

ATTACHMENT AA-1:
Assessing Justice-Involved Applicants
for New York City-Funded and/or -Assisted Housing¹

This document provides guidance to housing providers about how to assess justice-involved applicants for New York City-funded and/or -assisted housing in a way that is consistent with applicable Federal, State, and City anti-discrimination laws, regulations, and policies.²

Along with this guide, housing providers must use the accompanying Worksheet (Attachment AA-2 to the HPD/HDC Marketing Handbook), which is explained in depth below, to make their determination.

General Policies

- ❖ The housing provider may only consider prior criminal convictions. However, any youthful offender adjudications and any convictions that have been excused by pardon, overturned on appeal, sealed, or otherwise vacated may not be considered.
- ❖ Prior or pending arrests that did not result or have not resulted in a conviction may not be considered.
- ❖ The housing provider may only consider convictions for offenses that involved physical danger or violence to persons or property or that adversely affected the health, safety, and welfare of other people. See *Factors That Must be Considered and Using the Worksheet* below for more information.
- ❖ Even where convictions for such offenses exist, those convictions cannot be an automatic bar to the Applicant being selected for housing. The housing provider must perform an individualized assessment of whether the Applicant's criminal justice involvement, in light of the relevant facts and circumstances, makes an otherwise qualified applicant ineligible for New York City-funded and/or -assisted housing. See *Factors That Must be Considered and Using the Worksheet* below for more information.
- ❖ In this assessment, no one factor can be considered in isolation; the interplay between the factors must be taken into account (e.g., a reviewer may look for stronger evidence of rehabilitation if an Applicant has a more serious conviction). See *Factors That Must be Considered and Using the Worksheet* below for more information.
- ❖ When conducting a background check of an Applicant, the housing provider must use a reputable background check company. Further, the housing provider must comply with the requirements of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et. seq.
- ❖ The housing provider must provide the Applicant with an explanation of the procedures

¹ When the term New York City-funded and/or -assisted housing is used it refers to HDC-funded and/or -assisted housing, as well as New York City-funded and/or -assisted housing.

² These provisions include, without limitation: the Fair Housing Act (42 U.S.C. 3601 et seq), NYS Executive Law § 290 et seq, and NYC Administrative Code § 8-101, and their respective associated regulations and guidance, including "Guidance on Application of Fair Housing Act Standards to the use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" dated April 4, 2016, from HUD's Office of General Counsel.

and policies the provider uses for background checks, the Applicant's right to review, contest, and explain the information contained in the background check, and the Applicant's right to present evidence of rehabilitation.

- ❖ These guidelines must be followed by anyone who determines tenant eligibility, including, but not limited to, case managers, project managers, clerks, or independent contractors.
- ❖ Part M of the Housing Stability and Tenant Protection Act of 2019 limits the fee amount that housing providers may charge a household in connection with reimbursing the cost of a background check and credit check. The fee amount is limited to the actual cost of the background check and credit check or \$20 (cumulatively), whichever is less, and must be waived if the Applicant can provide a copy of a background or credit check that was conducted within the past 30 days.

Policies Regarding Record Keeping and the Applicant's Opportunity to Review the Record and Appeal

- ❖ The housing provider must complete and maintain the accompanying Worksheet, Attachment AA-2, for use in the decision-making process.
- ❖ All Applicants must be given an opportunity to review and explain any conviction record to the housing provider before any decision regarding tenancy is made. If an applicant's conviction record may result in a rejection based on Questions 1 – 3 in *Factors That Must be Considered and Using the Worksheet* below, the reviewer must reach out to the Applicant using Attachment AA-3 to request more information. The Applicant must be given no less than ten business days to provide more information regarding a conviction and/or subsequent rehabilitation. Applicants must be given the choice to submit this information through the Housing Connect system, by email, or in person, and must be provided the opportunity to review the information with the housing provider in person, by phone, or by virtual appointment, if they so choose.
- ❖ If an application is rejected, the Applicant must be given a written explanation of the denial of housing, as well as copies of any documentation the housing provider reviewed in assessing their application, including but not limited to the accompanying Worksheet.
- ❖ The Applicant must be given an opportunity to appeal the denial. The Applicant must be given no less than ten business days after notice of the denial to respond to the documentation and explanation of the denial. The appeal process must conform to Section 4.4-D of the HPD/HDC Marketing Handbook, which applies to all instances in which an Applicant is found to be ineligible or is rejected for any reason. As part of this process, Applicants must receive notification of the opportunity to complain to HPD or HDC if their initial appeal is unsuccessful (Appeal Rejection Notice, Attachment H-7).
- ❖ As required by Section 4.4-C of the HPD/HDC Marketing Handbook, the housing provider must maintain records of all Applicants and applications for a minimum of five years.
- ❖ The records maintained shall include, but not be limited to:
 - A copy of the original application;
 - A copy of the conviction record and other material reviewed in making the initial determination to deny the application.

- The written evaluation detailing the analysis and decision of the housing provider.
- Proof that written notification was provided to the Applicant that he or she has the right to provide additional information and evidence of rehabilitation, as well as confirmation that the Know Your Rights material was sent to the Applicant.
- A copy of any information the Applicant provided in response to the initial determination, or as evidence of rehabilitation.
- A copy of the Applicant's appeal, if applicable, including any material the Applicant submitted to appeal the denial, or to complain about an unsuccessful appeal.
- The completed Worksheet attached to these guidelines.

Factors That Must be Considered and Using the Worksheet

Introduction

The mandatory Worksheet serves two important purposes. First, it creates a record of the decision-making process the housing provider used to decide whether to accept or reject an Applicant. This permits the Applicant to understand the basis for the decision and helps the housing provider to make consistent decisions. Second, the Worksheet will help guide housing providers through the decision-making process to ensure the consideration of the relevant factors.

Neither the Worksheet nor this guidance is or is intended to be a comprehensive guide to Fair Housing requirements. Developers and Marketing Agents are responsible for ensuring that their employees are fully trained in and comply with all applicable Fair Housing requirements.

Automatic Bars to Admission

Automatic bars to admission are **limited only to** projects in which they are required by the U.S. Department of Housing and Urban Development ("HUD"). The Federally assisted programs that *may* have certain automatic bars to admission include the following:

- (1) Public housing;
- (2) Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);
- (3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);
- (4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;
- (5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);
- (6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715l(d)(5));
- (7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or
- (8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

To the extent that automatic bars to admission are required by HUD, responsibility for applying those bars may belong to the Public Housing Authority. If the responsibility for applying those automatic bars belongs to the housing provider, the reasons for denial will be incorporated into the Worksheet and, in any case where the reviewer finds cause to deny the application for housing on the basis of an automatic bar, the housing provider must submit prior notice to HPD or HDC for review and approval before issuing a letter of rejection.

Question 1: Did the offense[s] for which the Applicant was convicted involve physical violence to persons or property, or adversely affected the health, safety and welfare of other people?

Not all criminal convictions may be considered. The only convictions that may be considered are convictions for offenses that (a) involved physical violence to persons or property, or (b) adversely affected the health, safety, and welfare of other people. These categories of crimes are relevant because they relate to the behavior expected of a tenant, which is to live peaceably alongside other tenants, and to respect the building, its grounds, and the property of other tenants or visitors. If a person's record of conviction(s) does not fall into either category, then the analysis is over, and a person's conviction should not be factored in considering their application for tenancy.

The accompanying list of Applicable NYS Penal Law Convictions (Attachment AA-4) must be used to determine whether an applicant's conviction falls into either of these categories. If a conviction occurred under the NYS Penal Law and does not appear on the list, it should not be factored in considering the application for tenancy. If a conviction occurred pursuant to a law other than NYS's Penal Law, the reviewer must determine whether the conviction is comparable in nature and severity to a conviction on the attached list. All such determinations must be fully articulated in the Worksheet for the applicant and the agency to review.

If the Applicant's conviction appears on the list of Applicable NYS Penal Law Convictions or is a comparable conviction pursuant to a law other than the NYS's Penal Law, it is not grounds for an automatic rejection. Rather, the reviewer must engage in an individualized analysis of the Applicant, considering the remaining questions in the Worksheet.

Question 2: What was the age of the Applicant at the time of the offense?

A reviewer is required to take the age of the Applicant at the time of the crime into account. In no case may a reviewer reject an applicant for an offense committed before the applicant turned 17 years old. The reviewer must evaluate offenses committed at the age of 17 to 25 with the understanding that individuals who exercise poor judgment as youths or young adults very often mature into law abiding productive adults. On the other hand, if a person was convicted as an older person this does not, in itself, present a barrier to tenancy. The reviewer must engage in an individualized analysis of the Applicant, considering the remaining questions in the Worksheet.

Question 3: How much time has passed since the Applicant's date of the conviction, taking into consideration the level of the offense or timing of release from incarceration?

The reviewer may consider a conviction that meets the following criteria:

- a) a felony conviction that occurred within five years prior to the consideration or granting of tenancy,
- b) a conviction that resulted in incarceration where the applicant's release from incarceration occurred within one year prior to the consideration or granting of tenancy, or
- c) a misdemeanor conviction that occurred within one year prior to the consideration or granting of tenancy.

If the conviction occurred within these lookback periods, it is not grounds for an automatic rejection. Rather, the reviewer must engage in an individualized analysis of the Applicant, considering the remaining questions in the Worksheet. Any conviction or release from incarceration that did not occur within these lookback periods may not be the basis for rejection or further consideration.

Question 4: Has the Applicant shown evidence of rehabilitation and good conduct?

There are a number of areas to explore, including:

A: Treatment Completion

The Applicant may put forth evidence of successful completed treatment for drugs or alcohol, or for other conditions that may have contributed to their criminal behavior. This can be a positive factor in considering the application. On the other hand, it should not be assumed that a person has a drug or alcohol problem for which he or she needed to seek treatment, so the fact that an Applicant did not enroll in such treatment cannot be considered a negative factor. Rather, lack of evidence of treatment should be considered neutrally. Since treatment information is subject to HIPAA regulations, this information should be volunteered by the Applicant, not required, and maintained in a manner to ensure the privacy of the Applicant.

B: Rehabilitative Programming

This factor considers whether the Applicant has participated in and completed other types of rehabilitative programming – such as vocational, educational, work or therapy programs – during or after incarceration. Completion of such programs is a positive factor in considering the application.

C: Employment Status

This factor looks at whether the Applicant has sought and maintained employment after the conviction or release from incarceration, which is a positive factor not only for this analysis but for assessing the applicant's financial eligibility for tenancy.

D: Volunteer or Community Activities

This factor considers examples of community engagement or volunteer work undertaken by the applicant, which speak to how the applicant has been productively spending their time, particularly

if the applicant has had difficulty finding employment.

E: *Community Recommendations*

If the applicant provides recommendations from community members, list the recommendations on the Worksheet and attach them to the application and review packets. Recommendations can be provided by any member of the community, including, but not limited to: clergy, parole supervisors, educators, employers, neighbors and other local community residents, landlords (note: recommendations can be provided from a prior landlord, but are not mandatory; an applicant's failure to provide a recommendation from their current or prior landlord cannot be used against them). These are a positive factor in assessing tenancy.

F: *Other Relevant Factors*

The above list of factors is not exhaustive. If there are any other rehabilitative efforts that maybe relevant, list them here.