

A Legal Aid Perspective on COVID-19

Few periods in recent history have been as disruptive as the COVID-19 pandemic. In response to an unprecedented public health and economic crisis, the federal government authorized \$5.2 trillion in emergency relief between March 2020 and March 2021. The bulk of the funds went toward direct income support, health care, and supplemental assistance for food, housing, and education for low and middle-income households. The programs provided critical support, but millions of eligible households were unable to avail themselves of the relief. Language barriers, lack of internet access, erroneous verification processes, delays, and widespread closures of government offices were among the hurdles people faced when trying to obtain the aid they were entitled to receive. These problems fell disproportionately on low-income and historically marginalized communities.

From the outset of the crisis, civil legal aid organizations understood that none of the pandemic relief programs stood up by federal, state, or local governments were self-executing. Accessing relief was often complex. The demand for legal services was immense as the effects of the economic crisis made more people eligible for legal aid. People were filing unemployment claims for the first time, seeking eviction protection, experiencing family crises and they needed help navigating the administrative hurdles. Legal aid organizations were on the frontlines of the pandemic working to prevent historically marginalized groups from being left behind. Initially, a \$50 million investment in the federal Legal Services Corporation (LSC) made in the March 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act allowed civil legal aid providers to expand outreach to the low-income and hard-to-reach communities they traditionally serve. LSC's COVID grants helped organizations purchase new technology to stay connected with clients, invest in safety equipment, and bring on additional staff. However, these federal investments were not sufficient to support the legal aid providers that serve every county in every state and territory. Even before the pandemic created new legal needs, LSC grantees reported having to turn away more than 40 percent of people seeking assistance because of a lack of capacity. This disproportionately affected people of color, who make up roughly 60 percent of LSC grantees' clients.

When social distancing orders shuttered offices and generally prohibited in-person assistance, civil legal services across the country innovated ways to safely support their communities. They kept their doors open when possible and when permitted by local guidance. They expanded the reach of online and phone services, and language assistance. They scheduled virtual legal clinics to help people understand their rights. They petitioned state, local, and federal agencies on behalf of clients affected by the pandemic. They adapted to understand the implications of rapidly changing state and federal rules for the rights of vulnerable populations. As they addressed new challenges, they had to contend with longstanding issues that were exacerbated by the pandemic. Racial and ethnic minorities, immigrants, and low-income individuals saw some of the worst effects of the health and economic crises and remained among the most difficult to reach with support services.

This paper explores how the crisis caused by COVID-19 affected people experiencing poverty in the United States, with a particular focus on the intersection between federal policy responses and the role of civil legal aid. The issues addressed in this report cover the three areas that LSC grantees dealt with most frequently during the pandemic: income, housing, and family law. It also explores the unique problems that affected certain populations, and the consequences of the pandemic for the operations of legal aid organizations and the legal systems in which they operate. The information provided draws

on public sources curated by NLADA and furnished to members throughout the pandemic, as well as information gathered during formal and informal conversations, including the 2021 Litigation and Advocacy Leaders Conference supported by the W.K. Kellogg Foundation and 200 litigation and strategic advocacy experts.

Since March 2020, advocates have reached even deeper into their communities to provide the services that have helped millions of people access justice and protect their most basic human needs. In doing so, they have made the various state and federal programs more effective and helped plug the gaps in our social safety net in ways that will remain beneficial for years after this crisis.

Remote Courts and Services

Underlying all the issues discussed in this paper is the considerable extent courts and other legal processes shifted online. This began in parallel with lockdown orders but has continued consistently through 2022. A Thomson Reuters survey found that 93 percent of judges and courts staff were involved in conducting or participating in remote hearings during the first year of the pandemic. This fell only slightly to 89 percent in 2021.¹ Some believe this is a positive change that should be implemented beyond the pandemic to the maximum extent possible. Technology has created opportunities to reduce government expenditures on in-person functions and help backlogged courts process cases more speedily. People are able to participate in remote processes that they previously would have made arrangements to attend in person. For those with personal childcare responsibilities, inflexible employment schedules, or transportation challenges, all of which affect lower-income individuals more frequently, remote participation can be logistically advantageous. Remote communication between attorneys and clients can also be more efficient and less burdensome.

However, this shift has widened an existing “digital divide” and made courts even more inaccessible for those with limited access to technology or low digital literacy. The ability to participate remotely requires safe, reliable internet access and a device that can efficiently run the programs used by the court. This was a considerable barrier to the 40 percent of low-income people who do not have home broadband services or a desktop or laptop computer.² In many rural areas, home to roughly 19 million Americans, broadband internet is not available at all.³ Adjusting to digital communication has also been difficult for individuals who typically handled administrative matters in person. Certain demographic groups, including older adults, people with disabilities, and non-English speakers were less likely to be able to use online tools. To bridge the “digital divide,” some legal aid providers and a handful of local jurisdictions created Zoom studios, or virtual hearing rooms with access to webcams, high-speed internet, and privacy. While useful, this and other solutions tended to increase the burden on legal services programs that have had to use their limited resources providing assistance that was previously provided in-person by court or agency staff.

Remote participation in legal and other administrative processes also required levels of English language proficiency that an estimated 25.6 million Americans do not possess.⁴ Prior to the pandemic, language services in courts varied by location and were often nonexistent, which left legal aid providers to assume the burden.⁵ According to some advocates, remote hearings allowed greater telephone access for clients with limited English proficiency (LEP) seeking legal assistance. Interpreters working remotely had greater flexibility and could provide services to a larger number of clients, irrespective of location. These services are still insufficient to meet demand and many courts have not implemented consistent

¹ The Impacts of the COVID-19 Pandemic on State & Local Courts Study 2021: A Look at Remote Hearings, Legal Technology, Case Backlogs, and Access to Justice

² <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>

³ <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/eighth-broadband-progress-report>

⁴ <https://cis.org/Report/673-Million-United-States-Spoke-Foreign-Language-Home-2018>

⁵ <https://www.justice.gov/crt/file/892036/download>

guidelines for interpretation in remote hearings. Overall, the need to integrate language access into technology created an additional barrier to meaningful participation for LEP individuals.

Remote proceedings also raised serious concerns about both procedural and substantive justice. An NLADA study found that despite the potential logistical benefits for courts and litigants, remote justice “risks automating unjust and biased systems, stripping out important due process protections, and increasing inequitable outcomes, particularly among already vulnerable litigants.”⁶ The impersonal interactions during remote hearings have been shown to negatively impact the perceived credibility of witnesses and defendants, particularly non-English speakers. The very nature of the medium also changes the court’s perception of a speaker, how it engages with them, and consequently the decisions made about them. A 2010 study found a link between virtual hearings and higher pretrial bail amounts.⁷ Certain types of attorney-client communications have been negatively affected by the shift to remote, including obtaining and presenting evidence. These difficulties were exacerbated by widespread closures of government offices and businesses. Resolving these tensions will remain an important priority as the pandemic subsides, but it is also necessary to consider them when interpreting and analyzing the events of 2020 and 2021.

⁶ <https://www.nlada.org/sites/default/files/NLADA%20Pew%20ODR%20Report%20Final%20Draft%2012.30.20.pdf>

⁷ https://www.courtinnovation.org/sites/default/files/media/documents/2020-11/Summary_RemoteJustice_11192020.pdf

Income

It was apparent in March 2020 that the emergency lockdowns to protect public health would result in an economic crisis. Prior to the outbreak, the U.S. unemployment rate was 3.5 percent with initial claims for unemployment insurance (UI) around 210,000 per week. By April, the unemployment rate skyrocketed to 14.8 percent. New unemployment UI filings peaked at 6.87 million in the final week of March, a 33-fold increase from pre-pandemic levels. Job losses were disproportionately concentrated among low-income people, women, and people of color. The unemployment rate for Black and Hispanic Americans hit 16.7 percent and 18.9 percent respectively,⁸ Around 39 percent of households earning less than \$40,000 per year experienced the loss of a job.⁹ Women were doubly hit by pandemic layoffs and increased child care responsibilities and they continue to be overrepresented among the long-term unemployed.¹⁰

To address the economic hardships throughout the pandemic, the U.S. Congress authorized \$1.6 trillion for expanded unemployment and direct income support across four relief bills. The federal assistance programs were life-altering for low-income people and helped lift more than 18 million out of monthly poverty in the initial phase of the pandemic.¹¹ However, their administration was plagued with delays, wrongful rejections, and verification challenges that required people to seek legal aid or forfeit the receipt of benefits altogether. Moreover, many of the effects of the program were short-lived. While unemployment benefits, one-time stimulus payments, and expanded child tax credits helped households in the short-term, income inequality increased during the pandemic. The bulk of household savings were concentrated among wealthy households, as low and middle-income households saw their wealth increase by just 0.2 percent.¹²

Expanded Unemployment

Before the pandemic, unemployment compensation was not even in the top ten issues addressed by grantees of the Legal Services Corporation. By the end of 2020, it was second only to landlord-tenant matters and accounted for 11 percent of all COVID-related civil legal cases.¹³ In response to the initial loss of more than 22 million U.S. jobs, Congress authorized expanded pandemic unemployment relief under the CARES Act, the Coronavirus Response and Relief Supplemental Appropriations Act, and the American Rescue Plan Act (ARPA). The Pandemic Unemployment Compensation (PUC) program initially provided \$600 per week on top of state unemployment benefits to individuals who lost their job due to the pandemic. Pandemic Unemployment Assistance (PUA) provided the same benefits to workers who traditionally did not qualify for state benefits, like the self-employed, gig workers, and people who were not working before the pandemic. This initial round of benefits expired July 31, 2020 and was followed by a second round in December with 11 weeks of \$300 in weekly federal aid and a third round that

⁸ <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm>

⁹ <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>
p53

¹⁰ <https://fred.stlouisfed.org/series/LNS11300002>

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<https://static1.squarespace.com/static/5743308460b5e922a25a6dc7/t/5f87c59e4cd0011fabd38973/1602733471158/COVID-Projecting-Poverty-Monthly-CPSP-2020.pdf>

¹² <https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-covid-19-evidence-from-the-distributional-financial-accounts-20210830.htm>

¹³ <https://www.lsc.gov/about-lsc/lsc-and-covid-19/data-cares-act-funding-services>

provided support from March 2021 through Sept. 6. The federal government also provided matching funds for states to administer up to 79 weeks of UI.

The sheer volume of unemployment applications overwhelmed state systems. Before the pandemic, applications for unemployment benefits could take two to three weeks to be processed.¹⁴ Workers who found themselves unemployed after March 2020 reported lengthy wait times to receive benefits and states experienced monthslong backlogs. These were made worse in some parts of the country where agencies required mandatory waiting periods to verify recipients' wage information. Workers with limited English proficiency were even more acutely affected by benefit delays. States had fewer digital and online resources to help LEP individuals make initial UI claims or follow up existing ones. In Washington, the state unemployment division directed thousands of non-English speakers to a single phone line with interpreter services, where first-time claimants were required to apply for benefits and submit weekly claims.¹⁵ Unemployed LEP workers in Los Angeles County were similarly directed to apply for benefits using a limited number of translator phone lines. Spanish speakers could access applications through the website, but there were few resources for the 2.4 million L.A. residents who speak languages other than Spanish or English. In both instances, legal aid advocates filed complaints, coordinated with federal agencies, and worked with states to improve the process with additional language access.

Just as states struggled to meet the extraordinary quantitative need for assistance, legal aid programs were also overwhelmed with new demands. That included the need to provide information and assistance in making applications, resolve errors that caused delays in the payment of benefits, and address wrongful fraud determinations and eligibility denials. Many of these latter issues resulted from technological problems and disproportionately affected those without the ability to use online tools effectively. In particular, the adoption of new online identity verification tools created additional barriers for people applying for benefits and, in some cases, led to monthslong delays.

During the pandemic, reports of widespread UI fraud prompted states to implement stricter protections. While ostensibly designed to prevent wrongful payments and maintain the integrity of UI programs, advocates reported that many eligible people were wrongfully denied benefits when some states implemented rigid or complex verification systems. Since 2020, dozens of states partnered with the digital identity protection platform ID.me that claims to combat UI fraud, improve security, and prevent wrongful payments. People with low digital literacy struggled to understand the process. There were soon complaints that the system routinely issued wrongful denials. It had difficulty analyzing images of dark-skinned people and ID.me's use of facial recognition technology raised privacy concerns. Despite the challenges, state and federal governments have increasingly adopted the platform. At least 30 states and 10 federal agencies use ID.me, including the Internal Revenue Service and Social Security Administration (SSA). To this day, reports of delays and wrongful denial of benefits persist.¹⁶

¹⁴

<https://www.nlada.org/sites/default/files/State%20by%20State%20Unemployment%20Benefits%20and%20Requirements11-2020.XLSX>

¹⁵ Advocates with the Northwest Justice Project later worked with Washington's Employment Security Department to expand the number of dedicated translator phone lines for LEP individuals and develop more relevant digital resources.

¹⁶ <https://www.whec.com/news/many-struggle-to-get-through-idme-process/6240392/>

Millions of unemployed workers were also impacted by state decisions to withdraw from federal unemployment programs before the benefits ended in September 2021. From June to August, 26 states cut off workers from the \$300 federal unemployment increase. This prompted lawsuits from unemployed workers in Indiana, Maryland, Oklahoma, Texas and others over governors' failure to secure available federal insurance benefits to eligible citizens, which were successful in Maryland and Indiana. Altogether, more than 46 million Americans received at least one week of pandemic unemployment insurance.¹⁷

Economic Impact Payments

In addition to expanded unemployment, the CARES Act and subsequent legislation provided three separate one-time Economic Impact Payments (EIP) to all U.S. citizens and certain non-citizen residents. The first of these "stimulus checks" paid up to \$1,200 to qualifying individuals (\$3,400 for a married couple with two children). Another \$600 payment was approved in December 2020 supplemental appropriations act and a final \$1,400 payment was authorized under the March 2021 American Rescue Plan Act. A fully qualifying married couple with two dependent children received \$5,600 through ARPA. Caretakers were also eligible to collect "stimulus checks" for adult dependents. Low-income households were almost twice as likely as higher earners to spend the checks on rent, food, and other daily living essentials than those in higher income brackets.¹⁸ These payments, in combination with the PUC and PUA, coincided with dramatic drops in poverty while increasing disposable income and spending power for millions of households.

However, as the White House Legal Aid Interagency Roundtable noted in its 2021 report, "Efforts to address crises through Federal programs, grants, and initiatives are only successful if those resources are actually received by those for whom they were intended."¹⁹ While 149 million households received stimulus checks, millions of others struggled to access the benefits. Legal aid organizations reached out to inform communities about eligibility for payments using innovative approaches, such as social media campaigns, neighborhood fliers, and online information sessions. Many of these programs were supported by emergency state and federal funds.²⁰

Despite this work, roughly 8 million eligible people still missed out on a stimulus check.²¹ Individuals who filed taxes in the past two years or who received Social Security benefits were automatically enrolled and received direct payments or checks. Non-filers, who were often in greatest need of assistance, had to proactively apply for payments by requesting a mail-in form or applying on the IRS website. Non-filers tended to be individuals making less than \$12,200, people experiencing homelessness, and eligible noncitizens. People whose address or bank accounts changed were also required to submit documentation to the IRS to obtain benefits. Applying for assistance using the online portal was a challenge for those who lacked access to reliable internet, as well as people with limited ability to use English-language online tools, or those who feared providing information to the federal government—

¹⁷ <https://tcf.org/content/commentary/1-in-4-workers-relied-on-unemployment-aid-during-the-pandemic/?session=1&session=1&agreed=1>

¹⁸ <https://libertystreeteconomics.newyorkfed.org/2021/04/an-update-on-how-households-are-using-stimulus-checks/>

¹⁹ "Access to Justice in the Age of COVID-19 A Roundtable Report, September 2021"
<https://www.justice.gov/ag/page/file/1445356/download>

²⁰ <https://www.youtube.com/watch?v=ui-yEIO8EUA>

²¹ <https://www.usatoday.com/story/money/at-home/2021/02/26/how-claim-missing-stimulus-payments-recovery-rebate-credit/4524674001/>

an apprehension commonly experienced by non-citizens. Many of these groups were historically hard to reach by civil legal aid. Organizations sought to help as many of these people as possible, but as one provider in California explained, everything took longer. Processes that could be accomplished quickly with in-person meetings had to occur over the phone. As a result of this and widespread court closures, caseloads trended lower and the number of closed cases dropped significantly, despite higher demand for services.²²

In addition to providing income support, the “stimulus checks” had the added benefit of not counting as taxable income, so low-income people were not penalized for receiving the checks. The formula ensured the payments did not contribute to income limits for safety net programs such as Medicaid, Supplemental Security Income (SSI), or the receipt of services from an LSC grantee. However, recipients who saved their stimulus money could have those savings counted against them when seeking nutrition assistance in certain states.

Nutrition Assistance

Many of the people who were most impacted by COVID-19 were already at heightened risk of food insecurity. Amid family income loss, strict lockdown measures, and the shift from classrooms to remote learning, access to sufficient nutrition emerged as an immediate concern for low-income households. U.S. hunger was at its lowest level in 30 years before the pandemic. However, food insecurity rose nearly 30 percent, affecting an estimated 45 million people, including 15 million.²³

Of all the nutrition-related responses the federal government made to the pandemic, the permanent increase of baseline benefits was perhaps the most significant. In August 2021, the U.S. Department of Agriculture (USDA), which oversees the Supplemental Nutrition Assistance Program (SNAP), announced a 21 percent increase in SNAP benefit levels to about \$166 per person per month. It marked the first baseline increase in benefits since 1975. The change came as a result of increased reliance on the program during the pandemic as well as the overdue recognition that the cost of a nutritious diet was significantly higher than existing benefits. In 2019, SNAP provided an average of \$129 in monthly benefits to 35.7 million people. By 2020, the number of recipients increased to 39.8 million.²⁴

Early interventions by the federal government to mitigate food scarcity were limited despite being among the first issues Congress sought to address. The Families First Coronavirus Response Act (FFCRA) and CARES Act provided flexibility to states to waive some eligibility requirements for SNAP and the Temporary Assistance for Needy Families (TANF) program. The legislation also authorized emergency additional allotments to extend the maximum SNAP benefit to previously ineligible households. When Congress authorized these additional allotments, the USDA interpreted the law regressively. USDA increased the benefit amount for those who were not receiving the maximum benefit but did not increase the total benefit amount for those in need of the most support. That meant families getting the maximum – the lowest income group – received no additional support.

²² <https://www.lsc.gov/about-lsc/lsc-and-covid-19/data-cares-act-funding-services>; <https://www.lsc.gov/press-release/lsc-survey-finds-major-impact-covid-19-pandemic-legal-aid>

²³ <https://www.feedingamerica.org/about-us/press-room/new-usda-report-finds-fewer-people-faced-hunger-2019> and https://www.feedingamerica.org/sites/default/files/2021-03/National%20Projections%20Brief_3.9.2021_0.pdf

²⁴ <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-11.pdf>

This was eventually reversed as a result of a lawsuit by Community Legal Services of Philadelphia.²⁵ The USDA agreed to a settlement that changed its interpretation in Pennsylvania. Pennsylvania families were given back payments of more than \$700 million. Immediately following the settlement, USDA adopted the guidance nationally, allowing an estimated 25 million people to receive higher maximum nutrition benefits.²⁶ As of April 2021, all qualifying households were eligible for a monthly benefit of at least \$95. Households that received the maximum monthly SNAP benefits were given an additional \$95 on top of the maximum.

Even as the federal government revised benefit levels, it was still up to states to decide which waivers to adopt and how long to make emergency benefits available. At least, eight states, including Arkansas, Florida, Idaho, Montana, Missouri, Nebraska, and North Dakota, ended emergency SNAP allotments in 2021, despite the federal government continuing to make the expanded benefits available. At the start of 2022, 13 states had rejected the federal waiver for expanded SNAP benefits.²⁷

For children experiencing hunger, the closure of schools prevented them from receiving what, for many, was their most reliable, healthiest meal of the day.²⁸ Recognizing this loss, the FFCRA allowed states to replace lost school meals through the Pandemic Electronic Benefit Transfer (P-EBT) program. Families received lump sum payments on the EBT cards to compensate the cost of meals their children would have otherwise received in school. Every state initially took advantage of this program during the 2019-2020 school year. Only 14 states opted to extend it into the 2021-2022 school year, despite all states being eligible.²⁹ In local-control states, the program was administered by individual school districts, which led to discrepancies in the administration of the program. Legal aid advocates reported that LEP families were overlooked in some states, or they missed critical deadlines in districts that only provided information in English. The federal government later extended the flexible school lunch programs through June 2022, allowing participating states to provide free meals to all students, be reimbursed at higher rates, and allow greater leniency for parents or guardians to pick up food.³⁰

²⁵ <https://frac.org/wp-content/uploads/Opinion-Gilliam-v-USDA-9-11-20.pdf>

²⁶ <https://www.fns.usda.gov/news-item/usda-006421>

²⁷ <https://www.fns.usda.gov/snap/covid-19-emergency-allotments-guidance>

²⁸ https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2778453?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=040921

²⁹ <https://www.fns.usda.gov/snap/state-guidance-coronavirus-pandemic-ebt-pebt>

³⁰ <https://www.fns.usda.gov/fns-disaster-assistance/fns-responds-covid-19/child-nutrition-covid-19-waivers>

Housing

Evictions

As the scope of the economic crisis emerged, housing advocates warned that the nation would see a wave of evictions if steps weren't taken to keep people in their homes during the pandemic. Within days of the first lockdown orders, cities and states began implementing temporary bans on residential evictions. By the end of March, Congress put in place the first of a series of housing protection measures that came to include a federal eviction moratoria, rental assistance, and new emergency housing funds. These steps were ultimately effective in preventing the worst-case housing crisis, but the relief often arrived late, provided patchwork coverage, and was often too complex to navigate without legal assistance. Civil legal aid saw a surge in demand for assistance with tenant-landlord disputes, particularly after state and federal eviction moratoria expired. According to data provided to LSC by its grantee programs, the number of housing cases more than doubled during the pandemic, relative to other types of legal problems.³¹

The CARES Act established the first federal moratorium on non-payment evictions from federally insured or federally subsidized properties, covered just around one-third of U.S. renters and only through July 25, 2020. One of the first major challenges this presented was determining whether a unit was covered. While legal aid often represented the best hope of making this determination, advocates, poring over deeds and property records, were often unable to determine whether a property was covered under CARES. As a result, many eligible households did not receive the initial protection they were entitled to and others who were not able to navigate the procedural hurdles fell through the cracks.

With limited federal protections in place, the decision to prevent evictions fell to local jurisdictions. This created a ZIP code lottery in which some cities and states independently enacted moratoria, while others did not. At least seven states never imposed eviction bans. States, like Minnesota, that offered strong protections saw a double-digit decline in eviction filings over pre-pandemic levels.³² After a temporary, national drop in filings in April 2020 that coincided with the lockdown period and court closures, filings began to rise again across the United States. Places without local protections saw evictions occur at rates exceeding pre-pandemic. Two months after Milwaukee's citywide moratorium expired in May, evictions skyrocketed to four times the pre-pandemic rate.³³ Even in locations that prohibited evictions, landlords continued filing notices and proceeded with cases that had already started, even if the law enforcement did not formally execute the eviction.

It wasn't until September 2020, when many local moratoria had expired, that the federal government enacted a comprehensive, nationwide eviction ban under the auspices of the public health emergency. The Center for Disease Control and Prevention drafted the order to block evictions from "any residential property" in areas with substantial or high rates of COVID transmission. Landlords could still evict for nuisance or criminal activity but were banned from evicting residents under conditions that would increase their risk of exposure to COVID-19 and aggravate the public health emergency. The order prompted a host of unsuccessful legal challenges. It was renewed multiple times and ended on Aug. 26, 2021, when the Supreme Court blocked its enforcement, citing CDC's lack of legal authority. Before the

³¹ <https://www.lsc.gov/about-lsc/lsc-and-covid-19/data-cares-act-funding-services>

³² <https://evictionlab.org/eviction-tracking/minnesota/>

³³ <https://evictionlab.org/eviction-tracking/milwaukee-wi/>

Supreme Court ended the CDC moratorium, eviction rates were 49 percent of the historical average. Since then, eviction rates have gradually increased but remained below the historic average through the end of 2021.³⁴ Eviction rates in several cities and states have since increased above pre-pandemic levels. In total, the local and national eviction bans saved an estimated 1.55 million households. Moreover, Congress' passage of \$46.5 billion in federal Emergency Rental Assistance (ERA), distributed toward the end of 2021, also played an important role in preventing an immediate spike in evictions after the suspension of the CDC moratorium.

Throughout this crisis, civil legal aid was essential to keeping people housed, both where protections had been established and where they had not. To avail themselves of the CDC moratoria, tenants had to complete a variety of administrative steps, and many needed legal help to navigate the process. Those seeking protection under the federal moratorium were required to attest to five statements proving they qualified for assistance, including proof of income, evidence they sought government housing assistance, hardship declarations, and proof that if evicted they would become homeless or have to live in a shared space where they risked contracting COVID-19. Even after filing for protection, tenants still had to defend themselves from illegal evictions filed in contravention of moratoria. These were routine occurrences throughout the pandemic. In June 2020, more than 90 percent of respondents to a survey of legal aid attorneys reported illegal evictions in their areas. Common tactics included unlawfully locking tenants out and cutting off utilities to force them to leave.³⁵ In the absence of local protections or other means by which a tenant could remain, attorneys negotiated delays or the avoidance of penalties, such as negative credit reporting.

The need for civil legal aid was widespread throughout this period and was even greater among historically marginalized communities. Black households have historically experienced disproportionate eviction rates and saw elevated rates of pandemic evictions, while Hispanic and low-income renters also saw greater housing insecurity and had an increased need for assistance. In September 2020, 9.7 percent of Black renters and 8.7 percent of Hispanic renters believed they were likely to be evicted within two months, compared to 4.4 percent of white households.³⁶ Legal aid organizations recognized the potential for low-income people to lose housing on an unprecedented scale, and on a racially disparate basis and established specialized programs, community education, and online legal information services. Legal services providers created hotlines and virtual clinics and replaced in-person counsel with remote options.³⁷ Advocates around the country mobilized a legislative push for right to counsel laws to guarantee renters could access a public defender in eviction cases. In 90 percent of cases, renters represent themselves in housing courts, resulting in an overwhelming trend of negative judgments. A handful of cities, including New York, San Francisco, and Denver, had right to counsel laws in place before the pandemic. Connecticut, Maryland, and Washington enacted statewide legislation in 2021, with other states considering similar measures. These interventions were vital. In Michigan, tenants who participated in an eviction diversion program and received legal representation, avoided

³⁴ [Preliminary Analysis: Eviction Filing Trends After the CDC Moratorium Expiration \(evictionlab.org\)](https://www.evictionlab.org/preliminary-analysis-eviction-filing-trends-after-the-cdc-moratorium-expiration/)

³⁵ <https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf>

³⁶ <https://www.jchs.harvard.edu/blog/black-and-hispanic-renters-face-greatest-threat-eviction-pandemic>

³⁷ <https://www.wunc.org/education/2020-06-23/new-eviction-defense-hotline-for-spanish-speakers-plus-this-advice-for-tenants>; <https://www.beaconjournal.com/story/news/local/2020/06/30/legal-help-available-to-summit-county-renters-facing-eviction/113369976/>

eviction in 97 percent of cases.³⁸ Civil rights organizations and legal advocates also engaged in affirmative litigation to halt evictions in certain jurisdictions. Legal aid providers were also eligible to apply for \$20 million in Eviction Protection Grant Program funding to assist tenants at risk of eviction. The funds were available starting in July 2021 through the Department of Housing and Urban Development.³⁹

While the CDC moratorium helped hold eviction rates below pre-pandemic levels, many of the problems that legal aid programs encountered in the local context were replicated under the national order. Tenants had to navigate complex administrative tasks, prove they applied for rental assistance, and provide documentation, like rental agreements, which were often difficult to obtain with businesses and government offices working remotely.⁴⁰ Attorneys reported a frustrating lack of uniform administration in the eviction court system, with varying standards for submitting evidence, questioning witnesses, providing interpreters, and enforcing final orders. New issues also emerged that were unique to the CDC order, including a rise in “no cause” evictions. In some cases, covered renters were forced out of their homes by landlords who used the expiration of the lease to order them to vacate. Courts counterintuitively interpreted the CDC order as permitting eviction at the end of a lease, allowing evictions to proceed on that basis.⁴¹

Defendants and legal aid providers also had to navigate the new complexities of housing courts during a pandemic. Some eviction hearings resumed in-person, which raised public health issues. Many were remote, which raised procedural and due process issues. In some cases, tenants were unable to present documents, cross examine witnesses or access interpreters. Attorneys watched clients get evicted over Zoom. Renters faced homelessness because they didn’t have the right technology to connect to the courtroom. Legal aid providers generally worried about default negative judgments based on technology challenges, as well as race and class biases by judges and juries.⁴² The eviction process can be rapid, often leaving tenants with less than two weeks between an eviction summons and a hearing to seek legal counsel and get their affairs in order. As a result, tenants often skip scheduled hearings, a failure that results in a default eviction. According to analysis of local court records, 30 percent to 50 percent of all eviction cases in a given year are resolved as default judgments.⁴³

Other long-term consequences of the economic crisis with respect to housing have begun to emerge after the end of the moratorium. Because the CDC order did not relieve tenants of the obligation to pay rent, some renters sought to remain current by accumulating new debt or forgoing spending on their other basic needs, a problem compounded by the reduction in weekly pandemic unemployment benefits. The consequences of this have shown up in reports of record levels of consumer debt in recent months, accumulating at the fastest rate in nearly two decades.⁴⁴ Renters who were unable to avoid

³⁸ http://sites.fordschool.umich.edu/poverty2021/files/2021/05/Poverty-Solutions_Reducing-Michigan-Evictions_June2021.pdf

³⁹ “Access to Justice in the Age of COVID-19 A Roundtable Report, September 2021”
<https://www.justice.gov/ag/page/file/1445356/download>

⁴⁰ <https://spectrumlocalnews.com/tx/san-antonio/news/2020/12/16/evictions-in-fort-worth-continue--despite-moratorium->

⁴¹ <https://www.nhlp.org/wp-content/uploads/CDC-no-cause.pdf>

⁴² [Evictions-Survey-Results-2020.pdf \(nhlp.org\)](https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf)

⁴³ <https://lsc-live.app.box.com/s/mwq50tpyipqipkm2sbawilghr99fydrb>

⁴⁴ <https://www.federalreserve.gov/releases/g19/current/>

eviction will face new barriers and future housing discrimination as a result of that eviction. Additionally, taking on new financial obligations or failing to pay bills will also create serious downstream legal problems. Those who fell behind accrued rental arrearages often much higher than what they would be able to repay. As of December 2021, the average debt for renters behind on payments was \$9,300.⁴⁵ The total back rent owed nationally was estimated to be between \$13.2 and \$52.6 billion in January 2021⁴⁶ with an estimated 30 to 40 million people at risk of eviction.⁴⁷

Many within the legal aid community, and outside of it, believed the most realistic approach to prevent an avalanche of evictions at the expiration of the moratorium was to provide rental assistance payments to cover arrears, while guaranteeing the right to counsel for those who would nevertheless face the loss of their home.⁴⁸ Congress partially addressed those issues with the creation of two emergency funds, known as ERA1 and ERA2, in the December 2020 supplemental appropriations act and the American Rescue Plan. The funds, totaling \$25 and \$21.5 billion respectively, were distributed to states on a formula basis and designed to cover rent owed by tenants affected by COVID-19. However, the effectiveness of these rental assistance programs was reduced — in some places significantly — because states were slow or reluctant to establish a mechanism to enable tenants and landlords to access the funds authorized by Congress.⁴⁹ Only 16 percent of the money had been disbursed more than half a year after it was made⁵⁰ available. New York did not provide a single dollar in rental relief until August 2021. By November, only 56 percent of ERA1 funds had been paid to households.⁵¹ Some delays were caused by ERA requirements that applicants provide evidence of COVID-related hardship and other documentation. In other cases, there were reports of landlords refusing to engage, seek, or accept rental assistance because of the legal obligations associated with taking the funds or ideological objections.⁵² Civil legal programs, eligible for a portion of the ERA funds, provided tenants with legal information about the ERA programs but critically, they represented tenants disputing these issues, helped them prepare the necessary materials, smoothed application processes, while also making applications as part of a defense against evictions already filed. The assistance has been effective for many. As of January 2022, households earning less than \$25,000 reported increased confidence in their ability to pay rent and an 8 percent reduction in late rent payments.⁵³

Homelessness

One important consequence of eviction moratoria was the prevention of a wave of mass homelessness. However, for the existing homeless population and those who did become homeless during the

⁴⁵ [Household Rental Debt During COVID-19: Update for August 2021 \(philadelphiafed.org\)](https://philadelphiafed.org/research-and-data/indicators-and-figures/household-rental-debt-during-covid-19-update-for-august-2021)

⁴⁶ <https://www.urban.org/urban-wire/many-people-are-behind-rent-how-much-do-they-owe>

⁴⁷ <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk>

⁴⁸ <https://thehill.com/blogs/congress-blog/politics/529865-cdc-ban-on-evictions-expires-dec-31-congress-must-act-to-prevent>

⁴⁹ <https://www.nytimes.com/2021/09/10/business/evictions-rental-assistance.html>

⁵¹ <https://nlihc.org/era-dashboard>

⁵² <https://www.wbaltv.com/article/some-baltimore-landlords-refuse-to-accept-eviction-prevention-funds/37580521#>

⁵³ [Week 41 Household Pulse Survey: December 29, 2021 – January 10, 2022 \(census.gov\)](https://www.census.gov/hhes/health/status-of-households/week-41-household-pulse-survey-december-29-2021-january-10-2022)

pandemic, the crisis put them at heightened risk— they were up to three times more likely to die from COVID-19. The pandemic also increased their risk of legal problems associated with homelessness.⁵⁴ Many shelters reduced services or closed altogether, leaving greater numbers of people exposed to laws and ordinances prohibiting camping or sleeping outdoors or in vehicles.⁵⁵ Advocates urged jurisdictions to avoid enforcing these rules, which simply resulted in moving a person to a jail where the risk of contracting COVID was even greater. Still, city councils voted for stricter anti-camping laws during the pandemic, including Austin, Miami, and Los Angeles, which restricted sitting, sleeping or storing personal property in certain areas of the city.

At the federal level, it became clear that long-term, non-congregate housing approaches were necessary. HUD promulgated guidance⁵⁶ recommending the use of individual rooms. As of February 2022, the CDC continues to recommend “non-group housing options (such as hotels or motels) that have individual rooms should be considered for the overflow, quarantine, and protective housing sites for isolation.”⁵⁷ At least \$5 billion in federal CARES Act funding went toward improving and expanding shelters, providing essential services to residents, and rapidly rehousing the homeless under the Emergency Solutions Grants program. States were also able to draw on \$4 billion in Community Development Block Grant program funds. The National Law Center for Homelessness and Poverty tracked 85 state and local initiatives to provide individual housing units to people who were homeless.⁵⁸ By June 2021, many of these individuals remained housed in such units, including 8,000 people in New York City alone.⁵⁹ Congress also established a \$5 billion Emergency Housing Voucher program through ARPA, which has helped low-income tenants secure permanent accommodation. While legal aid organizations have been able to assist some clients in accessing vouchers, challenges remain, including cases of landlords illegally refusing – explicitly or in practice – to enter a lease agreement with prospective tenants using vouchers.⁶⁰

Critically, the pandemic has left a housing affordability crisis in its wake that has yet to be addressed. Low-cost rental units had been in steady decline before 2020 and single family rental homes were in short supply. Moreover, nearly a quarter of all renters were severely cost-burdened (paying more than half of their income on rent)⁶¹ By the end of 2021, the average monthly rent across the United States soared 14 percent over the previous year with 10 major metropolitan areas experiencing rent hikes above 29 percent.⁶² The White House initiated executive actions to increase the supply of affordable housing by 100,000 units over the next three years, but it is unclear if the efforts will succeed.⁶³

⁵⁴ <https://homelesslaw.org/wp-content/uploads/2020/04/Crim-COVID-4-22-20.pdf>

⁵⁵ <https://nlihc.org/coronavirus-and-housing-homelessness/shelter-closings>

⁵⁶ <https://files.hudexchange.info/resources/documents/Non-Congregate-Approaches-to-Sheltering-for-COVID-19-Homeless-Response.pdf>

⁵⁷ <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>

⁵⁸ <https://homelesslaw.org/coronavirus/#best-practices>:

⁵⁹ <https://www.nytimes.com/2021/06/16/nyregion/homeless-de-blasio-hotels.html>

⁶⁰ <https://westchester.news12.com/some-section-8-recipients-running-into-issues-finding-housing-after-being-denied-by-landlords>

⁶¹ https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf

⁶² <https://www.redfin.com/news/redfin-rental-report-december-2021/>

⁶³ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/01/fact-sheet-biden-harris-administration-announces-immediate-steps-to-increase-affordable-housing-supply/>

Foreclosure

At the start of the COVID-19 pandemic, legal aid advocates recalled the 2008 foreclosure crisis and feared a similar wave. This did not immediately occur. Rather, the foreclosure rate fell considerably, which is explainable to some extent by inequitable distribution of the economic impact of COVID-19.⁶⁴ The CARES Act established a moratorium on foreclosures for federally backed mortgages and permitted payment deferral and forbearance for loans backed by Fannie Mae and Freddie Mac. With more than a quarter of mortgage holders reporting in late 2021 they had only slight or no confidence in their ability to make their next mortgage payment,⁶⁵ a considerable increase in foreclosure cases remains a possibility. The ARPA sought to address the risk of a foreclosure crisis by creating a \$10 billion Homeowner Assistance Fund (HAF), administered by states, to support mortgage holders who were behind on payments. A portion of this fund was allocated for legal services to help prevent foreclosures. However, as of March 2022, fewer than half of states had begun accepting applications for HAF payments. Advocates expressed concern that these delays, coinciding with the expiration of forbearance periods, could result in hundreds of thousands of eligible homeowners not receiving HAF relief before foreclosure starts.⁶⁶ Legal services organizations are also expecting a rise in demand for help navigating legal and administrative barriers to low-income owners accessing the funds.

⁶⁴ <https://www.attomdata.com/news/market-trends/foreclosures/attom-data-solutions-2020-year-end-u-s-foreclosure-market-report/>

⁶⁵ https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk39/housing2a_week39.xlsx

⁶⁶ <https://library.nclc.org/holding-foreclosures-while-homeowners-await-billions-haf-payments>

Families and Children

Domestic Violence

In 2019, the type of case most frequently closed by LSC grantees related to family issues, such as divorce, child custody, and domestic violence. This remained true in 2020 when grantees closed more than 204,000 family cases.⁶⁷ Stay-at-home orders, remote schooling, and other public health measures worsened factors known to increase the prevalence of family problems, like financial instability and difficult relationships. Incidents of domestic violence reported to the National Domestic Violence Hotline increased by eight percent during the first months of the lockdown. The trend continued throughout 2020 and 44 percent of calls to the hotline involved a child.⁶⁸ The limited data do not reflect the full extent of the crisis, described by a New England Journal of Medicine article as a “pandemic within a pandemic.”⁶⁹ Domestic violence homicides increased sharply in 2020 from the previous year, according to FBI data.⁷⁰ Yet, reports of child abuse decreased as children has less physical contact with school staff, social workers, and doctors. Meanwhile legal aid organizations experienced higher demand for services related to domestic violence, including emergency protection orders, virtual hearings, and higher need for shelters.⁷¹

The very problems that worsened the prevalence of abuse also hindered reporting of it and inhibited victims’ ability to seek assistance. Low-income households were more likely to experience interpersonal stress related to financial insecurity, and victims in these situations were often in close quarters where they were exposed to and monitored by their abusers. Social distancing requirements and other isolative conditions sharply reduced the ability to contact help or escape to a friend or family member’s home. Seeking assistance from a shelter placed individuals at higher risk of exposure to COVID-19 and states reported a shortage of shelter capacity and safe, emergency housing.

Legal aid organizations sought to reach those affected remotely by exploring new ways to provide information about their services and the rights of survivors, particularly online.⁷² Many programs invested heavily in social media content and outreach.⁷³ Other approaches to reach individuals without safe or reliable access to the internet included posting physical information in places that remained open, like grocery stores, and recording infomercials for local television and radio.⁷⁴ As reports of abuse declined from community sources traditionally relied on in-person contact, such as schools and social workers, programs established new partnerships with other local agencies. For example, a Georgia program set up a Zoom portal in their local police station that survivors could use onsite.⁷⁵ Remote

⁶⁷ <https://lsc-live.app.box.com/s/amlce75n3jdggiw6omzjewm61eghavzt/file/872174451862> (p5)

⁶⁸ <https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/Domestic-Violence-During-COVID-19-February-2021.pdf>

⁶⁹ <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>

⁷⁰ <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/shr>

⁷¹ <https://lsc-live.app.box.com/s/mm0lc5pnrqkfyjtqtdy4owuucwje5d>

⁷² Some examples of state legal aid societies that offered online resources for the public:

<https://www.georgialegalaid.org/resource/covid-19-resource-list>; <https://www.valegalaid.org/covid-19-civil-legal-resources-and-information>; <https://www.laaonline.org/covid-19/>.

⁷³ <https://www.youtube.com/watch?app=desktop&v=PZKNQgtXKjY>

⁷⁴ <https://www.youtube.com/watch?v=J5LsR70XsT8>

⁷⁵ <https://www.youtube.com/watch?v=ybZoGDHoXY4&t=27s>: (1:00:00)

hearings were also preferable for survivors who were able to testify from a safe place without having to go to court and confront the opposing party in person.

While some courts closed entirely, most remained open for emergency cases. This ensured that individuals were able to request restraining orders or similar protections. However, because there were so few cases being heard, access to legal representation became even more critical as opportunities to appeal an unsuccessful initial hearing, or pursue other legal options, were often not considered emergent. Emergency hearings commonly took place remotely, with litigants under pressure to communicate their stories clearly and effectively while using a medium that research suggests can reduce feelings of empathy, making it more difficult to convince the court of the need for a protective order.⁷⁶ In some cases, litigants were forced to testify from the same home as their abuser, further risking their safety.⁷⁷

Matters outside of acute moments of crisis, such as divorce and child custody cases were postponed in many states,⁷⁸ trapping survivors who sought to exit a newly or increasingly abusive living situation. Those who had ongoing family legal matters experienced lengthy delays while courts reopened, with case backlogs growing by more than 30 percent in 2020.⁷⁹ For some, this represented an inconvenience. For those in acrimonious circumstances, it provided the opportunity for one spouse to escalate abuse, disobey child custody agreements or divorce orders with the other having limited recourse.

Direct federal interventions to address these challenges have been limited. The CARES Act included \$45 million for Family Violence Prevention and Services Act (FVPSA) programs, which focuses on emergency housing for victims. Congress also allocated \$50 million for the Legal Services Corporation. Around one-third of the money allocated to LSC was spent delivering legal aid to people experiencing domestic violence and other family-related matters. The American Rescue Plan Act was more expansive, providing close to \$500 million for survivors through a number of programs that included culturally specific services for tribal women. The Justice Department's Office on Violence Against Women offered technical assistance for victims of crime while supporting legal professionals and courts in providing virtual access for emergency requests and hearings.⁸⁰ Relative to other crises created by the pandemic, domestic violence and abuse were not the subject of large-scale policymaking or attention. While it is not possible to quantify the consequences of this for victims of violence, it is certain that greater investment would have prevented more harm.

Education

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<https://www.nlada.org/sites/default/files/NLADA%20Pew%20ODR%20Report%20Final%20Draft%2012.30.20.pdf>

⁷⁷ <https://www.law360.com/access-to-justice/articles/1260008/unsafe-at-home-virus-stirs-domestic-violence-fears>

⁷⁸ <https://texaslawhelp.org/article/coronavirus-and-child-visitation>

⁷⁹ <https://legal.thomsonreuters.com/en/insights/reports/impacts-of-the-pandemic-on-state-local-courts/form?gatedContent=%252Fcontent%252Ffewp-marketing-websites%252Flegal%252Fgl%252Fen%252Finsights%252Freports%252Fimpacts-of-the-pandemic-on-state-local-courts>

⁸⁰ "Access to Justice in the Age of COVID-19 A Roundtable Report, September 2021"

<https://www.justice.gov/ag/page/file/1445356/download>

The single most universal result of the pandemic on children was the disruption of in-person education. At the end of March 2020, 55 million students had been affected by school closures. By the spring, all but two states announced that schools would stay remote through the start of the next academic year.⁸¹ Even when classrooms reopened, new COVID-19 variants prompted thousands of school disruptions that led to cancellations and forced children back into home-based education. The sudden shift to remote learning exposed systemic weaknesses and educational inequalities that predated the pandemic. Students in high-wealth districts generally had the resources to mitigate learning loss, while low-income, urban, and rural districts had fewer certified teachers and lacked comparable access to broadband technology and digital learning devices. Though state and federal pandemic relief funding has increased internet access and allowed more districts to purchase digital devices for low-income students, there are still up to 12 million digitally underserved K-12 students.⁸²

Access to adequate education during the pandemic was largely dependent on race, ethnicity, immigration status, and income. Black and Hispanic students, and English language learners made up the overwhelming majority of students attending high-poverty schools where attendance and the availability of remote learning was less consistent than higher-income schools. Fewer than half of children in predominantly Black schools participated in remote instruction, compared to 60 percent to 70 percent in predominantly white schools. A study of online participation found just 60 percent of low-income students and 60 percent to 70 percent of Hispanic students logged on for online classes, compared to 90 percent of high-income and white students.⁸³ Additionally, only 1 in 3 school districts expected teachers to track student engagement online, according to a survey of 477 nationally representative districts.⁸⁴

These disparities had a direct impact on learning loss and underscored the need to close the digital divide as a precondition for equal education. One estimate suggested that students in majority-Black schools lost the equivalent of 1.5 to 2 times the number of months of learning compared to those in majority-white schools.⁸⁵ English language learners, Hispanic children and Native Americans also showed greater evidence of learning loss. Children with disabilities experienced widespread disruptions to specialized programs that required in-person instruction and they were also at the highest risk of all children for contracting COVID-19 and having serious adverse outcomes.⁸⁶ As grim as the projections were, loss may have even been greater due to the lack of tracking participation in online learning.

While education outcomes are critical for students' future, there remains a need to help children cope with pandemic trauma. During the last two years, there were reports of higher rates of negative mental

⁸¹ <https://www.edweek.org/leadership/the-coronavirus-spring-the-historic-closing-of-u-s-schools-a-timeline/2020/07>

⁸² <https://www.common sense media.org/about-us/news/press-releases/the-us-k-12-digital-divide-has-narrowed-but-must-close-to-eliminate>

⁸³ <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fscholarlycommons.law.wlu.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1520%26context%3Dcrsj&clen=694075>

⁸⁴ <https://crpe.org/too-many-schools-leave-learning-to-chance-during-the-pandemic/>

⁸⁵ <https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-the-lingering-effects-of-unfinished-learning>

⁸⁶ [Supporting COVID-19 School Safety for Children With Disabilities and Medical Complexity | Pediatrics | American Academy of Pediatrics \(aap.org\)](https://www.aap.org/Supporting-COVID-19-School-Safety-for-Children-With-Disabilities-and-Medical-Complexity)

health outcomes among school-age children, including increased suicide attempts among adolescents⁸⁷, and worsening incidents of depression and anxiety.⁸⁸ State and federal governments set aside funds to increase access to mental health resources, but many districts are constrained by a nationwide shortage of qualified school psychologists.

Children with special educational needs were affected in acute ways. While school districts were required to provide free appropriate public education (FAPE) to children with disabilities, many of those needs went unmet. Remote and hybrid learning, as well as mask use in reopened schools were not always consistent with students' individualized education program (IEPs) and some special needs students were experiencing significant learning loss as a result. Parents in New York, Maine, Nevada, Oklahoma, and Colorado sued schools for failing to provide adequate specialized services for special needs students. Even when in-person learning became available, children with aspiration difficulties and behavioral challenges struggled with facemasks, handwashing, and other mitigation measures.

Much of the work of legal advocates has been and continues to be addressing disparities in equal access to education. At the individual level, legal programs have provided guidance to parents about their children's rights to equal and appropriate education. They have also offered assistance in navigating conversations with schools and IEP teams.⁸⁹ More broadly, advocates addressed emerging disparities on the basis of federal civil rights laws including the Individuals with Disabilities Education Act⁹⁰ and the Civil Rights Act. Attorneys identified the potential for federal litigation under the Equal Education Opportunities Act, with regard to education programs for English learners that failed to meet basic standards of effective instruction to help students overcome language barriers. Litigation is currently proceeding in California, where a group of parents filed a class action lawsuit against the state for allegedly failing to provide "basic educational equality" for students of color, low-income students, and LEP students who had lengthy class cancellations during the pandemic.⁹¹

In total, Congress authorized roughly \$190 billion for schools to implement public health measures and accelerated learning programs. The bulk of federal spending went toward the Elementary and Secondary School Emergency Relief (ESSER) Fund that was created by the CARES Act and replenished under ARPA. State and local education agencies have until September 2024 to spend these funds on 15 categories of allowable activities, including investing in the needs of low-income students, students with disabilities, and racial and ethnic minorities. States and local jurisdictions are still drafting plans to spend the funds, and it is not yet clear to what extent these plans will in fact improve education outcomes and reduce inequality. ARPA specifically mandated that 20 percent of ESSER funds be used to address learning loss and "the disproportionate impact of COVID-19 on underrepresented student subgroups."⁹²

⁸⁷ <https://www.cdc.gov/mmwr/volumes/70/wr/mm7024e1.htm>

⁸⁸ https://jamanetwork.com/journals/jamapediatrics/fullarticle/2782796?guestAccessKey=05734066-1e37-4d9a-94a7-572bb9947b06&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tf1&utm_term=080921

⁸⁹ <https://www.justice4all.org/special-education-and-covid/>

⁹⁰ <https://www.washlaw.org/district-government-sued-for-not-providing-education-to-incarcerated-young-people-with-disabilities/>

⁹¹ <https://www.usatoday.com/story/news/education/2020/12/01/california-families-sue-remote-learning-inequities-coronavirus/3780771001/>

⁹² https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf

With respect to children with disabilities, a set-aside in ESSER combined with other provisions ARPA provided around \$3 billion to directly support special education.

Special Populations

The effects of the pandemic were not equal across demographics. Certain populations were more vulnerable to both the physical health consequences of COVID-19 and exposure to the economic and social costs of the pandemic. Many of these individuals were historically marginalized, which the pandemic intensified while creating new and serious problems, making the importance of continued legal support services within these underserved communities even more clear.

Native Americans

Centuries-long inequalities exacerbated both the physical and economic toll the pandemic took on the tribal communities of the continental U.S., Alaska and Hawaii. Native Americans were among the groups most vulnerable to COVID-19. Those living on reservations had infection rates 3.5 times higher than the white population.⁹³ COVID deaths among Native Americans were more common than any other racial or ethnic groups due to a greater prevalence of risk factors, including poverty, crowded living conditions, limited access to running water, substandard health care, and underlying medical conditions.⁹⁴ The Indian Health Services, the primary source of health care for roughly half of Native Americans, had virtually no surge capacity to deal with COVID-19 and had been chronically underfunded, understaffed, and underequipped for decades. Food insecurity affected nearly half of American Indians and Alaska Natives during the pandemic. Participation in the Food Distribution Program on Indian Reservations increased more than two-fold to 34 percent of households, while SNAP participation rose from 14 percent to 20 percent.⁹⁵

Access to benefits and legal support varied by tribe and location. Some of the largest tribal territories in the U.S. are considered legal deserts, with few resources and limited court capacity. More populous tribes with more robust government infrastructure, like the Navajo and Cherokee, tended to administer federal funding relatively effectively. Those tribes also provided citizens with enhanced COVID impact payments on top of federal EIPs. Tribes with less advanced infrastructure, particularly those with large geographic territories and dispersed populations, tended to have greater difficulty connecting citizens to services and benefits. The barriers were even higher when it involved state-administered benefits in tribal areas, like unemployment insurance. Individuals living on tribal territories had to coordinate with both the state and tribe to access benefits, and not every tribe participates in the state UI system. The Bureau of Labor Statistics does not track unemployment rates for Native Americans and Alaska Natives, which tend to be higher than the national average. That contributed to a poor understanding of the pandemic's effect on these communities and whether federal relief programs helped them recover. The shift to online or telephone services was particularly difficult for Native American communities living in regions with poor internet and cell phone service. Staff available to operate phones and manage online resources were also limited. Broadband access on Indian territories remains below the national average, creating widespread implications for government services, education, health care, and family services.

The Native American court systems are separate from states' and require specialized legal professionals to operate in them. This typically means fewer available resources for tribal citizens. Like other legal aid services, Native Americans routinely relied on in-person communication to address their legal needs. When COVID forced offices to close their doors, providers had to adapt. Legal aid services working with the Navajo, Hopi, Jicarilla Apache tribes in the southwest used LSC technology grants to get additional laptops, cell phones, and Wi-Fi hotspots to connect with clients. In states and territories that allowed

⁹³ [CDC data show disproportionate COVID-19 impact in American Indian/Alaska Native populations | CDC](#)

⁹⁴ [COVID-19 Risk Factors and Mortality among Native Americans | medRxiv](#)

⁹⁵ [Reimagining Hunger Responses in Times of Crisis \(nativeamericanagriculturefund.org\)](#)

public gatherings, staff returned to offices to meet with clients in person and invested in vehicles, including a travel trailer, to reach clients in remote areas.

Throughout the pandemic, Congress allocating over \$40 billion to be distributed among the 574 federally recognized tribes. The CARES Act set aside \$8 billion in direct assistance to tribal governments and the American Rescue Plan Act authorized another \$20 billion as part of the Coronavirus State Fiscal Recovery Fund. A large portion of ARPA funds went toward the Indian Health Services, Native American housing block grants, and increased support for the Bureau of Indian Education for broadband grants and remote learning.⁹⁶ Despite the authorization of relief funds, tribes were initially blocked from accessing \$8 billion in CARES Act funds for more than two months amid a disagreement over allocations to Alaska Native corporations (ANCs). The funds were eventually released, and the lawsuit was settled in a controversial Supreme Court ruling in favor of ANCs. Most of the relief money allocated to tribes has to be spent by 2022 or 2023, with state fiscal recovery funds available for distribution until 2024.

Non-citizens

There were roughly 45 million immigrants living in the United States at the start of the pandemic, including more than 10 million without documentation. Despite robust federal and state relief programs, noncitizens routinely struggled to access benefits due to language barriers, complicated immigration status, and fear of providing information to government authorities. Stricter immigration enforcement enacted before the pandemic fueled distrust of government-run COVID-19 testing and vaccination programs that required the collection of patient information. Limited language services at vaccination sites created unease and complicated the public health response. Additionally, the 2019 “public charge” rule created a chilling effect on immigrants seeking benefits they were entitled to collect. The rule, which was repealed in March 2021, conditioned future legal status could depend on whether a person received government support in the last 12 months. This led qualified immigrants to avoid participation in lifesaving programs, like Medicaid, SNAP, housing assistance, and unemployment insurance.

While some segments of the population could protect themselves and their families by working from home, immigrants were over-represented in frontline jobs, like health care, manufacturing, food production, essential retail services, and transportation.⁹⁷ Immigrants also accounted for a significant portion of the workforce in industries that were devastated by lockdowns. This left them more exposed to the economic consequences of the pandemic, often without the same supports as citizens.. Most undocumented workers were ineligible for any income relief,⁹⁸ though green card and work visa holders, individuals with Temporary Protected Status or Deferred Action for Childhood Arrivals could qualify for pandemic unemployment benefits. Certain other categories of noncitizens, including refugees, asylees, and some green card holders also qualified for expanded SNAP benefits. Health care was available to individuals, regardless of immigration status, through Community Health Centers, which received over \$8 billion in cumulative COVID relief funds. However, some states imposed additional eligibility requirements on Emergency Medicaid to cover these services, creating ⁹⁹barriers for immigrants and non-English speakers.

⁹⁶ [SENATE PASSES LARGEST INVESTMENT IN NATIVE PROGRAMS IN HISTORY, MORE THAN \\$31 BILLION HEADING TO NATIVE COMMUNITIES | The United States Senate Committee on Indian Affairs](#)

⁹⁷ [Immigrant Workers: Vital to the U.S. COVID-19 Response, Disproportionately Vulnerable \(migrationpolicy.org\)](#)

⁹⁸ California and New York used targeted state funding to support undocumented workers during the pandemic.

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Accessing stimulus checks was complicated for the more than 16 million people living in mixed status households, where one family member filed with an Individual Taxpayer Identification Number (ITIN) or Social Security Number (SSN). Initially, under the CARES Act, these households were prohibited from collecting Economic Impact Payments. By December 2020, Congress allowed the second \$600 “stimulus check” to go to households where at least one individual had a SSN. The change in law applied retroactively, which enabled mixed households that were overlooked during the first round to collect their \$1,200 EIPs. Despite changes to the law, 2.2 million children with SSNs and one taxpayer in the household remained ineligible for the first and second payments. The ARPA sought to close those gaps by authorizing payments to everyone in a household where one person had a SSN, regardless of whether the taxpayer filed with an ITIN.

Language services were critical throughout the pandemic. Most states had limited language access, making it more difficult for non-English speakers to access relevant information about health care services and navigate the complex benefit systems. Legal advocates played a central role in working with federal and state agencies to ensure compliance with Title VI of the Civil Rights Act. This work helped ensure critical information about the pandemic was available in multiple languages. Legal services helped push out this information through innovative digital and social media outreach campaigns to raise awareness about immigrants’ eligibility for pandemic relief, health care, and legal aid. Much of this assistance centered on providing language services and administrative support for individuals completing online applications, identity verification, and managing issues related to immigration status.

For immigrants who had to adjust their status, the pandemic was hugely disruptive. State and federal offices were closed and, in many cases, immigrants did not have online application options. This created significant delays and complications. Noncitizens seeking official documentation were instructed by federal agencies to send original immigration documents through the mail to obtain a Social Security card, with no absolute guarantee they would be returned. It took a year of the pandemic for the Social Security Administration and Department of Homeland Security agencies to allow remote interviews. Advocates pushed for changes throughout this process to help clients out of citizenship limbo. Moreover, pandemic disruptions to immigration courts left pressing immigration issues unresolved. Widespread shutdowns resulted in a backlog of more than 1.5 million immigration court cases,¹⁰⁰ while Title 42 public health restrictions, enacted in March 2020, have deprived millions of asylum seekers of due process.¹⁰¹

Older Americans

People over the age of 65 accounted for nearly three-quarters of all U.S. COVID-19 deaths throughout the pandemic¹⁰² and this group experienced the most acute health consequences. Those living in nursing homes and long-term care facilities accounted for 23 percent of all U.S. COVID fatalities.¹⁰³ While social distancing practices were necessary to protect older adults, it exposed them to social isolation and financial hardship, while making it more difficult to access care or support services. The shift from in-person to online interactions created new burdens for older adults who did not have reliable internet, access to technology, or who lacked experience using it. There was a 55 percent increase in older adults

¹⁰⁰ [Immigration Court Backlog Now Growing Faster Than Ever, Burying Judges in an Avalanche of Cases \(syr.edu\)](https://www.syr.edu/)

¹⁰¹ <https://www.aila.org/advo-media/issues/all/featured-issue-border-processing-and-asylum>

¹⁰² [Provisional COVID-19 Deaths by Sex and Age | Data | Centers for Disease Control and Prevention \(cdc.gov\)](https://www.cdc.gov/)

¹⁰³ <https://www.kff.org/policy-watch/over-200000-residents-and-staff-in-long-term-care-facilities-have-died-from-covid-19/>

being victims of internet fraud in 2020,¹⁰⁴ while the Social Security Administration reported a 250,000 drop in SSI applicants during the first year of the pandemic. Another 140,000 SSI recipients lost benefits in 2021, largely because they were unable to access in-person field offices, provide documentation online proving eligibility, or access legal services that could have helped them complete applications.

While Congress directed a total of \$2.6 billion to the Administration for Community Living to support state-based programs providing application assistance, care management, and legal aid, these and many other legal issues for older adults became more acute during the pandemic. Age discrimination was evident in state policies that functionally rationed health care to the elderly and disabled, while older adults experienced higher levels of unemployment and faced unique challenges returning to the workforce due to age-related health risks and ageism. There were also widespread reports of financial exploitation linked to nursing homes that unlawfully seized residents' stimulus checks as excess income. Cases of elder abuse and neglect, already prevalent in 1 in 10 older adults, skyrocketed during periods of prolonged isolation. During the spring of 2020, there was an 83 percent increase in elder abuse coinciding with lockdown orders and increased interpersonal stressors.¹⁰⁵ Cases of in-home abuse were prevalent, as victims were often isolated with their abuser and had fewer opportunities to seek help as restrictions on in-person interactions affected access to adult protective services and legal aid, while visitation restrictions on congregate living settings made it more difficult for seniors to seek in-home support or legal counsel.

People with Disabilities

Resource strains on the public health system affected millions of patients during the pandemic, but prompted a worrying uptick in discriminatory practices against people with disabilities, special needs, and chronic medical conditions. As hospitals found themselves overwhelmed with critically ill patients, advocates for people with disabilities and older Americans warned that rationing policies were leading to unlawful discrimination based on prejudices about an individual's likelihood of survival, quality of life, or "worth" based on physical and intellectual ability, or age. This practice disproportionately impacted people of color, who were more inclined to have underlying medical conditions, like diabetes, obesity, and hypertension.

Civil rights advocates saw a pattern of discriminatory health care rationing plans emerge early in the pandemic and brought a series of complaints to the Department of Health and Human Services Office for Civil Rights (HHS OCR). In an attempt to ameliorate resource constraints, states and health care providers enacted policies, like scoring criteria, that made it more likely for people with disabilities to be denied life-saving services. HHS OCR intervened in a dispute with the Alabama Department of Public Health¹⁰⁶ in April 2020, forcing it to change an emergency rationing plan for ventilators that excluded ventilator support for children and adults with developmental disabilities or brain injury. Similar disputes over discriminatory criteria for accessing life-saving care were resolved in Pennsylvania, Kansas, Washington, and Tennessee.¹⁰⁷ HHS issued new guidance in February explicitly barring states from developing rationing plans that discriminate against people with disabilities.

¹⁰⁴ https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3ElderFraudReport.pdf

¹⁰⁵ [High Prevalence of Elder Abuse During the COVID-19 Pandemic: Risk and Resilience Factors - PubMed \(nih.gov\)](#)

¹⁰⁶ [AL-OCR-press-release.pdf \(centerforpublicrep.org\)](#)

¹⁰⁷ [COVID-19 Medical Rationing & Facility Visitation Policies – Center for Public Representation](#)

Visitation restrictions in hospitals and long-term care facilities also created serious problems for people with disabilities, as policies often resulted in the denial of access for support persons that patients needed to communicate with treatment teams. Patients were therefore often not able to provide informed consent, receive equal access to care, and some were exposed to unnecessary medical interventions, including the use of physical and chemical restraints. Outside of the hospital setting, the pandemic also impacted the availability of support services. A majority of states saw significant disruptions to programs that provided everyday assistance for disabled people, both at-home and in institutional settings.¹⁰⁸ Social distancing requirements, COVID outbreaks, and staff shortages reduced the availability of skilled nursing staff, and adult day care providers, group homes, and other programs that helped individuals live independently were forced to shut down or sharply reduce attendance. Over a dozen states reported permanently closing at least one Medicaid HCBS provider, largely due to workforce constraints and financial hardship related to low reimbursement rates.¹⁰⁹

¹⁰⁸ [State Medicaid Home & Community-Based Services \(HCBS\) Programs Respond to COVID-19: Early Findings from a 50-State Survey | KFF](#)

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