

The CDC's Federal Eviction Moratorium

Updated August 10, 2021

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 moratorium was extended several times, until it expired on July 31, 2021. On August 3, 2021, the CDC issued a new [order](#) implementing another eviction moratorium [through October 3, 2021](#). Rather than applying nationwide, the new order is only applicable in [counties with heightened rates of COVID-19](#) community transmission. Both orders are intended to prevent the spread of COVID-19 by preventing homelessness and overcrowded housing conditions resulting from eviction. The CDC's actions, which followed an [Executive Order](#) directing it to consider such measures, are unprecedented, both in terms of the agency's reach into what is traditionally state and local governance of landlord-tenant law and its use of a [public health authority](#). Courts have issued conflicting decisions on the initial order's legality, leaving a [cloud of uncertainty](#) regarding the order's [enforceability](#).

Overview

The initial CDC eviction moratorium took effect on September 4, 2020, shortly after the expiration of a 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 three times: [through March 31, June 30, and July 31, 2021](#). The third extension [stated](#) that “absent an unexpected change in the trajectory of the pandemic, CDC does not expect to extend the Order further.” The CDC issued the new order on August 3, 2021, [citing a surge of cases spurred by the Delta variant](#).

The latest moratorium applies to all renters who attest to meeting the order's [income and other eligibility criteria](#) and live in counties experiencing substantial or high rates of community transmission of COVID-19, [as determined by the CDC](#). Eligibility criteria include having made all efforts to obtain governmental rental assistance 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. 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.

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The Constitution of the United States
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The CDC order contains enforcement provisions, including [penalties for landlords who violate the order](#) and a [penalty of perjury](#) for tenants who falsely declare eligibility. In April 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 its protections.

Status of the CDC Order

Legal Status

Numerous legal challenges to the initial moratorium were filed, resulting in conflicting court rulings regarding the CDC’s authority to issue the order, including differing rulings by the Sixth, [Eleventh](#), and [D.C.](#) Circuit Courts of Appeals (see [this Legal Sidebar](#)). Courts in [certain jurisdictions](#) that found the initial order unlawful are not enforcing the latest moratorium, but, as of the date of this Insight, no court has issued a nationwide injunction. In one pending challenge, the D.C. District Court held that the initial moratorium exceeded the CDC’s statutory authority, but stayed its order from taking effect pending appeal. On June 29, 2021, a 5-4 majority of the Supreme Court [denied](#) the plaintiffs’ request to lift the stay, allowing the moratorium to remain in force. Justice Kavanaugh’s concurring opinion agreed with the D.C. District Court that the CDC “exceeded its existing statutory authority by issuing a nationwide eviction moratorium” and it would need “new legislation ... to extend the moratorium beyond July 31,” but indicated that he voted to deny the application to vacate the stay “because the CDC plan[ne]d to end the moratorium in only a few weeks ... and ... those few weeks will allow for additional and more orderly distribution of the congressionally appropriated rental assistance funds.”

President Biden and members of his Administration [made several statements](#) in the days leading to the issuance of the latest moratorium indicating that while the President would have supported another extension of the CDC’s order, the Supreme Court ruling prevented it. The President instead urged Congress to extend the moratorium; Congress [did not pass](#) legislation before expiration. After the order expired, the President [asked](#) his Administration to review existing statutes to identify legal authority that would support a new eviction moratorium. The CDC issued its latest order pursuant to the [same statutory authority](#) cited in its previous order. The new order also has prompted litigation.

Effectiveness

Evictions have continued despite the moratorium, with landlords raising [lease violations](#) or [lease expiration](#) as grounds for evictions, rather than nonpayment of rent. Further, courts [determined](#) that some tenants who submitted a declaration of eligibility did not meet the order’s requirements. Nevertheless, some [researchers have found](#) that moratoriums at the federal, state, and local level significantly reduced evictions.

Even if they 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 tenants, who owe rent and could face displacement.

The federal government has also appropriated funds to assist renters. The [CARES Act](#) provided funding that [some states and localities](#) used to fund rental assistance. The [FY2021 Consolidated Appropriations Act](#) (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](#) (March 2021) provided an additional \$21.55 billion for the program (§3201). The CDC cited the need for more time to deploy rental assistance as part of the justification for the order’s [third extension](#) and for the [latest order](#).

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