

Clients & Friends Memo

Biden-Harris Administration Issues White Paper Addressing Tenants' Rights

February 14, 2023

On January 25, 2023, the White House Domestic Policy Council and National Economic Council published a Blueprint for a Renter Bill of Rights (the "Renter Bill of Rights") on behalf of the Biden-Harris Administration (the "Administration"). The stated purpose of the Renter Bill of Rights is to "support the development of policies and practices that promote fairness for Americans living in rental housing".

The Renter Bill of Rights is described as a non-binding statement of principles, and not an actual statement of U.S. government policy. It does not supersede, modify, or direct an interpretation of any existing Federal, state, or local statute, regulation, or policy. Rather, it appears to be a statement of the Administration's "wants" with respect to renter protections, and a starting point from which to begin conversations regarding the same.

The Renter Bill of Rights addresses five so-called "principles" that the Administration believes are essential to creating "fairness for renters in the housing market". Each such principle and the Administration's corresponding action plan is summarized below.

1. Safe, Quality, Accessible and Affordable Housing.

The Administration believes that renters should have access to safe and affordable housing, free of health and safety hazards, and that access to such housing should be free of significant barriers such as overly burdensome application and documentation requirements and screening. Further, the Administration believes that rent increases should be "reasonable", with the acknowledgment that rents may need to increase to cover landlord operating costs.

The action plan described in the Renter Bill of Rights is broken down broadly into two categories: (i) Increasing Housing Affordability and Access, and (ii) Improving Housing Quality. The Administration intends to implement an action plan through various federal agencies, including the Federal Trade Commission ("FTC"), the Department of Justice ("DOJ"), the Federal Housing Finance Agency ("FHFA"), the Department of Housing and Urban Development ("HUD"), the

Department of Defense (“DoD”), the Department of Treasury (“Treasury”), the Consumer Financial Protection Bureau (“CFPB”), and the Department of Agriculture (“USDA”).

Specifically, the Administration announced the following actions:

Increasing Housing Affordability and Access

- The FTC plans on obtaining data to assist in identifying unfair housing practices and will explore ways to expand its use of authority under the FTC Act to take action against such practices.
- The DOJ plans on hosting a workshop to potentially shape guidance updates around anticompetitive information sharing.
- In 2023, the FHFA required that at least 50 percent of all Freddie Mac and Fannie Mae purchases of multifamily loans be “mission driven”, indicating that the FHFA would like Freddie Mac and Fannie Mae to focus on financing affordable housing. Loans will qualify as “mission driven” if the loan agreement governing the loan restricts rents at levels affordable to households with incomes between 80 and 120 percent of area median income.
- The FHFA, Fannie Mae, and Freddie Mac will be engaging with stakeholders to identify opportunities and challenges of adopting and enforcing tenant protections, including policies that limit “egregious” rent increases at properties backed by Fannie Mae and Freddie Mac loans.
- The DoD will ensure that military members can receive housing assistance from their installation Military Housing Office, including assistance with finding housing, inspecting units, negotiating rents, reviewing leases, resolving landlord disputes, and addressing accessible housing issues and potential housing discrimination complaints.
- HUD will seek public comment on ways it can improve access to individuals with disabilities to HUD-assisted programs and HUD-assisted facilities.
- The White House, USDA, and HUD will meet with tenant and tenant advocates on a quarterly basis to discuss tenant protections.

Improving Housing Quality

- USDA will roll out a pilot program in 2023 instituting a uniform and independent inspection protocol across its housing portfolio, using trained inspectors.
- HUD will launch the National Standards for Physical Inspection of Real Estate (“NSPIRE”) in 2024. NSPIRE is intended to reduce health and safety hazards in housing and aligns multiple HUD programs to a single set of inspection standards.

- FHFA, Freddie Mac, and Fannie Mae will update radon testing diligence standards with the goal of better implementation and enforcement.

2. Clear and Fair Leases.

The Administration believes that “clear and fair leases” will assist with ensuring that tenants better understand the terms of the lease that they are signing, and that requiring “clear and fair leases” will reduce the number of leases that include unauthorized terms, hidden or illegal fees, false representations, or other unfair or deceptive practices. Specifically, the Administration is advocating for leases that are written in simple and clear language accessible to the renter, with a leasing process that ensures that the tenant understands the terms of the lease through a plain-language briefing.

The Renter Bill of Rights describes only one action plan related to “clear and fair leases”. The USDA is in the process of developing a “clear and fair lease” that is similar to the model lease used in HUD Section 8 properties. The USDA intends to use this lease across their 400,000-unit multifamily portfolio. The USDA will also develop a Tenant’s Rights and Responsibilities brochure for tenants in rural areas.

3. Education, Enforcement, and Enhancement of Renter Rights.

The Administration believes that it is the responsibility of federal, state, and local governments to educate renters on their legal rights, and that the same governments should ensure that those rights are being enforced.

The Renter Bill of Rights focuses on using educational tools to address three specific issues: (i) Tenant Background Checks, (ii) Source of Income Discrimination, and (iii) Protecting Survivors of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.

Tenant Background Checks

- The CFPB will identify guidance or rules that it can issue to hold tenant background check companies accountable for having reasonable procedures to ensure accurate information in the credit reporting system. The CFPB will also coordinate with federal and local government agencies to ensure tenant screening companies are not disseminating misleading information about tenants.
- HUD, FHFA, FTS, and USDA will work with CFPB on best practices for the use of tenant screening reports. HUD, FHFA, and USDA plan to strongly encourage owners in their respective portfolios to align with these best practices. HUD will release guidance addressing the use of tenant algorithms in ways that they may violate the Fair Housing Act.

Source of Income Distribution

- Treasury will meet with tenants, advocates, housing providers, and researchers to discuss ways to further the goals of tenant protections, including those around source of income, particularly with respect to housing that is benefiting from Low Income Housing Tax Credits.
- HUD is working on guidance to address source of income discrimination.
- Fannie Mae launched the Expanded Housing Choice pilot program to offer a pricing incentive to property owners who agree not to discriminate against voucher holders.
- Protecting Survivors of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.
- HUD will implement, via rulemaking, guidance, and other means, the Violence Against Women Act's ("VAWA") new housing protections for survivors.
- HUD's upcoming Community Compass Notice of Funding Opportunity will include up to \$5 million for ongoing training and technical assistance to HUD grantees and other stakeholders on VAWA's housing protections and remedies for survivors.

4. The Right to Organize.

The Administration suggests that renters should have the freedom to organize without interference or harassment from their housing provider or property manager. Additionally, the Administration suggests that tenant associations should be recognized by their housing provider or management company, and that tenants should not be at risk of losing housing because of organizing.

The Bill of Rights proposes a handful of actions centered around tenant education, with different programs for different types of tenants:

- For public housing tenants, the Bill of Rights suggests webinar training as a supplement to HUD's recently published "Resident Organizing and Participation Toolkits".
- For military members living in DoD's government-owned, government controlled, or privatized housing, DoD is committing to ensuring that military members have the right to organize and report housing issues without fear of retribution or retaliation.
- For other tenants of multifamily housing, HUD is developing grant opportunities to distribute appropriated funds to support leadership development and tenant education and outreach.
- For tenants of properties converted to HUD's Rental Assistance Demonstration ("RAD") program, HUD will continue building on existing training and technical assistance strategies to assist tenants with engagement with owners and with grievance procedures.

5. Eviction Prevention, Diversion, and Relief.

The Administration suggests that avoiding housing instability requires that renters have access to resources that help them avoid eviction, and that eviction proceedings are fair. The administration believes that evictions should be limited to evictions for “just” or “good” cause, and that tenants should be able to avoid evictions through alternatives outside of the legal system, including negotiation, mediation, or arbitration.

If an eviction is filed, the Administration believes that tenants should be given 30 days’ notice, right to counsel, protection from extrajudicial evictions and lockouts, hearings in a language they can understand, independent hearing officers, a written record with the ability to present evidence, the right to conduct discovery and cross-examination, and the ability for tenants to appeal eviction judgments without bond requirements. Further, the Administration believes that all eviction case filings should be immediately sealed and should remain sealed for minors, tenants who prevail in their eviction cases, and for tenants who reinstate their tenancy after entry of judgment.

The Renter Bill of Rights proposes certain actions to address the Administration’s concerns, including rental assistance grants, tenant notice requirements, and research on tenant protection plans to be published at a later date.

Specifically, the Administration announced the following actions:

- HUD will propose rules that require that Public Housing Agencies provide no less than 30 days’ advanced notification of lease termination due to nonpayment of rent.
- HUD will award \$20 million for the Eviction Protection Grant Program in fiscal year 2023. These funds will be used by nonprofits and governmental entities to provide legal assistance to low-income tenants at risk of or subject to eviction.
- FHFA, Freddie Mac, and Fannie Mae will make it easier for tenants to access information to determine whether they live at a property backed by Fannie Mae or Freddie Mac financing. Tenants of all such properties who are subject to eviction for nonpayment of rent must be given 30 days’ notice to vacate before the tenant can be required to leave the unit.
- Freddie Mac will publish a paper on marketable baseline tenant protections and plans as part of FHFA’s Equitable Housing Finance Plan initiative. Freddie Mac plans on using the paper to develop potential enhanced tenant protections in 2024.

In its current state, the Renter Bill of Rights is more of a statement of ideas and the beginning of a conversation than it is concrete policy. Most of the action plans and proposals are broad and will require significant additional detail and fine-tuning before any potential implementation. Nevertheless, the action plans and proposals have the potential to seriously affect owners and

operators of multifamily housing. The good news is that the Administration appears to be interested in receiving input from owners and operators of multifamily housing. Owners and operators of multifamily housing should remain engaged with and apprised of developments arising out of the Renter Bill of Rights. We will continue to monitor these developments.

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