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# **Chapter 9:** CORONAVIRUS, HOUSING, AND HOMELESSNESS

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# Eviction Protections during the COVID-19 Pandemic

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**H**ousing instability and homelessness have enormous consequences for individuals, their communities, and our nation's public health. Evictions put lives at risk and strain our already overstretched public health systems. Families evicted from their homes and forced to double or triple up with other families face greater challenges in practicing social distancing. This challenge is heightened for people experiencing homelessness – whether in shelters or encampments – who find it impossible to self-quarantine. People who are homeless and contract coronavirus are twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die than the general public.

Recognizing that eviction moratoriums – like quarantine, isolation, and social distancing – are effective public health measures to prevent the spread of coronavirus, the federal government issued two temporary moratoriums on evictions for nonpayment of rent during the COVID-19 pandemic. The federal eviction protections enacted through the “Coronavirus Aid, Relief, and Economic Security (CARES) Act” and then by the Centers for Disease Control and Prevention (CDC) were supplemented by a patchwork of state and local moratoriums implemented by governors and local officials.

Eviction moratoriums proved to be an essential public health measure. Research conducted on the efficacy of state, local, and federal eviction moratoriums provide evidence that such moratoriums are effective at reducing both eviction filings and COVID-19 transmission and fatalities. Researchers estimate the CDC eviction moratorium alone prevented at least 1.55 million eviction filings nationwide, and state and local eviction protections prevented an

additional 900,000 eviction filings throughout the country. Nationally, researchers found that expired eviction moratoriums led to an additional 433,700 cases of COVID-19 and 10,700 associated deaths. The risk of infection increases substantially when people are evicted or forced to live doubled-up with another household, but people who are evicted are not the only ones at risk – spillover transmission amplified by evictions also places the broader community at increased risk of infection.

## “CARES ACT” EVICTION AND FORECLOSURE MORATORIUM

The “Coronavirus Aid, Relief, and Economic Security (CARES) Act” (Pub. L. No. 116-136), enacted March 27, 2020 instituted a 120-day federal eviction moratorium for tenants in certain rental properties with federal assistance or a federally-backed mortgage. The moratorium prohibited owners of covered properties from filing new evictions against tenants for nonpayment of rent and charging additional fees related to nonpayment. Under the CARES Act moratorium, housing providers were required to provide tenants a 30-day notice to evict for nonpayment, which could not be given until after the 120-day moratorium period ended on July 24, 2020.

The moratorium enacted in CARES Act Section 4024(b) covered most residents of federally-subsidized housing programs, including those supported by HUD, USDA, or Treasury (Low Income Housing Tax Credit developments). The moratorium also extended to renters living in single-family and multifamily properties financed by federally-backed mortgages, such as those financed through Fannie Mae, Freddie Mac, HUD, or other federal agencies.

Additionally, the CARES Act instituted a moratorium on foreclosures for federally-backed mortgages. Landlords of federally-

backed multifamily properties could request up to 90 days of forbearance, during which they were prohibited from evicting any tenants for nonpayment of rent.

The CARES Act offered renters eviction protections broader in scope than the measures enacted by the Federal Housing Finance Agency (FHFA) and the Federal Housing Administration (FHA) in response to the pandemic. FHFA, the regulator that oversees federally-backed mortgages, enacted a moratorium on some evictions and single-family foreclosures with loans backed by Fannie Mae or Freddie Mac. The FHA also enacted a foreclosure and eviction moratorium for homeowners with FHA-insured single-family mortgages covered under the CARES Act.

As part of the Biden Administration's all-of-government approach to reduce evictions, the White House [announced](#) in June 2021 that HUD and other federal agencies will continue to enforce the CARES Act's 30-day notice to vacate requirement. Housing providers of federally backed and federally assisted properties must provide tenants with a 30-day notice to vacate in accordance with the CARES Act. Federally supported properties include all multifamily and single-family homes that have an FHFA-insured mortgage, Fannie Mae or Freddie Mac securitized mortgage, or a federal housing subsidy.

HUD published an [interim final rule](#) in the *Federal Register* on October 7, 2021, that requires providers of public housing and project-based rental assistance (PBRA) to provide tenants facing eviction for nonpayment of rent with a 30-day notice that includes information about the availability of federal emergency rental assistance (ERA). Currently, the CARES Act requires a 30-day notice prior to eviction, but it does not require the notice to provide information about ERA. The interim final rule is not limited to the current pandemic. Rather, whenever funding is available to assist tenants with nonpayment of rent during a national emergency, HUD may determine that tenants must be provided with adequate notice and time to secure that funding.

NLIHC and the National Housing Law Project, along with affordable housing and tenants' rights organizations, [called on HUD](#) to use its authority to act more comprehensively to prevent evictions by amending the interim final rule. The rule improperly limits the CARES Act's 30-day notice requirement to only public housing and PBRA tenants, when the requirement applies to all HUD tenants, including Housing Choice Voucher participants. Additionally, the interim final rule creates a sunset date for the 30-day notice requirement – the end of a presidentially-declared disaster – where no such time limit exists under the CARES Act.

### **Shortcomings of CARES Act Moratorium**

While the moratorium provided many renters an important short-term reprieve, it did not prevent people from accruing housing debt. Additionally, the limited CARES Act moratorium covered only 30% of renters nationwide, leaving many low-income households at risk of losing their homes during the pandemic.

Our country's complicated housing finance system made it difficult for renters to know if they were protected under the CARES Act, allowing some landlords to continue evicting tenants despite the moratorium. NLIHC created a searchable database and interactive map to allow some renters to determine whether their home was covered by the CARES Act moratorium. The federal eviction moratorium, however, lacked compliance and enforcement mechanisms, resulting in families losing their homes through evictions that violated the CARES Act.

Advocates urged Congress and federal agencies to enact a national, uniform moratorium on eviction and foreclosures for nonpayment of rent that would provide broader protections for renters and homeowners.

## **CDC FEDERAL EVICTION MORATORIUM**

The CDC took unprecedented action on September 1, 2020 by issuing a [temporary national moratorium on most evictions](#) for nonpayment of rent to help prevent the spread of

coronavirus. Citing the historic threat to public health posed by coronavirus, the CDC declared that an eviction moratorium would help to ensure that people are able to practice social distancing and comply with stay-at-home orders. The CDC eviction moratorium followed the expiration of many state and federal orders, including the CARES Act.

Effective September 4, the order declared a national moratorium on residential evictions for eligible renters for nonpayment of rent and nonpayment of other fees or charges until December 31, 2020. Any evictions for nonpayment of rent that may have been initiated before September 4, 2020, and had not been completed, were subject to the moratorium. The CDC moratorium did not include rental assistance, and renters remained responsible for paying any back rent and fees accumulated during the moratorium. Congress, however, provided rental assistance separately in COVID-19 relief packages.

To qualify for the protections, an individual was required to 1) be a “tenant, lessee, or resident of a residential property” and 2) provide a signed declaration to their landlord stating that they:

- Have “used best efforts to obtain all available government assistance for rent or housing;”
- Expect to earn no more than \$99,000 annually in 2020-2021 (or no more than \$198,000 jointly), or were not required to report income in 2019 to the IRS, or received an Economic Impact Payment;
- Are unable to pay rent in full or make full housing payments due to loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical costs;
- Are making their best efforts to make timely partial payments as close to the full rental/housing payment as possible;
- Would likely become homeless, need to live in a shelter, or need to move in with another person (aka live doubled-up) because they have no other housing options;

- Understand they will still need to pay rent at the end of the moratorium; and
- Understand that any false/misleading statements may result in criminal and civil actions.

The order applied to every state and territory with reported cases of coronavirus and to all standard rental housing, including mobile homes or land in a mobile home park.

In issuing the order, the CDC cited section 361 of the “Public Health Service Act” (42 USC § 264 and a regulation pursuant to the act, 42 C.F.R. 70.2), which grants the Secretary of Health and Human Services broad authority to enact measures to prevent the spread of disease. Landlords, property owners, and housing industry groups, however, filed numerous legal challenges against the CDC eviction moratorium in federal, state, and local courts, often arguing that the CDC did not have the authority to issue the order. These lawsuits contributed to legal uncertainty about the order, resulting in varying interpretations in court and uneven application and protections for renters.

The emergency COVID-19 relief legislation enacted by Congress in December 2020 extended the CDC eviction moratorium through January 31, 2021. President Biden extended it three additional times through March, June, and July. On July 29, the Biden Administration announced the CDC could not extend the moratorium due to a Supreme Court decision on June 29 that upheld the moratorium but declared the CDC could not grant an extension without congressional authorization. A measure to extend the moratorium failed to garner the support needed to pass the House of Representatives, and the eviction moratorium expired on July 31.

NLIHC urged President Biden to use his authority to extend the eviction moratorium and, in the meantime, to take all other possible actions to reduce evictions. Representative Cori Bush (D-MO) and other members of the Congressional Progressive Caucus staged rallies outside of the Capitol building to demand an extension of the moratorium and, along with NLIHC,

Speaker of the House Nancy Pelosi (D-CA) and Representative Maxine Waters (D-CA), demanded that the Biden Administration use every authority to extend eviction moratorium protections for renters. As a result of the extraordinary dedication of congressional champions and housing and homelessness advocates across the country, the CDC announced on August 3 a limited eviction moratorium through October 3. The new moratorium covered renters living in communities experiencing a substantial or high level of COVID-19 transmission, an estimated 90% of all renters.

The federal eviction moratorium continued to face legal challenges. One day after the CDC announced the new limited moratorium, the Alabama and Georgia Associations of Realtors, backed by the National Association of Realtors, again petitioned the federal district court in D.C. to overturn it. The Supreme Court ruled on August 26 to end the temporary stay on a lower court ruling seeking to overturn the CDC eviction moratorium. In doing so, the Supreme Court invalidated the eviction moratorium, eliminating vital protections that kept millions of households in their homes during the pandemic.

### **Shortcomings of the CDC Eviction Moratorium**

The federal eviction moratorium extended vital protections to renters at risk of eviction during the pandemic, helping to keep stably housed millions of people who otherwise would have been evicted. The CDC order, however, had significant shortcomings that prevented renters from making full use of the moratorium's protections.

To receive protection under the CDC order, renters had to know about the moratorium and take affirmative steps to be protected. As a result, far too many eligible renters, especially those with the lowest incomes who may not have access to legal aid attorneys, internet, or printers, and other marginalized people such as immigrants, seniors, and people with disabilities, were wrongfully evicted from their home.

The CDC issued on October 9 a Frequently Asked Questions (FAQ) document that created loopholes

in the moratorium's protections, undermining the intent of the order by eroding protections for renters and making it more difficult for struggling renters to remain stably housed. The FAQ stated, contrary to the original order, that landlords may challenge tenant declarations and initiate eviction proceedings at any time, as long as physical executions are not executed. Allowing landlords to challenge renters' declarative statements created new opportunities for landlord intimidation and further shifted the burden to struggling renters who must gather paperwork to prove they need assistance to stay housed during the pandemic. Permitting landlords to initiate eviction proceedings – even when covered renters cannot be evicted until the moratorium ends – served no purpose other than to mislead, pressure, scare, or intimidate renters into leaving sooner.

While the CDC order imposed criminal penalties on landlords who violated the moratorium, no entity or persons were enforcing the order and there was no mechanism for renters to file complaints against landlords who violated the order. As a result, the criminal penalties in the order did not deter improper evictions and landlords continued to evict renters in violation of the moratorium without consequence. There were numerous cases where landlords evicted renters from their homes, even though renters provided their landlords with a signed declarative statement.

The CDC moratorium was a public health necessity, providing stability to millions of people who would have lost their homes. NLIHC and advocates across the country urged the CDC to extend, strengthen, and enforce the order's protections. The CDC could have addressed the eviction moratorium's shortcomings by making the protections automatic and universal, rescinding its FAQ document that weakened the moratorium's protections, establishing a hotline number that renters could use to file complaints against landlords who violate the moratorium, and directing the U.S. Department of Justice to enforce the order.



## EMERGENCY RENTAL ASSISTANCE

The federal eviction moratoriums, paired with a patchwork of state and local protections, provided critical, short-term relief to many low-income households. Congress provided emergency rental assistance to keep renters stably housed after moratoriums ended and to ensure the continued viability of our country's essential affordable housing infrastructure.

Congress approved \$46 billion in emergency rental assistance (ERA) through the “[Consolidated Appropriations Act of 2021](#)” and the “[American Rescue Plan Act of 2021](#).” State and local governments have worked to design, scale up, and distribute aid to renters and landlords – a significant and time-consuming undertaking during a global pandemic. While some jurisdictions successfully ramped up their programs by adopting the flexibilities provided by the Treasury Department to expedite assistance, many programs failed to utilize proven best practices in program design and implementation. The elimination of the federal eviction moratorium on August 26, 2021, heightened the urgency of ensuring renters and landlords can access ERA. NLIHC continues to call on state and local governments to ensure that ERA programs are [visible, accessible, and preventive](#) of evictions. In addition to urging program administrators to implement strategies to ensure ERA reaches those with the greatest needs, NLIHC recommends state and local governments create, strengthen, or extend local eviction protections. Eviction moratoriums provide states and localities more time to ramp up their efforts to distribute ERA to households in need. State and local leaders should adopt additional measures, such as right to counsel, expungement of eviction records, and just-cause eviction standards, which can help protect renters during the pandemic and in the long term.

In collaboration with NLIHC's state and local partners, the End Rental Arrears to Stop Evictions (ERASE) team released a [State and Local ERA Tenant Protections Database](#), a resource of emergency rental assistance (ERA) tenant protections enacted during the pandemic.

The resource includes policies, legislation, ordinances, executive orders, and court orders that cities, counties, and states across the country have put in place to protect renters and prevent evictions.

## FOR MORE INFORMATION

The “Coronavirus Aid, Relief, and Economic Security (CARES) Act” (Pub. L. No. 116-136), <https://bit.ly/36HqwrX>.

NLIHC's Analysis of the CARES Act, <https://bit.ly/2JODPxe>.

National Housing Law Project (NHLP) Summary and Analysis of Federal CARES Act Eviction Moratorium, <https://bit.ly/39yMwXk>.

CDC Order: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, <https://bit.ly/2VEDJv2>.

The “Consolidated Appropriations Act of 2021” (Pub. L. No. 116-260), <https://www.congress.gov/bill/116th-congress/house-bill/133>.

NLIHC's National Eviction Moratorium resource page, <https://bit.ly/3mULNUx>.

NLIHC and NHLP, Overview of CDC Eviction Moratorium, <https://bit.ly/3g8x1H7>.

NLIHC and NHLP, National Eviction Moratorium: FAQ for Renters, <https://bit.ly/2JHG99n>.

The “American Rescue Plan Act of 2021” (Pub. L. No: 117-2), <https://bit.ly/30BD8wz>.

NLIHC State and Local Tenant Protections Database, <https://tinyurl.com/53wxx55y>.