

new criminal background rule

New Federal 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 explains how using 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.

Important Highlights:

- 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 consider each applicant on a case-by-case basis, evaluating the nature and severity of a crime, when the crime took place, and what a person has done since the conviction.
- 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.

We are aware of the nexus between criminal background and the exclusion of people of color from the housing market. 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. 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.

The Fair Housing Center encourages property owners and landlords who are moving toward less-restrictive tenant selection criteria to read the guidance in full, as it outlines HUD's "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."

Good examples of new housing selection criteria have already been rolled out around the country. One example is the Housing Authority of New Orleans (HANO); their new plan now includes the use of a three-person application review panel when needed. If you see a good example, please let us know at info@fhcmichigan.org.

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. In a New York Times article on the guidance, John Relman is quoted as saying that "the agency in charge of interpreting the Fair Housing Act agrees with us, and that will have a lot of weight" on the Fortune Society litigation.

"It is not possible to be in favor of justice for some people and not justice for all people."

- Martin Luther King, Jr.