



# Issue Fact Sheet

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## FAIR HOUSING ACT PROTECTED CLASSES/SOURCE OF INCOME DISCRIMINATION

### Background

The Fair Housing Act makes it illegal to make housing decisions based on one of seven protected classes: race, color, sex, national origin, religion, handicap and familial status. These protections were first put into law in 1968 and then strengthened in 1988 by making families with children and those with disabilities a protected class. While the federal law sets the minimum protections, states and localities can expand the number of protected classes. Many jurisdictions, for instance, have made marital status and sexual orientation local protected classes. In recent years, largely in an effort to address the affordable housing shortage, several states and localities have made source of income a protected class. This is generally defined to include any lawful source of income including government assistance, alimony, child support or other compensation or benefit. It also includes Section 8 housing subsidies.

Where these laws exist, rental providers may not refuse to rent to a person with a Section 8 voucher merely because the person participates in the Section 8 program. While no law states that participation in the Section 8 voucher program is mandatory, some advocates are interpreting this protection as a prohibition against denying any Section 8 voucher holder residency. Allegations of discrimination have been brought against apartment owners who reject applicants who are Section 8 voucher holders regardless of an owner's reason for the denial. In 1991, the New Jersey Supreme Court (*Franklin Tower One, L.L.C. v. N.M.*, A-159-97) ruled that New Jersey law prohibiting discrimination based on source of income does not conflict with the voluntary federal Section 8 rental assistance program.

### NMHC/NAA Position

Apartment owners make resident selection decisions without regard to race, color, sex, national origin, religion, handicap, familial status and any other protected classes as defined by their state or local law. In source of income jurisdictions, rental professionals apply the same screening criteria and credit requirements on applicants regardless of their participation in the Section 8 or other federal subsidy program. Such protections should not be interpreted to compel a property owner to contract with the federal government via participation in the Section 8 program.

Recognizing the regulatory burden the program places on private owners—owners who participate enter into a contract with HUD with very specific terms and conditions—Congress specifically made participation in the program voluntary. Mandating participation is ultimately self-defeating as it greatly diminishes private investment in affordable housing and reduces the supply.

### Current Status

Twelve states and the District of Columbia prohibit source of income discrimination. They are California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont and Wisconsin. In the last Congress, a bill (H.R. 6500) was introduced by Representative Jerry Nadler (D-NY) to amend the Fair Housing Act to prohibit discrimination on the basis of sexual orientation, gender identity, source of income or marital status. The bill did not advance and was not reintroduced this Congress.

### Relevant Committees

House Judiciary Committee

### NMHC/NAA Contact

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