



## LEGAL ADVISORY

**Subject: Updated Guidance on Sex Offender and Criminal Background Checks**

**Date: Updated February 2013**

The purpose of this advisory is to update and explain Habitat for Humanity International (HFHI) policy for Habitat affiliates on conducting and using sex offender registry checks and criminal background checks of potential homeowners, board members, staff members and key volunteers, and to provide guidance to affiliates on conducting those checks. Federal law and HFHI policy requires certain background checks to be conducted; other checks are recommended to be conducted, within the appropriate frameworks, as discussed in the memorandum. Laws on conducting and using sex offender and criminal background checks vary from state to state. *Please consult with your local attorney to ensure these recommendations comply with local law.*

### **I. SEX OFFENDER REGISTRY CHECK POLICY**

[Policy 19](#) of the U.S. Affiliated Organization Policy Handbook requires all Habitat affiliates to conduct sex offender registry checks on all potential homeowners, board members, staff members and key volunteers (key volunteers generally refer to individuals who work eight (8) or more hours each month with the affiliate and/or have contact with vulnerable populations such as children, the elderly or persons with disabilities, but the final determination of that definition rests with the affiliate board). An affiliate may choose to de-select a partner for presence on a sexual offender database<sup>1</sup>. Additionally, an affiliate may remove board members, staff members or key volunteers if they are located in a sexual offender database.

An affiliate must develop, adopt and implement a written policy that addresses: (1) how it will conduct the sex offender registry check, (2) how it will use that information to make decisions, and (3) how it will communicate a denial to potential partner families, board members, employees and key volunteers. Affiliates should consistently apply their policies and procedures. A sample affiliate sex offender registry policy is attached as [Exhibit A](#). Affiliates should check with local counsel on any state law requirements that may apply to their policy for conducting or using sex offender registry checks.

#### **A. HOW TO CONDUCT A SEX OFFENDER REGISTRY CHECK**

The United States Department of Justice maintains the Dru Sjodin National Sex Offender Public Website (NSOPW) at [www.nsopw.gov](http://www.nsopw.gov), a database that provides a central location to search for registered sex offenders. Affiliate representatives may search this database for particular states or search the entire United States, the District of Columbia, Puerto Rico, Guam, Northern Mariana Islands, and Indian Country. NSOPW is a cooperative effort between states hosting public sex offender registries and the federal government, and is offered free of charge to the public. However, the criteria for searching are

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<sup>1</sup> See [Policy 11](#), U.S. Affiliated Organization Policy Handbook.

limited to what each individual jurisdiction may provide. Each state reports and collects this data individually, so it is important for affiliates to read and understand a particular state's reporting practice. For instance, some states categorize sex offenders according to their threat level and only require high level sex offenders to register with the database. Other states require all sex offenders, regardless of the level of the offense, to register. As you read each state disclaimer, also take note of how often they update their database. Some states require offenders to provide updated information every ninety (90) days while others merely state that they update the database regularly. A listing of public registry websites by state, territory, and tribe is available on the NSOPW.

Sex offenders are subject to the registration laws of the jurisdictions where they work, live, attend school, or were convicted. Each jurisdiction's registration requirements might be different. Some jurisdictions require a sex offender's registration information to remain on their public registry website even after they have relocated to another jurisdiction.

## **B. NOTICE**

Prior to conducting a sex offender registry check, affiliates should notify and obtain consent from persons subject to the check. Affiliates may simply insert a notice in the application or other materials that states: "[Insert Affiliate name] screens all potential staff (whether paid or unpaid), board members, applicant families and key volunteers on the National Sex Offender Public Registry. By completing this application, you are submitting to such inquiry." If the affiliate is using a third party to conduct the check, notice should conform to the requirements of the Fair Credit Reporting Act (see Section II.C).

## **C. WHAT TO DO UPON DISCOVERY OF A SEXUAL OFFENSE?**

If an applicant family member, board member, staff person or key volunteer is discovered to be a registered sex offender, the affiliate must act in accordance with its adopted policy. Unless prohibited by law, affiliates may consider in its selection decisions convictions that may have an impact on the partner family's ability to pay and willingness to partner or that may pose a risk to the affiliate, volunteers or others within the community. An affiliate may choose to rank the level of risk to the affiliate and act accordingly. A sample affiliate sex offender score sheet is attached as [Exhibit B](#).

## **II. CRIMINAL BACKGROUND CHECK POLICY**

The board of directors at each affiliate must also adopt a criminal background check policy. For loan origination employees, the affiliate must conduct a criminal background check as well as a credit report. For all other personnel, the affiliate policy may require the affiliate to conduct criminal background checks or the affiliate policy may explicitly state that the affiliate does not conduct criminal background checks. Whichever course of action the affiliate chooses to pursue, HFHI recommends that the affiliate formally adopt the policy and apply it consistently with all homeowner, employee and volunteer applicants.

HFHI strongly recommends that affiliates conduct criminal background checks on all potential partner families, board members, staff members and key volunteers, and those who may have unsupervised contact with a child, the elderly or persons with disabilities. The advantages of criminal background checks include:

- The affiliate will be able to get relevant information about prospective and existing full-time employees, board members, key volunteers and prospective partner families to ensure the physical safety of those involved in Habitat's ministry.

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- Information retrieved from the criminal background checks can help ensure the financial health of the affiliate.
- The affiliate may be able to prevent negative publicity by declining to partner with individuals involved with criminal activity in the recent past, whether prospective partner families, board members, key volunteers or donors.

A sample affiliate criminal background check policy is attached as Exhibit C. Affiliates should check with local counsel on any additional state law requirements that may apply to their policy on conducting or using criminal background checks.

#### **A. BACKGROUND CHECKS FOR LOAN ORIGATION EMPLOYEES**

The Consumer Financial Protection Bureau released new rules in early 2013 that require loan originator organizations such as Habitat affiliates to (1) ensure that their loan originator employees meet character, fitness, and criminal background standards similar to existing SAFE Act licensing standards; and (2) provide training to their loan originator employees that is appropriate and consistent with those employees' origination activities. Unlike some other CFPB rules, there is no exemption for Habitat affiliates.

A loan originator employee is someone who, in expectation of direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person. It does not include someone who carries out purely administrative or clerical tasks in the performance of these activities.

In order to meet the character and fitness and background requirements, the affiliate must obtain:

- a criminal background check;
- a credit report; and
- from the loan originator themselves, information related to any administrative, civil, or criminal determinations by any government jurisdiction.

Before a loan originator acts in that capacity for the affiliate, those reports must confirm that:

- the loan originator has not have been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic or military court during the preceding seven-year period or, in the case of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, at any time; and
- the loan originator has demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual will operate honestly, fairly, and efficiently.

An affiliate that establishes written procedures for determining whether individuals meet the financial responsibility, character, and general fitness standards and follows those written procedures for an individual complies with the requirement for that individual. There is no requirement that this information be submitted to either the CFPB or your state regulating entity.

This rule does not require the loan originator organization to obtain the covered information for an individual whom the affiliate hired as a loan originator on or before January 10, 2014, provided that the individual was screened under applicable statutory or regulatory background standards in effect at the time of hire.

For more information on the new SAFE Act rules and their applicability to loan origination employees, check the MPAR page on my.habitat (<http://my.habitat.org/kc/home/mpar>) and the CFPB's website (<http://www.consumerfinance.gov/>).

## **B. HOW TO CONDUCT A CRIMINAL BACKGROUND CHECK?**

There are a number of resources that may be used in conducting criminal background checks.

**1. Law Enforcement and Corrections Agencies Records:** Law enforcement agencies such as local police precincts, state police agencies and corrections agencies may allow the public to access their records, including records of complaints, investigations, arrests, indictments, and periods of incarceration, probation and parole. Each agency may differ with respect to how and where the records may be searched, and whether they are indexed.

**2. Court Records:** Criminal records originate with counties; therefore, counties generally have the most complete criminal history records. Courthouses maintain records relating to criminal charges and convictions, including arraignments, trials, pleas, and other dispositions. Many county courthouse records must be retrieved on-site, but some courthouses offer their records online. County courthouses generally only contain information related to cases that originate in that county and may also be limited to the courthouse that contains the records.

Information about federal crimes may be accessed online through the federal courts' Public Access to Court Electronic Records (PACER) (<http://pacer.psc.uscourts.gov>). PACER is an electronic public access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts and from the PACER Case Locator. There is a fee for using PACER, and how far back the information goes will vary from court to court. Additionally, identifying a subject may be difficult because the subject's name is the only identifier that may be used (date of birth and/or social security numbers are removed from the databases).

**3. State Repositories:** Most states maintain their own centralized repositories of criminal records, which include records that are submitted by most or all of their criminal justice agencies, including their county courthouses. States differ with respect to the types of records included in the repository, the completeness of the records, and the frequency with which they are updated. Local counties may report to state repositories inconsistently and/or infrequently, and all levels of offenses may not be reported. States also differ on whether they permit the public to search the records by name, by fingerprint, or both. It may be difficult to obtain information from state repositories because common identifiers, such as date of birth or social security numbers, may be omitted from the index.

Unlike county records which are in the public domain, states own and maintain their criminal databases and may restrict access to some records or deny access altogether. While the state repository may not provide complete information, it may be used to identify the appropriate county in which to search for an individual's criminal records.

**4. Interstate Identification Index (III):** The Federal Bureau of Investigation (FBI) maintains the most comprehensive collection of criminal records in the nation, the III. The III database compiles records from each of the state repositories, as well as records from federal and international criminal justice agencies. However, very few entities are allowed to access this database.

**5. Third-Party Background Screening Businesses:** Most affiliates, as well as other businesses and employers, use third-party background screening businesses with proprietary databases to screen applicants or employees. Most proprietary databases are privately owned databases of criminal information maintained by companies and accessible online for a fee. LexisNexis is an example of an online proprietary database and may be accessed at <http://www.lexisnexis.com> or 1-800-590-8535. Such databases vary with respect to the geographic area covered, the type of information included (for example, information about arrests, convictions, prison terms, or specialized information), the sources of information used (county databases, law enforcement agency records, sex offender registries, etc.), and the frequency with which they are updated. Proprietary databases may not always be as up to date as county and/or state sources because they depend on county and or state sources for current information. They may also be missing certain types of disposition information.

### C. NOTICE

As with sex offender checks, affiliates should notify and obtain consent from the person being checked before conducting a criminal background check. Affiliates that use a third-party service provider to conduct background checks must comply with the federal Fair Credit Reporting Act (FCRA). The HFHI Legal Advisory on the FCRA is available on My Habitat: <http://my.habitat.org/kc/download-detail/g32e58/HFHI-Legal-Advisory--Denial-for-Credit-Reasons-under-Fair-Credit-Reporting-Act-FCRA-Jan-2013>.

### D. WHAT TO DO UPON DISCOVERY OF A CRIMINAL CONVICTION?

If an applicant family, board member, staff person or key volunteer is discovered to have a criminal conviction, the affiliate must act in accordance with its adopted policy. Unless prohibited by law, affiliates may consider in its selection decisions convictions that may have an impact on the partner family's ability to pay and willingness to partner or that may pose a risk to the affiliate, volunteers or others within the community. An affiliate may choose to rank the level of risk to the affiliate and act accordingly. A sample affiliate criminal offense score sheet is attached as Exhibit D.

## III. ADDITIONAL CONSIDERATIONS IN THE EMPLOYMENT CONTEXT

Affiliates should be aware that there are additional considerations when using background checks in the employment context. On April 25, 2012, the U.S. Equal Employment Opportunity Commission (EEOC) released Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended. In that guidance, the EEOC stated that an employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination.

The EEOC guidance reviewed disparate treatment and disparate impact analysis under Title VII. A violation of anti-discrimination law may occur when an employer treats criminal history information differently for different applicants or employees because of their race, color, religion, sex, or national origin. Therefore, affiliates should adopt policies and practices that do not treat individuals differently based on a protected status. (Such intentional discrimination is what is meant by discriminatory treatment.)

But even absent any discriminatory intent, an affiliate could be found liable under a discriminatory impact theory. An employer's neutral policy (such as excluding applicants from employment based on certain criminal conduct) may not be sufficient in preventing illegal discrimination if it disproportionately impacts individuals in a protected class. The EEOC's focus in these guidelines is

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in the exclusion (or other adverse treatment) from employment based on a criminal record. Consequently, affiliates should not adopt a blanket policy that bars anyone with an arrest or criminal conviction from employment. Instead, affiliates should have in place screening practices that are job related for the position in question and consistent with business necessity. This means that rather than excluding anyone convicted of a crime for any job, the affiliate determines that only certain criminal convictions will exclude people from particular jobs. The EEOC has provided three factors as a starting point for analyzing how specific criminal conduct may be linked to particular positions: the nature and gravity of the offense or conduct, the time that has passed since the offense, conduct or completion of the sentence, and the nature of the job held or sought. Affiliates should conduct that analysis to ensure that their background checks policies or practices do not have a discriminatory impact.

The EEOC guidance also specifically discussed the differences between arrest and conviction records. The fact of an arrest does not establish that criminal conduct has occurred, and an exclusion based on an arrest, in itself, is not job related and consistent with business necessity. However, an employer may make employment decisions based on the conduct underlying the arrest if the conduct makes the individual unfit for the position in question. In contrast, a conviction record will usually serve as sufficient evidence that a person engaged in particular conduct. Nevertheless, in some circumstances, there may be reasons (such as an inaccuracy) for an employer not to rely on the conviction record alone when making an employment decision.

For additional information and employer best practices, visit the EEOC website: [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

The Federal Fair Credit Reporting Act also has certain requirements that affiliates must comply with if they use a third-party vendor to conduct the background checks in the employment context. Review the HFHI Legal Advisory for more information: <http://my.habitat.org/kc/download-detail/g32e58/HFHI-Legal-Advisory--Denial-for-Credit-Reasons-under-Fair-Credit-Reporting-Act-FCRA-Jan-2013>.

#### **IV. OFFICE OF FOREIGN ASSET CONTROLS (OFAC) CHECK**

Affiliates should conduct a third type of background check on potential partner families and families whose mortgages remain in the affiliate's portfolio. The OFAC check, required by federal law, is for the purpose of determining whether a member of a partner family is a "Specially Designated National (SDN)," which is a person that has been deemed a terrorist, international narcotics trafficker or a supporter of such activities. Financial transactions with an SDN are prohibited and can subject an affiliate engaged in such a transaction to civil and criminal penalties. Because the OFAC list can be updated daily and without notice, affiliates should conduct this search on a regular basis on potential and current partner families. HFHI recommends that affiliates conduct OFAC checks on potential partner families at the beginning of the family selection process and again before closing, and at least quarterly for selected partner families who mortgages are held by the affiliate.

The OFAC checks can be done directly on the U.S. Treasury website or through the use of a third party servicer (recommended). For more information on OFAC checks, how to conduct the search and what to do if you encounter someone on the SDN list, see HFHI's memo entitled [Specially Designated National Quick Reference Summary](#).

## **EXHIBIT A**

*This sample is for illustrative purposes only. Laws vary from state to state.  
Please check with your local attorney for compliance with state laws.*

### **SAMPLE SEX OFFENDER REGISTRY CHECK POLICY**

#### **1.0 PURPOSE**

As a ministry, Habitat for Humanity [Affiliate Name] values the safety of children, our employees, volunteers and the families we serve. We want to take prudent measures to protect our human and material resources.

#### **2.0 POLICY**

Habitat for Humanity [Affiliate Name] requires that sex offender registry checks be conducted for all potential partner families, board members, employees and key volunteers<sup>2</sup>, and in particular, those who may have unsupervised contact with a child, the elderly or persons with disabilities. Habitat for Humanity [Affiliate Name] reserves the right to recheck sex offender status at any time during the homebuilding process, course of employment and/or service.

Any person who does not consent to a sex offender registry check will not be permitted to become a partner family, work and/or volunteer with Habitat for Humanity [Affiliate Name].

#### **2.1 DISQUALIFICATION CRITERIA**

A sex offender registry finding may disqualify an applicant from homeownership, employment, or board members and volunteers from service with Habitat for Humanity [Affiliate Name]. In determining eligibility, Habitat for Humanity [Affiliate Name], in its sole discretion, may consider several factors, including without limitation, one or more of the following:

- nature, duties and responsibilities of the position;
- nature of the conviction and whether children were involved;
- time elapsed since the offense;
- extent to which the offense may affect the person's fitness or ability to perform the duties or responsibilities of the position;
- age of the candidate when the illegal activity occurred;
- number of convictions (if more than one);
- any information produced by the person, or produced on the person's behalf demonstrating rehabilitation and good conduct;
- whether hiring, transferring, promoting or partnering with the applicant and/or candidate would pose risk to the organization;
- whether the state's public policy encourages employment of persons who have been convicted of crimes;

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<sup>2</sup> Key volunteer generally refers to any individual who works eight (8) or more hours each month and/or has contact with vulnerable populations such as children, the elderly or persons with disabilities.

- whether the state's public policy encourages homeownership of persons who have been convicted of crimes;
- the nature of the build, i.e., proximity of houses, mixed use communities, etc.; and/or
- any other factor that the affiliate deems relevant to the decision.

## **2.2 EXAMPLES OF DISQUALIFICATION WARRANTED**

If a person withholds information or falsifies information pertaining to a sex offense, the person may be disqualified from further consideration.

The following list provides some examples in which Habitat for Humanity [Affiliate Name] may, within its sole discretion, determine an individual to ineligible for homeownership, employment and/or service:

- child molestation conviction of a Faith Community Relations Manager applicant;
- statutory rape conviction of a Volunteer Coordinator applicant;
- conviction for an offense related to child pornography of a Family Services Coordinator applicant; and/or
- sexual assault conviction of a partner family member in a condominium or apartment style community.

This list is not exhaustive and is for illustrative purposes only. Habitat for Humanity [Affiliate Name] reserves the right to weigh disqualification criteria on a case-by-case basis and to make selection decisions in its sole discretion. Disqualification may extend to any partner family member and to any position with Habitat for Humanity [Affiliate Name] and associated entities, including, but not limited to Habitat for Humanity International, Inc., Area Offices, Branches, National Organizations, Affiliates, Disaster Response Centers, Regional Support Centers and State Support Centers.

## **2.3 EMPLOYMENT OFFER CONTINGENT ON SEX OFFENDER REGISTRY CHECK**

In the employment context, Habitat for Humanity [Affiliate Name] may extend an offer of employment to an applicant that is contingent on the completion of the sex offender registry check. However, the applicant may not start work before the sex offender registry check has been completed and the final employment and/or service eligibility decision has been made by Habitat for Humanity [Affiliate Name] personnel and/or Board of Directors.

## **3.0 PROCEDURE**

Habitat for Humanity [Affiliate Name] will make good faith efforts to comply with the following procedures when conducting sex offender checks:

- utilize the National Sex Offender Public Website (<http://www.nsopw.gov>) as a resource and check all states in which the person has resided for the last ten (10) years;
- ensure all recruitment information, applications, announcements, and descriptions state the position or partner family relationship requires a sex offender registry check;
- seek prior written approval (even if not required by law);

- initiate sex offender registry checks prior to the hire, transfer, promotion, or reassignment of individuals, including reclassification;
- notify the individual under consideration that an offer for any personnel action (employment, transfer, promotion, reclassification, or change in duties) or homeowner status is conditioned on successful completion of the sex offender registry check, and that falsification of information submitted may be cause for corrective action, up to and including dismissal and/or elimination from the homeownership program; and/or
- review sex offender registry checks that reveal convictions and determine within a reasonable time whether such convictions disqualify individuals from positions and/or family partnership.

#### **4.0 DENIAL OF APPLICATION, TERMINATION OR REASSIGNMENT**

Based on any or all of the criteria outlined in this policy, Habitat for Humanity [Affiliate Name] may, in its sole discretion, decide that a partner family will be denied homeownership, an employee will be terminated, a volunteer will be dismissed or an applicant will not be hired. In the employment or volunteer context, Habitat for Humanity [Affiliate Name] may, in its sole discretion, also choose to reassign a former sex offender to a job involving less exposure to risk. In doing so, Habitat for Humanity [Affiliate Name] may, in its sole discretion, consider:

- the type and location of the job – whether it would give the offender access to potential victims;
- the types of co-workers and subordinates in the workplace;
- whether the job would involve travel;
- work hours;
- degree of supervision; and/or
- amount of access to technology, i.e., the Internet.

#### **PRACTICAL TIPS**

- Some states prohibit and/or restrict discriminating against an individual based solely on a sex offender registry check, i.e., California, Massachusetts, Nevada, New Jersey, Oklahoma and Oregon. Thus, avoid blanket policies that bar individuals with a sex offender registry status from the workplace and/or homeownership and consult with local counsel on any state or local laws that might apply to the policy.
- Limit the people who view the sex offender registry check results to a “need-to-know” basis.
- Provide an opportunity for the applicant to supply information that refutes the charge, i.e., disposition from the court.
- Limit the number of business days in which an individual may provide evidence of the inaccuracy of a sex offender registry check report.
- Sex offender registry checks are only one part of the partner family and/or on-boarding process. Affiliates may also perform reference checks, verify prior employment, obtain copies of licenses or certificates required for the specific position, and conduct credit checks when appropriate.



## **EXHIBIT C**

*This sample is for illustrative purposes only. Laws vary from state to state.  
Please check with your local attorney for compliance with state laws.*

### **SAMPLE CRIMINAL BACKGROUND CHECK POLICY**

#### **1.0 PURPOSE**

As a ministry, Habitat for Humanity [Affiliate Name] values the safety of children, our employees, volunteers and the families we serve. We want to take prudent measures to protect our human and material resources.

#### **2.0 POLICY**

Habitat for Humanity [Affiliate Name] requires that criminal background checks be conducted for all potential partner families, board members, employees and key volunteers<sup>5</sup>, and in particular, those who may have unsupervised contact with a child, the elderly or persons with disabilities. Habitat for Humanity [Affiliate Name] reserves the right to recheck criminal backgrounds at any time during the homebuilding process, course of employment and/or service.

Any person who does not consent to a criminal background check will not be permitted to become a partner family, work and/or volunteer with Habitat for Humanity [Affiliate Name].

#### **2.1 DISQUALIFICATION CRITERIA**

A previous conviction may disqualify an applicant from homeownership, employment, or board members and volunteers from service with Habitat for Humanity [Affiliate Name]. In determining eligibility, Habitat for Humanity [Affiliate Name], in its sole discretion, may consider several factors, including, without limitation, the:

- nature, duties and responsibilities of the position;
- nature of the conviction and whether children were involved;
- time elapsed since the offense;
- extent to which the offense may affect the person's fitness or ability to perform the duties or responsibilities of the position;
- age of the candidate when the illegal activity occurred;
- number of convictions (if more than one);
- any information produced by the person, or produced on the person's behalf demonstrating rehabilitation and good conduct;
- whether hiring, transferring, promoting or partnering with the applicant and/or candidate would pose a risk to the organization;
- whether the state's public policy encourages employment of persons who have been convicted of crimes;

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<sup>5</sup> Key volunteer generally refers to any individual who works eight (8) or more hours each month and/or has contact with vulnerable populations such as children, the elderly or persons with disabilities.

- whether the state's public policy encourages homeownership of persons who have been convicted of crimes;
- the nature of the build, i.e., proximity of houses, mixed use communities, etc.; and/or
- any other factor the affiliate deems relevant to the decision.

## **2.2 EXAMPLES OF DISQUALIFICATION WARRANTED**

If a person withholds information or falsifies information pertaining to previous convictions, the person may be disqualified from further consideration.

The following list provides some examples in which Habitat for Humanity [Affiliate Name] may, within its sole discretion, determine an individual to be ineligible for homeownership, employment and/or service:

- embezzlement or fraud conviction of a Fundraising Director applicant;
- stalking conviction against a supervisory candidate or candidate with access to personal information such as an Executive Director or Human Resources personnel;
- murder and/or assault conviction against a candidate with access to dangerous instruments, i.e., Construction Manager; and/or
- burglary conviction of a partner family member in a condominium or apartment style community.

This list is not exhaustive and is for illustrative purposes only. Habitat for Humanity [Affiliate Name] reserves the right to weigh disqualification criteria on a case-by-case basis and to make selection decisions in its sole discretion. Disqualification may extend to any partner family member and to any position with Habitat for Humanity [Affiliate Name] and associated entities, including, but not limited to Habitat for Humanity International, Inc., Area Offices, Branches, National Organizations, Affiliates, Disaster Response Centers, Regional Support Centers and State Support Centers.

## **2.3 EMPLOYMENT OFFER CONTINGENT ON CRIMINAL BACKGROUND CHECK**

In the employment context, Habitat for Humanity [Affiliate Name] may extend an offer of employment to an applicant that is contingent on the completion of the criminal background check. However, the applicant may not start work before the criminal background check and the final employment and/or service eligibility decision has been made by Habitat for Humanity [Affiliate Name] personnel and/or Board of Directors.

## **4.0 PROCEDURE**

Habitat for Humanity [Affiliate Name] will make good faith efforts to comply with the following procedures when conducting criminal background checks:

- check all states in which the person has resided for the last ten (10) years;
- ensure all recruitment information, applications, announcements, and descriptions state the position or partner family relationship requires a criminal background check;

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- seek prior written approval in accordance with applicable laws, and in particular, where third party vendors are retained to conduct criminal background checks;
- initiate criminal background checks prior to the hire, transfer, promotion, or reassignment of individuals, including reclassification;
- notify the individual under consideration that an offer for any personnel action (employment, transfer, promotion, reclassification, or change in duties) or homeowner status is conditioned on successful completion of the criminal background check, and that falsification of information submitted may be cause for corrective action, up to and including dismissal and/or elimination from the homeownership program; and/or
- review criminal background checks that reveal convictions and determine within a reasonable time whether such convictions disqualify individuals from positions and/or family partnership.

#### **4.0 DENIAL OF APPLICATION, TERMINATION OR REASSIGNMENT**

Based on any or all of the criteria outlined in this policy, Habitat for Humanity [Affiliate Name] may, in its sole discretion, decide that a partner family will be denied homeownership, an employee will be terminated, a volunteer will be dismissed or an applicant will not be hired. In the employment or volunteer context, Habitat for Humanity [Affiliate Name] may, in its sole discretion, also choose to reassign a former convict to a job involving less exposure to risk. In doing so, Habitat for Humanity [Affiliate Name] may, in its sole discretion, consider:

- the type and location of the job – whether it would give the offender access to potential victims;
- the types of co-workers and subordinates in the workplace;
- whether the job would involve travel;
- work hours;
- degree of supervision; and/or
- amount of access to technology, i.e., the Internet.

#### **PRACTICAL TIPS**

- The Equal Employment Opportunity Commission and the majority of states prohibit and/or restrict discriminating against an individual in the employment context based on arrest and/or criminal conviction history due to the potential disparate impact on minorities. Avoid blanket policies that bar individuals with arrest records or former convictions from the workplace and consult with local counsel on any state or local laws that might apply to the policy.
- Comply with the Federal Fair Credit Reporting Act requirements if a third-party vendor is used to conduct the background checks. Review the HFHI Legal Advisory for more information: <http://my.habitat.org/kc/download-detail/g32e58/HFHI-Legal-Advisory--Denial-for-Credit-Reasons-under-Fair-Credit-Reporting-Act-FCRA-Jan-2013>.
- Limit the people who view the criminal background check results to a “need-to-know” basis.
- Provide an opportunity for the applicant to supply information that refutes the charge, i.e., disposition from the court.
- Limit the number of business days in which an individual may provide evidence of the inaccuracy of a criminal background check report.
- Criminal background checks are only one part of the partner family and/or on-boarding process. Affiliates may also perform reference checks, verify prior employment, obtain

copies of licenses or certificates required for the specific position, and conduct credit checks when appropriate.

**EXHIBIT D**

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APPLICANT \_\_\_\_\_

**CRIMINAL STATUS (Ability to Partner)**

Risk to Partnership:		15=HIGH	10=MODERATE	5=LOW	0=LITTLE OR NO RISK
10	0	A. Applicant convicted of a crime? Yes (10 pts) No (0 pts)			
15	10 5 0	B. Age of applicant at time of commission of the crime:			
		<16 years old (0 pts)	16-17 years old (5 pts)		
		18-20 years old (10 pts)	21 years or older (15 pts)		
15	10 5 0	C. Time since conviction:			
		Less than 2 years (15 points)	3-5 years (10 points)		
		6-10 years (5 points)	More than 10 years (0 points)		
10	0	D. Off Probation/Supervision? No (10 pts) Yes (0 pts)			
15	10 5 0	E. Nature of offense <sup>6</sup> :			
		Felony (15 pts)	Gross Misdemeanor (10 pts)		
		Misdemeanor (5 pts)	Petty misdemeanor (0 pts)		
10	0	F. More than one conviction? Yes (10 pts) No (0 pts)			
10	0	G. Does the nature of the conviction relate to the nature, duties and responsibilities of the position? Yes (10 pts) No (0 pts)			
0	-5	H. Is there evidence of rehabilitation, i.e., Certificate of Rehabilitation or Good Conduct? Yes (-5 pts) No (0 pts)			
<b>Total: _____</b>		<b>(<u>Maximum</u> of 50 to Qualify)</b>			

<sup>6</sup> Affiliates should consult with local counsel to tailor the score sheet to state specific criminal offense levels.  
THIS INFORMATION IS CURRENT AS OF THE DATE OF THE ADVISORY. THIS ADVISORY DOES NOT CONSTITUTE LEGAL ADVICE.  
PLEASE NOTE THAT LAWS VARY FROM STATE TO STATE. IT IS IMPORTANT TO CHECK WITH YOUR LOCAL ATTORNEY REGARDING STATE LAW AND TO OBTAIN LEGAL ADVICE REGARDING YOUR SPECIFIC AFFILIATE.