



## **New Hampshire Housing Finance Authority Criminal Screening Policy Guidance/Template**

### **Introduction**

In 2016, the U.S. Department of Housing and Urban Development (HUD) issued guidance that provides considerations for housing providers related to the use of criminal history in tenant screening and the Fair Housing Act.<sup>(1)</sup> In 2022, HUD's Fair Housing and Equal Opportunity (FHEO) office provided further implementation guidance for the earlier guidance.<sup>(2)</sup>

Owner/agents are advised to read and follow the HUD guidance. The general principles from these combined documents are described in further detail below. Based on HUD's guidance, NH Housing is providing a sample criminal screening policy at the end of this document. Owner/agents may choose to, but are not required to, use the sample policy. Owner/agents should consult their own attorney in finalizing their policy.

New Hampshire Housing is providing this information and the sample policy for two reasons. First, NH Housing wants to remind owner/agents of their obligation to comply with Fair Housing law, including how they review applicants with a criminal history. Second, NH Housing wants to encourage tenant-selection practices that provide applicants with a criminal history an equal opportunity to find housing, which is key for those individuals to re-enter society and live a productive and stable life. As HUD states: "Decent, stable, and affordable housing is a critical prerequisite to health, safety, education, jobs, and the economy. Unfortunately, individuals with a criminal history consistently face daunting barriers to obtaining and maintaining housing."

Studies show that the criminal justice system, including in New Hampshire, disproportionality impacts people of color and people with disabilities. An informed and compliant tenant-selection policy will help provide more housing opportunities to people; reduce liability risk to Owners and Agents under Fair Housing law; and help avoid the unintentional exclusion of qualified tenants.

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<sup>(1)</sup> Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions: April 4, 2016.

[https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

<sup>(2)</sup> Memorandum on the Implementation of the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions: June 10, 2022.

<https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf>

## HUD Guidance on Criminal Screening

HUD Guidance:

*a. Arrests.* HUD makes it clear that a policy that rejects applicants because of arrests (without conviction) is not valid under fair housing laws.

*b. Convictions.* While a conviction is usually evidence of criminal conduct, HUD states that a housing provider's screening policy cannot simply exclude all applicants with convictions. Instead, to avoid liability under fair housing laws, the policy must accurately distinguish between convictions for criminal conduct that indicate a demonstrable risk to tenant safety and/or property and those that do not.

HUD guidance advises that a policy that considers mitigating information (as opposed to a policy with blanket exclusions) is less likely to be in violation of fair housing laws. Therefore, HUD would recommend an individualized assessment be conducted for each applicant who may be rejected due to criminal screening. HUD suggests that housing providers consider the following factors:

- a. The facts or circumstances surrounding the criminal conduct;
- b. The age of the individual at the time of the conduct;
- c. Evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and
- d. Evidence of rehabilitation efforts.

Further, HUD stresses the importance of applying uniform standards consistently to all applicants.

## NH Housing's Recommended Criminal Screening Policy Template

All persons 18 years and older listed on the application (or requesting subsequent permission to live in the unit) must complete a State of New Hampshire criminal record release form. In addition, the Owner/Agent may require a similar release for any state where the applicant has resided in the past seven years. Felony criminal records will be reviewed for a period of up to seven years for any history of criminal activity involving physical violence against persons, malicious destruction of property, and drug related criminal activity. Any history of habitual criminal convictions that would adversely affect the health and safety of other tenants or illustrate a disrespect of property rights will also be reviewed – this review will be a 7-year lookback for felony convictions and a 2-year lookback for misdemeanor convictions.

In screening applicants, we shall not reject an applicant solely for any of the following reasons.

- i. Any arrest in an inactive case that did not result in conviction;
- ii. Participation in or completion of a diversion or a deferral of judgment program, including stays of adjudication and continuances for dismissal or without prosecution;
- iii. Any conviction that has been vacated or expunged, or for which the applicant received a stay of imposition of sentencing and complied with the terms of the stay;
- iv. Any conviction for a crime that is no longer illegal in the state of New Hampshire;
- v. Any conviction or any other determination or adjudication in the juvenile justice system, except for violent offenses;
- vi. Any conviction for a class B misdemeanor offense, prostitution, alcohol related crimes, or low-level property crimes (theft) (unless there is a pattern of habitual convictions);
- vii. Any conviction for misdemeanor offenses for which the dates of sentencing are older than two (2) years (unless there is a pattern of habitual convictions); or
- viii. Any criminal conviction for felony offenses for which the dates of sentencing are older than seven (7) years (unless there is a pattern of habitual convictions).

We may deny an applicant who has been convicted of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802) or for those same offenses that mandate denial of tenancy in federally assisted housing subject to federal regulations, including but not limited to, when any member of the household is subject to a lifetime sex offender registration requirement under a state sex offender registration program.

An applicant may provide additional information with a completed application to explain, justify, or negate the relevance of potentially negative information that may be revealed by screening and that the applicant believes to be relevant to the applicant's predicted performance as a tenant. The review of this information may occur after reviewing the screening report to assist the owner/agent in considering all circumstances related to applicant's history. The

Owner/Agent must evaluate this information before a final determination of acceptance or denial of applicant and must also consider:

- a. The nature and severity of the incidents that would lead to a denial;
- b. The number and type of the incidents;
- c. The time that has elapsed since the date the incidents occurred;
- d. The age of the individual at the time the incidents occurred; and
- e. The extent to which the applicant has taken all reasonable steps to prevent or mitigate any negative history.

If an applicant is denied based on any criminal conviction record, the Owner/Agent will provide a written notice of the determination and permit the applicant to submit relevant mitigating information at that time with a request for reconsideration. This notice shall include the applicable sections of the tenant selection policy. The Owner/Agent will provide a summary of their individualized assessment and consider the nature, severity, and recency of the conviction(s), along with evidence that the applicant has taken steps to reform the adverse behavior that formed the basis for the denial.

If an applicant requires a reasonable accommodation based on a disabling condition, the applicant will be provided with a request for reasonable accommodation/modification form. The Owner/Agent will respond to the request within ten (10) business days. If additional information is required, Owner/Agent will respond within an additional ten (10) business days after receiving all requested information. All decisions to grant or deny reasonable accommodations/modifications will be communicated in writing, and that notice shall include a copy of the applicable tenant selection policy.