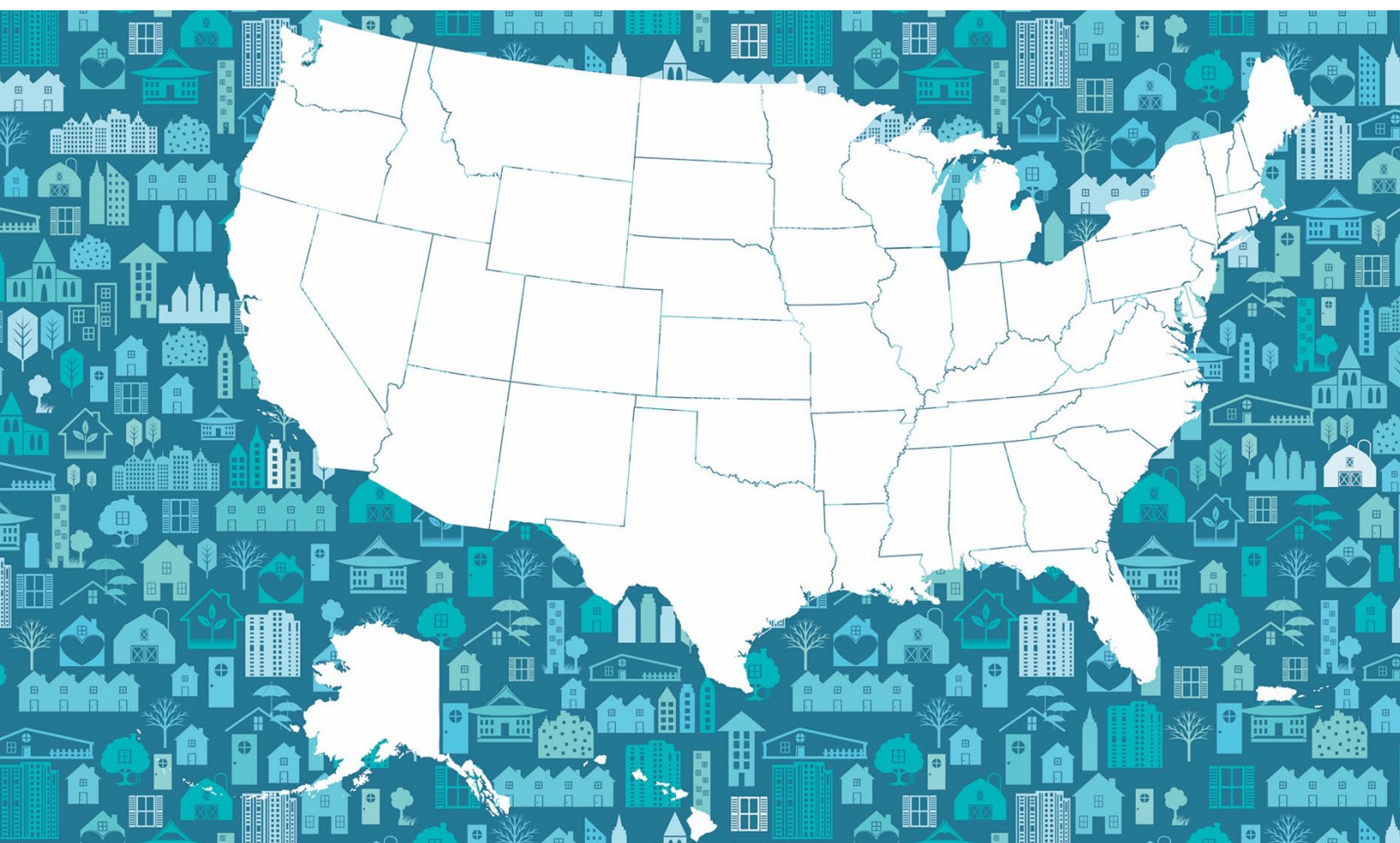


*June 2021 Update*

# 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 27 percent of all electronic rent payments in April 2021, increasing by seven percentage points since April 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 May payments through May 6 at 84.5 percent in the Class A block of product and 83.2 percent in the Class B inventory.
- Collection levels are lower at 73.2 percent in Class C projects.
- Payments were received from more than 90 percent or more of the households in Providence, R.I; Miami, Fort Lauderdale, Tampa, and West Palm Beach, Fl.; and Virginia Beach, Va.
- In contrast, rent has been collected from fewer than 80 percent of households in New Orleans, Boston and Seattle.
- The largest declines in year-over-year payments are in Seattle (-7.2 percentage points), Portland (-7.0 points) and San Jose, Calif. (-5.9 points).
- According to Mortgage Bankers Association Research Institute for Housing America, [renters collectively owe](#) \$8 billion for Q1 2021, up from Q4 2020.

Financial assistance for rent payments has been critical.

- The \$25 billion in federal emergency rental assistance funding allocated through the [Consolidated Appropriations Act of 2021](#) has now begun to flow through state and local programs, however, as we told the New York Times, [the pace is slow](#).
- Charged with administering these grant funds to states and localities, the Department of Treasury (USDT) [continues to offer](#) guidance and technical assistance to grantees to facilitate quick and efficient distribution to housing providers and renters in need.
- On May 7, 2021, the Biden Administration announced the allocation of an additional \$21.6 billion for emergency rental assistance via the American Rescue Plan Act (also known as “Emergency Rental Assistance 2” or “ERA2”). With the new monetary allocation, USDT released [updated guidance](#) which reflects program requirements for grantees who distribute ERA2 dollars.
- Approximately 388 programs have been established to provide emergency rental assistance for renters impacted by COVID-19. Visit [the National Council of State Agencies’ \(NCSHA\) website](#) for updated information on state and local programs.
  - According to NCSHA, by end of Q1, at least 34 states were processing applications and at least 22 states had made payments. Additionally, state grantees completed their first required quarterly report at the end of April and reported the following:
    - Households served in Q1 by type of assistance: 86% received prospective rent payments; 76% received rental arrears payments; 14% received utility arrears payments; 7% received prospective utility payments; and 3% received other housing assistance.

- Households served in Q1 by income level: 77% had incomes less than 30% of AMI; 13% had incomes between 30-50% of AMI; and 8.5% had incomes between 50-80% of AMI.
  - Q1 Average grant: \$4,627.17
- **Policy Outlook:** 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.
  - Of note, some grantees continue to [speak out](#) about the challenges that they continue to experience with the application process.

## Affiliate Spotlight: VA and CO apartment associations advocate for rental assistance changes.

- Due to successful advocacy of Virginia Apartment Management Association (VAMA) and the Apartment and Office Building Association of Metropolitan Washington (AOBA), the Virginia's Rent Relief Program (RRP) is now a housing provider-led process administered through the Virginia Housing Development Authority, speeding up the process exponentially.
  - The program approval process now takes approximately 45 days with payment received within 15 days, resulting in an approximate 60 day turn around. Before this change, the RRP had a very long application process and required housing providers to discount the rent owed to receive assistance.
  - As of March 24, 2021, the RRP has helped 28,960 households, to the tune of \$138.7 million, with the average payment at \$4,789.
- Similarly, Colorado's program allows housing providers to begin the process. Once the owner or operator submits their portion of the application, program administrators then send an email to the resident for the individual to complete the rest of the application.
  - Prior to the current ERAP program, newly minted to meet federal guidelines, Colorado's previous rental assistance program saw success as well. Due to the successful advocacy of the Colorado Apartment Association, Colorado distributed approximately \$72 million to housing providers for delinquent rent under the Colorado Emergency Housing Assistance Program and Property Owner Preservation programs between August 2020 and February 2021.
  - During this period, Colorado experienced high collection rates in the mid 90 percentiles (about 1.5 percentage points below normal) and evictions remained at a 30-year low (about 50 percent of normal eviction filing levels).

## 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](#) and [pandemic risk insurance](#) for the industry.




# Major Threats to the Industry

States make major changes to eviction moratoriums in advance of federal order expiration.

- On May 19, Gov. Kate Brown of Oregon signed [Senate Bill 282](#) into law. According to Multifamily NW, the new law functions as the “off-ramp” from Oregon’s eviction moratorium (per HB 4401). The law extends the grace period for renters who owe outstanding rental debts that accrued from April 1, 2020 through June 30, 2021, giving them until February 28, 2022 to repay their balance.
  - It also includes required changes to leasing forms, prohibitions on negative consumer reporting of renters, limitations on resident screening, forced relaxation of occupancy standards, and restrictions on termination of tenancy. Read [Multifamily NW’s write up](#) on the new requirements.
- Gov. Andrew Cuomo signed significant eviction-related legislation in May, stretching [New York’s](#) own moratorium until August 31, 2021. Learn more about [S.6362-A/A.7175-A](#).
- Meanwhile in Minnesota, state lawmakers [struggle to compromise](#) on a legislative solution which would create an off-ramp to Gov. Tim Walz’s eviction moratorium [executive order](#). The state’s Peacetime Emergency [Order](#) pushes the deadline for the ban on evictions until June 14, 2021.
- In Minneapolis, the City Council approved the [Fair Notice Ordinance](#) which now requires 14-day notice for housing providers to notify their residents of an eviction filing.
  - The ordinance directs the City Attorney to recommend whether the City should prohibit an eviction based on nonpayment for renters who applied for governmental assistance.
  - The Council also directs Community Planning & Economic Development department to report in one year on whether the City should require 30-day notice.
- **Policy Outlook:** With the U.S. Centers for Disease Control and Prevention (CDC) eviction moratorium order set to expire at the end of the month, state legislatures and city councils are weighing their options to ensure continuity of renter protections if the federal mandate ends. Deliberation in the White House is still underway to determine the future of the CDC order and whether it will be extended, as well.

Biden Administration steps up enforcement of the CDC Eviction Order and fights to keep it in place.

- The CDC [extended](#) its nationwide stay of evictions for covered persons through June 30, 2021 with added modifications. With the growing legal precedent declaring the CDC Eviction Order unlawful, the future of the order and possible extensions are uncertain.
  - Most recently, [Alabama Association of Realtors \(AAR\) v. U.S. Dept. of Health and Human Services \(HHS\)](#) as well as district courts in [Texas](#), [Tennessee](#) and [Ohio](#) have built over the foundation of NAA’s lawsuit. We also are actively participating as amici or plaintiffs in a number of cases, including [Mossman, et al. v. U.S. Centers for Disease Control and Prevention, et al.](#)
  - In AAR v. HHS, the DC federal appeals court [denied the plaintiffs’ request](#) on June 2 to resume evictions. In the lower court, the district court judge had granted a stay of her order which vacated the CDC Order in its entirety, pending appeal which prevents




evictions while the government's appeal is under consideration. The federal eviction moratorium remains in tact for now.

- The [Consumer Financial Protection Bureau](#) (CFPB) and the [Federal Trade Commission](#) (FTC) have stepped up enforcement efforts against housing providers who violate the CDC Order. The agencies sent [notification letters](#) to the nation's largest multifamily firms reminding them of their obligations.
- CFPB's rule which requires debt collectors to provide written notice to tenants of their rights under the CDC Eviction Order became effective on May 3.
  - Hear [what industry experts had to say](#) in an NAA webinar about the new rule and other important debt collection and consumer reporting topics.
  - The National Association of Residential Property Managers and plaintiffs [filed suit against the CFPB and FTC](#), alleging the agencies are compelling false representations by housers, since the CDC Order is invalid in several jurisdictions.
- Renters' right to counsel and eviction diversion legislation continues to be deliberated in statehouses across the country. Washington became the [first state in the nation](#) to adopt right to counsel for indigent tenants. [Read more](#) about the Washington Multi Family Housing Council's analysis.
- **Policy Outlook:** NAA is urging the Administration to let the federal eviction moratorium expire on June 30. The Administration must begin to widely communicate its expiration now and prepare stakeholders. The focus must be on distribution of federal emergency rental assistance dollars and directing more funding to housing subsidies for low- and moderate-income renters who need more time to recover from the pandemic. As we told [Politico](#), many small owners are at a breaking point.
  - As the Washington Post reports: ["According to government estimates, a third of small landlords are at risk of bankruptcy or foreclosure as the pandemic continues into its second year."](#)
  - We need your help. [Contact your members of Congress](#) and ask them to support ending the CDC's federal eviction moratorium.

HUD is interpreting the CARES Act NTV requirement as still effective today.

- On April 26, the U.S. Department of Housing and Urban Development (HUD), Office of Multifamily Housing Programs, updated its *Q&A for Coronavirus Disease 2019 (COVID-19)*, to emphasize that the agency interprets the CARES Act notice to vacate requirement to remain in effect. [See Question 25.](#)
  - HUD's Office of Public and Indian Housing also added similar language to its *CARES Act Eviction Moratorium FAQs*. [See EM1 on page 10.](#)
  - [Section 4024 of the CARES Act](#) prohibited housing providers from requiring residents in federally backed and federally assisted housing to vacate without providing 30-day notice, in cases of nonpayment of rent. This federal requirement takes precedence over the notice procedures normally required by state or local eviction laws.
- **Policy Outlook:** NAA maintains that Congress intended this notice requirement to be temporary as the CARES Act eviction moratorium, also in Section 4024, was a "temporary moratorium on eviction filings". Since 2020, NAA has worked towards a legislative solution.



## Affiliate Spotlight: SoCalRHA challenges San Diego County’s new eviction prohibition.

- On May 4, 2021, the San Diego County Board of Supervisors [passed an ordinance](#) prohibiting residential evictions without just cause until 60 days after the Local Emergency designation is lifted.
- After sustained opposition to the ordinance, the Southern California Rental Housing Association (SoCalRHA) has formally [challenged the legality](#) of the ordinance in federal court. A judge has been assigned to the case.

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

- On April 12, the U.S. Department of Housing and Urban Development submitted two fair housing rules for review.
  - The Affirmatively Furthering Fair Housing Interim Rule will take effect immediately once published in the Federal Register.
  - The Disparate Impact Proposed Rulemaking opens the door for another round of public comment.
- **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.

- 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.
- **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.

## 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.
- Of note, the bill would:
  - Provide incentive payments to new housing provider participants who operate in areas of opportunity, to increase renters housing choice and access.
  - Provide administrative fee bonuses for program administrators that hire "landlord liaisons" who serve as a dedicated resource for program participants.
  - Provide security deposit assistance so that applicants can better afford to meet required deposits and housing providers are assured greater protection against damages.
  - Permit inspection reciprocity so that owners and operators already subject to other federal inspection protocols satisfy HCV requirements.
  - Allow for "pre-approval" of units for new housing provider participants.
- The National Apartment Association proudly supports the "Choice in Affordable Housing Act" and applaud both senators for their work on this bill. It addresses many of the burdensome barriers that complicate and deter housing providers' participation in the HCV Program.
- [Tell your senators to cosponsor this important piece of legislation.](#) The "Choice in Affordable Housing Act" will provide meaningful changes to the Section 8 HCV program.

## 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").
  - In May, [Reynoldsburg, Ohio](#), was the latest U.S. city to join the list of municipalities, including Cincinnati and Atlanta, that mandate renters' choice.
  - The Pennsylvania Apartment Association continues to work with the Philadelphia City Council to better understand the council's renters' choice bill. So far little movement has been made on the bill, and the session is set to end on June 24.
  - In Baltimore, Mayor Brendan Scott has vetoed the City Council's renters' choice bill which passed in May. In his veto explanation, Mayor Scott voiced concerns that the risks of security deposit insurance outweighed the benefit of the security deposit alternative as a housing affordability tool.
- **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.

### Housing is infrastructure.

- Negotiations continue over the size and scope of the federal infrastructure package.



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- House and Senate Republicans have brought forward smaller proposals focused on traditional infrastructure, while Democrats' plan calls for more than \$1.7 trillion in spending on both traditional and "social" infrastructure, like housing, the environment, elder care, and job training.
  - The tax component of either bill is of critical importance as it will determine how the packages are funded. Proposals have focused on a gas tax, freight weight charges, and even unspent COVID-19 relief money. Other proposals impact the 1031 like-kind exchange, increase the capital gains tax, and place limitations on carried interest.
  - NAA supports the inclusion of the [Build More Housing Near Transit Act](#) in an infrastructure deal. The bill would amend existing capital investment grant programs to encourage smart land use policy that would emphasize the development of housing near transit.
  - **Policy Outlook:** The White House is working diligently to reach bipartisan consensus on an infrastructure deal, but party control over both chambers means that Democrats also can pass their proposal on party lines. Lawmakers have two hurdles to clear to achieve bipartisanship on infrastructure: (1) find compromise on defining infrastructure and (2) deliver smart policy solutions to pay for the deal.
  - [Take action today!](#) Both the Yes In My Backyard (YIMBY) Act and the Housing Supply and Affordability Act will help combat the ongoing crisis of housing affordability.

## New Biden executive order pushes greater oversight of climate-related financial risk.

- President Biden's latest [executive order](#) directs the federal government to identify climate-related threats and provide recommendations for mitigation within 180 days. While the order does not provide specific mitigation against climate-related financial instability, one such measure has been gaining steam. Climate-risk disclosures require public companies to report on the physical and transitional threats that climate change poses to business.
- **Policy Outlook:** A likely recommendation, climate-risk disclosures may encourage wider adoption of other disclosure policies, including building utility disclosures that can swing the market pendulum out of favor of older, more naturally occurring affordable housing that cannot sustain expensive energy efficient retrofits.

## 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.