

SOURCE OF INCOME AND FAIR HOUSING – WHAT YOU NEED TO KNOW

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The federal Fair Housing Act does not specifically include source of income as a protected class. However, if a type of income or subsidy is inextricably related to a protected class, or disproportionately received by a protected class compared to their percent of the overall population, denial of that source of income or subsidy by a housing provider can give rise to a Fair Housing Act (FHA) violation. Such violations that have been recognized under the FHA include:

- Refusing to rent to people who receive Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) because of qualifying disabilities. See e.g. *HUD, on behalf of Tunisha Perkins, v. Barbara Tremel and David Nowicki*, ALJ No. FHEO No. 05-10-1808-8 – 1/18/12.
- Refusing to accept section 8 housing choice vouchers. According to a 2008 national survey by HUD, 62% of voucher holders were designated as a minority and 48% were female-headed households with children. In Washington, one landlord's decision to terminate participation in a Section 8 certificate and voucher program was found to violate the FHA based on disparate impact on African American women and children. *Green v Sunpointe Associates, Ltd.*, No C96-1542C (W.D. Wash. 1997).
- Refusing to accept applicants who receive “welfare” assistance. A landlord’s “no welfare policy” had a disparate impact on women in a particular region of Massachusetts, and violated the FHA, because statistics established that an overwhelming percentage of AFDC recipients in that region are women. *U.S. v. Ross*, HUDALJ 01-92-0466-8 (1994).
- Income to Rent Ratio Requirements. A housing provider refused to consider applications if income was not at least 3 times the rent. Minority-race applicants asserted that the policy disproportionately and adversely impacted minority populations as compared to white applicants, demonstrated through local population and income statistics (minorities made up a statistically greater proportion of those receiving fixed income government assistance in the subject geographic region). *Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F.Supp. 148 (S.D.N.Y. 1989).
- Refusing to grant a reasonable accommodation for a person with a disability on fixed disability-related income. A request by a person receiving SSDI for a waiver of a landlord’s “no cosigner” rule was a reasonable accommodation because the disability of the applicant precluded him from being able to work and meet the 3-times the rent income requirement. The FHA requires apartment owners to individually assess the risk of non-payment created by a disabled applicant’s

situation rather than inflexibly applying a rental policy that forbids cosigners. *Geibeler v. M&B Assoc.*, 343 F.3d 1143 (9th Cir. 2003).

State or local laws may also prohibit housing discrimination based on alternative sources of income and subsidies. Several counties and cities in WA have protected alternative sources of income or section 8 vouchers. See e.g., Spokane Municipal Code Title 18, Ch. 18.03; Seattle Municipal code Title 14, Ch. 14.08. Two WA State laws also protect source of income and subsidies. The WA Law Against Discrimination prohibits housing discrimination based on honorably discharged veteran or military status. The WA Attorney General has enforced this law against landlords who refused to accept HUD-Veterans Affairs Supportive Housing (HUD-VASH) program vouchers. Most recently, last Spring the Washington legislature passed House Bill 2578, which adds protection for source of income to the WA State Residential Landlord Tenant Act.

The WA Residential Landlord Tenant Act (RLTA) applies to landlords who rent a mobile or manufactured home (whereas the Manufactured/Mobile Home Landlord-Tenant Act applies if a landlord only rents the lot for an owner-occupied home). Effective September 30, 2018, a landlord may not, based on the source of income of an otherwise eligible prospective tenant or current tenant, refuse to lease or rent any real property, expel from property, or impose different terms and conditions. "Source of income" is defined to include benefits or subsidy programs including housing assistance, public assistance, emergency rental assistance, veteran benefits, social security, supplemental security income or other retirement programs, and other programs administered by any federal, state, local, or nonprofit entity. If a landlord requires that a prospective tenant or current tenant have a certain threshold level of income, any source of income in the form of a rent voucher or subsidy must be subtracted from the total of the monthly rent prior to calculating if the income criteria have been met. A person in violation of this section shall be held liable in a civil action for up to 4.5 times the monthly rent of the real property at issue, court costs, and reasonable attorneys' fees. An exception to the requirement that a landlord must lease or rent real property to an applicant with an alternative source of income or subsidy exists if: the tenant's source of income is conditioned on the real property passing inspection; written estimate of the cost of improvements necessary to pass inspection is more than \$1,500; and the landlord has not received moneys from a landlord mitigation program account, (newly established by HB 2575 in a new section in ch. 43.31 RCW), to make the improvements. The landlord mitigation program will be administered by the WA Department of Commerce. A landlord who rents private market rental units to low-income tenants using a housing subsidy program, and pays the first \$500 for improvements necessary to pass inspection required by a source of income, may request up to \$1,000 from the mitigation fund for required improvements. Reimbursement may also include up to 14 days of lost rental income from the date of the offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until the move in by that applicant;

Tips for Calculating Income and Rent:

- Include all sources of verifiable income
- If an income to rent ratio requirement is used, subtract subsidy amounts from the total amount of monthly rent to calculate the tenant's out-of-pocket rent
- Make reasonable accommodations in financial policies for people with disabilities with disability-related income
- Aggregate the income of a household
- Use net income (net employment income rather than gross employment income) when calculating income to housing cost ratios, so as to give non-taxed public assistance incomes the same value as earned income.

Information provided by Northwest Fair Housing Alliance (NWFHA) is intended to acquaint landlords with issues implicating by fair housing laws, but is not intended as a substitute for legal advice. For more information about NWFHA visit our website at www.nwfairhouse.org.

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