



AFFIRMATIVE FAIR HOUSING MARKETING PLAN REQUIREMENTS

In the June 14, 2017 update to the Affirmative Fair Housing Marketing Plan Guide for Managing Agents, Owners, and Developers, HCR clarified housing providers' requirements in three specific areas: assessing applicants with criminal convictions; recordkeeping requirements; and compliance monitoring site visits. HCR-funded housing providers are not required to conduct criminal background checks, however, if they do so, it must be done in compliance with HCR's policy on assessing applicants with criminal convictions.

A. Assessing Applicants For Housing Who Have Criminal Convictions

The below information addresses common questions FEHO has received regarding compliance with HCR's policy for assessing applicants for state-funded housing who have criminal convictions.

HCR-funded housing providers **are prohibited** from utilizing tenant selection procedures with blanket exclusions of applicants based on their criminal history. Tenant selection procedures may only consider convictions or pending arrests for offenses that involved physical danger or violence to persons or property or that adversely affected the health, safety and welfare of other people.

Where convictions for such offenses exist, the owner/agent **must** conduct an individualized assessment of the applicant pursuant to HCR's Guide, Worksheet and Webinar Tutorial for Applying New York State's Anti-Discrimination Policies When Assessing Applicants for State-Funded Housing Who Have Criminal Convictions. Available at <https://hcr.ny.gov/fair-housing-marketing-plans-policies>.

HCR policy requires owners/agents to consider several factors relating to the potentially disqualifying conduct (*i.e.*, severity, time elapsed, degree of danger presented, likelihood of reoccurrence, etc.), as well as positive, or mitigating factors that demonstrate that an applicant can meet the requirements of tenancy despite their prior criminal conviction.

To be clear, the individualized assessment is not an appeal process. Instead, the individualized assessment is conducted before deciding whether an applicant is eligible for the housing. Therefore, before conducting the individualized assessment, the applicant **must** have the opportunity to provide additional information relevant to the individualized assessment. A sample request letter for additional information is included at the end of the Affirmative Fair Housing Marketing Plan Guide. Available [Here](#).

At the time the owner/agent requests additional information from an applicant, the owner/agent **must** provide the applicant with information that explains, among other things, 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. If the owner/agent denies tenancy to the applicant because of their criminal history, this information must be provided

again. Compliance with these requirements **shall** be demonstrated by providing applicants with HCR's "Know Your Rights: New Anti-Discrimination Guidance Affecting People with Criminal Histories." Available [Here](#).

Furthermore, for housing providers who conduct criminal background checks as part of their application screening process, provided below is model language to include in applications when asking applicants about criminal history.

Note: We conduct criminal background checks. If you have a criminal record, you have rights and protections. You have the right to review any conviction record the housing provider is using to make a decision. There are only two reasons for automatic denial to state-funded housing on the basis of your criminal convictions: conviction for methamphetamine production in the home or being required to register for life on a state or federal Sex Offender database. In all other instances, you have the right to provide additional information about the circumstances of the conviction and the right to present evidence of your rehabilitation. For more information about your rights as an individual with a criminal conviction, please visit <http://www.nyshcr.org/AboutUs/Offices/FairHousing/GPCC.htm>.

B. Recordkeeping and Compliance Monitoring Requirements

The following recordkeeping requirements, effective June 14, 2017, are detailed further in HCR's updated Affirmative Fair Housing Marketing Plan Guide:

- Records of complaints and resolutions by tenants and applicants alleging discrimination and/or improper conduct shall be retained for three years in the project's file.
- HCR's policy concerning individuals with criminal convictions requires that the housing provider maintain records on: (a) the number of applications received where the applicant had a criminal conviction or pending arrest, and (b) the number of those applicants denied as tenants because of their criminal conviction.
- Records of outreach to special interest groups, least likely to apply ("LLA") media and community contacts, and agencies providing referrals shall be kept on file in the project's management office.
- All advertising and records of dates of publication of the advertising shall be kept on file in the project's management office.
- All staff Fair Housing training certificates must be kept on file for five years.

During your compliance monitoring site visits conducted by HCR's Asset Management Unit ("AMU"), AMU verifies that the owner/agent can demonstrate compliance with, among other things, the above recordkeeping requirements.