NATIONAL APARTMENT ASSOCIATION
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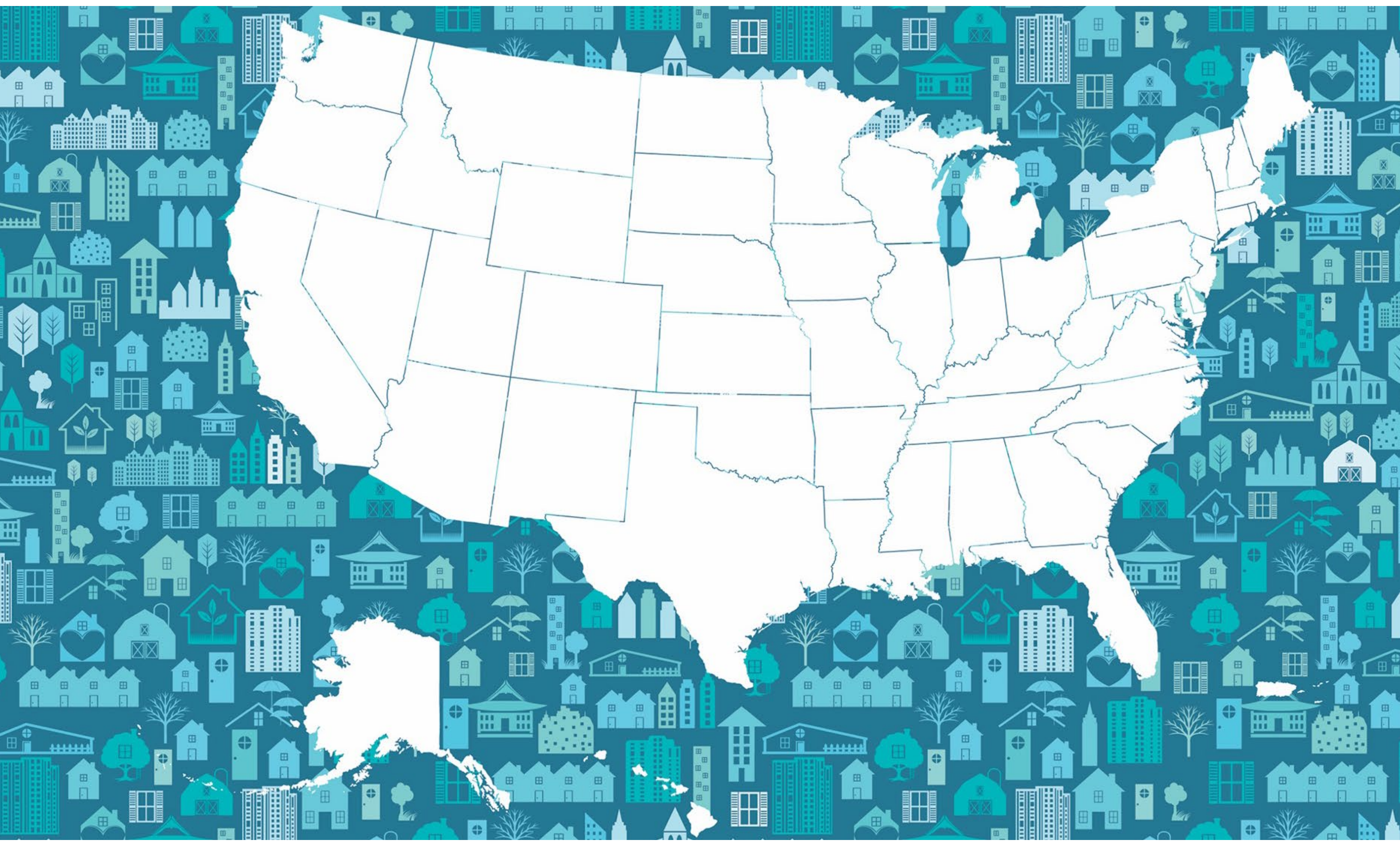
September 2021 Update

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 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 August payments through August 6 at 85.1 percent in the Class A product and 83.5 percent in the Class B inventory.
- Collection levels are lower at 73.5 percent in Class C projects.
- Payments were received from more than 89 percent of the households in Providence, RI; Fort Lauderdale, Miami, Tampa, West Palm Beach, Fl; Virginia Beach, Va; Austin, Tx; and Denver, Co.
- In contrast, rent has been collected from fewer than 82 percent of households in New Orleans, La.; New York, N.Y; Boston, Mass.; Las Vegas, Nv; Los Angeles, Ca; and St. Louis, Mo.
- The largest declines in year-over-year payments are in New Orleans (-14.8 percentage points), Oakland (-3.3 points) and San Diego (-2.9 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.
- 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,[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."

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.

[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.

- According to the U.S. Department of Treasury's (USDT) most recent compliance report, states and localities have only distributed 11 percent of the $46.5 billion in available federal funds through their rental assistance programs.
  - In the month of July alone, more than 340,000 households received nearly $1.7 billion in rental and utilities assistance, a roughly 15% increase in households served compared to June, and more than double the number of households served in May.
  - While this is welcome news, more must be done to expedite distribution of rental assistance dollars.
- On August 25, 2021, USDT released its third round of ERA guidance and Frequently Asked Questions, including new recommendations on self-attestation and providing assistance to housing providers whose residents vacated their unit. Learn more about NAA's takeaways as we analyze USDT's guidance and highlight our continued ERA advocacy.
- 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.
  - Awardees include Philadelphia; Des Moines and Polk County, Iowa; Houston and Harris County, Texas; Leon County, Fl.; and New Orleans. The tireless work of NAA's network of state and local affiliated apartment associations no doubt contributed to the effectiveness of these programs.
  - Grantees that substantially expended their share of funds from the Consolidated Appropriations Act (ERA1) and obligated at least 75 percent of their second allocation from the American Rescue Plan Act (ERA2) were eligible for more money.
  - To date, USDT had distributed only $8.6 billion of ERA2 funds to grantees. The $13 billion in additional resources for grantees comes from previously unreleased ERA2 dollars from federal coffers.
- 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. The latest version is certainly an improvement. It allows for self-attestation for all eligibility criteria to expedite processing of applications and creates a process for housing providers to notify residents that they will apply for rental assistance on their behalf (allowing a housing provider-led application process that is no longer contingent on the renter's consent).
    - However, we remain concerned about the inclusion of a 120-day eviction moratorium as a condition of receiving rental assistance, limitations on opportunities for housing provider assistance and other provisions that would increase barriers to housing provider participation in rental assistance programs.
- **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.

- 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.

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. Join the lawsuit today.

The U.S. Supreme Court strikes down the CDC eviction moratorium.

- 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, to remain in effect until October 3, 2021.
- On August 26, 2021, SCOTUS ruled 6-3, along ideological lines, to strike down the Order.
    - According to the unsigned decision, "It is indisputable that the public has a strong interest in combating the spread of the COVID–19 Delta variant. But our system does not permit agencies to act unlawfully even in pursuit of desirable ends."
    - The Court reiterated that if a federal eviction moratorium is to continue that Congress must specifically authorize it.
- 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)'s single-family foreclosure and eviction moratoriums for all federally backed mortgages in their purview remains in place until September 30, 2021.
    - Also read 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.
  - 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.

State eviction moratoriums see facelift amidst federal moratorium halt.

- In Illinois, Governor JB Pritzker has extended his state's eviction moratorium until September 18, 2021. This decision came two days before the Supreme Court struck down the federal eviction moratorium.
  - Representatives from the Governor's office had previously stated that they will "match whatever the federal government does" to ensure overlap with the federal moratorium.

- In New York, the U.S. Supreme Court has struck down a key element of the state's eviction moratorium.
    - Under New York law, renters seeking protection under the eviction moratorium only needed to self-certify financial hardship by filling out a form. The Supreme Court ruled that this practice violates the Due Process Clause and New York must now require renters seeking protection to provide evidence of financial hardship. New York's moratorium is set to expire on August 31, 2021.
    - Governor Kathy Hochul announced in late August that the legislature had reached a deal that would extend New York's eviction moratorium until January 15, 2022. Details of the extension have yet to be disclosed.
- **Policy Outlook:** State eviction moratoriums face greater vulnerability than ever before.
    - States may take one of two actions moving forward: Existing moratoriums may be challenged with greater confidence resulting in strike downs or partial strike downs; or alternatively, moratoriums expiring prior to the federal order's original end date of October 3, 2021, may now be extended to ensure coverage. The latter is being championed by the White House.
    - NAA and its affiliates will continue to work with lawmakers to ensure that state-level moratoriums are not further extended.

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.

- **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 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 House has also started the process on this larger package and Houser committees are expected to report out their portions by mid-September.

- 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 larger legislation will likely have to be paired back, 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.