



Guide to Applying New York State Credit Policy for Applicants to State-Funded Housing

This document gives housing providers guidance for the assessment of credit history for applicants to HCR-funded housing. This new policy requires developers, managing agents or owners to individually assess applicants with low credit scores or negative credit history rather than automatically reject them based on such findings.

Along with this guide, housing providers should use the accompanying worksheet (explained in depth below) to make their determination.

Background and General Policy

As part of a routine background check to determine eligibility, it is common for landlords across the state to check the consumer credit scores of applicants. If a tenant has a low credit score or negative credit findings such as bankruptcy or collections, a landlord may reject an applicant without regard for the cause or circumstances surrounding negative credit findings.

This type of blanket policy is especially pernicious because it harms some of the most vulnerable New Yorkers, including people of color, domestic violence survivors, and people with disabilities. In addition, these policies also adversely affect the large population of individuals with medical or student debt. These types of debt can contribute greatly to financial insecurity, an inability to pay bills and damaged credit. Further, advocates and stakeholders have found that credit score is a faulty indicator of whether or not a tenant will pay his or her rent on time.

As a housing provider, regulator and subsidizer, the work of HCR is threatened when individuals are denied access to affordable housing due to a credit score or credit history that fails to tell the complete picture and inaccurately predicts an applicant's ability to pay rent. Due to the potential for discrimination and the impact of such eligibility criteria on vulnerable New Yorkers, HCR has instituted a credit individualized assessment policy that would apply broadly to all recipients of HCR funding.

The Worksheet and Factors that Must be Considered

Introduction and Overview

When making an eligibility assessment based on credit, housing providers must use the worksheet titled: "Individualized Assessment Credit Worksheet: Applying New York State Credit Policy for Applicants to State-Funded Housing." The worksheet, as may be updated from time to time, is available at: <https://hcr.ny.gov/FEHO-Credit-Worksheet>.

The 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.

The worksheet sets forth a credit policy. Except for applicants who are in receipt of a full rental subsidy or applicants who are able to demonstrate that they paid their rent in full and on time during the preceding 12 months, the worksheet requires landlords or managing agents to individually assess applicants and sets forth the types of factors that must and must not be considered (for example, debt in excess of \$5,000 *except* if such debt is medical or student loan debt). The assessment is designed as a two-part process for applicants that are not in receipt of a full rental subsidy. The first part narrowly defines the credit history that a landlord may use to reject an applicant and the second part mandates mitigating factors that must be taken into account to counterbalance a negative finding. For example, an applicant with negative credit findings that would disqualify their application under the first part of the assessment may, under certain criteria, nevertheless be accepted if they can evidence 12 months of on-time, consistent rental payment history.

Part I: Four-Step Analysis to Review an Applicant's Credit History

Step 1: Applicant Subsidy

First, the developer, landlord, or agent must determine whether the applicant receives any government subsidies that go directly to the housing provider and which singularly or combined pay for the entirety of the applicant's rent on an ongoing basis. Examples of such subsidies include, but are not limited to, Section 8 vouchers, HUD/VASH, public assistance/FEPS, HOPWA/HASA, Rural Rental Assistance, and Non-Profit Rental Assistance.

Any applicant in receipt of a subsidy of this nature may not be denied based on credit history. The applicant must be approved, and this is the end of the process. If the applicant does not receive any of these subsidies, then the housing provider should proceed to Step 2 of the worksheet.

Step 2: On-Time Rental Payments

At the discretion of the applicant, applicant may choose to provide evidence of on-time, complete rental payments over the course of the preceding 12 months and avoid a credit check entirely. Examples of such evidence include, but are not limited to, canceled checks, rent receipts, a prior landlord's written record of rent payment, records of online rent payments, bank print-outs showing direct payment to landlord, money order stubs and other forms of evidence accepted at the discretion of developer, landlord or agent.

If an applicant is able to provide evidence of on-time, complete rental payments over the course of the preceding 12 months, the applicant must be approved, and this is the end of the process.

Step 3: Credit Score

Applicants to state-funded housing may not be denied housing based solely on their FICO credit score. Housing providers may consider a FICO credit score as one of several factors indicative of financial stability. Note that having limited to no credit score is not the same as having poor

credit and is not a cause for denial of housing. Note also that if a housing provider intends to use a credit scoring system other than FICO (such as Vantage, or others), they must provide HCR with documentation of how the score and model corresponds to FICO.

If the tenant selection policy does not consider the applicant's FICO credit score, then the housing provider should proceed directly to Step 3 of the worksheet and also conduct the analysis based on mitigating factors.

If the policy does take the applicant's credit score into account, then the applicant must be approved if his or her credit score is 580 or above. Furthermore, the applicant must be approved if his or her credit score is 500 or above and the applicant is homeless. If the applicant's credit score is below these levels, then the housing provider should proceed to Step 3 of the worksheet and also conduct the analysis based on mitigating factors.

Step 4: Factors as Grounds for Denial

Only the following two factors may be grounds for denial absent mitigating circumstances: (1) Bankruptcy, in certain cases; and (2) Delinquencies, collections, money judgments, and liens, in certain instances ("Applicable Debt").

An applicant's bankruptcy may only be considered if it occurred within the past twelve months. If the bankruptcy has occurred within that timeframe, then the housing provider should proceed to Part II of the worksheet. If the bankruptcy occurred more than twelve months ago, then the applicant may not be denied on the basis of this bankruptcy.

If the applicant has Applicable Debt, the housing provider must ask the following questions: Is the Applicable Debt currently delinquent or unpaid (more than 90 days passed due or in collections)? Does the Applicable Debt exceed \$5,000 in total? Please note that this Applicable Debt may not include medical or student loan debt. If the answer to all three of these questions is yes, then the housing provider should proceed to Part II of the worksheet. If the answer to any of the questions is no, then the applicant may not be denied based on Applicable Debt.

Part II: Applicant Outreach and Consideration of Mitigating Factors

If the applicant has failed Part I of the assessment, the housing provider is required to consider the following mitigating factors prior to rejecting the applicant. At this stage, the housing provider must reach out to the applicant requesting additional information so that an individualized assessment may be conducted.

The applicant must be provided at least 14 business days in which to provide such additional information. A housing provider must consider the additional information proffered by the applicant *prior to* making a determination regarding the applicant's eligibility. A sample letter to request additional information from the applicant can be found in HCR's Guidance on Affirmative Fair Housing Marketing Plans available on our website: <https://hcr.ny.gov/afhmp-guidance>.

Step 1: Mitigating Factors Mandating Eligibility

The following factors are mandatory mitigating factors regarding applicant eligibility: (1) if the credit history was related to a Violence Against Women Act (“VAWA”) covered crime and (2) positive rental payment history. If an applicant is able to provide documentation affirming the existence of these factors, the applicant must be deemed eligible on the basis of credit history.

VAWA covered crimes include domestic violence, dating violence, sexual assault, or stalking. If the applicant has informed the housing provider that he or she is a survivor of one of these crimes and has provided information sufficient for the housing provider to determine that the negative credit history is a direct result of this VAWA covered crime, then the applicant must be approved. Additional information concerning the owner/manager’s obligations and protections under VAWA is available on our website [here](#).

The COVID-19 Pandemic had a devastating economic impact on millions of New Yorkers due to loss of income and other factors. As a result, applicants should not be penalized for negative credit findings that occurred during the State of Emergency in New York State (specifically, March 7, 2020 through June 23, 2021). A housing provider may not deny an applicant on the basis of a Bankruptcy related to, or debt incurred (1) during the period of March 7, 2020 through June 23, 2021 and (2) due to financial hardship caused by the COVID-19 Pandemic.

Finally, if an applicant family has a negative finding or findings related to Bankruptcy or Applicable Debt based on non-payment of rent (as defined in Part I above), but is able to provided evidence of positive rental history, indicating consistent, on-time rental payments for the past 12 months, then the applicant must be approved. Forms of evidence of positive rental payment include, but are not limited to canceled checks, rent receipts, the landlord’s written record of rent payment, records of online rent payment, bank printouts showing direct payment to the landlord, and money order stubs.

Step 2: Other Mitigating Factors

In addition to the two above-mentioned mandatory factors, the housing provider must weigh the following factors in considering an applicant’s eligibility. The housing provider must weigh the totality of circumstances regarding the applicant and any mitigating information in order to make a determination regarding eligibility.

First, the housing provider must consider whether the applicant has provided evidence that the negative credit history was the result of erroneous or incomplete findings. Examples of such errors might include mistakes in the credit reporting or evidence of the settlement of delinquent accounts. Next, the housing provider must consider whether the applicant has evidenced any other mitigating factors. Such mitigating factors may include, but are not limited to, the following: the applicant’s incarceration, the applicant’s deployment in the U.S. Armed Forces, that the negative credit history was incurred due to financial hardship caused by the COVID-19 Pandemic, or a temporary financial crisis (such as short-term unemployment or illness). Upon receipt of this evidence, the housing provider is required to make a determination on the applicant’s eligibility for tenancy based on the totality of the circumstances. The provider must include a detailed explanation of this determination.

Prohibited Information

The following information may not be considered in this individualized assessment:

- Debt to income ratios;
- Lack of credit history or rental history;
- Eviction(s) or housing court history;
- Guarantors or co-signers, with the exception of not-for-profits or government entities acting on behalf of their clients;
- Home visits or representations of the applicant's living situation; or
- Outreach to current or previous landlords, neighbors or others associated with the applicant's living situation, except (1) as specifically authorized by the Applicant to obtain a current or previous landlord's written record of rent payment, or (2) to obtain information from a current or previous landlord regarding Applicant's history of major lease violations (e.g., nonpayment of rent or use of premises for illegal purposes), which does not require the authorization of the Applicant. To the extent that a current or previous landlord provides information that does not rise to the level of a major lease violation, such information must be disregarded. If a current or previous landlord reports a major lease violation, the Applicant must be afforded the opportunity to present documentation affirming the existence of any mitigating factors, as set forth in Part II above (e.g., financial hardship caused by the COVID-19 pandemic), even if a credit check is not performed.

Additional Responsibilities Under Federal and State Law

Please note that HCR's credit policy does not waive any rights or responsibilities under federal, state or local law, including, but not limited to the New York State Housing Stability and Tenant Protection Act of 2019 and the Fair Credit Reporting Act (FCRA) or other federal law. Among other provisions, FCRA requires that individuals (1) must be told if information in their credit report has been used against them, (2) must be allowed access to their credit report, and (3) have the right to dispute inaccurate or incomplete information contained in a credit report. For more information on FCRA, please review the following document produced by the Federal Trade Commission. (<https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>).

Recordkeeping Requirements

HCR's policy concerning credit history requires that the housing provider maintain records concerning (a) the number of applications where the applicant had a negative credit history (those below 580 or 500 for homeless individuals), and (b) the number of those applicants with negative credit histories accepted or denied as tenants, as well as completed worksheets for all accepted and denied applicants showing how the determination was made. During your compliance monitoring site visits conducted by HCR's Asset Management Unit (AMU), the AMU staff will be verifying that the housing provider can demonstrate compliance with HCR's guidelines for assessing applicants with negative credit histories.

Fees

Please note that pursuant to the New York State Housing Stability and Tenant Protection Act of 2019, the only fees that may be charged to an applicant in connection with the processing or review of an application are credit check and background check fees. The law provides that these fees may not exceed \$20 (cumulatively) per application, or the actual cost of conducting

these checks, whichever is less. The law also provides that this fee must be waived if an applicant can provide the housing provider with a copy of a background check and credit check conducted within the prior 30 days.

In addition, the housing provider must provide applicant with a copy of the background/credit check that was used to assess their eligibility.