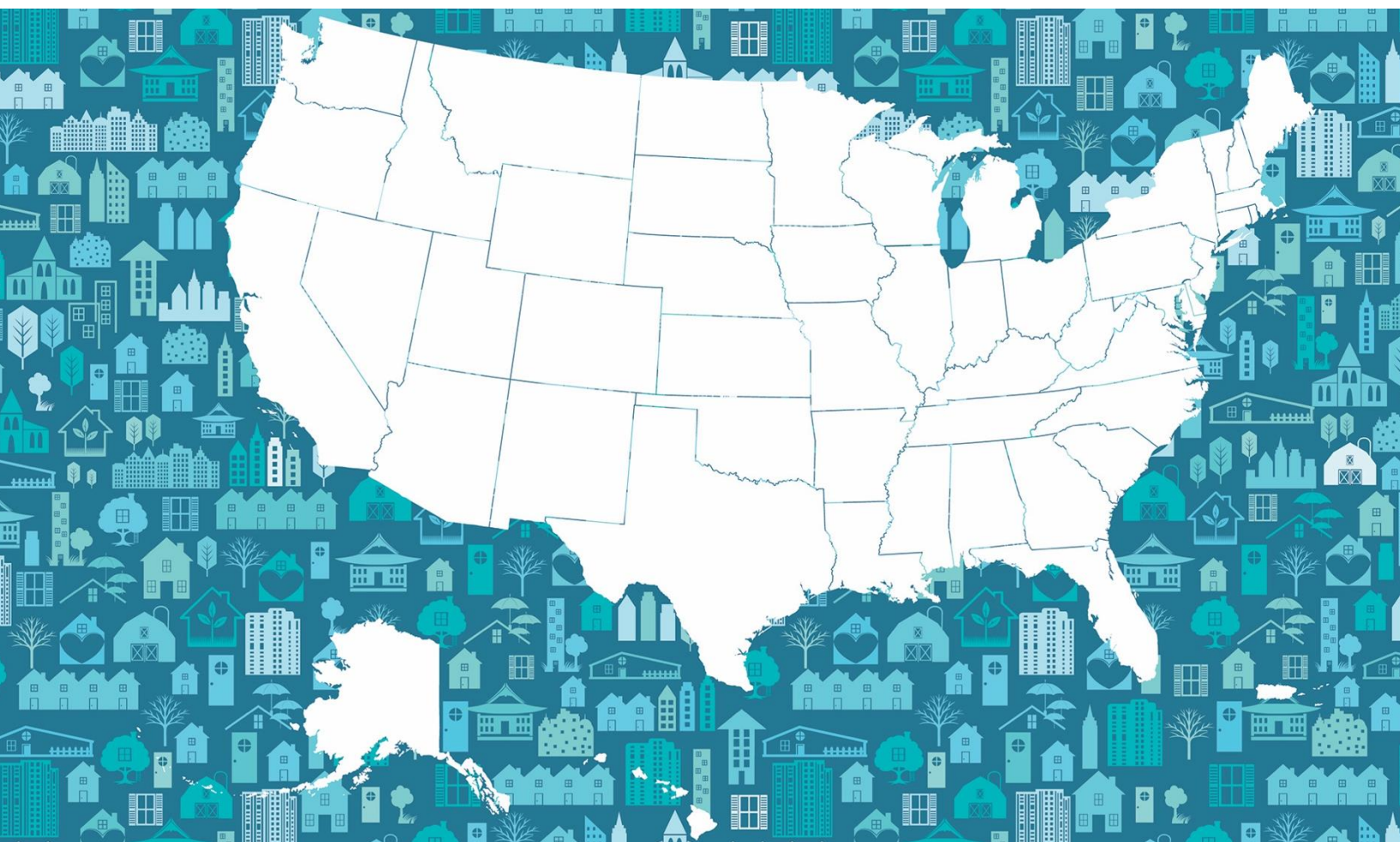


December 2021 Update

NAA Policy Outlook Report

Executive Briefing: Trending Apartment Industry Concerns





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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 30 percent of all electronic rent payments in August 2021, declining marginally by three percentage points since August 2020.
- According to RealPage, stats show October payments through November 6 at 84.3 percent in the Class A product and 82.1 percent in the Class B inventory.
 - Collection levels are lower at 69.2 percent in Class C projects.
- Payments were received from more than 90 percent of the households in Providence, RI; Miami, Fla.; Minneapolis, Minn.; Austin, Tx.; Fort Lauderdale and Tampa, Fl.; and Denver, Colo.
- In contrast, rent has been collected from fewer than 80 percent of households in New York, N.Y.; New Orleans, La.; Boston, Mass.; Milwaukee, WI; and Baltimore, Md.
- The largest declines in year-over-year payments are in New York City (-9.8 points), Milwaukee (-9.5 points), Baltimore (-7.4 points), Newark-Jersey City (-7.3 points) and Oakland (-7.1 points).
- According to recent estimates,¹² 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.
- In its [2021 State of the Nation's Housing Report](#),³ 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."](#)

U.S. Department of Treasury (USDT) begins to recapture and redistribute "Excess" rental assistance.

- [Almost 500 programs](#) have been established to provide emergency rental assistance (ERA) for renters impacted by COVID-19.
- As [AP reports](#), "Fresh numbers released by the Treasury Department, which oversees the Emergency Rental Assistance program, showed that the number of households receiving the benefits jumped 10% in September — up to 510,000 households compared with 459,000 in August."
 - [USDT's latest reporting](#) from grantees also shows the federal ERA program has distributed \$10.7 billion overall.
- At this pace, the White House estimates that more than \$16 billion will be distributed by the end of 2021, which is only 36% of Congress' total appropriation. While this is welcome news, more must be done to expedite distribution of rental assistance dollars.
- While USDT [announced](#) that the agency will provide additional ERA funds to state and local grantees that were most effective in distributing their original allocations, some of the ERA program's highest performers are already experiencing challenges to meet demand.

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

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

³ 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.

- The Texas Rent Relief Program unexpectedly announced they must [stop taking new applications](#).
- According to a Congressionally mandated deadline, grantees should have obligated 65 percent of their ERA 1 allocations (the first tranche of emergency rental assistance dollars appropriated by Congress) by September 30 or face recapture of excess funds.
 - USDT continues to offer guidance and resources on their recapture and reallocation procedures. [Deputy Secretary Adeyemo published a letter](#) to all grantees on October 25, highlighting new details on this process.
 - Grantees that want to request reallocated ERA1 funds must submit a request by November 30.
- Learn more about [NAA's analysis](#) of [H.R. 5196, "the Expediting Assistance to Renters and Landlords Act of 2021,"](#) the House's proposal to reform the ERA program. While the bill has passed the House Financial Services Committee, next steps for the bill are in flux.
- **Policy Outlook:**
 - Emergency rental assistance remains a critical resource for both housing providers and their residents. [Learn more](#) about the progress of NAA's federal rental assistance advocacy.
 - We continue to encourage industry professionals to use the Consumer Finance Protection Bureau's (CFPB) [Rental Assistance Finder](#) and share it widely with residents.
 - ICYMI Congresswoman Cori Bush (MO-01) and Senator Elizabeth Warren (D-MA), along with more than 50 of their peers as co-signatories, [sent a letter to Treasury Secretary Janet Yellen](#) requesting additional information on how ERA grantees will equitably distribute rental assistance funding.
 - They included several recommendations for the agency to incorporate in future guidance and requested a response by November 10.
 - Be on the lookout:
 - The Urban Institute is [encouraging scrutiny of housing providers](#) who refuse to accept rental assistance using source of income laws. Their researchers argue fair housing enforcement mechanisms would help renters access these critical resources.
 - USDT's "Promising Practices," highlighting a [multi-faceted approach to eviction diversion programs](#) that leverages ERA funding with other federal, state, and local resources. These recommendations may impact housing policy discussions locally.

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

- The Federal Housing Finance Agency (FHFA) has extended multifamily forbearance indefinitely, [maintaining](#) the same eviction restrictions and renter protections from previous iterations. This is the fourth extension of the forbearance program. [Learn more.](#)
- **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 Threat

Join NAA's lawsuit to recover damages from 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.
- **This is your opportunity to help the industry.**
 - [Share information about the lawsuit](#) including [this flyer](#) with your organization's leadership as well as industry partners and colleagues to help spread the word to get more owners to join.

There is no eviction tsunami.

- David Schwartz, CEO, chairman and co-founder of Waterton (also Chair of the National Multifamily Housing Council and member of NAA) said it best in his Las Vegas Review-Journal op-ed: ["There is no eviction tsunami. There is a housing crisis."](#)
- In August, SCOTUS ruled 6-3, along ideological lines, to strike down the CDC Eviction Order. [Yet the feared eviction tsunami has not come to pass.](#)
- Even as eviction filings increase in some parts of the country, [they remain well below pre-pandemic levels.](#)
- Jay Parsons, Rental Housing Economist and Real Estate SaaS VP, RealPage, has called the impending eviction cliff into doubt [since last summer](#). [Read his latest analysis.](#)
- Post-CDC Order, housing providers continue to help their residents as best as they can, however after the strain of more than a year of eviction moratoriums, they face difficult decisions.
 - Housing providers must navigate layers of eviction regulation, including continuing COVID-19 emergency mandates and moratorium "off-ramp" regimes, and decide the best path forward.

What does the future hold for federal eviction policy?

- 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.
- On September 21, Senator Elizabeth Warren (D-Mass.), member of the Senate Committee on Banking, Housing, and Urban Affairs, Congresswoman Cori Bush (D-Mo.), Deputy Whip of the Congressional Progressive Caucus and Member of the House Committee on the Judiciary, along with Senator Edward J. Markey (D-Mass.), Senator Alex Padilla (D-Calif.), and over three dozen of their colleagues introduced the Keeping Renters Safe Act of 2021 ([S. 2776](#) and [H.R. 5307](#)).
 - The bills would:
 - Enact a nationwide eviction moratorium, remaining in effect at least 60 days following the conclusion of the public health emergency; and
 - Amend section 361 of the Public Health Service Act to grant permanent authority to the Department of Health and Human Services to implement a residential eviction moratorium during public health crises.

- **Policy Outlook:**

- 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.

Expect continued enforcement of the CARES Act 30-day NTV requirement.

- On October 7, the U.S. Department of Housing and Urban Development (HUD) published an [interim rule](#) that requires HUD-subsidized public housing and housing providers whose properties benefit from project-based rental assistance to provide their residents with a 30-day notice that includes information about available federal emergency rental assistance (ERA) prior to filing for eviction due to nonpayment of rent.
 - [Here's what you need to know about the new rule.](#)
- Remember [HUD's eviction guidance](#) which emphasizes the agency's department-wide efforts to connect renters to assistance and prevent evictions. The guidance also reiterates the agency's position on the responsibility of "covered landlords" to provide 30 days' notice for evictions due nonpayment of rent.
 - Also see [HUD's Office of Multifamily Housing Programs guidance, Question 25](#) and [Office of Public and Indian Housing guidance, EM1 on page 10.](#)
- FHFA also [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.*
 - FHFA announced as part of its efforts to offer multifamily forbearance until further notice, that *at least* a 30-day notice to vacate [is required](#) during the repayment period.
- These agency actions align 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](#).
- **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.

Rent limitations gain momentum amidst COVID-19 drawdown.

- In Santa Ana, Calif., a new rent stabilization [ordinance](#) has gone into effect will limit annual rent increases by 3 percent or 80 percent of annual inflation for rental housing built before 1995.
 - The ordinance will also enact "just cause" eviction protections that will kick in for renters after 30 days of occupancy.
- In the cities of Minneapolis and Saint Paul, MN recently passed [rent regulation ballot questions](#) are receiving backlash.
 - Saint Paul Mayor Carter has [voiced support](#) for an amendment which exempts new construction to one of the strictest rent stabilization ordinances in the country.
 - Minneapolis [Mayor Frey](#) does not "support rent control in its classic form" and is likely to veto any proposal after voters enacted a question that allows the city council to pass rent control.

- In Massachusetts, [efforts are underway](#) to repeal the statewide preemption of rent control after proponents of the policy were elected mayors of Boston and Somerville.
- **Policy Outlook:** Rent control proposals are [expected to increase](#) as eviction restrictions are set to expire. NAA will continue to work with members and affiliates in impacted jurisdictions to curb the proliferation of rent control proposals and their impact on the rental housing industry.

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.
 - On August 24, NAA joined a coalition of housing providers to [respond to HUD's notice](#) of proposed rulemaking on its [Reinstatement of HUD's Discriminatory Effects Standard](#). [Read our comments.](#)
- On August 2, HUD [issued a memorandum](#) to Fair Housing Initiatives Program (FHIP) 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.*
- On November 3, HUD [announced](#) that it is providing \$13.6 million in American Rescue Plan (ARP) funding to enable 51 FHIPs to conduct a range of fair housing enforcement and education and outreach activities related to the COVID-19 pandemic. Another \$5,757,663 in ARP funding will be made available to eligible applicants that did not receive funding in this first round.
 - Among a number of priorities, FHIPs will be enforcing [HUD's eviction guidance](#) using these funds. [According to HUD](#), selective evictions because of protected class (such as race or national origin) violate the Fair Housing Act *even when the eviction might otherwise have been lawful*. Similarly, the Act requires housing providers to make reasonable accommodations for tenants with disabilities, including exceptions or modifications to eviction policies and procedures that may be necessary because of tenants' disabilities.
 - These funds will also be used to address fair housing issues affecting individuals and families experiencing housing instability, including those who may face displacement due to discriminatory evictions and foreclosures.
- We are closely monitoring [movement](#) on House Financial Services Committee Chairwoman and Congresswoman Maxine Waters' bill, [the Ending Homelessness Act of 2021](#), which would add "source of income" to the list of federally protected classes under the Fair Housing Act.
- **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](#).

Efforts continue to remove resident screening barriers.

- On November 4, the Consumer Financial Protection Bureau issued an advisory opinion to consumer reporting agencies (CRAs) asserting that name-only matching procedures were no longer in compliance with the Fair Credit Reporting Act (FCRA).
 - Name-only matching identifies subjects of consumer reports by name only, not additional personal identifying factors.
 - Industry concerns have revolved around the exclusion of important publicly accessible databases, such as PACER, which operate name-only search engines.
- Senate Banking Committee Chair Sherrod Brown wrote to CFPB Director Rohit Chopra to address tenant-screening companies regarding potential discrepancies that prohibit people from obtaining rental housing. Browns [letter](#) urges Chopra to request "... information about the pricing and marketing of tenant screening reports"
- **Policy Outlook:** Expect continued scrutiny of federal, state, and local consumer reporting and tenant screening laws. While efforts, thus far, have targeted CRAs, policymakers at all levels of government will 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.
 - [Fair Chance Housing](#) is a national social justice movement which seeks to reduce barriers to housing for previously incarcerated individuals.


Bipartisan action on Capitol Hill on Section 8 HCV reform.

- On May 20, 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

OSHA halts COVID-19 vaccination and testing standard.

- The Occupational Safety and Health Administration (OSHA) will comply with a federal appeals court order to stop enforcement of its Emergency Temporary Standard (ETS) mandating employers with 100 employees or more to require COVID-19 vaccinations or implement



mandatory testing and mask wearing for unvaccinated employees. The ETS will remain unenforceable pending future developments in litigation.

- [Here's what rental owner and management firms with 100 employees or more need to know.](#)

EPA plans to roll back lead certification exemptions.

- On November 4, the Environmental Protection Agency (EPA) [announced its intention](#) to require property management companies to obtain firm certifications under the lead-based paint renovation, repair and painting rule (RRP).
 - Currently, property management companies operating buildings constructed prior to 1978 do not require EPA certification if RRP activity is being handled by certified renovator firms.
 - The new rule would have property management companies become certified, even if the RRP activity is being handled exclusively by certified firms.
- **Policy Outlook:** NAA [submitted comments](#) to the EPA in opposition of the intended action. EPA will review comments beginning December 6, 2021. If EPA takes moves forward with its intention, the agency will implement the new requirements effective March 21, 2022.

HUD announces recipients of \$20 million Eviction Protection Grant.


- On December 3, HUD held a stakeholder briefing announcing the results of its Eviction Program Grant applications.
- HUD was provided \$20 million under the Consolidated Appropriations Act of 2021 to develop a grant program to help provide legal services to low-income renters facing or at risk for eviction.
- [Ten non-profit legal service providers](#) were selected and granted between \$1 million and \$2.4 million to support their efforts.
- **Policy Outlook:** Aside from fueling Right to Counsel efforts around the country, HUD intends to collect additional information from grant recipients. This will include identifying information on housing providers with high numbers of evictions tied to their properties. This information would be publicly disclosed. NAA takes serious concern with this provision of the grant program and will provide comment to HUD in an effort to reverse this data collection.

NAA's Bob Pinnegar represents the industry in Operation Allies Welcome discussions.

- On November 8, NAA was honored to represent the rental housing industry at a White House event highlighting Operation Allies Welcome, a nationwide effort to safely welcome Afghan allies and Afghans at risk. [Learn more here.](#)
 - "The Afghan allies and families arriving to our nation played a critical role supporting our troops over the last 20 years, and it is our honor and responsibility to help ensure they are settled and feel welcome in their new homes," said Bob Pinnegar, NAA President and CEO.
- Following the withdrawal from Afghanistan, a large number of Afghan refugees have been relocated to the United States. DHS is working on resettlement for these individuals and has asked for NAA's help as part of their [Operation Allies Welcome](#) program. They are in need of available rental housing units in which they can place individual refugees and families.
- Consider sharing this with your members or clients, and contact [Greg Brown](#), NAA's SVP of Government Affairs, to learn more about program details and target markets.

Housing is infrastructure.

- Congress has passed, and the President has signed, the bipartisan *Infrastructure Investment and Jobs Act*.

- 
- The more than \$1 trillion legislation [includes new investments](#) in the nation's roads, bridges, rail and transit systems, waterways, and broadband infrastructure over five years.
 - In addition to the importance of upgrading our nation's roads, bridges, and other transportation infrastructure, the National Apartment Association (NAA) has been advocating for housing's inclusion in infrastructure legislation, urging members of congress to include a housing component in the final bill.
 - The bill directs substantial funding for programs aimed at increasing the resiliency and sustainability of the nation's housing infrastructure and includes billions of dollars for programs like broadband deployment, weatherization, flood mitigation, and building energy efficiency,
 - **Policy Outlook:** The investments made in the *Infrastructure Investment and Jobs Act* aim to ensure that housing remains ready to withstand climate and financial-based risk. With the passage of this bill, Congress has recognized that, as NAA has been articulating, housing and infrastructure are inextricably linked.

Build Back Better seeks to address the nation's housing needs.

- Following passage of the bipartisan infrastructure agreement, deliberations continue on the Build Back Better bill, legislation focused on "human infrastructure" and guaranteed to pass with only Democrat votes.
 - The Build Back Better framework does include a number of housing provisions supported by NAA, including an expansion of the Low-Income Housing Tax credit, more funding for Section 8 Housing Choice Vouchers and language to encourage greater participation by private owners in the Section 8 program.
 - Unfortunately, the framework also includes several tax increases that could impact rental housing owners and operators like the application of the Net Investment Income Tax on active income as opposed to its current application on passive income.
 - NAA continues to weigh in with policymakers on this legislation as the process continues. It is likely to play out through the remainder of the year as the House and Senate pass varying versions of the package back and forth.

Keep up with NAA's advocacy.

- Keep up with the progress of NAA's federal advocacy on our new [timeline](#) and follow along in real time on our new interactive real-time policy tracking maps.
 - [NAA Federal Legislative Tracker](#)
 - [NAA State Legislative Tracker](#)
- 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.
- The NAA At Home Program saw over 170 NAA members and Affiliate staff meet with nearly 60 Congressional offices over the August recess! Thanks to these advocacy efforts, NAA was able to educate Members of Congress on important issues that face the rental housing industry.