



MESSER STRICKLER, LTD.

## **What Landlords Need to Know About Tenant Screening and Criminal Background Checks**

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Criminal background checks have long been used by property managers and landlords as a means of tenant qualification but, utilizing criminal and arrest information is not without its perils. The U.S. Department of Housing and Urban Development (HUD) has repeatedly expressed concern about the use of criminal background checks in tenant screening. Specifically, HUD has expressed concern about landlords who uniformly deny housing to prospective tenants based on the use of criminal histories alone. According to HUD, such policies and procedures unknowingly discriminate against African-Americans and Hispanics because statistics show that a higher percentage of those minorities have a criminal history compared to the Caucasian population.

As a result, HUD has concluded that utilizing criminal background checks are illegal unless (1) there is a “substantial, legitimate nondiscriminatory interest” and (2) there is no other way to get the same result without the discriminatory effect.

To comply with the Guidance a landlord or property manager who considers the criminal histories of applicants in the interest of resident safety and the protection of property should:

- Not deny applicants based on arrest records alone;
- Not employ a blanket prohibition against applicants with criminal convictions;
- Not deny an applicant with a criminal conviction without having first considered the nature, severity, and recency of the applicant’s criminal conduct on a case-by-case basis;
- Not deny an applicant with a criminal conviction without first having conducted an individualized assessment of relevant mitigating information beyond that contained in the applicant’s criminal record;
- Not deny an applicant with a criminal conviction without considering individualized evidence such as the facts or circumstances surrounding their criminal conduct; their age at the time of the conduct; evidence that they have maintained a good tenant history before and/or after the conviction or conduct; and evidence of their rehabilitation efforts; and
- Not consider the applicant’s criminal history until after their financial and other qualifications are verified.

The Guidance does state that landlords and property managers may deny applicants for drug manufacturing or distribution convictions regardless of any resulting discriminatory effect. This exception does not, however, apply to drug possession convictions.

For complete information see the Guidance at:

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

If you have questions about how to comply with the Guidance, please visit our website at [www.messerstrickler.com](http://www.messerstrickler.com)

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