

# THE HOUSING CHOICE ACT OF 2013 , OTHERWISE KNOWN AS “THE SECTION 8 BILL”: A SUMMARY AND COMMENTARY FOR OREGON LANDLORDS

By Sybil Hebb, Oregon Law Center,  
with Comments and Commentary By Jim Straub, ORHA Legislative Director

From Jim Straub, ORHA Legislative Director:

The Housing Choice Act of 2013, otherwise known as the “Section 8 Bill,” will go into effect on July 1, 2014. This law includes federal rent subsidies and other local, state, and federal assistance under the state’s source of income protections. No landlord will be forced to accept Section 8 under this law, but no landlord will be able to refuse to rent to someone solely because their income is a Section 8 voucher.

As I began writing this article, I received a copy of Sybil Hebb’s article on the Housing Choice Act. It became rapidly clear to me that I couldn’t improve on Ms. Hebb’s summary, which is provided below. Ms. Hebb and I together served on the Oregon Landlord-Tenant Law Coalition, which developed the Landlord-Tenant Omnibus Bill (Senate Bill 91). Ms. Hebb is the Director of Legislative Advocacy at the Oregon Law Center and is an attorney who is deeply knowledgeable about landlord tenant law in Oregon. We greatly appreciate her permission to share her summary with our ORHA members.

Once you’ve completed Ms. Hebb’s article, please keep reading for my analysis of the ways in which this law may impact ORHA members and Oregon landlords.

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## Summary 2013’s HB 2639 Provisions Related to the Housing Choice Voucher Program Oregon Laws Chapter 740 (2013)

*Effective date: July 1, 2014*

*By Sybil Hebb, Oregon Law Center*

**Background:** The Section 8 Housing Choice Voucher program is a federally funded program administered through housing authorities statewide. These vouchers are intended to help people with low incomes find housing in the private market that will maximize their opportunities for success. Currently, the program is not achieving its goals: too many tenants struggle to find places where their vouchers will be accepted, and fear of administrative issues causes landlord reluctance to participate. As a result, families have fewer choices and face barriers to success. When vouchers are not accepted, the important public purpose of the housing assistance program is undermined, and the stability of low-income families is threatened. HB 2639 is intended to balance and meet the needs of vulnerable tenants and communities, landlords, and housing authorities.

**Procedural Overview:** The language of 2013’s HB 2639, sponsored by House Speaker Representative Tina Kotek (*D, Portland*), was negotiated by stakeholders over months of regular meetings, beginning in September of 2012.

**Stakeholders:** Landlords and representatives of the state’s three landlord associations; Tenant representatives; Housing authorities and their representatives; the Oregon Housing Alliance, representing broad community interests; and the Oregon Department of Housing and Community Services (OHCS).

# Key Features of the Bill

## **Source of Income Protection: (Section 1)**

**A landlord may not refuse to rent to an applicant or tenant, or treat an applicant or tenant differently from others, because their source of income is a Section 8 voucher or other form of housing assistance.**

- Amends ORS 659A.421(1)(d) to include federal rent subsidy payments under 42 U.S.C 1437f, and any other local, state, or federal housing assistance, in the definition of the term “source of income.”
  - Under Oregon’s current fair housing law, a landlord cannot discriminate against an applicant or a tenant based on the tenant/applicant’s source of income. However, current law exempts housing assistance from the definition of the term “source of income.”
  - HB 2639 removes this exemption, effective July 1, 2014, and provides that Oregon’s “source of income” fair housing protections apply to applicants and tenants who are voucher holders or recipients of federal, state, or local housing assistance.
  - Under the new law, a landlord may not refuse to rent to a person or treat a person differently from other applicants or tenants because their source of income is a Section 8 voucher or other form of housing assistance.
- Amends ORS 659A.421(2)(a) to specifically clarify that this new protection does NOT prohibit a landlord from refusing to rent to an applicant with a voucher based upon the applicant’s past conduct or inability to pay rent, so long as the screening or denial is otherwise consistent with local, state, or federal law.
  - The value of the applicant’s housing assistance must be considered when assessing an applicant’s ability or inability to pay rent.

## **Housing Choice Landlord Guarantee Program: (Sections 2, 3, 4, and 5)**

**Improves upon a revolving fund currently managed by OHCS to provide financial assistance to landlords to mitigate unreimbursed damages caused by tenants as a result of occupancy under the Section 8 voucher program. Tenants must reimburse the Program for amounts paid to qualifying landlords.**

### **Definitions: (Section 2)**

- Defines terms for the purposes of the Housing Choice Landlord Guarantee Program
- “Housing Choice Voucher Program” means the Section 8 voucher program
- “Landlord” means a landlord who has entered an agreement with a local housing authority to receive section 8 vouchers as full or partial payment for rent, and who has entered a rental agreement with a tenant who is a voucher recipient.
- “Local housing authority” is a housing authority with a contract with HUD to make payments to landlords under the section 8 voucher program.
- “Tenant” is a person/family eligible for a Section 8 voucher in a rental agreement with a landlord.

### **Program Administration and Landlord Eligibility: (Section 3)**

- In order to be eligible for assistance, a landlord must obtain a judgment against a tenant in either the small claims department of the circuit court, or the circuit court for the county in which the property is located.
- Reimbursement is allowed only for amounts related to property damage, unpaid rent, or other damages:
  - Caused as a result of the voucher-holder tenant’s occupancy;
  - That exceed normal wear and tear on the property; and
  - That are in excess of \$500 but not more than \$5,000 per tenancy.
- A claim for assistance must be submitted within one year of obtaining a judgment against a tenant.
- OHCS must adopt rules to implement the program, and may prescribe additional qualifications and requirements for participation and application.
- OHCS may contract with a public or private provider for administration of the program, and shall adopt rules for the purposes of inviting proposals and awarding contracts.

### **Tenant Repayment Required: (Section 4)**

- Tenant must repay the full or partial amount of the mitigation payment made by the Program to the qualifying landlord.

- The Program must provide the tenant an opportunity to enter a reasonable repayment agreement for the full or partial amount. Upon request, the Program shall waive repayment requirements, for good cause.
- The Program may pursue remedies for collection of unpaid amounts due from a tenant.
- A tenant may contest the Program's determination that the tenant has failed to comply with, or failed to make good faith efforts to comply with, the repayment plan.
- The Program shall make information about a tenant's compliance, including records of repayment, available to landlords and housing authorities upon request and in a timely manner.
- After the Program pays a claim for assistance to an eligible landlord, the Program shall serve notice on the responsible tenant of the above requirements.
- OHCS shall promulgate rules to implement these provisions.

**Creation of the Fund: (Sections 5, 9, and 10)**

- The Housing Choice Landlord Guarantee Fund is created in the State Treasury. Interest earned from the fund remains with the fund. Funded by approximately \$475,000 from the current Rent Guarantee Fund.
- The fund may be used by OHCS to carry out the purposes of the Housing Choice Guarantee Program and the reporting requirements of Section 6 of the bill (see below).
- The legislature appropriated \$74,855 to OHCS for purposes of implementing the program, beginning July 1, 2013. Another \$74,855 was appropriated to the Emergency Board for the same purposes. If the E-Board funds are not allocated to OHCS before December 1, 2014, they may be reallocated. These amounts are in addition to the \$475,000 described above for the Landlord Guarantee Fund.

**State and Federal Strategies: (Sections 6 and 7)**

**Stakeholders will collaborate to use a variety of strategies to track progress and implementation of the new law, and to improve the Housing Choice Voucher Program for all participants.**

**State Strategies: (Section 6)**

- Local housing authorities will:
  - Annually provide OHCS with the information they already track for HUD regarding participation in the Housing Choice Voucher Program.
  - Annually review internal procedures to coordinate the length of rental terms with market standards, to achieve the maximum use and benefit of the Housing Choice Voucher Program in the best interests of landlords and tenants.
  - Consistent with federal law, facilitate landlord participation in the Housing Choice Voucher Program by:
    - Ensuring timely inspections and prompt processing of applications and payments;
    - Establishing leases with terms that match market standards;
    - Assisting with service referrals;
    - Establishing a process that allows landlords to provide regular input to local housing authorities.
- The Director of OHCS will appoint a Statewide Housing Choice Advisory Committee. Membership numbers and duration of membership are at the discretion of the Director.
  - Membership shall be geographically representative of the state, and shall include equal numbers of representatives of local housing authorities, landlords, and tenants.
  - The committee shall advise OHCS regarding the Housing Choice Voucher Program, discuss and share best practices for maximizing landlord and tenant participation, and develop strategies and outcome measures for gauging effectiveness of the program.
  - The committee shall report back to the legislature at the beginning of each regular session regarding participation and effectiveness of the program.

**Federal Strategies: (Section 7)**

- OHCS and the State Housing Council will cooperate with housing authorities to obtain approval of a waiver of federal requirements, and to renew existing waivers, to increase flexibility and streamline processes, and to make the use and distribution of the Housing Choice Voucher Program as efficient and beneficial as possible.

- The goal is to increase the supply of decent, safe, sanitary, and affordable housing for low and very low income families in this state.

### **Codification in Statute of Housing Choice Landlord Guarantee Fund and State and Federal Strategies:**

#### **(Section 8)**

- The provisions of sections 2-7 of the bill, comprising the Housing Choice Landlord Guarantee Fund and the state and federal strategies, will be codified in statute as part of ORS Chapter 456.

#### **Effective date:**

- Section 11 of the bill provides that the Source of Income Protection, Housing Choice Voucher Program, and the State Strategies (Sections 1-6 of the bill) take effect as of July 1, 2014.
- The rest of the bill takes effect as of January 1, 2014, as is the rule with all legislation unless otherwise provided by the terms of the bill. This effective date applies to:
  - The funding of the Guarantee Fund and Agency Implementation
  - The requirement to cooperate regarding federal strategies re: HUD waivers (*Section 7*).

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#### **Jim Straub, ORHA Legislative Director:**

Thanks again to Ms. Hebb for such an informative summary of the Housing Choice Act. With that information in hand, I'd like to take a look at the ways in which this law may impact Oregon landlords.

First, let me say again: this law does not force anyone to accept Section 8. It does, however, require Oregon landlords to treat Section 8 vouchers and some other forms of assistance as income under the state's protected sources of income requirement. What this means to Oregon landlords is that you do not have to change who you rent to. You are not required to change your screening criteria, including your income threshold required to rent your properties. If you would not have rented to someone who did not meet your screening criteria before this law goes into effect, chances are you will not have to rent to them now. How you view their Section 8 voucher as income is the real difference here.

And there are benefits to this bill for landlords, too. I'll remind you that when screening your applicants, you may contact the local Section 8 office for a rental reference for those applicants with a Section 8 voucher. I personally consider the Section 8 program to be one of the single best sources of tenant references. Section 8 references are complete, detailed, and tend to be much more candid than most landlord references. Most landlords these days simply answer 'yes' and 'no' questions when giving references and, based on liability concerns, are hesitant to answer additional questions. Not so with the Section 8 program. They consistently give high quality answers to open-ended questions that you rarely see from other landlords. While the references aren't entirely unbiased, they are independent references from a program that has a vested interest in placing good tenants (and giving you honest feedback about previously problematic tenants). Poor tenants give the Section 8 program a bad reputation, and so the program gives objective information to landlords about the tenants who participate in their program. I'd recommend never missing an opportunity to get a reference from the Section 8 program if you have a Section 8 applicant. (Check your local Section 8 office to confirm that they provide references. Some housing authorities do not.)

Now, as with any new law, there are some unanswered questions about how the law will be applied. There are a few questions in particular that currently remain unanswered:

- 1) *Say you have a Section 8 applicant who meets your screening criteria and you have moved on to the Section 8 inspection. What happens if Section 8 requires repairs that you do not want or cannot make?*

Do you have the right to refuse to make repairs without running afoul of the new law? Clearly we are not talking about minor repairs here. If Section 8 requires you to change a broken light bulb or replace a broken switch cover, no reasonable person would see that as a reason to refuse to move forward with the tenancy. Likewise, this isn't your opportunity to object to the entire law and simply decide ahead of time you aren't going to make any repairs, then refuse to rent to the otherwise-qualified applicant after the Section 8 inspection. If you did that, the applicant could sue you under the law and, frankly, most any

judge will see that as a transparent attempt to use your refusal as a tool for non-participation in the Section 8 process.

I'm thinking more of a landlord who, based on Section 8's exterior paint standards, is asked to repaint their entire property prior to renting to the Section 8 applicant. For some landlords on a budget, especially if we're talking about pre-1978 paint that requires lead-based paint remediation methods, this Section 8 requirement could be entirely cost prohibitive. What happens then? That's a good question, and no one really knows the answer right now. What I will say is that if you have an otherwise-qualified Section 8 applicant who you decide NOT to rent to based on a refusal to comply with Section 8's inspection requirements, be sure you have valid reasons for not making the repairs and moving forward with the tenancy. If you are sued, you will stand in front of a judge and have to justify your decision. If you choose this route, make sure you can defend your reasons for refusing to make the repairs. "I didn't think I should have to" is probably not going to be good enough.

Probably the biggest thing you want to look for when Section 8 makes inspection repair requirements is whether the recommendation is a habitability issue. You, of course, don't ever want to refuse to repair a problem that is a habitability concern. Worse, however, would be to have a habitability problem "on the record" for your property that you refuse to repair and then proceed to rent the property to someone else. If injury or damage is caused to those new tenants by the habitability problem, they will be able to make the case that you knew of the problem and rented the property anyway. I can't think of a faster way to lose a lawsuit than this.

I do want to point out that there are benefits to having a Section 8 inspection, too. I welcome having an experienced objective third-party review my rental on a yearly basis for potential problems that I may have overlooked. These inspections alert landlords to possible maintenance issues, too, such as caulking around the tub or even tenant-caused damages. You should consider any repair recommendations made by the Section 8 program carefully and consider the ways making such repairs could benefit you and reduce your liability against future harm or damage. Let me give you a personal example. I had recently purchased a rental property and had a Section 8 inspection after receiving an application from a Section 8 applicant. The Section 8 inspector discovered that my entire kitchen, every single electrical outlet, had the black and white wires crossed, reversing the polarity of the electrical current. This is not something I discovered myself, and I was grateful their inspection caught the problem so that I could make the necessary repairs before damage to persons or property occurred.

- 2) *The Section 8 program is supposed to coordinate the length of rental terms with market standards. What if I want a month-to-month rental agreement and Section 8 will only allow a fixed-term lease? Or vice-versa? Do I have the right to refuse to enter into the tenancy with the otherwise-qualified Section 8 applicant?*

Again, this remains to be seen. Part of the negotiations between landlord and tenant advocates surrounding the passage of this bill dealt with ensuring the Section 8 program could be responsive to the business needs of landlords. What if a landlord plans to sell their rental when market conditions improve and so need to retain the flexibility of a month-to-month rental agreement and don't want to require a fixed-term lease? What if Section 8 only offers you the option of a one-year lease and your rental is renting in November? That means you know you've got the potential for another vacancy the next November, when rentals are notoriously difficult to fill. Our hope is that local Section 8 offices will be sensitive to issues like these. But what happens if they're not? Honestly, we're not sure. At this point, the best recommendation I can make is, again, a reasonableness standard. If you chose not to move forward with the tenancy because you believe Section 8 is not reasonably responding to your needs, remember you may have to justify those actions before a judge if the applicant sues you. If you take this course of action, be sure you have a strong, reasonable justification for refusing to rent to the applicant.

The other option I can offer you is, if you don't want to offer a fixed-term lease to any applicant, state that in your ads. Say "month-to-month only" or "no fixed-term lease". Then, ideally, anyone who wants a fixed-term lease will choose not to apply for your rental, Section 8 recipient or not. This takes the decision about what kind of rental agreement to offer out of the hands of the Section 8 program.

- 3) *What if the Section 8 inspections aren't timely, and I'm losing money every day I sit and wait for Section 8 to finish their inspection. At what point can I cut the Section 8 applicant loose and move on to the next applicant? How long do I have to wait?*

Again, I wish I had a good answer for you. This is a reasonableness question and will depend in large part on what is considered a reasonable inspection wait in your geographical area. In my experience, waits for Section 8 inspections around the state of Oregon vary from 24 hours to upwards of 5 days. If you know you can reasonably expect to wait for 5 days for a Section 8 inspection in your area and you decided after one day that you just couldn't wait any longer and moved on to the next applicant in line, a judge is probably not going to find those actions to be reasonable. However, if 24 hours is the norm in your area and you've already waited 4 days with no good reason or explanation from Section 8, maybe it is time to move on. There is no right answer. The right answer will be whatever a judge believes is reasonable in your particular situation if the denied applicant were to sue you. We recommend erring on the side of caution in terms of your wait time, and we hope that this law will start to pressure Section 8 agencies to standardize their wait times in the future.

While I wish I could provide you with more specific answers to these questions, we do expect that many of these issues will be addressed in the coming months by the Housing Choice Advisory Committee provided for in the law. It will be the job of the committee to make recommendations for specific rules which will guide how the law is applied in real-life situations.

In conclusion, I want to say that I have participated in the Section 8 program as an independent landlord for over 18 years. Some of my best and longest-term tenants are Section 8 tenants. Section 8 tenants are often highly stable tenants, as they are generally not looking around for other rentals. They are happy to be living in your rental with a landlord who treats them fairly. I know this program can be done well. And to what do I attribute my success with the Section 8 program all these years? Screening, pure and simple. I screen Section 8 applicants the same way I screen all my applicants. Further, I love that since I provide Section 8 with copies of all my documentation, notices, and correspondence with my tenants, the Section 8 program has a complete record of my tenancy should I ever need to rely on it. I also value the references provided by the Section 8 program. They are happy to assist landlords with assessing the risk of a Section 8 applicant, and they are a great source of information (such as cross-referencing prior landlords' name and numbers, where sometimes applicants will intentionally leave off one or the other, or provide the correct landlord name but a cell phone for a different person). The Section 8 program can be a great boon during a down rental market or a difficult time of the year to rent. Many times, I find my only strong applicants during those times are Section 8 applicants. So, while there may be occasional bumps with the Section 8 program, I've found that they can be worked out and the benefits are worth it to many landlords.

Finally, I want to comment on one of the best things about this law – the mitigation fund. One of the more difficult things about participating in the Section 8 program can be collecting the cost of damages from low-income tenants. This challenge alone has kept many landlords from participating in the Section 8 program in the past. One of the components of the Housing Choice Act that the ORHA fought for most vociferously is the new mitigation fund. As you read in Ms. Hebb's summary, this is a fund for landlords who sustained damages to their rental properties by Section 8 tenants. Landlords may make a claim to be reimbursed for the cost of damages from this fund as long as the damages exceeded normal wear and tear, and the cost of damages was more than \$500 and less than \$5,000. The Housing Choice Advisory Committee will help ensure that the fund is being managed as intended. And best of all, the tenants who caused the damage must repay the fund for the amounts paid for their landlords' claims. Those tenants are held accountable for their actions, and their Section 8 vouchers are at risk if they don't comply with their repayment plan as agreed. I believe this mitigation fund will go a long way towards mitigating a major risk to renting to Section 8 tenants. This fund is like increasing your security deposit by \$5,000. I love this. Where else can you get this kind of a business guarantee? If this works as expected, my ads might read "Section 8 only."

Stay tuned for more information on the implementation of the Housing Choice Act after July 1<sup>st</sup>. We'll keep our members up-to-date about the actions of the Housing Choice Advisory Committee and the ways their recommendations impact Oregon landlords.