Fulfilling the Promise of the Housing Choice Voucher Program: Blind Review as an Enforcement Method for Source-of-Income Antidiscrimination Laws

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Fulfilling the Promise of the Housing Choice Voucher Program: 
Blind Review as an Enforcement Method for 
Source-of-Income Antidiscrimination Laws

Zachary Wakefield*

INTRODUCTION

The housing choice voucher program (HCV) is one that provides subsidies to very low-income individuals.1 These subsidies allow recipients of the vouchers to pay thirty percent of their income out of pocket towards their rent, with the difference being paid by the subsidy from the government directly to a landlord.2 Although the program itself is federal, it is administered by the states at the local level.3 As with most housing in the United States, the Fair Housing Act protects HCV recipients from discrimination based on “race, color, religion, sex, familial status, or national origin,” regardless of the state where the housing unit is located.4 However, the Fair Housing Act does not provide protection against discrimination based on source of income.5 This kind of discrimination is barred at the state level by a minority of jurisdictions.6 However, recent source-of-income antidiscrimination laws enacted in high-population localities have resulted in half or more than half of voucher holders benefiting from this protection.7 In those jurisdictions where source-of-income discrimination is permissible, landlords may turn down HCV recipients solely because a portion of their rent will be paid by the voucher program.8 In jurisdictions prohibiting such discrimination, source of income may not be considered in the selection of potential tenants.9

Even in jurisdictions that prohibit discrimination based on source of income, income-based discrimination still occurs.10 This unlawful discrimination keeps eligible HCV recipients out of units they should be able to rent and

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* J.D., Indiana University Maurer School of Law, 2024.
1 42 U.S.C. § 1437f.
2 Id. §§ 1437f(o)(1)(E), (t)(1)(d).
5 See id.
6 See Bell et al., supra note 3, at 3–4.
8 Bell et al., supra note 3, at 1–2.
9 Id.
disproportionately affects marginalized populations. This Note proposes a novel solution for preventing source-of-income discrimination in those jurisdictions where it is prohibited by law: using a blind review process to restrict the information landlords receive regarding a potential tenant’s source of income. Should source-of-income discrimination be barred federally, as others have called for, some solution for preventing it will be particularly necessary since it could potentially affect all HCV recipients. While the efficacy of the blind review process in preventing discrimination based on other protected classes is beyond the scope of this Note, the solution could feasibly be used to that end.

This Note proceeds in four parts. Part I will provide a general overview of the HCV program, its purposes, its effects, and its limitations. Part II will provide background information on source-of-income discrimination, laws that prevent it, and its persistence even in jurisdictions that bar it. Part III will explain how blind review processes have worked to reduce various kinds of discrimination in other contexts, and how applying such a framework could work to prevent source-of-income discrimination. Part IV will then outline what implementation of a blind review process could look like for landlords and tenants.

I. PURPOSES, EFFECTS, AND LIMITATIONS OF THE HCV PROGRAM

The 1974 Housing and Community Development Act created the HCV program, a federal housing subsidy program that serves millions of low-income Americans. The program provides eligible, low-income individuals with vouchers that allow them to pay a capped amount for their rent. The stated goals of the program are to “aid ‘low-income families in obtaining a decent place to live’ and promote ‘economically mixed housing.’” Another stated purpose is “the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income” and the revitalization of deteriorating or deteriorated neighborhoods. The program is funded by Housing and Urban Development (HUD), and it is administered through thousands of local Public Housing Agencies (PHAs). Those applying for vouchers interact with these local agencies directly.

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11 See id. at 7.
12 Bell et al., supra note 3, at 15.
13 Schwemm, supra note 7, at 584.
14 Id. at 585 (citing 42 U.S.C. § 1437f(o)(2)).
15 Id. at 590 (citing 42 U.S.C. § 1437f(a)).
16 Id. at 590 n.87 (quoting 42 U.S.C. § 5301(c)(6)).
17 Id. at 585 (citing 24 C.F.R. § 982.151(a)(1)).
18 Id. at 586.
the Fair Market Rent for the various localities, and this rate determines which
dwelling units individuals can use their vouchers to secure housing for.\textsuperscript{19}

HCV applicants must go through a long process to obtain and then use their
vouchers. Those seeking vouchers apply for them at their local PHAs.\textsuperscript{20} After
securing a voucher, which is generally valid for sixty days, the PHA also provides
the individual with information about landlords who may accept vouchers to assist
the individual with locating housing.\textsuperscript{21} The voucher recipient must go out and find
the housing on their own.\textsuperscript{22} In other words, they have to find housing with rent that
falls within the HUD’s prescribed Fair Market Rent and that is operated by a
landlord that accepts vouchers under the Act. The vouchers are “portable,” which
means that they can be used anywhere in the country that has a voucher program
administered by a PHA.\textsuperscript{23} Besides comporting with fair market rents, after finding
a landlord that will accept a voucher, the PHA must inspect the property to ensure
that the unit to be rented meets minimum requirements set by HUD.\textsuperscript{24} The lease
contract itself must also meet certain requirements set by HUD for the voucher to
be usable to obtain subsidized rent at the desired unit.\textsuperscript{25} Once housing is secured by
a voucher holder, they will normally not pay any more than thirty percent of their
monthly income for rent.\textsuperscript{26} The local PHA pays the remainder to the landlord
directly.\textsuperscript{27}

From the late 1980s to the end of the 1990s, landlords could not discriminate
against tenants using housing vouchers after accepting one voucher-using tenant
due to an amendment of the Housing and Community Development Act.\textsuperscript{28} However,
as it stands now, there is no requirement that landlords accept voucher holders.\textsuperscript{29} In
other words, at least federally, participation in the voucher program is voluntary on
the part of landlords, except in narrow circumstances. Effectively, this means that
landlords can continue to screen tenants however they wish (within constitutional
bounds). This in turn means that landlords can simply choose to exclude those who
use vouchers, based on that reason alone, with no consequences, unless a local law
prevents such source-of-income discrimination.\textsuperscript{30}

\textsuperscript{19} Jenna Bernstein, Note, Section 8, Source of Income Discrimination, and Federal Preemption: Setting the
\textsuperscript{20} Schwemm, supra note 7, at 586.
\textsuperscript{21} Bernstein, supra note 19, at 1410.
\textsuperscript{22} Id.
\textsuperscript{23} Schwemm, supra note 7, at 587; 42 U.S.C. §§ 1437f(o), (r).
\textsuperscript{24} Bernstein, supra note 19, at 1411.
\textsuperscript{25} Schwemm, supra note 7, at 587–88 & n.79.
\textsuperscript{26} Bernstein, supra note 19, at 1410.
\textsuperscript{27} Id.; 42 U.S.C. §§ 1437f(o)(10)(B), (D).
\textsuperscript{28} Bernstein, supra note 19 at 1414–15.
\textsuperscript{29} See id. at 1416.
\textsuperscript{30} See Bell et al., supra note 3, at 1.
The voucher program under the Act has assisted millions of people in obtaining housing.\textsuperscript{31} Due to its (initially) quick assistance, giving families more latitude in choosing where to live (instead of the only options available being public housing projects), and avoiding the more controversial arguments that can arise when public housing projects are proposed, the program has been praised.\textsuperscript{32} Additionally, allowing this kind of choice in housing for voucher holders may combat the negative mental and physical effects of living in poverty.\textsuperscript{33}

The program is, of course, not without its problems and limitations. Getting a voucher upon application is no sure thing. The amount of people who need vouchers outnumber the number of vouchers available.\textsuperscript{34} It is quite common to instead be placed on a waiting list for an extended period of time.\textsuperscript{35} Once one does receive a voucher, the limited time period in which it must be used may encourage the voucher holder to seek housing in low-income neighborhoods,\textsuperscript{36} which cuts against the stated purpose of the HCV program.\textsuperscript{37} Additionally, the local PHAs provide a patchwork administration of the program, and the quality of its implementation can vary by locality.\textsuperscript{38} Finally, and more germane to the topic of this Note, source-of-income discrimination can be used as a proxy for discrimination that is unlawful under the Fair Housing Act.\textsuperscript{39} Even in jurisdictions that ban such discrimination, landlords still find ways to discriminate.\textsuperscript{40}

II. THE PERSISTENCE OF SOURCE-OF-INCOME DISCRIMINATION

A. How and Why Landlords Discriminate Based on Source of Income

Source-of-income discrimination covers a wide variety of behavior by landlords, real estate agents, and management companies.\textsuperscript{41} This can include refusing to rent to a tenant, offering different terms and conditions to the lease, and

\textsuperscript{31} Schwemm, \textit{supra} note 7, at 584.

\textsuperscript{32} \textit{Id.} at 590. \textit{But see} Bernstein, \textit{supra} note 19, at 1411–12 (characterizing the program as a “mixed success”).


\textsuperscript{37} Schwemm, \textit{supra} note 7, at 590.

\textsuperscript{38} \textit{Id.}

\textsuperscript{39} \textit{See} \textit{EQUAL RTS. CTR.}, \textit{supra} note 10, at 7.

\textsuperscript{40} \textit{See} \textit{id.} at 10.

limiting a tenant’s access to facilities, services, repairs, and improvements.\textsuperscript{42} Advertising preferences or limitations based on a tenant’s or potential tenant’s lawful source of income can also be used to discriminate.\textsuperscript{43} The Fair Housing Act itself does not prohibit source-of-income discrimination, so all of these practices are allowed unless the property is in a state or locality that specifically prohibits source-of-income discrimination.\textsuperscript{44} Because it is legal in large portions of the country, between one-third and one-half of those that use vouchers are explicitly subject to this form of discrimination.\textsuperscript{45} As will be discussed in this Note, even those that live in jurisdictions banning source-of-income discrimination are still subject to it.\textsuperscript{46}

Source-of-income discrimination is widespread. Landlords across the country routinely refuse to rent to voucher holders because they are voucher holders.\textsuperscript{47} Denial rates vary across the country, but in some areas more than three-quarters of landlords surveyed simply did not accept vouchers.\textsuperscript{48}

Landlords give many reasons for discriminating against prospective tenants based on their use of housing choice vouchers. They range from the harmfully stereotypical to the arguably defensible. Even the latter category of reasons is somewhat dubious when closely examined. Landlords sometimes view voucher holders as more likely to be noisy, bring crime to the rental units, or damage rental units.\textsuperscript{49} Some landlords may also have a negative attitude towards voucher holders due to misperceptions about the program or its participants.\textsuperscript{50} Not unexpectedly, these views are largely unfounded and have garnered considerable criticism.\textsuperscript{51} Far from being lazy, voucher holders often work multiple jobs in order to make ends meet.\textsuperscript{52} Furthermore, tenants who use vouchers have plenty of reasons to not damage the unit they rent.\textsuperscript{53} Only about a quarter of those who apply for vouchers

\textsuperscript{42} Id. at 5.
\textsuperscript{43} Id.
\textsuperscript{44} Jessica Luna & Josh Leopold, Landlord Discrimination Restricts the Use of Rental Vouchers, URB. INST. (July 22, 2013), https://www.urban.org/urban-wire/landlord-discrimination-restricts-use-rental-vouchers.
\textsuperscript{45} Bell et al., supra note 3, at 7.
\textsuperscript{46} See discussion infra Part II.B.
\textsuperscript{48} Id. at 33.
\textsuperscript{51} See, e.g., Rent: Last Week Tonight with John Oliver (HBO), YOUTUBE (Jun. 20, 2022), https://www.youtube.com/watch?v=L4qmDnYli2E.
\textsuperscript{53} Bell et al., supra note 3, at 13.
receive them, and voucher holders can lose their subsidies if they damage the rental unit or are evicted for a similar reason.\textsuperscript{54} There is also evidence that HCV tenants cause no more problems than tenants that do not use vouchers to cover a portion of their rent.\textsuperscript{55}

Sometimes landlords defend their discriminatory practices on economic grounds. Landlords who accept voucher holders as tenants must submit their properties to inspections by the HUD and the local PHA,\textsuperscript{56} which some landlords claim is too burdensome.\textsuperscript{57} HUD also requires the inclusion of certain lease provisions and for the landlord to complete some additional paperwork.\textsuperscript{58} In opposition to a proposed ban on source-of-income discrimination in New York City, landlord associations called the HCV program “overly burdensome” for landlords and claimed it was “riddled with bureaucratic problems.”\textsuperscript{59} Besides these complaints, landlords also cite freedom of contract\textsuperscript{60} and loss of cash flow\textsuperscript{61} as other reasons why they should be able to discriminate based on lawful source of income.

On close examination, these economic concerns are not as legitimate as they first appear. As a result, the harms that source-of-income discrimination work upon voucher holders may outweigh the perceived harms that landlords suffer when discrimination is prohibited. Landlords’ complaints about having to make improvements based on the results of HUD and PHA safety inspections are not convincing, as the safety requirements of housing agencies are often less stringent than those imposed by the municipalities where the properties are located.\textsuperscript{62} Thus, if a landlord failed a HUD inspection, there is a good chance that they would have failed an inspection administered by local authorities, and they would be required by law to make the improvements anyway.\textsuperscript{63} As far as paperwork, HUD requires some basic information from landlords\textsuperscript{64} and an agreement to a modest contract likely no longer than the ones the landlord has tenants sign upon renting their units.\textsuperscript{65}

Concerns about cash flow problems stemming from renting to voucher holders are severely undercut by the reality of the situation. Landlords are allowed


\textsuperscript{55} Schwemm, supra note 7, at 587, 600.


\textsuperscript{57} Schwemm, supra note 7, at 600.

\textsuperscript{58} Bernstein, supra note 19, at 1416.

\textsuperscript{59} Chandler, supra note 55, at 137.

\textsuperscript{60} Johnson-Spratt, supra note 49, at 460.

\textsuperscript{61} Vesoulis, supra note 52.

\textsuperscript{62} See id.

\textsuperscript{63} The Main 5 Responsibilities of a Section 8 Landlord, INNAGO (July 5, 2023), https://innago.com/the-5-main-responsibilities-of-a-section-8-landlord/.

\textsuperscript{64} See Chandler, supra note 55, at 137.
to charge security deposits to voucher holders as long as they are comparable to the deposits they charge to other tenants, and landlords do not have to charge lower rent to voucher holders. Additionally, the portion of the rent that the PHA pays for a voucher holder (which is often a majority of the total rent payment) is reliable and often directly deposited via electronic transfer as soon as it is due. Any concerns about receiving the remainder of the rent from the tenant themselves are addressed by the fact that landlords can still use their regular screening criteria, for example taking into account criminal history, credit history, or other things that may indicate ability to pay when evaluating whether to rent to a voucher recipient.

Landlord participation in the HCV program may actually have a number of economic advantages rather than drawbacks. Thus, source-of-income discrimination cannot be justified by claiming that it harms landlords and the housing market. This is one reason why making source-of-income discrimination harder is a desirable solution.

B. The Effects of Source-of-Income Discrimination

Source-of-income discrimination has many negative effects that highlight why it should be curtailed by antidiscrimination laws and effective enforcement mechanisms. First, source-of-income discrimination can perpetuate racial discrimination, which is explicitly prohibited by the Fair Housing Act (FHA). Sixty-six percent of HUD users are racial minorities, and source-of-income discrimination disproportionately harms racial minorities. This disparate impact is evidence that source-of-income discrimination is equivalent to racial discrimination. Even absent disparate impact, some landlords may refuse to rent on the pretext that someone is a voucher holder, but in reality they are using that as a proxy for race-based discrimination. Since economic segregation often reflects racial segregation, source-of-income discrimination has adverse effects that mirror those of outright racism even if there is not any malicious intent on the part of landlords engaging in source-of-income discrimination. Allowing landlords to

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66 Bell et al., supra note 3, at 13.
67 Id.
68 Id.
69 Id. at 12.
70 See Chandler, supra note 55, at 158.
74 EQUAL RTS. CTR., supra note 10, at 7.
75 Id.
76 Schwemm, supra note 7, at 576, 626.
discriminate based on source of income thus perpetuates de facto racial segregation and can lead to the continuation of other discriminatory (and illegal) practices such as redlining.\textsuperscript{77} Indeed, in jurisdictions where source-of-income discrimination is permitted, landlords who face allegations of racial discrimination may simply say they were discriminating not on race, but on source of income as a defense.\textsuperscript{78} Thus, FHA-protected classes are still vulnerable to discriminatory practices when source-of-income discrimination is allowed to continue.\textsuperscript{79}

Besides de facto racial discrimination, source-of-income discrimination also frustrates the goals of the FHA and the HCV program itself. One of the goals of the HCV program is to deconcentrate poverty and increase housing choice for eligible individuals and families.\textsuperscript{80} However, the success of the voucher program depends in large part on landlords being willing to accept vouchers.\textsuperscript{81} When landlords discriminate based on source of income, voucher recipients’ choices are limited, and they are less likely to be able to obtain housing in low-poverty areas.\textsuperscript{82}

Source-of-income discrimination can also cause vouchers to go unused.\textsuperscript{83} Since voucher holders have as little as sixty days to use their vouchers, continuous rejections by landlords cause tenants to lose out on their benefits.\textsuperscript{84} By contrast, in jurisdictions that ban source-of-income discrimination, voucher utilization rates are higher than in those where discrimination was allowed.\textsuperscript{85} Voucher holders losing out on benefits results in more than merely a lofty legislative goal going unfulfilled. Taking away choices from those in poverty keeps them in poverty. Children in the household grow up in worse environments,\textsuperscript{86} and all of the various physical and mental strains associated with poverty, such as “depressive disorders, anxiety disorders, psychological distress,”\textsuperscript{87} as well as “reduced lifespan” and “increased hospitalizations”\textsuperscript{88} go unmitigated.

\textsuperscript{77} Chandler, supra note 55, at 129.
\textsuperscript{78} Johnson-Spratt, supra note 49, at 462.
\textsuperscript{79} See id.
\textsuperscript{80} 42 U.S.C. § 1437f(a).
\textsuperscript{81} Chandler, supra note 55, at 135.
\textsuperscript{82} Bell et al., supra note 3, at 2.
\textsuperscript{83} Id. at 6.
\textsuperscript{84} See Vesoulis, supra note 52.
\textsuperscript{85} Bell et al., supra note 3, at 6.
\textsuperscript{86} See Chandler, supra note 55, at 137–38.
\textsuperscript{87} Kevin M. Simon & Michaela Beder, Addressing Poverty and Mental Illness, PSYCHIATRIC TIMES (June 29, 2018), https://www.psychiatrictimes.com/view/addressing-poverty-and-mental-illness.
C. How Source-of-Income Discrimination is Being Combated Today

These negative effects of source-of-income discrimination against voucher holders demonstrate the need for laws prohibiting it. There have been calls to add source of income as a protected class to the Fair Housing Act to prevent discrimination.89 Many states have also made their own laws banning source-of-income discrimination.90 These include California, Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Oklahoma, Oregon, Utah, Vermont, Virginia, Washington, and Wisconsin.91 Many localities also ban source-of-income discrimination, including New York City, Los Angeles, Chicago, the District of Columbia, Denver, and San Francisco, among others.92 It is important to note, however, that some of these antidiscrimination laws explicitly or by judicial decision do not include housing choice vouchers as a protected source of income.93 In other words, discrimination based on use of housing choice vouchers is still explicitly allowed in some of these jurisdictions even though source-of-income discrimination generally is prohibited. Furthermore, landlords can claim other grounds as a defense to a claim of source-of-income discrimination in some of these jurisdictions.94 However, the growing amount of state and local action on this issue means that discriminating against voucher holders based on the use of their vouchers is becoming illegal in more and more jurisdictions.95 While this is a good thing, problems still remain.

With moves to ban source-of-income discrimination on the rise, it is becoming increasingly important to make sure these bans are effectively implemented because source-of-income discrimination (and all of the negative effects associated with it) still happens in the many jurisdictions that make it illegal. For example, in New York and Chicago, localities that explicitly prohibit source-of-income discrimination against voucher holders, such discrimination has persisted for years.96 In both cities, special task forces were created to investigate these violations and enforce compliance with the law.97 Similar non-enforcement issues


90 Schwemm, supra note 7, at 573.

91 Id. at 591.

92 Id.

93 Id. at 591–92 (indicating landlords have used administrative burden as a way to justify discrimination based on source of income).

94 Id. at 625.


96 Schwemm, supra note 7, at 598–99.

97 Id. at 599.
were also present in Washington, D.C.98 Although discrimination against voucher holders in those cities is prohibited, in 2005, the Equal Rights Center found a 61% discrimination rate against D.C. voucher holders.99 26% of landlords flatly refused to accept vouchers, while 35% imposed limitations on voucher holders that effectively made their units unavailable to them.100 A more recent study by the Urban Institute in 2018 found that 15% of Washington, D.C. landlords refused to rent to voucher holders,101 which is an improvement, but still leaves many instances of unlawful discrimination. The same study found even worse results in Newark, New Jersey, where 31% of landlords refused to accept tenants using housing vouchers.102 Another poignant example of persisting discrimination in flagrant disregard of antidiscrimination laws comes out of Louisville, Kentucky, which banned source-of-income discrimination against voucher holders, including discriminatory advertising practices.103 Several landlords throughout the locality blatantly advertised their refusal to accept housing vouchers on their websites even after the law went into effect.104 It is not hard to imagine that this behavior may have discouraged eligible voucher holders from applying for housing at various properties, even though they were legally entitled to do so.

Where source-of-income discrimination is explicitly outlawed and includes vouchers as a valid source of income, plaintiffs have more tools at their disposal to challenge landlords who they suspect rejected them because of their use of vouchers to pay a portion of their rent. As mentioned above, some jurisdictions allow a landlord defense of administrative burden when accused of source-of-income discrimination.105 In jurisdictions where this is not (yet) recognized as a defense, landlords may still outright acknowledge their unlawful discrimination and then attempt to justify it with an administrative burden defense.106 If this defense is allowed, tenants in the future may have a hard time enforcing bans on source-of-income discrimination through litigation. As is the case in jurisdictions without bans on source-of-income discrimination, voucher holders who are denied housing may have to turn to an FHA claim of disparate impact based on race in order to litigate their claims.

These kinds of claims pose several problems for voucher holders. First, it is difficult in any given case to determine that a landlord is being discriminatory.107

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98 See EQUAL RTS. CTR., supra note 10 at 8.
99 Id.
100 Id.
101 Vesoulis, supra note 52.
102 Id.
103 Chandler, supra note 55, at 129, 136.
104 Id.
105 See Schwemm, supra note 7, at 591–92.
106 Schwemm, supra note 73, at 383.
107 Bernstein, supra note 19, at 1412.
Furthermore, although disparate impact claims under the FHA are allowed, proving that a landlord’s source-of-income discrimination disparately impacts a minority group (and thus constituting discrimination by race, prohibited under the FHA) requires a very strong showing of causality. Some circuit courts of appeal even hold that source-of-income discrimination can never amount to disparate impact discrimination. The Sixth Circuit theoretically would allow a claim of disparate impact based on source of income, but even when there was a seemingly strong connection between voucher use and race, the landlord’s refusal to accept housing choice vouchers did not amount to disparate impact. It is simply harder to prove discrimination based on race when the underlying issue is discrimination based on income, and forcing plaintiffs to connect the dots instead of directly claiming income discrimination makes that discrimination easier for landlords to accomplish. Relying on disparate impact claims is also ineffective because not everyone affected by source-of-income discrimination can connect it to racial discrimination.

As demonstrated above, laws prohibiting source-of-income discrimination are needed, but even where they exist, they can be rendered largely toothless without effective ways to enforce them. The negative effects of source-of-income discrimination, also discussed above, then persist, whether there is an antidiscrimination law on the books or not. Indeed, HUD even acknowledges that lower denial rates in jurisdictions that ban source-of-income discrimination may not even be caused by those laws. Vigorous enforcement of these laws is needed to ensure their efficacy. Some suggested solutions to increasing enforcement include reminding landlords and voucher holders of the law’s requirements, encouraging reporting of violations, using testers to ensure enforcement, reporting on enforcement efforts, and recommending other ways to improve enforcement. These solutions are certainly worth implementing, but the solution outlined in this Note presents a novel solution that may prove to be an effective tool in the fight against source-of-income discrimination against HCV users.

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109 Id. at 139.

110 Id.

111 Id. (citing Graoch Assocs. # 33, L.P. v. Louisville/Jefferson Cnty. Metro Hum. Rel. Comm'n, 508 F.3d 366, 369 (6th Cir. 2007)).


113 Id.

114 See supra notes 96–104 and accompanying text.


116 See Rhoades, supra note 89.

117 Bell et al., supra note 3.
Source-of-income discrimination has many harmful effects.\textsuperscript{118} States and localities have seemingly recognized this, as evidenced by many enacting laws that prohibit it.\textsuperscript{119} However, landlords do still successfully discriminate based on source of income even when it is unlawful to do so.\textsuperscript{120} With laws prohibiting source-of-income discrimination on the rise, and calls for Congress to prohibit source-of-income discrimination federally, it is necessary to consider how these laws, both real and hypothetical, can be effectively enforced. Without such enforcement, even ubiquitous prohibition of source-of-income discrimination will not protect voucher holders, and the purposes of both the FHA and the HCV program will continue to be thwarted by discriminatory landlords. A blind review process can ensure effective enforcement of source-of-income discrimination bans. The next part of this Note will explain how blind review processes work generally, and how they have reduced bias and discrimination in other contexts.

III. HOW BLIND REVIEW CAN HELP

Blind review processes ("blinds") are used in several different contexts to reduce bias and discrimination.\textsuperscript{121} As a starting point, blinds are used in scientific research so that the results are not colored by the researcher’s expectations.\textsuperscript{122} The classic example is medical trials. In medical trials that use a double-blind system, neither the researcher nor the participants know whether they have received the medicine being tested or the ineffective placebo.\textsuperscript{123} This way, the risk that the researcher will unwittingly influence the participants or the data collection is reduced.\textsuperscript{124} By keeping themselves in the dark, the researchers have no opportunity to inject their own subjective feelings and desires into the process. They are forced to evaluate the results from the placebo group and the experimental group equally in order to ensure that they find all relevant data, rather than focusing on one group over the other. This method of research is so effective at reducing bias, increasing objectivity, and allowing for the discernment of truth that it has been deemed the "gold standard" of research.\textsuperscript{125}

In science, this kind of engineered ignorance is used to find objective truths and prevent errors. However, similar processes have also been used in attempts to

\textsuperscript{118} See generally discussion supra Part II.
\textsuperscript{119} Schwemm, supra note 7, at 573.
\textsuperscript{120} See Bell et al., supra note 3.
\textsuperscript{122} Misra, supra note 121, at 133.
\textsuperscript{123} See id.
\textsuperscript{125} Misra, supra note 121, at 132.
promote more abstract goals such as promoting fairness and preferred values.\textsuperscript{126} The application may be slightly different, but the idea is still essentially the same. An evaluator of some kind removes some information from their reach, they then evaluate only the characteristics that it is deemed correct to evaluate. In science, the evaluator removes any information that might lead them to evaluate results in a skewed fashion. In other areas, the evaluator may remove information from their view such as the race, sex, or income of those they are evaluating to make it more difficult or even impossible for discrimination based on those characteristics to take place. A famous study analyzing this type of blind review process involved orchestras using screens to make their auditions more neutral.\textsuperscript{127} This makes sense. To get the best orchestra possible, the only thing that matters is the sound the musicians are capable of producing. Their race, sex, age, income, and indeed all other characteristics can be thought of as irrelevant to a large extent. By hiding the auditioners from view and only evaluating their playing, the evaluators removed all of these other irrelevant characteristics from their evaluation. The researchers found that this blind audition process likely contributed to the increase in women being hired into orchestras.\textsuperscript{128}

Besides reducing sex discrimination, this type of information restriction can also be used to reduce discrimination based on race. In one study, researchers sent fake resumes to several employers.\textsuperscript{129} The researchers sent out equivalent resumes with only one major difference; some resumes used applicant names that were designed to make the employer assume the applicant was white, while others were meant to make the employer assume the applicant was black.\textsuperscript{130} The white “applicants” received fifty percent more callbacks for interviews than the black “applicants.”\textsuperscript{131} Since employers seemingly make consequential decisions based on race rather than on qualifications, one natural way to combat this tendency would be to present the employer with only an applicant’s qualifications and some non-identifying contact information. The process would once again take away any opportunity the evaluator has to discriminate based on irrelevant and immutable characteristics.

Blind review procedures clearly have positive effects in terms of reducing bias and discrimination and increasing objectivity—so much so that scholars have called for blind review processes to be used in a variety of other contexts in order to meet these ends.\textsuperscript{132} But it is true that the efficacy of blind review as a means to reduce

\textsuperscript{126} See Goldin & Rouse, supra note 121, at 716.
\textsuperscript{127} Id.
\textsuperscript{128} Id.
\textsuperscript{130} Id. at 992.
\textsuperscript{131} Id.
\textsuperscript{132} See, e.g., Jonathon Gingerich, A Call for Blind Review: Student Edited Law Reviews and Bias, 59 J. LEGAL EDUC. 269, 270 (2009); Amber E. Budden, Tom Tregenza, Lonnie W. Aarssen, Julia Koricheva, Roosa Leimu, & Christopher J. Lortie, Double-Blind Reviews Favours Increased Representation of Female Authors, 23 TRENDS IN ECOLOGY & EVOLUTION 4, 4 (2008).
bias is not without criticism. In particular, the orchestra study has been criticized for the fact that its findings were not statistically significant and that the blind review process did not favor women nearly as much after the preliminary rounds of auditions.133 A study by the Australian government even found that anonymizing job applicant information led to a reduction of women being hired because the hiring managers had been aware of biases that disadvantaged women and so had been practicing a form of affirmative action that they could no longer practice when a blind review process was in place.134 Another potential issue with anonymizing applicant information to reduce racial bias is that it will only get them so far. Eventually, applicants will likely have to come in to be interviewed, which ultimately will expose them to the employer’s biases after all, whether implicit or otherwise. These concerns are valid. We likely will not solve the problem of implicit biases and even outright racism with blind review processes. However, the solution proposed here does not aim to do so; it is merely an enforcement mechanism to increase compliance with laws that ban source-of-income discrimination.

Therefore, many of the above-mentioned concerns do not apply. For example, the problem identified by the Australian government will likely not come into play since there is no evidence that landlords are attempting to lease to voucher-holder applicants to make up for their implicit biases, and much evidence to suggest the opposite is true.135 In other words, landlords generally are not ashamed to discriminate based on source of income, since they believe they have legitimate reasons for doing so, such as economic reasons.136 Furthermore, like the issue of an anonymized applicant who eventually has to present themselves to their interviewer and thus becomes subject to their implicit biases, potential tenants whose income information is initially hidden will eventually have to reveal their source of income to their landlord. It is inevitable that the tenants will have to reveal their status as voucher holders. After all, the landlord will have to do some administrative work pursuant to the HCV program’s requirements for and upon accepting tenants who are voucher holders,137 It may seem, then, that the landlord will be able to discriminate based on source of income after all. However, if the prospective tenant’s source of income information is only revealed to the landlord after they accept the applicant based on other relevant criteria, this will still make discrimination harder. A landlord’s acceptance of a tenant initially, followed by retaliation or pushback only after learning that the tenant is a voucher holder, will immediately be viewed as suspicious and may even provide the tenant with a prima facie case of source-of-income discrimination. Using pretextual “legitimate” reasons to hide source-of-income discrimination will thus become much more difficult.

134 Robby Soave, A Famous Study Found that Blind Auditions Reduced Sexism in the Orchestra. Or Did It?, REASON (Oct. 22, 2019, 10:00 AM), https://reason.com/2019/10/22/orchestra-study-blind-auditions-gelman/.
135 See discussion supra Part II.
136 Johnson-Spratt, supra note 49, at 460.
137 See Schwemm, supra note 7, at 587–88.
In sum, blind review is used as a tool to preserve objectivity in science and has been explored as a way to reduce implicit biases in other contexts, with at least some degree of success. It is certainly not a panacea to all forms of discrimination, but when its use is confined to that of an enforcement mechanism for source-of-income antidiscrimination laws, the issues associated with using blind review for other purposes are inapplicable. If landlords do not know a prospective tenant’s source of income during the application process, it will be harder for them to discriminate based on source of income, and any pushback by the landlord after eventually learning of the tenant’s status as a voucher holder will be immediately suspicious.

IV. IMPLEMENTING A BLIND REVIEW PROCESS FOR TENANTS AND LANDLORDS

What would a blind review process in the context of enforcing a ban on source-of-income discrimination look like? It would need to anonymize source of income information on rental applications, be simple for both landlords and tenants, and be widely administrable—since even non-voucher holder tenants would need to submit redacted applications for any system to work. Furthermore, it would have to allow landlords to screen tenants in any lawful way that they choose, including checking eviction history, credit reports, criminal history, and amount of income.\textsuperscript{138} This Note proposes two similar solutions that can work in tandem and which piggyback off of existing screening methods.

There are a number of third-party services on the market that landlords use to streamline their tenant-screening processes.\textsuperscript{139} A common framework for these services is for the landlord to invite a tenant to fill out an application using the service with personal information, which the service then uses to conduct criminal background checks, check eviction reports and credit history, and verify income.\textsuperscript{140} The results of the report are then made available to the landlord who can decide if the tenant meets their criteria.\textsuperscript{141} For landlords who use these services, the solution is a simple one. When one of these services is gathering information for a landlord who operates in a jurisdiction banning source-of-income discrimination, the normal process would be followed, with one exception. Tenants would submit income verification documents to the service like normal, but in the final report to the landlord, only certain information about that income would be available. Before screening, the landlord would send the rental prices of their units to the service. The service would then accept income materials from tenants (pay stubs, bank statements, and in the case of voucher holders, a copy of the voucher). Based on this

\textsuperscript{138} There are policy arguments against screening tenants using these criteria as well, \textit{see, e.g.}, \textsc{Matthew Desmond}, \textsc{Evicted: Poverty and Profit in the American City} (2016), but analyzing the desirability of other screening methods is beyond the scope of this Note. This Note will proceed on the assumption that landlords will continue to screen as they normally would with the exception of source of income information.

\textsuperscript{139} These services include TurboTenant, Avail, and Rentredi, among many others.

\textsuperscript{140} TurboTenant, https://www.turbotenant.com/tenant-screening/ (last visited Apr. 26, 2024).

\textsuperscript{141} \textit{See id.}
information, the service can verify the amount of the tenant’s income and what percentage of their income will be used on rent. Instead of reporting the source and amount of income to the landlord, the service would only give the landlord an estimate of what percentage of the tenant’s income will be devoted to paying rent based on the information they received.\textsuperscript{142} In the case of voucher holders, this percentage would always be thirty percent.\textsuperscript{143} The rest of the collected data besides income information would be reported to the landlord as normal. This gives the landlord everything they need to know about a tenant and puts voucher holders on an even playing field as applicants who make three times the value of the rental cost per month, as their income information will look the same on the application.

Of course, landlords are not obligated to use third-party services, and some may prefer to verify tenant income and run background checks, etc., on their own. In such cases, tenants could possibly use similar third-party resources to generate anonymized income reports, but this could be cost prohibitive for voucher holders. Therefore, offering redacted income reports as a government service is a desirable solution. In such a scheme, the local PHA or other agency would collect the pay stubs, bank statements, or vouchers of potential tenants and generate the same kind of report as the third-party services. The landlord could verify all other information besides income in whatever way they wished, but they would be obligated to accept the PHA income report for purposes of verifying amount of income or income-to-rent ratio. The increased administrative burden on tenants that this solution produces is justified and minimal. For voucher-holding tenants, ostensibly, it will be only one more small step in the overall process of obtaining a voucher. For all other tenants, they would have to collect their income documentation anyway; they would simply be submitting it to a government agency instead of to a third-party service or to the landlord themselves.\textsuperscript{144}

These solutions would ensure that landlords do not discriminate based on source of income in jurisdictions that have deemed such discrimination undesirable. At the same time, landlords would still be able to screen tenants based on other valid criteria. Redacting source of income from rental applications and substituting rent-to-income ratio would protect voucher holders to some extent, since landlords would not be able to tell immediately which tenants will use vouchers and which will not. Nevertheless, these measures may need to be enacted alongside other

\textsuperscript{142} Providing the landlord with the amount of income without the source is undesirable and may prove ineffective for applicants who are voucher holders. For example, a tenant who makes $1,000 per month and wants to rent a unit that costs $800 per month would be undesirable for most landlords because the tenant would need to devote 80\% of their income to rent. The software could add the value of the voucher to the monthly income; but in the example above, this would only result in a reported income of $1,500 per month (30\% of $1,000 = $300, which is what the voucher holder would pay, with HUD then contributing the remaining $500 for rent). To the landlord, this would still look like the tenant would need to use more than half of their monthly income on rent, which does not accurately reflect the reality for voucher holders.

\textsuperscript{143} 42 U.S.C. § 1437f.

\textsuperscript{144} This solution would involve less work for tenants, than, for example, obtaining an Indiana license after moving from out of state, which requires more documentation than would likely be required to verify one’s income. See Bureau of Motor Vehicles, New Indiana Residents, In.gov, https://www.in.gov/bmv/licenses-permits-ids/new-indiana-residents/ (last visited, Apr. 30, 2024).
reforms to ensure compliance with source-of-income discrimination bans, since credit history and evictions that occurred when a tenant did not previously have access to vouchers would not necessarily be indicative of a tenant’s current ability to pay rent.

CONCLUSION

Source-of-income discrimination has demonstrable negative effects on voucher holders and, to an extent, defeats the purpose of HUD’s voucher program.145 Even in jurisdictions that have recognized this and acted to ban source-of-income discrimination, it can and does still take place.146 More enforcement mechanisms are therefore needed to ensure that landlords comply with bans on source-of-income discrimination. Research in other fields has demonstrated that blind review processes can reduce discrimination and biases in a variety of contexts.147 Applying a similar process in the source-of-income discrimination context could involve a process by which a third party (private or governmental) views a party’s income information, including source of income, and generates a report for the landlord which only includes a rent-to-income ratio. By this method, landlords would be unable to tell whether any given applicant makes double or three times the cost of rent per month, or whether they will use a housing choice voucher to supplement their other income. This would limit the opportunities of landlords to discriminate based on source of income and be consistent with the purposes of both the HCV program and bans on source-of-income discrimination.

145 See Schwemm, supra note 7, at 586.
146 EQUAL RTS. CTR., supra note 10.
147 See discussion supra Part III.