

December 2021

HOT TOPIC ALERT

Source of Income as a Protected Class



When Congress first passed the Fair Housing Act in 1968, it barred discrimination in housing and housing-related transactions because of a person’s personal characteristics in four protected classes: race, color, religion, and national origin. The Act made it illegal to deny housing to a person because of his/her personal characteristics in one of those categories. Discrimination based on sex was prohibited in 1974. In 1988, disability and familial status were added as protected categories. For the past twenty years, amending the Fair Housing Act to ban “source of income discrimination” -- that is, making it illegal to refuse to rent or lend because of an applicant’s lawful source of income, like spousal maintenance, disability payments, Housing Choice Vouchers, veterans’ benefits, public assistance, and child support – has been proposed and debated. While source of income (SOI) discrimination has failed to gain traction as a protected class under federal law, [at least 20 states and 89 localities](#) have added SOI as a protected class to their fair housing laws,

In this Hot Topic Alert, we provide a current snapshot of income-based fair housing issues and policies on the federal, state, and local level that can affect homeowners and renters in their communities. We provide an overview of the federal Fair Housing Act, and then summarize some of the state and local policies that govern whether specific sources of income can be recognized as protected under the Act. We also show how REALTORS® can influence fair housing and income policies that affect the housing and rental markets in their communities.

FAIR HOUSING PRINCIPLES

Title VIII of the Civil Rights Act of 1968, also known as the [Fair Housing Act](#) (the “Act”), makes it unlawful to refuse to sell, rent to, or negotiate with any person because of that person's personal characteristic that is considered a “protected class” or “protected category.” The Act lists [seven protected classes](#): race, color, national origin, religion, sex, familial status, and disability. “[Familial status](#)” covers families with children under the age of 18, pregnant individuals, and any person in the process of obtaining custody over a minor child (such as adoptive or foster parents). Homebuyers and renters are [protected](#) from discrimination based on these prohibited characteristics in buying or renting a home, obtaining a mortgage, and engaging in other housing-related transactions.

The 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. Limited exemptions exist for buildings occupied by the owner in which there are no more than four units, housing operated by religious organizations, private clubs that limit membership, and housing for older persons.

The Act specifically prohibits the following [actions](#) based on any of the protected categories:

- 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;
- Evicting a tenant or a tenant’s guest;
- Harassing a person;
- Failing to make, or delaying, maintenance or repairs;
- Making a discriminatory statement; or
- Otherwise denying a dwelling.

The Act also prohibits discrimination in [mortgage lending](#). Lenders cannot refuse to make a loan, refuse to provide information about home loans, or use different requirements for buyers based on a prohibited characteristic. Similarly, mortgage appraisals cannot be prepared in a discriminatory way, such as by overstating a property value to disqualify a would-be buyer or by understating a value because of the owner’s protected characteristic.

Persons with disabilities are also protected by the Act. Housing providers must make “[reasonable accommodations](#)” so that disabled individuals can properly use and enjoy their housing. Reasonable accommodations are modifications, exceptions, or adjustments to rules or policies.

Those with disabilities also have the right to make any [“reasonable modifications”](#) necessary to enjoy their homes or common areas. Such modifications are at the individual’s expense, and may include widened doorways, installation of ramps, installation of grab bars in bathrooms, etc.

STATE AND LOCAL LAWS

The Fair Housing Act does not include “source of income” as a prohibited basis for discrimination. For instance, the Act does not bar discrimination against homeowners or renters if they obtain their income primarily from spousal maintenance, child support, public assistance payments, and the like. However, in recent years, a number of states and cities have expanded fair housing principles to cover a housing applicant’s source of income. These laws and policies recognize that, while wages are an obvious source of income, a housing applicant may receive other income, such as Social Security or federal housing subsidies. As a result, in these jurisdictions housing providers, including housing providers, are prohibited from refusing to provide housing to individuals solely because they derive most, or all, of their income from sources other than wages. Many of these 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. For example, in [California](#), 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 April 2021, at least 20 state [jurisdictions](#)—California, Connecticut, Colorado, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Virginia, Washington, and Wisconsin—protect against discrimination based on an applicant’s source of income. In some states, protection against source of income discrimination has been weakened by court decisions. In [Maine](#), the protection was weakened by a [court decision](#) that held that the prohibition against source of income discrimination did not prohibit landlords from refusing to include the HUD Housing Choice Voucher tenancy addendum in a lease, thereby refusing to accept a Housing Choice Voucher as a source of payment. The Maine Human Rights Act has been [amended to address this issue](#), and effective October 17, 2021, it will be unlawful for a landlord to “[r]efuse to participate in or comply with any federal, state or local requirements of a tenant-based rental assistance program.” The [Minnesota law](#) against source of income discrimination was weakened by a 2010 state [Court of Appeals decision](#) that held that participation in the Housing Choice Voucher program is voluntary, so the refusal to participate is not discrimination.

Many [counties and cities](#) throughout the United States have enacted their own 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 2020, source of income was not protected in [Maryland](#), but it has been protected in [Annapolis](#) since 2009.

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 protects only 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 protects against refusing to “sell, lease or rent any real property to a purchaser” on the basis of source of income. In contrast, [Maine](#) regulations provide that “unlawful housing discrimination” occurs when “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 housing providers identify the specific laws that apply to them, keeping in mind that local regulations may exist in the absence of, or in addition to, state statutes.

State and local rules define “source of income” differently. Most jurisdictions that bar such discrimination generally define the term to include money or a voucher paid to a housing applicant, in whatever form that the applicant chooses to use for housing. However, exceptions do exist. For example, in [California](#), “source of income” is defined as “lawful, verifiable income paid directly to a tenant or representative of a tenant,” including “federal, state, or local public assistance, and federal, state, or local housing subsidies.” [Connecticut](#), however, 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. In [Philadelphia](#) “source of income” is defined as “any lawful source of income,” including, “but not 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 an individual supports himself or herself and his or her dependents.” It is important for housing providers to familiarize themselves with the definitions of “source of income” in their jurisdictions.

A recent proposal in [St. Louis County](#), Missouri provides insight into political debates around protecting against source-of-income discrimination. In 2019, a county councilmember introduced a bill that would require landlords in unincorporated areas of the county to participate in rental subsidy programs and to add “lawful source of income” as a protected class. However, [local news reports](#) found mixed support for the bill, with many individuals believing that it was a government mandate to accept all renters, including those whose income “is derived from laundered cash money, drug deals and the like”. Although the bill’s text limited the protections to only lawful sources of income, and allowed housing providers to reject applicants based on criminal background checks, the bill was eventually dropped due to the mixed response.

In 2017, a Minneapolis proposal to prohibit source-of-income discrimination met with more success. Although [news reports](#) noted that landlords were skeptical, council members and advocates argued that the new provision would prevent low-income housing from continuing to be concentrated in the city’s poorest neighborhoods. For instance, in near-north Minneapolis, a part of the city with a high concentration of lower-income residents, over 80% of the available units accepted rental subsidy vouchers, compared to no available units in some of the city’s more upscale districts. The Minneapolis City Council [approved the ordinance](#) by a unanimous vote on March 24, 2017, and it went into effect on May 1, 2018. Clearly, striking the right balance—for housing providers, tenants, local citizens—is no simple task.

Even where source-of-income discrimination has been outlawed, enforcement has been difficult. For example, although [New Jersey](#) prohibits source-of-income discrimination, an [Urban Institute study](#) of the housing market in the Newark area found that 31% of landlords overall, and 38% of landlords in low-poverty neighborhoods, refused to accept housing vouchers. A [Suffolk University study](#) of housing discrimination in the Greater Boston area tested whether landlords would be willing to show units to prospective tenants with Housing Choice Vouchers, or whether the prospective tenants would be given an application for rental to complete. The study found discrimination based on voucher status in 86% of the tests, even though [Massachusetts](#) prohibits source-of-income discrimination.

IMPORTANT FEDERAL, STATE, AND LOCAL LEGISLATION

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 its focus 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 (HUD) to provide funds to local public housing agencies (PHAs) to distribute to would-be tenants.

The value of a Housing Choice Voucher is based on a simple calculation. A Section 8 tenant pays an [amount](#) of his or her monthly income towards rent that is the greater of: (1) 30% of their monthly adjusted income, (2) 10% of their total monthly income, (3) welfare rent from a public agency, and (4) minimum rent determined by the local PHA. The same is true of Section 8 housing projects—housing developments built for Housing Choice Voucher tenants—except that, for housing project vouchers, the benefit is attached to the unit itself, rather than to the tenant. In other words, a voucher granted to the tenant does not depend on that person living in a specific unit.

Whether Housing Choice Vouchers are protected as a source of income depends on whether the property is in a state, city, or county that includes such vouchers in its legal definition. Some state and local governments protect Housing Choice Vouchers, and some do not. For example, [Minnesota](#)'s fair housing law includes source of income as a protected class, but it does not define Housing Choice Vouchers within that class. The state distinguished these vouchers from other sources of income because participation in Housing Choice Voucher programs is voluntary. However, even if a specific state does not protect Housing Choice Vouchers as a source of income, a given city or local area may do so. In such situations, tenants using such 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.

For example, prior to 2013, source of income protections in [Chicago](#) extended to Housing Choice Vouchers, while [Cook County](#) regulations (the county in which Chicago is located) excluded Housing Choice 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.

A housing provider cannot be required to accept a [Housing Choice Voucher tenant](#) if the unit rent is higher than the acceptable rent for the program. A potential Housing Choice Voucher tenant still may be rejected if he or she has not met the minimum standards set for all other tenants. These standards may include a background check, a security deposit, credit checks, and 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 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 Housing Choice Voucher tenant may be disqualified based on his or her failure to provide proof of the minimum income required to rent a unit, but not because of the source of that income.

States also continue to adopt new laws prohibiting source of income discrimination. In 2021, [Rhode Island](#) enacted a Fair Housing Practices Act to recognize the right of all individuals in the state to equal housing opportunities as a civil right. The Act defined a “lawful source of income” to include any income or benefit derived from child support, alimony, or any federal, state, or local public assistance program, including Housing Choice Vouchers. Owners and managers of housing units are prohibited from making any direct or indirect inquiry, whether written or oral, concerning the lawful source of income of any housing applicant. They also cannot issue any advertisements specifying a preference for certain sources of income over others.

Similarly, [Virginia](#) amended its Fair Housing Law in 2020 to prohibit discrimination based on any “source of funds,” which the law defines as any source that lawfully provides funds to either a renter or buyer of housing. The law also bars denying any individual access to membership or participation in a real estate listing service based on source of income. Any person that suffers discrimination based on source of income can file a complaint with the Virginia Real Estate Board and Virginia Fair Housing Board. The Board can then investigate the complaint and refer a charge on behalf of the applicant to the state Attorney General.

SOURCE OF INCOME AND HOUSING PROVIDERS

If source of income is protected in a state or town, the logical next question for housing providers is how to comply with the rules in their day-to-day operations. By following some simple guidelines in different housing transactions, problems can be avoided. A few examples are provided below. However, for a more thorough analysis of whether a given law or ordinance protects source of income in a particular jurisdiction, REALTORS® can utilize 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.

Eviction Notices—The procedures for tenant eviction generally do not change dramatically in jurisdictions where source of income is protected. So long as the housing provider is consistent with regular rules for eviction, no changes should be required.

For example, in California, the law requires that landlords 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. 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 reasons for eviction, 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 the tenants fall under a protected class or whether they 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 equal to the first and last months' rent, it is possible that source of income regulations may result in other forms of security to be accepted, such as car titles or a right to receive future payments. Federal law is generally silent on non-pet security deposits, but the local 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.

For 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 his or her rent late in a jurisdiction that protects source of income from discrimination, landlords may demand payment and/or initiate eviction proceedings, so long as the process for handling late payments remains consistent for all tenants. However, if the PHA is late in paying the landlord, he or she has no recourse. In other words, a landlord may not evict a tenant who has paid his or her share of the rent on time, even if the PHA has not paid the remainder on time.

For 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.”

REALTOR® ASSOCIATION INVOLVEMENT ON FAIR HOUSING

In April 2021, NAR commemorated [Fair Housing Month](#) by holding a series of events, including an online event discussing the future of fair housing and a headline speech by HUD Secretary Marcia Fudge. NAR also hosted a virtual event discussing efforts to close the racial gap in home ownership and to make fair lending and access to credit more equitable. As part of Fair Housing Month, NAR spotlighted a series of relevant books and videos, including “[A Matter of Place](#),” a

documentary that describes instances of present-day discrimination in New York City based on race, sexual orientation, disability, and source of income.

NAR also supports [additional funding](#) for HUD’s fair housing enforcement and education efforts, including HUD grant programs that help state and local organizations uncover hidden discrimination in the housing process.

Local REALTORS® and REALTOR® associations have also been active on fair housing issues. For instance, the [Birmingham Association of REALTORS®](#) partnered with the city of Birmingham to hold a Fair Housing Summit that spotlighted diversity in real estate and increased access to home ownership. The conference included experts from the local city council, HUD, and other real estate associations. A core focus of the conference was the effect of economic issues and the COVID-19 pandemic on real estate and home ownership, especially for minorities and others communities that have had difficulties in home ownership. The Birmingham Association also partnered with local housing authorities to launch a Home Ownership Initiative that provides resources to low-to-moderate income families so that they can secure the necessary credit and other resources to purchase their own homes.

In [Bellingham, Washington](#), the local REALTOR® association supported a “Bellingham for Everyone” campaign that encouraged increased diversity in housing types and affordability. The campaign conducted a series of free virtual public education events on issues such as zoning and sustainable urban growth. The campaign has also focused on dispelling myths surrounding affordable housing projects and multi-family housing. As a result of the campaign, local leaders are currently considering a sales tax to benefit affordable housing projects in the area.

REALTORS® in [Columbus, Ohio](#) created a Fair Housing Task Force to educate the community about cultural bias and challenges in the housing market. The Task Force also worked with other organizations to set up two events. First, a Cost of Poverty Experience workshop offered participants a chance to experience the housing challenges of low-income individuals in the community and how they are affected by limited housing choices and housing insecurity. Second, a mock trial dramatization of a recent local legal case spotlighted issues involving drinking water access and discrimination.

By continuing to advocate for these and other priorities, individual REALTORS® and state and local REALTOR® Associations can help improve their own communities and ensure increased equal access to housing, regardless of an individual’s source of income.

REALTOR® ASSOCIATION FAIR HOUSING RESOURCES

NAR has a [Fair Housing Action Plan](#), also called the ACT! Initiative, that emphasizes Accountability, Culture Change, and Training to ensure REALTORS® and local associations contribute to protecting fair housing rights. Under the Plan, NAR is committed to working closely with state associations to ensure that state laws include effective fair housing requirements. NAR has also created [additional robust fair housing education](#) to assist REALTORS®.

In June 2020, NAR released [Bias Override](#), a video that helps REALTORS® identify and combat implicit bias in real estate transactions that may result in fair housing violations. NAR will launch

implicit bias classroom training for CE credit in 2022. In November 2020, NAR also launched an online simulation training where real estate agents work to sell homes in the fictional town of [Fairhaven](#), while confronting typical discriminatory situations that occur in the homebuying process. Learners also experience discrimination from the point of view of the client. Also in November 2020, NAR's Board of Directors approved amendments to the REALTOR® [Code of Ethics](#) to cover hate speech and conduct.

Over the past year, NAR's [federal advocacy agenda](#) championed increased funding for fair housing enforcement. NAR also actively engages in policy advocacy to make homeownership more accessible, including increasing housing supply to make housing more affordable, down payment assistance for first-time buyers, alternative credit scoring, and student loan debt relief through the tax code. NAR also supports efforts to close the racial homeownership and wealth gaps through its membership in the [Black Homeownership Collaborative](#).

These advocacy efforts operate in conjunction with NAR's [Fair Housing grants](#), which support state and local REALTOR® associations' activities that create or improve systems, programs, and policies that uphold fair housing laws and strengthen REALTORS' commitment to providing equal professional service to all. These grants come in two different flavors. [Level 1 grants](#) have a maximum award of \$1,500, and can be used to hold educational activities, such as a class, workshop, or guest speaker. [Level 2 Grants](#) have a maximum award of \$5,000. These grants support activities that address fair housing issues in a community. Activities should involve a partnership with an organization that furthers the fair housing mission. Local REALTOR® associations can receive up to one Level 1 Grant and up to one Level 2 Grant per year.

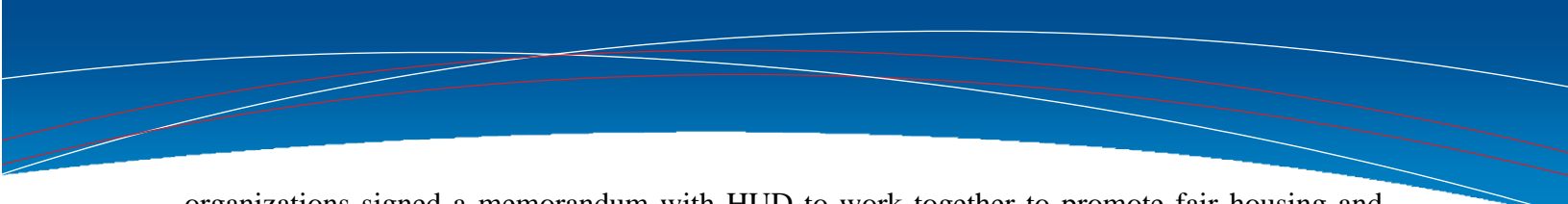
In addition to the activities for members, NAR is also providing resources for public outreach, to emphasize to the public that fair housing is an important part of a REALTOR'S® professional conduct. The "[That's Who We R](#)" advertising campaign was expanded in 2020 to add consumer-focused fair housing materials. NAR also provides [resources](#) to support Fair Housing Month efforts each April. These resources include a poster, social media assets, and a proclamation for a local government body.

FAIR HOUSING PARTNERS

NAR is joined by multiple partners in advocating for increased fair housing opportunities and decreased discrimination.

One such partner is the [National Association of Real Estate Brokers](#) (NAREB), which was founded in 1947 by African American real estate brokers. NAREB is committed to equal housing opportunities and to remove de facto segregation and institutional racism. Similarly, the [Asian Real Estate Association of America](#) (AREAA) is dedicated to promoting sustainable home ownership and housing opportunities in Asian American communities. Other [organizations](#), such as the [National Association of Hispanic Real Estate Professionals](#) (NAHREP) and the Women's Council of REALTORS®, are also focused on increased equality in real estate.

Since many members in these organizations are REALTORS®, they often work together to advance shared goals. For example, in 2003, NAREB, AREAA, NAHREP, and other



organizations signed a memorandum with HUD to work together to promote fair housing and reduce homeownership inequality among various racial and ethnic groups.

CONCLUSION

Housing is a necessity for all people, but differences in housing options, especially for those that have non-wage sources of income, are often overlooked. Many state and local governments have taken on this challenge by outlawing discrimination based on an individual's source of income. Local REALTORS® and REALTOR® Associations have a key role to play in ensuring broad and equitable access to housing. Fair housing opportunities help create more economic opportunity for individuals and families and improve local neighborhoods and communities.

Hot Topic Alerts are prepared for NAR by Legal Research Center, Inc.

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ADDITIONAL STATE & LOCAL RESOURCES

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.

All available on [REALTOR® Party webpage](#) under the *State & Local Issues* tab.