Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act (FHA), makes it unlawful to refuse to sell, rent to, or negotiate with any person because of that person's inclusion in a “protected class.” Homebuyers and renters in protected classes are protected from discrimination in buying or renting a home and obtaining a mortgage. The FHA includes seven protected classes: race, color, national origin, religion, sex, disability, and familial status. “Familial status” includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under 18.

The Fair Housing Act’s protections apply to nearly all housing in the United States, including the sale or rental of homes, apartments, condominiums or cooperatives, and as well as lending practices for the purchase of a home.
The Act prohibits the following actions against members of any of the seven protected classes:

- Refusing to rent or sell housing,
- Refusing to negotiate for the rental or sale of housing,
- Making housing unavailable,
- Setting different terms, conditions or privileges for the sale or rental of a dwelling,
- Falsely denying that housing is available for sale, inspection or rental,
- Persuading or trying to persuade homeowners to sell or rent dwellings based on statements about protected classes moving into the area,
- Making a discriminatory statement, or
- Otherwise denying a dwelling.

The Fair Housing Act prohibits discrimination in mortgage lending, as well as in sales or rentals. Lenders cannot refuse to make a loan, or refuse to provide information about home loans, to anyone in a protected class. Lenders cannot use mortgages with different requirements for buyers in protected classes. Similarly, mortgage appraisals cannot be prepared in a discriminatory way, such as by overstating a property value to disqualify a would-be buyer.

Persons with disabilities are also protected by the Fair Housing Act. Under the FHA, persons with disabilities have the right to make “reasonable modifications” to their homes or common areas in order to use the housing unit with a disability. These modifications are at the individual’s expense, and may include items such as widened doorways or grab bars in bathrooms. If a person requires a service animal, an exception must be made to a “no pets” policy. Since March 1991, new buildings with four or more units served by one or more elevators must be accessible to people living with disabilities. Older buildings must make ground-level units accessible.

STATE AND LOCAL LAWS

The Fair Housing Act does not include “source of income” as a prohibited basis for discrimination. However, in recent years, a number of states and cities expanded Fair Housing to cover a housing applicant’s source of income. While wages are an obvious source of income, a housing applicant may receive other income, such as alimony, child support, Social Security, or federal housing subsidies. State and local provisions prevent a rental property owner from rejecting an application based on the source of the applicant’s income, so long as it is a lawful source. Some of these anti-discrimination provisions apply to mortgage lenders as well as landlords. For example, California law provides that no “person, bank, mortgage company or other financial institution that provides financial assistance for the purchase, organization, or construction of any housing accommodation” may discriminate against a person because of that person’s source of income.

As of March 2017, at least 13 states—California, Connecticut, the District of Columbia, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, and Wisconsin—protect against
discrimination based on an applicant’s source of income. Additionally, many counties and cities throughout the United States have enacted ordinances protecting source of income. As a result, a municipality may have more rigorous anti-discrimination rules than the state in which it is located. For example, until this year source of income was not protected in Illinois, but it has been protected in Cook County (including Chicago) since 2013.

State protections against discrimination on the basis of source of income also vary in the level of protection extended to both buyers and renters. In most states, source of income only protects renters, however protections are extended to buyers under a few state housing regulations. This distinction is apparent when comparing Oregon protections against discriminatory housing practices to those set forth under the housing regulations in Maine. Oregon law states, “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[.]”

In contrast, Maine regulations provide that “[i]t 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[.]” Given this diversity of regulation, it is vital that landlords identify the specific laws to which they may be accountable, keeping in mind that while state-wide regulations may not exist, protections may exist at the local level.

State and local rules may define "source of income" differently. Most jurisdictions that bar such discrimination generally define the term to include money or a voucher paid to an applicant in whatever form that the applicant chooses to use for housing—but the specifics can vary. In California, "source of income" is defined as "lawful, verifiable income paid directly to a tenant or representative of a tenant." But Connecticut specifically lists "income derived from Social Security, supplemental security income, housing assistance, child support, alimony or public or state-administered general assistance" in the definition.

An ordinance in Philadelphia covers "any lawful source of income, and shall include, but not be limited to, earned income, child support, alimony, insurance and pension proceeds; all forms of public assistance, including Temporary Assistance for Needy Families (TANF); and housing assistance programs[.]" In Chicago, though, "source of income" is defined more vaguely as the "lawful manner in which a person supports himself or his dependents."
Two pending proposals in the Midwest provide insight into city and landlord concerns. In Dubuque, Iowa, the City has opened discussions about an ordinance that would prevent landlords from discriminating based on source of income. This requirement would be in addition to other Fair Housing provisions that bar discrimination against people in protected classes. According to local news reports, a dialogue meeting found landlords with a range of views. Those who had Section 8 (SEE PAGE 6) experience seemed to feel that an additional protection for those tenants would create tenancy delays and occupancy gaps. Others were willing to accept that government assistance was necessary for some tenants, such as veterans and the disabled, but were concerned that landlords’ recourse would be limited if Section 8 tenants caused damage. The city pointed out that most Section 8 tenants also have wage income, which could help ameliorate those issues. The proposal is still under study at the city, but as of March 2017, there has been no formal introduction of an ordinance.

In Minneapolis, a meeting to discuss a proposal to eliminate source-of-income discrimination found landlords skeptical. News reports noted council members and advocates presenting their concerns that, without the new provision, low-income housing would continue to be concentrated in the poorest neighborhoods. In near-north Minneapolis, for instance, a part of the city with a high concentration of lower-income residents, over 80% of the available units accept Section 8 vouchers, compared to no participants in some of the city’s posher districts. The City Council approved the ordinance by a unanimous vote on March 24, 2017. The new anti-discrimination ordinance will go into effect on May 1, 2018. Clearly, striking the right balance—for landlords, tenants, and the city—is no simple task.

RECENT LEGISLATION
States continue to adopt new laws prohibiting source of income discrimination. In Hawaii, Senate Bill 127 would prohibit discrimination based on lawful source of income for rentals. The bill includes provisions governing advertisements for available rental units. Landlords would be prohibited from refusing to rent, altering conditions or privileges of a rental agreement, or preventing an individual from inspecting an available property based on an individual’s lawful source of income. SB 127 passed its second reading in the Senate on February 17, 2017, and has been referred to the Senate Committee on Judiciary and Labor.

A bill in Illinois, Senate Bill 1331, proposes amending the Illinois Human Rights Act to bar discrimination on source of income. The Illinois amendment includes both residential rental transactions and sales agreements. Under the amendment, individuals in Illinois would not be allowed to indicate a preference or limitation for a particular source of income when advertising whether a property is available for sale or rent. Ads for rental properties would be required to avoid statements that would deter prospective renters based on a lawful source of income. As of March 28, 2017, SB 1331 was pending in the Senate Judiciary Committee. The deadline for passage out of the committee was set for April 7, 2017.

SOURCE OF INCOME & LANDLORDS
If source of income is protected in a state or town, the logical next question for landlords is how to comply with the rules in their day-to-day operations. By following some simple guidelines in different housing transactions, problems with source issues can be avoided. Here are a few examples:
Eviction Notices—Tenant eviction will not change dramatically if source of income is protected. So long as the landlord is consistent with regular rules for eviction, no changes to current procedures should be required.

Example: California landlords must provide a 60-day notice to a resident if the landlord elects to terminate a tenancy and the resident has lived in the unit for one year or longer (Civil Code Section 1946.1). If the resident has lived in the unit for less than one year, the owner must provide at least 30 days’ notice before terminating the tenancy. This timeframe does not change for landlords wishing to evict a tenant sheltered by source of income protections. Landlords are subject to strict eviction reasons, such as a tenant’s failure to pay rent or the illegal use of a rental unit. These regulations remain the same for all tenants, regardless of whether they fall under a protected class or have protected income sources.

In short, so long as the landlord utilizes a standard method for eviction of all tenants, no changes will be necessary to accommodate those falling under the scope of source of income as a protected class.

Security Deposits—Security deposit processes may be impacted where source of income is a protected class.

While it is typical for a landlord to receive a monetary security deposit, it is possible that source of income regulations may cause other forms of security to be accepted, such as car titles or a right to receive future payments. Landlords often require the first and last months’ rent as a deposit. The federal law is generally silent on non-pet security deposits, but Public Housing Authorities (PHA) may only require the tenant to pay their share of the last month’s rent, 30% of the tenant’s monthly income or $50, whichever is greater. Therefore, the landlord cannot require the tenant to pay the full amount of the rent as part of a security deposit.

Example: One Connecticut court held that a landlord discriminated against a prospective tenant when he refused to accept a security deposit guarantee from a social services agent instead of cash. The guarantee from a social services agent qualified as a lawful source of income under state law; therefore, the tenant was allowed to use it as a security deposit.

Payments—If a tenant pays rent late to the landlord in a jurisdiction that protects source of income, the same rules and regulations apply as though this were any other tenant. Landlords may demand payment and/or initiate eviction proceedings, so long as the process for handling late payments remains consistent for all tenants. If the PHA pays the landlord late, there is no recourse for the landlord. Landlords may not evict a tenant who has paid their share of the rent on time, where the PHA has not paid the remainder of the rent on time.

Example: Under Oregon state regulations, source of income protections extend to all “sales, rentals, mortgage lending, building and construction, home insurance appraisals and inspections, land use regulations, zoning, as well as neighbor-on-neighbor harassment.”
Example: Prior to 2013, source of income protections in Chicago extended to Section 8 vouchers, while Cook County regulations (the county in which Chicago is located) excluded Section 8 vouchers from source of income protections. Until Cook County changed its source-of-income rule to prevent discrimination, Chicago was a regulatory island within Cook County.

To determine whether a law or ordinance protects source of income in a particular jurisdiction, check the appendix to Expanding Choice: Practical Strategies For Building A Successful Housing Mobility Program, a publication of the Poverty & Race Research Action Council. Local fair housing councils or associations can also provide valuable information on source of income and other fair housing laws.

**SECTION 8 SOURCES**

In the 1980’s and 1990’s, the federal government fundamentally changed its approach to housing. Instead of focusing on building housing projects, the government shifted to subsidizing low-income individuals and families in the private rental market. The Housing Choice Voucher Program (HCVP), more commonly known as “Section 8 vouchers,” authorized the Department of Housing and Urban Development to provide funds to local PHA to distribute to would-be tenants.

Section 8 voucher value is based on a simple calculation. A Section 8 tenant pays 30% of his or her monthly income toward rent, and the rest is paid by the voucher program. The same is true of Section 8 projects—housing developments built for Section 8 tenants—except that in project vouchers, the benefit is attached to the unit itself, rather than given to the tenant. To put it another way, a voucher granted to the tenant does not depend on that person living in a specific unit.

Whether Section 8 vouchers are protected as a source of income depends on whether the property is in a state, city, or county that includes the vouchers in its legal definition. Some state and local governments protect Section 8 vouchers, and some do not. Minnesota’s fair housing law includes source of income as a protected class, but it does not define Section 8 housing vouchers within that class. The state distinguished the vouchers from other sources of income because participation in Section 8 programs is voluntary. If Section 8 vouchers are a protected income source in the state or local area, though, then tenants using those vouchers cannot be barred from renting on that basis. This means that the landlord can be compelled to enter into a contract with HUD and the PHA.

A landlord cannot be required to accept a Section 8 tenant if the unit rent is higher than the acceptable rent for the program. A potential Section 8 tenant may be rejected if he or she has not met the minimum standards set for all other tenants, regardless of the source of income issue. These standards may include a security deposit, credit checks, or even proof of income, so long as the amount required is equal to the amount the tenant is required to pay.
For example, if rent is $1,000, but the tenant pays 30% of that rent under Section 8 with the rest covered by a voucher, the landlord may request proof of income for the 30% paid by the tenant. In other words, in a source of income jurisdiction, a Section 8 tenant may be disqualified based on the amount of income, but not because of the source of that income.

Source of income protections are a relatively new phenomenon. Understanding what sources of income are included—and how far protections reach—is important for real estate professionals. The trend towards greater protection in fair housing regulations continues, so be sure to check local laws before taking action that could result in a fair housing dispute.

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**State Issues Tracker:** Database with over thirty real estate related issues and state laws. Examples include: Transfer Taxes, Seller Disclosures, Broker Lien Laws, Foreclosure Procedures, Sales Tax on Services, Licensing Requirements & Maintenance, etc.

**White Papers:** Comprehensive reports prepared for NAR on issues directly impacting the real estate industry. Examples include: Rental Restrictions, Land Banks, Sales Tax on Services, State & Local Taxation, Building Codes, Hydraulic Fracturing, Foreclosure Property Maintenance, Climate Change, Private Transfer Fees.

**Growth Management Fact Book:** Analysis of issues related to land use and modern growth management topics include: density—rate of growth, public facilities and infrastructure, protection of natural resources, preservation of community character, and affordable housing.

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