

December 2021

HOT TOPIC ALERT

MORTGAGE AND RENTAL ASSISTANCE



The COVID-19 pandemic has caused a financial hardship in both rental and homeowner markets. At the beginning of the pandemic, lawmakers imposed moratoriums on eviction and foreclosure. Later, they also offered assistance with rent and mortgage payments.

Even before COVID-19 started hitting markets, low- and moderate-income renters struggled to afford housing. Add in the additional struggle with the pandemic and it has become even more obvious that a disproportionate number of those experiencing hardship are [renters](#). But eviction moratoriums are problematic for a number of reasons. For one thing, they do not prevent arrearages and penalties from accumulating, which can result in eviction when the moratorium lifts. And nonpayment of rent damages falls heavily on housing providers, especially housing providers owning 2-4 unit properties who may depend on rent payments for their livelihood.

The National Association of REALTORS® (NAR) has advocated on behalf of housing providers that the best solution for all parties is rental assistance to cover the rent, taxes, and utility bills for tenants struggling during the pandemic. With full implementation of rental assistance, the aim is to regain stability and normalcy in America's housing market.

Brief History

With the outbreak of the COVID-19 pandemic, governments worldwide responded by imposing lockdowns and stay-at-home orders to contain the spread of the disease and prevent a collapse of healthcare systems. But shutdowns go hand-in-hand with economic disparities. With the lockdown orders, economic activity abruptly shut down and unemployment spiked.

The economic consequences of the pandemic included a [significant effect](#) on the real estate market: real estate sales initially dropped, and households encountered difficulties meeting rent and mortgage payments. Existing home sales dropped by more than [30%](#) between February and June 2020, but recovered to reach an all-time high in September 2020, thanks in part to low interest rates. Meanwhile, price increases have been continuous, despite COVID-19. As of the end of 2020, median home prices had increased by [more than 10%](#) over 2019 prices in most metropolitan areas. These developments have worsened the already serious housing supply shortage across the US.

As for renters, according to [US Treasury Department data](#), nearly 7 million Americans reported being behind on rent in the second half of [April 2021](#), and more than 40% of those worried they would be evicted in the coming months.

Significant Programs

A. CARES Act Eviction Moratorium and Rental Assistance

[The Coronavirus Aid, Relief and Economic Security \(CARES\) Act](#), signed into federal law on March 27, 2020, provided 120 days of eviction relief for tenants in multifamily rental housing that is federally insured or backed. It prohibited evictions that were based solely on nonpayment of rent before July 25, 2020. During that eviction moratorium, housing providers were prohibited from charging tenants late fees, penalties, or other charges for paying rent late. The eviction moratorium did not relieve tenants of the obligation to pay rent. It merely forbade housing providers from evicting tenants during that period for late payment.

The CARES Act also included \$150 billion in direct assistance to state, local, and tribal governments. Within the CARES Act, the Coronavirus Relief Funds (CRF) included minimum allocations to each state of \$1.25 billion, with direct payments to local governments with populations of at least 500,000.

The [National Conference of State Legislatures](#) has tracked state spending of CRF money across a variety of categories, including housing assistance. State allocations of CRF funds for housing assistance varied considerably. For instance, Wisconsin allocated \$35 million of its CRF for rental assistance to qualified low-income renters, with up to \$3,000 paid directly to their housing providers. Massachusetts allocated \$171 million of its CRF for eviction diversion, Iowa \$9 million

for low-income renters at imminent risk of eviction, and Illinois \$396 million for rent and mortgage assistance.

B. CARES Act Mortgage Forbearance

The Great Recession (the economic downturn from 2007 to 2009) caused about 8 million homeowners to lose their homes to foreclosure, with homeowners losing as much as \$20 trillion in equity. Today, the COVID-19 pandemic is wreaking economic havoc and endangering homeownership again. Borrowers with federally-backed loans (such as Federal Housing Authority (FHA) and Veterans' Administration (VA)) have the highest rate of delinquencies and are most at risk of having low or negative equity in their property.

The CARES Act provided for mortgage forbearance, giving qualified homeowners the temporary ability to skip or make smaller monthly mortgage payments. Section 4022 of the CARES Act gives borrowers with federally-backed mortgages the right to a forbearance if they are affected by a COVID-related hardship. Deadline extensions gave many borrowers until June 30, 2021 to apply for an initial forbearance of up to 12 months, while housing providers with certain federally-backed loans on multi-family properties have until September 30, 2021 to apply for the relief, which includes up to 90 days of forbearance.

Additionally, Fannie Mae or Freddie Mac residential borrowers who entered active forbearance by February 28, 2021 were able to request up to two additional three-month extensions, for a maximum of 18 months of total forbearance. Residential borrowers whose mortgages are backed by the US Department of Housing and Urban Development (HUD), the FHA, the US Department of Agriculture (USDA), or the VA who requested an initial forbearance plan by June 30, 2020, were also eligible for two additional three-month extensions, for a maximum of 18 months of total forbearance.

About 70 percent of the mortgage market is federally backed and therefore potentially entitled to these forbearance protections. The remainder of loans in the market are either in bank portfolios or in private-label securities. While the CARES Act did not protect borrowers with these types of loans, many servicers are voluntarily offering similar forbearance options to these borrowers, although they do not necessarily offer the same number of months or the same post-forbearance options. For instance, major lenders such as Bank of America, Chase, and Citi, offered their own forbearance and deferral programs, generally including at least three months of relief and suspension of late fees. Meanwhile, the Consumer Financial Protection Bureau (CFPB) has proposed a new rule that would establish a temporary "pre-foreclosure review period" essentially blocking all mortgage servicers from starting the foreclosure process until after December 31, 2021.

As of February 2021, more than 2 million borrowers were more than 90 days past due on mortgage payments or already in the foreclosure process. At the same time, about 2.7 million homeowners were taking advantage of mortgage forbearance, down from a peak of 4.8 million in May 2020. Most of those who have exited forbearance have been able to start making mortgage payments again, but about 14% of them exited forbearance without a plan. Projections show that up to 500,000 homeowners throughout the US could face foreclosure during 2021.

C. The CDC Eviction Moratorium

In September 2020, the Centers for Disease Control and Prevention (CDC) issued an [Order](#) under Section 361 of the Public Health Service Act ([42 U.S.C. § 264](#)) to temporarily halt residential evictions to prevent the further spread of COVID-19. Following extensions, the moratorium remained in place from September 4, 2020 through June 30, 2021. Under the moratorium, housing providers could not evict qualified tenants for failure to pay rent. Rental payments were still due, and, unlike the rules of the CARES Act moratorium, the CDC moratorium allowed housing providers to charge late fees, penalties, and interest for missed or late payments.

Housing providers violating the CDC order faced criminal penalties up to \$500,000 and up to one year in jail. Under the moratorium, housing providers were able to evict tenants only for criminal activity, threatening health and safety, damaging property, violating codes and ordinances, or other contractual obligations. State and local governments were allowed to adopt more restrictive protections were allowed, but the federal order overrode any state or local measures that provided less protection for renters.

A “covered person” under the CDC moratorium is any tenant or resident of a residential property who makes a declaration to their housing provider that they meet the [moratorium criteria](#): they are making best efforts to obtain assistance and to make timely rent payments; their income falls below certain benchmarks (i.e., the applicant expected to earn no more than \$99,000 (individual) or \$198,000 (joint) in 2020, or was not required to report income in 2019, or received an [Economic Impact Payment](#) from the CARES Act); they are unable to pay full rent due; and they likely face homelessness if they are evicted.

The CDC moratorium merely postponed evictions for a short term. It failed to take steps to address the longer-term damage COVID-19 caused in the housing sector. Under the moratorium, renters incurred levels of debt that they may never be able to repay. Housing providers experienced a loss of rental income that threatens the stability of the rental market.

Local REALTOR® associations in Alabama and Georgia [successfully challenged the CDC moratorium](#) in federal court in early May 2021, arguing that CDC exceeded its authority when it issued the moratorium (Alabama Association of REALTORS®, Georgia Association of REALTORS®, et al. v. HHS, et al. (U.S. Dist. Ct. D.C., [Case No. 1:20-cv-03377-DLF](#), filed November 20, 2020)). The US Department of Justice (DoJ) obtained an emergency stay from the D.C. Circuit Court of Appeals on June 2, 2021, temporarily reinstating the moratorium. The U.S. Supreme Court [vacated that stay](#) by its order dated August 26, 2021.

The moratorium was originally scheduled to expire on June 30, but was extended through July 31, and then extended for a third time from August 3 through October 3, 2021. The third extension was cut short by the Supreme Court’s ruling. It is estimated that as many as [12 million adults](#) may still be behind on their rent, according to estimates based on [Census Bureau data](#) for September 29 – October 11, 2021.

A number of states instituted their own eviction moratoriums, the majority of which expired in 2020. While most of the [state-level moratoria](#) have either expired or been repealed, a few remain in place. The [New Jersey moratorium](#), for instance, is scheduled to sunset on December 31, 2021,

while [New York's](#) lasts until January 15, 2022. In [Minnesota](#), renters who have a pending application for emergency rental assistance are protected from eviction.

Federal Emergency Rental Assistance

In the midst of the eviction moratoria, federal emergency rental assistance (ERA) unrolled in [two phases](#). In December 2020, Congress passed the Consolidated Appropriations Act ([P.L. 116-260](#), Div. N.) including \$25 billion in emergency rental assistance (ERA 1). In March 2021, the American Rescue Plan Act ([P.L. 117-2](#), § 3201) allocated a further \$21.6 billion (ERA 2). The ERA funds are directed to state and local governments via a per capita formula based on [US Census Bureau data](#), with no state receiving less than \$0.2 billion for ERA 1 and \$0.152 billion for ERA 2. ERA 2 includes a set-aside of \$2.5 billion for high-need grantees. The US Treasury Department provides a [detailed breakdown](#) of ERA distributions to state, local, and tribal governments.

The [ERA](#) funds may only be used for financial assistance and housing stability services for renters. The Consolidated Appropriations Act set parameters for using ERA 1 funds. For instance, states and localities were required to use at least 90% of their ERA 1 funds for rental and utility assistance (including payment of arrearages), with the remaining 10% usable for housing stability services (like case management and other support for families to retain their housing) and administrative expenses. Renters eligible under ERA 1 had to be low-income, experiencing financial hardship, and at risk of housing insecurity. Local governments administering the funds were directed to prioritize very low-income renters for assistance. Under ERA 1, the assistance can be provided for up to 12 months with the possibility of a single 3-month extension, but only if rental arrearages are addressed.

The American Rescue Plan Act changed these parameters somewhat for ERA 2. ERA 2 funding increased flexibility for spending on things like housing stability services and allowed the use of funds not already being spent on other purposes as of October 1, 2022 to be used for additional activities to promote affordable housing and eviction prevention. The American Rescue Plan Act also extended ERA 1 from December 31, 2021 to September 30, 2022.

Under ERA 2, rental assistance includes: payments for rent and rent arrears; utilities and home mortgage costs and arrears; and other expenses related to housing incurred due to the COVID-19 outbreak. ERA 2 allows a total of no more than 18 months of rental assistance under both ERAs combined.

While there are some differences in eligibility between ERA 1 and ERA 2, the basic requirements are the same. [“Eligible households”](#) must have at least one person who is (1) experiencing financial hardship related to COVID-19 (for instance, by qualifying for unemployment benefits), (2) is at risk of homelessness or housing instability, and (3) has a household income at or below 80% of the area median income (AMI) (for ERA 1), or the household is a low-income family as defined by the [US Housing Act of 1937](#) (for ERA 2) (also generally 80% of AMI). The US Treasury Department publishes [periodic FAQs](#) on ERA eligibility.

ERA payments are to be made directly to housing providers or utility providers, but tenants are allowed to receive the payments directly if the housing providers or utility providers are unwilling to accept them. Housing providers may assist their tenants in applying for the funds, or may even

apply directly if they meet certain conditions (such as obtaining tenant signatures, notifying tenants of the application, and ensuring that funds are applied to tenants' rental obligations). ERA 2 directs state and local governments to prioritize providing financial assistance and housing stability services for very low-income tenants (defined as those with income at or below 50% of local area median income) and applicants who are and have been unemployed for the prior 90 days.

As of late November 2021, there are about [505 ERA programs](#) open across the US. More are coming available every day as the end of the CDC eviction moratorium approaches. The [National Low Income Housing Coalition](#) collects and updates information on individual ERA programs and what they do for renters. States and localities have flexibility in designing their rental assistance programs under both ERA 1 and ERA 2. This flexibility, along with variations in resources and demand for rental assistance, means that the experience of similarly situated renters seeking assistance varies. There is a great deal of local variation in terms of how ERA programs are structured, especially in terms of:

- Who administers assistance (e.g., government entity versus nonprofit organization or community partner);
- How fund use is prioritized (e.g., funds applied to arrears versus prospective payments, or to utilities versus rent);
- How to distribute limited benefits (e.g., lottery versus first-come first-served or referral-based processes);
- Whether and how to prioritize applicants;
- How much documentation to require from applicants;
- The amount and duration of benefits; and
- Whether to place conditions on benefit recipients (e.g., requiring housing providers to accept partial payments or prohibiting housing providers who accept era funds from pursuing eviction).

According to the [U.S. Treasury Department](#), as of October 31, 2021, state, local, and Tribal governments have made over 2.5 million ERA payments, and have distributed over \$12.5 billion in rental assistance. [Some studies](#) credit ERA with being a factor in avoiding a post-moratorium spike in evictions. One study refers to ERA as a [“win-win-win,”](#) stabilizing both tenants and landlords, preserving neighborhoods, and protecting government budgets over the long-term by avoiding paying even more for housing assistance in the future.

ERA remains an option for many renters, even as strict bans against eviction are being eliminated. Some tenants are being provided with additional protection. HUD has recently issues an [interim rule](#) to require that tenants may not be evicted for nonpayment of rent from HUD-subsidized public housing and certain properties with project-based rental assistance unless they are provided with a 30-day notice period that includes information about available federal emergency rental assistance.

D. [The Homeowner Assistance Fund for Mortgage Payments](#)

ERA assistance may be provided only to eligible households, which is defined to include only households that are obligated to pay rent on a residential dwelling. However, homeowners may be eligible for assistance under programs using funds under the [Homeowner Assistance Fund \(HAF\)](#),

which was established by the US Treasury Department under the [American Rescue Plan Act](#) in 2021.

The HAF provides [nearly \\$10 billion](#) to state and local governments to grant relief to the most vulnerable homeowners. In order to participate in the HAF program, state and local governments had until [April 25, 2021](#) to submit a notice of funds request to the Department of the Treasury (Tribes, Tribal entities, and the Department of Hawai’ian Home Lands have until [September 30, 2021](#)). The program is directed at preventing mortgage delinquencies and defaults, foreclosures, loss of utilities or home energy services, and displacement of homeowners who experience financial hardship after [January 21, 2020](#). Funds from the HAF may be used for assistance with mortgage payments, homeowner’s insurance, utility payments, and other specified purposes. The law prioritizes funds for the homeowners who have experienced the greatest hardships.

The HAF provides a minimum of \$50 million for each state (including the District of Columbia and Puerto Rico), \$498 million total for Tribes, and \$30 million for other US territories. Allocations are based on the average number of unemployed people and the number of mortgages with payments more than 30 days past due or in foreclosure. Modeled after the [“Hardest Hit Fund”](#) of the Great Recession, the HAF reaches borrowers who were not covered by the CARES Act, including those in danger of tax foreclosure (rather than mortgage foreclosure), those whose incomes are not restored fully, or those who cannot qualify for a deferral or modification from their lenders without an additional cash contribution. The allocated fund of nearly \$10 billion is smaller than needed. At a national level, [NAR advocates](#) for additional funding, as well as streamlined and standardized distributions.

Impact on Real Estate/Homeownership

Today’s housing market is hot. There is a significant imbalance between supply and demand, especially for homes in more affordable price ranges. In 2020, home sales grew almost 6% from 2019 levels. Experts predict that 2021 home sales will [increase by nearly 22%](#), the most significant growth since 1983. However, these surges also mean that homeownership may become less affordable and accessible.

Even before COVID-19, there was a housing shortage in the United States. Recent [NAR estimates](#) put current US housing supply at 3.8 million units short of demand. Additionally, general mortgage credit availability has never bounced back to pre-recession levels. Due to the pandemic, there has been a shift toward [higher credit score borrowers](#), including an increase in required credit scores for purchase and refinance loans. To soften the blow of these trends during the pandemic, [NAR recommends](#) measures such as eliminating forbearance and foreclosure penalties that decrease future access to credit.

The ERA and HAF programs give renters and homeowners the chance to preserve their homes and to avoid the black marks to their credit ratings that eviction or foreclosure would cause. For housing providers and sellers of real estate, the ERA and HAF help to provide stability to the housing market and avoid the uncertainties caused by spikes in vacancies and homelessness.

There is no panacea for housing insecurity and its associated problems. Moratoriums are particularly problematic, since they merely delay the threat of eviction while the renter continues to accumulate debt. The loss of rent payments to housing providers is also a significant income shock. According to a [2020 Brookings Institute study](#), 40% of residential rentals are owned by individual investor housing providers, a third of whom are from low- to moderate-income households and for whom property income represents up to 20% of their total household income. Without rental assistance payments to accompany eviction moratoriums, both tenants and smaller housing providers are damaged.

As communities gear up for the expiration of the CDC eviction moratorium, a number of home-saving measures may come into play. For instance, [“pay to stay” ordinances](#) provide tenants the right to pay their rent in full up to the eviction hearing (although they do not prevent the housing provider to decline to renew a lease or to evict a tenant for cause unrelated to nonpayment). Another popular move among state and local legislatures is the [“Tenant Opportunity to Purchase Act”](#) (TOPA), which would enable tenants to purchase the property they rent before it is put on the market. TOPAs have a mixed track record, however. For instance, [Washington, D.C.](#), largely eliminated TOPAs for single-family dwellings, citing low use (less than 5% of renters ended up buying their homes in six years of the TOPA regime) and concerns over “flipping” of purchase options by tenants selling to speculators for large sums of money.

REALTOR® Association Involvement

NAR has been a major player in [pandemic-related housing policy](#). NAR’s Federal Advocacy team works closely with Congress, the Administration, and industry partners, to ensure the interests of REALTORS®, their families, consumers, and the entire real estate industry are protected in any federal action in response to COVID-19. The inclusion of mortgage forbearance protections and rental and mortgage assistance in federal COVID-19 legislation are just two examples. NAR is also advocating for credit reporting protections for borrowers experiencing pandemic-related hardship, among other measures.

Particular areas of interest include protecting [housing providers](#) and [homeowners](#), along with issues such as consumer access to credit and market liquidity, federal financial support and real-estate lending programs, and housing security and affordability.

NAR [supported](#) the Alabama and Georgia REALTORS® associations in their successful challenge to the CDC’s eviction moratorium. The best assistance for renters – and their landlords – is not a bar to eviction, but assistance in paying the rent. NAR, along with several state associations, is therefore working with the Administration and Congress to [improve disbursement of ERA funds nationwide](#). The goal is to keep renters housed and to make sure housing providers are able to meet their financial and legal obligations.

NAR’s Land Use Initiative analyzed over a dozen tenant protection, good cause eviction and foreclosure registry ordinances since April 2020 submitted by state and local REALTOR associations. To read through each analysis, [login to the LUI](#), click on “Search by Issue”, “Residential Rental Property Regulation”, “Tenant Protection” and “Good Cause Eviction”

Other Organizations Working on this Policy

A variety of real estate industry stakeholders, housing advocates, and think-tanks have raised their voices to advocate for COVID-19 related housing protections and provide valuable research, such as:

- [The Mortgage Bankers Association \(MBA\)](#): a leading advocate for the real estate finance industry
- [The National Multifamily Housing Council \(NMHC\)](#): a broad coalition of apartment industry leaders
- [The National Council of State Housing Agencies \(NCSHA\)](#): a network of state-chartered Housing Finance Agencies (HFAs)
- [The National Housing Council \(NHC\)](#): a coalition of affordable housing leaders
- [The Urban Institute](#): a nonprofit research organization focused on the "well-being of people and places" in the US
- [The Center on Budget and Policy Priorities \(CBPP\)](#): a nonpartisan research and policy institute aimed at reducing poverty and inequality and restoring fiscal responsibility
- [The Institute of Real Estate Management \(IREM\)](#): an international institute for real estate management professionals
- [The National Apartment Association](#): a leading voice for the rental housing industry
- [The National Association of Residential Property Managers \(NARPM\)](#): an association of real estate professionals focused on single-family and small residential properties
- [The National Low Income Housing Coalition \(NLIHC\)](#): a national organization dedicated to socially just public policy to ensure affordable and decent homes for people with the lowest incomes in the US

Conclusion

The full extent of the damage to housing by the COVID-19 pandemic will take years to assess. Short-term fixes such as unfunded eviction moratoriums only delayed the harm rather than aiding its solution. Other measures, such as mortgage forbearances and rental and mortgage assistance, may have real benefits and help to mitigate spikes in homelessness and home loss.

NAR has been at the forefront of advocating for aid to stabilize the housing market and all housing providers and renters alike that have experienced pandemic hardships. . Meaningful protections for homeowners and renters are imperative so that threats such as eviction and foreclosure do not harm their chances as housing market participants in the future

Hot Topic Alerts are prepared for NAR by Legal Research Center, Inc.

To review NAR's other Hot Topic Alerts, text **HOT TOPIC** to **30644** to sign up for REALTOR® Party Mobile Alerts and a link will be sent directly to your mobile device. All Hot Topic Alerts can also be found on the [REALTOR® Party webpage](#).

Questions or concerns contact Melissa Horn
Email: MHorn@nar.realtor
Phone: 202-383-1026

ADDITIONAL STATE & LOCAL RESOURCES

White Papers: Comprehensive reports prepared for NAR on issues directly impacting the real estate industry. Examples include: Rental Restrictions, Land Banks, Sales Tax on Services, State & Local Taxation, Building Codes, Hydraulic Fracturing, Foreclosure Property Maintenance, Climate Change, Private Transfer Fees.

Growth Management Fact Book: Analysis of issues related to land use and modern growth management topics include density — rate of growth, public facilities and infrastructure, protection of natural resources, preservation of community character, and affordable housing.

All available on [REALTOR® Party webpage](#) under the *State & Local Issues* tab.