

IN THE SUPREME COURT OF MARYLAND

SCM-MISC-0032-2024
September Term, 2024

KATRINA HARE,

Petitioner,

v.

DAVID S. BROWN ENTERPRISES, LTD.,

Respondent.

BRIEF OF PETITIONER KATRINA HARE

Lauren A. DiMartino (AIS# 2111120002)
Andrew D. Freeman (AIS # 8612010166)
Brown, Goldstein & Levy, LLP
120 E. Baltimore Street, Suite 2500
Baltimore, MD 21202
Phone: (410) 962-1030
Fax: (410) 385-0869
ldimartino@browngold.com
adf@browngold.com

James M. Ray, II (AIS # 1412180059)
Ray Legal Group, LLC
8720 Georgia Avenue, Suite 904
Silver Spring, Maryland 20910
Phone: (301) 755-5656
Fax: (301) 755-5627
Jim.ray@raylegallgroup.com

Counsel for Petitioner Katrina Hare

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New Jersey Division on Civil Rights, <i>Finding of Probable Cause: Moran v. Tower Mgmt. Servs., L.P.</i> , DCR Docket No. HB52WR-61415, (Apr. 22, 2010), https://www.nj.gov/oag/newsreleases20/Tower.FPC.pdf	33
New York State Commission on Human Rights, <i>Best Practices for Housing Providers to Avoid Source of Income Discrimination</i> 1 (Mar. 2023),	

https://www.nyc.gov/assets/cchr/downloads/pdf/materials/FairHouse_FAQs-Landlord-English.pdf	36
New York State Division of Human Rights, <i>Guidance on Protections from Source of Income Discrimination in Housing Under the New York State Human Rights Law</i> , (2020), https://dhr.ny.gov/system/files/documents/2022/05/nysdhr-soi-guidance-2020.pdf	16, 35–36
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U.S. Dep’t of Hous. & Urb. Dev., Off. of Pol’y Dev. & Rsch., <i>Assisted Housing: National and Local</i> , https://www.huduser.gov/portal/datasets/assthsg.html (last visited Feb. 25, 2025)	1, 2, 4–5, 18, 18–19
U.S. Dep’t of Hous. & Urban Dev., <i>Fair Market Rents</i> , https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/fmr (last visited Feb. 25, 2025)	19

Statement of the Case

Since 2020, the Housing Opportunities Made Equal (“HOME”) Act has prohibited Maryland landlords from discriminating against tenants based on their lawful source of income, such as the use of a housing voucher or other rental-assistance program. Md. Code. Ann., State Gov’t §§ 20-705(1), 20-705(j)(2). The General Assembly passed the law to promote safety and security in housing for vulnerable Marylanders, increase economic mobility by removing barriers to higher opportunity areas, deconcentrate poverty, and reduce homelessness. Preamble, 2020 Maryland Laws Ch. 116. Because “No Housing Voucher” signs are no longer allowed to be hung in landlords’ windows, some landlords rely on income-verification policies that, if legal, would nullify the Act—including the policy at issue here, which requires a prospective renter with a housing voucher to have an income of 2.5 times the full monthly market rent, *not* merely 2.5 times the prospective renter’s share of the rent after a subsidy. Respondent David S. Brown Enterprises, Ltd. (“DSB”) may not circumvent the HOME Act with a policy that is facially neutral but that has the effect of culling out the vast majority of housing voucher recipients.

Over 54,000 households (124,395 people) in Maryland rely on housing vouchers to keep a roof over their heads.¹ Under DSB’s policy, the vast majority of those households—including Petitioner Katrina Hare—would be precluded from living in units of their choice

¹ U.S. Dep’t of Hous. & Urb. Dev., Off. of Pol’y Dev. & Rsch., *Assisted Housing: National and Local*, <https://www.huduser.gov/portal/datasets/assthsg.html> (last visited Feb. 25, 2025) (select “State” from the “Select a Summary Level” dropdown menu, then choose “MD Maryland” from the “Select a State” form box, and then select “Housing Choice Vouchers” from the “Select a Program” form box)

that they can afford only with the assistance of their housing voucher. Like many other voucher holders, Ms. Hare is a senior, an African American, and has a disability.² In 2022, Ms. Hare submitted a rental application for an apartment in DSB's St. Charles at Olde Court in Pikesville, Maryland. As part of the application process, DSB required Ms. Hare to demonstrate income of at least 2.5 times the total monthly market rent. As a result, Ms. Hare did not qualify for the apartment. Had DSB subtracted from the rent the voucher payment amount, for which the County would be responsible (and which the County can undoubtably afford to pay), and considered whether Ms. Hare's income was sufficient to cover the amount of rent for which she would be personally responsible each month (the reasonable way to predict her ability to pay), it would have determined that Ms. Hare's monthly income was over 6.6 times the amount.

Ms. Hare filed suit against DSB in the Circuit Court for Baltimore County, alleging violations (among other things) of the HOME Act for discriminating against her based on her source of income. DSB filed a motion for summary judgment, which the Circuit Court granted in favor of Respondent on April 17, 2024. E.117.

This case involves Md. Code Ann., State Gov't §§ 20-704 and 20-705(1) (prohibition of discrimination in housing because of source of income); State Gov't § 20-701(j)(2) (definition of "source of income"); and Md. Rule 2-501 (Summary Judgment).

² U.S. Dep't of Hous. and Urb. Dev., Off. of Pol'y Dev. and Rsch., *Assisted Housing: National and Local*, <https://www.huduser.gov/portal/datasets/assthsg.html> (last visited Feb. 25, 2025).

Because an income requirement divorced from the share of rent a tenant will have to pay herself (1) requires voucher holders to demonstrate a larger income-to-rent ratio than the landlord requires of non-voucher holders, (2) would preclude the vast majority of voucher holders from being approved for the unit in question, and (3) would eviscerate the HOME Act's protection from source-of-income discrimination, DSB's minimum-income requirement is unreasonable and discriminatory, and thus violates the law. No state to address the issue has found such unreasonable income requirements to be legal under source-of-income discrimination laws. The intent of the General Assembly confirms that Maryland should not be the outlier.

Question Presented

Where a tenant's rent is subsidized by a housing voucher, does a landlord's imposition of an income requirement that fails to account for the share of the rent guaranteed by the voucher and has the effect of excluding voucher holders constitute source-of-income discrimination in violation of Md. Code. Ann., State Gov't § 20-705?

Statement of Facts

Housing Choice Vouchers

The federal government's Housing Choice Voucher ("HCV") program³ is the largest provider of housing subsidies for low-income individuals in the nation. Dep't of Legis. Servs., Md. Gen. Assembly, *Fiscal and Policy Note*, S.B. 530, 2020 Leg., 441st

³ The program is frequently referred to as Section 8 because it was authorized under Section 8 of the Housing Act of 1937, ch. 896, § 8, 50 Stat. 888, 895 (codified as amended at 42 U.S.C. § 1437f).

Sess. (Md. 2020), at 5, https://mgaleg.maryland.gov/2020RS/fnotes/bil_0000/sb0530.pdf; U.S. Dep’t of Hous. & Urb. Dev., *Housing Choice Vouchers Fact Sheet*, https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited Feb. 25, 2025). The program was born out of the federal Housing Act of 1937, which “allowed families to select their own housing and lease directly from a building owner.” S.B. 530, *Fiscal and Policy Note*, at 5. It provides low-income families with housing choice and prevents the high concentration of poverty. *Id.* Eligibility for an HCV is based on an applicant’s income as compared to the area median income (“AMI”) for their jurisdiction. 42 U.S.C. § 1437a(b). To qualify for an HCV, a person’s income must be at or below 50% AMI. 42 U.S.C. § 1437n(b). Seventy-five percent of vouchers must be given to “extremely low-income families”—applicants with incomes at or below 30% AMI. 42 U.S.C. § 1437a(b)(2)(C); 42 U.S.C. § 1437n(b)(1).

Voucher recipients are responsible for finding a suitable home to rent. 24 C.F.R. § 982.302. Once they have found such a home, voucher holders pay 30% of their monthly adjusted gross income for rent and utilities,⁴ and the landlord receives the housing assistance payments directly from the local housing authority each month. 42 U.S.C. § 1437a(a)(1); 24 C.F.R. § 982.514. Over 54,000 households in Maryland receive a housing subsidy through the HCV program. U.S. Dep’t of Hous. & Urb. Dev., Off. of Pol’y Dev. & Rsch., *Assisted Housing: National and Local*, <https://www.huduser.gov>

⁴ Although under the statute a family may not pay more than 30% of its monthly adjusted income towards rent, “where the gross rent of the unit exceeds the applicable payment standard for the family,” the family is able to increase its share of the rent up to 40% of the family’s adjusted monthly income. 24 C.F.R. § 982.508.

/portal/datasets/assthsg.html (last visited Feb. 25, 2025) (select “State” from the “Select a Summary Level” dropdown menu, then choose “MD Maryland” from the “Select a State” form box, and then select “Housing Choice Vouchers” from the “Select a Program” form box). Seventy-nine percent of those households make less than 30% AMI (classified as “extremely low income”). *Id.*

Katrina Hare’s search for a home

Petitioner Katrina Hare is a 62-year-old, disabled, African-American woman. E.100. Because her disabilities prevent her from working and maintaining suitable employment, Ms. Hare qualified for the HCV program administered by the Baltimore County Office of Housing. E.100–01. As an accommodation for Ms. Hare’s disability, she qualifies for additional money—known as an “exception payment standard,” 24 C.F.R. § 982.503(d)(5)—that, along with her Social Security Income (“SSI”) (\$841 monthly), is sufficient to cover her rent and utility payments each month. *Id.* As of February 2022, Ms. Hare lived in a second-floor apartment in Baltimore, but her disabilities rendered the home no longer suitable. E.101.

In February 2022, Ms. Hare submitted a rental application to the apartments of St. Charles at Olde Court in Pikesville, Maryland, owned by David S. Brown Enterprises, LTD (“DSB” or “the Landlord”). *Id.* Ms. Hare applied to rent a unit on the main level of the building, which would allow her to enter the residence with minimal stairs and provide access to cooking, the bathroom, and her bedroom on the same floor. *Id.* The unit also had a second bedroom for her live-in aide. *Id.* The market rent for the DSB unit was \$1,590 per month. E.103. As set forth in her application, most of Ms. Hare’s rent—\$1,464—would

have been covered by the County Office of Housing pursuant to the voucher, with Ms. Hare paying the remaining \$126. E.050.

DSB's income-verification policy

As part of the application process, DSB subjected Ms. Hare to its Application Qualification Procedures and Guidelines, and required her to demonstrate income that was “2.5 times the amount of the market rent” of the requested apartment. E.049; E.106–07. According to DSB, its policy is to add together all of the applicant’s income sources—including SSI and housing vouchers—to determine the applicant’s “income,” then evaluate whether that total is greater than 2.5 times the market rent of the requested unit. E.049; E.106–07. Although DSB allows for exceptions to its policy for full-time students—permitting them to qualify by submitting “official government documentation indicating that, through some form of financial aid, the applicant’s living expenses will be provided,” it does not make such an exception for voucher holders. E.108.

Upon a DSB agent’s request for proof of income, Ms. Hare submitted proof of her SSI (\$841 per month) and notified DSB of her housing voucher (\$1,464). E.050, E.064; E.101–02. According to DSB’s policy, it added these amounts together to determine Ms. Hare’s total monthly income (\$2,305). E.050. Because—according to DSB—Ms. Hare could only rent the \$1,590 per month unit if her monthly income exceeded \$3,975 (2.5 x \$1,590), DSB informed her that she would not be eligible to rent the unit unless she provided proof of additional income or secured a co-signer. E.065–66. Ultimately, DSB rejected Ms. Hare’s application based on its policy—despite the fact that she had an approved HCV that ensured her SSI benefits were more than sufficient to cover her share

of the rent obligation and utilities. E.050. DSB ignored the fact that Ms. Hare’s \$841 per month of SSI was well over 2.5 times her \$126 share of the rent—in fact, it was over 6.6 times that amount.

Ms. Hare’s allegations that DSB’s policy violated the HOME Act

After DSB refused to make an accommodation for Ms. Hare, E.013–14; E.050; E.103–04, she filed suit against DSB for violating the HOME Act’s prohibition on source-of-income (“SOF”) discrimination. E.002; E.007–22. Following a discovery period, DSB filed a motion for summary judgment. E.004. The Circuit Court granted DSB’s motion. E.116. It reasoned that because DSB “neutrally applied its income qualification criteria,” DSB comported with the HOME Act’s allowance for landlords to calculate a prospective tenant’s ability to pay rent in a “commercially reasonable and nondiscriminatory manner.” E.122. Ms. Hare timely filed her appeal to the Appellate Court of Maryland on May 10, 2024, and petitioned this Court to grant *certiorari* on August 27, 2024. E.124–25. The petition was granted on November 22, 2024.

Standard of Review

“This Court reviews a circuit court’s grant of summary judgment without deference,” *Westminster Mgmt., LLC v. Smith*, 486 Md. 616, 637 (2024) (citing *Bd. of Cnty. Comm’rs of St. Mary’s Cnty. v. Aiken*, 483 Md. 590, 616 (2023)), and “in a light most favorable to [Ms. Hare], the non-moving party.” *Crickenberger v. Hyundai Motor Am.*, 404 Md. 37, 45 (2008) (citing *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007)).

Argument

The HOME Act, 2020 Maryland Laws Ch. 116, amended Maryland's housing discrimination statute to prohibit discrimination on the basis of a person's source of income, making it illegal to "refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of . . . source of income." Md. Code. Ann., State Gov't § 20-705(1). Housing vouchers were expressly included within the protection of the Act, which defines source of income, in part, to include income from "any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937." Md. Code. Ann., State Gov't § 20-701(j)(2)(ii).

A minimum-income requirement untethered to a prospective tenant's personal share of the rent that has the effect of excluding the vast majority of housing voucher holders violates the HOME Act. First, DSB's policy violates the HOME Act under both disparate-treatment and disparate-impact theories of liability. The *prima facie* case of discrimination is easily satisfied for both methods of demonstrating discrimination. DSB's policy treats voucher holders differently than non-voucher holders in that it requires non-voucher-holder applicants to show income only 2.5 times the portion of rent they would be responsible for paying but requires voucher holders like Ms. Hare to show exponentially more than they would be responsible for paying. Additionally, because the amount of income DSB's policy requires disqualifies significantly more voucher-holding applicants than applicants without vouchers, the policy has a disparate impact on housing voucher holders and thus

discriminates on the basis of SOI. DSB cannot meet its burden in response. Under basic principles of common sense, there is no legitimate reason for requiring prospective tenants to show income in relation to an amount they are not responsible for paying.

Second, DSB’s policy undermines the intent and vitality of the Act—a remedial statute—by substantially harming Marylanders most vulnerable to homelessness and impeding the State’s efforts to increase economic opportunity for low-income families. Preamble, 2020 Maryland Laws Ch. 116. The policy is neither commercially reasonable nor nondiscriminatory as the Act requires. Finally, the General Assembly considered other states’ and jurisdictions’ source-of-income protections when passing the HOME Act. *Id.* The Court should consider that the use of minimum-income policies like the one here have been found to be discriminatory in all of the jurisdictions to have addressed the issue. Holding the same here would comport with legislative history and intent and this Court’s longstanding precedent interpreting Maryland’s anti-discrimination laws.

I. DSB’s income policy violates the HOME Act—a remedial statute—because it is discriminatory and counter to the Act’s purpose to expand housing opportunities for tenants using public subsidies.

A. DSB’s policy is discriminatory because it treats voucher holders differently from nonvoucher holders and it has a disparate impact on the availability of housing for voucher holders.

DSB’s policy violates the HOME Act under disparate treatment and disparate impact theories—either of which is sufficient to reverse the Circuit Court’s grant of summary judgment.⁵ *Nat’l Fair Hous. All. v. Bank of Am., N.A.*, 401 F. Supp. 3d 619, 630

⁵ “Maryland’s fair housing provisions are to be interpreted in *para materia* with those of its federal counterpart.” *Project Life, Inc. v. Glendening*, No. WMN-98-2163, 1998 WL

(D. Md. 2019) (citing *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519 (2015)); *Montgomery Cnty., Md. v. Bank of Am. Corp.*, 421 F. Supp. 3d 170, 182 (D. Md. 2019) (“[A] plaintiff may proceed on both the disparate impact and disparate treatment claims as alternative theories of recovery.”). “Under a disparate-treatment theory of liability, a ‘plaintiff must establish that the defendant had a discriminatory intent or motive,’ whereas ‘a plaintiff bringing a disparate-impact claim challenges practices that have a disproportionately adverse effect on minorities and are otherwise unjustified by a legitimate rationale.’” *Reyes v. Waples Mobile Home Park Ltd. P’ship*, 903 F.3d 415, 421 (4th Cir. 2018) (“*Reyes I*”) (quoting *Inclusive Cmtys.*, 576 U.S. at 524); *see also id.* (citing *Wright v. Nat’l Archives & Res. Serv.*, 609 F.2d 702, 711 n.6 (4th Cir. 1979)) (“[A] plaintiff is not required to elect which theory the claim relies upon at pre-trial, trial, or appellate stages.”). Here, DSB’s policy violates the HOME Act under both theories. *See* Am. Compl., E.016 ¶ 52, E.020 ¶¶ 71–72.

1. DSB treated Ms. Hare differently than prospective tenants without vouchers when it required Ms. Hare to show income significantly more than 2.5 times her share of the monthly rent without any legitimate business reason for doing so.

The manner in which DSB applied its policy constitutes disparate treatment in violation of the HOME Act. “Simply put, the inquiry under a disparate treatment analysis is whether similarly situated persons or groups are subject to differential treatment.” *Potomac Grp. Home Corp. v. Montgomery Cnty.*, 823 F. Supp. 1285, 1295 (D. Md. 1993)

1119864, at *3 (D. Md. Nov. 30, 1998)); *see also Chappell v. S. Md. Hosp., Inc.*, 320 Md. 483, 494 (1990) (stating that Maryland anti-discrimination laws are interpreted consistently with the corresponding federal statutes).

(citation omitted). “[A] plaintiff need not prove that a defendant was motivated by malice or prejudice in order to prevail on a claim of intentional discrimination.” *Id.*

A party can prove a disparate treatment claim “either directly, through direct or circumstantial evidence, or indirectly, through the inferential burden shifting method known as the *McDonnell Douglas* test.” *Corey v. Sec’y, U.S. Dep’t of Hous. & Urb. Dev. ex rel. Walker*, 719 F.3d 322, 325 (4th Cir. 2013) (internal quotation marks omitted) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). Under the *McDonnell Douglas* test, “where the plaintiff[] seeks to prove discrimination without the benefit of direct evidence, the employee must first make out a prima facie case of discrimination.” *Molesworth v. Brandon*, 341 Md. 621, 638 (1996). “The burden of production for a prima facie case of discrimination is minimal.” *Town of Riverdale Park v. Ashkar*, 474 Md. 581, 616 (2021) (citing *Tex. Dep’t of Cnty. Affs. v. Burdine*, 450 U.S. 248, 253–54 (1981)); *see also Wright*, 609 F.2d at 713–14 (quoting *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 576 (1978)) (“If the claimant meets this production burden, a legal inference of discriminatory motive for the action is created that suffices to carry the claimant’s initial burden of production.”). Next, the burden shifts to the defendant to produce evidence of “some legitimate, nondiscriminatory reason” for the action. *Molesworth*, 341 Md. at 638. Finally, if the defendant is able to show a legitimate, nondiscriminatory reason, the claimant may show “that the proffered justification is merely a pretext for discrimination.” *Wright*, 609 F.2d at 713–14.

- a. **Because DSB requires non-voucher holders to show income of only 2.5 times their share of the rent but requires voucher holders to show far more, Ms. Hare has made out a prima facie case of discrimination.**

As a voucher holder, Ms. Hare is part of a protected class of potential tenants under the HOME Act. Other than pointing to Ms. Hare's income, DSB has not identified any other reason that Ms. Hare was not qualified to be a tenant. By comparison, then, she must be treated the same as an *unprotected* class of potential tenants—non-voucher holders. *See Coleman v. Donahoe*, 667 F.3d 835, 846 (7th Cir. 2012) (“All things being equal, if an employer takes an action against one employee in a protected class but not another outside that class, one can infer discrimination.”) (internal quotation marks omitted). In verifying Ms. Hare's ability to pay, DSB required Ms. Hare to produce evidence of income that was far more than 2.5 times her share of the monthly rent while requiring prospective renters who were not using a voucher to demonstrate only 2.5 times their share of the monthly rent.⁶ E.066–108; E.103.

Because DSB cannot and has not explained why, for Ms. Hare, an income more than 6.6 times her share of the rent is insufficient to qualify for tenancy, but for non-voucher holders, 2.5 times their share of the rent in income suffices, Ms. Hare has satisfied her step-one burden of proving discrimination under the HOME Act. *See Burdine*, 450 U.S. at 253

⁶ Notably, although DSB states that “*all* applicants must show proof of income greater than or equal to 2.5 times the amount of market rent,” and that the “policy is not waived for anyone,” E.049, the documented policy does allow exceptions, including one for full-time students to meet the policy's requirement with “official government documentation indicating that, through some form of financial aid, the applicant's living expenses will be provided.” E.108.

(“The burden of establishing a prima facie case of disparate treatment is not onerous.”); *Olivierre v. Parkchester Pres. Co., L.P.*, No. 452058/2022, 2022 WL 18456529, at *4 (N.Y. Sup. Ct. July 29, 2022) (rejecting an argument a minimum-income policy was “applied uniformly” where a “plaintiff[’]s calculation, uniquely, ha[d] no relation to her share of rent that she would be required to be pay”). For voucher holders (and only voucher holders), DSB uses a formula untethered from their financial obligation to DSB. It considers their share of the rent *and* the government’s share of the rent in its calculation, even though voucher holders have no personal responsibility for the latter. “This disparate treatment alone reflects intentional discrimination, as applicants with subsidies [are] forced to satisfy an unreachable and illogical standard (i.e., to prove they could pay rent for which they had no personal responsibility).” *Fair Hous. Just. Ctr., Inc. v. Pelican Mgmt., Inc.*, No. 18CV1564EROTW, 2023 WL 6390159, at *16 (S.D.N.Y. Sept. 29, 2023) *aff’d* No. 23-7348-CV, 2025 WL 251723, at *2 (2d Cir. Jan. 21, 2025).

b. No legitimate, nondiscriminatory reason exists to require Ms. Hare to show more than 6.6 times her share of the rent in income.

Under step two of the framework, DSB must put forward a legitimate, nondiscriminatory reason for requiring more from Ms. Hare than from non-voucher holders. “The explanation provided must be legally sufficient to justify a judgment for the defendant.” *Burdine*, 450 U.S. at 255. For DSB to satisfy step two, there must be a high correlation between its policy and the proffered business necessity. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 406 (1975) (noting that for employment tests with discriminatory effects to be permissible, defendants must show “by professionally acceptable methods”

that they are “predictive of or significantly correlated with important elements of work behavior” relevant to the job).

DSB cannot satisfy its step-two obligation to demonstrate a legitimate reason for requiring voucher holders to show a larger income-to-share-of-rent ratio than non-voucher holders. The purpose of minimum-income requirements is to avoid tenant arrears and ensure landlords are “renting only to tenants who can afford to pay the rent.” *See, e.g., Fair Hous. Just. Ctr., Inc.*, 2023 WL 6390159 at *4, *13; *see also Comm’n on Hum. Rts. & Opportunities v. Sullivan Assocs.*, 250 Conn. 763, 789 (1999) (“*Sullivan I*”) (stating that an income requirement “affords a landlord an opportunity to determine whether, presumably for reasons extrinsic to the section 8 housing assistance calculations, a potential tenant lacks sufficient income to give the landlord reasonable assurance that the tenant’s portion of the stipulated rental will be paid promptly and that the tenant will undertake to meet the other obligations implied in the tenancy”). It may be legitimate, then, to require prospective tenants to show an income that is 2.5 times their share of the rent. It is not reasonable, though, to require more from voucher holders. *See Fair Hous. Just. Ctr., Inc.*, 2023 WL 6390159 at *13, *15. Although DSB added Ms. Hare’s voucher to her SSI, vouchers cannot “be construed like cash income,” because “rental subsidies are not disposable income available to be used for just any expense” *Id.* at *15. “Rather, rental subsidies are guaranteed rent payments made directly to the landlord,” so “treating subsidies like cash income . . . in effect, credit[s] only [a portion] of the voucher which can only be used to pay rent directly to a landlord.” *Id.*; *see also Olivierre*, 2022 WL 18456529, at *4 (“The analysis also neglects to value the fact that the subsidy is not just some of

plaintiffs income that a tenant could use in various ways, but a direct stream of money to the landlord, earmarked for rent.”).

Because DSB’s policy of requiring income in relation to the full monthly market rent—rather than the amount of rent for which the tenant would be responsible—does not further DSB’s interest in ensuring the full amount of rent is paid each month, DSB is unable to satisfy its burden of articulating a legitimate, nondiscriminatory reason. *See Griggs v. Duke Power Co.*, 401 U.S. 424, 431–32 (1971) (rejecting defendant’s reasons for requiring a high school diploma or intelligence test because evidence showed that requirements were not linked to job performance); *Moody*, 422 U.S. at 431 (holding that defendant could not establish that the required tests were linked to job performance).

c. Voucher payments essentially guarantee that the majority of the monthly rent will be paid, rendering any justification for the disparate treatment pretextual.

Finally, any proffered reason regarding risk is pretextual. There is more security for receiving rent payments for voucher holders than non-voucher holders because the monthly rent payment covered by the voucher is all but guaranteed from the government. *See, HOME Act: Hearing on H.B. 231 Before the House Env’t & Transp. Comm.*, 2020 442nd Sess. (Md. 2020) (written testimony of Delegate Brooke Lierman, Member, House Env’t & Transp. Comm. and co-sponsor of the bill) (“*Test. in Supp. of HB 231*”) at 2, https://mgaleg.maryland.gov/cmte_testimony/2020/ent/1502_02042020_11520-267.pdf; *T.K. v. Landmark W.*, 353 N.J. Super. 353, 362 (Law. Div. 2001), *aff’d*, 353 N.J. Super. 223 (App. Div. 2002) (because the tenant’s voucher would pay the rent in full, the defendant landlord could not “establish[] any rational relationship between the plaintiff’s

credit report and [defendant's] legitimate concern that plaintiff has the means to pay the rent"). Indeed, "[w]ith regard to vouchered or other subsidized tenants, a determination of ability to pay the tenant's or applicant's portion of the rent has already been made by the vouchering agency. If the housing provider found the person unqualified based on the same information obtained by the vouchering agency this would have the effect of negating the Law." New York State Division of Human Rights, *Guidance on Protections from Source of Income Discrimination in Housing Under the New York State Human Rights Law* 5 (2020), <https://dhr.ny.gov/system/files/documents/2022/05/nysdhr-soi-guidance-2020.pdf>. It is implausible that DSB believes that someone whose rent is almost entirely paid by the government—because of her limited income—must also demonstrate she can pay the monthly rent in its entirety in order to ensure that rent is paid on time. *Coleman*, 667 F.3d at 852 (stating that to demonstrate pretext, a plaintiff "must 'identify such weaknesses, implausibilities, inconsistencies, or contradictions' . . . 'that a reasonable person could find [it] unworthy of credence'" (internal quotation marks omitted)). Indeed, DSB is aware that it is unreasonable to require full-time students to show income sufficient to pay 2.5 times the monthly amount of rent when governmental financial aid is paying for living expenses. E.108.

Because DSB's income verification for prospective tenants treats voucher holders differently than non-voucher holders without any legitimate justification for doing so, it discriminates on the basis of source of income.

2. DSB’s policy disparately impacts housing voucher holders—a population protected by the HOME Act—and therefore violates the law.

DSB’s income policy violates the HOME Act because it adversely affects the rights of voucher holders—a group protected from discrimination by the Act. *See Reyes I*, 903 F.3d at 432 (“[D]isparate-impact claims may arise under circumstances in which the challenged policy, on its face, relates to conduct that was not protected under the [Fair Housing Act], but which may correlate with a protected class.”). Even where a facially-neutral policy is applied equally, “under a theory of disparate impact, the policy is unlawful if it has an unjustified significant adverse effect on a protected group, in this case subsidy holders, regardless of its neutral application.” *Fair Hous. Just. Ctr., Inc.*, 2023 WL 6390159 at *15; *see also Reyes v. Waples Mobile Home Park Ltd. P’ship*, 91 F.4th 270, 276 (4th Cir. 2024) (“*Reyes II*”), *cert. denied*, No. 23-1340, 2024 WL 4426687 (U.S. Oct. 7, 2024) (citing *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 645–46 (1989); *Inclusive Cmty. Project, Inc.*, 576 U.S. at 540) (under the disparate-impact theory of liability, “a facially neutral” practice can violate a fair housing statute if it has “a disproportionately adverse effect on” a protected group and is “not otherwise justified by a legitimate rationale.”); *Sullivan I*, 250 Conn. at 792–93 (“Even if the defendant demonstrably treats all rental applicants the same, however, its facially neutral conduct is not sufficient to avoid liability under the statute if such neutral conduct has a disparate impact on potential section 8 reimbursement tenants.”).

Disparate impact is analyzed under a three-step burden-shifting framework.

Step One requires the plaintiff to demonstrate ‘a robust causal connection’ between a defendant’s challenged policy and a disparate impact on a protected class. If the plaintiff establishes such a connection, the burden shifts to the defendant to ‘state and explain the valid interest served by their policies.’ If this standard is met, the burden then shifts back to the plaintiff ‘to prove that the defendant’s asserted interests ‘could be served by another practice that has a less discriminatory effect.’”

Reyes II, 91 F.4th at 276 (quoting *Reyes I*, 903 F.3d at 424).

- a. **Because DSB’s policy disqualifies more than 80% of voucher holders in Baltimore County but significantly fewer non-voucher holders, Ms. Hare satisfies step one of the disparate impact test.**

DSB’s policy of requiring an income of \$3,975 for a unit with a monthly rent of \$1,590 would have excluded *all* extremely-low-income two-person family households in Baltimore County (at least 79% of all HCV holders), *see* Md. Dep’t of Hous. & Cmty. Dev., *2022 Income Limits*, at 2, <https://dhcd.maryland.gov/HousingDevelopment/Documents/prhp/2022MDIncomeLimitsRents.pdf>; 42 U.S.C. § 1437a(b)(2)(C), and most very-low-income two-person households, *2022 Income Limits* at 4 (all two-person households making 30–40% of AMI would be disqualified through DSB’s policy); 42 U.S.C. § 1437a(b)(2)(B).⁷ It also excludes all extremely low-income two-person HCV

⁷ In 2022, 62% of HCV holders in Maryland made *less than \$20,000 per year*. U.S. Dep’t of Hous. and Urb. Dev., Off. of Pol’y Dev. and Rsch., *Assisted Housing: National and Local*, <https://www.huduser.gov/portal/datasets/assthsg.html> (last visited Feb. 25, 2025)) (select “2022 Based on 2020 Census” from the “Select a Year” dropdown menu, then select “State” from the “Select a Summary Level” dropdown menu, then choose “MD Maryland” from the “Select a State” form box, and then select “Housing Choice Vouchers” from the “Select a Program” form box).

households statewide.⁸ This is true even with DSB’s policy of adding the voucher amount to the applicant’s monthly income.⁹

The impact of the policy extends beyond the unit and year in question and, if adopted by other landlords, could exclude *all current voucher holders in Baltimore County* from *any apartment* with a fair market rent. For example, consider a very low-income HCV holder in Baltimore County today (who qualifies for an HCV based on making 50% AMI) for a two-bedroom apartment with the current rent payment standard (\$2,161).¹⁰ Balt. Cnty. Dep’t of Hous. & Cmty Dev., *Section 8 Data Summary Sheet*, Balt. Cnty. DHCD (Oct. 1, 2024), <https://www.baltimorecountymd.gov/files/departments/housing-and-community->

⁸ 96% of all voucher holders in Maryland were “very low income” or 50% or lower of the AMI in 2022. U.S. Dep’t of Hous. and Urb. Dev., Off. of Pol’y Dev. & Rsch., *Assisted Housing: National and Local*, <https://www.huduser.gov/portal/datasets/assthsg.html> (last visited Feb. 19, 2025); 42 U.S.C. § 1437a(b)(2)(B). Under very limited circumstances, a voucher holder’s income may exceed 50% AMI. 24 C.F.R. § 982.201(b)(1).

⁹ For example, in 2022, the maximum income allowed to qualify for an HCV as an “extremely low-income” (30% AMI) two-person household was only \$27,900 (\$2,325 per month). *2022 Income Limits* at 2. They would have been responsible for contributing 30% of their income towards the monthly rent (\$697.50). 42 U.S.C. § 1437a(a)(1); *but see* E.100, 113 (explaining that because of an accommodation for her disability, Ms. Hare was approved for a payment exception). For the unit in question (\$1,590 per month), their voucher, then, would have been \$892.50 per month (\$1,590 minus \$697.50). Even with adding their voucher amount to their monthly income (\$2,325 plus \$892.50 for a total of \$3,217.50), they would still not meet DSB’s \$3,975 requirement for this unit, despite their income being over 3.3 times the portion of the rent for which they’d be responsible.

¹⁰ Each local housing authority approves units for voucher use based on “a payment standard” that is between 90 and 110 percent of the fair market rent of the area. HUD publishes fair market rents annually, which represent the cost to rent a moderately-priced dwelling unit in the local housing market. 42 U.S.C. §§ 1437f(c)(1), 1437f(o)(1)(B); 24 C.F.R. §§ 982.4; U.S. Dep’t of Hous. & Urban Dev., *Fair Market Rents*, https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/fmr (last visited Feb. 25, 2025).

development/documents/datasummarysheetfy24.pdf. To qualify for an HCV as a two-person household, the household would need to have a gross income of less than \$48,900 a year (or \$4,075 per month), Md. Dep't of Hous. & Cmty. Dev., *2024 Maryland Income Limits*, (July 1, 2024), <https://dhcd.maryland.gov/HousingDevelopment/Documents/prhp/2024-MD-Income-Limits.pdf>. Under DSB's policy of requiring 2.5 times the full rent amount, the household would have to show an income (which DSB defines as monthly income plus amount of voucher) of \$5,402.50 (total rent (\$2,161) multiplied by 2.5). The household's voucher would cover at least 70% of rent and utilities,¹¹ as they are limited by federal law to contributing only 30% (or 40% in rare circumstances) of that income to their portion of the rent. 24 C.F.R. § 5.628. Assuming this family is making the maximum allowed for an HCV holder, \$4,075 a month, they would be responsible for paying \$1,222.50 a month towards rent and utilities (30% of their monthly income under 24 C.F.R. § 5.628). If they sought a voucher for a two-bedroom apartment with the fair market rent of \$2,161 then, their voucher amount would be \$938.50 (total rent minus the amount the household would be required to pay). Under DSB's policy, even adding their voucher amount (\$938.50) to their maximum income (\$4,075) (for a total of \$5,013.50), that person would still fall short of the \$5,402.50 monthly income DSB's policy would require.

¹¹ The rent payment standard includes rent for the unit plus tenant-paid utilities. *See* 42 U.S.C. § 1437f(o)(2)(A). Setting aside a portion of the payment standard for utilities does not change the outcome of this calculation.

While almost all voucher holders are excluded by DSB’s income policy, relatively few non-voucher holders would be excluded on the same grounds. In 2022, the median income for two-person family households in Baltimore County was \$89,441. *2022 Income Limits* at 14. Significantly fewer non-voucher-holding households, then, would be disqualified for the unit in question based on their income, *cf. Median Income in the Past 12 Months (in 2022 Inflation-Adjusted Dollars)*, Am. Cmty. Survey: 2022 ACS 1-Year Estimates Subject Tables, Table S1903, https://data.census.gov/table/ACSST1Y2022.S1903?t=Income+and+Poverty&g=040XX00US24_050XX00US24005&y=2022 (last visited Feb. 25, 2025) (showing that fewer than 29% of households made less than \$50,000 in 2022), as compared to the more than 80% of voucher holders who would be excluded under DSB’s policy. Courts have found such disparities to establish “a substantial adverse impact” on voucher holders. *See Fair Hous. Just. Ctr.*, 2023 WL 6390159 at *14–15 (relying on plaintiff’s analysis based on publicly available data to determine that because defendant’s policy excluded entire groups of certain subsidy holders and the majority of other types of subsidy holders, plaintiff satisfied its disparate impact burden).

Thus, although DSB may argue that its income requirement is facially neutral, the requirement discriminates against applicants using vouchers and other needs-based governmental assistance. *See Comm’n on Hum. Rts. & Opportunities v. Sullivan*, 285 Conn. 208, 244–45 (Conn. 2008) (“*Sullivan II*”) (“The mere fact that the defendants apply their discriminatory standards consistently by enforcing an objective formula that bears no relation to a prospective section 8 tenant’s personal share of the periodic rent does not

render those standards legitimate.”). This showing satisfies the robust causality required at the first step of a disparate impact claim. *Reyes I*, 903 F.3d at 427-429; *see also, e.g., Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982); *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983 (4th Cir. 1984) (finding that disparate impact was “self-evident” where 74.9% of non-whites were evicted but only 26.4% of whites were); *Crossroads Residents Organized for Stable & Secure ResiDencieS v. MSP Crossroads Apartments LLC*, No. 16-233 ADM/KMM, 2016 WL 3661146, at *7–*8 (D. Minn. July 5, 2016).¹²

b. DSB fails at step two because it cannot show that its policy is necessary to achieve a legitimate interest.

After the demonstration of a *prima facie* case of discrimination, the burden shifts to DSB to show that its income policy is “necessary to achieve a legitimate nondiscriminatory interest.” *Reyes II*, 91 F.4th at 275 (citing *Inclusive Cmty.*, 576 U.S. at 527). As explained above, DSB cannot meet its step-two burden. *See supra* 13–14. There is no valid business purpose served by untethering the amount of a prospective tenant’s income from the amount of rent they would be required to pay.

c. Because verifying the ability to pay rent can be satisfied by an alternative, nondiscriminatory policy, Ms. Hare satisfies her step-three burden.

Ms. Hare prevails in demonstrating that DSB’s policy disparately impacts her as a voucher holder because *even if* DSB could satisfy its step two burden, an alternate

¹² Although not at issue in this case, it is notable that voucher discrimination also has a disparate impact on communities of color. *See* S.B. 530, *Fiscal and Policy Note*, at 6 (“[A]dvocates have expressed concerns that the refusal of landlords to accept vouchers has a disproportionate impact on minorities. According to 2018 data from HUD, approximately 81% of voucher holders in [Maryland] were minorities.”).

practice—requiring a potential tenant to demonstrate income that is 2.5 times the rent for which they’d be responsible—serves the same business necessity with a less discriminatory impact. *Cf. Inclusive Cmtys*, 576 U.S. at 527 (“Once a defendant has satisfied its burden at step two, a plaintiff may ‘prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.’” (quoting 24 C.F.R. § 100.500(c)(3))). “It is irrelevant that [DSB] may have had no personal animus toward those prospective tenants, and it is irrelevant that it [may have] participated in other housing assistance programs. The effect of its policy and action was to violate the [state] law.” *Montgomery Cnty. v. Glenmont Hills Assocs. Priv. World at Glenmont Metro Ctr.*, 402 Md. 250, 279 (2007).

DSB’s policy discriminates against voucher holders, prevents low-income families from moving to high-opportunity areas, and perpetuates racial segregation—all outcomes that eviscerate the General Assembly’s purpose in passing the HOME Act. Particularly because a reasonable alternative to DSB’s policy would serve the same purpose, DSB’s existing policy violates the HOME Act. This Court should reject landlords’ efforts to evade the law.

B. The HOME Act is a remedial statute that must be interpreted in favor of voucher-holder tenants—the group it was intended to protect.

The General Assembly passed the HOME Act to “provide for fair housing throughout the State to all, regardless of . . . source of income . . . in order to protect and ensure the peace, health, safety, prosperity, and general welfare of all.” Md. Code. Ann., State Gov’t § 20-702(a). The underlying policies of the HOME Act are reflected in the

preamble, which “recognizes that equality, fairness, and opportunity for Maryland residents often require government action and that security, mobility, and economic opportunity are enhanced by the location of a person’s home,” and, as such, the “Act seeks to deconcentrate poverty by providing additional opportunities for tenants utilizing public subsidies to live in neighborhoods other than the neighborhoods in which those individuals are currently and disproportionately residing.” 2020 Maryland Laws Ch. 116; *see Wheeling v. Selene Fin. LP*, 473 Md. 356, 420 (2021) (Getty, J. concurring in part) (explaining that “the words of [a] preamble are instructive as to the legislature’s intent in enacting [the] legislation”). The preamble further acknowledged that discrimination on the basis of “a person’s source of income primarily affects persons that the General Assembly has already determined to need legal protection from discrimination such as families with children, people of color, and people with disabilities.” 2020 Maryland Laws Ch. 116; *see also Armstead v. State*, 342 Md. 38, 60 (1996) (relying on preamble to determine legislative intent); *Test. in Supp. of H.B. 231* at 3.

The HOME Act is unquestionably “a remedial statute that is to ‘be liberally construed . . . in order to effectuate [its] broad remedial purpose,’ and for which exemptions ‘must be narrowly construed.’” *See Westminster Mgmt.*, 486 Md. at 642 (*citing Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 424 (2016)) (additional citations omitted); *see also Haas v. Lockheed Martin Corp.*, 396 Md. 469, 495 (2007) (stating that this Court regularly finds Maryland’s anti-discrimination laws to be remedial in nature because of their intention to eliminate discrimination and advance equal opportunity); *Equitable Life Assur. Soc. v. State Comm’n on Hum. Rels.*, 290 Md. 333, 344 (1981) (“We find each of the

challenged enactments to relate to but one subject; discrimination. . . . The legislature in enacting and amending Article 49B.¹³ leaves no room to doubt its intent and purpose, i.e., to eradicate the vestiges of discrimination in the categories designated.”). Because the intention of the Act was to protect tenants, not landlords, the Act must be construed in a light more favorable towards tenants. *Haas*, 396 Md. at 495 (“As a remedial statute, § 42 of Article 49B should be construed liberally in favor of claimants seeking its protection.”) (citations omitted); *Coburn v. Coburn*, 342 Md. 244, 256 (1996) (quoting *Harrison v. John F. Pilli & Sons, Inc.*, 321 Md. 336, 341 (1990)) (“[R]emedial statutes are to be liberally construed to ‘suppress the evil and advance the remedy.’”).

As outlined above, the practical—and possibly intended—effect of DSB’s income requirement is that applicants who primarily rely on a voucher to obtain housing will virtually never be able to rent a DSB unit. *See supra* 18–22. The Circuit Court’s—and DSB’s—interpretation of the HOME Act would contravene the statute’s intent in expanding housing opportunities for voucher holders. Should the Circuit Court’s ruling stand, landlords throughout Maryland need only implement the same policy as DSB to discriminate against voucher holders without accountability. *See Olivierre*, 2022 WL 18456529, at *4 (“[I]f every landlord enforced minimum income requirements in this fashion, the spirit of source of income discrimination law would be subverted and rendered meaningless.”); *Shelby Cnty. v. Holder*, 570 U.S. 529, 592 (2013) (Ginsburg, J., dissenting) (“[S]econd-generation barriers . . . have emerged in the covered jurisdictions as attempted

¹³ Maryland’s antidiscrimination laws were formerly contained in Article 49B of the Annotated Code of Maryland. *Doe v. Cath. Relief Servs.*, 484 Md. 640, 657 n.7 (2023).

substitutes for the first-generation barriers that originally triggered preclearance in those jurisdictions.”).¹⁴ Indeed, many landlords already have. *See* Br. of Amici Curiae Pub. Just. Center, Laws.’ Comm. for Civ. Rts. Under L., Nat’l Hous. L. Project, Equal Rts. Ctr., Nat’l Fair Hous. All., Homeless Persons Representation Project, Fair Hous. Just. Ctr., & Disability Rts. Md. in Supp. of Pet. for Cert., *Hare v. David S. Brown Enters., Ltd.*, No. SCM-PET-0250-2024, at 2–3 (Md. 2024). Because it is neither commercially reasonable nor nondiscriminatory, DSB’s requirement that prospective tenants have income of at least 2.5 times the entire rent, rather than 2.5 times the portion of the rent for which they will be responsible, violates the HOME Act.

In passing the HOME Act, the General Assembly clarified that the Act does not “prohibit [landlords] from determining the ability of a potential . . . renter to . . . pay rent” but it must do so by verifying “the source and amount of income or creditworthiness of the potential . . . renter” in “a *commercially reasonable and nondiscriminatory manner*.”¹⁵ Md. Code, State Gov’t § 20-704(d)(1) (emphasis added). So, although DSB is entitled to verify a prospective tenant’s ability to pay rent, it may not do so with its current policy

¹⁴ *See also* Armen H. Merjian, *Second-Generation Source of Income Housing Discrimination*, 2023 Utah L. Rev. 963 (2023) (“After an early wave of overt cases, landlords and real estate agencies adjust their tactics in what may be described as ‘second-generation source of income discrimination.’ First-generation denials blatantly asserting that ‘no programs’ are accepted, or ‘no Section 8,’ are replaced with discriminatory minimum-income requirements . . .”).

¹⁵ Indeed, HUD also expects landlords will screen potential voucher-holding tenants for suitability through, for example, background checks and tenancy history. *Montgomery Cnty.*, 402 Md. at 277 (citing 24 C.F.R. § 982.307(a)).

because it is not commercially reasonable and it discriminates against the group the Act was intended to protect.

DSB's policy is not commercially reasonable¹⁶ for the same reason it is not supported by a legitimate objective: the tenant's income is irrelevant to the portion of the rent that the County will pay pursuant to the voucher. By requiring tenants to demonstrate an income amount untethered to the amount of rent they are personally responsible for paying, DSB's policy "eviscerate[s] the basic protection envisioned by the statute," and, as such, is "unreasonable." *See Sullivan I*, 250 Conn. at 776 ("It would lead to the *unreasonable* result that while the legislature mandated that landlords may not reject tenants because their income included section 8 assistance, the legislature at the same time also intended that landlords might avoid the statutory mandate by refusing to accede to a condition essential to its fulfillment.") (emphasis added). It is unreasonable to conclude that the legislature could have intended to allow landlords to reject voucher holders because of their low incomes, when voucher holders, *by definition*, have low incomes. A reasonable

¹⁶ Although "commercially reasonable" is not defined in the Act, this Court has interpreted it to be synonymous with acting in good faith, *David A. Bramble, Inc. v. Thomas*, 396 Md. 443, 467 (2007) ("Whether a specific term or condition is commercially reasonable, i.e., inserted in good faith, is a case-by-case determination . . ."); *Kline v. Cent. Motors Dodge, Inc.*, 328 Md. 448, 451–52 (1992) (holding that "bona fide" was equated with "commercial reasonableness"), and requiring it to avoid absurdities, *cf. Gardner v. Ally Fin. Inc.*, 430 Md. 515, 529–30 (2013) (analyzing the meaning of "commercial reasonableness" and citing, as an example of commercial unreasonableness, a transaction that failed to take measures customary in the industry and involved bids of a "curiously improbable air") (citing *Nat'l Hous. P'ship v. Mun. Cap. Appreciation Partners I, L.P.*, 935 A.2d 300, 315 (D.C. 2007), quoting *In re Zsa Zsa, Ltd.*, 352 F. Supp. 665, 671 (S.D.N.Y. 1972), *aff'd without opinion*, 475 F.2d 1393 (2d Cir. 1973); *Harris v. Bower*, 266 Md. 579, 590–91 (1972)).

method for verifying a tenant’s ability to pay would rely on the rent amount for which an applicant is responsible because that is the number associated with the risk of tenant arrears. *See, e.g.,* E.094, Virginia Real Estate Board Guidance Document: Housing Discrimination on the Basis of Source of Funds (“The landlord’s *reasonable* focus should be on whether the tenant can afford *the tenant’s share of the rent.*”) (emphasis added). No other calculation is logical—a reasonable person understands that a person need not make more than \$3,975 per month to pay rent amounting to \$126. *Cf. Comptroller of Md. v. FC-GEN Operations Invs. LLC*, 482 Md. 343, 379 (2022), *as corrected* (quoting *Wheeling*, 473 Md. at 377) (“In every case, the statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense.”); *see also Sullivan I*, 250 Conn. at 791 (“Our narrow construction of the statutory exception for ‘insufficient income’ contemplates a specific fact-bound determination of a potential tenant’s capacity to carry his or her part of the bargain.”).

This Court has not let such loopholes eviscerate tenant protections in the past. In rejecting a landlord’s attempt to circumvent Montgomery County’s SOI protections by claiming an administrative burden, this Court reasoned that it “should not read into a remedial statute an unstated exception that would undermine the legislature’s manifest intent to afford low income families access to the rental housing market.” *Montgomery Cnty.*, 402 Md. at 277 (quoting *Sullivan I*, 250 Conn. at 781–782). Considering the income caps in place for HCV eligibility, the effect of DSB’s income requirement is insidious and nonsensical, and this Court should interpret the HOME Act in a way “that does not suffer

the same flaw.” *Westminster Mgmt., LLC*, 486 Md. at 642 (citing *Bell v. Chance*, 460 Md. 28, 53 (2018)).

The General Assembly understood that the housing authority would pay landlords directly when it passed the HOME Act, *see* S.B. 530, *Fiscal and Policy Note*, 5–6, and thus acted with knowledge of the limited risks landlords faced in leasing units to voucher holders. *Test. in Supp. of HB 231* at 2 (explaining that accepting a housing voucher “takes very little time, . . . makes tenants ‘recession-proof’ [because] regardless of whether they lose their job due to a recession, they will still retain their voucher,” and because housing authorities “now do direct deposit,” landlords can rest assured that they “are paid on the same day every month without any need for a check.”). In other words, the General Assembly anticipated that the “rent” that a voucher holder must have the ability to pay is the small fraction of the entire monthly market rent.

Indeed, this Court’s prior rulings on the meaning of “rent” in remedial statutes demand a finding that the only reasonable way to determine a potential renter’s ability to “pay rent” would define “rent” as the amount that would be “owed by the tenant.” Md. Code. Ann., State Gov’t § 20-704(d)(1) (allowing a landlord to “determin[e] the ability of a potential . . . renter . . . to pay *rent* . . . in a commercially reasonable and non-discriminatory manner”); *Lockett*, 446 Md. at 424–25; *Westminster Mgmt.*, 486 Md at 649. Where this Court has analyzed the meaning of “rent” in the context of a remedial statute meant to protect tenants, it has found that “rent” refers to only the portion of the fixed periodic payments *for which the tenant is responsible*. *See Lockett*, 446 Md. at 425. For example, in *Lockett*, this Court considered an exemption for landlords to a remedial statute

“designed to protect tenants in residential properties against retaliation by landlords.” *Lockett*, 446 Md. at 424. The statute’s exemption excused “a landlord who has violated [the law] from being required to provide relief to a tenant if the tenant is not current on the rent.” *Id.* The Court held that because the clause “is an exemption from a remedial statute,” it was “to be construed narrowly” and thus opted for “a more specific definition” of rent: “the periodic sum *owed by the tenant* for use or occupancy of the premises.” *Id.* at 424–25 (emphasis added). Similarly, in *Westminster Management*, this Court evaluated a statute involving “the summary ejectment of a tenant who has fallen behind on rent.” 486 Md. at 626. Determining that the statute was remedial in nature, it relied on *Lockett* and “narrowly construed” the definition of “rent” to mean “the fixed, periodic payments *a tenant owes* for use or occupancy of a rented premises.” *Id.* at 642–46 (emphasis added); *see also* 24 C.F.R. 982.4(b) (defining “[f]amily rent to owner”—for the purposes of voucher programs—as ‘the portion of rent to owner paid by the family’); 24 C.F.R. § 982.515(b) (“The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.”).

DSB could apply the policy employing the definition of rent in *Lockett* and *Westminster* across all potential tenants—those with and without vouchers—and achieve the same goal: verifying that a potential tenant has sufficient income to make the monthly payments for which they’d be responsible under the lease. Indeed, with respect to Ms. Hare, the amount of her SSI was well over 2.5 times the amount that would be *owed by the tenant*, demonstrating she would be able to pay her share of the rent under any commercially reasonable policy. There is no valid reason for DSB’s current policy. Imposition of a renter

income requirement divorced from the tenant's personal share of the rent is arbitrary and discriminates against tenants who rely on housing vouchers and other income-based governmental programs. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (explaining that arbitrariness may indicate discriminatory purpose); *Sullivan I*, 250 Conn. at 786.

When read in harmony, nothing about §§ 20-705(1) or 20-704(d)(1) is ambiguous. Landlords are permitted to assess a prospective tenants' ability to cover rent in a bona fide way that is logical and does not discriminate against voucher holders. *See Lockshin v. Semsker*, 412 Md. 257, 275 (2010) ("If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction."). To the extent there is *any* ambiguity, that ambiguity is easily resolved by interpreting the language in a way that effectuates the General Assembly's remedial purpose. *Wheeling*, 473 Md. at 378 ("[W]here a statute provides remedies not available at common law, the statute is remedial in nature, and we liberally construe a remedial statute in order to effectuate its broad remedial purpose."). DSB's policy is not reasonable or nondiscriminatory and allowing it to stand would be counter to General Assembly's intent to expand housing opportunities for low-income families, decrease racial segregation, and increase economic mobility. *See Haas*, 396 Md. at 493 (citations omitted). The Circuit Court's overbroad interpretation of § 20-704(d)(1) allows landlords to develop loopholes that would disqualify almost all voucher holders and eschew liability for doing so—regardless of their intent. *Cf. Montgomery Cnty.*, 402 Md. at 278–79; *see Sullivan I*, 250

Conn. at 787 (stating that giving landlords complete freedom to define “insufficient income” would “swallow the statute whole and render it meaningless”).

As other jurisdictions have found, because DSB’s policy is not commercially reasonable and because it has a discriminatory effect, it is prohibited by the HOME Act. *See, e.g., Fair Hous. Just. Ctr., Inc. v. Pelican Mgmt., Inc.*, No. 23-7348-CV, 2025 WL 251723, at *2 (2d Cir. Jan. 21, 2025); *Sullivan I*, 250 Conn. at 776.

II. All jurisdictions to have addressed the issue have found that policies like DSB’s violate their source-of-income discrimination laws.

In passing the HOME Act, the Generally Assembly considered the fact that many states and jurisdictions already had statutes in place prohibiting discrimination in housing on the basis of a person’s source of income. *See* Preamble, 2020 Maryland Laws Ch. 116 (“WHEREAS, Fifteen states . . . , the District of Columbia, and more than 80 localities across the country have laws prohibiting discrimination based on a person’s source of income . . .”); S.B. 530, *Fiscal and Policy Note*, at 5 (“Background: According to the Poverty and Race Research Action Council, 15 states . . . and the District of Columbia . . . have statutes prohibiting housing discrimination on the basis of a person’s source of income (SOI).”).¹⁷ Those states’ interpretation of source-of-income discrimination laws provide this Court with guidance in deciding whether DSB’s policy is in violation of the law. *Cf.*

¹⁷ At the time the HOME Act was passed, 15 states and the District of Columbia had laws prohibiting source-of-income discrimination in housing. Preamble, 2020 Maryland Laws Ch. 116. Since the Act was passed, Illinois, Colorado, Hawaii, Michigan, Virginia, and Rhode Island passed similar laws. *See* Poverty & Race Rsch. Action Council, *Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination* 18 (Jan. 2025), <http://www.prrac.org/pdf/AppendixB.pdf>.

Haas, 396 Md. at 493 (relying, in part, on the opinions of “sister courts” in New Jersey, California, and Hawai’i when interpreting the meaning of a Maryland civil rights statute); *Harrison-Solomon v. State*, 442 Md. 254, 280 (2015) (considering the decisions of other state appellate courts when analyzing legislative intent); *Robinette v. Hunsecker*, 212 Md. App. 76, 121 (2013), *aff’d*, 439 Md. 243 (2014) (stating that the court “draw[s] [its] guidance from the courts of other jurisdictions” in a matter of first impression). No state to address the issue has found requirements like the one here to be legal under SOI discrimination laws.

Several states have SOI discrimination laws similar to Maryland’s that do not directly address minimum-income requirements, but the courts have determined that such requirements—untethered from the portion of rent the tenant is expected to pay—violate those laws.

New Jersey has rejected the same approach and rationale DSB used: “In calculating a prospective tenant’s income, Respondent considers any and all lawful income that a prospective tenant receives, including . . . housing vouchers, rent subsidies, Social Security Income benefits . . . Respondent then evaluates whether the sum of all these sources of income meets the respective minimum income requirement for the unit for which the prospective tenant is applying.” New Jersey Division on Civil Rights, *Finding of Probable Cause: Moran v. Tower Mgmt. Servs., L.P.*, DCR Docket No. HB52WR-61415, at 2 (Apr. 22, 2010), <https://www.nj.gov/oag/newsreleases20/Tower.FPC.pdf> (on remand from *Moran v. Tower Mgmt. Servs.*, No. A-2616-16T4, 2018 WL 6272934 (N.J. Super. Ct. App. Div. Dec. 3, 2018)). There, like here, the complainant sought to apply for an apartment

using a housing voucher. *Id.* His only income was \$965 per month in SSI, and although the unit rent was \$995, he would have been required to pay only 30% of it (with the Section 8 program paying the rest). *Id.* Respondent nonetheless demanded that he meet the minimum-income requirement of \$33,000 per year. *Id.* The New Jersey Division on Civil Rights found that these facts constituted probable cause of SOI discrimination under N.J. Stat. Ann. § 10:5-12(g). *Id.*; *see also T.K. v. Landmark W.*, 353 N.J. Super. at 362.

Connecticut’s Supreme Court unambiguously rejected the legality of an income criterion like DSB’s, despite the fact that the law includes a safe harbor that allows landlords to deny an applicant if the renter has “insufficient income.” *Sullivan I*, 250 Conn. at 776. In *Sullivan I*, the court held that “[i]t would be inconsistent with the remedial mandate of [the statute] for the legislature to have afforded to landlords carte blanche authority to define the term ‘insufficient income.’” *Id.* at 787. The court determined that the income policy had a disparate impact on voucher holders and, under its plain language, “the statutory exception must be construed more narrowly to require a showing of ‘insufficient income’ with respect to the potential tenant’s own ability to meet his or her personal rent obligation *for that part of the rental not covered by section 8 rental assistance payments....*” *Id.* at 790–91 (emphasis added). The Court reiterated its decision nine years later, clarifying that “a landlord, in deciding not to rent to a prospective tenant, may rely on the statutory exception only with respect to income requirements that *bear a reasonable relationship to a prospective tenant’s ability to meet his or her personal rental obligations.*” *Sullivan II*, 285 Conn. at 221 (“It would be inconsistent with the purpose of the provision, as well as basic principles of statutory construction, to construe the exception

so broadly that a landlord may set income requirements that are not reasonably related to the personal periodic rental obligations of a prospective tenant who is a section 8 participant.”).

Courts in New York have similarly interpreted minimum-income requirements to violate SOI discrimination laws. The Second Circuit recently upheld a decision finding that a landlord’s minimum-income policy requiring all prospective tenants earn an annual income of at least 43 times their total monthly rent violated New York City’s SOI discrimination law. *Fair Hous. Just. Ctr., Inc.*, 2025 WL 251723, at *2; *see also Olivierre*, 2022 WL 18456529, at *3 (finding that a minimum-income requirement untethered to the amount the tenant is required to pay is counter to the remedial nature of the statute and the legislative intent). New York State Division of Human Rights’ guidelines also explain that the state law forbids minimum-income requirements like DSB’s:

Any income or wealth requirements for vouchered tenants cannot be used as a subterfuge to avoid the law, or have the effect of frustrating the purpose of the Law. A housing provider cannot have a facially neutral income or wealth requirement that is equally applied but has the effect of excluding populations with rental subsidies. Housing providers cannot set unreasonable¹⁸ income formulas or wealth requirements for subsidized tenants. Persons receive vouchers because they have low income and lack wealth. Unreasonable wealth requirements could exclude everyone with a voucher and negate the intended protections of the law.

New York State Division of Human Rights, *Guidance on Protections from Source of Income Discrimination in Housing Under the New York State Human Rights Law* at 5

¹⁸ Although New York provided guidance on its SOI protections and Maryland did not, Maryland did not need to because the statute already forbade the “unreasonable income formulas or wealth requirements” that New York’s guidance identifies.

(citing N.Y. Exec. L. § 300); *see also* New York State Commission on Human Rights, *Best Practices for Housing Providers to Avoid Source of Income Discrimination* 1 (Mar. 2023), https://www.nyc.gov/assets/cchr/downloads/pdf/materials/FairHouse_FAQs-Landlord-English.pdf (“When a voucher program calculates a tenants’ [sic] rent based on their income, the government has already determined that they can afford to pay their required portion. [In this situation], it is a violation of the Law to impose any additional income requirements . . .”).¹⁹

If this Court were to decide that allowing landlords to impose minimum-income requirements for the entire monthly market rent rather than the tenant’s portion is “commercially reasonable and nondiscriminatory” and thus does not violate the State’s SOI discrimination law, it would be the first in the country to do so. The language of the HOME Act is not so far removed from those of other states to warrant such an outcome.

Conclusion

For the foregoing reasons, Ms. Hare respectfully requests that this Court reverse the Circuit Court’s grant of summary judgment.

¹⁹ New York’s law, like Maryland’s, does not explicitly forbid minimum-income requirements like some states. Although New York has published guidance regarding this practices and Maryland has not, “agencies for adjudicating [the] types of claims” at issue are entitled to “great deference,” *Olivierre*, 2022 WL 18456529 at *7, and here, the Attorney General (“the chief legal officer for the State of Maryland” that “is authorized to ‘investigate, prosecute, and remediate . . . any conduct that constitutes a civil rights violation on behalf of the residents of the State’”) finds DSB’s conduct to be in violation of the HOME Act. Br. of the Att’y Gen. of Md. as Amicus Curiae in Supp. of Pet. for Writ of Cert., *Hare v. David S. Brown Enters., Ltd.*, No. SCM-PET-0250-2024, at 1 (Md. 2024).

Respectfully submitted,

/s/ Lauren A. DiMartino

Lauren A. DiMartino (AIS# 2111120002)
Andrew D. Freeman (AIS # 8612010166)
Brown, Goldstein & Levy, LLP
120 E. Baltimore Street, Suite 2500
Baltimore, Maryland 21202
Telephone: (410) 962-1030 x1346
Fax: (410) 385-0869
ldimartino@browngold.com
adf@browngold.com

/s/ James M. Ray, II

James M. Ray, II (AIS # 1412180059)
Ray Legal Group, LLC
8720 Georgia Avenue, Suite 904
Silver Spring, Maryland 20910
Phone: (301) 755-5656
Fax: (301) 755-5627
Jim.ray@raylegalgroup.com

Counsel for Petitioner Katrina Hare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 26, 2025, the foregoing Brief of Petitioner Katrina Hare was served via MDEC and First Class Mail to:

Eric M Rigatuso, Esq.
Kari J. Gallagher, Esq.
Eccleston & Wolf, P.C.
7240 Parkway Drive, 4th Floor
Hanover, Maryland 21076

Counsel for Respondent

/s/ Lauren A. DiMartino

Lauren A. DiMartino

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 10,528 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Lauren A. DiMartino

Lauren A. DiMartino

MARYLAND RULE 20-201(h)(1) CERTIFICATE

I hereby certify that this filing does not contain any restricted information.

STATUTORY ADDENDUM

Md. Code. Ann., State Gov't § 20-701	Add.-002
Md. Code. Ann., State Gov't § 20-702	Add.-003
Md. Code. Ann., State Gov't § 20-704	Add.-004
Md. Code. Ann., State Gov't § 20-705	Add.-005
Md. Rule 2-501	Add.-006
2020 Maryland Laws Ch. 116	Add.-008
42 U.S.C. § 1437a	Add.-017
42 U.S.C. § 1437f	Add.-019
42 U.S.C. § 1437n	Add.-024
24 C.F.R. 5.628	Add.-025
24 C.F.R. 100.500	Add.-026
24 C.F.R. 982.201	Add.-027
24 C.F.R. 982.302	Add.-031
24 C.F.R. 982.307	Add.-032
24 C.F.R. 982.4	Add.-034
24 C.F.R. 982.503	Add.-042
24 C.F.R. 982.508	Add.-046
24 C.F.R. 982.514	Add.-047
24 C.F.R. 982.515	Add.-048
N.J. Stat. Ann. § 10:5-12(g)	Add.-049
N.Y. Exec. L. § 300	Add.-051

West's Annotated Code of Maryland

State Government (Refs & Annos)

Title 20. Human Relations (Refs & Annos)

Subtitle 7. Discrimination in Housing (Refs & Annos)

MD Code, State Government, § 20-701

§ 20-701. Definitions

Currentness

In general

(a) In this subtitle the following words have the meanings indicated.

Rent

(i) “Rent” includes to lease, sublease, let, or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

Source of income

(j)(1) “Source of income” means any lawful source of money paid directly or indirectly to or on behalf of a renter or buyer of housing.

(2) “Source of income” includes income from:

(i) a lawful profession, occupation, or job;

(ii) any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937;

(iii) a gift, an inheritance, a pension, an annuity, alimony, child support, or any other consideration or benefit; or

(iv) the sale or pledge of property or an interest in property.

West's Annotated Code of Maryland

State Government (Refs & Annos)

Title 20. Human Relations (Refs & Annos)

Subtitle 7. Discrimination in Housing (Refs & Annos)

MD Code, State Government, § 20-702

§ 20-702. State policy; administration and enforcement of subtitle

[Currentness](#)

State policy

(a) It is the policy of the State:

(1) to provide for fair housing throughout the State to all, regardless of race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, disability, source of income, or military status; and

(2) to that end, to prohibit discriminatory practices with respect to residential housing by any person, in order to protect and ensure the peace, health, safety, prosperity, and general welfare of all.

Administration and enforcement of subtitle

(b) This subtitle:

(1) is an exercise of the police power of the State for the protection of the people of the State; and

(2) shall be administered and enforced by the Commission and, as provided in this title, enforced by the appropriate State court.

Credits

Added by [Acts 2009, c. 120, § 2, eff. Oct. 1, 2009](#). Amended by [Acts 2014, c. 474, § 2, eff. Oct. 1, 2014](#); [Acts 2016, c. 8, § 1, eff. March 14, 2016](#); [Acts 2020, c. 116, § 1, eff. Oct. 1, 2020](#); [Acts 2020, c. 117, § 1, eff. Oct. 1, 2020](#); [Acts 2024, c. 322, § 1, eff. Oct. 1, 2024](#); [Acts 2024, c. 323, § 1, eff. Oct. 1, 2024](#).

West's Annotated Code of Maryland

State Government (Refs & Annos)

Title 20. Human Relations (Refs & Annos)

Subtitle 7. Discrimination in Housing (Refs & Annos)

MD Code, State Government, § 20-704

§ 20-704. Scope of subtitle

[Currentness](#)

Prohibition against discrimination based on source of income; exceptions

(d) The prohibitions in this subtitle against discrimination based on source of income do not:

(1) prohibit a person from determining the ability of a potential buyer or renter to pay a purchase price or pay rent by verifying in a commercially reasonable and nondiscriminatory manner the source and amount of income or creditworthiness of the potential buyer or renter;

(2) prevent a person from refusing to consider income derived from any criminal activity; or

(3) prohibit a person from determining, in accordance with applicable federal and State laws, the ability of a potential buyer to repay a mortgage loan.

West's Annotated Code of Maryland

State Government (Refs & Annos)

Title 20. Human Relations (Refs & Annos)

Subtitle 7. Discrimination in Housing (Refs & Annos)

MD Code, State Government, § 20-705

§ 20-705. Discriminatory housing practices--Sale or rental of dwelling

Currentness

Except as provided in §§ 20-703 and 20-704 of this subtitle, a person may not:

- (1) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, source of income, or military status;
- (2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, source of income, or military status;
- (3) make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, source of income, or military status, or an intention to make any preference, limitation, or discrimination;
- (4) represent to any person, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, source of income, or military status, that any dwelling is not available for inspection, sale, or rental when the dwelling is available; or
- (5) for profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person of a particular race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, national origin, source of income, or military status.

Credits

Added by Acts 2009, c. 120, § 2, eff. Oct. 1, 2009. Amended by Acts 2014, c. 474, § 2, eff. Oct. 1, 2014; Acts 2020, c. 116, § 1, eff. Oct. 1, 2020; Acts 2020, c. 117, § 1, eff. Oct. 1, 2020; Acts 2024, c. 322, § 1, eff. Oct. 1, 2024; Acts 2024, c. 323, § 1, eff. Oct. 1, 2024.

End of Document

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West's Annotated Code of Maryland
 Maryland Rules
 Title 2. Civil Procedure--Circuit Court
 Chapter 500. Trial

MD Rules, Rule 2-501

RULE 2-501. MOTION FOR SUMMARY JUDGMENT

Currentness

(a) Motion. Any party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record. A motion for summary judgment may not be filed: (A) after any evidence is received at trial on the merits or (B) unless permission of the court is granted, after the deadline for dispositive motions specified in the scheduling order entered pursuant to Rule 2-504(b)(1)(F).

Committee note: This Rule does not prevent the trial court from exercising its discretion during trial to entertain any motions *in limine* or other preclusive motions that may have the same effect as summary judgment and lead to a motion for judgment under Md. Rule 2-519. See, e.g., *Univ. of Md. Medical System Corporation, et al. v. Rebecca Marie Waldt, et al.*, 411 Md. 207 (2009). Such a procedure avoids confusion and potential due process deprivations associated with summary judgment motions raised orally or at trial. See *Beyer v. Morgan State Univ.*, 369 Md. 335, 359, fn. 16 (2002); see also *Hanson v. Polk County Land, Inc.*, 608 F.2d 129, 131 (5th Cir. 1979) (allowing oral motions for summary judgment leads to confusion with each side having a different recollection of what was contended.) Requiring a written motion also insures adequate notice to all sides.

(b) Response. A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

(c) Form of Affidavit. An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) Affidavit of Defense Not Available. If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

(e) Contradictory Affidavit or Statement.

(1) A party may file a motion to strike an affidavit or other statement under oath to the extent that it contradicts any prior sworn statement of the person making the affidavit or statement. Prior sworn statements include (A) testimony at a prior

hearing, (B) an answer to an interrogatory, and (C) deposition testimony that has not been corrected by changes made within the time allowed by Rule 2-415.

(2) If the court finds that the affidavit or other statement under oath materially contradicts the prior sworn statement, the court shall strike the contradictory part unless the court determines that (A) the person reasonably believed the prior statement to be true based on facts known to the person at the time the prior statement was made, and (B) the statement in the affidavit or other statement under oath is based on facts that were not known to the person and could not reasonably have been known to the person at the time the prior statement was made or, if the prior statement was made in a deposition, within the time allowed by Rule 2-415(d) for correcting the deposition.

(f) Entry of Judgment. The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602 (b), the court may direct entry of judgment (1) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

Cross reference: Section 3931 of the Servicemembers Civil Relief Act, [50 U.S.C. §§ 3901 et seq.](#), imposes specific requirements that must be fulfilled before a default judgment may be entered.

(g) Order Specifying Issues or Facts Not in Dispute. When a ruling on a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court may enter an order specifying the issues or facts that are not in genuine dispute. The order controls the subsequent course of the action but may be modified by the court to prevent manifest injustice.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 610 a 1 and 3.

Section (b) is new.

Section (c) is derived from former Rule 610 b.

Section (d) is derived from former Rule 610 d 2.

Section (e) is new.

Section (f) is derived in part from former Rules 610 d 1 and 611 and is in part new.

Section (g) is derived from former Rule 610 d 4.

Chapter 116

(House Bill 231)

AN ACT concerning

Housing Opportunities Made Equal Act

FOR the purpose of expanding the housing policy of the State to include providing for fair housing to all citizens regardless of source of income; prohibiting a person from refusing to sell or rent a dwelling to any person because of source of income; establishing certain qualifications and limitations on the general prohibition against discrimination in housing based on source of income; prohibiting a person from discriminating against any person in the terms, conditions, or privileges of the sale or rental of a dwelling because of source of income; prohibiting a person from making, printing, or publishing certain types of materials with respect to the sale or rental of a dwelling that indicate a preference, limitation, or discrimination on the basis of source of income; prohibiting a person from falsely representing that a dwelling is not available for inspection, sale, or rental based on source of income; prohibiting a person from inducing or attempting to induce, for profit, a person to sell or rent a dwelling by making certain representations relating to the entry or prospective entry into the neighborhood of a person having a particular source of income; prohibiting a person whose business includes engaging in residential real estate transactions from discriminating against any person in making available a transaction, or in the terms or conditions of a transaction, because of source of income; prohibiting a person from denying a person, based on source of income, access to or membership or participation in a service, an organization, or a facility relating to the business of selling or renting dwellings or from discriminating against a person in the terms or conditions of membership or participation; prohibiting a person from, by force or threat of force, willfully injuring, intimidating, or interfering with any person because of source of income and because the person is negotiating for the sale or rental of any dwelling or participating in any service relating to the business of selling or renting dwellings; defining a certain term; providing that this Act does not limit the rights or remedies that are otherwise available to a landlord or tenant under any other law; and generally relating to prohibitions against discrimination in housing based on source of income.

BY repealing and reenacting, with amendments,

Article – State Government

Section 20–701, 20–702, 20–704, 20–705, 20–707, and 20–1103

Annotated Code of Maryland

(2014 Replacement Volume and 2019 Supplement)

Preamble

WHEREAS, The General Assembly recognizes that equality, fairness, and opportunity for Maryland residents often require government action and that security, mobility, and economic opportunity are enhanced by the location of a person's home; and

WHEREAS, Discrimination in housing based on a person's source of income primarily affects persons that the General Assembly has already determined to need legal protection from discrimination such as families with children, people of color, and people with disabilities; and

WHEREAS, Anne Arundel County, Baltimore County, Frederick County, Howard County, Montgomery County, Prince George's County, the City of Annapolis, the City of Baltimore, and the City of Frederick have laws prohibiting discrimination based on a person's source of income; and

WHEREAS, Fifteen states, including California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oklahoma, Oregon, Utah, Vermont, Washington, and Wisconsin, the District of Columbia, and more than 80 localities across the country have laws prohibiting discrimination based on a person's source of income; and

WHEREAS, This Act will not prevent private landlords from considering relevant, nondiscriminatory factors in screening rental applicants, including an applicant's ability to comply with lease terms and prior tenancy history; and

WHEREAS, This Act seeks to deconcentrate poverty by providing additional opportunities for tenants utilizing public subsidies to live in neighborhoods other than the neighborhoods in which those individuals are currently and disproportionately residing; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Government

20–701.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Disability” means:

(i) a physical or mental impairment that substantially limits one or more of an individual's major life activities;

(ii) a record of having a physical or mental impairment that substantially limits one or more of an individual's major life activities; or

(iii) being regarded as having a physical or mental impairment that substantially limits one or more of an individual's major life activities.

(2) "Disability" does not include the current illegal use of or addiction to:

(i) a controlled dangerous substance, as defined in § 5–101 of the Criminal Law Article; or

(ii) a controlled substance, as defined in 21 U.S.C. § 802.

(c) "Discriminatory housing practice" means an act that is prohibited under § 20–705, § 20–706, § 20–707, or § 20–708 of this subtitle.

(d) "Dwelling" means:

(1) any building, structure, or portion of a building or structure that is occupied, or designed or intended for occupancy, as a residence by one or more families; and

(2) any vacant land that is offered for sale or lease for the construction or location on the land of any building, structure, or portion of a building or structure described in item (1) of this subsection.

(e) (1) "Familial status" means the status of one or more minors who are domiciled with:

(i) a parent or other person having legal custody of the minor; or

(ii) the designee of a parent or other person having legal custody of the minor with the written permission of the parent or other person.

(2) "Familial status" includes the status of being:

(i) a pregnant woman; or

(ii) an individual who is in the process of securing legal custody of a minor.

(f) "Family" includes a single individual.

(g) "In the business of selling or renting dwellings" means:

(1) within the preceding 12 months, participating as a principal in three or more transactions involving the sale or rental of any dwelling or any interest in a dwelling;

(2) within the preceding 12 months, participating as an agent, other than in the sale of the individual's own personal residence, in providing sales or rental facilities

or services in two or more transactions involving the sale or rental of any dwelling or any interest in a dwelling; or

(3) being the owner of any dwelling occupied, or designed or intended for occupancy, by five or more families.

(h) “Marital status” means the state of being single, married, separated, divorced, or widowed.

(i) “Rent” includes to lease, sublease, let, or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

(J) (1) “SOURCE OF INCOME” MEANS ANY LAWFUL SOURCE OF MONEY PAID DIRECTLY OR INDIRECTLY TO OR ON BEHALF OF A RENTER OR BUYER OF HOUSING.

(2) “SOURCE OF INCOME” INCLUDES INCOME FROM:

(I) A LAWFUL PROFESSION, OCCUPATION, OR JOB;

(II) ANY GOVERNMENT OR PRIVATE ASSISTANCE, GRANT, LOAN, OR RENTAL ASSISTANCE PROGRAM, INCLUDING LOW-INCOME HOUSING ASSISTANCE CERTIFICATES AND VOUCHERS ISSUED UNDER THE UNITED STATES HOUSING ACT OF 1937;

(III) A GIFT, AN INHERITANCE, A PENSION, AN ANNUITY, ALIMONY, CHILD SUPPORT, OR ANY OTHER CONSIDERATION OR BENEFIT; OR

(IV) THE SALE OR PLEDGE OF PROPERTY OR AN INTEREST IN PROPERTY.

20–702.

(a) It is the policy of the State:

(1) to provide for fair housing throughout the State to all, regardless of race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, [or] disability, **OR SOURCE OF INCOME**; and

(2) to that end, to prohibit discriminatory practices with respect to residential housing by any person, in order to protect and ensure the peace, health, safety, prosperity, and general welfare of all.

(b) This subtitle:

(1) is an exercise of the police power of the State for the protection of the people of the State; and

(2) shall be administered and enforced by the Commission and, as provided in this title, enforced by the appropriate State court.

20–704.

(a) This subtitle does not apply to:

(1) the sale or rental of a single–family dwelling, if the dwelling is sold or rented without:

(i) the use of the sales or rental facilities or services of any:

1. real estate broker, agent, or salesperson;
2. agent of any real estate broker, agent, or salesperson;
3. person in the business of selling or renting dwellings; or
4. agent of a person in the business of selling or renting

dwellings; or

(ii) the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this subtitle; and

(2) with respect to discrimination on the basis of sex, sexual orientation, gender identity, [or] marital status, **OR SOURCE OF INCOME IF THE SOURCE OF INCOME IS LOW–INCOME HOUSING ASSISTANCE CERTIFICATES OR VOUCHERS ISSUED UNDER THE UNITED STATES HOUSING ACT OF 1937:**

(i) the rental of rooms in any dwelling, if the owner maintains the dwelling as the owner’s principal residence; or

(ii) the rental of any apartment in a dwelling that contains not more than five rental units, if the owner maintains the dwelling as the owner’s principal residence.

(b) The use of attorneys, escrow agents, abstractors, title companies, and other similar professional assistance as necessary to perfect or transfer the title to a single–family dwelling does not subject a person to this subtitle if the person otherwise would be exempted under subsection (a) of this section.

(c) (1) (i) In this subsection, “housing for older persons” means housing:

1. provided under any State or federal program that is specifically designed and operated to assist elderly persons, as defined in the State or federal program;
2. intended for, and solely occupied by, persons who are at least 62 years old;
3. intended and operated for occupancy by at least one person who is at least 55 years old in each unit; or
4. that meets the requirements set forth in regulations adopted by the Secretary of Housing and Urban Development under 42 U.S.C. § 3607(b)(2)(C).

(ii) “Housing for older persons” includes:

1. unoccupied units, if the units are reserved for occupancy by persons who meet the age requirements of subparagraph (i) of this paragraph; or
2. units occupied as of September 13, 1988 by persons who do not meet the age requirements of subparagraph (i) of this paragraph, if the new occupant of the unit meets the age requirement.

(2) The provisions in this subtitle concerning familial status do not apply to housing for older persons.

(D) THE PROHIBITIONS IN THIS SUBTITLE AGAINST DISCRIMINATION BASED ON SOURCE OF INCOME DO NOT:

(1) PROHIBIT A PERSON FROM DETERMINING THE ABILITY OF A POTENTIAL BUYER OR RENTER TO PAY A PURCHASE PRICE OR PAY RENT BY VERIFYING IN A COMMERCIALLY REASONABLE AND NONDISCRIMINATORY MANNER THE SOURCE AND AMOUNT OF INCOME OR CREDITWORTHINESS OF THE POTENTIAL BUYER OR RENTER; ~~OR~~

(2) PREVENT A PERSON FROM REFUSING TO CONSIDER INCOME DERIVED FROM ANY CRIMINAL ACTIVITY; OR

(3) PROHIBIT A PERSON FROM DETERMINING, IN ACCORDANCE WITH APPLICABLE FEDERAL AND STATE LAWS, THE ABILITY OF A POTENTIAL BUYER TO REPAY A MORTGAGE LOAN.

20–705.

Except as provided in §§ 20–703 and 20–704 of this subtitle, a person may not:

(1) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**;

(2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**;

(3) make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**, or an intention to make any preference, limitation, or discrimination;

(4) represent to any person, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**, that any dwelling is not available for inspection, sale, or rental when the dwelling is available; or

(5) for profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person of a particular race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**.

20-707.

(a) In this section, “residential real estate–related transaction” means:

(1) the making or purchasing of loans or providing other financial assistance:

(i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) secured by residential real estate; or

(2) the selling, brokering, or appraising of residential real property.

(b) (1) A person whose business includes engaging in residential real estate–related transactions may not discriminate against any person in making available a transaction, or in the terms or conditions of a transaction, because of race, color, religion,

sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**.

(2) Paragraph (1) of this subsection does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**.

(c) A person may not, because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**:

(1) deny a person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings; or

(2) discriminate against a person in the terms or conditions of membership or participation.

20-1103.

(a) In this section, "disability", "dwelling", "familial status", "marital status", [and] "rent", **AND "SOURCE OF INCOME"** have the meanings stated in § 20-701 of this title.

(b) Whether or not acting under color of law, a person may not, by force or threat of force, willfully injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with:

(1) any person because of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME** and because the person is or has been:

(i) selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings;

(2) any person because the person is or has been, or in order to intimidate the person or any other person or any class of persons from:

(i) participating, without discrimination on account of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity,

[or] national origin, **OR SOURCE OF INCOME**, in any of the activities, services, organizations, or facilities described in item (1) of this subsection; or

(ii) affording another person or class of persons the opportunity or protection to participate in any of the activities, services, organizations, or facilities described in item (1) of this subsection; or

(3) any person because the person is or has been, or in order to discourage the person or any other person from:

(i) lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, disability, marital status, familial status, sexual orientation, gender identity, [or] national origin, **OR SOURCE OF INCOME**, in any of the activities, services, organizations, or facilities described in item (1) of this subsection; or

(ii) participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to participate in any of the activities, services, organizations, or facilities described in item (1) of this subsection.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both;

(2) if the violation results in bodily injury, imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both; or

(3) if the violation results in death, imprisonment not exceeding life.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not limit the rights or remedies that otherwise are available to a landlord or tenant under any other law.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 8. Low-Income Housing (Refs & Annos)

Subchapter I. General Program of Assisted Housing (Refs & Annos)

42 U.S.C.A. § 1437a

§ 1437a. Rental payments

Currentness

(a) Families included; rent options; minimum amount; occupancy by police officers and over-income families

(1) Dwelling units assisted under this chapter shall be rented only to families who are low-income families at the time of their initial occupancy of such units. Reviews of family income shall be made pursuant to paragraph (6); except that, in the case of any family with a fixed income, as defined by the Secretary, after the initial review of the family's income, the public housing agency or owner shall not be required to conduct a review of the family's income for any year for which such family certifies, in accordance with such requirements as the Secretary shall establish, which shall include policies to adjust for inflation-based income changes, that 90 percent or more of the income of the family consists of fixed income, and that the sources of such income have not changed since the previous year, except that the public housing agency or owner shall conduct a review of each such family's income not less than once every 3 years. Except as provided in paragraph (2) and subject to the requirement under paragraph (3), a family shall pay as rent for a dwelling unit assisted under this chapter (other than a family assisted under [section 1437f\(o\)](#) or (y) of this title or paying rent under [section 1437f\(c\)\(3\)\(B\)](#) of this title) the highest of the following amounts, rounded to the nearest dollar:

(A) 30 per centum of the family's monthly adjusted income;

(B) 10 per centum of the family's monthly income; or

(C) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated.

(b) Definition of terms under this chapter

When used in this chapter:

(1) Low-income housing

The term “low-income housing” means decent, safe, and sanitary dwellings assisted under this chapter. The term “public housing” means low-income housing, and all necessary appurtenances thereto, assisted under this chapter other than under [section 1437f](#) of this title. The term “public housing” includes dwelling units in a mixed finance project that are assisted by a public housing agency with capital or operating assistance. When used in reference to public housing, the term “low-

income housing project” or “project” means (A) housing developed, acquired, or assisted by a public housing agency under this chapter, and (B) the improvement of any such housing.

(2) Low-income families

(A) The term “low-income families” means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

(B) The term “very low-income families” means low-income families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(C) The term extremely low-income families³ means very low-income families whose incomes do not exceed the higher of--

(i) the poverty guidelines updated periodically by the Department of Health and Human Services under the authority of [section 9902\(2\)](#) of this title applicable to a family of the size involved (except that this clause shall not apply in the case of public housing agencies or projects located in Puerto Rico or any other territory or possession of the United States); or

(ii) 30 percent of the median family income for the area, as determined by the Secretary, with adjustments for smaller and larger families (except that the Secretary may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes).

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 8. Low-Income Housing (Refs & Annos)

Subchapter I. General Program of Assisted Housing (Refs & Annos)

42 U.S.C.A. § 1437f

§ 1437f. Low-income housing assistance

Currentness

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

(1)(A) An assistance contract entered into pursuant to this section shall establish the maximum monthly rent (including utilities and all maintenance and management charges) which the owner is entitled to receive for each dwelling unit with respect to which such assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically but not less than annually for existing or newly constructed rental dwelling units of various sizes and types in the market area suitable for occupancy by persons assisted under this section, except that the maximum monthly rent may exceed the fair market rental (A) by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent or that such higher rent is necessary to the implementation of a housing strategy as defined in [section 12705](#) of this title, or (B) by such higher amount as may be requested by a tenant and approved by the public housing agency in accordance with paragraph (3)(B). In the case of newly constructed and substantially rehabilitated units, the exception in the preceding sentence shall not apply to more than 20 per centum of the total amount of authority to enter into annual contributions contracts for such units which is allocated to an area and obligated with respect to any fiscal year beginning on or after October 1, 1980. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section. Notwithstanding any other provision of this section, after October 12, 1977, the Secretary shall prohibit high-rise elevator projects for families with children unless there is no practical alternative. If units assisted under this section are exempt from local rent control while they are so assisted or otherwise, the maximum monthly rent for such units shall be reasonable in comparison with other units in the market area that are exempt from local rent control.

(B) Fair market rentals for an area shall be published not less than annually by the Secretary on the site of the Department on the World Wide Web and in any other manner specified by the Secretary. Notice that such fair market rentals are being published shall be published in the Federal Register, and such fair market rentals shall become effective no earlier than 30 days after the date of such publication. The Secretary shall establish a procedure for public housing agencies and other interested parties to comment on such fair market rentals and to request, within a time specified by the Secretary, reevaluation of the fair market rentals in a jurisdiction before such rentals become effective. The Secretary shall cause to be published for comment in the Federal Register notices of proposed material changes in the methodology for estimating fair market rentals and notices specifying the final decisions regarding such proposed substantial methodological changes and responses to public comments.

(o) Voucher program

(1) Authority

(A) In general

The Secretary may provide assistance to public housing agencies for tenant-based assistance using a payment standard established in accordance with subparagraph (B). The payment standard shall be used to determine the monthly assistance that may be paid for any family, as provided in paragraph (2).

(B) Establishment of payment standard

Except as provided under subparagraph (D), the payment standard for each size of dwelling unit in a market area shall not exceed 110 percent of the fair market rental established under subsection (c) for the same size of dwelling unit in the same market area and shall be not less than 90 percent of that fair market rental, except that no public housing agency shall be required as a result of a reduction in the fair market rental to reduce the payment standard applied to a family continuing to reside in a unit for which the family was receiving assistance under this section at the time the fair market rental was reduced. The Secretary shall allow public housing agencies to request exception payment standards within fair market rental areas subject to criteria and procedures established by the Secretary.

(C) Set-aside

The Secretary may set aside not more than 5 percent of the budget authority made available for assistance under this subsection as an adjustment pool. The Secretary shall use amounts in the adjustment pool to make adjusted payments to public housing agencies under subparagraph (A), to ensure continued affordability, if the Secretary determines that additional assistance for such purpose is necessary, based on documentation submitted by a public housing agency.

(D) Approval

The Secretary may require a public housing agency to submit the payment standard of the public housing agency to the Secretary for approval, if the payment standard is less than 90 percent of the fair market rental or exceeds 110 percent of the fair market rental, except that a public housing agency may establish a payment standard of not more than 120 percent of the fair market rent where necessary as a reasonable accommodation for a person with a disability, without approval of the Secretary. A public housing agency may use a payment standard that is greater than 120 percent of the fair market rent as a reasonable accommodation for a person with a disability, but only with the approval of the Secretary. In connection with the use of any increased payment standard established or approved pursuant to either of the preceding two sentences as a reasonable accommodation for a person with a disability, the Secretary may not establish additional requirements regarding the amount of adjusted income paid by such person for rent.

(E) Review

The Secretary--

(i) shall monitor rent burdens and review any payment standard that results in a significant percentage of the families occupying units of any size paying more than 30 percent of adjusted income for rent; and

(ii) may require a public housing agency to modify the payment standard of the public housing agency based on the results of that review.

(2) Amount of monthly assistance payment

Subject to the requirement under [section 1437a\(a\)\(3\)](#) of this title (relating to minimum rental amount), the monthly assistance payment for a family receiving assistance under this subsection shall be determined as follows:

(A) Tenant-based assistance; rent not exceeding payment standard

For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) does not exceed the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the rent (including the amount allowed for tenant-paid utilities) exceeds the greatest of the following amounts, rounded to the nearest dollar:

(i) 30 percent of the monthly adjusted income of the family.

(ii) 10 percent of the monthly income of the family.

(iii) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.

(B) Tenant-based assistance; rent exceeding payment standard

For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) exceeds the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the applicable payment standard exceeds the greatest of amounts under clauses (i), (ii), and (iii) of subparagraph (A).

(C) Families receiving project-based assistance

For a family receiving project-based assistance, the rent that the family is required to pay shall be determined in accordance with [section 1437a\(a\)\(1\)](#) of this title, and the amount of the housing assistance payment shall be determined in accordance with subsection (c)(3) of this section.

(D) Utility allowance

(i) General

In determining the monthly assistance payment for a family under subparagraphs (A) and (B), the amount allowed for tenant-paid utilities shall not exceed the appropriate utility allowance for the family unit size as determined by the public housing agency regardless of the size of the dwelling unit leased by the family.

(ii) Exception for families in including persons with disabilities

Notwithstanding subparagraph (A), upon request by a family that includes a person with disabilities, the public housing agency shall approve a utility allowance that is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family member with a disability.

(3) 40 percent limit

At the time a family initially receives tenant-based assistance under this section with respect to any dwelling unit, the total amount that a family may be required to pay for rent may not exceed 40 percent of the monthly adjusted income of the family.

(4) Eligible families

To be eligible to receive assistance under this subsection, a family shall, at the time a family initially receives assistance under this subsection, be a low-income family that is--

(A) a very low-income family;

(B) a family previously assisted under this subchapter;

(C) a low-income family that meets eligibility criteria specified by the public housing agency;

(D) a family that qualifies to receive a voucher in connection with a homeownership program approved under title IV of the Cranston-Gonzalez National Affordable Housing Act; or

(E) a family that qualifies to receive a voucher under section 223 or 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990.

(5) Reviews of family income

(A) In general

Reviews of family incomes for purposes of this section shall be subject to [paragraphs \(1\), \(6\), and \(7\) of section 1437a\(a\)](#) of this title and to [section 3544](#) of this title.

(B) Procedures

Each public housing agency administering assistance under this subsection shall establish procedures that are appropriate and necessary to ensure that income data provided to the agency and owners by families applying for or receiving assistance from the agency is complete and accurate.

United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 8. Low-Income Housing (Refs & Annos)

Subchapter I. General Program of Assisted Housing (Refs & Annos)

42 U.S.C.A. § 1437n

§ 1437n. Eligibility for assisted housing

[Currentness](#)

(b) Income eligibility for tenant-based [section 1437f](#) assistance

(1) In general

Of the families initially provided tenant-based assistance under [section 1437f](#) of this title by a public housing agency in any fiscal year, not less than 75 percent shall be extremely low-income families.

(2) Jurisdictions served by multiple PHAs

In the case of any 2 or more public housing agencies that administer tenant-based assistance under [section 1437f](#) of this title with respect solely to identical geographical areas, such agencies shall be treated as a single public housing agency for purposes of paragraph (1).

This content is from the eCFR and is authoritative but unofficial.

Title 24 —Housing and Urban Development

Subtitle A —Office of the Secretary, Department of Housing and Urban Development

Part 5 —General HUD Program Requirements; Waivers

Subpart F —Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

Family Payment

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

Source: 61 FR 54498, Oct. 18, 1996, unless otherwise noted.

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb et seq.; 34 U.S.C. 12471 et seq.; Sec. 327, Pub. L. 109-115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

Source: 61 FR 5202, Feb. 9, 1996, unless otherwise noted.

Editorial Note: Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

§ 5.628 Total tenant payment.

- (a) **Determining total tenant payment (TTP).** Total tenant payment is the highest of the following amounts, rounded to the nearest dollar:
- (1) 30 percent of the family's monthly adjusted income;
 - (2) 10 percent of the family's monthly income;
 - (3) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated;
 - (4) The minimum rent, as determined in accordance with § 5.630; or
 - (5) For public housing only, the alternative non-public housing rent, as determined in accordance with § 960.102 of this title.
- (b) **Determining TTP if family's welfare assistance is ratably reduced.** If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section is the amount resulting from one application of the percentage.

[65 FR 16718, Mar. 29, 2000, as amended at 88 FR 9661, Feb. 14, 2023]

This content is from the eCFR and is authoritative but unofficial.

Title 24 –Housing and Urban Development

Subtitle B –Regulations Relating to Housing and Urban Development

Chapter I –Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development

Part 100 –Discriminatory Conduct Under the Fair Housing Act

Subpart G –Discriminatory Effect

Authority: 42 U.S.C. 3535(d), 3600-3620.

Source: 54 FR 3283, Jan. 23, 1989, unless otherwise noted.

§ 100.500 Discriminatory effect prohibited.

Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if supported by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.

- (a) ***Discriminatory effect.*** A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.
- (b) ***Legally sufficient justification.***
 - (1) A legally sufficient justification exists where the challenged practice:
 - (i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and
 - (ii) Those interests could not be served by another practice that has a less discriminatory effect.
 - (2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the two elements of a legally sufficient justification are set forth in paragraphs (c)(2) and (3) of this section.
- (c) ***Burdens of proof in discriminatory effects cases.***
 - (1) The charging party, with respect to a claim brought under 42 U.S.C. 3612, or the plaintiff, with respect to a claim brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.
 - (2) Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.
 - (3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

- (d) *Relationship to discriminatory intent.* A demonstration that a practice is supported by a legally sufficient justification, as defined in paragraph (b) of this section, may not be used as a defense against a claim of intentional discrimination.

[88 FR 19500, Mar. 31, 2023]

This content is from the eCFR and is authoritative but unofficial.

Title 24 —Housing and Urban Development

Subtitle B —Regulations Relating to Housing and Urban Development

Chapter IX —Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development

Part 982 —Section 8 Tenant-Based Assistance: Housing Choice Voucher Program

Subpart E —Admission to Tenant-Based Program

Authority: 42 U.S.C. 1437f and 3535(d).

Source: 59 FR 36682, July 18, 1994, unless otherwise noted.

Editorial Note: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999, and at 89 FR 38293, May 7, 2024.

§ 982.201 Eligibility and targeting.

(a) **When applicant is eligible: General.** The PHA may admit only eligible families to the program. To be eligible, an applicant must be a “family;” must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E. If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

(b) **Income —**

(1) **Income-eligibility.** To be income-eligible, the applicant must be a family in any of the following categories:

(i) A “very low income” family;

(ii) A low-income family that is “continuously assisted” under the 1937 Housing Act;

(iii) A low-income family that meets additional eligibility criteria specified in the PHA Administrative Plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;

(iv) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act (42 U.S.C. 1437f(o)(4)(D));

(v) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in § 248.101 of this title;

(vi) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under § 248.173 of this title.

(2) **Income-targeting.**

- (i) Not less than 75 percent of the families admitted to a PHA's HCV program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. Annual income of such families shall be verified within the period described in paragraph (e) of this section.
- (ii) A PHA may admit a lower percent of extremely low income families during a PHA fiscal year (than otherwise required under paragraph (b)(2)(i) of this section) if HUD approves the use of such lower percent by the PHA, in accordance with the PHA plan, based on HUD's determination that the following circumstances necessitate use of such lower percent by the PHA:
 - (A) The PHA has opened its waiting list for a reasonable time for admission of extremely low income families residing in the same metropolitan statistical area (MSA) or non-metropolitan county, both inside and outside the PHA jurisdiction;
 - (B) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to such families, including outreach and marketing to extremely low income families on the Section 8 and public housing waiting lists of other PHAs with jurisdiction in the same MSA or non-metropolitan county;
 - (C) Notwithstanding such actions by the PHA (in accordance with paragraphs (b)(2)(ii)(A) and (B) of this section), there are not enough extremely low income families on the PHA's waiting list to fill available slots in the program during any fiscal year for which use of a lower percent is approved by HUD; and
 - (D) Admission of the additional very low income families other than extremely low income families to the PHA's tenant-based voucher program will substantially address worst case housing needs as determined by HUD.
- (iii) If approved by HUD, the admission of a portion of very low income welfare-to-work (WTW) families that are not extremely low income families may be disregarded in determining compliance with the PHA's income-targeting obligations under paragraph (b)(2)(i) of this section. HUD will grant such approval only if and to the extent that the PHA has demonstrated to HUD's satisfaction that compliance with such targeting obligations with respect to such portion of WTW families would interfere with the objectives of the welfare-to-work voucher program. If HUD grants such approval, admission of that portion of WTW families is not counted in the base number of families admitted to a PHA's tenant-based voucher program during the fiscal year for purposes of income targeting.
- (iv) Admission of families as described in paragraphs (b)(1)(ii) or (b)(1)(v) of this section is not subject to targeting under paragraph (b)(2)(i) of this section.
- (v) If the jurisdictions of two or more PHAs that administer the HCV program cover an identical geographic area, such PHAs may elect to be treated as a single PHA for purposes of targeting under paragraph (b)(2)(i) of this section. In such a case, the PHAs shall cooperate to assure that aggregate admissions by such PHAs comply with the targeting requirement. If such PHAs do not have a single fiscal year, HUD will determine which PHA's fiscal year is used for this purpose.
- (vi) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the HCV program, such admission shall be counted against the targeting obligation of the initial PHA (unless the receiving PHA absorbs the portable family into the receiving PHA's HCV program from the point of admission).

- (3) The annual income (gross income) of an applicant family is used both for determination of income-eligibility under paragraph (b)(1) of this section and for targeting under paragraph (b)(2)(i) of this section. In determining annual income of an applicant family that includes a person with disabilities, the determination must include the disallowance of increase in annual income as provided in 24 CFR 5.617, if applicable.
- (4) The applicable income limit for issuance of a voucher when a family is selected for the program is the highest income limit (for the family size) for areas in the PHA jurisdiction. The applicable income limit for admission to the program is the income limit for the area where the family is initially assisted in the program. At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.
- (c) **Family composition.** See definition of "family" in 24 CFR 5.403.
- (d) **Continuously assisted.**
 - (1) An applicant is continuously assisted under the 1937 Housing Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.
 - (2) The PHA must establish policies concerning whether and to what extent a brief interruption between assistance under one of these programs and admission to the voucher program will be considered to break continuity of assistance under the 1937 Housing Act.
- (e) **When PHA verifies that applicant is eligible.** The PHA must receive information verifying that an applicant is eligible within the period of 60 days before the PHA issues a voucher to the applicant.
- (f) **Decision to deny assistance —**
 - (1) **Notice to applicant.** The PHA must give an applicant prompt written notice of a decision denying admission to the program (including a decision that the applicant is not eligible, or denying assistance for other reasons). The notice must give a brief statement of the reasons for the decision. The notice must also state that the applicant may request an informal review of the decision, and state how to arrange for the informal review.
 - (2) For description of the grounds for denying assistance because of action or inaction by the applicant, see § 982.552(b) and (c) (requirement and authority to deny admission) and § 982.553(a) (crime by family members).

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 61 FR 13627, Mar. 27, 1996; 64 FR 26642, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 56911, Oct. 21, 1999; 66 FR 6226, Jan. 19, 2001; 66 FR 8174, Jan. 30, 2001; 67 FR 6820, Feb. 13, 2002; 70 FR 77744, Dec. 30, 2005; 73 FR 72344, Nov. 28, 2008; 75 FR 66263, Oct. 27, 2010; 77 FR 5676, Feb. 3, 2012; 80 FR 8246, Feb. 17, 2015; 81 FR 80816, Nov. 16, 2016]

This content is from the eCFR and is authoritative but unofficial.

Title 24 —Housing and Urban Development

Subtitle B —Regulations Relating to Housing and Urban Development

Chapter IX —Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development

Part 982 —Section 8 Tenant-Based Assistance: Housing Choice Voucher Program

Subpart G —Leasing a Unit

Source: 60 FR 34695, July 3, 1995, unless otherwise noted.

Authority: 42 U.S.C. 1437f and 3535(d).

Source: 59 FR 36682, July 18, 1994, unless otherwise noted.

Editorial Note: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999, and at 89 FR 38293, May 7, 2024.

§ 982.302 Issuance of voucher; Requesting PHA approval of assisted tenancy.

- (a) When a family is selected, or when a participant family wants to move to another unit, the PHA issues a voucher to the family. The family may search for a unit.
- (b) If the family finds a unit, and the owner is willing to lease the unit under the program, the family may request PHA approval of the tenancy. The PHA has the discretion whether to permit the family to submit more than one request at a time.
- (c) The family must submit to the PHA a request for approval of the tenancy and a copy of the lease, including the HUD-prescribed tenancy addendum. The request must be submitted during the term of the voucher.
- (d) The PHA specifies the procedure for requesting approval of the tenancy. The family must submit the request for approval of the tenancy in the form and manner required by the PHA.

[64 FR 26644, May 14, 1999]

This content is from the eCFR and is authoritative but unofficial.

Title 24 –Housing and Urban Development

Subtitle B –Regulations Relating to Housing and Urban Development

Chapter IX –Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development

Part 982 –Section 8 Tenant-Based Assistance: Housing Choice Voucher Program

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Source: 59 FR 36682, July 18, 1994, unless otherwise noted.

Editorial Note: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999, and at 89 FR 38293, May 7, 2024.

§ 982.307 Tenant screening.

(a) PHA option and owner responsibility.

- (1)** The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy. The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA Administrative Plan.
- (2)** The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner.
- (3)** The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:
 - (i)** Payment of rent and utility bills;
 - (ii)** Caring for a unit and premises;
 - (iii)** Respecting the rights of other residents to the peaceful enjoyment of their housing;
 - (iv)** Drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and
 - (v)** Compliance with other essential conditions of tenancy.

(b) PHA information about tenant.

- (1)** The PHA must give the owner:
 - (i)** The family's current and prior address (as shown in the PHA records); and
 - (ii)** The name and address (if known to the PHA) of the landlord at the family's current and prior address.

- (2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug-trafficking by family members.
- (3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information packet that is given to a family selected to participate in the program. The PHA policy must provide that the PHA will give the same types of information to all families and to all owners.
- (4) In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

(Approved by the Office of Management and Budget under control number 2577-0169)

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 64 FR 26645, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 73 FR 72344, Nov. 28, 2008; 75 FR 66263, Oct. 27, 2010; 81 FR 80816, Nov. 16, 2016]

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Title 24 –Housing and Urban Development

Subtitle B –Regulations Relating to Housing and Urban Development

Chapter IX –Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development

Part 982 –Section 8 Tenant-Based Assistance: Housing Choice Voucher Program

Subpart A –General Information

Source: 60 FR 34695, July 3, 1995, unless otherwise noted.

Authority: 42 U.S.C. 1437f and 3535(d).

Source: 59 FR 36682, July 18, 1994, unless otherwise noted.

Editorial Note: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999, and at 89 FR 38293, May 7, 2024.

§ 982.4 Definitions.

Link to an amendment published at 89 FR 38293, May 7, 2024.

(a) *Definitions found elsewhere.*

- (1) The following terms are defined in 24 CFR part 5, subpart A: 1937 Act, Covered person, Drug, Drug-related criminal activity, federally assisted housing, Guest, Household, HUD, MSA, Other person under the tenant's control, Public housing, Section 8, and Violent criminal activity.
- (2) The following terms are defined in 24 CFR part 5, subpart D: Disabled family, Elderly family, Near-elderly family, and Person with disabilities.
- (3) The following terms are defined in 24 CFR part 5, subpart F: Adjusted income, Annual income, Extremely low income family, Total tenant payment, Utility allowance, and Welfare assistance.

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

Abatement. Stopping HAP payments to an owner with no potential for retroactive payment.

Absorption. For purposes of subpart H, the point at which a receiving PHA starts making assistance payments with funding under its consolidated ACC, rather than billing, the initial PHA.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See § 982.152.

Administrative fee reserve (formerly “operating reserve”). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See § 982.155.

Administrative Plan. The plan that describes PHA policies for administration of the HCV program. See § 982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in the tenant-based program.

- Applicant** (applicant family). A family that has applied for admission to the HCV program but is not yet a program participant.
- Authorized voucher units.** The number of units for which a PHA is authorized to make assistance payments to owners under its annual contributions contract.
- Budget authority.** An amount authorized and appropriated by the Congress for payment to PHAs under the HCV program. For each funding increment in the program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.
- Building.** A structure with a roof and walls that contains one or more dwelling units.
- Common space.** In shared housing: Space available for use by the assisted family and other occupants of the unit.
- Congregate housing.** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see § 982.606 to § 982.609.
- Continuously assisted.** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Act program when the family is admitted to the HCV program.
- Cooperative.** Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.
- Cooperative member.** A family of which one or more members owns membership shares in a cooperative.
- Domicile.** The legal residence of the household head or spouse as determined in accordance with State and local law.
- Downpayment assistance grant.** A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for purchase of the home or reasonable and customary closing costs required in connection with purchase of the home.
- Fair market rent (FMR).** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. In the HCV program, the FMR may be established at the ZIP code level (see definition of Small Area Fair Market Rents), metropolitan area level, or non-metropolitan county level.
- Family.** A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program. See "family composition" at § 982.201(c).
- Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see § 982.515(b).
- Family self-sufficiency program (FSS program).** The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).
- Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see § 982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

First-time homeowner. In the homeownership option: A family of which no member owned any present ownership interest in a residence of any family member during the three years before commencement of homeownership assistance for the family. The term "first-time homeowner" includes a single parent or displaced homemaker (as those terms are defined in 12 U.S.C. 12713) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.

Foster adult. A member of the household who is 18 years of age or older and meets the definition of a foster adult under State law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Foster child. A member of the household who meets the definition of a foster child under State law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see § 982.610 to § 982.614.

HAP contract. Housing assistance payments contract.

Home. In the homeownership option: A dwelling unit for which the PHA pays homeownership assistance.

Homeowner. In the homeownership option: A family of which one or more members owns title to the home.

Homeownership assistance. Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by a PHA for a family: monthly homeownership assistance payments, or a single downpayment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

Homeownership expenses. In the homeownership option: A family's allowable monthly expenses for the home, as determined by the PHA in accordance with HUD requirements (see § 982.635).

Homeownership option. Assistance for a homeowner or cooperative member under § 982.625 to § 982.641. A special housing type.

Housing assistance payment. The monthly assistance payment by a PHA, which includes:

- (1) A payment to the owner for rent to the owner under the family's lease; and
- (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing quality standards (HQS). The minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the HCV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

Independent entity.

- (i) The unit of general local government; however, if the PHA itself is the unit of general local government or an agency of such government, then only the next level of general local government (or an agency of such government) or higher may serve as the independent entity; or
- (ii) A HUD-approved entity that is autonomous and recognized under State law as a separate legal entity from the PHA. The entity must not be connected financially (except regarding compensation for services performed for PHA-owned units) or in any other manner that could result in the PHA improperly influencing the entity.

Initial PHA. In portability, the term refers to both:

- (1) a PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and
- (2) a PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Interest in the home. In the homeownership option:

- (1) In the case of assistance for a homeowner, "interest in the home" includes title to the home, any lease or other right to occupy the home, or any other present interest in the home.
- (2) In the case of assistance for a cooperative member, "interest in the home" includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

Jurisdiction. The area in which the PHA has authority under State and local law to administer the program.

Lease.

- (1) A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.
- (2) In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA. For purposes of this part 982, the cooperative is the Section 8 "owner" of the unit, and the cooperative member is the Section 8 "tenant."

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see § 982.620 and § 982.621.

Manufactured home space. In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See § 982.622 to § 982.624.

Membership shares. In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular unit in the cooperative, and the right to participate in management of the housing.

Merger date. October 1, 1999, which is the effective date of the merger of the two tenant-based programs (the housing voucher and housing certificate programs) into the Housing Choice Voucher (HCV) program.

Notice of Funding Availability (NOFA). For budget authority that HUD distributes by competitive process, the FEDERAL REGISTER document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

PHA plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD in accordance with part 903 of this chapter.

PHA-owned unit.

(i) A dwelling unit in a project that is:

- (A) Owned by the PHA (including having a controlling interest in the entity that owns the project);
- (B) Owned by an entity wholly controlled by the PHA; or
- (C) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

(ii) A controlling interest is:

- (A) Holding more than 50 percent of the stock of any corporation;
- (B) Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a nonprofit corporation);
- (C) Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;
- (D) Holding more than 50 percent of all managing member interests in an LLC;
- (E) Holding more than 50 percent of all general partner interests in a partnership; or
- (F) Equivalent levels of control in other ownership structures.

Portability. Renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Present homeownership interest. In the homeownership option: "Present ownership interest" in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. "Present ownership interest" in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

Program. The Section 8 HCV program under this part.

Program receipts. HUD payments to the PHA under the consolidated ACC, and any other amounts received by the PHA in connection with the program.

Public housing agency (PHA). PHA includes both:

- (1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), and
- (2) Any of the following:
 - (i) A consortium of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortium members);
 - (ii) Any other public or private non-profit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) on October 21, 1998; or
 - (iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

Reasonable rent. A rent to owner that is not more than rent charged:

- (1) For comparable units in the private unassisted market; and
- (2) For comparable unassisted units in the premises.

Receiving PHA. In portability: A PHA that receives a family selected for participation in the HCV program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

Renewal units. The number of units, as determined by HUD, for which funding is reserved on HUD books for a PHA's program. This number is used in calculating renewal budget authority in accordance with § 982.102.

Rent to owner. The total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

Request for Tenancy Approval (RFTA). A form (form HUD-52517) submitted by or on behalf of a family to a PHA once the family has identified a unit that it wishes to rent using tenant-based voucher assistance.

Residency preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area ("residency preference area").

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Section 8 Management Assessment Program (SEMAP). A system used by HUD to measure PHA performance in key Section 8 program areas. See 24 CFR part 985.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see § 982.615 to § 982.618.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see § 982.602 to § 982.605.

Small Area Fair Market Rents (SAFMRs or Small Area FMRs). Small Area FMRs are FMRs established for U.S. Postal Service ZIP code areas and are calculated in accordance with 24 CFR 888.113(a) and (b).

Special admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

Special housing types. See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group home, shared housing, manufactured home (including manufactured home space rental), cooperative housing (rental assistance for cooperative member) and homeownership option (homeownership assistance for cooperative member or first-time homeowner).

Statement of homeowner obligations. In the homeownership option: The family's agreement to comply with program obligations.

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. The term on the family's voucher stops from the date that the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant-paid utilities. Utilities and services that are not included in the rent to owner and are the responsibility of the assisted family, regardless of whether the payment goes to the utility company or the owner. The utilities and services are those necessary in the locality to provide housing that complies with HQS. The utilities and services may also include those required by HUD through a FEDERAL REGISTER notice after providing opportunity for public comment.

Utility reimbursement. The portion of the housing assistance payment which exceeds the amount of the rent to owner. (See § 982.514(b)).

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher (rental voucher). A document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Waiting list admission. An admission from the PHA waiting list.

Welfare-to-work (WTW) families. Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

Withholding. Stopping HAP payments to an owner while holding them for potential retroactive disbursement.

[63 FR 23857, Apr. 30, 1998; 63 FR 31625, June 10, 1998, as amended at 64 FR 26641, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 56887, 56911, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000; 65 FR 55161, Sept. 12, 2000; 66 FR 28804, May 24, 2001; 66 FR 33613, June 22, 2001; 67 FR 64492, Oct. 18, 2002; 77 FR 5675, Feb. 3, 2012; 80 FR 8245, Feb. 17, 2015; 80 FR 50572, Aug. 20, 2015; 88 FR 30503, May 11, 2023; 89 FR 38293, May 7, 2024]

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Subtitle B –Regulations Relating to Housing and Urban Development

Chapter IX –Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development

Part 982 –Section 8 Tenant-Based Assistance: Housing Choice Voucher Program

Subpart K –Rent and Housing Assistance Payment

Source: 63 FR 23861, Apr. 30, 1998, unless otherwise noted.

Authority: 42 U.S.C. 1437f and 3535(d).

Source: 59 FR 36682, July 18, 1994, unless otherwise noted.

Editorial Note: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999, and at 89 FR 38293, May 7, 2024.

§ 982.503 Payment standard areas, schedule, and amounts.

(a) Payment standard areas.

- (1)** Annually, HUD publishes fair market rents (FMRs) for U.S. Postal Service ZIP code areas, metropolitan areas, and nonmetropolitan counties (see 24 CFR 888.113). Within each of these FMR areas, the applicable FMR is:
 - (i)** The HUD-published Small Area FMR for:
 - (A)** Any metropolitan area designated as a Small Area FMR area by HUD in accordance with 24 CFR 888.113(c)(1).
 - (B)** Any area where a PHA has notified HUD that the PHA will voluntarily use SAFMRs in accordance with 24 CFR 888.113(c)(3).
 - (ii)** The HUD-published metropolitan FMR for any other metropolitan area.
 - (iii)** The HUD-published FMR for any other non-metropolitan county.
- (2)** The PHA must adopt a payment standard schedule that establishes voucher payment standard amounts for each FMR area in the PHA jurisdiction. These payment standard amounts are used to calculate the monthly housing assistance payment for a family (§ 982.505).
- (3)** The PHA may designate payment standard areas within each FMR area. The PHA may establish different payment standard amounts for such designated areas. If the PHA designates payment standard areas, then it must include in its Administrative Plan the criteria used to determine the designated areas and the payment standard amounts for those areas.
 - (i)** The PHA may designate payment standard areas within which payment standards will be established according to paragraph (c) (basic range) or paragraph (d) (exception payment standard), of this section.
 - (ii)** A PHA-designated payment standard area may be no smaller than a census tract block group.

- (b) **Payment standard schedule.** For each payment standard area, the PHA must establish a payment standard amount for each unit size, measured by number of bedrooms (zero-bedroom, one-bedroom, and so on). These payment standard amounts comprise the PHA's payment standard schedule.
- (c) **Basic range payment standard amounts.** A basic range payment standard amount is any dollar amount that is in the range from 90 percent up to 110 percent of the published FMR for a unit size.
 - (1) The PHA may establish a payment standard amount within the basic range without HUD approval or prior notification to HUD.
 - (2) The PHA's basic range payment standard amount for each unit size may be based on the same percentage of the published FMR (i.e., all payment standard amounts may be set at 100 percent of the FMR), or the PHA may establish different payment standard amounts for different unit sizes (for example, 90 percent for efficiencies, 100 percent for 1-bedroom units, 110 percent for larger units).
 - (3) The PHA must revise its payment standard amounts and schedule no later than 3 months following the effective date of the published FMR if revisions are necessary to stay within the basic range.
- (d) **Exception payment standard amounts.** An exception payment standard amount is a dollar amount that exceeds 110 percent of the published FMR.
 - (1) The PHA may establish exception payment standard amounts for all units, or for units of a particular size. The exception payment standard may be established for a designated part of the FMR area (called an "exception area") or for the entire FMR area. The exception area must meet the minimum area requirement at § 982.503(a)(3)(ii).
 - (2) A PHA that is not in a designated Small Area FMR area or has not opted voluntarily to implement Small Area FMRs under 24 CFR 888.113(c)(3) may establish exception payment standards for a ZIP code area that exceed the basic range for the metropolitan area or county FMR as long as the amounts established by the PHA do not exceed 110 percent of the HUD published SAFMR for the applicable ZIP code. The exception payment standard must apply to the entire ZIP code area. If an exception area crosses one or more FMR boundaries, then the maximum exception payment standard amount that a PHA may adopt for the exception area without HUD approval is 110 percent of the ZIP code area with the lowest SAFMR amount. If the PHA qualifies for an exception payment standard above 110 percent of the applicable FMR under paragraph (d)(3) or (4) of this section, it may establish exception payment standards up to the same percentage of the SAFMR for the applicable ZIP code.
 - (3) A PHA may establish exception payment standard amounts between 110 percent and 120 percent of the applicable FMR for such duration as HUD specifies by notice upon notification to HUD that the PHA meets at least one of the following criteria:
 - (i) Fewer than 75 percent of the families to whom the PHA issued tenant-based rental vouchers during the most recent 12-month period for which there is success rate data available have become participants in the voucher program;
 - (ii) More than 40 percent of families with tenant-based rental assistance administered by the agency pay more than 30 percent of adjusted income as the family share; or
 - (iii) Such other criteria as the Secretary establishes by notice.

- (4) Except as provided in paragraphs (d)(2), (3), and (5) of this section, the PHA must request approval from HUD to establish an exception payment standard amount that exceeds 110 percent of the applicable FMR. In its request to HUD, the PHA must provide rental market data demonstrating that the requested exception payment standard amount is needed for families to access rental units. The rental market data must include a rent estimate for the entire FMR area compared with a rent estimate for the proposed exception area. To apply the exception payment standard to the entire FMR area, the rental market data provided by the PHA must also provide data that demonstrates that the annual percentage of rent inflation in the FMR area is greater than the rental inflation adjustment factor in the calculation of the published FMR. Once HUD has approved the exception payment standard for the requesting PHA, any other PHA with jurisdiction in the HUD approved exception payment standard area may also use the exception payment standard amount.
- (5) If required as a reasonable accommodation in accordance with 24 CFR part 8 for a person with a disability, the PHA may establish, without HUD approval or prior notification to HUD, an exception payment standard amount for an individual family that does not exceed 120 percent of the applicable FMR. A PHA may establish a payment standard greater than 120 percent of the applicable FMR as a reasonable accommodation for a person with a disability in accordance with 24 CFR part 8, after requesting and receiving HUD approval.
- (e) **Payment standard amount below 90 percent of the applicable FMR.** HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. Unless it is necessary to prevent termination of program participants, HUD will not approve a lower payment standard if the proposed payment standard would, if it were used to calculate the housing assistance payments for current participants in the PHA's voucher program using currently available data, cause the family share for more than 40 percent of participants with tenant-based rental assistance to exceed 30 percent of adjusted monthly income.
- (f) **Phaseout of success rate payment standard amounts.** HUD will no longer approve success rate payment standards. However, a PHA that was approved to establish a success rate payment standard amount under this paragraph as in effect prior to June 6, 2024 shall not be required to reduce such payment standard amount as a result of the discontinuance of success rate payment standards.
- (g) **Payment standard protection for PHAs that meet deconcentration objectives.** This paragraph applies only to a PHA with jurisdiction in an FMR area where the FMR had previously been set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area, pursuant to 24 CFR 888.113(i)(3), but is now set at the 40th percentile rent.
 - (1) Such a PHA may obtain HUD Field Office approval of a payment standard amount based on the 50th percentile rent if the PHA scored the maximum number of points on the deconcentration bonus indicator in 24 CFR 985.3(h) in the prior year, or in two of the last three years.
 - (2) HUD approval of payment standard amounts based on the 50th percentile rent shall be for all unit sizes in the FMR area that had previously been set at the 50th percentile rent pursuant to 24 CFR 888.113(i)(3). A PHA may opt to establish a payment standard amount based on the 50th percentile rent for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.
- (h) **HUD review of PHA payment standard schedules.**

- (1) HUD will monitor rent burdens of families assisted with tenant-based rental assistance in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.
- (2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range.

[89 FR 38300, May 7, 2024]

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Subpart K –Rent and Housing Assistance Payment

Source: 63 FR 23861, Apr. 30, 1998, unless otherwise noted.

Authority: 42 U.S.C. 1437f and 3535(d).

Source: 59 FR 36682, July 18, 1994, unless otherwise noted.

Editorial Note: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999, and at 89 FR 38293, May 7, 2024.

§ 982.508 Maximum family share at initial occupancy.

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.

[64 FR 59622, Nov. 3, 1999]

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Editorial Note: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999, and at 89 FR 38293, May 7, 2024.

§ 982.514 Distribution of housing assistance payment.

The monthly housing assistance payment is distributed as follows:

- (a) The PHA pays the owner the lesser of the housing assistance payment or the rent to owner.
- (b) If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the housing assistance payment (“utility reimbursement”) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.
- (c) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.
 - (1) The PHA will have the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling \$45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement. PHAs exercising this option must have a hardship policy in place for tenants.
 - (2) If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000; 81 FR 12376, Mar. 8, 2016]

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Editorial Note: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999, and at 89 FR 38293, May 7, 2024.

§ 982.515 Family share: Family responsibility.

- (a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.
- (b) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.
- (c) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 56915, Oct. 21, 1999]

New Jersey Statutes Annotated

Title 10. Civil Rights

Chapter 5. Law Against Discrimination (Refs & Annos)

N.J.S.A. 10:5-12(g)

10:5-12. Unlawful employment practice or unlawful discrimination

Currentness

It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

. . . .

g. For any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any real property or part or portion thereof, or any agent or employee of any of these:

(1) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments;

(2) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity, or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments, or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied by individuals of one sex to any individual of the exclusively opposite sex on the basis of sex provided individuals shall be qualified based on their gender identity or expression;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c. 169 ([C.10:5-5](#)).

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N.Y. Executive Law, Article 15
Human Rights Law

§ 300. Construction.

The provisions of this article shall be construed liberally for the accomplishment of the remedial purposes thereof, regardless of whether federal civil rights laws, including those laws with provisions worded comparably to the provisions of this article, have been so construed. Exceptions to and exemptions from the provisions of this article shall be construed narrowly in order to maximize deterrence of discriminatory conduct. Nothing contained in this article shall be deemed to repeal any of the provisions of the civil rights law or any other law of this state relating to discrimination; but, as to acts declared unlawful by section two hundred ninety six of this article, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other state civil court action based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this article, he or she may not subsequently resort to the procedure herein.