

To: Dane County Affordable Housing Fund Staff Team

From: Heidi Wegleitner

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Re: Advancing Fair Housing and Tenant Protections to Promote Housing
Access and Stability in Dane County Funded Housing Projects

Dane County has an obligation to affirmatively further fair housing and eliminate impediments to fair housing. Making more units accessible to homeless individuals on the Community-wide Priority List and improving screening criteria are critical strategies to promote fair housing in County funded projects. Dane County also supports positive landlord-tenant relations and seeks to invest in housing projects which will respect the rights of tenants and prevent the exploitation of tenants. Minimum standards set forth in the request for proposals (RFP) for the Dane County Affordable Housing Fund will ensure that funded projects are not unfairly denying access to housing and protecting tenants from landlord abuses. I respectfully submit the following proposals for your consideration and incorporation into the 2019 Affordable Housing Development Fund RFP.

1. Identifying Units for Individuals and Families on Community-wide Priority List for Housing.

Projects shall identify a minimum of 12% of their units to the Coordinated Entry Systems Manager of the Homeless Services Consortium of Dane County (HSC) for individuals or families receiving case management services on the Community-wide Priority List for Housing maintained by the Homeless Services Consortium of Dane County (HSC). RFP scoring criteria should reward projects that have a higher percentage of units identified for taking housing placements from the HSC Priority List. The identified units shall be filled by the Coordinated Entry Systems Manager of the HSC in consultation with project property management.

The Homeless Services Consortium of Dane County (HSC) is the HUD Continuum of Care (CoC). The HSC has adopted a Community Plan to Prevent and End Homelessness, is governed by a Board of Directors, holds monthly membership meetings, and contains several committees that guide its work. Funded housing providers should be incentivized to participate in the HSC and take advantage of training opportunities offered through the HSC. Dane County should be encouraging

providers and property managers to be well-versed in trauma-informed services, fair housing law, and housing first practices.

2. Fair Tenant Selection and Admissions Process

I. Respondents shall attach their tenant selection plans to RFP response and certify that their screening criteria is designed to affirmatively further fair housing and does not disproportionately deny access to any protected class in Dane County. To that end, the screening policies shall be prohibited from denying applicants based on the following:

- a. Inability to meet a minimum income requirement if the applicant can demonstrate the ability to comply with the rent obligation based on a rental history of paying at an equivalent rent to income ratio for 12 months;
- b. Lack of housing history;
- c. Credit score;
- d. Information on credit report that is disputed, in repayment, or unrelated to a past housing or utility (gas, electric, and water only) obligation.
- e. Inability to meet financial obligations other than housing and utilities necessary for housing quality (gas, electric, water).
- f. Owing money to a prior landlord or negative rent payment history if the tenant's housing and utility costs were more than 50% of their monthly income.
- g. Owing money to a prior landlord or negative rent or utility payment history if applicant does one of the following: (1) establishes a regular record of repayment of the obligation; 2) signs up for automatic payment of rent to the housing provider; or (3) obtains a representative payee.
- h. Wisconsin Circuit Court Access (aka CCAP) records;
- i. Criminal activity¹, except: (i) violent criminal activity within the last year resulting in a criminal conviction, and (ii) if the program or project is federally assisted, criminal activity for which federal law currently requires denial. *Violent criminal activity* is defined in 24 C.F.R § 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 reasonably likely to cause, serious bodily injury or property damage.

¹ It could be helpful to note that the Department of Corrections reviews housing arrangements for persons under their supervision. In addition, guidance on the use of criminal records in HUD housing admissions is available at:

<https://www.hud.gov/sites/documents/PIH2015-19.PDF>

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

<https://www.hud.gov/sites/documents/FAQEXCLUDEARRESTREC33116.PDF>

j. Membership in a class protected by Dane County fair housing ordinances and non-discrimination ordinances in the municipality where the project is located.

II. Prior to a denial based on a criminal record, the housing provider shall provide the applicant a copy of the criminal record and an opportunity to dispute the accuracy and relevance of the report, which is already required of HUD assisted housing providers. See 24 C.F.R. § 982.553(d), which applies to public housing agencies administering the section 8 rent assistance program.

III. Prior to a denial based on a criminal record, the housing provider shall provide the applicant the opportunity to exclude the culpable family member as a condition of admission of the remaining family members.

IV. Prior to a denial decision, the housing provider shall meet with the applicant to review their application and make an individualized determination of their eligibility, considering: (a) factors identified in the provider's own screening policies, (b) if applicable, federal regulations, and (c) whether the applicant has a disability that relates to concerns with their eligibility and an exception to the admissions rules, policies, practices, and services is necessary as a reasonable accommodation of the applicant's disability. In making a denial decision, the housing provider shall consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of [denial](#) on other [family](#) members who were not involved in the action or failure.²

V. Denial decisions shall be based on sufficient evidence.³ An arrest record or police incident report is not sufficient evidence. Uncorroborated hearsay is not sufficient evidence.

VI. Denial notices shall include the following:

- a) the reason for denial with details sufficient for the applicant to prepare a defense, including:
 - i) the action or inaction forming the basis for the denial,
 - ii) who participated in the action or inaction,
 - iii) when the action or inaction was committed, and
 - iv) the source(s) of information relied upon for the action or inaction.

² These are the same factors set forth in HUD regulation governing denials and terminations of section 8 rent assistance. 24 CFR § 982.552(2)(i).

³ *Supra* note 1.

- b) Notice of the applicant's right to the copy of their application file, which shall include all evidence upon which the denial decision was made.
- c) Notice of the applicant's right to copies of the housing provider's screening criteria.
- d) Notice of the right to request an in-person hearing on the denial decision by making a written request for a hearing within 45 days.
- e) Notice of the right to have an advocate present at the hearing and of the right to be represented by an attorney or other representative.
- f) Notice of the right to present evidence in support of their application, including, but not limited to evidence related to your completion or participation in a rehabilitation program, behavioral health treatment, or other supportive services.

VII. The person conducting the in-person denial hearing shall be a person who was not involved or consulted in making the denial decision nor a subordinate of such a person so involved.

3. Dane County Affordable Housing Fund Tenancy Addendum

The following provisions must be attached as an addendum to all rental agreements for rental units at the funded property.

- a. **Security Deposits.** The amount of a security deposit shall not be more than one month's rent.
- b. **Late Fees and Other Fees.** Late fees must be set forth in the rental agreement. Late fees shall not exceed 5% of the tenant's portion of the monthly rent. Other penalty fees are prohibited. All other fees must be directly related to the cost for a specific amenity or service provided to the tenant and comply with all applicable laws.
- c. **Good Cause for Termination.** A tenancy may not be terminated during or at the end of the lease unless there is good cause. Good cause is defined as a serious violation of the lease or repeated minor violations of the lease. Repeated means a pattern of minor violations, not isolated incidents. Termination notices and procedures shall comply with Chapter 704 of Wisconsin Statutes and federal law, when applicable. Written notice is required for non-renewal and shall include the specific grounds for non-renewal and the right of the tenant to request a meeting to discuss the non-renewal with the landlord or landlord's property management agent within fourteen (14) days of the notice. If requested, the landlord or property management agent will meet with the tenant to discuss the non-renewal, allow the tenant to respond to the alleged grounds for non-renewal,

and pursue a mutually acceptable resolution prior to the filing of any eviction action.

- d. **Reasonable Guest Rules.** Tenants have the right to have guests. In the event the property management establishes rules related to guests, they must be reasonable. Should the property management wish to ban a guest of a tenant from the rental premises, it shall provide the tenant with notice and the right to dispute the ban of their guest at an in-person meeting. Unreasonable rules include, but are not limited to the following: (1) Prior authorization of guests by the property management, unless the guest is staying for an extended period of time (e.g. more than 2 weeks); (2) Prohibition on overnight guests; (3) Requiring that the resident be with the guest at all times on the property.
- e. **Rights of Youth to Access Common Spaces.** Rules shall not unreasonably restrict the rights of youth under the age of 18 to use and enjoy common areas without supervision. Requiring supervision of small children is reasonable.
- f. **Parking Policies.** Parking policies and practices must comply with applicable laws. State law authorizes towing of unauthorized vehicles on private property by a towing company if the property is properly posted with a notice that unauthorized vehicles may be immediately towed at the vehicle owner's expense. If the property has not been posted with the proper notice, the landlord may have the vehicle towed upon an illegal parking citation being issued. In this Dane County funded property, the owner or property manager shall not have a vehicle towed from the property unless it has first posted 24 hour written notice on the vehicle and provided a notice to all residents. The notice shall include a description of the vehicle, including license plate number, the parking policy which was violated and authorizes the tow, the time by which it must be moved to avoid a tow, and the location to which the vehicle will be towed. Vehicles shall not be towed to a location that is more than 6 miles from the rental premises, unless there is not a towing company with a tow location available within 6 miles and then it must be towed to the closest available site.

4. Incentivizing Family Friendly, Housing First Guest Policies

Projects that adopt the following reasonable guest policies shall be awarded extra points in RFP scoring.

All adult residents of the unit must be included on the lease.

Care givers, whether caring for a child or children, or an adult with disabilities, are not considered guests under this policy. Children are not considered guests under this policy.

Tenant must obtain prior written approval from Landlord to have a guest stay more than 14 consecutive days.

A guest shall not stay over more than 45 days in a twelve (12) month period without prior written approval.

Guests shall not be required to show ID unless requested by the tenant.

Tenant may not invite or allow a banned person as a guest on the premises, provided the Landlord has followed the proper procedure and given notice to Tenant as set forth herein.

Landlord may ban a person who is not a tenant from the rental premises if the person has committed violent criminal activity or drug related criminal activity at rental premises. No guest shall be banned from the unit without the consent of the tenant unless the following have taken place:

- (1) A notice of the ban is issued to the tenant stating the:
 - (a) name of the person banned,
 - (b) grounds for the ban including, (i) the specific facts detailing the activity resulting in the ban; (ii) the source of the information relied upon in making the ban decision; and (iii) a copy of any criminal record reviewed when making the ban decision; and
 - (c) the right of the tenant to have a meeting to dispute the proposed ban, discuss alternatives to the ban, and address any unintended consequences of the proposed ban.
- (2) If requested, a hearing on the ban has taken place to provide the tenant an opportunity to dispute the proposed ban, discuss alternatives of the ban, and address any unintended consequences of the proposed ban.

Nothing in this policy limits a person's right to pursue a civil order for protection against another individual.

A tenant who violates the guest policy may be given a written warning detailing the facts of the alleged violation. The written warning shall detail the violation, warn the Tenant that repeated violations may result in termination of tenancy, and encourage the Tenant to meet with the supportive services provider to come up with a tenant guest policy that may assist the guest in complying with the lease. If there are repeated violations (e.g. three (3) or more violations within a

twelve (12) month period) of the guest policy, Landlord may issue a notice of termination in accordance with state and federal law, provided prior written warnings have been given detailing violations.

These provisions are subject to the landlord's duty to make exceptions to its rules, policies, practices and services as a reasonable accommodation of a tenant's disability.