

To: NMHC Executive Committee
From: NMHC Government Affairs
Date: September 3, 2020
RE: NMHC Executive Committee Discussion

NMHC is hosting an exclusive peer discussion on the new challenges facing your firms during the COVID-19 outbreak. The discussion will cover the regulatory environment in a mid-pandemic world, where rent control activists are pushing for rent cancellations and extended eviction moratoriums in addition to punitive rent regulations.

To help guide the discussion, below is an overview of NMHC's federal advocacy on COVID-19.

Current State of Play on Latest COVID-19 Package

At the onset of the COVID-19 pandemic, Congress acted quickly and included important relief for families and businesses negatively impacted by the pandemic in three different relief packages:

Phase One - H.R. 6074, the Coronavirus Preparedness and Response Supplemental Appropriations Act expanded the Small Business Administration disaster lending program.

Phase Two - H.R. 6201, the Families First Coronavirus Response Act expanded emergency family medical and paid sick leave for employees.

Phase Three - S. 3548, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) included \$3 trillion in critical relief assistance including: pandemic unemployment Assistance payments of \$600 extra per week; one-time recovery rebate checks of \$1,200 per person/\$2,400 per couple/\$500 per child; and the creation of the Small Business Paycheck Protection Program (PPP) which provided \$350 billion for forgivable loans to small businesses (with 500 or fewer employees, full-time/part-time) if the employer kept employees on payroll.

Unfortunately, the expanded unemployment benefits and PPP funds have expired. NMHC continues to urge Congress and the administration to pass a fourth COVID-19 relief package, but as of this writing, negotiations are at a stalemate between House, Senate and Administration officials on the next package. There are several big-ticket items that remain as obstacles to a deal. They include the size of the package, unemployment benefit levels, state and local government aid and rental assistance.

House and Senate Democrats have largely remained united behind a House-passed \$3+ trillion HEROES Act as a starting point/red line for the package for negotiations. In July, a group of Senate Republicans issued a much smaller \$1 trillion package of pandemic assistance measures, the HEALS Act; even this limited measure did not have the support of a majority of the Republican Senators according to Senate Majority Leader McConnell. Republicans are now discussing the idea of a smaller \$500 billion package aimed at garnering the support of 51 Senate republicans. It is too early to tell if the two sides will be able to reach an agreement on a fourth COVID-19 relief package. [Click here to read a detailed analysis outlining how the HEROES Act and HEALS Act compare.](#)

After negotiations broke down on a fourth relief package, President Trump signed four Executive Orders focused on [student loans](#), [payroll taxes](#), [unemployment benefits](#) and [housing](#). Two of them are of particular interest to NMHC and the industry:

The unemployment benefits EO extends additional unemployment payments up to \$400 a week. However, due to how the Order is structured and the actual funds available, many states will only be able to offer \$300 of additional assistance and estimates suggest those funds would be exhausted in approximately three weeks. In addition, the distribution of those funds is contingent on both state and federal action, which could delay the disbursement of payments for weeks.

The housing eviction EO focuses on addressing evictions. The CARES Act banned **late fees and eviction filings** until July 25 on properties with government backed loans or those that receive federal funds. The order left the decision to ban evictions in the hands of Health and Human Services Secretary Alex Azar and Centers for Disease Control and Prevention Director Robert Redfield, and on September 1, 2020, the CDC and the Trump administration announced it is implementing a national four-month moratorium on residential evictions. The White House release can be found [here](#).

The enactment of this moratorium was disappointing, particularly without the backup of a meaningful rental assistance program. NMHC issued the following [press statement](#), again making the point that eviction moratoriums do nothing to solve renters' real financial stress problem.

Notably, the Order does not forgive rent or relieve any individual of their obligation to pay rent under their lease terms. It simply precludes eviction actions through December 31, 2020. It also does not preclude late fees or penalties from being assessed. It also imposes several limitations on when and how the moratorium applies. Specifically:

- The moratorium only applies to individuals making \$99,000 or less or families making \$198,000 or less.
- Renters must certify, under penalty of perjury, that:
 - They have made a “good faith” effort to seek rental assistance.
 - They are unable to pay due to COVID-19-related hardship.
 - Eviction would cause them to become homeless or live in close quarters.
- The Order provides a sample Declaration form (Attachment A) for renters to provide to their housing provider when seeking the eviction protection.
- Evictions would still be permitted for lease violations unrelated to inability to pay because of COVID-19.

NMHC continues to urge Congress to enact a robust rental assistance program and to oppose blanket eviction moratoriums. Importantly, enacting this eviction measure through public health authority provides the administration with potentially more legal justification for the action, but also fails to address or provide for the economic considerations needed to support the apartment industry going forward.

While there are certainly questions surrounding the legality of this Order; this measure will take effect September 4. NMHC will continue to monitor the implementation of this new Order and the impact to the industry, while also making the case to policymakers that renter protections must be paired with rental assistance.

NMHC Response to the COVID-19 Crisis

The apartment industry is playing a critical role as we seek to contain the COVID-19 outbreak across the nation. As Congress has considered additional relief, NMHC continues to make the case for critically needed emergency relief for the rental industry, housing professionals and our residents. Our top priorities have been:

Emergency Rental Assistance: Create a temporary rental assistance program for those impacted by the COVID-19 emergency and who are struggling to pay their rent.

Prevent a Federal Eviction Moratorium: Defer to state and local eviction moratoria or predicate any extension of the federal eviction moratorium protections on it being short in duration, specifically benefit only those who are negatively impacted by COVID-19 and clarify the notice to vacate language to ensure property owners can effectively manage their properties during the crisis. Further, any extension should be contingent on the establishment of a federal emergency rental assistance program.

Expanded Mortgage Forbearance: Provide mortgage forbearance protection to all multifamily properties and align the protections with local, state or federal eviction moratoria.

Credit Facilities: Create credit and liquidity facilities for mortgage servicers and rental property owners under the Federal Reserve.

Access for Multifamily in Federal Lending Programs: Ensure eligibility for all apartment owners and developers in the Small Business Administration's Paycheck Protection and the Federal Reserve's Mainstreet Lending Programs.

Enact Liability Protections: Provide targeted liability protections from COVID-19-related litigation for apartment firms that work to follow applicable public health guidelines in reopening.

Provide Pandemic Risk Insurance/Recovery Funding: Establish a federal economic business recovery fund and enact the Pandemic Risk Insurance Act to help apartment owners recover from this pandemic and prepare for the next.

To learn more about NMHC's advocacy efforts on both the next COVID-19 relief package and other critical issues important to the industry, visit NMHC's [advocacy webpage](#), and [click here](#) to get a snapshot of our most recent activities.

NMHC COVID-19 Member Resources, Research and Operational Strategies

In addition to NMHC advocacy efforts, NMHC has assembled an expansive library of resources, research, tools, and strategies for members to help mitigate the COVID-19 pandemic.

NMHC Rent Payment Tracker: Beginning on April 8 and continuing on a weekly basis for the duration of the COVID-19 outbreak, NMHC, in partnership with the leading apartment data providers, releases weekly metrics assessing the overall effect of the COVID-19 pandemic on the U.S. multifamily industry.

COVID-19 Webinar Series: NMHC launched an on-demand recorded webinar series covering a variety of topics including construction impacts, policy updates, legal obligations and more.

COVID-19 Resource HUB: As apartment owners mitigate and educate residents on potential exposure, NMHC has put together a list of go-to sites with relevant information.

NMHC Rent Control Resources

Rent Control Laws by State: Our [interactive map](#) and [chart](#) track rent control legislation and rent control preemptions on the state and local level.