

SOURCE OF INCOME FAQ

Q What is the new law regarding source of income protections?

A California has a law called the Fair Employment and Housing Act (FEHA) that protects people from housing discrimination based on categories including race, color, national origin, religion, disability, gender, gender identity, familial status, and sexual orientation and some sources of income. The latest amendment to the law regarding source of income protections adds people using a federal, state, or local housing subsidy to this list of protected groups. This means, beginning on January 1, 2020, housing providers, such as landlords, cannot refuse to rent to someone, or otherwise discriminate against them, because they have a housing subsidy, such as a Section 8 Housing Choice Voucher, that helps them to afford their rent.

Q What types of housing subsidy programs are included under the source of income protection law?

A The new law prohibits discrimination against any applicant because the applicant is using a federal, state, or local housing subsidy to assist with paying rent. Section 8 Housing Choice Vouchers, the HUD-VASH program, Homelessness Prevention and Rapid Re-Housing Programs, Housing Opportunities for Persons with AIDS and security deposit assistance programs, among others, all fall within the scope of the new law's protection. This list of protected subsidies also includes locally funded subsidy programs created by cities, counties and public agencies to address growing homelessness.

Q What is "Section 8 Housing Choice Voucher rental assistance"? What is a "VASH voucher"?

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

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

Q Who must comply with the new law?

A All housing providers must comply with the FEHA's new source of income protection law. This includes private landlords, property management companies, homeowners associations, corporations, and others who rent residential property in California. 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.

Q What are some examples of practices that are prohibited?

A A housing provider cannot take the following actions based only on a person’s source of income, or the housing assistance that person receives (partial listing):

1. Advertise or state a preference for tenants with certain sources of income.
2. Refuse an application from a prospective tenant, charge a higher deposit or rent, or treat the prospective tenant or tenant differently in any other way because the prospective tenant or tenant uses a Section 8 voucher or other housing subsidy.
3. Refuse to enter into or renew a lease because the tenant will use a Section 8 housing voucher or other housing subsidy.
4. Interrupt or terminate any tenancy because the tenant is using or plans to use a Section 8 voucher or other housing subsidy.
5. Falsely represent that a rental unit is not available for tenancy because the prospective tenant will be using a Section 8 housing voucher or other housing subsidy.
6. Require any clause, condition or restriction in the terms of an agreement solely because the tenant will use a Section 8 voucher (with the exception of those required by a particular subsidy program).
7. Restrict a tenant’s access to facilities or services at the rental property (such as a pool or fitness center) or refuse repairs or improvements to the property associated with the tenancy, because of the use of a Section 8 housing voucher or other subsidy.

Q Can housing providers indicate in a notice or advertisement, “I do not accept Section 8 Housing Choice Voucher Rental Assistance”?

A No. Beginning January 1, 2020 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 their source of income includes a Section 8 voucher subsidy.

Q Are housing providers prohibited from screening applicants with housing subsidy assistance based on other factors?

A 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. All fair housing laws still apply, ensuring that tenant selection is never based upon 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.*

*Covered under the Unruh Civil Rights Act, which applies to most housing accommodations in California.

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

A Yes. However, housing providers must consider all legal 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 standard. 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.

Q 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 Section 8 tenant meet the financial standard?

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

Q How are Section 8 Housing Choice Voucher rental assistance tenants screened by the housing authority?

A Households which receive Section 8 Housing Choice Voucher rental assistance undergo a verification process of their income and background checks for certain factors related to tenant suitability, such as criminal background* and eviction history. Recipients of housing assistance are also typically required to adhere to standards regarding conduct in the assisted units, providing additional incentives for tenants to comply with lease provisions. Housing providers are also permitted to do their own background checks as long as the screening complies with all federal, state, and local laws.

*FEHA also has specific regulations related to Criminal History Information.

Q Does the new protection mean a housing provider cannot set rent amounts?

A No. The local public housing agency determines whether or not the rent requested by the housing provider for a Section 8 Housing Choice Voucher rental assistance household 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 law that limits rent increases for certain residential properties and must provide the tenant and the local public housing agency with a written notice of a proposed rent increase and submit a Rent Increase Application. Rents for existing Section 8 Housing Choice Voucher rental assistance tenants may not exceed the rents charged for units with tenants who do not receive rental assistance.

Q What could happen if a housing provider does not follow the new law?

A Tenants and applicants can file a private lawsuit against housing providers who violate the law, or they can file a complaint with DFEH. DFEH will investigate and attempt to resolve the complaint. If the complaint isn’t resolved and DFEH determines there has been a legal violation, DFEH 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.

Q Where can I obtain more information?

A Please see our website at www.dfeh.ca.gov for more information and resources about source of income discrimination.