



Tenant Protections



Advancing Housing Stability in Housing Credit Properties

2023

Robust tenant protections—laws and other measures that preserve renters’ rights—are an essential part of ensuring housing stability for residents of low-income rental units. Without them, low-income households are at greater risk of facing high rent burdens, evictions and/or housing discrimination, all of which contribute to involuntary moves. Even when affordable housing is well constructed, well located, and equipped with supportive services, tenant protections can ensure that low-income households can better remain stably housed for the long-term. Such provisions can be integrated into Low Income Housing Tax Credit (Housing Credit) properties and other types of affordable housing to support housing retention and stability for existing residents, and also to improve opportunities for prospective resident applicants in accessing housing. State and local housing finance agencies (HFAs) play a pivotal role in ensuring that both existing and prospective residents of Housing Credit properties are protected by:

- Minimizing housing discrimination through Affirmative Fair Housing Marketing Plans,
- Expanding access to housing through low-barrier tenant screening,
- Reducing evictions through well defined “good cause” protections and required eviction prevention services,
- Enhancing stability through limits on year-to-year rent increases, and
- Requiring robust relocation plans with attention to permanent displacement.

HFAs can play a particularly pivotal role where federal, state, and local laws fail to protect or support residents and applicants of Housing Credit properties, given that HFAs set the priorities for their development through Qualified Allocation Plans (QAPs). Some federal tenant protections specifically govern federally subsidized housing, but units constructed only with Housing Credits do not trigger a few of those protections because the Housing Credit program is often classified as an indirect federal housing subsidy (rather than a direct subsidy). While it remains the largest federal investment in the development of affordable housing, the Housing Credit program is not directly funded through the Department of Housing and Urban Development (HUD) as many other subsidized housing programs are, like Housing Choice Vouchers and Section 8 Project-Based Rental Assistance. Legislation like the Uniform Relocation Assistance (URA) Act, for example, is not triggered by the Housing Credit

program.¹ The extent to which residents of Housing Credit properties are protected under the URA consequently depends on state and local law and/or HFA requirements.

The following analysis, which examined 53² Qualified Allocation Plans (QAPs) released prior to March 2023, provides insight into how HFAs consider and encourage tenant protections. Those provisions in turn impact how owners and property managers ensure that residents can remain stably housed over the long-term in Housing Credit properties.

Affirmative Marketing

People cannot remain stably housed in Housing Credit properties if they are not aware they exist in the first place. The first step HFAs can take, therefore, is to ensure that people have equal access to information about the property and have the opportunity to apply. Eligible low-income households with language barriers, limited access to transportation, and accessibility challenges, among other barriers to housing access, may be underrepresented in the applicant pool unless intentional steps are made to overcome these barriers. An Affirmative Fair Housing Marketing Plan (AFHMP) is one tool to encourage more inclusive and fair outcomes. The AFHMP is a HUD-supported approach that developers can use to certify their anti-discrimination marketing strategy, thereby mitigating unlawful discrimination against protected classes in housing access and increasing fair housing choice for historically underserved communities.

23 OUT OF
53 HFAs

require the submittal of an Affirmative Fair Housing Marketing Plan (AFHMP).

Today, at least 23 HFAs require the submittal of an AFHMP as part of the application developers submit for a Housing Credit award, although the extent to which the plan is integrated into a larger fair housing marketing strategy varies by state. In Georgia, the AFHMP is only one of several forms of documentation required that indicates the extent to which a developer will market to underserved populations. The Georgia QAP requires a documented strategy and examples of outreach efforts to local service providers, homeless shelters, and/or disability advocacy organizations, as well as a specific process for marketing to individuals with limited English proficiency. Delaware, New York, and Rhode Island, among a few other states, also incentivize or require translation of marketing materials into other languages.

While the AFHMP is one important way for an HFA to reduce potential discrimination in people's ability to secure housing, some allocating agencies use alternative strategies to encourage marketing to households that are least likely to apply. Oregon, for example, sets aside 10% of its Housing Credits for projects developed by "Qualified Culturally Specific Organizations" that are designed to serve historically underserved communities.



¹ Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 84 FR 69466 (proposed December 18, 2019) (to be codified at 49 C.F.R. 24) <https://www.federalregister.gov/documents/2019/12/18/2019-25558/uniform-relocation-assistance-and-real-property-acquisition-for-federal-and-federally-assisted>.

² All 50 states, plus DC, New York City and Chicago



Young residents outside of the leasing office and community center at Hazel Hill Apartments, Fredericksburg VA

Low-Barrier Tenant Screening

If affirmative marketing is the first step in ensuring that more potential residents from protected classes can apply for housing, then low-barrier tenant screening practices present an opportunity for HFAs to go even further. Such practices increase the chances that potential residents from protected classes and other applicants are approved for housing by “screening in” rather than “screening out” residents. HFAs can incentivize or require certain practices in their QAPs that ensure applicants facing the biggest hurdles to housing access – such as those with prior convictions or evictions – are not unnecessarily eliminated from the pool of eligible prospective residents.

As of 2023, at least 12 states incentivize or require low-barrier screening practices that reduce the use of eviction records or criminal history. Owners and property managers can reduce the barriers to housing access by limiting the use of arrest and conviction records and eviction history in tenant screening. Not only do these discriminatory practices disproportionately impact low-income people of color, but they are also not necessarily accurate predictors of housing retention.³ While low-barrier tenant screening is generally required for subsidized permanent supportive housing (PSH), screening in the Housing Credit program for non-PSH units often employs stricter criteria – including criminal and eviction histories. HFAs are therefore uniquely positioned to encourage low-barrier tenant screening for all units in Housing Credit developments. In so doing, HFAs can reduce the racially disparate impacts of criminal and eviction record-based tenant screening practices. The Louisiana QAP, for example, identifies all the types of criminal histories that may not be used by developers of Housing Credit properties. Those include screening for arrests, juvenile records, non-violent misdemeanor convictions, and felony convictions over three to five years old. The QAP also requires the developers commit to individualized assessments for other criminal histories. The QAP situates these requirements in the context of Louisiana’s history of mass incarceration and the impacts on access to housing for low-income households across the state.

12 OUT OF 53 HFAs

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³ Johnson, C. (2022, May 17). *Tenant Screening with Criminal Background Checks: Predictions and Perceptions Are Not Causality*. HUD. <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html>.

Definition of “Good Cause Eviction”

Once residents are housed, HFAs also have tools at their disposal to ensure that residents of Housing Credit properties remain so in the long term. Good cause eviction laws, for example, preserve housing stability by limiting landlords’ capacity to evict residents who are not at fault. With strong evidence of significant racial disparities in eviction rates,⁴ good cause protections can reduce the potential for housing discrimination. While federal rules require that Housing Credit property owners provide “good cause” when evicting or terminating the tenancy of a resident, the meaning of the term is not abundantly clear. State and local laws are also inconsistent in defining the term good cause. The ambiguity around the definition can give owners latitude to misuse the term, diminishing the strength of the protection especially where state and local law has not already provided a sufficient definition.

18 OUT OF
53 HFAs

include language positively defining good cause in their QAPs and/or lease addenda.

For Housing Credit properties, HFAs can play an important role in defining what constitutes good cause. Currently, **at least 18 HFAs include language positively defining good cause**—that is, listing infractions that constitute good cause for eviction—in their QAPs and/or HFA-provided lease addenda for use in Housing Credit properties. In most of these QAPs, the language defines good cause as a material violation of the lease, without providing further detail. Other states like Mississippi and Washington include examples in the QAP to include instances where a resident fails to vacate a significantly damaged unit and repair of an inhabited unit is economically infeasible under their definition of good cause. Of the 18 HFAs identified previously, at least eight HFAs include a definition of good cause in

their provided lease addenda, which owners may be required or encouraged to use, depending on the state. California, for example, requires owners to inform Housing Credit residents of their rights through a required Good Cause Lease Rider, which provides examples of what constitutes a good cause eviction and describes the process through which an owner can move to evict a tenant. Several other HFAs outside of these 18 address good cause through a negative definition – rather than defining what does constitute a good cause eviction, these agencies list infractions that do not constitute good cause. D.C.’s Housing Credit compliance manual, for example, clarifies that good cause does not include failure to sign a new lease, failure to pay a utility bill to be paid to the landlord, and failure to move if over the qualified income, except in cases of tenant fraud.



A resident and an NHT staff member discussing a resident engagement initiative at Monsenor Romero, Washington D.C.

⁴ Hepburn, P., Louis, R., & Desmond, M. (2020, December 16). *Racial and Gender Disparities among Evicted Americans*. The Eviction Lab. <https://evictionlab.org/demographics-of-eviction/>.

Eviction Prevention Practices

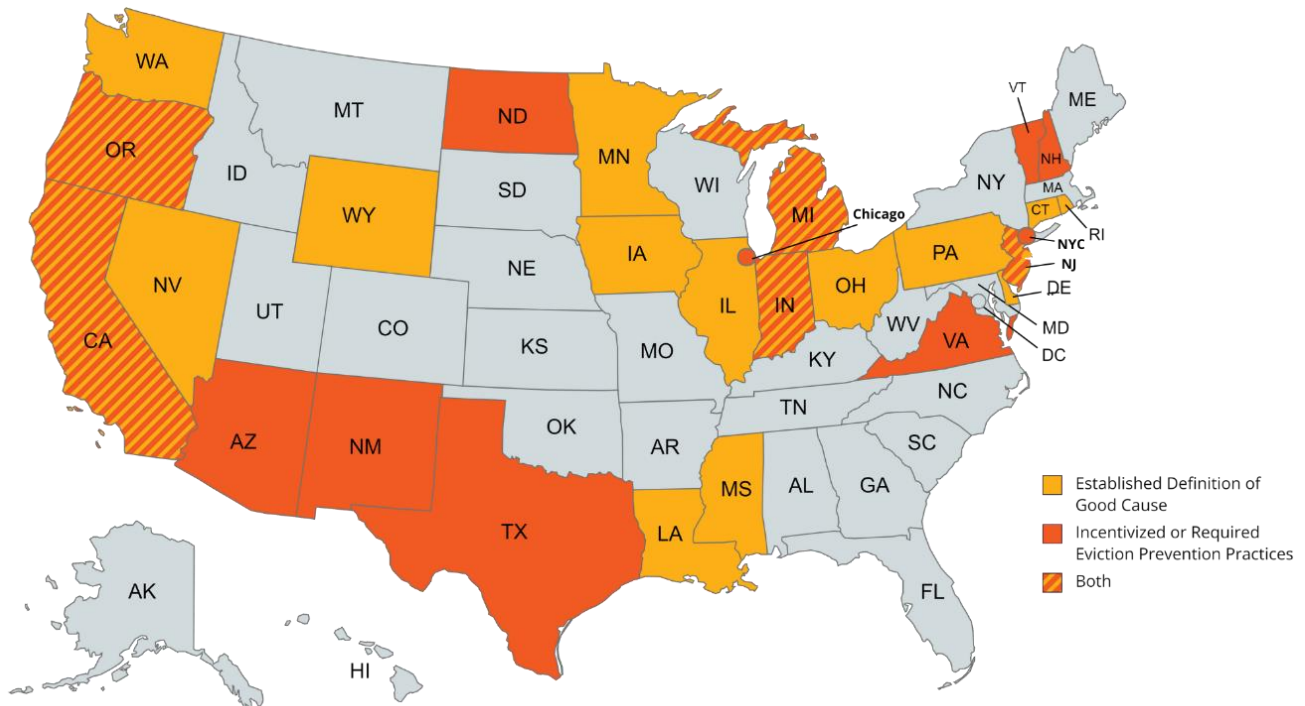
Eviction prevention programs – such as mediation and supportive payment plans -- are proven to effectively reduce housing instability, especially for households with the lowest incomes. As of mid-2023, however, only **14 HFAs include language around eviction prevention practices** in their QAPs. Among these 14, the provisions vary widely from state to state. Arizona and Vermont encourage the development of housing retention-focused supportive services plans. New York City, in its required Tenant Stability Plan, encourages the use of payment plans and mediation to address rental arrears and lease violations. Chicago, Michigan, and Virginia all include eviction prevention language only with regards to permanent supportive housing, while New Mexico and New Jersey include similar language only for special needs populations.

14 OUT OF 53 HFAs

include language around eviction prevention practices in their QAPs.

One of the strongest provisions around eviction prevention comes from the Indiana QAP, which since 2020 has included incentives for an Eviction Prevention Plan. The plan requires QAP applicants to detail strategies they will use to resolve issues with individual residents and must ensure that eviction is used only as a last resort option in Housing Credit properties. The plan, its implementation, and related eviction records are subject to HFA compliance monitoring. In encouraging eviction prevention practices, HFAs can nudge owners to use discretion in responding to lease violations such that evictions are minimized and properties can still sustainably operate in the long-term.

FIGURE 1: States that Positively Define “Good Cause” for Eviction and/or Incentivize or Require Eviction Prevention Practices (as of June 2023)



Limits on Rent Increases

Another tool at HFAs' disposal to preserve affordability and stability for renters is limits on rent increases. Low-income residents facing high rent increases can experience higher financial instability, a higher housing cost burden, and a reduced ability to pay other bills -- and consequently are more likely to be evicted. In some cases, limits on rent increases exist in state and local laws, though this is not always the case. Some of these policies also explicitly exempt properties with federal, state, or local affordability restrictions like the Housing Credit program. HFA-required limits on rent increases therefore may be especially effective where state and local law has not already determined rent increase caps.

As of mid-2023, **at least 10 HFAs explicitly cap allowable maximum rent increases in their QAPs.** These allowable increases range from 2% per year in New York and South Carolina to 10% in Nevada (for non-senior housing). At least seven of these HFAs cap increases at 5% per year. Other states outside of these 10 use alternative approaches to balance affordability and rent increases for renters. Iowa and Virginia incentivize Housing Credit property owners to ease rent burdens by requiring units' rent restrictions to be lower than income restrictions. In the Iowa QAP, for example, rent amounts calculated to be affordable for households at 40% of the area median income (AMI) are applied to units that are income restricted at 50% or 60% of the AMI, thereby increasing the effective affordability of the units to the residents. Ensuring a fair balance in rent increases that both protect residents and enable owners to make needed investments in maintenance and upgrades is critical to ensure the long-term housing stability for residents -- as well as the long-term viability of the affordable housing stock.

10 OUT OF
53 HFAs

explicitly cap
allowable maximum
rent increases

Relocation During Renovations

The extensive renovations that may be required during the preservation and rehabilitation of Housing Credit properties can often result in the relocation of existing residents. Required relocation can adversely impact the housing stability of existing residents, especially in states and localities where existing tenant protections around required relocation are limited. Moreover, for residents, relocation can result in significant disruptions in commutes, access to social support networks, and proximity to local resources like schools or doctors -- all of which impact their well-being. The Uniform Relocation Act (URA) seeks to ease the burden of relocation on residents by requiring developers to provide adequate notices, advisory services, financial assistance, and replacement housing. However, while Housing Credit developments receiving HUD funding (e.g., through HOME, NHTF or CDBG) are subject to the URA, the Housing Credit program itself does not trigger URA protections. In the absence of existing state and local legal standards for relocation assistance (e.g., California's Relocation Assistance Act), residents of Housing Credit properties may not be appropriately compensated for the logistical and financial challenges that come with involuntary moves.



34 OUT OF
53 HFAs

require submittal of a
relocation plan

HFAs can address this gap and better protect residents by requiring that the URA applies to all Housing Credit developments, regardless of HUD funding. Maryland, for example, explicitly identifies in its [Multifamily Rental Financing Program Guide](#) that all funding requests involving relocation are subject to the URA, “regardless of the ultimate source of the funds.” In addition to requiring URA protections, QAPs can encourage a more thoughtful approach to relocation during renovations in Housing Credit properties. **At least 34 HFAs require submittal of a relocation plan in Housing Credit applications**, though

the relative strength and breadth of the plan varies widely by state. Missouri requires developers to submit a description of the type of relocation, a breakdown of the relocation budget, a list of the services to be provided to residents during relocation, sample relocation notices to tenants, and information on households that may need “last resort housing” when comparable units are not available. **At least eight states prohibit or restrict the permanent displacement of residents.** Pennsylvania, for example, rejects development applications that involve the permanent displacement of existing residents unless the developer provides an appropriate relocation plan. The Pennsylvania QAP indicates that developers should offer existing residents the option to either be temporarily relocated or receive relocation benefits.

Conclusion

There are several ways HFAs can proactively protect both prospective and existing residents of Housing Credit properties. Affirmative marketing and low-barrier tenant screening can help HFAs ensure that eligible households seeking housing are not unfairly excluded from the applicant pool. Defining “good cause,” encouraging eviction prevention services, limiting rent increases, and requiring robust relocation plans are tools that HFAs can use to promote long-term housing stability for existing residents. While all of these protections can have important implications for resident stability in Housing Credit properties, this list is by no means exhaustive. In practice, HFAs vary widely in the extent to which they address tenant protections in QAPs, reflecting affordability priorities, regional differences, and the strength of existing state and local legal protections outside of the HFAs’ jurisdictions.

Learn more about how QAPs can accelerate the affordability, opportunities, and sustainability of affordable housing on our [QAP analysis home page](#).

TABLE 1: State Strategies to Ensure Tenant Protections in Housing Credit Properties

STATE	REQUIRED AFHMP	LOW-BARRIER TENANT SCREENING	POSITIVE DEFINITION OF GOOD CAUSE	EVICITION PREVENTION PRACTICES	LIMITS ON RENT INCREASES	REQUIRED RELOCATION PLAN	LIMITS ON PERMANENT DISPLACEMENT
AK	X					X	
AL	X						
AR	X						
AZ				X		X	
CA			X ³	X	X		
CO							
CT	X		X				X
DC						X	
DE	X		X			X	X
FL	X	X ^{1, 4, 5}				X	
GA	X	X ⁴				X	
HI							
IA	X		X			X	X
ID	X					X	
IL	X		X			X	X
Chicago				X ¹		X	
IN		X ⁵	X ³	X		X	
KS	X					X	
KY						X	
LA		X ⁴	X				
MA	X					X	
MD							X
ME						X	
MI	X		X ³	X ¹	X	X	
MN		X ^{4, 5}	X ³			X	
MO					X	X	
MS			X			X	
MT					X	X	
NC	X	X ⁴				X	
ND	X	X ⁴		X			
NE	X					X	
NH				X ²			
NJ	X		X ³	X ¹	X	X	
NM				X ¹		X	
NV			X ³		X		
NY	X	X ⁴			X		
NYC		X ⁵		X			
OH		X ^{4, 5}	X ³			X	X
OK							
OR		X	X	X ²	X	X	
PA	X		X		X	X	X
RI	X		X ³				
SC	X				X	X	
SD						X	
TN							
TX	X	X ⁴		X			
UT						X	
VA				X ¹		X	
VT				X			
WA			X ³			X	
WI						X	X
WV							
WY	X		X			X	
Total	23/53	12/53	18/53	14/53	10/53	34/53	8/53

¹ For specific populations or projects only
² To be selected from a list of approved services
³ Included in model lease or required lease addendum
⁴ Limits on use of criminal history
⁵ Limits on use of eviction history