

PRRAC

Poverty & Race Research Action Council

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Expanding Choice: Practical Strategies For Building A Successful Housing Mobility Program

(www.prrac.org/projects/expandingchoice.php)

APPENDIX B: State, Local, and Federal Laws Barring Source-of-Income Discrimination *Updated September 2015*

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 work 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 has been regularly updated since then. Thanks also to Christie Marra and Helen O'Beirne Hardiman of the Virginia Poverty Law Center; LeAnna Ware, Wisconsin Equal Rights Division; Ed Johnson, Oregon Law Center; Mary Hahn, Washington Lawyer's Committee; Ralph Menendez, NJ Division of Civil Rights; Rachel Batterson, Vermont Legal Aid; Connie Pascale, NJ Legal Services; Marty Blaustein, Utah Legal Services; Ken Shiotani, NDRN; Michael Miller, Legal Aid Oklahoma; Jeffrey Dillman, Housing Research and Advocacy Center, Cleveland; Jay Wilkinson, Legal Aid of Minnesota, the Tenant Resource Center, WI, and Etienne Toussaint, Ebony Gayles, Lawrence Laws, Philip Tegeler, and Jason Small at PRRAC. If you discover any errors in this document or have additional material to add, please contact Etienne Toussaint at PRRAC (etoussaint@prrac.org).

Outline

I. STATE STATUTES

- A. [California](#)
- B. [Connecticut](#)
- C. [District of Columbia](#)
- D. [Maine](#)
- E. [Massachusetts](#)
- F. [Minnesota](#)
- G. [New Jersey](#)
- H. [North Dakota](#)
- I. [Oklahoma](#)
- J. [Oregon](#)
- K. [Utah](#)

- L. [Vermont](#)
- M. [Wisconsin](#)

II. LOCAL ORDINANCES

- A. [Cities in California](#)
 - A1. [Corte Madera](#)
 - A2. [East Palo Alto](#)
 - A3. [San Francisco](#)
- B. [Cities in Illinois](#)
 - B1. [Chicago](#)
 - B2. [Cook County](#)
 - B3. [Harwood Heights](#)
 - B4. [Naperville](#)
 - B5. [Urbana](#)
 - B6. [Wheeling](#)
- C. [Iowa City, Iowa](#)
- D. [Counties in Maryland](#)
 - D1. [Frederick](#)
 - D2. [Howard County](#)
 - D3. [Montgomery County](#)
- E. [Cities in Michigan](#)
 - E1. [Ann Arbor](#)
 - E2. [Hamburg](#)
 - E3. [Grand Rapids](#)
- F. [Saint Louis, Missouri](#)
- G. [Counties/Cities in New York](#)
 - G1. [Buffalo](#)
 - G2. [Hamburg](#)
 - G3. [Nassau Co](#)
 - G4. [New York City](#)
 - G5. [West Seneca](#)
 - G6. [Suffolk County](#)
- H. [Cities in Ohio](#)
 - H1. [Wickliffe](#)
- I. [Cities in Pennsylvania](#)
 - I1. [Borough of State College](#)
 - I2. [Philadelphia](#)
- J. [Memphis, Tennessee](#)
- K. [Austin, Texas](#)
- L. [Counties/Cities in Washington](#)
 - L1. [Bellevue](#)
 - L2. [King County](#)
 - L3. [Seattle](#)
- M. [Cities in Wisconsin](#)
 - M1. [Cambridge](#)
 - M2. [Dane County](#)
 - M3. [Madison](#)

- M4. [Ripon](#)
- M5. [Sun Prairie](#)
- M6. [Wauwatosa](#)
- N. [Miami-Dade County](#)

III. PROPOSED LEGISLATION

- A. [Hawaii](#)
- B. [Maryland](#)
- C. [New York](#)

D. IV. 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](#)

V. 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, the law is supplemented by ordinances in several California cities, including Los Angeles, San Francisco, East Palo Alto, Corte Madera, and Woodland, which do bar voucher discrimination.

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.

In California Government Code Section 12921(b): The opportunity to seek, obtain, and hold housing without discrimination because of source of income or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right.

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.

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

Amendments

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.

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

If you have a question, or believe you have been a victim of housing discrimination, you may contact:

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

Boston Office
(617) 994-6000

Worcester Office
(508) 799-8010

Springfield Office
(413) 739-2145

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 2003. MINN. STAT. ANN. § 363A.09.

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

The New Jersey's housing discrimination laws were amended in 2002 to include source of income discrimination.

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's discrimination laws: 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

The Oklahoma’s source of income discrimination law, 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 illegal discrimination law, OR. REV. STAT. § 659a.421, was passed in 1995.

The Housing Choice Act of 2013 was passed in 2013 (HB 2639). It will be effective 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

Oregon’s illegal discrimination law, OR. REV. STAT. § 659a.421, was passed in 1995.

Operative Language

OR. REV. STAT. § 659A.421:

“‘Source of income’ does not include federal rent subsidy payments under 42 U.S.C. 1437f, income derived from a specific occupation or income derived in an illegal manner.”

“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. . . .”

AMENDMENT WITH BILL: A landlord may not refuse to rent to an applicant or tenant, or treat an applicant or tenant differently from others, because their source of income is a Section 8 voucher or other form of housing assistance.

- o Under Oregon’s current fair housing law, a landlord cannot discriminate against an applicant or a tenant based on the tenant/applicant’s source of income. However, current law exempts housing assistance from the definition of the term “source of income.”
- o HB 2639 removes this exemption, effective July 1, 2014, and provides that Oregon’s “source of income” fair housing protections apply to applicants and tenants who are voucher holders or recipients of federal, state, or local housing assistance.
- o Under the new law, a landlord may not refuse to rent to a person or treat a person differently from other applicants or tenants because their source of income is a Section 8 voucher or other form of housing assistance.

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).

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.

Date Enacted

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

Relevant Cases

There are no cases citing the source of income provision. There are no cases pending. According to practitioners, the eviction laws favor landlords so extremely, that they are reluctant to take on section 8 recipients for fear of being subjected to additional federal requirements. If you are interested in additional information regarding Utah, please contact Marty Blaustein at mblaustein@utahlegalservices.org, (801) 328-8891 x 3328.

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.

Vermont

Vermont's source of income (referred to as public assistance) discrimination law is codified at VT. STAT. ANN. tit. 9, § 4503 and was passed in 1987.

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

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, Wisconsin state law has held that lawful source of income does not include Section 8 federal rent assistance. See *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272 (Wis. 1995).

Date Enacted

Wis. STAT. § 106.50 was amended in 1980 to include lawful source of income discrimination protection.

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

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 landlord from raising the rent after opting out of the Section 8 voucher program, was preempted by state law. The precedent created by this decision may also affect the source of income discrimination protections in the local ordinances below.

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

San Francisco:

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

Date passed: 07/31/1998

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

Attorneys fees: Discretionary

Illinois

Chicago:

Citation: Chicago Fair Housing Ordinance §5-08-030

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.”

Administrative or court enforcement: Both

Attorneys fees: Discretionary

Cook County:

Citation: Cook County Code of Ordinances Sec. 42-37, 42-38

Date passed: 5/8/2013 (and to become 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.”

*** After the new ordinance was passed on 5/8/2013, “source of income” now includes protections for Housing Choice Voucher Holders.

Administrative or court enforcement: Administrative

Attorneys fees: Yes

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

Attorneys 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

Maryland

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

Attorneys 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

Attorneys 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

Attorneys fees: Only upon finding of §27-8 violation.

Massachusetts

Note that Massachusetts also has a statewide voucher discrimination law

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

Attorneys 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].”

Michigan

Ann Arbor:

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

Date passed: 03/17/1978

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

Administrative or court enforcement: Both

Hamburg:

Citation: Hamburg Local Law Ch. 109-3

Date passed: 3/14/2005

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

Administrative or court enforcement: Court

Attorneys fees: Discretionary

Grand Rapids:

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

Date passed: 07/11/2000

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

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

Attorneys fees: Yes

Hamburg:

Citation: Hamburg General Code Ch. 109

Date passed: 3/14/2005

Operative Language: “Source of Income: Any income or source of rent payment from lawful sources.”

Administrative or court enforcement: Both

Attorneys fees: Yes

Nassau County:

Citation: Nassau County Administrative Code §21-9.7

Date passed: Dec. 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

Attorneys 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

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

Attorneys fees: Discretionary

Westchester:

Citation: Local Law No, 6057-2013, Chapter 700, Article II, Sec

Date passed: 06/17/2013

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.”

“‘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

Attorneys 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. District Court affirmed and held for HUD which penalized the county.

Suffolk County

[New York](#)

Effective January 21, 2015, the County adopted an amendment to its Human Rights Law that added “lawful source of income” to the list of discriminatory activities (text and citation pending).

Ohio

City of Wickliffe, Ohio:

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 6-8-09

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

Attorneys fees: None listed

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.

Attorneys 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

Attorneys fees: Yes

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

Attorneys 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

Attorneys fees: Yes

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)).

Seattle

Citation: Seattle Municipal Code 14.08.040

Date passed: 12/11/1989

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 program’ means a federal, state or local government program in which a tenant's rent is paid partially by the government program (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

Attorneys fees: Yes

Wisconsin

Note that Wisconsin also has a statewide voucher discrimination law

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.”

Note, however, that although it is ‘declared policy’ that source of income discrimination is impermissible, the subsequent sections of the code only specifically protect ‘race, color, religion, ancestry, national origin, handicap, marital status, sexual preference, sex, age, or place of birth.’”

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

Attorneys 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

Attorneys 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”

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

Attorneys 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.”

Administrative or court enforcement: Court

Other Local Ordinances

Wilmington, Delaware:

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

Date passed:

Operative Language: “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

Miami- Dade County, Florida:

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

Date passed: August 3, 2009 (updated November 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

Iowa City, Iowa:

Citation: Iowa City Code, Tit. 2, Ch 5, §1 et seq.

Date passed: 05/28/1997

Operative Language: “It shall be an unlawful or discriminatory practice for any person to: A. Refuse to sell, rent, lease, assign, sublease, refuse to negotiate or to otherwise make unavailable, or deny any real property or housing accommodation 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.”

Administrative or court enforcement: Both

Saint Louis, Missouri

Citation: St. Louis City Ordinance 67119

Date passed: 06/13/2006

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

Attorneys fees: Yes

Memphis, Tennessee:

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

Attorneys fees: yes

Austin, Texas:

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

Date passed: December 11, 2014; repealed by state legislation May, 2015

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 challenge to ordinance in court (*Austin Apartment Association v. City of Austin*) was followed by state legislative repeal.

Administrative or court enforcement: N/A

Attorneys fees: N/A

Relevant Case Law:

Austin Apartment Association v. City of Austin, Case No. A-14-CA-1146-SS (February 27, 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.

PROPOSED LEGISLATION

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 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 Senate Bill No. 3702

Status as of April 2014: Referred To Investigations and Government Operations

Operative Language: “The term “source of income”, when used in this article, means any lawful source of income paid directly or indirectly to a renter or buyer of housing, including:

- (a) any lawful profession or occupation;
- (b) any government or private assistance, grant or loan program;”

<http://open.nysenate.gov/legislation/bill/S3702-2011>

Citation: New York Senate Bill No. 2885

Status as of April 2014: Referred To Investigations and Government Operations

Operative Language: The term “lawful source of income” shall include, but not be limited to, the federal housing subsidy known as “section eight”.

<http://open.nysenate.gov/legislation/bill/S2885-2011>

Citation: New York Assembly Bill No. 10163

Status as of April 2014: Amended on third reading

Operative Language: “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.”

http://assembly.state.ny.us/leg/?default_fld=&bn=A10163&term=2011&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y

Citation: New York Assembly Bill No. 3812

Status as of November 2012: Introduced January 2011

Operative Language: “he term “source of income”, when used in this article, means any lawful source of income paid directly or indirectly to a renter or buyer of housing, including:

- (a) any lawful profession or occupation;
- (b) any government or private assistance, grant or loan program;”

<http://assembly.state.ny.us/leg/?bn=A03812&term=2011>

Citation: New York Assembly Bill No. 1121

Status as of April 2014: Referred To Investigations and Government Operations

Operative Language: “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.”

http://assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=1121&term=2011&Summary=Y&Actions=Y&Votes=Y

FEDERAL LAWS PROHIBITING DISCRIMINATION AGAINST HOUSING CHOICE VOUCHER FAMILIES

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)”

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.”

HUD Regulations and Notices

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)

Neighborhood Stabilization Act of 2008 – engrossed and referred to Senate committee

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.

ADDITIONAL RESOURCES

Annotated Bibliography: Law Reviews and Studies

Law Review Articles on Source-of-Income Discrimination

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.

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.

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.

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.

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.

Related Law Review Articles

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.

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.

Kristine L. Zeabart, Note, *Requiring a True Choice in Housing Choice Voucher Programs*, 79 Ind. L.J. 767 (2004).

Author offers an overview of the *Gautreaux* litigation and suggests that its remedies should be adopted by HUD, ensuring metropolitan-wide mobility. Author also argues that the HCVP is inadequate to meet its goals of increasing disbursement of public housing residents throughout an area and decreasing segregation. In looking at segregation, focus is given to the individual, community, and programmatic barriers that limit true housing choice. Through increased counseling, heightened enforcement against hate crimes, mobility grants, and equity insurance, the government may better promote low-income renters' moves to integrated areas. At the same time, the continued need for public housing stock suggests the possibility of redevelopment of demolished buildings as mixed communities.

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).

Margery Austin Turner et al., *Housing Discrimination against Racial and Ethnic Minorities 2012* (2013) available at http://www.huduser.org/portal/Publications/pdf/HUD-514_HDS2012.pdf

This summary report presents findings from HUD's fourth such study of discrimination by private real estate agents and rental properties, which applied paired-testing methodology in 28 metropolitan areas to measure the incidence and forms of discrimination experienced by black, Hispanic, and Asian renters and homebuyers. They found that while the most blatant forms of housing discrimination have declined, their data demonstrates that well-qualified minority homeseekers are just as likely as equally qualified white homeseekers to get an appointment and learn about at least one available housing unit, but minority homeseekers are told about and shown fewer homes and apartments than whites.

Recent Studies of Source-of-Income Discrimination

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.

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.

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.

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.

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.

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.

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.

Other Resources

The web site of the National Housing Law Project (<http://www.nhlp.org>). Click on "Section 8" and "Source of Income Discrimination Protections for Section 8 Tenant-Based Assistance in California," which contains both California and national information regarding source of income.

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

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