

**TO: Virginia Housing Tax Credit Properties with the Leasing Preference Requirement**

**FROM: Compliance & Asset Management Department**

**DATE: June 2023**

**RE: Target Population Tenant Selection Plan Guidance**

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**Introduction.** Virginia Housing’s mission is to help Virginians attain quality, affordable housing. One of our strategic goals is to address the unmet rental needs of low-income and critical-needs populations. To further this goal, the Qualified Allocation Plan (QAP) requires a Target Population leasing preference to support some of Virginia’s most vulnerable individuals and families. Target Population applicants are referred by an approved Referring Agent.

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.

**Target Population Tenant Referrals.** Members of the Target Population face many barriers to being a renter, including having little to no income, a criminal history, and minimal or negative credit history. Virginia Housing provides the following guidelines and best practice criteria for developing written Tenant Selection Plans (TSP) for reviewing applications from Target Population referrals. The objective is to apply reasonable tenant selection criteria to ensure equitable access to units.

**Tenant Selection Plan.** The Tenant Selection Plan should incorporate screening criteria that match the characteristics of the Target Population leasing preference and remove as many barriers to housing as possible, including a low-threshold admission policy for specific populations increases access to housing options for the Target Population.

The Tenant Selection Plan should avoid a "one size fits all" policy and should not impose leasing criteria or terms upon referred individuals approved for the leasing preference that are more restrictive than the leasing criteria or terms applicable to other prospective tenants at the property who do not receive the leasing preference.

**General Eligibility criteria** for tenancy include:

- **Minimum** income guidelines
- **Maximum** income limits
- **Review Criteria**
  - Student status
  - Occupancy or age restrictions,
  - Leasing preference
  - Waitlist management
  - Credit review
  - Criminal background review
  - Landlord review

Referred applicants should meet minimum program eligibility standards and provide sufficient information to confirm eligibility with program requirements for income, student status, and their ability to pay rent, and should otherwise comply with lease provisions.

- **Comply with federal and state Fair Housing requirements.** Include a non-discrimination statement and written policies on equal opportunity, which apply to all applicants.
- **Describe leasing preferences or priorities** established for the property. The property may have multiple leasing preference requirements under the Housing Credit program administered by Virginia Housing for Intellectually Disabled or Developmentally Disabled (**ID/DD**) or **Target Population referrals, Section 504 units with accessible features, Accessible Supportive Housing (ASH Pool), or Project-Based Rental Assistance (PBRA)**, or additional leasing preferences through other agreements. Review your property's Extended Use Agreement (EUA) to confirm the Housing Tax Credit occupancy requirements and units.
- **Describe minimum eligibility criteria** so an applicant can reasonably self-determine whether they meet the established standard for approval. All mandatory policies supported by federal, state, or local regulations or other program requirements should be included (e.g., LIHTC income limits, student status, etc.).
- **Outline practices that provide equitable access** to all aspects of the application and leasing process and the property's programs and services for all tenants. Consider adopting practices that "screen in" rather than "screen out" prospective tenants.
- **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.

**Target Population Screening Criteria.** The Tenant Selection Plan should include a low threshold screening criteria for individuals referred by an approved Referring Agent and who meet the following criteria:

1. **Official Written Letter of Eligibility** – The approved Referring Agent issues the official written **Acknowledgement of Target Population Status Letter**, confirming eligibility for the leasing preference.

The eligibility letter will also specify the:

- Eligibility verification date
- Eligibility expiration date
- Authorized bedroom size for the referral
- Referring Agent contact information

2. **Rental Assistance** – The individual is approved for rental assistance under the State Rental Assistance Program (SRAP) or other rental subsidies, including Project-Based Rental Assistance (PBRA) available in the property.

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

3. **Income Eligibility** – Household income does not exceed the income limitation for the assigned unit at the time of move-in.
4. **Student Status** – The referred individual is not a full-time student or meets one of the five student exceptions under the Tax Credit program.

**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.

**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.

**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. Include the specific screening criteria for all leasing preference populations.

**Application Denial.** If the referred applicant does not meet the Target Population 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.

**Disparate Impact** is based on evidence that while policies are not openly discriminatory, the record of denied applications for individuals in protected classes (race, disability, national origin, etc.) can show that a policy has an unintentional negative effect.

Examples of disparate impact are having a blanket ban on arrests or not having procedures for an individualized assessment of applicant circumstances. 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.

## **Promote Non-Discrimination in Tenant Selection 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)