

# Fair Housing and Source of Income



# FAQ

## 1 | What is the law regarding source of income protections?

California has a law called the Fair Employment and Housing Act (FEHA)<sup>1</sup> that protects people from housing discrimination based on protected characteristics, including the source of a housing applicant or tenant's income. This includes the use of a federal, state, or local housing subsidy, such as a Housing Choice Voucher (also known as an "HCV" or "Section 8"), that helps participants afford their rent. The law also protects people from source of income discrimination in housing other than rental housing.

## 2 | What types of housing subsidy programs are included under the source of income protections?

The law prohibits discrimination against any applicant or tenant because they are using any type of federal, state, or local housing subsidy to assist with paying rent. This includes, but is not limited to, the Section 8 voucher/HCV program, the HUD-VASH program, Homelessness Prevention and Rapid Re-Housing programs, Housing Opportunities for Persons with AIDS, and security deposit assistance programs. The law also protects the use of subsidy programs created by cities, counties, and public agencies to address growing homelessness.<sup>2</sup>

## 3 | What is a Section 8/Housing Choice Voucher? What is a HUD-VASH voucher?

A Section 8 voucher/HCV is rental assistance funded by the U.S. Department of Housing and Urban Development (HUD). The funds are administered by local public housing authorities to help households with low incomes pay their rent. A tenant with a voucher pays a predetermined portion of rent, and the Section 8 voucher/HCV program pays the remainder of the rent directly to the housing provider.

The HUD-VASH program is a type of Section 8 voucher/HCV that provides assistance to veterans and their families who are experiencing homelessness. The program also includes case management and clinical services provided by the Department of Veterans Affairs.

## 4 | Who must comply with the law regarding source of income protections?

All housing providers must comply with FEHA's source of income protections.

This includes private landlords, property management companies, homeowners associations, corporations, and others who rent residential property in California.<sup>3</sup> Additionally, providers of housing-related services and programs such as mortgage lenders, insurance providers, and appraisers must also comply with the law.<sup>4</sup> However, homeowners who live in their house, condominium, or other single-family unit and rent out only one room within that unit are exempt from the law.<sup>5</sup>

1 Cal Govt. Code § 12900 et seq.

2 2 CCR § 12140(b)(4)

3 2 CCR § 12005(v)

4 2 CCR § 12140.1

5 2 CCR § 12052

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### 5 | What are some examples of practices that are prohibited?

Examples of actions a housing provider or a provider of housing related services/programs cannot take based only on a person's source of income include but are not limited to:

1. Advertising a preference for tenants with certain sources of income<sup>6</sup>
2. Refusing an application from a prospective tenant, charging a higher deposit or rent, or treating the prospective tenant or tenant differently in any other way because the prospective tenant or tenant uses a Section 8 voucher/HCV or another housing subsidy<sup>7</sup>
3. Refusing to enter into a lease with someone utilizing security deposit assistance<sup>8</sup>
4. Harassing or evicting an existing tenant because they begin utilizing a housing subsidy to pay rent<sup>9</sup>
5. Interrupting or terminating any tenancy because the tenant is using or plans to use a Section 8 voucher/HCV or other housing subsidy<sup>10</sup>
6. Falsely representing that a rental unit is not available for tenancy because the prospective tenant will be using a HUD-VASH voucher<sup>11</sup>
7. Requiring any clause, condition, or restriction in the terms of an agreement solely because the tenant will use a Section 8 voucher/HCV (with the exception of those required by a particular subsidy program)<sup>12</sup>
8. Restricting a tenant's access to facilities or services at the rental property (such as a pool or fitness center) or refusing repairs or improvements to the property associated with the tenancy because of the use of a Section 8 voucher/HCV or another subsidy<sup>13</sup>
9. Refusing to approve a mortgage for a qualified applicant because they will make payments with retirement benefits<sup>14</sup>
10. A city requiring social service providers to purchase a special license to provide hotel rooms to people experiencing homelessness<sup>15</sup>

### 6 | Can housing providers post notices or advertisements that say, "No Section 8" or indicate preferences for, or bans on, other rental assistance?

No. It is unlawful to make, print, publish, advertise, or disseminate in any way a notice, statement, or advertisement that indicates that a tenant will be declined because of their source of income, including a Section 8 voucher/HCV.<sup>16</sup>

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6 2 CCR § 12141(7)  
 7 2 CCR § 12141(a)  
 8 2 CCR § 12141(a)  
 9 2 CCR § 12140.1(e)  
 10 2 CCR § 12141(a)  
 11 2 CCR § 12141(a)  
 12 2 CCR § 12141(a)  
 13 2 CCR § 12141(a)  
 14 2 CCR § 12140.1(d)  
 15 2 CCR § 12140.1(k)  
 16 2 CCR § 12141(7)

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### 7 | Are housing providers prohibited from screening applicants with rental assistance based on other factors?

No. While housing providers cannot decline a tenant or treat a prospective tenant differently than other applicants, based only on the applicant's receipt of housing assistance, housing providers still have the right to screen all applicants according to their lawful tenant screening criteria.<sup>17</sup> However, as of January 1, 2024, housing providers must give applicants with housing subsidies the chance to present verifiable and lawful evidence that they can cover their portion of the rent. If the housing provider receives such evidence, they should consider this information instead of the applicant's credit history. Such proof could include, but is not limited to, documentation of the receipt of public benefits, bank statements, or pay stubs.<sup>18</sup>

Additionally, all fair housing laws still apply, ensuring that tenant selection is never based on race, color, national origin, religion, sex, familial status, disability, age, ancestry, sexual orientation, gender identity, gender expression, genetic information, marital status, military and veteran status, citizenship status, primary language, or immigration status.<sup>19</sup>

### 8 | Can a housing provider still screen for income eligibility to ensure an applicant will be able to pay their rent?

Yes. However, housing providers must consider all legal and verifiable sources of income for an applicant or resident. Any money that will be paid by a household must be included as part of the applicant's or resident's annual income when determining whether their income meets the requirements for the rent amount or other financial standards. This means that the housing provider must consider the total income of persons residing together or proposing to reside together on the same basis as the total income of married persons residing together or proposing to reside together.<sup>20</sup>

### 9 | Are applicants receiving rental assistance permitted to provide documentation of their ability to pay rent through evidence other than a credit report?

Yes. If a housing provider plans to check the credit history of an applicant with rental assistance, the provider must offer the opportunity, and give the applicant reasonable time, to present alternative, lawful, and verifiable evidence of their ability to cover their portion of the rent. If the applicant submits such evidence, the housing provider must consider this instead of the credit report. The evidence can include documentation of the receipt of public benefits, bank statements, or pay stubs.<sup>21</sup>

### 10 | If a housing provider uses a financial eligibility standard that requires a household to have a certain amount of income to qualify for a unit, how can a tenant with a Section 8 voucher/HCV meet the financial standard?

If a tenant or applicant is using a housing subsidy, such as a Section 8 voucher/HCV, the housing provider is only permitted to consider the tenant's portion of the rent. If a housing

<sup>17</sup> 2 CCR § 12141(b)

<sup>18</sup> Cal. Govt. Code § 12955(o)(B)

<sup>19</sup> 2 CCR § 12141(b)

<sup>20</sup> 2 CCR § 12142

<sup>21</sup> Cal. Govt. Code § 12955(o)(B)

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provider uses a financial or income standard that is not solely based on the portion of the rent to be paid by the tenant, then the housing provider has committed an unlawful discriminatory housing practice.<sup>22</sup>

For example:

A two-bedroom unit is advertised at a rent of \$2,500 per month. The building has a policy that all households must have an income of at least three times the rent in order to qualify for a unit. A household with a Section 8 voucher/HCV applies for the apartment. The tenant’s portion of the rent is \$500, and the housing authority will pay the additional \$2000. The housing provider is permitted to require that the tenant have an income of at least \$1500 a month (the tenant portion X 3). The housing provider cannot require that the tenant make three times the total rent for the unit (\$7500), as this would include the portion that will be paid by the housing authority. See chart illustrating this:

	Standard	Section 8
<i>Rent Due by Tenant:</i>	\$2,500	\$500
<i>Income Minimum:</i>	\$7,500	\$1,500

### 11 | Does this mean a housing provider cannot set their own rent amounts?

No. The local public housing authority only determines whether or not the rent requested by the housing provider for a household with a Section 8 voucher/HCV is reasonable. Critical market factors that impact rent are considered, such as the location, quality, size, unit type, and age of the contract unit, as well as any amenities. To raise the rent, the housing provider first must comply with any local or state law that limits rent increases for certain residential properties. Housing providers must also provide the tenant and the local public housing authority with a written notice of a proposed rent increase and submit a rent increase application. Rents for existing Section 8 voucher/HCV holding tenants may not exceed the rents charged for units with tenants who do not receive rental assistance.

### 12 | How are tenants with Section 8 vouchers/HCVs screened by the housing authority?

Households that receive a Section 8 voucher/HCV undergo a verification process of their income and background checks for certain factors related to tenant suitability, such as criminal conviction history\* and eviction history. Additionally, many rental assistance programs, including the Section 8 voucher/HCV, require recipients to adhere to specific rules and standards regarding conduct in housing to receive assistance. This provides an additional incentive for tenants to comply with lease provisions. Housing providers are also permitted to do their own background checks if the screening complies with all federal, state, and local laws.

\*FEHA also has specific regulations related to the use of criminal history information in housing decision-making.

22 Cal. Govt. Code § 12955(o)(A); 2 CCR § 12143

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### 13 | Do source of income protections apply in non-rental situations?

Yes. All providers of housing-related services and programs are prohibited from engaging in source of income discrimination, including in non-rental circumstances. Examples include, but are not limited to: 1) banks, mortgage companies, and other financial institutions providing financial assistance related to housing accommodations; 2) businesses that provide insurance for housing accommodations; and 3) persons or businesses performing appraisals.<sup>23</sup> For more information on what entities are prohibited from engaging in source of income discrimination, see California Code of Regulations, title 2, section 12140.1.

### 14 | What could happen if a housing provider does not follow the law?

Tenants, applicants, and others who believe they have experienced prohibited source of income discrimination can file a private lawsuit against housing providers who violate the law, or they can file a complaint with CRD. CRD will investigate and attempt to resolve the complaint. If the complaint isn't resolved and CRD determines there has been a legal violation, CRD can file a lawsuit in court seeking remedies that may include recovery of out-of-pocket losses, an injunction prohibiting the unlawful practice, access to housing that the landlord denied, damages for emotional distress, civil penalties or punitive damages, and attorney's fees.

### 15 | Where can I obtain more information?

Please see our website at [www.calcivilrights.ca.gov](http://www.calcivilrights.ca.gov) for more information and resources about source of income discrimination.

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**If you think you have been a victim of discrimination, please contact CRD.**

### **TO FILE A COMPLAINT**

#### **Civil Rights Department**

[calcivilrights.ca.gov/complaintprocess](http://calcivilrights.ca.gov/complaintprocess)

Toll Free: 800.884.1684

TTY: 800.700.2320

California Relay Service (711)

*Have a disability that requires a reasonable accommodation? CRD can assist you with your complaint.*

For translations of this guidance, visit: [www.calcivilrights.ca.gov/posters/housing](http://www.calcivilrights.ca.gov/posters/housing)

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23 2 CCR § 12140.1