

FAIR HOUSING: SOURCE OF INCOME DISCRIMINATION

The Fair Housing Act makes it illegal to make housing decisions based on seven protected classes: race, color, sex, national origin, religion, handicap or familial status. While the federal law sets the minimum protections, states and localities can add additional protected classes.

In recent years, largely in an effort to address the nation's growing affordable housing shortage, a number of states and localities have made source of income a protected class, meaning a property owner cannot choose to reject an applicant based on where his income comes from as long as it is a lawful source (e.g., alimony, child support or other compensation). This also includes Section 8 housing subsidies.

The issue can become problematic for apartment firms that have elected to not participate in the Section 8 housing voucher program and yet operate in areas where these source of income protections exist. Recognizing the operational challenges associated with taking a Section 8 voucher, Congress specifically made the program voluntary. However, these local source of income protections effectively force apartment firms to reluctantly participate in the program or risk potential discrimination charges.

There are many reasons why a private property owner may choose not to participate in the Section 8 program. It has been plagued with inefficiencies and onerous bureaucratic requirements. Owners who participate are subject to often cumbersome program restrictions, such as repetitive unit inspections, resident eligibility certification and other regulatory paperwork. All of these make it more expensive for apartment firms to operate their communities.

Apartment providers apply the same screening criteria and credit requirements to all applicants regardless of their participation in federal subsidy programs, and they should not be compelled to participate in a costly, bureaucratic contract with the federal government via the Section 8 program. With Congress continuing to introduce legislation to expand the number of protected classes, including source of income, the issue could potentially become increasingly more challenging for apartment firms to navigate.

NMHC/NAA Viewpoint

The apartment industry supports efforts to eradicate housing discrimination. However, some state and local source of income protections are effectively forcing apartment firms to participate in the voluntary Section 8 federal housing subsidy program. Lawmakers need to address this discrepancy to reflect housing providers' participation choice.

TWELVE STATES AND THE DISTRICT OF COLUMBIA PROHIBIT DISCRIMINATION BASED ON SOURCE OF INCOME, INCLUDING SECTION 8 SUBSIDIES.

