

Using the Qualified Allocation Plan Process to Influence LIHTC Priorities

Part of the

*What Survivor Advocates Should Know
about the Low Income Housing Tax Credit
Program*

webinar series

*Rachel Blake & Vanessa Raymond-Garcia, RHLS
December 9, 2020*



About RHLS



Regional Housing Legal Services (RHLS)

Pennsylvania legal services program focused on affordable housing & community development. Legal work involves primarily representing nonprofits doing development. Policy work runs the gamut.

Your speakers



Vanessa Raymond-Garcia

Policy Analyst, RHLS

Policy advocate and big picture thinker. Two-time graduate of Rutgers University, most recently with an MPP.



Rachel Blake

Associate Director, RHLS

Previously real estate attorney at private firms and at RHLS. Now focused on policy and RHLS organizational issues. Education in urban planning and business as well as law.



Question for the Audience

- *Do you have a better understanding of what LIHTC is and why it matters to survivors than you did before this webinar series started?*

What we'll cover



WHAT IS A QAP &
HOW DOES IT WORK?



CURRENT STATUS &
OPPORTUNITIES

What we'll cover



WHAT IS A QAP &
HOW DOES IT WORK?



CURRENT STATUS &
OPPORTUNITIES



LIHTC Can Help Survivors

- LIHTC is a program that builds more than **100,000** affordable apartments each year
- It allows units to be **set aside for survivors**
- And includes **special legal protections** to:
 - prevent discrimination based on status as a survivor; and
 - help make sure that survivors can keep their housing (or move to other affordable housing)



Portland, Oregon



Grand Rapids, Michigan

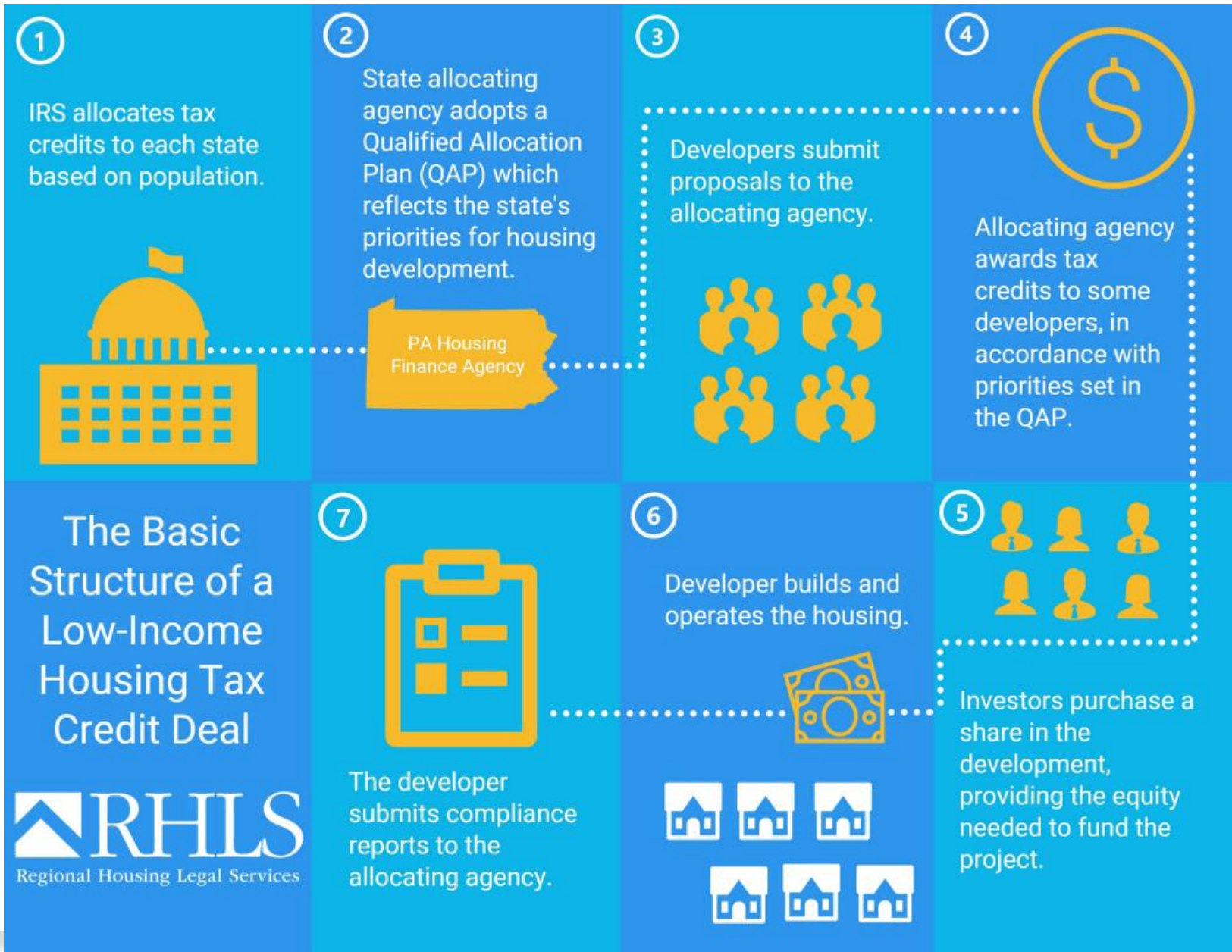


Indianapolis, Indiana



NYC, New York





How Are Tax Credits Allocated?



What is a QAP?

- Qualified Allocation Plan (QAP) is a federal requirement for the LIHTC Program
- It functions, in part, like an RFP
- It tells developers what they need to do to apply for LIHTC and what they'll get points for doing



Federal Requirements for Qualified Allocation Plans (QAPs):

- Must give preference to projects:
 - serving the lowest income tenants,
 - for the longest periods,
 - located in qualified census tracts, and which will contribute to a concerted community revitalization plan
- Identify the selection criteria to be used for determining housing priorities that are appropriate to local conditions; **must include, but is not limited to:**
 - project location, housing needs characteristics, project and sponsor characteristics, tenant populations with special needs, public housing waiting lists, tenant populations of individuals with children, projects intended for eventual tenant ownership, the energy efficiency of the project, and the historic nature of the project

Sources: 26 USC Sec. 42 [https://uscode.house.gov/view.xhtml?req=\(title:26%20section:42%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:26%20section:42%20edition:prelim)), <https://www.irs.gov/pub/irs-drop/rr-04-82.pdf>, <https://nlhrc.org/sites/default/files/2014AG-259.pdf>



State Agencies have Wide Discretion

- Flexibility to define key terms like: “tenant populations with special needs” to add DV/SA survivors
- Ability to add additional housing priorities
- Power to educate developers about key legal protections (like the Violence Against Women Act) and to require implementation of VAWA





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You Can Advocate for Changes to the QAP

- QAPs are generally issued each year after a public comment period
- You can urge your state leaders to incentivize more housing for survivors, increase survivor protections, or both



Low-Income Housing Tax Credits are the largest funding source for the creation of affordable housing.



The allocating agency adopts a **Qualified Allocation Plan (QAP)** which reflects federal regulations and state priorities for housing development.



The QAP often covers:

- Geographic Priorities
- Sustainability
- Community Impact
- Transportation
- Supportive Services
- And more! It can cover almost anything.

Stakeholders can comment on the QAP to make sure your community's needs are considered.



Advocacy for Your Community Using the Qualified Allocation Plan

RHLS used QAP advocacy to increase available tax credits for projects supporting vulnerable populations.



Check out how we did it.

Check out the current QAP and mark your calendar for the next commenting period.



Talk to your allocating agency about the best way to get involved in the process.



Even minor changes to the QAP can have a huge impact.



Gather your allies. Your feedback will have a bigger impact with multiple voices.



Regional Housing Legal Services



Path to advocacy



How Do I Find My State's QAP?

- Novogradac is a great resource!
 - comprehensive listing of QAPs by year - <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/2021-qaps-and-applications>
 - Listing of state agencies - <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/application-allocation/state-lihtc-allocating-agencies>



How Do I know
when I can
comment?

- Monitor the Novogradac listing for draft QAPs;
- Get familiar with your State Agency's website;
- Sign up for mailing lists;
- Follow your State Agency on social media.

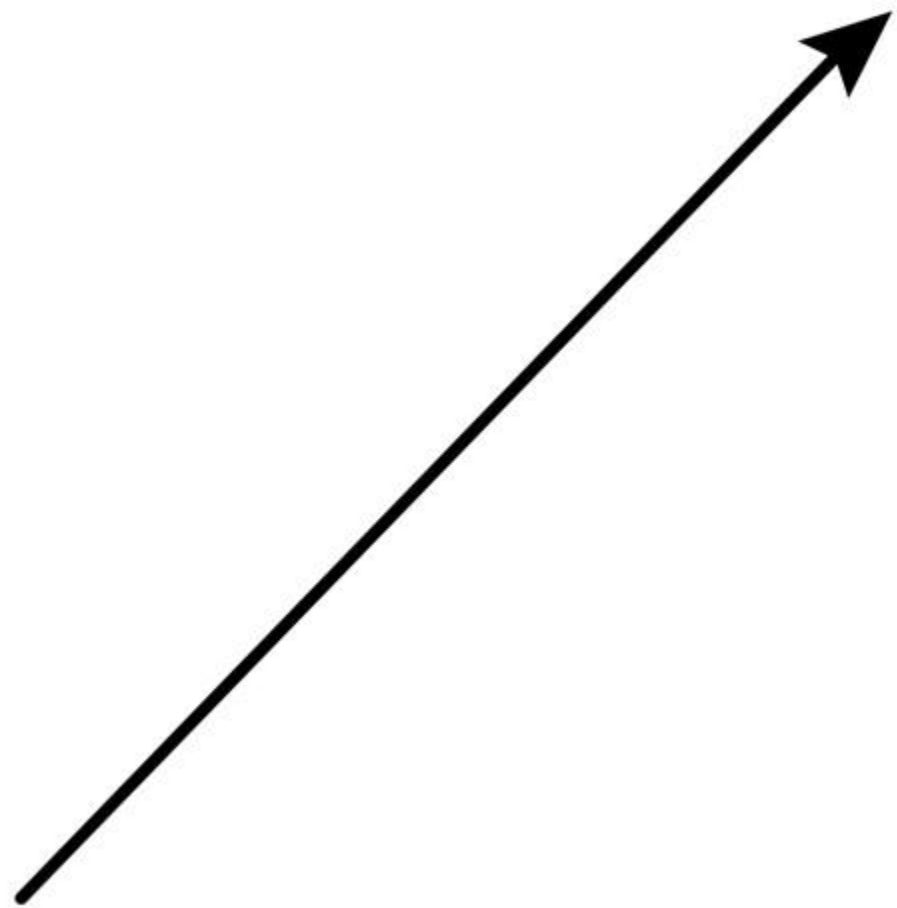


What Else Do I Need to Do or Know?

- Start thinking NOW about what you'd like to change;
- Find partners who agree with you and work together;
- Look for model language from other states;
- Talk to State Agency staff about your concerns and how you can help;
and
- Be persistent

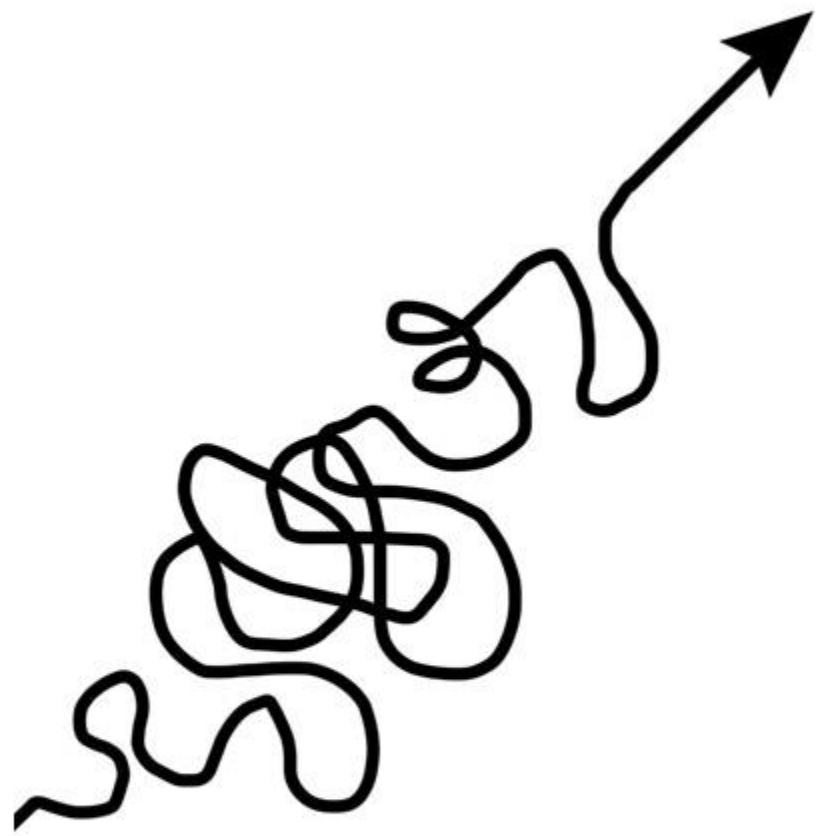


SUCCESS



what people think
it looks like

SUCCESS



what it really
looks like





Another Piece of the Puzzle: Compliance Manuals

- Compliance Manuals provide property owners/managers with guidance about how the property must be operated.
- VAWA protections also sometimes appear in Compliance Manuals.





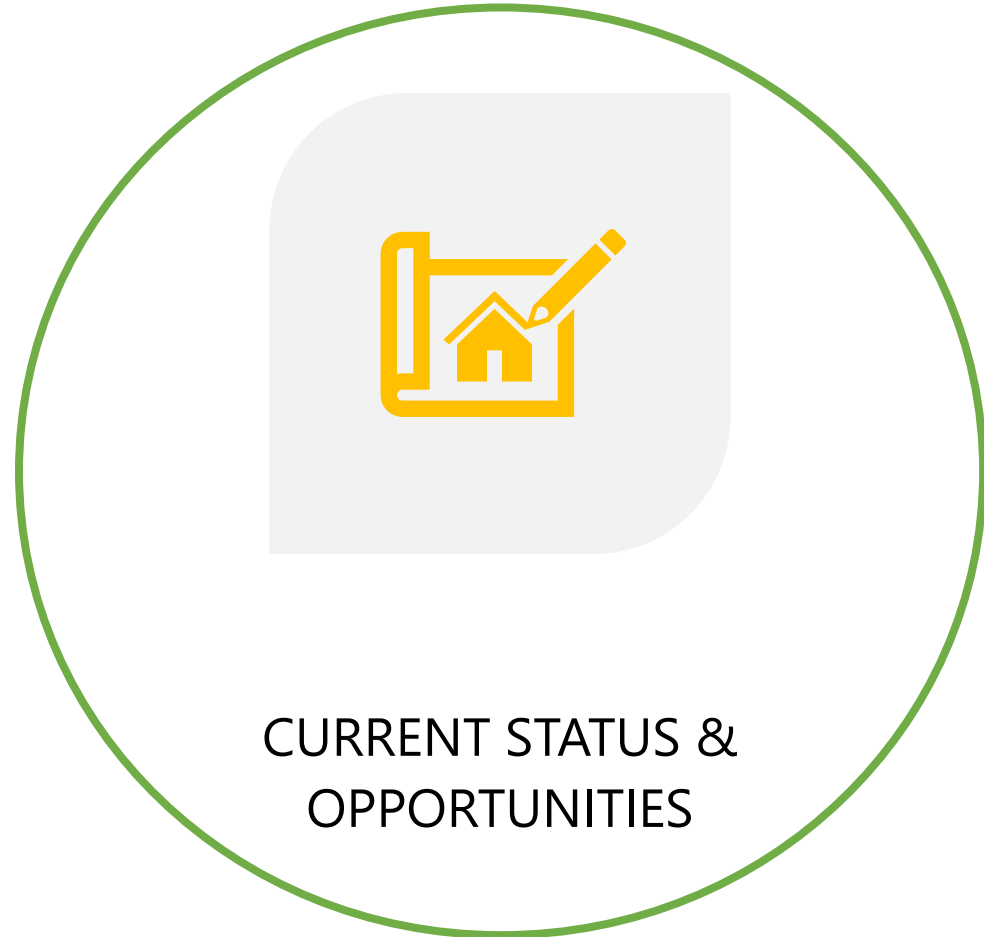
Question for the Audience

- *How interested are you in trying to advocate with your state agency to improve LIHTC policy?*

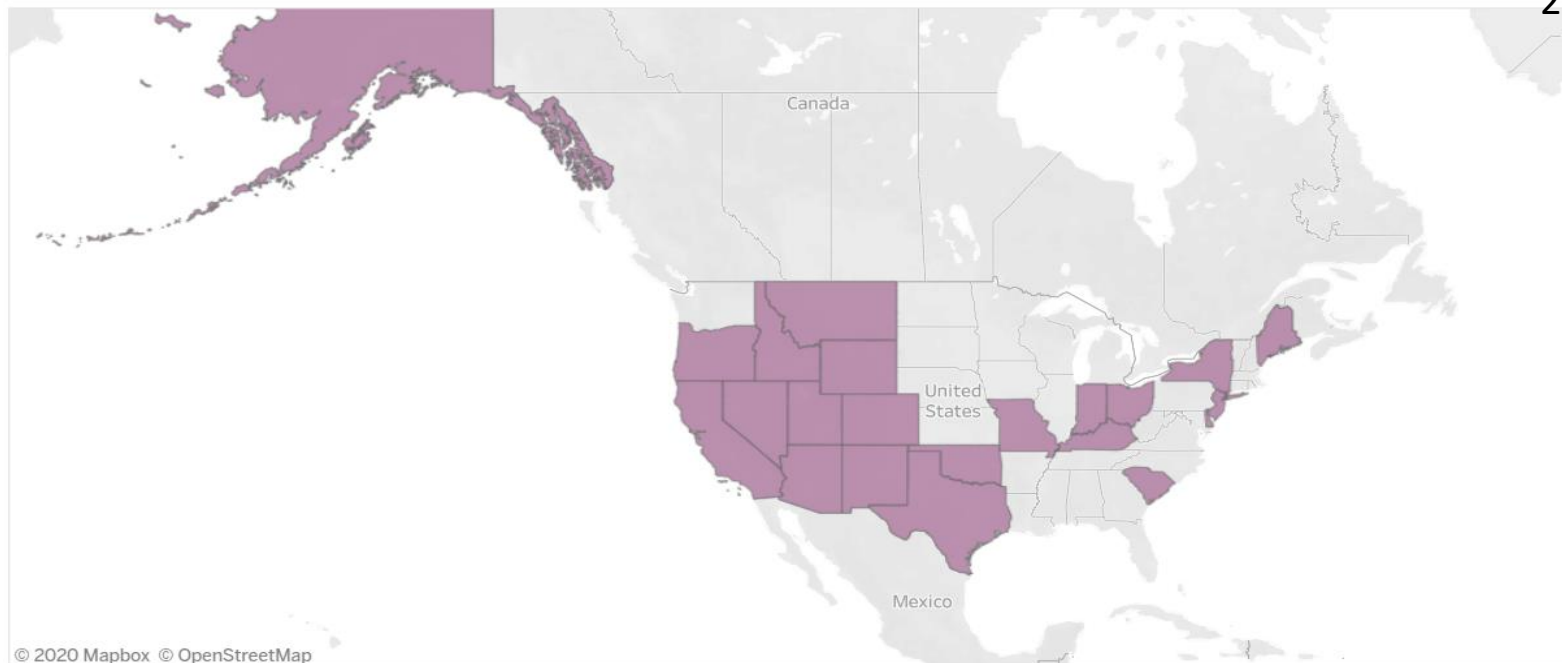
What we'll cover



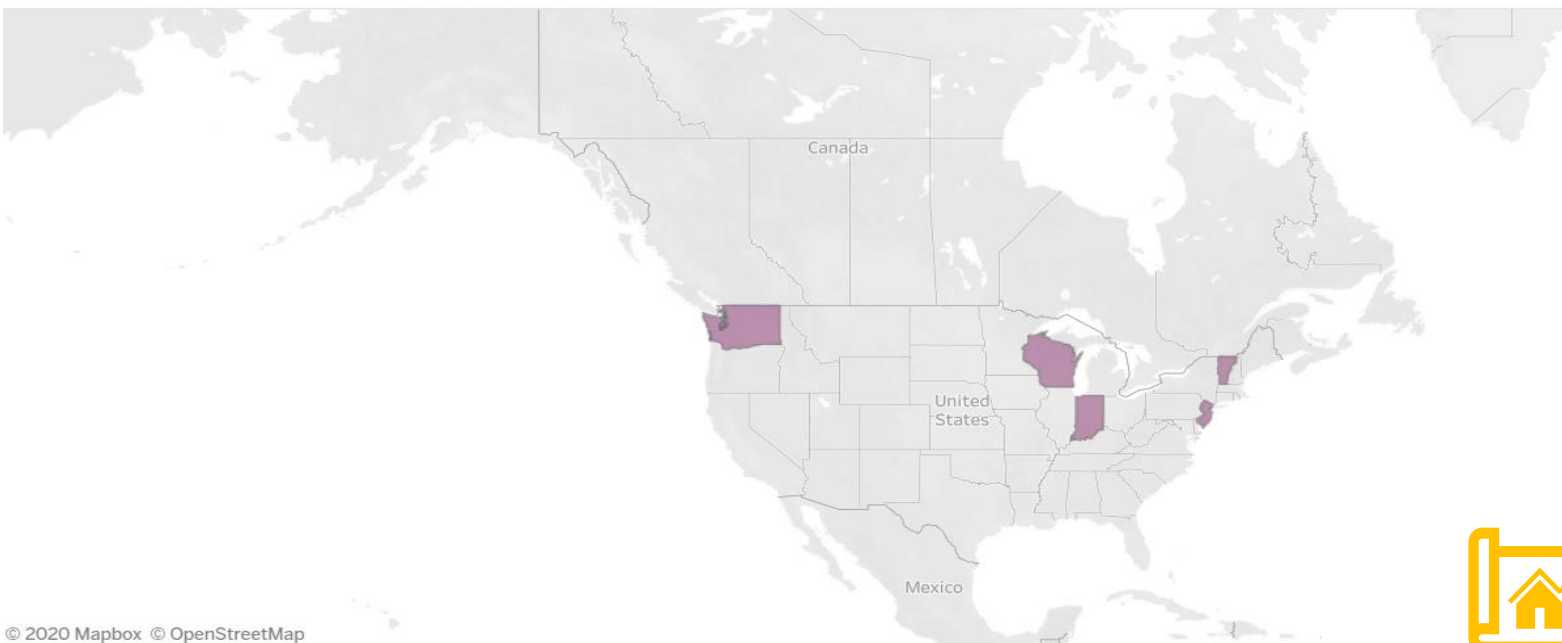
WHAT IS A QAP & HOW
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Compliance Manual



DV/SA survivors included as a "special population"

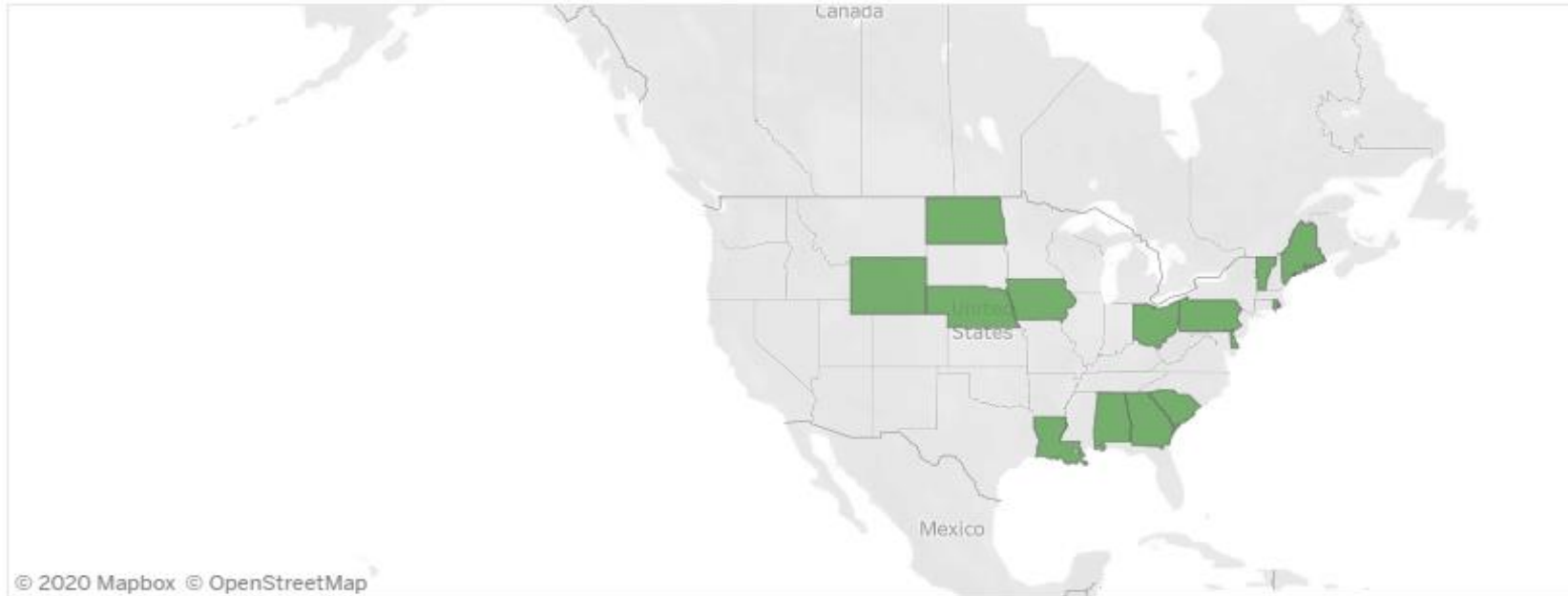
Source: RHLS analysis of Novogradac compilation of QAPs and CMs



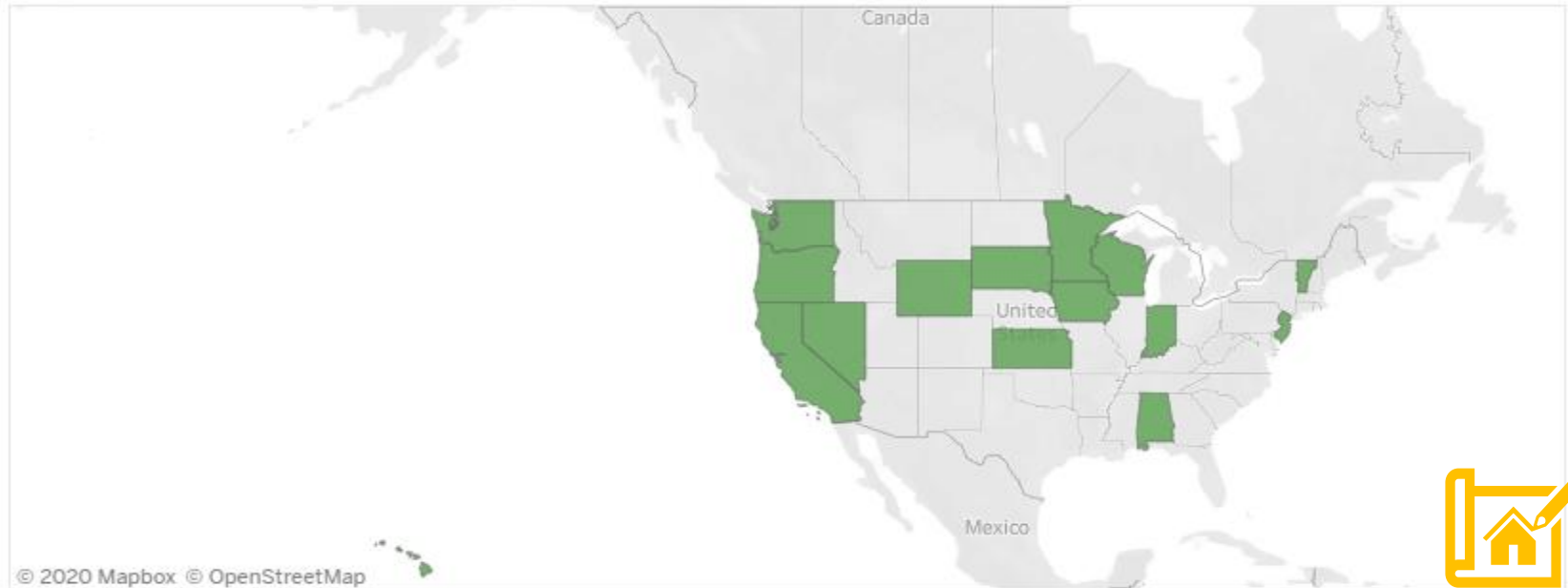
VAWA
stated as a
law to be
complied
with, 2020

Source: RHLS analysis of Novogradac
compilation of QAPs and CMs

Qualified Allocation Plans

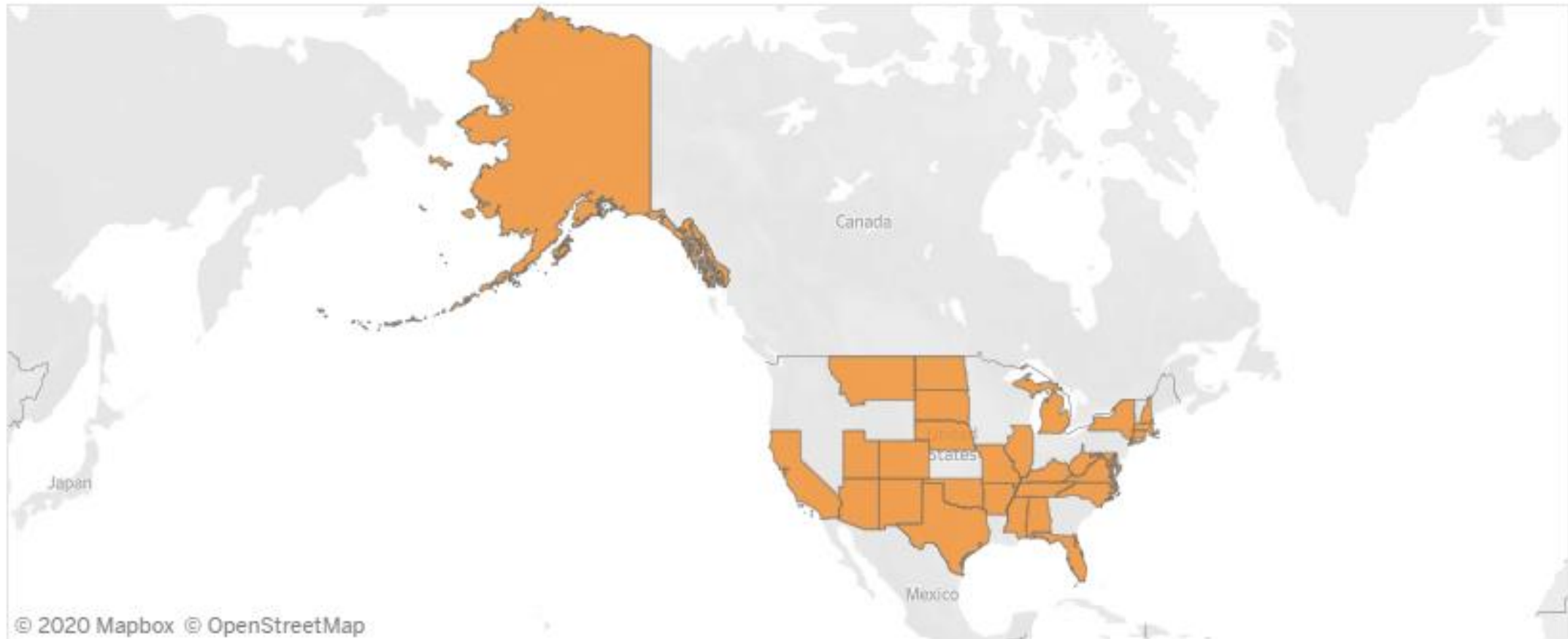


Compliance Manuals



States that do not have **any** VAWA rights and protections in regulations documents (QAPs and CMs)

Rights and protections not explicitly stated



Source: RHLS analysis of Novogradac compilation of QAPs and CMs



What are “rights and protections?”

1. Tenants must not be discriminated against based on their status as a survivor of domestic violence, sexual assault, dating violence, or stalking
2. HUD notice of VAWA rights must be given at three points in time – when an applicant is denied admission; when an applicant is admitted; when a tenant receives an eviction notice or termination notice.
3. Acts related to the fact that someone is a survivor under VAWA is not a Good Cause reason for eviction if the tenant otherwise complies with tenant occupancy rules.
4. Discusses lease bifurcations.
5. Discusses early lease terminations.
6. Discusses emergency transfers.
7. None of the above.



Example of model language for rights and protections

Ohio 2020 QAP Pages 4-5

Source: NASH & RHLS analysis

DOMESTIC VIOLENCE PROTECTION AND PREVENTION

In conformity with [Violence Against Women's Act \(VAWA\)](#) of 2013, an applicant for or tenant of housing assisted under the HTC program, or any affiliated individual thereof, may not be denied admission, denied assistance, terminated or evicted from the housing on the basis that they are a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant, tenant, or affiliated individual otherwise qualifies for admission, assistance, participation, or occupancy. Every resident and applicant must be provided a [Notice of Occupancy Rights](#) when admitted as a tenant, denied admission, denied assistance, or being terminated/evicted.

An incident of domestic violence, dating violence, sexual assault, or stalking shall not be considered a lease violation by the victim, nor shall it be considered good cause for an eviction. If a tenant or affiliated individual who is a victim requests an early lease termination, lease bifurcation from the abuser, or transfer to another unit because she/he is in danger, the owner/manager shall make every effort to comply with the request and shall not penalize the tenant.

Each owner/manager shall have an [emergency transfer plan](#) for victims seeking safety, which incorporates reasonable confidentiality measures to ensure that the owner or manager does not disclose the location of the dwelling unit of a tenant to a person that commits an act of violence or stalking against the tenant. Be advised that an emergency transfer plan incorporates many features in addition to a transfer plan, since an emergency transfer often may not be possible.

An owner/manager may request documentation from a victim before these protections are triggered. If the owner/manager requests documentation, the applicant, tenant, or affiliated

2020-2021 Qualified Allocation Plan

Page 4

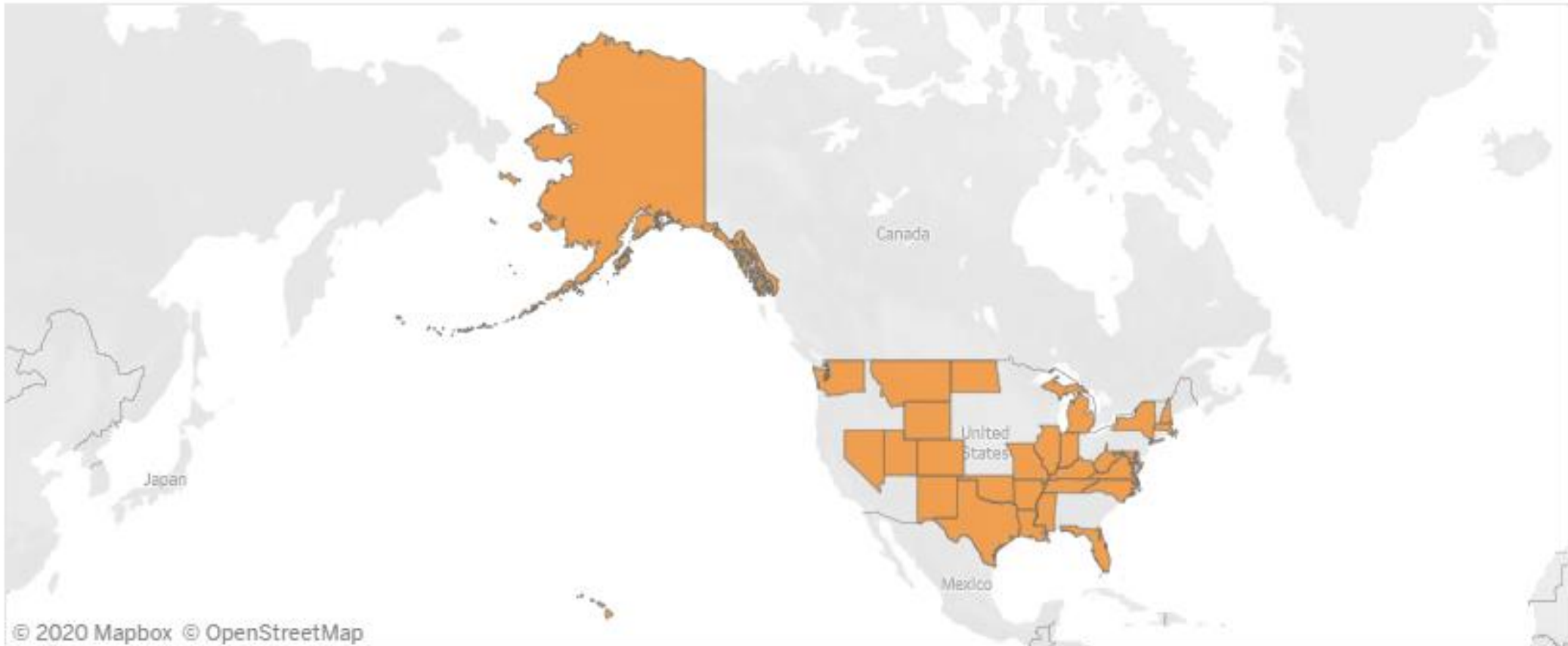
individual may provide any one of the following documents and owner/manager shall accept it as adequate documentation: a letter or form signed by the victim, including [HUD's Self-Certification Form 5382](#); a letter signed by a domestic violence service provider, attorney, or medical/mental health professional who assisted the victim; or a court or administrative record. This submission shall be confidential as defined in 81 FR 80724, 24 CFR §5.2007(C). Owners/managers shall also comply with all court orders.

All guidance related to complying with VAWA at OHFA-funded properties can be found on the [OHFA Compliance Policies webpage](#).



States that do not have **any** VAWA best practices in regulations documents (QAPs and CMs)

"Best practices" not explicitly stated



Source: RHLS analysis of Novogradac compilation of QAPs and CMs



What are “best practices?”

1. There is a procedure for tenants to file complaints about a VAWA violation.
2. Annual owner certification includes VAWA compliance.
3. Owners/managers with a history of VAWA violations can be disqualified from the LIHTC program.
4. Review processes include a check of VAWA compliance.
5. Penalties for VAWA noncompliance.
6. Noncompliance can lead to LIHTC debarment.
7. VAWA rights must be included in LIHTC property leases (or addenda).
8. LIHTC owners must submit written emergency transfer plans to the state agency.
9. LIHTC owners must provide VAWA trainings to their staff on a regular basis.
10. None of the above.



Example of model language for best practices

Delaware 2020 QAP Pages 72-73

Recordkeeping Requirements

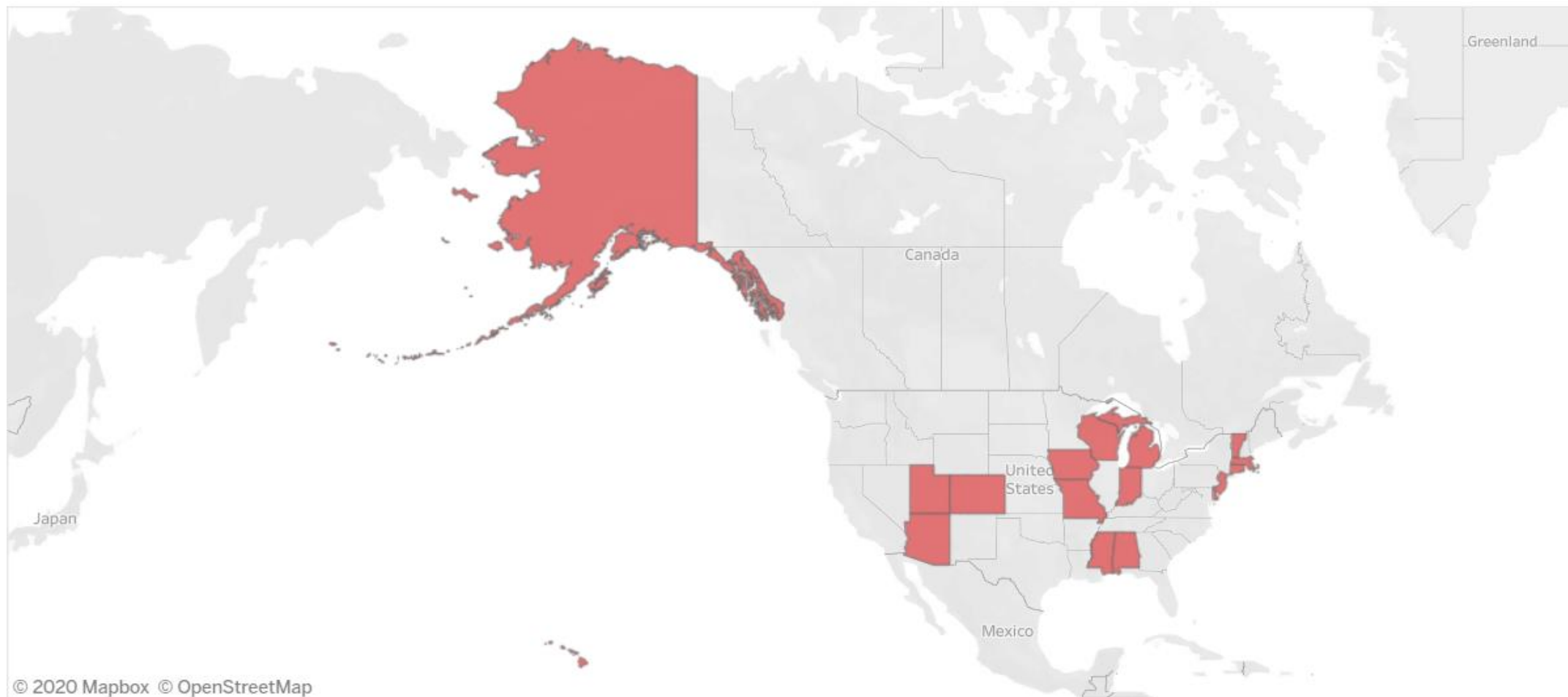
As required by the IRS, all LIHTC projects must maintain and have available for inspection the following information on each building in the project for each year in the compliance period:

11. Documentation that the owner has not refused to lease a unit in the project to an applicant because of any protected status, including VAWA history, or because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 or any State of Delaware rental assistance program;
12. The project was continually in compliance with the Violence Against Women Act and all applicable implementing regulations;



States that mention SSN as an income verification requirement

Compliance Manual (DE includes QAP)



Source: RHLS analysis of Novogradac compilation of QAPs and CMs



Major takeaways of the state document analysis

- States can encourage development of housing for survivors
- As with many other issues, VAWA in LIHTC requires vigilance and holding folks accountable. More progress can be made
- Enforcement mechanisms are the weakest link
- Models exist – you don't have to recreate the wheel
- There are multiple groups within the DV/SA survivor community that need and deserve access to resources





Question for the Audience

- *Would a website with even more resources on this topic be helpful to you?*

Let us Know How
We Can Help!

Project website

www.vawahome.com

rblake@rhls.org

www.rhls.org

 @rhlspace

 /rhlspace



Questions?