



Source of Income Protection: Guidance for Landlords on Screening Tenants and Calculating Income

In Toledo, as in many cities across the country,¹ it is illegal for landlords to discriminate based on source of income.² This means landlords cannot deny an application for housing simply because of the way a tenant pays for rent, as long as it is a legal, reliable source of income.

Landlords CANNOT:

- Advertise that they do not accept Housing Choice (Section 8) Vouchers or Social Security Disability, or that tenants must be gainfully employed
- Deny a tenant's application for housing because of their source of income
- Evict a tenant or refuse to renew a tenant's lease because of their source of income
- Use different eligibility criteria because of a tenant's source of income (for example, requiring minimum income or credit score only for those with nontraditional income, but not requiring this for tenants with traditional income)
- Require that all income is from one single source or refuse to consider multiple sources of legal, reliable income when performing income calculations

But landlords CAN:

- Require two or three times the rent in income as long as this is calculated based on the amount of rent a tenant will actually pay – see detailed guidance below
- Ask about the sources and nature of a tenant's income and request documentation, as long as they do not deny a tenant or treat them worse based on their source of income
- Deny a tenant's application because they do not meet other eligibility criteria, such as credit score, eviction record, or criminal history
- Deny a tenant's application because they are unable to pay the rent and fees in full

(continued)

The most common question The Fair Housing Center receives about source of income discrimination is whether landlords may demand two or three times the rent in income to approve an applicant for housing.

Answer:

The landlord may require two or three times the rent in income, **as long as they meet following guidelines:**

- (1) The requirement of two or three times the rent must be uniformly applied to all applicants, not just those with nontraditional income; and
- (2) The landlord must consider multiple sources of legal, reliable income when performing income calculations; and
- (3) If the tenant-applicant has a voucher or other subsidy that helps pay their rent, the landlord should calculate the “two or three times the rent in income” requirement based on **the tenant’s portion of rent.**³

Example:

If a tenant receives a governmental rent subsidy, such as Section 8 or Shelter Plus Care, the landlord should only count the portion of the rent that the tenant pays – not the total rent for the month. For example, suppose a landlord requires that the tenant’s income must be three times the rent of \$900. If a tenant has a Section 8 voucher and their portion of the rent is only \$200 (based on their income), then the landlord can only require the tenant’s income to be \$600 (three times the tenant’s portion of the rent), not \$2700 (three times the total rent).

Put simply, if a tenant pays a reduced amount in rent because of a subsidy, requiring that tenant to prove he has income of three times an amount of rent he does not actually pay treats him differently based on that source of income. The landlord should, therefore, calculate the two or three times the rent requirement based on the amount the tenant **actually** pays in rent.

The purpose of the “three times the rent in income” policy is to ensure the tenant has sufficient income to pay the rent. But tenants with a Housing Choice Voucher or other similar subsidy tend to be more stable than households without them.

If a tenant has a voucher and her hours are cut, or if she is laid off from work, her portion of the rent is adjusted accordingly so that her rent remains affordable and the portion of rent being paid by the voucher increases. This ensures that the housing provider always receives the full rent payment. In contrast, if a tenant paying market rate has her hours cut, she may have to scramble to pay the rent, and the landlord may have to evict her if she cannot pay.

Demanding three times an amount of rent that a voucher holder does not actually pay cannot advance a valid business interest for the landlord.⁴

(continued)

While Courts have not yet interpreted Toledo's source of income discrimination law, this interpretation of the law is consistent with other guidance and interpretation of similar laws, and it is consistent with federal fair housing law regarding disparate impact.

¹ For a list of jurisdictions that prohibit source of income discrimination, see here: <https://www.prrac.org/pdf/AppendixB.pdf>.

² TMC 554.01 through 554.100, available at https://codelibrary.amlegal.com/codes/toledo/latest/toledo_oh/0-0-0-93855.

³ Source of income discrimination laws have been widely interpreted and applied to confirm that landlords must calculate "the three times the rent in income" requirement to *the tenant's portion of rent*. For example, the Ohio Housing Finance Agency provides guidance on source of income discrimination that confirms this interpretation. See <https://ohiohome.org/incomediscrimination.aspx>. The City of South Euclid Ohio confirms the same interpretation in its official guidance. See <https://www.cityofsoutheuclid.com/wp-content/uploads/2019/11/FINAL-SOI-Landlord-Fact-Sheet.pdf>; see also, Cal.Gov.Code § 12921 effective January 1, 2014; Amendments to § 12927 and § 12955 approved October 8, 2019.

⁴ See 24 C.F.R. §100.500 (prohibiting policies and practices that have a discriminatory effect).

The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.