

## ***Crafting a strong and effective source of income discrimination law*** **March, 2020**

State and local “source of income discrimination laws” have become increasingly popular as our country faces a growing housing affordability crisis. These laws are primarily designed to protect families with Housing Choice Vouchers and other forms of housing subsidy, but they also cover families with other types of non-traditional income, such as alimony and child support. Source of Income (SOI) laws have the potential to increase voucher success and utilization rates,<sup>1</sup> support geographic mobility for families with vouchers,<sup>2</sup> and reduce concentration of vouchers in low rent neighborhoods, freeing up lower cost units for non-subsidized families. However, all SOI laws are not created equal; there is a wide range in the strength and effectiveness. The goal of this policy brief is to highlight some of the lessons we have learned as these laws have evolved over the past thirty years.

### **Creating a strong campaign**

Organizing: There is broad support for SOI protections beyond traditional housing advocacy organizations. In Maryland, for example, advocates have recently passed SOI ordinances in three new counties, followed by a statewide SOI law, with a broad coalition that include housing advocates, the NAACP, public housing authorities (PHAs) and their trade associations, health organizations, faith based organizations, community development groups, disability rights groups, and key elected officials. The National Low Income Housing Coalition’s “Opportunity Starts at Home” campaign provides a similar example of cross-sector organizing, bringing together interest groups from diverse sectors such as education, public health, and social welfare advocacy.

Messaging: Every successful SOI campaign has included a strong public education and messaging component, designed to highlight the need, explain the benefits, and debunk myths and implicit biases. First, start by emphasizing the pervasiveness of SOI discrimination in your community and nationwide by using available statistics, such as the 2018 HUD/Urban Institute study<sup>3</sup> and local audit testing reports.<sup>4</sup> Second, try to tell the story of how SOI discrimination

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<sup>1</sup> Meryl Finkel and Larry L. Buron, “Study on Section 8 Voucher Success Rates: Volume I Quantitative Study of Success Rates in Metropolitan Areas” (Abt Associates for HUD, November 2001); Lance Freeman, “The impact of source of income laws on voucher utilization,” *Housing Policy Debate* (March 2012).

<sup>2</sup> SOI laws, on their own, may modestly expand geographic choice for voucher families – but they are an important foundation for voucher programs that are affirmatively helping families widen their choices. See Peter Bergman, Raj Chetty, Stefanie DeLuca, Nathaniel Hendren, Lawrence Katz, Christopher Palmer, *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice* (NBER Working Paper NO. 26164, August 2019), <https://opportunityinsights.org/paper/cmto/>. See also Alison Bell, Barbara Sard, and Becky Koepnick, *Prohibiting Discrimination against Renters Using Housing Vouchers Improves Results* (Center on Budget & Policy Priorities, December 2018).

<sup>3</sup> Mary K. Cunningham, Martha Galvez, Claudia L. Aranda, Robert Santos, Doug Wissoker, Alyse Oneto, Rob Pitingolo, James Crawford, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers: Executive Summary*, U.S. Department of Housing and Urban Development Office of Policy Development and Research (2018)

<sup>4</sup> See, for example, “Choice Constrained: Limited Housing Options for Households Utilizing Housing Choice Vouchers” (Housing Opportunities Made Equal of Virginia, 2019), available at [https://homeofva.org/wp-content/uploads/2019/07/Choices-Constrained-2019\\_5\\_14\\_19.pdf](https://homeofva.org/wp-content/uploads/2019/07/Choices-Constrained-2019_5_14_19.pdf).

affects individual families – in their own words if possible – highlighting not just the hardship families face in searching for housing, but also their joy on finally finding a home. Third, to counter false narratives about the “burdens” of the HCV program, enlist landlords who rent to voucher families to speak about the value of the program, the ease of working with the housing authority, the financial advantages of the program, and the exemplary tenants they have found through the program.

### **Explicit protections for families with vouchers**

Although it is obvious that “source of income” includes federal and state housing subsidies, some earlier SOI laws have faced unnecessary litigation over this point. While many courts have routinely concluded that Housing Choice Vouchers are covered by these laws, a few others have not, and in designing a new law it is generally recommended to include housing assistance in the definition of source of income, to avoid a potential time-consuming challenge.<sup>5</sup>

### **Limiting exemptions**

There is often a temptation, in the political process, to exempt small owners from SOI laws. However, it is our experience that these property owners are a crucial part of the market – especially in the higher opportunity communities that many voucher families are eager to move to. Extending exemptions beyond small *owner-occupied* properties will severely limit the effectiveness of your ordinance.

### **Strong enforcement mechanisms**

The three key elements to ensure robust enforcement of your SOI law include a realistic ability to file and prosecute a claim, the availability of significant damages, and court-awarded attorneys’ fees for a successful claimant.

A private right of action in the local court system combined with the availability of damages and attorneys’ fees, is the best way to ensure compliance in the local real estate market. The availability of an administrative complaint procedure through a strong, well-resourced human rights agency, can also be valuable – ideally a victim of discrimination would have both options available.

Damages must be available, and they should not be capped. This includes damages for emotional distress and other actual damages, along with punitive damages, as appropriate. A few well publicized damages awards can have a powerful deterrent effect in the local real estate market.

Attorneys’ fees are probably the most powerful deterrent to housing discrimination, since they are design to incentivize lawyers (from both the public and private bar) to take on cases and prosecute them diligently. Unlike regular contingent fee arrangements, court awarded attorneys’ fees (paid by the losing defendant) are based on hours worked, not on the total amount of the damages award. Attorneys’ fees can also encourage creative settlements that include ongoing injunctive relief to benefit other families in the future.

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<sup>5</sup> For example, the 2019 New York State law defines “lawful source of income” to include “child support, alimony, foster care subsidies, income derived from social security, or any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers, or any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to a landlord, and other forms of lawful income.”

## Anticipating defenses and landlord concerns

A popular landlord defense has been to argue that the refusal to rent to voucher families is based on the administrative burdens of the HCV program, not on any desire to “discriminate” against voucher families. This tautological argument has been routinely rejected by courts,<sup>6</sup> but to avoid this type of argument altogether, it may be wise to insert language in your ordinance that references the administrative requirements of the voucher program.<sup>7</sup>

Another defense that has occasionally been raised is the “minimum income” defense – that HCV families do not satisfy the landlord’s minimum income requirements (often set at three times the monthly rent, for example). Again, courts have dismissed this specious argument,<sup>8</sup> but to avoid the issue, you may wish to include a phrase in your ordinance stating the obvious, that any minimum income requirement be related to the portion of the rent to be paid by the tenant.<sup>9</sup>

## Creating a strong enforcement climate

Once your jurisdiction has adopted a strong SOI law, the next step is to ensure a strong enforcement environment. This includes a public education campaign, including outreach to landlord groups and real estate brokers to explain how the law works, why it is needed, and the advantages of renting to families with Housing Choice Vouchers.<sup>10</sup> A second key component is adequate funding for local enforcement groups (legal services or fair housing centers) to investigate and prosecute SOI complaints. Finally, resources permitted, a systematic plan for audit testing in the local real estate market, with referrals to enforcement agencies and real estate licensing boards for property owners who have violated the law, can serve as a very powerful deterrent.

### For further reading:

Alison Bell, Barbara Sard, and Becky Koepnick, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results* (Center on Budget & Policy Priorities, December 2018)

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

Poverty & Race Research Action Council, *APPENDIX B: State, Local, and Federal Laws Barring Source-of-Income Discrimination* (March 2020)

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<sup>6</sup> See *Commission on Human Rights & Opportunities v. Sullivan Associates*, 250 Conn. 763 (Conn. 1999); *Feemster v. BSA Ltd Partnership*, 548 F.3d 1063, 1070-71 (D.C. Cir. 2008); *Montgomery County v. Glenmont Hills Assocs.* 936 A.2d 325, 340-41 (Md. App. 2007); *Franklin Tower One v. N.M.*, 725 A.2d 1104, 1114 (N.J. S.C. 1997).

<sup>7</sup> For example, the Minneapolis SOI ordinance describes “Discrimination in property rights” to include “[where] status with regard to a public assistance program, or any requirement of a public assistance program is a motivating factor.” M.C.O. §139.40(e).

<sup>8</sup> See, e.g., *Commission on Human Rights and Opportunities v. Sullivan Associates*, 250 Conn. 763 (1999).

<sup>9</sup> See CA GOVT 12955(n) (“It shall be unlawful ...in instances where there is a government rent subsidy, to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant.”); see also WA ST 59.18.255 (3); OR. REV. STAT. 659A.421(2)(a)(B)).

<sup>10</sup> This type of landlord education program was built into the San Diego ordinance from the outset, with funding for a local legal services group to hold educational forums across the city.