

# ATTACHMENT C-1

## TENANT SELECTION PLAN STANDARDS

### PURPOSE

The City of Madison encourages development teams to embrace the idea that well-designed affordable housing programs can alleviate conditions that often contribute to adverse tenant credit histories, rental histories, and/or criminal convictions. Access to stable and affordable housing can create conditions in which prior “deficiencies” are no longer a reliable predictor of future tenancy outcomes. This is only possible if these prior “deficiencies” are not allowed to pose insurmountable barriers to accessing affordable housing that contributes to stable living conditions.

Properties receiving Community Development Division (CDD) funding must provide a written Tenant Selection Plan (TSP). In accordance with the Loan Agreement, the TSP must be submitted to CDD in advance of financial closing and is subject to City approval. TSPs must adhere to all federal, state, and local fair housing requirements and comply with all applicable laws and regulations, including but not limited to CDD program requirements, the Fair Housing Act, and Madison General Ordinances.

It is expected that Tenant Selection Plans be generally designed to **screen-in** prospective tenants from the relevant supportive housing target population(s) through use of inclusive, low barrier screening criteria. TSPs are most effective when developed in close coordination with Supportive Service Provider(s) or Coordinator(s) who will be providing appropriate referrals and coordinating resident support services at the property.

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### GENERAL STANDARDS

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#### **Written Tenant Selection Plan (TSP)**

- TSP should reflect a collaborative effort between developer, borrower, property management, and supportive service provider.
- TSP must be made available to applicants before application.

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#### **Wait List**

- TSP must utilize a wait list in the order of their application.
  - Priority set-asides must have a separate wait list or a prioritization mechanism.
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<b>Age Restrictions</b>	<ul style="list-style-type: none"> <li>▪ TSP must indicate any age-related criteria.</li> </ul>
<b>Veterans</b>	<ul style="list-style-type: none"> <li>▪ TSP must describe any prioritization of veterans.</li> </ul>
<b>Violence Against Women Act (VAWA) 2013 Reauthorization</b>	<ul style="list-style-type: none"> <li>▪ All properties must comply with VAWA and all requirements in the 2013 reauthorization.</li> <li>▪ TSP should clearly state that VAWA protections cover persons of all gender identities and sexual orientations, whether actual or perceived.</li> </ul>
<b>Violence Against Women Act (VAWA) 2013 Reauthorization</b>	
<b>Occupancy Standards</b>	<ul style="list-style-type: none"> <li>▪ TSP should clearly state the minimum number of people allowed for each unit type.</li> <li>▪ At minimum, occupancy should be one person for each bedroom, unless reasonable accommodation is required.</li> </ul>
<b>Fees</b>	<ul style="list-style-type: none"> <li>▪ Current Wisconsin residents may not be charged for any costs incurred in conducting a criminal records review.</li> <li>▪ Applicants cannot be required to pay holding fees, earnest money, or any other payments towards securing housing (beyond the allowable maximum credit check/application fee as defined in ATCP 134.05(4)) until lease signing.</li> </ul>
<b>Security Deposits</b>	<ul style="list-style-type: none"> <li>▪ Maximum allowable deposit requirements: <ul style="list-style-type: none"> <li>○ Option 1: maximum security deposit equal to ½ month's rent as standard, or 1 month's rent for conditionally approved applications.</li> </ul> </li> <li>OR</li> <li>○ Option 2: maximum security deposit equal to a set amount applied equally to all applicants, such that the deposit approximates one-half month's rent as standard, or 1 month's rent for conditionally approved applications.</li> <li>▪ Rental payments guaranteed through an ongoing rent subsidy (e.g. Housing Choice Vouchers, VASH, Project-Based Vouchers, Section 811, etc.) the lowest-barrier option shall be required.</li> </ul>
<b>Installment Payment Plans</b>	<ul style="list-style-type: none"> <li>▪ Security deposits for units at/or below 60% AMI, or for which prospective tenants will receive case management services or a rent subsidy, must include an installment payment option.</li> <li>▪ The plan must require payment of no more than one-half of the deposit at lease signing, with the balance spread out over 4 months.</li> </ul>

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**Reasonable Accommodations and Independent Living**

- Reasonable accommodation must be provided for applicants with disabilities.
- TSPs must not create additional barriers, such as the ability to live independently.

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**Notice of Denial and Appeal Process**

**Notice of Denial and Appeal Process**

- Written notice is required, unless waived by the applicant in writing.
- Notice must clearly explain the TSP criteria the applicant failed to meet.
- Notice must inform applicants of their appeal rights.
- Housing providers should consider any mitigating information during the appeals process. Supporting documentation must be accepted in any reasonable format.

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**Tenant Based Rental Assistance (TBRA)**

- TBRA must be accepted.
- May not refuse to lease to applicants with TBRA, Housing Choice Vouchers, Rental Assistance or any form of subsidy.

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**ELIGIBILITY CRITERIA**

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**Income Criteria**

- TSP must clearly describe minimum and maximum income standards.
- Applicants cannot be denied on the basis of income that is below minimum requirements if the applicant can document the payment of an approximately equivalent rent to income ratio over a 2-year period or have a rent subsidy.
  - Proof can include letter(s) from prior landlords, documented proof of payments (e.g., rent receipts, cancelled checks, regular deductions listed on a bank statement), or other reasonable methods.
- An applicant awarded a rent subsidy must be given the opportunity to use it.
- Monthly household income requirements should not exceed 2.5 times the monthly rent.

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**Credit Score and/or Report**

- The TSP and application materials should include clear notice of whether a credit report is required for application.
  - Applicants must **not** be denied on the basis of:
    - An applicant's credit score. Information from a credit report that indicates fitness as a tenant can be utilized.
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**Credit Score and/or Report**

- An applicant's substandard credit score if the applicant has a cosigner who does not have a satisfactory credit score or if the applicant is enrolled in or completed a credit repair program or is enrolled in a housing program providing supportive services.
- For insufficient credit history unless the applicant intentionally withholds credit history information that might form a basis for denial.
- For information on a credit report that has been formally disputed, describes a claim that is in repayment, or is substantially unrelated to prior housing obligations.
- If an applicant has an outstanding obligation to a prior landlord for rent or damages, or to a utility company, provided the applicant has entered an approved payment plan with the creditor and is current.
- The property manager must inform an applicant if a lease application is denied based on information obtained from a credit report and, within 60 days, provide a copy of the credit report at no cost.

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**Landlord or Housing History**

- An applicant shall **not** have an application denied for:
  - An eviction filing that was dismissed or that resulted in a judgement in favor of the applicant.
  - An eviction filing which was settled with no judgement or a writ of recovery/stipulated dismissal was issued.
  - Eviction filing that resulted in a judgement for the landlord that occurred more than 2 years before the receipt of the applicant's rental application.
  - Insufficient rental history, unless management has definitive records indicating that the applicant has withheld rental information in bad faith.

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**Domestic Violence Protections**

- No applicant may be denied on the basis that the applicant or a member of the household is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant otherwise qualifies for admission.
  - Circumstances that may arise for a person impacted by abuse include:
    - Poor credit history resulting from a perpetrator using the victim's name to open or access accounts, loans, and utilities.
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**Domestic Violence  
Protections**

- A victim's inability to pay medical bills resulting from the abuse or interference with a victim's ability to acquire or maintain employment.
- Poor rental history attributable to a perpetrator's actions such as property damage, noise complaints, missed or late rent/utility payments, or drug-related activity.
- Legal or criminal issues arising from a perpetrator forcing the victim to engage in criminal behavior such as sex work, drug use or sale, or crimes committed by the victim to defend themselves or a third party from abuse.

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**Criminal Conviction  
Record Criteria**

- Must clearly be described in the TSP.
  - An applicant may not be denied **solely** based on any of the following:
    - An arrest that has not resulted in a conviction.
    - Participation in court-sanctioned diversion or deferral of judgement program, including stays of adjudication and continuances for dismissal without prosecution.
    - A conviction for an offense that is no longer illegal in Wisconsin or the City of Madison, regardless of the time elapsed.
    - A conviction which has been vacated or expunged or for which the applicant received a stay of imposition and sentencing and complied with the terms of the stay.
    - A conviction, determination, or adjudication within the juvenile justice system.
    - A conviction for any Misdemeanor offense unless the conviction was for an offense that has a "substantial relation to tenancy," but only if the conviction date was less than 2 years before the date of application.
    - A criminal conviction for a Felony offense where the conviction date was less than 5 years from the date of application, unless the conviction was for an offense that has a "substantial relation to tenancy. It may serve as justification for denial only if the conviction date was less than 10 years from the date of application.
  - **Definitions:**
    - "Violent criminal activity" is defined in 24 CFR § 5.100 and means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial
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**Criminal Conviction  
Record Criteria**

- enough to cause, or be likely to cause, serious bodily injury or property damage.
- “Drug-related criminal activity” is defined in Wis. Stat. 704.17(3m)(a)(2) and relates only to the manufacture or distribution of a controlled substance. “Drug-related criminal activity” does not include convictions for possession or use of a controlled substance, which may not serve as a basis for denying an applicant regardless of the date of conviction.
- Federal regulations on properties that receive federal assistance take precedence over these provisions.
- Tenant selection and application **criteria for Supportive Housing Units** should incorporate all reasonable flexibility to ensure authentic housing opportunities are available to the intended target populations.
- See Attachment A.

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## GENERAL POPULATION

The TSP must establish target populations and/or set-asides that do not diminish or obstruct fair housing obligations. The TSP waitlist section must indicate which populations are prioritized.

Any referral process, limits to tenant eligibility, or targeting/prioritization detailed in the TSP must comply with applicable nondiscrimination requirements in federal, state, or local law. A process that affords preference to specific populations does not violate nondiscrimination requirements if such preference is consistent with limitations or priorities that accompany the receipt of federal financial support. Any referral process that targets a specific population must be explicitly described and approved by the City.

## SERVING HOUSEHOLDS THAT ARE EXPERIENCING OR AT-RISK OF HOMELESSNESS

The City of Madison is committed to housing stability for all residents. Households at risk of or currently experiencing homelessness often encounter barriers to housing that go beyond their ability to pay. The City strives to create cohesive partnerships between developers and supportive service partners for the benefit of households with difficult credit, rent or criminal backgrounds. Supportive housing programs are most successful when they make housing opportunities available despite these challenges. It is expected that funded developments will adopt lenient, inclusive, and flexible policies that represent the unique circumstances of these households. It is expected that these policies will reflect a collaborative effort between developer, borrower, property manager, and service provider(s). Housing providers should understand that:

1. Poor rental and credit histories may be evidence of personal financial stress that can be alleviated through access to affordable and supportive housing. For supportive units, rental and/or credit histories may not be reliable indicators of future behavior. Screening for SH Unit tenants should consider factors such as the availability of a support structure, services to be provided, and access to rent subsidies.
2. Criminal convictions can be more prevalent among people that experience homelessness. Not all convictions involve behaviors that predict one's success as a tenant, nor should past offenses forever preclude someone from gaining access to housing. It is expected that referrals to SH units from Coordinated Entry or other programs serving people experiencing homelessness will employ screening processes that differentiate between past criminal convictions that can reasonably be expected to affect tenant performance and those that cannot. For more information, [HUD provides guidance on fair housing and individualized screening via memorandum](#).

## Attachment A

### CRIMINAL CONVICTION TABLE

	<b>Misdemeanors</b>	<b>Felonies</b>
<b>Can Deny:</b>	<ul style="list-style-type: none"> <li>• “Violent criminal activity” as defined in 24 CFR § 5.100 up to 2 years post-conviction</li> <li>• “Drug-related criminal activity” as defined in Wis. Stat. 704.17(3m)(a)(2) up to 2 years post-conviction</li> </ul>	<ul style="list-style-type: none"> <li>• Felony conviction up to 5 years post-conviction; except:</li> <li>• Felony “Violent criminal activity” as defined in 24 CFR § 5.100 up to 10 years post-conviction, and</li> <li>• Felony “Drug-related criminal activity” as defined in Wis. Stat. 704.17(3m)(a)(2) up to 10 years post-conviction</li> </ul>
<b>Cannot Deny:</b>	<ul style="list-style-type: none"> <li>• Any misdemeanor not involving “violent criminal activity” or drug-related criminal activity.</li> </ul>	<ul style="list-style-type: none"> <li>• Any felony conviction not meeting the violent or drug-related definition more than 5 years post-conviction</li> <li>• Any felony conviction more than 10 years post-conviction</li> </ul>