

# FEDERAL MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT

The Centers for Disease Control and Prevention (CDC) took unprecedented action on September 1 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 ensure people are able to practice social distancing and comply with stay-at-home orders. The CDC issued on October 9 [guidance](#) creating new burdens for renters seeking moratorium protections. While the new guidance does not rescind the moratorium on most evictions for nonpayment of rent, it states that landlords may challenge tenant declarations and initiate eviction proceedings at any time. The new guidance undermines the intent of the CDC's order by eroding protections for renters and making it more difficult for struggling renters to remain stably housed.

The CDC eviction moratorium took effect September 4 and was initially set to expire on December 31. Congress extended the moratorium through January 2021 – and President Biden further extended it through March, June, and July – and provided a total of [\\$46.5 billion](#) for emergency rental assistance (ERA). The eviction moratorium lapsed on July 31, but the CDC announced on August 3 a limited [eviction moratorium](#) through October 3 for renters living in communities experiencing a surge in COVID-19 cases, covering an estimated 80% of all U.S. counties and 90% of all renters. The CDC's announcement came one day after the Biden administration [announced](#) additional steps it will take to protect renters and prevent evictions during the pandemic, including those [recommended by NLIHC and the National Housing Law Project](#).

## HOW DOES THE NEW CDC EVICTION MORATORIUM DIFFER FROM THE PREVIOUS ORDER? WHY IS AN EVICTION MORATORIUM STILL NECESSARY?

The new eviction moratorium provides immediate relief for the [6.5 million](#) renter households who are currently behind on their rent and who were at an increased risk of eviction when the previous federal eviction moratorium expired on July 31. Recent research estimates that up to 80% of households behind on rent and at risk of eviction live in communities with over 100% COVID-19 case growth rates in July. An extended moratorium is desperately needed given the newly surging Delta variant, low vaccination rates in communities with high eviction filings, and cities and states' slow rate of distributing ERA. The new moratorium will help keep renters safely and stably housed, and it will provide state and local governments more time to distribute ERA to households in need.

The new moratorium:

- Prevents renters in communities experiencing a substantial or high level of community transmission of COVID-19 from being evicted for nonpayment of rent;
- Protects renters for up to two months, from August 3 to October 3. Renters lose protections under the moratorium once their community is no longer experiencing a substantial or high level of community transmission;
- Requires renters to provide their landlord with a signed declaration form to be covered. Renters who previously submitted declaration forms are not required to do so again; and

- Does not relieve renters from their obligation to pay rent.

Find out whether your county is experiencing a substantial or high rate of transmission here: <https://covid.cdc.gov/covid-data-tracker/#county-view>

## WHY DID THE CDC ISSUE THIS ORDER?

In its [notice](#), the CDC argues coronavirus presents a historic threat to public health and eviction moratoriums can be an effective public health measure to prevent the spread of coronavirus. An eviction moratorium is necessary to ensure people are able to follow best practices recommended by the CDC to cut down on coronavirus transmission, including quarantine, isolation, and social distancing. Moreover, the notice states housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk of COVID-19. CDC cites NLIHC's report [Out of Reach: The High Cost of Housing](#) and explains that the high cost of housing makes individuals who have experienced a drop in income since the onset of the pandemic particularly vulnerable to eviction.

In the updated [order](#), CDC Director Dr. Rochelle Walensky writes, "the emergence of the delta variant has led to a rapid acceleration of community transmission in the United States, putting more Americans at increased risk, especially if they are unvaccinated. This moratorium is the right thing to do to keep people in their homes and out of congregate settings where COVID-19 spreads. It is imperative that public health authorities act quickly to mitigate such an increase of evictions, which could increase the likelihood of new spikes in SARS-CoV-2 transmission. Such mass evictions and the attendant public health consequences would be very difficult to reverse."

## DOES THE FEDERAL MORATORIUM STOP ALL EVICTIONS?

The new eviction moratorium prevents renters in communities experiencing a substantial or high level of community transmission of COVID-19 from being evicted for nonpayment of rent. Renters lose protection under the moratorium once their community is no longer experiencing a substantial or high level of transmission. Since the CDC order has been challenged in court, tenants should stay tuned for updates, rather than just assuming they are protected through October 3.

Not all courts are interpreting the CDC order in the same way, and in a few jurisdictions, these protections may not apply. Tenants should contact their [local legal aid organization](#) or community organization group to be connected to legal assistance if they are facing eviction.

Tenants can still be evicted for:

- Conducting criminal activity on the property;
- Threatening the health or safety of other residents;
- Damaging or posing an immediate and significant risk of damage to the property;
- Violating applicable building codes, health ordinances, or other regulations related to health and safety; and
- Violating any contractual obligation other than the timely payment of rent, late fees, penalties, or interest.

## DOES THE FEDERAL MORATORIUM BLOCK ALL STAGES OF AN EVICTION?

The CDC guidance on the order states that landlords may initiate eviction proceedings at any time, but covered tenants cannot be evicted until the moratorium expires on October 3, 2021. However, in most states, eviction suits would still be prohibited by state law if brought before the CDC moratorium expires. If sued for eviction, seek legal assistance.

Permitting landlords to initiate eviction proceedings – even when covered renters cannot be evicted until the moratorium ends – provides landlords new opportunity to intimidate tenants who are behind on rent and pressure tenants to vacate their homes sooner. Evictions – even a single eviction filing – creates a long-term mark on a renter’s record, hindering their access to future housing opportunities. Some renters avoid that mark by vacating their home before the formal eviction proceedings occur. Other renters, especially the most marginalized renters, such as immigrants, seniors, and people with disabilities, fear the court process or cannot participate in court proceedings due to accessibility issues.

## WHAT AUTHORITY DOES CDC HAVE TO ISSUE THIS ORDER?

The order cites 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.

## IS THE MORATORIUM EFFECTIVE IN MY STATE OR TERRITORY?

The order applies to every U.S. county experiencing substantial or high rates of community transmission of SARS-CoV-2. See the COVID-19 Integrated County View [here](#).

## DOES THE FEDERAL MORATORIUM COVER ALL FORMS OF RENTAL HOUSING?

The order applies to all standard rental housing, including mobile homes or land in a mobile home park. However, it does not cover individuals renting hotels, motels, or other guest homes rented temporarily. Whether or not individuals living in hotels, motels, or renting guest homes are protected from eviction would depend on state/local law.

## WHAT STEPS MUST RENTERS TAKE TO BE PROTECTED BY THE EVICTION MORATORIUM?

To qualify, an individual must 1) be a “tenant, lessee, or resident of a residential property” and 2) provide a signed [declaration](#) to their landlord stating that they:

- Expect to earn no more than \$99,000 annually in 2021 (or no more than \$198,000 jointly), or were not required to report income in 2020 to the IRS, or received an [Economic Impact Payment in 2020 or 2021](#) or receive SNAP, TANF, SSI, or SSDI benefits;
- 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;
- Live in a U.S. county experiencing substantial or high rates of community transmission of COVID-19;
- Are making their best efforts to make timely partial payments as close to the full rental/housing payment as possible and to obtain all available government assistance for rent or housing;
- 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 (October 3, 2021); and
- Understand that any false/misleading statements may result in criminal and civil actions.

A sample declaration is included at the end of this FAQ.

Because of the requirement that tenants be “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, [or] lay-offs,” there are some low-wage workers who have not experienced a drop in income who will not be protected under this order unless they have “extraordinary out-of-pocket medical costs.” Out-of-pocket medical costs are considered “extraordinary” if they are likely to exceed 7.5% of a household’s adjusted gross income for the year.

## **ARE LANDLORDS REQUIRED TO NOTIFY THEIR TENANTS OF THE CDC ORDER AND DECLARATION?**

According to the CDC guidance, landlords are not required to notify their tenants of the CDC order and declaration. Many qualified renters are unaware of the legal steps they must take to be protected, and as a result, some landlords are moving quickly to file evictions before renters learn of the moratorium and can make use of its protection. Since the moratorium is only effective if renters are aware of its protections, [NLIHC and NHLP urge federal agencies](#) to require federally supported rental property owners and housing authorities to provide tenants written notice of their rights under the moratorium and what they must do to be protected.

## **CAN LANDLORDS CHALLENGE TENANTS’ DECLARATIVE STATEMENTS?**

The CDC guidance states that landlords may challenge renters’ declarative statements, creating new opportunities for landlord intimidation and further shifting the burden to struggling renters who must gather paperwork to prove they need assistance to stay housed during the pandemic. The guidance raises new questions regarding tenant protections and poses significant risks of intimidation and confusion that may deter eligible tenants from invoking the protection of the CDC order. The CDC guidance does not provide standards or procedures governing such challenges, so it will be important for courts to allow such challenges only when landlords present evidence suggesting a material falsehood exists in a tenant’s declaration, and place the burden of proof on landlords to establish that a tenant is not a covered person.

## **ARE RENTERS STILL RESPONSIBLE FOR BACK RENT AND FEES/PENALTIES ACCUMULATED DURING THE EVICTION MORATORIUM?**

Yes, renters must pay any back rent or fees accumulated during the moratorium.

## **WHAT HAPPENS IF A LANDLORD VIOLATES THE MORATORIUM?**

While landlords may be able to file an eviction lawsuit under the CDC’s moratorium, many such cases are improper under state law and should be dismissed.

Landlords in violation of the moratorium may be subject to a fine of up to \$100,000, one year in jail, or both; the fine increases to \$250,000 if the violation results in the death of a tenant. Organizations found to be in violation of the moratorium may be subject to a fine of up to \$200,000 per violation, or up to \$500,000 per violation if the violation results in a death.

The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) released a [joint statement](#) on March 29 announcing the agencies will monitor and investigate eviction practices to

ensure landlords and property owners are complying with the federal, state, or local moratoriums. The statement acknowledges there are reports that major multistate landlords are evicting tenants despite the federal eviction moratorium or before tenants are aware of their rights. The CFPB and FTC will enforce penalties against landlords who violate the order.

Renters can file complaints against their landlords if they violate the eviction moratorium with the CFPB and the FTC:

- Access the CFPB complaint database at <https://www.consumerfinance.gov/complaint/>
- Access the FTC complaint database at <https://reportfraud.ftc.gov/#/?pid=B>

## WHAT ELSE CAN COMMUNITIES DO TO PROTECT RENTERS AND PREVENT EVICTIONS?

As the Delta variant surges and our understand of its dangers grow, over 6.5 million renter households remain behind on rent and at heightened risk of losing both their homes and their ability to stay safe during the pandemic. States and localities must do much more to quickly distribute ERA to renters and to ensure programs are [visible, accessible, and preventive](#) of evictions.

Additional renter protections, such as right to counsel, expungement of eviction records, and just-cause eviction standards, are needed to help protect renters now and in the long term. The National Housing Law Project (NHLP) developed model state legislation for a “[Safe at Home Act](#)” that implements many of the policies described in [Safe at Home: Non-Monetary Relief for Tenants During the COVID Emergency](#). Advocates can use these resources to push for state and local protections for tenants.

NLIHC is tracking state and local emergency rental assistance programs. Find a rental assistance program near you at: <https://nlihc.org/rental-assistance>.

Access NHLP’s CDC eviction moratorium resources at: <https://www.nhlp.org/covid/cdc-eviction-moratorium/>.

For more information, contact Sarah Saadian, vice president of policy at NLIHC, at [ssaadian@nlihc.org](mailto:ssaadian@nlihc.org); Noelle Porter, director of government affairs at NHLP, at [nporter@nhlp.org](mailto:nporter@nhlp.org); or Alayna Calabro, policy analyst at NLIHC, at [acalabro@nlihc.org](mailto:acalabro@nlihc.org).

# DECLARATION OF \_\_\_\_\_

(Name of Tenant)

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the following facts are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2020 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) in 2020 or 2021;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses;
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;
- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.
- I live in a U.S. county experiencing substantial or high rates of community transmission levels of SARS-CoV-2.
- I understand that I must still pay rent or make a housing payment and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on October 3, 2021, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of Tenant