




ASSISTANT SECRETARY FOR
FAIR HOUSING & EQUAL
OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

February 12, 2024

MEMORANDUM FOR: Fair Housing Assistance Program (FHAP) Agencies

CC: Fair Housing Initiatives Program (FHIP) Grantees
Office of Fair Housing and Equal Opportunity (FHEO)

FROM: Demetria L. McCain, Principal Deputy Assistant Secretary of the
Office of Fair Housing and Equal Opportunity at the Department
of Housing and Urban Development 

SUBJECT: Source of Income Testing Activities under the Fair Housing
Assistance Program

This memorandum clarifies that funds provided under HUD's Fair Housing Assistance Program (FHAP) can be used to support source of income testing activities, as described below. Further, FHAP funds can support source of income testing projects that are designed to uncover discrimination that violates the Fair Housing Act or substantially equivalent state or local fair housing laws.

In keeping with its mission to eliminate housing discrimination, promote economic opportunity, and achieve diverse, inclusive communities, FHEO encourages and supports efforts to identify, remedy, and eliminate illegal housing discrimination in all forms. To underscore this priority, on August 2, 2021, Acting FHEO Assistant Secretary Jeanine M. Worden issued a memorandum to Fair Housing Initiatives Program (FHIP) grantees and the Office of Fair Housing and Equal Opportunity entitled, "[Testing that Qualifies as an Eligible Activity under the Private Enforcement Initiative \[PEI\] of the Fair Housing Initiatives Program.](#)" That memorandum, incorporated here by reference, emphasized that fair housing testing is a critical tool to root out housing discrimination. Accordingly, that memorandum confirmed that FHEO will approve and pay for FHIP testing activities as long as they are designed to identify violations of the Fair Housing Act, whether they be instances of intentional discrimination, discrimination with unjustified discriminatory effects or less discriminatory alternatives, refusals to grant reasonable accommodations for persons with disabilities, or cases where discrimination erodes compliance with the duty to affirmatively further fair housing. Some state and local fair housing laws, which have been deemed by HUD as substantially equivalent to the federal Fair Housing Act, may include "source of income" or the like as a protected class. The August 2, 2021 memorandum explicitly clarified that testing for discrimination because of someone's source of income could be funded with FHIP PEI funds because such discrimination can violate the Fair Housing Act.

This memorandum similarly clarifies that FHAP funds can be used to conduct source of income testing activities to detect discrimination that may violate the Fair Housing Act or substantially equivalent state or local fair housing laws. In accordance with 24 C.F.R Part 115, FHAP agencies are permitted to use HUD funds to enforce substantially equivalent local or state

laws. FHAP agencies may use FHAP funds to conduct source of income testing as an investigative tool in processing dual-filed complaints. FHAP funds may also support source of income testing activities as part of special enforcement efforts, partnerships initiatives, or other fair housing projects developed by FHAP agencies to enforce state or local fair housing laws.

One specific type of source-of-income discrimination—discrimination based on someone’s use of a Housing Choice Voucher (HCV)—remains disturbingly high in our country.¹ The HCV program is HUD’s primary program that assists very low-income families, elderly persons, and individuals with disabilities afford decent, safe, and sanitary housing in the private housing market.² HCV participants are free to apply to any housing that meets the requirements of the HCV program and are not solely limited to units located in subsidized housing projects. In practice, however, housing providers, particularly those with units in low-poverty, well-resourced neighborhoods, often refuse to rent or sell to voucher holders. And because households who use HCVs are disproportionately Black and Brown people, people with disabilities, families with minor children, and female-headed households, discrimination against voucher holders can violate the Fair Housing Act’s prohibition on discrimination because of protected characteristics, including but not limited to race, color, national origin, sex, disability and familial status.

Fair housing testing is an indispensable investigative tool because it effectively detects hidden disparate treatment in housing practices. But FHAP agencies should not limit their testing and enforcement programs to intentional discrimination. FHEO encourages testing activities designed to identify discrimination that violates the Act, whether through disparate treatment or unjustified discriminatory effects. Therefore, this memorandum confirms that FHAP funds may be used to conduct source of income testing to investigate dual-filed complaints and to develop fair housing testing projects designed to enforce state or local fair housing laws.

¹ See <https://www.huduser.gov/portal/portal/sites/default/files/pdf/Landlord-Acceptance-of-Housing-Choice-Vouchers.pdf>. See also <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-010924.html>.

² See https://www.hud.gov/topics/housing_choice_voucher_program_section_8.