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## HUD Explains Criminal Tenant Move

Faced with a backlash and potential legal action from the nation's rental housing industry, HUD issues a detailed explanation of how the department will pursue recalcitrant landlords, noting the government will sue landlords who screen prospective tenants for felonies (*see HAL, issue #15, 04-08-2016*).

The document is explicit in its insistence that HUD will consider landlords racists and subject them to legal action if they turn away tenant applicants based on their criminal records because criminal convictions disproportionately affect minorities.

Landlords insist criminal background screening is a legitimate business need necessary to cull prospective tenants who could be a danger to the protection and security of other residents.

HUD is positioning its landlord crackdown on the application of the "disparate impact" theory, a legal concept endorsed by the U.S. Supreme Court in mid-2015 and adopted by HUD as a core doctrine of its fair housing enforcement policy. The concept holds that a person or business can be guilty of racial or ethnic bias through an action or activity even if there was never any intent to discriminate.

In the landlord crackdown, HUD determined that denying a felon housing is likely racial discrimination because a disproportionate number of ex-convicts are black or Hispanic. "Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population," HUD explains. "Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.

"While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability)," the HUD justification continues. "Additionally, intentional discrimination in violation of the Act occurs if a housing provider treats individuals with comparable criminal history different because of their race, national origin or other protected characteristic (i.e., disparate treatment liability)."

With criminals now a new protected class, HUD claims that screening policies have a discriminatory disparate impact on black applicants even if the screening is applied evenly and neutrally across all races because blacks “are arrested at more than double their proportion of the general population.”

The HUD rationale places landlords in an untenable position. They must avoid even inquiring about the criminal records of prospective tenants to protect themselves from federal action. But if landlords fail to cull criminals and rent to one who mugs and robs a neighbor, they could be sued by the victim for negligence.

The plus side for HUD is that the new rule makes it easier to desegregate suburban neighborhoods under its new Affirmatively Furthering Fair Housing enforcement campaign where locales face a cut off of federal subsidies if they refuse to lift zoning restrictions on low-income housing.

**Info:** See HUD’s clarification statement at [www.cdpublications.com/docs/8817](http://www.cdpublications.com/docs/8817)

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