

**Unwanted Dollars, Unwanted Tenants: Source  
of Income Discrimination and a Proposed  
Federal Remedy**

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ABSTRACT

*Source of income (SOI) discrimination remains a pernicious and pervasive barrier to the success of the Section 8 Housing Choice Voucher program and its housing security, desegregation, and anti-poverty objectives. A federal law, in the form of an amendment to the Fair Housing Act of 1968, is a necessary step towards eliminating this form of discrimination. Based on the successes and failures of state and local SOI anti-discrimination laws, in order to achieve its aims, the federal amendment must include a definition of “source of income,” which should be written in broad, inclusive, language, and explicitly include housing voucher recipients within its scope. This legislation should be accompanied by U.S. Department of Housing and Urban Development (HUD) rule-makings aimed at subtler forms of SOI discrimination and administrative reform addressing landlord concerns.*

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I. INTRODUCTION

Congress appropriates tens of billions of federal dollars annually to fund the Department of Housing and Urban Development’s (HUD) Section 8 Housing Choice Voucher (HCV) program.<sup>1</sup> The HCV program is the nation’s single largest housing assistance program in the country, serving about 2.3 million low-income households annually.<sup>2</sup> The program administers rental subsidies to eligible families who apply for a voucher from their local public housing authority (PHA).<sup>3</sup> Those families then select and rent units of their choosing that meet program housing quality standards. The goal of the HCV program is to help low-income families find “decent” places to live in “economically mixed” communities.<sup>4</sup> The HCV program is one of the most effective housing programs in the United States, with rigorous studies demonstrating time and time again the program’s success in reducing homelessness, housing instability, and overcrowding, as well as improving outcomes for families and children.<sup>5</sup>

Nonetheless, far too many households eligible for the program never reap those benefits. Because of legalized landlord discrimination, the HCV program is largely failing to achieve its goals of helping low-income families find housing in high-opportunity neighborhoods.<sup>6</sup> Under federal law, landlords can refuse to rent to tenants for no other reason than that they intend to use vouchers to pay their rent.<sup>7</sup> This is a form of source of income (SOI) discrimination. Congressional complacency with SOI discrimination in the HCV program functions as a form of state-sanctioned discrimination that undermines the goals of the HCV program and of federal housing policy at large.<sup>8</sup>

A federal SOI anti-discrimination law is a necessary step towards fulfilling the potential of the HCV program. Academics and advocates have championed

1. Press Release, U.S. Dep’t Hous. & Urb. Dev., HUD Announces \$30 Billion Investment to Keep American Families Housed (May 14, 2024), <https://archives.hud.gov/news/2024/pr24-112.cfm>.

2. *Id.*

3. Maia Hutt, Note, *This House is Not Your Home: Litigating Landlord Rejections of Housing Choice Vouchers Under the Fair Housing Act*, 51 COLUM. J.L. & SOC. PROBS. 392, 398 (2018).

4. Miriam Elnemr Rofael, *Improving the Housing Choice Voucher Program through Source of Income Discrimination Laws*, 107 CALIF. L. REV. 1635, 1645 (2019) (citing 42 U.S.C. § 1437(f)(a)).

5. See e.g., Will Fischer, Sonya Acosta & Erik Gartland, *More Housing Vouchers: Most Important Step to Help More People Afford Stable Homes*, CTR. ON BUDGET & POL’Y PRIORITIES (May 31, 2021), <https://www.cbpp.org/research/housing/more-housing-vouchers-most-important-step-to-help-more-people-afford-stable-homes>.

6. Rofael, *supra* note 4, at 1645.

7. *Id.* at 1647.

8. See Hutt, *supra* note 3, at 400.

adding SOI as a protected category under the FHA for nearly thirty years.<sup>9</sup> This paper joins the chorus of support but will specifically seek to offer guidance for how Congress should draft an amendment given the successes and perils of similar legislation at the state and local levels. Experience from the implementation of SOI anti-discrimination laws across the country tells us that they are not a panacea, and that courts and landlords have proven to be considerable barriers to the success of SOI anti-discrimination laws in many states and localities.<sup>10</sup>

To help avoid the problems that state and local SOI laws have encountered, the federal SOI law should define “source of income” in the provision, draft the definition in broad language, and explicitly include vouchers as a protected category. Additionally, HUD, in its execution of the new law, should pass regulations aimed at combating “second-generation” forms of SOI discrimination. Without these federal policy changes, SOI discrimination will remain a tremendous barrier to the success of one of the most important housing programs in the country.

## II. BACKGROUND

The federal government is involved in over a dozen different housing assistance programs.<sup>11</sup> Each program combats housing instability differently, with their own structure, targeted group, budget, and participation requirements. The Housing Act of 1974 created the Section 8 rental assistance programs, and its current iteration is a product of the Quality Housing and Work Responsibility Act of 1998, creating what is now referred to as the Section 8 Housing Choice Voucher program.<sup>12</sup> Section 8 vouchers are a form of tenant-based rental assistance that allows an eligible family with a voucher to live in housing of their choice, with the voucher covering the difference between the family’s contribution towards rent and the actual rent for the unit. The program’s unique strengths lie in its portability and flexibility, opening the door to housing stability but also to living in high-opportunity neighborhoods.<sup>13</sup>

SOI discrimination occurs when a landlord refuses to rent to someone because it is known or believed that the renter intends to pay rent, in whole or in

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9. Robert G. Schwemm, *Source-of-Income Discrimination and the Fair Housing Act*, 70 CASE W. RES. L. REV. 573, 575 (2020); Paula Beck, Note, *Fighting Section 8 Discrimination: The Fair Housing Act’s New Frontier*, 31 HARV. C.R.-C.L. L. REV. 155 (1996).

10. See Tamica H. Daniel, *Bringing Real Choice to the Housing Choice Voucher Program: Addressing Voucher Discrimination Under the Federal Fair Housing Act*, 98 GEO. L.J. 769 (2010).

11. Section 8 vouchers and project-based rental assistance, public housing, Section 202 housing for the elderly, Section 811 housing for persons with disabilities, rural rental assistance (USDA’s Section 521 program), Community Development Block Grants, HOME Investment Partnership Block Grants, Low-Income Housing Tax Credits, homeless assistance programs, Federal Housing Authority and Department of Veterans Affairs mortgage insurance, and the mortgage interest deduction in the tax code. MAGGIE MCCARTY ET AL., CONG. RSCH. SERV., RL34591, OVERVIEW OF FEDERAL HOUSING ASSISTANCE PROGRAMS AND POLICY 1 (2019).

12. *Id.* at 8.

13. *Id.* at 34.

part, with income derived from a form of public assistance.<sup>14</sup> This income can include social security benefits, disability benefits, Temporary Assistance to Needy Families (TANF), or housing vouchers from the Section 8 Housing Choice Vouchers (HCV) program.<sup>15</sup> Most of the focus of SOI discrimination literature is on housing vouchers.<sup>16</sup> The success of the HCV program relies on the assumption that landlords in low-poverty neighborhoods will be willing to accept these vouchers. When landlords refuse, tenants are left with few options, remaining trapped in the neighborhoods that HCVs were meant to provide a way out of.<sup>17</sup> SOI discrimination is one of the most blatant forms of discrimination occurring today, yet it persists largely unaddressed by most state legislatures and Congress.<sup>18</sup>

The consequences of SOI discrimination are far-reaching and stand in the way of eliminating residential segregation, ending housing instability and homelessness, and alleviating concentrations of poverty – all goals of federal housing policy.<sup>19</sup> SOI discrimination contributes to the retrenchment of patterns of racial residential segregation that persist across the country to this day.<sup>20</sup> Historically, vouchers have been more accepted in areas with higher poverty rates, reinforcing long-standing issues of segregation.<sup>21</sup> Ending discrimination in the voucher system can help decrease segregation.<sup>22</sup> Unfortunately, “SOI protection laws . . . are often not present in places where residential segregation is most pronounced.”<sup>23</sup>

Refusing to act on SOI discrimination perpetuates housing instability and homelessness. SOI discrimination makes it exceedingly difficult for voucher holders to obtain desirable housing, with research suggesting that landlords in more desirable, higher-rent areas avoid vouchers.<sup>24</sup> A recent and comprehensive analysis of HUD administrative data found that success rates – defined as the share of voucher residents who successfully sign leases within the search times PHAs allowed – for voucher holders was only about 60% in 2019, using data from

14. Kinara Flagg, *Mending the Safety Net Through Source of Income Protections: The Nexus Between Antidiscrimination and Social Welfare Law*, 20 COLUM. J. GENDER & L. 201, 204 (2011).

15. *Id.*

16. Daniel, *supra* note 10, at 776.

17. Rofael, *supra* note 4, at 1647.

18. Poverty & Race Research Council, *Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination*, <https://www.prrac.org/pdf/AppendixB.pdf> (last updated Jan. 2025).

19. Daniel, *supra* note 10, at 771.

20. Schwemm, *supra* note 9, at 618; Jamie Langowski et al., *Qualified Renters Need Not Apply: Race and Housing Voucher Discrimination in the Metropolitan Boston Rental Housing Market*, 28 GEO. J. ON POVERTY L. & POL’Y 35, 45 (2020).

21. Tolly Maloney, *More Harm Than Good: How State-Sponsored Gentrification is Driving the Affordable Housing Crisis and a Call for Accountability and Source-of-Income Protections*, 30 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 289, 331 (2024).

22. Derek Waller, *Leveraging State and Local Antidiscrimination Laws to Prohibit Discrimination Against Recipients of Rental Assistance*, 27 J. AFFORDABLE HOUS. & CMTY. DEV. L. 401, 405 (2018).

23. Hutt, *supra* note 3, at 425.

24. Martha Galvez & Brian Knudsen, *Discrimination Against Voucher Holders and the Laws to Prevent It: Reviewing the Evidence on Source of Income Discrimination*, 26 CITYSCAPE 145, 147 (2024).

85,000 voucher holders at 433 PHAs.<sup>25</sup> This rate was down from 69% in 2000.<sup>26</sup> A 2018 HUD study evaluating how difficult it is for tenants with housing vouchers to find landlords willing to accept vouchers found that landlords in high poverty areas were more likely to accept vouchers than landlords in low poverty areas.<sup>27</sup> SOI discrimination hinders the federal government's pursuit of its declared goal of providing a suitable living environment for every American family.<sup>28</sup>

Refusing to act on SOI discrimination preserves concentrations of poverty. The HCV's goals include promoting access to high-opportunity neighborhoods for low-income families.<sup>29</sup> Studies have demonstrated that most HCV holders remain in low-opportunity neighborhoods with moderate or high levels of poverty and stay in or close to their original neighborhood.<sup>30</sup> As a result of voucher denials in high-opportunity neighborhoods, individuals are trapped in poverty and suffer the consequences. Living in a high-poverty neighborhood is associated with disparities in college graduation rates, professional employment, and earnings; poorer health outcomes; exposure to elevated levels of crime and violence; pervasive joblessness; and chronic physical and psychological health conditions.<sup>31</sup> By contrast, living in and moving to a high-opportunity neighborhood significantly improves one's quality of life, housing quality, economic opportunities, health, and a host of other important factors like job outcomes and enhanced upward mobility.<sup>32</sup> While the relative immobility of voucher recipients is not entirely due to SOI discrimination, as some families may prefer the social benefits of staying within an established social network,<sup>33</sup> research shows that most voucher holders would like to move to economically mixed communities but are unable to find housing.<sup>34</sup>

### III. EXAMINING STATE AND LOCAL SOI ANTI-DISCRIMINATION LAWS

#### A. *Impact of State and Local SOI Laws*

Housing provision does not exist in a vacuum independent of federal oversight and regulation. The federal Fair Housing Act (FHA) prohibits landlords from denying housing on the basis of race, color, religion, national origin, sex, familial status, and disability.<sup>35</sup> The absence of source of income from the list of

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25. *Id.*

26. *Id.*

27. Sarah Friedman, *A Source of Hope: Looking to Massachusetts's Fair Housing Law as a Guide for Rhode Island's Proposed Legislation to Protect Public Assistance Recipients from Housing Discrimination*, 25 ROGER WILLIAMS U.L. REV. 412, 418-19 (2020).

28. 42 U.S.C. § 441 (1949).

29. Lance Freeman & Yunjing Li, *Do Source of Income Anti-Discrimination Laws Facilitate Access to Less Disadvantaged Neighborhoods?*, 29 HOUS. STUD. 88, 89 (2013).

30. Hangen & O'Brien, *supra* note 18, at 1604.

31. Sara Pratt, *Civil Rights Strategies to Increase Mobility*, 127 YALE L.J. FORUM 498, 499 (2017).

32. *Id.* at 500; Hangen & O'Brien, *supra* note 18, at 1604.

33. Hangen & O'Brien, *supra* note 18, at 1604.

34. Rofael, *supra* note 4, at 1648.

35. Robert G. Schwemm, *State and Local Laws Banning Source-of-Income Discrimination*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. 373, 373 (2019).

prohibited categories remains a fundamental oversight, allowing SOI discrimination to continue in its absence.

Most states and many localities have civil rights laws that are substantially equivalent to the FHA, but many have gone beyond the boundaries of the FHA to include other protected classes, including age, marital status, sexual orientation, and source of income.<sup>36</sup> At the time of writing, nearly half of all states and Washington, D.C. have some sort of SOI anti-discrimination legislation on their books.<sup>37</sup> A handful of these laws date originated in the 1970s, another twenty were passed in the 1980s and 1990s, but most – over fifty – have been enacted since 2000.<sup>38</sup> As a result of these state and local laws, over a third of all households using vouchers are now protected by some form of voucher anti-discrimination law.<sup>39</sup> The laws themselves vary in exactly who and what they protect, how they are enforced, and have varying rates of success.<sup>40</sup>

Research suggests that SOI laws have significant impacts on voucher utilization and modest, but statistically significant, impacts on neighborhood quality.<sup>41</sup> As to voucher utilization rates, studies suggest that SOI discrimination laws increase the likelihood of HCV recipients finding a place to live.<sup>42</sup> Jurisdictions that have source of income protections have a success rate (the rate of voucher holders who successfully find housing within the PHA's time frame) that is 12% higher than in jurisdictions without such laws.<sup>43</sup> This means that in a jurisdiction with 10,000 vouchers, up to 1,200 additional units could successfully be leased.<sup>44</sup> As to neighborhood quality, studies have shown that SOI discrimination laws improve the likelihood of low-income families moving to better neighborhoods.<sup>45</sup> A 2018 study found that in jurisdictions with SOI discrimination laws, rates of voucher denials in low-poverty neighborhoods were similar to the overall denial rates for all neighborhoods.<sup>46</sup> By contrast, jurisdictions without discrimination laws had much higher denial rates in wealthier neighborhoods.<sup>47</sup>

SOI laws have encountered enforcement difficulties, and as a result the effect of those laws on reducing discriminatory landlord behavior has varied. For

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36. *Id.*

37. States with SOI protection laws: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Virginia, Washington, and Wisconsin. See Poverty & Race Research Council, *Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination*, <https://www.prrac.org/pdf/AppendixB.pdf> (last updated Jan. 2025).

38. *Id.*

39. *Id.* at 377.

40. *Id.*

41. Philip M.E. Garboden et al., *Taking Stock: What Drives Landlord Participation in the Housing Choice Voucher Program*, 28 HOUS. POL'Y DEBATE 979, 999 (2018).

42. Rofael, *supra* note 4, at 1653.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 1653-54.

47. *Id.* at 1654.



example, studies have demonstrated that landlords in Philadelphia largely ignored the city's SOI laws, widely denying vouchers in low-poverty areas at rates comparable to jurisdictions without SOI laws.<sup>48</sup> Nevertheless, other studies have demonstrated that the mere enactment of the laws and landlord awareness of their existence can have a deterrent effect on discriminatory behavior, regardless of actual enforcement practices.<sup>49</sup> While SOI laws are not a panacea, they are a necessary step towards helping tenants acquire affordable housing and ameliorating some of the deeply rooted patterns of segregation, housing instability, and concentrations of poverty in American communities.<sup>50</sup>

### *B. Barriers to the Success of State and Local SOI Laws*

#### *1. Judicial Narrowing of SOI Laws*

One significant barrier to the success of SOI protection legislation at the state and local levels, that may remain a significant barrier at the federal level, is subsequent court interpretation of SOI statutes. When jurisdictions' source of income discrimination laws do not explicitly include housing vouchers, courts are left to interpret whether vouchers are covered under the statute.<sup>51</sup> Consequently, some courts have held that they are included, and others have held that they are not.<sup>52</sup>

SOI anti-discrimination legislation has run into obstacles in the courts when statutes define source of income too narrowly. For example, in 1971, Massachusetts became the first state to enact a SOI law, prohibiting landlords from discriminating against any recipient of public assistance or housing subsidies "solely because the individual is such a recipient."<sup>53</sup> Sixteen years later, the Massachusetts Supreme Court interpreted "solely" to allow a landlord to refuse Section 8 voucher holders because he objected to the terms in the standard lease mandated by the program.<sup>54</sup> Three years later, Massachusetts added amendments removing the word "solely" and further prohibiting landlords from discriminating "because of any requirement of such public assistance, rental assistance, or housing subsidy program."<sup>55</sup>

Even when a SOI law has included housing vouchers in its definition, courts have sided in favor of discriminatory landlords. In Wisconsin, the state source of income discrimination statute prohibits discrimination based on "lawful source of income" which includes any "voucher representing monetary value such as food stamps, social security, public assistance or unemployment compensation benefits."<sup>56</sup> Although the statute explicitly names "vouchers" and "public assistance," the Seventh Circuit affirmed a lower court determination that Section 8 vouchers should not be included, distinguishing them from other forms of support by

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48. *Id.*

49. *Id.* at 1653.

50. Maloney, *supra* note 21, at 318.

51. Daniel, *supra* note 10, at 778.

52. *Id.* at 778-79.

53. See MASS. GEN. LAWS ch. 151B, § 4(10) (1971).

54. Attorney Gen. v. Brown, 511 N.E.2d 1103 (Mass. 1987).

55. Schwemm, *supra* note 35, at 378.

56. WIS. STAT. ANN. § 101.22(6) (West 2024).

stating that the money goes directly to the landlord instead of to the voucher holder.<sup>57</sup> Similarly, a California law prohibiting landlord discrimination against tenants based on a tenant's SOI that defined "source of income" as "lawful veritable income paid directly to a tenant" was successfully challenged as excluding Section 8 vouchers because they are paid to landlords, not tenants.<sup>58</sup> In 2019, California amended their law to explicitly include coverage of Section 8 vouchers.<sup>59</sup>

## 2. Landlord Circumvention of SOI Laws

Another significant barrier to the success of SOI anti-discrimination legislation at the state and local level has been "second generation" forms of SOI discrimination.<sup>60</sup> While first-generation discrimination comes in the form of blatant denials of prospective tenants who hold vouchers, second-generation discrimination is more subtle, replacing blatant denials with other, facially neutral conditions like minimum-income requirements and minimum credit requirements.<sup>61</sup> New York City offers a good example of this problem. Although the city has had an SOI anti-discrimination law on the books since 2008, SOI discrimination is still rampant.<sup>62</sup> One study found that many landlords use discriminatory income and credit requirements to deter voucher-holding prospective tenants.<sup>63</sup> Landlords and brokers throughout the city employed elusive qualifications, with requirements like "[y]ou need to earn 40x monthly rent" or "you need a minimum 750 credit score."<sup>64</sup> The study found that these criteria and requirements served as insurmountable barriers in the already challenging search to obtain housing in New York City.<sup>65</sup>

To combat the growing use of such second-generation discriminatory tactics, jurisdictions have amended statutory language, relied on their agencies, and relied on the courts. For example, Washington, D.C., a jurisdiction with an SOI law, specifies in statute that landlords cannot consider credit and income.<sup>66</sup> Most statutes, however, do not offer this level of specification.<sup>67</sup> However, including such specifications might make a federal SOI law more difficult to pass through Congress, as it will provide more debate fodder due to its ostensibly neutral requirements already being employed against tenants who do not utilize vouchers. Other jurisdictions have had their agencies implement interpretive rules and

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57. See *Knapp v. Eagle Prop. Mgmt. Corp.*, 54 F.3d 1271, 1282-83 (7th Cir. 1995).

58. Waller, *supra* note 22, at 411.

59. Schwemm, *supra* note 35, at 376 n.14.

60. Armen H. Merjian, *Second-Generation Source of Income Discrimination*, UTAH L. REV. 963, 965 (2023).

61. *Id.*

62. *Id.* at 969.

63. *Id.*

64. *Id.*

65. *Id.* at 970.

66. *Id.* at 973.

67. *Id.*



guidance saying that such behavior is impermissible.<sup>68</sup> For example, Virginia's housing agency has interpreted minimum income and minimum credit requirements to constitute SOI discrimination if they result in the automatic disqualification of HCV holders.<sup>69</sup> Following the enactment of a federal SOI law, HUD should strongly consider following Virginia's example and implement similar regulations to that end, or at the very least publish guidance documents containing similar instructions for landlords using minimum credit or income requirements. As a last resort, courts across the country have struck down minimum-income requirements, and to a slightly lesser extent, minimum credit requirements as both an unnecessary and unjustified form of SOI discrimination, as applied to all the rent a voucher-holding tenant would owe.<sup>70</sup>

#### IV. FEDERAL SOI ANTI-DISCRIMINATION LEGISLATION

##### *A. Crafting Federal SOI Legislation*

Federal source of income anti-discrimination legislation should be drafted as follows: inserting the words "or source of income" after "national origin" in subsections (a)-(e) of 42 USC § 3604, and adding a new subsection (g) that says "for purposes of this section, 'source of income' shall be defined as any form of public assistance, including but not limited to federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (41 U.S.C. Sec. 1437(f)), and any requirements of such assistance." This way, the new legislation can avoid superseding judicial interpretation as well as the pitfalls of overly narrow or vague definitions of source of income. This proposal comes from the experiences of state and local enactments of SOI legislation and what federal lawmakers should learn from those experiences.

The first takeaway is to provide a statutory definition of "source of income," and not leave the term undefined. While the phrase may seem self-explanatory, especially to administrative agencies like HUD that would be tasked with enforcing it, in the wake of *Loper Bright* overturning *Chevron*,<sup>71</sup> a court's interpretation, rather than an agency's, is controlling in ambiguous cases.<sup>72</sup> Therefore, without an explicit definition section in the law, a more inclusive interpretation of source of income by HUD could risk usurpation by a more limited interpretation by a federal judge. To avoid Congress's intent getting muddled by the courts, Congress should include a provision defining "source of income" in the amendment to the FHA.

The second takeaway for federal legislators is to avoid defining SOI too narrowly. Tragically, an overly narrow definition may make it possible for judges to exclude the very group the legislature intends to protect, as the case in

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68. *Id.* at 976.

69. *Id.* at 977.

70. *Id.* at 986.

71. *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244, 2264 (2024).

72. *Id.* at 2273.

Massachusetts demonstrated. This is why a federal SOI law should be careful to avoid words like “solely” and use broader language more clearly evincing the intent of the legislature to protect a large swatch of people, like “any,” which the Supreme Court has consistently interpreted as connoting a broad, expansive meaning in statutory text.<sup>73</sup> Writing too narrowly, even if not to exclude housing voucher holders, may still result in an underinclusive statute. For example, Oregon’s SOI anti-discrimination law defines source of income as including Section 8 voucher payments and “any other local, state, or federal housing assistance.”<sup>74</sup> Although Oregon succeeds in being explicit about protecting their Section 8 voucher holders, they neglect to protect other high-risk individuals seeking housing that will be paid for through public assistance, such as social security benefits, disability benefits, and Temporary Assistance to Needy Families, which are important sources of income worth protecting.

A third lesson learned for writing SOI legislation is the definition of SOI should clearly apply to housing voucher recipients. When this is not the case, as we have seen from the examples of Wisconsin and California, courts can apply a very rigid standard of interpretation to exclude Section 8 voucher holders. This outcome can be prevented using two legislative drafting strategies. First, by not referring to income “paid directly to a tenant” or to the direction of payment at all, but merely to the tenant’s status as a recipient of public assistance. This is the strategy that Vermont’s SOI discrimination law uses, where “public assistance” is defined in the statute as “any assistance provided by federal, state, or local government, including medical and housing assistance.”<sup>75</sup> The second, by ensuring that the definition of public assistance explicitly includes the Section 8 housing voucher program. Oregon uses this strategy, defining “source of income” as including Section 8 voucher payments and “any other local, state or federal housing assistance.”<sup>76</sup>

### *B. Implementing Federal SOI Legislation*

The Fair Housing Act of 1968 (FHA) was enacted to prohibit discriminatory practices in the sale and rental of housing.<sup>77</sup> However, the FHA did not really gain its teeth until the 1988 Fair Housing Amendments Acts, which added the enforcement strength that the original Act lacked.<sup>78</sup> The Amendment allowed a complainant to, if HUD determined that reasonable cause of discrimination existed, choose one of two options: Either file a claim with one of HUD’s administrative law judges reserving a later option to remove to federal district court, or file

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73. See e.g., *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 219 (2008) (noting that “read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’”); see also *U.S. v. Gonzales*, 520 U.S. 1, 5. (1997) (noting that “[r]ead naturally, the word ‘any’ has an expansive meaning”).

74. *Waller*, *supra* note 22, at 412.

75. *Id.* at 414-15.

76. *Id.* at 412.

77. *Maloney*, *supra* note 21, at 319.

78. *Id.* at 320.

directly in federal district court.<sup>79</sup> The Amendment gave the judges the power to award up to \$50,000 in compensatory damages, injunctive relief, and civil penalties for cases in which a party committed three offenses within seven years.<sup>80</sup> The Amendment also added two protected classes: families with children, and persons with physical or mental disabilities.<sup>81</sup>

The new SOI provision would be enforced like any of the other anti-discrimination provisions of the FHA. This means it would be subject to HUD's enforcement mechanisms, and in the case of a demonstrated "pattern or practice" of widespread SOI discrimination, the SOI law could be enforced by the Department of Justice.<sup>82</sup> Of course, this will run into the same issues of enforcing any claim of housing discrimination. Housing discrimination enforcement is largely complaint-driven, relying on individual reports of perceived discrimination to spur investigations and later litigation if evidence of discrimination is found.<sup>83</sup> Identifying violations of law is left to people already navigating a challenging housing search, under intense pressure to find housing before their vouchers expire, and assumes knowledge of the legal system and legal rights that few people may actually have.<sup>84</sup> Reporting discrimination is unlikely to improve a voucher holder's immediate housing prospects, and indirect discriminatory practices may leave some voucher holders unsure if they even experienced discrimination.<sup>85</sup> These are the same problems facing enforcement of any form of housing discrimination under the Fair Housing Act. Thus, the solution to this problem is outside the scope of this paper, which is specific to the source of income discrimination.

## V. RESPONDING TO ARGUMENTS AGAINST A FEDERAL SOI ANTI-DISCRIMINATION LAW

### A. Congressional Efforts Would Be Better Directed Towards Funding

A significant argument against the enactment of a federal SOI anti-discrimination law is that enforcement of SOI laws is so poor that the laws may as well not exist, so the state's resources would be better off going to increasing funding for these programs instead. It is true that enforcement of SOI discrimination has proven difficult, which has resulted in moderate impacts of the program compared to what could be possible if the program were to be implemented at its full force.<sup>86</sup> The subpar enforcement is, at least in part, due to Congress having chronically underfunded HUD for decades, leaving the agency understaffed and under-resourced.<sup>87</sup> Federal funding, inarguably, is enormously important to the success of

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79. *Id.*

80. *Id.*

81. *Id.*

82. Flagg, *supra* note 14, at 146-47.

83. Galvez & Knudsen, *supra* note 24, at 154.

84. *Id.* at 155.

85. *Id.*

86. Garboden et al., *supra* note 41, at 980.

87. Toni Aguilar Rosenthal, *Sabotaged HUD Must Rebuild to Fix the Housing Crisis*, REVOLVING DOOR PROJECT (Jan. 27, 2022), <https://therevolvingdoorproject.org/sabotaged-hud-must-rebuild-to-fix-the-housing-crisis/>.

any federal program. However, the annual fight for more funding should not distract from the goal of federal SOI discrimination legislation. Both goals should be sought in tandem, because neither can solve the housing crisis without the other.

If SOI legislation is enacted without additional HUD funding, the law itself will still make a significant impact that should not be undervalued. A 2018 study of landlords in five different markets reported voucher denial rates ranging from 15% to 78%, and the two jurisdictions with the lowest denial rates both had SOI protections in place.<sup>88</sup> While voucher denial rates do not plunge everywhere equally just by enacting SOI laws, there is no denying that the laws offer tenants extra legal protections and in many cases better housing outcomes that they would not otherwise have than if they were without them. Amending the Fair Housing Act to include discrimination based on voucher status would also create a cause of action for voucher holders subject to discrimination to bring lawsuits.<sup>89</sup> Jurisdictions that have enacted SOI protections show a quick uptake and steady rise in SOI cases, with 711 complaints filed in 2015, compared to 1,713 filed in 2021.<sup>90</sup>

### *B. A Federal SOI Amendment is Politically Infeasible*

Despite significant research on jurisdictions with SOI laws offering convincing evidence that these laws reduce housing instability and improve family mobility, many will argue a federal SOI law is a waste of time. There are concerns that such a law would never get the support needed to pass Congress and be signed by the President, making it a sinkhole for the already limited resources and time of policy advocates and social reformers. This section will challenge the notion that such a law would be insurmountably politically unpopular.

At the state level, SOI legislation has passed through the legislatures of right-leaning states like North Dakota, Oklahoma, Utah, Wisconsin, and Texas.<sup>91</sup> Additionally, legislating against SOI discrimination is not unheard of in Congress. In fact, bills proposing such an amendment to the FHA have been regularly introduced in Congress,<sup>92</sup> including four in the 118<sup>th</sup> session (two of which have been introduced in both the House and Senate).<sup>93</sup> SOI discrimination itself is a subversion of congressional intent. Despite protections from housing discrimination based on race, familial status, national origin, and disability, discriminating based on source of income disproportionately

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88. Ingrid Gould Ellen et al., *Advancing Choice in the Housing Choice Voucher Program*, 33 HOUS. POL'Y DEBATE 941, 943 (2023).

89. Daniel, *supra* note 10, at 780.

90. Maloney, *supra* note 21, at 325.

91. Poverty & Race Research Council, *supra* note 37, at 37-38, 43-45, 51-52.

92. *Id.*

93. See Fair Housing Improvement Act of 2023, H.R.2846 and S.1267 (prohibiting discrimination against individuals based on their source of income, veteran status, or military status in the sale or rental of housing and other related real estate transactions and services); Landlord Accountability Act of 2023, H.R.1431 (prohibiting discrimination in rental housing and residential real estate transactions based on an individual's source of income and providing for penalties); Ending Homelessness Act of 2023, H.R.4234 (among other things, prohibiting housing discrimination based on source of income); American Housing and Economic Mobility Act of 2024, S.4824 and H.R.9245 (expanding rights under the fair housing act by, among other things, adding source of income).

impacts exactly those classes of people the FHA is supposed to protect.<sup>94</sup> Congress has responded to proxy housing discrimination before. The 1988 amendment to the FHA that added “familial status” to the list of prohibited bases of discrimination was done in part because discrimination against families with children was being used as a proxy for racial and national-origin discrimination.<sup>95</sup> Therefore, there is precedent for adding new protected categories to the FHA when Congress is made aware of persistent residential discrimination, particularly when race may still be the underlying motivating factor of such discrimination.

There are also strategies legislators can take to increase the amendment’s political feasibility. One way to do this is by broadening the focus of the amendment away from exclusively the poor to including protections for more politically popular groups. An example of this can be seen in the American Housing and Economic Mobility Act of 2024, legislation introduced last Congress which not only amends the FHA to include source of income discrimination, but also discrimination based on veteran status.<sup>96</sup> The choice of the language to be “public assistance” should be intentional as well. Some states prohibit SOI discrimination based on any “lawful source of income/money,”<sup>97</sup> but an overly broad definition may not be politically popular, as it could include alimony and child support. By narrowing the language, more legislators can support a bill that protects a smaller, more clearly defined class.<sup>98</sup> It should also not be discounted that vouchers are one of the few social welfare tools that have a broad base of political support because they are largely invisible and their financial stakes too small to invite conspicuous fraud.<sup>99</sup> Thus, building upon this pre-existing support is feasible – certainly more so than creating new programs or even increasing funding, which is a never-ending annual battle in which HUD is often the loser.

Finally, some may argue that SOI anti-discrimination legislation is the type of policy that should be left to the states to handle. While states and localities have been implementing SOI legislation at accelerating rates across the country, SOI protection laws continue to not be present in places where residential segregation is most pronounced.<sup>100</sup> One of the most important goals of American housing policy is desegregation, and SOI discrimination legislation is a powerful step towards achieving that goal. Thus, waiting for SOI discrimination to pass state by state and at the local level is a fool’s errand. Without federal intervention, spotty state and local protection from SOI discrimination will leave many of the most vulnerable without protection. Additionally, states with stronger laws already on the books need not be concerned about federal preemption, as the FHA has a

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94. Hutt, *supra* note 3, at 393.

95. Schwemm, *supra*, note 9, at 618.

96. American Housing and Economic Opportunity Act of 2024, H.R. 9245, 118th Cong. (2024).

97. Friedman, *supra* note 27, at 420.

98. Friedman, *supra* note 27, at 414.

99. Charles J. Orlebeke, *The Evolution of Low-Income Housing Policy, 1949-1999*, 11 HOUS. POL’Y DEBATE 489, 505 (2010).

100. Hutt, *supra* note 3, at 425.

provision that explicitly allows any state or local law that “grants, guarantees, or protects the same rights as are granted by the FHA.”<sup>101</sup>

*C. Addressing Landlord Concerns Through HUD Regulatory Changes*

There are three main motivations behind landlord denial of vouchers: 1) previous negative experiences with PHAs and the voucher administrative process, 2) how the payment compares to what they might otherwise receive for units, and 3) personal biases toward or past experiences with voucher holders.<sup>102</sup> A federal SOI anti-discrimination law will get less resistance from landlords if HUD takes concrete steps towards reforming the administration of the HCV program. HUD regulations can and should address the first and second issues.

The most common reason for landlords leaving the HCV program is because they feel as if the PHA had not been adequately supportive of them.<sup>103</sup> Half of landlords report that inspections are a burdensome and negative aspect of the program.<sup>104</sup> While any form of inspection is burdensome, what frustrates landlords the most is perceived inconsistency and unpredictability of outcomes.<sup>105</sup> Administrative inefficiency related to inspection is one of the primary drivers of landlords’ refusal to participate in the program.<sup>106</sup> Standardizing the implementation of inspections so that they are less subject to inspectors’ discretion and improving the turnaround time for reinspection would be beneficial to all parties involved.<sup>107</sup> HUD should pass regulations to effectively address these concerns, including improving the efficiency and standards for the inspection process, and improving outreach and communication to manage landlords’ expectations.<sup>108</sup>

Another significant reason for landlord denial of vouchers is lower payment than what they would receive renting the unit at the market rate. To address this concern, HUD should adopt Small Area Fair Market Rent standards. These more precise, neighborhood-level approaches to setting local voucher payment standards can lead to more voucher households living in lower-poverty, higher-rent neighborhoods compared with having rent payments set at the metropolitan level.<sup>109</sup> This formula stands in contrast to the current payment standard: 90-110% of the Fair Market Rent for a moderately-priced unit in the local housing market, where the local housing market is the entire metropolitan area, which may contain multiple counties and millions of people, or counties themselves in non-metropolitan areas.<sup>110</sup> Washington, D.C. has a noticeably strong success rate

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101. Schwemm, *supra* note 9, at 595.

102. Galvez & Knudsen, *supra* note 24, at 150.

103. Garboden et al., *supra* note 41, at 981.

104. *Id.* at 993.

105. *Id.*

106. *Id.*

107. *Id.* at 999.

108. *Id.*

109. *Id.* at 147.

110. *U.S. Housing Market Conditions Summary, U.S. DEP’T HOUS. & URB. DEV.*, <https://www.huduser.gov/periodicals/ushmc/winter98/summary-2.html>. (last visited May 19, 2025).



of voucher holders finding housing throughout varied socioeconomic areas, and was the only location in a recent study where landlords were not substantially more likely to deny voucher holders in low-poverty areas compared with high-poverty areas.<sup>111</sup> DC PHA's payment standards vary by neighborhood, a model that researches largely credit for its success. If HUD anticipates resistance to this rule due to higher costs, they should at least publish guidance recommending that PHA's in cities across the country vary their payment standards by neighborhood location.

Some landlords argue that denying housing vouchers is not discrimination under the FHA but merely an exercise of their right to freedom of choice and freedom of contract in the rental process. To them, source of income is a legitimate business concern because it is relevant to whether tenants will have a steady source of income to pay rent.<sup>112</sup> While such concerns may be relevant for tenants paying rent with help from alimony or child support payments, those who are receiving Section 8 vouchers or other government assistance actually have one of the most stable sources of income available.<sup>113</sup> Some landlords express concern that accepting vouchers would mean their forced participation in the voluntary Section 8 program, but that is an incorrect assumption.<sup>114</sup> Landlords who are covered by the FHA would not be required to participate in the Section 8 program, instead, they would remain free not to rent to voucher holders provided they do so on other legitimate, nondiscriminatory grounds, such as an applicant's rental history or criminal history.<sup>115</sup> Opponents of SOI laws also argue that participation in the HCV program will harm landlords and force them to rent to problematic tenants, but these claims lack empirical evidence.<sup>116</sup>

## VI. CONCLUSION

Source of income discrimination will remain one of the most significant barriers to the success of a housing program that affects the lives of millions of Americans. SOI discrimination undermines the goals of the HCV program; "[i]t is a waste of our nation's resources to fund a program and then allow its frustration by letting people discriminate against the program's participants."<sup>117</sup> SOI discrimination defeats the aim of choice that is fundamental both to the HCV program and our fair housing laws.<sup>118</sup> The only way to dismantle this barrier nationwide is through the enactment of a federal source of income protection law.

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111. Galvez & Knudsen, *supra* note 24, at 149.

112. Michelle Streifthau-Livizos, *The Burden of Being a Landlord: the Truth Behind Delaware's Source of Income Discrimination Laws*, 10 DREXEL L. REV. 813, 846 (2018).

113. Gary Rhoades, *Freedom of Choice for Low-Income Renters Still Elusive as States and Cities Scramble to Confront Housing Voucher Discrimination*, 48 HUM. RTS. 16, 19 (2023).

114. Schwemm, *supra* note 9, at 619.

115. *Id.* at 620.

116. Rofael, *supra* note 4, at 1658.

117. Langowski et al., *supra* note 20, at 67.

118. *See generally*, Rhoades, *supra* note 113.



Successful state SOI discrimination laws can serve as models for this type of amendment to the FHA.

Specifically, a federal source of income discrimination amendment to the FHA should be mindful of three lessons learned from state and local implementations of SOI laws. First, that the amendment should include an explicit definition for “source of income” to avoid the risk that certain interpretations of the term will undermine the purpose of the amendment. Second, the definition of source of income should be broadly drafted, with use of terms like “any” to indicate to judicial interpreters that Congress intends for the legislation to be applied more liberally than conservatively. Source of income should be defined as “public assistance,” a term broad enough to cover multiple forms of assistance, such as vouchers and social security, but narrow enough that non-governmental sources, such as alimony and child support, would not be included. Finally, to ensure the provision is unambiguous in its protection of Section 8 voucher holders, the definition of source of income should specifically mention recipients of housing assistance under the Section 8 program. To bolster the effects of the new legislation HUD should pass regulations aimed at combating “second-generation” forms of SOI discrimination.

This type of amendment to the FHA would make marked improvements in the HCV program and help it achieve its intended purpose. More broadly, SOI discrimination laws would also further the nation’s housing goals to desegregate the market, increase stability, and reduce concentrations of poverty, while promoting choice and opportunity. While source of income discrimination will not disappear overnight, amending the FHA to include source of income discrimination as a protected category is an important and politically feasible step Congress can take to close a significant gap in this life-changing program.