

# Banning Housing Discrimination

*Based on Source of Income*

## THE PROBLEM

A chronic shortage of decent, affordable housing exists in many cities. As a result, families across the country struggle to find affordable rental housing in safe, stable neighborhoods. Due to discrimination against them, finding affordable housing is particularly hard for people who pay part or all of their rent with income derived from sources other than employment – such as housing assistance, welfare, Social Security, child support, and alimony.

The extent of housing discrimination based on source of income is difficult to measure.<sup>1</sup> A study in **Chicago** found “discrimination against Section 8 holders appears to be disturbingly common,”<sup>2</sup> and nearly all study participants reported at least one encounter with a landlord “who refused to even consider accepting Section 8.”<sup>3</sup> A report into the advertising practices of real estate brokers in New York City revealed a “proliferation of **New York City** rental advertisements . . . that indicate a limitation or discrimination based on source of income.”<sup>4</sup> In addition to the difficulty in quantifying incidents of housing discrimination based on source of income, discrimination often goes unreported.<sup>5</sup>

Source of income discrimination has a disproportionate effect on the most vulnerable members of society. Where a person lives defines her access to schools, employment and community. Living in less desirable neighborhoods means fewer opportunities and, without real housing alternatives, individuals and families cannot move on to lead better lives.

## THE SOLUTION

In 12 states and the **District of Columbia**, discrimination based on source of income is prohibited.<sup>6</sup> It is prohibited in counties and cities in 11 other states, including **Ann Arbor**, **Philadelphia**, and **Seattle**.<sup>7</sup> It is important for municipalities to take leadership on this issue if their states have failed to enact prohibitions. In addition to protecting their residents, action by municipalities will encourage further reform.

Protection against discrimination based on source of income gives local policymakers the ability to eliminate other



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forms of discrimination and foster inclusive communities. In many cases, source of income discrimination is proxy for illegal discrimination based on race and disability. By removing this proxy, municipalities can be more effective in protecting everyone against all forms of discrimination.

Discrimination based on source of income also frustrates housing assistance programs. A study by the U.S. Department of Housing and Urban Development revealed that local bans on source of income discrimination increase the rate at which voucher holders are able to find suitable housing.<sup>8</sup> Adoption of local source of income protection has a measurable, positive impact on implementation of housing policies and on meeting the needs of voucher holders.

Municipalities take different approaches to defining “source of income,” the scope of prohibited practices, and the availability of defenses and enforcement.

**DEFINING SOURCE OF INCOME:** In **New York City**, source of income discrimination is forbidden by human rights law and expressly includes “Section 8 vouchers.”<sup>9</sup> **Washington, D.C.** explicitly states that vouchers are an example of source of income.<sup>10</sup> In states and cities where Section 8 vouchers are not specified within the definition of “source of income,” claimants must rely on judicial interpretation to expand the scope of the definition.<sup>11</sup> Still, other jurisdictions do not define “source of income” and allow landlords to refuse to accept Section 8 vouchers from tenants.<sup>12</sup> Given the experience of some cities and municipalities, cities should define “source of income” to specifically include Section 8 vouchers.

**PROHIBITED PRACTICES:** Generally, local and state laws prohibit landlords from refusing to rent on the basis of source of income.<sup>13</sup> Other prohibited conduct may include discrimination in the terms, conditions, and privileges of housing transactions and discrimination in the advertisement of rental properties.<sup>14</sup> In **New Jersey**, the prohibition against discrimination based on source of income goes beyond the housing context to include those seeking employment.<sup>15</sup> There are obvious advantages to proposed local laws that adopt a broad scope of prohibited practices.

**AVAILABILITY OF DEFENSES:** Under some local laws, certain owners are exempt from the prohibition against discrimination based on source of income. For example, in **New York City**, owners of buildings containing fewer than six units are exempt. In other places, landlords have successfully claimed “administrative burden” or “legitimate reasons” defenses. However, courts generally reject such claims and only permit narrow and directly relevant creditworthiness considerations.<sup>16</sup> As far as possible, the availability of defenses and exceptions should be limited.

**ENFORCEMENT:** Studies and investigations across the country demonstrate high levels of discrimination even in states or cities with legislative protection against housing discrimination based on source of income.<sup>17</sup> In many jurisdictions, the burden of enforcement falls on victims to bring complaints to the administrative agency, many of which are under-resourced. This inhibits an agency’s ability to launch affirmative investigations into discriminatory practices and forces them to respond solely to isolated incidents. In other cities and states, the statutes permit both administrative and court enforcement.<sup>18</sup> In jurisdictions with court enforcement, the approach also varies: some require an agency to enforce in court on behalf of a complainant and some permit a complainant to file suit directly.<sup>19</sup> In **Montgomery County, MD**, the Human Rights Commission successfully enforced a local fair housing law prohibition against discrimination based on source of income following independent testing and obtained favorable holdings rejecting the existence of an “administrative burden” defense for landlords. Accordingly, proposed enforcement regimes should be bolstered by pro-active measures like testing, investigations, and reporting

by administrative agencies and non-profit organizations, and should provide complainants with the option to pursue civil action in courts.

## LANDSCAPE AND RESOURCES

The **Fair Housing Justice Center**, **The Leadership Conference**, **The Urban Institute** and the **Poverty & Race Research Action Council** all have valuable resources on this issue.

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### NOTES

1. Manny Hernandez, *Bias Is Seen as Landlords Bar Vouchers* (NY Times, Oct. 30, 2007).
2. Popkin & Cunningham at 23.
3. Id. at 25.
4. A snapshot of the postings on July 29, 2008 found no fewer than 1,543 advertisements for rental units that indicated a limitation or discrimination based on source of income.
5. Renters have no way of knowing whether they have been discriminated against if they are “screened out” at initial stages by landlords or brokers before they even have an opportunity to get the address of a prospective rental property.
6. California, Connecticut, District of Columbia, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont and Wisconsin.
7. Local laws and ordinances in Illinois, Iowa, Maryland, Michigan, Missouri, New York, Ohio, Pennsylvania, Tennessee, Missouri and Washington.
8. U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Study on Section 8 Voucher Success Rates (2001)* at 3-17.
9. N.Y.C. Admin. Code § 8-102(25) includes “income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers”.
10. D.C. Code § 2-1402.21(e).
11. Courts have held that Section 8 aid does not qualify as a source of income. *Sabi v. Sterling*, 183 Cal. App. 4th 916 (Cal. Ct. App. 2010); *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272 (Wis. 1995). Courts have held otherwise in *Comm’n on Human Rights & Opportunities v. Sullivan Associates*, 250 Conn. 763, 739 A. 2d. 238 (1999).
12. Cook County Code of Ordinances § 42-31, 42-38; *Wheeling Human Rights Ordinance Ch. 6.14* (Illinois).
13. D.C. Code Ann § 42-2851.06(c); Mass. Gen. Laws. Ann. ch. 151B § 4; N.Y.C. Admin. Code § 8-107(5)(a)(1).
14. Utah Code Ann. § 57-21-5; N.Y.C. Admin. Code § 8-107.
15. N.J. Stat. Ann. §10:5-4.
16. National Housing Law Project, *Housing Law Bulletin* (Nov/Dec 2008).
17. Fred Freiberg & 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); 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).
18. Including California, Connecticut, North Dakota, Oregon
19. Cal. Gov’t Code § 12980(h); Conn. Gen. Stat. Ann. § 46a-64c; N.D. CENT.

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