

August 16, 2021

Robert Pinnegar, CAE
President and Chief Executive Officer
National Apartment Association
4300 Wilson Blvd, Suite 800
Arlington, VA 22203

Charlie Oppler
President
National Association of Realtors
430 N. Michigan Ave
Chicago, IL 60611

Dear Mr. Pinnegar and Mr. Oppler;

On behalf of the undersigned groups, we urge you to inform the members of the national real estate trade associations you lead about the necessity of accepting Emergency Rental Assistance (ERA) funds.

Participation in ERA programs is both a moral and a legal imperative. The Delta variant is causing COVID-19 infection rates to skyrocket in communities across the country, and a spike in evictions would exacerbate this crisis. Moreover, with billions of unspent ERA funds available, landlords will be far more likely to be compensated for missed rent payments by working with their tenants to access these funds, rather than by pursuing eviction actions.

Tenants who are at the greatest risk of eviction and arrears—and thus are most likely to need ERA funds to pay their rent—are also disproportionately people of color, women, and persons with disabilities. The federal Fair Housing Act prohibits both intentional discrimination and policies that have an unjustified discriminatory effect on the basis of race, color, national origin, religion, sex, disability status, and familial status. The Fair Housing Act's protections for persons with disabilities also require housing providers "to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."

A landlord's refusal to accept ERA funds may implicate and would likely trigger these forms of liability. Obviously selective acceptance or non-acceptance of ERA funds based on a tenant's race or the racial composition of the neighborhood in which a property is located would violate the Fair Housing Act's prohibition on intentional discrimination. But broad refusal to accept ERA funds would also likely have a disparate impact on multiple protected groups, and it is unlikely that a court would find that such refusal was justified in light of the much greater likelihood of receiving compensation for back-rent through ERA participation than through a judgment in an eviction action. A tenant with a disability would likely be entitled to both

acceptance of ERA and additional time for an ERA application to be processed as reasonable accommodations. In addition to these applications of the federal Fair Housing Act, many state and local laws directly prohibit discrimination on the basis of source of income, which would include ERA funds in many cases.

By educating your members about these significant litigation risks, as well as the moral and public health implications of pursuing evictions when ERA funds are available, your organizations can simultaneously protect your members' financial interests and contribute to the public good.

Our organizations are prepared to serve as a resource as you develop educational materials and resources for your members. If you have any questions about how to best inform your members of best practices for complying with civil rights laws in connection with ERA programs, please do not hesitate to contact Thomas Silverstein of the Lawyers' Committee for Civil Rights Under Law by phone at (202) 662-8600 or by email at tsilverstein@lawyerscommittee.org.

Sincerely,

Alliance for Housing Justice

Lawyers' Committee for Civil Rights Under Law

Public Advocates Inc.