



Effective immediately: Revisions to section 5-6 of the HPD-HDC Marketing Handbook

September 18, 2023

The City is introducing revisions to Section 5-6 (F) and Section 5-6 (G) of the HPD-HDC Marketing Handbook in order to further its commitment to connecting vulnerable New Yorkers to affordable housing more quickly and with fewer barriers. *Housing Our Neighbors: A Blueprint for Housing and Homelessness* commits that the City will improve the expediency of and reduce administrative burden for applicants in the affordable housing placements and lease-up process. The Marketing Handbook revisions, which are detailed below, update and clarify the City's policies and procedures related to credit checks for applicants who receive rental subsidies or who are entering units connected with rental subsidy.

HPD and HDC are hereby amending the Marketing Handbook to prohibit Marketing Agents from running credit checks on applicants with rental subsidy or applicants who are applying for a unit connected with a rental subsidy. This change removes a set of steps, documents, and information exchanges that can add several days or more to the client screening process where the credit check itself does not add significant value. In cases where an applicant will receive a rental subsidy that covers the majority of their rent (including homeless referrals with rental subsidy), conducting a credit check is irrelevant because that applicant's ability to pay rent is guaranteed by their qualification for a rental subsidy, or by the affordable unit's connection to a rental subsidy. With such subsidies, the tenant's portion of the rent can typically be adjusted if their income changes, further reducing risk of rent burden or difficulty making payments.

The language herein supersedes the HPD-HDC Marketing Handbook that went into effect August 2021. All updates in this notice are effective immediately, and they apply to projects currently in the resident selection process for initial lease-up or sales as well as re-rentals and resales. Revisions will also be included in a forthcoming update to the HPD-HDC Marketing Handbook to be released in the Fall of 2023.

Summary of Changes

Marketing Agents are not permitted to run credit checks on or to require evidence of monthly rent payments from applicants receiving any type of rental subsidy or on applicants in process for a unit that has been designated for any type of project-based rental subsidy. Further, Marketing Agents may not use credit score or information related to such applicants' credit or rental history in determining their eligibility for an affordable unit.

This update applies to all HPD and HDC affordable housing subject to the Marketing Handbook, including both lottery applicants and homeless referrals. The updated language and corresponding policy changes are indicated in the updated excerpted text from the Marketing Handbook below, in bold, yellow-highlighted text.

– TEXT CHANGES –

Excerpted text from MARKETING HANDBOOK, SECTION 5: DETAILED SELECTION POLICIES 5-6:
Background Checks and Other Factors

F. RENTAL HISTORY AND CREDIT CHECKS: RENTALS

1. The following policies are the most stringent criteria permitted for evaluating rental and credit history. The Marketing Agent may implement less stringent policies, which must be described in the Marketing Plan and approved by the Agency. Selection criteria must be applied consistently to all applicants. This applies to:
 - Evidence of Rent Payments
 - Credit Checks and Fees
 - Credit Score
 - Bankruptcy
 - Delinquencies, Collections, Money Judgments, and Liens

Note: Use of information regarding landlord-tenant actions is no longer permitted in tenant selection. Please refer to Section 227-f of the New York State Real Property Law.

2. **Marketing Agents are not permitted to run credit checks on or to require evidence of monthly rent payments from applicants who will be receiving any type of rental subsidy or on applicants in process for a unit that has been designated for any type of project-based rental subsidy.**
3. **Applicants who are asked to submit to a credit check by the Marketing Agent may instead choose to provide evidence of complete monthly rent payments for the preceding 12-month period in lieu of a credit check.** If the applicant choosing this option currently resides in a City homeless shelter, they may provide evidence of rent payments for the 12-month period preceding their entry into shelter.
4. After the Marketing Agent has determined that the applicant is otherwise eligible for an available affordable unit, the Agent must provide the applicant *Attachment R-5 (Rent Payment History or Credit Review & Authorization to Release Information)* in which to indicate their decision to provide evidence of rent payments or proceed with a credit review.
5. The applicant must be given no fewer than five business days from the date the Marketing Agent provides *Attachment R-5* to submit the completed form and, if applicable, documentation supporting rent payment history to the Marketing Agent. Attachment H-1C, *Document List*, provides applicants with information on these options at the time they are invited to submit initial documents for eligibility review or schedule an eligibility appointment.
6. Evidence of Rent Payments
 - a. Applicants who opt to submit evidence of monthly rent payments must provide



proof of the monthly rental amount they were required to pay for the preceding 12 months (in accordance with Section 5-6 F.2) AND any of the following as evidence of monthly rent payments:

- i. Formal rent receipts
 - ii. Evidence of monthly withdrawals, payments, or transfers e.g., bank statements
 - iii. Money order receipts or copies
 - iv. Canceled checks
 - v. Landlord's written record of rent payment, i.e., rent ledger
 - vi. Other evidence subject to agency approval
- b. If the applicant provides evidence of monthly rent payments (in accordance with Section 5-6.F.2), the Marketing Agent will process the application without running a credit check.
 - c. If the rent payment information that the applicant provides is incomplete or of unclear validity, the Marketing Agent must request the applicant's written consent to either (i) contact the owner/manager(s) of applicant's residence(s) in the preceding 12 months (in accordance with Section 5-6.F.2) to request a ledger; or (ii) run a credit check as described below in *Credit Checks and Fees*.

7. Credit Checks and Fees

Note: Please refer to Section 238-a(1)(b) of the New York State Real Property Law.

- a. **Credit and background check fees may only be collected in when (a) an applicant appears to be otherwise eligible and (b) it is clear that a unit will be available if the applicant is approved.**
- b. If the applicant provides for review a copy of a credit check conducted within the past 30 days, the Marketing Agent may not run a credit check or charge a credit check fee.
- c. When a credit check must be run, the Marketing Agent may charge the actual fees for background checks and credit checks or \$20 per application, whichever is less.
- d. The Marketing Agent must provide the applicant with a copy of the background or credit check and the receipt or invoice from the entity that conducted the check; after which the applicant may be charged a fee.
- e. No credit/background check fees may be charged to homeless applicants referred directly by the city.
- f. If the Marketing Agent wishes to conduct a credit/background check prior to eligibility determination, they may do so provided (i) that the applicant consents, (ii) that the applicant knows that consenting to the early credit and/or background check is optional with no consequences to declining, and (iii) that the Marketing Agent subsidizes the up-front cost of the check. (If the applicant subsequently accepts and signs a lease for the unit, the Marketing Agent may

collect the fee at that time.)

G. EVALUATION OF CREDIT FINDINGS

If the Marketing Agent is permitted to conduct a credit check on an applicant per Section 5-6(F), the Marketing Agent may only reject that applicant for one of the reasons stated below.

1. Bankruptcy: Marketing Agents may only use past bankruptcy as grounds for rejection if the bankruptcy was filed or executed upon within the 12 months prior to the date of the credit report.
2. Delinquencies, Collections, Money Judgments, and Liens:
 - a. The Marketing Agent may only reject applicants with open or unsatisfied delinquencies, collections, money judgments, and liens exceeding \$5,000 in total.
 - b. Inclusions and exclusions:
 - Included in total: Money judgments, liens, and accounts on the credit report that are either over 120 days delinquent as of the date of the credit report or have been transferred to a collections agency and are currently being pursued for collection.
 - Excluded from total: Delinquencies, collections, money judgments, and liens due to medical or student loan debt.
3. Settled and Satisfied Accounts

The following policies apply to delinquencies, collections, money judgments, and liens revealed in the credit check with a total exceeding \$5,000. Totals \$5,000 and below shall not be grounds for rejection.

- a. Satisfied and settled accounts that have been paid in full or as agreed, prior to the date of the rejection notice, are not grounds for rejection.
- b. Settled accounts in repayment are not grounds for rejection, provided the applicant can show proof of being up-to-date on payments toward the settlement.
- c. If an applicant is not up-to-date on repayment of their settled account, the pre-settlement delinquency counts towards the \$5,000 threshold.
- d. Balances reflected on charged off accounts should not be counted towards the \$5,000 threshold; a charged-off account indicates the balance has been transferred to a third-party agency and will either be reflected elsewhere on the credit report or, if paid off, should not be counted as a delinquent balance.
- e. If the applicant has settled an account but the credit report does not yet reflect this, the applicant must provide the Marketing Agent proof of payment and, if applicable, a copy of the settlement agreement with the creditor. Payment or settlement agreement must have occurred prior to the date of the rejection notice.



4. Prohibited information and criteria

- a. Use of the following information and criteria is not permitted in rental resident selection:
 - i. Debt to income ratios
 - ii. Housing Court history
 - iii. Lack of credit history or rental history
 - iv. Guarantors or co-signers
 - v. Home visits, photos/videos, or other representations of the applicant's living situation
 - vi. Personal references
 - vii. Outreach to current or previous landlords, neighbors, or others associated with the applicant's living situation (except when requested by the applicant).