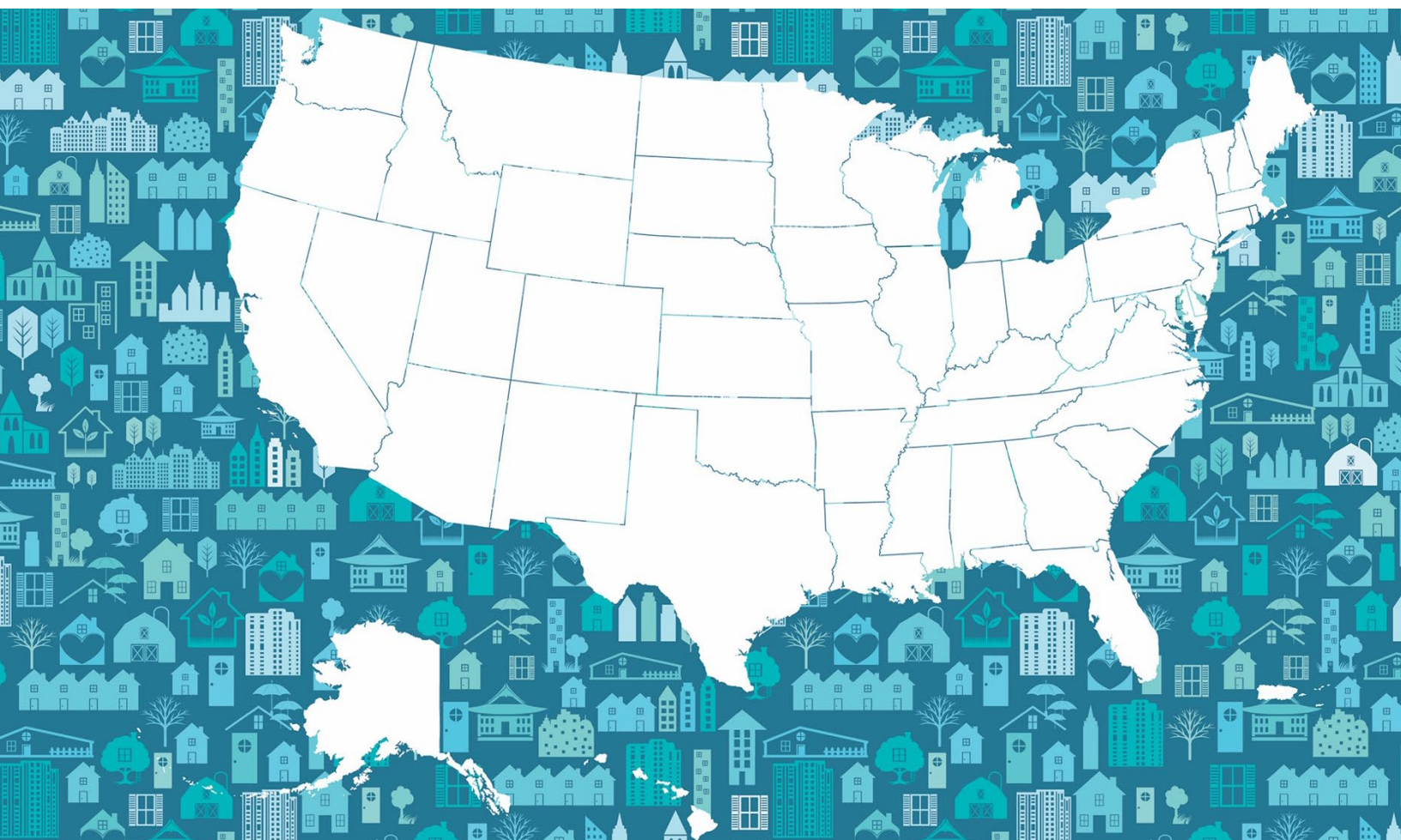


*August 2021 Update*

# NAA Policy Outlook Report

**Executive Briefing:** Trending Apartment Industry Concerns





# Outlook Contents

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Outlook Contents .....	1
Industry Outlook and COVID-19 Relief .....	2
Overall rent collections show signs of stabilization, although low-income renters still feel pandemic-related stress. ....	2
Administrators of rental assistance programs step up their distribution of federal aid, but more must be done to expedite processing and delivery of payments.....	2
Financial support and liability protection are providing some help for apartment firms. ....	3
Major Threats to the Industry .....	3
NAA filed a lawsuit seeking damages on behalf of rental housing providers who have been harmed by the Centers for Disease Control and Prevention’s (CDC) unlawful eviction order. ....	3
The CDC announces a new, targeted eviction moratorium for another 60 days.....	4
The Biden Administration continues to emphasize the CARES Act 30-day NTV requirement will be enforced. ....	5
List grows as more jurisdictions make major changes to eviction moratoriums as federal order lapses. .	5
The Administration makes good on its promise to strengthen fair housing protections through rulemaking. ....	5
Advocates continue efforts to remove resident screening barriers for renters. ....	6
Bipartisan Action on Capitol Hill on Section 8 HCV Reform .....	6
Emerging Issues .....	7
Housing is infrastructure. ....	7
Keep up with NAA’s advocacy.....	7



# Industry Outlook and COVID-19 Relief

Overall rent collections show signs of stabilization, although low-income renters still feel pandemic-related stress.

- MRI [reports](#) that credit card payments accounted for 28 percent of all electronic rent payments in May 2021, remaining flat since May 2020.
- According to the latest [RealPage data](#), 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 July payments through July 6 at 82.6 percent in the Class A product and 80.6 percent in the Class B inventory.
- Collection levels are lower at 66.4 percent in Class C projects.
- Payments were received from more than 88 percent of the households in Fort Lauderdale, Miami, Tampa and West Palm Beach, Fl.; and Austin, Texas.
- In contrast, rent has been collected from fewer than 70 percent of households in New York, N.Y.; New Orleans, La.; Boston, Mass.; and Baltimore, Md.
- The largest declines in year-over-year payments are in New Orleans (-11.3 percentage points), Baltimore (-10.7 points) and Providence (-10.5 points).
- According to recent estimates,<sup>12</sup> by the end of Q2, there could be a collective \$26.6 billion in rent debt that has no federal rental assistance to cover it.
- About 7.4 million tenant households reported being behind on rent in June, according to the [latest survey data from the Census Bureau](#). About 3.6 million households said they were “somewhat likely” or “very likely” to face eviction in the next two months.
  - Keep in mind the 3.6 million household estimate only represents about 7.2 percent of all renter households covered in the Pulse survey.
- In its [2021 State of the Nation’s Housing Report](#),<sup>3</sup> Harvard’s Joint Center for Housing Studies (JCHS) finds that housing cost burdens have moved up the income ladder. [“Seventy percent of renter households earning between \\$25,000 and \\$34,999 and nearly 50 percent of renters earning between \\$35,000 and \\$49,999 were cost burdened in 2019.”](#)

Administrators of rental assistance programs step up their distribution of federal aid, but more must be done to expedite processing and delivery of payments.


- Almost 500 programs have been established to provide emergency rental assistance (ERA) for renters impacted by COVID-19.
- According to the [National Council of State Agencies \(NCSHA\)](#):

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<sup>1</sup> <https://www.urban.org/urban-wire/many-people-are-behind-rent-how-much-do-they-owe>

<sup>2</sup> <https://www.globest.com/2021/05/10/apartment-owners-are-out-8b-from-missed-rent-payments-this-quarter/>

<sup>3</sup> NAA contributes to this flagship annual report, providing JCHS with information on new developments in housing policy, data, research and other insights reflecting our members’ concerns, of which the Joint Center might not otherwise be aware.

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- Statewide programs paid and processed requests for more than half-a-million renters by the end of June.
    - Of the more than \$46 billion in ERA allocated by the federal government, these programs will have paid out upwards of \$3 billion by the end of this month.
    - The pace of payouts has doubled or more than doubled in each of the last four months.
  - On June 24, 2021, the United States Department of Treasury (USDT) released another round of updated ERA [guidance](#) and [Frequently Asked Questions](#), including new recommendations on bulk processing and streamlining across local programs.
  - [Learn more](#) about NAA's takeaways as we analyze USDT's compliance reports from the first six months of the ERA grant program.
  - On July 28, the Consumer Finance Protection Bureau (CFPB) launched a new search tool, the [Rental Assistance Finder](#), which allows both renters and housing providers to easily find rental assistance programs and learn how to apply. We encourage industry professionals to use the tool and share it widely with residents.
  - **Policy Outlook:** Emergency rental assistance remains a critical resource for both housing providers and their residents. We continue outreach with Congress and the Administration to educate them on programmatic challenges that discourage housing provider participation and hinder the overall success of state and local programs that received federal monies. [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.


- The Federal Housing Finance Agency (FHFA) [extended](#) multifamily forbearance until September 30, 2021 which comes with eviction restrictions during the repayment period.
- **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](#) and [pandemic risk insurance](#) for the industry.

## Major Threats to the Industry

NAA filed a lawsuit seeking damages on behalf of rental housing providers who have been harmed by the Centers for Disease Control and Prevention's (CDC) unlawful eviction order.


- ICYMI on July 27, NAA [filed a lawsuit](#) in the U.S. Court of Federal Claims to recover roughly \$26 billion in damages on behalf of rental housing providers that have suffered severe economic losses under the CDC's overreaching federal eviction moratorium. Your support is encouraged.
  - [Watch NAA's President and CEO Bob Pinnegar discuss our efforts and the CDC order's impacts on the rental housing industry on FoxBusiness.](#)





## The CDC announces a new, targeted eviction moratorium for another 60 days.

- After the CDC allowed its nationwide stay of evictions for covered persons to expire on July 31, the agency announced a [new, targeted version](#) put into place at the direction of President Biden; it remains effective from August 3 through October 3, 2021.
  - The new order retains key elements of the previous version, but it is limited to counties with heightened levels of [community transmission rates of COVID-19](#).
  - It was also accompanied by a [new sample declaration form and translations](#) in commonly spoken languages.
  - Learn more about NAA's updated member guidance [here](#).
- Congress' inability to pass eviction moratorium legislation likely contributed to the Administration's actions. Your grassroots outreach on this matter resulted in close to 1,200 Congressional contacts in just a few hours, which were extremely helpful in thwarting a legislative extension.
  - Given the shaky legal ground, we fully expect Congress to revisit a longer extension when they return in September. Be prepared to mobilize again if and when that happens.
- Media outlets [have reported](#) that the new order was issued for largely political reasons, following a pressure campaign from Congressional leaders.
  - President Biden himself acknowledged the new order would not pass legal muster and that it was intended to give renters more time to obtain emergency rental assistance.
- While the CDC order is on shaky legal ground, it remains in effect. Even the Washington Post editorial board openly questioned its legality, writing "[Mr. Biden does not get a pass on the rule of law because his heart is in the right place](#)."
- As [frustrations mount](#), the real estate industry [anxiously awaits](#) a ruling from Judge Dabney Friedrich in the Alabama Association of Realtors v. U.S. Dept. of Health and Human Services case, as the plaintiffs moved to block enforcement of the new policy.
- As part of its "whole of government" approach to support renters and homeowners affected by the pandemic, FHFA and the Department of Housing and Urban Development (HUD)/the Federal Housing Administration (FHA) have extended the single-family foreclosure and eviction moratoriums for all federally backed mortgages in their purview until September 30, 2021.
  - Also read HUD Deputy Secretary Todman's [statement](#) on their department-wide efforts to connect renters to assistance and prevent evictions.
- **Policy Outlook:**
  - Continue to expect intense scrutiny on rental housing providers. Just prior to the issuance of the latest CDC Order, Senator Elizabeth Warren (D-Mass.) sent [letters](#) to eleven major corporate landlords, calling on them to commit to helping tenants obtain emergency rental assistance before initiating any eviction proceedings after the July 31 expiration of the CDC's original order and requesting information on their eviction policies.
  - NAA will continue to aggressively advocate against eviction moratoriums and continue calls for fully funding and swiftly delivering rental assistance. Your voice will be heard on Capitol Hill, within the administration and in the media. NAA has spoken with multiple national news outlets – including The New York Times, CBS and The Wall Street Journal – and remains in contact with key policy makers and agencies daily.



## The Biden Administration continues to emphasize the CARES Act 30-day NTV requirement will be enforced.

- On July 28, FHFA [announced](#) that tenants of multifamily properties with mortgages backed by Fannie Mae or Freddie Mac (the Enterprises) who are subject to eviction for nonpayment of rent must be given 30 days' notice to vacate before the tenant can be required to leave the unit. This requirement applies to all Enterprise-backed multifamily properties, *regardless of whether the loan is in forbearance*.
- The announcement aligns with the White House's [statement](#) that HUD/FHA and USDA will ensure that landlords whose property has a federally backed mortgage or that is receiving assistance from the federal government must provide 30 days' notice to vacate for non-payment of rent in accordance with [Section 4024 of the CARES Act](#).
  - Also see HUD's [Office of Multifamily Housing Programs guidance, Question 25](#) and Office of Public and Indian Housing guidance, [EM1 on page 10](#).
- **Policy Outlook:** NAA maintains that Congress intended this notice requirement to be temporary as the CARES Act eviction moratorium was a "temporary moratorium on eviction filings". Since 2020, NAA has worked towards a legislative solution.

## List grows as more jurisdictions make major changes to eviction moratoriums.

- In Washington, D.C., the City Council [passed](#) legislation drawing down the District's eviction moratorium while extending additional protections for renters. [Hear](#) about the Apartment and Office Building Association of Metropolitan Washington's take on the new law.
  - Upon signature by Mayor Muriel Bowser, housing providers may send notices of overdue rent. Filings for cases of nonpayment are prohibited until October 12, 2021, if a 60-day notice has been provided, and may not be initiated for amounts less than \$600.
  - Breach of lease notices may resume on September 26, but filings will not be permitted until January 1, 2022.
  - Rent increase freezes will be kept in place until the end of the year.
- **Policy Outlook:** Given that the courts could require enforcement of the CDC order to cease at any time, the onus is falling on state and local officials to decide whether to reinforce eviction protections for renters. States like Washington, California, New York, Oregon, Hawaii, Maryland, New Jersey, Illinois and Minnesota have already taken steps to extend their existing eviction prohibitions. NAA and its affiliates will continue to work with lawmakers to ensure that no new moratoriums are adopted in states without existing prohibitions.

## The Administration makes good on its promise to strengthen fair housing protections.

- In June, HUD published two fair housing rules in the Federal Register which reestablish Obama-era policies that were repealed and replaced during the Trump Administration.
  - The Rule [Restoring Affirmatively Furthering Fair Housing Definitions and Certifications](#) took effect on July 31.

- NAA is working on its comments to respond to HUD’s notice of proposed rulemaking on its [\*Reinstatement of HUD's Discriminatory Effects Standard\*](#); comments are due on August 24.
- On August 2, HUD [issued a memorandum](#) to Fair Housing Initiatives Program grantees (nonprofits that receive HUD funding for fair housing education and enforcement) confirming that the agency will fund efforts to test and enforce “source of income” discrimination laws, even though source of income is not a federally protected class under the Fair Housing Act.
  - According to HUD: *To provide clarity on this issue, this memorandum confirms that FHEO will approve [source of income-related] testing projects and pay for activities so long as they are designed to identify any form of discrimination that may violate the Act, or actions or policies that contribute to a failure to affirmatively further fair housing.*
- **Policy Outlook:**
  - We will continue to work with Congress and the Administration to make sure they understand how these fair housing policy changes 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.

- On July 24, North Carolina Governor Roy Cooper signed [SB 644 into law](#), which codifies [case law](#), ensuring that a housing provider cannot be held liable for residents who commit crimes on their property due to lack of screening.
- **Policy Outlook:** 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.
  - At the federal level, we also 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.

## Bipartisan Action on Capitol Hill on Section 8 HCV Reform

- On May 20, 2021, Senators Coons (D-Del.) and Kramer (R-N.D.) introduced S. 1830 the “[Choice in Affordable Housing Act](#)”, bipartisan legislation that will increase resources and reduce programmatic barriers in the Section 8 Housing Choice Voucher (HCV) program to attract and retain robust housing provider participation in the program voluntarily. [Learn more](#).
- **Policy Outlook:**
  - The National Apartment Association proudly supports the bill and applaud both senators for their work. [Tell your senators to cosponsor this important piece of legislation](#).
  - We are working with members of the House Financial Services Committee to secure companion legislation to the Coons/Cramer bill.



# Emerging Issues

Housing is infrastructure.

- There are two primary infrastructure packages in play in Congress.
  - The first, a bipartisan, bill with \$550 Billion in new “hard infrastructure” spending passed the Senate this week with broad bipartisan support and now moves to the House.
  - The second package, based upon President Biden’s American Families Plan will include a number of items not considered traditional infrastructure, but part of a broader category of social programs. This includes proposals for family medical leave, free education and housing. It will be passed under a process called “budget reconciliation” which eliminates the need for Republican votes.
- The Senate started the process on the second package with passage of a budget resolution this week that gives instructions to authorizing committees (e.g. Senate Banking, Housing and Urban Affairs). It also sets the top line price which in this case is \$3.5 trillion. Policymakers do not have to spend this amount but are authorized to do so.
- Early reports are the housing portion of the package is over \$320 billion in new spending on items like the Housing Trust Fund, rental assistance and the Community Development Block Grant program.
- This package will be paid for through changes in the tax code. Some are of which are of concern, including limitations on 1031 like-kind exchanges, eliminating capital gains treatment of a carried interest and increased taxes on estates.
- **Policy Outlook:** While the House process on the bipartisan bill will not be easy, ultimately the odds are in favor of its passage. The all-Democrat legislation also is almost certain to pass, however, there is not unanimity of opinion even amongst Democrats about how much to spend and on what, so it will take time.

Keep up with NAA’s advocacy.

- Keep up with the progress of NAA’s federal advocacy on our new [timeline](#) and don’t forget to check out the newly updated [tracking map](#) which captures federal bills of interest to the industry as well as state-level housing policy trends. Local bill tracking coming soon!
- Tune into NAA’s Monthly Legislative and Regulatory Calls for the latest updates on federal, state and local housing policy changes. [Register today!](#)
- NAA is here to be a resource for our affiliate network! Watch NAA’s [“Understanding Grassroots Advocacy” Webinar](#) to learn more about how we can help with your next advocacy campaign.