



POLICY BRIEF

March 8, 2022

Regulation of Rental Application Screening Fees for Potential Tenants

Highlights

The cost of rental application fees may pose a significant barrier to prospective tenants in Hawaii's active rental housing market.

Key Findings

- Rental application fees are not currently regulated by Hawaii's Landlord-Tenant Code. Landlords may require an upfront, non-refundable payment at the time a prospective renter applies for a vacant rental unit.
- Unregulated collection of rental application fees may disproportionately impact low-income applicants, applicants who use housing vouchers, and multi-generational families with multiple adults in the household.

Recommendations

- Implement a practical limit on the amount prospective renters may be charged for the rental application screening process.
- Allow applicants to purchase and provide copies of their own screening reports to landlords.
- Explore landlord incentives or other compensation to offset the omission of non-refundable application fees.
- Clearly define a landlord's responsibilities and obligations in the tenant screening process, including in the collection, use, and disposition of rental application fees.

Introduction

Hawaii's Landlord-Tenant Code regulates many aspects of the landlord-tenant relationship, including expectations of both parties during tenancy and upon the ending of any lease or rental agreement. Some aspects of pre-tenancy, such as discrimination based on membership in a protected class and security deposits, are also covered by the Landlord-Tenant Code and other laws.

A key component of the pre-tenancy process that is not currently regulated by Hawaii's Landlord-Tenant Code is the collection of rental application fees. Rental application fees are generally non-refundable fees charged by landlords to prospective tenants at the time of application for a vacant rental unit. These fees may apply to a variety of tenant screening costs, including:

- Criminal background check
- Credit report
- Administrative time spent verifying information, calling references, etc.

Rental application fees differ from other upfront charges, such as security deposits and holding fees, as there is no guarantee that the rental unit will be offered to an applicant. As such, applicants may need to pay non-refundable screening fees more than once during their housing search process. Unlike security deposits, which are regulated by state law, there are no current regulations on the amount a landlord may charge prospective tenants who apply for a rental unit, or the conditions under which the fees may be charged.

Impact on Renters

Approximately forty percent of Hawaii households are renters, according to recent data from the National Low Income Housing Coalition.ⁱ Non-refundable rental application fees may pose a barrier to all prospective renters in a tight housing market. However, low-income renters, multi-generational or large households, and voucher holders are particularly impacted by application screening fees.

Hawaii Wages and Housing Costs

Minimum hourly wage	\$10.10
Average renter hourly wage	\$17.56
Affordable rent at average renter wage	\$913
1-bedroom unit Fair Market Rent	\$1,501
2-bedroom unit Fair Market Rent	\$1,960

Source: *Out of Reach 2021, National Low Income Housing Coalition*

Figure 1 – Comparison of Hawaii wages and current Fair Market Rents

Costs of Application Fees

Rental application fees vary widely based on a landlord's screening process and derived administrative costs, such as time spent by a landlord or agent reviewing reports or calling references. Private landlords have discretion regarding the amount they may charge applicants, provided that they do not violate Fair Housing or other laws.

Application fees for each adult may range from a nominal or at-cost amount (e.g., the exact cost of a background check or credit report) to an amount reflecting a significant overhead cost. While it is difficult to estimate the average application fee charged to prospective tenants, the cost of a criminal background check is often in the range of \$25 - \$35.ⁱⁱ The administrative cost to access publicly available eviction records and other court records varies.

Non-refundable application fees impact all prospective renters, but households with multiple adult applicants are especially impacted. Landlords typically require a separate application fee for each adult in the household,ⁱⁱⁱ regardless of their relationship to each other. Native Hawaiian and other Pacific Islander households are over-represented in multi-generational living arrangements, often due to financial necessity.^{iv} People with shared housing arrangements, such as young adults or others who do not earn enough to qualify for a rental unit on their own, are also impacted by the multiplicative costs of application fees.

Prospective tenants who participate in rental assistance or housing subsidy programs based on financial need may still be responsible for paying rental application fees out of pocket. For example, the Section 8 Housing Choice Voucher

(HCV) program, which provides housing assistance to over 2.3 million households nationwide, does not subsidize the cost of application fees or security deposits for voucher holders.^v Other government- and privately-funded housing assistance programs may assist participants with rental application fees but subsidizing these non-refundable costs may reduce the overall amount of funds available to assist other households.

Duplication of Application Fees

Hawaii's tight housing market often results in a lengthy housing search process for prospective renters. High demand for vacant rental units, especially for units available below the market rate, often means that applicants will need to apply for multiple rental units before being accepted. Applicants with housing barriers, including people who participate in housing voucher programs, may experience repeated unsuccessful applications.^{vi} Many of these households also have limited or fixed incomes due to age, disability, or other economic hardship.

Applicants with limited financial resources may be forced to slow down their housing search process, especially if they receive multiple application rejections. Prolonging the housing search period may result in negative consequences beyond the actual loss of funds. Applicants may run out of time to use a housing voucher, make their current housing situation worse, or defer other essential costs to be able to afford multiple application fees.

Ambiguity in Rental Screening Criteria and Unit Availability

Households applying for rental units will likely encounter a wide range of rental screening criteria, depending on the preferences or restrictions imposed by landlords. While many applicants may be required to undergo a criminal background check and credit check, landlords may not clearly disclose the specific criteria that may result in a rejection. This may result in applicants paying a non-refundable fee without knowing that their application will be screened out.

In addition, prospective renters typically do not know how many other applications a landlord has received for a vacant unit, or whether the landlord has already begun the process of offering the vacant unit to another applicant. Thus, most applicants can never be certain that their application will be considered. Applicants may encounter scenarios where no background check or credit report is generated, despite paying the non-refundable screening fee to a landlord. In some cases, applicants may pay non-refundable screening fees without ever receiving a response from a landlord.^{vii}

Application Screening Fees in Other Jurisdictions

To mitigate the potential adverse impact of rental application fees, several states and counties have enacted laws that regulate the circumstances under which application screening fees may be charged to tenants. Generally, restrictions on non-refundable application screening fees include:

- Limiting the maximum amount a landlord can charge for application screening fees to a flat amount per person.
- Requiring that landlords only charge prospective tenants the exact cost of purchasing a criminal background check or other credit report (no administrative or overhead costs).
- Prohibiting application screening fees.

Several states, including California, Delaware, New York, Virginia, and Wisconsin, have established maximum amounts landlords may collect for the cost of a rental application. Other states, including Minnesota and Washington, require that rental application fees do not exceed the actual cost of the screening process. The state of Massachusetts prohibits the collection of rental application fees except those collected by licensed brokers.

Local governments may establish ordinances regulating rental application fees that are more stringent than state law. One example is the city of Boise's ordinance regarding rental application fees, which limits the amounts charged to a maximum of \$30 or the actual cost of screening reports, whichever is lower.^{viii} The state of Idaho does not currently regulate rental application fees.

Many communities have implemented other forms of tenant protections, such as protections against source of income discrimination, transparency in rental screening criteria, or rent stabilization. Often, these ordinances arise out of evidence documenting the disproportionate housing barriers faced by people with disabilities, people of color, and people who use housing vouchers.^{ix} The enactment of ordinances related to specific housing protections, such as prohibitions on source of income discrimination, has been correlated with increased positive housing outcomes for vulnerable renters.^x

Policy Recommendations

The regulation of rental application fees is another potential tool for local governments to level the housing playing field for households facing significant barriers to accessing safe, stable, and affordable housing. Hawaii has several options to address this critical part of the pre-tenancy process.

- **Implement a practical limit on the amount prospective renters may be charged for the rental application screening process.**
Establishing a statewide cap on rental application fees based on local industry standards would eliminate some of the uncertainty prospective tenants face when searching for housing.^{xi} Similarly, allowing only the actual, documented cost of screening reports to be passed on to applicants would discourage unscrupulous practices by landlords seeking to make significant profits from the tenant screening process.
- **Allow applicants to pay for and provide their own screening reports to landlords.**
Prospective renters may often apply to multiple properties within a short period of time, and landlords may request very similar criminal background check and credit check reports. Allowing applicants to purchase and provide copies of their own screening reports from qualified reporting agencies would mitigate some of the financial burden for prospective renters who must submit multiple rental applications. Outside of legislation, private landlords should be encouraged to consider accepting verifiable credit reports and background checks provided by applicants, especially relating to information available in the public record.
- **Explore landlord incentives or other compensation to offset the omission of non-refundable application fees.**
Many housing assistance programs, including the Section 8 Housing Choice Voucher program, have traditionally been limited in their ability to pay for non-refundable fees. However, Hawaii has a recent example of a housing subsidy program with built-in forms of landlord incentives, including payments to "hold" a unit and damage mitigation at the end of tenancy.^{xii} These incentives are offered in addition to any standard security deposits charged to renters, and provide additional financial recompense for landlords in the event of a negative tenancy outcome. The benefit to tenants and housing providers is that the incentive payments are made only as necessary and may thus be avoided entirely if there are no adverse impacts to the landlord.
- **Clearly define a landlord's responsibilities and obligations in the tenant screening process, including in the collection, use, and disposition of rental application fees.**
If rental application fees are collected, landlords should make all efforts to properly inform prospective renters about the specific criteria that will be used to evaluate their application.^{xiii} For example, landlords should clearly state the types of criminal convictions that will result in

Hawaii Interagency Council on Homelessness

Regulation of Rental Application Fees

the denial of a rental application, rather than simply informing applicants that a criminal background check will be conducted. Transparent screening criteria helps applicants make informed decisions in their housing search process.

Applicants should also be provided with a copy of any background check or credit report used in their evaluation, especially if the information contained in the report results in the denial of a rental application. In some cases, information may be reported in error and must be corrected by the appropriate agency to avoid future rental application denials.

Applicants should also be entitled to request a refund of an application screening fee if the landlord is unable to provide copies of any reports generated, which may occur if no screening actually takes place. Landlords should be required to process a legitimate refund request within a specified period of time, such as within 30 days of the request.

The practical regulation of rental application fees is just one of many policies that would ease the burden of the housing search process for vulnerable households. Additional tenant protections, such as the prohibition of source of income or housing voucher discrimination, should be considered along with the regulation of rental application fees.

For more information, visit <https://homelessness.hawaii.gov> or e-mail gov.homelessness@hawaii.gov.

Notes

- ⁱ See the National Low Income Housing Coalition's [Out of Reach 2021 report](#) on rental housing affordability in Hawaii for a detailed breakdown.
- ⁱⁱ While rental application fees vary, recent [testimony](#) from property management agencies and housing providers suggests that applicants often expect to pay a minimum of \$25 for a non-refundable application fee.
- ⁱⁱⁱ In [testimony](#) opposing HB2139 (2022), the Hawaii Association of REALTORS® has affirmed that screening each adult applicant is a standard practice in the local property management industry.
- ^{iv} Data from the [U.S. Census Bureau](#) shows that Hawaii has the highest percentage of multigenerational households in the country, and Native Hawaiian and other Pacific Islanders are over three times more likely than whites to live in a multigenerational household.
- ^v Additional information about the HUD Housing Choice Voucher program may be found on the [HUD Office of Housing Choice Vouchers website](#).
- ^{vi} See [testimony](#) on HB2139 (2022).
- ^{vii} While not all instances of this occurrence are due to fraudulent activity, local scams involving the collection of application fees and personal information for non-existent rental properties have been reported to the [Better Business Bureau](#).
- ^{viii} The City of Boise's [Rental Application Fee Ordinance](#) regulates several aspects of the tenancy application and screening process, including requiring landlords to disclose all screening criteria upfront and prohibiting

landlords from continuing to collect applications or fees once an applicant has placed a deposit on a vacant rental unit.

^{ix} The Urban Institute has compiled a [series of reports](#) documenting discriminatory housing practices impacting people of color, people with disabilities, and voucher holders. Families with children, same-sex couples, and transgender applicants also experience discriminatory or differential treatment in the housing market.

^x Tenant protection laws in Seattle (WA) contributed to the success of [economic mobility efforts](#) designed to help Housing Choice Voucher holders overcome barriers to upward mobility.

^{xi} While private landlords may determine their own application screening fees, [testimony](#) from several property management agencies suggests that fees charged by many local landlords are within a common range.

^{xii} [Oahu Housing Now](#), administered by Partners in Care using CARES Act funds directed for homeless services, provides damage mitigation support to landlords who rent to program participants. The program has [successfully housed over 300 households on Oahu](#) and has credited landlord incentives and wraparound case management for much of its success.

^{xiii} Examples of laws requiring transparency in rental screening criteria may be found in [Boise](#) (ID), [Philadelphia](#) (PA), and [Seattle](#) (WA).