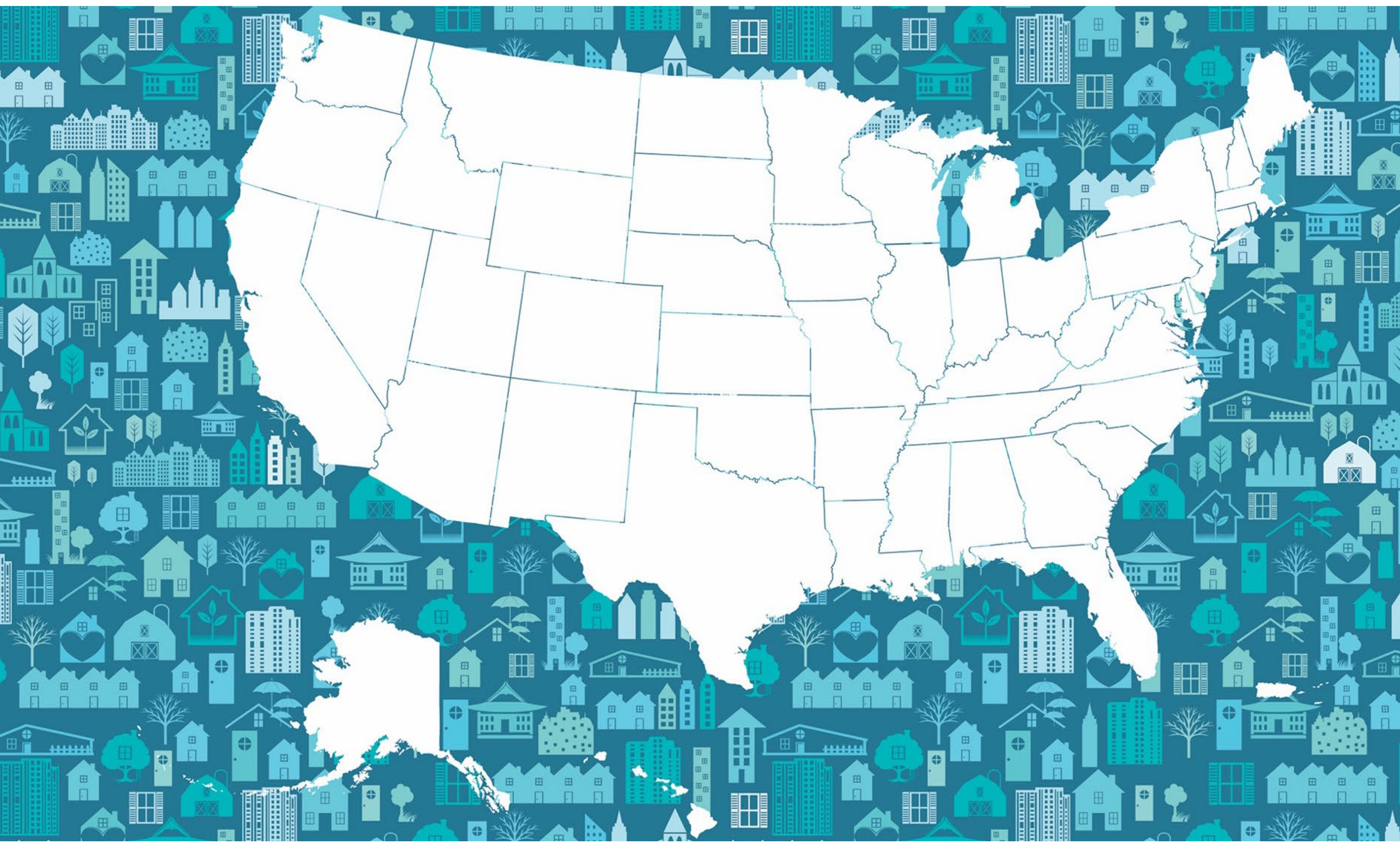
October 2021 Update

NAA Policy Outlook Report

Executive Briefing: Trending Apartment Industry Concerns



Outlook Contents

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, "Rent collections at the country's professionally managed apartments got off to a rough start in September, with Labor Day weekend travel and the effects of Hurricane Ida delaying the receipt of payments from many households."
- RealPage stats show September payments through September 6 at 79.7 percent in the Class A product and 76.9 percent in the Class B inventory.
    - Collection levels are lower at 58.4 percent in Class C projects.
- Payments were received from more than 88 percent of the households in Providence, RI; Fort Lauderdale and Miami, Fl; and Denver, Colo.
- In contrast, rent has been collected from fewer than 70 percent of households in New Orleans, La.; New York, N.Y; Boston, Mass.; and Baltimore, Md.
- The largest declines in year-over-year payments are in New Orleans (-47.9 percentage points), New York City (-31.2 points) and Oakland, Calif. (-14.7 points).
- According to recent estimates,[1][2] 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) Lays Out Process to Recapture and Redistribute "Excess" Rental Assistance Funds

- Almost 500 programs have been established to provide emergency rental assistance (ERA) for renters impacted by COVID-19.
- According to USDT's latest press release, more than 420,000 households received nearly $2.3 billion in rental and utilities assistance in the month of August, bringing the total to $7.7 billion since the beginning of the year.
- At this pace, the White House estimates that $16.7 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.

[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.

- USDT also announced that the agency will provide $13 billion in additional ERA funds to state and local grantees that were most effective in distributing their original allocations.
- On September 14, 2021, the House Financial Services Committee passed H.R. 5196, "the Expediting Assistance to Renters and Landlords Act of 2021," by a party line vote, 28-22. The bill reforms the ERA program and redefines how state and local grantees should structure their programs and distribute federal rental assistance dollars to housing providers and renters. Next steps for the bill are in flux as House Leadership considers options for this legislation and other priority items.
    - NAA, along with our coalition partners, has been engaging with the Committee over several iterations of H.R. 5196. While the latest version is certainly an improvement, we continue to have concerns about policy solutions included in the bill. Learn more about NAA's analysis of the bill.
- On October 4, 2021, USDT published guidance which sets forth the procedures to recapture and reallocate "excess" ERA 1 funds (the first tranche of emergency rental assistance dollars appropriated by Congress); this aligns with the agency's Congressional mandate to begin reallocating excess funds on September 30. USDT also highlighted the letter that Deputy Secretary Adeyemo sent outlining the process for ERA grantees and its one-page summary.
    - Stay tuned as the agency announced that it will release a form for grantees on October 15 to request reallocated funds.
- **Policy Outlook:**
    - ICYMI 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.
    - 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.
    - We continue to encourage industry professionals to use the Consumer Finance Protection Bureau's (CFPB) Rental Assistance Finder and share it widely with residents. The search tool allows both renters and housing providers to easily find rental assistance programs and learn how to apply.
    - Be on the lookout for 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 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.
- **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.

- More than one month ago, SCOTUS ruled 6-3, along ideological lines, to strike down the CDC Eviction Order. Yet the feared eviction tsunami has not come to pass.
    - According to the Washington Post, "In major metropolitan areas, the number of eviction filings has dropped or remained flat…In cities around the country, including Cleveland, Memphis, Charleston and Indianapolis, eviction filings are well below their pre-pandemic levels."
    - Moreover, Greg Brown, NAA's SVP of Government Affairs, said that housing providers "continue to show unprecedented flexibility despite months of lost rent and the government's painfully slow emergency rental assistance distribution."
    - 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, 2021, 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 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*.
- FHFA also 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.
- 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.
  - Read 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.
    - *For the duration of the presidentially-declared national emergency related to the COVID-19 pandemic, HUD will extend the time its programmatic regulations require before a tenant must vacate a unit once a notice of lease termination for non-payment has been issued from 14 days to 30 days, consistent with CARES Act protections and the protections already in place for FHA-insured Multifamily mortgages where the borrower is under a forbearance agreement.*
    - *Additionally, in order to initiate eviction, HUD may require additional steps of covered landlords.*
- **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.

Local eviction moratoriums take over as some state orders meet expiration.

- California's eviction moratorium, at one point the most stringent state eviction halt in the country, expired on September 30, 2021.
  - Several California jurisdictions including Fresno, Oakland, Berkeley, and Los Angeles County will continue to operate local moratoriums, some lasting until the end of the year.

- In Washington, Governor Jay Inslee has extended the state's bridge moratorium until October 31, 2021, citing additional time needed for jurisdictions to access state COVID-19 relief resources.
- **Policy Outlook:** Fewer than 10 states have active eviction protections for renters, of which several have off-ramp style moratoriums that gradually bring a concrete end date to these renter protections. Local lawmakers will become the driving force behind jurisdictional eviction moratoriums. NAA and its affiliates will continue to work with state and local lawmakers to ensure an equitable end to all eviction moratoriums.

Rent limitations gain momentum amidst COVID-19 drawdown.

- In Seattle, Wash., new legislation has been passed that would require a six month notice of rent increase be provided to renters. Current law requires a two month notice of rent increase.
- In Santa Ana, Calif., a new rent control ordinance is moving through City Council that would limit annual rent increases by 3 percent or 80 percent 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.
- The cities of Minneapolis and St. Paul, MN, will include rent control ballot initiatives during elections this November.
  - In Minneapolis, voters will face two questions that will (A) grant voters the right to bring forward rent control initiatives through a petition process and (B) allow the city council to pass rent control through the legislative process.
  - In St. Paul, voters will decide on the implementation of a 3 percent cap on rent annual rent increases with the opportunity to waive rent control requirements.
- **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 2021, 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, 2021, 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.*

- 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.

Advocates continue efforts to remove resident screening barriers for renters.

- On September 28, 2021, the House Financial Services Committee, Subcommittee on Diversity and Inclusion held its hearing, "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals" and considered "Fair Chance Housing" legislation which proposes to limit the availability of criminal records in consumer reports and adds to housing providers' responsibilities in the resident screening process.
    - Fair Chance Housing is a national social justice movement which seeks to reduce barriers to housing for previously incarcerated individuals.
- **Policy Outlook:** Expect continued scrutiny of federal, state, and local consumer reporting and tenant screening laws. 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

The Department of Homeland Security (DHS) Urges Industry Participation in Operation Allies Welcome.

- 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.

- There are two primary infrastructure packages in play in Congress.
  - The first, a bipartisan bill with approximately $1.5 trillion in new "hard infrastructure" spending passed the Senate with bipartisan support and is awaiting action in 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 and House started the process on the second package with passage of a budget resolution 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.
- 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:**
  - The House was scheduled to vote on the traditional infrastructure bill already passed by the Senate by the end of September, but progressive House Democrats refused to support the bill without action on the social spending package. As a result, the bill was not brought up for consideration.
  - Moderate Senators Manchin (D-WV) and Sinema (D-AZ) have indicated they cannot support $3.5 trillion in "human" infrastructure, and so, as that bill is renegotiated, the traditional infrastructure bill is on hold.

Changes to the National Flood Insurance Program expected to impact multifamily policy rates.

- On October 1, 2021, the National Flood Insurance Program (NFIP) will implement a new methodology for calculating insurance premiums.
    - Coined Risk Rating 2.0, the new rate setting process will consider a property's individual flood risk, rather than assess the property by the flood zone it is located within.
- Here's why flood insurance will look different in 2022.
- The National Apartment Association will be hosting a policy briefing webinar on Risk Rating 2.0 on October 12, 2021. In this webinar, senior executives from FEMA and the NFIP will discuss Risk Rating 2.0, how the methodology will impact multifamily and what policyholders can expect in terms of premium adjustments. Registration can be found here.
- **Policy Outlook:** Premium change estimates for single family homes indicate that the majority of properties will see nominal increases in monthly premiums. However, multifamily data has not been released leaving owners and operators of multifamily properties uncertain of what changes to expect. NAA is working closely with FEMA to compel the disclosure of relevant multifamily data so that owners and operators may better prepare for Risk Rating 2.0.

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.
- 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.