

Commonwealth of Pennsylvania Source of Income Law

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Executive Summary

In Pennsylvania, landlords can legally refuse to accept housing vouchers and other public financial assistance as valid income, making it difficult for low-income families and individuals to find affordable housing in good neighborhoods. The Pennsylvania State Legislature should amend the Pennsylvania Human Relations Act to ban discrimination based on source of legal income as part of a wider strategy to improve the affordable housing landscape in Pennsylvania. A successful legislative campaign would include building a broad coalition of supporting organizations and a well-executed education campaign.

Section I: Background & Motivation

Defining source of income discrimination and its impact

In 1968, one of the landmark legislative achievements of the civil rights era, the Fair Housing Act, prohibited discrimination based on race, religion, national origin or sex in the sale, rental, or financing of housing.¹ However, the Fair Housing Act does not protect people using public assistance or other non-wage income such as disability or social security benefits, child support, veteran benefits, or Section 8 Housing Choice Vouchers (HCV) to pay for housing, meaning landlords can legally discriminate based on source of income (SOI). The result is that families and individuals using vouchers or public assistance struggle to find housing they can afford in better, lower-poverty neighborhoods.

In 2017, the Housing Authority of the City of Pittsburgh estimated that a measly 25 to 30 percent of housing voucher recipients find a landlord willing to take the voucher, and the Housing Authority of Allegheny County estimated its success rate at about 50 percent.² Research has shown that laws that ban source of income discrimination can facilitate better voucher utilization rates; a study of utilization before and after SOI law enactment found improvements in utilization rates ranged from 4 to 11 percentage points.³ For a local housing authority with 10,000 vouchers, this represents between 400 and 1,100 more families successfully receiving assistance.

Furthermore, landlord rejection of housing vouchers is a likely barrier to moving to neighborhoods with lower concentrations of poverty. Nationwide, only 14 percent of families with children in the HCV program live in low-poverty neighborhoods, and the research supports the notion that families would like to move to better neighborhoods but are unable to.⁴ A widely cited longitudinal study underscores the

¹ U.S. Department of Housing and Urban Development (HUD), "Housing Discrimination Under the Fair Housing Act," accessed October 22, 2020, https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview.

² Nick Keppler, "How Housing Vouchers and 'Section 8' Stigma Fail Pittsburgh's Neediest Households," PublicSource, June 8, 2017, <https://www.publicsource.org/why-housing-vouchers-are-failing-pittsburghs-neediest-households/>.

³ Lance Freeman, "Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes," Assisted Housing Research Cadre Report, February 2011, https://www.huduser.gov/publications/pdf/Freeman_ImpactLaws_AssistedHousingRCR06.pdf.

⁴ J. Rosie Tighe, Megan E. Hatch, and Joseph Mead, "Source of Income Discrimination and Fair Housing Policy," *Journal of Planning Literature* 32, no. 1 (February 1, 2017): 3–15, <https://doi.org/10.1177/0885412216670603>;

importance of neighborhood on child outcomes; children under 13 who moved to less poor neighborhoods via the HCV program had higher future annual incomes in their 20s (31% greater than children who remained in low-income neighborhoods), higher college attendance rates, and attended higher quality colleges.⁵ The constraint of landlord acceptance of HCV makes it more difficult for families and individuals to move to neighborhoods that are safer, have more job opportunities, have better access to public transit, and have better schools.

SOI laws are sweeping the nation

Currently, fourteen states and over 75 cities and counties have enacted laws banning source of income discrimination⁶. As states and municipalities face a growing affordable housing crisis, source of income laws have seen an increase in popularity. In 2017, the American Bar Association adopted a resolution that urged “federal, state, local, and territorial governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income.”⁷ Since 2018, the states of Washington, California, New York, Maryland, and Virginia have passed or updated SOI laws.⁸

Section II: Policy Precedent & Considerations

Existing SOI laws in Philadelphia and Pittsburgh

In 1980, Philadelphia enacted an ordinance to include source of income as a protection against unlawful discrimination in the Philadelphia Code.⁹ This law is still in place and is enforced by Philadelphia Commission on Human Relations.

In 2015, the City of Pittsburgh passed an ordinance prohibiting source of income discrimination. However, litigation initiated by the Apartment Association of Metropolitan Pittsburgh has suspended this ordinance as the Commonwealth Court ruled the ordinance was in violation of the Home Rule Law.¹⁰ An appeal to the Pennsylvania Supreme Court in 2019 resulted in the case being remanded back to the Commonwealth Court for reconsideration, with instruction to consider whether the Second Class City Code or Pennsylvania Human Relations Acts expressly authorize Pittsburgh to enact the ordinance.¹¹ The Commonwealth Court upheld the previous ruling in March 2020, prompting the City of Pittsburgh to file for another review by the Pennsylvania Supreme Court in May 2020; which, if denied, finalizes the ruling

Alison Bell, Barbara Sard, and Becky Koepnick, “Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results,” *Center on Budget and Policy Priorities*, December 20, 2018, 21.

⁵ Raj Chetty, Nathaniel Hendren, and Lawrence Katz, “The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project,” *American Economic Review* 106, no. 4 (2016).

⁶ Poverty & Race Research Action Council, “APPENDIX B: State, Local, and Federal Laws Barring Source of Income Discrimination,” August 2020, 176.

⁷ “American Bar Association Resolution 119A,” August 17, 2017, https://www.nhlp.org/wp-content/uploads/2017_am_119A.OfficialFinal.pdf.

⁸ Poverty & Race Research Action Council, “APPENDIX B: State, Local, and Federal Laws Barring Source-of-Income Discrimination.”

⁹ Poverty & Race Research Action Council, “APPENDIX B: State, Local, and Federal Laws Barring Source-of-Income Discrimination.”

¹⁰ Poverty & Race Research Action Council, “APPENDIX B: State, Local, and Federal Laws Barring Source of Income Discrimination,” August 2020, 176.

¹¹ Nicholas Malfitano, “Commonwealth Court Rejects Argument of Pittsburgh, Which Had Defended Its Section 8 Housing Ordinance,” *Pennsylvania Record*, March 16, 2020, <https://pennrecord.com/stories/527819645-commonwealth-court-rejects-argument-of-pittsburgh-which-had-defended-its-section-8-housing-ordinance>.

and officially invalidates the SOI discrimination ordinance.¹² As the outlook for Pittsburgh’s ordinance is bleak, Pittsburgh should consider advocating for action in the state legislature – to enact a state-level source of income anti-discrimination law.

Action on the state-level

To date, there has been no proposal in the Pennsylvania State Legislature to introduce a statewide source of income discrimination law. Following the example of other states, state legislation should propose an amendment to the Pennsylvania Human Relations Act to include source of income as a protected class against housing discrimination. When it comes to drafting the legislation, there are several important considerations to ensure strong legislation:

- 1) Explicitly prohibit voucher discrimination: Assuming voucher discrimination is implicit in “source of income” may result in unnecessary and time-consuming litigation.¹³
- 2) Explicitly prohibit minimum income requirements based on the entire rent: Landlords may set minimum income requirements based on entire rent to circumvent the law; minimums should be based on only the tenant’s portion of rent.¹⁴
- 3) Resist exemptions: Although it may appear to be a good political compromise, small owners are a crucial part of the rental market and should not be exempted from the law.¹⁵
- 4) Include enforcement mechanisms: three mechanisms for strong enforcement include a private right to action, availability of damages, and court-awarded attorney’s fees for a successful claim.¹⁶

Based on other states’ experiences, legislators should be cautious not to compromise on these components during the political process, otherwise the law could be weakened by future court interpretations, loopholes discovered by landlords, and/or poor enforcement. This legislation amending the Pennsylvania Human Relations Act would not have an impact on the state budget, although it should be considered that the PA Commission on Human Relations may require additional resources to adequately enforce the law.

Section III: Political Concerns and Strategy

Potential opposition from landlords and Republicans

As demonstrated by Pittsburgh’s struggle to implement a SOI law, landlord associations will strongly oppose any SOI law. The Apartment Association of Metropolitan Pittsburgh would likely continue

¹² Andrew Goodermote and Matthew Beam, “City of Pittsburgh’s ‘Source of Income’ Ordinance Invalidated,” Scolieri Law Firm, accessed October 22, 2020, <https://www.scolierilaw.com/city-of-pittsburghs-source-of-income-ordinance-invalidated/>.

¹³ Bell, Sard, and Koepnick, “Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results.”

¹⁴ Ibid.

¹⁵ Poverty & Race Research Action Council, “Crafting a Strong and Effective Source of Income Discrimination Law,” March 2020, <https://prrac.org/pdf/crafting-a-strong-and-effective-source-of-income-discrimination-law.pdf>.

¹⁶ Ibid.

their efforts to thwart SOI legislation along with other local apartment associations statewide. The Pennsylvania Residential Owner's Association, a lobbyist group in Harrisburg representing rental property owners and property managers, is also a sure opponent.

In the states that passed SOI laws in the past two years, all have Democratic party control of the state legislature at minimum and the majority have Democratic control of the governorship as well. Pennsylvania, which has both a Republican-controlled House and Senate, most likely faces an uphill battle and narrow chances for success. Given a SOI law effectively places restrictions on the private housing market, it is highly unlikely that the Republican leadership would allow this legislation to the floor. Pro-business Republicans who are interested in cutting government involvement in the private real estate market are likely to be strong opponents of any SOI legislation.

Potential supporters in the PA legislature

As Pittsburgh will likely not be able to implement its own SOI law without state action, Democratic Allegheny County legislators could potentially lead the fight for a state-level SOI law. Rep. Sara Innamorato could be a strong advocate as she campaigned on a platform of "housing as a human right" and is also a member of the Urban Affairs committee, to which the bill will likely be assigned after being introduced.

Although Philadelphia already has its own SOI law, legislators from Philadelphia are likely to support their Pittsburgh colleagues and Philadelphia may also gain from a statewide law in terms of stronger enforcement and greater landlord awareness. To draw a comparison, New York City already had SOI law for over a decade, but NYC legislators and organizations were key players in the push for a statewide SOI law.

While HCV recipients are one of the largest affected groups, veterans receiving disability benefits or HUD-VASH benefits, which is a voucher program that provides rental assistance to homeless veterans, also face discrimination. Placing an emphasis on the benefits of the source of income discrimination legislation to veterans as well as potentially including veteran status as protected class in the bill could be an avenue to gain much-needed Republican votes.

Evidence that this strategy could attract bipartisan champions is demonstrated by the Fair Housing Improvement Act of 2018, which sought to ban discrimination in housing based on source of income or veteran status on the federal-level and was introduced by Senator Tim Kaine (D-VA) and Senator Orrin Hatch (R-UT) in the U.S. Senate.¹⁷ Although the bill never made it out of committee, it is clear that including veteran status and emphasizing that the benefit for veterans was the basis for Republican Senator Hatch's support. In describing the bill, he stated: "helping veterans lead lives of dignity and independence has long been among my top priorities."¹⁸ It is possible that this bipartisan collaboration could be replicated in the Pennsylvania legislature, and be a strategy to gain Republican supporters or champions. It is unlikely the proposed legislation would gain broad bipartisan support in the

¹⁷ Orrin G. Hatch, "S.3612 - 115th Congress (2017-2018): Fair Housing Improvement Act of 2018," November 13, 2018, 2017/2018, <https://www.congress.gov/bill/115th-congress/senate-bill/3612>.

¹⁸ "Bipartisan 'Fair Housing Improvement Act' Would Prohibit Discrimination Based on Source of Income and Veteran Status," National Low Income Housing Coalition, November 19, 2018, <https://nlihc.org/resource/bipartisan-fair-housing-improvement-act-would-prohibit-discrimination-based-source-income>.

Pennsylvania legislature, but the veteran emphasis may be sufficient in gaining the Republican votes needed to pass the legislation.

Especially if the legislative campaign for a state SOI law is spearheaded by Allegheny County representatives, Senate Minority Leader Jay Costa as well as Democratic Caucus Chair, Senator Wayne Fontana are likely to support the legislation. Senator Vincent Hughes (D-Philadelphia), who is the Appropriations Committee Minority Chair, may also be champion based on his engagement in affordable housing issues; in 2020 he introduced a bold affordable housing plan, the New Deal for Housing.¹⁹

In terms of potential Republican supporters in the Senate, Senator Killian introduced a bill to incentivize private investment in affordable housing that passed in the Senate, indicating an interest in housing issues, however, it is unclear whether he would support legislation that ostensibly places a regulation on the private rental market.

Section IV: Path to Success

Building a broad coalition

For the states of New York and Maryland, which passed SOI laws in 2019 and 2020, respectively, organizing large coalitions with diverse members was an integral part of the legislative victory. In Maryland, the HOME Act Coalition consisted of 60 members including housing developers/providers, housing advocates, civil rights activists, faith leaders, community advocates, disability rights groups, veteran groups, and unions. The coalition's advocacy campaign was led jointly by the Homeless Persons Representation Project and Public Justice Center.²⁰ New York State had followed a similar strategy, ERASE Racism NY founded the Statewide Source of Income Coalition in 2016 and led the effort along with the Fair Justice Housing Center, Enterprise, and the New York Housing Conference.²¹ The coalition was comprised of 110 member organizations across diverse domains, thus having a wide reach.

Pennsylvania should also follow this strategy of amassing a diverse array of groups from large statewide housing advocacy organizations to small community advocacy groups, led by several highly engaged organizations to push the campaign forward and keep messaging focused and organized. Pennsylvania organizations that could be involved include the Housing Alliance of PA and the Fair Housing Partnership of Greater Pittsburgh, the latter which has already demonstrated their dedication to the issue through their involvement in Pittsburgh's SOI lawsuit. Given the American Bar Association's strong stance on this issue, the Public Interest Law Center could likely be engaged. Local Human Relations Commissions have ties to various civil rights and community advocacy groups that could be mobilized. Tenant unions such as the Tenant Union Representative Network in Philadelphia and the Pittsburgh Union of Regional Renters as well as Pennsylvania's local housing authorities would also likely strongly support the effort. The housing authorities as well as other organizations that collect and analyze valuable data such as the

¹⁹ Cody Carlson, "PA Senator Rolls Out New Affordable Housing Proposal," February 12, 2020, <https://www.wenyc.com/story/41694362/pa-senator-rolls-out-new-affordable-housing-proposal>.

²⁰ "Maryland General Assembly Passes Bill to Prohibit Source-of-Income Discrimination," National Low Income Housing Coalition, accessed October 22, 2020, <https://nlihc.org/resource/maryland-general-assembly-passes-bill-prohibit-source-income-discrimination>.

²¹ "Article: Banning Income Bias in Housing in New York State," *Empire Justice Center* (blog), accessed October 22, 2020, https://empirejustice.org/resources_post/article-banning-income-bias-housing-new-york-state/.

Allegheny County Department of Human Services could be valuable in putting together a campaign that accurately and vividly depicts the impact a SOI law could have.

Messaging and Education Campaign

As the inclusion of Housing Choice Vouchers in the legislation is the primary reason for opposition, a smart campaign will disabuse the public, landlords, legislators of myths and misunderstandings regarding the HCV program and its participants. A good education campaign would clarify that a SOI law would not prevent landlords from using their usual (lawful) screening criteria regarding tenant history or from charging a security deposit, and emphasize that HCV payments are reliable and tenants have strong incentives to uphold the terms of the lease.²²

Furthermore, testimonies from Pennsylvania residents who have been affected by source of income discrimination could be a powerful tool in demonstrating the human impact of this discrimination.²³ Highlighting the challenges families face in finding affordable housing in their own words can help correct misconceptions about the low-income individuals who are affected and can have an emotive persuasive power that statistics from state and local agencies lack. To engage Pennsylvania legislators who care deeply about veterans' issues, these efforts should include veterans who have faced source of income discrimination in their search for housing. New York employed this strategy and featured several New York resident's stories in short videos, which were then used in the #BanIncomeBiasNY social media campaign. Finally, engaging landlords who participate in the HCV program to speak about their positive experiences and advantages of the program can help counteract misinformed narratives about the burden of the program and the tenants who participate.²⁴

Conclusion

In a Republican-controlled legislature, a state-level source of income law faces significant barriers to passage. However, building off the successes (and failures) of other states, a legislative campaign can employ various strategies to improve its chances for success. Passage of a source of income law would impact thousands of Pennsylvanians access to affordable, dignified housing and hopefully create momentum for more fair and affordable housing policies to transform Pennsylvania.

²² Bell, Sard, and Koepnick, "Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results."

²³ Poverty & Race Research Action Council, "Crafting a Strong and Effective Source of Income Discrimination Law."

²⁴ Ibid.