

NAA Joins Lawsuit Challenging CDC National Eviction Moratorium

By: PR Newswire

The National Apartment Association (NAA) has joined the New Civil Liberties Alliance (NCLA) in their lawsuit challenging the U.S. Centers for Disease Control and Prevention's (CDC) national eviction moratorium. The CDC's overreaching order directly harms the apartment industry and jeopardizes the long-term viability of rental housing. Rental housing providers, especially small "mom-and-pop" owners, do not have the ability to absorb delinquent rent and still pay their bills required to keep communities operational and Americans in their apartment homes.



The suit, *Richard Lee Brown, et al. v. Secretary Alex Azar, et al.*, argues that rental housing providers have been irreparably damaged by the CDC order and its unwarranted overreach. Federal agencies do not have powers to waive state laws and the CDC has encroached on private property rights with no legal authority. Under the order, many rental housing providers are unable to collect rent, including rental debt, which limits the ability to pay taxes, mortgages, insurance and utilities and provide contracted services to other residents who have paid their rent.

"Eviction moratoria saddle the apartment industry solely with the responsibility of offering a service without compensation, all while operating at a potential deficit," said NAA President & CEO Bob Pinnegar. "Rental housing works on extremely narrow margins and, though last paid themselves, owners still need to pay extensive bills."

Throughout the COVID-19 pandemic, NAA has called for direct rental assistance, which is the only policy that keeps people housed and directly addresses the needs of owners and operators alike. Despite continued calls for this much needed relief from a chorus of voices, including renter advocates and real estate groups, Congress has failed to enact direct rental assistance. This inaction, paired with the CDC eviction moratorium, devastates the industry in the short-term and furthers the housing affordability crisis, to the detriment of the broader economy in the long-term.

"A nationwide eviction moratorium without any kind of financial or direct rental assistance will exacerbate the nation's housing affordability crisis and reverberate into national, state and local economies," Pinnegar said. "If owners and operators cannot pay their bills – including apartment staff payroll, taxes, mortgages and insurance – rental units lose financial viability and money stops flowing to other sectors of the economy. Further, many rental housing units may be permanently lost from our already insufficient housing stock, whether by foreclosure, government liens or even the sale of the property."

The rental housing industry should not be held solely responsible for solving our nation's housing crisis, which has been exacerbated in this pandemic, and government agencies should not trade one crisis for another.

Convert Section 8 HCV to the EBT System: Save \$407.6 million a Year

By: Jodie Applewhite



Before the COVID-19 pandemic reached the United States, one in four American households in need received federal rental assistance due to funding limitations. Now, the need for rental assistance has grown exponentially in light of the ongoing public health emergency. Many renters remain housing insecure, and coupled with debilitating eviction moratoria, the long-term viability of the rental housing industry is in jeopardy. With all of this top of mind, it has never been more important for Congress to pursue sustainable solutions to address the emerging housing crisis. With much needed reforms in place, the Section 8 Housing

Choice Voucher (HCV) program has the potential to be one of the most effective ways to meaningfully address renters' housing instability long term.

It seems insurmountable, but as new NAA-funded research shows, the federal government could take one important step to realize substantial cost savings, better set the program up for success and address the growing need for affordable housing – transition HCV payments to the Electronic Benefits Transfer (EBT) system. EBT systems already exists in all 50 states to manage the distribution of Supplemental Nutrition Assistance Program (SNAP) benefits and other government subsidies, and have been essential in distributing benefits quickly and efficiently during COVID-19.

The HCV program provides rental assistance to low- and moderate-income households in need through public-private partnerships between the U.S. Department of Housing and Urban Development (HUD) and Public Housing Authorities (PHAs) around the country that administer the program. In 2019, HUD's budget for the HCV program was nearly \$22.6 billion and supported over 2.3 million rental units.

Because of operating system inefficiencies and challenges, the HCV program has never been able to reach its full potential as these issues discourage housing providers from accepting more vouchers or participating in the program altogether. This ultimately limits participating renters' access to affordable housing in areas of opportunity.

As part of NAA-funded research, NDP Analytics compared SNAP and the HCV program and found they share similar characteristics and operating structures. The research revealed four key potential benefits of adapting SNAP's EBT system to the HCV program:

- Federal administrative costs as a share of program expenditures decreased by 21.6 percent from 8.2 percent of total expenditures to 6.4 percent after SNAP transitioned to EBT. An equivalent efficiency improvement for the HCV program would save \$407.6 million per year. These cost savings could be used to reduce PHA funding gaps, allow PHA staff to focus more on program services and spend less time on administrative tasks and help maximize the program's potential.
- The improper payment rate decreased by 51.8 percent after SNAP transitioned to EBT. An equivalent improvement in the HCV program would reduce improper payments by \$207.6 million per year, including \$148.9 million in overpayments. Reducing improper payments through EBT would greatly improve program integrity and the cost-savings would allow PHAs to provide housing assistance to families that are currently on waiting lists for the program.

Convert Section 8 HCV to the EBT System: Save \$407.6 million a Year (Cont'd)

- The number of participating retailers in SNAP increased 6.2 percent per year on average after the implementation of EBT. An equivalent increase in housing provider participation would result in 104,542 additional housing units for the HCV program.
- The added efficiencies of an EBT system combined with \$556.5 million of cost savings per year from administrative costs and overpayments will help PHAs to better serve current housing providers and renters, increase the number of housing units that accept HCV and allow more families to participate in the program.

Importantly, NDP found real time benefits to using the EBT system to quickly and efficiently distribute financial relief during the pandemic. For example, Alabama used EBT to issue benefits to households with children who typically receive free school lunches after schools closed due to COVID-19. Regardless of whether families were previously enrolled in SNAP, EBT was a critical resource to provide benefits immediately to qualifying families. Similarly, housing benefits, as well as emergency rental assistance, could be distributed to those in need more quickly via EBT compared to the traditional voucher payment system.

The benefits of transitioning the HCV program to an EBT system are far reaching. NDP found that even with federal budget constraints, EBT would allow HUD to improve the integrity of the program, close funding gaps and better serve program participants. Moreover if the transition were to parallel SNAP, it would increase administrative efficiencies, significantly reduce error rates and encourage greater participation.

In addition to these programmatic benefits, this transition could increase participating residents' overall satisfaction and greatly ease the emotional toll that COVID-19 has taken on individual and families. Households that receive government assistance prefer EBT because it reduces stigmas and increases convenience. Since very low-income families often receive more than one type of assistance, it allows for a more seamless process.

Housing providers equally benefit from more streamlined processes and transparency. Cost savings could be reallocated to invest more in "landlord liaisons," which have been a priority for HUD under this Administration, to have PHA staff who are dedicated to supporting housing provider participants and their ongoing challenges.

The government benefits as well given that, according to NAA's research, HCV administrative savings could reallocate \$407.6 million to underfunded PHAs who never qualify for 100 percent of their administrative fees under current formulas. Additional benefits include increased ability to audit and detect errors and fraud, and the ability to serve constituents quickly and effectively in times of crisis.

As previously mentioned, the infrastructure already exists for the HCV program to adopt EBT technology. For the HCV program to best serve stakeholders and increase program participation, moving to an electronic system would be a positive leap forward.

To learn more about NAA's research, "The Benefits of Converting HUD's Housing Choice Voucher Program to an EBT System," conducted by NDP Analytics, please visit NAA's Section 8 Program policy page or contact Jodie Applewhite, Manager of Public Policy.

HUD Issues Final Revised Disparate Impact Rule

On September 24, the U.S. Department of Housing and Urban Development (HUD) published its final rule, HUD's Implementation of the Fair Housing Act's Disparate Impact Standard, effective October 26. It amends the agency's 2013 rule and refines its interpretation of the Fair Housing Act's (FHA) disparate impact standard to better reflect the U.S. Supreme Court's (SCOTUS) 2015 ruling in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (also known as "Inclusive Communities"). Thank you to the thousands of National Apartment Association (NAA) members who participated in the association's calls to action and made the industry's voice heard. The revised rule is a direct result of this advocacy.



For years, NAA, the National Multifamily Housing Council (NMHC) and their members have urged HUD to amend the Obama-era rule to bring it more in line with SCOTUS' landmark decision in *Inclusive Communities* and to provide guidance that ensures housing providers may continue to execute necessary business practices without running afoul of fair housing requirements. Under disparate impact theory, a rental housing provider can be sued if the owner or operator implements a policy that is neutral on its face but nonetheless has an unintended, discriminatory effect on members of a protected class under the FHA.

While the rental housing industry remains committed to providing equal opportunity for all renters, housing providers voiced concern about their broad liability for disparate impact claims in light of HUD's 2013 rule and subsequent guidance. Seemingly neutral and common business policies, such as occupancy limitations, criminal screening criteria and eviction screening policies could trigger discrimination claims under the disparate impact standard. Denial of Section 8 voucher holders also have been scrutinized under disparate impact theory as plaintiffs argue this practice disproportionately affects people of color, persons with disabilities, and families with children.

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