

Strengthen Tenants' Rights

Of the almost 44 million renter households in the U.S., nearly 11 million have extremely low-incomes, at or below the poverty line. Black and Brown people are disproportionately among the lowest-income households. Renters who live below the poverty line are especially susceptible to discrimination, substandard housing conditions, and eviction. While affordability solutions will inevitably raise prospects for low-income households, a comprehensive approach to equity and justice in housing must include fair treatment of tenants, enforcement of their rights, and ensured housing stability.

Robust rights for renters must address the application process, the terms and conditions of renting, and the eviction process. The application process is stacked against renters with increasing restrictions and almost no transparency. In private rental housing, landlords have broad authority to choose their tenants, limited only by fair housing laws that prohibit discrimination against protected classes. For federally assisted units, there are very few additional constraints on landlords.

The tenant screening process is increasingly controlled by tenant screening companies, and the screening criteria determined by landlords often denies access to large portions of applicants. These criteria include credit scores, eviction records, and criminal history, which bar anyone with a mark in any category. The data sets used for tenant screening have significant quality issues and are often riddled with inaccuracies. Because of the inherent racism in the criminal justice system, in eviction filings, and in the unregulated use of this data, these practices often conceal discriminatory bias and reinforce a history of systemic racism and discrimination against people with disabilities. Further, the process has no transparency, with applicants rarely able to access the application criteria, the reports detailing reasons for their denials, or a chance to appeal the decisions.

When renters do have access scarce affordable housing, tenants are often subject to unfair or abusive landlord practices that threaten their housing affordability and stability. This is especially true for the lowest-income renters, immigrant families, domestic violence survivors, and households with formerly incarcerated individuals. All affordable housing tenants should be guaranteed basic and enforceable rights which should be included in lease provisions.

Conditions in affordable housing are inconsistent across the country. Local codes, state law, or implied warranties require most rental housing to be decent and habitable, but units often still fail to meet these standards. Affordable housing program units sometimes fail to meet basic physical condition standards even though they are supported by generous federal subsidies. Substandard housing causes adverse health and safety outcomes for tenants, with lasting impacts on childhood development and education, health care costs and economic well-being.

NHLP has developed a proposal for the Biden-Harris administration to develop a baseline of uniform

tenants' rights for all federal affordable programs and to condition federal funding to states on expanding tenants' rights in the private market. This proposal would ensure fair access to the rental market, protect the rights of tenants who occupy federally-assisted housing, ensure habitability of housing in both public and private housing, and establish just protections for renters in the private market. These rights can be codified using the following recommendations.

Ensure fair access to rental housing.

- **Implement a single application for all federally-assisted housing in each region.** HUD should develop streamlined applications for units that accept federal assistance or are within the federal portfolio. There should be no application fee. Admission criteria should be approved by the responsible agency, publicly available, and limited to those necessary to fulfill affordable lease obligations. Any rejection of application should be delivered in writing with an opportunity for a tenant to appeal.
- **Require transparency in rental screening in the private market.** Congress should enact a law to regulate landlord obligations in tenancy decisions. Such law should require that tenants are able to access the screening policies for a property, reasons for any denials, and the relevant supporting information. Automated or algorithmic screening should be banned, along with the use of outdated landlord-tenant history and disputed arrearages, and tenants should be allowed to appeal with mitigating information. Unfair application fees should be prohibited.
- **Expand anti-discrimination protections for individuals who have had contact with the criminal legal system.** Federal agencies and Congress should disconnect a tenant's contact with the criminal legal system from their ability to secure housing.
- **Prohibit source of income discrimination.** Ensure that landlords do not discriminate against renters with vouchers or other rental subsidies. **Prohibit discrimination against LGBTQ households.**

Guarantee fair treatment and other rights to tenants of federally assisted units.

- **Prohibit unreasonable terms and conditions in leases and house rules.** Further, all current occupancy-related policies of housing authorities and affordable housing owners should be freely available to tenants and applicants without charge, or by website posting.
- **Keep rent in all programs affordable to very low-income tenants.** In programs where rent is not based on tenant income, such as the Low-Income Housing Tax Credit (LIHTC), rents must reflect a below-market discount and owners should be required to seek and accept any available subsidy. Reasonable utility allowances that cover both heating and cooling should be provided to tenants who pay utilities.
- **Establish federal good cause protections.** All tenants deserve good cause protections for both eviction and lease non-renewal, including those tenants with enhanced vouchers. It is also essential to end "one-strike" eviction policies.
- **Fully implement Violence against Women Act (VAWA) 2013 protections in all programs.** Specifically, domestic violence survivors should be guaranteed vouchers or emergency transfers to retain affordable housing when fleeing their abusers.

- **Make all federal housing programs compliant with Title VI Limited English Proficiency.**
- **Establish an Office of Tenant Ombudsperson at each responsible agency.** These offices can ensure that the policies and practices of each program are fully responsive to tenants' needs.
- **Ensure judicial enforcement rights for tenants.** Tenants and applicants should be able to pursue legal action for violations of statutory and regulatory rights, and of program contracts between agencies and owners.
- **Guarantee tenants' right to organize.** Collective tenant action is often necessary to secure improved conditions when landlords, owners, or responsible agencies fail to comply with their obligations. Tenants often face harassment or retaliation for organizing or standing up for their rights. Most states do not protect tenants from retaliation for organizing their fellow tenants. And even some of the federally-assisted programs (most notably LIHTC) do not protect tenant organizing. Federal policy must establish tenants' right to organize independently of management. Federally-assisted programs must also provide funding for tenant outreach, education, and organizing; and agencies must take enforcement action against violations of the right to organize.

Ensure habitability of housing in the private market and all federal programs.

- **When issues are identified, owners and responsible agencies must be required to take action.** The responsible parties should have clear and enforceable remediation obligations with established timelines. Owners who do not comply must be sanctioned and possibly barred from future program participation. Responsible agencies should be fully transparent in their enforcement activities.
- **Ensure tenants' full rights to remediate habitability concerns.** Tenants should be able to report violations, participate in inspections and in remediation, and contribute to redevelopment and relocation planning; and do all of this protected from retaliation. Tenants must also have enforcement rights, including rights to demand remediation of hazardous or unhealthy conditions and appropriate compensation. They must have timely, temporary relocation to safe and habitable affordable housing near the property while remediation occurs.
 - If the property requires substantial rehabilitation and longer-term relocation, it is essential to minimize permanent displacement. Tenants must have a right to return to the rehabilitated property without eligibility re-screening. The property should demonstrate that no affordable units have been lost as a result of the remediation. And tenants permanently displaced from federally-assisted housing must receive a choice of replacement housing or full Uniform Relocation Act benefits.
- **Public investments in affordable housing must be preserved in the public interest, and tenants must be protected whenever use restrictions terminate.** More affordable units are being lost than created in federal programs because of lax rules around housing preservation. Any new or additional significant federal investment in affordable properties using tax credits or federal financing or assistance must require the housing to remain permanently affordable through use restrictions that prevent any premature exits from the programs, and must guarantee that public or non-profit entities have the first right of acquisition upon sale, disposition, or any termination of affordability. For existing affordable properties that have shorter use restrictions, tenants facing displacement when restrictions

or subsidies are terminated must receive replacement assistance sufficient to remain or to obtain alternative housing, as well as a right to remain in their current homes.

- **Responsible agencies must monitor and enforce existing federal obligations.** Federal agencies have failed to fully enforce the existing duties of housing authorities and affordable housing owners that directly impact tenants.

Expand tenant protections in the private market in several crucial areas.

States have a patchwork of very limited protections for tenants under their landlord-tenant laws. With few exceptions, the laws and regulations guiding the private rental market fail to provide the most basic of tenant protections. This requires federal action.

First, Treasury needs to ensure that LIHTC is treated as “federal financial assistance” so that tenants have rights to coverage by the Uniform Relocation Act and other civil rights protections.

- **A “renters’ bill of rights” is necessary to provide basic rights for tenants across the country.** Legislation should include the following protections.

- Establish federal good cause protections. Landlords should not be able to evict tenants without ample notice and good cause.
- Basic protections to domestic violence survivors in all rental housing consistent with VAWA.
- Requirements that tenants receive net financial benefits, including protections against rent increases, where federal funds are used for infrastructure energy improvements in rental housing.
- Incentives for states to access to desirable federal funding when they provide a core set of tenant protections. States should require:
 - Written rental agreements and rent receipts, prohibit unreasonable lease terms, and impose reasonable limits on late fees, security deposits, and other non-rent charges;
 - Enforceable habitability, tenant privacy and retaliation protections, and a reasonable opportunity to cure nonpayment of rent and most lease violations; and
 - Meaningful access to counsel in evictions amongst other restrictions on judicial processes.

Until we have a basic set of rights for tenants in the U.S., we cannot truly begin to redress the systematic racism embedded in rental housing policy and practice. A comprehensive federal approach is required to work toward full justice in housing.

For more information, please contact NHLP Director of Government Affairs, Noelle Porter, at nporter@nhlp.org.