/Criminal_Conviction_Screening_Policies_White_Paper_2016_05-FINAL.pdf

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Restricting Property Managers/Landlords from screening will ultimately drive some property owners out of the rental pool, and in turn limit the availability of housing overall. What is logical for protecting families in HUD's section 8 program should also be applied for the safety of all families, and not be restricted based on the individual choices and limited term possible discriminatory impact.

Thank you to the council for the opportunity to provide these comments about this critical policy question, to strike a balance between fair access to housing and providing safe housing to the citizens of California. We believe the need for public safety outweighs the right for dangerous criminals to have unfettered access to housing in certain instances, and that state lawmakers should be held accountable for policies that will put many communities in harm's way.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terry Clemans', with a large, sweeping flourish extending to the left.

Terry Clemans
Executive Director

National Consumer Reporting Association

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