

## Advocacy Tips for Using Source of Income Laws to Prevent Evictions and Increase Emergency Rental Assistance Utilization

Many states and local jurisdictions are still in the early stages of disbursing the Emergency Rental Assistance Program (ERAP) funds from the Consolidated Appropriations Act and the American Rescue Plan to renters who have fallen behind on rent during the COVID-19 pandemic. At the same time, the federal eviction moratorium has expired, as have many state and local moratoria, with more set to end in the coming weeks.

There is no explicit federal fair housing protection for source of income, although in many state and local jurisdictions applicants and renters are protected against discrimination based on source of income. A list of jurisdictions with SOI laws can be found [here](#).

In jurisdictions with source of income (SOI) protections, advocates may be able to use these laws to prevent evictions for renters who have applied for ERAP, depending on how the law defines SOI. Most SOI laws cover ERA either explicitly<sup>1</sup> or because the language in the statute is broad enough to include ERA<sup>2</sup>. There are only a handful of SOI laws that are limited to housing vouchers.

### **Here are some ways advocates can use existing SOI laws to prevent or challenge evictions:**

1. Advocate with your state or local fair housing enforcement agency to issue guidance that a landlord's failure to participate in ERAP violates the SOI law. Ideally, the guidance will state the specific protections available to housing applicants and renters. Here are some examples of guidance already issued by enforcement agencies:
  - a. In New Jersey, the [guidance](#) provides that the state's COVID emergency rental assistance program is covered by the state's SOI law.
  - b. In Massachusetts, the [guidance](#) provides that local emergency rental assistance programs that have been created to lessen the impact of COVID-19, are covered by the state's SOI law and that the refusal to accept ERA or adhere to the program requirements may violate the state's law.

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<sup>1</sup> *E.g.*, Cal. Gov't Code § 12927; Mass. Gen. Laws Ann. ch. 151B § 4; MINN. STAT. ANN. § 363A.09; N.D. CENT. CODE § 14-02.4-02; Denver Revised Municipal Code [Ch. 3 Art. IV Sec. 28-95](#); City of Atlanta Code of Ordinances Part 94 – Human Relations; Article IV – Fair Housing Sec. 94-91, Sec. 94-92, Sec. 94-94; Urbana Code of Ordinances [Ch. 12 Art. III Div. 1 Sec. 12-37](#); City of Clayton, Missouri Ordinance [Article I Ch. 225 Sec. 225.020](#); Saint Louis City Ordinance [Title 3 Ch. 44 Sec. 3.44.080](#); ORD. 498-18 / 490-20. Repealing Toledo Municipal Code Chapter 554 “Discrimination Prohibited”; creating new Chapter 554 “Discrimination Prohibited”.

<sup>2</sup> *E.g.*, MD. CODE. ANN. §20-701; N.J. STAT. ANN. § 10:5-12(g). See also Urban Institute, “[State and Local Antidiscrimination Laws Could Help Renters Access Emergency Rental Assistance and Keep Their Homes](#)” (Sept. 22, 2021).

- c. In California, the [guidance](#) states that a housing provider may not have a blanket ban against accepting rent paid from a COVID-19 rental assistance program on behalf of a tenant, nor can a landlord refuse to accept a partial rent assistance payment because they do not want to verify certain information
  - d. In New York, the state agency has issued [guidance](#) that a landlord may be liable for source of income discrimination by refusing to accept ERAP payments, or if the landlord accepts ERAP payments but changes the terms or conditions of the tenancy, or neglects to make necessary repairs.
2. For states that have a strong SOI protection, advocate with your state attorney general's office to issue guidance that a landlord's failure to participate in ERAP violates the SOI law and/or to file or intervene in a discrimination case.<sup>3</sup>
3. If a landlord fails to participate in the ERAP application process initiated by the renter or refuses to accept ERAP funds, file a complaint with a fair housing enforcement agency. Alternatively, you may decide to bring an affirmative suit seeking injunctive relief to require the landlord's participation in ERAP and/or acceptance of the funds. There are many strategic considerations with regard to whether to file an administrative complaint or court action, including where jurisdiction lies, whether filing an administrative complaint prevents the filing of an eviction or stays an eviction action, etc.
4. If a state or local emergency rental assistance program allows for landlord refusal of ERAP funds in violation of state or local fair housing laws, elevate the issues to your state fair housing agency or the U.S. Treasury Department, which administers the federal ERAP.
5. If a landlord files an eviction action after a SOI administrative complaint is filed against them, the renter can allege retaliation under the applicable fair housing law as a defense or counterclaim.
6. If a landlord files an unlawful detainer while an ERAP application is pending, SOI discrimination should be asserted as a defense, in addition to any other applicable defenses. For example, in New York, the state enforcement agency issued guidance that, "the tenant may use the provisional determination of ERAP eligibility as an affirmative defense in any proceeding brought by the landlord during the subsequent year for a monetary judgment or an order of eviction based on the nonpayment of rent that would have been covered by the payment. After 12 months, the landlord is deemed to have waived the amount of rent that would have been covered by the payment."
7. If a landlord tries to collect past due rent or other debt related to the tenancy, the SOI law may provide a basis for preventing past due rent from being reported against the tenant in the future. This is especially true where the tenant has applied for ERAP or the landlord has actually

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<sup>3</sup> *E.g.*, Massachusetts Office of the Attorney General, [Emergency Rental Assistance Advisory](#) (issued April 27, 2021).

received ERAP and the landlord tries to collect the same past due rent or other debt related to the tenancy that has been waived. Advocates may be able to negotiate the forgiveness of the rental debt, sealing of any records regarding the rental debt or an agreement that the landlord not report the debt that is owed.

8. Work with your local Fair Housing Initiatives Program (FHIP) to increase community education about SOI protections and enforcement of SOI through testing and complaints (the FHIP program is now reimbursing FHIP agencies for these costs).