A microscopic view of a virus particle, likely COVID-19, is shown in the background. The virus is spherical with a textured surface and numerous spike-like protrusions extending from it. The image is rendered in shades of blue and white, giving it a scientific and clinical appearance. The virus is positioned in the upper left quadrant of the page, with other similar but less distinct virus particles visible in the background.

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TENANT PROTECTIONS AND EMERGENCY RENTAL ASSISTANCE DURING AND BEYOND THE COVID-19 PANDEMIC

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EXECUTIVE SUMMARY

The longstanding housing affordability crisis in the United States entered a new stage of urgency in 2020, as the COVID-19 pandemic sparked an economic and public health crisis that threatened the housing stability and the lives of millions of renters. The COVID-19 pandemic made clear the inextricable link between housing and individual and public health, as millions of renters – predominantly people of color – struggled to remain safely and stably housed throughout the pandemic. Many low-income renters who had struggled to pay rent before the COVID-19 crisis were in an even more perilous position due to the loss of jobs, increased expenses, and resulting rental arrears accrued during the pandemic. By January 2021, at least 9 million renter households¹ were estimated to owe up to \$50 billion in rent and utility arrears² and were at high-risk of losing their homes.

To mitigate the spread of COVID-19 and keep people in their homes, the Centers for Disease Control and Prevention (CDC) issued a nationwide [eviction moratorium](#), or a temporary halt in residential evictions for nonpayment of rent, in September 2020. In the months that followed, Congress passed two bills – the “[Consolidated Appropriations Act of 2021](#)” and the “[American Rescue Plan Act of 2021](#)” – that appropriated a total of \$46.55 billion in emergency rental assistance (ERA) for states and localities to distribute to renters and landlords across the country.

The public health emergency and resulting historic aid to renters have fundamentally shifted the housing landscape in the United States. In addition to the federal moratorium and availability of emergency rental assistance, state and local jurisdictions across the country have recognized the crucial role tenant protections play in preventing evictions and ensuring housing stability for the most marginalized households. In 2021 alone, states and localities passed or implemented over 130 new laws or policies to protect tenants from eviction and keep them stably housed.

This report provides a descriptive analysis of tenant protections and ERA-related policies that state and local governments enacted or implemented in 2021. The tenant protections included in this report are grouped into five categories: (1) state and local eviction moratoriums; (2) pauses on the eviction process to allow for ERA processing; (3) mandates that require landlords to apply for or share information on ERA before filing an eviction and that limit tenant fees; (4) increases to tenant representation during the eviction process; and (5) protections that reduce discrimination and promote housing stability.

While the COVID-19 pandemic has highlighted the need for additional tenant protections, it has also presented opportunities to learn how existing protections can be strengthened and expanded in the future. Emergency rental assistance and the short-term tenant protections tied to it will eventually expire, but long-term tenant protections, like source-of-income discrimination laws, right to counsel, and sealed eviction legislation, will outlast the pandemic and can guide housing advocates and policymakers looking to pass similar protections in their own jurisdictions.

In 2021 alone, states and localities passed or implemented over 130 new laws or policies to protect tenants from eviction and keep them stably housed.

1 Consumer Financial Protection Bureau. (2021). [Housing insecurity and the COVID-19 pandemic](#).

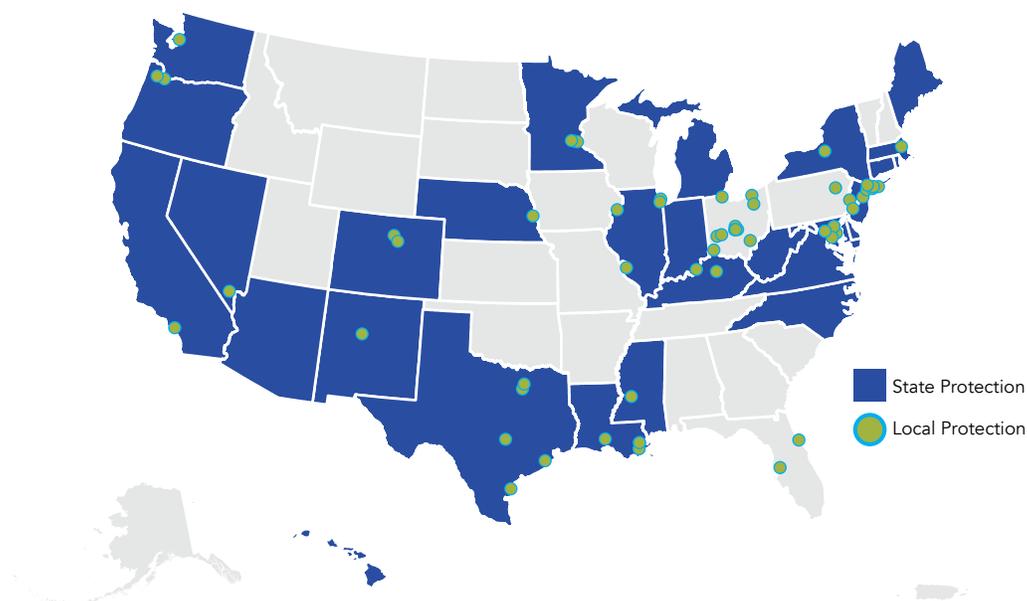
2 Zandi, M. & Parrott, J. (2021). [Averting an Eviction Crisis](#). Urban Institute.

NLIHC recommends the following actions at the state and local levels to protect tenants, prevent evictions, and support long term housing stability:

- State and local governments should continue to pass tenant protections in all stages of the eviction process to advance housing as a human right.
- States and localities must assess their tenant-protection laws and programs to ensure maximum effectiveness in preventing evictions, from improving enforcement of source-of-income discrimination laws to adequately funding right-to-counsel programs.
- ERA programs, states, and local courts should develop collaborative partnerships to ensure the successful implementation and enforcement of tenant protections at all stages of the ERA and eviction process.
- State and local courts should centralize eviction filing and outcome data for facilitating access to ERA to those in need, enforce existing tenant protections, and track housing stability outcomes for tenants who may have been evicted.
- Long-term federal tenant protections, such as source-of-income discrimination laws, “just cause” eviction standards, right to counsel, and sealed eviction legislation, are needed to ensure that all renters – across all jurisdictions – share a basic level of protection.
- A permanent program to provide emergency rental assistance, such as that proposed in the “Eviction Crisis Act” introduced by Senators Michael Bennet (D-CO) and Rob Portman (R-OH), is needed to ensure housing stability for households that experience financial shocks after the pandemic ends.

RENTER PROTECTIONS THAT SUPPORT ERA AND PREVENT EVICTIONS

Figure 1: New State and Local Tenant Protections (2021)



Over the last year, NLIHC has tracked 30 states, including Puerto Rico and the District of Columbia, and 59 local jurisdictions that have implemented or passed either [short-term or long-term tenant protections](#) to protect marginalized renters and prevent a wave of evictions that would be catastrophic during a global pandemic. Short-term protections are time-limited interventions that work within the eviction process to prevent, slow, or pause the process to allow emergency rental assistance to be accessed before an eviction takes place. Short-term protections include eviction-moratorium legislation, pauses on evictions while a tenant’s ERA application is under review, and efforts to coordinate the eviction process with emergency rental assistance.

Long-term protections are laws and policies intended to reduce discrimination and promote housing stability so that tenants face fewer barriers to housing in the long term. Such long-term protections include “right-to-counsel” legislation,

legal defense appropriations, source-of-income discrimination laws, and sealed eviction records legislation. Over the last year, such short- and long-term protections were enacted via a combination of state legislation, local ordinances, executive and administrative orders, court orders, and ERA program policies and procedures.

In 2021, six executive and 16 court orders were signed, 78 state and local laws were passed, and 33 ERA programs enacted policies that provided additional protections to tenants.

STATE AND LOCAL EVICTION MORATORIUMS

When the eviction protections in the “Coronavirus Aid, Relief, and Economic Security (CARES) Act” expired in August 2020, the CDC issued its own nationwide eviction moratorium, emphasizing the need to “[temporarily halt residential evictions to prevent the further spread of COVID-19](#).” The federal eviction moratoriums extended vital protections to renters at risk of eviction during the pandemic, helping to keep millions of people stably housed who otherwise would have been evicted. However, both the CARES ACT and the CDC moratoriums had [significant shortcomings](#) that prevented renters from making full use of the moratoriums’ protections. For example, while the moratoriums gave many renters an important short-term reprieve, they did not prevent people from accruing housing debt. Furthermore, renters had to be aware of each moratorium and take affirmative steps to be protected. As a result of these shortcomings and a lack of enforcement, some landlords, particularly larger landlords, continued to evict tenants for nonpayment of rent despite the bans.^{3,4} To further mitigate an eviction crisis during the public health emergency, many states and local jurisdictions supplemented Congress’s and CDC’s eviction moratoriums with a patchwork of state and local moratoriums implemented by governors and local officials.

According to the Eviction Lab’s “Preliminary Analysis: A Year of Eviction Moratoria,” between March 2020 and March 2021, 43 states, the District of Columbia, and five territories implemented eviction moratoriums.⁵ The state actors instituting the moratoriums varied from court officials and governors to state legislatures. The characteristics and strengths of these protections also varied, as did the justifications of the moratoriums (e.g., public health measure or response to the economic crisis), the durations (ranging from one month to

one year), and the stages of the eviction process in which the eviction was frozen (e.g., [written notice, eviction filing, court hearing, court decision, or writ enforcement](#)).

Only two states had an eviction moratorium in place at the end of 2021: [New Mexico](#), which required judges to put a hold on evictions until February 1, 2022, in cases where the tenant had shown the court that they were unable to pay rent; and [New York](#), which extended protections for nonpayment to all New Yorkers until January 15, 2022, while the state ERA program distributed funding to eligible applicants. At the time of writing, New York’s moratorium had expired but tenants applying for ERA could not be evicted because their lease had expired or because they had not paid rent during the COVID-19 pandemic.

The eviction moratoriums passed during the global pandemic demonstrated the power that federal, state, and local governments have in protecting citizens during a public health emergency and simultaneous economic crisis. According to the *American Journal of Epidemiology*, COVID-19 infection and mortality rates steadily increased in states after the CARES Act’s eviction moratorium expired in the summer of 2020, due to households doubling up with other renters or entering into homeless shelters.⁶ Thus, the eviction moratorium was necessary in halting the spread of COVID-19, and lawmakers should consider implementing eviction moratoriums in their jurisdictions when responding to future public health emergencies and natural disasters. Nevertheless, eviction moratoriums offer only a temporary solution for our nation’s affordable housing crisis. Instead, federal, state, and local governments must enact long-term, sustainable solutions that promote housing stability and prevent homelessness.

3 Private Stakeholder Equity Project. (2020, September 23). [Eviction Filings by Private Equity Firms and Other Large Landlords Surge Despite CDC Eviction Moratorium](#).

4 Conlin, M. (2021, April 23). [Special Report: Giant U.S. Landlords Pursue Evictions Despite CDC Ban](#). Reuters.

5 Alexander, A. K. & Lee, S. (2021, March 29). [Preliminary Analysis: A Year of Eviction Moratoria](#). Princeton, NJ: The Eviction Lab.

6 Leifheit, K. et al. (2021, June 30). [Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality](#). *American Journal of Epidemiology*. Volume 190, Issue 12, December 2021, Pages 2503–2510.

PAUSES ON THE EVICTION PROCESS TO ALLOW FOR ERA PROCESSING

In 2021, as state and local moratoriums came to an end, several jurisdictions created short-term “eviction off-ramps” designed to phase in evictions for households not eligible for emergency rental assistance, as well as to pause or delay evictions for eligible tenants to allow additional time for households to receive assistance in cases when ERA applications were pending. [Minnesota’s](#) moratorium transitioned to an “eviction off-ramp” on August 13, 2021, allowing a stay for renters with pending rental assistance applications until June 2022. Similarly, the [District of Columbia](#) phased out its moratorium, allowing eviction filings for nonpayment of rent to resume on October 12, 2021, in cases when a tenant was ineligible for ERA or when 60 days had passed since the tenant applied for ERA, provided that the application was not pending or under appeal.

Some of the most common eviction off-ramps aim to allow time for tenants to apply for ERA and/or receive ERA assistance before the eviction process is complete. Strategies to delay or pause the eviction process include requiring landlords to apply for ERA before they file for eviction, creating wait periods and safe harbors to allow time for ERA applications to be processed, and issuing eviction stays until ERA payments can be made.

REQUIRING LANDLORDS TO APPLY FOR ERA BEFORE FILING FOR EVICTION

The eviction process can be costly to both landlords and tenants. A tenant with a filing can have trouble accessing rental units in the future, and when faced with an eviction notice, a tenant often chooses to vacate a unit rather than face a lengthy and complicated eviction process, putting them at risk of future housing instability. One of the most effective ways to prevent an eviction is through diversion measures that ensure the eviction is not filed in the first place. ERA programs provide funds to assist households that are both behind on rent as well as unable to make future payments. A key tenant

protection is to divert landlords and tenants from evictions by enabling them to apply for ERA well before the eviction process is initiated.

In 2021, state and local courts across five different jurisdictions issued rulings that required landlords to apply for ERA before filing for eviction, ensuring that landlords make all efforts to resolve back rent before displacing tenants. For example, California’s [AB832](#) law requires landlords and property owners to testify that they have applied for ERA or have cooperated with a tenant applying for ERA before moving forward with an eviction; failure to do so authorizes the court to reduce the damages awarded to the landlord or property owner for COVID-related rental debt.

Likewise, Virginia enacted [legislation](#) requiring landlords to apply for ERA before pursuing an eviction for nonpayment of rent. An [executive order](#) issued by the governor of Connecticut requires landlords seeking eviction for nonpayment of rent to apply for ERA and give tenants 30 days’ notice before the eviction is filed. Finally, the Municipal Court of Philadelphia [requires](#) landlords to apply for ERA, complete an eviction diversion program, and wait 45 days before filing an eviction for nonpayment of rent. The court also prohibits landlords from performing lockouts of tenants who have successfully applied for ERA.

ESTABLISHING WAIT PERIODS AND SAFE HARBORS FOR ERA APPLICANTS

Most protections tied to ERA applications delay eviction proceedings for 30 to 90 days, pending a tenant’s successful ERA application. For example, a [court order](#) in Arizona directs eviction courts to delay an eviction action for 30 days if the tenant has applied for rental assistance. In California, [AB832](#) postpones evictions for nonpayment of rent if the tenant has applied for ERA.

Massachusetts passed [legislation](#) barring evictions from being finalized if a tenant has a pending application for ERA, and in Philadelphia an

[ordinance](#) prohibits landlords from issuing a writ of possession for nonpayment of rent while an ERA application is pending. A Bucks County, Pennsylvania, [court order](#) states tenants who have applied for ERA can avoid eviction for up to 60 days as they wait for their application to be processed and approved, but the order only applies to tenants who show they have fallen behind on rent as a result of job loss or changes in income related to COVID-19.

Oregon enacted [legislation](#) creating a 60-day eviction safe-harbor period for tenants who have applied for rental assistance, beginning the day the tenant provides their landlord with documentation that they have applied for assistance. [Multnomah County](#) and [Washington County](#) in Oregon extended their safe-harbor periods to 90 days.

The government actors who implemented these safe-harbor protections or wait periods recognize that the application and distribution of ERA funds is a lengthy process due to high demand and restrictive ERA policies on the state and local levels. Rather than holding renters who have applied for assistance at fault, these court orders, ordinances, and laws help keep struggling renters stably housed while their jurisdiction's ERA program processes applications and distributes funding. As ERA funding begins to run out and ERA programs begin to close their application processes, states and localities will need to implement other protections to support tenants into the future.

ISSUING EVICTION STAYS

An eviction stay is a temporary hold on an eviction until a judge decides whether to remove the judgement from the case. Over the last year, 16 state and local jurisdictions enacted protections that paused or delayed an eviction judgement to allow time for tenants to apply for ERA and for the program to process and pay out those funds to tenants facing eviction. For example, in preparation for the expiration of Illinois's state eviction moratorium on August 1, 2021, the Supreme Court of Illinois issued a [court order](#) establishing a one-month stay in which the state's judiciary would refer newly filed eviction cases against a tenant previously covered by the state's eviction moratorium to programs in the state providing rental assistance to landlords and tenants.

In Michigan, the Supreme Court issued a [ruling](#) that requires courts to stay an eviction proceeding for nonpayment of rent after the pretrial hearing if a tenant applies for rental assistance and notifies the court of the application. The stay is contingent on an eligibility determination made within 30 days of the pretrial hearing, the defendant is eligible to receive assistance for all rent owed, and the plaintiff receives payment within 45 days of pretrial hearing.

Eviction stays are a critical intervention that delay final judgment and give renters the opportunity to apply for ERA and avoid evictions. However, it should be noted that stays may be implemented too far into the eviction process, when tenants may voluntarily vacate or continue to accrue arrears that place them in greater debt. Additionally, to complement efforts that tie the eviction process to ERA applications, state and local courts and ERA programs should communicate and share data with one another to identify tenants and landlords in need of financial assistance throughout the eviction process. Policies should be put in place to ensure households are not evicted while they are waiting for their ERA applications to be processed and/or payments disbursed.

MANDATES THAT INCREASE ACCESS TO INFORMATION AND LIMIT FEES

The eviction process can be complicated and time-consuming. It often includes multiple steps, fees, and deadlines, which if missed, can lead to a judgement against the tenant. Increasing access to information and reducing additional tenant late fees can reduce burdens and increase successful outcomes for tenants with multiple barriers.

INCREASING ACCESS TO INFORMATION ON EMERGENCY RENTAL ASSISTANCE AND THE EVICTION PROCESS

NLIHC is tracking the implementation of more than 500 state and local ERA programs. Although the U.S. Department of the Treasury has provided guidance on ERA implementation, program features, and documentation requirements, the ways of accessing assistance vary from program to program. To help ensure tenants and landlords have the information they need to successfully apply for and access ERA and prevent evictions, 10 states and localities have implemented policies requiring that information on ERA be shared before an eviction can be filed, as well as throughout the eviction process.

The Texas Supreme Court [requires](#) a landlord bringing a non-payment eviction to submit a statement confirming they have reviewed information on the state ERA program. Eviction notices related to non-payment of rent must include information to the tenant about the state ERA program, and in court, officials must alert landlords and tenants to the availability of ERA funds and ask whether they are interested in participating. If they are interested, the court must stay the eviction action for 60 days while the ERA application is processed.

A court summons is issued to notify a tenant that their landlord intends to initiate eviction proceedings against them. A summons is issued before an eviction has been filed, so it is not an indication that an eviction has been added to a

tenant's record. Policies requiring landlords to provide tenants facing eviction for nonpayment of rent with information on the availability of ERA during the summons and/or written notice phase can help increase awareness of ERA and connect tenants to resources to address rental arrearage and prevent eviction.

[Colorado](#), [Illinois](#), [Maine](#), [Minnesota](#), [Nebraska](#), and the [District of Columbia](#) have passed laws requiring summons to contain information about the availability of ERA and other housing stability resources, including legal aid or landlord/tenant mediation services.

In the absence of legislation, courts can also take action to increase tenants' awareness of housing stability and eviction diversion resources. An [order](#) from the Texas State Supreme Court requires eviction summons to provide tenants with information in both English and Spanish on the availability of ERA.

While including such information on a court summons is crucial for increasing tenant awareness, communities should aim to connect households behind on rent to needed resources before a summons is ever issued. Chicago's [COVID-19 Eviction Protection Ordinance](#) requires landlords who receive a notice of COVID-19 hardship to register with the city's Department of Housing to learn about the availability of ERA. The ordinance, which went into effect for the 60 days following the expiration of the city's eviction moratorium on October 3, 2021, also requires landlords to issue tenants a five-day eviction notice. If the rent is not paid within that period, the ordinance then mandates landlords to engage in a seven-day negotiation period with tenants to develop an eviction diversion plan. In total, the Chicago ordinance delays evictions for 12 days.

REDUCING OR LIMITING LATE FEES

Policies that reduce or limit late fees typically extend the period during which a tenant can pay rent without being charged a late fee or cap the size

of the late fee a landlord can charge. In Nevada, [AB308](#) prevents landlords from charging a late fee if rent is paid within three days of its initial due date, and the law caps late fees at 5% of rent. A [similar law](#) passed in Colorado bars landlords from charging a late fee until seven days after the initial due date and caps late fees at \$50 or 5% of the past-due rent, whichever is greater.

Programs can also implement their own policies requiring landlords to limit or reduce late fees as a condition of receiving ERA. For example, the [ERA program](#) in Lexington-Fayette County, Kentucky, requires landlords who receive ERA to forgive all late fees, penalties, and interest related to a tenant's rental arrears. Louisiana's [ERA program](#) implemented similar measures, requiring landlords to forgive all penalties, interest, and court costs incurred since April 2020.

INCREASES TO REPRESENTATION DURING THE EVICTION PROCESS THROUGH MEDIATION, LEGAL CONSULTATION, AND REPRESENTATION FOR TENANTS

Data show that when tenants have legal representation during the eviction process, they are more likely to remain in their homes.⁷ With legal representation, tenants may be more informed of their rights, better positioned to navigate complicated eviction processes, and more able to access tenant protections that reduce fees or rent owed and allow them to stay in their homes. Two long-term strategies to increase representation are to develop mediation programs within state and local courts and develop and fund tenants' right to counsel.

According to the ACLU, 90% of landlords but only 10% of tenants have legal representation in eviction cases.

LANDLORD AND TENANT MEDIATION

Landlord-tenant mediation, combined with emergency rental assistance and additional tenant protections, can be an important tool for reducing the prevalence and harmful consequences of eviction. During the pandemic, several states and localities enacted policies that require or incentivize landlords to participate in mediation prior to proceeding with an eviction.

Mediation policies, including voluntary or mandatory participation, vary by state and locality. Most policies, such as those in [Illinois](#) and [Washington State](#), require landlords to provide notice of available mediation services prior to filing an eviction and to delay filing if a tenant agrees within a certain number of days to participate. Landlords in [Philadelphia](#), however, are required by law to participate in mediation before filing an eviction for nonpayment of rent.

While mediation can be a useful tool, its effectiveness largely depends on whether additional renter protections are in place. [Research](#) indicates mediation works best with a combination of financial assistance, access to legal aid, and additional tenant protections and resources.⁸ The voluntary nature of some COVID-19 eviction mediation policies may be a barrier to widespread participation. Requiring landlords to engage in mediation prior to filing an eviction may reduce evictions and their devastating, enduring consequences. Furthermore, while mediation can help reduce evictions in certain circumstances, long-term solutions that expand and enforce renter protections are urgently needed.

The Philadelphia Municipal Court issued an [order](#) in April 2021 requiring landlords seeking to evict for nonpayment of rent to apply for rental assistance, participate in mediation through [Philadelphia's Eviction Diversion Program](#), and wait 45 days before filing if issues are not resolved. Officials say the program was central to Philadelphia's success in distributing more than \$235 million in emergency rental assistance and that it has helped reduce

7 Park, S. & Pollock, J. (2021, January 12). [Tenants' Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond](#). New York City, NY: ACLU.

8 Parrish, D. (2021). [Designing for Housing Stability: Best Practices for Court-Based and Court-Adjacent Eviction Prevention and/or Diversion Programs](#). Cambridge, MA: Harvard Law School.

the number of eviction filings by 75% compared with pre-COVID levels. As of December 2021, [over 90% of nearly 2,500 cases](#) that the program served resulted in a settlement or an agreement to continue to negotiate.⁹

Hawaii passed [legislation](#) (Act 57) in June 2021 that requires landlords to provide a 15-day notice with information about mediation to tenants and delays the eviction-action filing if a tenant requests mediation. Landlords are required to notify a mediation center if they wish to evict a tenant, and mediation centers will reach out to those tenants and encourage them to schedule a free mediation session. Washington State lawmakers signed similar legislation (SB 5160) in April 2021 requiring landlords to invite tenants to participate in their local court's [Eviction Resolution Program](#) before being allowed to file an eviction for nonpayment of rent.

The Massachusetts Housing Court established a [two-tier process](#) for all pending eviction cases that integrates ERA and mediation into eviction proceedings. In the first tier, landlords and tenants work with a mediator who can direct them to ERA resources to cover back rent. If a resolution is not reached, the court can schedule a trial to begin no sooner than 14 days after the first hearing.

ESTABLISHING RIGHT TO COUNSEL AND EXPANDING ACCESS TO LEGAL AID

The most effective way of ensuring tenants facing eviction have access to legal aid is to implement and fund right-to-counsel laws, which guarantee defendants in a civil court case – including eviction cases – access to legal counsel. In eviction cases, access to legal representation can make the difference between a tenant remaining safely, stably housed and facing eviction and, in the worst case, homelessness. In fact, one study estimates that [90% of tenants who have legal representation in eviction court avoid being displaced into homelessness](#). However, according to the American Civil Liberties Union (ACLU), only 10% of tenants have legal

representation in eviction cases, compared to 90% of landlords.¹⁰

Recognizing the importance of legal aid, [three states and 12 cities have enacted right-to-counsel policies for tenants facing eviction](#). Washington State, Maryland, and Connecticut enacted right-to-counsel laws in the wake of the COVID-19 pandemic, as did Baltimore, MD; Seattle, WA; Louisville, KY; Denver, CO; Toledo, OH; Minneapolis, MN; and Boulder, CO. Right-to-counsel laws were codified before the pandemic began by New York, NY; San Francisco, CA; Newark, NJ; Cleveland, OH; and Philadelphia, PA.

States and cities that implemented right-to-counsel laws before the pandemic utilized general revenue funds and private donations to help fund their programs. Federal relief packages, including the American Rescue Plan Act and the CARES Act, have also funneled an unprecedented amount of flexible funds into states and cities, and many advocates and legislators have chosen to use these funds to establish their own right-to-counsel programs.

Most right-to-counsel programs include income-eligibility requirements that determine whether a tenant can receive legal representation. Such requirements typically set income limits at or below 200% of the federal poverty line, or 80% or below of area median income (AMI). Some programs have additional requirements. The program in Louisville, KY, for example, restricts participation to tenants with at least one child. Programs in other states have sought to expand access to legal representation. In California, [AB1487](#) created a Homelessness Prevention Fund to provide low-income tenants (those earning 80% of AMI or less) at risk of or imminently facing eviction with free access to legal aid.

While legal representation is a vital tool, lack of funding can reduce the impact of right-to-counsel legislation. For example, in 2017, New York City passed the nation's [first right-to-counsel legislation](#), but despite this historic victory, only 30% of tenants facing eviction were granted full representation by a lawyer due to inadequate funding in FY2018. By FY2021, the percentage had risen to 71%. In

9 Bond, M. (2021, December 8). [Philly's Program for Preventing Evictions is a National Model. Lawmakers Want to Make it Permanent](#). *The Philadelphia Inquirer*.

10 Park, S. & Pollock, J. (2021, January 12). [Tenants' Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond](#). New York City, NY: ACLU.

November 2021, the office of New York City Mayor Bill de Blasio released a [report](#) demonstrating that the overwhelming majority of tenants (84%) with city-funded legal representation were able to remain in their homes. The de Blasio administration enabled the success of New York City's right-to-counsel program by committing [\\$166 million in FY2021](#), thereby greatly increasing the representation rate and providing 100,000 New Yorkers with access to legal services.

PROTECTIONS THAT REDUCE DISCRIMINATION AND PROMOTE HOUSING STABILITY

Right to counsel is most effective when states and localities have other meaningful renter protections in place to support tenants. Laws banning source-of-income discrimination and protecting tenants from unlawful evictions – by landlords receiving ERA funds, for example – help balance the power dynamic existing between landlords and tenants, as do laws allowing for the sealing and expungement of eviction records.

SOURCE-OF-INCOME DISCRIMINATION LAWS

Many low-income tenants who use housing subsidies like housing vouchers, emergency rental assistance, and other forms of public assistance struggle to find or maintain safe, quality, affordable housing due to [source-of-income \(SOI\) discrimination](#) – the practice of denying an individual the full and equal enjoyment of housing based on that individual’s lawful source of income. SOI legislation prohibits landlords, owners, and real estate brokers from refusing to rent to current or prospective tenants based on the income they use to pay for their housing.

Prior to the pandemic, approximately [16 states and 90 municipalities](#) had SOI laws in place. In 2021, two states and 11 municipalities passed or began implementing SOI laws, bringing the total number of states and municipalities with active SOI laws to 18 and 101, respectively. Colorado’s [SOI legislation](#), which defines discrimination based on source of income as a type of unfair housing practice, went into effect on January 1, 2021, and in April 2021, Rhode Island passed the [Fair Housing Practices Act](#). Local actors in states with no SOI law also passed their own local ordinances that ban discrimination based on an individual’s lawful source of income. In Ohio, nine localities – [Akron](#), [Athens](#), [Bexley](#), [Columbus](#), [Cleveland Heights](#), [Reynoldsburg](#), [Toledo](#), [Westerville](#), and [Yellow Springs](#) – adopted SOI ordinances. Similarly, in Florida, where there is

no statewide SOI law, the [City of Daytona Beach](#) and [Hillsborough County](#) passed SOI ordinances. However, in certain states, including Iowa and Maine, attempts by local governments to ban SOI discrimination were preempted by [state law](#) or challenged in court, limiting or delaying the protections against discrimination for low-income renters.

SOI legislation prohibits landlords, owners, and real estate brokers from refusing to rent to current or prospective tenants based on the income they use to pay for their housing.

Most of these laws provide the same protections to applicants and recipients of emergency rental assistance because the statutory language is broad enough to include ERA. However, states and localities can ensure that emergency rental assistance is covered under their SOI law by issuing guidance that explicitly states that a landlord’s refusal to participate in an ERA program violates state or local SOI law. For example, Massachusetts’s Office of Attorney General published a [“Know Your Rights” FAQ](#) on SOI that explicitly states that it is illegal to discriminate against tenants who apply for or receive emergency rental assistance because the program is considered a public assistance program protected under Massachusetts law. [California](#), [New Jersey](#), and [New York](#) issued similar guidance.

Although source-of-income discrimination laws

help protect renters from being denied housing, governments often do not invest sufficient resources to enforce these laws. In [New Jersey](#), for example, where the state has had an SOI law in place for 20 years, tenants with housing vouchers who are denied housing struggle to receive support from the state due to inadequate enforcement. Tenants, who may be unaware of their rights, must file a complaint against a landlord, owner, or real estate broker before the Division of Civil Rights can investigate. Rather than waiting for tenants to file complaints, housing advocates recommend that investigators engage in undercover operations and publicize evidence of discrimination by landlords and brokers to effectively deter them from violating the law. Such undercover testing (researchers posing as apartment seekers with and without vouchers) requires significant human resources, and state and local governments that pass SOI laws must also pass adequate appropriations for enforcement to ensure success. The Poverty and Race Research

Action Council has been tracking enacted SOI discrimination laws in states and localities across the country and has developed a comprehensive [resource](#) that tenants, lawyers, researchers, and advocates can use to inform their advocacy.

PROHIBITING LANDLORDS WHO PARTICIPATE IN ERA FROM EVICTING TENANTS IN THE NEAR-TERM

The strongest ERA-related protections include requirements for landlords receiving ERA to drop eviction filings and/or forgive rental arrears, interest, or fees. The goal is to ensure that landlords who receive funding do not proceed with evictions and that tenants do not continue to accrue debt. In 2021, 29 states and localities passed laws or policies that prohibited landlords participating in ERA from evicting tenants for a period ranging from 30 days to 12 months.

TABLE 1: SUMMARY OF PROTECTIONS PROHIBITING EVICTION AFTER RECEIVING ERA	
JURISDICTION	PROTECTION DESCRIPTION
STATE OF DELAWARE	Housing assistance program stipulation allows ERA payments on the condition that the court confirms the eviction has been withdrawn, satisfied, or resolved via agreement between landlord and tenant.
STATE OF KENTUCKY	State ERA program forbids landlords who accept ERA from evicting a tenant for any past due rent, including rent not covered by ERA. Landlords receiving ERA must wait 45 days after assistance before initiating an eviction and must provide 30 days' notice before moving forward with an eviction.
LEXINGTON-FAYETTE COUNTY, KENTUCKY	Landlords who accept ERA must waive all late fees, penalties, and interest related to non-payment of rent and agree not to evict for past due rent accrued before March 2020. Landlords must give 45 days' notice for any future evictions.
STATE OF LOUISIANA	Landlords cannot evict for rent accrued before April 2020 and must forgive all penalties, interest, and court costs related to rent incurred since April 2020. Landlords are barred from moving forward with eviction for at least 60 days after ERA payments are complete unless the eviction is "for cause."
NEW ORLEANS, LOUISIANA	With the exception of "for cause" evictions, all evictions are banned for 180 days after ERA payments are complete.
STATE OF MICHIGAN	Landlords participating in the Eviction Diversion Program must dismiss all late fees, waive 10% of unpaid rent, and agree not to evict a household. For tenants who have applied for rental assistance, the court will stay an eviction proceeding after the pretrial hearing and not proceed to judgment.
STATE OF NEW YORK	New York State appropriated \$125 million for a landlord rental assistance program (LRAP) for landlords whose tenants are unwilling to apply for ERA. Landlords receiving LRAP funds must waive late fees accrued on a household's rental arrears and are barred from increasing rent on a household or evicting a household for an expired lease or holdover tenancy for one year.

EVICTION SEALING AND EXPUNGING

An eviction filing – regardless of the outcome – follows a renter for years, making it more difficult to obtain and maintain future housing and trapping individuals and families in cycles of poverty.¹¹ The [vast majority of property owners](#) utilize background screenings during the application process, which can be outdated and contain [inaccurate or misleading](#) information about applicants.¹² Property owners and landlords often deny admission to any prospective tenant whose screening report reveals an eviction filing, regardless of the outcome or circumstances.¹³

Laws that allow for the sealing and expungement of eviction records can help mitigate the devastating consequences of eviction and increase access to safe, stable housing moving forward. Expungement, while less common than sealing, means a [record is removed](#) from a court system’s public view, preventing prospective landlords from seeing an eviction on a tenant’s rental history and allowing the applicant to answer “no” when asked if they have been evicted. Eviction sealing refers to a court controlling and restricting access to a record.¹⁴ Tenants whose eviction records are sealed must still reveal those records on housing applications, which often triggers an automatic denial.^{15,16}

Measures to seal evictions enacted during the pandemic set a precedent for the future

- *Illinois passed the “[COVID-19 Emergency Housing Act](#)” (HB 2877) in May 2021, establishing automatic sealing of eviction records between March 2020 and March 2022 and prohibiting tenant screening companies from reporting sealed eviction records. While the eviction sealing provisions sunset on July 31, 2022, [advocates](#) are working to extend these critical protections.*
- *During the pandemic, the D.C. City Council enacted temporary legislation that seals eviction case records 30 days after a hearing if the tenant prevails or three years after a hearing if the landlord prevails. [Pending legislation](#) would make these protections permanent. The D.C. City Council is also considering [legislation](#) that would restrict the use of credit and income history by landlords in the rental screening process.*
- *During the 2021 legislative session, [Nevada lawmakers passed AB 141](#), which allows for summary eviction cases for nonpayment of rent that occur during the pandemic to be automatically sealed.*

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- 11 National Law Center on Homelessness & Poverty. (2018). [Protect Tenants, Prevent Homelessness](#). Washington, DC: National Law Center on Homelessness & Poverty.
- 12 Duke, A. & Park, A. (2019, July 18). [Court Database Shouldn’t Be Landlord Screening Tool](#). Commonwealth Magazine.
- 13 Collatz, A. (2017, June 6). [Landlord Survey: Optimism in Renting Your Property](#). SmartMove.
- 14 Scherer, James J. (2021). [Changing the Rule that Changes Nothing: Protecting Evicted Tenants by Amending Cleveland Housing Court Rule 6.13](#). *Cleveland State Law Review*: Volume 70, Issue 1.
- 15 Lake, J. & Tupper, L. (2021, September 30). [Eviction Record Expungement Can Remove Barriers to Stable Housing](#). Washington, DC: Center for American Progress.
- 16 Scherer, J. (2021). [Changing the Rule that Changes Nothing: Protecting Evicted Tenants by Amending Cleveland Housing Court Rule 6.13](#). *Cleveland State Law Review*.

At least eight states currently have some form of eviction record-sealing laws in place: [California](#), [Colorado](#), [Illinois](#), [Minnesota](#), [Nevada](#), [New Jersey](#), [New York](#), and [Oregon](#). [The Cleveland Municipal Housing Court](#) and [Toledo Housing Court](#) have enacted local rules that allow for eviction records to be sealed in certain circumstances. According to [Pew Research Center](#), legislators in 17 states and the District of Columbia introduced 31 eviction record-sealing bills in 2021.¹⁷ Several states with existing eviction record-sealing and expungement legislation – [California](#), [Illinois](#), [Nevada](#), [New Jersey](#), [Oregon](#), and [Washington, DC](#) – also passed new legislation or amended existing laws to limit sealing to cases filed specifically during the pandemic.

The strength of these laws varies, depending on the stage of the eviction process the law is sealing. For example, [Colorado's eviction sealing law](#) requires that courts suppress records of eviction cases only while they are moving through the court process and that records are kept hidden only if the tenant wins. Therefore, tenants who are evicted are no longer protected from the eviction sealing law, meaning that displaced tenants with the greatest need for rehousing face the greatest barriers to safe affordable housing. Eviction sealing laws can also present a challenge to housing advocates and legal service providers trying to access eviction data to inform their advocacy and work supporting tenants. States and localities must work to strengthen these laws by ensuring that all records of the eviction process – from notice to judgement – are sealed. They must also mitigate some of the unintended consequences involved in accessing eviction data by facilitating data-sharing agreements between eviction courts and nonprofit organizations, so that housing advocates and legal aid providers can better serve low-income and marginalized tenants.

17 Rickard, E. & Khwaja, N. (2021, August 26). [State Policymakers Are Working to Change How Courts Handle Eviction Cases](#). Washington DC: Pew Research Center.

CONCLUSION AND RECOMMENDATIONS

As the nation continues to navigate COVID-19 and the current public health and economic crises, it is critical that local, state, and federal policymakers adopt tenant protections to keep renters safely and stably housed – especially low-income renters, renters who are Black, Indigenous, or people of color (BIPOC), and renters from other marginalized communities, who face many disadvantages when seeking affordable housing and eviction prevention resources.

Over the last year, NLIHC has tracked state and local legislation and policies that protect tenants from eviction to demonstrate the power of a whole-of-government approach in addressing housing insecurity and homelessness. The federal eviction moratorium and the emergency rental assistance appropriated by Congress played an important role in mitigating the spread of COVID-19 and keeping renters with the lowest incomes stably housed, but many state and local actors understood that these stopgap measures must be accompanied by longer-term policies and legislation to prevent a mass eviction crisis. These executive, judicial, and legislative victories would not have been possible without the tireless efforts of housing advocates and organizers around the country. While emergency rental assistance and associated short-term tenant protections will eventually expire, long-term federal tenant protections, like source-of-income discrimination legislation, “just-cause” eviction standards, right to counsel, and sealed eviction legislation, would outlast the pandemic, ensuring that all renters – across all jurisdictions – share a basic level of protection and encouraging states and localities to provide additional protections in their communities. At the same time, a permanent program to provide emergency rental assistance, such as that proposed in the Eviction Crisis Act introduced by Senators Michael Bennet (D-CO) and Rob Portman (R-OH), is needed to ensure housing stability for those households that experience financial shocks after the pandemic ends.

As the U.S. government grapples with the country’s housing affordability and homelessness crisis, state and local governments should continue to pass

tenant protections for all stages of the eviction process and advance housing as a human right. States and localities that have passed long-term tenant protections must also assess their laws and programs to ensure maximum effectiveness in preventing evictions, from improving enforcement of source-of-income discrimination laws to adequately funding right-to-counsel programs.

KEY RECOMMENDATIONS

- *State and local governments should pass tenant protections in all stages of the eviction process to advance housing as a human right.*
- *States and localities must assess their tenant-protection laws and programs to ensure maximum effectiveness in preventing evictions.*
- *ERA programs, states, and local courts should develop collaborative partnerships to ensure the successful implementation and enforcement of tenant protections at all stages of the ERA and eviction process.*
- *State and local courts should centralize eviction filing and outcome data to facilitate access to ERA, enforce existing tenant protections, and track housing stability outcomes for tenants.*
- *Long-term federal tenant protections, such as source-of-income discrimination laws, “just cause” eviction standards, right to counsel, and sealed eviction legislation, are needed to ensure that all renters – across all jurisdictions – share a basic level of protection.*
- *A permanent program to provide emergency rental assistance, such as that proposed in the “Eviction Crisis Act,” is needed to ensure housing stability for households that experience financial shocks after the pandemic ends.*

Finally, federal, state, and local data transparency is critical to assessing the impact of recent state and local tenant protections on eviction filings and outcomes, as well as understanding the impact of emergency rental assistance programs. State and local courts should centralize eviction filing and outcome data to facilitate access to ERA for those in need, enforce existing tenant protections, and track housing stability outcomes for tenants who may have been evicted. This whole-of-government approach is crucial to efforts to meaningfully address our nation's housing affordability crisis, prevent evictions, and end homelessness once and for all.

FOR MORE INFORMATION ON THE STATE AND LOCAL TENANT PROTECTIONS DESCRIBED IN THIS REPORT, VISIT THE NLIHC ERA TENANT PROTECTIONS DATABASE AT:
[HTTPS://TINYURL.COM/NLIHCTENANTPROTECTIONS.](https://tinyurl.com/nlihctenantprotections)