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COUNCIL



### **NMHC/NAA Viewpoint**

*The apartment industry has a compelling need to consider employees' criminal backgrounds to protect apartment residents and reduce the risk of violence, theft and fraud. As lawmakers and regulators further examine this issue, we urge them to recognize the need for apartment firms to make informed employment decisions.*

*Seven out of 10 businesses use criminal background screening for job applicants, according to the society for human resource management.*

## EMPLOYEE BACKGROUND CHECKS

The apartment industry must retain the ability to make informed decisions about current and prospective employees to help protect the safety and security of apartment residents. We depend on professional employees who routinely enter apartment homes to respond to resident maintenance requests, handle confidential lease information and collect rent payments. The ability to consider the criminal history of a job applicant or employee can be one of the most important tools available to multifamily rental housing providers to help reduce the risk of violence, theft and fraud.

The Obama Administration and some members of Congress have indicated concerns about employer use of criminal history information. In April 2012, the Equal Employment Opportunity Commission (EEOC) updated its enforcement guidance on the issue, citing judicial precedent and existing policy.

According to the EEOC, employers may consider criminal history information, but the agency cautions employers to “take special care” implementing policies and practices that may disproportionately adversely impact groups protected by federal civil rights laws.

However, the EEOC has not provided sufficiently specific rules for employer use of criminal history in hiring, retention, promotion, and reassignment decisions. Meanwhile, the EEOC’s Strategic Enforcement Plan for Fiscal Years 2012-2016 prioritizes continued examination of employment screening practices, and the agency has pursued legal action against companies for allegedly discriminatory practices.

The EEOC indicates its guidance supersedes state or local laws pertaining to criminal background checks for employees even if such laws conflict with the EEOC’s regulations. This puts employers in the untenable position of failure to comply with either the EEOC’s guidance or state and local laws, leaving them open to litigation and the possibility of civil fines and penalties.

NMHC/NAA urge the EEOC and Congress to consider the compelling need for apartment owners and managers to mitigate potential risks of harm to apartment communities and the residents who are building their lives there.