

## Presidential Hopefuls’ Policy Platforms and the Rental Housing Industry

By: Sam Gilboard, NAA

### **Harris Pick Shakes Up Biden’s Housing Priorities**

When Kamala Harris’ presidential campaign ended in December 2019, many thought it would be the end of the California senator’s journey to the White House. But Joe Biden’s promise of selecting a female vice presidential running mate, and growing calls for woman of color to be selected, brought her back into focus. With Sen. Harris formally added to the Democratic ticket, she has brought new life to the campaign trail with the prospect of her pitted against Vice President Mike Pence at the October 7 debate. She is expected to gin up her a massive online presence and have major influence on the ticket’s policy formulation.



· 2020 PRESIDENTIAL ELECTION ·  
HOUSING PRIORITIES



What does this spell for Biden’s housing policy? The answer is quite a bit.

On most housing issues, Biden and Harris closely align. One facet of Biden’s housing strategy includes the establishment of a federal right-to-counsel standard for individuals facing eviction. Earlier this year, Harris introduced the Rent Emergencies Leave Impacts on Evicted Families (RELIEF Act) in response to the growing COVID-19 pandemic. The bill would effectively ban evictions for 18-months, place a halt of rent increases during that period, and create a renters legal assistance fund to combat evictions. While well intentioned, the policies proposed in this bill would be devastating to the rental housing industry, affect its long term viability and exacerbate existing housing affordability challenges around the country, not to mention, ultimately, impede the economic recovery during the COVID-19 pandemic.

On climate, both Biden and Harris share an ambitious approach to enacting progressive green policy. Biden’s climate plan sees a net-zero emissions United States no later than 2050 and a reduction in the carbon footprint of the country’s building stock by 50 percent by 2035. Harris signaled during her own campaign similar sentiment, zeroing in on the impact environmental change has on low-income communities. Whatever the outcome of Biden’s environmental initiatives, the plan must contend the high cost and impact on affordability that deep energy efficient retrofits can have on a property. Any plan must ensure that property owners are granted broad access to the resources necessary to keep up with the plan’s goals.

Like many of her fellow presidential candidates, including Biden, Harris supported the creation of a renters’ tax credit that would subsidize housing costs for renters who spend more than 30 percent of their income on housing. This tax credit fails to offer a solution to the nation’s housing shortage. It also could incentivize bad actors to raise housing costs, thus deepening the affordability crisis.

## Presidential Hopefuls' Policy Platforms and the Rental Housing Industry (Cont'd)



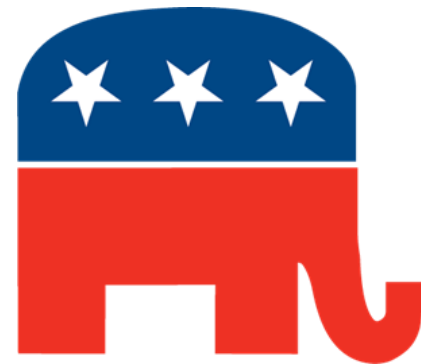
The lack of available and affordable housing is not lost on either member of the ticket. In Biden's original housing plan, he provides for a \$100 billion Affordable Housing Fund that will seek to fill in the housing gap. In 2019, Harris and Congresswoman Maxine Waters introduced the *Housing is Infrastructure Act* (H.R. 5187) that unleashed billions into various housing opportunities. The bill would make \$10 billion of Community Development Block Grant (CDBG) funding to states and cities contingent on demonstrating a reduction in barriers to housing development. Amongst other provisions, the bill would also invest \$5 billion into the Housing Trust Fund (HTF) to help leverage greater private capital for housing projects.

Housing was not the centerpiece issue of Harris' presidential campaign, although her legislative history clearly shows that she has a commitment to effecting change in the housing space. Biden has also demonstrated that he is willing to let the policies of his former fellow candidates influence his own campaign's platform. His pledge to not run for a second term should his age or health not permit has shined an even brighter spotlight on Harris as the Democratic heir apparent. The question is whether she will continue the Obama-Biden legacy or trailblaze her own path to the presidency.

## **What Will Trump's Housing Policy Legacy Be?**

### ***Tackling Development Barriers***

Throughout Trump's presidency, he has made good on his promise to "roll back the red tape [across federal agencies] that burdened Americans and stifled economic growth." In line with these efforts, we were encouraged to see President Trump establish the first ever White House Council on Eliminating Regulatory Barriers to Affordable Housing in 2019. The group was charged with identifying, addressing and removing physical and regulatory barriers which impede development and raise the cost of existing housing in communities across the country.



NAA played a vital role in supporting the Council's efforts, presenting the results of its U.S. Barriers to Apartment Construction Index at a White House listening session. With the assistance of its affiliate network, NAA also submitted feedback to the Council highlighting the challenges for housing providers and developers which contribute to the rising cost of housing nationwide. NAA continues to share insights with the Office of the President to advance the industry's policy priorities, and we eagerly await the Council's report on its findings and recommendations.

Additionally, we were pleased to see the White Council of Economic Advisors dedicate an entire chapter in their 2020 Economic Report to the Administration's commitment to amplifying housing equality by reducing regulatory barriers.



# Legislative News



## **Presidential Hopefuls' Policy Platforms and the Rental Housing Industry (Cont'd)**

### ***Discussion Leads to Action***

Under the Trump Administration, the Department for Housing and Urban Development (HUD) created several opportunities to engage housing providers on the issues that matter most. In 2018, HUD created the Landlord Task Force and completed a seven-city listening tour to elicit feedback from stakeholders about the Section 8 Housing Choice Voucher (HCV) Program. Understanding that housing providers play a pivotal role in the success of the program, HUD sought input on how to increase voluntary participation, create better outcomes for all program participants and ensure that voucher holders have increased access to housing in areas of opportunity.

In line with this initiative, HUD announced its new Housing Choice Voucher Mobility Demonstration in July 2020, which will allow participating Public Housing Authorities (PHAs) throughout the country to offer wrap-around services, thereby increasing the number of voucher families with children living in opportunity areas. Additionally, the program will encourage participating PHAs to adopt administrative policies that further increase private housing provider participation in the HCV program. The demonstration is just another step this administration has taken to ensure the long-term success of the HCV program. It would not be possible without the collaborative efforts with housing providers.

### **New Rule on the Horizon**

In a major victory for the industry, HUD issued a revised version of its disparate impact rule in 2019. While the rule has yet to go into effect, the amendments offered by HUD under this Administration shifts the burden of proof to the plaintiff to prove a causal connection between the policy in question and alleged discriminatory effect and created new defenses, reducing the risk exposure for housing providers. The final rule is expected to land by the end of 2020.

As background, in 2013, HUD issued its final rule that formalized the agency's position on disparate impact liability. The rule established the standard to determine when a real estate practice or policy that is neutral on its face has a disproportionate negative impact on members of a protected class, in violation of the Fair Housing Act. For years, we have asked HUD to revise the rule to better reflect the Supreme Court's decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*

At issue for apartment owners and managers is that seemingly neutral and common business policies, such as occupancy limitations, criminal background screening and Section 8 voucher policies, among others, could trigger discrimination claims despite no intention of singling out a particular group for adverse treatment.

### **HUD Fetches New ESA Guidance**

In January 2020, NAA welcomed the news that HUD released long-awaited, updated guidance regarding reasonable accommodation requests for emotional support animals. We urged HUD for years to issue new guidance as more clarity continues to be needed in the face of growing abuse of the law intended to protect the rights of disabled persons.

## **Presidential Hopefuls' Policy Platforms and the Rental Housing Industry (Cont'd)**

The Guidance takes important steps to address long-standing concerns in this area of fair housing, however, for apartment owners and operators, it leaves several pressing concerns unaddressed and raises additional questions. Such ambiguity in the guidance could enable greater abuse by online sellers of “verifications,” in some cases, could increase risk to employees and residents of animal-related injuries, and undermines housing providers’ ability to effectively evaluate reasonable accommodations requests.

### **By the Authority Vested in Me**

Most recently, President Trump issued a series of executive actions aimed at providing additional relief to households and businesses in light of the ongoing COVID-19 emergency. We were pleased to see that Trump’s “Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners” directed federal agencies to find opportunities to provide temporary rental assistance to renters and, in another executive action, acknowledged the importance of enhanced unemployment benefits to keep households stable during the crisis. His executive order on housing did not, on its own, extend the CARES Act eviction moratorium.

Far from conventional, President Trump’s housing policy is uniquely formulated to meet several of the needs of the multi-family industry. Still, NAA will continue to work with the administration, Congress and federal agency leaders to advance the rental housing industry’s priorities and promote balanced housing policy. We look forward to seeing how these issues and more are addressed during President Trump and Joe Biden’s first spar on September 29 in Cleveland, Ohio.



20\*20 PRESIDENTIAL  
DEBATE

### **Kansas again limits evictions, foreclosures. But governor wants Congress to act.** *By Jonathan Shorman*

Kansas Gov. Laura Kelly plans a short-term reinstatement of limits on evictions and foreclosures to pressure Congress to approve additional pandemic relief funding.

The Democratic governor said Monday she will issue an order prohibiting residents from being forced from their homes and apartments for two weeks in hopes federal lawmakers will act. The text of the order says it will remain until Sept. 15 or it’s rescinded.

Republican and Democratic leaders in Congress have been at odds over the size and scope of a future relief package. Kelly said she will consider extending her order if additional stimulus isn’t approved.

Unlike some past directives, counties won’t have the option of opting out of the order, Kelly said. That’s likely because counties are only allowed to repeal orders related to public health.

“I can’t sit back and do nothing while the Senate has gone on vacation without addressing the issue,” Kelly said at a news conference.

## Kansas again limits evictions, foreclosures. But governor wants Congress to act. (Cont'd)

Only evictions and foreclosures related to inability to pay because of the pandemic will be prohibited, the governor said. According to the text of the order, an individual or family must be suffering financial hardship due to COVID-19 to qualify.



“No landlords ... shall evict a residential tenant when all defaults or violations of the rental agreement are substantially caused by a financial hardship resulting from the COVID-19 pandemic,” the order reads.

The order is similar to a previous moratorium the governor issued in the early weeks of the pandemic. The earlier order expired in May.

The first order, announced in mid-March, prohibited financial institutions from starting any foreclosure or eviction proceedings on residential or commercial property because of non-payment due to COVID-19.

When the order expired, Kelly’s office said improvements in the state’s handling of unemployment claims led her to allow evictions and foreclosures to proceed. But within weeks, the secretary of labor resigned amid continued problems and claw backs of duplicate payments that over drafted the bank accounts of some benefit recipients.

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