

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1396 (Bradford)
Version: March 16, 2022
Hearing Date: April 19, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Tenancy: credit reporting: lower income households: evaluation

DIGEST

This bill instructs the Department of Financial Protection and Innovation, upon appropriation of the necessary funding, to select an independent evaluator to evaluate the impact of a state pilot program that requires landlords of assisted housing developments to offer their tenants the option of having their rental payments reported to at least one consumer reporting agency.

EXECUTIVE SUMMARY

Low-income Californians are often unbanked or underbanked, meaning that they have few if any fixed or formal financial accounts. As a result, they may have little or no established credit history. Without a credit history, they are unable to obtain loans, open new financial accounts, or access services for which good credit is required. In this way, lack of an established credit record becomes a self-perpetuating cycle: without a credit history, it is hard to establish a credit history. There is a regular bill that nearly all low-income Californians pay that is not usually reported to credit agencies: rent. Seizing on that fact, California enacted a pilot program in 2020 requiring landlords of assisted housing developments to offer their tenants the option of having their rental payments reported to at least one consumer reporting agency. The goal was to assist low-income tenants to build and improve their credit ratings. This bill now proposes the appointment, contingent on a budget appropriation for this purpose, of an independent entity to evaluate and report whether the program is achieving its intended result.

The bill is sponsored by the Credit Builders Alliance. Support comes from tenant and low-income consumer advocates. There is no opposition. If it passes out of this Committee, the bill will next be heard in the Senate Housing Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines an “assisted housing development” as a multifamily rental housing development that receives governmental assistance under specified federal laws and programs, such as the Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. § 1715 l(d)(3) and (5)), and specified state laws and local programs, such as local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code. (Gov. Code § 65863.10(a)(3).)
- 2) Requires, beginning July 1, 2021, any landlord of an assisted housing development to offer any tenant obligated on the leases in that housing development the option of having their rental payments reported to at least one nationwide consumer reporting agency or other consumer reporting agency, as defined. (Civ. Code § 1954.06(a).)
- 3) Exempts a landlord of an assisted housing development that contains 15 or fewer dwelling units from these provisions, unless the landlord owns more than one assisted housing development, regardless of the number of units in each assisted housing development, and the landlord is one of the following: (a) a real estate investment trust, (b) a corporation, or (c) a limited liability company in which at least one member is a corporation. (Civ. Code § 1954.06(j).)
- 4) Requires the offer of rent reporting, for leases entered into on and after July 1, 2021, to be made at the time of the lease agreement and at least once annually thereafter, and, for leases outstanding as of July 1, 2021, made no later than October 1, 2021, and at least once annually thereafter. (Civ. Code § 1954.06(b).)
- 5) Authorizes a landlord to charge a fee to a tenant who elects to have the tenant’s rental payments reported to a consumer reporting agency in an amount equal to the actual cost to the landlord to provide the service, or \$10 per month, whichever is less. (Civ. Code § 1954.06(f).)
- 6) Provides that if a tenant fails to pay the fee required by the landlord the failure of payment cannot be cause for termination of the tenancy, the unpaid fee cannot be deducted from the tenant’s security deposit, and the landlord may stop reporting the tenant’s rental payments if the fee remains unpaid for 30 days or more. Provides that the tenant cannot elect rent reporting again for a period of six months from the date on which the fee first became due. Provides that the payment or nonpayment of the fee cannot be reported to a consumer reporting agency. (Civ. Code § 1954.06(f) and (g).)

- 7) Authorizes a tenant who elects to have the tenant's rental payments reported to a consumer reporting agency to subsequently file a written request with the tenant's landlord to stop that reporting; however, a tenant that does so will not be allowed to elect rent reporting again for a period of at least six months from the date of the tenant's written request. (Civ. Code § 1954.06(h).)
- 8) Provides that a tenant who elects to have rent reported does not forfeit any rights under Sections 1941 to 1942, inclusive, of the Civil Code, and the deduction or withholding of rent as authorized by those sections will not constitute a late rental payment. A tenant invoking the right to deduct or withhold is required to notify the landlord of the deduction or withholding prior to the date rent is due. (Civ. Code § 1954.06(i).)
- 9) Repeals these provisions on July 1, 2025. (Civ. Code § 1954.06(l).)

This bill:

- 1) Directs the Department of Financial Protection and Innovation (DFPI), upon appropriation by the Legislature for this purpose, to select an independent evaluator to conduct an evaluation of the program described under Existing Law, above.
- 2) Instructs DFPI to choose the evaluator after the first complete year of program implementation, commencing January 1, 2024, and on or before March 1, 2024.
- 3) Provides that the selected evaluator shall create an annual report that includes, but is not limited to, all of the following:
 - a) The percentage of assisted housing developments in compliance with this section.
 - b) The total number of participating tenants.
 - c) The impact on the credit scores of participating residents living in assisted housing developments.
 - d) Recommendations for broadening impact for tenants of assisted housing developments.
- 4) Requires DFPI, on or before January 1, 2025 to post the evaluator's annual report on its website and distribute it to the appropriate policy committees of the Legislature for review.

COMMENTS

1. Lack of credit history as a self-perpetuating barrier to economic mobility

Having an established credit history is vital to accessing many consumer services and obtaining loans. Credit checks are frequently required for things like renting an

apartment, buying a house, obtaining basic utility services or a cell phone, getting a credit card, and borrowing money from a bank. Some employers even check an applicant's consumer credit record as part of the hiring process.

Some people are fortunate to be able to begin establishing a credit history early in their lives through things like convincing someone with good credit to co-sign on a loan or simply getting added to a parent's credit card account. For those who do not have these options, establishing a credit history can be enormously challenging because enrolling in services or obtaining loans that would establish a credit history often requires *having* a credit history. This catch-22 shuts many low-income individuals out of the formal economy, forcing them to make inflated deposits to obtain things like housing or utility services, steering them away from keeping money in interest-bearing accounts and driving them into the hands of financial services with hefty fees and high interest rates, like pay-day lenders and check-cashing companies.

Statistics show that a lack of credit impacts a large segment of our population and disproportionately affects those with low income and communities of color. According to a Consumer Financial Protection Bureau report on the topic:

- As of 2010, 26 million consumers in the United States were credit invisible, representing about 11 percent of the adult population. An additional 19 million consumers, or 8.3 percent of the adult population, had credit records that were treated as unscorable by a commercially-available credit scoring model. [...]
- There is a strong relationship between income and having a scored credit record. Almost 30 percent of consumers in low-income neighborhoods are credit invisible and an additional 15 percent have unscored records. [...]
- Blacks and Hispanics are more likely than Whites or Asians to be credit invisible or to have unscored credit records. About 15 percent of Blacks and Hispanics are credit invisible (compared to 9 percent of Whites and Asians) and an additional 13 percent of Blacks and 12 percent of Hispanics have unscored records (compared to 7 percent of Whites). These differences are observed across all age groups, suggesting that these differences materialize early in the adult lives of these consumers and persist thereafter.¹

¹ Brevoort, Grimm, and Kambara, *Data Point: Credit Invisibles* (May 2015) U.S. Consumer Financial Protection Bureau https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (as of Mar. 20, 2022) at p. 6.

2. The SB 1157 pilot program: could reporting rent payment help break the cycle?

There is one bill payment that many low-income individuals make regularly and that is often not included in people's credit scores: rent. A little over 45 percent of Californians rent their housing – the second highest in the nation after New York and 10 percent higher than the national average.² Most Californians who make on-time rent payments fail to receive any benefit to their credit scores for making those on-time payments even though failure to pay one's rent has a negative impact on one's credit. This is because most landlords are not submitting their tenants' "full-file" (positive and negative) rental payment history to any of the major consumer reporting agencies (Equifax, Experian, or TransUnion; also referred to as credit bureaus). In theory, therefore, reporting rent payments to consumer credit agencies could enable low-income individuals establish or improve their credit history, and several recent studies of the concept have borne that theory out.³

Seizing on those positive initial indicators, in 2020, California enacted SB 1157 (Bradford, Ch. 204, Stats. 2020). SB 1157 established a pilot program requiring the landlords of assisted housing developments to offer their tenants the option of having their rental payments reported to at least one consumer reporting agency. The program began on July 1, 2021. It is currently scheduled to expire on July 1, 2025.

² Campbell, *Is it More Common to Rent or Own in Each State?* (Jan. 21, 2019) Move.org <https://www.move.org/states-with-highest-lowest-owner-occupied-homes/> (as of Mar. 20, 2020).

³ See, e.g., Chenven and Schulte, *The Power of Rent Reporting Pilot: A Credit Building Strategy* (2015) Credit Builders Alliance and Citi Foundation <https://creditbuildersalliance.org/wp-content/uploads/2019/06/CBA-Power-of-Rent-Reporting-Pilot-White-Paper.pdf> (as of Mar. 20, 2022) at p. 5; *Credit for Renting* (2014) Experian <http://www.experian.com/assets/rentbureau/white-papers/experian-rentbureau-credit-for-rent-analysis.pdf> (as of Mar. 20, 2022) (analysis of data on 20,000 subsidized housing residents "demonstrates the impact of positive rent reporting on credit file thickness, risk segment migration and credit scores for subsidized housing residents" at p. 6); *TransUnion Analysis Finds Reporting of Rental Payments Could Benefit Renters in Just One Month* (June 19, 2014) TransUnion <https://newsroom.transunion.com/transunion-analysis-finds-reporting-of-rental-payments-could-benefit-renters-in-just-one-month> (as of Mar. 20, 2022) ("reporting of rental payment information to the credit bureaus in a manner similar to other financial obligations could have a positive effect for the majority of subprime consumers' credit"); *RentTrack Study Shows Positive Impact of Rent Reporting* (Mar. 6, 2015) RentTrack <https://blog.renttrack.com/rent-reporting-impact> (as of Mar. 20, 2022) ("Residents who reported rent went up an average of 9 points on the tri-bureau Vantage Score. For subprime consumers, or those with credit scores below 650, the average point increase was 29 points. 100% of residents without a score became score-able, with an average starting Vantage Score of 639."); Turner and Walker, *Potential Impacts of Credit Reporting on Public Housing Rental Payment Data* (Oct. 2019) Policy and Economic Research Council as commissioned by the U.S. Department of Housing and Urban Development <https://www.huduser.gov/portal/sites/default/files/pdf/Potential-Impacts-of-Credit-Reporting.pdf> (as of Mar. 20, 2022).

3. The independent evaluation proposed by this bill

Though intended as a test of whether offering reporting of rent payments to consumer credit agencies would help tenants to establish or improve their credit histories, SB 1157 did not include any mechanisms for evaluating its success. This bill addresses that omission by instructing the DFPI to select an independent evaluator to assess the program and report back to the Legislature and the public more broadly annually. The bill directs the independent evaluator to include the following information in the report:

- the percentage of assisted housing developments in compliance with this section;
- the total number of participating tenants;
- the impact that the program has had on the credit scores of participating residents living in assisted housing developments; and
- any recommendations for broadening impact for tenants of assisted housing developments.

The submission of this report will help inform the Legislature's determination whether to allow the pilot program to expire as scheduled on July 1, 2025, or to extend it. Strongly positive results might also indicate to the Legislature that a broader expansion of the program warrants consideration.

As currently laid out in the bill, however, a few of aspects of the timeline for the evaluation and report are a bit confusing. First, the bill describes the report as an "annual" report, which suggests that it might come out on a yearly basis, but the bill only provides one deadline and only enough time for one report to be completed. Second, the bill does not specify what period of time the evaluation should cover. Again, the word "annual" implies that the evaluation should cover a year, but the bill does not say which year that should be and, in any event, the evaluation might be more robust if it is not constrained to a single year. Finally, the bill implies that 2023 is the "first year of implementation" when, in fact, the pilot program took effect as of July 1, 2021. Clarifying these details may assist DFPI and the evaluator to carry out the work assigned to them under this bill.

Additionally, as it appears in print, the bill presumes that the evaluator will conclude that expansion of the pilot programs is appropriate and requires the evaluator to make recommendations for expansion of the program accordingly. Of course, the evaluator may conclude that expansion is not warranted. The author proposes to offer amendments in Committee to clarify that, in such an instance, the evaluator need not make recommendations regarding expansion of the pilot programs.

4. Proposed amendments

In order to address the issues set forth in the Comments above, the author proposes to incorporate amendments into the bill that would:

- provide additional details and clarification regarding the nature of the required evaluation and report; and
- clarify that the evaluator need not make recommendations for expansion of the pilot program if the evaluator concludes such recommendations are not warranted.

A mock-up of the amendments in context is attached to this analysis.

5. Arguments in support of the bill

According to the author:

SB 1157 was the first bill in the nation to provide renters the opportunity to get credit for their rental payments at a state level. This bill is expected to impact over 500,000 renters who live in subsidized housing and are more likely than homeowners to face challenges to accessing and leveraging credit. While the potential impact is high, the bill does not have a mechanism for evaluating its effect. This bill will establish the oversight and means to conduct a third party evaluation of bill implementation before it sunsets. The data collected through the evaluation will not only help stakeholders assess policy impact and publicize challenges and accomplishments as result of the bill, but serve as a resource for other jurisdictions seeking to learn from California's leadership in this space. The research will support a data driven approach that will inform further state-level rent reporting policy decisions.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 1324 (Durazo, 2022) requires landlords to adhere to the conduct standards in California's fair debt collection laws when demanding the payment of overdue rent. SB 1324 is scheduled to be heard in the Senate Judiciary Committee on the same day as this bill.

Prior Legislation:

SB 1157 (Bradford, Ch. 204, Stats. 2020) created a pilot program requiring landlords of assisted housing developments, as defined, to offer their tenants the option of having their rental payments reported to at least one consumer reporting agency.

SB 619 (Hueso, 2019) would have created a pilot program in which tenants living in large, state-subsidized housing developments located within Promise Zones could have opted to have their rent payments reported to the major credit reporting agencies, thus potentially building their credit history. The bill was later gutted and amended to address other matters.

Amended Mock-up for 2021-2022 SB-1396 (Bradford (S))

Mock-up based on Version Number 98 - Amended Senate 3/16/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1954.06 of the Civil Code is amended to read:

1954.06. (a) As specified in subdivision (b), and except as provided in subdivision (j), beginning July 1, 2021, any landlord of an assisted housing development shall offer the tenant or tenants obligated on the lease of each unit in that housing development the option of having the tenant's rental payment information reported to at least one nationwide consumer reporting agency that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(p)) or any other consumer reporting agency that meets the definition in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)) so long as the consumer reporting agency resells or otherwise furnishes rental payment information to a nationwide consumer reporting agency that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(p)). A tenant's election to have rent reported under this subdivision shall be in writing, as described in subdivision (c).

(b) For leases entered into on and after July 1, 2021, the offer of rent reporting shall be made at the time of the lease agreement and at least once annually thereafter. For leases outstanding as of July 1, 2021, the offer of rent reporting shall be made no later than October 1, 2021, and at least once annually thereafter.

(c) The offer of rent reporting shall include a written election of rent reporting that contains all of the following:

(1) A statement that reporting of the tenant's rental payment information is optional.

(2) Identification of each consumer reporting agency to which rental payment information will be reported.

(3) A statement that all of the tenant's rental payments will be reported, regardless of whether the payments are timely, late, or missed.

(4) The amount of any fee charged pursuant to subdivision (f).

(5) Instructions on how to submit the written election of rent reporting to the landlord by mail.

(6) A statement that the tenant may opt into rent reporting at any time following the initial offer by the landlord.

(7) A statement that the tenant may elect to stop rent reporting at any time, but that they will not be able to resume rent reporting for at least six months after their election to opt out.

(8) Instructions on how to opt out of reporting rental payment information.

(9) A signature block that the tenant shall date and sign in order to accept the offer of rent reporting.

(d) When the offer of rent reporting is made, the landlord shall provide the tenant with a self-addressed, stamped envelope to return the written election of rent reporting.

(e) The written election to begin rent reporting shall not be accepted from the tenant at the time of the offer. A tenant may submit their completed written election of rent reporting at any time after they receive the offer of rent reporting from the landlord. A tenant may request and shall obtain additional copies of the written election of rent reporting form from the landlord at any time.

(f) If a tenant elects to have that tenant's rental payments reported to a consumer reporting agency under subdivision (a), the landlord may require that tenant to pay a fee not to exceed the lesser of the actual cost to the landlord to provide the service or ten dollars (\$10) per month. The payment or nonpayment of this fee by the tenant shall not be reported to a consumer reporting agency.

(g) If a tenant fails to pay any fee required by the landlord pursuant to subdivision (f), all of the following shall apply:

(1) The failure to pay the fee shall not be cause for termination of the tenancy, whether pursuant to Section 1161 of the Code of Civil Procedure or otherwise.

(2) The landlord shall not deduct the unpaid fee from the tenant's security deposit.

(3) If the fee remains unpaid for 30 days or more, the landlord may stop reporting the tenant's rental payments and the tenant shall be unable to elect rent reporting again for a period of six months from the date on which the fee first became due.

(h) A tenant who elects to have rent reported as described in subdivision (a) may subsequently file a written request with their landlord to stop that reporting with which the landlord shall comply. A tenant who elects to stop reporting shall not be allowed to elect rent reporting again for a period of at least six months from the date of the tenant's written request to stop reporting.

(i) A tenant who elects to have rent reported does not forfeit any rights under Sections 1941 to 1942, inclusive. If a tenant makes deductions from rent or otherwise withholds rent as authorized by those sections, the deductions or withholding of rent shall not constitute a late rental payment. A tenant invoking the right to repair and deduct or withhold rent under those sections shall notify their landlord of the deduction or

withholding prior to the date rent is due. This subdivision shall not be construed to relieve a housing provider of the obligation to maintain habitable premises.

(j) This section shall not apply to any landlord of an assisted housing development that contains 15 or fewer dwelling units, unless both of the following apply:

(1) The landlord owns more than one assisted housing development, regardless of the number of units in each assisted housing development.

(2) The landlord is one of the following:

(A) A real estate investment trust, as defined in Section 856 of Title 26 of the United States Code.

(B) A corporation.

(C) A limited liability company in which at least one member is a corporation.

(k) For purposes of this section, the following definitions shall apply:

(1) "Assisted housing development" has the same meaning as defined in Section 65863.10 of the Government Code.

(2) "Landlord" means an owner of residential real property containing five or more dwelling units.

(l) An independent evaluator, upon appropriation by the Legislature for this purpose, shall be selected by the Department of Financial Protection and Innovation and shall be responsible for conducting an evaluation ~~of~~ the impact of rental payment reporting in this state pursuant to this section.

(1) The evaluator shall be ~~chosen~~ selected through a competitive process to be completed after the first complete year of implementation, commencing January 1, 2024, and on or before March 1, 2024.

(2) The evaluator shall conduct the evaluation of the impact of rental payment reporting in this state pursuant to this section through June 30, 2024, or a later date chosen by the evaluator with the approval of the Department of Financial Protection and Innovation.

(3) Based on the evaluation described in paragraph (2), the evaluator shall create an annual report that includes, but is not limited to, information about all of the following:

(A) The percentage of assisted housing developments in compliance with this section.

(B) The ~~total~~ number of participating tenants.

(C) The impact on the credit scores of participating residents living in assisted housing developments.

(D) Recommendations, if any, for broadening impact for tenants of assisted housing developments.

(3) On or before January 1, 2025, the annual report required pursuant to paragraph (2) shall be posted on the internet website of the Department of Financial Protection and Innovation and distributed to the appropriate policy committees of the Legislature for review.

(m) This section shall remain in effect only until July 1, 2025, and as of that date is repealed, unless a later enacted statute that is enacted before July 1, 2025, deletes or extends that date.