

CDA Memo: Affirmative Fair Housing Marketing Plans and Tenant Selection Policies - August 5, 2024 – Updated November 26, 2024 and September 28, 2026

The Maryland Department of Housing and Community Development (“Department”) is committed to ensuring fair and open access to affordable housing and compliance with state and federal civil rights obligations. Fair Housing requirements apply to the full spectrum of housing activities, including, but not limited to, outreach and marketing, qualification and selection of residents, and occupancy. This memo will continue DHCD’s long-standing commitment to affirmatively furthering fair housing and ensure that the tenant selection policies for projects receiving Department funding do not unjustifiably exclude people from housing opportunities in discriminatory ways.

On May 7, 2026, the State of Maryland enacted the Maryland Fair Chance Housing Act, (Senate Bill 937, codified at Md. Code Ann., Real Prop. §§ 8-218(b) and 8-2A-01 through 8-2A-12), effective on October 1, 2026. This law establishes certain restrictions on a landlord’s use of a prospective tenant’s criminal history records, in addition to other prohibitions.

To that end, the Department has modified our requirements for Affirmative Fair Housing Marketing Plans and Tenant Selection Plans to comply with the Maryland Fair Chance Housing Act. Owners and/or managers of properties that have received LIHTC awards, program funds, or other subsidies from the Department are now required to submit a copy of their tenant selection plan or policy during application, compliance reviews, and as requested, to evidence compliance with the policies listed below. DHCD will review the tenant selection plan and will reject any plan that is clearly not in conformance. Additionally, projects must review and update their tenant selection plans at least every 5 years or more frequently if required by DHCD. Failure to comply with an approved tenant selection plan will be subject to compliance action by DHCD.

AFFIRMATIVE FAIR HOUSING MARKETING PLAN REQUIREMENTS

The owner must affirmatively market and lease LIHTC units in a manner that complies with the goals and requirements of applicable federal, state, and local fair housing and civil rights laws or regulations, and the Tenant Selection Plan approved by CDA. Owners must submit an AFHMP regardless of whether the project receives federal funds. Marketing plans, including the AFHMP and Tenant Selection Plan must be maintained, reviewed, and updated to document that such marketing efforts are being made and that the results are being reported and evaluated. Plans should contain, at a minimum:

1. A statement as to how affirmative marketing strategies and tenant selection criteria will be implemented, inclusive of occupancy and lease-up goals;

2. Copies of all advertisements and promotional marketing plans; and
3. Groups determined to be least likely to apply to the project without targeted marketing and outreach, and the data used to make the determination in accordance with the HUD instructions for preparation of AFHMPs.

Owners should consult the HUD Handbook 4350.3 REV-1, Chapter 2. Civil Rights and Nondiscrimination Requirements (or most current version) for guidance on Affirmative Fair Housing Marketing Plans.

NOTE: Before a household takes occupancy, the owner (or manager) must determine that the household will meet the rent and income restrictions to qualify for the LIHTC unit.

TENANT SELECTION POLICIES

Owners must prepare, submit to DHCD for review,¹ and post in their leasing office and website a Tenant Selection Plan that describes all criteria that will be used in the decision-making process to screen and approve eligible applicants for tenancy. The Tenant Selection Plan must be specific so that a prospective applicant or third party may reasonably determine an applicant's likelihood of acceptance to the property. The owner must provide access to the information for people with limited English proficiency and people with disabilities. The Tenant Selection Plan must use criteria that comply with the General Public Use requirement, the Fair Housing Act, the Maryland Fair Chance Housing Act, and the threshold requirements of Sections 3.3.2 Affirmative Fair Housing Marketing and 3.3.3 Tenant Selection Plans of the Multifamily Rental Financing Program Guide. Records outside of the scope of the Tenant Selection Plan should not be considered. The Tenant Selection Plan must include, at a minimum, the following provisions:

- Reasonable accommodation request process for applicants with disabilities;
- Description of how applications will be made available and accepted for processing;
- How the waiting list will be maintained if a waiting list is part of the plan;
- Prohibition of income and minimum credit score requirements for prospective tenants with Housing Choice Vouchers or similar rental assistance, including, but not limited to, VASH, Shelter Plus Care, Bridge Subsidy and Continuum of Care, or prospective tenants applying for units with project-based vouchers;
- Criminal record screening policy in accordance with the Maryland Fair Chance Housing Act and the requirements listed below in the Criminal Record Screening section; and
- Denial notification process that includes in writing, via mail or email, all reasons for the denial, including the specific standard(s) that the applicant did not meet. If an applicant fails multiple screening criteria, all of those criteria should be included in the denial letter. All records relied on should be attached, including any screening reports. Letters should also include instructions on how to submit an appeal within 14 days of receiving a denial letter if a record is inaccurate, incomplete, or irrelevant; mitigating circumstances exist; or a reasonable accommodation for a

¹ DHCD will review owners' plans for clear inconsistencies with fair housing compliance; however, the owner is ultimately responsible for ensuring compliance with fair housing and other applicable laws. DHCD shall not assume any liability for an owner's tenant selection policies, regardless of DHCD's review thereof.



disability is needed. For denials or withdrawals of conditional offers relating to criminal record screening criteria, a notification and individualized reassessment process that adheres to the Maryland Fair Chance Housing Act and the requirements listed below in the Criminal Record Screening section.

Owners should follow the guiding principles for non-discriminatory tenant screening in all cases, which include: (1) screening only for relevant screening criteria; (2) using only accurate records; (3) following the applicable screening policy; (4) being transparent with applicants; (5) allowing applicants to challenge negative information; and (6) designing and testing complex models for fair housing compliance.

Owners utilizing tenant screening services must ensure that the tenant screening services (a) offer customizable services based on a property's screening criteria; (b) frequently update their data; (c) monitor for unjustified discriminatory effects; (d) report clear and specific reasons for denials; (e) allow individuals to correct inaccuracies; (f) publicly disclose key details about their screening systems; and (g) comply with all applicable Federal, state, and local laws. Tenant screening services should serve to help implement, rather than effectively set, a housing provider's screening policies. If screening reports include denial recommendations, the owner should make an independent determination whether, under their screening policies, the information in the report is, in fact, disqualifying.

Owners should avoid screening existing tenants of a property who have lived there without incident. Tenants' behavior at the property is more relevant than a records-based screening.

In addition to the requirements of the Maryland Fair Chance Housing Act, DHCD requires all owners and/or managers of properties that have received LIHTC awards, program funds, or other subsidies from the Department to maintain all denial notifications and individualized reassessments for a period of no less than 5 years, and will be made available for DHCD's review for compliance monitoring, within 3 business days of the date of request.

If DHCD receives a complaint that applicants to any property have been unfairly turned down for housing, DHCD will ask for a summary of the facts and circumstances used in the decision to deny the applicant and to compare against the written Tenant Selection Policy on file at DHCD for the property. In any case where the tenant's claim appears to have merit, the matter will be referred to the appropriate authorities or, in appropriate circumstances, a compliance action may be pursued by DHCD.

The information in this section is not intended as legal advice and does not provide a legal opinion as to the matters stated. It is recommended that all property owners consult with an attorney who is well versed in fair housing law when making decisions regarding their Tenant Selection Policy.

Note: Owners of LIHTC properties are prohibited by State and federal law from refusing to lease to a prospective tenant based on the fact that the applicant holds a Section 8 Housing Choice Voucher.

The following types of screening are likely to pose fair housing concerns: credit history, eviction history, and criminal records. Overbroad screenings in these areas, including screenings that fail to



MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

7800 HARKINS RD • LANHAM, MD 20706 • DHCD.MARYLAND.GOV
301-429-7400 • 1-800-756-0119 • TTY/RELAY 711 or 1-800-735-2258



account for individual circumstances, are especially likely to have an unjustified discriminatory effect based on race, national origin, sex, disability, or other protected characteristics.

Credit History Screening

Credit scores are calculations designed to calculate the relative risk of consumers defaulting on a loan, not the risk that a tenant will fail to pay rent. Racial, gender, and other disparities exist in the context of credit scores; thus overbroad screenings for credit history may have an unjustified discriminatory effect. Owners and tenant screening companies should avoid denials and denial recommendations based on an applicant's credit score when the applicant's financial background has little relevance. Limiting the use of credit scores when more relevant financial information is available may be a less discriminatory alternative to using credit scores in all instances. Other relevant financial information could include circumstances like a cosigner who satisfies the financial screening criteria. Negative credit history due to an event that is unlikely to recur, such as a medical emergency or job loss also has little relevance. Further, minimal or poor credit history due to domestic violence, dating violence, sexual assault, or stalking is not the fault of the survivor and does not bear upon the likelihood that the survivor will pay their rent on time in the future.

Applicants should be given the chance to explain why their credit history is not relevant by presenting mitigating circumstances.

Having no credit history or limited credit history (i.e., an absence of credit history, negative or positive) is less relevant than having poor credit history. Admitting applicants so long as they do not have a negative credit history can be a more precise policy than requiring a positive credit history.

Eviction History Screening

Eviction records are among the most commonly-marketed tenant screening components and they are standard features of many screening reports. However, eviction disproportionately affects Black and Hispanic renters, women, families with children, and individuals with disabilities. Thus, overbroad screenings for eviction history may have a discriminatory effect.

Owners and tenant screening companies should not rely on eviction records that are old, incomplete, irrelevant, or where a better measure of an applicant's behavior is available. If this information about an eviction record is known before a screening, the record should not be used. Otherwise, applicants should get the chance afterward to have the record disregarded and corrections made.

Owners and tenant screening companies should not deny or recommend the denial of housing to applicants based on eviction proceedings where the tenant prevailed, a settlement was reached, or the matter was dropped. Several other circumstances exist in which it would be problematic to hold a past eviction against a tenant; for example, where a tenant was retaliated against or where the eviction is due to an underlying experience of domestic violence, dating violence, sexual assault, or stalking.

An eviction that occurred long ago or under circumstances that are no longer relevant does not likely bear upon the applicant's future performance as a tenant. For example, an eviction for non-payment of



MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

7800 HARKINS RD • LANHAM, MD 20706 • DHCD.MARYLAND.GOV
301-429-7400 • 1-800-756-0119 • TTY/RELAY 711 or 1-800-735-2258



rent from a market-rate unit is not likely relevant to whether an applicant who has since begun receiving rental assistance (e.g. from a government agency) will pay rent on time.

Criminal Record Screening

Pursuant to the Maryland Fair Chance Housing Act, owners and management companies managing five or more units must utilize a “Conditional Offer” framework. A conditional offer is an offer to lease a unit that is contingent on a subsequent criminal history inquiry. Below is a summary of the requirements of the Maryland Fair Chance Housing Act. Owners and managers are responsible for being familiar with the law and should not rely entirely on the below summary.

- **Pre-Application Notice & Prohibitions:** Owners may not require a prospective tenant to submit to a drug or alcohol test, nor request consent to release substance use disorder treatment records. Before accepting an application fee, the owner must provide written notice regarding the use of criminal history checks, stating that the general convictions will only be considered after a conditional offer is extended, and notifying the prospective tenant of their right to provide evidence of inaccuracies, rehabilitation, or mitigating factors during an individualized assessment.
- **Pre-Conditional Offer Inquiries:** Before extending a conditional offer, owners may not make general inquiries regarding a prospective tenant’s criminal history. However, owners may inquire about and reject an application prior to a conditional offer only if the prospective tenant has been convicted of: for potential tenancy in federally assisted housing, manufacturing methamphetamine on federally assisted housing; specific sexual offenses; child pornography; first- or second-degree murder; human trafficking; if they are subject to a state or federal sex offender registration requirement; or if they have ever been convicted in another state or federal court of a crime with the same criminal elements as a crime listed above.
- **Uniform Application:** If an owner conducts a criminal history records check, they shall do so for every prospective tenant.
- **Admissions Criteria (Post-Conditional Offer):** After a conditional offer has been made, the owner may conduct a general criminal background check.
- **Permissible Lookback:** Owners may only consider felony convictions that occurred within the 5 years immediately preceding the rental application (including out-of-state equivalent felonies), or convictions for the severe crimes listed in the Pre-Conditional Offer Inquires section above that the prospective tenant failed to previously disclose.
- **Withdrawal:** The owner may withdraw a conditional offer based on a criminal history check *only* if the withdrawal is necessary to fulfill a substantial, legitimate, and nondiscriminatory interest.
- **Denial Notification & Individualized Reassessment:** If withdrawing a conditional offer, the owner must provide written notice stating the specific reason for withdrawal. Within 30 days of this notice, the prospective tenant may request a copy of all information relied upon (which must be provided within 10 days) of their right to request an individualized reassessment by providing written evidence (signed under the penalty of perjury) demonstrating inaccuracies in



MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

7800 HARKINS RD • LANHAM, MD 20706 • DHCD.MARYLAND.GOV
301-429-7400 • 1-800-756-0119 • TTY/RELAY 711 or 1-800-735-2258



the prospective tenant's criminal history records, rehabilitation, or mitigating factors.

Individualized reassessments must consider:

- The nature and severity of the criminal offense;
- The prospective tenant's age at the time of the occurrence of the criminal offense;
- The amount of time that has elapsed since the occurrence of the criminal offense;
- Any information produced by the prospective tenant, or produced on the prospective tenant's behalf, regarding rehabilitation and good conduct since the criminal offense;
- The degree to which the criminal offense, if it reoccurred, would negatively impact the safety of other tenants or the property; and
- Whether the criminal offense occurred on property that was rented or leased by the prospective tenant.



MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

7800 HARKINS RD • LANHAM, MD 20706 • DHCD.MARYLAND.GOV
301-429-7400 • 1-800-756-0119 • TTY/RELAY 711 or 1-800-735-2258

