



# SOURCE OF INCOME: GENERAL OVERVIEW

Branden Butler, Assistant Deputy Director of  
Education and Outreach, DFEH

Alexander "Sasha" Harden, Policy Advocate,  
Western Center on Law and Poverty

Kara Brodfuehrer, Staff Attorney,  
National Housing Law Project



# WELCOME & INTRODUCTIONS





# GENERAL ISSUES

1. Send questions to:

[Shalineehunter@dfeh.ca.gov](mailto:Shalineehunter@dfeh.ca.gov)

2. MCLE - Send name, bar number, address, and phone number to [DFEHMCLEProvider@dfeh.ca.gov](mailto:DFEHMCLEProvider@dfeh.ca.gov)





The Department of Fair  
Employment and Housing is  
California's Civil Rights Agency





# CIVIL RIGHTS LAWS ENFORCED BY DFEH

## *Fair Employment and Housing Act*

- Government Code §§ 12940-12951, 12955-12956.2 protect individuals from housing and employment discrimination and harassment on the basis of protected characteristics.





## HOUSING PROTECTED BASES (1 OF 2)

- Race (hair texture and style, effective 1/1/20)
- Color
- Ancestry
- Religion
- Sex
- Gender
- Sexual Harassment
- Sexual Orientation
- Gender Identity
- Gender Expression
- National Origin
- Source of Income (amended)
- Marital Status





## HOUSING PROTECTED BASES (2 OF 2)

- Familial Status (children under the age of 18, pregnant, or becoming a legal custodian)
- Disability (mental and/or physical)
- Medical Condition
- Military or Veteran (new)
- Genetic Information
- Primary Language\*
- Immigration Status\*
- Age\*
- Citizenship\*

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





# SB 329: HOUSING OPPORTUNITIES ACT (1 OF 2)

- *SB 329 adds tenant-based housing assistance to California's existing protections against discrimination based on source of income:*

*(See next slide for definition)*







# SB 329: HOUSING OPPORTUNITIES ACT (2 OF 2)

- “Source of income” means lawful, verifiable income paid directly to a tenant or to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f)





## “SOURCE OF INCOME” DISCRIMINATION

- This means that a housing provider may not engage in actions based on a tenant’s (or prospective tenant’s) use of housing assistance that would be prohibited on the basis of any other protected class, such as race or religion.
- There is one exception – a housing provider may inquire about a tenant or prospective tenant’s level and source of income.
- But the housing provider may not discriminate against a tenant *because* housing assistance is a source of their income.





## WHO MUST COMPLY WITH THE NEW LAW?

- All housing providers must comply. This includes private landlords, property management companies, homeowners' associations (HOA's), corporations, and others who rent residential property in the state of California. However, homeowners who live in their house, condominium or other single-family unit and rent out only one room within that unit, do not have to follow the law.





# WHAT TYPES OF HOUSING SUBSIDY PROGRAMS ARE INCLUDED UNDER THE SOURCE OF INCOME LAW?

- Section 8 Housing Choice Vouchers,
- the HUD-VASH program,
- Homelessness Prevention and Rapid Re-Housing Programs,
- Housing Opportunities for Persons with Aids (HOPWA) and
- security deposit assistance programs.
- This also includes locally funded subsidy programs created by cities, counties and public agencies to address growing homelessness





## WHAT IS TENANT BASED RENTAL ASSISTANCE? (1 OF 2)

- Tenant-based rental assistance is financial assistance paid to a landlord on behalf of a low-income tenant to help them afford market rent for privately owned housing units.
- Typically, the tenant pays 30% of their income towards the rent.





## WHAT IS TENANT BASED RENTAL ASSISTANCE? (2 OF 2)

- A government entity (usually a Public Housing Authority) pays the remainder of the rent directly to the landlord.
- Over 300,000 families in California receive this assistance, and local governments are increasingly turning to vouchers to help solve the housing crisis.





# APPLICANTS AND CURRENT TENANTS ARE COVERED BY SB 329 (1 OF 2)

- As of January 1, 2020, it is unlawful for a housing provider to discriminate against a person because they receive housing assistance to help them pay the rent.
- These protections apply to both applicants *and* existing tenants, and are not limited just to advertisements or admissions to housing:
  - Can't evict someone because you no longer want to accept Section 8





# APPLICANTS AND CURRENT TENANTS ARE COVERED BY SB 329 (2 OF 2)

- Can't refuse to accept rent from a tenant who receives assistance after they have been admitted
- Can't refuse to rent or impose different requirements for someone simply because they receive housing assistance
- Applies to a range of housing activities, including operation of housing, real estate transactions, financing and development, and land use decisions.







# EXAMPLES OF DISCRIMINATION: PROHIBITED PRACTICES (1 OF 3)

Unlawful to...

- discriminate against or harass...
- make, print, or publish... any notice, statement, or advertisement... that indicates any preference, limitation, or discrimination...
- discriminate... in the terms, conditions, or privileges relating to the obtaining or use of... financial assistance...





## EXAMPLES OF DISCRIMINATION: PROHIBITED PRACTICES (2 OF 3)

- harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices [of discrimination]...
- discriminate against any person in making available a [real estate] transaction...
- otherwise make unavailable or deny a dwelling...





## EXAMPLES OF DISCRIMINATION: PROHIBITED PRACTICES (3 OF 3)

- discriminate through public or private land use practices, decisions, and authorizations...  
[including] covenants, zoning laws, denials of use permits...  
... based on Source of Income





# EXAMPLES OF DISCRIMINATION (1 OF 2)

- Advertisements that state “No Section 8”, “No Public Assistance,” “No HUD,” etc.
- Evicting a tenant who has already been admitted because they receive a voucher and plan to use it to pay rent going forward
- Refusing to complete paperwork required for the tenant to begin paying their rent using assistance





## EXAMPLES OF DISCRIMINATION (2 OF 2)

- Refusing to finance a housing development because of the planned occupancy by tenants with housing assistance
- Imposing different insurance requirements for properties with tenants that use housing assistance
- Cities imposing different conditions in land use approvals for housing for tenants with housing assistance





## NOTE: SOME OF THESE PRACTICES MAY ALSO RUN AFOUL OF OTHER LAWS...

- AB 1482: limits on rent increases and just cause eviction requirements; covers tenants using rental assistance unless property otherwise exempt.
- Government Code Section 65008: prohibits land use discrimination based on affordability of proposed project, etc.
- Insurance Code Section 679.74: prohibits discrimination in property insurance based on acceptance of housing assistance, and prohibits related inquiries on insurance applications.





# ARE HOUSING PROVIDERS REQUIRED TO ACCEPT ALL APPLICANTS USING HOUSING SUBSIDIES? (1 OF 2)

- Landlords are still free to consider other lawful factors when analyzing a rental application:
- including income eligibility
- credit history
- rental history





# ARE HOUSING PROVIDERS REQUIRED TO ACCEPT ALL APPLICANTS USING HOUSING SUBSIDIES? (2 OF 2)

- But when analyzing whether an applicant has enough income to pay the rent for a unit, a housing provider must consider all legal and verifiable sources of income paid by the tenant *or* directly to the landlord on behalf of the tenant, including housing subsidies







# WHAT ABOUT MINIMUM INCOME REQUIREMENTS?

- If the landlord requires a minimum income that is a multiple of the monthly rent and the tenant will be using a housing subsidy to cover part of the rent, the landlord can only consider the tenant's portion of the rent when calculating the minimum income.  
(Cal. Govt. Code 12955 (o))





## EXAMPLE 1: MIRIAM (1 OF 2)

Miriam received \$2500 in security deposit assistance from a local social services agency. She applied to live in a unit and was accepted. However, when she gave her landlord the security deposit, he refused to accept it because it was not coming directly from her.

Is the landlord allowed to refuse the security deposit assistance?





## EXAMPLE 1: MIRIAM (2 OF 2)

No. SB 329 requires landlords to accept all verifiable sources of income, paid directly by a tenant or on behalf of a tenant.





## EXAMPLE 2: MARIB (1 OF 2)

Marib is renting out a unit in a six unit apartment complex. In the ad, he includes the words, “ No Section 8”

Does this ad comply with the new law?





# DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

☆ \$2000 / 3br - 1050ft<sup>2</sup> - 3 Bedroom, 2 Bath House, Stove, Fridge, Washer, Dryer, Patio - SDSU (San Diego College Area) ☒

image 1 of 12



This is a 3 bedroom, 2 bath house with a covered patio and a small fenced yard. It is located in central San Diego in the eastern San Diego State University College Area, near La Mesa. Close, easy access to Freeway 8 off 70th Street. This house includes a new refrigerator, stove, and washer and dryer appliances. New carpet thru-out. The renters pay for the water, gas and electric, cable, etc. The trash and recycling pickup is free. This is a Month-to-Month rental. Tenant background screening will be performed.

Please reply by e-mail and indicate how many people, when you want to move-in, and if you have any pets. Please include your name and phone number in the email. You can also text me with this info at [show contact info](#) .

This house is located on Mohawk Street by 71st Street. Move-in cost is first month's rent plus deposit for a total of \$4000, \$35 application screening fee per person. No smoking and **No Section 8**. Available near the end of June or 1st of July.



## EXAMPLE 2: MARIB (2 OF 2)

No. SB 329 prohibits advertising a preference for tenants with certain types of income.





## EXAMPLE 3: MARISOL (1 OF 2)

Marisol has been renting a unit with a section 8 voucher for three years. Her landlord says he is ending her tenancy because he no longer wants to participate in the section 8 program.

Can Marisol's landlord end her tenancy?





## EXAMPLE 3: MARISOL (2 OF 2)

No. The Fair Employment and Housing Act prohibits discrimination at all times during a tenancy. This includes refusing to continue a tenancy because a tenant is utilizing a section 8 voucher.







## EXAMPLE 4: ARYA (1 OF 2)

Joffrey is renting out a unit for \$1500. He requires an applicant to have a minimum income of two times the rent to qualify. Arya has a housing subsidy that will pay \$1100 of the rent, and she will be responsible for the remaining \$400. Arya's monthly income is \$1600.

Joffrey refused to rent to Arya because she does not make \$3000 a month, two times the monthly rent.

Can Joffrey refuse to rent to Arya?





## EXAMPLE 4: ARYA (2 OF 2)

Joffrey can only consider Arya's portion of the rent (\$400) when calculating whether she meets his minimum income requirement. Arya will qualify because her income of \$1600 is more than the applicable minimum of \$800 ( $\$400 \times 2$ ).





*Questions?*





THANK YOU!

Branden Butler

[Branden.Butler@dfeh.ca.gov](mailto:Branden.Butler@dfeh.ca.gov)

Alexander "Sasha" Harnden

[aharnden@wclp.org](mailto:aharnden@wclp.org)

Kara Brodfuehrer

[kbrodfehrer@nhlp.org](mailto:kbrodfehrer@nhlp.org)

