

# Discrimination in Tenant Screening

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Chancela Al-Mansour, Executive Director  
Housing Rights Center  
[calmansour@housingrightscenter.org](mailto:calmansour@housingrightscenter.org)

Michelle Uzeta, Deputy Legal Director  
Disability Rights Education & Defense Fund  
[muzeta@dredf.org](mailto:muzeta@dredf.org)



Section 8 Discrimination

Other Screening Protections

Strategies / Enforcement

# Prohibition on Section 8 Discrimination

# Why is the Section 8 Program so important?

- Main source of affordable housing – bridges the gap
  - *2.1 million households nationwide (35% include a person with a disability)*
  - *319,524 households in California*
- Increases housing opportunities for low-income people, who are disproportionately black, brown, and/or disabled
- Makes safe, decent, safe, and sanitary housing available
- Promotes fair housing choice
- Increases access to transportation, schools, and employment
- Reduces segregation and concentration of poverty
- Prevents homelessness

- Discrimination against Section 8 recipients is widespread
  - Unfounded stereotypes and misconceptions about voucher users and the Section 8 Program
  - Pretext for other types of discrimination
  - See DREDF “Speaking the Truth About Section 8”  
<https://dredf.org/web-log/2023/09/28/speaking-the-truth-about-section-8/>
  
- Use it or Lose it
  - Waitlists are long; vouchers are time-limited

## The Problem

# Federal Law

- Fair Housing Act – no express prohibition on Section 8 discrimination
- Exception: Low-Income Housing Tax Credit (LIHTC) 26 U.S.C. § 42(h)(6)(B)(iv)
  - Properties are expressly prohibited from discriminating against voucher holders.
  - Owners are required to certify compliance annually.
  - State housing agencies are responsible for monitoring owner compliance.
- Other Exceptions: HOME program, Mark To Market, Multi-Family units purchased from HUD, and a few others
- HUD Resource: Source of Income Protections for Housing Choice Vouchers  
[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/source-of-income-protections](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/source-of-income-protections)

# State Source of Income Protections

- 16 states have laws prohibiting voucher discrimination (+ D.C. and Massachusetts):
  - California, Connecticut, Colorado, Hawaii, Illinois, Maryland, New Jersey, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Virginia, Washington
- 5 states with limited SOI laws:
  - Delaware (limited protection for voucher holders), Maine and Minnesota (weakened by court interpretation), Texas (HOAs only), Wisconsin (does not cover housing vouchers)

See: Poverty & Race Research Action Council, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination, <https://www.prrac.org/pdf/AppendixB.pdf> [Updated March 2024]

# Local Source of Income Protections

- 120+ counties/cities nationwide including:
  - Cities/counties in states with state law protections: e.g. Denver, Buffalo
  - Cities/counties in states without state protections: e.g. Tucson, Saint Louis, Albuquerque



# California City / County Ordinances Prohibiting Section 8 Discrimination

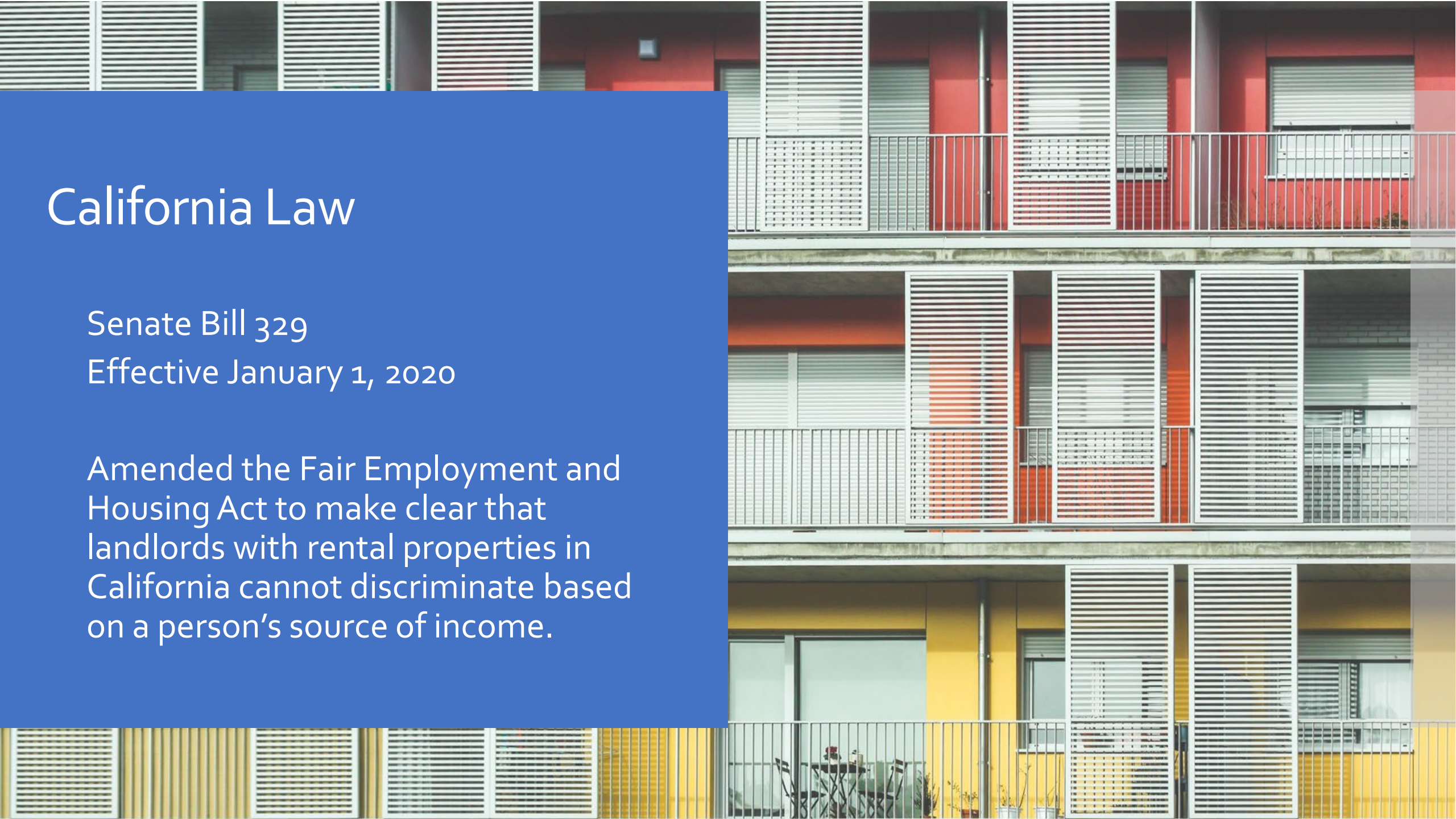
- Alameda
- Berkeley
- Corte Madera
- East Palo Alto
- Fairfax
- Los Angeles
- Los Angeles County  
(unincorporated areas only)
- Marin County
- Mill Valley
- Milpitas
- Novato
- San Anselmo
- San Diego
- San Francisco
- San Jose
- San Rafael
- Santa Clara County  
(unincorporated areas only)
- Santa Monica
- Woodland

# California Law

Senate Bill 329

Effective January 1, 2020

Amended the Fair Employment and Housing Act to make clear that landlords with rental properties in California cannot discriminate based on a person's source of income.



# Broad Application

All housing providers who rent residential properties in California:

- Rental / leasing agents
- Management companies
- Landlords
- Homeowner associations
- Corporations
- Housing authorities

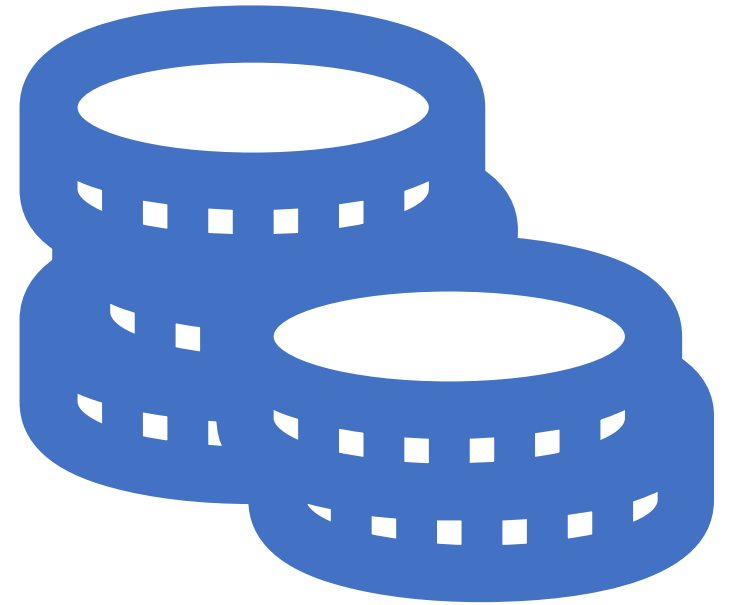


# Source of Income Defined

## Cal. Gov. Code § 12955(p)(1)

Lawful, verifiable income paid directly to a tenant, tenant representative, or housing owner on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies. Includes:

- Section 8 Housing Choice Voucher Rental Assistance
- Veterans Affairs Supportive Housing voucher
- Financial aid from any program that provides rental assistance, homeless assistance, security deposit assistance or rapid rehousing.



## Prohibited Activities Include ...

- Refusal to rent or renew an agreement for tenancy
- Interruption or termination of tenancy
- Falsely representing that a rental unit is not available
- Different terms or conditions
- Refusing to complete forms, sign documents, make repairs, etc.
- Harassment
- “Otherwise” making housing unavailable

Cal. Gov. Code § 12955

2 CCR §12005 (b)(1); 2 CCR §12141

# Advertising

It is also unlawful to “make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on ... source of income ... or an intention to make that preference, limitation, or discrimination.”

Cal. Gov. Code § 12955(c)

2 CCR §12141(a)(8)



# Examples

## Minimum rental requirements:

- **Income:** 2 times the rent
- **Occupancy no more than:** 1 person studio, 2 person per bedroom
- **Credit:** will be evaluated case by case. Security deposit may increase due to bad credit/income.
- **No:** Section 8, third parties, evictions



Frankly, you are better off going after properties/units that are already registered for section 8.

As I mentioned earlier, completing a section 8 application is not going to be our top priority so it will take some time on our end.

The unit is available July 1, 2019.

**No Section 8 Accepted (don't ask)**

No smoking (City Ordinance)

No Pets

# Other Screening Protections



# Financial and Income Requirements

- When dealing with a government rent subsidy (like Section 8), financial or income standards must be based on the tenant's share of the rent – not the total rent

Cal. Govt. Code 12955(o)(1)(A)

2 CCR §12143

# Credit History

SB 267 – effective 1/1/24

- Prohibits use of Section 8 applicant's credit history as part of application process without offering option of providing lawful, verifiable alternative evidence of reasonable ability to pay tenant portion of rent. For e.g.:
  - Government benefit payments
  - Pay records
  - Bank statements
- Must give applicant additional time to provide that alternative evidence

Cal. Govt. Code 12955(o)(1)(B)

## Takeaway: Unlawful Screening of Tenants Can Take Multiple Forms & Is Not Always Obvious

- Refusing to complete paperwork or delaying paperwork
- Saying the building is not “registered” as Section 8
- Only considering employment income
- Saying credit is too low
- Saying the process takes months, and units can only be held for a brief time
- Raising rent after a household with a voucher applies
- Accusing a household of fraud for not disclosing voucher from the outset
- Using criminal history and eviction records with no mitigation
- Improper use of eviction records
- Lacking transparency of process or denial

# Criminal History

- Housing providers sometimes look at a person's criminal history when making a housing decision.
- Housing providers have legitimate interests in screening potential tenants.
- Problem: individuals with criminal histories face barriers to housing even when their history bears no relationship to their ability to be responsible tenants.
- FEHA regulations effective January 1, 2020 clarify when and how a housing provider can consider information about a person's criminal history.

2CCR §12264 - 2CCR §12271

California Civil Rights Department, *Fair Housing and Criminal History*

[https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2020/04/Fair-Housing-and-Criminal-History-FAQ\\_ENG.pdf](https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2020/04/Fair-Housing-and-Criminal-History-FAQ_ENG.pdf)

## Criminal History Information

“Any record that contains individually identifiable information and describes any aspect of an individual's criminal history or contacts with any law enforcement agency.” Includes Information about:

- Arrests
- Criminal charges or indictments
- Having been questioned, apprehended, taken into custody or detained, or held for investigation, regardless of whether it resulted in a criminal conviction.

Includes records from any jurisdiction; records that are not prepared strictly for law enforcement purposes.

2CCR §12264

## Criminal History Information – What is It?

# Prohibited Uses of Criminal History Information

A housing provider's policy or practice regarding criminal history will violate California law when it:

- Has an unjustified discriminatory effect on members of a protected class, even when the provider had no intent to discriminate
- Is used to intentionally exclude members of a protected class - e.g. only running criminal history screenings on black applicants
- Constitutes a discriminatory statement – e.g. advertising a blanket ban on anyone with an arrest

2CCR §12265 - 2CCR §12269

## Specific Prohibited Uses of Criminal History Information

A housing provider cannot seek out or consider information about:

- Arrests that did not lead to a conviction
- Being questioned, apprehended, taken into custody, detained, or held for investigation by law enforcement
- Infractions

2CCR §12269



# Specific Prohibited Use of Criminal History Information (Continued)

A housing provider also cannot seek out or consider information about:

- Referral to or participation in a pre-trial or post-trial diversion program or a deferred entry of judgment program
- Criminal convictions that have been sealed, dismissed, or expunged
- Matters processed in the juvenile justice system, unless pursuant to a court order

Unless offered as “mitigating information” – information to show that the person does not pose a current risk to the health and safety of others, to the property, or to other substantial, legitimate, and nondiscriminatory interests of the housing provider

2CCR §12269

# Permitted Use of Criminal History Information

- Housing providers can otherwise check the criminal history of an applicant
- Allowed to deny housing or take adverse action based on a “directly-related” conviction
  - Direct and specific negative relevance to a substantial, legitimate and nondiscriminatory interest of the housing provider, e.g. health and safety of others or of the property
  - Factors:
    - nature and severity of crime
    - when the crime happened

2CCR §12266



# Strategies & Enforcement – Section 8 Discrimination

# Options

## **FEHA**

- Injunctive relief
- Monetary damages, including punitive damages
- Attorney's fees and costs.

## **Local (LA and San Diego, e.g.):**

- 3x actual damages; or
- Damages equal to three-times the monthly rent at the time of the violation.

## **Administrative Complaints:**

- California Civil Rights Department



# Enforcement is Needed

- Discrimination against Section 8 vouchers is still widespread
- Housing Rights Center testing in Los Angeles
  - nearly half (47.5%) of the 80 properties tested showed evidence of discrimination: <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/10/Fair-Housing-Testing-and-Housing-Choice-Voucher10.17.22PR.pdf>

# State Enforcement

June 2023 public record request to the Civil Rights Department for information regarding the number of SOI complaints received and disposition.

January 1, 2020, to June 26, 2023: 635 SOI Complaints

- 358 “No Cause Determinations”
- 25 closed through “Agency Discretion”
- 82 “Conciliated”
- 73 recorded as “Withdrawn”
- 13 “Settled by Enforcement” (violation letters)
- Lawsuits – believed to be just one, filed January 2023  
<https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/2023.01.04-SOI-CRD-Press-Release.pdf>

June 2023 public record requests to California municipalities with SOI ordinances.

17 cities / counties contacted:

Alameda	Novato
Berkeley	San Anselmo
Corte Madera	San Diego
Fairfax	San Francisco
City and County of Los Angeles	San Rafael
Marin	Santa Clara
Mill Valley	Santa Monica
Milpitas	Woodland

Only one had engaged in any affirmative enforcement of Source of Income Protections: Santa Monica.

Local  
Enforcement

# Strategies for Addressing Voucher Discrimination

- Educate/train voucher holders and their advocates
- Testing
- Private enforcement (boast successes – promote via media)
- Advocate for improvements in technology that address delays in communication with PHAs and with submitting documents
- Push for state and local funding of enforcement efforts
- Push for Federal legislation
- Increase voucher payment standards
- Expand search time
- Re-brand Section 8 and tout its advantages



# The Use of AI in Tenant Screening

- Fortune: “AI is already screening job resumes and rental apartment applications and even determining medical care with almost no oversight” (March 5, 2024) – [link to article](#)
- In a race-based discrimination case on the use of algorithmic based screening software ([link to article](#)), the DOJ filed a statement of interest ([link](#)), and it just settled for \$2.2 million:  
<https://www.law360.com/articles/1818921/tenant-screener-to-pay-2-2m-over-race-bias-claims>
- Open Communities 2024 settlement in Illinois ([press release](#))
- 2023 study on tenant screening issues by NCLC (“[Digital Denials](#)”)
- 2023 White House’s EO on the use of AI in screening (“[Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#)”)

# Contact HRC

 Housing Rights Hotline: 1 (800) 477-5977  
TTY: 1 (213) 201-0867

 [info@housingrightscenter.org](mailto:info@housingrightscenter.org)

 [www.housingrightscenter.org](http://www.housingrightscenter.org)

\*Workshops: [www.housingrightscenter.org/register](http://www.housingrightscenter.org/register)

\*Counseling: [www.housingrightscenter.org/help](http://www.housingrightscenter.org/help)



Thank you!