

# PRRAC

## *Poverty & Race Research Action Council*

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

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

*Updated August 2017*

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

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## STATE LAWS

### California

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

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

The state law is augmented by ordinances in several California cities, including Los Angeles, San Francisco, East Palo Alto, Corte Madera, and Woodland, which do explicitly bar voucher discrimination.

#### **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.

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## Connecticut

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

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

### **Date Enacted**

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

### **Relevant Case Law**

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

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

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

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

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

### **Operative Language**

Conn. Gen. Stat. Ann. § 46a-63:

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

### **Enforcement Process**

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

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

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

### **Attorney’s Fees**

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

### **Organizations Helping Victims of Discrimination**

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

## Delaware

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

### Date Enacted

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

### Relevant Case Law

N/A

### Operative Language

4601. Declaration of purpose and construction.

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

4602. Definitions.

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

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

4607. Exemptions in certain situations.

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

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

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

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

§5116, Title 25. Fair housing provisions.

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

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

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

### **Enforcement Process**

Title 6. § 4612 Enforcement by Commission.

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

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

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

### **Attorney's Fees**

Yes

### **Organizations Helping Victims of Discrimination**

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

## **District of Columbia**

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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](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>

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## **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

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

### **Date Enacted**

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

### **Relevant Case Law**

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

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

### **Operative Language**

Mass. Gen. Laws Ann. ch. 151B § 4:

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

### **Enforcement**

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

### **Attorney’s Fees**

Mass. Gen. Laws Ann. ch. 151B § 9 requires that a prevailing petitioner be awarded reasonable attorney’s fees and costs “unless special circumstances would render such an award unjust.” *See also, Bandera v. City of Quincy*, 220 F. Supp. 2d 26 (D. Mass. 2002). (holding that mediation fees were includable as part of the reasonable attorney fees and costs allowed by court under Massachusetts civil rights statute).

### **Organizations Helping Victims of Discrimination**

- **Massachusetts Commission Against Discrimination** ([www.state.ma.us/mcad/](http://www.state.ma.us/mcad/))

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

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

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### **Minnesota**

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

#### **Date Enacted**

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

#### **Relevant Case Law**

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

#### **Operative Language**

MINN. STAT. ANN. § 363A.09:

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

#### **Enforcement:**

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

- The department can issue complaints, receive and investigate charges alleging unfair discrimination, determine whether probable cause exists for a hearing, subpoena witnesses,

take testimony, require production of materials for examination, attempt to eliminate unfair discriminatory practice (Sec. 363A.06).

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

### **Attorney's Fees**

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

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## **New Jersey**

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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.

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## **North Dakota**

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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.

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## **Oklahoma**

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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.

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## **Oregon**

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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.

- 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). The aggrieved party can also sue and recover compensatory damages or \$200, whichever is greater, punitive damages and attorney fees. *See* ORS 649A.885 (1) and (3).

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## **Utah**

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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. Utah has introduced a bill which would explicitly exclude vouchers from their definition of source of income.

### **Date Enacted**

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

### **Operative Language:**

UTAH CODE ANN. § 57-21-5:

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

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

### **Enforcement:**

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

### **Attorney's Fees**

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

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## **Vermont**

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### **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

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## Wisconsin

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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**

1980

### **Relevant Case Law**

*Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272 (Wis. 1995) (finding that Section 8 federal rent assistance vouchers were not “lawful source of income” within meaning of Wisconsin Open Housing Act provision prohibiting landlords from discriminating in housing on basis of lawful source of income).

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

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

### **Statutory Language**

WIS. STAT. § 106.50 - Open housing

“(1) Intent. It is the intent of this section to render unlawful discrimination in housing. It is the declared policy of this state that all persons shall have an equal opportunity for housing regardless of sex, race, color, sexual orientation, disability, religion, national origin, marital

status, family status, lawful source of income, age or ancestry and it is the duty of the political subdivisions to assist in the orderly prevention or removal of all discrimination in housing through the powers granted under ss. 66.0125 and 66.1011. . . .”

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

### **Enforcement**

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

### **Attorney’s Fees**

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

### **Organizations Helping Victims of Discrimination**

#### **Fair Housing Council**

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

## LOCAL LAWS AND ORDINANCES

### Cities in California\*

\*Please consult a California attorney for advice on the applicability of the following local ordinances. The case of *Apartment Ass'n, Inc. v. City of Los Angeles*, 136 Cal. App. 4th 119 (2006) held that a Los Angeles ordinance, LAMC 151.04, which prohibits landlords from raising the rent after opting out of the Section 8 voucher program, was preempted by state law. The precedent created by this decision may also affect the source of income discrimination protections in the local ordinances below.

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#### Berkeley:

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**Citation:** Berkeley Municipal Code Chapter 13.31

**Date passed:** 7/27/2017

**Operative Language:**

Section 13.31.20 Discrimination based on source of income is prohibited.

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

A. Refuse to rent or lease a housing accommodation, or access to or use of the common areas and facilities of the housing accommodation, serve a notice of termination of tenancy, commence an unlawful detainer action, or otherwise deny to or withhold from any person or persons, a housing accommodation on the basis of source of income;

B. Represent to any person, on the basis of source of income, that a housing accommodation is not available for inspection or rental when such housing accommodation is in fact available for inspection or rental, or to require different terms for such transactions on the basis of source of income;

C. Make, print, or publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a housing accommodation offered by that person that indicates any preference, limitation, or discrimination with respect to source of income; or

D. To use a financial or income standard for rental housing that:

1. Privileges income earned directly by the tenant or prospective tenant, or rental payments made directly by the tenant or prospective tenant over housing assistance.
2. Discounts or discriminates against housing assistance payments.
3. Fails to account for the aggregate income of persons residing together or proposing to reside together or an aggregate income of tenants or prospective tenants and their cosigners or proposed

cosigners on the same basis as the aggregate income of married persons residing together or proposing to reside together.”

**Administrative or court enforcement:** Both; civil and criminal enforcement

Attorney’s fees: Yes

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**Corte Madera:**

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**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)

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**East Palo Alto:**

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**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

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**Marin County:**

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**Citation:** Marin County Code Chapter 5.53

**Date passed:** 3/21/2017

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

5.53.010- Housing.

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

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

**Administrative or court enforcement:** Both; civil and criminal enforcement

Attorney’s fees: Yes

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**San Francisco:**

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**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

**Attorney’s fees:** Discretionary

**Legal challenges:** §3304 withstood a legal preemption challenge relating to California Government Code §12955 at the trial level and is pending appeal. Search California Court of Appeal, First Appellate District, Div. 2 at Case No. A149136 (*S.F. v. Post*).

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**Santa Clara County:**

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**Citation:** Santa Clara County Ordinance No. NS-507.1

**Date passed:** 4/25/2017

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

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

**Administrative or court enforcement:** Both

**Attorney’s fees:** Yes

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**Santa Monica:**

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

**Date passed:** 2015

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

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

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

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

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

**Administrative or court enforcement:** Both

**Attorney’s fees:** Yes

## Delaware

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### Wilmington, Delaware:

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**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

## Florida

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**Miami- Dade County, Florida:**

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**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

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**Counties/Cities in Illinois**

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**Chicago:**

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

**Date passed:** 1990

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

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

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

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**Cook County:**

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

**Date passed:** 5/8/2013 (and 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.” Sec. 42-31.

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

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

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

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

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### Harwood Heights:

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**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

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### Naperville:

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**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

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**Urbana:**

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**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.

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**Wheeling:**

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**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

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**Iowa**

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**Iowa City, Iowa:**

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**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

### Counties/Cities in Maryland

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#### Annapolis:

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**Citation:** Annapolis Code of Ordinances, Chapter 11.32.030

**Date passed:** 2007 or 2009

**Operative Language:** “It is an unlawful housing practice:

A. For any person:

4. Otherwise to deny or withhold any housing unit from any person because of the person's race, color, religion, disability, familial status, sexual orientation, gender identity, marital status, sex, lawful income or national origin,

5. To include in the terms, conditions or privileges of any sale, lease, sublease, rental, assignment or other transfer of any housing unit any clause, condition or restriction discriminating against any person in the use or occupancy of such housing unit because of race, color, religion, disability, familial status, sexual orientation, gender identity, marital status, sex, lawful income, or national origin,

6. To discriminate in the furnishing of any facilities, repairs, improvements or services, or in the terms, conditions, privileges or tenure of occupancy of any housing unit because of race, color, religion, disability, familial status, sexual orientation, gender identity, marital status, sex, lawful income, or national origin.”

**Administrative or court enforcement:** Both

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#### Baltimore:

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**Citation:** Baltimore City Code, § 2B-25

**Date passed:** 6/30/2014

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

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

(1) refuse to sell or rent, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of that person’s source of income;

(2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of that person's source of income;

(3) make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on the source of income that may be used to pay rent;

(4) represent to any person, because of that person's source of income, that any dwelling is not available for inspection or rental when the dwelling is available; or

(5) for profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person using a particular source of income.

(b) Projects receiving cost offsets for affordable housing.

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

(1) refuse to sell or rent, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of that person's source of income;

(2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of that person's source of income;

(3) make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on the source of income that may be used to pay rent;

(4) represent to any person, because of that person's source of income, that any dwelling is not available for inspection or rental when the dwelling is available; or

(5) for profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person using a particular source of income.”

**Administrative or court enforcement:** Administrative

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**Frederick:**

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**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

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**Frederick County:**

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

**Date passed:** April 21, 2009

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

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

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

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

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

**Administrative or court enforcement:** Both

**Attorneys fees:** Yes

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**Howard County:**

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**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

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**Montgomery County:**

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**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.

## Cities in Massachusetts

Note that Massachusetts also has a statewide voucher discrimination law

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### Boston:

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**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

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### Cambridge:

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**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

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### Quincy:

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**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

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**Revere:**

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**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].”

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**Cities in Michigan**

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**Ann Arbor:**

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**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

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**Hamburg:**

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**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

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**Grand Rapids:**

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**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

## Minnesota

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### Minneapolis

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

**Date passed:** Adopted March 24, 2017; Effective January 2018

**Operative Language:**

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

(a) *Findings.* The council finds that discrimination in employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment, sexual orientation, gender identity, disability, age, marital status, or status with regard to public assistance or familial status adversely affects the health, welfare, peace and safety of the community. Such discriminatory practices degrade individuals, foster intolerance and hate, and create and intensify unemployment, substandard housing, undereducation, ill health, lawlessness and poverty, thereby injuring the public welfare.

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

(1) To recognize and declare that the opportunity to obtain employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services without discrimination based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment, sexual orientation, gender identity, disability, age, marital status, or status with regard to public assistance or familial status is a civil right.

(2) To prevent and prohibit all discriminatory practices based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment, sexual orientation, gender identity, disability, age, marital status, or status with regard to public assistance with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations or public services.

(3) To prevent and prohibit all discriminatory practices based on familial status with respect access to real estate and services related to real estate.

(4) To protect all persons from discrimination and from unfounded charges of discriminatory practices.

(5) To eliminate existence and the development of any ghettos in the community.

(6) To effectuate the foregoing policy by means of public information and education, mediation and conciliation, and enforcement.

(c) *Effective date of 2006 amendments.* Each provision in this chapter that was amended in 2006 shall apply to any complaint or charge alleging conduct occurring on or after July 1, 2006, except when such a provision is superseded through a subsequent amendment. The ordinance as enacted prior to the 2006 amendments shall continue to apply to any complaint or charge alleging conduct arising before July 1, 2006.

(d) *Effective date of first quarter 2017 amendments.* Each provision in this chapter that was amended in the first quarter of 2017 shall apply to any complaint or charge alleging conduct occurring on or after January 1, 2018, except when such a provision is superseded through a subsequent amendment. The ordinance as enacted prior to the 2017 first quarter amendments shall continue to apply to any complaint or charge alleging conduct arising before January 1, 2018.

139.40. - Acts of discrimination specified.

(e) *Discrimination in real estate.* For an owner, lessee, sublessee, managing agent of, real estate broker, real estate salesperson or other person having the right to sell, rent or lease any property, or any agent or employee of any of these:

(1) To refuse to sell, rent or lease, to offer for sale, rental or lease, or otherwise deny or withhold any real property to or from any person or group of persons or to refuse to negotiate for the sale, rental or lease of any real property to any person or group of persons because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, status with regard to public assistance or familial status familial status, status with regard to a public assistance program, or any requirement of a public assistance program. It is an affirmative defense if the refusal, denial, or withholding is due to a requirement of a public assistance program and that requirement would impose an undue hardship. The department may promulgate rules or regulations establishing standards for undue hardship determinations.”

**Administrative or court enforcement:** Both

**Attorneys fees:** Yes

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**Missouri**  
**Saint Louis, Missouri**

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**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

**Counties/Cities in New York**

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**Buffalo:**

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**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

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**Hamburg:**

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**Citation:** Hamburg General Code Ch. 109

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

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

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

**Administrative or court enforcement:** Both

**Attorneys fees:** Yes

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**Nassau County:**

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**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

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**New York City:**

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**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

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### **Suffolk County:**

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

**Date passed:** January 21, 2015

### **Operative Language:**

A. “It shall be an unlawful discriminatory practice:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any individual or group of individuals any housing accommodation, constructed or to be constructed, land or commercial space, or an interest therein, or refuse to negotiate for the sale, rental or lease of any housing

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

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

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

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

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

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

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

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space, or an interest therein, to any individual or group of individuals or to refuse to negotiate for the sale, rental or lease of any housing accommodation, land or commercial space, or an interest therein, to any individual or group of individuals because of the group identity, veteran status, status as a victim of domestic violence or because of the lawful source of income of such individual or group of individuals, or to represent that any housing accommodation, land or commercial space,

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

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

### C. Exceptions.

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

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

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

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

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

**Administrative or court enforcement:** Both

**Attorneys fees:** ?

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## Syracuse

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

**Date passed:** December 5, 2016

**Operative Language:**

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

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

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

**Administrative or court enforcement:** Both

**Attorneys fees:** Yes

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**Westchester County:**

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

**Date passed:** 06/17/2013

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

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

**Administrative or court enforcement:** Both

**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).<sup>1</sup> 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.

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### West Seneca:

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**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

### Cities in Ohio

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#### Linndale:

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**Citation:** Chapter 515, codified ordinances of Linndale, Ohio

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

**Operative Language: 515.01 Determination of Policy.** “It is hereby determined to be the continuing policy of the Village of Linndale to do all things necessary and proper to secure for all its citizens their right to equal housing opportunities regardless of their race, color, religion,

sex, familial status, as defined in Section 4112.01 of the Ohio Revised Code, national origin, disability as defined in that section, ancestry, military status, sexual orientation, gender identity, and source of income.”

**Administrative or court enforcement:** Both

**Attorneys fees:** ?

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### South Euclid:

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

**Date passed:** Ord. 07-15. Passed 9-30-15.

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

**Administrative or court enforcement:** Both

**Attorneys fees:** Yes

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### University Heights:

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

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

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

**Administrative or court enforcement:** Both

**Attorneys fees:** Yes

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**Warrensville Heights:**

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

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

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

**Administrative or court enforcement:** Both

**Attorneys fees:** None listed

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**Wickliffe:**

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**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

**Cities in Pennsylvania**

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**Borough of State College:**

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**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

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### Philadelphia:

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**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

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### Pittsburgh:

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

**Date passed:** December 15, 2015

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

**Administrative or court enforcement:**

**Attorneys fees:**

### Tennessee

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## Memphis:

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**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

## Cities in Texas

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

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## Austin:

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

**Date passed:** December 11, 2014

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

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

**Date passed:** September 1, 2015

**Operative language:** REGULATION OF RENTAL OR LEASING OF HOUSING ACCOMMODATIONS. Except as provided by this section, a municipality or county may not adopt or enforce an ordinance or regulation that prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because

the person's lawful source of income to pay rent includes funding from a federal housing assistance program.

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

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

### **Relevant Case Law:**

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

*Inclusive Communities Project v. Governor Greg Abbott*, No. 3:17-cv-440 (complaint alleging the Texas statute, “Tex. Local Gov’t Code § 250.007” outlawing local source of income discrimination laws violates the 14th Amendment to the U.S. Constitution and the Fair Housing Act.). See Complaint here : [www.prrac.org/pdf/ICP\\_Complaint\\_-\\_state\\_preemption\\_of\\_SOI\\_ordinance.pdf](http://www.prrac.org/pdf/ICP_Complaint_-_state_preemption_of_SOI_ordinance.pdf).

In August, 2017, the Austin City Council also voted to sue the state of Texas for prohibiting source of income protections. See article [here](#).

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### **Dallas:**

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

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

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

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

**Operative language:**

**SEC. 20A-2. DECLARATION OF POLICY.**

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

**SEC. 20A-3. DEFINITIONS.**

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

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

**SEC. 20A-4.1. HOUSING VOUCHER INCENTIVES.**

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

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

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

See ordinance for defenses, complaint procedure, etc.

**Administrative or court enforcement:** Both

**Attorneys fees:** Yes

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

Sec. 250.007. REGULATION OF RENTAL OR LEASING OF HOUSING

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

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

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

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

**Relevant Case Law :** *Inclusive Communities Project v. Governor Greg Abbott*, No. 3:17-cv-440 (complaint alleging the Texas statute, “Tex. Local Gov’t Code § 250.007” outlawing local source of income discrimination laws violates the 14th Amendment to the U.S. Constitution and the Fair Housing Act.). See Complaint here : [www.prrac.org/pdf/ICP\\_Complaint\\_-\\_state\\_preemption\\_of\\_SOI\\_ordinance.pdf](http://www.prrac.org/pdf/ICP_Complaint_-_state_preemption_of_SOI_ordinance.pdf).

### Counties/Cities in Washington

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#### Bellevue

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**Citation :** Bellevue City Code 9.20.045

**Date passed:** 1/30/1990

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

**Administrative or court enforcement:** Both

**Attorney’s fees:** No

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## King County

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**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

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## Kirkland

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**Citation:** Kirkland Municipal Code 1.12.020 Chapter 7.74

**Date passed:** March 19, 2013

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

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## Redmond

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**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))."

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### Seattle

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\*\*Mayor Murray proposed legislation to expand the ordinance on April 19, 2016 to add all legal and verifiable non-wage sources of income.\*\*

**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

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### Tumwater

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**Citation:** Tumwater Municipal Code 5.70

**Date passed:** 2010

**Operative Language:** "It is declared to be the policy of the city in the exercise of its police power for the public safety, public health, and general welfare, for the maintenance of business and good government and for the promotion of the city's trade, commerce and manufacturers, to assure equal opportunity to all persons to live in decent housing facilities regardless of race, color, religion, ancestry, national origin, gender, any sensory, mental, or physical disability,

familial status, marital status, sexual orientation or use of federal housing assistance, and to that end to prohibit discrimination in housing by any person, including real estate brokers, real estate salesmen and agents, owners of real property and lending institutions, to forward the cause of community, and to secure a reduction of all tensions and discriminations because of race, color, religion, national origin, gender, any sensory, mental, or physical disability, familial status, marital status, sexual orientation or use of federal housing assistance.”

**Administrative or court enforcement:** Both

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## Vancouver

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**Citation:** Vancouver Municipal Code 8.45

**Date passed:** September 2015

**Operative Language:**

Section 8.45.010      Definitions

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

Section 8.45.020      Refusal to rent based on source of income prohibited

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

Section 8.45.030 Exceptions

“Nothing in this chapter shall:

A. Apply to the renting, subrenting, leasing, or subleasing of a portion of a single-family dwelling, wherein the owner or person entitled to possession thereof maintains a permanent residence, home or abode therein;

B. Be interpreted to prohibit any person from making a choice among prospective tenants on the basis of factors other than the source of income; 1. If income screening criteria are elected to be used, any source of income in the form of a rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating if the income criteria have been met.

C. Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on the basis of race, color, national origin or other illegal discriminatory basis;

D. Be construed to prohibit treating people with disabilities more favorably than people who do not have disabilities;

E. Be construed to protect criminal conduct; or

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

### Cities in Wisconsin

#### Relevant Case Law:

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

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### Cambridge

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**Citation:** Village of Cambridge Wisconsin Code of Ordinances § 9.36.010

#### Date passed:

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

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

**Administrative or court enforcement:** Administrative

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### Dane County

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**Citation:** Dane County Code Ch. 31

**Date passed:** 8/6/1987

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

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

**Attorneys fees:** No

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### Madison

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**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

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### Ripon

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**Citation:** Ripon Municipal Code § 12.48

**Date passed:** 12/21/1988

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

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

**Administrative or court enforcement:** Administrative

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### Sun Prairie

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**Citation:** Sun Prairie Code of Ordinances § 9.20.010

**Date passed:** 10/6/2007

**Operative Language:** “‘Protected class’ includes persons of a specific race, color, religion, ancestry, national origin, sex, handicap, sexual preference, marital status of person maintaining a household, lawful source of income, place of birth, age or other federal or state designated protected classes for purposes of fair housing.”

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

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

**Administrative or court enforcement:** Administrative

**Attorney’s fees:**

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### Wauwatosa

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**Citation:** Wauwatosa Municipal Code § 15.22

**Date passed:** 8/5/1986

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

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

**Administrative or court enforcement:** Court

# STATE AND LOCAL INCENTIVES TO PROMOTE ACCEPTANCE OF HOUSING CHOICE VOUCHERS

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## ILLINOIS

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

**Date Passed:** August 15, 2014

**Operative Language:** Housing opportunity area abatement program.

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

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

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

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

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

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

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

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

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

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## VIRGINIA

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

**Date Passed:** March 7, 2016

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

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

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

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

F. In no case shall the amount of credit taken by a participating landlord for any taxable year exceed the total amount of tax imposed by this chapter for the taxable year. If the amount of

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

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

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

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## WASHINGTON

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

**Date Passed:** April 18, 2016

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

### WHO CAN APPLY?

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

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

The rented unit/property in question must also be located in a jurisdiction that prohibits landlords from denying tenancy based solely on the tenant's source of income. To the Department of

Commerce's knowledge, the following locations currently have such protections in place. We recommend you check with authorities in your community, as local landlord-tenant ordinances vary and may change.

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

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

#### HOW MUCH CAN I BE REIMBURSED?

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

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

#### WHAT DAMAGES ARE COVERED?

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

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

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

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

of mitigation assistance provided to landlords in order to determine if there have been any overpayments.

#### WHAT IS THE PROCESS FOR APPLYING AND RECEIVING THE FUNDS?

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

Within 30 days of receiving financial assistance from the Department of Commerce, the landlord must file a **satisfaction of judgment** in the amount of assistance received from Commerce. A "partial satisfaction" must be filed if the judgment is *more* than the amount received. The landlord must file satisfaction documents in the court that issued the judgment against the tenant. Landlords have 40 days from the date they received assistance to deliver a copy of the filed satisfaction of judgment to the Department of Commerce. If the assistance received from the department did not cover the full amount of the judgment, the landlord may pursue other means to complete the judgment.”

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

## PROPOSED LEGISLATION

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### HAWAII

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

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### MARYLAND

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

Introduced on February 8, 2016

**Operative Language:** “FOR the purpose of expanding the housing policy of the State to include providing for fair housing to all citizens regardless of source of income; prohibiting a person from refusing to sell or rent a dwelling to any person because of source of income; establishing certain qualifications and limitations on the general prohibition against discrimination in housing based on source of income; prohibiting a person from discriminating against any person in the terms, conditions, or privileges of the sale or rental of a dwelling because of source of income; prohibiting a person from making, printing, or publishing certain types of materials with respect to the sale or rental of a dwelling that indicate a preference, limitation, or discrimination on the basis of source of income; prohibiting a person from falsely representing that a dwelling is not available for inspection, sale, or rental based on source of income; prohibiting a person from

inducing or attempting to induce, for profit, a person to sell or rent a dwelling by making certain representations relating to the entry or prospective entry into the neighborhood of a person having a particular source of income; prohibiting a person whose business includes engaging in residential real estate transactions from discriminating against any person in making available a transaction, or in the terms or conditions of a transaction, because of source of income; prohibiting a person from denying a person, based on source of income, access to or membership or participation in, a service, an organization, or a facility relating to the business of selling or renting dwellings or from discriminating against a person in the terms or conditions of membership or participation; prohibiting a person from, by force or threat of force, willfully injuring, intimidating, or interfering with any person because of source of income and because the person is negotiating for the sale or rental of any dwelling or participating in any service relating to the business of selling or renting dwellings; defining a certain term; providing that this Act does not limit the rights or remedies that are otherwise available to a landlord or tenant under any other law; and generally relating to prohibitions against discrimination in housing based on source of income.”

**Citation:** Maryland House Bill 168

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

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

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

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

**Citation:** Maryland Senate Bill No. 643

**Status as of April 2014:** Referred to Committee

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

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

**Citation:** Maryland Senate Bill No. 487

**Status as of April 2014:** Recommitted to Judicial Proceedings

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

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

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## NEW YORK

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**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](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](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**

### **Capital Magnet Fund**

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

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

### **HOME Program**

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

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

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

#### **24 CFR 92.252(d):**

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

### **Low-Income Housing Tax Credit Program (LIHTC)**

#### **26 U.S.C. § 42(h)(6)(B)(iv):**

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

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

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

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

“(c) Certification and review provisions—

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

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

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

**Mark-to-Market**

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

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

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

**Multifamily Properties Purchased from HUD**

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

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

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

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

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

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

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

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

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

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

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

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

## **National Housing Trust Fund**

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

## **Neighborhood Stabilization Act of 2008 – 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.

## **[Related law: The Equal Credit Opportunity Act]**

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

## 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.

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

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

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

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

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

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

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

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

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

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

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

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

Public sources of income that are targeted vary, but include everything from Social Security and unemployment compensation to food stamps, Temporary Assistance for Needy Families (TANF), and Section 8 housing participation; private sources include alimony and child support.<sup>8</sup> Section 8 is perhaps the most well known of these federal income support programs: each year, over two million Section 8 vouchers are distributed to qualifying individuals and families.<sup>9</sup> However, the Department of Housing and Urban Development (HUD) reports that in spite of the high number of vouchers distributed, approximately one-third of vouchers are returned unused.<sup>10</sup> Low-income families and individuals who are denied housing on account of their vouchers are not left with many

housing opportunities.<sup>183</sup> SOI discrimination harms people who pay their rents with income received through trusts, legal settlements and third-party payers. [...] success in curbing discrimination and improving the social welfare could emerge from this single change in housing discrimination policy.

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

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

Part II of this note summarizes the history of the relevant federal housing programs and Congress' periodic attempts to adjust and maintain these programs. Part III discusses whether application of the Massachusetts voucher discrimination law to expiring project-based contracts is a viable cause of action. Part IV analyzes the interaction of the Massachusetts voucher discrimination law with federal statutes and regulations, and whether federal law precludes application of the voucher discrimination law. Part V discusses alternative means of preserving expiring project-based units. Part VI concludes that while the voucher discrimination law may not be an effective tool for preserving project-based contracts, other alternatives may be applied with some success.

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.

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

The use of an administrative burden defense by defendants in a source of income discrimination case is wholly unsupported, and unsupportable, under the relevant laws. Not one of the seven state or local source of income laws analyzed provides an exception

based upon administrative requirements or burdens. Creating an exception based upon these burdens would provide landlords with an easy ground upon which to evade compliance, rendering source of income protections nugatory. For a court to permit such an exception would be to nullify the laws, to render them meaningless by judicial fiat. This article examines existing source of income laws and analyzes the defense of administrative burden under those laws, concluding that there is no basis for this defense, with numerous independently dispositive grounds for rejecting it out of hand. Part I provides background on source of income discrimination in the United States. Part II provides an analysis of every case to date that has examined the administrative burden defense under source of income laws. Part III concludes by reviewing the multiple grounds upon which courts have found--and should find--the administrative burden defense impermissible.

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

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

### **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](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

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

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

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.

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

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

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

There are numerous mechanisms in place that perpetuate residential segregation in the United States. For decades, researchers have recognized that real estate agents have been a driving force behind steering, a major contributing factor to segregation in the United States. Recent studies indicate that large numbers of real estate agents continue to violate the laws that prohibit steering, some with full knowledge that they are violating the law. Whether the agent is maliciously withholding information from Black home seekers or offering a friendly suggestion to white prospective purchasers, the result is the same. A real estate agent's willingness to flout civil rights laws helps keep America segregated. Attorneys practicing in the field of affordable housing and community development are practicing in an area where race and poverty are constantly present. Whether these issues are at the forefront of our practice or fade into the background obscured by loan documents, zoning ordinances, or HUD regulations, an understanding of the continuing presence and evolving nature of these issues is critical to our work. Specifically, the topic of segregation is critical to practitioners of affordable housing and community development law because it negatively impacts either our clients or the clients of our

direct clients. Segregation also impacts each of us individually. We are impacted generally as members of a segregated society; and, despite the fact that we are attorneys, we are not immune from civil rights violations of any type, including steering.

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](http://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, *The Impact of Source of Income Laws on Voucher Utilization*, HUD Office of Policy Development and Research Report, (2011). Available at: [https://www.huduser.gov/publications/pdf/freeman\\_impactlaws\\_assistedhousingrcr06.pdf](https://www.huduser.gov/publications/pdf/freeman_impactlaws_assistedhousingrcr06.pdf)

Vouchers are lauded both for being the most efficient way of delivering housing assistance to needy households and for the potential to allow poor households to access

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

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.

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.

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

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

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

Vouchers have come to be seen as a tool for promoting economic and racial/ethnic integration. Discrimination based on Source of Income (SOI), however, could hinder the use of vouchers to move to more desirable neighborhoods. State and local SOI anti-discrimination laws (SOI laws) are one policy response to address this issue. SOI laws make it illegal for landlords to discriminate against voucher recipients solely on the basis of their having a voucher. The research presented here tested whether SOI laws in the

USA improve locational outcomes for voucher recipients. This research found that the impacts of SOI laws on locational outcomes are mixed. We found substantively important reductions in neighborhood poverty rates associated with the implementation of SOI laws and small but statistically significant reductions in minority concentration as well. The concentration of voucher recipients in a neighborhood, however, does not appear to be related to SOI law implementation.

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

The housing choice voucher program was designed with two main goals in mind: to eliminate concentrations of poverty and the social problems it causes and to provide poor households with greater access to higher-opportunity neighborhoods. However, research suggests that voucher holders would like to move to higher-opportunity neighborhoods, but often are unable to do so. One of the most prominent reasons for this is that, in most cities and states, local law allows landlords to discriminate against potential tenants on the grounds of their “source of income” (SOI). This article reviews the literature on discrimination of voucher recipients and the potential for SOI antidiscrimination laws to mitigate some of these negative outcomes.

### **Other Resources**

PRRAC’S Housing Mobility Webpage: [www.prrac.org/projects/housingmobility.php](http://www.prrac.org/projects/housingmobility.php)

Housing mobility resources, program descriptions, and family stories: [www.housingmobility.org](http://www.housingmobility.org)

## Acknowledgments

This compilation updates research originally compiled by PRRAC in 2009 and also drawing on earlier documents prepared by the National Housing Law Project and the Center for Policy Alternatives. PRRAC staff who have helped to compile this directory include LaKeeshia Fox, Etienne Toussaint, Lawrence Laws, Jessica Smiley, Pooja Patel, Ebony Gayles, Phil Tegeler, and Jason Small. We are especially grateful for the contributions and corrections of many of our legal services colleagues in the Housing Justice Network, including:

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 and Lael Robinson, Legal Aid of Minnesota, the Tenant Resource Center, WI;  
Michele Thomas of the Washington Low Income Housing Alliance;  
Fred Fuchs, Texas Rio Grande Legal Aid;  
Frank Avellone; Tenants In Foreclosure Intervention Project;  
Antonia Fasanelli, Homeless Persons Representation Project;  
John Vanlandingham, Lane County Legal Aid & Advocacy Center;  
Denise Mcgranahan, Legal Aid Foundation of Los Angeles  
Jeanne Nishimoto, Legal Aid Foundation of Los Angeles  
Eric Dunn. Northwest Justice Project;  
Kori Schneider Peragine. Metropolitan Milwaukee Fair Housing Council  
Michael Lepley, The Housing Research & Advocacy Center  
Christopher Hull, Town of Hamburg, NY Department of Community Development  
Debbi La Rue, Marin County Community Development  
Zachariah Oquenda, UC Berkeley Law School  
Ed Gramlich, National Low Income Housing Coalition