

Fair housing best practices for housing providers using AI

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It is no secret that the use of Artificial Intelligence (“AI”) has exploded across many industries. AI can increase business efficiencies and streamline outdated modes of operation, including with respect to housing-related services. But AI can pose risks for housing providers when used in the tenant screening process and to advertise housing opportunities. Housing providers, tenant screening companies and advertisers should tread carefully when using AI for these or similar purposes to avoid running afoul of fair housing laws.

Fair Housing Act refresher

The Fair Housing Act (“FHA”) protects people from discrimination in the sale, rental and financing of dwellings, among other housing activities, because of race, color, national origin, religion, sex, familial status and disability.

Tenant screening processes that rely on AI technology can increase the likelihood that a screening decision is based on overbroad criteria that may exclude people from housing opportunities in discriminatory ways.

For example, among other discriminatory practices, the FHA prohibits any entity that plays a substantial role in any housing decision from taking any of the following actions in relation to an individual’s protected class:

- Discouraging or preventing the rental or purchase of a dwelling;
- Setting different terms or conditions for the sale or rental of a dwelling;
- Using different qualification criteria or procedures, such as income standards or application requirements;
- Publishing any advertisement related to the sale or rental of a dwelling that indicates preference based on any protected class; or

- Assigning a person to a particular building or neighborhood. Various state laws expand the protected classes (e.g. age) and contain additional prohibitions.

Tenant screening tips

Housing providers have a legitimate interest in choosing occupants who will comply with their lease, follow community rules and pay their rent and/or mortgage. But tenant screening processes that rely on AI technology can increase the likelihood that a screening decision is based on overbroad criteria that may exclude people from housing opportunities in discriminatory ways.

Guidance (<https://bit.ly/4gSd3hO>) from the U.S. Department of Housing and Urban Development (“HUD”) makes it clear that housing providers and third-party screening companies, including those using AI or similar technologies for screening, have an obligation to ensure tenant screenings are accurate, give all housing applicants equal opportunity to be evaluated for housing on their own merit and comply with the FHA.

The following best practices can help housing providers avoid fair housing violations when using or relying on AI for tenant screening.

- **Vet screening companies** — Housing providers that use third party screening companies should look for companies that (a) offer customizability; (b) frequently update their data; (c) audit their criteria and processes for discriminatory impact; (d) report clear and specific reasons for denials; (e) allow applicants to correct inaccuracies; and (f) publicly disclose key details about their screening system and use of AI technologies.
- **Use relevant screening criteria** — Housing providers, or their chosen screening companies, should only use screening criteria which impacts the probability that a tenant will comply with their tenancy obligations. If particular screening criteria has a disparate impact on certain protected classes, the screening criteria should be made more precise to reduce the discriminatory impact. For example, screening criteria should focus on the most recent records available and avoid use of outdated records that are not reflective of the tenants’ recent behavior. Standard screening criteria should be waived if it is not relevant to an applicant’s individual circumstances

(ex: minimum income for applicant whose rent will be paid by someone else). Additionally, records for which a negative outcome cannot be confirmed, or no negative outcome occurred, should be disregarded (ex: eviction proceeding irrelevant if tenant prevailed).

- **Be transparent with applicants** — Screening policies should be in writing and easily made available to applicants. Applicants should receive a copy of the screening policy or told where they can locate the same before submitting their application. The policy should include enough detail so that an applicant can make an educated prediction on whether they are likely to qualify. This includes what records will be considered, incidents that would disqualify the applicant and the look-back period for the screening. Applicants should also receive information regarding how to submit evidence of mitigating circumstances and how to request a reasonable accommodation for disability.
- **Provide opportunity to dispute** — Housing providers and screening companies should provide applicants with a complete opportunity to dispute the accuracy or relevance of any information upon which a denial is based. This includes providing the applicant with the screening report, identifying the disqualifying incidents, and a clear process for disputing the denial.

Housing providers that use AI in the tenant screening process can face significant risk that use of such technologies violate the FHA if not properly vetted. For, example, in 2022 two Massachusetts residents brought a fair housing lawsuit (<https://bit.ly/4fCw1YL>) against a tenant screening company after being denied tenancy at apartments of interest based on the negative assessments of a third-party tenant screening company.

The tenant screening company recommended the property management company at issue decline the plaintiffs' rental applications when the scores calculated by the company's AI powered screening tool did not meet the threshold score set by the property management company.

The plaintiffs alleged the algorithm used by the tenant screening company disproportionately scored Black and Hispanic renters who use housing vouchers lower than white applicants, and that the software inaccurately weighed irrelevant account information about whether they would be good tenants, such as credit scores and non-housing related debt, but did not factor in that they would be using a housing voucher.

In November 2024 the screening tenant company ultimately settled the matter for \$2.3 million and has agreed to stop using its past scoring system or make any kind of recommendation when it came to prospective tenants who used housing vouchers for five years. If the company wants to implement a new scoring system it must have it validated by a third-party fair housing organization.

Online advertisement tips

The creation and delivery of targeted advertisements for housing, and particularly online advertisements that rely on AI, can

unlawfully deny prospective applicants information about housing opportunities.

For example, it may violate the FHA when advertisement targeting or delivery mechanisms that rely on protected characteristics are used in a manner that discourages potential applicants from pursuing housing, different prices or conditions are advertised to prospective applicants based on their protected class, or prospective applicants are steered to specific neighborhoods because of their protected characteristics.

For example, AI systems may decide that African Americans respond better to certain advertisement content or modes than other demographics, and in turn only direct those types of ads to African Americans.

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Housing providers should implement the following tips, when possible, to ensure use of online advertisements, especially those created or implemented using AI, complies with FHA requirements.

- Avoid using targeting options that directly describe or closely correlate with FHA- protected classes, either alone or when used cumulatively;
- Ensure ad platforms and services are aware the advertisement relates to housing to promote appropriate treatment;
- Carefully analyze use of any tools provided by the ad platform for evaluating the projected demographics of a targeted audience; and
- Track the results of advertising campaigns, when feasible, to identify and mitigate discriminatory outcomes.

For additional recommendations regarding specific types of AI technology related to advertisements, including audience categorization tools, customer and mirror audience tools and algorithmic delivery functions, see HUD guidance (<https://bit.ly/4iQORjz>) on these issues.

Conclusion

AI can be a wonderful tool for housing providers to efficiently meet business objectives, but the application and impact deriving from use of the above technologies are not exempt from FHA requirements. Housing providers must be diligent in ensuring any advanced technologies used in relation to housing services comply with fair housing law.

About the authors



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