

The Ohio Housing Finance Agency (OHFA) provides financing to facilitate the development and rehabilitation of affordable housing. As part of our mission, OHFA seeks to reduce barriers to housing and to further that goal, all properties financed through OHFA must have a Tenant Selection Plan (TSP). The TSP Guidelines provide guidance for property owners/management agents on what must be included in a project's TSP. **Note it is acceptable for owners to call the TSP a Resident Selection Plan or Qualifying Criteria.**

Compliance with the Mandatory Elements in these TSP Guidelines is a requirement for all projects funded by OHFA. The Tenant Screening Criteria section contains recommended best practices.

For projects that are subject to specific tenant screening requirements because of federal obligations or local laws/ordinances, owners/management agents should follow those requirements. These guidelines are not intended to be a complete list or to supersede those requirements. Consult with an attorney to determine if your TSP complies with all applicable laws and regulations, program requirements, the Fair Housing Act, and the Violence Against Women Act (VAWA).

If a project receives HUD Section 8 or HOME/NHTF funds from another entity, or any other funding source from an entity that is not funded by OHFA, OHFA will not review the TSP for compliance with those programs and instead encourages owners/agents to connect with the administering entity to determine any TSP expectations.

OHFA will review TSPs during the Compliance Next Steps (CNS) process [Compliance Next Steps Policy](#) and communicate with owners/management agents comments and/or questions based on the content of the TSP. OHFA will not formally approve the TSP. Rather, OHFA's review will help increase transparency of the TSP and confirm OHFA's TSP Guidelines are followed. It is important to note the owner is responsible to ensure the TSP is compliant with program rules and federal regulations. TSP's may also be reviewed as part of OHFA's compliance audit process.

## MANDATORY ELEMENTS

Items listed below must be included in the TSP:

1. **Written Tenant Selection Plan.** Owners must have a written TSP. The plan must be readable and accessible for those with disabilities and made available to applicants before they apply and/or pay an application fee. The owner must provide meaningful access to the information for people with limited English proficiency and people with disabilities.
2. **Applications and Waiting List.** The TSP must describe application processes and any waiting list process and preferences.
3. **Occupancy Standards.** Owners must develop and follow occupancy standards that take into account the size and number of bedrooms needed based on the number of people in the family. These standards must be included in the TSP
4. **Income and Eligibility.** The TSP must provide clear information on eligibility criteria such as income restrictions and any program-specific requirements. It must also clearly state the processes and criteria that will be used to evaluate applications. If the development receives funding to serve a specific population, such as individuals eligible for supportive housing or senior housing, the TSP's evaluation criteria must be structured in a way that will consider the specific barriers faced by these households. For developments funded with HUD Section 811 Project Rental Assistance, owners must use the [811 TSP Addendum for 811 units](#). For developments that receive Ohio Department of Medicaid Subsidy Demonstration (ODMSD) program, owners must use the [ODMSD TSP Addendum](#) for the ODMSD units. . In the event that a development utilizes TSP evaluation criteria that leans more favorable to the tenant than the Ohio 811 TSP Addendum or ODMSD TSP Addendum, the development's TSP may prevail
5. **Tenant Screening/Credit Reports.** Some owners use consumer reports, such as tenant screening or credit reports, as part of the application process. The Federal Trade Commission (FTC) provides [guidance for housing providers](#) who use such reports. If the owner uses consumer reports, a full description of the owner's tenant screening criteria and process must be included in the TSP. FTC requires that when a housing provider takes an adverse action based on information in a consumer report, the housing provider must provide a notice to the applicant that includes but not limited to:
  - a. The name, address and telephone number of the credit reporting agency (CRA) that supplied the consumer report, including a toll-free telephone number for CRAs that maintain files nationwide;

- b. A statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give the specific reasons for it; and,
- c. A notice of the applicant's right to dispute the accuracy or completeness of any information the CRA furnished, and the applicant's right to a free report from the CRA upon request within 60 days.

Important: Owner is responsible to ensure any updated guidance from FTC is incorporated into the TSP.

- 6. **Notice of Denial.** The TSP must state that owners must give applicants a prompt written notice of denial that states the criteria the applicant failed to meet and the process to appeal. The notice must contain a specific statement as to the reason(s) for the decision. The applicant should understand from the statement why he or she is being denied. A specific timeframe needs to be established in the TSP to when the notice of denial should be given to the applicant.
- 7. **Appeals Process.** Housing providers must offer an appeals process and this process and timeline must be clearly stated in the TSP. The appeals process must allow an opportunity for applicants to provide information of mitigating circumstances or information that would demonstrate their ability to be a successful tenant, or correct inaccurate background check results. Housing providers must review all information provided to determine if the grounds for denial are a reliable indication of future tenancy performance. The housing provider must notify the applicant, in writing, of the outcome of the appeal. Note the person who makes the final decision on appeal is not the same person makes the original decision or is subordinate to that person. The determination of the appeal must be in writing and decided within a certain timeframe that is established in the TSP. The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. The decision should be factual evident relating to the individual circumstances of the family. A copy of the hearing decision shall be furnished promptly to the family.
- 8. **Domestic Violence.** Several federal programs, including HOME, Section 811 and the Low-Income Housing Tax Credit (LIHTC) program, are subject to the restrictions outlined in the Violence Against Women Act (VAWA). All projects funded with OHFA resources must comply with the requirements of the Violence Against Women Act (VAWA) set forth in [24 CFR part 5](#), subpart L. VAWA provides that an applicant "may not be denied admission...on the basis that the applicant...is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission." Similarly, adverse eligibility factors such as criminal activity or other adverse credit or rental history related to the abuse should not be considered. \*

Policies and practices that target or otherwise discriminate against any person because of their status as domestic violence survivors are likely unlawful under federal law. Examples of circumstances that are related to abuse include but not limited to:

- a. Poor credit history resulting from the perpetrator using the victim's name to open credit card accounts, loans, utilities, and failing to pay unpaid medical bills resulting from the abuse or forcing the victim to work without pay.
- b. Poor rental history attributable to the perpetrator's actions such as property damage, noise complaints, missed or late rent or utilities, or drug activity.
- c. 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 the abuse.

Owners are encouraged to include language that clearly explains the protections for victims of domestic violence in their TSPs.

- 9. **Applicants with Disabilities and Reasonable Accommodations/ Modifications.** Housing providers must not raise barriers for individuals with disabilities, such as imposing requirements that applicants be able to live independently. Additionally, housing providers must have a written reasonable accommodation policy and process for handling accommodation requests at application. The housing provider's TSP must state that the reasonable accommodation policy will be made available to all applicants, . , In the event that tenants need to request a reasonable modification, housing providers must have a mechanism in place to address the request and if rejected, the tenant must receive a notice that contains the specific reason(s) for the denial.
- 10. **Tenant-based Rental Assistance.** As a condition of receipt of funding through OHFA, owners are not permitted to refuse to lease a unit to, or discriminate against, a prospective tenant because the prospective tenant has a housing choice voucher (HCV) or any other form of tenant-based rental assistance. This requirement must be reflected in the TSP.

11. **Supportive Housing.** The TSP must clearly state the intended population for supportive housing units, and if applicable, the referral source for these units. If the Supportive Housing units are targeting people experiencing or at risk of homelessness, referrals should come directly from the County's or Balance of State Region's Coordinated Entry System. Supportive housing programs are intended to house people who often have poor credit histories, poor rental histories, criminal histories, or other barriers that may prevent them from accessing housing. Such programs are successful in serving the people for whom they are designed only when these issues do not raise insurmountable barriers to accessing housing. To the extent permitted by the rules and regulations related to the type of housing, housing providers are encouraged to adopt lenient and flexible criteria regarding these common barriers when creating a TSP. In addition, and in the course of tenant screening, consideration of mitigating factors either before or during an appeals process must also consider the extent to which supportive services will help alleviate the real or perceived risk of the negative screening factors. Further detail on these items are included in the Tenant Screening Criteria section below.
12. **Records Retention.** Owners have found it beneficial to track outcomes to help ensure the process is effective for tenant success. To help ensure that tenancy determinations and appeals processes are being conducted in a non-discriminatory manner, housing providers must retain records regarding applicant denials and appeals in addition to tenant records. Housing providers must periodically review such records for consistency and to identify areas where their records retention process could be improved. Records must be kept for a minimum of 3 years or in accordance with landlord-tenant laws as some programs may have longer retention requirements
13. **Student Rules.** For a household to be eligible to occupy a LIHTC unit, the household must meet the LIHTC program's student eligibility requirements ([8823 Guide, Chapter 17](#)). A household comprised entirely of all full-time students (of any age) who attend school at an educational organization is not eligible to occupy a LIHTC unit unless the household meets one of the five exceptions as stated in IRC § 42(i)(3)(D). Owners must include the five LIHTC student rule exceptions in the TSP. Owners must be mindful that the LIHTC student rules are different than the HUD/RD/HOME student rules. If a household has LIHTC and HOME, RD, or Section 8 (HUD), the owner needs to qualify the household under both sets of student rules ([HUD student rule](#)). Projects funded with HOME/OHTF must also include the HUD student rule exceptions.
14. **Fair-Housing.** The TSP must have policies to Comply with Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act as amended, and other relevant Civil Rights laws and statutes.
15. **Unit Transfer Policy.** The TSP must list the project's unit transfer policy. The policy must address transfers due to reasons such as a change in household size, deeper unit set aside, medical reasons, and accessible unit needs. The policy should also address reasons for transfers such as being over/under housed, fair-housing and VAWA. Transfer fees for residents must not exceed the average out-of-pocket costs to process a unit transfer and may not include expenses to make units ready involved in a transfer. All transfer fees must be reasonable and properly accounted for. An example of an appropriate charge would be tenant-caused damage (in excess of normal wear and tear). An example of what cannot be charged is painting or carpet cleaning, as these are normal costs associated with turning a unit.
16. **Criminal Background Screening.** (This section is a mandatory TSP Element for developments funded by OHFA in and after 2020 only. For projects funded prior to 2020, this Element is a recommended best-practice).

As described more fully in the [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](#) published by HUD on April 4, 2016, OHFA suggests TSPs include language that explicitly prohibits the denial of admission, termination of assistance or eviction on the basis of arrest records alone. Additionally, TSPs should state reasonable look-back periods for review of crimes. TSPs should include an individual assessment of each tenant applicant's history and provide the tenant applicant an opportunity to provide mitigating information before denying housing based upon the result of criminal screening. These three items are explained in more detail below.

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. 8 The HUD issued guidance includes the following considerations, which are relevant to all properties funded by OHFA. Per the 2020-21 OHFA QAP, the TSP must prohibit the denial of admission, provide termination of assistance or eviction based on arrest records

alone, create reasonable look-back periods for review of crimes, include an individual assessment of each applicant's history and provide the applicant an opportunity to provide mitigating information before denying housing based on upon the result of criminal screening. Owners may also want to reference this model criminal background screening policy which has been promoted as a model policy to comply with HUD's guidance.

- a. **Arrests Records.** HUD makes it clear that a policy that rejects applicants because of arrests (without conviction) is not valid under fair housing laws. The TSP must have the above prohibition clearly stated and clearly connected to arrest records. The language should not be followed or accompanied by additional conditions that ultimately diminish or negate the effect of the prohibition.
- b. **Convictions and Reasonable Lookback Periods.** 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, in order 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 recommends a tenant screening policy consider:
  - i. The **nature and severity** of a conviction; and
  - ii. The **amount of time that has passed** since the criminal conduct occurred.

HUD does not define what the reasonable look backs should be, but at minimum they cannot be a lifetime ban. While the TSP may include a prohibition on certain convictions with reasonable look back periods, the presence of a conviction still within the lookback period may not serve as the sole reason for denying someone tenancy. The housing provider must still conduct an individual assessment of the applicant as described in *c. Individual Assessment and Mitigating Factors* below, and provide the applicant an opportunity to provide mitigating information before denying housing based upon the result of the criminal background screening.

- c. **Individual Assessment and Mitigating Factors.** Similar to *1. Supplemental Evidence*, the TSP must state that a housing provider will conduct an individual assessment of each tenant applicant's history and provide the tenant applicant an opportunity to provide mitigating information before denying housing based on upon the result of criminal screening.

Relevant individualized evidence might include: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts. Mitigating information does not mean disputing the accuracy of the information in the background check.

The TSP should outline a clear process for how this assessment will be conducted and what information will be considered. The TSP must state that this process will occur **before** denying housing based on the applicant's criminal history- this should occur without the tenant applicant needing to request an individualized assessment or submitting an appeal

## TENANT SCREENING CRITERIA

The following TSP Elements are considered recommended best practices by OHFA and strongly encouraged as part of each Tenant Selection Plan.

Housing providers should be aware of all program and funding source-specific requirements however, as some of the below items may be required as part of a particular program or funding source.

1. **Supplemental Evidence.** For all housing units, the tenant selection plan should state that an applicant can 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. This information should be evaluated **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.
2. **For all housing units** that are not supportive housing, an owner should apply screening criteria that do not reject an applicant for any of the following reasons:
    - a. Credit history:
      - i. Credit score by itself, though information within a credit report directly relevant to fitness as a tenant can be relied upon by a landlord; or
      - ii. Insufficient credit history, unless the applicant in bad faith withholds credit history information that might otherwise form a basis for denial.
    - b. Rental history:
      - i. An eviction action pursuant to Ohio Revised Codes Chapters 5321 and 1923 if the action:
        1. Was dismissed or resulted in a judgment for the applicant before the applicant submits the application;
        2. Resulted in a judgment against the applicant that was entered three (3) or more years before the applicant submits the application; or
      - ii. Insufficient rental history, unless the applicant in bad faith withholds rental history information that might otherwise form a basis for denial.
3. **Supportive Housing.** For all non 811 or ODMSD supportive housing units (any units with supportive services that are restricted to or set aside to serve households or persons experiencing homelessness or with a disability) TSPs should demonstrate the following:
    - a. Adherence to Housing First principles, including addressing how tenant screening criteria reduces barriers to accessing housing.
    - b. Applicants shall not be screened out based on housing history. This includes eviction history, references from previous landlords and others, as well as money owed to previous landlords or money owed for utilities unless the tenant will be responsible for utilities for the unit and is not able to resolve the issue to set up an account. A recent egregious activity in housing may be considered as a reason for rejection. This includes extremely disruptive behavior to peaceable enjoyment or abusive treatment of other tenants or staff.

- c. Applicants shall not be screened out based on credit history or credit score.

An income to rent ratio cannot be required (e.g. income must be two or three times the rent amount), but an owner may review the applicant's income to determine that they have adequate income to pay their portion of the rent if they do not have rental assistance. For those with rental assistance/subsidy, the ratio can only be applied to the tenant's portion of rent, not the Fair-Market-Value (FMR).

- d. Criminal History: An owner's screening criteria shall not reject an applicant for any of the following reasons:

- i. Any arrest in an 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. Participation in or completion of a diversion or a deferral of judgment program, 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 Ohio;
- v. Any conviction or any other determination or adjudication in the juvenile justice system;
- vi. Any convictions for petty misdemeanors, prostitution, alcohol related crimes, or low- level property crimes (theft);
- vii. Any conviction for misdemeanor offenses for which the dates of sentencing are older than two (2) years;
- viii. Any criminal conviction for felony offenses for which the dates of sentencing are older than seven (7) years; however, a landlord 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.