

Deregulation Is Not Immunity: How Fragmented Federal Enforcement Is Reshaping Fair Housing Compliance

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By Gwen Roy-Harrison



One of the most overlooked developments in 2026 is how enforcement has splintered across federal agencies—each operating independently of HUD’s policy posture. HUD’s rescission of numerous guidance documents and the federal government’s recalibration of civil rights priorities do not eliminate risk for housing providers. Instead, the landscape has shifted and spider-webbed across multiple agencies, a few of which are outlined below along with their impact on multifamily housing.

HUD Office of Inspector General (OIG)

HUD OIG operates under a statutory mandate untethered from HUD’s guidance priorities. Its recent semiannual report* reflects aggressive audit and enforcement activity, including:

- 64 administrative sanctions
- Over \$219 million in questionable spending
- Nearly \$600,000 recommended for better use of funds

OIG audits routinely examine tenant files, eligibility determinations, and internal controls. Poor site-level documentation by housing providers can trigger repayment demands and referrals.

Social Security Administration (SSA)

The SSA has ramped up investigations into identity fraud in housing, issuing subpoenas and, in some jurisdictions, executing search warrants connected to benefit misuse and rental fraud schemes. Property management companies may soon find themselves caught in SSA investigations due to fraud perpetrated by applicants who use misappropriated or manufactured documents.

Department of Homeland Security (DHS) and Immigration Verification

HUD has recently proposed increasing citizenship and immigration verification requirements for occupants in federally assisted housing, seemingly, promptly after compiling a joint eligibility report with DHS. HUD’s February 2026 proposed rulemaking would require eligibility verification for all household members regardless of age, effectively ending prorated assistance for mixed-status households. This push in enforcement carries serious fair housing risks. While housing providers must follow federal eligibility rules precisely, selective enforcement, retaliation, or national-origin discrimination remain unlawful under the Fair Housing Act. Providers must ensure uniform application and airtight communications with residents.

HUD's Criminal Screening Rules Changed—The Risk Didn't

HUD's withdrawal of several guidance documents—most notably its criminal screening and assistance animal guidance—reflects a policy shift, not a legal repeal. The Fair Housing Act ("FHA") remains the governing statute and courts have previously upheld judicial decisions grounded in disparate impact, reasonableness, and evidentiary justification.

Criminal screening remains one of the most common fair housing complaints, particularly because criminal history policies may disproportionately affect certain protected classes. However, HUD has formally rescinded its 2015–2022 criminal screening guidance, including its Office of General Counsel memoranda emphasizing individualized assessments and discouraging reliance on arrest records. In addition, HUD has signaled a renewed focus on safety in federally assisted housing and stricter enforcement of criminal activity at these properties (e.g., "one strike" rules). However, housing providers should not misread the recent rescission as a green light for blanket bans on criminal history.

Courts, and state-level administrative enforcement agencies, continue to rely on the same legal frameworks that underpinned the rescinded guidance. Judicial decisions still reject universal criminal history bans, require a logical nexus between a criminal conviction and potential housing risk, and scrutinize whether a policy is necessary to achieve a legitimate interest. Providers that assume HUD's silence equals judicial approval do so at their peril.

Practical Considerations for Applicant Criminal Screening

- Avoid blanket exclusions based on "any conviction"
- Tie disqualifying convictions to specific, defensible housing risks
- Consider the offense severity and recency of the conviction
- Document individualized decision-making and review mitigating evidence
- Ensure screening vendors follow lawful, jurisdiction-specific processes

Most enforcement actions do not originate in boardrooms; they begin with frontline interactions in leasing offices.

Preparing for the Next Enforcement Cycle—Not Just This One

The safest compliance posture in 2026 is continued adherence to existing statutes and regulations, not shifting with agency guidance. Providers should assume that every decision may one day be reviewed by a different agency, or a different administration. Strong policies grounded in law, evidence, and consistency future-proof operations against political change, regulatory whiplash, and reputational harm.

Sub-regulatory guidance can be rescinded quickly by HUD, but it can be reissued just as easily by a future administration. Conduct occurring today will still be evaluated under existing statutory and case law standards. Providers that loosen policies now may face substantial exposure later through private litigation, changes to state and local enforcement, or renewed federal scrutiny.

Change is the name of the game in 2026. Risk has shifted, not vanished. Housing providers that confuse deregulation with immunity may face harsh consequences when enforcement resurges.

Semiannual Report to Congress For the Period April 1, 2025, to September 30, 2025