

Federal Eviction Protections during the COVID-19 Pandemic

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Housing 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 were 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. The federal eviction moratoriums were also paired with emergency rental assistance, and the combination helped millions of renters remain stably housed.

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.

The CARES Act notice provision has no expiration date or sunset clause and remains in effect as a federal statute codified at 15 U.S.C. § 9058(c). 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.

According to the National Housing Law Project (NHLP), advocates report widespread noncompliance with the CARES Act 30-day notice provision and a lack of consistency in court enforcement. There have been multiple court decisions interpreting and enforcing the CARES Act 30-day notice provision. See NHLP's memo, Enforcing the CARES Act 30-Day Eviction Notice Requirement, for more information.

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.

The White House Domestic Policy Council and National Economic Council released the "White House Blueprint for a Renters Bill of Rights" in January 2023. In the blueprint, HUD announced its intent to issue a notice of proposed rulemaking to build upon the interim final rule and extend the 30-day notice requirement to situations outside of a national emergency. HUD published the proposed rule (88 FR 83877) in November 2023. The rule would require PHAs with tenants in public housing and owners of PBRA properties to provide 30 days' notice, regardless of the availability of federal funding to prevent eviction due to a national emergency. The 30-day notice must include instructions on how tenants can cure lease violations for nonpayment of rent. The proposed rule reiterates that the CARES Act 30-day notice to vacate requirement

for nonpayment of rent is still in effect for all CARES Act covered properties.

SHORTCOMINGS OF THE CARES ACT MORATORIUM

While the moratorium provided many renters an important short-term reprieve, it did not prevent people from accruing housing debt. Congress did not enact emergency rental assistance until December 2020. 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 – alongside emergency rental assistance – to protect renters and homeowners and keep them stably housed.

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. Because renters remained responsible for paying any back rent and fees accumulated during the moratorium, Congress provided more than \$46 billion in emergency rental assistance in COVID-19 relief packages. Together, the combination of an eviction moratorium and emergency rental assistance kept millions of people stably housed.

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, 2021.

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 in October 2021 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.

A NEED FOR LONG-TERM SOLUTIONS

The eviction moratoriums passed during the global pandemic demonstrated the power that federal, state, and local governments have

in protecting citizens during a public health emergency and economic crisis. The eviction moratoriums were necessary in halting the spread of COVID-19, and lawmakers should consider implementing eviction moratoriums alongside emergency rental assistance in their jurisdictions when responding to future public health emergencies and natural disasters.

Eviction moratoriums, however, offer only a temporary solution for our nation's affordable housing crisis. The power imbalance between renters and landlords puts renters at greater risk of housing instability, harassment, and homelessness, and it fuels racial inequity. Federal, state, and local governments must enact long-term, sustainable solutions that promote housing stability and prevent homelessness. The Biden Administration's blueprint is an important step towards achieving President Biden's commitment to establishing a Renters of Bill Rights, but there is more work to be done. The Biden Administration and Congress should continue to strengthen and enforce renter protections.

FOR MORE INFORMATION

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>.

NHLP, Enforcing the CARES Act 30-Day Eviction Notice Requirement, <https://tinyurl.com/2wy29kd9>.

For more information on the state and local renter protections enacted in response to the COVID-19 pandemic, visit NLIHC's State and Local Tenant Protections Database, <https://tinyurl.com/53wxx55y>.

White House Blueprint for a Renters Bill of Rights, <https://tinyurl.com/3a7x6vjy>