

Fair Housing Laws and Affirmative Efforts to Reduce Homelessness in the District of Columbia

- OHR Enforcement Guidance 20-002 -



Date: September 21, 2020

SUBJECT

Fair Housing Laws and Affirmative Efforts to Reduce Homelessness in the District of Columbia

BACKGROUND

There exists a concerted affirmative effort by governmental and non-governmental organizations to reduce homelessness in the District. To that end, OHR received inquiries as to potential implications under the D.C. Human Rights Act (DCHRA), and OHR now provides guidance on this initiative.

PURPOSE & SUMMARY ANALYSIS

To provide guidance on whether affirmative efforts to reduce homelessness, including assistance to low-income voucher-holders and persons experiencing homelessness, run afoul of fair housing laws under the DCHRA. OHR finds that such efforts likely do not violate the DCHRA, so long as the efforts are specifically intended to address historical and present barriers to stable housing for individuals experiencing or who have experienced homelessness, including low-income voucher holders, and are not specifically intended to discriminate against or exclude other applicants based on any characteristic protected by the DCHRA.

RELEVANT PROVISIONS OF THE DCHRA

D.C. Code § 2-1402.21 prohibits discrimination in the provision of residential and commercial real estate based on eighteen characteristics, including source of income and place of residence. Source of income includes vouchers. D.C. Code § 2-1402.21(e).

GUIDANCE

Please be advised that the below constitutes general guidance and not legal advice on any particular situation.

- 1. May a governmental organization, non-governmental organization, or landlord engage in affirmative efforts to secure permanent housing for persons experiencing homelessness or low-income voucher-holders without violating the DCHRA?**

Generally yes, because there exist historical and present barriers to access to stable housing for persons experiencing homelessness and low-income individuals, including discrimination based on other protected characteristics such as race, source of income, and disability;¹ thus, such efforts

¹ See <https://www.sciencedirect.com/science/article/abs/pii/S0149718918303823> (Barriers to Housing among Unsheltered Homeless Adults) (Last accessed September 11, 2020); <https://nationalfairhousing.org/housing-voucher-discrimination-in-d-c/> (Last accessed September 11, 2020); https://socialinnovation.usc.edu/wp-content/uploads/2019/08/Wenzel_2019_Everyday-discrimination-among-formerly-homeless-persons-in-permanent-supportive-housing.pdf (Last accessed September 1, 2020); <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results> (Last accessed, July 20, 2020).

are acceptable so long as 1) the intention is to ameliorate objectively identifiable barriers to stable housing for persons experiencing homelessness or low-income individuals; and 2) the intention is not to discriminate against other potential tenants based on any protected characteristic under the DCHRA.

OHR notes that while homelessness is not an explicit protected characteristic under the DCHRA, the statute prohibits place of residence discrimination. While lack of income is not protected, the DCHRA's prohibition against source of income discrimination encompasses vouchers. However, OHR affirms that where governmental and non-governmental organizations seek to secure stable housing for objectively disadvantaged persons experiencing homelessness and low-income individuals, such efforts constitute legitimate, non-discriminatory public policy objectives, so long as the entity is not motivated by invidious discrimination toward other potential tenants.² Thus, participating in governmental or non-governmental programs to reduce barriers to housing for persons experiencing homelessness and low-income individuals generally does not conflict with the DCHRA.

2. May a landlord waive credit requirements for persons experiencing homelessness or low-income voucher-holders?

Yes, so long as the intention of the waiver is to facilitate access to stable housing for persons experiencing homelessness or low-income individuals and not to discriminate against other potential tenants based on any protected characteristic under the DCHRA.

3. May a landlord coordinate with a governmental or non-governmental agency to secure units for persons experiencing homelessness or low-income voucher-holders?

Yes, so long as the intention of the efforts is to facilitate access to stable housing for persons experiencing homelessness or low-income individuals and not to discriminate against other potential tenants based on any protected characteristic under the DCHRA.

4. Is a landlord required to waive credit requirements for voucher-holders?

Generally, no. Where a landlord requires a certain credit rating of all applicants, a landlord may require the same of voucher-holders, if the rules of the voucher program require the voucher-holder to pay a portion of the rent. However, in the case where a voucher program guarantees that the government will pay the entirety of the rent and customary fees for the duration of tenancy, there may be no legitimate reason to impose a credit requirement on that particular voucher-holder.

FURTHER GUIDANCE

[OHR Guidance 2016-001](#) provides additional source of income guidance.

[OHR Guidance 2017-001](#) provides additional housing and commercial space guidance.

² Affirmative action plans may be approved by OHR, so long as they are devised to correct past discrimination or are otherwise not intended to contravene the purposes of the statute. D.C. Code § 2-1402.53(a). A plan, including justification, objective, parameters, and duration, may be submitted by a senior official of an organization, for OHR's consideration, to ohr.ogc@dc.gov.