



## Landlord Fact Sheet and Frequently Asked Questions

### What is “Source of Income” discrimination?

“Source of income” (SOI) discrimination is when a landlord refuses to rent a unit to a prospective tenant based on his or her source of income. Some applicants have vouchers to assist with paying rent who are disabled, are veterans or are low income.

For example, a landlord may advertise rentals with “No Section 8” or similar statements, **or when asked, say they don’t rent to Housing Choice Voucher or Section 8 participants.** This is currently legal and happens often **throughout Ohio.**<sup>1</sup>

Examples of inquiries/comments that may be evidence of discrimination include:

- “We don’t take people on SSI.”
- “Two years steady employment required.”
- “Each roommate has to make three times the rent.”
- “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 (HCV), you must make three times the full rent.”
- “Don’t bother applying if you don’t have a job.”<sup>2</sup>

### What is the impact to the property owner when leasing to a voucher holder?

There are many pros to accepting people who participate in the HCV program. Property owners benefit from housing voucher holders because they have guaranteed rent, partially prescreened tenants, and lower vacancy rates. In order to house voucher holders, landlords need to have the property inspected yearly by the local housing authority to make sure that health and safety standards are in place for the tenant. Depending on the municipality, landlords who house voucher holders can qualify for tax benefits or credits.<sup>3</sup>

## HOW SOURCE OF INCOME PROGRAMS WORK

### What are the income verification and inspection requirements?

The total tenant payment is calculated as an affordable portion of the tenant’s monthly income, at approximately 30%. If the tenant has a change in jobs or hours, then the total tenant

---

<sup>1</sup> South Euclid. 2019. ““Source of Income” Fair Housing Laws Q&A.” *Building and Housing*. October 30. Accessed June 28, 2020.

<sup>2</sup> Office of Human Rights. n.d. ““Source of Income” Discrimination in Housing.” *Office of Human Rights*. Accessed July 6, 2020.

<sup>3</sup> South Euclid. 2019. ““Source of Income” Fair Housing Laws Q&A.” *Building and Housing*. October 30. Accessed June 28, 2020.



## Landlord Fact Sheet and Frequently Asked Questions

payment will be adjusted to allow their rent to remain affordable for them with the amount paid by the voucher provider increasing or decreasing. This ensures that the housing provider will always receive full rent payment.

However, a housing provider can still refuse to rent to a household with a voucher if the applicant and voucher provided combined will not cover the full rent amount.

Rental units must pass a Housing Quality Standards Inspection before going into a contract with the program. These are basic requirements established by HUD and include working smoke detectors, hazardous gas hook-ups, no water, no heat, or sewer issues and basic security measures.<sup>4</sup>

### Can a housing provider refuse to take a voucher because they do not want to work with a third party (eg. Public Housing Authority) or participate in the inspection process?

No. This would violate source of income protections as working with the PHA and completing annual inspections is part of housing a Housing Choice Voucher holder.<sup>5</sup>

### Can landlords reject prospective voucher holding tenants based on their credit history or score?

In short, yes, but this must be because there has been reasonable consideration and consistent screening on the credit score of prospective tenants with and without vouchers.

T.K. v. Landmark West, 353 N.J. Super. 353, 802 A.2d 609 (N.J. Super. Ct. App. Div. 2001) found that creditworthiness is specifically related to the landlords "legitimate concern that a prospective tenant has a reliable and steady source of income to fund rent payments and satisfy the other financial requirements of a lease."<sup>6</sup> More information about this case can be found in this document from the [National Housing Law Project](#).<sup>7</sup>

This means that if the owner reviewed the applicants credit and found cases of unpaid rent and utilities while the applicant was using a voucher, then this would be reasonable means for denial. However, if the applicant had accrued cases of unpaid rent and utilities *before* the use of the voucher, then denial of the potential tenant would be deemed discriminatory.

---

<sup>4</sup> South Euclid. 2019.

<sup>5</sup> South Euclid. 2019.

<sup>6</sup> South Euclid. 2019.

<sup>7</sup> National Housing Law Project. 2008. "Courts Consider Landlord Defenses to Source of Income Laws." *Housing Law Bulletin*. December. Accessed July 9, 2020.



## Landlord Fact Sheet and Frequently Asked Questions

While landlords can deny an applicant with poor credit history, they cannot set a minimum credit score as a requirement. This would be discriminatory under source of income protections. Many voucher holders, especially newer voucher holders, may have lower credit history due to their financial situations. However, it should be noted that once the voucher holder is able to find affordable housing, they can begin rebuilding their credit score.<sup>8</sup>

### Can landlords advertise their properties as “No Housing Vouchers” or “No Section 8”?

No. This would be discrimination against source of income. Like other discriminatory language, a listing with this language would violate Fair Housing Laws and Ordinances.<sup>9</sup>

### Can a landlord reject a prospective voucher holding tenant if they have court records pertaining to criminal history?

Yes. However, screening for a criminal background can verge on discrimination protected by Fair Housing Laws. When screening a prospective tenant with or without a housing voucher, landlords must follow the guidelines set forth by HUD in the [2016 guidance from HUD’s Office of the General Counsel on the Application of the Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#). This document states that the landlord must be able to show that any reason the applicant is denied is “necessary to serve a ‘substantial, legitimate, nondiscriminatory interest’” and that the policy “accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.”<sup>10</sup>

Under this guidance, “blanket bans” (“No felonies or criminal record”) violates the Fair Housing Act because these bans disproportionately discriminate against African Americans and Latinos.<sup>11</sup> Alternatives for screening for criminal history can be found in the guidance listed above.

### Can landlords reject a prospective voucher holding tenant if they have been previously evicted and/or sued by a past landlord?

---

<sup>8</sup> South Euclid. 2019.

<sup>9</sup> South Euclid. 2019.

<sup>10</sup> U.S. Department of Housing and Urban Development. 2016. “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions.” April. Accessed July 9, 2020.

<sup>11</sup> South Euclid. 2019.



## Landlord Fact Sheet and Frequently Asked Questions

Yes. However similar to credit score, the past evictions must have occurred prior to the issue of a housing voucher. The eviction or lawsuit must also have been for reasons other than non-payment. For example, this could include damage to the property, repeated noise violations, or other material that breaches the lease may be considered reasonable.<sup>12</sup>

### Can a landlord reject a voucher holding applicant because they do not meet the minimum income requirements?

No. This would be considered source of income discrimination as some income requirements require the applicant to make two to three times the amount of monthly rent. This would not be appropriate for a voucher holder because they are only required to pay 30% of their monthly income towards rent with the rest of the rent being paid by the PHA. If a voucher holder's hours are cut or they receive a pay cut, then their monthly tenant portion will be adjusted so that it still remains affordable for them with the rest of the payment towards rent being made by the PHA. This ensures that the housing provider always receives full monthly rent payment.<sup>13</sup>

### Can a landlord refuse to rent to a voucher holding applicant if the tenant's portion and the voucher provided combined do not cover the full amount of rent?

Yes. Housing providers do not have to rent to a voucher holding applicant if the total contract (30% of the tenants monthly income and the voucher provided combined) is less than the rent amount that the property is listed or advertised for. However, charging a higher rent for voucher holders is against the fair housing ordinance and is discriminatory.<sup>14</sup>

### Does the owner have to use a different lease?

The landlord may use its own lease which must be in compliance with the Department of Housing and Urban Development (HUD) rules for submission to the public housing authority (PHA). The Landlord will attach HUD's Tenancy Addendum to its lease.

In addition, there are a few extra steps that the owner must take. Before signing the lease, the tenant and landlord must complete a Request for Tenancy Approval (RFTA). This allows the PHA to ensure that program requirements have been met.

After a RFTA is complete, the tenant and landlord can execute a lease. Following the lease, the landlord and PHA must execute a Housing Assistance Payments (HAP) contract,

---

<sup>12</sup> South Euclid. 2019.

<sup>13</sup> South Euclid. 2019.

<sup>14</sup> South Euclid. 2019.



## Landlord Fact Sheet and Frequently Asked Questions

which is required by HUD to provide rental subsidy assistance under the Housing Choice Voucher Program. HUD provides a flowchart that can better explain and show the steps taken during this [process](#).<sup>15</sup>

### Does the owner have to follow a different eviction procedure?

Yes, the eviction procedure is slightly different. Landlords can evict a HCV holder as long as there is a “good cause” for the eviction during the lease. These are examples of “good cause:” a material serious violation of the lease, criminal activity by the tenant or someone in the home, illegalBuilding minor violations of the lease or rules. Depending on the city ordinance, sometimes non-payment of rent by a voucher holder is *not* a good cause for an eviction. Again, this depends on the ordinances set forth by the municipality.

Housing Choice Voucher holders must receive a 3 day notice about the eviction and a copy of the eviction must go to the Public Housing Authority. Following the written notice of the eviction, the tenant can request a grievance hearing or a meeting with management. Otherwise, the landlord can file a formal eviction in court.

However, voucher holders have good incentives to act as responsible tenants. For example, if they are evicted they will likely lose their housing subsidy.<sup>16</sup>

### Can the owner sue a former Housing Choice Voucher tenant for damages or unpaid rent?

Yes, the owner can bring an action against a tenant who had a voucher if there are damages in excess of the security deposit or for unpaid rent due from the tenant.

***A special thank you to Enterprise Community Partners in Cleveland, Ohio, Strategic Opportunities, and Renter Mentor for providing technical support to the efforts in central Ohio to create a just and equitable region.***

---

<sup>15</sup> Housing and Urban Development. n.d. *HCV Landlord Resources*. Accessed July 6, 2020.

<sup>16</sup> Ohio Legal Help. 2020. *Eviction from subsidized housing*. Accessed July 1, 2020.