

## INDUSTRY UPDATE: USE OF INCOME INFORMATION IN COLORADO

Colorado recently amended the Rental Application Fairness Act (the “Act”) to add requirements about using income information and credit information in residential leasing and limiting the amount of security deposits (the “Amendments”)<sup>1</sup>.

The Amendments take effect on August 8, 2023. This Industry Update provides a brief overview of these new requirements, which differ depending on whether the applicant has a housing subsidy.

*The Act and the Amendments contain other responsibilities for Colorado housing providers that are not addressed here. Housing providers should review the entire Rental Application Fairness Act and consult their legal or compliance team to ensure they are meeting the Act’s requirements.*

### EVALUATING APPLICANTS WITH AND WITHOUT A HOUSING SUBSIDY

#### Applicants WITH a Housing Subsidy

Housing providers who evaluate an applicant’s financial information (including credit or rental history information):

- MUST NOT consider or inquire about the applicant’s credit score, adverse credit event, or lack of credit score UNLESS required to do so by federal law.
- MAY ONLY use applicant income information to:
  - Determine an applicant’s eligibility if the subsidy provider (including a government entity, non-government entity, or non-profit) requires landlords to income-qualify tenants for income-restricted units as a condition of the subsidy.
  - Determine whether the applicant’s annual income is equal to or greater than 200% of the portion of the annual rent that the applicant would pay.

#### Applicants WITHOUT a Housing Subsidy

Housing providers who evaluate an applicant’s financial information (including credit or rental history information):

- MAY consider or inquire about the applicant’s credit score, adverse credit event, or lack of credit score.
- MAY ONLY use applicant income information to determine whether the applicant’s annual income equals or exceeds 200% of the annual rent (housing providers cannot require prospective tenants to have an annual income that exceeds 200% of the annual rent).

### LIMITS ON SECURITY DEPOSITS

The Amendments also state that for all tenants (regardless of whether the tenant receives a housing subsidy), security deposits cannot exceed the amount of two monthly rent payments.

### POTENTIAL PENALTIES

A violation of these new requirements is considered unlawful income discrimination under Colorado law and the Act imposes an initial \$50 penalty to be paid to each affected applicant. Failure to fix a violation may result in an additional penalty of \$2,500 plus economic damages, court costs, and attorneys’ fees, and the Act does not limit applicants from seeking any other relief permitted by law.

### QUESTIONS HOUSING PROVIDERS SHOULD ASK WHEN REVIEWING THEIR APPLICATION AND SCREENING PROCEDURES:

- Do your applicant evaluation processes consider the new limitations on credit history and income depending on whether the applicants have subsidized housing?
- Do your security deposits comply with the two-months’ rent limitation?
- Have you reviewed your overall applicant qualification criteria with your legal or compliance team? As part of this exercise, you are encouraged to ensure your qualification criteria are permitted by not only the Act, but by all other applicable laws and regulations and are further supported by legitimate business reasons.

*This Brief Review was prepared for general information purposes only, does not constitute legal advice, must not be acted upon as such, and is subject to change without notice. Always consult a lawyer or qualified housing expert for legal or compliance advice.*

<sup>1</sup> See Senate Bill 23-184 ([https://leg.colorado.gov/sites/default/files/2023a\\_184\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2023a_184_signed.pdf)).