



URGENT! HUD Disparate Guidance—Criminal Screening Criteria

The following would be set out in the screening criteria under Criminal:

A landlord is not required to rent to any person whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Any conviction for manufacture or distribution of any federally controlled substance will result in an automatic denial of tenancy.

All other criminal convictions will require additional screening, which will require additional time for screening and an additional charge of \$_____, which shall be paid in full prior to the additional criminal screening.

When you apply, screening will be run on income, credit, other areas in the screening criteria and criminal history. If the screening passes the non-criminal requirements and you have no criminal convictions, then your application may be accepted immediately. If you do have criminal convictions, you may be given a conditional approval, pending the outcome of the criminal screening.

Determinations as to criminal screening will be made on a case by case basis, and will be based on the following factors and information, which will be required for every conviction, and we cannot complete the application screening without this information: 1) the facts of the crime you were convicted of; 2) the actual charge you were convicted of; 3) your age at the time of the conviction; 4) criminal convictions prior to the conviction; 5) criminal convictions and pending charges since the conviction; 6) how much time has passed since the conviction; and for drug possession charges 7) if you are in, or have completed recovery or treatment since the conviction. Failure to provide any information is a basis for denial of tenancy.

My suggestion for a best practice to insure against a claim of racial discrimination for a denial based on criminal convictions is:

1. Get the information on the facts of the crime and the actual charge that the applicant is convicted of from a 3rd party screening company, rather than from the applicant. This may require the screening company to pull criminal records from actual court files, and will add costs and time to the process.
2. Once you have this information, you need to find out the treatment question from the applicant, and you can require proof of treatment or completion of a treatment program.
3. Assign the applicant a number, so that any person making the criminal screening decisions only see the number, not any identifying information about the applicant, including sex, name, race, national origin, etc. to insure that the decision is only based on the criminal conviction elements.
4. Collate all of the conviction information for each applicant under that tenant number. That may require redacting names from the criminal court records before collation.
5. Have 3 persons at the regional management level all vote accept/deny on each applicant number, and if they vote to deny, then a statement as to why they have denied the applicant, based on the information provided.
6. If the majority votes are for denial, then deny the tenant, and send out the adverse action notice to the applicant. If the majority votes are for approval, then notify the applicant of the approval.

This is going to be a very labor intensive and timely process. Other problems with this approach (a variety of which is now required by HUD under the disparate impact guideline), is the time that it takes and making the decision on how long to hold a unit off the market while this process is going on. You cannot just give preference for those persons without criminal convictions, because that puts you right back in the same predicament with disparate impact, since convictions are much more common with minority applicants.

~Randy Redford, Attorney At Law



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Background Checks: What Employers Need to Know Tips From the FTC & EEOC

[Privacy and Security](#) [Credit Reporting](#) [Human Resources](#)

If employers use background checks in making personnel decisions, they must comply with the Fair Credit Reporting Act and laws that protect people from discrimination. The FTC and EEOC have tips for businesses on the lawful use of background information.

When making personnel decisions — including hiring, retention, promotion, and reassignment — employers sometimes want to consider the backgrounds of applicants and employees. For example, some employers might try to find out about the person's work history, education, criminal record, financial history, medical history, or use of social media. Except for certain restrictions related to medical and genetic information (see below), it's not illegal for an employer to ask questions about an applicant's or employee's background, or to require a background check.

However, any time you use an applicant's or employee's background information to make an employment decision, regardless of how you got the information, you must comply with federal laws that protect applicants and employees from discrimination. That includes discrimination based on race, color, national origin, sex, or religion; disability; genetic information (including family medical history); and age (40 or older). These laws are enforced by the Equal Employment Opportunity Commission (EEOC).

In addition, when you run background checks through a company in the business of compiling background information, you must comply with the Fair Credit Reporting Act (FCRA). The Federal Trade Commission (FTC) enforces the FCRA. This publication explains how to comply with both the federal nondiscrimination laws and the FCRA. It's also a good idea to review the laws of your state and municipality regarding background reports or information because some states and municipalities regulate the use of that information for employment purposes.

Before You Get Background Information

EEOC

In all cases, make sure that you're treating everyone equally. It's illegal to check the background of applicants and employees when that decision is based on a person's race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, asking only people of a certain race about their financial histories or criminal records is evidence of discrimination.

Except in rare circumstances, don't try to get an applicant's or employee's genetic information, which includes family medical history. Even if you have that information, don't use it to make an employment decision. (For more information about this law, see the EEOC's publications explaining the Genetic Information Nondiscrimination Act, or GINA.) Don't ask any medical questions before a conditional job offer has been made. If the person has already started the job, don't ask medical questions unless you have objective evidence that he or she is unable to do the job or poses a safety risk because of a medical condition.

To Be Continued Next Newsletter

For more information please click link

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**Orca will be closed on Monday, the 4th of July
and will reopen Tuesday, the 5th at 9:00 AM**

Happy 4th of July!!!!