

CLIENT ALERT: HUD Issues New Guidance On The Use Of Criminal Records In Housing

On April 4, 2016, the United States Department of Housing and Urban Development (HUD) issued guidance on the use of an individual's criminal record by housing authorities, property managers, landlords, home sellers, and other housing providers subject to the Fair Housing Act. The express purpose of the guidance is to help reduce barriers to housing for individuals with a criminal record history.

The Fair Housing Act is a federal law prohibiting discrimination in the sale or rent of a private or public dwelling to any person on the basis of race, color, national origin, religion, sex, or familial status. An individual's criminal record is not a protected category and housing providers may, and sometimes must, use criminal record information in evaluating whether to rent to a potential tenant.

Certain public housing providers are legally required to obtain and consider criminal record information of applicants. For example, local housing authorities in Massachusetts are required to check the Criminal Offender Record Information (CORI) of public housing applicants. HUD's regulations require a criminal background check of applicants for federally-assisted public housing and reject those having a household member who is currently using illegal drugs, has been previously evicted from federally-assisted public housing for drug-related criminal activity in the past three years, or is a registered sex offender. State and federal regulations also list other prior criminal activity that may, but is not required to, be disqualifying.

HUD's new guidance acknowledges that criminal record information may and, in certain cases, must be used in assessing applicants but notes that having a criminal record alone should not automatically disqualify an applicant and that such a blanket policy barring those with a criminal record could constitute unlawful discrimination.

Using a "disparate impact" analysis, the HUD guidance notes that, statistically, African-Americans and Hispanics are more likely to have a criminal record and, as a result, the use of criminal record information to disqualify applicants could have a disproportionately discriminatory effect on these groups, even if the housing provider lacks any discriminatory animus against the individual applicant. A broad policy prohibiting renting to those with a criminal record would likely violate the Fair Housing Act as a result of its disparate impact.

The HUD guidance also notes that prior arrest information without a conviction does not constitute proof of past criminal conduct and the use of arrest record information by a housing provider would not be a valid defense to a charge of discrimination.

Criminal record information can provide helpful information to housing providers in the assessment of a potential tenant and ensure the safety and security of other tenants, the property, and surrounding community. However, the HUD guidance highlights the importance of avoiding overbroad policies against renting to individuals with criminal records and instead allowing for case-by-case

determinations based on the type, severity, number, and dates of any prior criminal convictions. The use of this criminal record information to screen potential tenants must be related to the legitimate, non-discriminatory interests of the housing provider in maintaining a safe and secure property.

Housing authorities and residential property managers should review their policies and practices regarding the use of criminal record information to ensure compliance with federal and state law.

The guidance can be found [here](#).

James M. Pender is an attorney with Morgan, Brown & Joy, LLP. Jim may be reached at 617-523-6666 or at jpender@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was published on April 29, 2016.

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