



## **Guide for Applying New York State’s Anti-Discrimination Policies When Assessing Justice-Involved Applicants for State-Funded Housing**

This document gives housing providers guidance for applying New York State’s antidiscrimination policies when assessing justice-involved applicants for state-funded housing. These policies are found at 9 NYCRR §1627.72 (New York funded public housing); NYSHCR Section 8 Administration Plan, §1.09.02 (July 2015 Revision); New York State Housing Finance Agency Fair Housing and Tenant Selection Guidelines, §4.1.2.3. (July 2015 Revision); Management Bulletin Memorandum 2016-B-04; and Capital Programs Manual § 7.05.

Along with this guide, housing providers should use the accompanying worksheet (explained in depth below) to make their determination. The worksheet can be found at the following link: <https://hcr.ny.gov/marketing-plans-policies>.

### **General Policies**

The housing provider may only consider prior criminal convictions or pending<sup>1</sup> arrests. Prior arrests and/or accusations that did not result in a conviction may not be considered. Arrests with adjournments in contemplation of dismissal are not pending arrests. Any convictions that have been excused by pardon, overturned on appeal or otherwise vacated may not be considered.

- ❖ Pursuant to Section 269(16) of the New York State Human Rights Law, it is unlawful to inquire about or deny housing to an Applicant on the basis of: (a) any prior arrests or criminal accusations that have been resolved in the Applicant’s favor; (b) youthful offender adjudications; (c) pending arrests with adjournments in contemplation of dismissal; (d) convictions for violations sealed pursuant to Section 160.55 of the New York State Criminal Procedure Law; and (e) convictions sealed pursuant to Section 160.58 or 160.59 of the New York State Criminal Procedure Law. Under New York State law, an Applicant that is asked about such a protected arrest, conviction or adjudication may answer as if it never occurred.
- ❖ The housing provider may only consider convictions or pending arrests for offenses that (1) are not those listed above and (2) involved physical danger or violence to persons or property or that adversely affected the health, safety and welfare of other people.
- ❖ Even where convictions for such offenses exists, those convictions cannot be an automatic bar to the Applicant being selected for housing. The housing provider must do an individualized assessment of all Applicants.
- ❖ In this assessment, no one factor can be considered in isolation; the interplay between the

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<sup>1</sup> Pending arrests are *recent* arrests that have not yet been resolved through the judicial process. As it is possible that old unresolved arrests that appear on a background check report do so as a result of erroneous or incomplete information, the housing provider should allow an Applicant to provide an explanation. Any analysis of pending arrests must be undertaken using the guidelines provided in this document. If an offense would not be disqualifying as a conviction, it should not be disqualifying as a pending arrest.



factors must be taken into account (e.g. a reviewer may look for stronger evidence of rehabilitation if an Applicant has a more serious crime).

- ❖ 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 application that includes information that explains the procedures and policies with regard to 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. Certain programs administered by HCR have more stringent requirements than those set forth in the Housing Stability and Tenant Protection Act.

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

- ❖ The housing provider must maintain records of all Applicants and applications for a minimum of two years.
- ❖ All Applicants must be given an opportunity to review and explain any pending arrest or conviction record to the housing provider before any decision regarding tenancy is made. The Applicant must be given no less than fourteen business days to provide more information regarding a pending arrest or conviction prior to a determination being made.
- ❖ If an application is denied, the Applicant must be provided with any documentation used to deny his or her application, an explanation of the denial of housing, and be given an opportunity to respond. There may be no less than fourteen business days between an Applicant receiving the notice and documentation used to deny the application and the Applicant's opportunity to respond.
- ❖ The housing provider must complete and maintain the accompanying worksheet for use in the decision-making process.
- ❖ 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 obtained in connection with evaluating the application;



- Written notification 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.
- The written evaluation detailing the analysis and decision of the housing provider, and;
- The Worksheet attached to these guidelines.

### **Factors That Must be Considered and Using the Worksheet**

#### Introduction

The attached mandatory worksheet serves two important purposes. First, it creates a record of the decision-making process the housing provider undertook when deciding 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.

#### Automatic Bars to Admission

There are two circumstances for which the Applicant's criminal history will automatically make them ineligible for the housing accommodation. If the Applicant was convicted for producing methamphetamine in the home, or is required to be a lifetime registrant on the Sex Offender registry, Federal Department of Housing and Urban Development ("HUD") rules make them ineligible for acceptance by the housing provider. If either of these circumstances are present, the application must be denied, and the analysis can stop here.

#### Question 1: Did the crime[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 pending arrests or criminal convictions may be considered. Under Section 269(16) of the New York State Human Rights Law, it is unlawful to inquire about or deny housing to an Applicant on the basis of: (a) any prior arrests or criminal accusations that have been resolved in the Applicant's favor; (b) youthful offender adjudications; (c) pending arrests with adjournments in contemplation of dismissal; (d) convictions for violations sealed pursuant to Section 160.55 of the New York State Criminal Procedure Law; and (e) convictions sealed pursuant to Section 160.58 or 160.59 of the New York State Criminal Procedure Law. Beyond these, the only convictions that may be considered are convictions for offenses that (a) involved physical violence to persons or property, or that (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 their property. 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 his or her application for tenancy.



There is no list of what crimes fit into these categories. Interpretation of whether a crime fits is left to the reviewer's judgment, which the reviewer should articulate in the worksheet.

Question 2: How much time has passed since the Applicant's date of the conviction and how much time has the Applicant spent in the community after release from incarceration, if he or she was incarcerated as a result of the conviction(s)?

The reviewer shall not require the lapse of a fixed period of time between the date of the conviction or release from incarceration and consideration or granting of tenancy. Rather, the reviewer must engage in an individualized analysis of each Applicant. The reviewer is trying to determine whether the Applicant has had enough time in the community and has used that time productively to establish him or herself as a qualified tenant. Part of this analysis is a consideration of facts gathered in question 5, about what the person has done in the community since release from prison or since the time of conviction if the person was not incarcerated.

Question 3: What was the age of the Applicant at the time of his or her conviction?

A reviewer is required to take the age of the Applicant at the time of the crime into account, and must do so 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.

Question 4: What is the seriousness of the Applicant's offense?

The reviewer must evaluate the seriousness of the offense and its relevance to the person's current ability to live peaceably alongside other tenants and respect their property. Again, this factor is not considered in isolation, but alongside other factors such as the passage of time and evidence of rehabilitation.

Question 5: 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 his or her 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, and therefore lack of completion of such treatment be considered a negative factor. Rather, lack of evidence of treatment completion 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, during or after incarceration. Examples of such programming include vocational, educational, work or therapy programs. Completion of such factors is a positive factor in considering the application.

***C: Employment Status***

This factor looks at whether the Applicant has sought and maintained employment after his or her 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 his or her 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, residents, neighbors, landlords (note: recommendations can be provided from a prior landlord, but are not mandatory; an applicant's failure to provide a recommendation from their landlord cannot be used against them), educators and employers. 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 may be relevant, list them here.