Adverse Action Notices/Denials of Admission

In 2023, the Department of Housing and Urban Development (HUD) posted [written “outreach”](https://www.hud.gov/program_offices/housing/mfh/hsgrent/Denial_of_Admission#:~:text=Under%20FCRA%2C%20landlords%20or%20property,as%20the%20adverse%20action%20notice.) on its web site for multifamily operators. The outreach reminds HUD multifamily assisted housing providers of disclosure and appeals requirements for denials of admission they issue. The agency also strongly encourages the use of written adverse action notices and to provide a copy of the report relied upon with the notice.

# Criminal Records

HUD's Office of General Counsel provided [guidance](https://www.naahq.org/sites/default/files/hud_criminal_records_guidance.pdf) in 2016 discussing how a criminal conviction screening policy would be evaluated by the agency under the Fair Housing Act. 2016 Guidance: https://www.naahq.org/sites/default/files/hud\_criminal\_records\_guidance.pdf

In 2022, HUD’s Office of Fair Housing and Equal Opportunity provided [additional guidance](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) – its views on how fair housing investigators should implement the 2016 guidance, including additional “best practices” for housing providers.

# CFPB Guidance

In 2023, the Consumer Financial Protection Bureau (CFPB) issued a [release](https://www.consumerfinance.gov/about-us/blog/federal-housing-agencies-strongly-encourage-landlords-to-provide-tenants-written-notice-of-their-rights/#:~:text=This%20obligation%2C%20known%20as%20the,or%20requiring%20a%20co%2Dsigner.) about the scope of the adverse action requirements in tenant screening and renters’ dispute and complaint rights.

Rental History Furnishing.

In 2021, the agency issued an [Enforcement Bulletin](https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2021-03-consumer-reporting-rental-information/) addressing furnishers’ obligations under the Fair Credit Reporting Act and Regulation V for reporting rental payment information accurately and reasonably reinvestigating disputed furnished information.

# FTC Guidance

The Federal Trade Commission has provided [guidance](https://www.ftc.gov/business-guidance/resources/using-consumer-reports-what-landlords-need-know) to help housing providers understand their federal obligations when using consumer reports in resident screening. For example, “adverse action” taken by a housing provider includes either a decline of an applicant or an acceptance with additional conditions - such as a guarantor or increased security deposit - as a result of a review of a consumer report.

# State and Local Laws

State and local laws add important compliance obligations to housing providers’ resident screening processes. Custom disclosures, screening fee limits, limits on screening criteria, ban the box/conditional offer requirements, adverse action notice, and portable screening reports are some of these state and local requirements. Below is a partial list of state and local law examples. This list is not exhaustive, and this area of the law changes regularly: members are encouraged to consult with experienced counsel about their obligations.

## California

The Investigative Consumer Reporting Agencies Act (Cal. Civ. C. § 1786) has several requirements for consumer report users (e.g., rental housing operators), including giving applicants a means to obtain a copy of their consumer report. Screening fees are capped and landlords are obligated to provide a receipt for screening fees. Cal. Civ. C. 1950.6.

Several localities limit the criminal history that may be used to decline an applicant and require additional disclosures in adverse action notices.

### Oakland

<https://www.oaklandca.gov/resources/fair-chance-access-to-housing-ordinance>

### San Francisco

https://www.sf.gov/information/affordable-housing-protections-people-criminal-history

Colorado – Landlords are obligated to provide advance notice to applicants of their rights to provide a qualifying portable tenant screening report, and are limited in what they may charge for resident screening. Col. Rev. Stat. 38-12-902. 903. Landlord inquiries into an applicant’s qualifying income and prior eviction and criminal public records are also limited. Adverse action notices must be accompanied by a copy of the report and a statement of the applicant’s right to dispute the action. C.R.S. 38-12-904

## Illinois

Locally. Cook County’s [Just Housing Amendment](https://www.cookcountyil.gov/content/just-housing-amendment-human-rights-ordinance) limits the criminal history a landlord may consider, prohibits an inquiry into criminal history on an application, requires advance disclosures before accepting an application fee and post-screening report copy disclosures, requires an individualized assessment of the applicant’s criminal history, and establishes a dispute process.

## New Jersey

The [Fair Chance in Housing Act](https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/fcha/) requires a housing provider to provide an advance notice of applicant rights, prohibits an inquiry into cirminial history before a conditional offer to lease, limits the criminal history that a landlord may consider, requires that an individualized assessment be made of any criminal history. N.J.S.A. 46:8-52 et seq. The Attorney General has provided model notices and screening policies.

## New York

Landlords may not refuse to rent to an applicant on the basis that they were previously involved in a New York eviction proceeding. N.Y.S. Real Prop. Art. 7, Sec. 227-f Screening fees are capped, and a consumer has a limited right to provide a copy of their own report. The housing provider must give the applicant a copy of its report and a receipt of fee charged to landlord. Sec. 238-a

### New York City

Under New York City ordinance, advance disclosure must be made of the categories of reports used in tenant screening. 16 NYC 20-807 Effective January 1, 2025, the criminal history a landlord may review is limited, a conditional lease agreement must be provided to the applicant before criminal history may be reviewed, advance notice that a check will be conducted and a copy of the city’s notice of rights must be provided, requires an individualized assessment, requires a written statement of reasons for the adverse action notice along with supporting documentation. NYC Adm. C. Tit. 8, Subd. 5, Sec. 8-107

## Oregon

State law requires a landlord adopt written screening criteria and give certain detailed disclosures to an applicant before accepting applicant screening charge. Screening charges are subject to certain limitations. O.R.S. 90.295 Reasons for adverse action denial that may be used are identified. O.R.S. 90.304

## Rhode Island

A rental housing provider may not charge an application fee. An applicant may provide a recent state police report and credit report to apply; if it does not, then the landlord may charge the actual cost for procuring same. R.I. G.L. 34-18-58

## Washington

Requires advance disclosures of landlord criteria, including whether portable screening reports are accepted, and name and address of consumer reporting agency used for screening. Rental housing provider is to provide a state-specific adverse action notice where applicable. R.C.W. 59.18.257

### Seattle

Requires [advance notice](https://www.seattle.gov/civilrights/housing-rights/criminal-history-protections) of criteria et al., substantially limits the scope of applicant’s public criminal history landlord may review or use as basis for decline.

## Washington, DC

Requires detailed pre-screening disclosures and conditional offer before criminal history review. Prohibits certain eviction and criminal history, credit scores, and lease violations that may be basis for adverse action. Caps application fees. Includes additional required local content in adverse action notice. 42-3505, 42-3541