

TENANT SELECTION PLAN STANDARDS

Purpose

The City of Madison encourages Development Teams to embrace that affordable housing programs are intended to, and often do, alleviate conditions that may have previously led to adverse tenant credit histories, rental histories, and/or criminal convictions for some households. Access to stable and affordable housing creates conditions where prior “deficiencies” are not a primary predictor of future tenancy outcomes. However, this is only possible if these prior “deficiencies” are not insurmountable barriers to accessing the very affordable housing that provides more stable living conditions.

All properties receiving City of Madison Community Development Division (CDD) funding must have a written Tenant Selection Plan (TSP) or Resident Selection Criteria. In accordance with the Loan Agreement, the TSP must be submitted to CDD in advance of financial closing, if revised since application, and is subject to City approval. TSPs must adhere to all federal, state, and local fair housing requirements as well as comply with all applicable laws and regulations, including but not limited to program requirements, the Violence Against Women Act (VAWA), the Fair Housing Act, Wis. State Statutes, and Madison General Ordinances. Other funders may also require additional details. This document is not intended to be a complete list or to supersede other, more inclusive funder requirements.

This document is provided to assist Development Teams, including Property Management, in drafting a Tenant Selection Plan that meets the City’s expectations for both the general applicant pool and the Integrated Supportive Housing Units (“SH Units”). In accordance with the explicit goal and requirements of this RFP, it is expected that Tenant Selection Plans be further 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 this development. This Attachment will be incorporated into the Loan Agreement.

The TSP should clearly and quantifiably identify the project's criteria regarding the following categories, bearing in mind that criteria must be designed to provide fair housing opportunity to those who face traditional barriers to access:

Application and Lease-Up Standards

1. **Written Tenant Selection Plan (TSP).** The TSP should be developed as a collaborative effort between all parties (developer, Borrower, property management, and supportive service provider). The written TSP must be made available to applicants, if requested, before they apply and/or pay an application fee.
2. **Wait List.** The TSP must provide for the selection of tenants from a written Wait List in the order of their application. Applications for SH Units and/or units with stated priority set-asides must have either a separate Wait List or a prioritization mechanism, as detailed in AHF loan agreements. All descriptions of the Wait List in the TSP must detail prioritization criteria, if applicable.
3. **Eligibility Criteria.** The TSP must provide clear information on eligibility criteria as described below. It must also clearly state processes and criteria that will be used to evaluate applications.
 - a. **Income criteria.** The TSP must detail clear minimum and maximum income requirements for all applicants.
 - i. Applicants shall not be denied for applying with incomes below minimum income requirements if applicant can demonstrate paying an approximately equivalent rent to income ratio for 2 years, or if they are the recipient of a tenant-based rental subsidy. Applicants that are recent recipients of a tenant-based rental subsidy must be afforded opportunities to utilize said assistance. Demonstrating ability to pay a similar rental amount can be presented to property management in any reasonable method, including letter(s) from prior landlords and/or other proof of payment (e.g. documented, regular deductions as listed on a banking statement).
 - ii. Developments should not have income requirements greater than 2.5 times the monthly rent.

- b. **Occupancy criteria.** Include definitions of the minimum number of persons allowed to occupy each unit in the project, subject to local state, and federal laws. Each unit must be leased to a household comprised of a minimum of one person per bedroom at the time of occupancy unless reasonable accommodations are required.
- c. **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 for:
- i. Credit score alone, although information within a credit report that indicates fitness as a tenant (e.g., number of accounts and amount in collections) can be utilized in application review
 - ii. Credit score, provided that the applicant has a cosigner, and/or is enrolled in or has documentation of completing a credit repair program, and/or is enrolled in housing program providing supportive services
 - iii. Insufficient credit history, unless the applicant, withholds credit history information in bad faith that might otherwise form a basis for denial
 - iv. Information on a credit report that has been formally disputed, is in repayment, or is substantially unrelated to prior housing obligations;
 - v. The applicant owing money to a prior landlord for rent or damages, or to a utility company, provided the applicant has entered into a payment arrangement with the creditor and is current on the repayment arrangement.

The property manager must provide notice to applicants if a denial is based on information obtained from the credit report, and must make it known to the applicant that they may request a copy of the credit report that was ordered, at no cost, within 60 days of the notice of denial.

- d. **Landlord or housing history,** including prior eviction judgments. A prospective tenant/applicant shall not have an application denied for any of the following:
- i. Any eviction filing that was dismissed or resulted in a judgement in favor of the applicant
 - ii. Any eviction filing which was settled with no judgement or writ of recovery issued (e.g. stipulated dismissal)
 - iii. Any eviction filing that resulted in judgement for the landlord more than 2 years before the applicant submits the application
 - iv. Insufficient rental history, unless management has definitive records indicating that the applicant withholds rental information in bad faith that would otherwise be a basis for denial
- e. **Notice of Denial & Appeal Process.** Written notice is required, unless waived by the applicant in writing, and must include an explanation of the TSP criteria the applicant failed to meet. The notice of denial must inform applicants how to seek and file an appeal, including what documentation could correct the basis for denial (e.g. stating the reason for denial and providing a list of potentially acceptable documentation) and timeline for processing. During the appeals process, housing providers should consider additional mitigating information as available. Appeals and supporting documentation must be accepted in any reasonable format (e.g., electronically, hand-written, etc.)
- f. **Domestic Violence.** All properties must comply with the Violence Against Women Act (VAWA), including all requirements of the 2013 reauthorization. Among other requirements, VAWA requires that no applicant be denied admission on the basis that the applicant or member of the applicant's household is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission. It should be clearly stated in the TSP that VAWA protections cover persons of all gender identities and sexual orientations, whether actual or perceived. Examples of circumstances related to abuse include, but are not limited to:
- i. Poor credit history resulting from the perpetrator using the victim's name to open accounts, loans, utilities, and failing in the ability to pay medical bills resulting from the abuse or forcing the victim to work without pay
 - ii. Poor rental history attributable to the perpetrator's actions such as property damage, noise complaints, missed or late rent/utility payments, or drug-related activity
 - iii. Criminal grounds due to the 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

- g. **Criminal conviction record criteria** must be detailed in all TSPs, including defining the number of years that will be considered in a criminal background search. Applicants must not be charged a fee for a criminal records search if they are a current resident of Wisconsin. TSPs should clearly define what information will be collected for the use of screening an applicant's criminal history.

An applicant may not be denied based on any of the following:

- iv. Arrest that has not resulted in a conviction
- v. Participation in diversion or deferral of judgement programs, including stays of adjudication and continuances for dismissal without prosecution
- vi. Conviction for a crime that is no longer illegal in the State of Wisconsin or the City of Madison, regardless of time elapsed from date of conviction
- vii. 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
- viii. Conviction, determination, or adjudication in the juvenile justice system
- ix. Conviction for any Misdemeanor offense, unless the offense is substantially related to tenancy and the date of conviction is within **2** years of the date of application.
- x. Criminal conviction for any Felony offense for which the date of conviction is more than **5** years from the date of application, unless the offense has a “substantial relation to tenancy”.
- xi. Conviction for any offense for which the date of conviction is more than **10** years from the date of application, the Maximum Lookback Period.

Definition: “Substantial relation to tenancy” in this document is to mean only that the offense is violent or drug-related criminal activity as defined by the following regulations:

- i. “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 enough to cause, or be likely to cause, serious bodily injury or property damage.
- ii. “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.

Criminal Conviction Table

	Misdemeanors	Felonies
Can Deny:	<ul style="list-style-type: none"> • “Violent criminal activity” as defined in 24 CFR § 5.100 up to 2 years post-conviction • “Drug-related criminal activity” as defined in Wis. Stat. 704.17(3m)(a)(2) up to 2 years post-conviction 	<ul style="list-style-type: none"> • Any felony with a date of conviction 5 years or less from date of application • Felony “Violent criminal activity” as defined in 24 CFR § 5.100 up to 10 years post-conviction • Felony “Drug-related criminal activity” as defined in Wis. Stat. 704.17(3m)(a)(2) up to 10 years post-conviction
Cannot Deny:	<ul style="list-style-type: none"> • Any misdemeanor with a date of conviction older than 2 years from date of application 	<ul style="list-style-type: none"> • Any felony not meeting the violent or drug-related definition above with a date of conviction older than 5 years from date of application

Property Management may additionally deny applicants in developments receiving federal assistance only for those criminal activities required by Federal regulations, which may include, but is not limited to, violent criminal activity as defined in 24 CFR § Part 5.100 or subject to a sex offender registry program.

- h. Tenant selection and application **criteria for Supportive Housing Units** should include additional, flexible criteria, as appropriate to ensure authentic housing opportunities exist for the intended target populations. These criteria should be further developed in coordination with the development's supportive service coordinator/partner, and be explicitly designed to be inclusive in screening-in prospective tenants for which the partnership was designed.
4. **Security Deposits.** The housing provider shall implement a reasonable security deposit policy that does not create a financial impediment or barrier to entry for low-income households to access housing, especially prospective residents with supportive service needs. To ensure such reasonableness, the CDD has established the following maximum allowable deposit requirements:
 - a. Option 1: Maximum Security Deposit equal to ½ month's rent as standard, or 1 month's rent for conditionally approved applicants
 - b. 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 applicants
 - iii. (e.g. a \$500 standard security deposit as standard and a \$1,000 security deposit for conditionally-approved applications would be considered to be reasonable)

For units and/or tenants with rental payments guaranteed through an ongoing rent subsidy (e.g. Housing Choice Vouchers, VASH Vouchers, Project-Based Vouchers, Section 811, or other similar program), the lowest-barrier option of the above shall be required.

In addition to the options above, any security deposit requirements for units designated at a rent level less than or equal to 60% AMI, or for any unit for which the prospective tenant has case management or a rental subsidy, must have an installment payment plan offered to them. Installments for security deposit must require no greater than one-half of the deposit to be collected at lease signing, with monthly installment payments of an amount no more than one-quarter of the remaining deposit added to monthly tenant payments until such time that the security deposit balance has reached the full, contracted amount.

At no point shall developments require that applicants place a holding fee, earnest money, or any other payment towards securing housing (beyond the allowable maximum credit check/application fee as defined in ATCP 134.05(4)) until time of lease signing.

5. **Applicants with Disabilities** must be provided reasonable accommodation and that information must be provided clearly to applicants within the TSP and in communication to the prospective tenant. Property Management should also make sure that TSPs do not raise additional barriers to individuals with disabilities, such as the ability to "live independently".
6. **Tenant-Based Rental Assistance** must be accepted by developments. This must be clearly stated within the TSP. Developments are not allowed to refuse to lease a unit to, or otherwise discriminate against, prospective residents on the basis of source of income, which includes Housing Choice Vouchers, Rental Assistance, or any other form of tenant-based rental subsidy whether temporary or permanent, including use of such funds/programs previously in their rental history.

Prioritizing Targeted Populations

A. General Population

The TSP must establish target populations consistent with those identified in the development's approved LIHTC application submitted to WHEDA, and in the signed Supportive Services Agreement(s), as applicable. The TSP must establish targeted populations and/or set-asides that do not diminish or obstruct the Project's fair housing obligations. The TSP waitlist section must additionally indicate if certain tenant populations will be given a higher priority for units than others.

Any referral process, limitation to tenant eligibility, or targeting/prioritization detailed in the TSP must not violate any nondiscrimination requirements in federal, state, or local law. However, a process that limits preference to specific populations does not violate nondiscrimination requirements so long as that housing is restricted by age or if the housing receives funding from a federal program that limits or prioritizes eligibility to a particular segment of the population and if that limit or preference is tailored to serve that segment of the population.

Among other requirements, it should be especially noted that targeting a designated population does not violate nondiscrimination requirements or fair housing laws should the designated population need supportive services being coordinated and/or provided at the development in order to reasonably obtain and maintain housing. Any referral process that targets any designated population must be explicitly described and approved by the City at point of application and term sheet contracting.

B. Serving Households that are Experiencing or At-Risk of Homelessness

The City of Madison is committed to furthering housing stability for all residents, including the stated goal to Prevent and End Homelessness. Households at risk of or currently experiencing homelessness often encounter barriers to housing that extend beyond their ability to pay, and it is a stated policy of the City's AHF funding to create cohesive partnerships between developers and supportive service partners to house individuals and families with poor credit, poor rental histories, and/or prior criminal convictions, after accounting for the exemptions detailed within this document. Supportive housing programs are successful only when they are designed and implemented so that these histories do not raise insurmountable barriers to housing opportunities.

To the extent permitted by rules and regulations associated with CDD-funded developments, it is expected that developments will adopt lenient, inclusive, and flexible criteria within either the primary or a supplemental TSP for leasing SH Units. The development of a tenant selection plan for these units must include consultation with supportive service coordinators and providers, and should be a collaborative effort between developer, Borrower, property manager, and service provider(s). As TSPs are developed in this collaboration, please note the following:

1. Poor rental and/or credit histories may be evidence of personal financial stress that will be alleviated by having access to affordable and supportive housing opportunities. For supportive units, rental and/or credit histories are not reliable indicators of future behavior. SH Units must allow for mitigating information as a component of the application screening process, and take into account factors such as support structure, services to be provided, whether the tenant has access to rental subsidy, etc. For example, requiring specific credit scores or a year of rental history would be considered an unreasonable barrier for supportive service units and will not receive CDD approval.
2. Criminal convictions can be especially pronounced in populations that experience homelessness. It is expected that for any referrals to supportive service units that place applicants from Coordinated Entry or other programs serving people experiencing homelessness use individualized screening processes to distinguish between prior criminal convictions that indicate a demonstrable risk to tenant safety and/or property and one that does not, as described in Section H above. For more information, HUD provides guidance on fair housing and individualized screening via memorandum at: <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>

C. Serving Other Prioritized or Designated Populations

Veterans

Proposals prioritizing veterans must be described in the TSP consistent with the applicable WHEDA Qualified Action Plan, as applicable.

Age-Restrictions

The TSP must also identify any **age-restriction**, or lack thereof, of tenancy for the project. Acceptable age-restrictions may include "family" housing for units without an age-restriction; "active- adult" or "senior" housing for units restricted to households with at least one member aged 55 and above; and "elderly" housing for units restricted to households aged 62 and above.

The City of Madison and the U.S. Department of Housing and Urban Development (HUD) stress the importance of applying TSP standards consistently to all applicants.