

Centers for Disease Control and Prevention Halt Evictions for the Rest of 2020

By Sean Fulmer

Original post [here](#).

On September 1, the Centers for Disease Control and Prevention (CDC) [announced](#) a widespread, but not universal, residential eviction moratorium (the Order) until December 31 to prevent the further spread of the COVID-19 pandemic.

The CDC's Agency Order comes after President Trump [issued](#) an Executive Order on August 8, asking the CDC to consider measures to protect homeowners and renters. The Household Pulse Survey by the Census Bureau [reports](#) that about 20% of tenants did not make a rental payment in June.

This eviction moratorium is wider than the 120-day eviction ban [included](#) in the CARES Act. The CARES Act moratorium applied only to renters of properties with federal assistance or federally related financing, about 12 million tenant households or 30% of the national total. And that ban expired on July 24, 2020.

Prior to the CDC's Agency Order, the Aspen Institute [estimated](#) that 29-43% of tenant households, or as many as 40 million people, were at risk of eviction, partly due to the lapse in the federal eviction ban instituted by the CARES Act. Additional local and state level eviction moratoriums have expired, as have supplemental federal unemployment insurance benefits.

The CDC's Order described the measure as a public health necessity. If tenants are evicted, the Order said, they are likely to move into crowded spaces in shared quarters, which risks exacerbating the spread of COVID-19.

Provisions of the CDC's Agency Order

The CDC's Agency Order is applicable to every rental property used for residential purposes, and is available to all tenants meeting certain income restrictions. The Order provides that no "landlord, owner of a residential property, or other person" shall evict any "covered person" from any residential property prior to December 31. The Order does not apply to those living in hotels, motels, or temporary housing.

The Order does not excuse individuals from their payment obligations. Therefore, tenants who take advantage of the eviction moratorium will still owe unpaid rent at the end of the moratorium period. Also, landlords are allowed to charge or collect fees, penalties, and interest related to non-payment of rent as provided in applicable contracts.

There are five declarations that a renter must make to be a "covered person" eligible for the moratorium.

- First, the individual has undertaken “best efforts” to obtain government assistance to help pay the rent.
- Second, the individual has under \$99,000 of income in 2020, or \$198,000 if filing a joint tax return. Also, individuals who were not required to report any income in 2019 or received an Economic Impact Payment are eligible.
- Third, the individual is unable to make a full payment of the rent due to loss of income, job, or hours, or because of “extraordinary out-of-pocket medical expenses” (i.e., any unreimbursed medical expense likely to exceed 7.5% of one’s adjusted gross income for the year).
- Fourth, the person is using “best efforts” to make partial payments toward the rent.
- Fifth, the eviction from would likely result in homelessness or force the individual to move into close quarters in a new home.

In order to benefit from the moratorium, individuals must attest to these requirements by signing a [Renter’s Declaration](#) form that will be posted on the CDC website. (A similar statement may also be used). The declaration is sworn testimony and lying can be prosecuted as perjury. It is unclear how aggressively landlords will pursue litigation against tenants for falsely claiming eligibility. Every person listed on the lease, housing contract, or rental agreement needs to fill out a separate declaration and provide it to the landlord.

The sworn declaration includes the clause: “I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt.” Therefore, tenants must be prepared to provide a full lump-sum payment of their missed payments at the end of December.

Both [landlord](#) and [tenant](#) groups criticized the Order moratorium for not addressing the real financial needs of renters. If there is no ensuing fiscal stimulus to help those who would have been evicted without this moratorium, then this measure prolongs the eviction process without addressing the underlying causes, they say. Individuals at risk of eviction are unlikely to have the full amount of their deferred rent and fees available to them by the end of December, especially with the ongoing sluggish recovery.

Additionally, the Order does not address the economic hardships that the moratorium could inflict on [small landlords](#) who do not have the cash reserves to make up the deferred rent. Individual landlords account for [nearly half of all rental units nationwide](#) and [75% of small apartment buildings](#).

The Order does not forbid all evictions. Landlords are still able to evict tenants for criminal behavior, threatening the health and safety of others, damage to property, violating building codes, or violating any contractual obligations, except those related to nonpayment covered by the moratorium.

The CDC said it intended the eviction moratorium to function as the minimum level of protection offered to tenants. Therefore, state, local, territorial, or tribal governments are allowed to issue further protection to tenants beyond what is contained in the CDC’s measure; such existing laws remain in force. Those governments can not offer less protection than the CDC moratorium.

Justification and Legal Overview

This action taken by the CDC [relies](#) on an expansive reading of the Public Health Service Act. Section 361 of said Act [states](#) that:

“The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession... For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation... as in his judgment may be necessary.”

Since, according to the Census Bureau, 15% of moves [occur](#) interstate, the CDC concluded that mass evictions would lead individuals to travel across states, providing it a basis to use its authority to issue this eviction moratorium. However, some [commenters](#) questioned whether this type of action falls within Congressional intent given the statute’s reference to very different types of actions, “inspection, fumigation, disinfection, sanitation.” However, Section 361 is also the basis of the CDC’s authority to impose [quarantine and isolation requirements](#) on individuals. Other interpretations of the section involving the FDA [have focused](#) on the regulation of stem cell research and the interstate sale of pet turtles. The eviction moratorium has been called [“ambitious and unorthodox”](#) because of its broad reach.

(Due to [administrative reorganization](#) in 1966, the Director of the CDC, subject to review by the Secretary of Health and Human Services, has the authority vested by this Section, since the Surgeon General is now an educational and advisory role.)

Beyond the Public Health Service Act, the Order relies on [42 CFR 70.2](#) to justify its eviction moratorium. That federal regulation states that the Director of the CDC may implement regulations if the measures of states or local governments are deemed insufficient to deal with the spread of a communicable disease. As with Section 361 of the Public Health Service Act, the main examples described in such regulations regard disinfection, sanitation and fumigations, not wide-reaching policies like a national eviction moratorium.

Experts say the Order is [likely to face legal challenges](#) due to its expansiveness. Landlord associations sued [local](#) (San Francisco) and [state](#) (Illinois) governments over their COVID-related eviction moratoriums in the earlier stages of the pandemic. Judges in [San Francisco](#) and [Illinois](#), and in [seven other similar cases](#), have supported eviction moratoria implemented by various governments.

Furthermore, it is unclear what “best efforts” means in the Renter’s Declaration. Landlords might choose to litigate against tenants in order to evict or obtain payments. Additionally, the process for receiving protection under the Order is incumbent on proactive action by the individual tenant. They must sign the written certification that they meet the requirements of the Order and be responsible for defending their eligibility for the eviction moratorium in court if landlords decide to sue en masse.

If landlords violate the Order, they are subject to a fine of \$100,000 or one year in jail, if the eviction does not result in death. If the eviction does result in death, then the maximum fine is \$250,000 or one year in jail. If the landlord is an organization rather than a person, the fine is \$200,000 or \$500,000 if there is a death. The Department of Health and Human Services is directed to cooperate with local and state officials to enforce the Order. The CARES Act eviction moratorium did not carry landlord penalties.

The eviction moratorium becomes effective when the Order is published in the Federal Register, which is expected to be September 4, and remains in effect through December 31, 2020.