



NOTICE

The City of Indianapolis recently passed a general ordinance, the “Protection of Tenants’ Rights”. **Attached** is a copy of the Ordinance which provides tenants with several rights, protections and duties. Among other provisions, but first and foremost, there is a new notification that **MUST** be given to all **new tenants** within ten (10) days of commencement of the new tenancy and to all **current tenants** within ten (10) days of the date of renewal (the, “**Notice of Tenant Rights and Responsibilities**” - “Notice”)(**see, attached**).¹ The new Ordinance goes into effect on **July 1, 2020**. The Notice must be signed by the tenant to acknowledge the tenant has received the Notice. A signed copy of the Notice must be kept on file for as long as the tenant remains a tenant. The Ordinance imposes a penalty of \$500 per violation.

The Ordinance also provides for a prohibition against retaliatory evictions. There are five instances that create a rebuttable presumption of retaliation...they are enumerated in Section 105 of the ordinance:

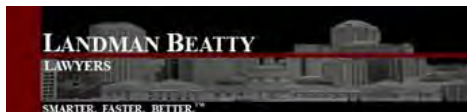
It is prohibited for any landlord to take any adverse action against a tenant in retaliation for:

- (1) The tenant’s use of the Tenant Information Hotline;
- (2) The tenant’s seeking or obtaining legal or non-legal assistance in connection with the tenant’s legal rights under Indiana law, including but not limited to Indiana Code Chapters 32-31-7 and 32-31-8;
- (3) The tenant’s communication with the Department of Business and Neighborhood Services to report a landlord’s violation of the requirements of Section 103 of this Chapter;
- (4) The tenant’s request for inspection or other communication, or an attorney’s request for inspection or other communication on the tenant’s behalf, with the Marion County Public Health Department concerning the conditions of the tenant’s rental unit; or
- (5) The tenant’s communication with the Department of Business and Neighborhood Services in connection with the Indianapolis Landlord Registry established under Chapter 851 of the Revised Code.

When enforced, the Ordinance puts the burden on the landlord to prove the adverse action was not retaliatory. An adverse action can be an eviction filing or threat of eviction, the raising or threat to raise rent, adversely altering the living conditions, or generally and materially treating the tenant differently from other similarly situated tenants. The application of this section will be on a case by case basis. Finally, a landlord cannot discriminate against a tenant or applicant based on expunged or sealed convictions.

Again, this Ordinance is new and its application and enforcement will evolve over time. In the meantime, if you have questions, please do not hesitate to contact our office.

LANDMAN BEATTY LAWYERS



¹ Spanish and Burmese language versions are available at <https://www.indy.gov/activity/notice-of-tenant-rights-and-responsibilities-the-notice>

**CENTERS FOR DISEASE CONTROL AND PREVENTION
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**ORDER UNDER SECTION 361
OF THE PUBLIC HEALTH SERVICE ACT (42 U.S.C. 264)
AND 42 CODE OF FEDERAL REGULATIONS 70.2**

**TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO
PREVENT THE FURTHER SPREAD OF COVID-19**

SUMMARY

Subject to the limitations under “Applicability,” a landlord, owner of a residential property, or other person¹ with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.

DEFINITIONS

“*Available government assistance*” means any governmental rental or housing payment benefits available to the individual or any household member.

“*Available housing*” means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

“*Covered person*”² means 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,³ a declaration under penalty of perjury indicating that:

¹ For purposes of this Order, “person” includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

² This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. See Desmond, M., Gershenson, C., Who gets evicted? Assessing individual, neighborhood, and network factors, *Soc Sci Res.* 2017;62:362-377. doi:10.1016/j.ssresearch.2016.08.017, (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. See *2019 San Francisco Homeless Count & Survey Comprehensive Report*, Applied Survey Research, at 22, https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf. (last viewed Mar. 24, 2021).

³ As used throughout this Order, this would include, without limitation, an agent or attorney acting on behalf of the landlord or the owner of the residential property.

- (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),⁴ (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).^{5,6}
- (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 extraordinary⁷ out-of-pocket medical expenses;
- (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.

“*Evict*” and “*Eviction*” means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, to remove or cause the removal of a covered person from a residential property. This definition also does not prohibit foreclosure on a home mortgage.

⁴ According to one study, the national two-bedroom housing wage in 2020 was \$23.96 per hour (approximately, \$49,837 annually), meaning that an hourly wage of \$23.96 was needed to afford a modest two-bedroom house without spending more than 30% of one's income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was \$38.76 (approximately \$80,621 annually). See *Out of Reach: How Much do you Need to Earn to Afford a Modest Apartment in Your State?*, National Low Income Housing Coalition, <https://reports.nlihc.org/oor> (last visited Mar. 23, 2021). As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID-19 through movement into close quarters in new congregate, shared housing settings, or through homelessness, the higher income thresholds listed here have been determined to better serve this goal.

⁵ “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 this Order since it was entered into on September 4, 2020.

⁶ A person is likely to qualify for protection under this 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) Supplemental Security Disability Income (SSDI) to the extent that income limits for these programs are less than or equal to the income limits for this Order. However, it is the individual's responsibility to verify that their income is within the income limits described.

⁷ Extraordinary expenses are defined as those that prevented you from paying some or all of your rent or providing for other basic necessities like food security. To qualify as an extraordinary medical expense, the unreimbursed medical expense is on that is likely to exceed 7.5% of one's adjusted gross income for the year.

“*Residential property*” means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park,⁸ or similar dwelling leased for residential purposes, but shall not include any hotel, motel, 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.

“*State*” shall have the same definition as under 42 CFR 70.1, meaning “any of the 50 states, plus the District of Columbia.”

“*U.S. territory*” shall have the same definition as under 42 CFR 70.1, meaning “any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.”

STATEMENT OF INTENT

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Mitigating the spread of COVID-19 within crowded, congregate or shared living settings, or through unsheltered homelessness;
- Mitigating the further spread of COVID-19 from one state or territory into any other state or territory;
- Mitigating the further spread of COVID-19 by temporarily suspending the eviction of covered persons from residential property for nonpayment of rent; and
- Supporting response efforts to COVID-19 at the federal, state, local, territorial, and tribal levels.

BACKGROUND

There is currently a pandemic of a respiratory disease (“COVID-19”) caused by a novel coronavirus (SARS-COV-2) that has now spread globally, including cases reported in all fifty states within the United States, plus the District of Columbia and U.S. territories. As of March 25, 2021, there have been almost 125 million cases of COVID-19 globally, resulting in over 2,700,000 deaths.⁹ Over 29,700,000 cases have been identified in the United States, with new cases reported daily, and over 540,000 deaths due to the disease.¹⁰ Although transmission has decreased since a peak in January 2021, the current number of cases per day remains almost twice as high as the initial peak in April 2020 and transmission rates are similar to the second peak in July 2020.

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Individuals without symptoms can

⁸ Mobile home parks may also be referred to as manufactured housing communities.

⁹ *COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU)*, Johns Hopkins Coronavirus Resource Center, <https://coronavirus.jhu.edu/map.html> (last visited Mar. 25, 2021).

¹⁰ *COVID Data Tracker*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Mar. 25, 2021).

also spread the virus.¹¹ Among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID-19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions (e.g. cancer, obesity, serious heart conditions, or diabetes) are at increased risk for severe illness from COVID-19.¹²

COVID-19 presents a historic threat to public health, and COVID-19 cases have been detected in every county in the continental United States.¹³ Between December 2020 and January 2021, the number of deaths per day from COVID-19 consistently exceeded any other cause.¹⁴ Although transmission levels have decreased since January, between February 25 and March 25, 2021, the daily incidence of COVID-19 remained comparable to the summer peak of transmission in July 2020, which is higher than the daily incidence when the Order initially took effect in September, 2020. Furthermore, 37% of counties in the United States are categorized as experiencing “high” transmission (over 100 cases per 100,000 people or greater than 10% test positivity) and an additional 30% of counties are categorized as experiencing “substantial” transmission (50-99.99 cases per 100,000 people or 8-9.99% test positivity).¹⁵ No counties are currently considered free of spread, and only 8% of counties are considered to have low transmission.¹⁶

Two-dose mRNA COVID-19 vaccination became available in December 2020 and as of March 27, 2021 over 50 million people in the United States (more than 15% of the population) have been fully immunized.¹⁷ In February 2021, a single dose COVID-19 vaccine also became available. CDC continues to update guidance for COVID-19 precautions among individuals who have been fully vaccinated; however, currently there are no recommended changes to COVID-19 prevention recommendations related to activities in public, such as avoiding crowded and poorly ventilated places. This is particularly important given continued transmission. Even as COVID-19 vaccines continue to be distributed, it remains critical to maintain COVID-19 precautions to avoid further rises in transmission and to guard against yet another increase in the rates of new infections. It is important to note that despite higher rates of vaccine coverage, the simultaneous roll-back of community mitigation efforts may continue to expose vulnerable populations, such as those targeted in this Order, to higher-than-average COVID-19 rates. It is important to note that despite higher rates of vaccine coverage, the simultaneous roll-back of community

¹¹ Johansson MA, Quandelacy TM, Kada S, et al. SARS-CoV-2 Transmission From People Without COVID-19 Symptoms. *JAMA Netw Open*. 2021;4(1):e2035057. doi:10.1001/jamanetworkopen.2020.35057

¹² *People with Certain Medical Conditions*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated Mar. 15, 2021).

¹³ *US COVID-19 cases and deaths by state*, USAFacts, <https://usafacts.org/visualizations/coronavirus-covid-19-spread-map/> (last visited Mar. 24, 2021).

¹⁴ Woolf SH, Chapman DA, Lee JH. COVID-19 as the Leading Cause of Death in the United States. *JAMA*. 2021;325(2):123–124. doi:10.1001/jama.2020.24865

¹⁵ *COVID-19 Integrated County View*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#county-view> (last visited Mar. 22, 2021).

¹⁶ *Id.*

¹⁷ *Id.*

mitigation efforts may continue to expose vulnerable populations, such as those targeted in this Order, to higher-than-average COVID-19 rates.¹⁸

In recent months, new variants of SARS-CoV-2 have also emerged globally.¹⁹ Epidemiological evaluation of these variants shows increased transmissibility as well as possible increased mortality. The current substantial levels of transmission and the emergence of variants highlight the persistent and dynamic nature of the pandemic and the need for continued protections.

To respond to this public health threat, Federal, state, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. In particular, the COVID-19 pandemic has triggered unprecedented restrictions on interstate and foreign travel. For example, many states require travelers arriving from other states to obtain negative test results and/or quarantine upon arrival.²⁰ For international travel, all passengers age two or older—including U.S. citizens—must obtain a negative test result or show proof of recovery before they may board a flight to the United States.²¹ Despite the need for travel precautions, airport use has increased in recent weeks, leading to heightened concerns of interstate transmission.²² SARS-CoV-2 transmission, behavior change, and travel restrictions have devastated industries that depend on the movement of people, such as the travel, leisure, and hospitality.²³ Ten months after the initial wave of closures due to COVID-19, over 16 percent of the hospitality and leisure sector's labor force was unemployed.²⁴ The persistent spread of COVID-19 continues to necessitate preventive action.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow state and local authorities to more easily implement, as needed, stay-at-home and social distancing directives to mitigate the community spread of COVID-19.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) to aid individuals and businesses adversely affected by COVID-19 in March 2020.

¹⁸ *COVID Data Tracker*, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Mar. 25, 2021).

¹⁹ Abdool Karim SS, de Oliveira T. New SARS-CoV-2 Variants - Clinical, Public Health, and Vaccine Implications [published online ahead of print, 2021 Mar 24]. *N Engl J Med*. 2021;10.1056/NEJMc2100362. doi:10.1056/NEJMc2100362.

²⁰ *Travel During COVID-19*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (last updated Feb. 16, 2021).

²¹ *Id.*

²² Cecelia Smith-Schoenwalder, *CDC Urges Americans to Avoid Travel as Airport Screenings Approach Pandemic Peak*, U.S. News, <https://www.usnews.com/news/health-news/articles/2021-03-22/cdc-urges-americans-to-avoid-travel-as-airport-screenings-approach-pandemic-peak> (last visited Mar. 26, 2021).

²³ Aaron Klein & Ember Smith, *Explaining the economic impact of COVID-19: Core industries and the Hispanic workforce*, Brookings Institute, <https://www.brookings.edu/research/explaining-the-economic-impact-of-covid-19-core-industries-and-the-hispanic-workforce/> (last visited Mar. 23, 2021).

²⁴ *Labor Force Statistics from the Current Population Survey*, U.S. Bureau of Labor Statistics, <https://www.bls.gov/web/empsit/cpseea31.htm> (last updated Mar. 5, 2021).

Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with federal assistance or federally related financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID-19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020. The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and other local officials using emergency powers.

Researchers estimated that this temporary federal moratorium provided relief to a material portion of the nation's roughly 43 million renters.²⁵ The CARES act also provided funding streams for emergency rental assistance; surveys estimate that this assistance became available to the public through rental assistance programs by July 2020.²⁶

The federal moratorium provided by the CARES Act, however, did not reach all renters. Many renters who fell outside the scope of the Federal moratorium were instead protected under state and local moratoria. In August, it was estimated that as many as 30-40 million people in America could be at risk of eviction.²⁷ In early March, 2021, the Census Household Pulse Survey estimated that over 4 million adults who are not current on rent perceive that they are at imminent risk of eviction.²⁸ A wave of evictions on that scale would be unprecedented in modern times.²⁹ A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus becoming at higher risk of COVID-19.

On September 4, 2020, the CDC Director issued an Order temporarily halting evictions in the United States for the reasons described therein. That Order was set to expire on December 31, 2020, subject to further extension, modification, or rescission. Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021. With the extension of the Order, Congress also provided \$25 billion for emergency rental assistance for the payment of rent and rental arrears. Congress later provided an additional \$21.55 billion in emergency rental assistance when it passed the American Rescue Plan.

On January 29, 2021, following an assessment of the ongoing pandemic, the CDC Director renewed the Order until March 31, 2021. This Order further extends and modifies the prior Eviction Moratoria until June 30, 2021, for the reasons described herein, subject to revision

²⁵ See *CARES Act Eviction Moratorium*, Congressional Research Service, <https://crsreports.congress.gov/product/pdf/IN/IN11320> (last visited Mar. 23, 2021).

²⁶ Vincent Reina et al., *COVID-19 Emergency Rental Assistance: Analysis of a National Survey of Programs*, Research Brief, https://nlihc.org/sites/default/files/HIP_NLIHC_Furman_Brief_FINAL.pdf (last visited Mar. 26, 2021).

²⁷ See Emily Benfer et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at Risk*, Aspen Institute, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/> (last visited Mar. 23, 2021).

²⁸ *Household Pulse Survey*, United States Census Bureau, <https://www.census.gov/data-tools/demo/hhp/#/?measures=EVR> (last visited Mar. 25, 2021).

²⁹ As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. *National Estimates: Eviction in America*, The Eviction Lab: Princeton University, <https://evictionlab.org/national-estimates/> (last visited Mar. 24, 2021).

based on the changing public health landscape. To the extent any provision of this Order conflicts with prior Orders, this Order is controlling.

Researchers estimate that, in 2020, Federal, state, and local eviction moratoria led to over one million fewer evictions than the previous year.³⁰ Additional research shows that, despite the CDC eviction moratorium leading to an estimated 50% decrease in eviction filings compared to the historical average, there have still been over 100,000 eviction filings since September, suggesting high demand and likelihood of mass evictions.³¹

EVICTION AND RISK OF COVID-19 TRANSMISSION

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID-19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding. Studies show that COVID-19 transmission occurs readily within households. The secondary attack rate in households has been estimated to be 17%, and household contacts are estimated to be 6 times more likely to become infected by an index case of COVID-19 than other close contacts. A study of pregnant women in New York City showed that women in large households (greater number of residents per household) were three times as likely to test positive for SARS-CoV-2 than those in smaller households, and those in neighborhoods with greater household crowding (>1 resident per room) were twice as likely to test positive. Throughout the United States, counties with the highest proportion of crowded households have experienced COVID-19 mortality rates 2.6 times those of counties with the lowest proportion of crowded households.

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, chronic health conditions, cognitive decline, or limited access to technology, and thus may find it more difficult to take actions to protect themselves from COVID-19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for medical evaluations as needed depending on symptoms. Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Preliminary modeling projections and observational data from COVID-19 incidence comparisons across states that implemented and lifted eviction moratoria indicate that evictions substantially contribute to COVID-19 transmission. In mathematical models where eviction led exclusively to sharing housing with friends or family, lifting eviction moratoria led to a 40%

³⁰ Pete Hepburn & Renee Louis, *Preliminary Analysis: Six Months of the CDC Eviction Moratorium*, The Eviction Lab: Princeton University, <https://evictionlab.org/six-months-cdc/> (last visited Mar. 26, 2021).

³¹ *Id.*

increased risk of contracting COVID-19 among people who were evicted and those with whom they shared housing after eviction (pre-peer review). Compared to a scenario where no evictions occurred, the models also predicted a 5-50% increased risk of infection, even for those who did not share housing, as a result of increased overall transmission. The authors estimated that anywhere from 1,000 to 100,000 excess cases per million population could be attributable to evictions depending on the eviction and infection rates.

An analysis of observational data from state-based eviction moratoria in the 43 states and the District of Columbia showed significant increases in COVID-19 incidence and mortality approximately 2-3 months after eviction moratoria were lifted (pre-peer review). Specifically, the authors compared the COVID-19 incidence and mortality rates in states that lifted their moratoria with the rates in states that maintained their moratoria. In these models, the authors controlled for time-varying indicators of each state's test count as well as major public-health interventions including lifting stay-at-home orders, school closures, and mask mandates. After adjusting for these other changes, they found that the incidence of COVID-19 in states that lifted their moratoria was 1.6 times that of states that did not at 10 weeks post-lifting (95% CI 1.0, 2.3), a ratio that grew to 2.1 at ≥ 16 weeks (CI 1.1, 3.9). Similarly, they found that mortality in states that lifted their moratoria was 1.6 times that of states that did not at 7 weeks post-lifting (CI 1.2, 2.3), a ratio that grew to 5.4 at ≥ 16 weeks (CI 3.1, 9.3). The authors estimated that, nationally, over 433,000 cases of COVID-19 and over 10,000 deaths could be attributed to lifting state moratoria.³²

Although data are limited, available evidence suggests evictions lead to interstate spread of COVID-19 in two ways. First, an eviction may lead the evicted members of a household to move across state lines. Of the 35 million Americans who move each year, 15% move to a new state. Second, even if a particular eviction, standing alone, would not always result in interstate displacement, the mass evictions that would occur in the absence of this Order would inevitably increase the interstate spread of COVID-19. This Order cannot effectively mitigate interstate transmission of COVID-19 without covering intrastate evictions, as the level of spread of SARS-CoV-2 resulting from these evictions can lead to SARS-CoV-2 transmission across state borders. Moreover, intrastate spread facilitates interstate spread in the context of communicable disease spread, given the nature of infectious disease. In the aggregate, the mass-scale evictions that will likely occur in the absence of this Order will inevitably increase interstate spread of COVID-19.

EVICTION, HOMELESSNESS, AND RISK OF SEVERE DISEASE FROM COVID-19

Evicted individuals without access to support or other assistance options may become homeless, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID-19 than the general population. In Seattle-King County, 5-15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless. Additionally, some individuals and families who are evicted may

³² Leifheit, Kathryn M. and Linton, Sabriya L. and Raifman, Julia and Schwartz, Gabriel and Benfer, Emily and Zimmerman, Frederick J and Pollack, Craig, Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality (November 30, 2020). Available at SSRN: <https://ssrn.com/abstract=3739576> or <http://dx.doi.org/10.2139/ssrn.3739576>.

originally stay with family or friends, but subsequently seek homeless services. Among people who entered shelters throughout the United States in 2017, 27% were staying with family or friends beforehand.

People experiencing homelessness are at high risk for COVID-19. It may be more difficult for these persons to consistently access the necessary resources to adhere to public health recommendations to prevent COVID-19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

Extensive outbreaks of COVID-19 have been identified in homeless shelters. In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members. In Boston, Massachusetts, universal COVID-19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents. COVID-19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested). Data from 557 universal diagnostic testing events at homeless shelters in 21 states show an average of 6% positivity among shelter clients. Data comparing the incidence or severity of COVID-19 among people experiencing homelessness directly to the general population are limited. However, during the 15-day period of the outbreak in Boston, MA, researchers estimated a cumulative incidence of 46.3 cases of COVID-19 per 1000 persons experiencing homelessness, as compared to 1.9 cases per 1000 among Massachusetts adults (pre-print).

CDC guidance recommends increasing physical distance between beds in homeless shelters. To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above. The challenge of mitigating disease transmission in homeless shelters has been compounded because some organizations have chosen to stop or limit volunteer access and participation.

In the context of the current pandemic, large increases in evictions resulting in homelessness could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID-19. The other is if homeless shelters limit new admissions, leading to increases in unsheltered homelessness, which is associated with significantly heightened risk of mortality generally. Neither consequence is in the interest of the public health.

Additionally, research suggests that the population of persons who would be evicted and those experiencing homelessness may be at risk of severe disease from COVID-19. Five studies have shown an association between eviction and hypertension, which has been associated with more severe outcomes from COVID-19. Also, people experiencing homelessness often have underlying conditions that increase their risk of severe outcomes of COVID-19. Among patients with COVID-19, homelessness has been associated with increased likelihood of hospitalization.

In short, evictions threaten to increase the spread of COVID-19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate

settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase.

MODIFICATIONS

In addition to extending the effective period of the prior orders, this Order makes several modifications. A description of each modification follows:

CDC added a statement in the “Statement of Intent” section consistent with the clarification of the “Evict” and “Eviction” definitions. The statement now specifically clarifies that one intended purpose of this Order is to mitigate the spread of COVID-19 by temporarily suspending the eviction of covered persons from residential property for nonpayment of rent.

CDC modified the “Applicability” section to add the following points:

A signed declaration submitted under a previous order remains valid notwithstanding the issuance of this extended and modified order, and covered persons do not need to submit a new declaration under this Order.

Evictions for nonpayment of rent initiated prior to September 4, 2020, but not yet completed are subject to this Order, but those that were completed before September 4, 2020, are not subject to the Order.

While the Order does not prohibit evictions for engaging in criminal activity while on the leased premises, covered persons may not be evicted on the sole basis that they are alleged to have committed the crime of trespass (or similar state-law offense) where the underlying activity is a covered person remaining in a residential property despite nonpayment of rent.

Individuals who are confirmed to have, who have been exposed to, or who might have COVID-19 and take reasonable precautions to not spread the disease should not be evicted on grounds that they pose a health or safety threat to other residents.

Even if a particular eviction, standing alone, would not always result in interstate displacement, the mass evictions that would occur in the absence of this Order would inevitably increase the interstate spread of COVID-19. Moreover, increases in intrastate spread further facilitate interstate spread in the context of communicable disease spread.

The “Background,” “Eviction and Risk of COVID-19 Infection” and “Eviction, Homelessness, and Risk of Severe Disease from COVID-19” subsections have been revised to reflect updated epidemiological and other relevant information in support of this Order.

CDC added a new section titled “Declaration Forms” with the following points:

To qualify as a covered person eligible for the protections of this Order, a tenant, lessee, or resident of a residential property must provide a completed and signed copy of a declaration with the elements listed in the definition of “Covered Person” to their landlord, owner of the residential property where they live, or other person who has a right to have them evicted or removed.

Tenants, lessees, or residents of a residential property may use any written document in place of the Declaration Form if it includes the required information as in the Form, is signed, and includes a perjury statement.

Tenants, lessees, or residents of a residential property can use a form translated into other Languages.

In some circumstances, it may be appropriate for one member of the residence to provide an executed declaration on behalf of the other adult residents who are party to the lease, rental agreement, or housing contract.

CDC modified the “Findings and Action” section to, among other things, further explain that this Order is not a rule within the meaning of the Administrative Procedure Act and, to the extent a court finds that the Order qualifies as a rule, there is good cause to dispense with prior public notice and comment.

APPLICABILITY

This Order does not apply in any state, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order or to the extent its application is prohibited by federal court order. In accordance with 42 U.S.C. 264(e), this Order does not preclude state, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID-19. This Order does not relieve any individual of any obligation to pay rent, make a housing payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents;³³ (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, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

³³ Individuals who might have COVID-19 are advised to stay home except to get medical care. Accordingly, individuals who 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. See *What to Do if You are Sick*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html> (last updated Mar. 17, 2021).

A signed declaration submitted under a previous order remains valid notwithstanding the issuance of this extended and modified order, and covered persons do not need to submit a new declaration under this Order.

Any evictions for nonpayment of rent initiated prior to September 4, 2020, but not yet completed, are subject to this Order. Any tenant, lessee, or resident of a residential property who qualifies as a “Covered Person” and is still present in a rental unit is entitled to protections under this Order. Any eviction that was completed prior to September 4, 2020, is not subject to this Order.

Under this Order, covered persons may be evicted for engaging in criminal activity while on the premises. But covered persons may not be evicted on the sole basis that they are alleged to have committed the crime of trespass (or similar state-law offense) where the underlying activity is a covered person remaining in a residential property for nonpayment of rent. Permitting such evictions would result in substantially more evictions overall, thus increasing the risk of disease transmission as otherwise covered persons move into congregate settings or experience homelessness. This result would be contrary to the stated objectives of this Order, and therefore would diminish their effectiveness. Moreover, to the extent such criminal trespass laws are invoked to establish criminal activity solely based on a tenant, lessee, or resident of a residential property remaining in a residential property despite the nonpayment of rent, such invocation conflicts with this Order and is preempted pursuant to 42 U.S.C. 264(e).

Individuals who are confirmed to have, who have been exposed to, or who might have COVID-19 and take reasonable precautions to not spread the disease may not be evicted on grounds that they may pose a health or safety threat to other residents.

The Order is extended through June 30, 2021, based on the current and projected epidemiological context of SARS-CoV-2 transmission throughout the United States. Although daily incidence of COVID-19 decreased and plateaued between January and March 25, 2021, widespread transmission continues at high levels, making the Order still necessary, especially given that previous plateaus have led to secondary and tertiary phases of acceleration. Furthermore, the number of deaths per day continues at levels comparable to or higher than when this Order was established in September 2020.³⁴ This 90-day extension will allow the assessment of natural changes to COVID-19 incidence, the influences of new variants, and the expansion of COVID-19 vaccine coverage to determine if there is a continued need for a national eviction moratorium.

DECLARATION FORMS

To qualify for the protections of this Order, a tenant, lessee, or resident of a residential property must provide a completed and signed copy of a declaration with the elements listed in the definition of “Covered person” 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. To

³⁴ *Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory*, Centers for Disease Control and Prevention, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendsdeaths (last visited Mar. 22, 2021).

assist tenants and landlords, the CDC created a standardized declaration form that can be downloaded here: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>.

Tenants, lessees, and residents of residential property are not obligated to use the CDC form. Any written document that an eligible tenant, lessee, or residents of residential property presents to their landlord will comply with this Order, as long as it contains the required elements of “Covered person” as described in this order. In addition, tenants, lessees, and residents of residential property are allowed to declare in writing that they meet the elements of covered person in other languages.

All declarations, regardless of form used, must be signed, and must include a statement that the tenant, lessee, or resident of a residential property understands that they could be liable for perjury for any false or misleading statements or omissions in the declaration. This Order does not preclude a landlord challenging the truthfulness of a tenant’s, lessee’s, or resident’s declaration in court, as permitted under state or local law.

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 the other adult residents party to the lease, rental agreement, or housing contract. The declaration may be signed and transmitted either electronically or by hard copy.

FINDINGS AND ACTION

For the reasons described herein, I am extending and modifying the September 4, 2020 Order, as extended by section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 and further extended by the January 29, 2021 Order. I have determined that extending the temporary halt in evictions in this Order constitutes a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID-19 throughout the United States. I have further determined that measures by states, localities, or territories that do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID-19.³⁵

Based on the convergence of COVID-19, household crowding and transmission, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, I have determined that extending the temporary halt on evictions is appropriate.

Therefore, under 42 CFR 70.2, subject to the limitations under the “Applicability” section, the September 4, 2020 Order is hereby modified and extended through June 30, 2021.

Accordingly, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential

³⁵ In the United States, public health measures are implemented at all levels of government, including the federal, state, local, and tribal levels. Publicly-available compilations of pending measures indicate that eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions. *COVID-19 Housing Policy Scorecard*, The Eviction Lab: Princeton University, <https://evictionlab.org/covid-policy-scorecard/> (last visited Mar. 23, 2021).

property in any state or U.S. territory in which there are documented cases of COVID-19 that provides a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act (APA) but rather an emergency action taken under the existing authority of 42 C.F.R. § 70.2. The purpose of section 70.2, which was promulgated through notice-and-comment rulemaking, is to enable CDC to take swift steps to prevent contagion without having to seek a second round of public comments and without a delay in effective date.³⁶

In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. See 5 U.S.C. 553(b)(3)(B). Considering the public health emergency caused by COVID-19, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order.

In the September 4, 2020 Order, the previous CDC Director determined that good cause existed because the public health emergency caused by COVID-19 made it impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of the Order. The previous Director also found that a delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that would have potentially significant consequences. For these reasons, the previous Director concluded that the delay in the effective date of the Order would defeat the purpose of the Order and endanger the public health and, therefore, determined that immediate action was necessary. As a result, the previous Director issued the Order without prior notice and comment and without a delay in the effective date. I made similar findings in the January 29, 2021 Order.

As noted above, although transmission levels have decreased since January, between February 25, 2021 and March 25, 2021, the daily incidence of COVID-19 remained comparable to the summer peak of transmission in July 2020. Daily incidence in the last 30 days has remained consistently higher than the daily incidence when the Order took effect in September 2020. Furthermore, 37% of counties in the United States are categorized as experiencing “high” transmission (over 100 cases per 100,000 people or greater than 10% test positivity) and an additional 30% of counties are categorized as experiencing “substantial” transmission (50-99.99 cases per 100,000 people or 8-9.99% test positivity). No counties are currently considered free of spread, and only 8% of counties are considered to have low transmission. Because of these reasons and because the current extension is set to expire on March 31, 2021, I hereby conclude that immediate action is again necessary without prior notice and comment and without a delay in the effective date.

The rapidly changing nature of the pandemic requires not only that CDC act swiftly, but also deftly to ensure that its actions are commensurate with the threat. This necessarily involves assessing evolving conditions that inform CDC’s determinations.

³⁶ *Chambless Enters., LLC v. Redfield*, No. 20-1455, 2020 WL 7588849, (W.D. La. 2020).

Although the pandemic is dynamic and the situation evolves over time, the fundamental public health threat that existed on September 4, 2020, and January 29, 2021—the risk of large numbers of residential evictions contributing to the spread of COVID-19 throughout the United States—continues to exist. Without this Order, there is every reason to expect that evictions will increase. It is imperative that public health authorities act quickly to help ward off an unprecedented wave of evictions, which would threaten new spikes in SARS-CoV-2 transmission at a critical juncture in fight against COVID-19. Such mass evictions and the attendant public-health consequences would be very difficult, if not impossible, to reverse. It would be impracticable and contrary to the public interest to delay the issuance and effective date of the Order pending notice-and-comment rulemaking for the reasons described herein, and because of the ever-changing landscape of the pandemic and the uncertainty of whether Congress would grant another extension as it did in December 2020.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs (OIRA) has determined that it would be an economically significant regulatory action pursuant to Executive Order 12866 and a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. CDC has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately. Thus, this action has been reviewed by OIRA.

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by federal authorities and cooperating state and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

CRIMINAL PENALTIES

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this 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 a death, or 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 this 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 otherwise provided by law. The U.S. Department of Justice may initiate criminal proceedings as appropriate seeking imposition of these criminal penalties.

NOTICE TO COOPERATING STATE AND LOCAL OFFICIALS

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid state and local authorities in the enforcement of their quarantine and other

health regulations and to accept state and local assistance in the enforcement of federal quarantine rules and regulations, including in the enforcement of this Order.

NOTICE OF AVAILABLE FEDERAL RESOURCES

While this Order to prevent eviction is effectuated to protect the public health, the states and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD), the Department of Agriculture, and Treasury have informed CDC that unprecedented emergency resources have been appropriated through various Federal agencies that assist renters and landlords during the pandemic, including \$46.55 billion to the Treasury through the Consolidated Appropriations Act of 2021 and the American Rescue Plan (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).³⁷ 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.

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. HUD has further informed CDC that forbearance policies for mortgages backed by the federal government are in effect until June 30, 2021, which provide many landlords, especially smaller landlords, with temporary relief as new emergency rental assistance programs are deployed.

HUD, USDA and Treasury grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG-CV and ESG-CV funds provided by the new funding from the CARES Act, Consolidated Appropriations Act of 2021, and ARP all communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

HUD stands at the ready to support American communities take these steps to reduce the spread of COVID-19 and maintain economic prosperity. For program support, including technical assistance, please visit www.hudexchange.info/program-support. For further information on HUD resources, tools, and guidance available to respond to the COVID-19 pandemic, state and local officials are directed to visit <https://www.hud.gov/coronavirus>. These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-

³⁷ Vincent Reina et al, *COVID-19 Emergency Rental Assistance: Analysis of a National Survey of Programs*, Research Brief, https://nlihc.org/sites/default/files/HIP_NLIHC_Furman_Brief_FINAL.pdf (last visited Mar. 26, 2021).

assisted multifamily properties. Furthermore, tenants can visit consumerfinance.gov/housing for up-to-date information on rent relief options, protections, and key deadlines.

EFFECTIVE DATE

This Order is effective on April 1, 2021, and will remain in effect through June 30, 2021, subject to revision based on the changing public health landscape.

In testimony whereof, the Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, has hereunto set her hand at Atlanta, Georgia, this 28th day of March 2021.

A handwritten signature in blue ink, appearing to read "Rochelle P. Walensky", is written over a horizontal line.

Rochelle P. Walensky, M.D., M.P.H.

Director,

Centers for Disease Control and Prevention