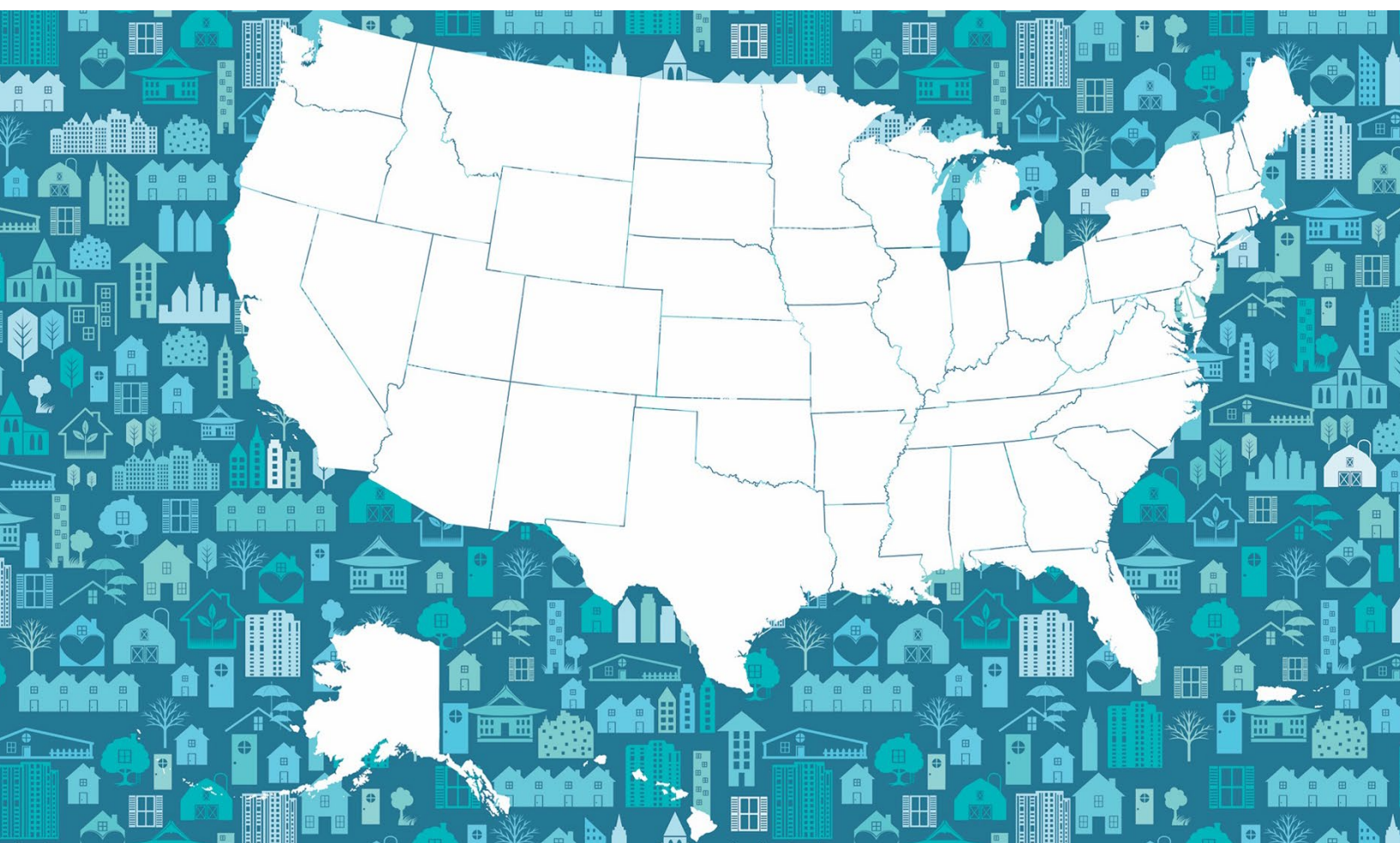


*April 2021 Update*

# NAA Policy Outlook Report

**Executive Briefing:** Trending Apartment Industry Concerns





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# Industry Outlook and COVID-19 Relief

Rent collections are slipping, showing signs of pandemic-related stress.

- Entrata [reports](#) that credit card payments accounted for 18 percent of all rent payments in February 2021, increasing by five percentage points since February 2020.
- According to [RealPage](#), as has been seen since the COVID-19 pandemic began, rent collections remain better in the upper-end and mid-range apartments than in the lower-tier properties.
- RealPage stats show March payments through the 27th at 94.9 percent in the Class A block of product and 95.2 percent in the Class B inventory.
- Collection levels are lower at 89.0 percent in Class C projects.
- Nationally, the share of households paying March's rent through the 27th is off by 1.5 percentage points since last year.
- Payments were received from 99 percent or more of the households in Fort Lauderdale, Providence, Tampa, Salt Lake City, Columbus and West Palm Beach.
- In contrast, rent has been collected from fewer than 90 percent of households in New Orleans. Rent payment levels in Seattle, New York City, Las Vegas, Portland and Los Angeles ranged between 92 to 95 percent.
- The largest declines in year-over-year payments are in Portland (-5.9 percentage points), Seattle (-5.9 points) and New Orleans (-5.6 points).
- Additionally, 29 percent of renter respondents to the [US Census' Household Pulse Survey](#) have no or only slight confidence in their ability to make next month's rent payment on time. Also, 17 percent of renter households report not being up to date with their rent payments.

Financial assistance for rent payments has been critical.

- On December 29, President Trump signed the [Consolidated Appropriations Act of 2021](#) (CAA) into law, which includes several [provisions of interest](#) to the rental housing industry, notably \$25 billion in dedicated rental assistance and a one-month extension of the CDC eviction moratorium.
- On March 11, President Biden signed the [American Rescue Plan Act of 2021](#) (ARPA), which allocated an additional \$21.55 billion in emergency rental assistance, \$5 billion for emergency housing vouchers, \$750 million for tribal housing needs, and \$100 million for rural housing. The bill also includes \$5 billion for homelessness interventions and long-term supports, \$9.96 billion for homeowner assistance, and \$100 million for housing counseling.
  - Of note, \$2.5B of the emergency rental assistance is earmarked for communities deemed high need with large numbers of very low-income renter households paying more than 50% of their income towards rent or living in substandard/overcrowded housing. The AMI targets from December will still stand—preference for 50% AMI and below but an ability to go up to 80% AMI with income being certified on day of application.
- On March 26, The U.S. Department of Treasury (USDT), which has been charged with administering the emergency rental assistance (ERA) grant program for states and localities, released [revised FAQs](#) to apply to the CAA funding.
  - The updated document outlines the criteria for administrative expenses, allowing grantees to use not more than 10 percent of the amount paid to a grantee for administrative costs attributable to providing financial assistance and housing stability services to eligible households.
  - The FAQs are expected to be supplemented by forthcoming formal guidance. For more information on the ERA program, including grantee allocations and award terms, [visit the USDT's website](#).

- At least 68 state-level programs and 370 local-level programs have been established to provide emergency rental assistance for renters impacted by COVID-19. Visit [the National Council of State Agencies' website](#) for updated information on state and local programs.
  - Similar to the landlord compensation fund in Oregon, California passed AB 80/SB 91 that requires housing providers to forgive the remaining 20 percent in arrears and not pursue evictions or go after remaining debt.
  - The Pennsylvania Senate passed SB 109, which codifies provisions required in the new federal law.
- **Policy Outlook:** While the latest federal package is a life preserver for the countless Americans facing financial hardship, the \$46 billion in dedicated rental assistance dollars will only make a dent in what owed.
  - More rental assistance dollars are desperately needed to close the growing gap of tens of billions in rental debt that accumulated in 2020 and prevent additional rent-in-arrears from building this year.
  - Implementation challenges continue across the US. NAA remains in conversations with administration staff and policymakers on critical changes that are needed to the program.
  - Learn more about the progress of NAA's COVID-19-related [federal advocacy](#).

Financial support and liability protection are providing some help for apartment firms.

- **Policy Outlook:** NAA continues to urge Congress to implement policies that help owners and operators maintain housing operations during the crisis, including [targeted liability protections](#), broader eligibility for business relief (e.g., the Paycheck Protection Program), and [pandemic risk insurance](#) for the industry.

## Major Threats to the Industry

Industry scores a win against rent control, but threat remains.

- Due to its advocacy efforts, the Washington Multi-Family Housing Association prevented [SB 5139](#), which would have limited rent increases in the state, from advancing out of committee. This is the third year in a row that NAA's affiliate has defeated rent control legislation. [Learn more](#) about the economic impacts this proposal would have had on Washington.
- Arizona Senator Marin Quezada has introduced a rent regulation bill, [SB 1611](#).
- New York Sen. Jamaal Baily has introduced [S 03365](#), a bill to further cap the amount of collectible rent increases due to major capital improvements, which is already severely limited by the 2019 Housing Stability and Tenant Protection Act.
- NAA and NMHC have submitted an [amicus brief](#) in support of a challenge to New York's Rent Stabilization Law by the Rent Stabilization Association of New York City, Community Housing Improvement Program, and individual property owners.
- **Policy Outlook:** Renters' rights advocates view rent control as both a mechanism to ensure vulnerable renters are not displaced once the economy recovers and an essential plank of a broader social justice platform. The economic effects of the government's response to COVID-19 have created [favorable conditions](#) for the spread of rent regulation. We expect the effects of the pandemic on low-income renters to be a key argument in support of these measures.



## CDC Order Extended by Biden Administration Despite Legal Challenges

- [On March 29](#), the U.S. Centers for Disease Control and Prevention (CDC) [extended](#) its federal eviction moratorium order through June 30, 2021. The announcement included some modifications, while the core elements of the order remain in effect.
  - While the order does not prohibit evictions for engaging in criminal activity while on the leased premises, covered persons may not be evicted on the sole basis that they are alleged to have committed the crime of trespass (or similar state-law offenses).
  - The order states that individuals who have, who might have been exposed to or who might have COVID-19 should not be evicted on the grounds that they pose a health or safety threat to other residents.
  - The order notes that covered persons may use any written document in place of the declaration form if it includes the required information in the form or use a form translated into other languages.
- As part of the Administration’s multi-agency efforts to provide pandemic-related housing support, the Consumer Financial Protection Bureau and the Federal Trade Commission announced they will [step up enforcement efforts](#) against housing providers who violate the CDC order. According to their joint press release:
  - Evicting tenants in violation of the CDC, state, or local moratoria, or evicting or threatening to evict them *without apprising them of their legal rights* under such moratoria, may violate prohibitions against deceptive and unfair practices, including under the Fair Debt Collection Practices Act and the Federal Trade Commission Act.
  - While this stated policy directly conflicts with guidance in the current FAQs, the CDC is expected to release updated FAQs imminently with additional requirements. We will continue conversations with the Administration about this development and will update NAA’s member guidance accordingly.
- We are encouraged by the growing legal precedent – declaring the order unlawful – that district courts in [Texas](#), [Tennessee](#) and [Ohio](#) have built over the foundation of NAA’s lawsuit, and we are actively participating as amici or plaintiffs in a number of these cases.
- On March 30, the Sixth Circuit [denied](#) the Government’s request to stay the district court’s judgment in *Tiger Lily, LLC, et al. v. United States Department of Housing and Urban Development, et al.* in which the Court held the CDC Order to be unenforceable. The stay would keep the moratorium in place during the appeal; it was denied because the Court found the government unlikely to succeed on the merits of its appeal.
- NAA is also urging our members to contact their members of Congress to ask them to support ending the CDC’s federal eviction moratorium. Sharing your story with Congress can help shed light on what the rental housing industry is facing during this moratorium. [Take action today!](#)
- As the situation continues to evolve, NAA will provide updates of new developments as we consider paths forward, keeping all options on the table.
- Several states are looking to expand and extend their own eviction moratoria restrictions. Renter advocates specifically are pushing to close perceived loopholes, including preventing housing providers from choosing not to renew leases and limiting allowable evictions to cases of “imminent danger” and “serious nuisance.”
  - [Rhode Island \(“Held for further study” AKA removed from consideration\)](#),

- [Ohio \(in committee\)](#), [Michigan \(in committee\)](#), and [Maryland \(Passed State Assembly\)](#) are examples of states considering legislation that would accomplish this.
- New York's legislature is again considering statewide just cause eviction legislation ([S 3082](#)), which includes a provision to prevent evictions when a renter defaults on rent because of a rent increase greater than 3%. The bill has 22 democratic cosponsors and sits currently with the Senate Judiciary Committee.
- Renters' right to counsel and eviction diversion legislation continues to be deliberated in statehouses across the country. So far in 2021, Connecticut, Indiana, Maryland, Nebraska, South Carolina, and Washington have pending legislation. These bills are either actively being discussed by committees of jurisdiction or are scheduled to be considered by those committees.
  - Coronavirus relief funds are being used to operate these programs by a slew of jurisdictions.
  - Grantees that received federal emergency rental assistance funding can use a portion of their allocation to fund these types of activities, so expect the proliferation of these programs to continue.
- The increased proliferation of legal representation mandates in California is leading to a substantial increase in warranty of habitability claims seeking damages of \$50,000-\$100,000 per resident.
- **Policy Outlook:** The pandemic has placed a spotlight on the eviction process. NAA continues to oppose any extension of the federal eviction moratorium and support the affiliate network's advocacy to prevent additional state and local restrictions.

## President Biden recommits to strengthening protections under the Fair Housing Act.

- On January 27, President Biden issued the [Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies](#).
  - As expected, the President took action to open the door for the Secretary of Housing and Urban Development (HUD) to reinstate the 2015 Affirmatively Furthering Fair Housing Rule and the 2013 Disparate Impact Rule which were repealed and replaced during the Trump Administration.
  - Changes to these rules would impact fair housing regulation and enforcement actions against rental housing providers, for example, related to source of income, resident screening and occupancy standards.
- On February 11, HUD [announced](#) that it will enforce the Fair Housing Act to prohibit discrimination on the basis of sexual orientation and gender identity, in line with the President's [Executive Order](#) on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.
  - Enforcement actions will be based on an expanded interpretation of the Act's prohibition against sex-based discrimination.
  - This is intended to align with established protections under employment law and formalizes a practice that has been going on for some time to protect renters in areas where sexual orientation and gender ID were not protected classes under state and local FH laws.

- **Policy Outlook:**
  - We will continue to work with Congress and the Administration to make sure they understand how legislative and regulatory proposals affect the provision and operation of rental housing.
  - Learn more about what these changes mean for the industry on the [NAA website](#), including our previous reporting on [affirmatively furthering fair housing](#) and [disparate impact](#).

## Advocates continue efforts to remove resident screening barriers for renters.

- Policymakers at all levels of government continue to attack housing providers' ability to evaluate applicants based on criminal, eviction, and credit history. Lawmakers also question the legitimate business need to evaluate immigration information.
- The [accuracy of consumer reporting](#) and how difficult it is to remove inaccurate information remain huge sticking points for social justice advocates.
- On February 19, NAA hosted a webinar on emerging resident screening trends. A recording of the webinar can be found [here](#).
- **Policy Outlook:** Under the Biden Administration, we expect additional scrutiny on the use of algorithms to rate consumers, given their purported disparate impact on communities of color, and anticipate proposed changes to the Fair Credit Reporting Act to prevent certain consumer information from ever being made public. These policies would restrict housing providers' access to critical information used to evaluate applicants.

## Emerging Issues

### COVID-19 is driving changes to security deposit laws.

- Advocates want to [change security deposit laws](#) to allow renters to utilize security deposit alternatives or pay upfront costs in installments (aka "renters' choice").
- Columbus becomes the latest city to introduce such legislation.
- **Policy Outlook:** A growing number of policymakers view traditional security deposits as a barrier to housing access and choice for lower income renters. We expect continued interest at the municipal level, with the potential for some action from progressive state legislatures.

### Multifamily firms spared from new OSHA enforcement program.

- On January 21, President Biden ordered the Occupational Safety and Health Administration (OSHA) to take immediate action to issue new guidance on COVID-19 workplace safety for employers and employees.
- OSHA delivered new workplace guidance for dealing with COVID-19 on January 29 which included the following:
  - Recommendations for the wearing of face coverings in workplaces;
  - Framework for mitigative measures that can be utilized in workplaces;
  - A reference of required reporting requirements for workplace illness;
  - and additional key measures on ensuring workforce safety.
- OSHA has also released framework for its new [National Emphasis Program](#), which will prioritize the investigation and enforcement of COVID-19 safety protocols within certain high-risk industries. Apartment communities and management firms are not amongst the priority



industries, although the construction and building industry has been placed as a secondary priority industry.

- **Policy Outlook:**
  - OSHA has opted for a National Emphasis Program in lieu of an emergency temporary standard which would have placed new and radical COVID-19 safety requirements on businesses.
  - Currently, there is no federal standard for COVID-19 workplace safety beyond the guidance released by OSHA and no expectation that standards will be released.

### Should employers require vaccinations?

- COVID-related safety efforts in the rental housing industry continue to pose a variety of challenges for employers, and the COVID-19 vaccine rollout means that the rental housing industry will have decisions to make regarding their approach to vaccine policies. Learn more about [NAA's operational resources](#).