



Felon Rule Called Arbitrary Scheme

HUD's decision to force public housing authorities and HUD-contracted landlords to house ex-convicts is meeting with furor. And private landlords are running scared as well. Public housing advocates decry the order as an arbitrary scheme designed to shut out discussion and circumvent congressional scrutiny.

The order from the Justice Department to relax felon scrutiny came in the wake of the administration strategy to release non-violent felons from prison and help them establish a new life. One of the primary obstacles for ex-felons has been a lack of housing and landlords willing to accept new tenants with criminal records.

HUD determined that since blacks and Hispanics make up a disproportionate share of the prison population, most of the convicts released would be minorities who already find housing searches difficult.

The new guidance -- a strategy used by the Executive branch to initiate new policy by circumventing formal rulemaking, public discussion and a formal public comment period -- says blanket policies denying housing to individuals with criminal backgrounds are likely to violate the Fair Housing Act.

The new rule hits property managers and housing management firms hard. They must now balance a criminal record with the possibility they would violate the FHA's disparate impact ruling that holds a person legally culpable for even the remotest hint of discrimination against any of the protected classes -- which now includes ex-convicts.

In its release of the new directive, HUD failed to explain in detail how the department would determine bias under the new guidance.

"The guidance fails to offer housers specific guidance concerning what constitutes acceptable and unacceptable screening practices or to describe any safe harbor for housers concerning use of criminal histories," the Public Housing Authorities Directors Association says in a scathing critique of the guidance in a letter to HUD's chief lawyer, Helen Kanovsky.

"HUD has taken the unusual step of issuing important guidance outside of its normal channels through its operating divisions," the PHADA letter says. "The department appears to have

established new requirements and review standards without the public notice and comment process required by the Administrative Procedures Act, or process required by guidance issued by the Office of Management & Budget to federal agencies and departments concerning guidance issuances (OMB Bulletin 07-02).”

PHADA says the guidance is inconsistent with or contradicts the tone and content of some of HUD’s existing regulations. The public housing industry group asserts that the guidance may not jibe with standards regarding implementation of a disparate impact described in the June 2015 decision on the concept by the U.S. Supreme Court.

The PHADA letter calls on HUD to reconsider the guidance.

Meanwhile, the guidance has roiled the residential real estate industry. The guidance, under the umbrella of the Fair Housing Act, impacts the private real estate industry as well. The new rule sent shockwaves through real estate brokerages throughout the country.

Brokers remain mum so far, waiting to see how application of the rule unfolds. Many brokers fear just running a criminal background check could trigger intervention from HUD’s Fair Housing & Equal Opportunity Office. Brokers view the guidance move as a prelude to formal regulations.

While HUD would have difficulty enforcing the guidance on the private real estate industry, the department has the backup of the FHA to use as an enforcement cudgel.

Info: See the PHADA letter at www.cdpublications.com/docs/8909

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