

The CDC's Federal Eviction Moratorium

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On September 4, 2020, the Centers for Disease Control and Prevention (CDC) [imposed a nationwide temporary federal moratorium on residential evictions](#) for nonpayment of rent. The stated purpose of the order was to prevent the further spread of Coronavirus Disease 2019 (COVID-19), specifically by preventing homelessness and overcrowded housing conditions resulting from eviction. The action, which followed an [Executive Order](#) directing the CDC to consider such a measure, was unprecedented, both in terms of the federal reach into what is traditionally state and local governance of landlord-tenant law and its use of [a public health authority](#) for this purpose. Since the issuance of the order, several courts have addressed challenges to the CDC's legal authority to issue the eviction moratorium. As discussed below, these courts have issued conflicting decisions on the eviction moratorium's legality and, while no court has issued an order enjoining the moratorium's enforcement nationwide, the conflicting judicial rulings have left a [cloud of uncertainty](#) regarding the order's enforceability in their wake.

This Insight provides a brief description of the moratorium, as well as its current status.

Overview

The CDC eviction moratorium took effect on September 4, 2020, less than two weeks after the expiration of a different and narrower set of eviction protections established by [the CARES Act \(§4024\)](#). The original CDC order had an expiration date of [December 31, 2020](#). Prior to its expiration, it was extended legislatively [through January 31, 2021](#). The CDC administratively extended the order two additional times, first [through March 31, 2021](#), then again [through June 30, 2021](#).

The CDC's national eviction moratorium applies to all renters who attest to meeting [income and other eligibility criteria](#) set out in the order. The criteria include having made all efforts to obtain government assistance for rent and being at risk of homelessness or overcrowded housing conditions upon eviction. Renters must assert their right to protection under the order by submitting a signed declaration of eligibility to their landlords ([Attachment A](#) of the order). The CDC moratorium [does not supersede](#) more protective [state and local government eviction protections](#).

The moratorium prohibits evictions only for [nonpayment of rent and related fees](#), not other causes, and it [does not prohibit landlords from charging fees or penalties](#), nor [does it forgive unpaid rent amounts](#).

The CDC eviction moratorium contains several enforcement provisions, including potential [penalties for landlords that violate the order](#) and potential [penalty of perjury](#) for tenants who falsely declare their

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eligibility. On April 19, 2021, the [Consumer Financial Protection Bureau published a rule](#) requiring debt collectors—which can include attorneys representing landlords in court—to provide written notice to tenants of their rights under the moratorium and prohibiting them from misrepresenting tenants’ eligibility for protection under the moratorium. This rule followed [a joint announcement with the Federal Trade Commission](#) of the intent of both agencies to monitor and investigate eviction practices.

Status of the CDC Order

Legal Status

Several federal courts have heard statutory and constitutional challenges to the CDC’s eviction moratorium order and have issued conflicting rulings. Some federal courts have refused to enjoin enforcement of the CDC’s order at the preliminary injunction phase of litigation, determining, among other things, that the plaintiffs had not shown a substantial likelihood of success on the merits of the case (e.g., the U.S. District Courts for the Northern District of Georgia and the [Western District of Louisiana](#)). Other courts have found the order unlawful because it exceeds the CDC’s statutory authority (e.g., the U.S. District Courts for the District of Columbia, motion to stay order pending appeal granted; Northern District of Ohio; and [Western District of Tennessee](#), motion to stay pending appeal [denied](#)) or, in one instance, because it exceeds the government’s authority under the [Commerce and Necessary and Proper Clauses](#) of the U.S. Constitution (Eastern District of Texas). Some of the courts that found the order unlawful have issued orders enjoining enforcement of the CDC eviction moratorium in [certain jurisdictions](#) or [against certain plaintiffs](#), but as of the date of this Insight, no court has enjoined enforcement of the moratorium nationwide. These decisions are [pending appeals](#).

Effectiveness

Since the CDC eviction moratorium has been in place, news articles report that evictions have continued, with landlords often raising [lease violations](#) or [lease expiration](#) as grounds for evictions, rather than nonpayment of rent. Further, some tenants who submitted a declaration of eligibility [have been determined by courts](#) not to have met the requirements of the order. Although evictions have continued despite the moratorium, some [researchers have found](#) that evictions have been significantly reduced by the imposition of eviction moratoriums at the federal, state, and local level.

Even if these moratoriums have been effective at reducing evictions, questions remain about the implications of the moratoriums, particularly when they expire, for both landlords, who are owed significant back rent, and for tenants, who owe rent and could face displacement. [Census data from mid-April 2021](#) show nearly 7 million renters (or 15% of those who pay rent) were behind on their rent payments. Other [research](#) has estimated that rental arrears could be as high as nearly \$53 billion.

The federal government has appropriated funds to assist renters. The [CARES Act provided funding](#) that [some states and localities](#) used to fund rental assistance. In addition, since the CDC eviction moratorium was put in place, funding specifically for rental assistance has been appropriated. The [FY2021 Consolidated Appropriations Act](#), enacted in late December 2020, included \$25 billion for states and localities to administer a new [Emergency Rental Assistance program](#) (Division N; §501). The [American Rescue Plan Act](#), enacted in March 2021, provided an additional \$21.55 billion for the program (§3201). As the expiration date of the CDC moratorium nears, it is unclear [how rapidly states and localities have been, or will be, able to deploy these funds](#) to address arrearages and prevent evictions.

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