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Section 8 Housing Discrimination Draft White Paper

Introduction

The Section 8 Housing Choice Voucher Program is a housing authority assistance program that subsidizes a portion of or all of a tenant's rent if the tenant falls under a certain income threshold in relation to family size. In Massachusetts, it is illegal for landlords and property managers to discriminate against tenants and prospective tenants both based on their status as a Section 8 voucher holder and based on the requirements of the Section 8 program.¹ Despite this law, organizations that assist those in need of housing report that such discrimination is rampant.² In a study by researchers at Suffolk University Law School, *ninety percent of testers*³ who told landlords they were voucher holders experienced discrimination when trying to find a property to rent.⁴ Vindication of the right to rent that the housing assistance program is intended to provide, and realizing the intent of the anti-discrimination laws, will require a new approach.

One problem is that the requirement of a habitability inspection during a Section 8 tenant's rental application process can lead to a failure and the tenant's subsequent inability to rent that apartment, for nothing forces the landlord to bring the apartment up to the standard of

¹ "Know Your Rights: Source of Income Discrimination Frequently Asked Questions," *Office of the Attorney General of Massachusetts*, <https://www.mass.gov/doc/source-of-income-discrimination-faqs/download>.

² Based on the experience of the Massachusetts Fair Housing Center.

³ "Testers" are people of two kinds who try to rent the same apartment – if one kind keeps failing and one succeeds, discrimination is strongly indicated.

⁴ Jamie Langowski *et al.*, "Qualified Renters Need Not Apply: Race and Voucher Discrimination in the Metro Boston Housing Market," *Suffolk University Law School*, July 2020, https://www.suffolk.edu/-/media/suffolk/documents/news/2020/law-news/rental_housing_study_july2020.pdf?la=en&hash=B0FFF5916ECA23DFD054170DA223780EDA571241.

habitability, but the tenant cannot get funding for an apartment that does not meet standards. A related problem is when a landlord does not wish to have a habitability inspection. Closely related and reinforcing this issue is when an inspection might trigger an order to make the apartment lead safe under Massachusetts law, which is any residential rental in a building built before 1978 where a child is living. This issue fits into the category of discrimination based on the requirements of the Section 8 program, as the program requires a habitability inspection.

Discrimination against Section 8 tenants at the habitability inspection phase of the rental process is deeply harmful to tenants, and this problem is deeply embedded in the status quo and intertwined with other safe and fair housing issues. This white paper seeks to outline this problem and offer a few potential methods for making the anti-discrimination intent of the law real. Such solutions would generally tend to increase the stock of housing in Massachusetts that meet standards of habitability. We suggest that a combination of solutions is needed to effectively address this issue, including: legislation to resource state and local authorities that can ensure rapid and adequate response to complaints throughout the state; liberalizing the process of Section 8 applications and inspections to make it easier for tenants; improving the affordable housing stock; creating a corps of rental intermediaries, strengthening the mandate to require habitability in order to have the legal right to rent, and creating more resources—technical and financial—to assist landlords in making repairs to meet the mandate of habitability.

Habitability Inspections Background

A tenant's eligibility for a housing voucher is determined by their local public housing agency (PHA), which administers the program, based on federal guidelines.⁵ While those who

⁵ "Housing Choice Vouchers Fact Sheet," *U.S. Department of Housing and Urban Development*, https://www.hud.gov/topics/housing_choice_voucher_program_section_8.

are granted Section 8 housing vouchers receive financial assistance on rent payments from the program, they must work on their own to find a property they wish to rent and submit a request for tenancy approval. Once the Section 8 renter does this, the property must then pass an inspection for habitability, also known as housing quality standards, conducted by someone at the local PHA, (or hired by the PHA), before the tenant is allowed to move in.⁶ If a tenant's potential apartment fails the Section 8 health and safety inspection, the tenant will not be allowed to move into the space until the landlord makes the appropriate repairs and has the property inspected again. Landlords have the ability to choose whether or not to make repairs; if they choose not to make the repairs, their ability to rent the property to non-Section 8 tenants will not be affected. Tenants are only given 120 days to either find eligible housing or lose the voucher, regardless of whether or not a failed inspection has slowed down the process. Additionally, there is no incentive for landlords to fix whatever caused them to fail the inspection.⁷

The Problem

The problem is larger than the impact on the Section 8 voucher holder who is turned away. This is because when the Section 8 applicant is denied, and the repairs are not made, the next tenant will move into an apartment that has been found to be uninhabitable under the Section 8 inspection standards. The same result is likely when a landlord discriminates and will not even consider a Section 8 voucher holder – the chances are high that the reason the landlord does this is to avoid an inspection because the apartment may fail for lead or another reason, and the next tenant will be exposed to those hazards. Thus, there is a documented, actual adverse

⁶ “Inspections,” *Boston Housing Authority*, <https://www.bostonhousing.org/en/For-Section-8-Leased-Housing/Inspections.aspx>.

⁷ *Boston Housing Authority*, “Inspections”.

impact (when the apartment has failed inspection) and a likely adverse impact (when there has been discrimination at the outset) on the immediate apartment seeker, and on all subsequent tenants, from the failure to bring an apartment up to minimum standards of habitability.

The Section 8 process can be hard on voucher holders. If Section 8 applicants are denied placement in an apartment following an inspection, they have limited time to look for another one using their Section 8 voucher. Tenants who are granted Section 8 housing vouchers are only granted 120 days to locate appropriate housing, or they risk forfeiting their voucher.⁸ However, there are many reasons why a prospective Section 8 tenant might experience delays in securing accommodations, many of which are completely outside of their control. After a prospective tenant is able to find a property they would like to rent, a process which on its own can be drawn out and taxing, and submits a request for an inspection of a property, the request can take up to a month to be processed. During this time, landlords are not technically allowed to move forward with allowing another, non-Section 8 tenant to rent the property instead, but this policy is loosely enforced.⁹ A failed habitability inspection can also hinder a tenant's ability to find housing in a timely manner. A tenant might go through the entire process finding a property and submitting a request to have the property inspected so that they can move in only to have the property fail the inspection and the landlord decline to make the necessary repairs. In this case, the tenant is all the way back to square one, and must begin their search again. Tenants may be eligible for an extension if they are not able to find housing in the allotted 120 days; however, whether or not an extension is granted is decided on a case by case basis. In Massachusetts, tenants are only eligible for one thirty day extension; if they are still unable to find housing after those thirty days, they will be removed from the Section 8 housing program. All of this means that the

⁸ *Boston Housing Authority*, "Inspections".

⁹ *Office of the Attorney General of Massachusetts*, "Know Your Rights"

likelihood of Section 8 tenants facing extended homelessness if they experience this type of discrimination is quite high.

Families with young children are disproportionately impacted by this issue. In Massachusetts, when a family with a child under 6 years old moves into a unit, the landlord is responsible for checking the unit to see if there is lead paint on the walls, and, if there is, for deleading the unit.¹⁰ Thus, landlords often see an incentive to prevent families with young children from moving into their units in general. This cause of discrimination is compounded by in the Section 8 habitability inspection requirement. The tendency for homes to remain below habitability standards includes the continuing threat of lead poisoning plaguing families with young children. Any house built before 1978 with a child under 6 living there must pass lead inspections to be considered habitable. Lead is an especially important aspect of habitability, having potentially severe impacts on children's development and the health of all ages of residents, including adults. Lead inspections can cost between \$300 and \$500 depending on the size of the house, apartment, etc. That this is a cost levied upon landlords before they can accept Section 8 vouchers offers motivation to deny section 8 voucher holders leases.

Recommendations

To uncover a better path forward, we conducted research on this issue including a literature review and a series of interviews with various parties of relevant expertise. It seems there are potential means for addressing this issue and we were encouraged by our conversations with experts to offer them in hopes that they can further the resolution of this matter.

¹⁰ Jeffrey Feuer and Benjamin Hiller, "Your Right to be Protected from Lead Poisoning," *MassLegalHelp*, May 2017, <https://www.masslegalhelp.org/housing/lt1-chapter-9-protection-lead-poisoning>.

Create an administrative procedure for enforcing anti-discrimination laws in the habitability inspection phase.

The Massachusetts Attorney General's Office has responded to the issue, and in pursuing and winning discrimination cases, has affirmed the intent of the law and that there is accountability for violations of the Section 8 anti-discrimination law.¹¹ However, AG staff acknowledge that pursuing a handful of cases is not a response robust enough to fully address the issue. Moreover, public records from MCAD indicate that this problem is not reported frequently through existing channels, with only one exact match found in source of income discrimination complaints received from MCAD.¹² Currently, the only real option for the pursuit of justice in cases of discrimination against Section 8 applicants at the habitability inspection phase is legal action. The court system is difficult to navigate, and many in need of Section 8 housing are not or do not feel empowered to make use of the system. Pursuing a case in court takes time and money and legal defense must be available.

For a problem of this genre and magnitude, more is needed. The current method for vindicating the right to rent places a very large burden on Section 8 tenants. Besides the cost and time of legal action it may be process unknown or incomprehensible to tenants experiencing discrimination. Even if every victim of this type of discrimination were to take legal action, the court system is not designed to generate swift justice in these types of cases.

Instead of maintaining the status quo, we recommend the creation of a robust code enforcement administrative system, in which tenants facing this type of discrimination can report it to the relevant administrative authority who can then investigate the case and take action on

¹¹ "AG Healey Secures Multiple Fair Housing Settlements on Behalf of Low-Income Tenants in Massachusetts," *Mass.gov*, October 9, 2018, <https://www.mass.gov/news/ag-healey-secures-multiple-fair-housing-settlements-on-behalf-of-low-income-tenants-in>. See also *DiLiddo v. Oxford Street Realty, Inc.* (2007).

¹² Public records obtained from the Massachusetts Commission Against Discrimination.

their behalf. Case investigation could be carried out via a statewide testing program, wherein a case of discrimination is reported to the proper state or local authority, and the authority then sends a tester to the property reported to apply for the same property, posing as non-Section 8 tenants, to see if they receive similar discrimination to the Section 8 applicant who reported the discrimination.

Consistently grant extensions to the 120 day limit for tenants facing a failed habitability inspection, lengthen this time limit, or abolish this time limit altogether.

A maximum of 120 days for tenants to find housing is unreasonable, and extensions can be hard to get. One preferable alternative would be to remove this time limit for tenants facing a failed habitability inspection, as it is unfair to place the time burden on struggling tenants by threatening them with the prospect of losing their voucher and thus their access to safe and healthy housing. If a removal of the time limit is not possible, the next best alternatives would be to either consistently grant extensions to tenants facing this discriminatory treatment, or to lengthen the time limit for all Section 8 tenants who have started their rental search.

Create and publicize expanded resources to assist landlords in making necessary repairs to achieve habitable housing.

As of now, there is no enforcement mechanism to make landlords repair their properties. In an ideal world, property owners would want their apartments to be lead-free and habitable, but landlords may avoid these repairs for a number of reasons:

1. Landlords are able to rent to non-section 8 voucher holders without regularly passing government inspections

2. Landlords might not be able to afford the repairs mandated by the section 8 requirements.

Providing a financial incentive for landlords to keep their properties up to habitability standards and associated assistance would increase the population that bring their apartments up to habitability standards and reduce the incentive to discriminate. Beyond financial incentives, the government could provide assistance, not just inspections, that could help landlords navigate the process of making essential repairs. It could provide insurance, zero-interest loans, and some management of jobs using contractors who qualify to make those repairs. Lower income landlords may need grants. Capital could be paid off as part of property taxes. Funding provided through the Department of Housing and Community Development, could reward landlords with code violations who take prompt action, with the incentive diminishing when landlords delay action.

Increase the stock of affordable housing in Massachusetts.

While increasing or removing the time restriction placed on Section 8 tenants would greatly alleviate some of the problems that may arise in the search for housing, the issue still remains that there is simply not enough affordable housing available for tenants to choose from. Increasing the amount of affordable housing in Massachusetts would allow tenants to find eligible housing much quicker, and in the instance that housing that they applied for did not pass an inspection, they would more easily be able to find alternative housing. This solution could take shape in multiple forms, which could be combined for maximum effectiveness, such as building more affordable housing units and increasing the volume of Section 8 vouchers available to tenants to reduce wait times for vouchers. This could potentially look like an

entitlement program for Section 8 vouchers as opposed to a program with a limited number of vouchers.

Empower local code inspectors through state law to require habitability, including the ability to assess fines for failing to meet habitability standards.

Empowering local authorities to assess fines equips the system with one more possible avenue for recourse against discriminatory behavior. Ideally, this fine could increase over time, further incentivizing the landlord to make the repairs as soon as possible. Local enforcement should not be the only avenue for enforcement in this issue area, as different localities have drastically different resources, but a more localized enforcement option could be beneficial for addressing the problem more immediately in many cases.

Establish a corps of rental intermediaries

One way that both tenants and landlords might become more knowledgeable about Section 8 processes is if there were intermediaries available to facilitate conversations between the two. When a Section 8 tenant submits an application to rent a property, the tenant and the property's landlord might be able to consult with an intermediary who can take a knowledgeable, objective, fair opinion, who can help each side understand each other. Such a service could help educate each side about the optimal approach of achieving habitability and respecting the intent of the anti-discrimination laws. A respected third party could clearly explain what is required of the two parties, and answer any questions or clear up any uncertainties. Mediated conversations could prevent wariness and uncertainty in landlords and assist them in finding resources, as well as preventing confusion and frustration in Section 8 tenants.

Make information regarding Section 8 housing policies more widely available to both landlords and tenants.

It can be difficult for both tenants and landlords to find information clearly explaining what their rights and responsibilities regarding Section 8 housing are. There is an abundance of contradictory and confusing information published across the internet, and it can be frustrating to try to weed out the outdated and untrue information. Additionally, information presented about the procedures that tenants and landlords need to follow is often needlessly convoluted. This can cause tenants to be unsure about the actual actions they need to take to secure housing, and landlords to be wary of housing Section 8 tenants when they aren't actually sure what they're getting themselves into. The Attorney General has published a clear and concise guide, but it is not clear that the information is received by those who should have it.

Resources for Current Section 8 Tenants

While the onus of enforcing anti-discrimination laws should not fall upon the marginalized parties who are victims of it, unfortunately, that is the status quo when it comes to the issue of discrimination against Section 8 tenants when the habitability inspection phase of the process is reached. This white paper aims to shed light on this issue and to shift this burden off of Section 8 tenants and onto the proper authorities, but these need supplementation. We hope that while change is not an instant process that it can begin.

The following is a list of resources now available for Section 8 tenants facing this type of discrimination who would like to seek remedy for the injustices they have experienced.

Massachusetts Fair Housing Center

57 Suffolk Street

Holyoke, MA 01040

413-539-9796

South Coast Fair Housing

257 Union Street

New Bedford, MA 02740

774-473-9994

Massachusetts Commission Against Discrimination

1 Ashburton Place #601

Boston, MA 02108

617-994-6000

Resources for Landlords

Childhood Lead Poisoning Prevention Program

250 Washington Street

Boston, MA 02108

800-532-9571

Massachusetts Housing Finance Agency

1 Beacon Street

Boston, MA 02215

617-854-1000

Endnotes

“AG Healey Secures Multiple Fair Housing Settlements on Behalf of Low-Income Tenants in Massachusetts.” *Mass.gov*, October 9, 2018. <https://www.mass.gov/news/ag-healey-secures-multiple-fair-housing-settlements-on-behalf-of-low-income-tenants-in-massachusetts>.

Feuer, Jeffrey and Benjamin Hiller. “Your Right to be Protected from Lead Poisoning.” *MassLegalHelp*, May 2017. <https://www.masslegalhelp.org/housing/lt1-chapter-9-protection-lead-poisoning>.

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