

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of League of United Latin American) DOCKET NO. \_\_\_\_\_  
Citizens, Zoraida Santana, and Jesse Moody )  
to Initiate Emergency Rulemaking to )  
Prevent Electric Utility Shutoffs )  
\_\_\_\_\_ )

**PETITION OF LEAGUE OF UNITED LATIN AMERICAN CITIZENS,  
ZORAIDA SANTANA, AND JESSE MOODY TO INITIATE  
EMERGENCY RULEMAKING TO PREVENT ELECTRIC UTILITY SHUTOFFS**

Petitioners League of United Latin American Citizens of Florida, also known as LULAC Florida Educational Fund, Inc. (“LULAC”), Zoraida Santana, and Jesse Moody, pursuant to section 120.54(7), Florida Statutes, hereby submit this Petition requesting that the Florida Public Service Commission (“PSC”) initiate emergency rulemaking to amend Rules 25-6.105, F.A.C. to fulfill the PSC’s statutory obligation to protect the public welfare by ordering that electric utility shutoffs be halted for at least 90 days due to the COVID-19 crisis.

**Summary**

Over 3,500,000 people in Florida have filed for unemployment since the onset of the COVID-19 crisis. As the United States approaches 200,000 deaths, the ravages of the virus have not spared the state of Florida. Over 670,000 people in Florida have been stricken with COVID-19, with over 13,000 having succumbed to the virus. With a seven-day running average of about 3,000 new cases per day, the crisis is far from over. In the midst of this economic and public health calamity, Duke Energy Florida, Tampa Electric Company, and Florida Power & Light Co. have resumed cutting-off Floridian’s electricity due to non-payment. Based on the latest data provided by the utilities, these companies may shut-off the electricity to over 1 million people in the state. Electricity is a necessity in Florida, not a luxury, given the extreme weather conditions we face in this state. This is why cutting off electricity has long been recognized as a

constructive eviction under Florida law. Given the necessity of keeping people socially distanced and housed, and recognizing the public health emergency, the Centers for Disease Control and Prevention and Governor Ron DeSantis have prohibited evictions due to the current crisis when renters and others are unable to make their payments and have nowhere else to go. Petitioners simply ask this Commission to give effect to these prohibitions by extending it to electricity cut offs for the duration of the crisis by using its explicit authority to protect the public welfare.

### **Petitioners and Jurisdiction**

LULAC Florida is part of the largest and oldest Hispanic civil rights organization in the United States. The mission of LULAC, as stated on their website, is to “advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of the United States.” To meet these goals, LULAC has an elevated interest in protecting the economic, housing, and health interests of its members. The cost of meeting a household’s electricity needs – its energy burden – is disproportionately high in Hispanic communities. COVID-19 has also imposed disproportionately negative impacts, both in terms of health and economic losses, in Hispanic communities. Reducing these impacts will protect LULAC’s members. As noted below with the individual members that are part of this petition (Ms. Santana is a member of LULAC), LULAC’s members are facing disconnection in Florida due to their inability to pay their electric bills because of the COVID-19 crisis.

Virtually all of LULAC’s Florida members reside, and are ratepayers, in the service territories of Florida Power & Light Company (“FPL”), Duke Energy Florida, LLC (“Duke”), and Tampa Electric Company (“TECO”). LULAC was recently granted intervention in a proceeding at the Florida Public Service Commission regarding FPL, Duke, and TECO, and their

energy efficiency and demand-side renewable energy goals. *In re: Commission review of numeric conservation goals*, Docket Nos. 20190015-EG; 20190018-EG; 20190021-EG, Order No. PSC-2019-0293-PCO-EG (Fla. P.S.C. July 25, 2019).

Petitioners Zoraida Santana and Jesse Moody live together in a rental house where Ms. Santana cares for her four children. They are Duke Energy Florida customers, and are over \$2,000 behind on their electric bill. Although they have sought utility payment assistance from several aid agencies and have made their best efforts to get aid, they have been informed by each organization that there is no money left to help them catch up on their utility bill. Ms. Santana, a member of LULAC, lost her source of income shortly after the pandemic started, and only recently restarted her job. Ms. Santana spent the last several months at home, caring for her children, and heeding the medical advice of her family's physician. Specifically, Ms. Santana's doctor urged her not to risk exposure to the coronavirus by going to work as her 3 year old daughter has a congenital heart defect, elevating her risk of serious complications or even death from COVID-19. As the CDC has reiterated, "[p]eople of any age with certain underlying medical conditions, such as . . . serious heart conditions . . . are at increased risk for severe illness from COVID-19." 85 Fed. Reg. at 55293-94. Financial necessity has forced her to return to work despite warnings from her doctor that doing so may endanger her child. Even though Ms. Santana is employed now, she and her partner, Mr. Jesse Moody, are over \$2,000 behind on their electric utility bill to Duke Energy as a result of lost income during the COVID crisis. After seeking help from Duke, the utility told them that the best it could do was put them on a bill repayment plan. With no other choice, they agreed to the plan, but because it still requires hundreds of dollars of repayment on top of their monthly bill, they cannot afford the payments and are at risk of imminent disconnection now that Duke has resumed disconnecting customers

for non-payment. Like many low-income Floridians, they are renters, whose home suffers from a lack of insulation and thus have high-energy bills. Effective energy efficiency programs would help seal their doors and windows, preventing high-energy losses and lowering their electric bills. If their electricity is disconnected, they will have no choice but to move into Ms. Santana's parents' house, where the only space for them to sleep, including her four children, will be on the floor in very crowded conditions.

For purposes of this proceeding, petitioners' contact information is that of undersigned counsel as provided herein. This Petition is being filed consistent with Section 120.54(7), Florida Statutes, and Rule 28-106.201, F.A.C. The agency affected is the Florida Public Service Commission, located at 2540 Shumard Oak Blvd., Tallahassee, FL 32399. This case does not involve reversal or modification of an agency decision or an agency's proposed action. It is not known which, if any, of the issues of material fact set forth in the body of this Petition may be disputed. The PSC has jurisdiction over this Petition pursuant to Section 366.05, Florida Statutes, 366.03, Florida Statutes, and 366.04, Florida Statutes.

### **Background & Requested Emergency Rule Change**

The Centers for Disease Control and Prevention ("CDC") has entered a moratorium on evictions for people meeting certain conditions due to the ongoing public health emergency. 85 Fed. Reg. 55292 (Sept. 4, 2020). Through a series of executive orders, Governor Ron DeSantis has also issued a moratorium on evictions. *See* Executive Order No. 20-180 (July 29, 2020), extended by Executive Order No. 20-211 (August 31, 2020) until October 1, 2020. As further elaborated below, the CDC explains the myriad of reasons necessitating a moratorium on evictions.

Florida law has long recognized that in order for a home to be habitable, electricity service needs to be provided. Specifically, even if a renter is behind on their rent, a landlord “shall not cause, directly or indirectly, the termination or interruption of . . . electricity, . . . , whether or not the utility service is under the control of, or payment is made by, the landlord.” § 83.67(1), Fla. Stat. The Legislature has already found that “[a] violation of this section constitutes irreparable harm.” § 83.67(6), Fla. Stat. The reason for this statutory directive is that the Legislature wanted landlords to go through the proper eviction process, and wanted to “penalize self-help eviction practices” like disconnecting electricity. *Badaraco v. Sucoast Towers V Associates*, 676 So. 2d 502, 503 (Fla. 3d DCA 1996). Given the extreme heat that Florida faces, it is no wonder that the Legislature found that cutting off electricity essentially amounts to an eviction. People without electricity in their homes will have no ability to stay cool, power medical devices, communicate with others, or stay warm during the winter. Electricity is an essential good; without it, people cannot stay in their homes and must seek shelter elsewhere.

The CDC has recognized the dangers of allowing evictions to continue during a global pandemic, and has accordingly prohibited them. It is worth repeating some of the key points from the CDC summary of the reasons to enact its moratorium:

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. . . . Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

85 Fed. Reg. 55292 (Sept. 4, 2020). The CDC goes on to order the halt of evictions to those that would not necessarily be homeless because they could move in with friends or family because doing so “would introduce new household members and potentially increase household crowding. Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an index case of COVID-19 than other close contacts.” 85 Fed. Reg. at 55294.

According to the latest available public information, Duke Energy Florida has approximately 150,000 residential customers behind on their bills.<sup>1</sup> This equates to about 370,000 people.<sup>2</sup> FPL has 258,465 residential customers behind on their bills.<sup>3</sup> This equates to about 585,000 people.<sup>4</sup> Gulf has 63,484 residential customers behind on their bills.<sup>5</sup> This equates to about 154,000 people.<sup>6</sup> Tampa Electric Company has about 92,000 accounts behind on their bills, at least two-thirds of which are residential accounts

---

<sup>1</sup> <http://www.psc.state.fl.us/Files/PDF/Utilities/CovidWorkshop/DEF.pdf> (as of June 2020).

<sup>2</sup> <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2020/Duke%20Energy%20Florida.pdf> (schedule 2.1.1 provides the average number of members per household (2.479 projected for 2020)).

<sup>3</sup> <http://www.psc.state.fl.us/Files/PDF/Utilities/CovidWorkshop/FPL.pdf> (page 9, as of June 2020).

<sup>4</sup> <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2020/Florida%20Power%20and%20Light%20and%20Gulf%20Power%20Company.pdf> (schedule 2.1 provides the average number of members per household (2.26 projected for 2020)).

<sup>5</sup> <http://www.psc.state.fl.us/Files/PDF/Utilities/CovidWorkshop/FPL.pdf> (page 11, as of June, 2020).

<sup>6</sup> <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2020/Florida%20Power%20and%20Light%20and%20Gulf%20Power%20Company.pdf> (schedule 2.1 provides the average number of members per household (2.42 projected for 2020)).

(so about 60,000 residential customers behind on their bills).<sup>7</sup> This equates to approximately 156,000 people.<sup>8</sup> In total, this leaves over 1.25 million people now facing electric disconnection by the major investor-owned utilities that are resuming disconnections.<sup>9</sup>

The statutory obligations of investor-owned utilities and the PSC’s role in regulating them is governed, in part, by chapter 366, Florida Statutes. The very first section of that chapter declares that “[t]he regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the *protection* of the *public welfare* and all the provisions hereof shall be *liberally construed* for the accomplishment of that purpose.” § 366.01, Fla. Stat. (emphasis added). The enactment of emergency rules is appropriate if there is “an immediate danger to the public health, safety, or welfare,” in response to which “the agency may adopt any rule necessitated by the immediate danger.” § 120.54(4)(a), Fla. Stat. Use of this procedure allows rules to go into immediate effect, although such rules may not be effective for a period of longer than 90 days. § 120.54(4)(c), Fla. Stat. As noted above, the CDC has already found that the halt of evictions is required to protect the public welfare—the same public welfare that the PSC is charged with protecting.

---

<sup>7</sup> <http://www.psc.state.fl.us/Files/PDF/Utilities/CovidWorkshop/TECO.pdf> (page 2 shows number of accounts past due, page 3 graphically shows residential versus non-residential accounts past due).

<sup>8</sup>

<http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2020/Tampa%20Electric%20Company.pdf> (schedule 2.1 provides the average number of members per household (2.6 projected for 2020)).

<sup>9</sup> It is not clear whether Gulf Power has immediate plans to resume disconnections or not.

The PSC already regulates when, how, and why utilities may cut off electric service for residential customers. *See* 25-6.105, F.A.C. The PSC has not only ample authority, but even a duty, “to require . . . extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and *welfare* of the public and secure adequate service or facilities for those reasonably entitled thereto.” § 366.05(1)(a), Fla. Stat. (emphasis added). Additionally, “the Commission shall have jurisdiction to regulate and supervise each public utility with respect to its . . . service.” § 366.04(1), Fla. Stat. Furthermore, the PSC is charged with overseeing the investor-owned utilities, ensuring that each “shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms *as required by the commission.*” § 366.03, Fla. Stat. (emphasis added). In sum, the PSC has broad statutory authority to require the investor-owned utilities to suspend disconnections in line with the CDC requirements and eviction moratoriums.

The proposed rule change to accomplish the relief requested is attached as Attachment A. This request almost exactly mirrors the CDC certification required to avoid eviction. 85 Fed. Reg. at 55297 (Attachment B, with example CDC certification form included as Attachment C). It should be noted, as made clear in the proposed emergency rule attached, and the CDC requirements, that people who have the funds to pay their electric bill will not be relieved of their burden to do so and could still face disconnection. Furthermore, although Petitioners believe debt forgiveness coupled with energy efficiency, as noted below, would be good practice for the utilities and the Commission to pursue to address the crisis, nothing like that is contemplated in the proposed emergency rule.



Many other states have enacted complete moratoriums on utility and electricity shut-offs. According to the National Association of Regulatory Utility Commissions, 23 states currently have mandatory moratoriums on electricity disconnections, including such states as Texas, Arkansas, Wyoming, California, New York, and Kentucky.<sup>10</sup> The states' respective public service commissions have ordered most of these moratoriums. Florida is the largest state in the nation without a mandatory moratorium on disconnections. Even without mandated moratoriums, many large utilities nationwide have announced that they will voluntarily refrain from disconnections until 2021.<sup>11</sup>

The PSC has already addressed some of the costs associated with COVID-19. In July, the PSC decided to grant Gulf's petition for approval of a regulatory asset to record costs incurred due to COVID-19. *In re: Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Gulf Power Company*, Docket No.

20200151-EI, Order No. PSC-2020-0262-PCO-EI (Fla. P.S.C. July 27, 2020).

Essentially, Gulf, and, presumably, all of the other electric utilities, will be able to maintain their same profit margin and be made whole by treating their bad debt and extra COVID-19 costs as a regulatory asset. We note this to show that the PSC has looked to make the electric utilities whole despite the current crisis. Petitioners are not requesting that residential customers be made whole or that their debt even be forgiven in this

---

<sup>10</sup> <https://www.naruc.org/compilation-of-covid-19-news-resources/map-of-disconnection-moratoria/> (information updated Sept. 14, 2020).

<sup>11</sup> For example, Arizona Public Service.

[https://www.eenews.net/energywire/2020/09/17/stories/1063713911?utm\\_medium=email&utm\\_source=eenews%3Aenergywire&utm\\_campaign=edition%2BiZ%2B%2FftFV%2B2LxUfHtN5bxJQ%3D%3D](https://www.eenews.net/energywire/2020/09/17/stories/1063713911?utm_medium=email&utm_source=eenews%3Aenergywire&utm_campaign=edition%2BiZ%2B%2FftFV%2B2LxUfHtN5bxJQ%3D%3D)

petition – petitioners are merely requesting that their electricity not be cut off in line with CDC guidance that people should not be evicted right now if they cannot pay their bills.

Although not requested in this petition (which the PSC should immediately grant), long-term debt relief will need to be considered after the crisis is over. Many, like Petitioners Ms. Santana and Mr. Moody, are thousands of dollars behind on their electric bill because of the COVID-19 crisis. Even when the crisis is over, it will be difficult, if not impossible, for them to fully catch-up on their utility bills. The PSC and utilities should consider targeted energy efficiency programs to customers like Petitioners to help them reduce their energy burden and high electric bills due to outdated housing and high-energy losses. The energy burden in Florida is quite high compared to national benchmarks.<sup>12</sup> These targeted energy efficiency programs should be coupled with debt-relief, to make electric bills affordable for Petitioners. Only with this kind of long-term planning will both the utilities *and* their customers be able to recover from the COVID-19 crisis.

### **Conclusion**

Florida’s citizens face an unprecedented simultaneous economic and public health crisis. On top of the existing crises, the investor-owned utilities in Florida have all begun disconnections or are about to. Over 1 million people could have their electricity cut off. Florida law has long recognized that if electricity is cut off to a person, given the need for electricity, they have suffered irreparable harm and have been constructively evicted. The CDC has found that evictions will only exacerbate the current crisis, and using its

---

<sup>12</sup> <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf>;  
<https://www.aceee.org/sites/default/files/pdf/fact-sheet/ses-florida-100917.pdf>.

public health powers, has issued a moratorium on such evictions for those that cannot pay their bills. Florida should not allow an end-run around this moratorium by allowing electricity cut offs during the present emergency. We still face several possible months of stifling heat and hurricanes, along with high levels of coronavirus transmission and deaths. We should be doing everything we can to mitigate these crises.

Respectfully submitted this 22nd day of September, 2020.

/s/ Bradley Marshall  
Bradley Marshall  
Florida Bar No. 0098008  
bmarshall@earthjustice.org  
Jordan Luebke  
Florida Bar No. 1015603  
jluebke@earthjustice.org  
Earthjustice  
111 S. Martin Luther King Jr. Blvd.  
Tallahassee, Florida 32301  
(850) 681-0031  
(850) 681-0020 (facsimile)  
***Counsel for Petitioners Florida League of  
United Latin American Citizens, Zoraida  
Santana, and Jesse Moody***

# Attachment A

**25-6.105 Refusal or Discontinuance of Service by Utility.**

(1) Until adequate facilities can be provided, each utility may refuse to serve an applicant if, in the best judgment of the utility, it does not have adequate facilities to render the service applied for.

(2) Each utility may refuse to serve any person whose service requirements or equipment is of a character that is likely to affect unfavorably service to other customers.

(3) Each utility may refuse to render any service other than that character of service which is normally furnished, unless such service is readily available.

(4) Each utility shall not be required to furnish service under conditions requiring operation in parallel with generating equipment connected to the customer's system if, in the opinion of the utility, such operation is hazardous or may interfere with its own operations or service to other customers or with service furnished by others. Each utility may specify requirements as to connection and operation as a condition of rendering service under such circumstances.

(5) If the utility refuses service for any reason specified in this subsection, the utility shall notify the applicant for service as soon as practicable, pursuant to subsection (7), of the reason for refusal of service. If the utility will discontinue service, the utility shall notify the customer at least 5 working days prior to discontinuance, that service will cease unless the deficiency is corrected in compliance with the utility's regulations, resolved through mutual agreement, or successfully disputed by the customer. The 5-day notice provision does not apply to paragraph (h), (i) or (j). In all instances involving refusal or discontinuance of service the utility shall advise in its notice that persons dissatisfied with the utility's decision to refuse or discontinue service may register their complaint with the utility's customer relations personnel and to the Florida Public Service Commission at 1(800) 342-3552, which is a toll free number. As applicable, each utility may refuse or discontinue service under the following conditions:

(a) For non-compliance with or violation of any state or municipal law or regulation governing electric service.

(b) For failure or refusal of the customer to correct any deficiencies or defects in his wiring or equipment which are reported to him by the utility.

(c) For the use of energy for any other property or purpose than that described in the application.

(d) For failure or refusal to provide adequate space for the meter and service equipment of the utility.

(e) For failure or refusal to provide the utility with a deposit to insure payment of bills in accordance with the utility's regulation, provided that written notice, separate and apart from any bill for service, be given the customer.

(f) For neglect or refusal to provide safe and reasonable access to the utility for the purpose of reading meters or inspection and maintenance of equipment owned by the utility, provided that written notice, separate and apart from any bill for service, be given the customer.

(g) For non-payment of bills or non-compliance with the utility's rules and regulations, and only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer, such notice being separate and apart from any bill for service, provided that those customers who so desire may designate a third party in the company's service area to receive a copy of such delinquent notice. For purposes of this subsection, "working day" means any day on which the utility's business office is open and the U.S. Mail is delivered. A utility shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the utility.

(h) Without notice in the event of a condition known to the utility to be hazardous.

(i) Without notice in the event of tampering with meters or other facilities furnished and owned by the utility.

(j) Without notice in the event of unauthorized or fraudulent use of service. Whenever service is discontinued for fraudulent use of service, the utility may, before restoring service, require the customer to make at his own expense all changes in facilities or equipment necessary to eliminate illegal use and to pay an amount reasonably estimated as the loss in revenue resulting from such fraudulent use.

(6) Service shall be restored when cause for discontinuance has been satisfactorily adjusted.

(7) In case of refusal to establish service, or whenever service is intentionally discontinued by the utility for other than routine maintenance, the utility shall notify the applicant or customer in writing of the reason for such refusal or discontinuance.

(8) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

(a) Delinquency in payment for service by a previous occupant of the premises unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer continues to occupy the premises and such previous customer shall benefit from such service.

(b) Failure to pay for merchandise purchased from the utility.

(c) Failure to pay for a service rendered by the utility which is non-regulated.

(d) Failure to pay for a different type of utility service, such as gas or water.

(e) Failure to pay for a different class of service.

(f) Failure to pay the bill of another customer as guarantor thereof.

(g) Failure to pay a dishonored check service charge imposed by the utility.

(h) Failure to pay when a customer or applicant certifies that 1) they have used their best efforts to obtain all available government assistance for their utility bill; 2) that they expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), were not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act; 3) that they are unable to pay their full electric bill due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses; 4) that they are using their 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; 5) that their only alternative to have access to electricity is to move into a homeless shelter or move into a new residence shared by other people who live in close quarters; 6) that they understand that they must still make utility payments and that fees, penalties, or interest for not making payments may still be charged or collected, and 7) that they understand that at the end of this temporary halt on utility disconnections 90 days after this emergency rule goes into effect, that their utility may require payment in full for all payments not made prior to and during the temporary halt and that failure to pay may make them subject to utility disconnection. Before refusing service to an applicant or discontinuing service to a customer, a utility must document that they gave the applicant or customer an opportunity to make this certification and that the applicant or customer was unable or refused to make such certification.

(9) When service has been discontinued for proper cause, each utility may charge a reasonable fee to defray the cost of restoring service, provided such fee is included in its filed tariff.

(10) No utility shall discontinue service to any non-commercial customer between 12:00 noon on a Friday and 8:00 a.m. the following Monday or between 12:00 noon on the day preceding a holiday and 8:00 a.m. the next working day. Provided, however, this prohibition shall not apply when:

(a) Discontinuance is requested by or agreed to by the customer; or

(b) A hazardous condition exists; or

(c) Meters or other utility owned facilities have been tampered with or

(d) Service is being obtained fraudulently or is being used for unlawful purposes.

Holiday as used in this subsection shall mean New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day.

(11) Each utility shall submit, as a tariff item, a procedure for discontinuance of service when that service is medically essential.

*Rulemaking Authority 366.05 FS. Law Implemented 366.03, 366.04(2)(c), (5), 366.041(1), 366.05(1), 366.06(1) FS. History--New 2-25-76, Amended 2-3-77, 2-6-79, 4-13-80, 11-26-80, 1-1-91, 1-7-93.*

# Attachment B

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Agency Order.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the issuance of an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID-19.

**DATES:** This Order is effective September 4, 2020 through December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Nina Witkowsky, Acting Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-10, Atlanta, GA 30329; Telephone: 404-639-7000; Email: [cdcregulations@cdc.gov](mailto:cdcregulations@cdc.gov).

#### SUPPLEMENTARY INFORMATION:

##### 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 (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

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. Some people without symptoms may be able to spread the virus. 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, such as cancer, an

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.<sup>1</sup>

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.<sup>2</sup> During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the 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. Despite these best efforts, COVID-19 continues to spread and further action is needed.

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 stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

##### Applicability

Under this Order, a landlord, owner of a residential property, or other person<sup>3</sup> with a legal right to pursue

<sup>1</sup> CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

<sup>2</sup> Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

<sup>3</sup> For purposes of this Order, “person” includes corporations, companies, associations, firms,

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. 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. Nor does this order apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

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.

##### Renter’s or Homeowner’s Declaration

Attachment A is a Declaration form that tenants, lessees, or residents of residential properties who are covered by the CDC’s order temporarily halting residential evictions to prevent the further spread of COVID-19 may use. To invoke the CDC’s order these persons must provide an executed copy of the Declaration form (or a similar declaration under penalty of perjury) 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. Each adult listed on the lease, rental agreement, or housing contract should likewise complete and provide a declaration. Unless the CDC order is extended, changed, or ended, the order prevents these persons from being evicted or removed from where they are living through December 31, 2020. These persons are still required to pay rent and follow all the other terms of their lease and rules of the place where they live. These persons may also still be evicted for reasons other than not paying rent or making a housing

partnerships, societies, and joint stock companies, as well as individuals.



payment. Executed declarations should not be returned to the Federal Government.

### 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 CFR 70.2

#### Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19

##### Summary

Notice and Order; and subject to the limitations under “Applicability”: Under 42 CFR 70.2, a landlord, owner of a residential property, or other person<sup>4</sup> 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”<sup>5</sup> means any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or

<sup>4</sup> For purposes of this Order, “person” includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

<sup>5</sup> 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*, Social Science Research 62 (2017), 366–377. <http://dx.doi.org/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 Point-in-Time Count & Survey, page 22, available at: [https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport\\_SanFrancisco\\_FinalDraft-1.pdf](https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf).

other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

(1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return),<sup>6</sup> (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(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<sup>7</sup> 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 a possessory action, to remove or cause the removal of a covered person from a residential property. This does not include foreclosure on a home mortgage.

“Residential property” means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or

<sup>6</sup> 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 National Low-Income Housing Coalition, *Out of Reach: The High Cost of Housing 2020*, available at: <https://reports.nlihc.org/oor>. 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.

<sup>7</sup> An extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one’s adjusted gross income for the year.

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 congregate or shared living settings, or through unsheltered homelessness;
- mitigating the further spread of COVID-19 from one U.S. State or U.S. territory into any other U.S. State or U.S. territory; 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 (excepting American Samoa). As of August 24, 2020, there were over 23,000,000 cases of COVID-19 globally resulting in over 800,000 deaths; over 5,500,000 cases have been identified in the United States, with new cases being reported daily and over 174,000 deaths due to the disease.

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. Some people without symptoms may be able to spread the virus. 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, such as cancer, an

immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID-19.<sup>8</sup>

COVID-19 presents a historic threat to public health. According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.<sup>9</sup> During the 1918 H1N1 influenza pandemic, there were approximately 50 million influenza-related deaths worldwide, including 675,000 in the United States. To respond to this public health threat, the 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. Despite these significant efforts, COVID-19 continues to spread and further action is needed.

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 stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.

#### 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. 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.

Additionally, this Order shall not apply to American Samoa, which has reported no cases of COVID-19, until such time as cases are reported.

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;<sup>10</sup> (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).

#### 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.<sup>11</sup> Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an

index case of COVID-19 than other close contacts.<sup>12</sup>

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, cognitive decline, or no 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.<sup>13</sup> 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.

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. 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.<sup>14</sup> The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and 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.<sup>15</sup>

<sup>12</sup> Bi Q, Wu Y, Mei S, et al. *Epidemiology and transmission of COVID-19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study*. *Lancet Infect Dis* 2020. [https://doi.org/10.1016/S1473-3099\(20\)30287-5](https://doi.org/10.1016/S1473-3099(20)30287-5).

<sup>13</sup> See CDC COVID-19 Guidance for Shared or Congregate Housing, available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>.

<sup>14</sup> Because evictions generally require 30-days' notice, the effects of housing displacement due to the expiration of the CARES act are not expected to manifest until August 27, 2020.

<sup>15</sup> See Congressional Research Service. *CARES Act Eviction Moratorium*, (April 7, 2020) available at: <https://crsreports.congress.gov/product/pdf/IN/IN11320>.

<sup>8</sup> CDC, People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (accessed August 26, 2020).

<sup>9</sup> Faust JS, Lin Z, del Rio C. Comparison of Estimated Excess Deaths in New York City During the COVID-19 and 1918 Influenza Pandemics. *JAMA New Open*. 2020;3(8):e2017527. doi:10.1001/jamanetworkopen.2020.17527.

<sup>10</sup> 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*, available at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

<sup>11</sup> United States Census Bureau. American Housing Survey, 2017. <https://www.census.gov/programs-surveys/ahs.html>.

Approximately 12.3 million rental units have federally backed financing, representing 28% of renters. Other data show more than 2 million housing vouchers along with approximately 2 million other federally assisted rental units.<sup>16</sup>

The Federal moratorium, however, did not reach all renters. Many renters who fell outside the scope of the Federal moratorium were protected under State and local moratoria. In the absence of State and local protections, as many as 30–40 million people in America could be at risk of eviction.<sup>17</sup> A wave of evictions on that scale would be unprecedented in modern times.<sup>18</sup> A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus contributing to the spread of COVID–19.

The statistics on interstate moves show that mass evictions would likely increase the interstate spread of COVID–19. Over 35 million Americans, representing approximately 10% of the U.S. population, move each year.<sup>19</sup> Approximately 15% of moves are interstate.<sup>20</sup>

#### Eviction, Homelessness, and Risk of Severe Disease From COVID–19

Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID–19 than the general population.<sup>21</sup> In Seattle-King County, 5–15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless.<sup>22</sup> Additionally,

some individuals and families who are evicted may 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.<sup>23</sup>

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order 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.<sup>24</sup> In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members.<sup>25</sup> In Boston, Massachusetts, universal COVID–19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents.<sup>26</sup> COVID–19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested).<sup>27</sup> Throughout the United States, among 208 shelters reporting universal diagnostic testing data, 9% of shelter clients have tested positive.<sup>28</sup>

CDC guidance recommends increasing physical distance between beds in homeless shelters.<sup>29</sup> 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 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 turn away the recently homeless, who could become unsheltered, and further contribute to the spread of COVID–19. Neither consequence is in the interest of the public health.

The risk of COVID–19 spread associated with unsheltered homelessness (those who are sleeping outside or in places not meant for human habitation) is of great concern to CDC. Over 35% of homeless persons are typically unsheltered.<sup>30</sup> The unsheltered homeless are at higher risk for infection when there is community spread of COVID–19. The risks associated with sleeping and living outdoors or in an encampment setting are different than from staying indoors in a congregate setting, such as an emergency shelter or other congregate living facility. While outdoor settings may allow people to increase physical distance between themselves and others, they may also involve exposure to the elements and inadequate access to hygiene, sanitation facilities, health care, and therapeutics. The latter factors contribute to the further spread of COVID–19.

Additionally, research suggests that the population of persons who would be evicted and become homeless would include many who are predisposed to developing 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.<sup>31</sup> Also, the homeless

[uploads/2020/07/Count-Us-In-2020-Final\\_7.29.2020.pdf](https://www.huduser.gov/portal/datasets/assths/statedata98/descript.html)

<sup>23</sup> United States Department of Housing and Urban Development. The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2. Available at: <https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf>

<sup>24</sup> Mosites E, et al, *Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters—Four U.S. Cities, March 27–April 15, 2020*. MMWR 2020 May 1;69(17):521–522.

<sup>25</sup> Tobolowsky FA, et al. *COVID–19 Outbreak Among Three Affiliated Homeless Service Sites—King County, Washington, 2020*. MMWR 2020 May 1;69(17):523–526.

<sup>26</sup> Baggett TP, Keyes H, Sporn N, Gaeta JM. *Prevalence of SARS-CoV-2 Infection in Residents of a Large Homeless Shelter in Boston*. JAMA. 2020 Apr 27;323(21):2191–2. Online ahead of print.

<sup>27</sup> Imbert E, et al. *Coronavirus Disease 2019 (COVID–19) Outbreak in a San Francisco Homeless Shelter*. Clin Infect Dis. 2020 Aug 3.

<sup>28</sup> National Health Care for the Homeless Council and Centers for Disease Control and Prevention. Universal Testing Data Dashboard. Available at: <https://nhchc.org/cdc-covid-dashboard/>.

<sup>29</sup> Centers for Disease Control and Prevention. Interim Guidance for Homeless Service Providers to Plan and Respond to COVID–19. <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html>.

<sup>30</sup> In January 2018, 552,830 people were counted as homeless in the United States. Of those, 194,467 (35 percent) were unsheltered, and 358,363 (65 percent) were sheltered. See, Council of Economic Advisors, *The State of Homelessness in America* (September 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf>.

<sup>31</sup> Hugo Vasquez-Vera, et al. *The threat of home eviction and its effects on health through the equity*  
Continued

<sup>16</sup> See HUD, A Picture of Subsidized Households General Description of the Data and Bibliography, available at: <https://www.huduser.gov/portal/datasets/assths/statedata98/descript.html>.

<sup>17</sup> See Emily Benfer, et al., *The COVID–19 Eviction Crisis: An Estimated 30–40 Million People in America are at Risk*, available at: <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

<sup>18</sup> As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. National Estimates: Eviction in America. <https://evictionlab.org/national-estimates/>.

<sup>19</sup> See U.S. Census Bureau, CPS Historical Migration/Geographic Mobility Tables, available at: <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html>.

<sup>20</sup> *Id.*

<sup>21</sup> See CDC, Coronavirus Disease 2019 (COVID–19), People Who Are at Increased Risk for Severe Illness, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html> (accessed August 26, 2020).

<sup>22</sup> Seattle-King County. Point in Time Count. <https://regionalhomelessnessystem.org/wp-content/>

often have underlying conditions that increase their risk of severe outcomes of COVID-19.<sup>32</sup> Among patients with COVID-19, homelessness has been associated with increased likelihood of hospitalization.<sup>33</sup>

These public health risks may increase seasonally. Each year, as winter approaches and the temperature drops, many homeless move into shelters to escape the cold and the occupancy of shelters increases.<sup>34</sup> At the same time, there is evidence to suggest that the homeless are more susceptible to respiratory tract infections,<sup>35</sup> which may include seasonal influenza. While there are differences in the epidemiology of COVID-19 and seasonal influenza, the potential co-circulation of viruses during periods of increased occupancy in shelters could increase the risk to occupants in those shelters.

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. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

#### Findings and Action

Therefore, I have determined 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 U.S. territories that

lens: A systematic review. *Social Science and Medicine*. 175 (2017) 199e208.

<sup>32</sup> Fazel S, Geddes JR, Kushel M. *The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinical and policy recommendations*. *Lancet*. 2014;384(9953):1529–1540.

<sup>33</sup> Hsu HE, et al. *Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID-19 at an Urban Safety-Net Medical Center—Boston, Massachusetts, 2020*. *MMWR* 2020 Jul 10;69(27):864–869. Historically, African Americans and Hispanic Americans are disproportionately represented in evictions compared to other races. They are more likely to experience severe outcomes of COVID-19. *Id.*

<sup>34</sup> See, generally, the Annual Homeless Assessment Report to Congress (2007), available at: <https://www.huduser.gov/Publications/pdf/ahar.pdf> (acknowledging the seasonality of shelter bed use).

<sup>35</sup> Ly TDA, Edouard S, Badiaga S, et al. Epidemiology of respiratory pathogen carriage in the homeless population within two shelters in Marseille, France, 2015–2017: Cross sectional 1-day surveys. *Clin Microbiol Infect*. 2019; 25(2):249.e1–249.e6.

do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID-19.<sup>36</sup>

Based on the convergence of COVID-19, seasonal influenza, 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, all of which may be exacerbated as fall and winter approach, I have determined that a temporary halt on evictions through December 31, 2020, subject to further extension, modification, or rescission, is appropriate.

Therefore, under 42 CFR 70.2, subject to the limitations under the “Applicability” section, 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 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 CFR 70.2. 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.

A delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that could have potentially significant consequences. As discussed above, one potential consequence would be that evicted individuals would move into close quarters in congregate or shared living settings, including homeless shelters, which would put the individuals at higher risk to COVID-19. Another potential consequence would be if evicted individuals become

homeless and unsheltered, and further contribute to the spread of COVID-19. A delay in the effective date of the Order that leads to such consequences would defeat the purpose of the Order and endanger the public health. Immediate action is necessary.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately.

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 if the violation does not result in a death or one year in jail, or both, or a fine of no more than \$250,000 if the violation results in a death or one year in jail, or both, 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 court 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

<sup>36</sup> 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. Eviction Lab, *COVID-19 Housing Policy Scorecard*, available at: <https://evictionlab.org/covid-policy-scorecard/>.

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) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's 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 CARES Act, 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. Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are sufficiently addressed, and utilize HUD's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit [www.hudexchange.info/program-support](http://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-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund may be used to fund rental assistance programs to prevent eviction. Visit <https://home.treasury.gov/policy->

*issues/cares/state-and-local-governments* for more information.

#### Effective Date

This Order is effective upon publication in the **Federal Register** and will remain in effect, unless extended, modified, or rescinded, through December 31, 2020.

#### Attachment

#### 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

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;<sup>37</sup>
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or

<sup>37</sup> "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

wages, lay-offs, or extraordinary<sup>38</sup> out-of-pocket medical expenses;

- I am 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;

- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.<sup>39</sup>

- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.

- 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 and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant Date

#### Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Dated: September 1, 2020.

**Nina B. Witkofsky,**

*Acting Chief of Staff, Centers for Disease Control and Prevention.*

[FR Doc. 2020-19654 Filed 9-1-20; 4:15 pm]

**BILLING CODE 4163-18-P**

<sup>38</sup> An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

<sup>39</sup> "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 you.

# Attachment C

**[FORM] 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**

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through December 31, 2020. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;<sup>1</sup>
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary<sup>2</sup> out-of-pocket medical expenses;
- I am 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;

---

<sup>1</sup> "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.

<sup>2</sup> An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.<sup>3</sup>
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- 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 and failure to pay may make me subject to eviction pursuant to state and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

\_\_\_\_\_  
Signature of Declarant

\_\_\_\_\_  
Date

<sup>3</sup> “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 you.