



SHCM® Webinar Series 5.18.16
Trending Issues in Housing Credit Management:
 How HUD's Final Rule on Streamlining Administrative Regulations Impacts Your Housing Credit Blended Site


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REMEMBER...


**You may be working with multiple programs,
 sometimes you have navigate down several
 different paths...**




A HOUSING CREDIT PATH



A HUD SECTION 8 PATH










Important Language Used

- Must / Must Not / Cannot / Prohibited
- Should / Should not
- Can / May







Background



- On March 8, 2016, HUD published the Final Rule on Streamlining Administrative Regulations for Public Housing, Housing Choice Vouchers, Multifamily Housing, and Community Planning and Development Programs.
- These changes are designed to reduce the administrative burden on PHAs and Multifamily Owners
- The Final Rule was effective on April 7, 2016.

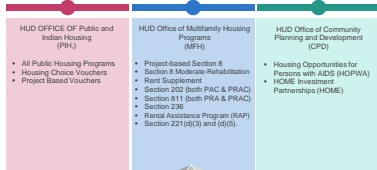


Background

- The Final Rule combines the modifications found in the 2014 and 2015 appropriations acts, HUD's proposed rule from January 6, 2015 and September 8, 2015.
- In addition, the January 2015 rule proposed changes intended to reduce the administrative burden on public housing agencies, multifamily owners and to align, where feasible, requirements across the following programs



Final Rule on Streamlining Administrative Regulations for Public Housing, Housing Choice Vouchers, Multifamily Housing, and Community Planning and Development Programs



Background

- This final rule makes changes to the regulatory text as presented in the January 2015 proposed rule, including additional changes in response to public comment as well as further consideration by HUD of changes proposed in January 2015, and finalizes the regulatory changes contained in the September 2015 interim rule.



The Final Rule

- There are 2 documents
 - The Federal Register
 - HUD's Summary of the Final Rule (99 pages)
- Multifamily Programs affected by the Final Rule:
 - Project-Based Section 8
 - New Construction
 - State Agency-Financed
 - Substantial Rehabilitation
 - Rural Housing Services (RHS)
 - Loan Management Set-Aside (LMSA)
 - Property Disposition Set-Aside (PDSA)
 - Section 8 Moderate Rehabilitation



Multifamily Programs affected by the Final Rule Cont'd:

- Rent Supplement Program (Rent Supp)
- Section 202 Supportive Housing for the Elderly
 - Including Project Assistance Contract (PAC) and Project Rental Assistance Contract (PRAC)
- Section 811 Supportive Housing for Persons with Disabilities
 - Including PRAC and PAC
- Section 236 Interest Reduction Payments Program
- Rental Assistance Payment Program (RAP)
- Sections 221(d)(3) and (d)(5) – FHA Insurance Programs for New Construction or Substantially Rehabilitated Multifamily Rental Housing





Biennial Inspections

- Allows PHAs to use an inspection performed through another housing programs such as HOME or LIHTC
- Allows PHA's to impose an optional inspection fee re-inspection if the re-inspection proves that the violation has not yet been fixed
- In the Final Rule HUD clarified that a PHA may adopt an alternative inspection method that is specifically authorized by Congress, such as sampling as conducted under the requirements of the LIHTC program.
- The final rule also included a provision that the Real Estate Assessment Center (REAC) will approve or disapprove a PHA's certification that an alternative inspection method meets HUD standards prior to allowing the PHA to employ the alternative inspection method.

Flat Rents

- PHAs that manage public housing units that were developed or modernized using LIHTC must set maximum rents for such units at the required maximum LIHTC rents, even if this is lower than the minimum flat rent amount for a particular unit.

Verification of Social Security Numbers (§ 5.216)

- This section applies to the endpoint of the 6-month period during which a family member under the age of six (6) years of age who may have been added to an applicant family and lacks a Social Security Number
- If a child under the age of 6 years was added to the applicant's household within the 6-month period prior to the household's move-in date; the applicant household may still be allowed to move-in to the property, and receive assistance, so long the proof of SSN can be provided 90-calendar days from the move-in date.



Verification of Social Security Numbers (§ 5.216)

- The owner must grant an extension of one (1) additional 90-day period if the owner determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the applicant household.
- If the applicant family fails to produce the SSN documentation required within the required time period, this could mean either terminating assistance or terminating tenancy (depending on the program)



How Does This Impact your Housing Credit Blended Site?

- Must follow for Section 8 Programs
 - Exception Codes will need to be updated
 - Tenant Selection Plan will need to be updated
- No impact on the Housing Credit Program



Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

- The final rule includes fees within the definition of tuition. (This provision applies to the HCV/PBV, Section 8, and PH programs.)
- It does not apply to the Rent Supplement, Section 236, Sections 221(d)(3) or (d)(5) programs.)
- HUD notes that this provision is included in the Final Rule does not necessarily provide administrative relief, but it is meant to codify in regulation, language included in recent appropriations acts, that has excluded from income those amounts needed to pay mandatory student fees



Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

- Additional guidance from HUD regarding what constitutes such fees is forthcoming in the form of a notice that relies on the Department of Education definitions of tuition and fees.
- HUD gave an example of a mandatory education fee, as a student service fee.
 - That same notice will provide guidance on how to verify fee information.



Included Fee Expenses

- Examples of required fees include, but are not limited to:
 - Writing and science lab fees
 - Fees specific to the student's major or program (i.e., nursing program)
 - student service fees
 - student association fees
 - student activities fees
 - laboratory fees



Excluded Fee Expenses

- Expenses related to attending an institution of higher education **must not** be included as tuition.
- Examples of these expenses include, but are not limited to,
 - room and board
 - books
 - supplies
 - meal plans
 - transportation and parking
 - student health insurance plans
 - other non-fixed sum charges



How Does This Impact your Housing Credit Blended Site?

- LIHC Resident income is calculated in a manner consistent with the determining of annual income under Section 8 of the United States Housing Act of 1937; therefore, we need to wait and see if states adopt the same exclusion of mandatory fees for those residents who receive Section 8 assistance
- States have the authority to impose more restrictive requirements as long as they do not circumvent the Code



How Does This Impact your Housing Credit Blended Site?

- Section 8 Assisted Residents:
 - Owners **must** verify the amounts of tuition and required fees charged by the school when determining annual income.
 - Owners **may** wish to verify those amounts using the student's bill or account statement (including an online account statement) as provided by the school's Bursar's office, or by contacting the Bursar's office directly.
 - It is also **recommended** that an owner visit the school's website, as many institutions of higher education provide an itemized list covering tuition and fees that are charged to a majority of their students on their websites.



Definition of Extremely Low-Income Families (\$5.603)

- Extremely low-income family. A very low-income family whose annual income does not exceed the higher of:
 - (1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or
 - (2) 30% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.



Definition of Extremely Low-Income Families (\$5.603)

- HUD's 2014 Appropriations Act defines the term "extremely low-income family" as previously stated.
- The Final Rule includes the above revised definition of an extremely low-income family.
- This definition applies to all programs assisted under the 1937 Act.



Streamlined Annual Reexamination for Families on Fixed Incomes (§ 5.657)

- The final rule provides for a streamlined income determination for any fixed source of income, even if a person or a family with a fixed source of income also has a non-fixed source of income.
- The final rule requires that, upon move-in, third party verification of all income amounts must be obtained for all family members, and a full reexamination and redetermination of income must likewise, be performed every 3 years.



Streamlined Annual Reexamination for Families on Fixed Incomes (§ 5.657)

- In the interim years, a streamlined income determination **may** be performed for a family member with a fixed source of income by applying to a previously determined or verified source of income a cost of living adjustment (COLA) or interest rate adjustment specific to each source of fixed income.
- The COLA or current interest rate applicable to each source of fixed income must be obtained either from a public source or from tenant-provided, third-party generated documentation. In the absence of such verification for any source of fixed income, third-party verification of income amounts must be obtained.



Streamlined Annual Reexamination for Families on Fixed Incomes (§ 5.657)

- This provision applies to:
 - Most MFH Section 8 programs
 - 202/811,
- It does not apply to:
 - Rent Supplement,
 - Section 236,
 - Moderate Rehabilitation
 - Sections 221(d)(3) or (d)(5) programs.)



Annual Reexamination for Families on Fixed Incomes

- HUD recognizes that prior to the issuance of this Final Rule, the Fixing America's Surface Transportation Act, or FAST Act, was signed into law.
- Section 78001 of that Act modified the 1937 Housing Act to allow PHAs and owners to undergo full income recertification for families with 90% or more of their income from fixed-income sources every three years instead of annually.
- HUD believes that while the FAST Act provisions and the provisions contained in this rule are very similar, they offer different benefits; therefore, HUD is retaining the flexibilities in this final rule and will issue implementation regulations for the FAST Act separately.



How Does This Impact your Housing Credit Blended Site?

- Section 8 sited "MAY" chose to adopt the permission to conduct full income certification at move in and then again once every 3-years (instead of annually) for families with 90% or more of their income from fixed-income sources
- We need to wait to see if states adopt the same streamlining for properties that are not 100% Housing Credit Sites or for sites where the residents receive Section 8 Project Based Rental Assistance



Family Declaration of Assets Under \$5,000

- Currently this provision of the Final Rule only applies to HCV and PH programs, the Office of Multifamily Housing Programs, is issuing an interim final rule to accomplish this expansion to the MFH programs.
- Although based on comments received, HUD has clarified in that the verification provision applies to families at reexamination not at move-in.
- At move-in, all assets of a family will need to be verified.
- Also based on the streamlining of income determination the O/A will need to obtain third-party documentation of all family assets every three years.



Utility Reimbursements



- The provides a PHA with the option of making utility reimbursement payments "quarterly," for reimbursements totaling \$45 or less per quarter. This means, no less frequently than once every calendar-year quarter.
- If the PHA opts to make the payments on a quarterly basis, the PHA must institute a hardship policy for the tenants if such payments would create a financial hardship for them.



How Does This Impact your Housing Credit Blended Site?

- Currently this provision of the Final Rule only applies to Housing Choice Vouchers and PH program
- The Office of Multifamily Housing Programs, is issuing an interim final rule to expand this to the MFH programs.
- No Impact on Housing Credit Sites without Section 8 Assisted households.



Thank you



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Questions?
More Information?
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What's New With the IRS?

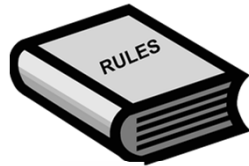
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The IRS Issues New Rules in 2016

- ▶ Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations – Federal Register Volume 81, No. 37, February 25, 2016
- ▶ Revenue Procedure 2016-15 – Physical Inspections



Background on IRS Changes

- ▶ Pilot Program in 2012 to align physical inspections among agencies on properties with both housing credits and Section 8 or other HUD funding.
- ▶ The IRS also sought comments
- ▶ Commenters urged streamlining of duplicative and burdensome physical inspection requirements for mixed-financed properties.
- ▶ The new rules are the IRS response to the comments submitted



Summary of Changes



- ▶ Greater flexibility for the minimum number of units and files inspected
- ▶ Eliminates the "same unit" rule
- ▶ Permits use of the physical inspection protocol established under HUD's Real Estate Assessment Center (REAC) to satisfy the LIHTC physical inspection requirements



Summary of Changes



- ▶ Revises the minimum number of units that must undergo a physical inspection to include the **lesser of** 20 percent of the low-income units in the project or the number of units set forth in the Minimum Unit Sample Size Reference Chart (next slide)
- ▶ Allows agencies to undertake physical inspections and income certification reviews on fewer than 20 percent of the units in larger properties.



# of Low-Income Units in the LIHC Project	Minimum Unit Sample Size	# of Low-Income Units in the LIHC Project	Minimum Unit Sample Size
1	1	30-34	15
2	2	35-40	16
3	3	41-47	17
4	4	48-56	18
5-6	5	57-67	19
7	6	68-81	20
8-9	7	82-101	21
10-11	8	102-130	22
12-13	9	131-175	23
14-16	10	176-257	24
17-18	11	258-449	25
19-21	12	450-1461	26
22-25	13	1462-9999	27
26-29	14		

State Discretion

- ▶ The IRS allows the State Agency discretion to exceed the minimum requirement
- ▶ The IRS does not appear to require the State Agency to play nice with HUD regarding
 - ▶ Inspection protocol (REAC)
 - ▶ Elimination of Same Unit Rule



Stay Tuned: Most states are still deciding how they are going to handle this



Housing Credit Properties and VAWA

Refresher from our last webinar:

- ▶ The 2013 Reauthorization of the Violence Against Women Act (VAWA) extended its protections to victims who reside in Housing Credit Properties
- ▶ Each agency is to develop its own rules and policies to comply with VAWA
- ▶ But . . . the Act lacked enforcement provisions for LIHTC properties



Administration's 2017 Budget Request

The U.S. Department of Treasury explains in the Administrations 2017 Budget request:

Section 601 of the Violence Against Women Act as Reauthorized in 2013 “applies these duties (VAWA Protections) to “the low income housing tax credit program under section 42 of the Internal Revenue Code of 1986.”



2017 Budget Proposes LIHC Compliance

- Proposes protections for victims of domestic abuse be required in all Long-Term Use Agreements.
- These provisions would apply to both the low-income and the market-rate units in the building.
- The owner could not refuse to rent any unit in the building to a person because that person had experienced domestic abuse.
- Domestic abuse would not be cause for terminating a tenant's occupancy.
- Under the Agreement, an owner could bifurcate a lease so that the owner could evict a tenant or lawful occupant who engaged in criminal activity directly relating to domestic abuse.



2017 Budget Proposes LIHC Compliance

- The administration included this proposal in the fiscal years 2015 and 2016 budget requests
- So this is still not resolved
- Meanwhile, State Agencies continue to consider and in some cases implement VAWA protections for LIHTC residents and applicants



Stay Tuned: This issue may be resolved in the next administration



What's New With The IRS



Income Limits and Blended Sites

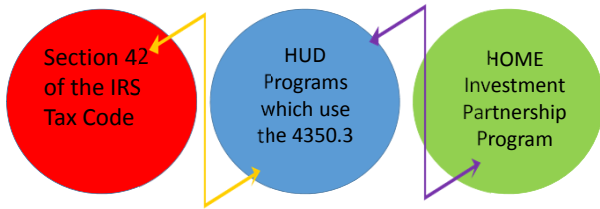


Presented by
DEBORAH M. GERSHEN, CPM®
Moderate Income Management Company



Introduction

- The concept of “blended sites,” in which a property is participating in more than one housing program, is not new.



Introduction

- The Section 42 Low Income Housing Tax Credit (LIHTC) looks to use HUD’s annually issued income limits as a benchmark;
- HUD Programs use the 4350.3 for determine which income limit to use based upon the program type. They use HUD’s annually issued income limits;
- HOME The HOME Income Limits are calculated using the same methodology that HUD uses for calculating the income limits for the Section 8 program, in accordance with Section 3(b)(2) of the U.S. Housing Act of 1937, as amended.

Income Limits – HUD/LIHTC

The Basics:

- Income limits are issued by HUD annually, usually around November for the coming year – but delays have occurred
- Published in the Federal Register
- Based on jurisdictional areas
- Based on Area Median Income (AMI)



HUD establishes the following limits:

- Low (or Lower) Income is 80% of AMI
- Very Low Income is 50% of AMI
- Extremely Low Income is 30% of AMI



LIHTC uses are different:

- Income limits for Tax Credit buildings are applicable for move ins and existing residents.
- 140% rule

HOME limits are based on HUD estimates of median family income, with adjustments based on family size.

LIHTC Income limits

PRE – HERA (The Housing and Economic Recovery Act) (HERA)

- Placed in service prior to July 30, 2008:
- Income limits issued by the HUD Office of Multifamily Housing
- The income limits published and effective for HUD Multifamily Housing are also effective for Tax Credit buildings, with conversions for Tax Credits as necessary (e.g., 40% and 60% of AMI)
- Determining whether or not to count individuals under the income limits (e.g., unborn children, foster children and foster adults) comes from the HUD Handbook 4350.3, Rev. 1

Post-HERA Tax Credit building:

- Income limits come from HUD’s Office of Multifamily Housing
- Multifamily Tax Subsidy Program (MTSP) are published and effective for LIHTC and Tax Exempt Bond buildings

HERA added 3 income limit provisions for Tax Credit buildings:

- 1. Rural Housing-Use the greater of the actual AMI or national non-metro AMI.
- 2.Tax Credit Bond properties may get HERA special income limits if they received a HUD Hold Harmless status and were placed in service before 1/1/2009.
- 3. All LIHTC buildings have Hold Harmless status

Whose rules do you follow?



It is vitally important that you know not only the income limits that are applicable to all programs at your building, but also how your resident household’s income is calculated.

- HUD’s Office of Multifamily Housing has determined that unborn children are counted as a person for the purposes of income limits ONLY. However, if your building is Tax Credit with a layer of funding from the HOME program, the “Participating Jurisdiction” to makes a determination on this; they may elect to adopt the HUD guidance...or not,,,,

Determining Family Size

You must include all persons living in the unit except the following:

- Live in Aides and;
- Guests



You must include the following individuals who are not living in the unit:

- Children temporarily absent due to placement in a foster home;
- Children in joint custody arrangements who are present in the household 50% or more of the time;
- Children who are away at school but who live with the family during school recesses;
- Unborn children of pregnant women;
- Children who are in the process of being adopted;
- Temporarily absent family members who are still considered family members;
- Family members in the hospital or rehabilitation facility for periods of limited or fixed duration;
- Persons permanently confined to a hospital or nursing home.



Or how about this:

Have you ever had a resident with a Voucher observe that the income you've recorded on their Tenant Income Certification (TIC) is different from the income calculated by the PHA for their Voucher?

- It could be because PHA rules give an "Earned Income Disallowance," phasing in employment income over 48 months—something that is not a rule in the HUD Handbook 4350.3.
- The two differing numbers could well be correct in this instance



HUD Programs which use the 4350.3

HOME Investment Partnership Program

Section 42 of the IRS Tax Code

Always use the lowest income limit

It is a common misperception that "income limits always increase each year."



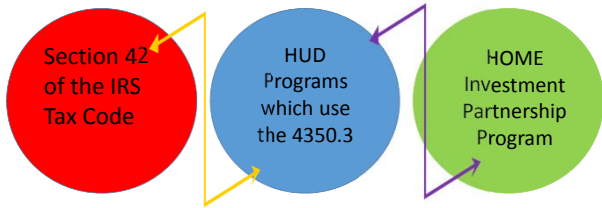
- While it is more common than not for income limits to increase, there have been years in which the income limits have decreased
- You could have applicants who were income eligible when they applied, but when the income limits go down, their income could make them ineligible even if it did not change

Implementation




- Taxpayers must rely on the income limits published by HUD until 45 days after HUD releases a new list of income limits or until HUD's effective date for the new list, whichever is later. Income limits were published March 28, 2016
- HOME income limits were published 4/13/2016

Thank You!!!!



NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

Presented by: Anita Moseman




NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- On April 4, 2016, HUD's General Counsel released guidance regarding how the use of criminal background checks could potentially violate fair housing laws
 - For all housing providers
 - Not just those who are HUD subsidized
- For Landlord who run criminal background checks as part of your screening process, it is important to become familiar with the guidance
- HUD guidance
 - Not law
 - Clearly outlines how HUD would analyze a fair housing complaint based on the use of criminal background checks to deny housing

COULD BE SCARY

NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- Focuses on "disparate impact" (discriminatory effect) discrimination
- Disparate impact occurs when a landlord has a policy or practice that is neutral (i.e., non-discriminatory) on its face and applies equally to all applicants and/or residents, but its application has a discriminatory effect on one or more of the protected classes.
- Successfully defending a claim of discrimination
 - Landlord must be able to show that this policy or practice is necessary in order to achieve a non-discriminatory business objective, and that there is no less discriminatory alternative that would achieve that business objective.





NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- Due to the higher than average incarceration rates among certain races (Hispanics and African Americans) in the United States (relative to their percentage of the total population) when compared against the incarceration rates of non-Hispanic Caucasians, the use of criminal history to deny housing can cause a disparate impact on these particular races.
- If Landlords want to use criminal background checks as part of their rental criteria, they have the burden to show:
 - It is necessary to use criminal background checks in order to achieve a non-discriminatory business objective and;
 - There is no less discriminatory alternative.
- The "business objective" would presumably be the protection of resident safety and/or property.
 - The business objective cannot be prospective in nature.
 - The landlord must prove that the use of the criminal background checks actually accomplishes the business objective.

NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- In order to meet this burden when a Landlord's policy has a disparate impact, Landlords must consider the following:
 - **Arrest Records:** HUD states that landlords should not use arrest records as a basis for excluding applicants.
 - An arrest which does not lead to a subsequent conviction does not prove that an individual engaged in illegal activity.
 - Use of arrest records would not provide information regarding whether the applicant would be a threat to the safety of other residents or their property.

NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- In order to meet this burden when a Landlord's policy has a disparate impact, Landlords must consider the following:
 - **Prior Convictions:** Prior convictions are sufficient evidence to prove that an individual engaged in criminal conduct
 - *"A housing provider that imposes a blanket prohibition on any person with any conviction record- no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then- will be unable to meet this burden."*
 - "If a landlord is going to use criminal records as part of the screening criteria, the policy must be narrowly tailored.
 - A landlord would still need to prove that this "tailored" policy is necessary to serve a "substantial, legitimate, nondiscriminatory interest."
 - A landlord must be able to show that its "tailored" use of criminal background checks "accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not."

NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- "Safe Harbor" available to landlords:
 - Only exclude applicants who have been convicted of the illegal manufacture or distribution of a controlled substance
 - Fair Housing Act specifically states landlords do not have to make housing available to persons with such a conviction.
 - Exclusion is only for manufacture or distribution (making or selling) controlled substances and does not extend to other drug-related crimes such as use or possession.

NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- Excluding applicants convicted of other crimes?
 - **Nature of the Conviction:**
 - Must take into account the "nature and severity" of an individual's conviction.
 - Should consider the exact crime and how severe it was.
 - Should consider whether the fact that the applicant engaged in this particular type of criminal activity means this applicant will be a greater risk to resident safety and/or property.
 - Avoid blanket restrictions such as a policy that excludes all applicants who have any felony conviction.

NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- Excluding applicants convicted of other crimes?
 - **When the Criminal Activity Occurred:**
 - Must take into account how long ago the criminal activity occurred.
 - Crimes that occurred a long time ago should be considered less relevant as compared to more recent crimes (and possibly not considered at all).
 - How far back should a landlord look? Could a landlord safely consider a crime that took place 5 years ago? 10 years ago?
 - HUD offers no guidance.
 - Up landlord to defend whatever policy they choose to implement.

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NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- Excluding applicants convicted of other crimes?
 - **Individualized Assessment:** Landlords need to narrowly tailor their use of an applicant's criminal history
 - Must show that this narrowly tailored policy has the least possible discriminatory affect.
 - HUD recommends Landlords conduct an "individualized assessment" of each applicant, considering "relevant mitigating information" such as:
 - The facts or circumstances surrounding the criminal conduct;
 - The age of the individual at the time the conduct occurred;
 - Evidence that the individual has maintained a good tenant history before and after the conviction or conduct;
 - Evidence of rehabilitation efforts.

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CRIMINAL HISTORY DO'S & DON'TS

- **DO'S**
 - Create tailored criminal history policies and practices
 - Exclude only based on criminal convictions that show a demonstrable risk to residents safety or property
 - Consider nature and severity of an individual's conviction before excluding based on that
 - Consider amount of time that has passed since criminal conduct occurred.
 - Conduct individualized assessments that take into account mitigating factors, such as facts and circumstances surrounding the criminal conduct, age at the time of the conduct, evidence of good tenancy before/after conduct, and rehabilitative efforts
 - May exclude persons convicted of the illegal manufacture or distribution of a controlled substance
- Source: National Association of Realtors Legal Affairs Dept.

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NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- Even if a Landlord's use of criminal background checks is narrowly tailored by taking into consideration the nature and severity of the crime, the length of time since conviction occurred, and where individualized assessments are carried out, Landlord *"will still bear the burden of proving that any discriminatory effect caused by such policy or practice is justified."*

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CRIMINAL HISTORY DO'S & DON'TS

- **DON'TS**
 - Don't create arbitrary or overly broad criminal history policies and practices
 - Don't maintain a policy or practice that does not serve a substantial, legitimate, nondiscriminatory interest
 - Don't create exclusions based on arrest records alone
 - Don't create a blanket exclusion of any person with any conviction record
 - Don't use comparable criminal history differently for individuals of protected classes
 - Don't make an exception to a policy or practice for some individuals, but not make the same exception for another based on the individual's inclusion in a protected class
 - Don't include a blanket prohibition against drug possession
- Source: National Association of Realtors Legal Affairs Dept.

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NEW HUD GUIDANCE ON USE OF CRIMINAL BACKGROUND CHECKS

- The only sure way a Landlord can avoid fair housing liability if he/she wants to consider an applicant's criminal history?
 - Limit the policy to exclude only applicants with prior convictions for illegal manufacture or distribution of controlled



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THANK YOU FOR YOUR ATTENTION