

NOTE: Proposed redline changes are effective beginning with projects selected in the 2021 Multifamily Consolidated RFP/2022 HTC Round 1 and for any other projects selected with applicable Minnesota Housing financing beginning in calendar year 2021. All existing operating properties with applicable financing from Minnesota Housing shall incorporate this guidance into their tenant selection plans no later than December 31, 2022.

Each housing provider that receives applicable Minnesota Housing financing that is required to have a tenant selection plan shall use the information below to create the plan.¹ Project funding sources and jurisdictions may also impose additional tenant selection plan requirements. For developments that are subject to specific tenant screen requirements because of federal obligations or local laws/ordinances, housing providers should follow those requirements. This guidance is not intended to be a complete list or to supersede those requirements. Consult with an attorney to determine if your tenant selection plan complies with all applicable laws and regulations, program requirements, the Fair Housing Act, the Violence Against Women Act (VAWA), and the Minnesota Human Rights Act.²

General Considerations

1. **Written Tenant Selection Plan.** Housing providers must have a written tenant selection plan. The plan must be readable and accessible to applicants and must be made available to applicants before they apply and/or pay an application fee. **The owner must provide meaningful access to the information for people with limited English proficiency and people with disabilities.** ~~which may include providing interpreter services and/or written materials translated into other languages.~~
2. **Waiting List.** The tenant selection plan must describe any waiting list process.
3. **Eligibility.** The tenant selection plan must provide clear information on eligibility criteria such as income restrictions and any program-specific requirements. It must also clearly state the processes and criteria that will be used to evaluate applications. If the development receives funding to serve a specific population, such as individuals eligible for supportive housing or senior housing, the tenant selection plan's evaluation criteria must be structured in a way that will consider the specific barriers faced by these households.
4. **Supplemental Evidence.** The tenant selection plan must state that an applicant can provide additional information with a completed application to explain, justify, or negate the relevance of potentially negative information that may be revealed by screening and that the applicant believes to be relevant to the applicant's predicted performance as a tenant. This information must be evaluated at the time of application to determine -acceptance or denial of an applicant and- must also consider:
 - a. The nature and severity of the incidents that would lead to a denial;

¹ Applicable programs and funding sources that will be subject to this guidance.

² It is Minnesota Housing's policy to affirmatively further fair housing in all programs so that individuals of similar income levels have equal access to its programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, or sexual orientation. Property owners and managers are expected to comply with laws and regulations prohibiting housing discrimination when creating and implementing a tenant selection plan.

- b. The number and type of the incidents;
 - c. The time that has elapsed since the date the incidents occurred; and
 - d. The age of the individual at the time the incidents occurred.
5. **Tenant Screening/Credit Reports.** Many housing providers use consumer reports, such as tenant screening or credit reports, as part of the application process. The Federal Trade Commission (FTC) provides [guidance for housing providers](#) who use such reports.³ The FTC requires that when a housing provider takes an adverse action based on information in a consumer report, the housing provider must provide a notice to the applicant that includes:
- a. The name, address and telephone number of the credit reporting agency (CRA) that supplied the consumer report, including a toll-free telephone number for CRAs that maintain files nationwide;
 - b. A statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and
 - c. A notice of the applicant’s right to dispute the accuracy or completeness of any information the CRA furnished, and the applicant’s right to a free report from the CRA upon request within 60 days.⁴
6. **Notice of Denial.** Housing providers must give applicants a prompt written notice of denial that states the criteria the applicant failed to meet and the process to appeal.⁵
7. **Appeal Process.** Minnesota Housing requires that all housing providers offer an appeal process. The appeal process must allow an opportunity for applicants to provide information of mitigating circumstances or information that would demonstrate their ability to be a successful tenant, or correct inaccurate background check results. Housing providers must review all information provided to determine if the grounds for denial are a reliable indication of future tenancy performance. The appeal process and timeline must be clearly stated in the tenant selection plan. The housing provider must notify the applicant of the outcome of the appeal in writing.
8. **Domestic Violence.** A number of federal programs, including HOME, Section 811 and the Low-Income Housing Tax Credit (LIHTC) program, are subject to the restrictions outlined in the Violence Against Women Act (VAWA). VAWA provides that an applicant “may not be denied admission...on the basis that the applicant...is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission.”⁶ Similarly, adverse eligibility factors such as criminal activity or other adverse credit or rental history related to the abuse should not be considered.

Housing providers not subject to VAWA are still prohibited from discriminating against victims of domestic violence under the federal Fair Housing Act. In addition to VAWA protections, because the overwhelming majority of domestic violence survivors are women, they are protected by the federal Fair Housing Act’s prohibition on sex discrimination; therefore, policies and practices that target or

³ Federal Trade Commission, Using Consumer Reports: What Landlords Need to Know, available at <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know>

⁴ If the rejection is based on a credit score, the housing provider must also inform the applicant of the numerical score used as well as information on the basis of the score. For more information, see 15 U.S.C. §§ 1681m(a), 1681g(f).

⁵ Refer to Minn. Stat. § 504B.173.

⁶ 42 USC § 14043e(b)(1); 24 CFR § 5.2001. Housing providers subject to VAWA should review HUD regulations and policies regarding how to fully comply with the requirements.

otherwise discriminate against women because of their status as domestic violence survivors are likely unlawful under federal law. Examples of circumstances that are related to abuse include:

- a. Poor credit history resulting from the perpetrator using the victim's name to open credit card accounts, loans, utilities, and failing to pay unpaid medical bills resulting from the abuse or forcing the victim to work without pay.
- b. Poor rental history attributable to the perpetrator's actions such as property damage, noise complaints, missed or late rent or utilities, or drug activity.
- c. Criminal grounds due to the perpetrator forcing the victim to engage in criminal behavior such as sex work, drug use or sale, or crimes committed by the victim to defend themselves or a third party from the abuse.⁷

Housing providers are encouraged to include language that clearly explains the protections for victims of domestic violence in their tenant selection plans.

9. **Applicants with Disabilities and Reasonable Accommodations.** Housing providers must make sure that tenant selection plans do not raise barriers for individuals with disabilities, such as imposing requirements that applicants be able to live independently. Additionally, housing providers must have a written reasonable accommodation policy and process for handling accommodation requests at application. The housing provider's tenant selection plan must state that the policy will be made available to applicants upon request.⁸
10. **Tenant-based Rental Assistance.** As a condition of receipt of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident because the prospective resident has a housing choice voucher (HCV) or any other form of tenant-based rental assistance, ~~including income supplements meant to support payment of rent, such as Housing Support or Minnesota Supplemental Aid.~~ Research has shown that tenant-based rental assistance improves housing outcomes.⁹ This requirement must be reflected in the tenant selection plan.
11. **Criminal Background Screening**
In 2016, the U.S. Department of Housing and Urban Development (HUD) issued guidance that provides considerations for housing providers related to the use of criminal history in tenant screening and the Fair Housing Act.¹⁰ The [guidance](#) includes the following considerations, which are relevant to all properties funded by Minnesota Housing.¹¹

- a. **Arrests.** HUD makes it clear that a policy that rejects applicants because of arrests (without

⁷ U.S. Department of Housing and Urban Development, Violence Against Women Act (VAWA) Reauthorization Act of 2013 – Additional Guidance

for Multifamily Owners and Management Agents (July 30, 2017) available at: <https://www.hud.gov/sites/documents/17-05HSGN.PDF>

⁸ See, e.g., Minn. Stat. § 363A.10 (“[Discrimination includes . . . a refusal to make reasonable accommodations in rules, policies, practices, or services, when accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.”); 42 U.S.C. § 3604(f)(3)(B); Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodation Under the Fair Housing Act (May 17, 2004), available at <http://www.hud.gov/offices/ftheo/library/huddojstatement.pdf>.

⁹ Warren, Cael. *Success in Housing: How Much Does Criminal Background Matter?* Wilder Research 16 (January 2019), available at https://drive.google.com/file/d/1HwY0BFJ_k98C6TT99w2o7ryk2CnAGvgo/view [Wilder Research].

¹⁰ US Department of Housing and Urban Development, Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Reports by Providers of Housing and Real Estate-Related Transactions (Apr. 4, 2016), available at http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf [HUD Guidance]

¹¹ Some funding sources incorporate additional criminal screening requirements. Housing providers should consult with an attorney to ensure their plan complies with all program requirements.

conviction) is not valid under fair housing laws.

b. **Convictions.**

- a. While a conviction is usually evidence of criminal conduct, HUD states that a housing provider's screening policy cannot simply exclude all applicants with convictions. Instead, in order to avoid liability under fair housing laws, the policy must accurately distinguish between convictions for criminal conduct that indicate a demonstrable risk to resident safety and/or property and those that do not.¹²

In addition, HUD recommends a tenant screening policy consider:

- i. The **nature and severity** of a conviction; and
- ii. The **amount of time that has passed** since the criminal conduct occurred.¹³

- c. **Mitigating Factors.** HUD guidance advises that a policy that considers mitigating information (as opposed to a policy with blanket exclusions) is less likely to be in violation of fair housing laws.¹⁴ HUD suggests that housing providers consider the following factors:

- a. The **facts or circumstances** surrounding the criminal conduct;
- b. The **age** of the individual at the time of the conduct;
- c. Evidence that the individual has maintained a **good tenant history** before and/or after the conviction or conduct; and
- d. Evidence of **rehabilitation** efforts.

- d. **Consistent Application of Tenant Screening Policy.** HUD stresses the importance of applying the standards consistently to all applicants.¹⁵

In addition to HUD guidance, recent research by the Wilder Foundation that examines over 10,000 households in affordable housing properties found:

- a. Eleven of 15 criminal offense categories examined have no significant effect on housing outcomes;
- b. The effect of a prior criminal offense on a resident's housing outcome declines over time. Felonies that occurred more than five years prior to move-in have no significant effect on housing outcomes; for misdemeanors, there are no significant effects after only two years; and
- c. The level of impact that criminal backgrounds may have on housing success is small in

¹² HUD makes clear that the Fair Housing Act does not prohibit housing providers from rejecting applicants with convictions of the illegal manufacture or distribution of the controlled substances listed in section 102 of the Controlled Substances Act, 21 U.S.C. HUD Guidance at 8. HUD stresses that the limitation applies only to convictions for manufacturing or distribution of those substances and does not apply to arrests. (without conviction) for those offenses or to convictions for drug possession. Id

¹³ The HUD Guidance cites research "reporting that after six or seven years without reoffending, the risk of new offenses by persons with a prior criminal history begins to approximate the risk of new offenses among persons with no criminal record." HUD Guidance at 7 fn 34, citing Megan C. Kurlycheck et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 *CRIMINOLOGY & PUB. POL'Y* 483 (2006). That research also refers to studies showing that recidivism decreased significantly if the individual avoided engaging in criminal activity for two years. Kurlycheck at 7

¹⁴ HUD notes that by "delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process." HUD Guidance at 7

¹⁵ HUD Guidance at 9 ("For example, the fact that a housing provider acted upon comparable criminal history information differently for one or more individuals of a different protected class . . . is strong evidence that a housing provider was not considering criminal history information uniformly or did not in fact have a criminal history policy.").

comparison to other factors such as the make-up of the household and the presence of a rental subsidy.¹⁶

Minnesota Housing encourages housing providers to read and consider both the HUD guidance and the Wilder Foundation study before developing and submitting a tenant selection plan for review.

12. **Supportive Housing.** The tenant selection plan must clearly state the intended population for supportive housing units, and if applicable, the referral source for these units.

Supportive housing programs are intended to house people who often have poor credit histories, poor rental histories, criminal histories, or other barriers that may prevent them from accessing housing. Such programs are successful in serving the people for whom they are designed only when these issues do not raise insurmountable barriers to accessing housing. To the extent permitted by the rules and regulations related to the type of housing, housing providers are encouraged to adopt lenient and flexible criteria regarding these common barriers when creating a tenant selection plan. In addition, and in the course of tenant screening, consideration of mitigating factors either before or during an appeal process must also consider the extent to which supportive services will help alleviate the real or perceived risk of the negative screening factors.

13. **Records Retention.** Minnesota Housing encourages records retention as a best practice. Providers have found it beneficial to track outcomes to help ensure the process is effective for tenant success. To help ensure that tenancy determinations and appeal processes are being conducted in a non-discriminatory manner, housing providers should retain records regarding applicant denials and appeals in addition to tenant records. Housing providers are encouraged to periodically review such records for consistency and to identify areas where their records retention process could be improved.

Tenant Screening Criteria

1. For all housing units that are not supportive housing, an owner must apply screening criteria that do not reject an applicant for any of the following reasons:
 - a. Credit History:
 - i. Credit score by itself, though information within a credit report directly relevant to fitness as a tenant can be relied upon by a landlord; or
 - ii. Insufficient credit history, unless the applicant in bad faith withholds credit history information that might otherwise form a basis for denial.
 - b. Rental history:
 - i. An eviction action pursuant to Minnesota Statutes Chapter 504B if the action:
 - i. Was dismissed or resulted in a judgment for the applicant before the applicant submits the application;

¹⁶ Warren, Cael. *Success in Housing: How Much Does Criminal Background Matter?* Wilder Research 16 (January 2019), available at https://drive.google.com/file/d/1HwY0BFJ_k98C6TT99w2o7ryk2CnAGvgo/view [Wilder Research].

- ii. Resulted in a judgment against the applicant that was entered three (3) or more years before the applicant submits the application; or
 - ii. Insufficient rental history, unless the applicant in bad faith withholds rental history information that might otherwise form a basis for denial.
 - c. Income to rent ratio: If a minimum income test is used, the income to rent ratio cannot exceed two and a half (2 ½) times the rent. Minnesota Housing does not have a minimum income requirement.
2. For all supportive housing units (any units restricted to or set aside to serve households or persons experiencing homelessness or with a disability including HPH and PWD units), units at or below 30% MTSP rent limits, and units with any form of rental assistance, tenant selection plans must demonstrate the following:
- a. Adherence to Housing First principles, including addressing how tenant screening criteria reduces barriers to accessing housing.
 - b. Applicants shall not be screened out based on housing history. This includes eviction history, references from previous landlords and others, as well as money owed to previous landlords or money owed for utilities unless the tenant will be responsible for utilities for the unit and is not able to resolve the issue to set up an account.
 - c. Applicants shall not be screened out based on credit history or credit score.
An income to rent ratio cannot be required (e.g., “income must be two or three times the rent amount”), but an owner may review the applicant’s income to determine that they have adequate income to pay their portion of the rent if they do not have rental assistance
 - d. Criminal History: An owner’s screening criteria shall not reject an applicant for any of the following reasons:
 - i. Any arrest in an inactive case that did not result in conviction;
 - ii. Participation in or completion of a diversion or a deferral of judgment program, including stays of adjudication and continuances for dismissal or without prosecution;
 - iii. Any conviction that has been vacated or expunged, or for which the applicant received a stay of imposition of sentencing and complied with the terms of the stay;
 - iv. Any conviction for a crime that is no longer illegal in the state of Minnesota;
 - v. Any conviction or any other determination or adjudication in the juvenile justice system;
 - vi. Any convictions for petty misdemeanors, prostitution, alcohol related crimes, or low-level property crimes (theft);
 - vii. Any conviction for misdemeanor offenses for which the dates of sentencing are older than two (2) years;
 - viii. Any criminal conviction for felony offenses for which the dates of sentencing are older than seven (7) years; however, a landlord may deny an applicant who has been convicted of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) or for those same offenses that mandate denial of tenancy in federally assisted housing subject to federal regulations, including but not limited to when any member of the household is subject

to a lifetime sex offender registration requirement under a state sex offender registration program.

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