



February 5, 2021

The Honorable Marcia Fudge
Secretary Nominee
Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Dr. Rochelle P. Walensky
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329-4027

Ambassador Susan Rice
Director
Domestic Policy Council
White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Secretary-Designate Fudge, Director Walensky and Ambassador Rice:

The undersigned national associations represent for-profit and non-profit owners, operators, developers, lenders and property managers and housing cooperatives involved in the provision of rental housing, both affordable and conventional.

Thank you for your commitment and that of the entire Administration to addressing the significant housing challenges created by the pandemic. Our organizations look forward to working with you to craft policies that meet the needs of America's renters and housing providers who have been severely impacted by the COVID-19 pandemic.

We are, however, concerned that the current approach is failing to address the scope of damage in the housing sector and will not meet the needs of renters and housing providers. The continuation of a broad federal eviction moratorium is not aligning with the scale and structure of rental assistance programs we are seeing emerge at the state and local level.

The resulting loss of rental income facing the rental housing industry threatens the stability of the rental market and strains the industry's ability to manage hundreds of thousands of units and keep thousands of workers employed while continuing to make significant contributions to the economy. Estimates of 2020 lost rent alone range from \$27 billion to nearly \$60 billion, despite the impact of the CARES Act.

As we approach 12 months with some sort of federal moratorium in place, the financial solvency of many in the rental housing industry, including thousands of small, "mom and

pop” housing operators are in jeopardy. Functioning under reduced revenue for almost a year has drained reserves, caused deferred maintenance and capital improvements and placed many renters and housing providers on the precipice of economic ruin.

The \$25 billion Emergency Rental Assistance program, established as part of the *Consolidated Appropriations Act of 2021*, is incredibly important and will certainly help protect the housing of thousands of renters and the livelihoods of housing providers. However, the reach of these funds is far narrower than the scope of the Centers for Disease Control & Prevention (CDC) order for a [Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19](#) (CDC Order), both in terms of statutory income requirements and scale of aid necessary.

It is particularly problematic that numerous jurisdictions are crafting rental assistance programs that far too narrowly constrain recipient eligibility in a way that seriously limits the utility of federal assistance funds. Together, thousands of housing providers and their residents will be left without aid under eviction moratoriums.

The parameters under which the federal moratorium is executed are also important as they can place significant additional operational pressure on housing providers. Of greatest immediate concern is the extension of CDC Order and calls from some to rescind some elements of the underlying CDC Order and the accompanying [Frequently Asked Questions](#) (FAQs) issued by the CDC.

This is a concern because some elements of the CDC Order and the FAQs are critically important to ensuring that housing providers can manage their properties, protect the health and safety of their residents and continue to exercise their rights to access the courts, while leaving the intent of the order intact: focusing on preventing physical displacement in cases of non-payment of rent.

Targeted protection for those unable to pay their rent as a result of the pandemic has been and should continue to be the objective of the order. It should not be, as has been suggested, to create an “automatic and universal moratorium” that would protect those who have not been financially impacted by the pandemic or who violate the terms of their lease, including cases of posing a threat to other residents, staff or the property itself.

Importantly, the CDC Order and supporting FAQs preserve the ability to access courts as the established, neutral arbiter of landlord-tenant disputes and eviction proceedings. Maintaining a jurisdiction’s existing framework for initiating the eviction process provides transparency, certainty for all parties, and ensures housing providers have access to their only legal remedy when a renter violates the terms of the lease contract, even if the physical move out of evicted residents is delayed for public health reasons.

Finally, the CDC Order and supporting FAQs reinforce the courts’ responsibility to decide questions of accuracy of renter declarations, address requests for additional documentation, and resolve issues that arise when renters’ circumstances change.

The CDC itself [acknowledged](#) the importance of these provisions in *Brown, Rondeau, Krausz, Jones and the National Apartment Association v. CDC*:

Most importantly, the Order does not prevent a landlord from filing an eviction action in state court. First, the Order expressly permits eviction for various reasons other than nonpayment of rent...Second, nowhere does the Order prohibit a landlord from attempting to demonstrate that a tenant has wrongfully claimed its protections. And third, even where a tenant is entitled to its protections, the Order does not bar a landlord from commencing a state court eviction proceeding, provided that that actual eviction does not occur while the Order remains in place.

To this end, the FAQs could certainly be revised to better clarify the intent of the federal government and to ensure more even application of these rules while protecting both renters and rental housing operators. We continue to see courts interpret the Order differently and ignore clarifying federal guidance as non-binding.

Instead of further extending one-size-fits-all federal eviction moratoriums or complicating the execution of the existing moratorium, the better course is that which has the support of all in the housing community - provide additional funds for robust financial assistance to help renters who have been negatively impacted by the pandemic. This support helps both renters and housing providers and directly addresses the underlying financial stress of both.

In summary:

It is our position that extending the CDC eviction order is the wrong policy solution to the housing crisis created by the pandemic, especially without a sustained and robust rental assistance program in place. The \$25 billion for Emergency Rental Assistance is a positive first step to assisting struggling renters, but it will not be enough to cover the extensive need for help. We sincerely appreciate that the Administration acknowledged the need for more funding and is working to secure those resources.

Modifying the parameters of the Order that enable housing providers to effectively manage their properties and protect the stability of the rental housing sector could make things even worse. Given that the federal moratorium has been extended to March 31, we urge you to maintain the current structure of the CDC Order including important qualification criteria and the supporting FAQs. We specifically request that you preserve:

- Targeted protection for those unable to pay their rent as a result of the pandemic;
- The ability for housing providers to initiate eviction proceedings in the courts, even if the actual eviction is delayed due to public health considerations;
- The courts' responsibility to decide questions of accuracy of renter declarations, address requests for additional documentation, and resolve issues that arise when renters' circumstances change.

We remain committed to working with the Administration and Congress to help shepherd the nation through the COVID-19 housing crisis.

Thank you for your consideration of our views and please contact us with any questions or if we can answer any questions.

Sincerely,

CCIM Institute
Council for Affordable and Rural Housing
Institute of Real Estate Management
Manufactured Housing Institute
Mortgage Bankers Association
National Affordable Housing Management Association
National Apartment Association
National Association of Home Builders
National Association of Housing Cooperatives
National Association of REALTORS
National Leased Housing Association
National Multifamily Housing Council

cc: The Honorable Janet Yellen, Secretary of the Treasury