

October 3, 2023

Richard J. Monocchio, Principal Deputy Assistant Secretary
Danielle Bastarache, Deputy Assistant Secretary
Office of Public and Indian Housing
Department of Housing and Urban Development
Washington, DC

Re: HUD guidance on source of income discrimination

Dear HUD colleagues,

We are writing to urge HUD (and specifically the Office of Public and Indian Housing) to issue guidance to public housing authorities and to the general public that will help to protect families with Housing Choice Vouchers from discrimination based on their source of income.

Almost 60% of families with HUD vouchers live in places with source of income discrimination protections in place,¹ and yet discrimination continues to be rampant, even where these protections exist.² Sometimes this discrimination is masked by supposedly neutral requirements like “minimum income requirements” or “credit checks.” In other cases, property owners complain about long delays in inspections and lease approval.

We believe that Public Housing Authorities have an important role to play in protecting their voucher clients from discrimination. The current status quo, to simply permit families to be discriminated against in violation of state or local law, is a dereliction of PHAs’ duty to affirmatively further fair housing, as HUD data indicates that families with vouchers are disproportionately Black and Latino, and also comprise a large percentage of residents with disabilities.³ The relationship between source of income discrimination and fair housing is also reflected in the 2015 AFFH Guidebook,⁴ and in the HUD Office of Fair Housing’s recent decision to permit FHIP funds to be used for source of income discrimination testing.⁵

¹ See “Expanded protections for families with Housing Choice Vouchers (PRRAC, September 2022), <https://www.prrac.org/pdf/soi-voucher-data-brief.pdf>.

² See Mary Cunningham et al, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers* (HUD, 2018), <https://www.huduser.gov/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>.

³ The extent of the racial impact of source of income discrimination is particularly acute in the states where SOI discrimination has been outlawed. For example: California’s HCV population is 59% Black and Latino (categories from HUD PICS 2022 are non-Hispanic Black or Hispanic); CO 51%; CT 79%; DC 97%; HI 18% (plus 58% Asian Pacific Islanders); IL 85 %; MD 81 %; MA 56 %; MN 54 %; NJ 74 %; NY 69 %; ND 15 % (plus 8% Native American); OK 59%; OR 23%; RI 51%; UT 24%; VT 8%; VA 76%; WA 32%. Percentages of Black and Latino voucher families are even higher in most cities and metro areas with source of income discrimination laws.

⁴ Affirmatively Furthering Fair Housing Rule Guidebook (HUD, 2015), <https://www.hud.gov/sites/dfiles/FHEO/documents/AFFH-Rule-Guidebook.pdf>.

⁵ See FHEO Memo to Fair Housing Initiatives Program Grantees, dated August 2, 2021, <https://www.hud.gov/sites/dfiles/FHEO/documents/FHIP%20Testing%20and%20Enforcement%20Activities%20AS%20Memo%20Final%2C%208.2.2021.pdf>

Below, we suggest several ways that HUD guidance can assist PHAs in addressing source of income discrimination, and we also would invite HUD to join us in visioning additional steps that could address the rampant discrimination that voucher families are facing.

Guidance to PHAs: HUD should issue guidance to any PHAs in jurisdictions with SOID laws⁶ on basic steps they should be taking to support their clients who face discrimination.

- a. PHAs should include state/local fair housing SOID complaint forms in HCV briefing packets, or information about who to contact regarding SOI discrimination if no form exists;
- b. When SOI discrimination is reported, PHAs should reach out to owners explaining SOID laws and assessing if voluntary compliance can be achieved prior to a fair housing referral;
- c. Any report of SOI discrimination by a voucher family should be referred by the PHA to the local fair housing organization and human rights agency (unless it has been informally resolved);
- d. PHAs should be encouraged to affirmatively educate owners about SOID laws, and distribute HUD explainers about the program (see below);
- e. PHAs should provide voucher families with information about LIHTC properties in the area, including that LIHTC properties are prohibited from discriminating against families with vouchers, whether or not they are located in a jurisdiction prohibiting SOI discrimination;
- f. PHAs should create better internal systems to track SOI discrimination faced by clients, and regularly report data on locations and patterns of alleged discrimination to local fair housing organizations or state FHAP agencies for possible testing.

In addition, PHAs should be urged to complete inspections and lease approvals expeditiously, to address a common complaint about participation in the voucher program. PHAs could also be reminded of new administrative fee flexibilities that could address obstacles erected by property owners.⁷

General guidance on the voucher program: In addition to steps that PHAs can take, HUD can assist state and local enforcement of source of income discrimination laws by issuing information addressing misconceptions about the voucher program, or defenses to SOI discrimination claims, that are often brought up by landlords who want to avoid renting to families with vouchers. These types of official HUD explainers could be referred to by courts and state and local human rights agencies in their enforcement of SOI discrimination laws. For example:

⁶ See *Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination* (PRRAC 2023), <https://www.prrac.org/pdf/AppendixB.pdf>.

⁷ See HUD Notice PIH 2022-18 (June 13, 2022), <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2022-18.pdf>.

- a. HUD could issue guidance on the appropriate use of minimum income requirements in assessing voucher families' eligibility – i.e. that the same rule applied to unsubsidized tenants should apply to subsidized tenants (e.g., income 3x the tenant's share of the rent); and state definitively that minimum income requirements based on the full unit rent constitute per se source of income discrimination;
- b. HUD should forcefully address the discriminatory use of credit scores in screening out families with vouchers, explaining that credit scores do not measure tenants' ability and willingness to pay rent (or their past rent payment records), and that the use of credit scores automatically screens out the vast majority of very low income families as a class, regardless of the likelihood of meeting their rent obligations. HUD could also explain that rent history is a more accurate indicator of future rent payment;
- c. The HUD Office of Policy Development & Research should analyze and provide data on the average time that apartments remain vacant between tenants in the private market in each state or metro area, so that local PHAs can compare that with their own average time from the Request for Tenancy Approval to the signing of the voucher lease.

We hope that these ideas will help HUD begin to address the rampant problem of source of income discrimination that continues to undermine its largest housing assistance program. HUD has an obligation to its HCV clients (and its own AFFH responsibilities) to do more to address source of income discrimination.

Sincerely,

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cc: Demetria McCain, Principal Deputy Assistant Secretary, Office of Fair Housing and Equal Opportunity
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