

Fair Housing Center of Southeast & Mid Michigan

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NEW RULE BANS LANDLORDS FROM BLANKET DENIALS BASED ON CRIMINAL BACKGROUND

On April 4, 2016, the United States Department of Housing and Urban Development (HUD) issued new guidance to the real estate community regarding the use of criminal background in evaluating prospective tenants. The guidance, titled “[Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#),” explains how criminal background as a screening tool could violate the Fair Housing Act, and suggests standards and procedures that landlords should follow instead. This is the first time HUD has issued guidance on the [issue to non-governmental entities](#).

Highlights from the new HUD guidance:

- Landlords may not have a blanket ban on prospective tenants with a criminal background.
- Landlords must distinguish between arrests and convictions.
- Potential tenants cannot be denied for an arrest record.
- Landlords will need to evaluate the nature and severity of the crime, when the crime took place, what the person has done since the conviction, and consider each applicant on a case-by-case basis.
- If a potential tenant is denied due to a conviction, the landlord may have to prove that the exclusion is justified.
- The only exception to this guidance is when the conviction was for manufacturing or distributing drugs.

Criminal background is not a protected class under the Fair Housing Act (FHA). The new guidance explains how blanket denials of applicants with conviction records, and any denial of applicants with only an arrest record, have been proven to have a disparate impact on classes that *are* protected under the FHA (for instance, race and national origin), which means these housing selection policies may violate the Fair Housing Act.

The Fair Housing Center of Southeast & Mid Michigan (FHC) applauds the new guidance from HUD and recognizes its great potential to reintegrate African-American and Latino applicants

back into the rental market. The FHC is highly aware of the nexus between criminal background and the exclusion of people of color from the market. As the guidance states, “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.”

“We have taken complaints from people of color whose convictions were over 20 or 30 years old, and others who had non-violent misdemeanors that in no way should have affected their ability to rent an apartment,” said Pam Kisch, Executive Director of the FHC. “Our office will continue to take and investigate these complaints when they come in, as well as negotiate and resolve reasonable accommodations for those who have a disability and criminal background.”

"When someone is convicted of a crime and completes a probation, jail, or prison sentence, their punishment should be over. Instead we ask people to pay for the rest of their lives, when they are denied access to housing and employment with blanket "no felony" policies," stated Mary King, Executive Director of the Michigan Council on Crime and Delinquency ([MCCD](#)). “Thanks to the new guidance from HUD, people who have a felony conviction can now expect fair consideration of their application and can turn to the Fair Housing Center for help if they encounter a landlord still practicing blanket denials."

Under the new guidance, the Fair Housing Center plans to conduct additional outreach to the community so people know where to call if they have questions or have been denied housing due to criminal background.

Natalie Holbrook, Program Director of the American Friends Service Committee’s Michigan Criminal Justice Program ([AFSC- MI CJ](#)), also applauds the new guidance. "As an organization that has worked diligently for prisoner rights and rights for people with felony convictions, AFSC has witnessed first-hand the multitude of problems that people returning to their communities experience when coming home from prison. Access to permanent, affordable housing is a major issue faced by returning citizens and this guidance from HUD is long overdue in the work to end discrimination against people with felony convictions, poor people, people of color and people living with disabilities. We are hopeful that this guidance will create more housing options and will lead to less discrimination and more opportunities for returning citizens."

The Fair Housing Center encourages property owners and landlords who are moving toward less-restrictive tenancy selection criteria to read the guidance in full, as it outlines what HUD will use as “the three steps used to analyze claims that a housing provider’s use of criminal history to deny housing opportunities results in a *discriminatory effect* in violation of the Act. ... [as well as the] analytical framework used to evaluate claims of *intentional discrimination*.” [Italics added]

As mentioned above, the FHC has had some success in gaining reasonable accommodations for people with disabilities who either have a criminal background themselves, or require the assistance of someone who does.

Ex-Offender Keeps Housing, Parking Space

A man with a physical disability lived in his apartment building for three years. He was, by all accounts, an excellent tenant. When a new management company took over, they required that each tenant reapply. Our complainant had a felony record from 14 years prior and for this reason the new managers told him he would have to move at the end of his lease. As a reasonable accommodation, FHC asked for a new lease to be issued, pointing out that our complainant had turned his life around. The accommodation was granted. The complex later removed his reserved parking space. We asked for a second accommodation to have his reserved parking space returned to him and the accommodation was granted.

Caregivers with Conviction Records Allowed

A woman who owns a mobile home needs 24-hour-a-day care provided by her son and her boyfriend. Both had been living with her for the last six years without complaint or incident. A new manager demanded she officially put her caregivers on her lease, but denied their applications because of past felony convictions. This led to an eviction notice and the woman feared that any gap in her care could be fatal. FHC staff wrote a letter asking that they let her add her caregivers to the lease as a reasonable accommodation of her disability. The accommodation was granted.

One to watch: The law firm [Relman, Dane & Colfax](#) filed a case in October 2014 that is now pending before the U.S. District Court for the Eastern District of New York. Their client, the Fortune Society, alleges that Sandcastle Towers in New York City has a blanket ban against applicants with any convictions and this likely violates the Fair Housing Act.

The Fair Housing Center of Southeast & Mid Michigan (formerly Fair Housing Center of Southeastern Michigan), founded in 1992, actively protects the civil rights of those who are discriminated against in the rental, sale, or financing of housing through investigation, education, advocacy, and legal action. The FHC takes an average of 150 complaints each year from its eight-county service area – Clinton, Eaton, Ingham, Jackson, Lenawee, Livingston, Monroe, and Washtenaw counties.

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