

1-1-2021

## Opportunity Gap: A Survey of State Sourceof-Income Protection Laws and How They Address the Challenges Facing the Federal Housing Choice Voucher Program

Jamie H. Wood  
*University of Richmond School of Law*

Follow this and additional works at: <https://scholarship.richmond.edu/lawreview>



Part of the [Courts Commons](#), [Housing Law Commons](#), [Judges Commons](#), [State and Local Government Law Commons](#), and the [Supreme Court of the United States Commons](#)

---

### Recommended Citation

Jamie H. Wood, *Opportunity Gap: A Survey of State Sourceof-Income Protection Laws and How They Address the Challenges Facing the Federal Housing Choice Voucher Program*, 55 U. Rich. L. Rev. 691 (2021).

Available at: <https://scholarship.richmond.edu/lawreview/vol55/iss2/8>

This Comment is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in University of Richmond Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact [scholarshiprepository@richmond.edu](mailto:scholarshiprepository@richmond.edu).

# OPPORTUNITY GAP: A SURVEY OF STATE SOURCE-OF-INCOME PROTECTION LAWS AND HOW THEY ADDRESS THE CHALLENGES FACING THE FEDERAL HOUSING CHOICE VOUCHER PROGRAM

## INTRODUCTION

In 1968, the United States Congress enacted the Fair Housing Act (“FHA”) with the stated purpose of “prevent[ing] segregation and discrimination in housing, including in the sale or rental of housing . . . .”<sup>1</sup> The FHA prohibits landlords from refusing to rent to members of certain protected classes, including race, color, national origin, sex, religion, disability, and familial status.<sup>2</sup> Notably absent from this list is what is commonly referred to as “source-of-income” (“SOI”) protection, which extends antidiscrimination statutes to recipients of federal public assistance.

The federal government’s primary housing public assistance program is the Housing Choice Voucher (“HCV”) Program (formerly known as Section 8).<sup>3</sup> First established under the Housing and Community Development Act of 1974, the HCV Program allows voucher holders to use federal assistance to access the private housing market.<sup>4</sup> The HCV Program aims “to increase access to safe, affordable housing units and to provide opportunities for low-income families to obtain rental housing outside areas of poverty

---

1. Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,461 (Feb. 15, 2013) (to be codified at 24 C.F.R. pt. 100); see MARY CUNNINGHAM, MARTHA GALVEZ, CLAUDIA L. ARANDA, ROB SANTOS, DOUG WISSOKER, ALYSE ONETO, ROB PITINGOLO & JAMES CRAWFORD, URBAN INST., A PILOT STUDY OF LANDLORD ACCEPTANCE OF HOUSING CHOICE VOUCHERS 2 (2018) [hereinafter HCV STUDY].

2. 42 U.S.C. § 3604.

3. *Housing Choice Vouchers Fact Sheet*, U.S. DEPT’H HOUSING & URB. DEV., [https://www.hud.gov/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](https://www.hud.gov/topics/housing_choice_voucher_program_section_8) [<https://perma.cc/CW6L-U2PE>].

4. See Pub. L. No. 93-383, § 8(a), 88 Stat. 633, 662 (codified at 42 U.S.C. § 1437f); *Housing Choice Vouchers Fact Sheet*, *supra* note 3.

or minority concentration.”<sup>5</sup> Unfortunately, the goals of this program have been severely undermined by the refusal of many landlords to accept tenants who will pay their rent through a voucher.<sup>6</sup>

In response to this phenomenon, fifteen state legislatures have enacted some form of SOI-protection statute.<sup>7</sup> The purpose of these statutes is to prevent landlords from refusing a tenant simply because they plan to pay their rent with the aid of federal public assistance.<sup>8</sup> While each state’s statutory protections share a common purpose, they are not all structured in exactly the same manner. This Comment fills a gap in the current scholarship by highlighting the nuances of SOI protection across the states and analyzing which protections best align with the goals of the HCV Program and can best combat the current challenges the program faces. The Comment concludes by arguing that SOI protections accompanied by landlord incentives to participate in the HCV Program align best with the goals of the program and most specifically address the challenges the program currently faces.

Part I provides an overview of the history and goals of the HCV Program and addresses some of the challenges that the program has faced since its implementation. Part II addresses one of the ways states have chosen to address these challenges: implementing SOI-protection laws. Section II.B surveys the fifteen states that have implemented source-of-income protection laws. The section identifies that these protections can be divided into three broad categories: (1) pure prohibitions, (2) prohibitions plus exemptions, and (3) prohibitions plus incentives. Part III analyzes which category of protection most closely aligns in theory to the goals of the

---

5. HCV STUDY, *supra* note 1, at 1.

6. *See id.* at 46; Paula Beck, *Fighting Section 8 Discrimination: The Fair Housing Act’s New Frontier*, 31 HARV. C.R.-C.L. L. REV. 155, 155–61 (1996); Armen H. Merjian, *Attempted Nullification: The Administrative Burden Defense in Source of Income Discrimination Cases*, 22 GEO. J. ON POVERTY L. & POL’Y 211, 214–17 (2015); Danieli Evans Peterman, *Socioeconomic Status Discrimination*, 104 VA. L. REV. 1283, 1316–18 (2018).

7. POVERTY & RACE RESEARCH ACTION COUNCIL, EXPANDING CHOICE: PRACTICAL STRATEGIES FOR BUILDING A SUCCESSFUL HOUSING MOBILITY PROGRAM app. B at 1–2 (2020) (providing the respective statutes from California, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, North Dakota, Oklahoma, Oregon, Utah, Vermont, Virginia, Washington, and Washington, D.C.). Delaware, Minnesota, and Wisconsin have also passed SOI-protection statutes; however, these statutes either expressly exclude HCV participants or have been judicially undermined such that they no longer protect HCV participants. *See infra* note 71 and accompanying text.

8. ALISON BELL, BARBARA SARD & BECKY KOEPNICK, CTR. ON BUDGET & POLICY PRIORITIES, PROHIBITING DISCRIMINATION AGAINST RENTERS USING HOUSING VOUCHERS IMPROVES RESULTS 2–3 (2018).

HCV Program and the spirit of federal nondiscrimination policies generally. Part IV asserts that laws following the prohibitions-plus-incentives framework effectuate the goals of the HCV Program and embody the spirit of nondiscrimination policies more broadly compared to pure prohibitions or prohibitions plus exemptions.

States have served as “laboratories of democracy”<sup>9</sup> for SOI protections for housing since the 1970s.<sup>10</sup> As such, this Comment ultimately concludes that Congress should enact SOI protection to include both prohibitions and incentives at the federal level to effectuate the goals of the HCV Program. Should action on the federal level not be taken, this Comment recommends that any states wishing to add SOI protection for voucher holders follow the prohibitions-plus-incentives framework.

## I. BACKGROUND

### A. *History and Goals of the HCV Program*

Congress created the HCV Program under the Housing and Community Development Act (“HCDA”) of 1974 as a response to “unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income.”<sup>11</sup> The HCV Program represented a shift in federal housing policy from public, project-based housing to a subsidy system dependent on private market housing options.<sup>12</sup> Under the HCV Program, participants pay 30% of their income towards the rent of a private market housing unit, and the federal government sends the landlord a subsidy for the remainder of the fair market rent.<sup>13</sup>

---

9. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

10. BELL ET AL., *supra* note 8, at 5.

11. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 201(a), 88 Stat. 633, 653 (codified as amended at 42 U.S.C. § 1437).

12. Merjian, *supra* note 6, at 214.

13. *Housing Choice Vouchers Fact Sheet*, *supra* note 3. The U.S. Department of Housing and Urban Development (“HUD”) calculates the fair market rents (“FMRs”) annually by dividing the country into various jurisdictions and determining the rental price below which 40% of all similar units are listed. See HCV STUDY, *supra* note 1, at 7 (noting that some research has shown that the FMRs do not accurately reflect rents in certain submarkets, contributing to access issues in higher-cost areas).

Today, the HCV Program serves over two million low-income households each year.<sup>14</sup> According to a 2012 study by the National Low Income Housing Coalition, HCV Program participants are among the lowest income people in the U.S., with 87% of participants having household incomes of less than \$20,000 a year.<sup>15</sup> The HCV Program serves some of the country's most vulnerable populations—43% of voucher households have children, 28% of voucher households have at least one family member with a disability, and 19% have at least one elderly member.<sup>16</sup> Black households represent 45% of voucher holders, although they comprise only 12% of all households in the U.S., and a staggering 83% of HCV households are female-headed, a common characteristic across all housing assistance programs.<sup>17</sup> The population served by the HCV Program makes evaluating its successes and barriers to achieving its goals even more essential.

The primary objective of the HCDA was to develop urban communities “by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.”<sup>18</sup> The HCV Program is specifically designed to achieve two main goals: (1) “to increase access to safe, affordable housing units” and (2) “to provide opportunities for low-income families to obtain rental housing outside areas of poverty or minority concentration.”<sup>19</sup> These goals can be characterized as (1) the “access goal” and (2) the “opportunity goal.” The access goal connects with the HCDA’s objective to provide decent housing and a suitable living environment. The opportunity goal is driven by the HCDA’s objective of expanding economic opportunities for low- and moderate-income families and is supported by research showing that residential areas with a high concentration of

---

14. *Housing Choice Voucher (HCV) Data Dashboard*, U.S. DEP’T HOUSING & URB. DEV., [https://hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/dashboard](https://hud.gov/program_offices/public_indian_housing/programs/hcv/dashboard) [<https://perma.cc/EN9E-W33C>]. Public Housing Authorities (“PHAs”) determine a tenant’s or family’s financial eligibility for the HCV Program based on the total annual gross income and family size. Generally, the family’s income cannot exceed 50% of the median income for the locality and 75% of a PHA’s vouchers must be given to tenants whose incomes do not exceed 30% of the locality’s median income. See *Housing Choice Vouchers Fact Sheet*, *supra* note 3.

15. *Who Lives in Federally Assisted Housing?*, HOUSING SPOTLIGHT, Nov. 2012, at 1, 1–2.

16. *Id.*

17. *Id.* at 2–3. Female-headed households under the cited study refer to “any household where the primary applicant for housing assistance was female.” *Id.* at 2.

18. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101(c), 88 Stat. 633, 634 (codified as amended at 42 U.S.C. § 5301).

19. HCV STUDY, *supra* note 1, at 1.

individuals living in poverty tend to exacerbate crime, poverty, and poor educational outcomes.<sup>20</sup>

### B. *Challenges Faced in Achieving the Goals of the HCV Program*

The federal regulations guiding the HCV Program attempt to promote the access goal. Landlords who accept a voucher holder must ensure the housing unit is decent, safe, and sanitary.<sup>21</sup> The U.S. Department of Housing and Urban Development (“HUD”) has established housing quality standards, which Public Housing Authorities (“PHA”) use to determine whether a unit qualifies for the HCV Program.<sup>22</sup> For a landlord to continue receiving housing assistance payments, PHAs must annually inspect each unit to ensure that it continues to meet the minimum housing quality standards.<sup>23</sup> In addition to ensuring the safety of the housing unit, PHAs must annually assess the income of each family so that adjustments to the federal subsidy and the amount the voucher holder is expected to contribute can be made.<sup>24</sup> These uniform regulations are designed to keep housing units safe and affordable, thus promoting access nationwide to voucher holders.<sup>25</sup>

In contrast, the HCV Program is largely viewed as failing to achieve the opportunity goal because voucher holders rarely obtain rental housing outside of areas of poverty or minority concentration.<sup>26</sup> Some research has shown that only 20% of voucher holders rent in low-poverty areas.<sup>27</sup> In fact, voucher holders actually live near lower-performing schools and have been found to live in more

---

20. See Margery Austin Turner, *Moving Out of Poverty: Expanding Mobility and Choice Through Tenant-Based Housing Assistance*, 9 HOUSING POLY DEBATE 373, 375 (1998).

21. *Housing Choice Vouchers Fact Sheet*, *supra* note 3.

22. *Id.*

23. *Id.*

24. *Id.*

25. It is worth noting, however, that despite these regulations and the significant number of families served by the HCV Program, “approximately three out of every four households that are eligible for assistance do not receive it.” *Landlords: Critical Participants in the Housing Choice Voucher Program*, EVIDENCE MATTERS, Winter 2019 [hereinafter *Landlords: Critical Participants*], <https://huduser.gov/portal/periodicals/em/winter19/highlight1.html> [<https://perma.cc/C5RT-HMUR>].

26. See Beck, *supra* note 6, at 158–59; Stacy Seicshnaydre, *Missed Opportunity: Furthering Fair Housing in the Housing Choice Voucher Program*, 79 L. & CONTEMP. PROBS., no. 3, 2016, at 173, 175; J. Rosie Tigh, Megan E. Hatch & Joseph Mead, *Source of Income Discrimination and Fair Housing Policy*, 32 J. PLAN. LITERATURE 3, 3 (2017); Miriam Elnemr Rofael, Note, *Improving the Housing Choice Voucher Program Through Source of Income Discrimination Laws*, 107 CALIF. L. REV. 1635, 1636–37 (2019).

27. *Landlords: Critical Participants*, *supra* note 25.

economically and racially segregated areas than other low-income families that do not receive any form of housing assistance.<sup>28</sup> There are several factors that contribute to this opportunity challenge: (1) the federal government's lack of clear guidance surrounding this goal, (2) a lack of counseling for voucher holders on available housing options, (3) the private-market nature of the program, and (4) persistent SOI discrimination by landlords.

First, the federal government has failed to further fair housing in the HCV Program by delaying providing clear guidance that de-concentration is a central goal of the program and failing to provide formal direction on how to measure and achieve that goal.<sup>29</sup> Only in July 2015 did HUD issue a Final Rule clarifying that promoting fair housing choices, overcoming historic patterns of segregation, and fostering inclusive communities are central to the proper administration of the HCV Program.<sup>30</sup> With this Rule, HUD also provided guidance to PHAs on concrete steps to take to comply with the Rule, including (1) regularly examining the program, (2) identifying fair housing issues and contributing factors within the program, (3) specifying actions and strategies to address the issues, (4) working with jurisdictions on initiatives that concern the PHA, and (5) maintaining records corresponding to this work.<sup>31</sup> With this ruling, the focus of HUD and the HCV Program has now been more clearly articulated and PHAs have a clearer directive to work towards these goals.

Second, the HCV Program does not include a requirement that counseling be provided to inform voucher holders of the various neighborhoods available and the amenities they provide.<sup>32</sup> However, "HUD has known for decades that 'choice' is dependent on information," and the Department has even recommended that PHAs advise families of their housing options.<sup>33</sup> Studies show that counseling prior to obtaining housing through the HCV Program increases the ability of voucher holders to find housing outside of high-poverty neighborhoods.<sup>34</sup> Without knowledge of new neigh-

---

28. Seicshnaydre, *supra* note 26, at 175.

29. *Id.* at 181–84.

30. *Id.* at 182.

31. *Id.* at 183.

32. *Id.* at 178–81.

33. *Id.* at 179.

34. *Id.*

borhoods and the potential benefits and opportunities they can provide, voucher holders stick to their familiar neighborhoods. This undermines the opportunity goal of the HCV Program because neighborhoods of low-poverty and lower-minority concentration are rarely ever sought out.

Third, the private-market nature of the HCV Program means that the federal government and PHAs have little control over which units are available and when and where such units are available.<sup>35</sup> Unlike public housing projects, the availability of HCV Program units in neighborhoods that offer greater economic opportunity depends on factors largely out of the control of the federal government.<sup>36</sup> If a given neighborhood experiences few vacancies, or if landlords choose not to participate in the program, then those units are simply not available to voucher holders.<sup>37</sup>

Finally, the private-market nature of the program leads into what is often the biggest focus for housing choice advocates—persistent SOI discrimination by landlords.<sup>38</sup> Advocates believe that the success of the HCV Program in deconcentrating poverty has been severely undermined by SOI discrimination.<sup>39</sup> Unfortunately, the shift in federal housing policy to the HCV Program did not include a change in the FHA to prohibit landlords from discriminating against voucher recipients.<sup>40</sup> While the FHA prohibits landlords from discriminating against tenants on the basis of race, color, national origin, sex, religion, disability, and familial status, SOI—namely, for recipients of federal public assistance—is not a protected class under the FHA.<sup>41</sup> Efforts to add SOI protection to the FHA have been made by representatives and senators, most recently by Senators Tim Kaine (D-Virginia) and Jacky Rosen (D-Nevada).<sup>42</sup> These efforts have so far proven to be unsuccessful.

---

35. Beck, *supra* note 6, at 159.

36. See *Landlords: Critical Participants*, *supra* note 25.

37. *Id.*

38. See Beck, *supra* note 6, at 159; Rofael, *supra* note 26, at 1637–38.

39. Beck, *supra* note 6, at 159.

40. Merjian, *supra* note 6, at 216.

41. See 42 U.S.C. § 3604(a), (f).

42. Fair Housing Improvement Act of 2019, S. 1986, 116th Cong. (2019); Fair Housing Improvement Act of 2019, H.R. 3516, 116th Cong. (2019); see Ben Lane, *Prominent Senators Begin Bipartisan Push to Expand Fair Housing Act*, HOUSINGWIRE (Nov. 15, 2018, 2:06 PM), <http://housingwire.com/articles/47416-prominent-senators-begin-bipartisan-push-to-expand-fair-housing-act> [<https://perma.cc/8CAU-67E3>].



Throughout the history of the HCV Program, SOI discrimination by landlords has become a major barrier to achieving the opportunity goal.<sup>43</sup> This is driven by the stigma surrounding government-subsidized housing that persists throughout the nation.<sup>44</sup> This stigma is a subset of general societal prejudice against lower-income individuals. Research shows that adults hold unconscious, automatic bias based on socioeconomic status and tend to stereotype lower-income individuals with traits like “laziness, stupidity, and dishonesty.”<sup>45</sup> Landlords unfairly stereotype tenants holding vouchers as loud, destructive, and having a tendency to overcrowd units.<sup>46</sup> Landlords worry about property damage and the ability to receive rent payments.<sup>47</sup>

However, in reality the HCV Program provides some level of protection for landlords who are worried about nonpaying tenants.<sup>48</sup> A study focused on the Atlanta area found that “some large investor landlords in distressed neighborhoods prefer voucher tenants for the stable payments.”<sup>49</sup> Contrary to the stereotype of participation in public housing programs as reducing the desirability of certain properties, some landlords have reported that their willingness to accept vouchers actually *increased* the demand for their rental units.<sup>50</sup> In some regards, this makes voucher recipients more appealing tenants from a business perspective. This is why some landlords in lower-income neighborhoods almost exclusively fill their properties with voucher holders because the income stream is often more reliable.<sup>51</sup> The HCV Program is also often blamed for neighborhood changes.<sup>52</sup> However, studies show that neighborhoods are not harmed by small-scale subsidized housing.<sup>53</sup> Rather, clustering of vouchers in high-poverty minority neighborhoods can be detrimental to the well-being of a community.<sup>54</sup>

---

43. Beck, *supra* note 6, at 159; Seicshnaydre, *supra* note 26, at 193–94.

44. Seicshnaydre, *supra* note 26, at 192–94.

45. See Peterman, *supra* note 6, at 1310–11.

46. Beck, *supra* note 6, at 159.

47. *Id.* at 163.

48. *Id.* at 163–64.

49. *Landlords: Critical Participants*, *supra* note 25.

50. *Id.*

51. Beck, *supra* note 6, at 164.

52. Seicshnaydre, *supra* note 26, at 193.

53. *Id.*; see also Beck, *supra* note 6, at 166 (noting that introduction of HCV participants often brings actual improvements and the perception of improvement into neighborhoods).

54. Seicshnaydre, *supra* note 26, at 193.

While the stigma associated with tenants receiving federal housing subsidies predominates, landlords also discriminate against voucher holders based on an unwillingness to participate in a government program. Landlords often assert that it is extremely burdensome to deal with the HCV Program.<sup>55</sup> However, these administrative burden defenses have failed to hold up in court, indicating that the HCV Program presents at most a de minimis burden on landlords.<sup>56</sup> It is thus valid to question whether this justification is merely an excuse made to mask a landlord's personal opinion about voucher recipients and to thereby permit discriminatory treatment.<sup>57</sup>

HUD recognizes this severe limitation on the HCV Program's effectiveness, and in August 2018 launched a new campaign to boost landlord acceptance of housing vouchers.<sup>58</sup> In its news release announcing the new campaign, the Department highlighted that "two new studies find most landlords do not accept voucher-holders, and those who do complain about the program's administrative requirements."<sup>59</sup> In November 2019, HUD hosted its inaugural "Landlord Symposium" in connection with this new campaign, which aimed to encourage landlord participation in the HCV Program.<sup>60</sup> It remains to be seen how effectively these efforts will increase landlord participation.

State and local governments have chosen to focus their energy on combating the SOI discrimination rampant in the HCV Program by enacting SOI protections. The next section describes the history of these state and local efforts and then surveys the laws of the fifteen states that have adopted SOI protections that extend to voucher holders.

---

55. Beck, *supra* note 6, at 165; *see also Landlords: Critical Participants*, *supra* note 25.

56. *See* Merjian, *supra* note 6, at 244–46.

57. Many housing advocates also argue that SOI discrimination is a proxy through which landlords discriminate against tenants on the basis of race and other protected classes under the FHA. *See* Beck, *supra* note 6, at 155.

58. *HUD Launches Campaign to Boost Landlord Acceptance of Housing Vouchers*, U.S. DEP'T HOUSING & URB. DEV. (Aug. 20, 2018), <http://archives.hud.gov/news/2018/pr18-086.cfm> [<https://perma.cc/4PS6-B7CR>].

59. *Id.*

60. U.S. DEP'T OF HOUS. & URBAN DEV., 2019 ACCOMPLISHMENTS (2020).

## II. SOURCE-OF-INCOME PROTECTION LAWS

### A. *History of Source-of-Income Protections*

Some states recognized early on the challenges recipients of public assistance would face if nondiscrimination statutes were not adopted. In 1971, Massachusetts became the first state to adopt SOI protection.<sup>61</sup> This legislation did not specifically target discrimination under the HCV Program because it predated the HCDA; instead, it prohibited SOI discrimination broadly to protect recipients of federal public assistance.<sup>62</sup> Following the enactment of the HCDA in 1974, Maine joined Massachusetts in adopting statewide SOI protection.<sup>63</sup> In 1989, Massachusetts amended its statute to clarify the legislative purpose of extending protection to voucher holders following a judicial interpretation that excluded voucher holders from protection.<sup>64</sup>

Popularity of SOI protections continued to grow, and in the late 1970s four cities—Ann Arbor, MI; Madison, WI; Urbana, IL; and West Seneca, NY—enacted their own protective statutes.<sup>65</sup> Between 1980 and 2000, Connecticut, North Dakota, Oklahoma, Vermont, and Utah adopted SOI protections along with fifteen cities and counties.<sup>66</sup> Since 2000, California, New Jersey, New York, Oregon, Washington, and Washington, D.C., have adopted SOI protections along with fifty-one cities and counties.<sup>67</sup> Most recently,

---

61. BELL ET AL., *supra* note 8, at 5.

62. MASS. GEN. LAWS ch. 151B, § 4; *see* BELL ET AL., *supra* note 8, at 5.

63. BELL ET AL., *supra* note 8, at 18.

64. *Id.* at 5 n.9.

65. *Id.* at 18.

66. *Id.* at 18–19. Jurisdictions adopting protections during this time period included (in chronological order of adoption): Boston, MA; Philadelphia, PA; Olympia, WA; Lansing, MI; Dane County, WI; Seattle, WA; Chicago, IL; Bellevue, WA; Montgomery County, MD; Cambridge, MA; Quincy, MA; Howard County, MD; Borough of State College, PA; Revere, MA; and Wilmington, DE. *Id.*

67. *Id.* at 19–21; POVERTY & RACE RESEARCH ACTION COUNCIL, *supra* note 7, app. B at 6, 21. The cities and counties adopting protections during this time period include (in chronological order of adoption): Nassau County, NY; East Palo Alto, CA; Corte Madera, CA; Naperville, IL; Grand Rapids, MI; Frederick, MD; East Lansing, MI; Memphis, TN; Hamburg, NY; Buffalo, NY; King County, WA; Annapolis, MD; Sun Prairie, WI; New York City, NY; Harwood Heights, IL; Miami-Dade County, FL; Wickliffe, OH; Cambridge, WI; Tumwater, WA; Linndale, OH; Marion, IA; University Heights, OH; Redmond, WA; Warrensville Heights, OH; Kirkland, WA; Cook County, IL; Westchester County, NY; Austin, TX; Suffolk County, NY; Santa Monica, CA; Iowa City, IA; St. Louis, MO; South Euclid, OH; Pittsburgh, PA; Vancouver, WA; Renton, WA; Dallas, TX; Syracuse, NY; Spokane, WA; Berkeley, CA;

the Maryland and Virginia legislatures (following Democratic party takeovers of state government) have joined the growing trend by adopting their own SOI protections.<sup>68</sup>

A few states have passed SOI protections that do not extend to HCV participants. For example, in Delaware, an exemption to the state's SOI-protection statute provides that "[a] landlord is not required to participate in any government-sponsored rental assistance program, voucher, or certificate system."<sup>69</sup> This exemption effectively provides little to no protection for voucher holders. In Minnesota and Wisconsin, judicial interpretations of SOI-protection statutes have limited the scope of such laws so that voucher holders are not protected from discrimination.<sup>70</sup> In neither case have the state legislatures stepped in to broaden the scope of these statutes.

Despite these few state statutes that reject protection for HCV participants, the growing trend among states, cities, and counties seems to be to extend protections to voucher holders to prevent discrimination against them and to further the access and opportunity goals that lie at the heart of the HCV Program. The next section surveys the states with current SOI protections that extend to voucher holders and explains some of the nuances between the approaches taken by different states.

---

Marin County, CA; Santa Clara County, CA; Broward County, FL; Minneapolis, MN, Denver City and County, CO; Erie County, NY; San Diego, CA; Woodland, CA; Jackson, MI; Milwaukee, WI. BELL ET AL., *supra* note 8, at 18–21.

68. Housing Opportunities Made Equal Act, ch. 116, § 1, 2020 Md. Laws 909, 910 (codified at MD. CODE ANN., STATE GOV'T §§ 20-701, -702, -704, -705, -707, -1103); Act of Mar. 27, 2020, ch. 477, 2020 Va. Acts \_\_ (codified as amended at VA. CODE ANN. §§ 36-96.1, -96.3 (Cum. Supp. 2020)); *see* POVERTY & RACE RESEARCH ACTION COUNCIL, *supra* note 7, app. B at 15, 29.

69. DEL. CODE ANN. tit. 6, § 4607.

70. MINN. STAT. § 363A.09 (prohibiting discrimination on the basis of an individual's "status with regard to public assistance"); WIS. STAT. § 106.50 (prohibiting discrimination on the basis of an individual's "lawful source of income"); *Edwards v. Hopkins Plaza Ltd.*, 783 N.W.2d 171, 179 (Minn. Ct. App. 2010) (holding that, because the voucher program is voluntary, it was not unlawful for landlords to make a "legitimate business decision" not to participate); *Knapp v. Eagle Prop. Mgmt. Corp.*, 54 F.3d 1272, 1283 (7th Cir. 1995) (holding that housing vouchers did not fall within the meaning of "lawful source of income" under the Wisconsin statute).

## B. *Survey of State Source-of-Income Protection Laws*

The fifteen states that have enacted SOI protections that extend to voucher holders include California, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, North Dakota, Oklahoma, Oregon, Utah, Vermont, Virginia, Washington, and Washington, D.C.<sup>71</sup> The nature of each state's SOI protections can be divided into three broad categories: (1) pure prohibitions, (2) prohibitions plus exemptions, and (3) prohibitions plus incentives. This section details which states have adopted each category and explains some of the features of statutes within each category.

### 1. States with Pure Prohibitions

Only Massachusetts has adopted a pure prohibition SOI-protection statute. Massachusetts law states explicitly that it is unlawful

[f]or any person furnishing . . . rental accommodations to discriminate against any individual who is . . . a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.<sup>72</sup>

This statute is one of the few that explicitly prohibits landlords from discriminating against a tenant because of the requirements of a housing subsidy program. Effectively, this statute eliminates a landlord's ability to argue that the requirements of the HCV Program are too burdensome for them to participate.

While Massachusetts' antidiscrimination statute does not include any of the common exemptions described in the next section for SOI discrimination, it does include such exemptions for discrimination with respect to whether a tenant has children.<sup>73</sup> This suggests that these exemptions have at least been contemplated by

---

71. CAL. GOV'T CODE § 12955; CONN. GEN. STAT. § 46a-63; D.C. CODE § 2-1402.21; ME. STAT. tit. 5, § 4581-A; MD. CODE ANN., STATE GOV'T § 20-704(2); MASS. GEN. LAWS ch. 151B, § 4; N.J. STAT. ANN. § 10:5-4; N.Y. EXEC. LAW §§ 292, 296; N.D. CENT. CODE § 14-02.4-02; OKLA. STAT. tit. 25, § 1452; OR. REV. STAT. § 659A.421; UTAH CODE ANN. § 57-21-5; VT. STAT. ANN. tit. 9, § 4504(2); VA. CODE ANN. § 36-96.1; WASH. REV. CODE § 59.18.255.

72. MASS. GEN. LAWS ch. 151B, § 4.

73. *Id.*

the legislature and rejected for SOI, which lends support to the idea that the Massachusetts statute really is a *pure* prohibition.

## 2. States with Prohibitions plus Exemptions

The majority of states that have enacted SOI protections include some exemptions within their statutes. For the purposes of this Comment, exemptions for religious organizations that serve as landlords and property owners will not be discussed. The first prominent exemption that states include applies to landlord-occupied housing units. In California, for example, the SOI-protection statute explicitly states that “[d]iscrimination’ does not include . . . [r]efusal to rent or lease a portion of an owner-occupied single-family house to a person as a roomer or boarder living within the household, provided that no more than one roomer or boarder is to live within the household.”<sup>74</sup>

Connecticut offers another example, providing that its nondiscrimination statute does not apply to “the rental of a room or rooms in a single-family dwelling unit if the owner actually maintains and occupies part of such living quarters as his residence” or to “a unit in a dwelling containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies the other such living quarters as his residence.”<sup>75</sup> Maine, Maryland, New Jersey, New York, Oklahoma, and Vermont offer similar landlord-occupied exemptions, and some of these states extend the exemption to units occupied by the landlord’s family.<sup>76</sup> These exemptions seem to recognize a personal liberty boundary line that states are unwilling to cross. States will allow landlords a broad freedom to decide (through whatever means) with whom they wish to live.

The second prominent exemption applies to what could be considered “less-sophisticated” landlords—landlords that own fewer than a certain number of units or a particular type of property. A few states offer this type of exemption in addition to an exemption for landlord-occupied housing units. Washington, D.C., for example, exempts single-family units rented by landlords that do not

---

74. CAL. GOV'T CODE § 12927(c)(2).

75. CONN. GEN. STAT. § 46a-64c(b)(1).

76. ME. STAT. tit. 5, § 4581(4)(B); MD. CODE ANN., STATE GOV'T § 20-704(a)(2); N.J. STAT. ANN. § 10:5-5(n); N.Y. EXEC. LAW § 296(5)(a); OKLA. STAT. tit. 25, § 1453(C)(1)(b); VT. STAT. ANN. tit. 9, § 4504(2).

own more than three of such homes at any one time and that do not use professional agents to lease their property.<sup>77</sup> The D.C. statute also exempts “the rental or leasing of housing accommodations in a building in which the owner, or members of his or her family occupy one of the living units.”<sup>78</sup> North Dakota and Utah also provide both exemptions for landlord-occupied dwellings and less-sophisticated landlords.<sup>79</sup>

The guiding principle behind offering these types of exemptions seems to be focusing antidiscrimination statutes on sophisticated landlords who truly rent housing units as a business. Such statutes seek to exempt those landlords who may be the most disadvantaged by compulsory participation in the HCV Program. For example, a less-sophisticated landlord may not have as much capacity or skill in working with the local PHA and meeting the requirements for participation in a federal program.<sup>80</sup>

### 3. States with Prohibitions Plus Incentives

A few states have opted for policies that offer both SOI protection and incentives to landlords to participate. These states include Oregon, Virginia, and Washington.<sup>81</sup> The SOI-protection statutes of Oregon and Virginia include exemptions similar to the ones described above in addition to the various incentives they provide. The incentives take two main forms: (1) a tax credit to landlords providing housing to HCV participants and (2) financial assistance to landlords to mitigate any damages resulting from the actions of HCV participants.

In Oregon, the SOI-protection statute exempts landlord-occupied housing units.<sup>82</sup> To incentivize landlord participation, Oregon also offers the Housing Choice Landlord Guarantee Program.<sup>83</sup> This program provides financial assistance to landlords to mitigate

---

77. D.C. CODE § 2-1402.24.

78. *Id.*

79. N.D. CENT. CODE § 14-02.5-09; UTAH CODE ANN. § 57-21-3.

80. See Krista Sterken, Note, *A Different Type of Housing Crisis: Allocating Costs Fairly and Encouraging Landlord Participation in Section 8*, 43 COLUM. J.L. & SOC. PROBS. 215, 227–28 (2009) (providing an illustration of “Mrs. Smith,” a hypothetical, less-sophisticated landlord).

81. See OR. REV. STAT. §§ 456.378, 659A.421; WASH. REV. CODE §§ 43.31.605, 59.18.040; VA. CODE ANN. §§ 36-96.2, 58.1-439.12:04.

82. OR. REV. STAT. § 659A.421.

83. *Id.* § 456.378.

damages caused by tenants as a result of their occupancy under the HCV Program. To benefit from this program, landlords must first obtain a judgment against the tenant. The landlord can only recover damages attributed to reimbursement for property damage, unpaid rent, or other damages caused as a result of the tenant's occupancy. This excludes any payment for punitive damages or any damages that are unrelated to the tenant's occupancy. Under the Housing Choice Landlord Guarantee Program, the damages must exceed normal wear and tear and be worth at least \$500; however, the program will not reimburse for damages exceeding \$5000.

In Washington, the SOI-protection statute does not include the exemptions discussed above; however, Washington provides a program similar to Oregon's called the Landlord Mitigation Program.<sup>84</sup> This program offers landlords up to \$1000 for necessary improvements on their property that will allow the property to meet the housing quality standards set by HUD.<sup>85</sup> Landlords can also receive reimbursement for damages as reflected in a judgment obtained against the tenant, reimbursement for damages arising from repairs made after inspection, and reimbursement for unpaid rent and unpaid utilities.<sup>86</sup> The reimbursement for repairs, unpaid rent, and utilities is not conditioned on the landlord obtaining a judgment against the tenant but must still be supported through proper documentation for the landlord to receive payment.<sup>87</sup> Similar to the Oregon program, damages must be in excess of \$500, but landlords will not be reimbursed in excess of \$5000 per tenancy.<sup>88</sup>

In Virginia, the SOI-protection statute exempts both landlord-occupied housing units and less-sophisticated landlords.<sup>89</sup> In addition, Virginia provides a tax credit incentive for landlords to participate in the HCV Program.<sup>90</sup> Under this program, landlords earn a tax credit for renting a qualified housing unit equal to 10% of the

---

84. WASH. REV. CODE §§ 59.18.040, 43.31.605.

85. *Id.* § 43.31.605.

86. *Id.*

87. *Id.*

88. *Id.*

89. VA. CODE ANN. § 36-96.2.

90. *Id.* § 58.1-439.12:04. Illinois also provides a similar tax incentive, called the Housing Opportunity Area Abatement Program. 35 ILL. COMP. STAT. 200/18-173. However, the state is not included in this analysis because it has not passed any type of statewide SOI-discrimination prohibition. See POVERTY & RACE RESEARCH ACTION COUNCIL, *supra* note 7, app. B at 2.



fair market value of the rent for the unit.<sup>91</sup> If a property has four or more housing units and over 25% of those units are considered qualified housing units, then the tax credit will be limited to only 25% of those units.<sup>92</sup> A landlord may not earn more than \$250,000 in tax credits per year under the Virginia law.<sup>93</sup>

### III. COMPARING SOURCE-OF-INCOME PROTECTIONS TO THE GOALS OF THE HCV PROGRAM

With this understanding of the various frameworks for SOI-protection laws, it is important to inquire to what extent these laws are designed to effectuate the goals of the HCV Program and specifically to address the program's failure to achieve the opportunity goal. The HCV Program aims to increase safe and affordable housing for low-income individuals and families and to provide opportunities for these individuals and families to move to neighborhoods that offer greater social and economic opportunity.<sup>94</sup> The biggest failure of the HCV Program lies in the opportunity goal, which is challenged by (1) the federal government's lack of clear guidance surrounding this goal; (2) the lack of counseling for voucher holders on available housing options; (3) the private-market nature of the program; and, most significantly, (4) persistent SOI discrimination by landlords.<sup>95</sup>

Based on the particular challenges the HCV Program has faced in achieving the opportunity goal, SOI protections falling under the pure-prohibitions and prohibitions-plus-exemptions categories are not sufficient to combat the challenges facing the nation's major housing assistance program. SOI protections falling under the prohibitions-plus-incentives category, however, more specifically address the barriers to achieving the opportunity goal and align with the goals of the HCV Program as a whole. The HCV Program primarily fails in its efforts to deconcentrate poverty and areas of minority concentration.<sup>96</sup> This objective is important to effectuating

---

91. VA. CODE ANN. § 58.1-439.12:04.

92. *Id.*

93. *Id.*

94. *See supra* section I.A.

95. *Id.*

96. *Id.*

the opportunity goal of the HCV Program and enabling HCV participants to access greater economic opportunities and improve outcomes.<sup>97</sup>

Some research indicates that simply prohibiting discrimination against voucher holders increases the number of vouchers that are successfully used to lease a unit.<sup>98</sup> However, research is mixed on whether these prohibitions actually help voucher holders access new neighborhoods that present greater economic opportunity.<sup>99</sup> One study found that after SOI protections are adopted, voucher holders live in neighborhoods with only a slightly lower poverty level than before those protections were enacted.<sup>100</sup> This is unsurprising because SOI protections alone do not address the lack of information voucher holders have about new neighborhoods and the resources they provide, one of the other primary reasons the HCV Program fails to achieve the opportunity goal.<sup>101</sup> These protections do nothing to make housing options and new neighborhoods *known* to voucher holders. That knowledge is essential to voucher holders actually seeking and accessing the type of housing the HCV Program aims for its participants to access.

Additionally, SOI protections falling into the pure-prohibitions and prohibitions-plus-exemptions categories fail to alleviate landlords' (often misguided) concerns about property damage and lost expenses. Instead, landlords may be forced to rent to a tenant that they have reservations about, although those reservations are based on discrimination and stereotypes. SOI protections, without more, could heighten landlords' resistance to public housing assistance by creating what seems like compulsory participation in governmental bureaucracies. This could create a tense and unhealthy environment for the tenant in which they feel resented or subjected to harsher scrutiny by the landlord. This type of situation could actually create housing environments that feel *less* safe, rather than furthering the HCV Program's goal of providing accessible, safe, and affordable housing.

In contrast, prohibitions that include incentives to landlord participation are better suited to holistically address the failures of

---

97. Seicshnaydre, *supra* note 26, at 174–76.

98. BELL ET AL., *supra* note 8, at 5.

99. *Id.* at 8–9.

100. *Id.* at 8.

101. *See supra* section I.B.

the HCV Program. Tax credit incentives, similar to Virginia's, actually make it potentially *more profitable* for landlords to seek tenants that will be paying rent through vouchers. This profitability could drive landlords to advertise directly to voucher holders or devise ways to reach potential tenants in higher-poverty neighborhoods. Critics of tax incentives may argue that the public as a whole should not be responsible for incentivizing landlords to engage HCV participants as tenants. However, given the other social and economic costs of the housing crisis and the high concentration of lower-income individuals in certain neighborhoods, the relatively low burden of a tax incentive could be warranted.<sup>102</sup> The alternative is that the social and economic burdens of the current housing climate continue to be shouldered by some of the most vulnerable in our society—the voucher holders themselves. Instead of asking HCV participants to shoulder the burden alone, “public burdens . . . should be borne by the public as a whole.”<sup>103</sup>

Landlords could also be incentivized to work more closely with local PHAs to draw tenants into their neighborhoods. For example, local landlords could be driven to reach out to PHAs to request to be added to their list of available units or to leave brochures or other advertisements with the PHAs.<sup>104</sup> Landlords may also use private-market resources to directly advertise to HCV participants in lower-income neighborhoods, as opposed to the common practice of advertising units and specifically excluding voucher holders.<sup>105</sup> This strategy takes some of the burden off of the federal government and PHAs and channels private-market forces into solving one of the HCV Program's biggest challenges. This shift also aligns with the HCV Program generally. The program shifted housing assistance from the exclusively public sphere to a model relying on the private market, so it makes sense to turn to the private market to combat some of the program's challenges.<sup>106</sup>

---

102. See *supra* section I.B.

103. *Pennell v. City of San Jose*, 485 U.S. 1, 19–23 (1988) (Scalia, J., concurring in part and dissenting in part).

104. Responsibility for fostering connections between landlords and PHAs lies also with local PHAs. PHAs should “actively recruit landlords through outreach efforts . . .” *Landlords: Critical Participants*, *supra* note 25. “Some PHAs employ landlord liaisons to cultivate relationships with landlords and property managers.” *Id.* However, these efforts often require additional resources, which simply may not be available. See *id.*

105. See *id.*

106. See Rofael, *supra* note 26, at 1643–44 (discussing the history of the shift to the privatization of subsidized housing).

Even if landlords do not view tax credits as more profitable, they could be viewed as subsidizing any added costs landlords may incur through participating in the HCV Program. Landlords have argued that dealing with the bureaucracy of the program, the inspections, and the occasional delays in payments create an administrative burden on them such that they should not be required to participate in the program.<sup>107</sup> Providing a tax credit could be seen as reimbursement for dealing with any administrative burdens.

Likewise, mitigation or reimbursement incentives, similar to Oregon's and Washington's, could alleviate some of the (illegitimate) concern landlords have about voucher holders as responsible tenants. If landlords know that there is an available remedy for their losses, not dependent on an individual tenant's ability to pay damages, landlords may be less resistant to rent to voucher holders. These incentives in particular can serve to make the blanket prohibition on SOI discrimination feel like less of a government intrusion for resistant landlords. It conveys the message that the government hears landlords' concerns and will step in to make them whole when circumstances require it. However, it is important to note that mitigation programs are reactionary and depend on the landlord incurring damages and pursuing the legal recourse. A tax incentive, on the other hand, is provided prior to the landlord incurring any damages or pursuing any recourse.

While prohibitions plus incentives are best aligned with the goals of the HCV Program, certain exemptions may be practical. For example, the primary exemptions discussed above for landlord-occupied housing units and less-sophisticated landlords do not offend the access and opportunity goals of the HCV Program.<sup>108</sup> Including these exemptions may be a pragmatic step for Congress or any state legislatures hoping to pass some form of SOI protection to improve the outcomes of the HCV Program. Exceptions for landlord-occupied units and less-sophisticated landlords could alleviate some of the common concerns of infringing on personal liberties and imposing undue financial burdens, while ensuring that protections remain in place for landlords whose primary business revolves around rental properties.

---

107. See Sterken, *supra* note 80, at 224–26. See generally Merjian, *supra* note 6 (analyzing thoroughly the judicial treatment of administrative burden defense arguments).

108. See *supra* section II.B.2.

SOI protections that fall in the prohibitions-plus-incentives category are best designed to specifically and holistically address the challenges facing the HCV Program. This category of protection also reflects HUD's renewed focus on expanding economic opportunity and encouraging landlords' participation in the HCV Program.<sup>109</sup> Incentives aimed at encouraging landlords to participate can engage forces of the private market to actually make neighborhoods of higher economic opportunity available to voucher holders. In light of this, the next section provides a call for action at the federal level or, in lieu of such action, continued action by states to improve the effectiveness of the HCV Program.

#### IV. GUIDANCE FOR FEDERAL AND STATE LEGISLATORS

The HCV Program is widely viewed as having failed at its objective to improve lower-income individuals' and families' opportunities to access higher-income neighborhoods.<sup>110</sup> The common critiques of this program, that landlords can and do discriminate against voucher holders, and the proposed solution, to prohibit SOI discrimination, have remained consistent since as early as 1996.<sup>111</sup> States have been the "laboratories of democracy"<sup>112</sup> for nearly fifty years for various types of SOI-protection laws and incentives.<sup>113</sup> The trend among the states is toward adopting these protections, but as the HCV Program is a *federal* program that is failing to achieve its key aims, the federal government must take the initiative to ensure the program's success. Therefore, Congress should urgently add "source of income" as a protected class under the FHA. If practicality dictates a need for Congress to include exemptions for landlord-occupied units and less-sophisticated landlords, then those compromises should be made without hesitation in the name of remedying the persistent discrimination in this program.

However, Congress should not stop at just adding SOI as a protected class but should also implement incentives to landlord participation to best effectuate the goals of the program. Congress should examine the landlord mitigation programs of Oregon and

---

109. See *supra* notes 29–31 and accompanying text (discussing HUD's 2015 Final Rule and the 2018 campaign to encourage landlord participation in the HCV Program).

110. See *supra* section I.B.

111. See, e.g., Beck, *supra* note 6, at 155, 161, 168.

112. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

113. See *supra* section II.A.

Washington and the tax incentive structure of Virginia to determine which incentive structures are most useful and practical to implement. Legislators should seriously consider the advantage of including both tax incentives and a landlord mitigation program in the future legislation. A combination of incentives could bring about the best outcome by both easing landlords' hesitation to participate for fear of property damage and encouraging landlords to view HCV participation as a profitable form of business. These incentives are even more crucial because of the long history of stigma associated with the HCV Program. To ensure the program's success, Congress must counteract nearly fifty years of discrimination against voucher holders and the associated stereotypes.

Although fifteen states already guarantee protection from discrimination for HCV participants,<sup>114</sup> the federal government should not permit disparate treatment between citizens of different states with respect to the primary federal housing assistance program. The federal government should guarantee this protection to all citizens and put in place nationwide incentives to drive the success of this program. These federal efforts to support the HCV Program would also support a number of other key social issues that the federal government prioritizes. This is because housing intersects with such issues as education and eradicating racial segregation.<sup>115</sup>

Should Congress not act to alleviate this issue, state governments that have not already should consider adopting prohibitions on SOI discrimination for the reasons discussed above. Additionally, state governments should implement incentives for landlord participation in the HCV Program similar to the landlord mitigation programs or tax incentives. If state legislatures contemplate other incentive structures for landlords, they should consider implementing those as well. The focus should be on incentives that make the HCV Program seem more financially manageable to landlords and encourage landlords to actively seek out HCV participants. Those are the types of incentives best suited to address the opportunity gap in the HCV Program.<sup>116</sup>

---

114. *See supra* note 71 and accompanying text.

115. *See Turner, supra* note 20, at 375.

116. *See supra* Part III.

## CONCLUSION

It is clear that the current HCV Program is failing to effectuate its goals of (1) increasing access to safe, affordable housing units and (2) providing opportunities for low-income families to obtain rental housing outside of areas of poverty or minority concentration.<sup>117</sup> The program's most egregious failure lies in its failure to expand social and economic opportunities for lower-income families.<sup>118</sup> This failure is at odds with the purpose of the FHA, which is to "prevent segregation and discrimination in housing, including in the sale or rental of housing."<sup>119</sup> Fifteen state legislatures have responded to these challenges by enacting SOI protections to prohibit landlords from discriminating against HCV participants.<sup>120</sup> Three states have notably enacted some form of incentives to make the HCV Program more appealing to landlords.<sup>121</sup> These prohibitions, combined with incentives, are best designed to respond to the challenges facing the opportunity goal of the HCV Program. To improve outcomes for the nation's primary housing assistance program, Congress should add "source-of-income" protection to the FHA and enact incentives to make the program a more appealing opportunity for landlords and to increase participation.

*Jamie H. Wood \**

---

117. *See supra* Part III.

118. *See supra* Part III.

119. Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11,460, 11,461 (Feb. 15, 2013) (to be codified at 24 C.F.R. pt. 100); *see* HCV STUDY, *supra* note 1, at 2.

120. *See supra* note 71 and accompanying text.

121. *See supra* section II.B.3.

\* J.D. Candidate, 2021, University of Richmond School of Law; B.A., 2014, University of Texas at Austin. I would like to thank Professors Carl W. Tobias, Rachel J. Suddarth, and Tara L. Casey for their guidance and the valuable conversations that led me to explore this topic in the first place. I am immensely grateful to Professor Luke P. Norris for providing instructive feedback and encouragement that allowed me to carry on writing this Comment in the middle of a pandemic. I also appreciate my fellow members of the *University of Richmond Law Review* for their hard work and careful editing. Any remaining errors are mine. Finally, to Alex Wood: thank you for supporting and believing in me every step of the way.