

President Biden's Rent Control Proposal: A Bad Dream

Client Alerts

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By: Andrew W. Vail, Daniel Weiss, Jon Skladany

On July 16, 2024, President Biden announced a proposal to pass legislation capping rent increases to no more than 5% on properties held by corporate landlords, with an exception for new construction and substantial renovation or rehabilitation. It would go into effect this year, and last for the next two years.

The proposal defines a “corporate landlord” as any landlord with over 50 units in the portfolio, which covers over 20 million units nationwide. The proposal implements the cap via a tax penalty. A violating landlord would not be able to take advantage of faster depreciation write-offs.

The proposal aligns with the Biden campaign’s recent strategic shift toward more populist messaging on housing issues. This move signals that the White House has embraced progressive policies aimed at capping rents and imposing additional controls over landlords. A proposal such as this one, however, which is broad in scope and is not limited to federally financed properties, would require an act of Congress to implement. Republicans in both chambers will strongly oppose any legislation along those lines. With the Republicans currently in control of the House and no must-pass bills left on the docket, there is almost no chance of any bill passing this year.

However, the risk that this or a similar policy could be enacted by Congress could increase in 2025, when Congress and the White House will negotiate a must-pass tax bill to address the impending expiration of roughly \$4 trillion in Trump-era tax cuts. That, and any other must-pass bill that decreases revenue, could be accompanied by various revenue-raising offsets such as the proposed tax penalty on corporate landlords. The outcome of the presidential and congressional elections in November will be critical for predicting the outcome of those negotiations.

According to recent remarks by former Obama administration economist and Harvard professor, Jason Furman, “Rent control has been about as disgraced as any economic policy in the tool kit. The idea we’d be reviving and expanding it will ultimately make our housing supply problems worse, not better.”

Key details about the President’s proposal remain unknown. There is no accompanying legislative text, and because the proposal is a tax-code change, any proposed legislation will be referred to the

tax-writing committees: the House Committee on Ways and Means, chaired by Rep. Jason Smith (R-MO), and the Senate Committee on Finance, chaired by Sen. Ron Wyden (D-OR). The House Financial Services Committee and the Senate Banking Committee—the committees of jurisdiction for housing policy—will also weigh in.

We will continue to monitor any developments related to this proposal or any similar one. Our Government Controversies practice has strong connections to members and staff at the key committees, including the tax-writing committees and the housing committees in both chambers. Jon Skladany is a former Republican staffer at the House Financial Services Committee, which has jurisdiction over housing policy and would lead the pushback from Republicans against any legislative proposal on this topic.

Our Real Estate Litigation Practice, led by Andrew Vail and Dan Weiss, is currently litigating to protect unlawful government intrusions on property owners' rights, continuing the firm's long history of successfully litigating these important legal issues. We will discuss these issues and others with leading experts in the field at the Jenner & Block Realty Rendezvous on October 9, 2024.

Related Attorneys



Andrew W. Vail

Partner

avail@jenner.com

+1 312 840 8688



Daniel Weiss

Partner

dweiss@jenner.com

+1 312 923 4517



Jon Skladany

Partner

jskladany@jenner.com

+1 202 639 5340

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