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persons that are using Housing Choice Vouchers to maintain housing for themselves and their children. Racial discrimination is often perpetrated through denials of housing opportunities to Section 8 voucher holders. It is wrong and HUD will now keep systemic violators from applying for HUD funds.”

It remains to be seen whether lawmakers will heed the call to change federal law, but the issue has gained traction on the state and local level, with mixed results. Earlier this year, a bill to extend fair housing protection based on source of income failed in Maryland, but in New York, Gov. Andrew Cuomo announced plans to include a ban on discrimination based on source of income as part of a 10-point Women’s Equality Agenda.

In this lesson, we’ll review fair housing laws protecting source of income and offer six rules to help you comply with applicable laws to avoid discrimination claims. Then you can take the *Coach’s Quiz* to see how much you’ve learned.

WHAT DOES THE LAW SAY?

The FHA prohibits discrimination in housing because of race, color, religion, sex, national origin, familial status, or disability.

Though it’s not expressly covered under federal law, source-of-income discrimination is banned under some state and local laws. In general, the laws protect applicants from discrimination because of where they get their income or means of financial support. They generally apply only to lawful sources of income—earnings from criminal activity are not covered. Examples of lawful income include wages, grants, gifts, inheritance, retirement benefits, annuities, alimony, child support, unemployment benefits, veterans benefits, disability benefits, and government or private assistance. Some laws also protect prospects and residents against discrimination based on lawful occupation.

Some source-of-income laws also ban discrimination against applicants whose rent is paid with housing subsidies, including Section 8 vouchers. The Section 8 program allows voucher holders to live in any housing that meets program requirements, including private housing where the owner agrees to rent under the program. Funding for the voucher program comes from HUD, but it’s administered by local public housing authorities.

In a nutshell, the Section 8 voucher program creates a three-way relationship among the landlord, the tenant, and the local housing authority. After the tenant finds a unit and comes to terms with the landlord, the local housing authority must approve the rental based on several factors, including the amount of the rent and results of a health and safety inspection. Once approved, the tenant and the landlord sign a lease with a HUD-required addendum, and the landlord signs a standard housing assistance payment contract with the hous-

ing authority. The amount of the voucher is based on the tenant's income—tenants must pay at least 30 percent (but no more than 40 percent) of their monthly income for rent; the voucher makes up the difference and is paid directly to the landlord by the housing authority.

To avoid these regulatory and administrative requirements, many communities choose not to accept Section 8 housing vouchers. There's no direct requirement in federal law or HUD regulations that a community must accept Section 8 vouchers, so it's lawful to decline to participate in the program in a majority of states—but not if your community is subject to state or local laws banning discrimination based on source of income, including housing subsidies. In those jurisdictions, communities may be liable for fair housing violations if they turn away or otherwise discriminate against applicants or residents who wish to pay their rent using Section 8 vouchers.

6 RULES FOR AVOIDING SOURCE-OF-INCOME DISCRIMINATION

Rule #1: Get to Know State and Local Law

Find out whether your community is subject to state or local laws banning discrimination based on source of income. Currently, 12 states and the District of Columbia include protections based on source of income in their fair housing or civil rights laws. They include:

- California;
- Connecticut;
- Maine;
- Massachusetts;
- Minnesota;
- New Jersey;
- North Dakota;
- Oklahoma;
- Oregon;
- Utah;
- Vermont; and
- Wisconsin.

If your state is on the list, check the details to determine what the law covers—and specifically what it says about Section 8 housing vouchers and other

housing subsidies. In Massachusetts, for example, the law bars communities from discriminating against individuals who receive public assistance or rent subsidies, including Section 8 housing vouchers. But in Oregon, the law bans discrimination based on source of income, but it specifically excludes federal housing subsidies under the Section 8 housing program.

Even if your state isn't on the list, it's important to check the details of local fair housing laws. In many states, county and municipal governments have taken the lead to ban discrimination based on source of income, with particular attention to Section 8 housing vouchers. As many as 40 jurisdictions have adopted such measures, including New York, Chicago, Los Angeles, Philadelphia, Seattle, and many smaller cities, along with county governments in Illinois, Maryland, Oregon, Washington, and other states.

COACH'S TIP: In the absence of current laws regarding source of income, ask your attorney to keep you apprised of any pending changes to the law in your state and local area. Each year, state and local lawmakers across the country consider proposals to add fair housing protections based on source of income, including housing subsidies. For example, discrimination against voucher holders was already outlawed in Chicago, but in May 2013, lawmakers in Cook County, Ill., extended the ban to the rest of the county by amending its source-of-income protections to cover Section 8 voucher holders.

Rule #2: Don't Reject Applicants Based on Source of Income

Failure to abide by state, county, or local laws banning discrimination based on source of income can lead to fair housing trouble. Last year saw a 38 percent spike in the number of complaints based on lawful source of income, according to the National Fair Housing Alliance's (NFHA's) 2013 report, which noted that fair housing organizations reported 569 complaints in 2012—up from 353 in 2011.

But that's only the tip of the iceberg, according to the NFHA, which pointed to recent fair housing tests that revealed significant levels of discrimination in jurisdictions where only a few formal complaints were filed. Meanwhile, fair housing advocates continue to pursue active investigations into compliance

with laws banning discrimination based on source of income.

EXAMPLE: In March 2013, the Equal Rights Center (ERC) released the latest in a series of reports in its ongoing investigation into discrimination against Section 8 voucher holders in the District of Columbia. The latest investigation found that 28 percent of voucher holders encounter housing discrimination, down from 45 percent in 2010 and 65 percent in 2005.

In the most recent investigation, the ERC conducted 90 phone tests of rental housing providers, ranging from large and small apartment complexes to basement apartments in row houses. In 28 percent of the tests, a caller inquiring about renting an apartment with a voucher was subjected to some form of discriminatory treatment—including outright refusal to accept the voucher, limiting the use of the voucher, imposing different terms or conditions for a voucher holder, or imposing limitations that would effectively bar a voucher holder from obtaining the housing.

“The fact that the rate of source-of-income discrimination in the District has decreased by more than 50 percent in less than 10 years confirms that continued education, outreach, and monitoring is improving many families’ ability to use their vouchers,” Executive Director Don Kahl said in a statement. “Despite this progress, more than one in four voucher holders continue to face discrimination. These kinds of barriers to equal housing opportunity simply cannot continue to be tolerated in the nation’s capital.”

To comply with laws banning discrimination based on source of income, communities should make sure that they don’t turn away applicants simply because they’re unemployed or receive financial assistance, such as rental assistance or disability benefits. Otherwise, you could trigger a fair housing complaint—win or lose, it still can be costly to resolve.

EXAMPLE: In May 2013, a Connecticut landlord and his former property manager agreed to pay \$150,000 to settle a fair housing case alleging that they unlawfully refused to accept lawful sources of income that also served to discriminate against individuals with disabilities.

The lawsuit was filed by the Connecticut Fair Housing Center, based on the results of fair housing testing dating back to 2009. The complaint alleged that the owner and manager repeatedly expressed an unwillingness to rent to individuals because they either attempted to use state assistance programs or disability benefits to pay their rent or security deposits, or they could not demonstrate they were employed.

Without admitting liability, the owner and property manager agreed to a settlement, which requires them to pay \$150,000, adopt a fair housing policy, receive fair housing training, and cooperate with the monitoring of certain rental practices for three years.

“Source-of-income discrimination such as the refusal to accept rental assistance programs or other government aid causes real harm to individuals and families, particularly those with disabilities, seeking housing,” the Center’s Legal Director Greg Kirschner said in a statement. “These types of settlements underscore the severity of these violations and further the Center’s mission of ensuring all people have access to the housing of their choice, free from discrimination.”

Rule #3: Watch Your Language

Make sure that your compliance efforts extend to what you say in your advertising—and how you respond to telephone or online inquiries—about your willingness to accept Section 8 housing vouchers or other forms of public assistance. The wrong message may trigger a fair housing complaint—or draw the attention of fair housing enforcement officials or organizations, who are monitoring online advertising for compliance with state and local laws banning discrimination based on source of income.

If these laws apply to your community, then it’s unlawful to make statements or disseminate advertising that indicates a preference or limitation based on a prospect’s source of income. For example, your community may not publish advertisements that say, “No Section 8,” or tell prospects over the phone that you don’t accept Section 8 housing vouchers. If you do, you may trigger a fair housing complaint because you’re effectively screening out all Section 8 prospects before they even apply.

In addition, it's unlawful to provide inaccurate or untrue information about the availability of units for discriminatory reasons. Such prohibited conduct includes indicating, through words or conduct, that an available unit has been rented, or limiting information about suitably priced available units, because of the prospect's source of income.

COACH'S TIP: When meeting with prospects, make sure to tell them about all vacancies that meet their needs, regardless of their source of income. Telling applicants receiving housing assistance about vacancies in only particular sections of the community amounts to unlawful steering, a form of discrimination based on source of income.

Rule #4: Follow Standard Procedures Regardless of Source of Income

Follow standard policies and procedures when dealing with prospects and applicants to ensure that every prospect visiting your leasing office is treated the same way, regardless of her source of income. For example, you should offer every prospect—regardless of her source of income—a rental application and invite her to fill it out. Be consistent in applying your screening criteria—including credit history, rental history, criminal background, and the like—to all applicants, regardless of the source of funds used to pay rent.

It's unlawful to refuse to allow a prospect to apply to live in the community—or to impose procedural hurdles that make it more difficult for prospects with housing assistance to get through the application process. Fair housing organizations are taking notice—and acting on complaints of discriminatory treatment during the application process.

EXAMPLE: In April 2013, the Fair Housing Justice Center (FHJC) filed a lawsuit on behalf of a woman living with AIDS, who claimed that she had been denied a unit in a 5,000-unit community in New York City because she intended to pay her rent using a housing subsidy for people with HIV/AIDS issued by a city agency (HASA).

According to the FHJC, the owner and its affiliates are among the nation's largest landlords, with rental communities in New York, California, New

Jersey, Oregon, and Washington. Based on the complaint, the FHJC conducted an investigation, which allegedly revealed systemic discrimination based on source of income and disability at all the owner's rental buildings in New York City.

The lawsuit accused the community and its rental management company of treating applicants with rental assistance of any kind, including persons with a HASA housing subsidy, differently and less favorably than applicants with income from employment. For example, the complaint alleged that applicants who were employed were allowed to go directly to a convenient on-site leasing office, meet with a leasing agent, obtain floor plans, and view available apartments before having any income verified or completing a rental application.

In contrast, the complaint alleged that applicants with any type of rental assistance, including persons with a HASA rental subsidy, were required to go to a separate off-site leasing office, speak with employees behind a glass window, complete a rental application, submit to a credit and criminal background check, and provide other documentation just to be placed on a waiting list and before any information would be provided about apartments for rent or available apartments would be shown. The lawsuit alleged that this different treatment constitutes intentional source-of-income discrimination under the New York City Human Rights Law.

The complaint is the latest of a series of lawsuits filed by the FHJC on behalf of prospects attempting to rent a unit with a HASA housing subsidy in New York City. In March 2013, a large realty company agreed to pay \$212,500 to settle a lawsuit involving the city's ban on discrimination based on source of income.

And in December 2012, a court ordered two New York City real estate firms to pay \$25,000 in damages for source-of-income discrimination against a HASA client and others using government subsidies. According to the court, one of the brokers refused to assist HASA clients altogether. Although the other worked with HASA clients, it refused to show them properties owned by landlords who didn't accept HASA subsidies.

The court rejected the brokers' claim of a legitimate business justification based on delays in the approval process and payment of deposits. Although

there could be circumstances when a landlord or realtor might prefer a so-called market-rate client over a HASA client or a person receiving a governmental rental subsidy, that wasn't the case here. The court noted that the broker who worked with the prospect didn't tell him that he was ineligible for certain apartments because they were available immediately and that HASA applications would take too long to process. Rather, it indicated that certain apartments didn't accept programs under any circumstances because they were only for working people [Short v. Manhattan Apartments, December 2012].

Rule #5: Apply Standard Screening Policies

Source-of-income laws ban discrimination against applicants because of where they get their income—not the amount of their income. You may ask about the source of the applicant's income, as long as you don't discriminate based on that information.

Communities have the right to rent only to applicants they believe to be responsible and who will pay the rent. You may require applicants to satisfy your screening criteria—such as credit checks, criminal background checks, and rental history—as long as you apply the same standards to all your applicants, regardless of their source of income.

For example, you don't have to accept an applicant who receives financial assistance if you have other nondiscriminatory reasons for rejecting him, such as a criminal record, as long as you apply that policy consistently to all applicants. Other legitimate, nondiscriminatory reasons for rejecting an applicant might be bad credit history or prior evictions for non-payment of rent or damage to the apartment.

Regardless of the applicant's source of income, you don't have to accept individuals who can't demonstrate their ability to pay their rent. Communities may require all applicants to satisfy minimum income requirements, such as two or three times the rent, and may verify that the applicant can satisfy that standard. Doing so doesn't violate state or local laws banning discrimination based on source of income—as long as you apply the same income criteria (taking into account their financial assistance) to all applicants.

For example, if your community requires applicants to earn at least three times the rent to live there, you may impose the same requirement on applicants who get Section 8 vouchers or other financial assistance. But you must take into account the amount of their financial assistance to determine whether they meet this requirement, for example, by requiring that they make three times the amount of their portion of rent.

Furthermore, communities may refuse to rent to applicants who can't afford to rent the unit, even with housing subsidies. The Section 8 housing voucher limits the amount of housing assistance based on the amount generally needed to rent a moderately priced unit in the local housing market. If the rent is greater than that amount, then the voucher holder must pay the difference—but by law, a family moving into a new unit may not pay more than 40 percent of its adjusted monthly income for rent.

Rule #6: Apply the Same Terms and Conditions, Regardless of Source of Income

To comply with laws protecting source of income, communities must treat all applicants and residents equally in the terms, conditions, or privileges of the tenancy, regardless of their source of income. In jurisdictions where the laws include protections for housing subsidies, it would be unlawful to require Section 8 voucher holders to pay a larger security deposit or higher rent than required of other residents.

It would also be unlawful to treat residents differently or enforce community rules and policies more strictly against them based on their source of income. You could face a discrimination claim, for example, if maintenance requests by individuals using Section 8 housing vouchers are ignored or put at the bottom of the list. The same would be true if you singled out residents receiving housing assistance for rules violations, while ignoring similar infractions by people who don't receive such assistance.

To avoid a potential violation, provide fair housing training to all employees, stressing the need to treat all your residents in the same professional manner—regardless of their source of income or any other protected characteristic.

COACH'S QUIZ

We've suggested six rules for complying with fair housing laws banning discrimination based on source of income. Now let's look at how the rules might apply in the real world. Take the **COACH's Quiz** to see what you've learned.

INSTRUCTIONS: Each of the following questions has only one correct answer. On a separate piece of paper, write down the number of each question, followed by the answer you think is correct—for example, (1)b, (2)a, and so on. The correct answers (with explanations) follow the quiz. Good luck!

QUESTION #1

If state law bans discrimination based on source of income, then it may be unlawful to refuse to accept Section 8 housing vouchers. True or false?

- a. True.
- b. False.

QUESTION #2

If your community is subject to laws banning discrimination based on source of income, then you may not reject an applicant because she relies on retirement benefits to pay her rent. True or false?

- a. True.
- b. False.

QUESTION #3

Your community is subject to laws banning discrimination based on source of income. You receive an application from a man who receives a housing subsidy, but during the background check, you find out that he has a lengthy criminal record. Since he doesn't meet your screening criteria, you may reject his application without violating fair housing law. True or false?

- a. True.
- b. False.

QUESTION #4

If your state or municipality bans discrimination based on source of income, then it's unlawful to require applicants to satisfy minimum income requirements and to verify that that applicants can satisfy that standard. True or false?

- a. True.
- b. False.

QUESTION #5

Your community is subject to state or local laws banning discrimination based on source of income. A resident relies on alimony and child support payments for her financial support, but you're concerned that she may fall behind on her rent if her ex-husband doesn't fulfill his obligations. Although other residents are allowed to mail rental checks, you have the right to ensure prompt payment by requiring her to bring cash to the office to pay her rent. True or false?

- a. True.
- b. False.

COACH'S ANSWERS & EXPLANATIONS

QUESTION #1

Correct answer: a

Reason: Rule #1 applies here:

Rule #1: Get to Know State and Local Law

In many jurisdictions, laws banning discrimination based on source of income also cover public and private housing assistance, including Section 8 housing vouchers. But some don't, so check with your attorney to get the details of state and municipal laws applicable to your community.

QUESTION #2

Correct answer: a

Reason: Rule #2 applies here:

Rule #2: Don't Reject Applicants Based on Source of Income

To comply with laws banning discrimination based source of income, you may not refuse to rent to prospects because of where they get their income or means of financial support, including retirement benefits.

QUESTION #3

Correct answer: a

Reason: Rule #5 applies here:

Rule #5: Apply Standard Screening Policies

You don't have to accept all applicants who receive housing assistance to comply with state or municipal laws banning source-of-income discrimination. You may reject an applicant if you have other nondiscriminatory reasons for

rejecting him, such as a criminal record, as long as you apply that policy consistently to all applicants, regardless of their source of income.

QUESTION #4

Correct answer: b

Reason: Rule #5 applies here:

Rule #5: Apply Standard Screening Policies

Laws banning source-of-income discrimination don't prevent communities from requiring all applicants to satisfy minimum income requirements, such as two or three times the rent, and to verify that the applicant can satisfy that standard. Doing so doesn't violate state or local laws banning discrimination based on source of income—as long as you apply the same income criteria (taking into account their financial assistance) to all applicants.

QUESTION #5

Correct answer: b

Reason: Rule #6 applies here:

Rule #6: Apply the Same Terms and Conditions, Regardless of Source of Income

Fair housing protections based on source of income don't stop with the application process, so you may not treat residents differently or apply your rules and policies more strictly because of the source of their income. Even if you have concerns that she'll fall behind on rent payments if her ex-husband doesn't fulfill his obligation to pay alimony and child support, it's unlawful to impose more stringent payment requirements on the resident based solely on the source of her income.