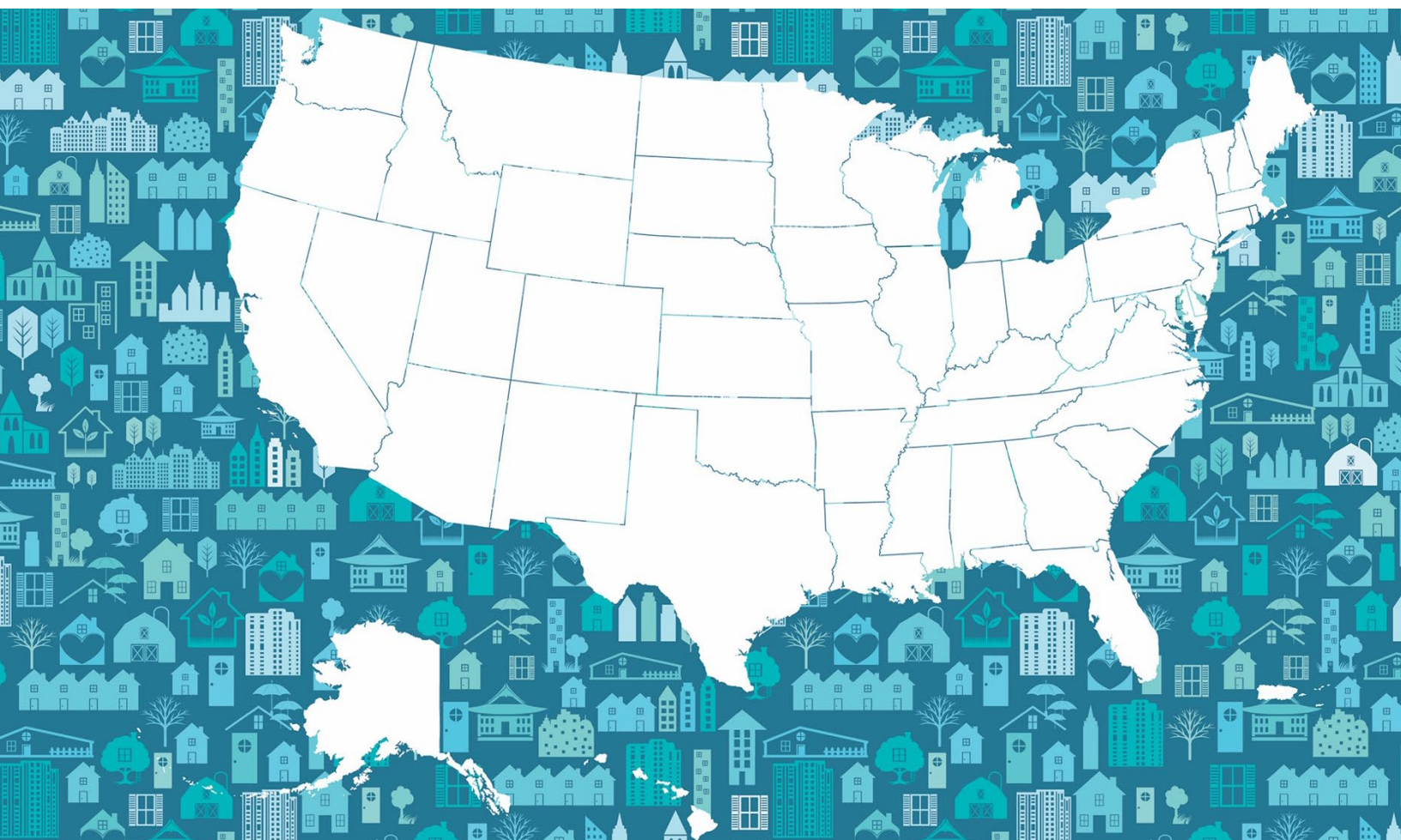


*May 2021 Update*

# NAA Policy Outlook Report

**Executive Briefing:** Trending Apartment Industry Concerns





# Outlook Contents

- 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
  - Financial assistance for rent payments has been critical. ....2
  - Financial support and liability protection are providing some help for apartment firms. ....3
- Major Threats to the Industry ..... 3
  - Industry scores another win against rent regulation, but threat remains. ....3
  - CDC Order extended by Biden Administration along with stepped up enforcement. ....4
  - Affiliate Spotlight: MMHA and AOBA defeat adverse bills in Maryland. ....5
  - President Biden recommits to strengthening protections under the Fair Housing Act. ....5
  - Advocates continue efforts to remove resident screening barriers for renters. ....6
- Emerging Issues ..... 6
  - Despite nationwide housing shortage, construction moratoriums become new normal. ....6
  - COVID-19 is driving changes to security deposit laws. ....6
  - New efficiency proposal helps boost building performance. ....6
  - Ownership disclosure to become new norm for corporations and LLCs. ....7
  - New NAA policy research and tracking available. ....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 25 percent of all electronic rent payments in March 2021, increasing by four percentage points since March 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 April payments through the 20th at 91.9 percent in the Class A block of product and 91.5 percent in the Class B inventory.
- Collection levels are lower at 85.8 percent in Class C projects.
- Payments were received from more than 96 percent or more of the households in Miami, Fort Lauderdale, Tampa, and West Palm Beach, Fl. as well as Providence, R.I.
- In contrast, rent has been collected from fewer than 90 percent of households in Seattle, New Orleans, Las Vegas, New York City and Milwaukee.
- The largest declines in year-over-year payments are in Seattle (-6.7 percentage points), Portland (-4.1 points) and Milwaukee (-2.9 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.

- The \$25 billion in federal emergency rental assistance funding allocated through the [Consolidated Appropriations Act of 2021](#) (CAA) 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.
- The \$21.55 billion in emergency rental assistance funding allocated by the [American Rescue Plan \(ARP\) Act of 2021](#) is still being processed. FAQs from USDT are forthcoming to help grantees navigate the statutory requirements for ARP funds which differ slightly from the CAA.
- 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.
  - Of note, some state and local grantees are refusing to allow subsidized renters or their housing providers to apply, which [directly conflicts with USDT FAQs, Question 15](#). We urged the Treasury to update its guidance and remind grantees that subsidized renters are eligible.
- NAA raised concerns from its affiliate network with Biden Administration officials and Congressional staff about the implementation process of emergency rental assistance overall and shared suggested changes that should be included in the next round of USDT guidance:
  - Permit housing providers to apply for emergency rental assistance on behalf of their residents.
  - Allow for bulk processing as well as coordination and communication regarding pending applications.

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- Provide flexibility with regard to demonstration of renter eligibility. A certification or affidavit of need should be sufficient. In addition, with regard to housing provider applications on behalf of residents, proof of consent should be easily demonstrable.
  - Allow for safe harbors by which states, localities, and program participants may operate in good faith and within the intent of the legislation. The overarching goal should be to assemble reasonable supporting documentation to enable the assistance to flow quickly and efficiently.
  - Ensure broad distribution of funds across rural, suburban, and urban markets, and to all property types – small, medium, and large.
  - Widely communicate availability of assistance and the process by which renters or their housing providers may apply.
  - 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.
  - **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. [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 another win against rent regulation, but threat remains.

- The COVID-19 Eviction and Housing Relief Act of 2021 (MD HB 1312) failed to pass as Maryland's legislative session ended on April 12. This bill included a rent freeze for renters who can show a substantial loss of income due to the pandemic.
- Despite rent regulation bills in Washington and Maryland failing to pass, multiple rent regulation bills are still alive in other parts of the country, including Connecticut, Arizona, Oregon, Minnesota, Illinois, and Florida.
- **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 along with stepped up enforcement.

- [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.
- As part of the Administration's multi-agency efforts to provide pandemic-related housing support, the Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission announced they will [step up enforcement efforts](#) against housing providers who violate the CDC order.
- On April 19, the CFPB issued an [interim final rule](#) requiring "debt collectors" to provide written notice to renters of their rights under the CDC's eviction moratorium order and prohibiting "debt collectors" from misrepresenting renters' eligibility for protection from eviction under the moratorium. The rule will go into effect on May 3 and last through the duration of the CDC Order.
  - To understand whether the rule applies to you, it is important to note the CFPB's definition of "debt collector," derived from the Fair Debt Collection Practices Act (FDCPA). According to the CFPB, under the FDCPA:
    - [The interim final rule requirement] may include lawyers who represent landlords or property managers in eviction court to collect unpaid rent, if they start collecting the debt for [a renter's] landlord after [renters] fall behind on [their] payments.
  - There may be other considerations as well, including relevant case law that may be more conclusive about whether property managers or management firms are categorized as "debt collectors," and whether state eviction laws and court processes separate the process to recover possession from actions to cover outstanding rent debt.
  - We highly encourage all NAA members to seek the advice of a local attorney before proceeding with an eviction to understand whether CFPB's rule applies.
- 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, most recently [Mossman, et al. v. U.S. Centers for Disease Control and Prevention, et al.](#)
- 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 advocacy and their analysis of [SB5160](#) which also includes just cause eviction protections.
- **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.
  - 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!](#)




## Affiliate Spotlight: MMHA and AOBA defeat adverse bills in Maryland.

- The Maryland Multi-Housing Association (MMHA) and Apartment and Office Building Association of Metropolitan Washington (AOBA) worked to defeat approximately 57 out of 60 adverse housing bills introduced during the Maryland legislature's session.
- Following are the highest profile victories:
  - MD HB 31 which proposed an increased eviction filing fee surcharge of \$68 for nonpayment of rent cases and would have prohibited pass costs to late paying residents, was defeated.
  - MD HB 52, which, as introduced, would have established a protracted eviction diversion program and notice requirement for evictions, was defeated. The House-passed version, as amended, would have required a 7-day notice, including two forms of notice, with the time period for filing not to begin running until after the second notice was delivered by mail.
  - MD HB 1312 (which would establish zero percent rent increases statewide for renters who could prove a substantial loss of income due to the pandemic; create emergency just cause eviction defenses; and require housing providers to apply for rental assistance on behalf residents and wait 120 days after receiving the assistance to bring an eviction) was defeated.
  - HB 18 establishes an "access to counsel program" for tenants who make less than 50% of AMI, subject to funding. The bill also establishes a 10-day notice period for tenants prior to a Failure to Pay Rent (FTPR) eviction and allows any one form of notice provided by statute to be executed.
    - With input from NAA affiliates which reduced its ultimate impact on the industry, the new law was enacted without funding and becomes effective on October 1, 2021.

## 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.

## Emerging Issues

Despite nationwide housing shortage, construction moratoriums become new normal.

- Jurisdictions in South Carolina and Florida are experimenting with temporary building halts that will severely limit the development of new multifamily housing.
  - In Lexington County, S.C., authorities have placed a 180-day stop on new multifamily applications while the City of Greenville is set to consider a 6-month moratorium on any construction next to single-family homes.
  - Tampa Bay, Fl., is also considering a lengthy 9-month long construction moratorium lasting from June to March.
  - Advocates for these policies are making a counterintuitive argument that construction moratoriums are important in areas experiencing high levels of growth so that authorities may measure their capacity for handling such growth. Of course, this is nothing more than a NIMBY strategy to ensure the exclusion of multifamily communities.
- **Policy Outlook:** Construction moratoriums promote exclusionary housing practices, prevent the production of much needed housing, and increase costs for existing housing.

## 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").
- Texas is the latest to consider such legislation. See [SB 1783](#).
- **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.

## New efficiency proposal helps boost building performance.

- New equipment depreciation proposal makes higher building performance achievable. On April 1, 2021, federal legislators introduced the Energy Efficient Qualified Improvement Property ([E-QUIP](#)) Act.

- E-QUIP provides commercial and residential properties with a ten-year, straight line tax depreciation period for the installation of qualified, high performance energy efficient equipment.
- **Policy Outlook:** Under current tax depreciation rules, cost recovery for certain equipment can range anywhere from 15 – 40 years. E-QUIP creates a faster cost recovery process that allows property owners of all sizes to invest in energy efficient equipment that will foster more sustainable, resilient buildings. Introduced as standalone legislation, E-QUIP also has the potential to be included in future infrastructure or climate packages.

## Ownership disclosure to become new norm for corporations and LLCs.

- Enacted under the National Defense Authorization Act for FY 2021, the Corporate Transparency Act (CTA) sets out new disclosure requirements to curb money laundering, financial crimes, and other illicit activities.
- The CTA will require corporations, LLCs, and other “similar entities” doing business in the United States to report identifying information of individuals who exercise significant control or have more than 25% ownership interest in the entity. The required information will be name, residential address, date of birth, and identification number (i.e., driver’s license, passport, etc.)
- The CTA includes more than 23 entity types that are excluded from reporting requirements, including businesses with more than 20 employees and report more than \$5 million in gross receipts annually.
- **Policy Outlook:** The Financial Crimes Enforcement Network (FinCen) is responsible for administering the reporting requirements and operating the non-public database that will hold the information. Recently, FinCen has issued an advance notice of public rulemaking soliciting best practices for administering the reporting requirements. NAA is working with industry stakeholders to reduce risk for our members and ensure that FinCen rules prioritize clarity, ease, and accessibility for all required reporting entities.

## New NAA policy research and tracking available.

- Over the last year, NAA has worked tirelessly to revamp its 50-state statutory research charts which affiliates use to understand the policy landscape across the country.
- NAA has moved the charts into a more user-friendly report format, where users can click on the state or locality and view the applicable law. Currently, there are twenty-six reports available on policy issues ranging from eviction, resident screening, source of income, rent control, late fees, security deposits, and occupational licensing.
- If you would like a copy of any of these reports, please contact [Jodie Applewhite](#), Manager of Public Policy.
- Don’t forget to check out [NAA’s tracking map](#) which has been updated with a number of bills now reorganized by topic.