

DATE: May 1, 2019

TO: Governor Larry Hogan

FROM: Maryland Commission on Civil Rights

SUBJECT: Sign Source of Income Discrimination Bill Into Law

EXECUTIVE SUMMARY

The federal Housing Voucher Choice Program was intended to address poverty and residential instability by helping low-income individuals and families access safe, affordable and decent housing. Yet, in Maryland, it is legal for a landlord to refuse to rent property to an individual or a family using a housing voucher. We recommend that the Governor sign into law the Fair Housing Opportunities Act of 2019 to outlaw source of income discrimination in Maryland.

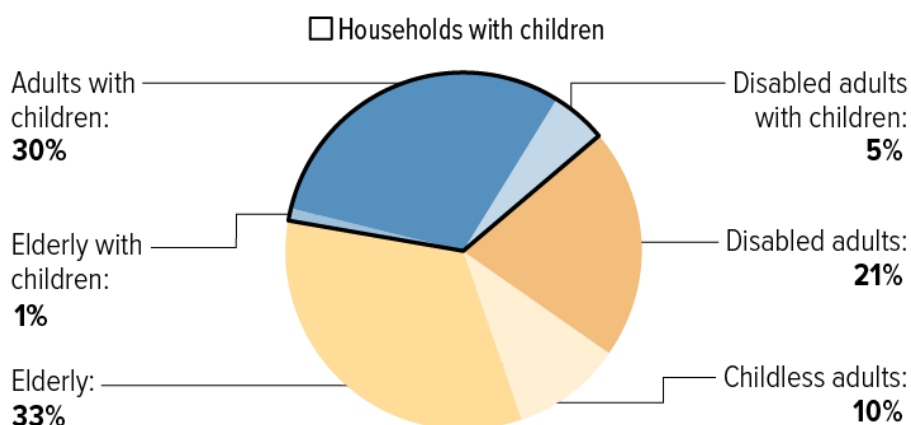
BACKGROUND

In Maryland, people pay their rent and mortgages not only with income earned from wages but income received from federal assistance. These programs include but are not limited to housing vouchers, rental subsidies, social security, disability, unemployment insurance, and veterans' benefits. Yet, not all income is equally considered in the private housing market. Studies show that landlords remain reluctant to rent to voucher holders partly based on negative stereotypes of voucher holders as irresponsible tenants. One landlord surveyed expressed that "those people with Section 8 vouchers, they destroy a unit, and the damages are above the security deposit and [you're] never going to be able to get [your] money back because they're already poor."¹

¹ U.S. Department of Housing and Urban Development, "Landlord Participation Study," October 2018. Retrieved from

Over 94,000 low-income households in Maryland rely on federal rental assistance to keep a roof over their heads and make ends meet.² The Housing Choice Voucher Program (HCVP) is the largest housing voucher program serving 5.3 million Americans and 2.2 American households.³ In Maryland, approximately 53,124 people hold housing vouchers.⁴ Voucher holders are overwhelming members of vulnerable populations, including single parents with children, senior citizens, people with disabilities, and veterans.

90 Percent of Households Using Federal Rental Assistance in Maryland Include Children or People Who Are Elderly or Disabled



Discrimination against voucher holders is widespread and pervasive in Maryland and across the country. A 2018 report by U.S. Department of Housing and Urban Development (HUD) studied discrimination against voucher holders in five metropolitan cities and found that the landlord denial rate was 67 percent or higher in three of the five cities studied.⁵ The same

<https://www.huduser.gov/portal/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>

² Center on Budget and Policy Priorities, “Maryland Fact Sheet: Federal Rental Assistance,” <https://www.cbpp.org/sites/default/files/atoms/files/4-13-11hous-MD.pdf>.

³ Center on Budget and Policy Priorities, “Housing Choice Voucher Fact Sheets,” <https://www.cbpp.org/housing-choice-voucher-fact-sheets>.

⁴ Maryland General Assembly. (2019 Regular Session). *Fiscal and Policy Note for Senate Bill 812*. Retrieved April 21, 2019, <https://trackbill.com/s3/bills/MD/2019/SB/812/analyses/fiscal-and-policy-note.pdf>.

⁵ U.S. Department of Housing and Urban Development, “A Pilot Study of Landlord Acceptance of Housing Choice Vouchers,” September 2018. Retrieved from

year, CBS local affiliate WUSA9 did an investigative series on discrimination against DC voucher holders.⁶ They found more than 100 Craigslist advertisements for housing in the District of Columbia made explicit discriminatory statements such as “No housing vouchers,” “Vouchers not accepted,” and “Owners will not be accepting Section 8 Vouchers.” In 2017, a veteran of the U.S. Coast Guard testified before the Maryland General Assembly about her difficulties finding housing using a housing voucher. “I was only able to use my voucher after a housing specialist from Veterans Affairs told me about properties in [a particular area] that take Section 8. Let me be clear, this is not where I want to live. But . . . I was at the point where my voucher was about to expire,” she said. “I am a U.S. veteran – I signed on the line to protect my fellow citizens and I did so honorably. I have no Criminal Record. Yet . . . the same landlords that wanted me to sacrifice my life to protect them won’t even let me live in their buildings.”⁷

Source of income discrimination is not currently prohibited under federal law or Maryland state law. The federal Fair Housing Act of 1968 (FHA) protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. Protected classes under the FHA include sex, race, color, national origin, religion, familial status, and disability.⁸ Public housing funded by federal housing programs, such as the Low Income Housing Tax Credit, HUD’s

<https://www.huduser.gov/portal/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>

⁶ Advocates to DC landlords: Stop telling Section 8 voucher holders 'No'. (2018, September 18). Retrieved from <https://www.wusa9.com/article/news/investigations/advocates-to-dc-landlords-stop-telling-section-8-voucher-holder-s-no/65-595848115>.

⁷ American Bar Association, “Housing on the Basis of Lawful Source of Income Resolution,” August 2017. Retrieved from https://www.nhlp.org/wp-content/uploads/2017_am_119A.OfficialFinal.pdf.

⁸ The Fair Housing Act, 42 U.S.C. §§ 3601-3619.

HOME block grant, and the National Housing Trust Fund, are prohibited from discriminating against voucher holders but there is no such prohibition for the private housing market.⁹

The Fair Housing Opportunities Act of 2019, sponsored by Senator Will Smith (D-Montgomery), would prohibit discrimination on the basis of a person’s source of income in Maryland. Individuals who feel they have experienced housing discrimination based on their source of income would be able to file a complaint with the Maryland Commission on Civil Rights (MCCR) or file a civil action in circuit court. If an administrative law judge (ALJ) finds that the defendant has engaged in a discriminatory housing practice, the ALJ may order appropriate legal relief, including damages, injunctive relief, and civil penalties. Additionally, it would make it unlawful for any person, acting under color of law or not, to willfully injure, intimidate, or interfere, by force or threat of force, with a person’s housing-related activities a misdemeanor and subject violators to maximum penalties of 1 year imprisonment and/or a \$1,000 fine.

ANALYSIS

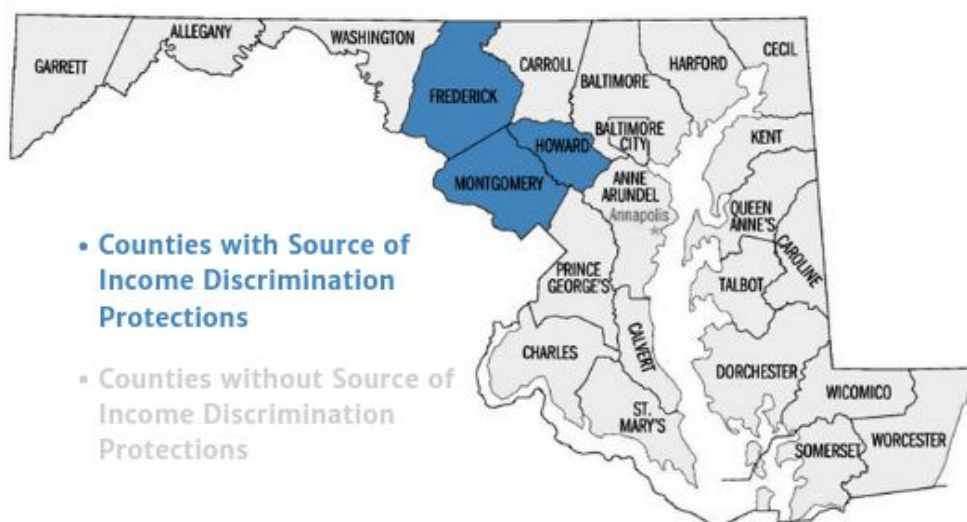
Signing this bill into law will not be controversial. 14 states and the District of Columbia have already outlawed source of income discrimination. Those states are California, Connecticut, Delaware, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, Washington, and Wisconsin.¹⁰ In Maryland, the counties of Frederick, Howard, and Montgomery, as well as the cities of Frederick and Annapolis, prohibit

⁹ Poverty & Race Research Action Council, “Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination,” <https://www.prrac.org/pdf/AppendixB.pdf>.

¹⁰ Poverty & Race Research Action Council (PRRAC), “Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination.” Retrieved from <https://www.prrac.org/pdf/AppendixB.pdf>.

source of income discrimination. Source of discrimination laws have also garnered bipartisan support from Congress. In December 2018, U.S. Senators Tim Kaine, a Democrat from Virginia, and Orrin Hatch, a Republican from Utah, co-sponsored bipartisan legislation that would amend the federal Fair Housing Act to add source of income and veteran status as protected classes to protect voucher holders and veterans from housing discrimination.¹¹

Source of Income Discrimination Laws in Maryland



The law is unlikely to face a constitutional challenge. Courts have upheld source of income discrimination laws and dismissed legal challenges from landlords alleging that they are federally preempted by the Fair Housing Act or that they impermissibly compel landlord

¹¹ Fair Housing Improvement Act of 2018 (S. 3612), introduced by Senators Hatch and Kaine, <https://www.congress.gov/bill/115th-congress/senate-bill/3612>, and a companion bill (H.R. 7262) introduced in the House by Reps. Richmond, Cummings, Lee, and Moore <https://www.congress.gov/bill/115th-congress/house-bill/7262>.

participation in housing voucher programs.¹² For example, in *Montgomery County v. Glenmont Hills Assocs. Privacy World*, the Maryland Court of Appeals rejected Glenmont Hills' argument that the federal Housing Choice Voucher Program was intended to be voluntary and optional for landlords as "belied by the federal law itself and unsupported by logic, any rational notion of public policy, and existing case law."¹³ The Court also rebuffed Glenmont Hills' argument that Montgomery County's source of income law was preempted by the federal Fair Housing Act.

Implementing the law will not strain the state budget or place an undue burden on landlords. An independent and impartial analysis conducted by the Maryland Senate Judiciary and the Maryland Office of Administrative Hearings found that the bill can be implemented using existing state resources. General fund expenditures will only increase slightly as a result of the bill's incarceration penalty due to the possibility of violators being convicted and sentenced to state correctional facilities. However, the number of people incarcerated is expected to be minimal. The analysis also found that landlords may be subject to participation in the federal housing voucher program and may have increased administrative responsibilities and costs from federal regulations requiring annual inspections by housing authorities. However, the costs are expected to be minimal.¹⁴

POLICY RECOMMENDATIONS

While we recognize that source of income discrimination laws are not the silver bullet to the issues of affordable housing facing Maryland, we believe it to be a step toward the right

¹² States Uphold Source of Income Discrimination Laws Protecting Voucher Holders, 38 Hous. L. Bull. 11 (Jan. 2008).

¹³ *Montgomery County v. Glenmont Hills Assocs. Privacy World*, 402 Md. 250, 936 A.2d 325 (2007).

¹⁴ Maryland General Assembly. (2019 Regular Session). *Fiscal and Policy Note for Senate Bill 812*. Retrieved April 21, 2019, <https://trackbill.com/s3/bills/MD/2019/SB/812/analyses/fiscal-and-policy-note.pdf>.

direction. The Maryland Commission on Civil Rights strongly urges Governor Hogan to sign into law the Fair Housing Opportunities Act of 2019.