

Source of Income Discrimination Guidance



*How Maryland's Fair
Housing Act Protects You*



Source of Income Discrimination Guidance



General Source of Income Discrimination Guidance

Background

Housing discrimination is prohibited under the Maryland Fair Housing Act, Annotated Code of Maryland, State Government Article, Title 20, subtitle 7. The Maryland Fair Housing Act prohibits a person from refusing to sell or rent a home to a person based on the renter or buyer's source of income and prohibits property owners from discriminating against tenants who seek to pay for housing using federal or State subsidies.

Purpose

The purpose of this guidance¹ is to provide information on how the State of Maryland Commission on Civil Rights ("Commission") analyzes source of income discrimination in housing as a result of the enactment of the Housing Opportunities Made Equal ("HOME") Act of 2020. The guidance aims to inform tenants, housing providers, real estate professionals, and the public about source of income discrimination which commonly involves unfair treatment of a prospective renter because that person seeks to pay their rent with the assistance of an income-based housing subsidy.

1. What is the Maryland Fair Housing Act?

The Maryland Fair Housing Act, Annotated Code of Maryland, State Government Article, Title 20, subtitle 7, is the state law that prohibits unlawful discrimination in housing. The Commission investigates housing complaints to determine whether there is probable cause or no probable cause that discrimination occurred.

2. How does the Maryland Fair Housing Act protect Marylanders from housing discrimination based on their source of income?

The Maryland Fair Housing Act prohibits discrimination against a person based on their source of income when renting an apartment, buying a home, applying for a mortgage, or receiving housing-related services. The Maryland Fair Housing Act also prohibits real estate brokers and appraisers from discriminating against a person based on their source of income. If the Commission finds probable cause of discrimination, the Commission will attempt to settle the case. If the case does not settle, the Commission will certify the case for litigation before either the Office of Administrative Hearings or the Circuit Court to decide whether discrimination occurred.

¹ The information contained in this Guidance is provided as a public service and must not be considered legal advice.



Source of Income Discrimination Guidance



A person who believes that they experienced discrimination because of their source of income may report the incident to the Maryland Commission on Civil Rights. For more information on how to start the process.²

3. What does source of income mean?

Under the Maryland Fair Housing Act, *Source of Income* means “any lawful source of money paid directly or indirectly to or on behalf of a renter or buyer of housing.” In other words, a person’s source of income is how they receive the money to pay for housing or housing related services.

4. What are examples of a person’s source of income that are protected from discrimination under the Maryland Fair Housing Act?

Common sources of income protected under the Maryland Fair Housing Act include:

- A gift
- An inheritance
- A pension
- An annuity
- Sale or pledge of property or an interest in property
- Income from employment
- Housing Choice Vouchers (also known as Section 8)
- Federal, state, local, or private housing assistance
- Emergency housing assistance payments
- Court ordered child support payments
- Spousal maintenance
- Retirement income
- Housing assistance for Veterans/benefits
- Social Security retirement benefits
- Social Security Supplemental Security Income (SSI)
- Social Security Disability Insurance (SSDI)
- Person with a disability third party payee

5. What are examples of possible source of income discrimination under the Maryland Fair Housing Act?

- Preferring tenants with employment income over tenants with other sources of income.
- Discouraging applicants with non-employment income from applying to rent.

² For more information on how to file a complaint with MCCR, please see Question 23 on page 8.



Source of Income Discrimination Guidance



- Advertising or making statements such as “Landlord is not set-up for Section 8” or “No Section 8” or similar limitations.
- Screening out applicants receiving Social Security or other government assistance.
- Rejecting applicants who cannot provide paystubs or W-2 forms.
- Refusing to process, or delaying, a person’s application because they intend to use a Housing Choice Voucher.
- Rejecting housing applicants because they rely on child support payments.
- Refusing to rent to someone because they are employed seasonally or part-time.
- Falsely telling an applicant that a property is not available because the landlord wants to rent to another person with a different source of income.
- Charging higher fees or requiring different terms and conditions because a person receives income from non-employment sources.
- Charging a higher security deposit fee for Housing Choice Voucher participants.

6. Does the Maryland Fair Housing Act protect existing tenants from housing discrimination based on their source of income?

Yes. The Maryland Fair Housing Act protects both new applicants and existing tenants. If an existing tenant obtains a voucher or other new source of income, the housing provider must accept the new source of income and must take steps to meet any program requirements to accept the income, such as allowing an inspection.

7. What are the consequences if a housing provider unlawfully discriminates based on source of income?

A housing provider that discriminates based on source of income may be found liable and be required to do the following:

- cease-and-desist discriminating;
- pay actual damages to compensate for loss or injury;
- pay other damages;
- pay a civil penalty to the State of Maryland;
- pay attorney’s fees.

8. What are some best practices housing providers can follow to avoid unlawfully discriminating against an applicant based on their source of income?

- Screen applicants on a case-by-case basis rather than by their source of income.
- Do not advertise a preference for certain types of sources of income.
- Do not give preference to one source of income over another.
- Do not steer applicants with non-employment sources of income to different properties than would be shown to applicants with employment income.



Source of Income Discrimination Guidance



- Apply rental standards and qualifications uniformly and equally to all applicants.
- Ensure rental standards and qualifications are reasonable.
- Know the minimum quality standards for Housing Choice Voucher housing.

Source of Income Questions

9. Can a housing provider ask about a person's source of income?

Yes. Housing providers may ask applicants and tenants about the sources of their income for the limited purposes of determining their ability to pay rent and verifying the accuracy of the information provided. However, the housing provider may not prefer one source of income over another. If a housing provider asks about an applicant's source of income, then the housing provider must ask the same question(s) of all applicants.

10. Can a housing provider give greater preference to market-rate applicants over subsidized applicants?

No. Housing providers must accept applicants who receive housing assistance. The Maryland Fair Housing Act requires housing providers to treat all applicants and tenants equally regardless of their source of income.

11. Can a housing provider give greater preference to subsidized applicants over market-rate applicants?

No. Housing providers must accept applicants who do not receive housing assistance. The Maryland Fair Housing Act requires housing providers to treat all applicants and tenants equally regardless of their source of income.

12. Can a housing provider give greater preference to one housing subsidy program over another housing subsidy program?

No. Accepting only some vouchers or programs violates the Maryland Fair Housing Act. This is true even if certain programs require more paperwork, pay a lower fee to the broker, or involve longer processing times.

13. Can a housing provider refuse to accept one-time grants or other types of housing assistance?

No. Housing providers must treat all applicants and tenants equally regardless of their source of income. Any type of monetary assistance intended to help with paying rent, security deposits, move-in fees, etc., is covered by the Maryland Fair Housing Act.



Source of Income Discrimination Guidance



A housing provider may consider other non-discriminatory factors in determining whether to accept housing assistance, including payment history and ability to pay the rent for the term of the lease.

Proof of Income Questions

14. Can housing providers require tenants and applicants to provide proof of income?

Yes. A housing provider can require proof of income so long as they accept proof of non-employment income (e.g., social security, disability benefits, or Housing Choice Vouchers) in the same manner as proof of employment income (e.g., paystubs, W-2 forms, and tax returns).

Housing providers may not use information about income in a way that has a discriminatory effect on applicants and tenants based on their source of income.

15. Can housing providers deny applicants because they do not earn enough income?

Yes. The Maryland Fair Housing Act does not prohibit housing providers from requiring proof that tenants have enough income to pay the rent. However, the income standard must be reasonable.

Housing providers may not use an income standard that has the effect of excluding persons receiving housing subsidies. Housing subsidies are provided to low-income housing applicants. Unreasonable income requirements may effectively discriminate against people who have been found eligible for Housing Choice Vouchers or other housing subsidies.

Housing providers must only consider the tenant's or applicant's portion of the rent when using a minimum income standard. If a person has a Housing Choice Voucher, then the granting agency has already determined that the person is qualified to pay their portion of the rent. For example, imagine that a unit is advertised for \$2,000, for which the housing provider requires an applicant's income to be three times (3x) the rent amount. If an applicant has a housing subsidy that pays \$1,500 directly to the housing provider, then the applicant would only pay \$500 per month directly.

In this example, the housing provider may only require the applicant to have a non-subsidized income of \$1,500 per month in addition to the rent subsidy. The housing provider may not require the applicant to have a non-subsidized income of \$6,000 per month.



Source of Income Discrimination Guidance



Compliance with Housing Subsidy Program Standards Questions

16. Are housing providers required to prepare their properties to be compliant with Housing Choice Voucher quality standards before receiving applications?

No. A housing provider is not required to modify their property to comply with Housing Choice Voucher (or similar subsidy program) program's quality standards until they become aware that a qualified applicant intends to use a voucher or similar subsidy.

The purpose of Housing Choice Vouchers and similar subsidies is to provide excellent affordable housing. Housing providers should be familiar with quality standards and be prepared to pass an initial inspection.

Common deficiencies found in quality standard inspections include damaged walls and doors, electrical hazards, lead paint, broken smoke detectors, and pests.

The Housing Choice Voucher program's quality standards can be a valuable roadmap for all housing providers concerning the minimum standards to ensure a quality living environment.

17. Are housing providers required to lower the rent to allow a subsidized tenant to rent the unit?

No. A housing provider is not required to lower their rent to accommodate applicants who use a Housing Choice Voucher or other subsidized income. However, a housing provider may not increase their rent to avoid renting to subsidized applicants.

In many instances the local public housing agency determines whether the rent requested by the housing provider for a Housing Choice Voucher rental assistance household is reasonable. Critical market factors that impact rent are considered, such as the location, quality, size, unit age and type, and any amenities.

18. Can a housing provider outright refuse to accept Housing Choice Vouchers or similar subsidies that require third-party approval and inspections?

No. Housing providers may not outright refuse to rent or sell to applicants with housing subsidies that require the housing provider to take additional steps to utilize the subsidy.

The Maryland Fair Housing Act requires housing providers to treat all applicants and tenants equally regardless of their source of income. Equal treatment means that persons



Source of Income Discrimination Guidance



with Housing Choice Vouchers and other subsidies must be given a fair opportunity to use those sources of income to pay for their housing.

A housing provider may not make discriminatory advertisements or statements, such as:

- “landlord is not set-up for Section 8”,
- “Section 8 not accepted”,
- “market rate tenants only”,
- “no vouchers accepted”,
- “we are not set-up for housing subsidy programs”,
- “we are not set-up for housing voucher programs”.

A housing provider may not use the source of the income as a factor in the application or screening process. If a subsidized applicant is ready and willing to rent the property but the property requires third-party approval, then the housing provider must cooperate with the review and approval process – including making the property available for an inspection and making any reasonable repairs necessary to comply with minimum quality standards.

Credit, Security Deposit, and Fee Questions

19. Can housing providers require security deposits, application fees, or move-in fees?

Yes. A housing provider may require a reasonable security deposit and reasonable fees if they are equally applied to all applicants and tenants regardless of their source of income. A housing provider may not charge different fees for subsidized tenants than they do for market rate tenants.

20. Can housing providers run credit checks?

Yes. The Maryland Fair Housing Act does not prohibit a housing provider from checking a tenant’s credit history if the same standards are equally applied to all tenants regardless of their source of income. Housing providers should equitably run credit checks for all tenants.

21. Can housing providers require a minimum credit score for renting an apartment?

Yes. The Maryland Fair Housing Act generally does not prohibit housing providers from requiring tenants to have a minimum credit score. However, a minimum credit score requirement may violate the Maryland Fair Housing Act if it has a discriminatory effect on applicants based on their source of income or other protected characteristics.



Source of Income Discrimination Guidance



Housing providers should consider an applicant's credit on a case-by-case basis to avoid discrimination. If an applicant does not have sufficient credit, the housing provider should consider the applicant's housing payment history, bill payment history, and similar evidence of the applicant's likelihood of paying rent on time.

Housing providers who reject tenants with subsidies that cover 100% of the rent because they did not meet minimum credit score criteria may be engaging in source of income discrimination.

Reporting and Filing a Charge of Source of Income Discrimination

22. What can a person do if they are experiencing discrimination because of their source income?

A person experiencing source of income discrimination may report the incident to the Maryland Commission on Civil Rights within 1 year of the date of the alleged discriminatory act.

23. How does a person report discrimination to the Maryland Commission on Civil Rights?

A person who believes they have been discriminated against by a housing provider based on their source of income may file a complaint with the Maryland Commission on Civil Rights by submitting a completed intake form, known as the Preliminary Questionnaire ("PQ").

- 1) You can access MCCR's Preliminary Questionnaire online at <https://mccr.maryland.gov/>. It is available as both a completable online survey or a downloadable PDF.
- 2) There are four ways to submit your PQ:
 - a. Online – complete the survey on MCCR's website. Once complete, the information is sent directly to the Intake Unit.
 - b. E-mail – send the completed PQ to mccr@maryland.gov.
 - c. Mail – send the completed PQ to Maryland Commission on Civil Rights, 6 St. Paul Street, Suite 900, Baltimore, Maryland 21202.
 - d. In-Person – please call MCCR's Intake Unit at (410) 767-8600 (*option 1 for English then option 2 for Intake; option 2 for Spanish*) to schedule a visit or to obtain directions to MCCR's Baltimore Office. Photo identification is required to enter the building.



Source of Income Discrimination Guidance



24. What can I do to prepare to report an incident of discrimination and support the investigation?

- When searching for housing, keep detailed notes of your interactions.
- Take photos or screenshots of advertisements immediately.
- Let the Maryland Commission on Civil Rights know if you have any witnesses to your incident.
- Save all your text messages and e-mails in a safe place (not just on your phone).
- Report possible discrimination to the Maryland Commission on Civil Rights.

25. Does the Maryland Commission on Civil Rights accommodate persons with disabilities?

Yes. MCCR provides assistance to anyone who needs help accessing and understanding our information. Please contact MCCR's Intake Unit to arrange an accommodation if you are a person with a disability. You can contact the Intake Unit:

- By e-mail at mccr@maryland.gov,
- By phone at (410) 767-8600 (*option 1 for English then option 2 for Intake; option 2 for Spanish*), or
- By Maryland Relay 711.

26. Do I need to speak English to report discrimination or to file a complaint?

No. MCCR will provide an interpreter if requested. You may also bring a support person of your choice to interviews. Please contact MCCR's Intake Unit to arrange an interpreter if you are a person with limited English proficiency. You can contact the Intake Unit:

- By e-mail at mccr@maryland.gov,
- By phone at (410) 767-8600 (*option 1 for English then option 2 for Intake; option 2 for Spanish*), or
- By Maryland Relay 711.

27. Do I need to be a Permanent Resident or U.S. Citizen to report discrimination or to file a complaint?

No. Anyone who believes that they have been discriminated against in the State of Maryland because of a protected basis (such as source of income) can report the incident and file a charge of discrimination. MCCR does not collect information regarding an individual's immigration status.



Source of Income Discrimination Guidance



28. Do I need to hire an attorney to file a complaint of discrimination?

No. An attorney is not required to file a complaint of discrimination with MCCR. However, an attorney may represent a person or another party at any stage of the process. The person who filed the complaint has a right to have their own lawyer.

29. Is there a fee to report discrimination?

No. There is no fee to report the incident and file a complaint with MCCR.

30. What can be done if someone threatens me to prevent me from reporting discrimination, filing a complaint, or cooperating with an investigation?

It is unlawful to retaliate against or to intimidate any person for reporting discrimination, filing a complaint of discrimination, or participating in an investigation being conducted by MCCR. It is also unlawful to retaliate against or to intimidate any person because that person reported a discriminatory practice to a housing provider or other authority. If you believe that you have experienced retaliation or intimidation, contact MCCR immediately to file a complaint.³

31. Where can I get more information if I don't see the answer to my question here?

If you have a question about source of income discrimination not answered by this guidance, please visit MCCR's website at <https://mccr.maryland.gov/>, call MCCR at (410) 767-8600, or e-mail MCCR at mccr@maryland.gov.

³ For more information on how to file a complaint with MCCR, please see Question 23 on page 8.