

# Why HB 1336-FN Will Not Normalize Two-Month Security Deposits in New Hampshire

*A summary of the safeguards built into the Regulated Conditional Deposit framework*

## At a Glance

<b>Basis for RCD eligibility</b>	<b>Why this is only a limited portion of the market</b>
<b>Credit score below landlord's standard</b>	The bill caps the usable credit threshold at <b>650</b> . A landlord cannot set a 700, 720, or higher floor to push ordinary applicants into RCD eligibility. Most New Hampshire residents have credit scores above this level. Average for NH is <b>720-738</b> (TransUnion, FICO), so this reaches only the materially higher-risk credit pool.
<b>Income below landlord's standard</b>	The bill allows this only where the applicant earns above <b>350% of the federal poverty guideline</b> and the landlord's income requirement is no more restrictive than <b>3x rent</b> . For 2026, that means income-based RCDs are not mathematically available below roughly <b>\$2,146/month in rent</b> , excluding a very large portion of the ordinary rental market.
<b>Prior eviction judgment</b>	Mere filings do not qualify. Dismissed cases and no-fault eviction grounds are excluded. This reaches only applicants with an actual adverse judgment, not anyone who was once involved in a housing dispute. This is a small minority of renters, thus cannot produce normalization.
<b>Unpaid judgment</b>	Limited to outstanding unpaid judgments within seven years and excluded if the applicant is complying with a payment plan. This is a narrow and curable risk category.
<b>No verifiable landlord references</b>	This primarily covers first-time renters or applicants whose prior landlords cannot be verified. This is a smaller subset of the market. The provision addresses a "Catch-22" group that often has no lawful way to strengthen an application under current law. It also naturally resolves as the tenant builds a rental record.

## Full Analysis

HB 1336-FN creates a narrowly drawn pathway, called the Regulated Conditional Deposit (RCD), that allows a landlord and a marginally qualified rental applicant to agree to an additional deposit of up to one month's rent. A reasonable question raised about the bill is whether, over

time, this pathway will drift in practice into a new market default in which every New Hampshire landlord routinely requires two months' security.

The structure of the bill, the math of the eligibility gates, and the economics of the affected applicant pool all cut directly against that outcome. This memorandum catalogs the specific provisions and dynamics that prevent normalization.

## **1. The one-month cap remains the floor, and the Consumer Protection Act enforces it**

HB 1336-FN does not raise the security deposit cap. Section 3 of the bill preserves RSA 540-A:6, I(a). A landlord still may not demand or receive a security deposit in excess of one month's rent. The RCD is introduced as the only narrow exception, and that exception is policed by the Consumer Protection Act.

Section 2 of the bill adds RSA 540-A:8, I(c):

*"Any landlord who does not comply with RSA 540-A:9 shall be deemed to have violated RSA 358-A:2 and be subject solely to the remedies set forth in RSA 358-A:10, I."*

The practical effect is unambiguous. A landlord who collects a second-month deposit from an applicant who meets the landlord's published screening criteria is committing a CPA violation, exactly as under existing law. Private right of action, statutory damages, and attorneys' fees all apply. A landlord cannot lawfully "just ask for two months" from a qualified applicant. The RCD only becomes available after the applicant has failed one of five specific, enumerated screening categories that were disclosed before the application was submitted.

## **2. The five eligibility gates are narrowly drawn**

RSA 540-A:9, II permits a Regulated Conditional Deposit only when the applicant has failed the landlord's pre-disclosed approval criteria, and only when at least one of five enumerated conditions is true. Each gate is bounded, and each addresses a small slice of the applicant pool.

### **(a) Credit score; capped at 650**

An RCD on the basis of credit is permitted only if the landlord's minimum credit score requirement is set at 650 or below and the applicant fails that test. A landlord cannot set a 720 floor in order to push more applicants into the RCD bucket. The 650 line is set based on risk, because credit bureau data shows that risk of eviction drops sharply above a credit score of 650.

Context matters here. The average credit score in New Hampshire is among the highest in the country, in the low 720s by TransUnion data and the high 730s by FICO data. Setting the RCD

threshold at 650 means that the typical New Hampshire applicant, along with most below-average New Hampshire applicants, remains protected by the one-month cap. The RCD reaches only the well-below-average credit pool, where empirical eviction risk is materially elevated. A landlord cannot expand the RCD-eligible pool by tightening the credit floor, because any minimum above 650 disqualifies the RCD outright.

#### **(b) Income; a two-prong restriction**

An RCD on the basis of income requires both (i) that the applicant's verifiable household gross income exceed 350% of the federal poverty guidelines for a household of two, and (ii) that the landlord's minimum income requirement be no more restrictive than three times the monthly rent. The combined effect of these two conditions removes most of the New Hampshire rental market from RCD eligibility entirely. See Section 3 for the underlying math.

#### **(c) Prior evictions; judgment required, with carve-outs**

Only evictions where there was a judgment against the applicant qualify. The bill expressly excludes cases dismissed without judgment, plus a list of no-fault grounds: lead abatement, lease expiration, landlord renovation, removal from the rental market, sale absent tenants, intent to lease to relatives, refusal of a rent increase during a prior tenancy, and other reasons clearly not the applicant's fault.

In practice, most eviction filings that begin never reach a final writ of possession, because landlords routinely accept payment plans. The applicants captured by this gate are those who refused to pay and refused to move long enough to receive a judgment. That is a small, identifiable population.

#### **(d) Unpaid judgments; bounded and curable**

Limited to outstanding unpaid judgments issued within seven years, and excluded entirely when the applicant can verify compliance with a payment plan for the earlier of 12 months or until paid in full. Another narrow population.

#### **(e) No verifiable landlord references; the "Catch-22" gate**

First-time renters, and applicants whose prior landlords cannot be reached, have no clear path to approval under current law. The RCD gives them one. As discussed in Section 5, it also gives them a path to recover the deposit as they build a verifiable rental record.

### **3. The income math: most New Hampshire rentals are excluded**

The income gate in RSA 540-A:9, II(b) is the single provision that does the most to prevent statewide normalization, because it mathematically eliminates the RCD across most of the New Hampshire rental market. The math for 2026 is straightforward:

Calculation	2026 Value
350% of federal poverty guideline, 2-person household	<b>\$75,740 / year</b>
Monthly equivalent ( $\div 12$ )	<b>\$6,311.67 / month</b>
Maximum landlord income requirement	<b>3 × monthly rent</b>
Equivalent housing ratio	<b>33.33%</b>
Lowest rent at which an RCD is mathematically possible	<b>≈ \$2,146 / month</b>

The lowest rent at which an RCD is even theoretically available works out to roughly \$2,146 per month, and only at a housing ratio just above 33.33%. Below that rent point, an applicant earning more than \$75,740 will satisfy the landlord's income test, and the RCD becomes statutorily unavailable.

**How that floor compares to the New Hampshire rental market**

Statewide rental data from 2025 brackets the RCD income floor. The HUD/New Hampshire Housing Finance Authority fair market rent for a statewide two-bedroom unit is approximately \$1,706. Broader market data (Apartments.com and Zillow) puts the statewide two-bedroom average closer to \$2,069 to \$2,145, and the one-bedroom average at \$1,498 to \$1,828. Three-bedroom units statewide average more than \$2,500.

In practice, all studio and one-bedroom units across New Hampshire rent below the \$2,146 mathematical floor, which means an applicant qualifying for any of those units cannot be placed on a Regulated Conditional Deposit on income grounds. The two-bedroom market sits at or near the threshold, with the median below and the upper half above. Three-bedroom and larger units typically sit above. The clear implication is that the RCD income gate excludes a substantial share of the housing stock New Hampshire renters actually occupy. The market cannot normalize to two months' deposit at price points where the second deposit is statutorily prohibited.

The secondary effect of this gate is worth flagging. It concentrates RCD use at higher-rent units. An applicant who could only qualify for a luxury apartment at 2.5× rent (but not 3×) can use the RCD to move up, which frees a more affordable unit elsewhere in the market (and removes a more highly qualified applicant from competition for those more affordable units).

**4. Market dynamics that further constrain RCD use**

Beyond the statutory gates, the economic incentives facing both sides of the rental market push back against any normalization.

### **Landlords above the statutory caps have an incentive to relax, not tighten**

For landlords whose existing screening criteria are MORE restrictive than the caps in HB 1336-FN (for example, a 700+ credit floor, or a 3.5× income requirement), the RCD creates a reason to relax those standards toward the bill's caps. Under current law these landlords pass on marginal applicants entirely. Under HB 1336-FN they can accept those applicants with additional risk mitigation in the form of an RCD. The bill expands their viable applicant pool. It does not give them a reason to tighten further.

### **Landlords below the statutory caps have no incentive to raise standards to them**

For landlords whose existing screening criteria are LESS restrictive than the bill's caps (for example, a 600 credit floor, or no minimum credit floor at all), HB 1336-FN gives no reason to raise standards. Doing so would shrink their applicant pool relative to what is already working for them under current law. Imposing a new 650 credit floor where there was none before, just to make a few applicants RCD-eligible, eliminates a portion of the pool entirely, and many of the applicants who do clear the new floor may not have the funds for the additional deposit anyway. The strategy is a net loss for the landlord.

### **Vacancy-cost discipline, with extra force for commercial multifamily**

Every landlord must keep units filled, and every landlord competes with other landlords on where to draw the line on tenant screening. If a landlord's primary market is a lower-liquidity subset of the renter pool, RCDs are simply not a viable option in the first place, because those applicants cannot fund the additional deposit. The landlord must balance vacancy cost against screening stringency, exactly as under current law.

For owners of commercial multifamily properties (the larger buildings that drive much of the rental supply in New Hampshire), the vacancy-cost discipline is significantly stronger than the per-month rent loss suggests. Commercial multifamily is valued based on the net operating income it generates, typically using a capitalization rate that produces a 10× to 20× multiplier on every dollar of NOI. A unit sitting vacant for one extra month at \$2,000 in rent represents roughly \$20,000 to \$40,000 in lost property value, not \$2,000 in lost rent. An owner who prices screening criteria so aggressively that good applicants are pushed away faces a property valuation hit measured in tens of thousands of dollars per excess vacancy month. That is a strong, persistent disincentive against tightening criteria in pursuit of larger deposits.

### **Optionality on both sides**

RSA 540-A:9, III is explicit. The bill compels nothing. A landlord cannot be required to accept an RCD. A landlord cannot be required to approve an applicant who fails screening. A landlord cannot accept an RCD on the basis of any approval criterion more restrictive than what the statute permits. The RCD is offered by the applicant and accepted or suggested by the landlord. It is a negotiated tool, not a mandate.

This provision also resolves a real-world fact pattern under current law: applicants with past credit or income trouble who do have funds (from a settlement, an inheritance, a tax return, or savings) and who today routinely offer extra security to make a marginal application work. Under current law a landlord must refuse that offer. The applicant does not get approved. HB 1336-FN gives that applicant a path forward.

## **5. Tenants have an affirmative path to recover the RCD**

The bill is not "two months in, two months held forever." RSA 540-A:9, VI gives the tenant a statutory right to be re-screened at their own expense. Re-screening is available once every six months for criteria (a) through (d), and once every twelve months for the missing-references criterion, which resolves naturally as the tenant builds a rental record.

If the tenant clears the landlord's standard criteria on re-screening, the landlord has 30 days to either refund the RCD or apply it to the tenant's future rental obligations, at the landlord's option.

Combined with the standard notice form in RSA 540-A:9, V, which identifies which of the five criteria the applicant failed and discloses the re-screening right and any re-screening fee, the structure is closer to an earnable, refundable supplement than to a permanent doubling of the security deposit.

## **6. The naming convention is itself a safeguard**

"Security deposit" continues to mean a one-month maximum under RSA 540-A:6, I(a). The Regulated Conditional Deposit is a distinct, named, statutorily-defined instrument with disclosure, eligibility, and re-screening requirements that simply do not exist for an ordinary security deposit.

The term "Regulated Conditional Deposit" was chosen deliberately to prevent shorthand drift toward "two-month deposit" in everyday market conversation. The word "regulated" signals a regulated instrument with hefty penalties for misuse, and the word "conditional" signals that the deposit is contingent and recoverable. Consistent public use of the term, by sponsors, advocates, the press, landlord associations, and tenant advocates, keeps that legal distinction visible to both sides of every lease and discourages the very shorthand drift the question contemplates.

## **Conclusion**

HB 1336-FN does not raise the security deposit cap. It preserves the one-month cap, adds Consumer Protection Act liability for landlords who collect more than one month from a qualified applicant, and creates a narrowly drawn pathway, bounded by income, credit score, and specific verifiable risk indicators, paired with mandatory disclosure and tenant re-screening rights, to help marginally qualified applicants reach approval where current law forces a refusal.

The combination of the statutory gates, the math of the income floor, the economic incentives facing both sides of the market, and the tenant's affirmative path to recover the deposit makes a statewide normalization of two-month security deposits implausible. The bill's structure is deliberately designed to prevent exactly that outcome.