



## Are Housing Providers Abiding by HUD's Guidance on the Use of Criminal Records?

### What is 'the guidance'?

A statement issued on April 4, 2016 by HUD's Office of General Council detailing how the Fair Housing Act applies to the process by which housing providers use criminal records in real-estate transactions. The guidance helps keep housing providers accountable for their policies regarding the use of criminal records.

Specifically, the guidance addresses the discriminatory effects and disparate treatment methods of proof that apply in Fair Housing Act Cases.

In the US, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population; in addition, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.

Although having a criminal record is not currently a protected class under the Fair Housing Act, criminal history based restrictions on housing opportunities violate the Act if without justification, the barriers affect participants of a particular race or national origin over another (i.e, Discriminatory effects liability).

### So, what does this mean?

Even if a housing policy or practice seems 'neutral' or 'innocent' if it has discriminatory effects, it violates the Act, unless it is supported by proper legal justification, which is analyzed through three steps:

1. Plaintiff/HUD must present evidence proving the practice causes a disparate impact.
2. Housing provider must prove the challenged practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Exclusions apply!
3. The last step applies only if the housing provider proves the policy is necessary; the Plaintiff/HUD must then assess whether an alternative option is available that has a less discriminatory affect.

To read the full guidance, please visit

[https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)