COVID-19 FAQS

FOR HOUSING PROVIDERS

June 22, 2022

EVICTION MORATORIUM

Please note:

On August 26, 2021, the Supreme Court, in a 6-3 decision, vacated the stay on the D.C. District Court decision, which held the moratorium exceeds the Centers for Disease Control and Prevention's (CDC's) authority, ruling in favor of the Alabama and Georgia Associations of REALTORS®, two housing providers, and their property management companies (plaintiffs).However, housing providers should still proceed carefully with eviction proceedings, as state courts may not be processing these actions right away. For more information, please visit the NAR Background and Talking Points: CDC Eviction Moratorium Expiration page.

NAR supports the Emergency Rental Assistance Program (ERAP), which Congress appropriated $46.55 billion to in 2020 and 2021. These funds were disbursed to states and localities, which then created systems for processing applications from renters and housing providers seeking relief. By August 2021 many areas had exhausted their funding but still faced demand, and the Treasury Department began the process of reallocating rental funds from areas that received more funding than necessary or were not meeting pre-set program benchmarks for assistance. This process is ongoing, so a program that previously closed due to lack of funding may receive more funding and reopen. The Administration continues to promote awareness of the availability of rental assistance in some states and localities to help both renters and housing providers through a toolkit issued by the Consumer Financial Protection Bureau at the end of July 2021 and a fact sheet on "Initiatives to Promote Housing Stability by Supporting Vulnerable Tenants and Preventing Foreclosures," issued at the end of June 2021. These initiatives are intended to encourage better disbursement of Emergency Rental Assistance Program (ERAP) funds, coordination across agencies and levels of governments to communicate to vulnerable tenants and housing providers the aid available to them, and encouraging state and local courts to adopt "anti-eviction diversion practices" to help housing providers and tenants reach agreements and access rental assistance to keep people in their homes while making housing providers whole.

1. Emergency Rental Assistance

a. How much money was available in federal rental assistance?

The December 2020 COVID relief package included $25 billion for rental assistance, allocating at least $200 million per state, with more available based on population. States applied for the funds to the Treasury Department, which disbursed the money to each state accordingly. Each state was tasked with creating its own program, within the guidelines set by the Treasury Department, which was then administered by the state's housing agency.

The "American Rescue Plan Act," which became law in March 2021, includes an additional $21.55 billion in dedicated rental assistance funds, along with funding for housing vouchers. From that funding, each state received at least $152 million in additional funding.

b. What are the guidelines set by the Treasury Department for the state programs?

The Treasury Department released two separate sets of guidelines for states ("grantees") to use when creating their rental assistance programs; the first applies to the funds appropriated in the December 2020 FY 2021 Appropriations bill ("ERA 1"), and the second applies to the funds appropriated by the March 2021 American Rescue Plan ("ERA 2"). Though they are similar, there are some differences between the two guidance documents, due to slight differences in the language of their enacting legislation. The state programs that have been created thus far conform with the guidelines set for the

first tranche of funding; it is not yet clear how or if the states will adjust their programs to reflect the changes in the guidelines between the two.

Across both guidelines, some of the most relevant information for housing providers are:

- "Eligible households" must have at least one person who:
    - Qualifies for unemployment OR has experienced a reduction in household income/incurred significant costs/experienced financial hardship due to COVID-19;
    - Is at risk of homelessness or housing instability;
    - 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 United States Housing Act of 1937 (for ERA 2).
- Applications for rental assistance may be submitted by either an eligible household *or* by the housing provider on behalf of an eligible household.
- Applicants can self-certify that they meet many of the requirements at the time of application, and income may be determined based on either the total income for the year 2020 or the monthly income at the time of application.
- Assistance can only be applied for three months at a time (not including rental arrears), totaling up to 12 months.
    - Grantees may provide an additional 3 months of assistance (beyond the 12 months) if they determine it is necessary for the household.
- For ERA 1: Rental arrears payments are to be prioritized (though it does not require that they be fully paid before applying to prospective rent).
- For ERA 2: Rental arrears are not required to be prioritized (though it is still an eligible use for the funds).
- Tenants that receive housing subsidies are eligible for rental assistance to cover any portion of rent and utilities that the tenant pays themselves.
- Housing providers can accept direct payments on behalf of tenants, but must confirm their cooperation with the state program; outreach to the housing provider to confirm this by the states will be considered complete if one of the following conditions is met:
    - A request to the housing provider sent by mail, which the housing provider has 14- calendar days to respond to (from date of mailing);
    - At least three attempts by phone, text or email over a 10 calendar-day period to the housing provider; or
    - The housing provider confirms in writing that they do *not* wish to participate.
- Under the guidelines for ERA 2, the states do not have to seek the cooperation of the housing provider before providing assistance directly to tenants. While this is concerning as it means the money may not go directly to housing providers who *would* have participated in the program, given the opportunity, it may result in funds being disbursed more quickly. Additionally, the programs already created by the states have that requirement, and it is not mandated that it be removed.
- In addition, ERA 2 explicitly allows the use of ERA funds for relocation costs, including rental security deposits.

More information can be found in the updated Treasury Department Emergency Rental Assistance FAQ document (May 7, 2021), or on the Treasury Department's Emergency Rental Assistance page.

On August 25, 2021 the White House released additional guidance aimed at speeding up and improving distribution of ERAP funds to tenants and housing providers in need. These include:

- **Allowing self-attestation to document a household's eligibility for ERAP.** This includes showing financial hardship, income, and risk of homelessness/housing instability. It specifically states that the administering entities can rely on that alone to document household income eligibility.
- **Housing providers can receive an advance on expected assistance.** Treasury released guidelines to provide a portion of estimated "bulk payments" (payments covering multiple tenants in a single property) in anticipation of receiving the full application and documentation requirements.
- **State and local administrators can partner with nonprofits to deliver advance**

assistance to households at risk of eviction while their application is processed. Expedited payments may be available for tenants who are at risk of eviction through non-profit organizations, which the federal ERAP funds then cover once the application is fully processed.

- **State and local administrators may make additional payments to housing providers who take on tenants who face major barriers securing a lease, including those who have been evicted or experienced homelessness during COVID.** These payments may be paid as a required condition for entering into a lease with a hard-to-house household that would not otherwise qualify.
- **Rental arrears from previous addresses may be covered.** This will both help make the previous housing provider whole and pay the debt they are owed and also remove barriers for the tenants to find new housing if they have outstanding debt.
- **Tenants' costs associated with obtaining a hearing or appealing an order of eviction may be covered by ERAP funds as an eligible "housing expense."** Rent bonds – frequently required as a condition for a tenant to get an eviction hearing – are an eligible ERA expense.

These changes follow a letter with recommendations to improve the program sent by the housing provider coalition NAR is a member of to the Administration and Congress. Several of those recommendations have now been adopted, including allowing self-attestation, advances for housing providers, and ensuring that previous addresses are eligible for ERAP funds.

c. How do I access the federal rental assistance?

Each state created a different program, provided through its housing agency. While some states and localities still have funding from the original disbursement amounts, many have exhausted their funds. The Treasury department began reallocating unspent rental assistance funds from programs that received more money than needed or were not meeting pre-set benchmarks in the fall of 2021. Thus, programs that previously closed due to lack of funding may reopen if the treasury reallocates money to them. **To learn more about the reallocation process and to see if your program has received reallocated funds, see the Treasury Departments Emergency Rental Assistance Page.**

In addition, in April 2022 the Treasury Department released guidance to states on the "State and Local Fiscal Recovery Funds" (SLFRF) from the CARES Act of 2020. The SLFRF provided $350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. In its guidance, the Treasury specifies that rental assistance is one of the eligible uses for the funding. You can learn more about the SLFRF from the Treasury Department's information page on the program.

NAR has a "Rental Assistance Resource page" with links to many of the resources available on rental assistance, including information from the federal government and resources from other industry groups to help housing providers communicate and work with their tenants who are behind on rent due to COVID-19.

On July 28, 2021, the White House released a new CFPB portal to help both renters and housing providers easily find the rental assistance program in their area.

The Treasury Department has created a portal for tenants and housing providers to find assistance in their areas.

The National Council of State Housing Agencies (NCSHA) has provided information on state-by- state programs, which can be accessed at https://www.ncsha.org/emergency-housing-assistance/.

2. PROPERTY MANAGEMENT ISSUES (NAR also recommends REALTORS® visit the Institute of Real Estate Management website at https://www.irem.org/learning/coronavirus for more information).

a. The economy is reopening. How should housing providers respond?

Maybe the economy is reopening, but housing never closed. Indeed, the basic strategy from government authorities for the last six weeks has been to "shelter at home." In other words, staying home has been our national response to COVID-19. In the absence of a vaccine, reliable medical treatment, or adequate testing/contact tracing/isolation, it is likely that, at least to some extent, the virus will spread more quickly as the economy reopens than it has in recent weeks.

That means that it is more – not less – likely that the virus will circulate at rental properties. If so, housing providers need to maintain and, if necessary, increase the steps they have already taken to minimize the spread of the COVID-19 virus at their properties, even as the rest of the economy begins to reopen.

b. The governor has lifted COVID-19 precautionary measures in my state. Do I need to lift them from my property too?

Many government authorities adopted rules to strictly enforce social distancing, including closing businesses. Those policies gave owners and managers implied authority to adopt similar

restrictions at their properties. As governments have lifted those restrictions, some residents have pressed to lift restrictions imposed by housing providers. There are good reasons to keep restrictions in place, however. First, as noted above, if residents return to work and become exposed to the virus, there is more reason than ever to take steps to prevent them from exposing the virus to other residents. Also, the housing belongs to its owner, not the residents, and in most jurisdictions, owners retain broad control over the use and operation of their properties.

Finally, in most jurisdictions, civil authorities themselves lifted restrictions in phases, hoping to prevent new disease flare-ups, and housing providers are justified in using similar caution in removing their own precautions. Just because civil authorities lift restrictions doesn't mean housing providers are required to do likewise.

c. Social distancing

i. What are the best practices for encouraging social distancing?

Social distancing remains the best method to slow the spread of the COVID-19 virus. Managing social distancing will vary from property to property. The solutions will be different for a high-rise, elevator-serviced apartment in an urban setting from a garden- style property in a suburban location. But some common themes apply to everyone:

1. To the maximum extent possible, housing providers should continue to restrict access to common and public areas. The virus spreads through social contact, and common and public areas are the most likely place in your property for those contacts to take place. Until effective prevention or treatment is available, housing providers should continue to restrict access to common and public areas. Encourage your residents to use common and public areas like lobbies as briefly as possible and to treat them as places for transit only and not as places for socializing. Some owners have removed furniture from lobbies to discourage residents from lingering there. Social spaces, such as communityrooms and game rooms, should stay closed. Continue to restrict deliveries and, where possible, visits from non-residents.

   That's easier said than done. In response to resident requests and improving weather conditions, some owners are experimenting with methods to relieve restrictions on common and public area. This could include limiting the number of persons who can occupy a space, or assigning appointment times for use of picnic, playground and similar areas. The problem is "social creep" – once areas are opened, residents will want to use them, and it will be very difficult to enforce any remaining restrictions. If it is okay to have six people in a grill area, why not 8 or 10? In a lot of respects, a flat prohibition on use is a much easier policy to enforce than relaxed restrictions that rely on residents policing themselves.

2. Should all public and common areas be treated alike? Yes: In particular, housing providers need to be aware that facilities that are used frequently by children – for example, recreational areas, playgrounds, and tennis and basketball courts – must be treated like any other common/public areas. Otherwise, imposing additional restrictions on facilities predominantly used by

children (compared to those areas used by adult residents) may lead to charges of violations of the prohibitions of the Fair Housing Act ("FHAct") against discrimination based on familial status.

d. Can a landlord require masks in all common areas?

Just as a restaurant can adopt a "no shoes, no shirts, no service" rule, landlords generally can adopt rules restricting the use of their public and common use areas, including requiring tenants and visitors to wear masks. Owners' decision to require masks in public places will be strengthened to the extent that state or local governments have adopted rules requiring masks in public places.

The rules may be slightly different for federally assisted properties including Section 8, Section 202 and Section 811 properties. According to recent HUD guidance, owners of these properties can update their house rules to require face coverings, but must give existing renters at least 30- days' notice of any such change (persons within the initial lease term must be given notice 60 days prior to the end of their lease terms). The changes must be approved by HUD and "must be within the bounds of common sense [and] not excessive or extreme." The FAQs state that rules concerning face coverings "must be consistent with state and local law and directives from public health officials," suggesting that approval is less likely in places that have not adopted requirements to wear masks in public.

e. Can a landlord prohibit outside guests from a property?

Common law allows landlords to prohibit trespassers on their properties, but also gives tenants the right to invite guests. If a property owner wants to limit non-resident access to the property, there are several steps they can take. Landlords can require that all persons on the property (including contractors hired by tenants) must confirm they have no current COVID-19 symptoms and have not traveled to any place where the virus is prevalent. If possible, there should be some sort of check-in procedure. Posted signs should also say that visitors are subject to getting their temperature taken before being admitted. Landlords may also require that all deliveries be made to a central location (rather than throughout the property). Posting signs like that will discourage a lot of unwanted people from coming in. Staff should be familiar with the requirement and, to avoid subsequent claims of discrimination or other types of liability, should apply it uniformly.

With respect to housing for older persons, the CDC has said for months that at "retirement communities" and "independent living facilities," non-essential visitors should be limited (one visitor per day) and should be restricted to persons "who are essential to preserving health, including mental health, well-being and safety of residents."

With respect to federally-assisted housing, including Section 8, Section 202 and Section 811 housing, to the extent that HUD's new FAQs require changes in house rules to implement a mask requirement on tenants, that guidance also suggests that owners should consider changing house rules if they want to restrict visitors. The same requirements for 30 or60 day notice, referenced above, and HUD approval apply.

f. Could a landlord require temperature be taken for any outside guests?

Again, owners have latitude with respect to admitting outside persons onto their properties, which would include taking the temperature of visitors. Signs notifying visitors that they may be required to have their temperature taken should be posted at entrances to the property, and, as with other precautions, staff should be familiar with the requirement and apply it uniformly.

However, as with other requirements for wearing masks and restricting visitors, HUD's recent FAQs suggest that owners of Section 8, Section 202 and Section 811 housing wishing to require visitors to submit to temperature testing should adopt applicable house rules, subject to the same 30- or 60- day notice and HUD approval requirements.

3. TENANT ISSUES

a. Must a landlord consider unemployment assistance as a form of income?

- In most cases, no. Owners are under no federal requirements when it comes to counting unemployment assistance as income in connection with lease applications. In addition, the one-time $1200 check received by many taxpayers was a tax rebate or credit and should not be included in calculating a tenant's income. If you are in a state or locality that has "source of income" provision in its discrimination laws, owners should check with legal counsel to determine how to treat unemployment compensation to avoid discrimination claims.

- If you participate in HUD-assisted housing, the amount of assistance a family receives may be affected by the amount of income they receive and so it is important to know how to count unemployment assistance. Housing providers are urged to be in contact with their housing authority to clarify how this is treated.

b. Communications with residents

i. What is the best policy for communications with residents?

If they have not done so already, housing providers should communicate frequently with residents, providing them with regular updates about the steps they are taking to maintain a healthy environment. Signs and posters should be placed around the property to encourage personal hygiene (wash your hands!) and other steps individual tenants can take to make themselves and the property safer. Examples are available on the CDC website (cdc.gov).

If they have not done so already, housing providers should explain to residents that the COVID-19 virus is still spreading rapidly through the population and that they should assume that other people – including other residents at the property – may be carrying the virus and take appropriate precautions. Residents should be reminded that if everyone takes precautions to protect themselves from the virus, it will improve the health prospect of all residents.

ii. What should I do if I learn that a resident or staff person has tested positive for the COVID-19 virus?

First, do not respond to rumor or gossip. A verbal report from one tenant that another tenant is sick or has suspicious symptoms is not sufficiently reliable to take action.

The situation is different if a housing provider receives a reliable statement from a tenant that he/she has tested positive, or a similar report from a public health official. Although the law varies greatly from place to place, as a general matter, a landlord has a duty to warn tenants of known hazards at their property. While there is no case law specifically with respect to COVID-19, reliable information that someone at the property has tested positive for the virus could be deemed to constitute knowledge of a hazard that should be shared with other tenants. At a minimum, disclosing that information will encourage other tenants to redouble their efforts to avoid the virus, which will make the housing provider's job easier. But, as discussed below, you should not disclose specific resident or employee names or information. Better to communicate the issue generally and steps taken to protect residents and staff so they are not exposed. Both HUD and the CDC have advised that housing providers can inform residents that a staff member or another resident has tested positive for the virus.

Be aware, however, that some local public health agencies have urged housing providers not to disclose this information, largely to protect the privacy interests of persons who test positive. Before notifying other residents, even generally, that someone at the property has tested positive, you should try to determine if your local public health agency has published guidance.

iii. If I decide to disclose that someone at the property has tested positive, can I disclose who that person is?

No: Medical information is subject to a variety of state and federal privacy protections, and providing personally identifying information about someone who has tested positive would likely violate these principles. And employees may also be protected under privacy and labor laws. Given the widespread presence of the virus and the many asymptomatic people who may be spreading the virus, information that a particular person has the virus may not provide really useful information. As a practical matter, it also may create issues for that resident or employee that will only complicate dealing with other residents: disclosing this information would make it much less likely that another person who tests positive would disclose that information to you. Housing providers should politely discourage any request to share personally identifying information about a person who tests positive, explaining that they treat all residents' privacy seriously and reminding residents that if they tested positive, they would want the housing provider to treat their personal health information similarly.

c. A resident has tested positive for the COVID-19 virus. Can I ask them to vacate their unit or evict them?

Except in extraordinary cases, no: HUD guidance is that in most cases, persons who have

tested positive can successfully isolate themselves in their unit until they recover. If a person who has tested positive for COVID-19 refuses to self-isolate, however, housing provider should consider taking additional action. Housing providers should check with their legal counsel to determine whether their lease form and applicable landlord/tenant law allows additional action against
non-compliant tenants. While it does not expressly discuss grounds for eviction, the Fair Housing Act does not protect persons from discrimination claims who present a "direct threat" to the health or safety of others. Conceivably, someone who fails to comply with direction to self-isolate may present such a direct threat. But courts advise that each "direct threat" claims must be based on an "individualized assessment" of the specific facts of each case, including whether some action less than eviction may persuade the person who has tested positive to follow self- isolation guidance. In serious cases, it may be appropriate to seek advice from local public health or law enforcement officials.

d. Cleaning

i. What additional cleaning procedures should housing providers adopt?

Since the beginning of the pandemic, the CDC has urged constant cleaning and disinfecting of public spaces. In a multifamily housing property, this will include disinfecting door handles, counter surfaces, elevator buttons, handrails, light switches, and laundry rooms, including controls for washers and dryers. Making extra efforts to clean and disinfect the property is probably the most visible way to demonstrate your concern for keeping your property virus- free and to encourage residents to make their own anti-virus efforts. Cleaning and disinfecting operations should happen multiple times each day – of course, whenever a surface is touched, it may become contaminated, but multiple cleaning will eliminate at least some possible exposure. Where possible, hand sanitizing stations and disinfecting wipes should be made available near doors, elevators and other "touch points" for residents' use.

Even during this re-opening phase, it is best to continue this cleaning process vigilantly until it is clear there are no or minimal reported cases in your state or region.

ii. Disinfecting contaminated apartments. Professional cleaning companies are gearing up to provide this service. The apartment should be treated as if it has exposed to a type of
toxic substance. Cleaning protocols should be consistent with CDC guidance. For example, if an apartment is vacated by a sick resident, CDC recommends that the windows should be opened for at least 24 hours to allow ventilation that may help remove the virus. It also would be reasonable to leave the unit vacant for two weeks (considered generally to be the maximum incubation period reported for people with the virus). Cleaning personnel should still wear gloves, goggles and masks as appropriate and should scrupulously follow all warning labels on products they use.

e. Tenant services/staffing/marketing

i. How should I manage on-site property management staff?

The management of a multifamily housing property is a business like any other. In addition to worrying about the health and safety of their residents, housing providers need to worry about the welfare of their staff also. At least in those jurisdictions that remain subject to stay-at-home orders, the first question an owner needs to confirm is whether on-site property managers are deemed to be "essential workers". But even where on-site staff is deemed essential, most housing providers have adopted systems to minimize the number of persons required to be on-site, such as using more electronic and remote services for tenant transactions and restricting maintenance to only emergency repairs, as discussed below.

In situations where property staff must remain on site, housing providers are looking at staggered shifts, scheduling appointments with residents, and other options to keep at least some on-site visibility while minimizing contacts that may be dangerous to both staff and residents. These options are far from ideal, and housing providers need to remain nimble and adaptable to respond to changing government policies, economic conditions, management issues, and local health directives.

ii. How should I handle maintenance requests?

Maintenance requests are a good example of the practical problems posed by the virus. Since the virus began to spread, many housing providers have announced that they would only undertake "emergency" maintenance and repairs. Maintenance staff and, grudgingly, most residents accepted this solution to avoid contacts that could spread the virus. But exactly what constitutes an "emergency"

varies widely, and some residents report that repairs to important fixtures – refrigerators, water heaters, ovens – have not been treated as "emergency" matters. As the weather warms, air conditioning needs also will become urgent. And housing providers do not want their residents to undertake DIY fixes that may present fire, flood, and electrical hazards. Over time, wider availability of personal protective equipment ("PPE") for both repair crews and residents may make people more comfortable about permitting in-unit repairs to take place. If units are occupied, repair crews should plan to wear their own PPE – at a minimum, masks and gloves – and bring similar PPE for any occupants in the unit while the repairs are performed.

iii. **To protect my staff and tenants, can I use remote or electronic services to deal withtenant transactions?**
Yes: many owners have discovered that modern technology allows many transactions that were formerly performed in person to be moved online, including making rent payments and submitting maintenance requests. Because of efficiency gains, some housing providers may decide to retain these electronic systems after the crisis passes. The availability of remote/ electronic services, however, is not universal – not all tenants have access to computers or tablets, and even when they do, their operating systems may not mesh with the housing provider's systems. Back-up systems, such as lockboxes to collect rent payments, may still be needed. Also, to the extent that housing providers move services online, they need to make sure that those services are equally available to persons with visual and hearing impairments. Websites that are not accessible to persons with disabilities may result in claims of discrimination under the Americans with Disabilities Act, the FHAct, and other federal and state antidiscrimination laws.

iv. **What should I do about apartment tours?**
Here again, many housing providers are turning to remote and electronic alternatives to provide pre-rental apartment tours. Video sessions on FaceTime and other apps serve most of the needs for prospective renters to see a unit and assess its condition. While not the ideal solution for anyone, most prospective renters and housing providers are aware of thehealth dangers posed by physical meetings and look at video tours as an acceptable alternative under the circumstances. Here too, however, housing providers need to be aware that to the extent that they rely on electronic means to provide apartment tours, those media must be accessible to persons with visual and hearing impairments also.

HUD's Q & As Related to the CDC Order to Temporarily Halt Residential Evictions and the June 30, 2021 Extension