"Source of Income" Discrimination in Housing (*UPDATED*)
OHR Enforcement Guidance No. 23-03

Date: December 9, 2022

Background

Housing discrimination is prohibited under the DC Human Rights Act of 1977 (DCHRA),[1] as amended, as well as under the federal Fair Housing Act (FHA).[2] The Office of Human Rights (OHR) investigates claims under both the DCHRA and the FHA.[3] The DCHRA prohibits source of income discrimination in housing, which commonly involves unfair treatment of a prospective renter because that person seeks to pay their rent with the assistance of an income-based housing subsidy.[4]

Purpose

The purpose of this guidance is to provide updated information on how OHR analyzes source of income discrimination as a result of the enactment of the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022 (ERSFRA). While OHR previously provided guidance on "source of income" (SOI) under OHR Guidance No. 16-01, this updated Guidance explains the additions made to the DCHRA by ERSFRA. ERSFRA's additions to the DCHRA went into effect on May 18, 2022.

How was "source of income" discrimination been updated by ERSFRA?

Generally, under the DCHRA, it is an unlawful discriminatory practice to deny, directly or indirectly, any individuals the full and equal enjoyment of housing, including the rental of a dwelling, services, facilities, and privileges, based on a person's "source of income."[5]

"Source of income" is defined as "the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court- ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist."[6]

ERSFRA enhanced protections under the DCHRA for prospective tenants seeking to rent with the assistance of income-based housing subsidies by explicitly adding the following:[7]

- Prohibiting discrimination based on prior credit issues or prior rental payment history where such issues or history arose prior to a prospective tenant's receipt of a housing subsidy;[8]
- Prohibiting discrimination based on income level and credit scores unless required by federal law;[9] and
- Creating a rebuttable presumption that discrimination has occurred if a housing provider charges any fees, deposits, or additional rent that the housing provider would not have charged to persons who do not seek to pay rent with an income-based housing subsidy.[10]

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[1] D.C. Code § 2-1402.21, *et seq.*
[2] 42 U.S.C. § 3601, *et seq.*
[3] D.C. Code § 2-1403.01, *et seq.*
[4] D.C. Code § 2-1402.21.
[5] D.C. Code § 2-1402.21(a).
[6] D.C. Code § 2-1401.02(29).
[7] D.C. Code § 2-1402.21.
[8] D.C. Code §§ 2-1402.21(g)(1)(A); 2-1402.21(g)(1)(C).
[9] D.C. Code § 2-1402.21(g)(1)(B).
[10] D.C. Code § 2-1402.21(g)(2).

More Information on "Source of Income" Definition and Examples

OHR interprets the definition of "source of income" to include monetary assistance provided to an owner of a housing accommodation either directly or through a tenant. Discrimination based on one's "source of income" can include, but is not limited to:

- Payments from federal and local programs
- Short- and long-term rental subsidies
- Housing choice vouchers (Section 8)
- Emergency assistance payments
- SSI Income

- Unemployment insurance payments
- Alimony
- Veteran's benefit
- Disability benefits payments

Examples of federal and local subsidy programs include, but are not limited to the following:

- Housing Choice Vouchers
- Rapid Re-Housing
- Emergency Rental Assistance
- Permanent Supportive Housing

- Tenant-Based Rental Assistance under Housing Opportunities for Persons with HIV/AIDS (HOPWA)
- Short-Term Rent, Mortgage, and Utility (STRMU)
- Veterans Affairs Supportive Housing (VASH)
- Shelter Plus Care

Examples of Source of Income Discrimination

The following examples are provided as interpretation guidance only; OHR evaluates each case on its own merit.

EXAMPLE A
Refusal to Accept Housing Choice Voucher (Section 8) Funds

A prospective applicant calls a housing provider to inquire about the availability of a two-bedroom unit. The housing provider states that the unit is still available and the rent is $1,700 per month. The prospective applicant asks whether the housing provider accept Housing Choice Vouchers. After some discussion, the housing provider tells the prospective applicant that it does not "use" housing choice vouchers.

This type of refusal may be a source of income violation under the DCHRA because the housing provider refused to consider the applicant's voucher.

EXAMPLE B
Rebuttable Presumption of Discrimination

A prospective applicant visits the leasing office of a housing provider to inquire about the availability of a two-bedroom unit after hearing from an acquaintance that the housing provider has good two-bedroom units and that all those units cost only $1,700 per month. The prospective applicant asks whether the housing provider accepts Housing Choice Vouchers and the housing provider acknowledges that it is required by law to do so. The housing provider then tells the potential applicant that the rent for the relevant unit is $2,000.

If the applicant's acquaintance provided accurate information, there is rebuttable presumption of discrimination against the applicant under the DCHRA based on the applicant's source of income unless the housing provider can provide evidence showing that no discrimination occurred, for instance documentation of a price increase that took effect following the prospective applicant's conversation with his acquaintance.

EXAMPLE C
Impermissible Income Requirement

A prospective renter seeking to rent with the assistance of an income-based housing subsidy applies for a one-bedroom apartment. The prospective renter lists his income as $25,000 per year on the application and notes that he will be using a Housing Choice Voucher. The housing provider denies the application, stating that the prospective renter's income is well below the minimum income that it requires for the $1,550 per month unit.

This refusal may be a source of income violation under the HRA because the housing provider may not require that a prospective renter show minimum income when that renter has an income-based housing subsidy.

Additional examples of inquiries/comments that may be evidence of discrimination include:
- *"We don't take people on SSI."*
- *"Two years steady employment required."*
- *"I've found that people on Section 8 don't fit in well here."*
- *"We don't give home loans unless you are employed full-time."*
- *"Even if you have a Housing Choice Voucher (Section 8), you must make three times the full rent."*
- *"Don't bother applying if you don't have a job."*

Other policies or practices which may constitute source of income discrimination
- Denying a rental application because of the applicants' partner's or family member's lawful source of income;
- Asking whether the applicant is receiving any government assistance or Social Security and then denying the application;
- Advertising apartments with the phrase "No Programs" or "No Section 8" included;
- Stating that the DCHRA doesn't apply to rent-controlled units [even though you were living there when the law went into effect];
- Stating that the DCHRA only applies to new Section 8 voucher holders – not to existing tenants with vouchers;
- Applying minimum income or minimum credit requirements to an applicant receiving an income-based housing subsidy; or
- Denying a rental application due to the applicant's history of nonpayment or late payment with knowledge that the nonpayment or late payment occurred prior to the applicant receiving an income-based housing subsidy

Resources

Visit OHR's website for information regarding housing and for training on housing discrimination at:
http://ohr.dc.gov/fairhousing

Call OHR at 202-727-4559 with any further questions.