



April 15, 2021

UPDATE #36
CDC Eviction Moratorium Updated FAQs

Friends:

The Center for Disease Control (“CDC”) recently issued updated guidance on the extension of the CDC’s eviction moratorium. Attached to this update are some frequently asked questions. While these FAQs are advisory, courts will often follow the guidance and use it to help clarify the CDC’s intent.

The new guidance does not change the original moratorium, which is limited to cases: (1) that are based solely on nonpayment of rent and (2) where a tenant executes a declaration. The eligibility requirements for the declaration remain the same and landlords maintain the right to challenge the truthfulness of the declaration. However, **the moratorium is now extended to June 30, 2021.**

The FAQs suggest that a landlord may initiate eviction proceedings for nonpayment of rent, so long as the physical removal of the tenant does not take place during the period of the Order. It is our position that a landlord may file eviction and obtain a judgment, but that the landlord may not file the writ of possession to have the tenant removed from the premises until after the moratorium expires. We will see if Tennessee courts ultimately agree with this position.

The **Government is cracking down, and may begin to seek out landlords who violate the Order.** Additionally, while the CDC Order itself does not require landlords to tell tenants about the Order, under other law, **landlords may be required to make tenants aware of the Order.** The Federal Trade Commission has stated that “evicting or threatening to evict tenants without telling them their legal rights under a moratorium may violate prohibitions against deceptive and unfair practices.” The FAQs note that landlords are encouraged to tell their tenants about the Order, even if it isn’t legally required.

The Federal District Court in West Tennessee recently declared the CDC’s Order unconstitutional. That ruling is limited to the courts that fall within the Western District. Now may be an opportune time to bring a case before the Federal District Court in East Tennessee. If you or your company have interest in taking up this matter to federal court, please let me know.

Should you have any questions about this update or any declarations you may receive, please contact our office to discuss.

Very Truly Yours,

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HHS/CDC TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID-19

FREQUENTLY ASKED QUESTIONS

Introduction

This non-binding guidance document shares the views of the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS), U.S. Department of Housing and Urban Development (HUD), and U.S. Department of Justice (DOJ) on frequently asked questions about the CDC Order entitled [*Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 \(March 31, 2021\)*](#). This guidance document does not create or impose any obligations on any member of the public or any entity beyond those established by the Order. This guidance document is not a comprehensive summary of the duties and obligations under the Order. Individuals should seek the assistance of a legal aid program or private legal counsel (as applicable)¹ for questions relating to the application of the Order to their individual circumstances.

CDC issued its initial order temporarily halting residential evictions of covered persons for nonpayment of rent on September 4, 2020. That order was set to expire on December 31, 2020. On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021. Section 502 of Title V, Division N of that Act extended the expiration date of the CDC Order until January 31, 2021. On January 29, 2021, the CDC Director, Dr. Rochelle Walensky, modified and further extended Order until March 31, 2021. On March 29, 2021, CDC modified and further extended the Order until June 30, 2021.

What does the Order do?

The Order temporarily halts residential evictions of covered persons for nonpayment of rent during September 4, 2020, through June 30, 2021. This means that covered persons cannot be evicted for nonpayment of rent from any residential property in any U.S. state or U.S. territory where the Order applies. We explain where the Order applies and who is covered later in this document.

What does CDC mean by “eviction”?

“Eviction” means any action to remove or cause the removal of a covered person from a residential property. State and local laws with respect to tenant-landlord relations vary, as do the eviction processes used to implement those laws. The judicial process will be carried out according to state and local laws and rules. Eviction does not include foreclosure on a home mortgage. The Order is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided that the actual physical removal of a covered person for non-payment of rent does NOT take place during the period of the Order. A landlord or residential property owner would, however, violate this Order, for example, if it executed or caused to be executed a writ of eviction or possession (or had an agent or attorney execute or cause to be executed such a writ) that led to the actual physical removal of a covered person during the period of the Order.

¹ Additional information on legal assistance available in your area is available at Legal Services Corporation (<https://www.lsc.gov/what-legal-aid/find-legal-aid>), the ACL Elder Care Locator (<https://eldercare.acl.gov/Public/Index.aspx>), and LawHelp.org (<https://www.lawhelp.org/>). CDC is providing these links for your awareness only. CDC has not evaluated and does not endorse these websites.

Who is a “covered person” for purposes of the Order?

A “covered person” is any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action,² a declaration under penalty of perjury that:

- (1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- (2) The individual either (i) earned no more than \$99,000 (or \$198,000 if filing jointly) in Calendar Year 2020, or expects 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) (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check),^{3,4}
- (3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses⁵;
- (4) The individual is 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; and
- (5) Eviction would likely render the individual homeless— or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

How do I use this protection?

A tenant, lessee, or resident of a residential property must provide a completed and signed copy of the declaration, as described above, to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed from where they live. This may include the property managers and attorneys or agents for the landlord or owner, or other person with a legal right to carry out the eviction.

² As used throughout the Order and these Frequently Asked Questions, this would include, without limitation, an agent or attorney acting on behalf of the landlord or the owner of the residential property.

³ “Stimulus check” includes payments made pursuant to Section 2201 of the CARES Act, to Section 9601 of the American Rescue Plan Act of 2021, or to any similar federally authorized payments made to individual natural persons in 2020 and 2021. Eligibility for the 2020 or 2021 stimulus checks has been based on an income that is equal to or lower than the income thresholds described above and does not change or expand who is a covered person under the Order since it was entered into on September 4, 2020.

⁴ A person is likely to qualify for protection under the Order if they receive the following benefits: a) Temporary Assistance for Needy Families (TANF); b) Supplemental Nutrition Assistance Program (SNAP); c) Supplemental Security Income (SSI); or d) Social Security Disability Insurance (SSDI) (erratum: where the Order refers to SSDI as Supplemental Security Disability Income, it was intended to be Social Security Disability Insurance) to the extent that income limits for these programs are less than or equal to the income limits for the Order. However, it is the individual’s responsibility to verify that their income is within the income limits described.

⁵ An “extraordinary out-of-pocket medical expense” is defined in the Order as any unreimbursed medical expense that is likely to exceed 7.5% of one's adjusted gross income for the year.

The declaration may be signed and transmitted either electronically or by hard copy.

Each adult listed on the lease, rental agreement, or housing contract should complete the declaration. In certain circumstances, such as individuals filing a joint tax return, it may be appropriate for one member of the residence to provide an executed declaration on behalf of other adult residents party to the lease, rental agreement, or housing contract at issue. For more information about the declaration form, see below. **Do not return your completed form to CDC.**

The declaration can be downloaded [here](#).

Who does this Order apply to?

The Order applies to a landlord, owner of a residential property, or other person with a legal right to pursue an eviction or a possessory action against a residential tenant, lessee, or resident, including an agent or attorney acting on behalf of the landlord or the owner of the residential property.

How should state or local courts apply this Order?

The Order does not apply in any states (including the District of Columbia), localities, territories, or tribal areas that have in place a moratorium on residential evictions that provides the same or greater level of public-health protection than the Order, and it only applies to the extent its application is not prohibited by federal court order. Relevant courts deciding these matters should make the decision about whether a state order or legislation provides the same or greater level of public health protection. Once a court determines that a state order does not provide the same or greater level of public health protection, the court should apply this Order.

This Order supplies federal law for state and local courts to apply. Consistent with 42 U.S.C. § 264(e) and the Supremacy Clause of the U.S. Constitution, this Order preempts state and local laws to the extent they conflict with it. Thus, where this Order applies, state and local courts should not order the eviction of covered persons for nonpayment of rent (or should stay any such eviction orders until this Order expires). It would violate this Order for a person to whom this Order applies to execute an eviction order (or cause that order to be executed) by physically removing a covered person for nonpayment of rent before this Order expires.

Has CDC provided a declaration form that eligible individuals can complete and submit to their landlord?

Yes, CDC has issued a declaration form that is compliant with the Order. CDC recommends that eligible persons use this declaration form. The declaration form is available on the CDC website at: [Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention's Temporary Halt in Evictions to Prevent Further Spread of COVID-19 \(cdc.gov\)](#)

Individuals are not required to use the CDC form. Any written document that an eligible individual presents to their landlord will comply with the Order, as long as it contains the same information as the CDC declaration form.

All declarations, regardless of the form used, must be signed, and must include a statement that the covered person understands that they could be liable for perjury for any false or misleading statements or omissions in the declaration.

Individuals can use translations of the CDC declaration form, as long as the declarations contain the information required to be in a declaration, are signed, and include a statement that the covered person understands that they could be liable for perjury for any false or misleading statements or omissions in the declaration. The CDC cannot guarantee that all translations in fact satisfy these requirements.

To seek the protections of the Order, each adult listed on the lease, rental agreement, or housing contract should complete and sign a declaration and provide it to the landlord where they live. This includes the property managers and attorneys for landlord or owner, or other person with a legal right to evict.

In certain circumstances, such as individuals filing a joint tax return, it may be appropriate for one member of the residence to provide an executed declaration on behalf of other adult residents party to the lease, rental agreement, or housing contract at issue.

If you have already been evicted, does this Order apply to you?

The effective date of the CDC Order is September 4, 2020. That means that any evictions for nonpayment of rent that may have been initiated prior to September 4, 2020, but have yet to be completed, will be subject to the Order. Any tenant who qualifies as a “Covered Person” and is still present in a rental unit is entitled to protections under the Order. Any eviction that occurred prior to September 4, 2020 is not subject to the Order.

If you are eligible for protection under the CDC Order, do you still owe rent to your landlord?

Yes. The CDC Order does not cancel rent. You must still fulfill your obligation to pay rent and follow all the other terms of your lease and rules of the place where you live. You must use best efforts to make timely partial payments that are as close to the full payment as their individual circumstances permit, considering other nondiscretionary expenses.

This Order temporarily halts residential evictions. When the Order expires, consistent with the applicable landlord-tenant or real-property laws, you will owe your landlord any unpaid rent and any fees, penalties, or interest as a result of your failure to pay rent or make a timely housing payment during the period of the Order.

See the question below if you have questions about being evicted for reasons other than unpaid rent.

How can CDC help me avoid being evicted?

CDC has issued this Order to temporarily halt residential evictions of covered persons for nonpayment of rent from September 4, 2020 through June 30, 2021.

CDC is not able to help individual tenants or landlords in eviction actions. Individuals should seek the assistance of a legal aid program or private legal counsel (see footnote #1). If you are looking for legal help, contact legal aid or your local bar association. Visit [LawHelp.org](https://www.lawhelp.org) to find a legal aid program in your state.

CDC is providing this link for your awareness only. CDC has not evaluated and does not endorse these websites.

Please see question below regarding enforcement of the Order.

Who do I contact to appeal an eviction decision made against me?

The Order does not establish an administrative appeal process. Individuals who need legal assistance with appeals for eviction actions taken that they believe are in violation of this Order should consult with a private attorney or legal aid program (see footnote #1).

Is CDC providing rental assistance?

No. But you can find up-to-date information on eviction protections, rental assistance, and housing rights at www.consumerfinance.gov/renters.

Where does the Order apply?

The Order does not apply in any states (including the District of Columbia), localities, territories, or tribal areas that have in place a moratorium on residential evictions that provides the same or greater level of public-health protection than the Order, and it only applies to the extent its application is not prohibited by federal court order. Relevant courts deciding these matters should make the decision about whether a state order or legislation provides the same or greater level of public health protection. CDC is aware of the following websites which provide more information on state-by-state eviction moratoriums:

- <https://www.nolo.com/legal-encyclopedia/emergency-bans-on-evictions-and-other-tenant-protections-related-to-coronavirus.html>
- <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html>
- <https://www.rhls.org/evictionmoratoriums/>
- <https://evictionlab.org/covid-policy-scorecard/#scorecard-intro>
- <https://evictionlab.org/covid-eviction-policies/>

CDC is providing these links for your awareness only. CDC has not evaluated and does not endorse these websites.

Can I still be evicted for reasons other than not paying full rent?

Yes, you may still be evicted for reasons other than not paying full rent or making a full housing payment. The Order does not prevent you from being evicted for:

- (1) engaging in criminal activity while on the premises;
- (2) threatening the health or safety of other residents;
- (3) damaging or posing an immediate and significant risk of damage to property;
- (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- (5) violating any other contractual obligation of a tenant's lease, other than the timely payment of rent or similar housing-related payment (including nonpayment or late payment of any fees, penalties, or interest).

Individuals who are confirmed to have, have been exposed to, or might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. Individuals who might have COVID-19 are advised to self-isolate except to get medical care. See [What to Do If You Are Sick | CDC](#).

You may have additional protections against evictions under laws in your state or local jurisdiction.

How can I find government rental assistance?

You can find up-to-date information on your eviction protections, rental assistance, and housing rights at www.consumerfinance.gov/renters. To find rental assistance in your area, visit this [rental assistance database](#) from the National Low-Income Housing Coalition.⁶

An unprecedented amount of emergency resources for landlords and tenants have been appropriated through the Department of Housing and Urban Development (HUD), the Department of Agriculture, and Treasury during the pandemic, including \$46.55 billion to the Treasury through the Consolidated Appropriations Act of 2021 and the American Rescue Package (ARP). Furthermore, in 2020 44 states and 310 local jurisdictions allocated about \$3.9 billion toward emergency rental assistance, largely from funds appropriated to Treasury and HUD from the Coronavirus Aid, Relief, and Economic Security (CARES). These three rounds of federal appropriations also provided substantial resources for homeless services, homeowner assistance, and supplemental stimulus and unemployment benefits that low income renters used to pay rent. Furthermore, forbearance policies for mortgages backed by the federal government are in effect until June 30, which provide many landlords, especially smaller landlords, with temporary relief as new emergency rental assistance programs are deployed.

Visit <https://home.treasury.gov/policy-issues/cares/state-and-local-governments> for more information about the Coronavirus Relief Fund and <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program> for more information about the Emergency Rental Assistance Program. Tenants and

⁶ CDC is providing this link for your awareness only. CDC has not evaluated and does not endorse this website.

landlords are encouraged to connect with local and state authorities to find out how to access these funds. Contact information for many of these authorities can be found on the [HUD website](#).

HUD has also released guidance on rent repayment plans for [tenants and landlords](#), though that guidance is not specific to requesting protection from eviction under this order.

In addition, the HHS Administration for Children and Families administers the Community Services Block Grant (CSBG) program. The CSBG funds States, territories, tribes, and local nonprofit Community Action Agencies (CAAs) that provide a variety of services for low-income families and individuals. Based on needs identified within the community, CSBG funds flexible support that territories, tribes, CAAs and other eligible entities can use to meet the unique needs of children, youth, and families, including housing-related needs. To access these resources, individuals and families may wish to contact their state and local authorities:

- <https://communityactionpartnership.com/find-a-cap/>
- <https://www.acf.hhs.gov/ocs/resource/state-officials-and-program-contacts>

What types of residential properties are covered by the Order?

The Order applies to any property leased for residential purposes, including any house, building, manufactured home, mobile home or land in a mobile home park or manufactured housing community, or similar dwelling leased for residential purposes. The Order does not apply to hotel rooms, motel rooms, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.

What is CDC's legal authority for issuing this Order?

CDC issued the Order under the authority of section 361 of the Public Health Service Act (42 U.S.C. § 264) and federal regulations codified at 42 C.F.R. § 70.2. Under 42 U.S.C. § 264, the HHS Secretary is authorized to take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States and between U.S. states and U.S. territories. The authority for carrying out these functions has been delegated to the CDC Director. Under long-standing legal authority found at 42 C.F.R. § 70.2, the CDC Director can take public health measures to prevent the interstate spread of communicable diseases in the event of inadequate local control.

Why did CDC issue this Order?

CDC issued this Order because evictions threaten to increase the spread of COVID-19. During a pandemic, calling a temporary halt to evictions can be an effective public health measure to prevent the spread of disease. A temporary halt of evictions can help people who get sick or who are at risk for severe illness from COVID-19 protect themselves and others by staying in one place to quarantine.

These orders also allow state and local authorities to more easily implement stay-at-home and social distancing measures to lessen the community spread of COVID-19. Housing stability helps protect public health because homelessness increases the likelihood that people may move into close quarters in homeless shelters or other settings. These crowded places put people at higher risk of getting COVID-19. People who are homeless and not in a shelter also have increased risk of severe illness from COVID-19.

Do landlords have to make their tenants aware of the CDC order and Declaration?

The Order itself does not require landlords to make tenants aware of the Order and Declaration. But other relevant law, for instance the Fair Debt Collection Practices Act and the Federal Trade Commission Act, may require landlords, or their agents, to do so⁷. Under these statutes, evicting tenants in violation of the CDC, state, or local moratoria, or evicting or threatening to evict them without apprising them of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices. Landlords must otherwise comply with all requirements of the Order. Also, even if not legally required, landlords are encouraged to tell their tenants about the Order.

What does it mean when a tenant has declared themselves to be a covered person under the CDC Order?

Covered persons located in jurisdictions in which this Order applies may not be evicted for non-payment of rent solely on the basis of the failure to pay rent or similar charges at any time during the effective period of the Order. You may continue to charge rent and accept partial payments from your tenant during this time, but a covered person cannot be physically evicted unless and until the tenancy is terminated for a legitimate reason other than nonpayment of rent. If local laws permit, you may also agree to a repayment schedule with your tenant for back rent payments that have accumulated during this time. Tenants retain all existing rights and protections against eviction under applicable state law.

What can a landlord do if a tenant has declared that they are a covered person under the CDC Order, but the landlord does not believe the tenant actually qualifies?

The Order does not preclude a landlord from challenging the truthfulness of a tenant's declaration in any state or municipal court.

If a landlord initiated an eviction for nonpayment of rent before September 4 (the effective date of the CDC Order) but has not completed the eviction, does the CDC Order provide eviction protections for the tenant?

Yes. The effective date of the CDC Order is September 4, 2020. That means that any evictions for nonpayment of rent that may have been initiated before September 4, 2020, and have yet to be completed, will be subject to the Order. Any tenant who qualifies as a "Covered Person" and is still present in a rental unit is entitled to protections under the Order. Any eviction that occurred before September 4, 2020, is not subject to the Order.

What are the penalties for a landlord, owner of a residential property, or other person with a legal right to pursue an eviction or a possessory action violating this Order?

Several laws (18 U.S.C. §§ 3559 and 3571, 42 U.S.C. § 271, and 42 C.F.R. § 70.18) provide that a person who violates the Order may be subject to a fine of no more than \$100,000 or one year in jail, or both, if the violation does not result in death. A person violating the Order may be subject to a fine of no more than \$250,000 or one year in jail, or both, if the violation results in a death or as otherwise provided by law. An organization violating the Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as

⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-acting-director-uejio-and-ftc-acting-chairwoman-slaughter-issue-joint-statement-on-preventing-illegal-evictions/>

otherwise provided by law. These are criminal penalties and are determined by a court of law. CDC has no involvement in these penalties or in other laws that may apply. Other relevant federal, state, and local law could also result in penalties for action violating this Order.

What if individuals act in bad faith when completing and submitting the declaration?

Anyone who falsely claims to be a covered person under this Order by attesting to any material information which they do not believe to be true may be subject to criminal penalties under 18 U.S.C. § 1621 (perjury) or other applicable criminal law.

How does the federal government intend to enforce this Order?

The U.S. Department of Justice has the authority to prosecute violations of the Order. The public may report violations to their local U.S. Attorney's Office or to the National Center for Disaster Fraud at 866-720-5721 or www.Justice.gov/DisasterComplaintForm.

In addition, on March 29, 2021, Consumer Financial Protection Bureau Acting Director Dave Uejio and Federal Trade Commission Acting Chairwoman Rebecca Slaughter issued a joint statement that evicting tenants in violation of the CDC, state, or local moratoria, or evicting or threatening to evict them without apprising them of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices, including under the Fair Debt Collection Practices Act and the Federal Trade Commission Act (see footnote # 7).