

**FREQUENTLY ASKED QUESTIONS**  
**Source of Income Discrimination**  
**Section 8 Federal Rent Assistance/Housing Choice Vouchers**

**DRAFT 3: October 26, 2014**

1. What is the new Oregon law regarding Section 8 vouchers and source of income protection? Oregon law has long prohibited discrimination in rental or for-sale housing (including advertising the sale or rental of housing) on the basis of protected class status, including race, religion, national origin, sex, marital or familial status, and source of income. Prior to passage of House Bill 2639 in 2013, the “source of income” category explicitly **excluded** federal rent assistance, which primarily refers to the Section 8 Housing Choice Voucher program; this exclusion meant that Oregon landlords could refuse to rent to applicants, or even to consider them, just because they had a Section 8 voucher. HB 2639, passed under the leadership of House of Representatives Speaker Tina Kotek, removes that exception and explicitly states that Section 8 or any other local, state, or federal housing assistance is **included** in the source of income protection. Oregon Revised Statute 659A.421 (1) (d).

The new law also creates the Housing Choice Landlord Guarantee Program, to compensate landlords for damages incurred as a result of tenancies by Section 8 voucher holders. See the discussion in Question #15.

Here’s a link to the bill:

<https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureDocument/HB2639/Enrolled>.

\* What does this mean for landlords and tenants? Landlords cannot refuse to rent to an applicant, or treat an applicant or tenant differently, because the applicant is using a Section 8 voucher or other local, state, or federal rental housing assistance. Nor can landlords advertise “no Section 8.” Landlords can still screen and reject any applicant, including those with a Section 8 voucher, for past conduct and ability to pay rent.

\* When does the new law become effective? July 1, 2014.

### \* Does it only cover Section 8 Vouchers?

No. The new law provides protection from discrimination for applicants or purchasers of housing with any local, state, or federal rent/housing assistance. Because the most common rental housing assistance program is the federal Section 8 Housing Choice Voucher program, much of the information about the new law in this FAQ and elsewhere refers to that program. Note that the Landlord Guarantee Program only covers Section 8 voucher tenancies.

**2. How does the Section 8 voucher program work?** The primary purpose of the program is to help low-income people find decent, safe, and affordable housing, by relying on their own initiative to find the best housing for their own living situation. Another purpose is to avoid concentrations of poverty sometimes associated with larger housing projects. And finally the program supports existing housing mostly owned by private landlords.

Low-income Oregonians apply to their local public housing authority or agency (PHA) for a Section 8 voucher. Demand for vouchers is much greater than the supply, so there is usually a long waiting list, and in some communities the wait is so long that the PHA doesn't keep the list open all the time. PHAs screen applicants for past criminal conduct; only people who pass that screening test will qualify for a voucher. Eligibility is limited to very low-income individuals or families; most must have incomes below 30 percent of the area median income; almost 80 percent of voucher holders in Oregon make less than \$15,500/year for a family of four. Voucher holders may be families with children, seniors (18 percent), individuals with disabilities (44 percent), or veterans. There are about 33,600 households with vouchers in Oregon, housed by 12,800 Oregon landlords.

When an individual gets a Section 8 voucher, he or she must attend an orientation by the PHA about how to use it. The individual then has a specific amount of time – usually 60 days, with a possible extension to a total of 120 days under some circumstances – to find a rental unit that meets certain requirements of the program. These requirements include that the unit rents for an amount within the allowed level (the PHA Payment Standard), that passes a PHA inspection and meets the HUD Housing Quality Standards, and that the landlord is willing to rent to the individual. The landlord and tenant enter a written rental agreement, and the landlord enters a contract with the PHA. The tenant pays approximately 30 percent (with some exceptions) of his/her income toward rent; the PHA pays the landlord the balance (although there are some exceptions to how much the PHA pays, discussed in greater detail on page 5 regarding the Total Tenant Payment). The

PHA gets the rent assistance subsidy from the federal Housing and Urban Development Department (HUD), which is funded by Congress.

Some Section 8 voucher program rules are in statutes adopted by Congress; some are in administrative rules adopted by HUD.

Unless noted otherwise, normal Oregon residential landlord/tenant law applies wherever it does not conflict with federal law or administrative rules.

\* **What does the name, Section 8, refer to?** The section of the federal law which created the Section 8 or Housing Choice Voucher program is Section 8 of the Housing Act of 1937, 42 United States Code Sec. 1437f.

\* **What happens at first?** When an applicant with a Section 8 voucher contacts a landlord about a unit for rent, the applicant will have already been determined by the PHA to be eligible to use the voucher, and will have been given information about allowable rent amounts. As with any rental application, the landlord should give the applicant an application and describe the screening criteria. The landlord should screen the tenant as with any other applicant. The applicant gives the landlord the forms required by the PHA for the Section 8 voucher program. If the applicant meets the landlord's criteria, the landlord signs the forms and returns them to the PHA, either electronically, by FAX, or via the tenant/applicant. The PHA will contact the landlord to schedule an inspection. Once the papers are signed and the unit passes inspection (see below), the tenancy begins and both the tenant and the PHA pay the landlord.

\* **Is the PHA a party to the rental agreement between the landlord and the tenant?** No, but there is a required contract between the landlord and the PHA, called the Housing Assistance Payment Contract (the HAP Contract), which lists the landlord's rights and responsibilities. Part of the HAP Contract, called the Tenancy Addendum, becomes a part of the rental agreement between the Section 8 voucher tenant and the landlord.

\* **What is the PHA's responsibility to the landlord under the lease and the HAP contract? Does the PHA guarantee the tenant's performance?** The PHA's obligation is to pay the subsidized portion of the rent, the rent assistance. The PHA does not guarantee the tenant's

performance. (But see the discussion below about the Landlord Guarantee Program.) The PHA will not have screened the applicant for his or her suitability as a tenant; that's the landlord's responsibility. However, a Section 8 voucher tenant's failure to pay his or her portion of the rent or to comply with rules regarding maintenance of the property can lead to termination of the tenant from the Section 8 voucher program.

\* **What happens if the PHA terminates the tenant from the Section 8 voucher program?** If the PHA terminates the tenant from the Section 8 voucher program, the rental agreement between the landlord and the tenant also terminates, as does the HAP Contract, both as provided in the HAP Contract. The landlord and tenant may choose to continue the tenancy at the market rent, without the rent assistance subsidy, or the landlord can require the tenant to vacate the rental unit. The PHA will stop paying its share of the rent, after giving the landlord advance written notice, generally of at least 30 days; it will continue to pay its share of the rent during the notice period. The tenant may contest the termination from the Section 8 voucher program in an administrative procedure with the PHA. If that happens, the PHA also will continue to pay its share of the rent to the landlord until the administrative procedure is completed. If the tenant prevails in the administrative procedure, everything continues as before; if the tenant loses, the tenant becomes responsible for the full rent, without the rent assistance subsidy.

\* **Does HUD or the PHA limit the rent charged? What is Fair Market Rent?** A landlord can charge whatever rent the landlord wishes, so long as that rent amount does not vary based on the source of the tenant's income or on another protected class – in other words, so long as the landlord doesn't charge a higher rent because the tenant is using a Section 8 voucher or is a member of another protected class.

Still, some rent levels will be too high for use with a Section 8 voucher.

Each PHA sets a rent level or Payment Standard for its community, which is based on the HUD Fair Market Rent. HUD sets a Fair Market Rent amount, varied by the number of bedrooms in the rental unit, for every county in the country, based on Census data and rent surveys. It is meant to reflect the amount, for that area, that would be needed to pay the gross rent (shelter rent plus utilities) of privately

owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities.

The Payment Standard limits how much subsidy the PHA will pay: Generally, the PHA will pay the difference between the total rent, up to the Payment Standard for that bedroom size, and 30 percent of the tenant's income, with the exception that the tenant may pay up to 40 percent of income at the beginning of a tenancy.

For example, if the Payment Standard for a 2-bedroom unit is \$1,000 per month and the tenant's income is \$600, the tenant would pay 30 percent or \$180 (known as the Total Tenant Payment or TTP) and the PHA would pay \$820 of the rent. If the actual rent for a unit were less than the Payment Standard, the PHA would pay less. If it is more than the Payment Standard, the PHA won't pay more but the tenant can pay more, up to 40 percent of income, in this case, \$240, which would allow the tenant to rent a unit at \$1,060 (the PHA's \$820 plus the tenant's \$240). But if the rent is above \$1,060, in this example, the unit is ineligible for use with a voucher.

Obviously, this information about the Payment Standard and the TTP is complicated, and some Section 8 voucher applicants may not understand their limits. Landlords and applicants should seek clarity over allowable rent amounts and who pays what by contacting their local PHA.

If a landlord knows that the rent exceeds the Payment Standard, the landlord is not required to accept an application from a Section 8 voucher holder – although because of the possible exceptions mentioned above, and other complexities, a landlord would do well to not make that determination on his or her own, but to leave it to the PHA.

On the other hand, a landlord who raises the rent just for the purpose of making the unit ineligible for the Section 8 voucher program would be in violation of the new law.

\* Does the PHA or HUD regulate the amount of security deposit a landlord can charge? HUD rules provide that a PHA may prohibit a landlord from charging a deposit that is greater than the local private market practice or greater than the landlord charges non-Section 8 voucher tenants. The new state law also prohibits landlords from charging a special or higher deposit just because the applicant is using a Section 8 voucher. Keep in mind that

there is a landlord guarantee program which also acts like a deposit to cover significant landlord costs/damages (of up to \$5,000; see more about the program below in #15).

A landlord may charge a higher-than-normal deposit because an applicant has a record of property damage or of unpaid rent, if that policy is applied to all applicants and not just to Section 8 voucher applicants.

\* [May a landlord charge a lower rent or a lower deposit amount from Section 8 voucher holders?](#) Yes. Landlords can and do choose to lower their rents in order to make their units eligible for use with a Section 8 voucher, and doing so is perfectly legal. The same is true for deposits. But they are not required to do that.

\* [May a landlord require prepayment of a last month's rent deposit in addition to a security deposit?](#) Yes, a landlord may require prepayment of a last month's rent deposit, if that is the practice the landlord follows with all applicants, although the landlord should only require a Section 8 tenant to pay a last month's rent deposit equal to the tenant's portion of the rent, since the PHA will be paying the balance of the rent.

[3. What are Public Housing Authorities or Agencies?](#) PHAs are public bodies created under Oregon law, found in ORS chapter 456. Any city or county may create one. Currently there are 22 PHAs serving the 36 Oregon counties. The federal Housing Act of 1937 called for the creation of local housing authorities, and most states immediately adopted laws authorizing them.

Initially PHAs built and operated, with federal money, public housing projects in which the housing subsidy is attached to the unit, not to the tenant. Some PHAs also have built and now own rental properties pursuant to modern subsidized housing programs. Today all of the Oregon PHAs administer Section 8 voucher programs, in which the subsidy goes with the tenant. As public bodies, PHAs have boards and meet in public. The boards often consist of the local county commission plus, under HUD rules and with some exceptions, at least one Section 8 voucher or public housing tenant. Some PHAs also operate community service programs, such as weatherization and energy assistance.



\* **What is the PHA relationship to HUD?** PHAs are public corporations created under state law; they are not part of the federal government. Among other things, PHAs administer federal housing programs, such as the Section 8 voucher program, under contract with HUD, and are paid a fee by HUD to do so. HUD, through a Congressional appropriation, pays the Section 8 voucher rent assistance subsidy to the PHA, which passes it along to the landlord.

\* **Are all PHAs the same?** Most PHAs operate under the same HUD rules, but some, like Portland's Home Forward, have been designated a "Moving to Work PHA," which gives them more flexibility regarding some HUD rules. In addition, while all PHAs generally follow the same HUD rules, each PHA writes its own Section 8 Administrative Plan, describing how it will carry out its responsibilities, specific to its own community.

\* **Where can I find out more about the rules governing PHAs?** From the HUD web site:  
[http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8).

The Oregon PHA statutes:  
[https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ors456.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors456.html).

#### 4. What are the positives for a landlord in renting to a Section 8 tenant?

- \* Many Section 8 tenants are good, long-lasting residents.
- \* Greater pool of applicants.
- \* Allowable HUD rent may be higher than other landlords in the community might otherwise get.
- \* Reliable source of rent payments on a regular monthly schedule.
- \* Possible increase in rent assistance if the tenant has a loss of income, for example, from becoming unemployed or ill.
- \* The Landlord Guarantee Program.
- \* Social goals: Dispersing poverty, greater opportunity for safe neighborhoods near good schools and employment, diversity of income and race, helping needy families with children, seniors, and those with disabilities.

## 5. Are there negatives for landlords?

\* Some landlords do not want to have a relationship with a federal program, undergo inspections, or deal with the resulting paperwork. The new law means that landlords cannot rely on this reason to reject otherwise eligible applicants with Section 8 vouchers.

\* As with all tenants, rich or poor, some Section 8 tenants are good and some are not.

\* See issues below.

*NOTES REGARDING THE ISSUES DISCUSSED BELOW: Landlord and tenant advocates and PHA representatives worked with Speaker Kotek in the drafting of this new law to address some of the primary concerns that impact stakeholders. Those advocates and representatives continue to work together to try to address the remaining concerns, some of which are discussed below. The new law creates an advisory committee – the Housing Choice Advisory Committee – of equal numbers of representatives from the three groups to work with the Oregon Housing & Community Services Department to address these and other issues that might arise in the future. Here’s a link to the department’s web page for the HCAC:*

*[http://www.oregon.gov/ohcs/Pages/housing\\_choice\\_advisory\\_committee.aspx](http://www.oregon.gov/ohcs/Pages/housing_choice_advisory_committee.aspx)*

*Also, while landlords are typically taught to treat every applicant and tenant the same, in order to avoid discrimination claims, this new law may suggest using a more individualized approach in some cases, rather than a standardized rule, for example, with the income-times-rent issue discussed below. Fair housing law does not prevent that; in fact, fair housing law encourages individualized analyses in some situations, for example, with reasonable accommodation requests. Landlord attorneys think that the issue of individualized analyses is a complex subject, and encourage landlords to seek legal advice before engaging in individualized screening of any applicant, Section 8 voucher holder or not.*



6. Issue: Lease term: Fixed term tenancy versus month to month. Must a landlord accept a Section 8 voucher applicant with a required initial one-year lease or any term greater than month to month? With exceptions described below, HUD requires that the initial lease or rental agreement term for Section 8 voucher tenancies be for one year; after that initial term, the tenancy term automatically converts to month-to-month (unless the landlord and the tenant agree to a longer term). Some landlords prefer month-to-month rental agreements because either the landlord or the tenant can terminate the tenancy with a no-cause notice. Others prefer fixed term agreements or leases because they provide stability for both the landlord and the tenant. Note that HUD rules previously required a specific cause to terminate a tenancy, even in month-to-month tenancies, but that is no longer the case.

The new law requires PHAs to, consistent with federal law, facilitate landlord participation in the Section 8 voucher program by using leases with terms that are customary for the dwelling units involved.

HUD rules allow PHAs to accept initial lease terms of less than one year, if they find that such leases are customary in the community and that shorter terms improve housing opportunities for tenants. Practices vary around the state. Several Oregon PHAs currently accept less than one year leases, with some allowing 6-month leases, others month-to-month. Other PHAs are considering that change. Still others feel that one year leases are customary for their communities and better protect both landlords and tenants.

The lease term policy will be set on the local level by the PHA. If a PHA's analysis, as described above, is that one year initial leases are required, landlords who reject Section 8 applicants on that basis run the risk of that rejection being treated as a violation of the law.

## 7. Issue: Rent

\* Are landlords required to lower their standard rents to make their apartments or homes eligible for Section 8 voucher applicants? No; landlords may set their rents at whatever level they please, so long as they do not charge a higher rent for Section 8 voucher tenants than they

charge for all others. But they can charge a lower rent of a voucher tenant in order to help the tenant qualify. See the discussion in # 2, above.

\* Can a landlord refuse a Section 8 voucher applicant because the landlord doesn't accept "split payments" -- rent payments from the tenant plus from another source, for example, the PHA? No. That would mean that no Section 8 applicant would ever be eligible for that landlord's units. Oregon law already protects landlords from a tenant raising a waiver defense in an eviction lawsuit when a landlord accepts Section 8 voucher payments from a PHA; see ORS 90.414 (1).

\* Can a landlord apply a multiplier criteria, requiring that an applicant have a certain income greater than the rent level, such as three times the rent? Yes, although there is some disagreement about what the landlord would multiply. The statute now explicitly allows a landlord to screen for an applicant's "inability to pay rent." In light of this language, any criteria involving ability to pay rent must refer only to the Section 8 voucher applicant's portion of the rent. In the example described in #2 above, the applicant's share of the rent (the Total Tenant Payment) is \$180; three times that rent obligation would require income of \$540, while the applicant's actual income is \$600, so that the applicant meets the criteria.

If the multiplier is applied to the total rent amount (\$1,000), not to the amount that the Section 8 voucher tenant pays, few Section 8 voucher applicants would ever qualify. In the example above, that would mean the applicant's income would have to be at least \$3,000, an income which would likely make the applicant ineligible for the Section 8 voucher program.

The issue becomes more complex if the applicant's income is zero, in which case the PHA will pay all of the applicant's rent. Three times zero is zero, so such an applicant would still meet the criteria. Some landlords express concern that an applicant with zero income couldn't pay for utilities or food or other necessities, making that applicant risky in terms of likelihood of paying rent; they may want to require some sort of minimum income. Tenant advocates note in response that the statute only refers to screening regarding "an inability to pay the rent," which is satisfied if the voucher covers all of the rent.

And one risk with requiring a minimum income is that it overlooks that applicants may have other sources of income or other forms of non-cash assistance, such as food stamps or utility allowances or assistance. These other sources should be considered in applying any multiplier.

And note, again, that the Landlord Guarantee Program will cover unpaid rent (if the amount owed exceeds \$500, and up to \$5,000).

And as with everything involving concern about fair housing and discriminatory treatment, a landlord must apply admission criteria evenly and not just to block Section 8 voucher applicants.

\* **Can a landlord raise the rent during a Section 8 voucher tenancy?** Yes, but only with PHA approval. In order to increase the rent above the amount set in the HAP Contract, the landlord must submit a request for a rent increase to the PHA at least 60 days before the effective date of the increase. If the PHA determines that the increase is reasonable, the PHA will notify the tenant of the approved rent increase and of the new amount of the tenant's rent portion at least 30 days before the effective date.

\* **Can a landlord require a tenant to pay additional rent, or accept additional rent from the tenant, beyond the amount set out in the HAP Contract?** No. Extra rent payments, or side payments, above the amount in the HAP Contract are not allowed. The landlord will have to refund the money to the tenant, and risks being charged with a federal crime.

\* **What are the landlord's remedies if the tenant doesn't pay his/her share of the rent?** As with any tenant, Oregon residential landlord/tenant law allows a landlord to evict a Section 8 voucher tenant who does not pay his/her portion of the rent. The procedure is the same as with non-Section 8 voucher tenants.

**8. Issue: Screening: Can a landlord still screen Section 8 voucher applicants?** Absolutely. The new law amends ORS 659A.421 (2) (a) to expressly authorize landlords to screen all applicants for past conduct and inability

to pay rent, consistent with fair housing law. As is already the law, landlords should treat all applicants equally.

\* [Does the PHA also screen Section 8 voucher holders?](#) Yes, but only for program eligibility, which is limited to income, criminal history, and immigration status. PHAs have some discretion regarding the types of crimes they consider for eligibility, and how long ago the crime occurred. Landlords generally use screening criteria that review more aspects of an applicant's background or history. PHAs are not responsible for the conduct of Section 8 voucher holders.

[9. Issue: Delay in leasing up:](#) As noted in the answer to #2 above, the PHA must approve the rental unit, both for the rent amount and for housing quality. The PHA does the latter by scheduling an inspection of the rental unit. An informal survey of Oregon PHAs in 2012 indicated that the average time to schedule and conduct an inspection ranges from 3 to 14 days. Federal laws say that PHAs cannot take more than 15 days. In some cases, the inspection delay may be because the applicant or the landlord is slow in returning the paperwork to the PHA; in others, it may be because the PHA has too few staff or too big a geographic area to cover.

A PHA cannot begin paying its share of the rent until after the rental unit passes the PHA inspection and the HAP Contract is signed between the landlord and the PHA. This means that a landlord can't collect rent for that period; the longer the wait, the longer the landlord goes without rent. In markets where there are more rental vacancies, this may not be an issue, especially for shorter waits. But it is an issue in tight rental markets with lots of other qualified applicants.

Advocates and PHAs are working hard to improve the timeliness of inspections and leasing up, as the new law requires, with PHAs sharing best practices among themselves and seeking permission from HUD to vary from these requirements, and some foundations considering grants to PHAs to make the process electronic.

\* [How long must a landlord wait for a PHA inspection before rejecting the Section 8 voucher applicant?](#) The answer is, "It depends." The new law says that PHA inspections are to be "timely," although it does not define what that term means. We think that the answer depends on how long the wait is, who is responsible for the delay, whether there are other eligible non-Section 8 voucher applicants seeking that unit, and what the financial impact of the wait and the lost rent revenue is to that particular landlord. If that landlord

has many units, the loss of some rent revenue would not be as harmful as it would be to a landlord with only a few units. Some of us think that this situation requires an individualized analysis by the landlord, considering the particular factors listed above. Others of us think that in a tight rental market where there are many eligible applicants, “timely” may be three to five days; in a slower market with fewer eligible applicants, “timely” may be six to fourteen days. Either way, a landlord cannot reject all Section 8 applicants in all cases just because of a concern that the inspection time may take too long.

\* Can a landlord require the Section 8 voucher applicant to pay a deposit to secure a rental unit during the wait for the PHA inspection, under ORS 90.297? Possibly, but that statute requires the landlord to approve the applicant first, which poses some risk to the landlord if done before the PHA approves the rental unit. And the landlord and applicant would have to enter a special written agreement regarding the deposit. As discussed in regard to other issues, a landlord would have to do this with all applicants who require any delay in approval. And it is not clear what happens to the deposit if the PHA does not approve the unit.

## 10. Issue: Inspections and Repairs

\* What if the PHA’s initial/move-in inspection results in a requirement that the landlord make some repairs before the unit can be approved? The PHA inspection is for HUD’s Housing Quality Standards (HQS), as required by HUD regulation at 24 Code of Federal Regulations Part 982. Here’s a link to a HUD FAQ about the HQS: [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_9143.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9143.pdf).

The 13 areas covered by the HQS are very similar to Oregon’s habitability requirements for all rental housing. See ORS 90.320. In most cases, an HQS violation would also be a violation of ORS 90.320. As a result, landlords cannot reject a Section 8 voucher applicant because the PHA inspection finds an HQS violation, unless it is for something which is not also covered by ORS 90.320 and which would be a significant burden on the landlord to fix. An example of an HQS violation which is not also covered by ORS 90.320 and which could be expensive to correct is peeling lead paint on the dwelling unit, a situation which would allow a landlord to reject a Section 8 voucher applicant and move on to the next applicant

– although any landlord of a rental unit with peeling lead paint risks liability if he or she rents to an applicant with young children, Section 8 voucher or not.

\* **What about other inspections?** The PHA must conduct HQS inspections during the tenancy. These inspections benefit the landlord by alerting the landlord to physical problems with the unit. If the PHA finds a problem during an inspection, there is a process (written notice to both landlord and tenant) and reasonable timeline for correcting an HQS violation. If the tenant caused the violation, the PHA will require the tenant to make the correction or else the PHA will terminate the voucher. If the landlord is responsible and doesn't make the correction, after a reasonable period, the PHA may abate the rent subsidy or even terminate the HAP Contract. The PHA has some discretion with regard to these actions. Of course, a landlord has a duty under Oregon law to maintain a rental unit in a habitable condition, a duty that is independent of PHA inspections.

**11. Can a landlord require a Section 8 voucher applicant to obtain renter's insurance?** Possibly, but usually not. Renter's insurance is authorized and regulated by ORS 90.222. Landlords are not allowed to require renter's insurance of tenants who live in subsidized housing, such as apartments financed with federal tax credits. That prohibition does not apply to Section 8 voucher tenants renting non-subsidized housing; compare ORS 90.222 (9) (a) and (9) (b). But the statute prohibits landlords from requiring renter's insurance if the tenant's household income is equal to or less than 50 percent of the area median income, a figure set for each area of the state by the Oregon Housing & Community Services Department and HUD. ORS 90.222 (8). Many Section 8 voucher tenants will have income lower than 50 percent AMI, so that their landlords cannot require renter's insurance.

**12. Are there types of rental units that are not eligible for occupancy by someone with a Section 8 voucher?** Yes, but very few. Rental units that are not eligible under the Section 8 voucher program include college dorms, nursing homes, generally units owned by a close relative to the Section 8 voucher holder, and units occupied by the unit's owner or by a person with an ownership interest. Section 8 voucher holders can use their vouchers with single room occupancy units, congregate care and group homes, cooperatives, shared housing, and manufactured homes where the tenant rents both the manufactured home and the space for the home. And, with PHA approval, Section



8 vouchers can even be used by individuals who own their manufactured home and rent the space.

13. Are there types of housing projects that are not eligible? Yes, generally speaking, those where the resident is already benefitting from a significant rent subsidy which is attached to the unit and not to the tenant, such as public housing projects, HUD-subsidized projects, Rural Development (formerly Farmer's Home) projects, and project-based Section 8 projects. See 24 CFR 982.352.

Section 8 vouchers may be used with projects financed under the federal Low Income Housing Tax Credit Program.

14. What happens if a landlord violates the new law? How is it enforced? As a result of the new law, discrimination on the basis of source of income – against an applicant or tenant because he or she has a Section 8 voucher or other rental housing assistance – is now treated under Oregon law the same as discrimination against any other protected class of people. Individuals who think that a landlord has violated the law has several options. They may sue the landlord in an Oregon court within two years of the violation. They may file an administrative complaint with the Oregon Bureau of Labor and Industries (BOLI), which is the state agency that enforces fair housing laws in Oregon. Another resource is the Fair Housing Council of Oregon, which can help investigate an alleged violation, advocate for the victim of the violation, or possibly help file an administrative complaint with BOLI. <http://www.fhco.org/>.

Here's a link to an explanation of BOLI's complaint process:  
[http://www.oregon.gov/boli/CRD/Pages/C\\_Crcompl.aspx](http://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx).

By law, BOLI may assess a penalty of up to \$11,000 for a first violation of fair housing law; penalties increase for additional violations. ORS 659A.855.

15. How does the Housing Choice Landlord Guarantee Program work? The new law creates a fund to compensate landlords who incur losses – primarily property damages or unpaid rent – as a result of renting to a Section 8 voucher holder. The program doesn't cover damages or unpaid rent caused by tenants with rent assistance from other housing assistance programs.

To be eligible for coverage, any damages or unpaid rent must have been caused by or result from the Section 8 voucher holder's occupancy, damages must exceed normal wear and tear, and the damages and unpaid rent must be more than \$500. The damages and unpaid rent must have been incurred after the effective date of the new law, July 1, 2014, although the tenancy could have begun before that date. In most cases, a landlord doesn't learn of property damage or doesn't have a legal claim for property damage until after a tenancy ends, although there may be cases where property damage is incurred and known about before the end of the tenancy, such as from a tenant-caused fire. Claims are limited to \$5,000.

The program is administered by the Oregon Housing & Community Services Department. To submit a claim under the program, a landlord will need to obtain a court judgment – Circuit Court, Small Claims Court, or Justice Court – from the county where the rental property is located. Claims must be submitted to OHCS within one year after the judgment is final (meaning any appeals have been resolved or the appeal period has run; there are no appeals from Small Claims Court; the appeal period for the other two courts is typically 30 days). OHCS is required to make the responsible Section 8 voucher tenant repay any amounts paid out of the fund, although OHCS may waive that requirement for good cause, and OHCS must offer the tenant a reasonable payment plan. The rules for the Housing Choice Landlord Guarantee Program are available on the OHCS web site, at [http://www.oregon.gov/ohcs/pdfs/public\\_notices/813-360-Administrative-Rule-Housing-Choice.pdf](http://www.oregon.gov/ohcs/pdfs/public_notices/813-360-Administrative-Rule-Housing-Choice.pdf).

16. What if a landlord's insurer rejects insurance coverage for the landlord because the landlord rents to Section 8 voucher holders? This would be a violation of the new law, by the insurance company. The landlord should report this to BOLI.

17. What should you do if you have questions or problems with this? If you are a landlord, you should talk to one of the three landlord trade groups.

If you are a tenant, you should talk to the Community Alliance of Tenants (<http://oregoncat.org/>; in the Portland area only) or to the Fair Housing Council of Oregon or to your local legal services office (see [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for a link to legal resources).

And you can always talk to the members of the Housing Choice Advisory Committee (see discussion at page 8).

And to your local PHA. Here's a link to PHAs by county:  
<http://www.hud.gov/offices/pih/pha/contacts/states/or.cfm>.

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Section 8 Source of Income FAQ.clean copy.10262014.word