



## Basic Income Programs in Marin County and Oakland Exclude White People. Is That Legal?

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The answer mostly hinges on how much the government is involved.

Basic income pilot programs are proliferating throughout the San Francisco Bay Area. The goal is to empower poor families with unconditional cash grants. But there's a catch: You aren't eligible if you're white.

Last week, Oakland Mayor Libby Schaaf announced the launch of the Oakland Resilient Families partnership, which will provide 600 families with a \$500 monthly cash stipend for the 18 months.

"The poverty we all witness today is not a personal failure, it is a systems failure," said Schaaf. "Guaranteed income is one of the most promising tools for systems change, racial equity, and economic mobility we've seen in decades."

The program—modeled off of a similar pilot in Stockton, California—will be eligible to families with at least one child under 18, who are making no more than 50 percent of the area's median income (\$59,000 for a family of three), and who are black, indigenous, and/or people of color (BIPOC).

The Resilient Families partnership, while endorsed and promoted by Schaaf and the city government, is funded entirely by philanthropic donations. It will be run by a collection of community groups, including the nonprofits Family Independence Initiative, Mayors for a Guaranteed Income, and Oakland Thrives, a public-private partnership.

A recent study of Stockton's basic income pilot program found that recipients saw their financial security and reported mental well-being rise, reports NPR.

Eligible families will apply online to participate in the program and will be chosen at random. The program is scheduled to start this spring.

It's similar to another basic income pilot being launched in nearby Marin County. That program, reports the *San Francisco Chronicle*, will provide a \$1,000 monthly stipend to 125 low-wage women of color with at least one child over the next two years.

The program will be administered by the Marin Community Foundation, a nonprofit, which is also contributing \$3 million to the endeavor. The Marin County Board of Supervisors voted last Tuesday to spend \$400,000 on the program.

Oakland's program is probably the better-designed out of the two, says Max Ghenis, founder and president of the UBI Center, a think tank that researches basic income policies.

"Oakland set up smaller amounts and used the budget to expand the population that's being reached, so that's a pretty smart step," he tells *Reason*, saying that research on cash transfer programs shows that smaller amounts provided to a larger number of people do a better job of alleviating poverty.

The same is true of programs that target families with children, which both Marin County and Oakland do. "The impact [of a cash stipend] on the future well-being and development of those kids is much stronger than alleviating the poverty of adults," Ghenis says.

Transfer programs with strict income cutoffs often discourage recipients from earning more money, as additional wages could cost them even more in benefits. These pilot programs should be able to avoid that perverse incentive, given that once participants are selected, they'll remain eligible for the monthly cash stipend even if their income rises.

Limiting eligibility of these programs by race could well prove legally problematic, says Walter Olson, a legal expert at the Cato Institute. The U.S. and California constitutions, he notes, generally prohibit race-selective programs and public services.

This is particularly true of Marin County's decision to award public funding to its local basic income pilot program.

"The structure of the program is racially discriminatory. It will probably not make it over the threshold for when government is allowed to discriminate," Olson says, telling *Reason* that governments can generally only discriminate along racial lines when implementing programs narrowly aimed at righting past discriminatory behavior by that same government.

The legal issues around Oakland's basic income pilot are harder to parse, he says, given that it is privately funded and administered, but also heavily promoted by city officials.

"The issue that comes out is, is there state action?" says Olson.

Much of the fleshing out what counts as state action stems from court cases in the post-Jim Crow South, where local and state governments would nominally privatize government services like schools or libraries in order to maintain racially discriminatory rules about their use.

Oakland's basic income pilot could be found to be unconstitutional on similar grounds depending on how active of a role city officials take in administering or directing people toward the program, says Olson.

At the same time, he says, libertarians should be wary of defining state action too broadly.

"By libertarian standards, there ought to be quite a bit of leeway for local government to talk up things, endorse things," says Olson, giving the example of a city closing off streets for a parade honoring a local same-sex college.

While the local government would be prohibited from operating a same-sex college, it shouldn't be so constrained as to not be able to promote it. That's separate from the political question of whether local officials should be endorsing race-selective programs the way Schaaf has.

"The legal controversy is only part of it. I think it's appropriate to have a controversy about what our mayors are getting into when they seem to put a city's endorsement behind these kinds of things," says Olson.

"We've just gone through ten years of agitation about how you should be allowed to have medical studies" that select for race, he says. There's no reason that social experiments should be immune from that same scrutiny.

Ghenis says that race-based eligibility requirements could also undermine public support for basic income proposals.

"I do worry that something like this could be spun as something closer to reparations than [universal basic income]. The polling is much stronger for semi-universal cash relief than it is for reparations," he says. "I think there's a political case and also an external validity case. If ultimately, we want to get to UBI, we need to see how more inclusive programs fare."