

PRRAC

Poverty & Race Research Action Council

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Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program

APPENDIX B: State, Local, and Federal Laws Barring Source-of-Income Discrimination

Updated September 14, 2018

Set out below is a compilation of state, local, and federal statutes prohibiting discrimination in the housing market based on source of income. Please use the hyperlinks on this page to navigate through the document. This compilation updates research originally compiled by PRRAC in 2009 and also drawing on earlier documents prepared by the National Housing Law Project and the Center for Policy Alternatives. The list was updated for the Fourth National Housing Mobility Conference in 2012 and was published as an appendix to the PRRAC-Urban Institute housing mobility toolkit that followed the conference, [*Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*](#) (February 2013). This guide has been updated most recently by Peter Kye, Law & Policy Associate at PRRAC, and David Pringle, a Law & Policy Intern. We are grateful for the contributions and corrections of our former staff contributors, and many of our legal services colleagues in the Housing Justice Network (see our full list of acknowledgements [here](#)). If you discover any errors in this document or have additional materials to add (new ordinances, case law developments, law review articles, etc.), please contact Phil Tegeler (ptegeler@prrac.org).

I. STATE STATUTES

- A. [California](#) (does not cover housing vouchers)
- B. [Connecticut](#)
- C. [Delaware](#)
- D. [District of Columbia](#)
- E. [Maine](#)
- F. [Massachusetts](#)
- G. [Minnesota](#) (weakened by court interpretation)
- H. [New Jersey](#)
- I. [North Dakota](#)
- J. [Oklahoma](#)
- K. [Oregon](#)
- L. [Utah](#)
- M. [Vermont](#)
- N. [Washington](#)
- O. [Wisconsin](#) (does not cover housing vouchers)

II. LOCAL ORDINANCES

- A. [Cities/Counties in California](#)
 - 1. [Berkeley](#)
 - 2. [Corte Madera](#)
 - 3. [East Palo Alto](#)
 - 4. [Los Angeles](#)
 - 5. [Marin County](#)
 - 6. [San Francisco](#)
 - 7. [Santa Clara County](#)
 - 8. [Santa Monica](#)
 - 9. [Woodland](#)
 - 10. [San Diego](#)
- B. [Wilmington, DE](#)
- C. [Cities in Colorado](#)
 - 1. [Denver](#)
- D. [Counties in Florida](#)
 - 1. [Broward County](#)
 - 2. [Miami- Dade County](#)
- E. [Counties/Cities in Illinois](#)
 - 1. [Chicago](#)
 - 2. [Cook County](#)
 - 3. [Harwood Heights](#)
 - 4. [Naperville](#)
 - 5. [Urbana](#)
 - 6. [Wheeling](#)
- F. [Cities in Iowa](#)
 - 1. [Iowa City](#)
 - 2. [Marion](#)
- G. Counties/Cities in [Maryland](#)
 - 1. [Annapolis](#)
 - 2. [Baltimore](#)
 - 3. [Frederick](#)
 - 4. [Frederick County](#)
 - 5. [Howard County](#)
 - 6. [Montgomery County](#)
- H. [Cities in Massachusetts](#)
 - 1. [Boston](#)
 - 2. [Cambridge](#)
 - 3. [Quincy](#)
 - 4. [Revere](#)
- I. [Cities in Michigan](#)

1. [Ann Arbor](#)
 2. [East Lansing](#)
 3. [Grand Rapids](#)
 4. [Lansing](#)
 5. [Jackson](#)
- J. [Minneapolis, Minnesota](#)
- K. [Saint Louis, Missouri](#)
- L. [Counties/Cities in New York](#)
1. [Buffalo](#)
 2. [Hamburg](#)
 3. [Erie County](#)
 4. [Nassau County](#)
 5. [New York City](#)
 6. [Suffolk County](#)
 7. [Syracuse](#)
 8. [Westchester](#)
 9. [West Seneca](#)
- M. [Cities in Ohio](#)
1. [Linndale](#)
 2. [South Euclid](#)
 3. [University Heights](#)
 4. [Warrensville Heights](#)
 5. [Wickliffe](#)
- N. [Cities in Pennsylvania](#)
1. [Borough of State College](#)
 2. [Philadelphia](#)
 3. [Pittsburgh](#)
- O. [Memphis, Tennessee](#)
- P. [Cities in Texas](#)
1. [Austin](#)
 2. [Dallas](#)
- Q. [Counties/Cities in Washington](#)
1. [Bellevue](#)
 2. [King County](#)
 3. [Kirkland](#)
 4. [Olympia](#)
 5. [Redmond](#)
 6. [Renton](#)
 7. [Seattle](#)
 8. [Spokane](#)
 9. [Tumwater](#)
 10. [Vancouver](#)
- R. [Cities in Wisconsin](#)

1. [Cambridge](#)
2. [Dane County](#)
3. [Madison](#)
4. [Milwaukee](#)
5. [Ripon](#)
6. [Sun Prairie](#)
7. [Wauwatosa](#)

III. STATE AND LOCAL INCENTIVES TO PROMOTE ACCEPTANCE OF HOUSING CHOICE VOUCHERS

- A. [Illinois](#)
- B. [Oregon](#)
- C. [Virginia](#)
- D. [Washington](#)

IV. PROPOSED LEGISLATION (and ABA RESOLUTION)

- A. [Colorado](#)
- B. [Hawaii](#)
- C. [Maryland](#)
- D. [New York](#)
- E. [Rhode Island](#)
- F. [Virginia](#)
- G. [King County, WA](#)
- H. [ABA Resolution](#)

V. FEDERAL LAWS

- A. [HOME Program](#)
- B. [Low-Income Housing Tax Credit Program](#)
- C. [Mark to Market](#)
- D. [Multifamily Units Purchased from HUD](#)
- E. [HUD Regulations and Notices](#)
- F. [Neighborhood Stabilization Act of 2008](#)
- G. [Capital Magnet Fund](#)
- H. [Preemption](#)

VI. ADDITIONAL RESOURCES

[Law Review Articles on Source-of-Income Discrimination](#)

[Recent Studies of Source-of-Income Discrimination](#)

STATE LAWS

California

The California source of income discrimination law does not protect Section 8 voucher tenants. *See SABI v. Sterling*, 183 Cal.App.4th 916 (2010). However, in February 2016, Senator Leno introduced a state bill (SB 1053) which would prohibit discrimination against voucher holders.

In California Government Code Section 12955(p)(1): "Source of income' is defined as 'lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For purposes of this section, a landlord is not considered a representative of a tenant." California's Fair Employment and Housing Department has held, therefore, that landlords are not required to accept Section 8 housing choice vouchers under the "source of income" discrimination prohibitions. Moreover, even if a landlord accepts a section 8 voucher, a tenant must meet other requirements for tenancy and have the financial resources to pay any rental amounts not covered by a voucher.

The state law is augmented by ordinances in several California cities, including Los Angeles (suspended by court ruling), Santa Monica, San Francisco (court challenge pending), East Palo Alto, Berkeley, Marin County, Santa Clara County, Corte Madera, and Woodland, which do explicitly bar voucher discrimination. See discussion of local ordinances below.

Date Enacted

Source of income discrimination was added to §12955 in January 2000 and further amended in 2005.

Cal.Gov.Code § 12921 effective January 1, 2014

Relevant Case Law:

Morrison v. Vineyard Creek, 193 Cal. App. 4th 1254, 123 Cal. Rptr. 3d 414 (2011): Landlord did not harass or discriminate against tenant, based on her source of income, when it advised tenant of its good faith belief that tenant could not operate day care in apartment premises, as required for tenant to be entitled to attorney's fees under the California Fair Employment and Housing Act; objection was based on lease's express limitation of the use of the apartment to private residential purposes; landlord's prohibition was against all nonresidential uses, not just family day care homes, and landlord was aware at time of rental that tenant's primary source of income was from her work as a nanny.

Sabi v. Sterling, (2010) 183 C.A.4th 916, 933, 939, 107 C.R.3d 805. Government assistance payments paid to a landlord under the program known as "Section 8" are not part of a tenant's income for purposes of Govt.C. 12955, and a landlord's refusal to participate in the program does not constitute source of income discrimination.

Sisemore v. Master Financial, Inc., 60 Cal. Rptr. 3d 719, 724 (Cal. Ct. App. 2007) (finding that despite the language of subsection (p)(1), protection against discrimination on the basis of source of income is not limited to landlords and tenants and may be applied to borrowers and lenders).

Operative Language:

Cal. Gov't Code § 12955; effective January 1, 2005 (Section of the Fair Employment and Housing Act):

"For the purposes of this section, 'source of income' means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant. For the purposes of this section, a landlord is not considered a representative of a tenant."

Rules Pertaining to Source of Income

Source of income discrimination applies to landlords; real estate brokers, home sellers, mortgage companies, and banks may not refuse to deal with you because of the source of your income. They also cannot charge a higher deposit or treat you differently because of your source of income.

A landlord cannot advertise or state a preference for certain sources of income. However, a landlord can have a minimum income requirement, such as two or three times the rent.

A landlord can require each person in the household to meet the minimum income requirement separately only if he or she would make a husband and wife who applied each meet the income requirement separately. Otherwise, the landlord must consider all household members' incomes combined to determine whether the household as a whole meets the minimum income requirement.

If the applicant receives a governmental rent subsidy, such as Section 8 or Shelter Plus Care, landlords can only use a minimum income requirement that relates to the tenant's portion of the rent. For example, suppose a landlord requires that a tenant's income must be three times the rent of \$900. If an applicant has a Section 8 voucher with a tenant-portion of the rent being only \$200 (because of her income), then the landlord can only require her income to be \$600 (three times her portion of the rent), not \$2700 (three times the total rent).

A landlord can ask what an applicant's source of income is as long as he/she do not discriminate based on that information.

The fair housing protections for source of income apply to all housing EXCEPT a home in which the landlord lives and rents out only one room.

Enforcement Process

The Fair Employment and Housing Act may be enforced under § 12980 by filing a complaint with the California Department of Fair Employment and Housing (DFEH). One can also file a civil action in an appropriate court. The DFEH can be contacted

at (800) 884-1684. See also: <http://www.dfeh.ca.gov/Complaints.htm> for general information about complaints and <http://esq5.houdiniesq.com/dfeh2/esq/reg/> to directly file a complaint online.

If the department indicates that it will not issue a notice of the complaint, the complainant has the right to bring a civil action against the person named in the verified complaint. (§ 12980(h)). A filing with the department for a discrimination claim does not bar an individual from seeking redress in the courts, but once an individual files a civil action, the department shall terminate its proceedings. A civil action must be brought within 2 years after the “occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into, whichever occurs last.” § 12989.1.

Connecticut

Connecticut’s source of income discrimination statute, Connecticut General Statutes, section 46a-64c, was passed in 1989. The law prohibits discrimination against all lawful forms of income, including state and federal housing vouchers, federal welfare or disability assistance, etc. The statute has been challenged twice in court; in both cases, the Connecticut Supreme Court upheld the law. See *Commission on Human Rights & Opportunities v. Sullivan Associates*, 739 A.2d 238 (Conn. 1999); *Commission on Human Rights & Opportunities v. Sullivan*, 939 A.2d 541 (Conn. 2008).

In Connecticut, each of the following programs are considered a lawful source of income: Section 8 housing voucher; state housing assistance, such as the Rental Assistance Program (RAP) and Transitional Rental Assistance Program (T-RAP); and using the Security Deposit Guarantee Program in lieu of paying cash for a security deposit.

Date Enacted

Connecticut’s source of income discrimination statute was enacted in 1989.

Relevant Case Law

Commission on Human Rights & Opportunities v. Sullivan Associates, 739 A.2d 238 (Conn. 1999) (*Sullivan I*) (upholding the statute and finding that landlords may only consider the Section 8 recipient’s personal rent obligation and other reasonable obligations associated with the rental when assessing sufficiency of income).

Commission on Human Rights & Opportunities ex rel. Palmer v. Burkamp, , CVH7749, 2012 WL 2850985 (Conn. Super. May 21, 2012) (Housing assistance which is public or state administered is a lawful source of income.)

Francia v. Mount Vernon Fire Ins. Co., CV084032039S, 2012 WL 1088544 (Conn. Super. Ct. Mar. 6, 2012). Denying motion to strike complaint by landlord against insurance company and insurance broker for refusing to provide general liability insurance on his multi-family property because more than 20% of his tenants paid with HCV.

Commission on Human Rights & Opportunities Ex Rel. Arnold v. Forvil, 302 Conn. 263, 274 (Conn. 2011) (Security Deposit Guarantee issued by the State is a lawful source of income under statute).

Commission on Human Rights & Opportunities v. Sullivan, 939 A.2d 541 (Conn. 2008) (upholding the statute and affirming *Sullivan I*).

Operative Language

Conn. Gen. Stat. Ann. § 46a-63:

“‘Lawful source of income’ means income derived from Social Security, supplemental security income, housing assistance, child support, alimony or public or state-administered general assistance.”

Enforcement Process

The Connecticut source of income law can be enforced either through the state Commission on Human Rights and Opportunities or in state court. Complaints may be filed with the Commission’s Fair Housing Unit at (860) 541-3403 or (800) 477-5737 ext. 3403. See also: <http://www.ct.gov/chro/cwp/view.asp?a=2524&Q=316274>

The Commission’s responsibilities include issuing a complaint of its own volition if discrimination is suspected; investigating and mediating discriminatory practice complaints; and holding hearings relating to any matter under investigation. A private cause of action remains after the Commission’s release, which can be filed in the superior court for the judicial district in which the discriminatory practice is alleged to have occurred. Any action involving state agency or official may be brought in the superior court for the judicial district of Hartford.

A private cause of action may be brought in certain circumstances, but must be brought within one year of the alleged discriminatory practice or of a breach of a conciliation agreement entered into pursuant to this chapter.

Attorney’s Fees

The Commission can award attorney fees, or seek them in court on the complainant’s behalf. See, *Commission on Human Rights and Opportunities v. Sullivan* 939 A.2d 541 (Conn. 2008) (finding that a landlord challenging prospective tenant's claim for attorney fees had the right to call the tenant's attorney as a witness in order to question her regarding her affidavit and billing records and test reasonableness of fees); see also, *Commission on Human Rights and Opportunities v. Litchfield Housing Authority*, 978 A.2d 136 (Conn. 2009). (seeking an award of costs and reasonable attorney's fees)

Organizations Helping Victims of Discrimination

Victims of source of income discrimination can contact the Connecticut Fair Housing Center at (888) 247-4401.

Delaware

The Delaware Fair Housing Act (Section 4601, Title 6 of the Delaware Code) prohibits discrimination on the basis of source of income.

Date Enacted

Source of Income discrimination was added to the Delaware Fair Housing Act on August 3, 2016.

Relevant Case Law

N/A

Operative Language

4601. Declaration of purpose and construction.

“This chapter is intended to eliminate, as to housing offered to the public for sale, rent or exchange, discrimination based upon race, color, national origin, religion, creed, sex, marital status, familial status, source of income, age, sexual orientation or disability, and to provide an administrative procedure through which disputes concerning the same may effectively and expeditiously be resolved with fairness and due process for all parties concerned.”

4602. Definitions.

(25) “Source of income means any lawful source of money paid directly, indirectly, or on behalf of a renter or buyer of housing including:

- a. Income derived from any lawful profession or occupation;
- b. Income or rental payments derived from any government or private assistance, grant, or loan program.”

4607. Exemptions in certain situations.

(h) “The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of any person to consider the sufficiency or sustainability of income, or the credit rating of a renter or buyer, so long as sufficiency or sustainability of income, and the credit requirements, are applied in a commercially reasonable manner and without regard to source of income.

(i) The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of any housing authority or related agency having oversight over the provision of housing assistance from prohibiting such authority's employees or agents from renting housing to persons who receive such assistance, where such prohibition is intended to prevent conflicts of interest or the appearance of impropriety, nor shall this chapter prohibit such agents and employees from complying with any such prohibition on renting housing to persons receiving such assistance.

(j) A landlord is not required to participate in any government sponsored rental assistance program, voucher, or certificate system. A landlord's non-participation in any government sponsored rental assistance program, voucher, or certificate system may not serve as the basis for any administrative or judicial proceeding under this chapter.

(k) The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of a landlord participating in any government sponsored rental assistance program, voucher, or certificate system from reserving rental units for tenants who qualify for such governmental program.”

§5116, Title 25. Fair housing provisions.

(e) “A landlord not be required to participate in any government sponsored rental assistance program, voucher, or certificate system. A landlord's non-participation in any government sponsored rental assistance program, voucher, or certificate system may not serve as the basis for any administrative or judicial proceeding under this chapter.

(f) The prohibitions in this section against discrimination based on source of income shall not limit the ability of a landlord participating in any government sponsored rental assistance program, voucher, or certificate system from reserving rental units for tenants who qualify for such governmental program.

(g) The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of any landlord or prospective landlord to consider the sufficiency or sustainability of income of, or the credit rating of, a tenant or prospective tenant, so long as sufficiency or sustainability of income, and the credit requirements, are applied in a commercially reasonable manner and without regard to source of income.”

Enforcement Process

Title 6. § 4612 Enforcement by Commission.

(g) *Hearings; findings and conclusions; orders.* —

(3) ”If the Administrative Hearing Officer or Panel finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such Administrative Hearing Officer or Panel shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person, costs, expenses, attorney's fees and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent to be paid to the Special Administration Fund:

- a. In an amount not exceeding \$10,000 for each discriminatory practice if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
- b. In an amount not exceeding \$25,000 for each discriminatory practice if the respondent has been adjudged to have committed 1 other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and
- c. In an amount not exceeding \$50,000 for each discriminatory practice if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the issuing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in paragraphs (g)(3)b. and c. of this section may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.”

Attorney's Fees

Yes

Organizations Helping Victims of Discrimination

- [Delaware Division of Human Relations](http://statehumanrelations.delaware.gov/index.shtml)
<http://statehumanrelations.delaware.gov/index.shtml>

District of Columbia

The D.C. Human Rights Act of 1977 (D.C. Code Ann. § 2-1402.21) prohibits discrimination on the basis of income or its derivation, including Section 8 voucher assistance.

Date Enacted

Source of Income discrimination was added to the D.C. Human Rights Act (DCHRA) on February 9, 2005.

Relevant Case Law

Bourbeau v. Jonathan Woodner Co., 549 F. Supp. 2d 78 (D. D.C. 2008) (holding that the DCHRA, prohibiting source of income housing discrimination against federally funded rental assistance voucher holders, did not alter, amend, or conflict with federal statute establishing Housing Choice Voucher Program (HCVP), permitting landlords to accept as many or as few voucher holders as they chose, as required for preemption of DCHRA, under the Supremacy Clause, since preemption would affect District's power to regulate matter of local concern, and DCHRA's nondiscrimination requirement neither compelled nor permitted parties to violate any provision of HCVP and advanced HCVP's objective of aiding low-income families in obtaining decent place to live).

Feemster v. BSA Limited Partnership, 471 F. Supp. 2d 87 (D.D.C. 2007) (mem.) (stating that DCHRA requires a showing that a landlord's refusal to accept vouchers is based on discrimination rather than the desire to ready the property for sale).

Operative Language

D.C. Code Ann. § 2-1401.02: Definition of Source of Income:

“‘Source of income’ means the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist.”

D.C. Code Ann. § 2-1402.21(e): “The monetary assistance provided to an owner of a housing accommodation under Section 8 of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 662; 42 U.S.C. § 1437f), either directly or through a tenant, shall be considered a source of income under this section.”

D.C. Code Ann. § 42-2851.06(c): “The owner of a housing accommodation shall not refuse to rent a dwelling unit to a person because the person will provide his or her rental payment, in whole or in part, through a Section 8 voucher.”

Enforcement Process

The D.C. source of income law can be enforced either through the Commission on Human Rights or in the D.C. courts. The DCOHR may be contacted at (202) 727-4559. For more information on fair housing, go to <http://www.ohr.washingtondc.gov/ohr/cwp/view,a,3,q,627574,ohrNav,%7C30953%7C.asp> or see <http://ohr.dc.gov/complaint> for more information about how to file a complaint.

The commission can hear and decide cases of unlawful discrimination. Additionally, a private cause of action can be filed as provided in Sec. 2-1403.16 for anyone claiming to be aggrieved by an unlawful discriminatory practice.

Attorney’s Fees

The District of Columbia Human Rights Act does not require courts to award reasonable attorney’s fees to prevailing parties, but rather, confirms court’s discretionary authority over attorney’s fee applications. *See*, D.C.Code 1981, §§ 1-2501 et seq., 1-2553, 1-2553(a)(1), 1-2556, 1-2556(b); *see also*, *Thompson v. International Ass’n of Machinists and Aerospace Workers*, 664 F. Supp. 578 (1987) (holding that the goal of awarding attorney’s fees in civil rights cases is to attract competent counsel for these cases, but not to provide them with windfalls).

Organizations Helping Victims of Discrimination

- Equal Rights Center
http://www.equalrightscenter.org/site/PageServer?pagename=issues_housing
- Washington Lawyers Committee for Civil Rights & Urban Affairs (established in 1968) with pro bono assistance from private law firms.
<http://www.washlaw.org/projects/fair-housing>

Maine

The Maine Human Rights Act protects recipients of both state and federal housing assistance from discrimination on the basis of their status as a recipient. ME. REV. STAT. ANN. tit. 5, § 4582.

Date Enacted

In 1975 the Maine Human Rights Act was amended to include a provision prohibiting the refusal to rent or the imposition of different tenancy terms to individuals receiving public assistance. The law was further amended in 1985, making the provisions applicable to any person furnishing public accommodations, and made discrimination unlawful where refusal to rent or imposition of different tenancy terms is done primarily because an individual is receiving public assistance.

Operative Language

ME. REV. STAT. ANN. tit. 5, § 4581-A:

“It is unlawful housing discrimination, in violation of this Act:

For any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as recipient.”

Enforcement Process

The Maine Human Rights Act may be enforced by filing a charge with the Maine Human Rights Commission. The Commission must issue a right-to-sue letter before a civil complaint may be filed in state court.

The Commission can investigate all conditions and practices that allegedly "detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity," including investigating all forms of discrimination, whether carried out legally or illegally, and whether by public agencies or private persons." (ME. REV. STAT. ANN. tit. 5, § 4566).

The Commission may hold hearings on any case being investigated and may also file an action in the superior court.

Attorney's Fees

Attorney's fees are covered under § 4614. Attorneys' fees and costs may be awarded in the court's discretion to the prevailing party, other than the commission, under ME. REV. STAT. ANN. tit. 5, § 4614.

Housing applicant was “prevailing party” in his action alleging that federally subsidized housing project owner's use of application that inquired into nature of person's disability was illegal, and thus, applicant was entitled to attorney's fee award under Maine Human Rights Act. *Robards v. Cotton Mill Associates*, 713 A.2d 952 (Me. 1998).

Organizations Helping Victims of Discrimination

Advocacy Groups and Legal Resources

Maine Volunteer
Lawyers Project
Tel: 1-800-442-4293

Maine Equal Justice
Project
Tel: 207-626-7058 or
866-626-7059

Disability Rights Center
Statewide Hotline: 800-
452-1948

Massachusetts

Massachusetts source of income discrimination law, MASS. GEN. LAWS ANN. ch. 151B, § 4, prohibits discrimination against individuals or families receiving public assistance or rental subsidies, or because of any of the requirements of these programs.

Date Enacted

Source of income was originally included in subsection 10 of the Massachusetts law on Aug. 31, 1971. The law was later amended in 1989 to clarify language in order to overcome a damaging State Supreme Court interpretation (*Attorney Gen. v. Brown*)

Relevant Case Law

DiLiddo v Oxford Street Realty, Inc., 876 N.E.2d 421 (Mass. 2007) (holding that the terms of the voucher program lease are requirements that cannot be rejected by landlords or their agents, and that agents can be held liable for discrimination).

Attorney Gen. v. Brown, 511 N.E.2d 1103 (Mass. 1987) (finding that because a landlord did not discriminate against a Section 8 voucher holder “solely” on the basis of the tenant’s status as a participant in the program, that the landlord’s actions were lawful. The legislature subsequently removed “solely” and added new language that made it unlawful for a landlord to discriminate either because the person is a housing subsidy recipient or because of any requirements of the program.).

Operative Language

Mass. Gen. Laws Ann. ch. 151B § 4:

“It shall be an unlawful practice: . . . For any person furnishing credit, services or rental accommodations to discriminate against any individual who is a recipient of federal, state, or local public assistance, including medical assistance, or who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.”

Enforcement

Massachusetts source of income discrimination law can be enforced through the Human Rights Commission or the Massachusetts Commission against Discrimination. A plaintiff can file a complaint with the Commission against Discrimination. If the Commission finds probable cause, then it can commence a suit against the offender. If the offender so chooses, this suit may be resolved in the Superior Court. Additionally, the injured party can substitute herself in this suit so as to seek damages against the landlord. Mass. Gen. Laws Ann. ch. 151B § 3(1-7).

Attorney’s Fees

Mass. Gen. Laws Ann. ch. 151B § 9 requires that a prevailing petitioner be awarded reasonable attorney’s fees and costs “unless special circumstances would render such an

award unjust.” See also, *Bandera v. City of Quincy*, 220 F. Supp. 2d 26 (D. Mass. 2002). (holding that mediation fees were includable as part of the reasonable attorney fees and costs allowed by court under Massachusetts civil rights statute).

Organizations Helping Victims of Discrimination

- **Massachusetts Commission Against Discrimination** (www.state.ma.us/mcad/)

Boston Office
(617) 994-6000
Springfield Office
(413) 739-2145

Worcester Office
(508) 799-8010
New Bedford Office
(508) 990-2390

Minnesota

Minnesota’s source of income (“public assistance”) law was enacted in 1990. It was later undermined by judicial interpretation in 2010 (*Edwards v. Hopkins Plaza Ltd. Partnership*)

Date Enacted

Minnesota’s source of income (“public assistance”) law was enacted in 1990.

Relevant Case Law

Edwards v. Hopkins Plaza Ltd. Partnership, 783 N.W.2d 171 (Minn. App., 2010) held that participation in Section 8 programs was voluntary and thus it is not “unlawful for property owners to either refuse to rent, or refuse to continue renting, to tenant-based Section 8 recipients based on a legitimate business decision not to participate in Section 8 programs.”

Operative Language

MINN. STAT. ANN. § 363A.09:

“‘Status with regard to public assistance’ means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.”

Enforcement:

In Minnesota, unfair discriminatory practice must be brought as a civil action pursuant to section 363A.33, subdivision 1, filed in a charge with the Department of Human Rights Commission pursuant to section 363A.07, subdivision 3. One may also file a private cause of action as granted in Sec. 363A.28.

- The department can issue complaints, receive and investigate charges alleging unfair discrimination, determine whether probable cause exists for a hearing, subpoena witnesses, take testimony, require production of materials for examination, attempt to eliminate unfair discriminatory practice (Sec. 363A.06).

- There is a private cause of action granted in Sec. 363A.28. Any person can either bring a civil action or file a verified charge with the commissioner.

Attorney's Fees

Minn. Stat. Ann. § 363A.33 governs allocation of attorney's fees and allows for an award of reasonable attorney's fees to the prevailing party at the court's discretion.

New Jersey

New Jersey law makes it illegal for a landlord to refuse to rent to a person because the person has a Section 8 voucher or another type of housing assistance. N.J. STAT. ANN. § 10:5-12(g). This applies to tenants who obtain Section 8 assistance while already tenants in a house or apartment and to tenants who are seeking to rent from a landlord for the first time. A landlord cannot refuse to accept rental assistance from a tenant and then turn around and sue to evict that tenant for nonpayment of rent. *See Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602 (1999).

Date Enacted

The New Jersey Law Against Discrimination: N.J. STAT. ANN. §10:5-12 was amended in 2002 to include source of income discrimination.

Relevant Case Law

Bell v. Tower Mgmt. Services, L.P., A-3165-08T3, 2010 WL 2346651 (N.J. Super. Ct. App. Div. June 11, 2010). Reversing and remanding dismissal of complaint alleging SOI and reasonable accommodation violations by landlord refusing to accept housing subsidy for persons with disabilities because it didn't meet annual income limitations. "The complaint clearly states a cause of action for discrimination based on the adoption of a policy that is allegedly not justified by business necessity but which allegedly has the impact of excluding almost all applicants who intend to pay their rent through an S-RAP subsidy."

The leading case on section 8 voucher law, *Pasquince v. Brighton Arms Apartments*, 378 N.J. Super. 588 (App. Div. 2005), has not set positive precedent in the state, but is very fact specific. In *Pasquince*, the court held that a person with a Section 8 voucher could be denied an apartment if he/she had a poor credit history, even though the poor credit was a result of disability.

Franklin Tower One v. N.M., 157 N.J. 602 (1999) (upholding the statute stating that Section 8 vouchers are covered by source of income protection because the statute prohibits discrimination not only against source of income but also against the source of a lawful rent payment).

T.K. v. Landmark West, 802 A.2d 527, (N.J. Super. App., 2002) (finding that trial court did not violate statute and substitute its standards for landlord's business judgment in determining tenant's creditworthiness when it found that tenant's disputed credit problems were used by

landlord as a pretext; though statute did not limit landlords from refusing to rent based on creditworthiness, it was up to trial court to make assessment of credibility).

Operative Language

N.J. STAT. ANN. §10:5-4 (2002):

“All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.”

Enforcement

Housing discrimination claims in New Jersey can be handled either administratively, through the New Jersey Division of Civil Rights, or via civil action.

Attorney’s Fees

N.J. STAT. ANN. 10:5-27.1 governs attorney’s fees and allows the prevailing party to be awarded “reasonable attorney’s fees” but also includes a bad faith exception.

Organizations Helping Victims of Discrimination

Low-income New Jerseyans can get free legal help by calling toll-free hotline at 1-888-LSNJ-LAW (1-888-576-5529), Monday through Friday, 8:00 a.m. to 5:30 p.m. Outside of New Jersey; they can call 732-572-9100 and ask to be transferred to the hotline.

North Dakota

The North Dakota Code Chapter 14-02.4 and 14-02.5, the Human Rights laws and Housing Discrimination code, govern source of income discrimination (“status with regard to public assistance”). Source of income discrimination is specifically prohibited under N.D. CENT. CODE § 14-02.5-07, passed in 1999. It became the policy of North Dakota not to discriminate based on source of income in 1983 under N.D. CENT. CODE § 14-02.4-01.

Date Enacted

N.D. CENT. CODE, § 14-02.4-01 was passed in 1983
N.D. CENT. CODE § 14-02.5-07 was passed in 1999.

Operative Language:

N.D. CENT. CODE § 14-02.4-02:

“‘Status with regard to public assistance’ means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.”

Enforcement

North Dakota’s source of income discrimination can be enforced through filing a complaint with the Human Rights Division within the Department of Labor, or by filing a private right of action. If the department determines that there is probable cause but cannot resolve the complaint through negotiations or conciliation, the department will provide for an administrative hearing.

Attorney’s Fees

§ 14-02.5-44 governs the allocation of attorney’s fees and provides for the allocation of “reasonable attorney’s fees” to the prevailing party.

Oklahoma

Oklahoma’s source of income discrimination statute, OKLA. ST. tit. 25, § 1452 was added by Laws 1985, c. 289, § 2 and amended by Laws 1991, c. 177, § 3.

Date Enacted

Oklahoma’s source of income discrimination law was added in 1985 and amended in 1991.

Operative Language

OKLA. ST. tit. 25, § 1452:

“A. It shall be an unlawful discriminatory housing practice for any person, or any agent or employee of such person:

. . . 8. To refuse to consider as a valid source of income any public assistance, alimony, or child support, awarded by a court, when that source can be verified as to its amount, length of time received, regularity, or receipt because of race, color, religion, gender, national origin, age, familial status, or handicap....”

Enforcement

Oklahoma’s source of income discrimination law may be enforced by filing a complaint with the Human Rights Commission or by filing a private cause of action suit within the required statutory period.

Attorney's Fees

Attorney's fees are governed by OKLA. ST. tit. 25, §1506.8, which provides for "reasonable attorney's fees" to the prevailing party.

Oregon

Oregon's law prohibiting unlawful discrimination in employment public accommodations and real property transactions, OR. REV. STAT. § 659A.421, was passed in 1995.

The Housing Choice Act of 2013 was passed in 2013 (HB 2639). It went into effect on July 1, 2014 (Oregon Laws Chapter 740).

- Amends ORS 659A.421(1)(d) to include federal rent subsidy payments under 42 U.S.C 1437f, and any other local, state, or federal housing assistance, in the definition of the term "source of income."

Date Enacted

1995; 2013

Operative Language

OR. REV. STAT. § 659A.421:

"Source of income" includes federal rent subsidy payments under 42 U.S.C. 1437f and any other local, state or federal housing assistance."

"(2) A person may not, because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of any person:

- (a) Refuse to sell, lease or rent any real property to a purchaser. This paragraph does not prevent a person from refusing to lease or rent real property to a prospective renter or prospective lessee:

- (A) Based upon the past conduct of a prospective renter or prospective lessee provided the refusal to lease or rent based on past conduct is consistent with local, state and federal law, including but not limited to fair housing laws; or

- (B) Based upon the prospective renter's or prospective lessee's inability to pay rent, taking into account the value of the prospective renter's or prospective lessee's local, state and federal housing assistance, provided the refusal to lease or rent based on inability to pay rent is consistent with local, state and federal law, including but not limited to fair housing laws.

- (b) Expel a purchaser from any real property

- (c) Make any distinction, discrimination or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection therewith.

- (d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(h) Deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation.

(i) Represent to a person that a dwelling is not available for inspection, sale or rental when the dwelling in fact is available for inspection, sale or rental.

(j) Otherwise make unavailable or deny a dwelling to a person.

(3)(a) A person whose business includes engaging in residential real estate related transactions may not discriminate against any person in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(b) As used in this subsection, "residential real estate related transaction" means any of the following:

(A) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing or maintaining a dwelling;
or

(ii) Secured by residential real estate; or

(B) The selling, brokering or appraising of residential real property.

(4) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(5) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income."

Enforcement

Enforcement is governed by OR. REV. STAT. § 659A.825. The statute may be enforced by filing a complaint with the Bureau of Labor and Industries or by filing a private cause of action in circuit court. A complaint may similarly be filed by the Attorney General.

Attorney's Fees

The allocation of attorney's fees is governed by OR. REV. STAT. § 659A.885. Reasonable

attorney's fees are allowable at the court's discretion subject to certain exceptions. In a housing discrimination case, the court "shall award reasonable attorney fees to the commissioner if the commissioner prevails in the action." OR. REV. STAT. § 659A.885(8). The aggrieved party can also sue and recover compensatory damages or \$200, whichever is greater, punitive damages and attorney fees. *See* ORS 649A.885 (1) and (3).

Utah

Utah's Fair Housing Act, UTAH CODE ANN. § 57-21-5, was passed in 1989 and amended to add source of income discrimination in 1993. In 2016, Utah introduced a bill which would explicitly exclude vouchers from their definition of source of income. After pressure from advocates, the state senate decided not to move forward with the bill.

Date Enacted

UTAH CODE ANN. § 57-21-5 was amended to add source of income discrimination in 1993.

Operative Language:

UTAH CODE ANN. § 57-21-5:

"(1) It is a discriminatory housing practice to do any of the following because of a person's race, color, religion, sex, national origin, familial status, source of income, or disability:

- (a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental, or otherwise deny or make unavailable any dwelling from any person;
- (b) discriminate against any person in the terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling; or
- (c) represent to any person that any dwelling is not available for inspection, sale, or rental when in fact the dwelling is available."

Enforcement:

Utah's source of income discrimination laws may be enforced pursuant to UTAH CODE ANN. § 57-21-(8-12) by filing a complaint with the Division of Antidiscrimination and Labor under the Labor Commission. One may also file a private right of action. A civil action may be filed by an individual or by the division.

Attorney's Fees

Reasonable attorney's fees are provided for under UTAH CODE ANN. § 57-21-11 at the court's discretion, whichever is greater, punitive damages and attorney fees. *See* ORS 649A.885 (1) and (3).

Vermont

Date Enacted

Vermont's source of income discrimination law VT. STAT. ANN. tit. 9, § 4503 was passed in 1987.

Statutory Language

VT. STAT. ANN. tit. 9, § 4503:

“(a) It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.”

Enforcement:

Vermont source of income discrimination may be enforced pursuant to VT. STAT. ANN. tit. 9, § 4506 by filing a claim with the Human Rights Commission established under sec. 4551, or a private right of action in state or federal court. The commission has jurisdiction to investigate and enforce complaints of unlawful discrimination, including that based upon receiving public assistance.

Attorney's Fees

Under VT. STAT. ANN. tit. 9, § 4506 (b), “the court may award costs and reasonable attorney's fees to an aggrieved person who prevails in an action . . .”

Organizations Helping Victims of Discrimination

Vermont Legal Aid, Inc. is a non-profit organization that provides free civil legal services including for housing issues.
Phone: 800-889-2047

The Vermont Human Rights Commission is a Vermont State Agency that investigates and adjudicates charges of housing discrimination. It is a neutral body.
Phone: 800-416-2010

Champlain Valley Office of Economic Opportunity (CVOEO)'s Fair Housing Project does intake and referral of housing discrimination victims to the HRC and to VLA.
Phone: 802-862-2771

Washington

Washington's Residential-Landlord Tenant Act, WASH. REV. CODE §59.18, was amended to add a chapter that prohibits source of income discrimination. The law becomes effective on September 30, 2018.

<http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/2578-S2.SL.pdf#page=1>

Date Enacted

2018

Statutory Language

(1) A landlord may not, based on the source of income of an otherwise eligible prospective tenant or current tenant:

(a) Refuse to lease or rent any real property to a prospective tenant or current tenant, unless the: (i) Prospective tenant's or current tenant's source of income is conditioned on the real property passing inspection; (ii) written estimate of the cost of improvements necessary to pass inspection is more than one thousand five hundred dollars; and (iii) landlord has not received moneys from the landlord mitigation program to make the improvements;

(b) Expect a prospective tenant or current tenant from any real property;

(c) Make any distinction, discrimination, or restriction against a prospective tenant or current tenant in the price, terms, conditions, fees, or privileges relating to the rental, lease, or occupancy of real property or in the furnishing of any facilities or services in connection with the rental, lease, or occupancy of real property;

(d) Attempt to discourage the rental or lease of any real property to a prospective tenant or current tenant;

(e) Assist, induce, incite, or coerce another person to commit an act or engage in a practice that violates this section;

(f) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected under this section;

(g) Represent to a person that a dwelling unit is not available for inspection or rental when the dwelling unit in fact is available for inspection or rental; or

(h) Otherwise make unavailable or deny a dwelling unit to a prospective tenant or current tenant that, but for his or her source of income, would be eligible to rent real property.

(2) A landlord may not publish, circulate, issue, or display, or cause to be published, circulated, issued, or displayed, any communication, notice, advertisement, or sign of any kind relating to the rental or lease of real property that indicates a preference, limitation, or requirement based on any source of income.

(3) If a landlord requires that a prospective tenant or current tenant have a certain threshold level of income, any source of income in the form of a rent voucher or subsidy must be

subtracted from the total of the monthly rent prior to calculating if the income criteria have been met.

(4) A person in violation of this section shall be held liable in a civil action up to four and one-half times the monthly rent of the real property at issue, as well as court costs and reasonable attorneys' fees.

(5) As used in this section, "source of income" includes benefits or subsidy programs including housing assistance, public assistance, emergency rental assistance, veterans benefits, social security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity. "Source of income does not include income derived in an illegal manner.

Enforcement

Individuals can file a private civil suit in court. The Washington State Attorney General does not have the authority to enforce the Residential Landlord-Tenant Act.

Attorney's Fees

Yes. "A person in violation of this section shall be held liable in a civil action...as well as court costs and reasonable attorneys' fees."

Organizations Helping Victims of Discrimination

Fair Housing Center of Washington serves western and central Washington.

Northwest Fair Housing Alliance serves eastern Washington.

Wisconsin

WIS. STAT. § 106.50 was amended in 1980 to include lawful source of income discrimination protection and authorizes the Department to promulgate such rules as are necessary to carry out this section. Lawful source of income includes: wages, a voucher having monetary value, social security, public assistance or other related payments. However, the Wisconsin law has been interpreted to exclude Section 8 federal rent assistance from the definition of lawful source of income. *See Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272 (Wis. 1995).

Date Enacted

1980

Relevant Case Law

Knapp v. Eagle Property Management Corp., 54 F.3d 1272 (Wis. 1995) (finding that Section 8 federal rent assistance vouchers were not "lawful source of income" within meaning of

Wisconsin Open Housing Act provision prohibiting landlords from discriminating in housing on basis of lawful source of income).

Metropolitan Milwaukee Fair Housing Council v. South Side Spirit, ERD Case No. 9052484 (August 26, 1992) (finding a violation of sec. 101.22 (2) (d), Stats. by publishing an advertisement which stated or indicated discrimination).

Fernandez-Tome v. Joseph (LIRC, 07/25/90) (finding a violation of the statute where Respondent stated he preferred to rent to "two working people" where complainant was known to accept social security).

Statutory Language

WIS. STAT. § 106.50 - Open housing

“(1) Intent. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ss. 66.0125 and 66.1011. . . .”

“...1(m) Definition: (h) “Discriminate” means to segregate, separate, exclude or treat a person or class of persons unequally in a manner described in sub. (2), (2m) or (2r) because of sex, race, color, sexual orientation, disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry.”

Enforcement

Wisconsin’s source of income discrimination law may be enforced by filing a complaint with the Equal Rights Division, or by filing a private cause of action in court. Individuals can file complaints charging discrimination violations.

Attorney’s Fees

WIS. STAT. §106.50(6) allows for reasonable attorney’s fees for the prevailing complainant.

Organizations Helping Victims of Discrimination

Fair Housing Council

- Fair Housing Council can help one understand one’s rights under the law and outline a variety of ways to pursue a complaint.
- To determine if a Fair Housing Council serves your area of the state, contact the Metropolitan Milwaukee Fair Housing Council at (414) 278-1240.

LOCAL LAWS AND ORDINANCES

Cities in California*

*Please consult a California attorney for advice on the applicability of the following local ordinances. The case of *Apartment Ass'n, Inc. v. City of Los Angeles*, 136 Cal. App. 4th 119 (2006) held that a Los Angeles ordinance, LAMC 151.04, which prohibits landlords from raising the rent after opting out of the Section 8 voucher program, was preempted by state law. However, a similar challenge in San Francisco was recently rejected by the appellate division in *City and County of San Francisco et. al. v. Chuck M. Post et al.*, 22. Cal. App. 5th 121 (Cal. Ct. App. 2018). The outcomes of these cases may also affect the source of income discrimination protections in the local ordinances below.

Berkeley:

Citation: Berkeley Municipal Code Chapter 13.31

Date passed: 7/27/2017

Operative Language:

Section 13.31.20 Discrimination based on source of income is prohibited.

“It shall be unlawful for any person offering for rent or lease, renting, leasing, or listing any housing accommodation, or any authorized agent or employee of such person, to do or attempt to do any of the following:

- A. Refuse to rent or lease a housing accommodation, or access to or use of the common areas and facilities of the housing accommodation, serve a notice of termination of tenancy, commence an unlawful detainer action, or otherwise deny to or withhold from any person or persons, a housing accommodation on the basis of source of income;
- B. Represent to any person, on the basis of source of income, that a housing accommodation is not available for inspection or rental when such housing accommodation is in fact available for inspection or rental, or to require different terms for such transactions on the basis of source of income;
- C. Make, print, or publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a housing accommodation offered by that person that indicates any preference, limitation, or discrimination with respect to source of income; or
- D. To use a financial or income standard for rental housing that:
 - 1. Privileges income earned directly by the tenant or prospective tenant, or rental payments made directly by the tenant or prospective tenant over housing assistance.
 - 2. Discounts or discriminates against housing assistance payments.

3. Fails to account for the aggregate income of persons residing together or proposing to reside together or an aggregate income of tenants or prospective tenants and their cosigners or proposed cosigners on the same basis as the aggregate income of married persons residing together or proposing to reside together.”

Administrative or court enforcement: Both; civil and criminal enforcement

Attorney’s fees: Yes

Corte Madera:

Citation: Anti-Discrimination Ordinance, Chapter 5.30

Date passed: 2000 (unverified)

Operative Language: “It is unlawful for the owner or manager of rental housing to discriminate against an existing tenant on the basis of that tenant's use of a Section 8 rent subsidy. It is a violation of this prohibition for a property owner or manager to refuse to accept a Section 8 rent subsidy for which an existing tenant qualifies, or to terminate the tenancy of an existing tenant based on the property owner's or manager's refusal to participate in a Section 8 rent subsidy program for which an existing tenant has qualified.”

Administrative or court enforcement: Both (mediation or civil action for damages/injunctive relief)

East Palo Alto:

Citation: East Palo Alto Municipal Code Chapter 14.16.010

Date passed: 11/06/2000

Operative Language: “For purposes of this subsection, ‘source of income’ means all lawful sources of income or rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program. Source of income includes any requirement of any such program or source of income or rental assistance.”

Administrative or court enforcement: Court

Los Angeles:

Citation: LAMC 151.04 (suspended by *Apartment Ass'n, Inc. v. City of Los Angeles*, 136 Cal. App. 4th 119 (2006) (holding that the ordinance was pre-empted by state law – but see recent San Francisco case with opposite holding).

Marin County:

Citation: Marin County Code Chapter 5.53

Date passed: 3/21/2017

Operative Language: “It is unlawful to restrict housing choice on the basis of race, color, disability, religion, sex, familial status, national origin, sexual orientation, marital status, ancestry, age, and source of income.

5.53.010- Housing.

A. Prohibited Activity. It is unlawful for any person to do any of the following as wholly or partially based on source of income:

1. To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property, including, but not limited to, the rental thereof; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;
2. To include in the terms or conditions of a transaction in real property any clause, condition or restriction;
3. To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement or advertisement with respect to a transaction in real property, or with respect to financing related to any such transaction, which unlawfully indicates preference, limitation or discrimination based on source of income.
5. For purposes of this subsection, source of income means all lawful sources of income or rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program. Source of income includes any requirement of any such program or source of income or rental assistance.

Administrative or court enforcement: Both; civil and criminal enforcement

Attorney’s fees: Yes

San Francisco:

Citation: San Francisco Police Code Art. 33, §3304

Date passed: 7/31/1998

Operative Language: “For purposes of this Subsection (a), source of income means all lawful sources of income or rental assistance from any federal, State, local, or nonprofit-administered benefit or subsidy program. "Source of income" also means a rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program. "Source of income" includes any requirement of any such program or source of income, or rental assistance.”

Administrative or court enforcement: Both

Attorney’s fees: Discretionary

Legal challenges: A challenge to the ordinance was brought in 2016, claiming that the ordinance was preempted by California’s FEHA (Fair Housing and Employment Act). The preemption argument was rejected by the trial court. The Appellate Division upheld the trial court decision, agreeing that the local ordinance was not preempted. First Appellate District, Div. 2. *City and County of San Francisco et. al. v. Chuck M. Post et al.*, 22 Cal. App. 5th 121 (Cal. Ct. App. 2018)

Santa Clara County:

Citation: Santa Clara County Ordinance No. NS-507.1

Date passed: 4/25/2017

Operative Language: “It is unlawful for any person to do any of the following as wholly or partially based on receipt of housing assistance:

- (a) To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property, including, but not limited to, the rental thereof; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;
- (b) To include in the terms or conditions of a transaction in real property any clause, condition, or restriction;
- (c) To refuse or restrict facilities, services, repairs or improvements for any current or prospective tenant or lessee;
- (d) To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement, or advertisement with respect to a transaction in real property, or with respect to financing related to any such transaction, that unlawfully indicates preference, limitation, or discrimination based on receipt of housing assistance;
- (e) To use a financial or income standard for rental housing that privileges income earned directly by the tenant or prospective tenant, or rental payments made directly by the tenant or prospective tenant over housing assistance, or that discounts or discriminates against housing assistance payments.”

Administrative or court enforcement: Both

Attorney's fees: Yes

Santa Monica:

Citation: Santa Monica Municipal Code section 4.28.030 (currently being challenged in court)

Date passed: 2015

Operative Language: “ It shall be unlawful for any person offering for rent or lease, renting, leasing, or listing any housing accommodation, or any authorized agent or employee of such person, to do or attempt to do any of the following:

(a) Refuse to rent or lease a housing accommodation, or access to or use of the common areas and facilities of the housing accommodation, serve a notice of termination of tenancy, commence an unlawful detainer action, or otherwise deny to or withhold from any person or persons, a housing accommodation on the basis of disability, age, source of income, parenthood, pregnancy, or the potential or actual occupancy of a minor child.

(b) Represent to any person, on the basis of disability, age, source of income, parenthood, pregnancy, or the potential or actual occupancy of the minor child that a housing accommodation is not available for inspection or rental when such housing accommodation is in fact available for inspection or rental.

(c) Make, print, or publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a housing accommodation offered by that person that indicates any preference, limitation, or discrimination with respect to disability, age, source of income, parenthood, pregnancy, or the potential or actual occupancy of a minor child.

(j) For purposes of this part, “source of income” includes any lawful source of income or rental assistance from any federal, State, local or non-profit-administered benefit or subsidy program including, but not limited to, the Section 8 voucher program.” Santa Monica Municipal Code section 4.28.030.

Administrative or court enforcement: Both

Attorney's fees: Yes

Woodland:

Citation: Woodland Municipal Code Sec. 6A-4-60

Operative Language: (a) Each owner of multifamily rental residential projects shall enter into an inclusionary housing agreement (regulatory agreement) with the city for each residential project that contains units with affordability restrictions. As a provision of this chapter as well as the regulatory agreement, the community development department will be responsible for tracking and monitoring all of the city's inclusionary housing units.

This includes maintaining a database of all units as well as files with the required regulatory agreements recorded against each property.

(b) Owner shall comply with all fair housing laws and not discriminate based on race, ancestry, gender, religion, color, age, national origin, marital status, familial status, sexual orientation, source of income and disability;

(c) Owner shall not discriminate based on any government rental subsidy, including but not limited to HUD Section 8 assistance. Tenants may utilize Section 8 vouchers to assist in renting inclusionary units; however, the rent levels collected for inclusionary units occupied by tenants using Section 8 vouchers shall remain at the affordable level determined pursuant to Section 6A-4-40 of Chapter 6A of this code;

(D) Agree to Rent Affordable Units to Qualified Income-Eligible Households for a Lease Term not to Exceed One Year. At the end of each lease term, the lease may be renewed for up to one year once the owner or manager has re-certified that the household income of the affordable unit remains eligible to the restricted income level of the unit. No household shall be required to terminate its tenancy from such affordable unit absent a showing of good cause. If a very low income household increases its income so that it no longer qualifies as a very low income household during its tenancy, it shall be permitted to remain in the affordable unit as long as its income does not exceed the low income limitation (i.e., eighty percent of AMI). At vacancy, such unit shall be rented to an eligible very low income household and the affordable rent level for a very low income household, unless the affordable unit requirement has been met by renting other vacant units at the appropriate affordable rent level.

Administrative or Court Enforcement: Both

San Diego:

Citation: San Diego Municipal Code Chapter 9 Article 8 Division 8 Sections 98.0801, 98.0802, 98.0803, 98.0804, 98.0805, and 98.0806

Date passed: 7/31/18 (Effective: 8/31/18)

Operative Language: §98.0803 Prohibited Activity

(a) It is unlawful for any person to do any of the following acts, wholly or in part, based on a person's source of income (except as may be necessary to comply with any program requirements related to source of income):

1. To refuse to enter into or renew an agreement for tenancy;
2. To interrupt or terminate any tenancy;
3. To falsely represent that a rental-unit is not available for tenancy;
4. To require inclusion in the terms of an agreement for tenancy any clause, condition, or restriction; or
5. To restrict a tenant's access to facilities or services on real property associated with the tenancy, or refuse repairs or improvements to real property associated with the tenancy.

(b) It is unlawful for any person to make, print, publish, advertise, or disseminate in any way, or cause to be made, printed, published, advertised, or disseminated in any way, any notice, statement, or advertisement with respect to a rental-unit, or with respect to financing related to a rental-unit, which indicates discrimination based on a person's source of income.

(c) It is unlawful for any person to use a financial or income standard for entering into or renewing a tenancy that does either of the following:

- (1) Fails to account for any tenant's or prospective tenant's entire source of income; or
- (2) Fails to account for the aggregate source of income of tenants residing together or proposing to reside together, or the aggregate source of income of tenants or prospective tenants and their cosigners or proposed cosigners, on the same basis as the aggregate source of income of married persons residing together or proposing to reside together.

Administrative or court enforcement: Both

Attorney's fees: Yes

Cities in Colorado

Denver:

Citation: Section 28-91 of the Denver Revised Municipal Code ("D.R.M.C.")

Date passed: 8/6/18

Operative Language: Section 3. That Section 28-95 of the D.R.M.C. shall be amended by deleting the stricken language and adding the underscored language, as follows:

Sec. 28-95. - Discriminatory practices in real estate transactions.

(a) Generally. It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, source of income, military status or physical or mental disability of any individual:

- (1) To interrupt or terminate or refuse to initiate or conduct any transaction in real property or to require different terms for such transaction or to represent falsely that an interest in real property is not available for transaction;
- (2) To include in the terms or conditions of a transaction 1 in real property any clause, condition or restriction prohibited by this article;
- (3) To refuse to lend money, guarantee a loan, accept a deed of trust or mortgage or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property or impose different conditions on such financing or refuse to provide title or other insurance, relating to the ownership or use of any interest in real property;
- (4) To refuse or restrict facilities, service, repairs or improvements for a tenant or lessee;
- (5) To communicate, make, print or publish or cause to be communicated, made, printed or published any notice, statement or advertisement with respect to a transaction or proposed transaction in real property or financing related thereto,

which notice, statement or advertisement indicates or attempts to indicate any preference, limitation or discrimination based on race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, source of income, military status, family status or physical or mental disability of any individual;

(6) To discriminate in any financial transaction involving real property on account of the location of residence or business, i.e., to red-line; or

(7) To restrict or attempt to restrict housing choices or to engage in any conduct relating to the sale or rental of a dwelling that otherwise denies the rental or sale or makes it unavailable; or

(8) To refuse to consider any source of income in the same manner as ordinary wage income in connection with an application for rental housing.

Administrative or court enforcement: Must exhaust all administrative remedy before any court action can be filed

Attorney's fees: N/A

Cities in Delaware

Wilmington, Delaware:

Citation: Wilmington City Code, Art. III, §35-76 et seq.

Date passed: N/A

Operative Language:

Sec 35-76. Definitions.

Fixed income means unearned income and shall include pension income, social security benefits and any other income from other than gainful employment.

Sec 35-78. Unlawful acts.

“Except as provided in section 35-80 it shall be an unlawful practice for any person because of race, age, marital status, creed, color, sex, sexual orientation, handicap, national origin, or economic or family status to: (1) Refuse to sell or rent to those who are welfare recipients, or who are dependent upon other fixed incomes, or to a parent with minor children, or to handicapped persons, if such refusal is based only upon the status of the applicant as stated above. . . .”

Administrative or court enforcement: Both

Counties in Florida

Broward County:

Citation: Broward County, Florida – Code of Ordinances, § 16 ½ et seq.

Date passed: 12/5/2017

Operative Language:

Sec. 16 ½ -2. – Purposes; construction

(a) The general purposes of the Broward County Human Rights Act are:

(1) To express support within Broward County for the policies embodied in Titles II, III, and VII of the Federal Civil Rights Act of 1964, as amended; Title VIII of the Federal Civil Rights Act of 1968, as amended; Section 504 of the Federal Rehabilitation Act of 1973, as amended; the Civil Rights Act of 1991, as amended; the Age Discrimination and Employment Act of 1967, as amended; the Americans with Disabilities Act of 1990, as amended; and other federal and state anti-discrimination laws; and

(2) To secure for all individuals within the County freedom from discrimination because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression, veteran or service member status, *lawful source of income*, or being the victim of dating violence, domestic violence, or stalking, in connection with employment, public accommodations, or real estate transactions, where applicable, and thereby to promote the interests, rights, and privileges of individuals within the County.

(b) The Broward County Human Rights Act shall be liberally construed to further the general purposes stated in this chapter. The provisions of this Act shall be construed consistent with similar federal and state statutes.

Sec. 16½-3. - Definitions.

(p) Discriminatory classification means a classification on the basis of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression, veteran or service member status, lawful source of income, or being the victim of dating violence, domestic violence, or stalking. Familial status, veteran or service member status, lawful source of income, or being the victim of dating violence, domestic violence, or stalking shall only be included in this definition for the purpose of claims alleging a discriminatory housing practice under this Act.

Sec 16 ½-35. – Discriminatory practices in real estate transactions

It is unlawful for any person, including but not limited to any owner, lessee, lessor, sublessee, sublessor, assignee, assignor, manager, real estate broker, salesperson, condominium association, homeowners' association, cooperative association, or any representative of any of the foregoing:

(a) To refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny, a dwelling to any person because of a discriminatory classification.

(b) To discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of a discriminatory classification.

(c) To represent to any person because of a discriminatory classification that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(d) To make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on a discriminatory classification, or an intention to make any such preference, limitation, or discrimination.

(e) To induce or attempt to induce, for profit, any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, marital status, age, familial status, political affiliation, disability, sexual orientation, gender identity or expression, pregnancy status, veteran or service member status, lawful source of income, or being the victim of dating violence, domestic violence, or stalking.

Administrative or court enforcement: Both

Attorney's Fees: Yes.

Sec. 16 ½-53(f): “In a civil action commenced pursuant to this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court shall issue an order prohibiting the practice and the court may grant such affirmative relief from the effects of the practice, including injunctive and other equitable relief, an award of compensatory and punitive damages, and reasonable attorney's fees and costs.”

Miami- Dade County:

Citation: Florida, Code of Ordinances Sec.11A(12), 11A(13)

Date passed: 8/3/2009 (updated 11/5/2014)

Operative Language: “*Source of income* shall mean the lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant, including, but not limited to, Section 8 Housing Choice Vouchers, Supplemental Security Income, Social Security, pensions and other retirement benefits.”

Administrative or court enforcement: Both

Counties/Cities in Illinois

Chicago:

Citation: Municipal Code of Chicago, Ch. 5-8, Chicago Fair Housing Regulations, §5-8-030 Unfair Housing Practices

Date passed: 1990

Operative Language: “Source of income: means the lawful manner by which an individual supports himself or herself and his or her dependents.” Municipal Code of Chicago §2-160-020(n).

Administrative or court enforcement: Both- Administrative enforcement by the Chicago Commission on Human Relations.

Attorney’s fees: Discretionary. *See*, Chicago Commission on Human Relations, Reg. 240.630, .640

Cook County:

Citation: Cook County Human Rights Ordinance, Sec. 42-30 et seq. Sec. 42-37 (Public Accommodations), Sec. 42-38 (Housing)

Date passed: 5/8/2013 (and became effective 90 days after)

Operative Language: “*Source of income* means the lawful manner by which an individual supports himself or herself and his or her dependents.” Sec. 42-31.

Housing Choice Voucher Holders were exempted from the Ordinance’s protections until 5/8/2013 when the exemption was removed.

<http://www.cookctyclerk.com/countyboard/boardmeetings/Pages/05082013DividedRollCallVotes.aspx>

Administrative or court enforcement: Administrative enforcement by the Cook County Commission on Human Rights.

Attorney’s fees: Yes. “Relief may include... an order to: (g) Pay the complainant all or a portion of the costs, including reasonable attorney's fees.” Sec. 42-34(c)(1)(g).

Harwood Heights:

Citation: Harwood Heights Municipal Code Title 19

Date passed: 8/13/2009

Operative Language: “It is declared to be the public policy of the Village of Harwood Heights ("village"), in the exercise of its power to regulate for the protection of the public health, safety, morals, and welfare, to assure fair housing and freedom from discrimination throughout the community, to protect the community from the effects of residential segregation based upon a person's race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity, or housing status, and to secure its citizens the economic, social, and professional benefits of living in a stable, integrated society.”

Administrative or court enforcement: Administrative with right of judicial review

Attorney’s fees: No

Naperville:

Citation: Naperville Ordinance 00-92

Date passed: 6/6/2000

Operative Language: “Unlawful Discrimination: Discrimination against a person because of his or her race, color, religion, sex, national origin, ancestry, age, marital status, familial status, physical or mental handicap or disability, military status, sexual orientation, or legal source of income.”

Administrative or court enforcement: Administrative

Urbana:

Citation: Urbana City Code Ch. 12

Date passed: 11/17/1975

Operative Language: “Source of income. The point or form of the origination of legal gains of income accruing to a person in a stated period of time; from any occupation, profession or activity, from any contract, agreement or settlement, from federal, state or local payments, including Section 8 or any other rent subsidy or rent assistance program, from court ordered payments or from payments received as gifts, bequests, annuities or life insurance policies.”

Administrative or court enforcement: Administrative, pursuant to judicial review of commission decision.

Wheeling:

Citation: Wheeling Human Rights Ordinance Ch. 6.14

Date passed: 1995

Operative Language: “Source of income means the lawful manner by which an individual supports himself or herself and his or her dependents.”

BUT: “Notwithstanding anything to the contrary contained in this title, nothing contained in this chapter shall require any person who does not participate in the federal Section 8 Housing Assistance Program (42 U.S.C. 1437f) to accept any subsidy, payment assistance, voucher or contribution under or in connection with such program or to lease or rent to any tenant or prospective tenant who is relying on such a subsidy, payment assistance, contribution or voucher for payment of part of the rent for such housing accommodation.”

Administrative or court enforcement: Administrative

Cities in Iowa

Iowa City:

Citation: Iowa City Code, Tit. 2, Ch 1 §2-1-1; Tit. 2, Ch.3 §2-3-5 ; Tit. 2, Ch.3 §2-3-6

Date passed: 12/15/2015

Operative Language:

Tit 2, Ch 1 §2-1-1: PUBLIC ASSISTANCE SOURCE OF INCOME: Income and support derived from any tax supported Federal, State or local funds, including, but not limited to, social security, supplemental security income, temporary assistance for needy families, family investment program, general relief, food stamps, and unemployment compensation, housing choice voucher subsidies and similar rent subsidy programs.

Tit. 2, Ch.3 §2-3-5:

It shall be an unlawful or discriminatory practice for any person:

A. To refuse to sell, rent, lease, assign, sublease, refuse to negotiate or to otherwise make unavailable, or deny any real property or dwelling or part, portion or interest therein, to any person because of the age, color, creed, disability, gender identity, marital status, familial status, national origin, race, religion, sex, sexual orientation, presence or absence of dependents or public assistance source of income of that person.

B. To discriminate against any other person in the terms, conditions or privileges of any real estate transaction because of age, color, creed, disability, gender identity, marital status, familial status, national origin, race, religion, sex, sexual orientation, presence or absence of dependents or public assistance source of income.

C. To directly or indirectly advertise, or in any other manner indicate or publicize in any real estate transaction that any person is not welcome or not solicited because of age, color, creed, disability, gender identity, marital status, familial status, national origin, race, religion, sex, sexual orientation, presence or absence of dependents or public assistance source of income.

D. To discriminate against the lessee or purchaser of any real property or dwelling or part, portion or interest of the real property or dwelling, or against any prospective lessee or purchaser of the property or dwelling because of age, color, creed, disability, gender identity, marital status, familial status, national origin, race, religion, sex, sexual orientation, presence or absence of dependents, or public assistance source of income of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives or in any similar capacity

E. The following exceptions are applicable to this section and section 2-3-6 of this chapter:

1. Any bona fide religious institution with respect to any qualifications it may impose based on religion, when these qualifications are related to a bona fide religious purpose unless the religious institution owns or operates property for a commercial purpose or membership in the religion is restricted on account of age, color, creed, disability, gender identity, marital status, familial status, national origin, race, sex, sexual orientation, presence or absence of dependents or public assistance source of income.

2. Any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of age, color, creed, disability, gender identity, marital status, familial status, national origin, race, sex, sexual orientation, presence or absence of dependents or public assistance source of income.
(Ord. 15-4650, 12-15-2015)

Tit. 2, Ch.3 §2-3-6

A. A person shall not induce or attempt to induce another person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular age, color, creed, disability, gender identity, marital status, familial status, national origin, race, religion, sex, sexual orientation, presence or absence of dependents, or public assistance source of income.

B. A person shall not represent to a person of a particular age, color, creed, disability, gender identity, marital status, familial status, national origin, race, religion, sex, sexual orientation, presence or absence of dependents, or public assistance source of

income that a dwelling is not available for inspection, sale or rental when the dwelling is available for inspection, sale or rental.

F. A person whose business includes engaging in residential real estate related transactions shall not discriminate against a person in making a residential real estate related transaction available or in terms or conditions of a residential real estate related transaction because of age, color, creed, disability, gender identity, marital status, familial status, national origin, race, religion, sex, sexual orientation, presence or absence of dependents or public assistance source of income.

Administrative or court enforcement: Both

Marion

Citation: Marion Code of Ordinances, Chapter 31.18

Date passed: 2012

Operative Language:

Chapter 31.18 FAIR HOUSING – GENERAL

Prohibitions/Unfair or Discriminatory Practices – Housing. It is an unfair or discriminatory practice for any person, owner of rights to housing or real property, or a person acting for an owner of rights to housing or real property, with or without compensation, including (but not limited to) persons licensed as real estate brokers or salespersons, attorneys, auctioneers, architects, builders, developers, agents, or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will – collectively referred to in this chapter as a “housing provider”:

A. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of age, color, creed, disability, familial status, gender identity, lawful source of income, marital status, national origin, race, religion, sex, or sexual orientation.

B. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection therewith, because of age, color, creed, disability, familial status, gender identity, lawful source of income, marital status, national origin, race, religion, sex, or sexual orientation.

C. To make, print, or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on age, color, creed, disability, familial status, gender

identity, lawful source of income, marital status, national origin, race, religion, sex, or sexual orientation or an intention to make any such preference, limitation or discrimination.

D. To represent to any person because of age, color, creed, disability, familial status, gender identity, lawful source of income, marital status, national origin, race, religion, sex, or sexual orientation that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

E. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular age, color, creed, disability, familial status, gender identity, lawful source of income, marital status, national origin, race, religion, sex, or sexual orientation.

F. To discriminate against an individual who is receiving or has a Federal, State or local housing subsidy, including rental assistance or Section 8 vouchers, because the individual is such a recipient or because of any requirement of such rental assistance or housing subsidy or voucher program, subject to the exemptions in Section 31.21 of this chapter; a housing provider:

- (1) Shall consider, and may verify, any lawful source of income or occupation in determining qualifications for rental or sale of a dwelling.
- (2) Shall not be required to rent or sell to any participant in a housing subsidy program merely because the individual has the subsidy. This subsection does not create a preference for persons with housing subsidies over those without subsidies.
- (3) Shall not refuse to accept or participate in a government housing subsidy program, except as provided elsewhere in this section, and must consider and evaluate individuals who participate in these programs along with other individuals and applicants.
- (4) May refuse to consider income derived from any criminal activity.
- (5) May determine the ability of any potential buyer or renter to pay a purchase price or pay rent by:
 - a. Verifying, in a commercially reasonable manner, the source and amount of income of the potential buyer or renter, including any rental or purchase payments or portions of rental or purchase payments that will be made by other individuals, organizations or voucher and rental assistance payment programs on the same basis as payments to be made directly by the potential buyer or renter.
 - b. Evaluating, in a commercially reasonable manner, the prospective stability, security, and credit worthiness of the potential buyer or renter or any source of income of the potential buyer or renter, including any rental or purchase payments or portions of rental or purchase payments that will be made by other individuals, organizations or voucher and rental assistance payment programs.
- (6) May refuse to lease or sell a dwelling to a potential or current renter or buyer who is relying on a Section 8 voucher or subsidy for payment of part or all of the rent or sale price for a dwelling if and when the Marion Housing Services Office or its designee determines that:
 - a. The dwelling fails to meet Federal Housing Quality Standards in connection with the Section 8 or subsidy program;

or

- b. The rent for the dwelling exceeds the Fair Market Rent authorized by the U.S. Department of Housing and Urban Development or the Marion Housing Services Office in connection with the Section 8 or subsidy program.
- (7) Shall cooperate with the Marion Housing Services Office, HUD and the buyer or renter to execute all documents necessary to apply for participation in the housing subsidy or voucher program and to enable payment of housing subsidies or rental assistance payments.

Administrative or court enforcement: Both

Counties/Cities in Maryland

Annapolis:

Citation: Annapolis Code of Ordinances, Chapter 11.32.030

Date passed: 2007 or 2009

Operative Language: “It is an unlawful housing practice:

A. For any person:

4. Otherwise to deny or withhold any housing unit from any person because of the person's race, color, religion, disability, familial status, sexual orientation, gender identity, marital status, sex, lawful income or national origin,
5. To include in the terms, conditions or privileges of any sale, lease, sublease, rental, assignment or other transfer of any housing unit any clause, condition or restriction discriminating against any person in the use or occupancy of such housing unit because of race, color, religion, disability, familial status, sexual orientation, gender identity, marital status, sex, lawful income, or national origin,
6. To discriminate in the furnishing of any facilities, repairs, improvements or services, or in the terms, conditions, privileges or tenure of occupancy of any housing unit because of race, color, religion, disability, familial status, sexual orientation, gender identity, marital status, sex, lawful income, or national origin.”

Administrative or court enforcement: Both

Baltimore:

Citation: Baltimore City Code, § 2B-25

Date passed: 6/30/2014

Operative Language: “(a) Projects subject to affordable housing requirements.

For any unit in any residential project that meets the requirements of § 2B-21(a), § 2B-22(a), or, when effective, § 2B-23(a) of this subtitle, a person may not:

- (1) refuse to sell or rent, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of that person's source of income;
 - (2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of that person's source of income;
 - (3) make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on the source of income that may be used to pay rent;
 - (4) represent to any person, because of that person's source of income, that any dwelling is not available for inspection or rental when the dwelling is available; or
 - (5) for profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person using a particular source of income.
- (b) Projects receiving cost offsets for affordable housing.

For any unit in any residential project that receives a cost offset from the Housing Commissioner under § 2B-24 of this subtitle, a person may not:

- (1) refuse to sell or rent, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of that person's source of income;
- (2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of that person's source of income;
- (3) make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on the source of income that may be used to pay rent;
- (4) represent to any person, because of that person's source of income, that any dwelling is not available for inspection or rental when the dwelling is available; or
- (5) for profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person using a particular source of income."

Administrative or court enforcement: Administrative

Frederick:

Citation: Frederick City Code, Appendix F

Date passed: 5/16/2002

Operative Language: “‘Source of Income’ means any lawful, verifiable source of money paid directly or indirectly to a renter or buyer of housing including:

- (1) Any lawful profession or occupation;
- (2) The condition of being a recipient of federal, state, or local government assistance, including medical assistance, subsidies, rental assistance, or rent supplements;
- (3) Any gift, inheritance, pension, annuity, alimony, child support, trust or investment accounts, or other consideration or benefit; and
- (4) Any sale or pledge of property or interest in property.”

Administrative or court enforcement: Administrative

Attorney’s fees: Yes

Frederick County:

Citation: Frederick County Code, § 1-2-93

Date passed: 4/21/09

Operative Language: “§ 1-2-93. **DISCRIMINATION CONTRARY TO PUBLIC POLICY AND UNLAWFUL.**

(A) Discrimination based upon race, color, religion, national origin, sex, age, marital status, disability, familial status, or source of income is contrary to the public policy of Frederick County.

(B) Discrimination based upon the following is unlawful in Frederick County:

- (1) Race, color, religion, national origin, sex, age, marital status or disability in employment, housing, or public accommodations,
- (2) Familial status in housing or employment, and
- (3) Source of income in housing.

(C) "Discrimination" means any act that is unlawful under Federal or State law based upon race, color, religion, national origin, sex, age, marital status, or disability. "Discrimination" also means acts that are unlawful under Federal or State law based upon familial status in housing or employment or source of income in housing.”

Administrative or court enforcement: Both

Attorney’s fees: Yes

Howard County:

Citation: Howard County Fair Housing Ordinance §§12.200-12.218.

Date passed: 1992

Operative Language: “Source of income means any lawful source of money that is paid to or for the benefit of a renter or buyer of housing, including:

- (1) A lawful profession or occupation;
- (2) A Federal, State or local government assistance, grant or loan program;
- (3) A private assistance, grant or loan program”

Administrative or court enforcement: Administrative, civil action only if authorized by the Human Rights Commission

Attorney’s fees: Discretionary

Montgomery County:

Citation: Montgomery County Code, Ch. 27

Date passed: 1991

Operative Language: “Any lawful source of income (grant, gift, inheritance, pension, annuity, alimony, child support, government or private assistance) or occupation must be considered in determining qualifications for rental or sale of property and these sources of income and occupation may be verified.”

Administrative or court enforcement: Both

Attorney’s fees: Only upon finding of §27-8 violation.

Cities in Massachusetts

Boston:

Citation: City of Boston Municipal Code Ch. 10-3

Date passed: 1980/2002?

Operative Language: “It is the policy of the City of Boston to see that each individual, regardless of his/her race, color, religious creed, marital status, military status, handicap, children, national origin, sex gender identity or expression, age, ancestry, sexual preference or source of income shall have equal access to housing and to encourage and bring about mutual understanding and respect among all individuals in the City by the elimination of prejudice, intolerance, bigotry and discrimination in the area of housing.”

Administrative or court enforcement: Administrative

Cambridge:

Citation: Cambridge Municipal Code § 14.04.030

Date passed: 1992

Operative Language: “Source of income means public assistance reciprocity. Source of income shall not include income derived from criminal activity.”

Administrative or court enforcement: Both

Attorney’s fees: No

Quincy:

Citation: Quincy Municipal Code § 2.150.010

Date passed: 1992/93?

Operative Language: “‘Source of income’ means public assistance reciprocity. “Source of income” shall not include income derived from criminal activity.”

Administrative or court enforcement: Court

Revere:

Citation: Revere Municipal Code §9.28.080

Date passed: 1994

Operative Language: “‘Source of income’ means the manner or means by which an individual supports herself or himself and his or her dependents, except in this chapter it shall not include any criminal activity from which a source of income is derived.”

Administrative or court enforcement: Human Rights commission can “refer individuals with complaints to the appropriate state or federal agency of any violation [based on source of income].”

Cities in Michigan

Ann Arbor:

Citation: Ann Arbor City Code Ch. 112, § 9:150 et seq.

Date passed: 3/17/1978

Operative Language: “*Source of income.* Any legal source from which a person obtains money.”

Administrative or court enforcement: Both

East Lansing:

Citation: East Lansing Code of Ordinances Ch. 22 Article II §22-34

Operative Language: (b) “The opportunity to purchase, lease, sell, hold, use, and convey dwelling houses or dwelling units or engage in any other type of real estate transaction as protected in this section or under state and federal law is hereby recognized and declared to be a civil right. This includes, but is not limited to seeking, inspecting, advertising, offering, or listing of real property without discrimination because of religion, race, color, national origin, age, height, weight, disability, sex, marital status, sexual orientation, gender identity or expression, student status, use of adaptive devices or aids, or *legal source of income*, except with respect to age or income only, where necessary to meet the requirements of federal, state, or local programs.”

Administrative or court enforcement: Both

Attorney's fees:

Sec. 22-38,- Complaint process

(h) "Action ordered under this section may include, but is not limited to, an order which requires:

(9) Payment to the complainant of damage for an injury or loss caused by a violation of this article, including reasonable attorney fees plus statutory interest from the date of occurrence.

(10) Payment to the complainant of all or a portion of the costs of maintaining the action before the commission, including reasonable attorney fees and expert witness fees, when the commission determines that award to be appropriate.

Grand Rapids:

Citation: Grand Rapids City Code Ch. 160, §9.361 et seq.

Date passed: 7/11/2000

Operative Language: "Source of *lawful income* means consistent income derived from wages, social security, supplemental security income, all forms of federal, state or local assistance payments or subsidies, Section 8 assistance, child support, alimony and public assistance which can be verified and substantiated."

Administrative or court enforcement: Administrative

Lansing:

Citation: Lansing Code of Ordinances, Title 12, Chapter 296

Operative Language:

296.02 Definitions: "income of an individual or group being derived in whole or in part from alimony, child support or public assistance funds"

296.03 Discrimination prohibited: "the fact that the income of a person, or of a person residing with that person, is derived in whole or in part from alimony, child support or public assistance funds"

Administrative or court enforcement: Administrative

Jackson:

Citation: Jackson, MI – Code of Ordinances (Code 1977, § 9.150; Ord. No. 2012-03, § 1, 2-21-12; Ord. No. 2018-07)

Date passed: 6/26/18

Operative Language: Sec. 14-132. - Discrimination in sale, lease or rental prohibited.

It shall be unlawful for any owner, lessee or sublessee of real property, or any agent or representative thereof, to refuse to sell, exchange, rent or lease any housing accommodation of any sort within the city because of an individual's religion, race, color, national origin, age, sex, familial status, handicap (disability) or source of income.

Administrative or court enforcement: Administrative

Cities in Minnesota

Minneapolis

Citation: Title 7, Chapter 139 of the Minneapolis Code of Ordinances relating to Civil Rights: In General.

Note that this ordinance is currently suspended due to pending litigation – see below

Date passed: Adopted 3/24/2017; Effective 5/1/2018

Operative Language:

139.10. - Findings, declaration of policy and purpose, effective date.

a) Findings. The council finds that discrimination adversely affects the health, welfare, peace and safety of the community by, among other things, degrading individuals, fostering intolerance and hate, and creating and intensifying unemployment, substandard housing, under education, ill health, lawlessness and poverty, thereby injuring the public welfare.

(b) Declaration of policy and purpose. It is the public policy of the City of Minneapolis and the purpose of this title:

(1) Prevent and prohibit all discriminatory practices in the City of Minneapolis in the following protected areas:

d. In lending: When race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, status with regard to public assistance, or familial status is a motivating factor.

f. In property rights: When race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, familial status, emancipated minor status, status with regard to a public assistance program, or any requirement of a public assistance program is a motivating factor.

g. In real estate services: With regard to race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, status with regard to a public assistance program, or familial status.

139.20. – Definitions

For the purposes of this title, the following definitions shall apply:

Public assistance program: Federal, state or local assistance, including medical assistance, or tenant-based federal, state or local subsidies, including, but not limited to, rental assistance, rent supplements, and housing choice vouchers.

Status with regard to a public assistance program: The condition of being a recipient of or participant in a public assistance program.

Status with regard to public assistance: The condition of being a recipient of federal, state or local assistance, including medical assistance, or of being a tenant receiving federal, state or local subsidies, including rental assistance, or rent supplements.

139.30 – Exemptions.

(b) Property rights and public assistance . The provisions of section 139.40(e) relating to tenant-based federal, state or local subsidies, including, but not limited to, rental assistance, rent supplements, and housing choice vouchers, or any requirement of such a program, shall not apply to:

(1) Renting or leasing a room in an owner occupied single-family dwelling.

(2) Renting or leasing a single-family dwelling, a single dwelling unit, or a single dwelling unit of a condominium, townhouse, or housing cooperative, by the owner of the dwelling or dwelling unit, for no more than thirty-six (36) months, when such dwelling or dwelling unit is an owner occupied homestead at the start of the thirty-six (36) month period.

(3) Renting or leasing a dwelling with two dwelling units when a person who owns or has an ownership interest in the dwelling is residing in the other dwelling unit.

(4) Renting or leasing a single-family dwelling, a single dwelling unit, or a single dwelling unit of a condominium, townhouse, or housing cooperative, by the owner of the dwelling or dwelling unit, while the owner is on active military duty and when such dwelling or dwelling unit is an owner occupied homestead at the start of the active military duty.

(c) Property rights . The provisions of section 139.40(e) do not prohibit an owner of a dwelling or dwelling unit from:

(1) Abiding by laws restricting the occupancy of a dwelling or dwelling unit to a maximum number of people.

(2) Screening any person who will occupy a dwelling unit based on rental or lease history as allowed by the public assistance program applicable to the rental or lease, or any other non-discriminatory criteria, including, but not limited to, past conduct or the ability to pay their applicable portions of the rent or lease.

(3) Abiding by applicable laws, regulations, or this Code, and provisions of Minnesota Statutes, Chapter 504B.

139.40. - Acts of discrimination specified.

(e) *Discrimination in property rights.* It is an unlawful discriminatory practice for an owner, lessee, sublessee, managing agent, real estate broker, real estate salesperson or other person having the right to sell, rent or lease any property, or any agent or employee of any of these, when race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, familial status, emancipated minor status, status with regard to a public assistance program, or any requirement of a public assistance program is a motivating factor:

(1) To refuse to sell, rent or lease, or to refuse to offer for sale, rental or lease; or to refuse to negotiate for the sale, rental, or lease of any real property; or to represent that real property is not available for inspection, sale, rental, or lease when in fact it is so available; or to otherwise make unavailable any property or any facilities of real property. It is an affirmative defense if the refusal, denial, or withholding is due to a requirement of a public assistance program and that requirement would impose an undue hardship. The department may promulgate rules or regulations establishing standards for undue hardship determinations.

(4) To print, circulate, publish or post, or cause to be printed, circulated, published or posted, any advertisement or sign, or use any form of application for the purchase, rental or lease of any real property, or make any record or inquiry, verbal or written, in connection with the prospective purchase, rental or lease of any real property, which expresses directly or indirectly, any limitation, specification or discrimination as to race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, familial status, emancipated minor status, status with regard to a public assistance program, or any requirement of a public assistance program.

a. The provisions of this clause regarding familial status and age shall not be construed to prohibit the advertisement of a dwelling unit as available only to older persons if the dwelling meets the requirements of housing for older persons as defined in section 139.20.

b. This clause shall not apply to advertisements, notices, signs, or statements describing a living arrangement in which persons intend to occupy the same living quarters as another person including sharing a bathroom, bedroom, kitchen or living room.

Relevant Case Law: The ordinance was recently deemed “unconstitutional” by a local court (*Fletcher Properties, Inc. v. City of Minneapolis*, File No. 27-CV-17-9410 (Minn. Dist. Ct. June 7, 2018) A group of Minneapolis landlords sued claiming that the ordinance violated their due process rights under the Minnesota Constitution. Though the court found that “rational basis review” was the appropriate standard of review for the Plaintiffs’ due process claim, the court engaged in a heightened form of review and rigorously scrutinized the ordinance. The court acknowledged evidence in the record indicating that source of income discrimination was significantly impeding the ability of voucher holders to move out of high poverty neighborhoods. Nevertheless, the court reasoned that the ordinance was “arbitrary” and “unreasonable” because, according to the court, the ordinance assumed that landlords were rejecting voucher holders on the basis of personal animus. The ruling is expected to be [appealed](#).

Opinion available at:

<http://stmedia.startribune.com/documents/Ruling+on+Section+8+ordinance.pdf>.

Administrative or court enforcement: Both

Attorney’s fees: Yes

Cities in Missouri

Saint Louis, Missouri

Citation: St. Louis City Ordinance 67119

Date passed: 6/13/2006

Operative Language: “It shall be a prohibited housing or realty practice and shall constitute a discriminatory housing practice: (a) For any person, including, without limitation any real estate broker, salesman or agent, or any employee thereof, to discriminate against any individual because of race, color, religion, sex, sexual orientation, familial status, legal source of income, disability, national origin or ancestry, with respect to the use, enjoyment or transfer, or prospective use, enjoyment or transfer, of any interest whatsoever in realty . . .”

Amendment: St. Louis City Ordinance 69953

Date passed: 2015 (*Publication and citation forthcoming*)

Operative Language: An ordinance amending the definitions under the Civil Rights Enforcement Agency, repealing Section Two of Ordinance 67119, codified as 3.44.010 of the Revised Code of the City of St. Louis and enacting new section in lieu thereof to include the definition “Source of Income”, and containing an emergency clause. It defines "Source of Income" as "the point or form of the origination of legal gains of income accruing to a person in a stated period of time; from any occupation, profession or activity, from any contract, agreement or settlement, from federal, state or local payments, including Section 8 or any other rent subsidy or rent assistance program, from court ordered payments or from payments received as gifts, bequests, annuities or life insurance policies.”

Administrative or court enforcement: Administrative and then judicial review

Attorney’s fees: Yes

Counties/Cities in New York

Buffalo:

Citation: Buffalo Code of Ordinances §154-12 et seq.

Date passed: 5/2/2006

Operative Language: “Source of Income: Payments from a lawful occupation or employment, as well as other payments including, but not limited to, public assistance, supplemental security income, pensions, annuities, unemployment benefits, government subsidies such as Section 8 or other housing subsidies.”

Administrative or court enforcement: Both

Attorney’s fees: Yes

Erie:

Citation: Local Law 4, Fair Housing in Erie County

https://locallaws.dos.ny.gov/sites/default/files/drop_laws_here/ECMMDIS_appid_DOS20180529060015/Content/09021343801f3924.pdf

Date Passed: 5/23/2018

Operative Language: “It is the intent of the Legislature to provide for fair housing throughout the County of Erie and to prohibit discrimination of any kind in the sale, rental or leasing of housing to any person.”

“d. Source of Income: Payments from any lawful occupation or employment, as well as other payments including, but not limited to, public assistance, public assistance security agreements, supplemental security income, pensions, annuities, unemployment benefits, disability payments, government subsidies, or other housing subsidies.”

Administrative or Court Enforcement: Both

Attorney’s Fees: Yes

Hamburg:

Citation: Hamburg General Code Ch. 109

<http://www.townofhamburgny.com/Fair-Housing-Law-5-24-2016-New-Final.hud.pdf>

Date passed: 3/14/2005; amended May, 2016

Operative Language: “payments from any lawful occupation or employment, as well as other payments including, but not limited to, public assistance, public assistance security agreements, supplemental security income, pensions, annuities, unemployment benefits, government subsidies such as Section 8, or other housing subsidies.”

Administrative or court enforcement: Both

Attorney’s fees: Yes

Nassau County:

Citation: Nassau County Administrative Code §21-9.7

Date passed: 12/13/2000

Operative Language: “‘Source of income’ means any lawful source of income, including federal, state, local, non-profit assistance or subsidy program.”

Administrative or court enforcement: Both

Attorney’s fees: Yes

New York City:

Citation: New York Administrative Code Tit. 8, Ch.1, §8-101

New York City Human Rights Law N.Y., Code § 8-107

Date passed: 3/26/2008

Operative Language: “The term lawful source of income shall include income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers.”

§8-107(5): Housing accommodations, land, commercial space and lending practices.

(a) Housing accommodations. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of any lawful source of income of such person or persons.

(2) To discriminate against any person because of any lawful source of income of such person.

(3) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein or to make any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to any lawful source of income.

Relevant Cases to § 8-107(5)

L.C. v. LeFrak Organization Inc. (2013 WL 6569868): Plaintiffs stated plausible claims under NYCHRL for intentional disability discrimination and discrimination based on source of income.

Wilson v. Phoenix House (42 Misc.3d 677): Focuses on gender discrimination but uses above law.

Administrative or court enforcement: Both

Suffolk County:

Citation: Suffolk County Administrative Code, Ch.528, §528-9
<http://ecode360.com/14946868>

Date passed: 1/21/2015

Operative Language:

A. “It shall be an unlawful discriminatory practice:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any individual or group of individuals any housing accommodation, constructed or to be constructed, land or commercial space, or an interest therein, or refuse to negotiate for the sale, rental or lease of any housing accommodation, land or commercial space, or an interest therein, to any individual or group of individuals, because of the group identity, veteran status, status as a victim of domestic violence or lawful source of income of such individual or individuals or to represent that any housing accommodation, land or commercial space, or an interest therein, is not available for inspection, sale, rental or lease when, in fact, it is so available, or to otherwise deny to or withhold any housing accommodation, land or commercial space, or an interest therein, or any facilities of any housing accommodation or commercial space from any individual or individuals because of the group identity, veteran status, status as a victim of domestic violence or lawful source of income of such or individual or individuals;

(2) To discriminate against any individual or group of individuals because of the group identity, veteran status, status as a victim of domestic violence or lawful source of income of such individual or individuals in the terms, conditions or privileges of the sale, rental, or lease of any housing accommodation, land or commercial space, or an interest therein, or in the furnishing of facilities or services in connection therewith;

(3) To discriminate against any individual or group of individuals in making available a residential real estate transaction, or in the terms and conditions of such a transaction, because of the group identity, veteran status, status as a victim of domestic violence or lawful source of income of such individual or individuals;

(7) To make, print, or publish, or cause to be made, printed or published, any statement, advertisement, or publications, or to use any form of application for the purchase, rental, or lease of any housing accommodation, land or commercial space, or an interest therein, or to make any record or inquiry in connection with the prospective purchase, rental, or lease of such housing accommodation, land or commercial space, or an interest therein, which expresses, directly or indirectly, any limitation, specification, or discrimination with respect to group identity, veteran status, status as a victim of domestic violence or because of the lawful source of income of such individual or individuals, or any intent to make any such limitation, specification, or discrimination;

(8) To induce or attempt to induce, for profit or otherwise, any person to sell, rent or lease any housing accommodation, land, or commercial space, or an interest therein, by representations, explicit or implicit, regarding the entry or prospective entry into the neighborhood of an individual or group of individuals because of his, her or their group identity, veteran status, status as a victim of domestic violence or lawful source of income;

(9) To threaten, intimidate, or interfere with individuals in their enjoyment of a housing accommodation, land or commercial space because of their group identity, veteran status, status as a victim of domestic violence or lawful source of income, or the group identity, veteran status, status as a victim of domestic violence of their guests, invitees, visitors or associates.

B. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson, or an employee or agent of a real estate broker or real estate salesperson:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space, or an interest therein, to any individual or group of individuals or to refuse to negotiate for the sale, rental or lease of any housing accommodation, land or commercial space, or an interest therein, to any individual or group of individuals because of the group identity, veteran status, status as a victim of domestic violence or because of the lawful source of income of such individual or group of individuals, or to represent that any housing accommodation, land or commercial space, or an interest therein, is not available for inspection, sale, rental or lease when, in fact, it is so available, or otherwise deny or withhold any housing accommodation, land or commercial space, or an interest therein, or any facilities of any such housing accommodation or commercial space from any individual or group of individuals because of the group identity, veteran status, status as a victim of domestic violence or because of the lawful source of income of such individual or individuals.

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, sale, rental or lease of any housing accommodation, land, or commercial space, or an interest therein, or to make any record or inquiry in connection with the prospective purchase, sale, rental or lease of any housing accommodation, land or commercial space, or an interest therein, which expresses, directly or indirectly, any limitation, specification, or discrimination as to group identity, veteran status, status as a victim of domestic violence or as to lawful source of income, or any intent to make any such limitation, specification or discrimination.

C. Exceptions.

(2) The provisions of Subsection A(1) through (7) shall not apply:

(a) To the rental of housing accommodations in a building which contains housing accommodations for not more than two families if the owner or members of his or her family reside in one of such housing accommodations; or

(b) To the rental of a room or rooms in a housing accommodation if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or she or members of his or her family reside in such housing accommodation; or

(3) The provisions of § 528-9, as they relate to unlawful discriminatory practices on the basis of lawful source of income, shall not apply to housing accommodations that contain two or fewer housing units; provided, however, the provisions of § 528-9 shall apply to all housing accommodations, regardless of the number of units contained in each, of any person who has the rights to sell, rent or lease or approve the sale, rental or lease of at least three housing accommodations within Suffolk County, constructed or to be constructed, or has the rights to sell, rent or lease or approve the sale, rental or lease of interests in at least three housing accommodations.

(4) Nothing in Subsection A(4), (5) and (6) requires that a housing accommodation or multiple dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”

Administrative or court enforcement: Both

Attorney’s fees: ?

Syracuse

Citation: Local Law No. 7-2012, “The Syracuse Fair Practices Law.”

Date passed: 12/5/2016

Operative Language:

Section 8-2. “Equality of opportunity a civil right. The opportunity for the use and occupancy of housing accommodation without discrimination based on legal sources of income upon which a person may rely to pay housing costs, as specified in this law, is hereby recognized as and declared to be a civil right.”

Section 8-3. “Definitions. When used in this law:

19. The term “lawful source of income” includes payments from a lawful occupation or employment, as well as other lawful payments including, but not limited to, any form of state, federal or local public assistance, income derived from social security, pensions, annuities, state or federal disability programs or benefits, child support, alimony, foster care subsidies, unemployment benefits, disability or unemployment insurance, veteran’s benefits, government subsidies such as Housing Choice Vouchers (also referred to as “Section 8 Vouchers”) or other housing subsidies. The term “lawful source of income” shall include payments to, or on behalf of, the head of household, or to, or on behalf of, any of the members of their household who will be listed on the lease as residents living in the dwelling unit with the head of household, or any combination of such payments.”

Administrative or court enforcement: Both

Attorney’s fees: Yes

Westchester County:

Citation: Local Law No, 6057-2013, Chapter 700, Article II, Sec
<http://www.ecode360.com/?custId=WE0417&guid=6842330&j=23>

Date passed: 6/17/2013

Operative Language: “It shall be unlawful: A. To refuse to sell or rent or refuse to negotiate for the sale or deny a dwelling to any person because of race, color, religion, sex, age, marital status, handicap, national origin, source of income or because the person has a child or children.”

“‘Source of income’ shall mean, as it relates to unlawful discriminatory real estate practices, lawful, verifiable income derived from social security, or any form of federal, state or local public assistance or housing assistance, grant of loan program, including the federal housing subsidy known as ‘Section 8,’ any disability payment, and assistance, or grant or loan program from a private housing assistance organization.”

Administrative or court enforcement: Both

Attorney's fees: Discretionary

Relevant Cases

35 Ossining LLC v. Thornton (981 N.Y.S.2d 503)

County of Westchester v. U.S. Dept. of Housing and Urban Development (2013 WL 4400843): In order to receive certain federal funding from HUD, the County must certify that it will meet a variety of fair housing obligations, including that the County will affirmatively further fair housing (“AFFH”). See 42 U.S.C. § 5304(b)(2).¹ As part of its duty to AFFH, the County was required to conduct an analysis of impediments, or AI, that analyzes the existence and impact of racial discrimination in barriers to housing opportunities. In the 2009 Opinion, the Court ruled that the County's certifications to HUD were false as a matter of law. Later that year, on August 10, 2009, the United States and the County entered into a Stipulation and Order of Settlement and Dismissal (“Settlement”), which required the County inter alia to complete a revised AI analyzing impediments to fair housing based on race that must be deemed acceptable by HUD; promote a model zoning ordinance to advance fair housing; and promote legislation to ban source-of-income discrimination in housing.

West Seneca:

Citation: West Seneca Fair Housing Code Ch. 71

Date passed: 3/5/1979

Operative Language: “It shall be unlawful:<http://www.ecode360.com/?custId=WE0417&guid=6842330&j=23> A. To refuse to sell or rent or refuse to negotiate for the sale or deny a dwelling to any person because of race, color, religion, sex, age, marital status, handicap, national origin, source of income or because the person has a child or children.”

Administrative or court enforcement: Both

Attorney's fees: Discretionary

Cities in Ohio

Linndale:

Citation: Chapter 515, codified ordinances of Linndale, Ohio

Date passed: Ord. 2012-06. Passed 5/1/2012.

Operative Language: 515.01 Determination of Policy. “It is hereby determined to be the continuing policy of the Village of Linndale to do all things necessary and proper to secure for all its citizens their right to equal housing opportunities regardless of their race, color, religion, sex, familial status, as defined in Section 4112.01 of the Ohio Revised Code, national origin, disability as defined in that section, ancestry, military status, sexual orientation, gender identity, and source of income.”

Administrative or court enforcement: Both

Attorney’s fees:

South Euclid:

Citation: Chapter 1408, Chapter **522.01, Chapter 552.03, Chapter 552.23** codified ordinances of South Euclid, Ohio

Date passed: Ord. 07-15. Passed 9/30/2015, (Ord. 12-17. Passed 4-9-18.),

Operative Language: 1408.01 Purpose. “It is hereby declared to be the purpose of this chapter to provide, within constitutional limitations, for fair housing throughout the City, to assure that all persons have full and equal opportunity to consider all available housing for themselves and their families within the City without being discriminated against on the basis of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, including people associated with or residing with a person meeting the definition of a disability, ethnic group, marital status, familial status, national origin, military status, association with someone of a protected class, sources of income, or receipt of public assistance and to promote a stable, racially integrated community.”

552.01 Definitions: (e) "Discriminate, discrimination or discriminatory" means any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's age, race, color, creed, religion, national origin, ancestry, disability, marital status, military status, gender, gender identity or expression, sexual orientation, source of income, ethnic group, or physical characteristic.

552.03 PROHIBITED ACTS OF DISCRIMINATION RELATING TO HOUSING AND REAL ESTATE TRANSACTIONS.

(a) With regard to housing and real estate transactions, it shall be unlawful to engage in any of the following acts wholly or partially for a discriminatory reason: For a real estate operator, a real estate broker, a real estate salesperson, a financial institution, an employee of any of these, or any other person, for the purposes of inducing a real estate transaction from which such person may benefit financially to represent that a change has occurred or will or may occur in the composition with respect to age, race, color, creed, religion, national origin, ancestry, disability,

marital status, military status, gender, gender identity or expression, sexual orientation, source of income, ethnic group, or physical characteristic of the owners or occupants in the block, neighborhood or area in which the real property is located or to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood or area in which the real property is located ("block-busting");

552.23 EQUAL OPPORTUNITY.

No person shall be denied the right to purchase or lease a condominium unit in the City because of age, race, color, creed, religion, national origin, ancestry, disability, marital status, military status, gender, gender identity or expression, sexual orientation, source of income, ethnic group, recipient of public assistance or physical characteristic.

Administrative or court enforcement: Both

Attorney's fees: Yes

University Heights:

Citation: Chapter 820, codified ordinances of the City of University Heights

Date passed: Ord. 2012-11. Passed 4/2/2012.

Operative Language: 113.01 Policy. "It is hereby declared to be the purpose of this chapter to provide, within constitutional limitations, for fair housing throughout the City, to assure that all persons have full and equal opportunity to consider all available housing for themselves and their families within the City without being discriminated against on the basis of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, or national origin, military status, association with a protected class or source of income, and to promote a stable, racially integrated community."

Administrative or court enforcement: Both

Attorney's fees: Yes

Warrensville Heights:

Citation: Chapter 113, codified ordinances of the City of Warrensville Heights

Date passed: Ord. 2012-072. Passed 5/5/2012.

Operative Language: 113.01 Policy. “It is hereby designated to be the continuing policy of the City to do all things necessary and proper to secure for all citizens their right to equal housing opportunities regardless of their race, color, creed, sex, religion, family status, disability or national origin, ancestry, military status, sexual orientation, gender identity or source of income.”

Administrative or court enforcement: Both

Attorney’s fees: None listed

Wickliffe:

Citation: Chapter 1103, codified ordinances of the City of Wickliffe
<http://www.conwaygreene.com/wickliffe/lpext.dll?f=templates&fn=main-h.htm&2.0>

Date passed: Ord. 2009-30. Passed 6/8/2009

Operative Language: “Source of Income” is not defined in the ordinance, but all forms of housing discrimination based on source of income are prohibited.

Administrative or court enforcement: Court

Attorney’s fees: None listed

Cities in Pennsylvania

Borough of State College:

Citation: Code of Ordinances of the Borough of State College Ch. V, §501 et seq.

Date passed: 3/9/1993

Operative Language: “ ‘Source of income’ means income received through any legal means including, but not limited to, wages, salaries, interest, dividends, child support, alimony, public assistance, pensions or other retirement benefits, social security or other documentation of ability to pay. Nothing herein shall be construed to mean a landlord must rent to someone who does not have the ability to pay.”

Administrative or court enforcement: Administrative. If mediation fails, subsequent civil enforcement may be available.

Attorney’s fees: Yes

Philadelphia:

Citation: Philadelphia Code Ch. 9-1100 et seq.

Date passed: 1980

Operative Language: “*Source of Income*. Shall include any lawful source of income, and shall include, but not be limited to, earned income, child support, alimony, insurance and pension proceeds, and all forms of public assistance, including Aid For Dependent Children and housing assistance programs.”

Administrative or court enforcement: Both

Attorney’s fees: Yes

Pittsburgh:

(suspended)

Citation: Ordinance supplementing the Pittsburgh Code of Ordinances, Title Six: Conduct, Article Five: Discrimination, Chapter 659: Unlawful Practices, Section 659.03: Unlawful Housing Practices by adding a new protected class, “Source of Income”

Date passed: 12/15/2015.

Operative Language: “§ 651.04 - DEFINITIONS. (jj) SOURCE OF INCOME. All lawful sources of income or rental assistance program, including, but not limited to, earned income, child support, alimony, insurance and pension proceeds, and all forms of public assistance including federal, state and local housing assistance programs. This includes the Section 8 Housing Choice Voucher Program.”

Relevant Case Law: This ordinance was only in effect for a short period of time before being struck down by a local court on the grounds that “the Section 8 program is voluntary.” Apartment Association of Metropolitan Pittsburgh, Inc. v. The City of Pittsburgh, No. GD 16-000596 (Pa. Ct. Com. Pl. filed Mar. 14 2018). In April of 2018 the city announced it would appeal the decision.

Cities in Tennessee

Memphis:

Citation: City of Memphis Fair Housing Ordinance, Ord. 4932 §10-36-1

Date passed: 3/5/2002

Operative language: "'Source of income' means a regular, verifiable income, or its equivalent, from which an individual can pay rental, mortgage or other payments associated with the provision of housing. The term shall specifically include Section 8 vouchers or certificates issued by the United States Department of Housing and Urban Development"

Administrative or court enforcement: Both

Attorney's fees: Yes

Cities in Texas

Note that local Source of Income Discrimination laws in Texas may be preempted by a state statute that purports to prohibit such laws; that state statute is currently being challenged in federal court (see descriptions below).

Austin:

Citation: City of Austin's Housing Ordinance, Ordinance Number 20141211-050

Date passed: 12/11/2014

Operative language: The Ordinance amended the City's fair housing code to prohibit landlords from refusing to rent to prospective tenants on the basis of "source of income," which is defined to include "housing vouchers and other subsidies provided by government or non-governmental entities." Unsuccessful court challenge to ordinance by property owners (*Austin Apartment Association v. City of Austin*) was followed by state legislative repeal (below). But in 2017, a fair housing act challenge to state preemption law was filed. The case was dismissed for lack of standing in 2018 (see below).

Citation: Section 250.007 of the Texas Local Gov't Code

Date passed: 9/1/2015

Operative language: REGULATION OF RENTAL OR LEASING OF HOUSING ACCOMMODATIONS. Except as provided by this section, a municipality or county may not adopt or enforce an ordinance or regulation that prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program.

(b) This section does not affect an ordinance or regulation that prohibits the refusal to lease or rent a housing accommodation to a military veteran because of the veteran's lawful source of income to pay rent.

(c) This section does not affect any authority of a municipality or county or decree to create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to encourage the acceptance of a housing voucher directly or indirectly funded by the federal government, including a federal housing choice voucher.

Relevant Case Law:

1. *Austin Apartment Assn. v. City of Austin*, 89 F. Supp.3d 886 (W.D. Tex. 2015): Austin Apartment Association (the Association), a trade association whose members control rental properties serving over 192,000 households, claimed the Ordinance is invalid and sought a preliminary injunction against its enforcement. Specifically, the Association argued that the Ordinance is preempted by Texas and federal law, impairs the obligation of contracts in violation of the Texas Constitution, and constitutes a regulatory taking and due process violation under the Texas and United States Constitutions. The Court denied the motion for preliminary injunction. Case and appeal subsequently mooted by state legislation.

2. *Inclusive Communities Project v. Governor Greg Abbott*, No. 3:17-cv-440 (N.D. Tex. 2017), complaint alleging the Texas statute, “Tex. Local Gov’t Code § 250.007” outlawing local source of income discrimination laws violates the 14th Amendment to the U.S. Constitution and the Fair Housing Act.). See Complaint here : www.prrac.org/pdf/ICP_Complaint_-_state_preemption_of_SOI_ordinance.pdf. Case was dismissed without prejudice for lack of standing on May 28, 2018. The court held that ICP failed to prove a causal link between its injury and the actions of the Governor. Further, the court held that the action was barred by the Eleventh Amendment. An appeal is expected.

In August, 2017, the Austin City Council also voted to sue the state of Texas for prohibiting source of income protections. *City of Austin v. Ken Paxton*, Texas Attorney General, in his official capacity, and the Texas Workforce Commission, No. 1:17-cv-00843-SS, (W.D. Tex., filed Aug. 29, 2017) (State's motion to dismiss pending). See article [here](#).

Dallas:

Citation: Chapter 20A, “Fair Housing,” of the Dallas City Code, Ordinance No. 30246.

Date passed: 10/26/2016. However, the ordinance is partially blocked by a state preemption statute, Tex. Local Gov’t Code § 250.007, which outlaws local source of income laws in Texas, pending the outcome of court challenge to the law. See “Relevant Case Law” below.

Summary: “An ordinance amending Chapter 20A, “Fair Housing,” of the Dallas City Code by amending Sections 20A-2, 20A-3, 20A-4, 20A-5, 20A-7, and 20A-10; adding Section 20A-4.1; prohibiting discrimination in housing practices on the basis of source of income; providing that a recipient of a subsidy shall not discriminate against holders of housing vouchers; providing that a multifamily housing accommodation that receives a financial award shall set aside ten percent of

the dwelling units for housing voucher holders; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.”

Operative language:

SEC. 20A-2. DECLARATION OF POLICY.

“It is the policy of the city of Dallas, through fair, orderly, and lawful procedures, to promote the opportunity for each person to obtain housing without regard to race, color, sex, religion, handicap, familial status, national origin, or source of income. This policy is grounded upon a recognition of the right of every person to have access to adequate housing of the person’s own choice, and the denial of this right because of race, color, sex, religion, handicap, familial status, national origin, or source of income is detrimental to the health, safety, and welfare of the inhabitants of the city and constitutes an unjust deprivation of rights, which is within the power and proper responsibility of government to prevent.”

SEC. 20A-3. DEFINITIONS.

(21) “SOURCE OF INCOME means lawful, regular, and verifiable income from whatever source derived (including housing vouchers and other subsidies provided by government or non-governmental entities, child support, or spousal maintenance), except as prohibited by Texas Local Government Code, Section 250.007, as amended. For purposes of housing accommodations that benefit from a subsidy approved by the city council on or after the effective date of this ordinance, source of income includes housing choice vouchers and other federal, state, and local housing subsidies.

(22) SUBSIDY means a designated public subsidy matter, as that term is defined in Section 12A-15.2 of this code, as amended, or a density bonus, and that was approved by the city council.”

SEC. 20A-4.1. HOUSING VOUCHER INCENTIVES.

“In accordance with Section 250.007(c) of the Texas Local Government Code, as amended, the city hereby creates and implements the following voluntary program to encourage acceptance of housing vouchers, including vouchers directly or indirectly funded by the federal government.

(a) Subsidy. All housing accommodations that benefit from a subsidy approved by the city council on or after the effective date of this ordinance shall not discriminate against holders of any housing vouchers, including vouchers directly or indirectly funded by the federal government.

(b) Financial award. Multifamily housing accommodations that benefit from a financial award approved by the city council on or after the effective date of this ordinance shall set aside at least 10 percent of the dwelling units and solely lease those dwelling units to holders of housing vouchers, including vouchers directly or indirectly funded by the federal government, for a minimum of 15 years from the date of the initial issuance of the housing accommodation’s certificate of occupancy. Multifamily has the meaning assigned in Section 51A-4.209(b)(5) of the Dallas Development Code, as amended.”

See ordinance for defenses, complaint procedure, etc.

Administrative or court enforcement: Both

Attorney’s fees: Yes

State preemption law, Tex. Local Gov't Code § 250.007:

Sec. 250.007. REGULATION OF RENTAL OR LEASING OF HOUSING

ACCOMMODATIONS. Except as provided by this section, a municipality or county may not adopt or enforce an ordinance or regulation that prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program.

(b) This section does not affect an ordinance or regulation that prohibits the refusal to lease or rent a housing accommodation to a military veteran because of the veteran's lawful source of income to pay rent.

(c) This section does not affect any authority of a municipality or county or decree to create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to encourage the acceptance of a housing voucher directly or indirectly funded by the federal government, including a federal housing choice voucher.

Added by Acts 2015, 84th Leg., R.S., Ch. 1140 (S.B. [267](#)), Sec. 1, eff. September 1, 2015.

Relevant Case Law : *Inclusive Communities Project v. Governor Greg Abbott*, No. 3:17-cv-440 D (complaint alleging the Texas statute, “Tex. Local Gov’t Code § 250.007” outlawing local source of income discrimination laws violates the 14th Amendment to the U.S. Constitution and the Fair Housing Act.). See Complaint here : <https://www.inclusivecommunities.net/wp-content/uploads/2017/12/ICP-2d-amended-complaint-exhibit-to-motion.pdf>

Counties/Cities in Washington

Bellevue

Citation : Bellevue City Code 9.20.045

Date passed: 1/30/1990

Operative Language: “No person shall refuse to rent a dwelling unit to any rental applicant solely on the basis that the applicant proposes to rent such unit pursuant to a Section 8 voucher or certificate issued under the Housing and Community Development Act of 1974 (42 USC 1437(F)); provided this section shall only apply with respect to a Section 8 certificate if the monthly rent on such residential unit is within the limits of fair market rent as established by the Department of Housing and Urban Development.”

Administrative or court enforcement: Both

Attorney’s fees: No

King County

Citation: King County Code 12.20.040

Date passed: March 2006 (applies only to unincorporated sections of King County)

Operative Language: “‘Discriminate’ means any action or failure to act, whether by single act or as part of a practice, the effect of which is to adversely affect or differentiate between or among individuals or groups of individuals, because of race, color, religion, national origin, ancestry, age, gender, marital status, parental status, participation in the Section 8 program, sexual orientation, disability, or use of a service or assistive animal by an individual with a disability.”

“‘Participation in the Section 8 program’ means participating in a federal, state or local government program in which a tenant’s rent is paid partially by the government, through a direct contract between the government program and the owner or lessor of the real property, and partially by the tenant.”

Administrative or court enforcement: Both

Attorney’s fees: Yes

Kirkland

Citation: Kirkland Municipal Code 1.12.020 Chapter 7.74

Date passed: 3/19/2013

Operative Language: “No person shall refuse to rent a dwelling unit to any rental applicant solely on the basis that the applicant proposes to rent such unit pursuant to a Section 8 voucher or certificate issued under the Housing and Community Development Act of 1974 (42 U.S.C. 1437f); provided, this section shall only apply with respect to a Section 8 certificate if the monthly rent on such residential unit is within the allowable rent as established by the Department of Housing and Urban Development. ‘Dwelling unit’ shall have the meaning set forth in KZC 5.250.” (Ord. 4384 § 2 (part), 2013)

Olympia

Citation: Olympia Municipal Code Title 5, Chapter 5.80

Operative Language: “It is declared to be the policy of the city in the exercise of its police power for the public safety, public health, and general welfare, for the maintenance of business and good government, and to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, ancestry, national origin, gender, familial

status, the presence of any sensory, mental, or physical disability, the use of a trained guide dog or service animal by a disabled person, marital status, sexual orientation, or gender identity, or the perception thereof, or use of vouchers for payment of rent offered by any governmental agency on behalf of a prospective tenant or lessee, and to that end to prohibit discrimination in housing by any person, including real estate brokers, associate brokers, salespersons, owners of real property and lenders to forward the cause of community, and to secure a reduction of all tensions and discriminations because of race, color, religion, national origin, gender, familial status, the presence of any sensory, mental, or physical disability, the use of a trained guide dog or service animal by a disabled person, marital status, sexual orientation, or gender identity, or the perception thereof.”

Administrative or court enforcement: Both

Redmond

Citation: City of Redmond Ordinance No. 2645, Ch. 6.38.010, 6.38.020

Date passed: 2/7/2012

Operative Language: “(A) No person shall refuse to rent a dwelling unit to any rental applicant solely on the basis that the applicant proposes to rent such a unit pursuant to a Section 8 voucher or certificate under the House and Community Development Act of 1974 (42 USC 1437(F)); provided this section shall only apply with respect to a Section 8 certificate if the monthly rent on such residential unit is within the allowable rent as established by the Department of Housing and Urban Development. ‘Dwelling unit’ shall have the meaning set forth in RZC 21.78.”

“Exceptions for this ordinance included permanent residents who are renting, sub-renting, leasing, or subleasing a single-family dwelling (6.38.030(A)(1)) or religious organizations wishing to rent to the same religion (6.38.030(A)(3)).”

Renton

Citation: Renton Municipal Code Chapter 32 Section 6-32-1

Operative Language: Property owners, property managers, landlords, and their agents, who rent or lease dwelling units shall not refuse to rent or lease a dwelling unit to any tenant or potential tenant or otherwise discriminate or retaliate against such person solely on the basis that the person proposes to pay a portion of the rent using a Section 8 housing choice voucher or certificate issued under the Housing and Community Development Act of 1974 ([42 U.S.C. 1437f](#)). “Dwelling unit” shall have the meaning set forth in RMC [4-11-040](#). (Ord. 5847, 6-26-17; Ord. 5826, 11-7-16)

Administrative or court enforcement: Both

Seattle

Citation: Seattle Municipal Code 14.08.040

https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14.08U NHOPR

Date passed: 12/11/1989; most recent amendment 2006

Operative Language: “‘Discrimination’ means any conduct, whether by single act or as part of a practice, the effect of which is to adversely affect or differentiate between or among individuals or groups of individuals, because of race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, gender identity, political ideology, honorably discharged veteran or military status, participation in a Section 8 program, the presence of any disability or the use of a trained dog guide or service animal by a disabled person.”

"Section 8 or other subsidy program" means short or long term federal, state or local government, private nonprofit, or other assistance programs in which a tenant's rent is paid either partially by the program (through a direct arrangement between the program and the owner or lessor of the real property), and partially by the tenant or completely by the program. Other subsidy programs include but are not limited to HUD-Veteran Affairs Supportive Housing (VASH) vouchers, Housing and Essential Needs (HEN) funds, and short-term rental assistance provided by Rapid Rehousing subsidies.

F. It is an unfair practice for an owner or lessor of real property, when determining tenant eligibility for purposes of leasing, subleasing, or renting real property, to apply income screening criteria (such as an income to rent ratio) in a manner inconsistent with the following:

1. Any payment from a Section 8 or other subsidy program that reduces the amount of rent for which the tenant is responsible must be subtracted from the total of the monthly rent.
2. All sources of income must be included as a part of the tenant's total income except in situations where the rental housing unit is subject to income and/or rent restrictions in a housing regulatory agreement or subsidy agreement and income is determined pursuant to the agreement.

H. It is an unfair practice for a person to fail to:

1. Cooperate with a potential or current occupant in completing and submitting required information and documentation for the potential or current occupant to be eligible for or to receive rental assistance from Section 8 or other subsidy program
2. Accept a written pledge or commitment by a Section 8 or other subsidy program to pay for past due or current housing costs, and court costs or reasonable attorney's fees already incurred and directly related to recovery of the unpaid housing costs lawfully owed, under all of the following conditions:
 - a. By itself or in combination with: other payments from a Section 8 or other subsidy program, and any verifiable source of income including but not limited to wages, salaries, or other compensation for employment, and all alternative sources of income, the written pledge or commitment is sufficient to allow the occupant to become current on all

housing costs, and court costs or reasonable attorney's fees already incurred and directly related to the recovery of the unpaid housing costs lawfully

Administrative or court enforcement: Both

Attorney's fees: Yes

Spokane

Citation: Spokane Municipal Code Title 18, Chapter 8.01, Section 18.01.010

Date passed: 3/27/2017

Operative Language: The City of Spokane finds that discrimination based on race, religion, creed, color, sex, national origin, marital status, familial status, domestic violence victim status, age, sexual orientation, gender identity, honorably discharged veteran or military status, refugee status, the presence of any sensory, mental or physical disability as defined by the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq, and/or the Washington State Law Against Discrimination, Chapter 49.60 RCW, or the receipt of, or eligibility for the receipt of, funds from any housing choice or other subsidy program or alternative source of income poses a substantial threat to the health, safety and general welfare of the citizens of Spokane. The City deems it necessary and proper to enact a local ordinance to address these issues.

Administrative or court enforcement: Both

Tumwater

Citation: Tumwater Municipal Code 5.70

Date passed: 2010

Operative Language: “It is declared to be the policy of the city in the exercise of its police power for the public safety, public health, and general welfare, for the maintenance of business and good government and for the promotion of the city’s trade, commerce and manufacturers, to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, ancestry, national origin, gender, any sensory, mental, or physical disability, familial status, marital status, sexual orientation or use of federal housing assistance, and to that end to prohibit discrimination in housing by any person, including real estate brokers, real estate salesmen and agents, owners of real property and lending institutions, to forward the cause of community, and to secure a reduction of all tensions and discriminations because of race, color, religion, national origin, gender, any sensory, mental, or physical disability, familial status, marital status, sexual orientation or use of federal housing assistance.”

Administrative or court enforcement: Both

Vancouver

Citation: Vancouver Municipal Code 8.45

Date passed: September 2015

Operative Language:

Section 8.45.010 Definitions

“As used in this section: ‘Dwelling unit’ means any building or portion thereof which contains living facilities including provisions for sleeping, eating, cooking and sanitation, including not more than one kitchen for not more than one family. ‘Source of income’ includes income derived from social security, supplemental security income, other retirement programs, and any federal, state, local, or nonprofit-administered benefit or subsidy programs, including housing assistance, public assistance, and general assistance programs. ‘Source of income’ does not include income derived in an illegal manner.”

Section 8.45.020 Refusal to rent based on source of income prohibited

“No person shall refuse to rent a dwelling unit to any rental applicant on the basis that the applicant proposes to rent such unit with a ‘source of income’ as defined in this Chapter.”

Section 8.45.030 Exceptions

“Nothing in this chapter shall:

- A. Apply to the renting, subrenting, leasing, or subleasing of a portion of a single-family dwelling, wherein the owner or person entitled to possession thereof maintains a permanent residence, home or abode therein;
- B. Be interpreted to prohibit any person from making a choice among prospective tenants on the basis of factors other than the source of income; 1. If income screening criteria are elected to be used, any source of income in the form of a rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating if the income criteria have been met.
- C. Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on the basis of race, color, national origin or other illegal discriminatory basis;
- D. Be construed to prohibit treating people with disabilities more favorably than people who do not have disabilities;

E. Be construed to protect criminal conduct; or

F. Prohibit any person from limiting the rental or occupancy of a dwelling based on the use of force or violent behavior by an occupant or prospective occupant, including behavior intended to produce fear of imminent force or violence against the person or property of the owner, manager, or other agent of the owner.”

Cities/Counties in Wisconsin

Relevant Case Law:

Knapp v. Eagle Property Management Corp., 54 F.3d 1272 (Wis. 1995) (finding that Section 8 federal rent assistance vouchers were not “lawful source of income” within meaning of Wisconsin Open Housing Act provision prohibiting landlords from discriminating in housing on basis of lawful source of income). Therefore, note that local ordinances need to include specific language on housing assistance to overcome this ruling.

Cambridge

Citation: Village of Cambridge Wisconsin Code of Ordinances § 9.36.010

Date passed:

Operative Language: “It is declared to be the policy of the village to assure equal opportunity to all persons to live in adequate housing facilities regardless of race, color, religion, ancestry, national origin, sex, handicap, sexual preference, marital status of persons maintaining a household, lawful source of income, place of birth, or age, and, to that end, to prohibit discrimination in housing by any persons.”

Cambridge follows WIS. STAT. § 106.50 and does not include Section 8 vouchers in “lawful source of income.”

Administrative or court enforcement: Administrative

Dane County

Citation: Dane County Code Ch. 31

Date passed: 8/6/1987

Operative Language: “*Discriminate* and *discrimination* mean to segregate, separate, exclude or treat any person or class of persons unequally because of race, gender, age, religion, color, national origin, ancestry, marital status of the person maintaining the household, family status, mental illness, physical condition, appearance, lawful source of income, including receipt of rental assistance under 24 Code of Federal Regulations Subtitle B, Chapter VIII [the “Section 8”

housing program], student status, arrest or conviction record, sexual orientation, military discharge status or political beliefs.”

Administrative or court enforcement: Both, however the Corporate Counsel refuses to enforce Section 8 cases.

Attorney’s fees: No

Madison

Citation: Madison Code of Ordinances §39.03

Date passed: 10/29/1977

Operative Language: “Source of income includes, but shall not be limited to, moneys received from public assistance, pension, and Supplementary Security Income (SSI). Source of income shall be limited to legally derived income.”

“Housing. It shall be an unfair discrimination practice and unlawful and hereby prohibited for any person having the right of ownership or possession or the right of transfer, sale, rental or lease of any housing, or the agent of any such person: (a) To refuse to transfer, sell, rent or lease, to refuse to negotiate for the sale, lease, or rental or otherwise to make unavailable, deny or withhold from any person such housing because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, including receipt of rental assistance under 24 Code of Federal Regulations Subtitle B, Chapter VIII [the "Section 8" housing program] . . .”

Administrative or court enforcement: Administrative

Attorney’s fees: No

Milwaukee

Citation: Section 107.01 and Section 5 107.02(9) of the Milwaukee County Code of General Ordinances

Date Passed: 06/21/2018

Operative Language: “It is the intent of this chapter to render unlawful discrimination in housing and to enact this chapter pursuant to the authority granted to counties by s. 66.432(2) 66.1011, Wis. Stats. It is the declared policy of the county that all persons shall have an equal opportunity for housing regardless of sex, race, color, disability, religion, creed, national origin or ancestry, marital status of a person maintaining a household, lawful source of income, receipt of rental or housing assistance, age, sexual orientation, as defined in s. 111.32(13m)”

“Receipt of rental or housing assistance” means the receipt of any form of financial contribution from a third party for the purposes of creating or keeping affordable housing for tenants, purchasers, or other potential housing recipients, including but not limited to, assistance provided pursuant to Title 42, United States Code, section 1437f 137 (commonly known as the “Section 8” housing program), the HOME Partnership Program, the Community Development Block Grant program, or any other public or private rental assistance vouchers or programs. It shall not be considered unlawful discrimination in housing for a housing provider to (1) refuse to accept emergency assistance funds under s. 49.138, Wis. Stats., or (2) refuse to accept any other public rental assistance or voucher if such rental assistance or voucher does not fully reimburse the housing provider for the amount of rent due at the time a rental assistance or voucher payment is made.”

Administrative or Court Enforcement: Administrative

Attorney’s Fees: No

Ripon

Citation: Ripon Municipal Code § 12.48

Date passed: 12/21/1988

Operative Language: “In connection with any of the transactions set forth in this section which affect any housing accommodation on the open market or in connection with any public sale, purchase, rental, financing or lease of any housing accommodation, it is unlawful within the city of Ripon for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above, to: A. Refuse to sell, purchase, rent or lease, or deny to or withhold any housing accommodation from a person because of his or her race, color, religion, age, ancestry, national origin, gender, sexual orientation, disability, marital status, familial status, lawful source of income, or place of birth.”

Ripon follows WIS. STAT. § 106.50 and does not include Section 8 vouchers in “lawful source of income.”

Administrative or court enforcement: Administrative

Sun Prairie

Citation: Sun Prairie Code of Ordinances § 9.20.010

Date passed: 10/6/2007

Operative Language: “‘Protected class’ includes persons of a specific race, color, religion, ancestry, national origin, sex, handicap, sexual preference, marital status of person maintaining a

household, lawful source of income, place of birth, age or other federal or state designated protected classes for purposes of fair housing.”

“‘Discrimination’ or ‘discriminatory housing practice’ means any difference in treatment based upon race, color, religion, sex, or national origin; or any act that is unlawful under this chapter. Discrimination as defined in this chapter does not include, and specifically exempts defining any of the following as protected classes for purposes of fair housing discrimination unless required by state statute or federal law: . . .

5. Refusal of Section 8 housing tenants, if not otherwise income qualified, if the owner has either refused all Section 8 tenants or if they have previously set capacity controls on the number of Section 8 units allowed within the property.”

Administrative or court enforcement: Administrative

Attorney’s fees:

Wauwatosa

Citation: Wauwatosa Municipal Code § 15.22

Date passed: 8/5/1986

Operative Language: “‘Discriminate’ and ‘discrimination’ mean to segregate, separate, exclude or treat any person unequally only because of sex, race, color, sexual orientation as defined in Section 111.32(13m) of the Wisconsin Statutes, handicap, religion, national origin, familial status, sex or marital status of the person maintaining a household, lawful source of income, age or ancestry.”

Wauwatosa follows WIS. STAT. § 106.50 and does not include Section 8 vouchers in “lawful source of income.”

Administrative or court enforcement: Court

STATE AND LOCAL INCENTIVES TO PROMOTE ACCEPTANCE OF HOUSING CHOICE VOUCHERS

ILLINOIS

Citation: Chapter 35. Revenue § 200/18-173

Date Passed: 8/15/2014

Operative Language: Housing opportunity area abatement program.

(a) For the purpose of promoting access to housing near work and in order to promote economic diversity throughout Illinois and to alleviate the concentration of low-income households in areas of high poverty, a housing opportunity area tax abatement program is created.

(c) The owner of property located within a housing opportunity area who has a housing choice voucher contract with a housing authority may apply for a housing opportunity area tax abatement by annually submitting an application to the housing authority that administers the housing choice voucher contract. The application must include the number of housing opportunity units as well as the total number of dwelling units contained within the property. The owner must, under oath, self-certify as to the total number of dwelling units in the property and must self-certify that the property is in substantial compliance with local building codes. The housing authority shall annually determine the number of qualified units located within each property for which an application is made. The housing authority shall establish rules and procedures governing the application processes and may charge an application fee. The county clerk may audit the applications to determine that the properties subject to the tax abatement meet the requirements of this Section. The determination of eligibility of a property for the housing opportunity area abatement shall be made annually; however, no property may receive an abatement for more than 10 tax years.

(d) The housing authority shall determine housing opportunity areas within its service area and annually deliver to the county clerk, in a manner determined by the county clerk, a list of all properties containing qualified units within that service area by December 31st of the tax year for which the property is eligible for abatement; the list shall include the number of qualified units and the total number of dwelling units for each property.

The county clerk shall deliver annually to a housing authority, upon that housing authority's request, the most recent available equalized assessed value for the county as a whole and for those taxing districts and townships so specified by the requesting housing authority.

(e) The county clerk shall abate the tax attributed to a portion of the property determined to be eligible for a housing opportunity area abatement. The portion eligible for abatement shall be determined by reducing the equalized assessment value by a percentage calculated using the following formula: 19% of the equalized assessed value of the property multiplied by a fraction where the numerator is the number of qualified units and denominator is the total number of dwelling units located within the property.

(f) Any municipality, except for municipalities with 1,000,000 or more inhabitants, may annually petition the county clerk to be excluded from a housing opportunity area if it is able to demonstrate that more than 2.5% of the total residential units located within that municipality are occupied by tenants under the housing choice voucher program. Properties located within an

excluded municipality shall not be eligible for the housing opportunity area abatement for the tax year in which the petition is made.

(g) Applicability. This Section applies to tax years 2004 through 2024, unless extended by law.

<http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=003502000K18-173>

OREGON

Citation: ORS 456.378. Housing Choice Landlord Guarantee Program

Date Passed: 2013

Operative Language:

(1)The Housing and Community Services Department shall develop and implement the Housing Choice Landlord Guarantee Program for the purpose of providing financial assistance to landlords to mitigate damages caused by tenants as a result of occupancy under the Housing Choice Voucher Program.

(2)Landlords that are eligible for assistance under the Housing Choice Landlord Guarantee Program must obtain a judgment against the tenant, following a hearing in which the landlord proves the amount of damages, in either the small claims department of a circuit court or a circuit court for the county in which the property is located. Assistance is limited to reimbursement for only those amounts in the judgment that are related to property damage, unpaid rent or other damages:

- (a)Caused as a result of the tenant’s occupancy under the Housing Choice Voucher Program;
- (b)That exceed normal wear and tear; and
- (c)That are in excess of \$500 but not more than \$5,000 per tenancy.

(3)A landlord must submit a claim for assistance to the department within one year of obtaining a judgment against a tenant pursuant to subsection (2) of this section.

(4)The department may contract with a public or private provider for the administration of the Housing Choice Landlord Guarantee Program. The department is not subject to the provisions of ORS chapter 279A or 279B in awarding a contract under the provisions of this subsection. The department shall establish by rule procedures for inviting proposals and awarding contracts under this subsection.

(5)The department shall adopt rules to implement the provisions of this section, including but not limited to prescribing additional qualifications and requirements that must be met by landlords

and the form of application that must be submitted to the department to receive assistance under the program. [2013 c.740 §3; 2017 c.271 §2]

VIRGINIA

Citation: § 58.1-439.12:04. Tax Credits for Technology Industries Grants for Investment and Research and Development in Tobacco-Dependent Localities.

Date Passed: 3/7/2016

Operative Language: “B. For taxable years beginning on or after January 1, 2010, a participating landlord renting a qualified housing unit shall be eligible for a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 in an amount equal to 10 percent of the fair market value of the rent for the unit, computed for that portion of the taxable year in which the unit was rented by such landlord to a tenant participating in a housing choice voucher program. The Department of Housing and Community Development shall administer and issue the tax credit under this section. If (i) the same parcel of real property contains four or more dwelling units and (ii) the total number of qualified housing units on the parcel in the relevant taxable year exceeds 25 percent of the total dwelling units on the parcel, then the tax credit under this section shall apply only to a limited number of qualified housing units with regard to such parcel of real property, with the limited number being equal to 25 percent of the total dwelling units on such parcel of real property in the taxable year.

C. The Department of Housing and Community Development shall issue tax credits under this section on a fiscal year basis. The maximum amount of tax credits that may be issued under this section in each fiscal year shall be \$250,000.

D. Participating landlords shall apply to the Department of Housing and Community Development for tax credits under this section. The Department of Housing and Community Development shall determine the credit amount allowable to the participating landlord for the taxable year and shall also determine the fair market value of the rent for the qualified housing unit based on the fair market rent approved by the United States Department of Housing and Urban Development as the basis for the tenant-based assistance provided through the housing choice voucher program for the qualified housing unit. In issuing tax credits under this section, the Department of Housing and Community Development shall provide a written certification to the participating landlord, which certification shall report the amount of the tax credit approved by the Department. The participating landlord shall attach the certification to the applicable income tax return.

E. The Board of Housing and Community Development shall establish and issue guidelines for purposes of implementing the provisions of this section. The guidelines shall provide for the allocation of tax credits among participating landlords requesting credits. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

F. In no case shall the amount of credit taken by a participating landlord for any taxable year exceed the total amount of tax imposed by this chapter for the taxable year. If the amount of credit issued by the Department of Housing and Community Development for a taxable year exceeds the landlord's tax liability imposed by this chapter for such taxable year, then the amount

that exceeds the tax liability may be carried over for credit against the income taxes of the participating landlord in the next five taxable years or until the total amount of the tax credit issued has been taken, whichever is sooner. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

G. In the event that the amount of the qualified requests for tax credits for participating landlords in the fiscal year exceeds \$250,000, the Department of Housing and Community Development shall pro rate the tax credits among the qualified applicants.”

<http://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-439.12:04/>

WASHINGTON

Citation: Section 2 of E2SHB 2578.SL (Laws of 2018)

Date Passed: 3/15/2018

Operative Language:

NEW SECTION. Sec. 2. A new section is added to chapter 43.31 RCW to read as follows:

(1) Subject to the availability of funds for this purpose, the landlord mitigation program is created and administered by the department. The department shall have such rule-making authority as the department deems necessary to administer the program. The following types of claims related to landlord mitigation for renting private market rental units to low-income tenants using a housing subsidy program are eligible for reimbursement from the landlord mitigation program account:

(a) Up to one thousand dollars for improvements identified in section 1(1)(a) of this act. In order to be eligible for reimbursement under this subsection (1)(a), the landlord must pay for the first five hundred dollars for improvements, and rent to the tenant whose housing subsidy program was conditioned on the real property passing inspection. Reimbursement under this subsection (1)(a) may also include up to fourteen days of lost rental income from the date of offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until move in by that applicant;

(b) Reimbursement for damages as reflected in a judgment obtained against the tenant through either an unlawful detainer proceeding, or through a civil action in a court of competent jurisdiction after a hearing;

(c) Reimbursement for damages established pursuant to subsection (2) of this section; and

(d) Reimbursement for unpaid rent and unpaid utilities, provided that the landlord can evidence it to the department's satisfaction.

Citation: Section 1010 of ESHB-2380 (Laws of 2016)

Date Passed: 4/18/2016

Operative Language: Landlord Mitigation Program. “The Department of Commerce was directed by the 2016 Washington State Legislature to develop and implement a Landlord Mitigation Program. The program is designed to provide financial assistance to landlords of private market units to mitigate qualifying damages caused by tenants who use HUD’s Housing Choice Voucher Program to pay for their rent. Specifically, Section 1010 of ESHB-2380 (Laws of 2016) stated: “\$125,000 of the appropriation is provided solely for landlord mitigation for the cost of damages that may be caused to private market units renting to housing choice voucher holders. In order to be eligible for assistance, a landlord must obtain a judgment against a tenant from the county in which the property is located. Participation is restricted to units within jurisdictions that prohibit denying tenancy based solely on the applicant's source of income. Reimbursement is allowed only for amounts related to property damage, unpaid rent, and other damages caused as a result of the voucher-holder tenant's occupancy. Damages must exceed normal wear and tear on the property and be in excess of \$500 but not more than \$5,000 per tenancy. A claim must be submitted within one year of obtaining a judgment against a tenant.”

WHO CAN APPLY?

To be eligible for the program, a landlord must have leased a private market unit to a tenant using the HUD Housing Choice Voucher Program. For more details on the various Housing Choice Voucher types, visit HUD’s Housing Choice Voucher Program website. The damages to the rented unit/property must exceed normal wear and tear.

To qualify for this assistance, the landlord must first obtain a judgment against the tenant from a court in the county in which the rental property is located. The judgment claim must have been initiated **no earlier than April 18, 2016** (which is the date the bill became law). An application for reimbursement under the Landlord Mitigation Program must be submitted to Department of Commerce within one year of the date of the judgment.

The rented unit/property in question must also be located in a jurisdiction that prohibits landlords from denying tenancy based solely on the tenant's source of income. To the Department of Commerce’s knowledge, the following locations currently have such protections in place. We recommend you check with authorities in your community, as local landlord-tenant ordinances vary and may change.

- Unincorporated King County
- Bellevue
- Redmond
- Kirkland
- Seattle
- Olympia
- Tumwater
- Vancouver

Reimbursements are limited to those amounts covered in a final judgment against a tenant who was a Housing Choice Voucher-holder during their tenancy. The landlord must submit an application for mitigation assistance to the Department of Commerce within one year of obtaining a judgment against a qualified tenant. The timeframe to appeal a judgment must have expired without appeal *or* there must be no outstanding appeal on the judgment.

HOW MUCH CAN I BE REIMBURSED?

Damages must exceed normal wear and tear on the property and must be in excess of \$500, but not more than \$5,000 *per tenancy*. Program assistance may be available on a judgment that exceeds \$5,000, but the amount of assistance provided will not exceed \$5,000.

For example, for a judgment of \$7,000 in qualifying damages, a landlord may seek reimbursement for up to \$5,000 of the qualifying damages. In such cases, the damages covered by this program must be clearly identified in the application submitted to the Department of Commerce. All reimbursement requests must be clearly substantiated by paid invoices of work performed. We cannot disburse funds for requests based solely on estimates.

WHAT DAMAGES ARE COVERED?

The following costs can be considered "damages" eligible for reimbursement under the Landlord Mitigation Program:

- Repairs or replacements due to property damage that exceed normal wear and tear
- Unpaid rent
- Other damages caused as a result of the tenant's occupancy and which are included in the judgment

If the judgment is \$5,000 or less, and the landlord received payment from the tenant or a third party for some amount included in the judgment (such as any deposits retained by the landlord), the amount must be deducted from the request for reimbursement from the Landlord Mitigation Program. If a judgment exceeds the \$5,000 program reimbursement limit, and the payment received, if any, does not reduce the total unpaid amount of the judgment below \$5,000, the landlord may request assistance up to the \$5,000 program limit.

For example, if \$500 has been received toward satisfaction of a \$7,000 court judgment, the landlord may still apply for the full \$5,000 allowable from the program. However, if, after submitting an application for program assistance, a landlord receives payment for any claimed damages from a tenant or a third party, the landlord must notify the Department of Commerce within 10 days of such payment. If payment from another source (the tenant or a third party) results in an overpayment by Commerce, the landlord must provide restitution to the department for the overpaid assistance within 45 days. The Department of Commerce will maintain a record of mitigation assistance provided to landlords in order to determine if there have been any overpayments.

WHAT IS THE PROCESS FOR APPLYING AND RECEIVING THE FUNDS?

The application and submittal instructions are available for download here. After submitting the application and supporting materials, the Department of Commerce will notify the landlord within 10 days that the application was received and ask for additional information or clarifications, if needed. The department will process applications on a first come, first served basis. If all criteria for reimbursement are met, payments will be provided to the landlord within 45 days from the date the application is received.

Within 30 days of receiving financial assistance from the Department of Commerce, the landlord must file a **satisfaction of judgment** in the amount of assistance received from Commerce. A "partial satisfaction" must be filed if the judgment is *more* than the amount received. The

landlord must file satisfaction documents in the court that issued the judgment against the tenant. Landlords have 40 days from the date they received assistance to deliver a copy of the filed satisfaction of judgment to the Department of Commerce. If the assistance received from the department did not cover the full amount of the judgment, the landlord may pursue other means to complete the judgment.”

<http://www.commerce.wa.gov/building-infrastructure/housing/landlord-mitigation-program/>

PROPOSED LEGISLATION (and ABA RESOLUTION)

COLORADO

Citation: Colorado House Bill No. 18-1432

Status as of May 2018: Passed by House of Representatives. Introduced into Senate Committee on State, Veterans, & Military Affairs and postponed indefinitely.

Operative Language:

Section 1. In Colorado Revised Statutes, 23-34-501, amend (4) and add (4.5) as follows:

24-34-501. Definitions. As used in this part 5, unless the context otherwise requires:

(4.5) “Source of income” means any lawful source of money paid directly, indirectly, or on behalf of a person, including: (a) Income derived from any lawful profession or occupation; and (b) Income of rental payments derived from any government or private assistance, grant, or loan program.

Section 2. In Colorado Revised Statutes 24-34-502, amend (1)(h) and add (1)(l),(1)(m),(1)(n),(1)(o),(1)(p), and (1)(q) as follows:

24-34-502. Unfair housing practices prohibited. (1) It shall be an unfair housing practice and unlawful and hereby prohibited:

(h) For any person to deny another person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility related to the business of selling or renting dwellings or to discriminate against such person in the terms or conditions of such access, membership, or participation on account of race, creed, color, religion, sex, sexual orientation, disability, marital status, familial status, or national origin or ancestry, or source of income;

(l) For any person to refuse to show, rent, or lease; to refuse to receive and transmit any bona fide offer to rent or lease; or to otherwise make unavailable or deny or withhold from another person any housing for rent or lease because of the person's source of income;

(m) For any person to discriminate in the terms, conditions, or privileges pertaining to the rental or lease of any housing, or in the furnishing of facilities or services in connection therewith, because of a person's source of income, including a person's receipt of public housing assistance or a person's participation in a third-party contract required by a public housing assistance program;

- (n) For any person to make, print, or publish or cause to be made, printed, or published any notice or advertisement relating to the rental or lease of any housing that indicates any limitation, specification, or discriminated based on a person's source of income;
- (o) For any person to represent to another person that any dwelling is not available for rent or lease, when the dwelling is in fact available, for the purpose of discriminating against the person on the basis of the person's source of income; and
- (p) For any person, for profit, to induce or attempt to induce another person to rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons with particular sources of income

http://leg.colorado.gov/sites/default/files/documents/2018A/bills/2018a_1432_ren.pdf

HAWAII

Citation: Hawaii Senate Bill No. 805

Status as of April 2014: Carried over to 2014 Regular Session

Operative Language: ““Source of income” means any lawful source of money paid directly or indirectly to a renter or buyer of housing, including:

- (1) Any lawful profession or occupation;
- (2) Any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers under the United States Housing Act of 1937, as amended;”

http://capitol.hawaii.gov/measure_indiv.aspx?billtype=SB&billnumber=805

Citation: Hawaii House Bill No. 676

Status as of April 2014: Carried over to 2014 Regular Session

Operative Language: “Source of income” means any lawful source of money paid directly or indirectly to a renter or buyer of housing, including:

- (1) Any lawful profession or occupation;
- (2) Any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers under the United States Housing Act of 1937, as amended;”

http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=676

MARYLAND

Citation: Maryland House Bill 759 (Home Act of 2016)

Status: Introduced on 2/8/2016

Operative Language: “FOR the purpose of expanding the housing policy of the State to include providing for fair housing to all citizens regardless of source of income; prohibiting a person from refusing to sell or rent a dwelling to any person because of source of income; establishing certain qualifications and limitations on the general prohibition against discrimination in housing based on source of income; prohibiting a person from discriminating against any person in the terms, conditions, or privileges of the sale or rental of a dwelling because of source of income; prohibiting a person from making, printing, or publishing certain types of materials with respect to the sale or rental of a dwelling that indicate a preference, limitation, or discrimination on the basis of source of income; prohibiting a person from falsely representing that a dwelling is not available for inspection, sale, or rental based on source of income; prohibiting a person from inducing or attempting to induce, for profit, a person to sell or rent a dwelling by making certain representations relating to the entry or prospective entry into the neighborhood of a person having a particular source of income; prohibiting a person whose business includes engaging in residential real estate transactions from discriminating against any person in making available a transaction, or in the terms or conditions of a transaction, because of source of income; prohibiting a person from denying a person, based on source of income, access to or membership or participation in, a service, an organization, or a facility relating to the business of selling or renting dwellings or from discriminating against a person in the terms or conditions of membership or participation; prohibiting a person from, by force or threat of force, willfully injuring, intimidating, or interfering with any person because of source of income and because the person is negotiating for the sale or rental of any dwelling or participating in any service relating to the business of selling or renting dwellings; defining a certain term; providing that this Act does not limit the rights or remedies that are otherwise available to a landlord or tenant under any other law; and generally relating to prohibitions against discrimination in housing based on source of income.”

Citation: Maryland House Bill 168

Status as of April 2014: Unfavorable Report by Environmental Matters Withdrawn

Operative Language: “‘Source of Income’” means any lawful source of money paid directly or indirectly to, or on behalf of, a renter or buyer of housing. Source of income includes income from:

- (1) A lawful profession, occupation, or job;
- (2) Any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937.”

<http://mlis.state.md.us/2012rs/billfile/hb0168.htm>

Citation: Maryland Senate Bill No. 643

Status as of April 2014: Referred to Committee

Operative Language: “SOURCE OF INCOME” INCLUDES INCOME FROM:

(I) A LAWFUL PROFESSION, OCCUPATION, OR JOB;
(II) ANY GOVERNMENT OR PRIVATE ASSISTANCE, GRANT, LOAN, OR RENTAL ASSISTANCE PROGRAM, INCLUDING LOW-INCOME HOUSING ASSISTANCE CERTIFICATES AND VOUCHERS ISSUED UNDER THE UNITED STATES HOUSING ACT OF 1937;

<http://mlis.state.md.us/2011rs/billfile/sb0643.htm>

Citation: Maryland Senate Bill No. 487

Status as of April 2014: Recommitted to Judicial Proceedings

Operative Language: SOURCE OF INCOME” INCLUDES INCOME FROM:

(I) A LAWFUL PROFESSION, OCCUPATION, OR JOB;
(II) ANY GOVERNMENT OR PRIVATE ASSISTANCE, GRANT, LOAN, OR RENTAL ASSISTANCE PROGRAM, INCLUDING LOW-INCOME HOUSING ASSISTANCE CERTIFICATES AND VOUCHERS ISSUED UNDER THE UNITED STATES HOUSING ACT OF 1937

<http://mgaleg.maryland.gov/2013RS/bills/sb/sb0487F.pdf>

NEW YORK

Citation: New York Assembly Bill No. A10077

Status as of March 2018: Referred to the Committee on Governmental Relations

Operative Language:

Section 1. Section 292 of the executive law is amended by adding a new subdivision 35 to read as follows:

35. THE TERM "SOURCE OF INCOME" SHALL INCLUDE: WAGES FROM LAWFUL EMPLOYMENT; CHILD SUPPORT; ALIMONY; FOSTER CARE SUBSIDIES; INCOME DERIVED FROM SOCIAL SECURITY, OR ANY FORM OF FEDERAL, STATE OR LOCAL PUBLIC ASSISTANCE; HOUSING AND RENTAL SUBSIDIES AND ASSISTANCE, INCLUDING SECTION 8 VOUCHERS; SAVINGS, INVESTMENT AND TRUST ACCOUNTS; AND ANY OTHER FORMS OF LAWFUL INCOME.

S 3. Paragraphs (a), (b) and (c) of subdivision 2-a of section 296 of the executive law, as amended by chapter 106 of the laws of 2003, are amended to read as follows:

(a) To refuse to sell, rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color, disability, national origin, sexual orientation, military status, age, sex, marital status, [or] familial

status, OR SOURCE OF INCOME of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(b) To discriminate against any person because of his or her race, creed, color, disability, national origin, sexual orientation, military status, age, sex, marital status, [or] familial status, OR SOURCE OF INCOME in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color, disability, national origin, sexual orientation, membership in the reserve armed forces of the United States or in the organized militia of the state, age, sex, marital status, [or] familial status, OR SOURCE OF INCOME of a person seeking to rent or lease any publicly-assisted housing accommodation; provided, however, that nothing in this subdivision shall prohibit a member of the reserve armed forces of the United States or in the organized militia of the state from voluntarily disclosing such membership.

S 4. Subdivision 5 of section 296 of the executive law, as amended by chapter 106 of the laws of 2003, is amended to read as follows:

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, [or] familial status, OR SOURCE OF INCOME of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, [or] familial status, OR SOURCE OF INCOME in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, [or] familial status, OR SOURCE OF INCOME, or any intent to make any such limitation, specification or discrimination.

http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10077&term=2017&Summary=Y&Text=Y

Citation: Governor's Program Bill No. 23. Lawful Source of Income Non-Discrimination Act

Status: Introduced on 4/27/2018

Operative Language:

§ 2. Section 292 of the executive law is amended by adding a new subdivision 35 to read as follows:

35. The term "lawful source of income" shall include, but not be limited to, child support, alimony, foster care subsidies, income derived from Social Security, or any form of federal, state, or local public assistance or housing assistance including, but not limited to, Section 8 vouchers, or any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to a landlord, and other forms of lawful income.

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/GPB23_LAWFUL_SOURCE_OF_INCOME_NONDISCRIMINATION_ACT_BILL.pdf

RHODE ISLAND

Citation: Rhode Island Senate Bill No. 2301

Status as of March 2018: Senate Judiciary Committee recommended the measure be held for further study

Operative Language:

SECTION 1. Sections 34-37-1, 34-37-2, 34-37-3, 34-37-4 and 34-37-5.3 of the General Laws in Chapter 34-37 entitled "Rhode Island Fair Housing Practices Act" are hereby amended to read as follows:

34-37-1

(b) It is hereby declared to be the policy of the state to assure to all individuals regardless of ...lawful source of income..., equal opportunity to live in decent, safe, sanitary, and healthful accommodations anywhere within the state in order that the peace, health, safety, and general welfare of all the inhabitants of the state may be protected and ensured.

(c) The practice of discrimination in rental housing based on the lawful source of income of an applicant for tenancy, or the potential or actual tenancy of a person with a minor child, or on the basis that a tenant or applicant or a member of the household is, or has been, or is threatened with being the victim of domestic abuse, or that the tenant or applicant has obtained, or sought, or is seeking relief from any court in the form of a restraining order for protection from domestic abuse is declared to be against public policy.

34-37-2. Right to equal housing opportunities – Civil Rights

The right of all individuals in the state to equal housing opportunities regardless of... lawful source of income... is hereby recognized as, and declared to be, a civil right. Nothing in this section shall prevent a landlord from proceeding with eviction action against a tenant who fails to comply with § 34-18-24(7)

34-37-3. Definitions.

When used in this chapter:

(18) The term "lawful source of income" means income or other assistance derived from Social Security; Supplemental Security Income; any other federal, state or local general public assistance, including medical assistance; any federal, state or local housing assistance, including Section 8 Housing as authorized by 42 U.S.C. §1437, and any other rental assistance; child support; or alimony.

<http://webserver.rilin.state.ri.us/BillText/BillText18/SenateText18/S2301.pdf>

Citation: Rhode Island House of Representatives Bill 7528

Status as of March 2018: House Judiciary Committee recommended the measure be held for further study

Operative Language:

SECTION 1. Sections 34-37-1, 34-37-2, 34-37-3, 34-37-4 and 34-37-5.3 of the General Laws in Chapter 34-37 entitled "Rhode Island Fair Housing Practices Act" are hereby amended to read as follows:

34-37-1

(b) It is hereby declared to be the policy of the state to assure to all individuals regardless of ...lawful source of income, ...equal opportunity to live in decent, safe, sanitary, and healthful accommodations anywhere within the state in order that the peace, health, safety, and general welfare of all the inhabitants of the state may be protected and ensured.

(c) The practice of discrimination in rental housing based on the lawful source of income of an applicant for tenancy,... is declared to be against public policy.

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“The right of all individuals in the state to equal housing opportunities regardless of ... lawful source of income..., is hereby recognized as, and declared to be, a civil right. Nothing in this section shall prevent a landlord from proceeding with eviction action against a tenant who fails to comply with § 34-18-24(7)

34-37-3. Definitions.

When used in this chapter:

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<http://webserver.rilin.state.ri.us/BillText/BillText18/HouseText18/H7528.pdf>

VIRGINIA

Citation: Virginia House Bill No. 1408

Status as of February 13, 2018: Left in Committee on General Laws

Operative Language:

§ 36-96.1:1. Definitions

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Source of funds" means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

§ 36-96.3. Unlawful discriminatory housing practices.

A. It shall be an unlawful discriminatory housing practice for any person *to*:

1. *Refuse* to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, *source of funds*, or familial status;
2. *Discriminate* against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, *source of funds*, or familial status;
3. *Make*, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, *source of funds*, or handicap. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer. However, reference alone to places of worship, including, but not limited to, churches, synagogues, temples, or mosques in any such notice, statement, or advertisement shall not be prima facie evidence of an illegal preference;
4. *Represent* to any person because of race, color, religion, national origin, sex, elderliness, familial status, *source of funds*, or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;
5. *Deny* any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, *source of funds*, or handicap;
6. *Include* in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, *source of funds*, or handicap or for any person to honor or exercise, or attempt to honor or exercise, any such discriminatory covenant pertaining to housing;
7. *Induce* or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, *source of funds*, or handicap;
8. *Refuse* to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter,; (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available,; or (iii) any person associated with the buyer or renter;

9. *Discriminate* against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a handicap of (i) that person; (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented, or made available; or (iii) any person associated with that buyer or renter.

King County, WA

Citation: Proposed Ordinance 2017-0176

This proposed legislation would extend the list of protections that are part of the Open Housing Chapter of the King County Code. Landlords would be prohibited from denying housing for potential tenants who have a verifiable alternative source of income, such as Social Security. The legislation also includes housing subsidies including Veterans Affairs Supportive Housing (VASH) vouchers, state Housing and Essential Needs (HEN) funds, or rapid rehousing assistance.

Status: Passed by King County Council on 4/16/18

<https://www.kingcounty.gov/council/news/2018/April/04-16-JKW-housingdiscrimination.aspx>

Operative Language:

SECTION 2. Ordinance 5280, Section 1, as amended, and K.C.C. 12.20.010 are each hereby amended to read as follows:

This chapter is an exercise of the police power of King County for the protection of the public welfare, health, peace and safety of the residents of King County and in fulfillment of the state Constitution. The King County council finds and declares that practices of housing discrimination against any persons on the basis of race, color, religion, national origin, ancestry, age, gender, marital status, parental status, participation in the Section 8 program or other housing subsidy program, alternative source of income, sexual orientation, disability or use of a service or assistive animal by an individual with a disability constitute matters of local concern and are contrary to the public welfare, health, peace and safety of the residents of King County.

SECTION 3. Ordinance 5280, Section 2, as amended, and K.C.C. 12.20.020 are each hereby amended to read as follows:

B. "Alternative source of income" means lawful, verifiable income derived from sources other than wages, salaries, or other compensation for employment. It includes but is not limited to moneys derived from Social Security benefits, other retirement programs, supplemental security income, unemployment benefits, child support, the state Aged, Blind or Disabled Cash

Assistance Program, state Refugee Cash Assistance and any other federal, state, local government, private or nonprofit-administered cash benefit program.

J. "Participation in the Section 8 program or other housing subsidy program" means participating in a short- or long-term federal, state or local government, private, nonprofit or other assistance program in which a tenant's rent is paid either partially or completely by the program, through a direct arrangement between the program and the owner or lessor of the real property. Other housing subsidy programs include, but are not limited to, the federal Veteran Affairs Supportive Housing vouchers, state Housing and Essential Needs funds and short-term rental assistance provided by rapid rehousing subsidies.

ABA Resolution on Source of Income Discrimination

In August of 2017 the American Bar Association (ABA) House of Delegates adopted a [Resolution](#) urging federal, state, and local governments to “enact legislation prohibiting discrimination in housing on the basis of lawful source of income.” The report accompanying the resolution recognized that source of income discrimination presented a significant barrier to families who wanted to use Housing Choice Vouchers to move out of high poverty, racially segregated neighborhoods. The ABA Report on the Resolution noted that a [Chicago study](#) found that voucher holders could not access 70% of the city’s housing stock because of landlord’s refusal to accept vouchers. The Report relied on data showing that families who live in high poverty, racially segregated neighborhoods were more likely to have poor health outcomes and inferior educational and employment outcomes than their peers in more integrated, high-opportunity areas. Thus, the ABA found that supporting source of income discrimination laws would help it further its commitment to promoting “the human right to adequate housing for all” and preventing “infringement of that right.”

The ABA resolution can be a useful tool in state or local advocacy for SOI, and may be something that a state bar association or local lawyers association could consider emulating. Contact Antonia Fasanelli at afasanelli@hprplaw.org. The ABA Resolution and Report can be accessed [here](#).

FEDERAL LAWS PROHIBITING DISCRIMINATION AGAINST HOUSING CHOICE VOUCHER FAMILIES

Capital Magnet Fund

From Interim Rule, 81 Fed. Reg. 25 (February 8, 2016):

12 CFR §1807.401(b) *Nondiscrimination against rental assistance subsidy holders.* The Recipient shall require that the owner of a rental unit cannot refuse to lease the unit to a Section 8 Program certificate or voucher holder ([24 CFR part 982](#), Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

HOME Program

42 USC 12745 (a)(1)(D):

“(a)(1) Housing that is for rental shall qualify as affordable housing under this subchapter only if the housing –

(D) is not refused for leasing to a holder of a voucher or certificate of eligibility under section 1437f of this title because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility”

24 CFR 92.252(d):

“(d) Nondiscrimination against rental assistance subsidy holders. The owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982 — Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document

Low-Income Housing Tax Credit Program (LIHTC)

26 U.S.C. § 42(h)(6)(B)(iv):

“(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing...

(B) Extended low-income housing commitment. For purposes of this paragraph, the term ‘extended low-income housing commitment’ means any agreement between the taxpayer and the housing credit agency...

(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder...”

26 C.F.R. § 1.42-5(c)(1)(xi): Regulations Relating to IRS

“(c) Certification and review provisions—

(1) Certification. Under the certification provision, the owner of a low-income housing project must be required to certify at least annually to the Agency that, for the preceding 12- month period—

(xi) An extended low-income housing commitment as described in section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308-2311), including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to section 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438-439)”

See also HUD Notice PIH 2002-15 (HA) (June 7, 2002) Reinstatement - Notice PIH 2001-2 (HAs), Prohibition of Discrimination against Families with Housing Choice Vouchers by Owners of Low-Income Housing Tax Credit and HOME Developments (This Notice reinstates Notice PIH 2001-2 (HA), same subject, indefinitely. Notice PIH 2001-2 (HA) expired January 31, 2002)

Mark-to-Market

United State Housing Act of 1937, 42 U.S.C. § 1437f

24 C.F.R § 401.556: Regulations Relating to HUD

“A Restructuring Plan must prohibit any refusal of the owner to lease a unit solely because of the status of the prospective tenant as a section 8 voucher holder.”

Multifamily Properties Purchased from HUD

National Housing Act, 12 U.S.C § 1701z-12

“The Secretary shall require any purchaser of a multifamily housing project owned by the Secretary which is sold on or after October 1, 1978, to agree not to refuse unreasonably to lease a vacant dwelling unit in the project which rents for an amount not greater than the fair market rent for a comparable unit in the area as determined by the Secretary under section 1437f of Title 42 to a holder of a certificate of eligibility under that section solely because of such prospective tenant’s status as a certificate holder.”

24 C.F.R § 290.19: Regulations Relating to Multifamily properties purchased from HUD

“The purchaser of any multifamily housing project shall not refuse unreasonably to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), or any successor legislation. This provision is limited in its application, for tenants or applicants with Section 8 Certificates or their equivalent (other than Vouchers), to those units which rent for an amount not greater than the Section 8 Fair Market Rent, as determined by HUD. The purchaser's agreement to this condition must be contained in any contract of sale and also may be contained in any regulatory agreement, use agreement, or deed entered into in connection with the disposition.”

24 C.F. R § 290.39: Regulations Relating to Multifamily properties purchased from HUD

“(a) Nondiscrimination requirement. For any mortgage described in paragraphs (c) or (d) of this section that HUD sells without FHA mortgage insurance, the project owner shall not unreasonably refuse to lease a dwelling unit offered for rent, offer to sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is a certificate or voucher holder under 24 CFR part 982...

(c) Applicability to mortgages securing unsubsidized projects receiving project-based assistance (partially-assisted projects) or securing subsidized projects.

(1) The nondiscrimination requirement in paragraph (a) of this section applies to the project owner upon the sale of a mortgage without FHA mortgage insurance if, at the time HUD offers it for sale, the mortgage secures:

i) An unsubsidized project that receives any of the forms of assistance enumerated in paragraphs (4)(i) to (4)(iv) of the "subsidized project" definition in § 290.5; or

(ii) A subsidized project, as defined in § 290.3.

(2) This requirement shall continue in effect until the mortgage debt is satisfied.

(d) Covenant requirement for all delinquent mortgages sold without FHA mortgage insurance. This paragraph (d) applies to the sale of any mortgage that is delinquent at the time HUD offers it for sale without FHA mortgage insurance, without regard to the subsidy status of the project. The mortgage purchaser and its successors and assigns shall require the mortgagor to record a covenant running with the land as part of any loan restructuring or final compromise of the mortgage debt and shall include a covenant in any foreclosure deed executed in connection with the mortgage. The covenant shall set forth the nondiscrimination requirement in paragraph (a) of this section. The covenant shall continue in effect until a date that is the same as the maturity date of the mortgage sold by HUD.”

National Housing Trust Fund

The National Housing Trust Fund interim rule, 24 CFR part 93.303(d)(4), provides that properties receiving NHTF assistance “Do not exclude an applicant with a voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program (24 CFR part 92) because of the status of the prospective tenant as a holder of such voucher or comparable HOME tenant-based assistance document.”

Neighborhood Stabilization Act of 2008: In response to the federal loan and foreclosure crisis in the United States, the House of Representatives passed legislation which provided a loan and grant program for the distribution of money to areas severely impacted by foreclosures and predatory lending. Participants in this program cannot discriminate against holders of Section 8 vouchers. Section 8(h) of H.R. 5818.

[Related law: The Equal Credit Opportunity Act]

The Equal Credit Opportunity Act, 15 USC §1691 et seq, prohibits discrimination in the provision of credit, including discrimination “because all or part of the applicant’s income derives from any public assistance program,” 15 USC §1691(a)(2). The Act’s implementing regulations require that banks report any loans made or denied to multifamily properties that include units that are “income-restricted pursuant to Federal, State, or local affordable housing programs,” 15 CFR §1003.4 (a)(32) and discrimination in lending based on presence of these deed restricted units is prohibited (note however that the statute does not require reporting of units that receive portable tenant based Housing Choice Vouchers).

A note on federal preemption:

Does the lack of a landlord mandate in the Housing Choice Voucher program “preempt” state and local source of income discrimination protections? No. “Nothing in part 982 is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder. However, such State and local laws shall not change or affect any requirement of this part, or any other HUD requirements for administration or operation of the program.” 24 C.F.R. 982.53(d).

ADDITIONAL RESOURCES

Annotated Bibliography: Law Reviews and Studies

Law Review Articles on Source-of-Income Discrimination

Stacy Seicshnaydre et al., *Missing Opportunity: Furthering Fair Housing in the Housing Choice Voucher Program*, 79 *Law & Contemp. Probs.* 173 (2016).

The premier rental housing program created in part to reduce isolation of low-income renters is marked by a series of missed opportunities to provide expanded housing choice and upward socioeconomic mobility for those harmed by racial and economic segregation. The United States Department of Housing and Urban Development (HUD) never structured the program to address segregation, deconcentrate low-income persons, expand housing choice, or further fair housing. HUD's issuance of a new Fair Housing Act (FHA) rule, designed to affirmatively further fair housing, explicitly imposes detailed fair housing planning obligations on the public-housing authorities (PHAs) that administer voucher programs. Part I of the article describes the HCV Program's structure, purpose, and failure to fulfill its potential for expanding housing choice. Part II discusses the role of informed housing choice in transforming the HCV from a short-term instrument of survival to a long-term tool of opportunity. Part III conducts a case study using the dramatic expansion of HCV use in post-Katrina New Orleans following the hurricanes and accelerated public housing demolitions; this case study examines the clustering of vouchers and the extent to which the HCV Program delivers housing choice in a nondiscriminatory manner. Part V proposes tools for reforming the historical flaws in the HCV Program to affirmatively further fair housing.

Armen H. Merijan, *Attempted Nullification: The Administrative Burden Defense in Source of Income Discrimination Cases*, 22 *Geo. J. on Poverty L. & Pol'y* 211 (2014-2015).

The use of an administrative burden defense by defendants in a source of income discrimination case is wholly unsupported, and unsupportable, under the relevant laws. Not one of the seven state or local source of income laws analyzed provides an exception based upon administrative requirements or burdens. Creating an exception based upon these burdens would provide landlords with an easy ground upon which to evade compliance, rendering source of income protections nugatory. For a court to permit such an exception would be to nullify the laws, to render them meaningless by judicial fiat. This article examines existing source of income laws and analyzes the defense of administrative burden under those laws, concluding that there is no basis for this defense, with numerous independently dispositive grounds for rejecting it out of hand. Part I provides background on source of income discrimination in the United States. Part II provides an analysis of every case to date that has examined the administrative burden defense under source of income laws. Part III concludes by reviewing the multiple grounds upon which courts have found--and should find--the administrative burden defense impermissible.

Jonathan Sheffield, *Cook County Prevents Source of Income Discrimination from Begetting Unlawful Race Discrimination and So Should Illinois*, 19 Pub. Interest L. Rptr. 86 (2014).

Author points to a recent amendment to Cook County's human rights ordinance that prohibits discrimination against Housing Choice Voucher (HCV) holders, and argues for Illinois to outlaw source of income (SOI) discrimination throughout the state to promote fair housing. The author presents research findings highlighting the impact SOI discrimination on HCV holders and their ability to move out of high-poverty, distressed neighborhoods into opportunity neighborhoods. The author also highlights the work of fair housing advocates in Cook County, who help monitor and enforce SOI discrimination. The author explains that some Cook County suburbs, such as Glenview, have attempted to nullify the recently amended ordinance by adopting retaliatory ordinances that repeal the protections for HCV holders.

Kinara Flagg, *Mending the Safety Net through Source of Income Protections: The Nexus between Antidiscrimination and Social Welfare Law*, 20 CJGL (2011).

Public sources of income that are targeted vary, but include everything from Social Security and unemployment compensation to food stamps, Temporary Assistance for Needy Families (TANF), and Section 8 housing participation; private sources include alimony and child support.⁸ Section 8 is perhaps the most well known of these federal income support programs: each year, over two million Section 8 vouchers are distributed to qualifying individuals and families.⁹ However, the Department of Housing and Urban Development (HUD) reports that in spite of the high number of vouchers distributed, approximately one-third of vouchers are returned unused.¹⁰ Low-income families and individuals who are denied housing on account of their vouchers are not left with many housing opportunities.¹¹ SOI discrimination harms people who pay their rents with income received through trusts, legal settlements and third-party payers. [...] success in curbing discrimination and improving the social welfare could emerge from this single change in housing discrimination policy.

Michael Quirk, *Preserving Project-Based Housing in Massachusetts: Why the voucher Discrimination Law Falls Short*, 30 Rev. Banking & Fin. L. 651 (2011).

Some plaintiffs in Massachusetts are attempting to use the state voucher discrimination statute as a means to preserve expiring project-based housing. This approach, however, is problematic. While the Massachusetts voucher discrimination law might be an effective tool to combat voucher discrimination toward individual tenants in the open market, it cannot be interpreted to apply to expiring project-based housing contracts. Moreover, the regulatory regime governing both mortgage prepayment and failure to renew Section 8 contracts is extensive, and there is some authority to suggest that federal law might preclude utilizing state anti-discrimination law to require a developer to renew a federal contract.

Part II of this note summarizes the history of the relevant federal housing programs and Congress' periodic attempts to adjust and maintain these programs. Part III discusses whether application of the Massachusetts voucher discrimination law to expiring project-based contracts is a viable cause of action. Part IV analyzes the interaction of the

Massachusetts voucher discrimination law with federal statutes and regulations, and whether federal law precludes application of the voucher discrimination law. Part V discusses alternative means of preserving expiring project-based units. Part VI concludes that while the voucher discrimination law may not be an effective tool for preserving project-based contracts, other alternatives may be applied with some success.

Tamica H. Daniel, Note, *Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination under the Federal Fair Housing Act*, 98 Geo. L.J. 769 (2010).

Author provides an overview of the status of voucher discrimination under federal law and argues for an amendment to the Fair Housing Act which would add voucher holders as a protected class. The author analogizes to a similar legal climate as existed prior to the addition of familial status as a protected class under the Fair Housing Act in the 1980s. The author argues that current State, county and city statutes and ordinances which protect against source-of-income discrimination do not go far enough to significantly reduce the occurrences of voucher holder discrimination. The author argues that in lieu of a Congressional amendment to the Fair Housing Act, the courts could allow voucher holders to bring disparate impact claims for voucher discrimination, and thereby support the goals and purposes of the federal legislation.

Rebecca Rotem, *Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal from the Section 8 Voucher Program* 78 Fordham L. Rev. 1971 (2010).

The U.S. Courts of Appeals for the Second and Seventh Circuits have held that, as a matter of law, a landlord who withdraws from the Section 8 voucher program cannot be held liable under the FHA, even if that action has a disproportionate impact on a protected class. In contrast, the Court of Appeals for the Sixth Circuit has held that a plaintiff can rely on evidence of disparate impact to show that a landlord violated the FHA by withdrawing from Section 8. This Note argues that in order to meet the FHA's goal of ending housing discrimination, landlords who withdraw from the Section 8 program should not be given a categorical exemption from liability under the FHA if that action has a disparate impact on a protected class.

Jenna Bernstein, *Section 8 Source of Income Discrimination, and Federal Preemption: Setting the Record Straight*, Cardozo L. Rev. (2010).

Since the mid 1980s, a number of state and local governments have passed legislation mandating participation in the Section 8 program in an attempt to combat what they perceive to be “source of income discrimination” by landlords. By amending state and local fair housing statutes to prohibit discrimination based on source of income--a category that lawmakers and courts have defined to include Section 8 vouchers--these state and local governments have left landlords virtually no choice but to accept a Section 8 tenant or face a discrimination action. This Note argues that decisions by courts that uphold state and local discriminatory laws run counter to federal preemption doctrine and stand in violation of the Supremacy Clause of the United States Constitution. Part I

reviews the purpose and history of the Section 8 legislation, discusses the obstacles facing Section 8 voucher holders today, and reviews the legislation that federal, state, and local governments have passed to combat these problems. Part II summarizes the state cases that have rejected landlords' preemption defense, outlines federal preemption doctrine, applies preemption law to the state and local anti-discrimination regulations, and explains why the highest courts in Massachusetts, New Jersey, Connecticut, and Maryland reached the wrong result in holding that such state and local laws do not violate the Supremacy Clause.

Julie Becker, Rebecca Lindhurst & Antonia K. Fasanelli, *Case Note: D.C. Circuit says that enhanced-voucher tenants have "right to remain" and landlord's "benign motive" does not justify source-of-income discrimination*, 43 Clearing House J. Poverty L. & Pol'y 74 (2009).

Between 2004 and 2008 the District of Columbia's active real estate market and the accompanying rise in sales prices for residential property increasingly pressured low-income tenants. Eager landlords saw opportunities to turn affordable rental housing into luxury properties. Our litigation (see *Feemster v. BSA Limited Partnership*, 548 F.3d 1063 (D.C. Cir. 2008)) and transactional efforts during this period allowed ten low-income tenants to keep their homes. We based our legal claims on our clients' federal-law "right to remain" in their subsidized housing units and on District of Columbia landlord-tenant law.

Krista Sterken, *A Different Type of Housing Crisis: Allocating Costs Fairly and Encouraging Landlord Participation in Section 8*, 43 Colum. J.L. & Soc. Probs. 215 (2009).

The Section 8 Housing Choice Voucher Program ("Section 8") is an important effort to make quality housing accessible to low-income families. Although the federal program is voluntary, several states, cities, and local communities have responded to the problem of landlord rejection of Section 8 tenants with laws prohibiting discrimination based on a prospective tenant's source-of-income. Mandatory Section 8 facilitates the program's success but also raises significant equity issues when individual landlords face unusually high burdens as a result of mandated participation. Further, mandatory participation undermines incentives to implement an efficient program because it removes the need to attract voluntary participants. As such, an exception is a necessary and desirable complement to a mandatory Section 8 scheme. An exception could be constructed as a statutory exemption or affirmative defense, or created through a play-or-pay approach. Finally, encouraging rather than coercing landlord participation offers significant advantages in achieving the program's objectives and is an important balance to mandated participation.

Laura Bacon, Note, *Godinez v. Sullivan-Lackey: Creating a Meaningful Choice for Housing Choice Voucher Holders*, 55 DePaul L. Rev. 1273 (2006).

Author offers Chicago and its local law barring source-of-income discrimination as a potential model for creating a realistic solution to discrimination against section 8 voucher recipients. Focusing on the HCVP in Chicago, the author discusses the history

of the program and its limited effectiveness in the face of source-of-income discrimination. The city's ordinance, subject to challenge in *Godinez v. Sullivan-Lackey*, was upheld by the Illinois Appellate Court. The case may serve as an example to other cities and municipalities of the legal viability of local fair housing ordinances. Although there are shortcomings to the local legislative approach, if states and cities add source-of-income protection to their legislative agendas, the goals of HCVP can be more likely realized.

Kinara Flagg, *Mending the Safety Net Through Source of Income Protections: The Nexus Between Antidiscrimination and Social Welfare Law*, 20 Colum. J. Gender & L. 201 (2011).

This Article considers the issue of SOI discrimination, discussing its effects in practice as well as its status in laws, and recommends that SOI discrimination be addressed through a change to federal law. In order to better understand the consequences of such an amendment, this Article argues that the addition of a source of income protection provision requires engagement with both the antidiscrimination model and the social welfare paradigm. The addition of a source of income provision would be compatible with both social welfare and antidiscrimination laws.

Paul Boudreaux, *Vouchers, Buses, and Flats: The Persistence of Social Segregation*, 49 Vill. L. Rev. 55 (2004).

Author presents an analysis of the failure of the Housing Choice Voucher Program in the face of the social trend towards racial and socio-economic segregation, the scarcity of affordable housing in many cities, and the difficulties of finding a landlord who will accept the voucher. Despite its goals, the rental subsidy program fails to protect its recipients from the discrimination that promotes segregation. Unless landlords are prevented from discrimination on the basis of source-of-income, real integration will not be possible.

Kim Johnson-Spratt, Note, *Housing Discrimination and Source of Income: A Tenant's Losing Battle*, 32 Ind. L. Rev. 457 (1999).

Author presents an overview of source-of-income litigation and discusses remedies for the lack of protection given to source-of-income under federal law. Previous discrimination cases have met with success by molding source-of-income discrimination into discrimination of a protected category such as familial status or gender. In jurisdictions where source-of-income protection does exist, results have been mixed and suggest that existing protections are inadequate. Without a federal law banning source-of-income discrimination, section 8 voucher holders lack a meaningful choice in obtaining housing. The author examines Paula Beck's proposal to amend the Fair Housing Act and rejects the proposed amendment as incomplete and unlikely. The author further suggests that given legislative intent and the purpose of the section 8 statute and Personal Responsibility and Work Opportunity Reconciliation Act of 1996, protection against source-of-income discrimination may be implied in both laws. Given the public's fears of judicial activism, however, the best approach may be for HUD to promulgate a rule prohibiting discrimination on the basis of income source.

Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act's New Frontier*, 31 Harv. C.R.-C.L. L. Rev. 155 (1996).

Author discusses the failures of the section 8 program to promote integration, reviews the effectiveness of current state and federal laws to protect against source-of-income discrimination, and suggests that an amendment to the Fair Housing Act is needed. By prohibiting discrimination on the basis of source-of-income, the social and economic burdens of section 8 vouchers will be shifted from low income renters to the landlords and middle-income renters who are in a better position to absorb them.

Mark A. Malaspina, Note, *Demanding the Best: How to Restructure the Section 8 Housing-Based Rental Assistance Program*, 14 Yale L. & Pol'y Rev. 287 (1996).

Author reviews the flaws in the section 8 program, noting that many of the program's problems result from inappropriate use of supply-side housing policies in a demand-side program (including federal eviction standards, housing quality requirements, and fixed payment structure which may fail to motivate voucher-holders). Author further suggests reforms to (1) improve the administration of the program by replacing local public housing authorities with regional government agencies, (2) increase mobility through the implementation of counseling services and extended deadlines for finding an acceptable apartment, and (3) introduce a new payment structure. Landlord acceptance of section 8 vouchers could be further increased by a federal nondiscrimination provision, barring source-of-income discrimination.

Courts Consider Landlord Defenses to Source of Income Laws, Housing Law Bulletin, Volume 38, National Housing Law Project (2008)

Over the past two years, courts have decided numerous cases where Section 8 voucher holders have sought enforcement of state and local laws that prohibit landlords from discriminating against tenants and applicants based upon source of income. Many of these cases have upheld local source of income statutes, rejecting landlord claims that local source of income laws are preempted. On what is usually the threshold question, courts have evaluated whether the state and local anti-discrimination protection covers the receipt of Section 8 assistance. Frequently, these cases have also addressed defenses raised by landlords that the rejection of a tenant with a Section 8 voucher was not discriminatory, but instead based upon legitimate reasons, such as burdensome program requirements, poor credit or insufficient income. The courts have usually rejected such claims as inadequate. This article briefly reviews these recent cases, as well as prior precedents addressing source of income issues where necessary.

Other Recent Studies of Source-of-Income Discrimination

Mary K. Cunningham, Martha Galvez, Claudia L. Aranda, Robert Santos, Doug Wissoker, Alyse Oneto, Rob Pitingolo, James Crawford, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers: Executive Summary*, U.S. Department of Housing and Urban Development Office of Policy Development and Research (2018)

Abstract: This pilot study uses rigorous paired testing methodology to explore landlord treatment of Housing Choice Voucher (HCV) holders during the initial stages of the housing search process. It is the first study to use paired testing methods across multiple sites to examine landlord treatment of HCV holders. The study finds that landlords often refuse to rent to HCV holders. In most cases, the landlord refusal takes place early in the search process, when a tester calls the landlord and asks whether Housing Choice Vouchers are accepted. In other cases, the landlord may suggest that vouchers are accepted, but subsequently fail to show up for a scheduled appointment. Landlord denial rates vary across the five study sites and may be influenced by factors such as state or local laws that prohibit discrimination by source of income (particularly local source of income laws that include protections for Section 8/voucher holders), housing market conditions, and voucher payment standards.

Philip Garboden, Eva Rosen, Meredith Greif, Stefanie DeLuca, Kathryn Edin, The Poverty and Inequality Research Lab; Johns Hopkins University, *Urban Landlords and the Housing Choice Voucher Program – A Research Report*, U.S. Department of Housing and Urban Development Office of Policy Development and Research (2018)

Summary: Authors examine the role landlords play in shaping the residential experience of low and moderate-income renters, especially those with housing choice vouchers. Authors use interview data from 127 landlords and property managers in Baltimore, Dallas, and Cleveland combined with ethnographic observations collected between 2013 and 2015 and 1.5 million administrative records on landlords and tenants in the HCV program from HUD's 50058 database.

Equal Rights Center, *Next Generation Segregation: A Civil Rights Testing Investigation and Report* (2018), <https://equalrightscenter.org/wp-content/uploads/next-generation-segregation-report.pdf>.

Fifteen tests were conducted with source of income as the basis of the tests, while 20 tests were conducted with familial status as the basis of the tests. Over half of the source of income based tests revealed concerning discrimination—three tests reflected outright denials of the Voucher, and five tests showed housing providers or property management companies disclosing incorrect or confusing information in response to questions about whether they accepted Vouchers from testers posing as potential applicants.

Results of this investigation indicate that source of income discrimination plays a clear role in maintaining, if not intensifying, racial segregation within the DC housing market. It also appears to be one piece of a complex confluence of factors that is leading African

American families to move out of the District altogether. In order to undo these legacies of segregation and displacement, multiple stakeholders must take decisive action.

Michael Lepley & Lenore Mangiarelli, The Housing Center, *Housing Voucher Discrimination and Race Discrimination in Cuyahoga County*, (2017)

Abstract: The Housing Center identified housing policies that limit choices of HCVP participants that include a region-wide voucher payment standard (Fair Market Rent) that is insufficient for participants to gain access to high-opportunity areas and the continual siting of Low Income Housing Tax Credit units, which are required to accept Housing Choice Vouchers, in low- opportunity neighborhoods throughout Cuyahoga County. Nearly 80% of HCVP participants surveyed reported that one barrier to finding housing is that landlords refuse (legally in most of Cuyahoga County) to accept housing vouchers, the most reported challenge. Using an investigatory technique known as “testing,” this report explores the role housing providers play in limiting the housing choices of HCVP participants in Cuyahoga County: how refusal to take a voucher might serve as a proxy for race-based discrimination and how limited housing choices perpetuate racial segregation. The Housing Center used race-based, matched-pair, email testing (one African American tester and one white tester per test) to compare the incidences of “unfavorable treatment” on the basis of race by housing providers that advertise that they do not accept housing vouchers (Experiment Group) compared to the prevalence of unfavorable treatment on the basis of race by housing providers that state no preference for housing vouchers (Control Group). Differences in race-based discrimination could show that housing providers are racially motivated when refusing to accept vouchers.

Policy Basics: Federal Rental Assistance. Federal Rental assistance enables over 5 million low-income households to afford modest homes, Center on Budget and Policy Priorities (2017)

Summary: Article explains programs such as Housing Choice Vouchers, Section 8 Project-based Rental Assistance, and Public housing as well as the “202” and “811” Supportive Housing Programs for the Elderly and for People with Disabilities; Housing Opportunities for People with AIDS/HIC (HOPWA) and McKinney-Vento permanent housing programs for the homeless. The authors also explain who is helped by federal rental assistance, who is eligible, how much assisted families pay for housing, the role of the private market, and the geographic location and funding of federal rental assistance.

J. Rosie Tighe, Megan E. Hatch, Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, *Journal of Planning Literature* 32:1 (2017).

The housing choice voucher program was designed with two main goals in mind: to eliminate concentrations of poverty and the social problems it causes and to provide poor households with greater access to higher-opportunity neighborhoods. However, research suggests that voucher holders would like to move to higher-opportunity neighborhoods, but often are unable to do so. One of the most prominent reasons for this is that, in most

cities and states, local law allows landlords to discriminate against potential tenants on the grounds of their “source of income” (SOI). This article reviews the literature on discrimination of voucher recipients and the potential for SOI antidiscrimination laws to mitigate some of these negative outcomes.

Vouchers Help People of All Racial and Ethnic Backgrounds Afford Modest Housing, Center on Budget and Policy Priorities (2016)

Summary: Infographic that details the share of the 2.2 million voucher households by race/ethnicity. Race/ethnicity categories are based on the household head. Household heads that identify as Hispanic/Latino are excluded from the other categories. Information was accumulated by CBPP tabulations of 2016 Department of Housing and Urban Development administrative data.

Ruoniu Wang, UIC College of Urban Planning and Public Affairs, *Tracking “Choice” in the Housing Choice Voucher Program: The Relationship Between Neighborhood Preference and Locational Outcome*, Urban Affairs Review (2016)

Summary: Do residential locations of Housing Choice Voucher (HCV) households reflect tenants’ preferences for neighborhood quality? Study results come from a three-part methodology: (1) survey of voucher holders to find neighborhood preferences and other factors in the consumer decision-making model, (2) geographic information system (GIS) analysis of actual locational outcomes in terms of neighborhood opportunity and transportation accessibility, and (3) quantitative analysis of the strength of preference–outcome relationships. The results reveal that survey participants placed high priority on neighborhoods that were safe and clean, and with quality schools. Despite this, higher priority on quality housing and search barriers affected the housing choice. As such, to a large extent, the residents did not live in places that met their location preferences. The study calls for an expansion of location assessment measures in the current policy framework and the provision of more information about housing and neighborhood options to voucher recipients.

“The Answer”, Shelterforce Staff, *Do Section 8 voucher holders increase crime in a neighborhood*, Shelterforce.org (2015)

Summary: One pager that details researchers’ efforts to determine whether there was any association between an increase in Housing Choice Vouchers (formerly known as Section 8 vouchers) and the crime levels in that neighborhood. They found no association, rather, that in reality an increase in crime predicts an increase in voucher holders the next year.

Lance Freeman & Yunjing Li, *Do Source of Income Anti-discrimination Laws Facilitate Access to Less Disadvantaged Neighborhoods?* Housing Studies Vol. 29:1 (2014).

Vouchers have come to be seen as a tool for promoting economic and racial/ethnic integration. Discrimination based on Source of Income (SOI), however, could hinder the

use of vouchers to move to more desirable neighborhoods. State and local SOI anti-discrimination laws (SOI laws) are one policy response to address this issue. SOI laws make it illegal for landlords to discriminate against voucher recipients solely on the basis of their having a voucher. The research presented here tested whether SOI laws in the USA improve locational outcomes for voucher recipients. This research found that the impacts of SOI laws on locational outcomes are mixed. We found substantively important reductions in neighborhood poverty rates associated with the implementation of SOI laws and small but statistically significant reductions in minority concentration as well. The concentration of voucher recipients in a neighborhood, however, does not appear to be related to SOI law implementation.

Stefanie DeLuca, Philip M.E. Garboden & Peter Rosenblatt, *Segregating Shelter: How Housing Policies Shape the Residential Locations of Low-Income Minority Families*, The ANNALS of the American Academy of Political and Social Science, vol. 647:1 (2013).

Individuals participating in the HUD Housing Choice Voucher program, formerly Section 8, can rent units in the private market and are not tied to public housing projects in a specific neighborhood. We would expect vouchers to help poor families leave the ghetto and move to more diverse communities with higher socioeconomic opportunity, but many voucher holders remain concentrated in poor, segregated communities. We use longitudinal qualitative data from one hundred low-income African American families in Mobile, Alabama, to explore this phenomenon, finding that tenants' limited housing search resources, involuntary mobility, landlord practices, and several aspects of the voucher program itself limit families' ability to escape disadvantaged areas. We also find that the voucher program's regulations and funding structures do not incentivize housing authorities to promote neighborhood mobility and residential choice. This combination of forces often keeps voucher recipients in neighborhoods with high concentrations of poor and minority residents.

Will You Take My Voucher? An update on Housing Choice Voucher discrimination in the District of Columbia, The Equal Rights Center (2013)

Abstract: This report provides an update on source of income discrimination between 2011 and 2013 and confirms that while the Equal Rights Center's outreach efforts have proven useful, discrimination against voucher holders persists. In the most recent testing, voucher holders were subject to discrimination 28 percent of the time. While much improved, continued education and advocacy is needed to address the more than 1 out of 4 voucher holders who still experience some form of discrimination.

"The Answer", Shelterforce Staff, *Does affordable housing development lower nearby property values? No.*, Shelterforce.org (2013)

Summary: This infographic explains that affordable housing development does not lower property values but actually might raise them. Researchers combed through seven

bibliographies and literature reviews and found 62 studies on the effects of affordable housing on property values.

Lance Freeman and Yunjing Li. "Do Source of Income (SOI) Anti-Discrimination Laws Facilitate Access to Better Neighborhoods?" Paper presented at the Association of Public Policy and Management Fall Research, Baltimore, MD, November 8, 2012.

In recent decades vouchers have come to be seen as a tool for promoting economic and racial/ethnic integration. The advantages of vouchers over project-based housing assistance depend on the ability of voucher recipients to locate a landlord who will accept the voucher. Some landlords wish to avoid the administrative burden associated with the voucher program. Other landlords perceive voucher recipients to be undesirable tenants and/or fear their other tenants would object to voucher recipients as neighbors. This type of discrimination based on SOI could hinder the use of vouchers to move to more desirable neighborhoods. State and local SOI anti-discrimination laws are one policy response to address this issue. SOI laws make it illegal for landlords to discriminate against voucher recipients solely on the basis of their having a voucher. The research presented here tested whether SOI laws improve locational outcomes for voucher recipients. This research found that SOI laws appear to have a modest impact on locational outcomes.

Lance Freeman, *The Impact of Source of Income Laws on Voucher Utilization*, HUD Office of Policy Development and Research Report, (2011). Available at: https://www.huduser.gov/publications/pdf/freeman_impactlaws_assistedhousingrcr06.pdf

Vouchers are lauded both for being the most efficient way of delivering housing assistance to needy households and for the potential to allow poor households to access better neighborhoods. The success of vouchers is of course predicated on recipients being able to successfully use a voucher. For a number of reasons, including discrimination by landlords on the basis of source of income (i.e. a voucher), voucher recipients frequently cannot find apartments to lease. Using a difference-in-differences approach the research reported here examines how Source of Income anti-discrimination laws affect the utilization of housing vouchers. The findings indicate that utilization rates are higher among Local Housing Authorities in jurisdictions with Source of Income anti-discrimination laws. These findings suggest such laws can be an effective tool for increasing the rate at which vouchers are successfully utilized. In a time of scarce resources for affordable housing this is an important policy tool that should not be overlooked.

Voucher Holders Need Not Apply: An Audit Report on the Refusal of Housing Choice Vouchers by Landlords in the Austin MSA, Austin Tenants' Council (2012)

Abstract: The Austin Tenants' Council conducted this survey to measure the number of private landlords in the Austin MSA that accept Housing Choice Voucher Program subsidies to determine where in the MSA this rental housing is located. Such an audit is especially important as the area experiences record low apartment vacancy rates, a

shortage of affordable housing, and persistently segregated residential neighborhoods. While discrimination based on source of income is not illegal in Texas, understanding the rate at which voucher holders encounter source of income discrimination is essential to evaluating the effectiveness of the HCVP. Examining where the housing is located helps answer whether the HCVP is meeting its goal of increasing housing choice for low-income renters in areas of high opportunity with access to high-performing schools, sustainable employment, stable housing, safe neighborhoods, and health care.

Martha Galvez. "Defining Choice in the Housing Choice Voucher Program: The Role of Market Constraints and Household Preferences in Location Outcomes" PhD diss., Robert F. Wagner School of Public Service, New York University, 2011.

This dissertation examines neighborhood concentration and quality outcomes for Housing Choice Voucher holders in 315 metropolitan areas (MSAs) in 2004, coupled with an in-depth analysis of move preferences and outcomes for a sample of new voucher holders in Seattle, Washington, in 2009. Results show that voucher holders lived in nearly all MSA neighborhoods and few experienced extremely high neighborhood poverty rates. However, assisted households were unevenly distributed in a manner similar to black residential segregation. On average, neighborhood quality for voucher holders was no better than that of similarly poor households or Low Income Housing Tax Credit unit locations. Results are consistent for the Seattle sample of households, who tended to shift from one low opportunity neighborhood to another. Results are more promising for black households specifically: on average nationally, black voucher holders lived in lower poverty, less distressed neighborhoods compared to similarly poor blacks in the same MSAs.

Regression analyses suggest voucher holders are more concentrated and live in higher poverty rate neighborhoods in MSAs that are more racially segregated, and where a larger share of voucher holders is minority. Average neighborhood poverty rates for voucher holders were slightly lower in areas with source of income anti-discrimination laws in place.

Survey results for the Seattle sample suggest location outcomes mirrored pre-program mobility preferences. Respondents who wanted to change neighborhoods tended to do so, and respondents who wanted to lease in place likely did so. Respondents who were dissatisfied with pre-program neighborhood quality were more likely to change neighborhoods and to experience improvements in quality. In contrast, place attachments and market perceptions were only weakly correlated with move preferences or outcomes. Importantly, dissatisfaction with pre-program neighborhood quality was the exception and not the norm. The majority of the sample was satisfied with their pre-program neighborhoods, despite living in areas that offered limited access to economic mobility opportunities.

Matthew D. Marr, *Mitigating apprehension about section 8 vouchers: The positive role of housing specialists in search and placement*, *Housing Policy Debate*, 16:1, 85-111, DOI: [10.1080/10511482.2005.9521535](https://doi.org/10.1080/10511482.2005.9521535) (2010)

Abstract: The U.S. Department of Housing and Urban Development has found that Section 8 voucher recipients are often unable to secure apartments outside of high-poverty areas in tight urban rental markets. However, intensive housing placement services greatly improve the success and mobility of voucher holders. Drawing on ethnographic research in the housing placement department of a private, nonprofit community-based organization, I first describe how fundamental problems in implementing the public subsidy program in a tight private rental market generate apprehension among landlords and voucher recipients that can prevent the successful use of vouchers. Second, I demonstrate how housing placement specialists can dispel and overcome this apprehension through a variety of tactics that require extensive soft skills and a deep commitment to the mission of housing poor families. These findings provide support for the increased use of housing placement services to improve success and mobility rates for Section 8 vouchers.

Stefanie DeLuca & James E. Rosenbaum, *If low-income blacks are given a chance to live white neighborhoods, will they stay? Examining mobility patterns in a quasi-experimental program with administrative data*, *Housing Policy Debate Vol 14* (2003). available at <http://dx.doi.org/10.1080/10511482.2003.9521479> (2010).

After describing the distinctive features of various policy models of residential mobility, we examine the long-term outcomes of the Gautreaux program. Administrative records provide baseline characteristics for all participants, and we located recent addresses for over 99 percent of a random sample of 1,506 participants an average of 14 years after original placement. Although 84 percent of the families made subsequent moves, the racial composition of the current address is strongly related to program placement, even among movers, and after family attributes and premove neighborhood characteristics are controlled. Combined with our prior findings, these results suggest that residential mobility has an enduring, long-term impact on the residential locations of these families. Contrary to models that assume that families' enduring preferences will quickly erase these moves, these results suggest the need for further research to consider whether mobility alters preferences or structural barriers.

Barbra Teater, *Residential Mobility of Section 8 Housing Choice Voucher Program Recipients: Assessing Changes in Poverty and Racial Composition in Neighborhoods*, *Journal of Poverty*, 12:3, 351-371, DOI: [10.1080/10875540802198651](https://doi.org/10.1080/10875540802198651) (2008)

Abstract: This study evaluates the locational outcomes of the HCV program recipients in Columbus, Ohio from 1999–2005 against the program's policy goals of deconcentration and desegregation by examining the change in poverty and change in racial composition from pre to post-move neighborhoods. The results reveal that the mobility of recipients does not predict a change in poverty and a recipient's race does not predict a change in racial composition in neighborhoods. The findings suggest that the HCV program policy goals of deconcentration and desegregation are currently being met in Columbus, Ohio.

Kirk McClure, *Deconcentrating Poverty With Housing Programs*, Journal of the American Planning Association, 74:1, 90-99, DOI: [10.1080/01944360701730165](https://doi.org/10.1080/01944360701730165) (2008)

Abstract: Administrative data from the Department of Housing and Urban Development are used to assess the degree to which federal housing programs help low-income homebuyers and renters locate in neighborhoods where less than 10% of the population is below poverty. Research indicates that housing vouchers supplied to households are not helping renters locate in low poverty areas any more effectively than are current project-based subsidies. Additionally, a disproportionately high share of low-income homebuyers are locating in low-poverty neighborhoods than are low-income renters. Author recommends that housing planners seeking to make poverty deconcentration more effective use housing placement counselors, administer programs at the metropolitan scale, lease and broker market-rate housing directly, promote mixed-income LIHTC developments, practice inclusionary zoning, and monitor impacts of these efforts.

Fred Freiberg and Diane L. Houk, Fair Housing Justice Center, *No License to Discriminate: Real Estate Advertising, Source of Income Discrimination, and Homelessness in New York City* (2008).

The Fair Housing Justice Center examines whether real estate brokers in New York City comply with the March 2008 addition of a prohibition on source-of-income discrimination to local fair housing law. The report focuses on the listings placed by brokers on the www.craigslist.org website during the month of July 2008. During that period, at least 363 postings used discriminatory language that made unavailable housing units based on receipt of Section 8 vouchers or of other “program” assistance. Seventy-six percent of those advertised units were priced at rates affordable to low- and moderate-income renters, and many were within the fair market rent allowed for voucher-holders. In response, the FHJC makes a number of recommendations aimed at strengthening and expanding fair housing enforcement activity: (1) City government should support systemic testing investigations; (2) fair housing organizations should increase efforts to notify state authorities when there is evidence of discrimination; and (3) fair housing enforcement should emphasize remedies that end discrimination, provide redress, and promote future compliance with fair housing laws. Additionally, the FHJC recommends that appropriate standards be created to evaluate the fair housing training received by brokers and that such training be required of all brokers. Finally, the FHJC also recommends that source-of-income protection be included in New York State fair housing law.

New York ACORN, *Housing for Everyone: New York City, Section 8, and Source of Income Discrimination* (2007).

ACORN conducted three series of tests to document discrimination experienced by Section 8 voucher holders seeking to rent in New York City. Results indicated that only

a limited number (less than 21%) of property management companies offered apartments within voucher rent limits. Of these, less than half would accept a Section 8 voucher. In addition, only 13% of those apartments identified by common rental listing sources would accept vouchers. ACORN also found that over 40% of the units listed in the New York City Housing Authority's own rental materials were unavailable. To remedy this, ACORN recommends that New York City adopt source-of-income/Section 8 protection similar to that in place in a number of other states and cities.

Rachel Blake, *Illegal Steering in America: Who's at the Wheel?*, ABA Journal of Affordable Housing & Community Development Law. 16: 2 (2007).

There are numerous mechanisms in place that perpetuate residential segregation in the United States. For decades, researchers have recognized that real estate agents have been a driving force behind steering, a major contributing factor to segregation in the United States. Recent studies indicate that large numbers of real estate agents continue to violate the laws that prohibit steering, some with full knowledge that they are violating the law. Whether the agent is maliciously withholding information from Black home seekers or offering a friendly suggestion to white prospective purchasers, the result is the same. A real estate agent's willingness to flout civil rights laws helps keep America segregated. Attorneys practicing in the field of affordable housing and community development are practicing in an area where race and poverty are constantly present. Whether these issues are at the forefront of our practice or fade into the background obscured by loan documents, zoning ordinances, or HUD regulations, an understanding of the continuing presence and evolving nature of these issues is critical to our work. Specifically, the topic of segregation is critical to practitioners of affordable housing and community development law because it negatively impacts either our clients or the clients of our direct clients. Segregation also impacts each of us individually. We are impacted generally as members of a segregated society; and, despite the fact that we are attorneys, we are not immune from civil rights violations of any type, including steering.

Victoria Basolo, Mai Thi Nguyen, *Does mobility matter? The neighborhood conditions of housing voucher holders by race and ethnicity*, Housing Policy Debate, 16:3-4, 297-324, DOI: [10.1080/10511482.2005.9521546](https://doi.org/10.1080/10511482.2005.9521546) (2005)

Abstract: Mobility is one mechanism used to address the federal goals of deconcentrating poverty and minorities. The Housing Choice Voucher Program relies on participants to make residential location decisions consistent with these goals. Our research investigates the level and impact of mobility on the neighborhood quality of voucher holders, their neighborhood conditions by race and ethnicity, and perceived obstacles to mobility within the jurisdiction of a Southern California housing authority. About one-third of the sample moved during the study and moving resulted in improved neighborhoods for only one subset of movers. Minorities live in more impoverished, overcrowded neighborhoods than nonminorities, even when controlling for mobility status, contract rent, and other factors. Further, most voucher holders see the lack of rental units as a major obstacle to mobility. These findings suggest that current policy is

not uniformly achieving deconcentration and that real and perceived barriers to mobility exist, especially for minorities.

Isabelle M. Thabault & Eliza T. Platts-Mills, *Discrimination Against Participants in the Housing Choice Voucher Program: An Enforcement Strategy*, Poverty & Race Research Action Council (2006)

Summary: This article discusses the importance of enforcement strategies that include testing and litigation to open up housing opportunities to low-income families. The combination of rising rents and fewer available apartments abetted by discriminatory practices created a housing crisis for low-income tenants. The enforcement program described in this article can be replicated in other jurisdictions where local or state civil rights laws include source-of-income discrimination provisions.

Lawyers Committee for Better Housing, Inc., *Locked Out: Barriers to Choice for Housing Voucher Holders, Report on Section 8 Housing Choice Voucher Discrimination* (2002).

This study by Lawyers Committee for Better Housing seeks to substantiate the accounts of discrimination encountered by Section 8 voucher holders in the Chicago area. LCBH worked with two fair housing centers to conduct phone and in-person testing. The study finds that (1) voucher holders are routinely discriminated against, (2) evidence exists indicating increased discrimination against vouchers seeking to rent in an area designated by the Chicago Housing Authority as an “exception rent area,” and (3) evidence shows that vouchers face increased discrimination due to race and ethnicity. As a result, LCBH recommends: mandatory landlord education, education for voucher holders regarding their rights and remedies, increased enforcement of Chicago’s Fair Housing Ordinance, increased landlord testing for noncompliance with fair housing laws, greater inclusion source-of-income protection of county and state laws, and implementation of a media campaign to debunk myths of renting to voucher holders.

Meryl Finkel, Larry Buron, Abt Associates Inc., *Study on Section 8 Voucher Success Rates Volume I – Qualitative Study of Success Rates in Metropolitan Areas - Final Report*, U.S. Department of Housing and Urban Development Office of Policy Development and Research (2001)

Summary: Authors work to provide a national estimate of the success rate for Section 8 voucher holders in metropolitan areas and to compare success rates by demographic group and type of voucher issued. Authors also examine the role the tightness of a local housing market plays in success rates and in the time it takes successful voucher holders to lease a unit. In addition, authors examine the role specific PHA policies and procedures play in success rates. These policies and procedures include applicant screening criteria, the level at which the PHA sets the payment standard compared with HUD’s published Fair Market Rents (FMRs), and assistance provided to voucher holders searching for housing.

Susan J. Popkin & Mary K. Cunningham, The Urban Institute, *Searching for Rental Housing with Section 8 in Chicago Region* (2000).

This Urban Institute report examines the challenges facing a growing population of Section 8 voucher holders in Chicago and seeks to build on their 1999 study of unsuccessful voucher holders. The authors find that Chicago voucher holders have special needs as a group that will require a more intensive approach to housing counseling. Additionally, they find that few differences exist between those voucher holders who are successful at finding housing and those holders who are unsuccessful. Discrimination, financial barriers, and participants' personal problems create barriers to finding housing through Section 8 in Chicago. Housing authorities must strategize as to how these difficulties can be managed.

Susan J. Popkin & Mary K. Cunningham, The Urban Institute, *CHAC Section 8 Program: Barriers to Successful Leasing Up* (1999).

This Urban Institute study examines the reasons behind voucher holders' unsuccessful searches for housing in Chicago. The authors describe four types of discrimination: (1) racial discrimination; (2) discrimination against families with children; (3) discrimination against Section 8 tenants; and (4) discrimination against former public housing high rise residents now attempting to use Section 8 vouchers. Although the study found that many factors may contribute to families' difficulty in locating housing, discrimination against voucher holders particularly demonstrates the need for mobility services to facilitate the transition to less segregated housing.

James H. Carr, Fannie Mae Foundation, *The Complexity of Segregation: Why it Continues 30 Years After the Enactment of the Fair Housing Act*, *Cityscape: A Journal of Policy Development and Research*, Volume 4, Number 3, U.S. Dept of Housing and Urban Development (1999)

Summary: Author highlights the complexities of housing segregation, improvements that have been made, the impact of federal programs on segregation, mobility programs to achieve integration, the lingering problem of housing discrimination, and the cost of discrimination and segregation to society. Author argues three main points: (1) The Fair Housing Act was not designed to address segregation directly, so its ability to further promote integration, particularly where it is most intransigent, is limited, (2) current Federal housing programs aimed at reducing segregation have had only modest influence on segregation, and (3) government-supported initiatives to reduce segregation must address segregation directly, and not just discrimination.

David P. Varady, Carole C. Walker, *Vouchering out Distressed Subsidized Developments – Does Moving Lead to Enhanced Feelings of Safety?*, DOI: [10.1177/00139169921971976](https://doi.org/10.1177/00139169921971976) (1999)

Abstract: When families are provided with Section 8 vouchers or certificates, with moderate counseling and no program requirements as to where they should move, how far will they move and how successful will the moves be in terms of attaining greater feelings of safety? This article offers some answers to these questions through analysis of the experiences of households relocated from four distressed privately-owned subsidized

developments in Baltimore, Newport News, Virginia; Kansas City, Missouri; and San Francisco. Even though many of the residents chose to remain in the same area, most improved their situation in terms of safety by moving. The overwhelming majority reported that they felt safer at their new location, noting a lower incidence of crime, better neighbors, less loitering, and better security features. Thus, this article contends that inner-city families need not make long-distance moves toward the suburbs to enhance their sense of security.

Reynolds Farley, Charlotte Steeh, Maria Krysan, Tara Jackson, and Keith Reeves, *Stereotypes and Segregation: Neighborhoods in the Detroit Area*, American Journal of Sociology Vol. 100:3 (1994).

Two opposing hypotheses seek to explain why black-white residential segregation persists despite open housing laws. One perspective argues that discriminatory practices in the marketing of real estate are responsible. Another view contends that it is the preferences of both blacks and whites for their own neighborhoods that maintain segregation. Using data from the Detroit Area Study of 1976 and 1992, the authors test the hypothesis that stereotypes among whites play an important role in explaining their resistance to integrated neighborhoods. They conclude that stereotype use links white preferences to discriminatory real estate practices in a way that helps to explain the persistence of segregation in the Detroit area.

Other Resources

PRRAC'S Housing Mobility Webpage: www.prrac.org/projects/housingmobility.php

Housing mobility resources, program descriptions, and family stories: www.housingmobility.org

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