

**TO: Virginia Housing Rental Portfolio**  
**FROM: Compliance & Asset Management Department**  
**DATE: June 2023**  
**RE: Tenant Selection Plan Guidance**

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**Introduction.** Virginia Housing’s mission is to help Virginians attain quality, affordable housing. One of its strategic goals is to address the unmet rental needs of low-income and critical-needs populations. To further this goal, properties should apply reasonable tenant selection screening criteria to ensure equitable access to units for all applicants.

The guidance herein does not, and is not intended to, constitute legal advice; the content within this guidance memo is for informational purposes only and may not reflect the most up-to-date legal or other information. Property owners and management agents must seek independent guidance from their legal counsel to ensure their written Tenant Selection Plan(s) include(s) procedures that meet federal and state Fair Housing requirements and other requirements applicable to their respective development(s). All liability with respect to actions taken or not taken based on the contents of these guidelines is hereby expressly disclaimed by Virginia Housing.

**Tenant Selection Plan.** Owners should provide written guidance on the procedures used to confirm an applicant’s eligibility with program requirements (e.g., occupancy, income, student status) and the review of the property application used to screen an applicant’s ability to pay rent and comply with the lease provisions, (e.g., credit and criminal reports, landlord references).

The leasing criteria should clearly describe in detail the property’s established:

- **Program requirements** for maximum income limits, as published annually by HUD and as applicable for student status, rent limits, annual tenant verification or certification, Violence Against Women Act (“VAWA”) protections, and all other property-specific state or federal program requirements.
- **Eligibility criteria** and procedures for applying for housing, so an applicant can reasonably self-determine whether they meet the established standards for approval.
- **Application review and screening procedures** with details on the review of the tenant application, verification requirements, references, and supplemental information including credit, criminal, and landlord records, and what to expect for application approval and denial.

- **Leasing preferences** for marketing units to applicants with disabilities and applicants with extremely low income, including details regarding waitlist management and rental assistance in the property.
- **Occupancy requirements** for age restrictions and household size.
- **Reasonable Accommodation procedures** so an applicant is aware of their rights and informed of the process to request an accommodation.
- **Lease policies and property rules** describing security deposits, the use of community amenities, and other required notifications (e.g., pet policies, smoking, gym, adding or removing occupants, etc.).

**General Eligibility Criteria.** The Tenant Selection Plan:

- must comply with federal and state Fair Housing laws and the Virginia Residential Landlord and Tenant Act and include a non-discrimination statement and written policies on equal opportunity for all applicants;
- must not be so restrictive that it creates a disparate impact on groups protected by the federal and state Fair Housing Act;
- should avoid a "one size fits all" policy and avoid relying solely on algorithms in screening to determine a potential tenant's suitability;
- should include procedures for a personal review and individualized assessment of an applicant's specific circumstances for criminal, credit, and landlord screening criteria for the final decision for approval or denial of housing;
- should outline practices that provide equitable access to all aspects of the application, leasing process, and the property's programs and services for all tenants. Consider adopting practices that "screen in" rather than "screen out" prospective tenants;
- should disclose mandatory fees, policies, or programs (e.g., deposits, renter insurance, pets, unit transfers, etc.) that an applicant needs to know before applying to the property; and
- **(Tax Credit properties)** include procedures to assist victims and the families of victims of domestic violence, dating violence, sexual assault, or stalking under the VAWA and provide details about related tenant protections, including the VAWA "Notice of Occupancy Rights form" (HUD Form 5380), the "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternative Documentation lease addendum form" (HUD Form 5382), emergency transfer or relocation, lease bifurcation or termination, and required privacy, confidentiality, and tenant consent policies.

**Reasonable Accommodation.** The Tenant Selection Plan should include the expected review and response times for Reasonable Accommodation requests for applicants with disabilities who require changes to have equal access to any aspect of the application process or the property's programs and services.

**Rent-Assisted Applicants.** The selection criteria for referral or rent-assisted applicants should not be more restrictive than the leasing criteria or terms applicable to other prospective tenants who do not receive the rental assistance, and the application review procedures for all applicants must consider individual factors before denying an application.

According to Virginia Housing's Qualified Allocation Plan, an owner may not require a minimum income of more than \$3,600 per year or 2.5 times the tenant-paid rent portion for tenants receiving rental assistance.

**Target Population Leasing Preference.** Virginia's Qualified Allocation Plan ("QAP") includes incentives and requirements focused on providing housing for the most vulnerable individuals in a Target Population. Properties with the leasing preference requirement in their Extended Use Agreement must accept referrals from an approved Referring Agent for the Target Population, unless not permitted due to additional agreements with Rural Development, HUD, a local Housing Authority, or other entities, and include leasing preference language in their Tenant Selection Plan. Virginia Housing's compliance monitoring rules require the property to share its Tenant Selection Plan with the approved Referring Agent for review before the property begins lease-up to the general population and immediately (within five business days) after the written Tenant Selection Plan is revised.

For more information about the Target Population requirements, please visit [VirginiaHousing.com/Partners/Rental-Housing/Compliance-Monitoring](https://VirginiaHousing.com/Partners/Rental-Housing/Compliance-Monitoring).

**Credit Screening.** Credit screening may create barriers to providing affordable housing. Removing inflexible credit requirements that do not consider individual circumstances assists Virginia Housing's mission. The credit screening review is performed to confirm an applicant's ability to pay the rent and review their history of payments to creditors. Poor credit or low credit scores should not be the only factor used to deny an application for affordable housing. Implementing a secondary review of a conditional or denied screening report in the Tenant Selection Plan is the best practice to determine if an applicant meets the essential requirements of tenancy.

For individuals receiving rental assistance or referred by an approved Referring Agent, the Tenant Selection Plan may include provisions to waive credit review factors as a Reasonable Accommodation. Rent-assisted households provide owner and management agents the ability to cover and recover economic losses related to tenancy.

Examples of credit screening provisions used to expand access to housing include waiving credit factors such as medical bills, student loans, foreclosure, and bankruptcy, considering the circumstances surrounding the eviction (COVID, loss of job, etc.), and charging a higher security deposit rather than denying an application due to past credit issues.

**Criminal Screening.** Housing providers are encouraged to adopt policies that achieve a sensible and practical balance in their criminal screening procedures. A housing provider should not impose a "blanket" prohibition on any applicant or tenant with an arrest, charge, or conviction. There should be a documented business necessity for denying applications for specific types of charges or convictions.

A criminal screening policy that is too restrictive may be seen as a fair housing violation because of its disparate impact on persons protected by the federal or state Fair Housing Act. An individualized assessment for any applicant with a criminal record is best practice.

Written policies for application review should consider the nature and severity of the criminal background record and include a reasonable look-back period for reviewing criminal history and actions.

The review should also consider evidence of an applicant's rehabilitation or rehabilitating efforts in determining the risk level of whether an applicant poses a demonstrable risk to residents and property safety.

**Application Approval.** Describe the procedure to notify applicants of acceptance. Include the timeline for notifying applicants of acceptance, their required action(s) for accepting the unit, and the date the unit is available.

**Application Denial.** If the applicant does not meet the screening criteria, the reason for denial should be provided in writing and include the specific reasons for rejection based on the written criteria, along with the deadline to request an Appeal or Second Look to investigate and challenge the denial.

Factors to consider before a final application denial include an applicant's disability, change in income or source of income, past or present VAWA status, citizenship status, or other specific circumstances related to past evictions, debt-to-income ratio, and evidence of rehabilitation or rehabilitating efforts balanced against the potentially disqualifying behavior or circumstances.

**Compliance Monitoring.** Virginia Housing requires owners and management agents to periodically review and update their written property-specific Tenant Selection Plan. The Tenant Selection Plan will be reviewed in Virginia Housing's compliance monitoring.

**Fair Credit Reporting Act ("FCRA").** Under the FCRA, applicants should be notified of the factors considered in the application denial. For more information on requirements under FCRA, visit the Federal Trade Commission website [here](#).

**Promote Non-Discrimination in Tenant Selection Plan Written Criteria.** Please review the [Model Policy for Tenant Screening](#) document on the Virginia Department of Professional and Occupational Regulation ("DPOR") website.

Visit the [DPOR Fair Housing page](#) for additional links, guidance, and resources.

Comply with the HUD guidance on Criminal Background Screenings published by the [HUD Office of General Counsel on Fair Housing](#).

Contact your assigned Compliance Officer or send general questions on policies or programs to [Compliance-AssetManagement@VirginiaHousing.com](mailto:Compliance-AssetManagement@VirginiaHousing.com).