



Opening Doors to Affordable Housing: The Low-Income Housing Tax Credit Program and People with Conviction Histories

Contents

Introduction	3
The Low-Income Housing Tax Credit Program	4
LIHTC Policies for People with Conviction Histories	5
Limiting the use of conviction histories.....	7
Denials based on conviction histories.....	14
No guidance on housing people with conviction histories	17
State legislation that permits denials.....	17
States with inclusive housing policies	19
Conclusion.....	22
Acknowledgments	23
Endnotes	23

Introduction

Housing is a human right, but for millions of people in the United States, the right to safe and affordable housing is not secure. Local, state, and federal policies have contributed to divestment in economic, educational, and health programs, and the social safety net for millions of people in the United States has deteriorated as a result.¹ One area that has been especially affected by this is housing. Housing shortages, increased housing costs, and stagnant income and wage growth have all contributed to the current housing crisis.² As a result, millions of people in the United States experience homelessness and housing insecurity: in 2020, for example, 1.25 million people experienced sheltered homelessness at some point during the year; in January 2022, 582,462 people experienced homelessness on a single night, a slight increase from 2020.³

These housing challenges impact everyone, but some marginalized groups are disproportionately affected, including the elderly, women and children, people with disabilities, and people of color.⁴ And for the millions of people with a history of arrest or conviction, housing challenges are exacerbated by discriminatory and restrictive policies.⁵ Housing providers in the public and private housing markets often deny housing for the one in three people in the United States who have a conviction history, and the scale of these restrictive housing policies is unknown.⁶ But the impacts of the barriers are known: formerly incarcerated people are 10 times more likely to be unhoused than the general public, and 203 out of 10,000 formerly incarcerated people experience homelessness.⁷ Housing instability exposes people to increased interactions with police, increasing the likelihood of arrest and contributing to the revolving door of homelessness and incarceration.⁸

Housing policies that bar admission to people with conviction histories seek to make housing developments and communities safe, but they are counterproductive. Research shows that access to safe and affordable housing increases the chances that a person returning home from prison or jail will receive family support, find and maintain employment, rebuild supportive social networks, and avoid additional convictions.⁹ One 2004 study found that receiving support for needs such as housing reduced the odds of recidivism by 83 percent among women.¹⁰ Further, arrest or conviction backgrounds have no bearing on tenancy outcomes, and these records do little to predict future danger and harm by a person to other residents in a development.¹¹ Ultimately, policies that prevent people with conviction histories from accessing affordable housing inhibit economic mobility, separate families, and contribute to increased recidivism rates.

Affordable housing is already in short supply, and policies that bar people with conviction histories from obtaining housing further decrease this small

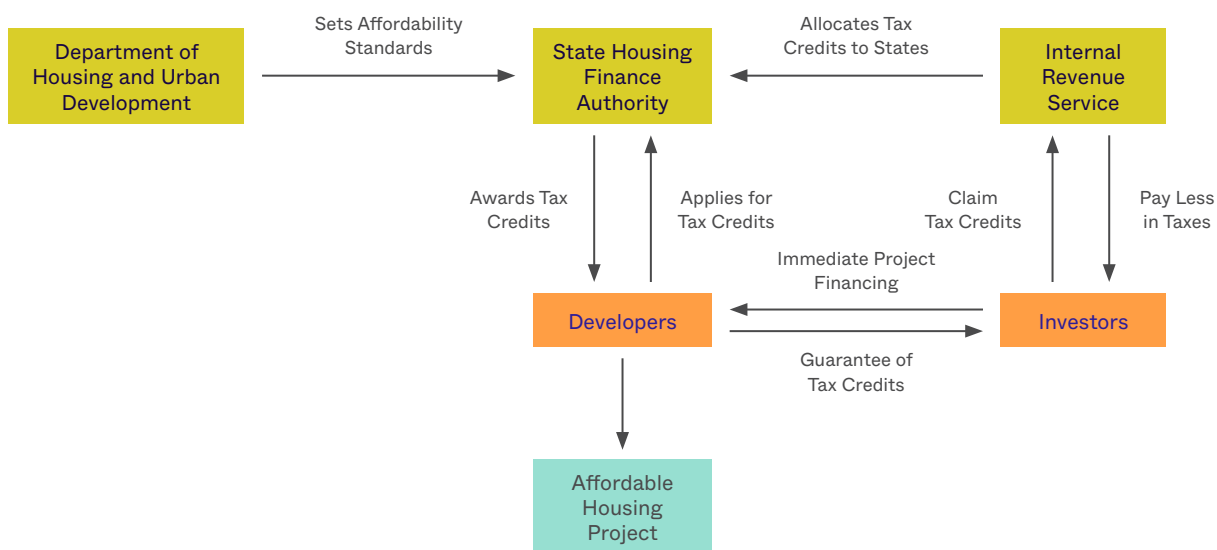
Formerly incarcerated people are 10 times more likely to be unhoused than the general public, and 203 out of 10,000 formerly incarcerated people experience homelessness.

supply.¹² But housing providers and policymakers are now recognizing the expansive reach and impact of the criminal legal system and are beginning to reconsider the policies that bar admission to housing for people with conviction histories. In recent years, the agencies that administer the Low-Income Housing Tax Credit (LIHTC) program have started to adopt inclusive policies. The LIHTC program provides people in the United States with a pathway to economic mobility by subsidizing the development and rehabilitation of affordable housing units across the country. In this report, the Vera Institute of Justice (Vera) consolidates the rules and regulations of state housing finance agencies for the LIHTC program that support the inclusion of people with conviction histories in their properties. In addition, Vera also includes the barriers to housing for people with conviction histories, highlighting jurisdictions that can do more to increase housing stability and public safety.

The Low-Income Housing Tax Credit Program

The Low-Income Housing Tax Credit (LIHTC) program is a federal program that supports the development and rehabilitation of affordable rental housing.¹³ LIHTC awards housing developers federal tax credits to offset costs in exchange for agreeing to reserve a portion of the units in the development for lower-income households. Developers often sell the tax credits, which can be claimed over 10 years, to investors in exchange for financing to build the units required to qualify for the LIHTC program.¹⁴ From 1987 to 2020, LIHTC supported 50,567 projects and the development of more than 3.4 million housing units.¹⁵ Figure 1 shows the stakeholders and their roles in the program.

FIGURE 1
The Low-Income Housing Tax Credit program



Source: Everett Stamm and Taylor LaJoie, *An Overview of the Low-Income Housing Tax Credit* (Washington, DC: Tax Foundation, 2020), 14, <https://perma.cc/4P3D-XEUH>.

LIHTC was created when the Tax Reform Act of 1986 became law.¹⁶ The U.S. Department of the Treasury (Treasury) administers the program and, within the Treasury, the Internal Revenue Service (IRS) determines the annual LIHTC allocation for each state according to the state's population.¹⁷ For example, the LIHTC allocation was \$2.60 per person in each state for 2022.¹⁸ Beyond the allocation, housing finance agencies (HFAs) implement LIHTC at the state level. HFAs determine the application requirements, criteria, and priorities for tax credit projects, all of which are outlined in each HFA's qualified allocation plan (also referred to as QAP).¹⁹ Each state creates its own qualified allocation plan and must include minimum selection criteria, including housing needs, location, and special populations prioritized for the housing.²⁰ Beyond the minimum selection criteria, HFAs can have additional requirements, but developers and property managers have broad discretion in targeting prospective residents.²¹ The IRS awards new allocations each year, and states usually draft and revise qualified allocation plans annually.

Federal regulations stipulate income requirements for LIHTC tenants, but there are no other requirements on how LIHTC properties should screen prospective tenants. Housing providers must abide by the Fair Housing Act, which prohibits housing-related discrimination based on race, color, religion, sex, familial status, and disability but does not include people with conviction histories.²² Recently, the U.S. Department of Housing and Urban Development (HUD) released guidance that the use of arrest and conviction history to screen people for housing may violate the Fair Housing Act under three theories of liability: discriminatory intent (disparate treatment), discriminatory effects (disparate impact), and refusal to make reasonable accommodations.²³ Although the guidance is limited to potential theories of liability without affirmative rules relating to conviction history screening, recent lawsuits have tested the applicability of these theories. For example, the Fortune Society, a nonprofit in New York, sued the Sandcastle Towers Housing Development Fund for prohibiting people with conviction histories from living in its units, claiming the practice was discriminatory and had a disparate impact on the basis of color and race.²⁴ The U.S. District Court for the Eastern District of New York denied summary judgment for Sandcastle Towers and allowed the case to proceed to trial on the basis of the disparate impact claim.²⁵ The case was ultimately settled before trial, with Sandcastle Towers agreeing to pay more than \$1.1 million.²⁶

Housing providers must abide by the Fair Housing Act, which prohibits housing-related discrimination based on race, color, religion, sex, familial status, and disability but does not include people with conviction histories.

LIHTC Policies for People with Conviction Histories

Vera reviewed the qualified allocation plans and other policies that govern the LIHTC program from HFAs of all 50 states and the District of Columbia.

HFAs take varying approaches to screening people with conviction histories. Most do not include any policies for accepting or denying people with conviction histories, but others have inclusive policies and guidance on housing people with conviction histories. The following sections highlight states with restrictions for housing people with conviction histories, states with inclusive policies and guidelines for people with conviction histories, and states without explicit policies for people with conviction histories. (See Figure 2 for a chart that summarizes the findings for each state.)

Key findings

- › State housing finance agencies in 34 states and the District of Columbia have no guidance in their qualified allocation plan or other policies on using criminal backgrounds when determining admission for prospective tenants.
- › In 11 states, housing finance agencies have some guidance on the use of criminal backgrounds for people with conviction histories. There is a broad spectrum of guidelines and policies on the use of criminal background checks for prospective tenants:
 - ↳ Two agencies require a clearly defined screening policy, and seven limit the use of arrest histories when making admissions decisions.
 - ↳ For certain types of housing projects (for example, supportive housing), agencies require developers to implement a screening policy that is “low barrier” and encourage housing providers to consider mitigating factors for recent conviction histories, including age at the time of the incident, the time that has passed since the incident, and the conviction’s relevancy to tenancy.
 - ↳ The time following a conviction, arrest, or other criminal legal system event (for example, release from prison) during which housing providers can consider these histories in determining admission into housing—or lookback periods—vary. Agencies include lookback periods as low as three months for certain types of activity and as high as 10 years. Some agencies mandate specific lookback periods for certain types of convictions (for example, five years for felony convictions related to the sale of a controlled substance).
 - ↳ Illinois’s and Pennsylvania’s agencies include language in their policies that is inclusive of people with conviction histories *and* have guidelines for housing providers to deny people based on their conviction histories. Illinois’s and Pennsylvania’s policies are highlighted in two sections of this report.
- › In seven states, agency guidelines and policies permit the use of conviction histories to deny people admission to housing.
 - ↳ The language describing prohibitions is clear in some agencies, with defined lookback periods for certain convictions. However, there are agencies with guidelines that are ambiguous and broad, calling for rejections when people have conviction histories “involving behavior that could negatively affect other tenants.”^a

- › Drug use and drug-related criminal activity that impact the health and safety of other residents remain a concern for some agencies.

a Nebraska Investment Finance Authority, *Low-Income Housing Tax Credit Program—2022–2023 Qualified Allocation Plan* (Omaha, NE: Nebraska Investment Finance Authority, 2022), 596, <https://perma.cc/3H6P-Q3X6>.

Limiting the use of conviction histories

Eleven state agencies have guidelines that limit the use of arrest and conviction history when screening for tenants of LIHTC properties. These guidelines range from limiting the types of convictions that housing providers can use for the basis of denials to establishing time frames in which they may consider convictions. Other guidelines reference HUD guidance on the use of arrest and conviction histories when making admissions decisions.²⁷ One benefit of these states' policies is that they are clear about using background checks narrowly so that people who have criminal legal system involvement have a chance at obtaining housing.

Florida

The Florida Housing Finance Corporation (FHFC) is the housing finance agency that administers the LIHTC program. FHFC requires applicants to submit a tenant selection plan (TSP) that outlines tenant application and screening procedures.²⁸ FHFC's TSP checklist indicates that the TSP should state that convictions, not arrests, will be the basis of criminal history screenings and that the TSP should indicate if it will conduct screenings based on Florida's sex offense registry database.²⁹ If an owner rejects an applicant, it must provide notice in writing to the applicant stating the reason for rejection and notifying the applicant of their right to appeal.³⁰

Georgia

In Georgia, the Department of Community Affairs is responsible for processing LIHTC applications, and the Georgia Housing and Finance Authority is responsible for allocating the housing credits to developers.³¹ The qualified allocation plan requires developers to have a clearly defined screening policy that establishes the criteria for renting to prospective tenants.³² Developers maintain discretion in their screening criteria, but the qualified allocation plan requires developers to comply with the following: arrest histories cannot be the basis for rejecting a tenant; housing providers may only reject tenants with a conviction if the record demonstrates that the safety of the property and/or residents is at risk; and housing providers cannot include any blanket terms but must evaluate screening criteria on a case-by-case basis.³³

FIGURE 2

State-by-State Guidance Summary

State	No guidance in QAP	Guidance that supports inclusivity	Guidance that poses barriers	State policies that permit denials	State policies that increase access
Alabama	X			X	
Alaska	X				
Arizona	X			X	
Arkansas	X				
California	X				X
Colorado	X				X
Connecticut	X				X
Delaware	X				
District of Columbia	X				X
Florida		X			
Georgia		X			
Hawaii	X				
Idaho			X		
Illinois		X	X		X
Indiana		X		X	
Iowa	X				
Kansas	X				
Kentucky	X				
Louisiana		X			
Maine	X				
Maryland	X				
Massachusetts			X		
Michigan		X			
Minnesota		X			
Mississippi	X				
Missouri					
Montana	X				
Nebraska			X		
Nevada	X				
New Hampshire	X				
New Jersey	X				X
New Mexico	X				
New York		X			
North Carolina		X			
North Dakota	X				
Ohio		X			
Oklahoma	X			X	
Oregon	X				
Pennsylvania		X	X		
Rhode Island	X				
South Carolina	X				
South Dakota	X				
Tennessee	X				
Texas			X		
Utah	X				
Vermont	X				
Virginia	X			X	
Washington	X				
West Virginia	X				
Wisconsin	X				
Wyoming	X				

Illinois

In addition to guidance on screening people with conviction histories (detailed in the section that follows), the Illinois Housing Development Authority's qualified allocation plan directs owners to the state's Comprehensive Housing Planning Act (CHPA), which aims to improve the state's housing services for underserved populations throughout Illinois.³⁴ CHPA identifies people with arrest and conviction histories as a special needs population, suggesting it may release more inclusive tenant selection criteria related to screening tenants with conviction histories in the coming years.³⁵

Indiana

The Indiana Housing and Community Development Authority (IHCDA) administers Indiana's LIHTC program.³⁶ Indiana's qualified allocation plan requires that property managers for supportive housing implement a screening process that includes "low-barrier" arrest and conviction history screening procedures.³⁷ These tenant-screening procedures include provisions that housing providers

- › cannot reject applicants based on misdemeanors older than two years and felonies older than five years;
- › can consider individual or mitigating factors for recent convictions, especially if the conviction is unrelated to tenancy; and
- › cannot consider non-convictions, arrests, diversions, deferrals, dismissals, expungements, and crimes committed as a youth.³⁸

IHCDA recommends that property managers, as a best practice, comply with low-barrier criminal background screening procedures and develop evidence-based policies when considering conviction history and mitigating factors in the selection of tenants.³⁹ IHCDA, citing 2016 guidance from HUD, further states that such "[p]olicies must consider the type of conviction and the amount of time that has passed since the conviction and that [i]f a policy excludes individuals with specific types of convictions, the housing provider must prove that the policy is necessary to serve a 'substantial, legitimate, nondiscriminatory interest.'"⁴⁰ Indiana's 2019 Rental Housing Tax Credit Compliance Manual (the most recent manual available) also states that tenant selection criteria from property managers must be in compliance with HUD guidance.⁴¹

Louisiana

In 2021, advocates in Louisiana, including the Louisiana Fair Housing Action Center and Voice of the Experienced, secured changes to a new tenant screening policy for the LIHTC program and other programs the Louisiana Housing Corporation administers.⁴² The policy stipulates that⁴³

- › housing providers must explain that their tenant selection policies specific to criminal backgrounds are necessary to achieve “substantial, legitimate, [and] nondiscriminatory interests”;
- › housing providers may not consider arrests, charges that do not result in a conviction, records from the juvenile legal system, nonviolent misdemeanor convictions, violent misdemeanor and nonviolent felony convictions that are more than three years old, and violent felony convictions that are more than five years old when making admissions decisions;
- › housing providers will consider reasonable accommodations if a conviction was related to a person’s disability;⁴⁴ and
- › applicants have a right to submit mitigating evidence to support an individualized assessment of their arrest or conviction history, including facts related to the incident, evidence of rehabilitation, and evidence of good tenancy history.

Michigan

The Michigan State Housing Development Authority (MSHDA) administers the LIHTC program. The qualified allocation plan and accompanying scoring criteria offer up to four points for permanent supportive housing projects that adopt criminal background screening criteria that are “not more restrictive than MSHDA’s Housing Choice Voucher (HCV) criteria, with the exception for specific violent property crimes.”⁴⁵ MSHDA’s HCV screening criteria outline the following policies:

- › denial if any household member is currently engaged in drug-related criminal activity (defined as a conviction and from the date of arrest and/or charge, whichever is earlier) in the past three months;
- › denial if any household member has engaged in violent criminal activity (defined as a conviction and from the date of arrest and/or charge, whichever is earlier) in the past 12 months;
- › denial if any household member was evicted from federally subsidized housing within the past three years for drug-related criminal activity; however, MSHDA may admit the household member who was evicted if MSHDA can verify the completion of an MSHDA-approved supervised drug rehabilitation program;
- › mandatory denials for people convicted of producing methamphetamines in federally subsidized housing; and
- › mandatory denials for people who have a lifetime sex offender registry requirement.⁴⁶

In October 2022, MSHDA launched a racial equity impact assessment.⁴⁷ In collaboration with Enterprise Community Partners and the Community

Economic Development Association of Michigan, MSHDA examined its qualified allocation plan to advance equity in communities and developments built with LIHTC. Stakeholders from across the state, including people with lived experience in the criminal legal system and resulting housing insecurity, offered their feedback to MSHDA. Ongoing stakeholder meetings will occur through early 2023, and MSHDA will include recommended changes in the 2024–2025 qualified allocation plan.

Minnesota

The Minnesota Housing Finance Agency (Minnesota Housing) does not address the use of criminal background checks for potential LIHTC tenants in its qualified allocation plan.⁴⁸ Minnesota Housing’s compliance guide points to a relevant section of Minnesota Housing’s Tenant Selection Plan (TSP) Guidelines.⁴⁹ The TSP Guidelines are mandatory for all projects selected for an applicable program and funding source as a result of a funding application submitted to Minnesota Housing after March 31, 2021.⁵⁰ The TSP Guidelines include limitations on the use of criminal background checks for potential LIHTC tenants. The TSP Guidelines reiterate HUD’s 2016 guidance and stipulate that housing providers

- › use convictions, not arrests, for the basis of denials;
- › may not use blanket bans for applicants with convictions and must distinguish between convictions that pose a risk to tenant safety and/or property and those that do not;
- › should consider mitigating factors when making tenancy decisions (e.g., tenant history, evidence of rehabilitation efforts);
- › must allow an applicant to provide additional information with a completed application to explain any information surfaced by a screening; and
- › should apply the same standards consistently to all applicants.⁵¹

For all supportive housing units, the TSP Guidelines impose further restrictions on the role arrest or conviction history can play in tenant selection. For all supportive housing units, an owner’s screening criteria shall not reject an applicant for any of the following reasons:

- › arrests that did not lead to a conviction, participation in a diversion program, and convictions that were vacated or expunged;
- › convictions in the juvenile legal system;
- › convictions for crimes that are no longer illegal in Minnesota;
- › convictions for petty misdemeanors, sex work, alcohol-related crimes, or low-level property crimes;

- › convictions for misdemeanors that are older than two years; and
- › convictions for felonies that are older than seven years; however, landlords can deny people who are convicted of the illegal manufacture or distribution of a controlled substance.⁵²

New York

The New York State Housing Finance Agency, which is a sub-agency of the Division of Housing and Community Renewal, administers New York State's qualified allocation plan. New York's qualified allocation plan does not include additional criteria for screening people with conviction histories and does not require housing providers to conduct background checks for state-funded housing.⁵³ However, if the provider conducts background checks, it must follow New York's Anti-Discrimination Policies When Assessing Justice-Involved Applicants for State-Funded Housing.⁵⁴ The developer may screen housing applicants who have had past convictions that involved physical danger or violence to persons or property that adversely affected the health, safety, and welfare of other people.⁵⁵ The developer must assess each tenant on an individual basis, considering the amount of time since the conviction, the age of the tenant at the time of the offense, the seriousness of the offense, and any evidence of the tenant's rehabilitation.⁵⁶ When screening tenants, the developer is prohibited from using records such as arrests, juvenile convictions, or sealed convictions as a basis for denying a tenant's application for housing.

North Carolina

The North Carolina Housing Finance Agency (NCHFA) administers the LI-HTC program.⁵⁷ North Carolina's most recent qualified allocation plan does not address criminal background checks for tenants or applicants, but NCHFA's TSP guidance addresses the use of criminal background checks in selecting tenants.⁵⁸ TSPs must describe detailed screening criteria for criminal background checks so that applicants may reasonably determine whether they meet the requirements of the criminal background screening criteria, and they must be no more restrictive than North Carolina's model policy on screening applicants with conviction histories.⁵⁹ Screening criteria must also not be restrictive to create a disparate impact with respect to a person's race, color, religion, sex, disability, familial status, or national origin, categories protected by the federal Fair Housing Act.⁶⁰

The NCHFA's Model Policy on Screening Applicants with Criminal Records requires any applicable management company to explain its policies and procedures on criminal background checks and inform applicants of their right to submit evidence of mitigating circumstances.⁶¹ The Model Policy states that management companies may conduct criminal background checks on each adult member of an applicant household.⁶² If a management company intends to deny admission due to negative information from a criminal background report, then the company must provide the

applicant with notice and an opportunity to dispute the accuracy of the record within eight business days.⁶³ If the applicant does not dispute the accuracy of the criminal background check report, then the management company must send a written notice of ineligibility to the applicant providing specific reasons for denial and advising the applicant of their right to appeal.⁶⁴ Management companies are not allowed to consider arrests or charges resolved without conviction or expunged or sealed convictions.⁶⁵

The Model Policy also includes the following criteria for assessing past convictions:

- › The management company *must* deny admission if a member of an applicant household has been convicted of a felony involving the sale or manufacture of a controlled substance within five years of application, *may* deny admission if convicted within five to 10 years of application, and *must not* deny admission if convicted more than 10 years before the application.
- › The management company *must* deny admission if a member of an applicant household has been convicted of a violent felony offense within five years of the application and *may* deny admission if convicted more than five years before the application.
- › The management company *may* deny admission if a member of an applicant household has been convicted of a nonviolent felony offense within seven years of the application and *must not* deny admission if convicted more than seven years before the application.
- › The management company *must* deny admission if a member of an applicant household has been convicted of a violent misdemeanor within two years of the application and *may* deny admission if convicted more than two years before the application.
- › The management company *may* deny admission if a member of an applicant household has been convicted of a nonviolent misdemeanor within five years of the application and *must not* deny admission if convicted more than five years before the application.⁶⁶

Ohio

The Ohio Housing Finance Agency's (OHFA) qualified allocation plan includes detailed instructions for assessing potential tenants with conviction histories.⁶⁷ Owners have some discretion in drafting their own tenant selection plans, but they must submit all TSPs to OHFA for approval. OHFA prohibits the denial of housing based on arrest records alone, limits the lookback period for convictions to a "reasonable" period, mandates an individual assessment process for each applicant, and requires that the applicant be given an opportunity to provide mitigating information to the housing provider relating to the relevant conviction(s).⁶⁸

OHFA also provides a model criminal background screening policy in its qualified allocation plan.⁶⁹ The model policy allows background screenings to consider only felony property offenses, major drug offenses, major violent offenses, and sex offenses. It also limits this inquiry to the last five years.⁷⁰ If an applicant is found to have a covered conviction, the owner must conduct an individual assessment of the applicant. The assessment procedure requires the owner to also consider the following factors:

- › the facts and circumstances from the criminal incident;
- › the age of the applicant when the incident occurred;
- › evidence of good tenancy or employment history;
- › evidence of rehabilitation and any other information about good conduct since the incident;
- › the time that has passed since the conduct occurred;
- › whether the arrest or conviction arose from an applicant's disability, including mental illness; and
- › additional information that determines whether the person's arrest or conviction history will pose a risk for current residents, the property's employees, or the property.⁷¹

If, after the individual assessment, the owner decides to reject an applicant, the owner must explain the decision to the applicant in writing in the form of a criminal background adverse action letter.⁷²

Pennsylvania

In addition to guidance on screening people with conviction histories (detailed in the section that follows), the Pennsylvania Housing Finance Agency's qualified allocation plan emphasizes that owners must apply screening criteria uniformly to all applicants. Criminal background check policies for applicants and tenants should be nondiscriminatory and reasonable and must not violate the federal Fair Housing Act.⁷³ To determine if such a policy or procedure is reasonable and nondiscriminatory, HUD's general counsel has provided a three-step analysis: whether the policy or procedure has a discriminatory effect; whether the policy or procedure is necessary to achieve a substantial, legitimate, nondiscriminatory interest; and whether there is a less discriminatory alternative.⁷⁴

Denials based on conviction histories

Housing finance agencies in seven states have guidelines that permit the use of conviction histories as a basis for denials when screening for tenants for LIHTC properties. These guidelines vary; some establish specific

convictions that may prompt a denial, while others establish time frames during which housing providers may consider convictions.

Idaho

The Idaho Housing and Finance Association's qualified allocation plan does not list any requirements or limitations on the use of criminal background checks for screening tenants, but it requires developers to include a tenant selection policy within their management plans.⁷⁵ The guidance on tenant selection does not address criminal background screening directly, but it does provide that if a tenant is incarcerated for a drug-related or violent criminal offense, the housing provider should not allow the tenant to return to their unit.⁷⁶ However, the housing provider may grant an exception to this upon completion of a rehabilitation program.⁷⁷

Illinois

The Illinois Housing Development Authority (IHDA) requires owners to submit a TSP as a part of their application, and a TSP template is available on the IHDA website.⁷⁸ In its criminal convictions/drug use section, the TSP mandates rejection of applicants who use marijuana or whose use of another controlled substance interferes with the "health, safety, or right to peaceful enjoyment" of other residents; applicants who have been evicted in the last three years for drug-related activity; and applicants who have been convicted of sex offenses.⁷⁹ The TSP also states that housing providers may reject applicants for convictions involving violence or the manufacture or distribution of controlled substances, both subject to a reasonable lookback period determined at the discretion of the owner.⁸⁰

Massachusetts

The Massachusetts Department of Housing and Community Development (DHCD) is responsible for administering the LIHTC program.⁸¹ The Massachusetts Housing Finance Agency (MassHousing) shares authority with the DHCD to issue tax credits for affordable housing development.⁸² The DHCD prepares and publishes its qualified allocation plan governing the allocation of LIHTC credits on an annual basis.⁸³ The Massachusetts qualified allocation plan does not include guidance on criminal background checks in LIHTC housing, but a model TSP MassHousing issued in February 2022 provides some guidance for housing providers.⁸⁴

Exhibit 2 of the model TSP lists the rejection standards for developments MassHousing administers or finances.⁸⁵ The following rejection standards relate to an applicant's history of criminal activity:

- › An applicant or household member's arrest or conviction history reveals criminal activity that would interfere with or threaten the health and safety of other tenants; the owner; or employees, contractors, or agents of MassHousing.

- › In the past three years, the applicant or household member has been evicted from federally assisted housing for drug-related criminal activity. The owner may admit the household if the evicted applicant or household member who engaged in drug-related criminal activity has successfully completed a drug rehabilitation program, or circumstances leading to the eviction no longer exist (e.g., the household member with the history of drug-related criminal activity has died).
- › The applicant or household member currently uses one or more controlled substances.
- › The applicant or household member's use of drugs will interfere with the health and safety of other residents.
- › The applicant or household member is required to register with the Massachusetts Sex Offender Registry or has a lifetime registration requirement.
- › The applicant or household member's alcohol use will interfere with the health and safety of other residents.⁸⁶

Nebraska

The Nebraska Investment Finance Authority (NIFA) administers the LIHTC program in Nebraska. NIFA's current qualified allocation plan includes leasing guidelines, which state: "With respect to all prospective Tenants, Manager shall inquire and verify whether a prospective Tenant has any criminal records. Any conviction involving behavior that could negatively affect other tenants shall be cause for rejection."⁸⁷

Pennsylvania

The Pennsylvania Housing Finance Agency's qualified allocation plan outlines requirements for screening people based on their conviction histories.⁸⁸ The tenant selection plans that housing providers in Pennsylvania create must contain screening criteria that include guidelines to deny people "who have engaged in drug-related or criminal activity and registered sex offenders."⁸⁹

South Dakota

The South Dakota Housing Development Authority (SDHDA) administers the LIHTC program and publishes a qualified allocation plan annually.⁹⁰ SDHDA also publishes a housing tax credit compliance manual as a reference guide for the LIHTC program.⁹¹ Neither the qualified allocation plan nor the housing tax credit compliance manual offers guidelines for how developers should screen applicants' criminal histories. However, the qualified allocation plan does require developers or property managers of LIHTC housing developments to attend crime-free multi-housing (CFMH) programs that law enforcement entities across the state host.⁹²

Police departments administer CFMH programs on a local basis, and the guidance that police departments issue for screening for and denying prospective tenants with conviction histories varies. For example, the City of Brookings Police Department guidance to housing providers states that “[n]o person with a felony assault behavior conviction in the last five years will be allowed to reside on the property, and [n]o person with a felony drug conviction in the last five years will be allowed to reside on the property.”⁹³

Texas

The Texas Department of Housing and Community Affairs’ qualified allocation plan includes criminal background screening criteria and procedures in detail.⁹⁴ It prohibits residents who are subject to lifetime sex offender registration from residing in developments.⁹⁵ Additionally, it establishes that, at a minimum, an owner’s criminal screening criteria must provide for “[t]emporary denial for a minimum of seven years from the date of conviction based on . . . any felony conviction for murder-related offenses, sexual assault, kidnapping, arson, or manufacture of a controlled substance, as well as [t]emporary denial for a minimum of three years from the date of conviction based on . . . any felony conviction for aggravated assault, robbery, drug possession, or drug distribution.”⁹⁶

The qualified allocation plan also requires owners to include provisions for assessing mitigating evidence for tenants with criminal histories, which can include personal statements, evidence of drug and alcohol treatment, and letters of recommendation.⁹⁷

No guidance on housing people with conviction histories

Thirty-four states and the District of Columbia have no guidance in their qualified allocation plans or other policies on the use of criminal backgrounds for prospective tenants, the types of convictions that would warrant a denial, or factors to consider when housing people with conviction histories.⁹⁸ However, some states have broader fair chance housing policies or laws that allow housing providers to use conviction histories as a basis for denials. These policies govern all housing in the state—with limitations in certain states on properties where the owner resides and/or has a certain number of units—and apply to LIHTC properties.

State legislation that permits denials

Some states have passed legislation that allows housing providers to deny tenancy to people based on their conviction histories. Although policies of the housing finance agencies in those states may offer no guidance on housing people with conviction histories, the legislation permits developers and property managers in the following states to deny people based on specific convictions.

Alabama

The Alabama Fair Housing Law permits housing providers to deny people who have prior convictions for manufacturing and distributing controlled substances and allows housing applications to mandate disclosures by applicants for violating laws related to manufacturing and distributing controlled substances.⁹⁹

Arizona

Arizona's state fair housing law provides that it does *not* prohibit discrimination against a person because the person has been "convicted . . . of the illegal manufacture or distribution of a controlled substance."¹⁰⁰

Indiana

Indiana has implemented a state-level fair housing law that explicitly states that it does not prohibit discrimination against a person because the person has been "convicted . . . of the illegal manufacture or distribution of a controlled substance."¹⁰¹ The statute does not address other criminal convictions.

Oklahoma

Oklahoma's statute allows all property owners in the state, including those participating in the state's Affordable Housing Tax Credit program, to deny applicants or terminate previously executed lease agreements based on an applicant's or tenant's felony conviction.¹⁰² A housing provider may also refuse to enter into a lease agreement with a prospective tenant convicted of a felony or may terminate an existing lease agreement if the housing provider discovers that a current tenant concealed or failed to disclose a prior felony conviction.¹⁰³ Any felony conviction counts under this law: the statute's list ends with a catchall provision that allows a housing provider to reject an applicant based on *any* kind of felony.¹⁰⁴ The statute also includes a provision clarifying that it specifically supersedes the authority of all state administrative entities, which is particularly relevant to the extent that it limits the authority of the Oklahoma Housing Finance Agency.¹⁰⁵

Virginia

The Virginia Fair Housing Law allows the use of criminal background checks, stating that rental applications may require disclosure of convictions and that owners/managing agents may require a criminal background check.¹⁰⁶ The law does not prohibit housing providers to deny people "convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law."¹⁰⁷ In addition, the Virginia Fair Housing Law permits housing providers to charge the costs for criminal background checks to the rental applicant.¹⁰⁸ Finally, the Virginia Fair Housing Law states that "[n]othing in

this chapter shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.”¹⁰⁹

States with inclusive housing policies

Several states have enacted legislation that sets parameters on housing access for people with conviction histories. Although the qualified allocation plans may offer no guidance on housing people with conviction histories, the following states have policies related to the use of criminal records when developers and property managers make admissions decisions about people with conviction histories.

California

California’s Fair Employment and Housing Act (FEHA) prohibits discrimination against tenants of several protected classes, including race, national origin, ancestry, disability, sexual orientation, marital status, and gender identity.¹¹⁰ The Department of Fair Employment and Housing, the agency that enforces the FEHA, published regulations that specify how housing providers may consider criminal history when screening tenants without engaging in unlawful discrimination and how they may rely on a third party’s criminal history report.¹¹¹ These regulations state that a housing provider’s policy for considering criminal history will violate California law when it has an unjustified discriminatory effect on members of a protected class or if it constitutes intentional discrimination on the basis of a protected characteristic.¹¹² Additionally, housing providers cannot indicate or advertise a complete ban on applicants with conviction histories.¹¹³

Under California regulations, when reviewing an applicant, housing providers may not consider the following:¹¹⁴

- › arrests that do not lead to a conviction;
- › participation in a diversion program;
- › dismissed, expunged, or sealed convictions;
- › convictions in the juvenile legal system; and
- › records of arrest, indictment, or conviction that are more than seven years old (from the date of disposition, release, or completion of parole).¹¹⁵

If considering criminal history information, the housing provider’s policy should focus on conviction histories that have a direct impact on the “substantial, legitimate, and nondiscriminatory interest” of the housing provider, such as the safety of other residents.¹¹⁶ The California Civil Rights

Department recommends that, to be sure they are in compliance with these regulations, housing providers should run any criminal background check after all other qualifications (e.g., finance) have been verified, offer applicants the opportunity to provide mitigating information about a previous conviction, consider the accuracy of the criminal background report, and provide the background check policy to the applicant on request.¹¹⁷

Colorado

Colorado's Rental Application Fairness Act limits criminal history considerations and requires disclosures on denials of prospective tenants.¹¹⁸ Landlords may not consider arrest records or convictions older than five years prior to the application date.¹¹⁹ There are exceptions to this limitation: crimes related to methamphetamine, crimes that require a person to register as a sex offender, and homicides.¹²⁰ If the landlord denies a rental application, it is required to provide written notice to the applicant stating its reasons.¹²¹

Connecticut

Connecticut has enacted the Connecticut Discriminatory Housing Practices Act, a fair housing law that establishes limited protections for people with erased criminal histories.¹²² As of January 1, 2023, this statute prohibits discrimination on the basis of an erased criminal history in Connecticut.¹²³ The statute does not otherwise address screening potential tenants' conviction histories.¹²⁴

Illinois

In 2021, Illinois passed the Public Housing Access Bill, increasing public housing access for people with conviction histories. The law's provisions include a six-month lookback period from the time of application and prohibitions against using arrests when making admissions decisions.¹²⁵ The federally mandated exclusions for public housing (convictions for producing methamphetamines in federally subsidized housing and convictions that require lifetime sex offense registration) still apply.

New Jersey

The Fair Chance in Housing Act (FCHA) limits the use of arrest and conviction histories on housing applications in New Jersey.¹²⁶ The FCHA applies to landlords, owners, lessors, sublessors, or any other person receiving rent or benefits for the use of a rental housing unit.¹²⁷

The FCHA provides strict rules that limit when and how housing providers can inquire about the conviction histories of applicants. The statute prohibits housing providers from inquiring, either before or after a conditional offer of housing, about several types of records, including arrests that do not lead to a conviction, expunged convictions, convictions in the juvenile legal system, and sealed records.¹²⁸ However, before a conditional offer of

housing, the provider may consider “whether an applicant has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing, and whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program.”¹²⁹

Only after a housing provider has considered an application and issued a conditional offer to an applicant may the housing provider consider the applicant’s criminal background.¹³⁰ Housing providers are limited to considering specific types of convictions and lookback periods that depend on the type of conviction. For example, convictions for murder may be considered and convictions for a first-degree indictable offense may be considered if the conviction (or the resulting prison sentence) ended within six years.¹³¹

After this review stage, if the housing provider withdraws the conditional offer based on a person’s conviction history, the provider must deliver to the applicant a written notification that lists the specific reasons for the withdrawal and the process for appeal.¹³² As a part of that individualized assessment and review process, the housing provider must assess the nature and severity of the crime, the age of the applicant at the time of the incident, the time that has elapsed since the incident, and any information that demonstrates the good conduct and rehabilitation of the person. The housing provider must also determine whether the offense is related to the health and safety of other tenants and whether the offense occurred in a housing property the applicant leased.¹³³

Washington, DC

The District of Columbia passed the Fair Criminal Record Screening for Housing Act in 2017.¹³⁴ The following highlights components of the law and the process for conducting criminal background checks for prospective tenants:

- › Before accepting the application fee, the housing provider must disclose the criminal background policy and eligibility criteria and notify the applicant of the right to dispute any inaccuracies in the criminal background check and offer any evidence of rehabilitation or mitigating factors.¹³⁵
- › A housing provider is prohibited from inquiring about or considering arrests that do not lead to a conviction.¹³⁶
- › After a conditional offer is made, a housing provider may only consider a pending criminal accusation or criminal conviction that has occurred within the past seven years if it is within a specified list of crimes.¹³⁷
- › A housing provider may withdraw a conditional offer based on an applicant’s pending criminal accusation or criminal conviction as

outlined above, only if the housing provider determines that the withdrawal achieves a substantial, legitimate, nondiscriminatory interest. In determining such interest, the housing provider may consider the following factors: the nature and severity of the offense; the age of the applicant at the time of the offense; the time that has elapsed since the offense occurred; any rehabilitation information and good conduct since the offense; the degree to which the offense, if it reoccurred, would negatively impact the safety of other tenants in the property; and whether the offense occurred on or was connected to a property the applicant rented or leased.¹³⁸

- › If a housing provider withdraws an offer as outlined above, the housing provider must give the applicant written notice that includes the reason for the withdrawal and information about the applicant’s right to file an administrative complaint with the Office of Human Rights of the District of Columbia.¹³⁹
- › The protections do not apply to owners of a housing accommodation that includes three or fewer rental units.¹⁴⁰

Conclusion

Safe and affordable housing promotes public safety, but policies that deny affordable housing to people with conviction histories diminish the well-being of communities. Such policies also decrease the already limited housing options available for people with conviction histories. The scarcity of housing in the country inevitably leads to debates about who is more or less deserving of this fundamental need—and people with conviction histories often fall in the “undeserving” category. But the millions of people with conviction histories are not a monolith: they are our colleagues, family members, and neighbors. Safe and affordable housing should be available to everyone.

Currently, state housing finance agencies are at different stages of providing access to housing for people with conviction histories. The policies highlighted in this report reflect the range of possibilities and ways to consider expanding housing access to people with conviction histories. This summary of policies also provides a starting place to reconsider existing barriers. As more state housing finance agencies consider adopting inclusive policies and opening doors to affordable housing for people with conviction histories, housing insecurity will decrease for this vulnerable population. Only then can we establish a foundation for improved well-being, increased public safety, intact families, and, ultimately, thriving and vibrant communities.

But the millions of people with conviction histories are not a monolith: they are our colleagues, family members, and neighbors. Safe and affordable housing should be available to everyone.

Endnotes

- 1 United States Interagency Council on Homelessness, *All In: The Federal Strategic Plan to Prevent and End Homelessness* (Washington, DC: United States Interagency Council on Homelessness, 2022), <https://perma.cc/MAF3-3JLM>.
- 2 *Ibid.*, 15–16.
- 3 *Ibid.*, 13. The U.S. Department of Housing and Urban Development (HUD) establishes different categories for defining homelessness, including people who lack fixed, regular nighttime residence (literally homeless), people who are at risk of imminently losing their home, people who are considered homeless as defined by other statutes, and people who are fleeing domestic violence. HUD, “HUD’s Definition of Homelessness: Resources and Guidance,” March 8, 2019, <https://perma.cc/VZ5G-R4H3>. People experiencing sheltered homelessness live in emergency shelters, transitional housing, or other temporary settings; see Meghan Henry, Tanya de Sousa, Colette Tano, et al., *2021 Annual Homeless Assessment Report Part 1: Point-in-Time Estimates of Sheltered Homelessness* (Washington, DC: HUD, 2022), 3, <https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf>. Housing insecurity refers to people’s experiences with a range of housing problems, including affordability, loss of housing, and quality. Shawn Bucholtz, “Measuring Housing Insecurity in the American Housing Survey,” PD&R Edge, November 19, 2018, <https://perma.cc/55MB-ANN2>.
- 4 United States Interagency Council on Homelessness, *Federal Strategic Plan to Prevent and End Homelessness*, 2022, 15–16.
- 5 Sentencing Project, *Americans with Criminal Records* (Washington, DC: Sentencing Project, 2022), <https://perma.cc/H2DP-R32D>.
- 6 *Ibid.*
- 7 Lucius Couloute, “Nowhere to Go: Homelessness among Formerly Incarcerated People,” Prison Policy Initiative, August 2018, <https://perma.cc/2JST-EEJC>.
- 8 Tristia Bauman, Rajan Bal, Karianna Barr, et al., *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* (Washington, DC: National Law Center on Homelessness and Poverty, 2019), 50, <https://perma.cc/A7JU-5HDL>.
- 9 Amanda Geller and Marah A. Curtis, “A Sort of Homecoming: Incarceration and the Housing Security of Urban Men,” *Social Science Research* 40, no. 4 (2011), 1196–1213, 1197, https://www.researchgate.net/publication/46443188_A_Sort_of_Homecoming_Incarceration_and_the_Housing_Security_of_Urban_Men; Marta Nelson, Perry Deess, and Charlotte Allen, *The First Month Out: Post-Incarceration Experiences in New York City* (New York, NY: Vera Institute of Justice, 1999), 16, <https://perma.cc/J37Z-FSH8>; and Rebecca L. Naser and Nancy G. La Vigne, “Family Support in the Prisoner Reentry Process: Expectations and Realities,” *Journal of Offender Rehabilitation* 43, no. 1 (2006), 93–106, <https://perma.cc/U7C2-XNV7>.
- 10 Kristy Holtfreter, Michael D. Reisig, and Merry Morash, “Poverty, State Capital, and Recidivism among Women Offenders,” *Criminology & Public Policy* 3, no. 2 (2004), 185–208, 201, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9133.2004.tb00035.x>.
- 11 Calvin Johnson, “Tenant Screening with Criminal Background Checks: Predictions and Perceptions Are Not Causality,” PD&R Edge, May 17, 2022, <https://perma.cc/55SU-MQY9>.

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- 12 Chris Arnold, Robert Benincasa, Jacqueline Ganun, et al., “There’s a Massive Housing Shortage across the U.S. Here’s How Bad It Is Where You Live,” NPR, July 14, 2022, <https://perma.cc/D89F-EMQW>.
- 13 Mark P. Keightley, *The Low-Income Housing Tax Credit: Policy Issues* (Washington, DC: Congressional Research Service, 2019), <https://perma.cc/3ZPH-ZPUC>.
- 14 *Ibid.*
- 15 HUD, “Low-Income Housing Tax Credit (LIHTC): Property Level Data,” database (Washington, DC: HUD, updated April 28, 2022), <https://www.huduser.gov/portal/datasets/lihtc/property.html>. (As of the date of this paper, the home page for this database reads: “HUD’s LIHTC database contains information on 50,567 projects and 3.44 million housing units placed in service between 1987 and 2020. Data for properties placed in service in 2021 will be collected in the fall of 2022 and added to this database in the spring of 2023.”)
- 16 Tax Reform Act of 1986, 26 U.S.C. § 1 et seq.
- 17 26 U.S.C. § 42—Low-income housing credit, <https://www.law.cornell.edu/uscode/text/26/42>.
- 18 Mark P. Keightley, *An Introduction to the Low-Income Housing Tax Credit* (Washington, DC: Congressional Research Service, 2022), 4, <https://sgp.fas.org/crs/misc/RS22389.pdf>.
- 19 *Ibid.*
- 20 Ed Gramlich, *Qualified Allocation Plan* (Washington, DC: National Low Income Housing Coalition, 2014), 1, <https://perma.cc/7QYN-CMTD>.
- 21 *Ibid.*, 2.
- 22 42 U.S.C. § 3601 et seq.
- 23 Demetria McCain, memorandum to Office of Fair Housing & Equal Opportunity, Fair Housing Assistance Program Agencies, and Fair Housing Initiatives Program Grantees dated June 10, 2022, re: *Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, US Department of Housing and Urban Development*, <https://perma.cc/LD3G-DULT>.
- 24 *The Fortune Society v. Sandcastle Towers Housing Development Fund Corp.* No. 1:14-cv-6410 (E.D.N.Y.), (Amended Complaint filed May 1, 2015), <https://perma.cc/UA76-UGKP>.
- 25 *The Fortune Society v. Sandcastle Towers Housing Development Fund Corp.*, 388 F. Supp. 3d 145 (E.D.N.Y. 2019), <https://perma.cc/AZ2Z-3CXF>.
- 26 Relman Colfax, “The Fortune Society v. Sandcastle Towers Housing Development Fund Corp.,” <https://www.relmanlaw.com/cases-fortune>.
- 27 See, e.g., HUD, “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions,” notice issued on April 4, 2016, <https://perma.cc/Z3MC-SNGA>.
- 28 Florida Housing Finance Corporation, *Tenant Selection Plan Guidelines* (Tallahassee, FL: Florida Housing Finance Corporation, 2021), <https://perma.cc/HP5Z-BKRE>.
- 29 Florida Housing Finance Corporation, *Tenant Selection Plan Checklist* (Tallahassee, FL: Florida Housing Finance Corporation, 2021), https://floridahousing.org/docs/default-source/programs/developers-multi-family-programs/competitive/tenant-selection-plan-documents/8-17-21-tenant-selection-plan-checklist.xlsx?sfvrsn=8c60f77b_2.
- 30 *Ibid.*
- 31 Georgia Department of Community Affairs, “Housing Tax Credit Program (LIHTC),” archived February 23, 2023, <https://perma.cc/G57Q-93UN>; and Georgia Department of Community Affairs, *State of Georgia 2022 Qualified Allocation Plan* (Atlanta, GA: Georgia Housing and Finance Authority, 2021), 2, <https://perma.cc/55N5-X948>.
- 32 Georgia Department of Community Affairs, *State of Georgia 2022 Qualified Allocation Plan*, 2021, 22.
- 33 *Ibid.*, 22–23.
- 34 Illinois Housing Development Authority, *2022–2023 Low Income Housing Tax Credit Qualified Allocation Plan* (Chicago, IL: Illinois Housing Development Authority, 2022), 6, <https://perma.cc/8L95-P35U>.
- 35 *Ibid.*
- 36 Indiana Housing and Community Development Authority, *State of Indiana 2023–2024 Qualified Allocation Plan* (Indianapolis, IN: Indiana Housing and Community Development Authority, 2022), 1, <https://perma.cc/5D75-HJDQ>.
- 37 *Ibid.*, 17.
- 38 Indiana Housing and Community Development Authority, *Low-Barrier Screening and Eviction Prevention Requirements and Resources* (Indianapolis, IN: Indiana Housing and Community Development Authority, 2022), 7, <https://perma.cc/XTC3-NU3D>.
- 39 *Ibid.*, 11.
- 40 *Ibid.*
- 41 Indiana Housing and Community Development Authority, *Indianan Rental Housing Tax Credit Compliance Manual: Revision August 2019* (Indianapolis, IN: Indiana Housing and Community Development Authority, 2019), 66, <https://perma.cc/NRE8-4GK9>.
- 42 Louisiana Fair Housing Action Center, “Advocates Secure New Inclusive Criminal Background Screening Policy at the LA Housing Corporation,” July 16, 2021, <https://perma.cc/8B8B-WVY6>.
- 43 Louisiana Housing Corporation, “Memo: Fair Housing and Tenant Selection with Regard to Criminal Record Screening 7/14/21,” July 14, 2021, 2–3, <https://perma.cc/2K9F-6EYU>.
- 44 People with disabilities are overrepresented in the criminal legal system. For example, police may arrest people who exhibit mental health conditions because they believe jails can offer basic needs and services. For people with intellectual and developmental disabilities (IDD), their interactions with police may escalate because police are not properly trained to respond to people with

- IDDs who are experiencing duress. See Rebecca Vallas, *Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America's Jails and Prisons* (Washington, DC: Center for American Progress, 2016), <https://perma.cc/9NBU-VHXE>.
- 45 Michigan State Housing Development Authority, *2022–2023 LIHTC Scoring Criteria* (Lansing, MI: Michigan State Housing Development Authority, 2021), 32, <https://perma.cc/LB3B-TT7J>.
- 46 Michigan State Housing Development Authority, “Chapter 3: Eligibility,” in *2022 Administrative Plan* (Lansing, MI: Michigan State Housing Development Authority, 2021), 3-22–3-23, <https://perma.cc/9NT8-6CLK>.
- 47 Michigan State Housing Development Authority, “QAP Racial Equity Impact Assessment,” <https://perma.cc/T8Z9-588M>.
- 48 Minnesota Housing Finance Agency, *2022–2023 Housing Tax Credit Qualified Allocation Plan* (St. Paul, MN: Minnesota Housing Finance Agency, 2021), <https://perma.cc/N9W3-KKLL>.
- 49 Minnesota Housing Finance Agency, *Housing Tax Credit Program Compliance Guide* (St. Paul, MN: Minnesota Housing Finance Agency, 2022), <https://perma.cc/W5GQ-YDNU>.
- 50 Minnesota Housing Finance Agency, *Tenant Selection Plan Guidelines* (St. Paul, MN: Minnesota Housing Finance Agency, 2020), 1, <https://perma.cc/WJA8-SN6C>.
- 51 *Ibid.*, 3–5.
- 52 *Ibid.*, 6.
- 53 New York State Division of Housing and Community Renewal, “Qualified Allocation Plan (QAP),” <https://hcr.ny.gov/qualified-allocation-plan-qap>.
- 54 New York State Homes and Community Renewal, *Worksheet for Applying New York State’s Anti-Discrimination Policies When Assessing Justice-Involved Applicants for State-Funded Housing* (Albany, NY: New York State Division of Housing and Community Renewal, 2022), 1, <https://perma.cc/V7U7-K35J>.
- 55 N.Y. Comp. Codes R. & Regs. Tit. 9 § 1627-7.2(c), <https://perma.cc/5KLX-BDV3>.
- 56 *Ibid.*
- 57 North Carolina Housing Finance Agency, “Our Financing,” archived February 24, 2023, <https://perma.cc/EPF8-PCAB>.
- 58 North Carolina Housing Finance Agency, *Fair Housing and Tenant Selection Policy for Properties Monitored by the North Carolina Housing Finance Agency* (Raleigh, NC: North Carolina Housing Finance Agency, 2018), 11–14, <https://perma.cc/9G4Z-WYFN>.
- 59 *Ibid.*
- 60 *Ibid.*, 1.
- 61 *Ibid.*, 11.
- 62 *Ibid.*
- 63 *Ibid.*
- 64 *Ibid.*
- 65 *Ibid.*, 12.
- 66 *Ibid.*, 11–12.
- 67 Ohio Housing Finance Agency, *2022–2023 Qualified Allocation Plan* (Columbus, OH: Ohio Housing Finance Agency, 2022), 52, <https://perma.cc/DYJ7-GX43>.
- 68 *Ibid.*
- 69 *Ibid.*, Appendix: Sterling Glen Criminal History Policy, <https://perma.cc/DRK6-H98S>.
- 70 *Ibid.*
- 71 *Ibid.*
- 72 *Ibid.*
- 73 Pennsylvania Housing Finance Agency, *Allocation Plan for Program Year 2022 Low Income Housing Tax Credit Program* (Harrisburg, PA: Pennsylvania Housing Finance Agency, 2022), 13, <https://perma.cc/M7KP-DLMG>.
- 74 Nora Davenport, “Successful QAP Reform Will Bring Housing Justice to Returning Citizens,” Regional Housing Legal Services, February 3, 2021, <https://perma.cc/H2HB-2L4J>.
- 75 Idaho Housing and Finance Association, *Low-Income Housing Tax Credit Program Qualified Allocation Plan for the State of Idaho* (Boise, ID: Idaho Housing and Finance Association, 2022), 29, 85, 87–88, <https://perma.cc/WW2R-K37L>.
- 76 Idaho Housing and Finance Association, “Chapter 10: Tenant Selection and Assignment Plan,” in *Admissions and Continued Occupancy Policy* (Boise, ID: Idaho Housing and Finance Association, 2016), 10-9, <https://perma.cc/FA8J-R8P3>.
- 77 *Ibid.*
- 78 Illinois Housing Development Authority, *Tenant Selection Plan Template* (Chicago, IL: Illinois Housing Development Authority, 2021), <https://perma.cc/8CR6-HD62>.
- 79 *Ibid.*, 27–28.
- 80 *Ibid.*
- 81 Massachusetts Department of Housing and Community Development, *Low Income Housing Tax Credit Program: 2022–2023 Qualified Allocation Plan* (Boston, MA: Massachusetts Department of Housing and Community Development, 2022), 3, <https://perma.cc/JYP5-S7DF>.
- 82 *Ibid.*, 13.
- 83 *Ibid.*
- 84 Massachusetts Housing Finance Agency, *Tenant Selection Plan* (Boston, MA: Massachusetts Housing Finance Agency, 2022), B-3, <https://perma.cc/T4GM-C6G5>.
- 85 *Ibid.*, B-1–B-3.
- 86 *Ibid.*
- 87 Nebraska Investment Finance Authority, *Low-Income Housing Tax Credit Program—2022–2023 Qualified Allocation Plan* (Omaha, NE: Nebraska Investment Finance Authority, 2022), 596, <https://>

perma.cc/3H6P-Q3X6.

- 88 Pennsylvania Housing Finance Agency, *Allocation Plan for Program Year 2022*, 13.
- 89 Pennsylvania Housing Finance Agency, “Resident Selection Criteria,” in *Non Performance Based Section 8 Manual* (Philadelphia, PA: Pennsylvania Housing Finance Agency, 2019), 5-1, <https://perma.cc/3FH7-7WNL>; and Pennsylvania Housing Finance Agency, *Tenant Selection Plan Checklist* (Philadelphia, PA: Pennsylvania Housing Finance Agency, 2021), 1, <https://perma.cc/T6AQ-YFRB>.
- 90 South Dakota Housing Development Authority, *Low Income Housing Tax Credit 2022–2023 Qualified Allocation Plan* (Pierre, SD: South Dakota Housing Development Authority, 2022), 1, <https://perma.cc/N5SG-7ZG5>.
- 91 South Dakota Housing Development Authority, *Housing Tax Credit Compliance Manual* (Pierre, SD: South Dakota Housing Development Authority, 2019), <https://perma.cc/4B8R-9YUH>.
- 92 South Dakota Housing Development Authority, *Low Income Housing Tax Credit 2022–2023*, 24.
- 93 City of Brookings, “Crime Free Housing,” archived February 24, 2023, <https://perma.cc/XWC2-FG3D>.
- 94 Texas Department of Housing and Community Affairs, 2023 *Qualified Allocation Plan* (Austin, TX: Texas Department of Housing and Community Affairs, 2022), 24–25, <https://perma.cc/C5RE-YXT9>.
- 95 *Ibid.*, 24.
- 96 *Ibid.*
- 97 *Ibid.*, 24–25.
- 98 The 34 states with no guidance in qualified allocation plans are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kansas, Kentucky, Maine, Maryland, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. For a state-by-state summary, see Figure 2.
- 99 Ala. Code § 24-8-7(f), <https://casetext.com/statute/code-of-alabama/title-24-housing/chapter-8-alabama-fair-housing-law/section-24-8-7-exemptions>.
- 100 Ariz. Rev. Stat. § 41-1491.14(C), <https://perma.cc/4WAY-T7FS>.
- 101 Ind. Code § 22-9.5-5-1(c), <https://perma.cc/2GYA-3HPG>.
- 102 Okla. Stat. tit. 41 § 41-201(A), <https://perma.cc/8XXG-TNF3>.
- 103 *Ibid.*
- 104 Okla. Stat. tit. 41 § 41-201(B)(6).
- 105 Okla. Stat. tit. 41 § 41-201(C).
- 106 Va. Code § 36-96.2(F), <https://perma.cc/N8KU-U5VZ>.
- 107 Va. Code § 36-96.2(D).
- 108 Va. Code § 36-96.2(F).
- 109 *Ibid.*
- 110 Cal. Gov’t. Code § 12955(d), <https://perma.cc/T46A-JEBQ>.
- 111 Cal. Code Regs. tit. 2 §§ 12264-12271, <https://www.law.cornell.edu/regulations/california/title-2/division-4.1/chapter-5/subchapter-7/article-24>.
- 112 Cal. Code Regs. tit. 2 § 12265.
- 113 Cal. Code Regs. tit. 2 § 12269(a)(5).
- 114 Cal. Code Regs. tit. 2 § 12269(a).
- 115 Cal. Code Regs. tit. 2 § 12269(b).
- 116 Cal. Code Regs. tit. 2 § 12266(b).
- 117 California Civil Rights Department, *Fair Housing and Criminal History FAQ* (Sacramento, CA: California Civil Rights Department, 2020), 3, <https://perma.cc/F6WF-U4XK>.
- 118 Colo. Rev. Stat. § 38-12-901 et seq., <https://casetext.com/statute/colorado-revised-statutes/title-38-property-real-and-personal/tenants-and-landlords/article-12-tenants-and-landlords/part-9-rental-application-fairness-act>.
- 119 Colo. Rev. Stat. § 38-12-904(1)(b).
- 120 Colo. Rev. Stat. § 38-12-904(1)(b)(I)-(b)(IV).
- 121 Colo. Rev. Stat. § 38-12-904(2)(a).
- 122 Conn. Gen. Stat. § 46a-80c, <https://perma.cc/7MEA-CSYK>. Connecticut law provides for automatic erasure of records under certain circumstances such as pardons, dismissals, and not guilty verdicts. This erasure extends to the records of the initial arrest. Connecticut also permits erasure of records of offenses later decriminalized. Conn. Gen. Stat. § 54-142a, <https://perma.cc/6ERQ-XJW7>.
- 123 Conn. Gen. Stat. § 46a-80c.
- 124 Conn. Gen. Stat. § 46a-80c(8)(d).
- 125 Ill. Pub. Act No. 101-0659, §25(e-5)(1), <https://perma.cc/MPS7-6QWY>.
- 126 N.J. Stat. Ann. § 46:8-52 et seq., <https://perma.cc/MKG4-LT8Y>.
- 127 N.J. Stat. Ann. § 46:8-54.
- 128 N.J. Stat. Ann. § 46:8-56(a).
- 129 N.J. Stat. Ann. § 46:8-55(a)(1).
- 130 *Ibid.*
- 131 N.J. Stat. Ann. § 46:8-56(b).
- 132 N.J. Stat. Ann. § 46:8-56(c)(2).
- 133 N.J. Stat. Ann. § 46:8-56(c)(3).
- 134 D.C. Act 21-677, Fair Criminal Record Screening for Housing Act of 2016 (D.C. 2017), <https://perma.cc/F9LH-GVWL>.
- 135 D.C. Code § 42–3541.02, <https://perma.cc/ZP33-TMN9>.
- 136 D.C. Code § 42–3541.02(a).
- 137 D.C. Code § 42–3541.02(d).
- 138 D.C. Code § 42–3541.02(e).
- 139 D.C. Code § 42–3541.02(f)(1).
- 140 D.C. Code § 42–3541.03.