

Resident Screening

Disclaimer: *The materials and information referenced in this document are provided for general and informational purposes only. They are not offered as, and do not constitute, legal advice or legal opinions.*

Please be advised that the U.S. Department of Housing and Urban Development (HUD) is in the process of formally updating its [rule](#) on disparate impact discrimination. HUD's rulemaking activities in this area will affect how apartment owners and operators develop and implement resident screening policies; a rental housing provider can be sued under disparate impact theory if the owner or operator implements a policy that is neutral on its face but nonetheless has an unintended, discriminatory effect on members of a protected class under the Fair Housing Act (FHA). When the final rule goes into effect, the National Apartment Association (NAA) will update this guidance and all relevant materials to align with new requirements, if there are any.

Purpose: To ensure that NAA members understand which resident screening best practices to consider to fairly and consistently comply with regulations; help mitigate risk; meet goals for occupancy, absorption, delinquency and bad debt; and provide a great experience for their customers.

Applies to: All NAA members who own or operate conventional, rental housing.

Overview: Resident screening is the process of evaluating prospective residents for available apartments. Effective resident screening is one of the most important steps a manager can take to maximize the bottom line by ensuring the company has quality residents. This helps achieve the firm's occupancy and delinquency goals by receiving on-time rental payments throughout the lifecycle of the residency. Additionally, it's important to have a resident who maintains the apartment and minimizes damage. Criminal screening, as permitted by law, is an essential function that helps owners and operators mitigate risk and ensure the safety and security of residents and community staff.

Ineffective or insufficient resident screening often can lead to skips, eviction filings and/or, worse yet, set outs. Legal fees and court costs associated with these actions cannot always be passed through to the delinquent resident. These expenses, along with delinquent rent and damages, add up. A typical eviction action with rent loss, damages and eviction expenses can easily cost an owner or manager more than \$3,000.

NAA members must ensure they comply with the FHA when screening potential residents. The act makes it unlawful for housing providers to discriminate against an individual based on race, color, religion, sex, familial status, disability or national origin (known as "protected classes"). Apartment owners and operators also must comply with the Fair Credit Reporting Act (FCRA), which governs the rules regarding the use of credit screening and other consumer reports. Additionally, housing providers must observe guidelines declared in HUD's April 2016 "disparate

impact” guidance.¹ [HUD's 2016 Guidance](#) Housing providers also must comply with all state and local resident screening and fair housing laws, which could: Require additional disclosures; place further prohibitions on acceptable reasons for applicant rejection; and identify other protected classes.

A company’s resident selection policies and screening criteria may vary depending on the property’s location, occupancy, delinquency goals and regulations that govern the screening process. However, there are some standard guidelines, market factors and requirements set forth by the owner or financial institution that also should be considered when establishing one’s screening policies and procedures. These guidelines are outlined in this best practice document.

NAA members can use industry-developed scoring models alongside criminal screening results, as permitted by law, and their own thresholds to make better informed leasing decisions. Whatever the criteria behind the screening strategy, they should be clearly defined and consistently implemented to manage and mitigate litigation risk on a property-by-property basis.

The screening process also should include fraud identification procedures that look at first-, second- and third-party fraud; please refer to the NAA white paper on [Synthetic Fraud](#) to learn how to identify, prevent and respond to fraud.

Many property management companies rely on three decision-point ranges regarding prospective residents: Accept, conditional and reject. A statistical and data-based approach helps optimize these ranges to maximize occupancy while avoiding or minimizing lease-default risk. Property management companies should establish and continually monitor their decision points either to accept the quantity of applicants needed to fill vacancies or to consistently maintain a property’s applicant quality standards at a specified level. The best solutions will offer the ability to understand the additional cost/risk associated with lowering decision points to optimize occupancy and net operating income (NOI).

This data-driven, scientific approach enables NAA members to take advantage of the best applicant screening tools and analyses available to effectively manage their operations through all types of economic conditions and seasonal variances. A critical element in such an analysis is the periodic review of property, region and/or portfolio-performance reporting regarding risk scores and decisions and the resultant occupancy and bad debt.

Guidance:

1. Comply with federal, state and local laws and regulations that govern resident screening.

Fair Housing Act of 1968, Fair Housing Act Amendments Act of 1988 and similar state and local laws: Fair housing laws prohibit discrimination in housing transactions, including advertising, on the basis of protected classes. The federally protected classes are race, color, disability, religion, sex, familial status and national origin. State and local fair housing laws add additional protected classes. For

¹ https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

example, the District of Columbia has 20 protected classes, such as age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, political affiliation, matriculation, source of income (which protects renters who receive government subsidies such as Section 8 Housing Choice Vouchers), place of residence or business and status as a victim of an intrafamily offense (also conventionally known as domestic violence protections). You should familiarize yourself with the fair housing laws in your area. Remember, the strictest of all applicable laws must be followed.

- a. HUD's Guidance on the Application of Fair Housing Standards to the Use of Criminal Records (see full guidance [here](#)): While individuals with criminal records are not a protected class under the FHA, certain criminal screening criteria and practices are prohibited under HUD's disparate impact rule and state and local fair housing laws.

The April 2016 HUD Guidance memo states that arrest-only histories should not be the sole determining factor in a landlord's screening process. This is because the person has not been found guilty in a court of law and, thus, arrest records are not valid proof of an individual's involvement in a crime. Property owners have more leeway using criminal convictions records; some exclusions of applicants with certain criminal convictions might be justifiable as legitimate business interests. Property owners should consider many factors when developing their criminal criteria for screening: 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.² You should work with your legal counsel in establishing your criminal screening criteria.

- b. The General Data Privacy Regulation (GDPR) and California Consumer Data Privacy Act: GDPR is a regulation that applies to the European Union and has the U.S. keenly focused on data privacy. Data privacy is a rapidly growing concern for the multifamily housing industry given the recent enactment of the California Consumer Data Privacy Act, which governs required opt-out options and disclosures regarding the collection and use of consumer personal data. The industry actively collects consumer personal data through its marketing, application and screening processes, and additional [states](#) have followed suit with laws similar to California's. This has created a patchwork of various requirements across the nation, which can be difficult for firms operating in multiple states to administer. As part of your application process, it is advised to disclose all purposes for which the applicant's data will be used. Additionally, it must be ensured that all applicant and resident data is properly secured and inaccessible to anyone without a proper business justification for having access to such information.

² https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

- c. The Fair Credit Reporting Act (FCRA)^{3,4} : The FCRA is a federal law governing the usage of background screening reports on consumers. It sets specific procedures that must be followed when obtaining information about applicants, the use and protection of that information and how disputed information should be handled.⁵

According to Federal Trade Commission guidance:

[Property owners and operators] must take certain steps before getting a consumer report and after taking an adverse action based on the report. A consumer report can include a credit report, a rental history report and/or a criminal history report. [Owners and operators] can only get consumer reports if they have a “permissible purpose,” like [resident] screening. Before you get a consumer report, you must certify to the company providing the report that you’ll use the report only for housing purposes.

If you, [as an owner or operator], take an adverse action against a [resident] or rental applicant, then you must give notice – orally, in writing or electronically. An adverse action could include denying a lease, requiring a co-signor, or requiring higher rent or higher deposit than for another applicant. The FTC’s guidance has more examples of when an adverse action notice is required. When you send an adverse action notice, it must include the contact information for the company who supplied the report and an explanation of the right to dispute the report.

NOTE: You cannot use a resident screening report for employee screening purposes. Your company must be setup for employee screening with its distinct disclosures, authorizations and products.

Housing providers should always consult with local counsel regarding applicable state or local laws.

- d. The Keating Memorandum relating to Occupancy Standards: In March of 1991, HUD released its memorandum, *The Fair Housing Enforcement Policy: Occupancy Cases*⁶, also known as the “Keating Memo.” The Keating Memo clarified that HUD and U.S. Department of Justice (DOJ), as a general rule, considered an occupancy policy of two persons per bedroom to be reasonable, but that reasonableness is rebuttable and is not a bright line rule.

³ See the NAA/National Multifamily Housing Council Guidance paper, ["Guidance on consumer credit in screening process"](#)

⁴ Note that since this guidance was published, an additional requirement has been added to the FCRA’s delineation of what must be disclosed in an adverse-action notice—the consumer’s credit score, if a score was used.

⁵ <https://www.ftc.gov/news-events/blogs/business-blog/2016/11/screening-tenants-check-out-ftcs-new-guidance>

⁶ Occupancy Standards Notice of Statement of Policy, 63 Fed.Reg. 70256–01, 70257 (Dec. 18, 1998). The Keating Memo was issued in 1991, but on December 18, 1998, Congress legislated the Keating Memo into official law through the Quality Housing and Work Responsibility Act and by publishing the Keating Memo in the Federal Register. See also <https://www.naahq.org/system/files/issues/member-resources/fair-housing-white-paper-2016-03-final.pdf>

The Keating Memo then illustrates hypothetical examples of when the two-person-per-room rule may not be reasonable. Factors relevant in this analysis include the size of the bedroom and overall unit, the age of any children occupants, the configuration of the unit, state and local laws and other physical limitations of the building. The Keating Memo, later incorporated into the Federal Register by HUD, is still valid HUD policy and the Keating factors serve as a reminder that it is ultimately a totality test and there is not a bright line rule on occupancy restrictions.

Note that it is also important to consult state and local laws when forming occupancy limits.

Housing providers should include their occupancy standards in their rental qualifications policy. The standard guideline is two plus one per bedroom; however, recent reports indicate that HUD is also proposing that unit size in square footage is a better basis for a policy than persons per room. Courts want to see informed deliberation based on the unique factors of the unit in the drafting of the occupancy policy. Units with significantly larger bedrooms than units with smaller ones should have occupancy limits that reflect such differences.

For more information, please see NAA's March 2016 White Paper, <https://www.naahq.org/system/files/issues/member-resources/fair-housing-white-paper-2016-03-final.pdf>

2. Decide on the criteria you want to govern screening decisions.

Inaccurate or falsified information on the rental application may be grounds for denial. All criteria should be documented and provided to each applicant for review and signature including as part of any online application process. Application criteria must be applied consistently to all applicants.

- a. Property managers should limit application decision overrides, as they result in inconsistent criteria being considered and increase the risk of violating fair housing laws. If an override is necessary, document the reason and make sure you can legally justify the decision.
- b. Applicants must be able to enter into a binding contract. Check with your local jurisdiction on the minimum age required to enter into a binding contract.
- c. To help detect and defend against identity misrepresentation, applicants should submit one or more forms of identification in addition to a government-issued photo identification; property managers should check expiration dates and authenticity of identification presented by applicants. Many owner/managers use government form I9 for acceptable documents to verify identity (see sample form below). Acceptable forms of identification include, but are not limited to, valid forms of the following:
 - i. A social security card: These should never be used as the sole form of identification but can be used in conjunction with a driver's license or military ID. Many owner/managers allow applicants to present an ITIN (Individual

Taxpayer Identification Number) as a form of identification. Although applicants with ITINs are authorized to work in the U.S., they might not be U.S. citizens or have a Permanent Resident Card or U.S. Visa. They should have a passport from their country of origin.

- ii. A passport.
 - iii. A Permanent Resident Card.
 - iv. A U.S. Visa. The visa's expiration date should be noted, and leases should never be written to end after this date. It is recommended that the apartment owner/manager follow-up with the resident one month prior to the visa's expiration to determine whether the resident has obtained an extension.
- d. Financial criteria:
- i. Market standards vary. In cases where rental rates are high, for example, typical rent-to-income requirements may be 2.5 to 2.8 times the rent in monthly gross income. In cases where rental rates are low, the typical rent-to-income requirement is 3.0 times the rent in monthly gross income. Income is verified by paystubs or through written verification of employment from the employer. Real-time employment/income verifications are becoming available, saving time and reducing fraud. There may be additional income eligibility requirements for participants in federal housing programs.
 - ii. Income/employment verification should be required of applicants and may include, but is not limited to, paystubs, tax returns or written verification from the applicant's employer, bank accounts, alimony, child support, trust accounts, Supplemental Security Income (SSI), social security benefits, unemployment benefits, Temporary Assistance for Needy Families (TANF) and grants or loans. Applicants who are self-employed should be required to show proof of income through copies of their previous year's tax returns. Note: Some state or local fair housing laws include "source of income" as a protected class, meaning owners and operators cannot deny an applicant based on lawful sources of income. Please check with your attorney for guidance on this issue.
 - iii. If monthly income does not meet the required rent-to-income ratio, an exception may be granted with an additional security deposit and/or a guarantor. The typical income requirement for a guarantor is four to six times the monthly rent.
 - iv. Some property managers choose not to verify income and rely entirely on the results of the credit/criminal/eviction check; high-scoring applicants may not be required to present income verification. If you choose to follow this approach or some version of this methodology, ensure that your acceptance thresholds are clearly documented in your screening criteria and are applied consistently across all applicants.
- e. Credit, criminal reports and CREDIT scoring (see page 2): Please keep in mind that an inaccurately entered name, address, date of birth (DOB) and social security

number (SSN) can compromise the output in a criminal background search, eviction search or credit report. Additionally, when ordering credit reports, be sure to ask your third-party provider to include alert messages, such as SSN date of issuance or whether the SSN is issued to a deceased person.

- i. Credit criteria: Scores are typically set by the owner/manager/property management company in collaboration with the screening provider. Industry scoring models offer a variety of ranges. Within such variances, scores can be set for an “accept” at the highest score threshold with a standard security deposit or for an “accept with conditions” with a higher deposit and, in some cases, the potential of adding a guarantor to the application.

A guarantor is held jointly and severally responsible for the financial obligation of the rent and any damages (see sample Guarantor Addendum below). Most owner/managers now use industry standard scoring models that have different score ranges from CREDIT and statistically predict the likelihood of rental default versus credit default. All of these approval/decline thresholds and additional deposit/guarantor requirements should be clearly documented in your screening criteria and followed consistently across all applicants. CREDIT scores at 580 and below typically correlate with an eviction rate of approximately 10 percent.

- ii. Credit criteria: Items on the credit report that negatively affect the overall score are typically derogatory payment history, collection accounts, usage of accounts and age of accounts. Previous models may also have factored in civil judgments, liens and bankruptcy data. As of July 2017, the credit repositories removed tax liens and civil judgments from consumer files. These public records previously impacted the applicant’s score; please check with your third-party screening company for options and solutions to this data set. With the information absent from the credit file, the opportunity to identify a risky applicant becomes more challenging. As all judgments have been removed, this includes eviction judgments. It is important to always include a separate eviction search in your resident screening package. Credit alone is no longer sufficient.

Note: Confirm that the bankruptcy is in discharged status. Those in “dismissed” status means an application was not approved, allowing the applicant to refile. It is recommended that bankruptcies be discharged for at least one year, if not two years, and that the credit history be in good standing since the discharge date.

- iii. Criminal criteria: Typically, credit screening and eviction screening are the first step in the applicant screening process and, with a pass on the credit and eviction checks, the process moves to a criminal background check. Some owners/managers may choose not to complete criminal background checks; however, it is recommended that if your jurisdiction permits you to do so, completing a criminal background check is a good practice. In accordance

with the 2016 HUD guidance⁷ on criminal screening, it is recommended for housing providers to follow the best practices below when establishing criminal screening criteria for applicants. This information was originally published in NAA/NMHC's White Paper, "Criminal Conviction Screening Policies: Best Practices to Avoid Disparate Impact Liability."⁸

1. **Have a Policy:** *Develop a written policy that clearly states legitimate screening concerns and justifications for those concerns. The policy should include the number of months/years to look back on varying types of criminal offenses and identify which types of crimes pose the most concern (risk).*
2. **Determine Legitimate Interests:** *Engage in thoughtful deliberations about what are the "substantial, legitimate, nondiscriminatory" interests that motivate the need for criminal screening. Concerns about the health and safety of residents and employees as well as the safety of the property will be significant. Record these concerns in writing the policy and tie them to how the screening is structured.*
3. **No Automatic Conviction Exclusions:** *Policies should not automatically exclude applicants solely based on the evidence of a prior criminal conviction without defining a specific lookback period or the type of criminal offense.*
4. **Ignore Arrests:** *Do not have a policy that factors the existence of a prior arrest into consideration for denying an applicant.*
5. **Apply Policy Equally and Consistently:** *Apply the background check and policy to each and every applicant consistently. Do not make subjective determinations to only apply screenings to certain individuals, which would only result in exposure to claims of inconsistent and discriminatory treatment.*
6. **Individually Assess Records and Conduct:** *If pending criminal charges or arrests are considered, look for the underlying conduct and pattern of behavior to determine if the criminal history is consistent with the legitimate concerns expressed in the screening policy. If adverse action is taken based on pending or conviction criminal records, conduct an individualized assessment that considers the nature and severity of the crime, the time since the offense occurred and any underlying facts giving rise to determining if those findings provide basis for exclusion under the screening policy. Also consider mitigating factors and evidence of rehabilitation provided through the applicant's statements or other validated documentation.*
7. **Narrowly Tailor Inquiries:** *When asking applicants questions about their criminal convictions, limit questions to those related to legitimate interests and concerns as stated in the screening policy.*

⁷ https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

⁸ <https://www.naahq.org/system/files/issues/member-resources/criminal-conviction-screening-policies-white-paper-2016-05-final.pdf>

8. **Train Staff:** Provide detailed training to local management and staff to know how to communicate the policy and effectively apply it in a consistent and unbiased manner.

DO	DO NOT
<i>Have a written and thoughtfully developed criminal screening policy</i>	<i>Inconsistently apply the screening policy or allow subjective considerations to be part of the decision</i>
<i>Narrowly tailor the screening policy to reflect legitimate concerns about criminal offenses that directly relate to the legitimate interests of a housing provider</i>	<i>Ignore mitigating information and fail to review on a case-by-case basis accounting for the time passed since the offense, the nature and severity of the offense and efforts to rehabilitate</i>
<i>List justifications in support of the legitimate interests for the policy</i>	<i>Automatically deny an applicant because of the mere existence of a prior arrest</i>
<i>Give greater weight to convictions that reflect the legitimate concerns</i>	<i>Automatically deny an applicant because of the mere existence of a prior conviction</i>
<i>Allow an individual the opportunity to explain mitigating circumstances and provide evidence of rehabilitation if adverse action is taken</i>	<i>Exempt certain people or classes of people from the screening policy</i>
<i>Provide detailed training to staff to consistently apply the screening policy and to understand the justifications for the policy</i>	<i>Use a criminal screening policy as a pretext to exclude certain individuals or classes of individuals</i>

- iv. Criminal criteria: While the preceding information assists in the formation of a housing provider's criminal screening criteria, it is important to stay apprised of state and local laws, which can limit the lookback period for an individual's criminal background as well as place a limit on what types of convictions may be screened during the application process.

When determining a company's criminal screening standard, it is best to identify the types of convictions that are legitimate concerns to a housing provider, because the provider is responsible for the safety of their residents and employees. Specific crimes such as violent and sexual offenses against persons can be considered as a legitimate concern; however, some localities, such as Seattle, prohibit housing providers from even considering some of these crimes. Housing providers should rely on the created policy that will weigh the conviction and the seriousness of the conviction as it relates to the provider's substantial, legitimate and non-discriminatory interests. Other crimes to consider may include financial dishonesty (e.g., fraud) and property damage.

In determining the lookback period for types of convictions, housing providers should consider the severity and nature of the offense.⁹ A conviction for a more serious offense that is a direct concern to the housing provider's legitimate interests, as established in the provider's criteria, can justify a longer lookback period than a less serious conviction.

Additionally, according to the 2016 HUD guidance, even if a housing provider determines, and can justify, that the refusal of the applicant is based on legitimate interests, the applicant may still file a disparate impact claim. The guidance proposes for housing providers to wait until the end of the screening process to conduct a criminal background check, even though delaying a background check to the end of the process may create an administrative and monetary burden on housing providers. A suggested best practice is to allow for an applicant to explain and provide mitigating circumstances or evidence of rehabilitation if the criminal background screening is the reason for denial.¹⁰

It is not enough to pull a standard criminal background report. All U.S. businesses are prohibited from doing any business with anyone who is a Specially Designated National (SDN). Checking the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) list is essential as part of your criminal background search.

- v. Criminal criteria: It should also be noted that no criminal database exists anywhere that covers the entire U.S. Thus, you should plan to perform county criminal searches when necessary, even though doing so may add expense and time to the search. Please visit https://www.amrent.com/documents/AmRent_CriminalRecords_WhitePaper.pdf.

to learn more about the availability and use of criminal records within the resident screening process.

⁹ https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

¹⁰ <https://www.naahq.org/system/files/issues/member-resources/criminal-conviction-screening-policies-white-paper-2016-05-final.pdf>

f. Prior Rental/Mortgage History:

i. Civil and eviction court records: Civil and eviction court records are the best predictor of future evictions involving applicants. A credit report will not indicate that a person was evicted from a property. Therefore, when considering a screening provider, ensure that the provider offers an eviction search service. Studies have shown that residents that get evicted are three times more likely to have prior civil court filings, illustrating how such filings are a strong indicator of risk.

ii. Very few markets still dictate that property managers verify an applicant's prior rental or mortgage history, other than considerations to the applicant's eviction court records. If your market still follows this practice, however, consider these points:

a. If one year of current third-party, verifiable (non-family member) rental or mortgage history is required: Homeownership is verified through the county tax assessor. Mortgages currently reflecting a past-due balance will require an additional security deposit. Rental references ending 12 months prior to the date of application will not be considered current.

b. If an eviction-free rental history is required by your company:

i. A rental history reflecting past-due rent or an outstanding balance should be denied. Owners and operators should have a policy stating the threshold for the outstanding balance to warrant a denial; for example, any balance due greater than \$100 results in a denial, and any balance under \$100 may be approved with conditions, as the balance may be for just a water bill or similar issue.

ii. If an owner or operator gives a negative reference or refuses to give a reference, there should be further review and an investigation that may warrant an "approved with condition" or a denial decision.

iii. Three or more nonsufficient funds (NSF) checks within a period of one year will result in an "approved with conditions" or a denial. Some owner/managers opt to work with such applicants and allow them to pay their rent via direct deposit from their employers.

g. Hire a Third- Party Screening Company:

It is highly recommended that apartment owner/managers hire a third-party company that specializes in multifamily applicant screening to complete the screening process.

Consider using the screening company's statistical screening methodology versus a CREDIT credit score. Hiring a screening company relieves your employees from making the final decision regarding a potential resident and ensures consistency, timeliness, quality and legally required communication with the applicant. Other benefits include nonbiased, consistent decision-making based on data and science, expedited through technology, and shorter turnaround times for decision-making. Such screening companies offer flexible criteria and processing options that best support the diverse needs of owner/manager/property management portfolios.

3. Send required notices

Send proper notice of application conditional approval or rejection (FCRA adverse action requirement): Consider and follow state and federal notice requirements. Include the name of and contact information for the consumer reporting agency that provided the information and how to contact the agency to dispute the accuracy of the information. Adverse action notices (FCRA) are required when an owner/manager doesn't lease to an applicant or offers housing with a condition. Refer to these sections of the FCRA for guidance (§ 615 (a) (1-4), (b) (1-2) [Fair Credit Reporting Act](#)). Please see form samples below.

Related Forms

Sample Rental Application

Sample Rental Criteria

Sample Approval Letter

Sample Adverse-Action Letters

Sample Guarantor Addendum

Form I 9

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About NAA

The National Apartment Association (NAA) serves as the leading voice and preeminent resource through advocacy, education and collaboration on behalf of the rental housing industry. As a federation of nearly 160 affiliates, NAA encompasses over 82,000 members representing more than 10 million apartment homes globally. NAA believes that rental housing is a valuable partner in every community that emphasizes integrity, accountability, collaboration, community responsibility, inclusivity and innovation. NAA thanks its strategic partners Maintenance Supply Headquarters and Yardi. To learn more, visit www.naahq.org.