

## **How Will HUD's Policies Under the Biden Administration Affect the Industry?**

Biden's housing priorities are significant, and the U.S. Department of Housing and Urban Development (HUD) certainly will play a critical role. His team has already released the list of agency review advisors who will help to ensure that HUD is prepared to meet the nation's urgent housing challenges from day one. A number of high-profile names are being floated to lead the agency as well. The National Apartment Association (NAA) has analyzed the records of the HUD advisors named to the transition team and potential secretary picks to predict how the agency's priorities may change under the Biden Administration and affect the rental housing industry.



At the helm, Erika Poethig, Vice President and Chief Innovation Officer at the Urban Institute, leads the HUD transition team. Poethig, also former Acting HUD Assistant Secretary for Policy, Research, and Development under President Obama, helped establish the White House Council on Strong Cities and Strong Communities. During her tenure at the Urban Institute, Poethig has shown strong support for reducing regulatory barriers, at all levels of government, that prevent the development of affordable housing. Her stance very much aligns with President-Elect Biden's goal to tie federal funding for municipalities to the elimination of these barriers. Additionally, Poethig has advocated for greater public subsidies to help offset the high cost of new multifamily construction and increase overall housing affordability.

Alongside Poethig, the HUD transition team is heavily weighted with former HUD staff from the Obama Administration and housing advocates from organizations like the Urban Institute, the Center on Budget and Policy Priorities and the New York University's Furman Center. While we agree with these organizations in their support of rental assistance, we disagree with their support of rent control, source of income protections for voucher holders, eviction moratoria and other displacement prevention measures for renters affected by COVID-19 that unfairly put the financial burden of the crisis on housing providers. While Biden has not officially lent his support to these policies, his rhetoric during the campaign season and choice of HUD transition advisors would suggest a willingness to consider these ideas as his housing priorities continue to take shape.

Biden's team has also hinted at potential picks to lead HUD, signaling former Jacksonville, Fla. mayor Alvin Brown as the top candidate. Brown's consideration comes as a surprise to some Floridians given his quiet housing recording in Jacksonville. His value, according to insiders, comes from the relationships that he has cultivated with top federal and state lawmakers.

Maurice Jones, another Obama-era HUD veteran, is also under strong consideration for the top job. As CEO of the Local Initiatives Support Corporation, Jones has helped provide private financing for more than 400,000 affordable homes. Jones' expertise in housing finance would align directly with Biden's call to direct more than \$100 billion to affordable housing development.

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Further down Biden's shortlist for HUD Secretary are California Congresswoman Karen Bass, Atlanta Mayor Keisha Lance Bottoms, and Diane Yentel, President & CEO of the National Low-Income Housing Coalition (NLIHC). Rep. Bass and Mayor Bottoms bring experience in community activism from two of the nation's largest cities, Los Angeles and Atlanta, respectively.

Yentel, also a former HUD staffer under President Obama, is well-known amongst progressive leaders and renters' rights advocates. Under Yentel's leadership, the NLIHC outlined a number of policy initiatives that the Biden Administration could pursue to end homelessness and achieve housing justice, including support for:

- Continued extension of the federal eviction moratorium (going a step further to suggest "automatic, universal" eviction protections for renters);
- Funding for legal defense and federal "right to counsel" for renters in eviction courts;
- Federal just cause eviction protections;
- Adding source of income to the list of protected characteristics in the Fair Housing Act;
- Enforcing the 2016 approach to the Fair Housing Act liability rule which holds housing providers accountable for their residents' discriminatory conduct; and
- Restrictions on resident screening criteria through federal fair housing laws and guidance, including lookback periods on criminal history and limitations on types of history that may be considered.

As the industry anxiously awaits to learn whether the next administration will extend the CDC's federal eviction moratorium or continue its protections in some other form moving forward, NAA continues its advocacy efforts on behalf of the industry to push for balanced housing policy. Importantly, more work must be done to help rental housing owners and operators affected by COVID-19. NAA stands ready to work with the next Administration and Congress to help tackle the housing challenges our country faces and serve as the leading voice for the rental housing.

## **Reasonable Accommodation – Accommodating Residents With Allergies**

*By: Fair Housing Institute*



The focus of this article will be on working with a resident who notifies the management of allergies that they deal with. It can be difficult for management to provide reasonable accommodations to residents with allergies. What can you do? What are some best practices?

As many of you have experienced, it appears that the occurrences of residents with severe allergies, asthma, and multiple chemical sensitivity are increasing. These types of situations can create difficult problems for a housing provider attempting to meet the needs of the residents.

They want to provide reasonable accommodations, while also not limiting the use of chemicals and products by other residents and staff, particularly those that are critical to building maintenance.

## Reasonable Accommodation – Accommodating Residents With Allergies

*Continued*

As an example, let's review the situation of Mike Jones, a resident of Happy Village. Mike has allergies to fresh paint and he has **requested that no new paint** be applied anywhere inside his building. The first issue to address is whether Mike is disabled, and, therefore entitled to a reasonable accommodation.



### Is The Allergy A Disability Or Not?

The Fair Housing Act defines a disability as a mental or physical impairment that substantially limits one or more major life activities. If Mike's symptoms are minimal, arguably he's not substantially limited by his allergies, and thus not disabled.

For most of us with allergies, while the reactions may be uncomfortable, it is probably reasonable to state that those reactions do not "substantially limit one or more major life activity" thereby rising to the level of a disability.

In the request form and verification form it's ok to point out the subtle but important difference between an "impairment" and a disability. It's also ok to ask Mike and his verifier whether Mike has been tested to determine what he's allergic to, and whether there may be other substances involved in his allergy attacks, i.e., smoking, animals, and household chemical products.

If the allergy is not a disability, then management is not legally required to accommodate Mike. On the other hand, if paint fumes cause Mike's throat to close and hives to break out on his body, these symptoms would probably be considered a fairly substantial limitation to his major life activities. In this case, **only a third party verifier can determine whether Mike is disabled**, and, if so, what accommodations his disability requires to enable him to live in his apartment. In this situation, it's a good idea to ask the verifier what other alternatives the verifier can propose to alleviate Mike's reaction.

For purposes of our example, let's say that Mike has provided verification from his doctor that his allergy is a disability. It states that he needs to be far away whenever paint is applied and for at least 48 hours afterwards. In this example, a reasonable accommodation would be to resist painting within Mike's apartment while he lived there. The housing provider could also agree to provide him advance notice whenever anyone is planning to paint anywhere within his building.

### Reasonable Accommodation Option

Another reasonable accommodation would be to discuss with Mike whether it would be helpful to perform all painting within the same time period. Mike could then choose to remove himself from the building for 48 hours after the inception of the painting. It is not a housing provider's responsibility to pay for alternative housing arrangements if Mike decides to leave the building for a few days whenever painting is planned. Another discussion topic with Mike is whether a different type of paint would significantly decrease his reaction. If so, and if the price of the different paint is not exorbitant, a change to that type of paint would be a reasonable accommodation.

## Reasonable Accommodation – Accommodating Residents With Allergies

*Continued*

It's important to note that these discussions with Mike to obtain a better understanding of the problem and discuss possible resolutions are required. HUD and the courts now view the “interactive process” as an essential step by housing providers during the reasonable accommodation process if the housing provider plans to deny or offer the resident an alternative accommodation.

### Reasonable Accommodation Or Unreasonable?

We recently learned of a resident who requested that none of the other residents within his building use any type of chemicals within their own apartments without providing the resident with one hour prior notice. For persons with multiple chemical sensitivity this may be a preferable situation, but **it is highly unlikely that this request would ever be deemed to be reasonable** in multifamily housing.



While a housing provider would be justified in refusing to require such notice by other residents, it would be a reasonable accommodation to send a letter to the other residents requesting that no chemicals be used outside the apartments or in the common areas. It would also be a reasonable accommodation to provide this resident with advance notice if the housing provider will be using any chemicals in and directly outside the building.

As with Mike's situation, this type of request requires a housing provider to conduct an interactive process by having one or more conversations with the resident so that the housing provider is able to offer the most effective alternative accommodation.

As you can see there is no cookie-cutter approach to dealing with what a reasonable accommodation is and is not. It is a broad topic that requires education and training. Reviewing potential scenarios, like the ones discussed, can also provide perspective.

### Regular Fair Housing Training a Must

Property management professionals are best served when regularly trained to identify the issues and then discussed as a team. Dealing with reasonable accommodation requests can be quite dynamic. Working together as a team with an understanding of your company's policies and procedures achieves the best results.

If you are not clear of the legal requirements, reach out to a qualified fair housing attorney when necessary. The more you know the better you will be when dealing with complex reasonable accommodation requests.

## NAA Joins Coalition to Protect Industry Jobs from Future Pandemics



The National Apartment Association (NAA) recently joined with more than two dozen industry organizations and private firms representing the restaurant, entertainment, hospitality, gaming, retail, communications, broadcasting and real estate sectors to form the Business Continuity Coalition (the Coalition). The goal of the coalition is to work with policy-makers and other stakeholders to develop a plan for protecting jobs and mitigating future economic damage from business interruptions resulting from pandemics and other national

emergencies. The members of the BCC represent a combined 50 million jobs across the nation.

As the COVID-19 pandemic required broad-based closures and shutdowns, employees and businesses of all sizes have been significantly impacted. The Coalition advocates for a public/private business continuity insurance program modeled after the Terrorism Risk Insurance Act passed following the 9/11 attacks. Such a program would, in the event of a government-ordered shutdown, enable employers to maintain payroll and supply chains to protect jobs and reduce stress on the financial system. Ultimately, this can speed economic recovery when government-imposed limitations on operations are lifted.

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**Esther Mills**  
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