

# REAL ESTATE ADVISORY

## Consolidated Appropriations Act, 2021: Key Real Estate Provisions



January 20, 2021

On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021 (CAA 2021), a spending bill that includes economic stimulus relief related to the novel coronavirus disease (COVID-19) outbreak. CAA 2021 is follow-up legislation to the CARES Act (Coronavirus Aid, Relief, and Economic Security Act) enacted in March 2020. The following is a summary of the key provisions of CAA 2021 that impact real estate.

### KEY TAKEAWAYS

- The real estate impact of CAA 2021 primarily affects residential landlords, mostly indirectly, through assistance that prevents rental tenants from being evicted.
- Financial assistance will be provided for the payment of rent, rental arrears, utilities and home energy costs, utilities and home energy costs arrears, and other housing-related expenses related to the COVID-19 outbreak.
- The prohibition on evictions enacted under the CARES Act has been extended to January 31, 2021, (and may be extended beyond January 31, 2021, under the Biden administration).

### SUMMARY

#### Emergency Rental Assistance — Residential Landlords:

For the fiscal year 2021, \$25,000,000,000 has been appropriated for payments to states and local governments (Grantees) so that those Grantees may provide financial assistance and housing stability services to eligible households impacted by the COVID-19 outbreak.

The Secretary of the Treasury (the Secretary) reserves \$400,000,000 of the payments for the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American



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Samoa; \$800,000,000 of the payments to tribal communities and the Department of Hawaiian Homelands; and \$15,000,000 for certain administrative costs.

Within 30 days of the enactment of CAA 2021, the payments will be distributed to states based on relative population proportion, with no state receiving less than \$200,000,000.

At least 90% of a Grantee's funds must be used to provide eligible households with financial assistance and the remaining 10% or less may be used to provide housing stability services, which include case management and other services related to the COVID-19 outbreak. Grantees should prioritize households earning less than 50% of the area median income or households in which one person in the household has been unemployed for 90 days prior to the date of the application.

An eligible household is a household of one or more individuals obligated to pay rent on a residential dwelling for which the Grantee determines that the household earns no more than 80% of the area median income and at least one person in the household: (i) receives unemployment benefits or has experienced financial hardship due to the COVID-19 outbreak and (ii) can demonstrate risk of homelessness or housing instability. Since the funds may only be distributed to or on behalf of residential tenants, CAA 2021 does not impact commercial landlords or tenants.

Eligible households may apply for up to 12 months of emergency financial assistance to pay for: rent, rental arrears, utilities and home energy costs, utilities and home energy costs arrears, and other housing-related expenses incurred due to the COVID-19 outbreak. An additional three months of assistance may be provided only if necessary to ensure housing stability for a household, subject to the availability of funds. Grantees may provide financial assistance for more than three months of prospective rent if the Grantee has funds available and the eligible household has not exceeded the "12 months, plus three additional months" of assistance allowed for housing expenses and housing expenses in arrears. Also, to the extent any eligible household has rental arrears, Grantees may not pay for prospective payments unless they have also provided assistance to reduce rental arrears.

Tenants may directly apply for financial assistance, or landlords and owners of residential dwellings may submit applications on behalf of tenants. If landlords or owners of residential dwellings apply for financial assistance on behalf of a tenant, they must: (i) obtain the tenant's signature, (ii) provide the tenant with a copy of the application, and (iii) use the funds to satisfy the tenant's rental obligations to the landlord or owner.

Grantees shall make payments directly to a lessor or utility provider on behalf of the eligible household in the case of rent, rental arrears, utilities and home energy costs, and utility and home energy costs arrears, unless the lessor or utility provider objects. If the lessor or utility provider objects, the Grantee may make payments directly to the eligible household so that the household can pay the lessor or utility provider.

Funds are available to Grantees through December 31, 2021; however, starting September 30, 2021, the Secretary will begin recapturing unobligated funds and reallocating those amounts to other Grantees that demonstrate need, as determined by the Secretary.

**Extension of Eviction Moratorium — Residential Landlords:**

The temporary eviction moratorium enacted under the CARES Act has been extended through January 31, 2021. Under the CARES Act, borrowers under loans backed by HUD and the Enterprises for dwelling units, whether single-family or multifamily, may not evict or charge late fees or penalties to tenants for nonpayment of rent, nor require a tenant to vacate on less than 30-days' notice, nor deliver a notice of eviction. The incoming Biden administration may extend the moratorium beyond the January 31, 2021, expiration. Sherman & Howard continues to monitor these issues and will provide further updates should the situation change.

**QUESTIONS**

Please reach out to any member of our [Real Estate team](#) with questions about the direct and indirect effects of CAA 2021 on the real estate industry. We are happy to help during this difficult time.