



MEMORANDUM

June 28, 2021

To: TRIBAL HOUSING CLIENTS

From: Ed Clay Goodman and Cari Baermann
HOBBS, STRAUS, DEAN & WALKER, LLP

Re: ***CDC Extends Eviction Moratorium Until July 31, 2021; Biden Administration Implements “Whole of Government” Approach to Address Potential Eviction Crisis***

Late last week, the Centers for Disease Control and Prevention (CDC) announced that it had extended its nationwide eviction moratorium (the Moratorium) until July 31, 2021. Originally adopted on September 4, 2020, the moratorium was originally set to expire on December 31, 2020, but has been extended several times. The extension order can be found here: [https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC_Eviction_Extension_Order_Final_06242021.pdf?utm_source=NLIHC+All+Subscribers&utm_campaign=81b6a236f3-cta_062421&utm_medium=email&utm_term=0_e090383b5e-81b6a236f3-291742433&ct=t\(cta_062421\)](https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC_Eviction_Extension_Order_Final_06242021.pdf?utm_source=NLIHC+All+Subscribers&utm_campaign=81b6a236f3-cta_062421&utm_medium=email&utm_term=0_e090383b5e-81b6a236f3-291742433&ct=t(cta_062421))

The Biden Administration has also announced the implementation of a “Whole of Government” approach to address what may shape up to be an eviction crisis when, and if, the eviction moratorium expires. At the National Low Income Housing Coalition weekly conference call earlier today, Gene Sperling, the American Rescue Plan Coordinator and Senior Advisor to President Biden, and Noel Poyo, Deputy Assistant Secretary at the Department of Treasury (overseeing the Emergency Rental Assistance Program) spoke about the CDC moratorium extension and the “Whole of Government” approach.

I. CDC Eviction Moratorium Extension

a. Overview of Eviction Moratorium

On September 4, 2020, the CDC published an Eviction Moratorium Order in response to the COVID-19 pandemic. The Moratorium prohibits all private and public landlords and property owners from evicting individuals from residential properties for failure to make rental or housing payments, so long as the tenant submits a declaration to the landlord. The eviction Moratorium was originally set to expire on December 31, 2020, but the CDC has extended it several times, through June 30, 2021.

The CDC ordered the Moratorium to reduce the spread of COVID-19, noting that evictions often result in homelessness and overcrowding in other homes and homeless shelters, which facilitate the spread of COVID-19. The Moratorium protects rental tenants who fall under the

definition of a “covered person”: a tenant, lessee, or other resident of residential property who provides the landlord or other owner of the property a declaration, under the penalty of perjury, that:

- The individual has used best efforts to obtain all available government assistances for rent or housing;
- The individual will earn no more than \$99,000 (\$198,000 if filing a joint return) in 2020;
- The individual is unable to pay the full rent or make the housing payment due to a substantial loss of income, loss of hours, lay-off, or “extraordinary” out of pocket medical expenses;
- The individual is making best efforts to make timely partial payments; and
- Eviction would likely render the individual homeless or force him or her to move into an overcrowded living situation.

Individuals may still be evicted for reasons other than not paying rent or making a housing payment (e.g., other lease violations, criminal activity, nuisance, drug-related activity, threatening the health and safety of other residents, damaging property, and violations of public health codes or ordinances). Additionally, the Moratorium does not remove the obligation to pay rent—all rent or housing payments, fees, penalties, and interests may have continued to accrue since September 4, 2020. The Moratorium contains no provisions encouraging or requiring renters to enter into repayment plans. Renters who defer payments will be faced with paying the accrued charges when the Moratorium lifts, with no plan in place to protect them from having to pay the accrued charges and interest all at once.

b. Moratorium Extension

On June 25, 2021, the Biden Administration announced that it will extend the Moratorium issued by the CDC through July 31, 2021. The Biden Administration also announced it will implement a whole-of-government approach to prevent evictions this summer (discussed below).

Both Mr. Poyo and Mr. Sperling explained that the basis of the CDC extension is the ongoing public health risk of evictions, particularly of the low-income population who are the main beneficiaries of the Moratorium. Despite the national data, the CDC is aware that the low-income population covered by the Moratorium has a lower COVID-19 vaccination rate than the population at large. If the low-income population is subject to evictions *en masse*, there will likely be a substantial increase in COVID-19 infections and transmission. However, Mr. Poyo noted the current extension would likely be the last, and that it is intended to provide an “off-ramp” to ending the Moratorium.

Mr. Sperling commented that the CDC’s decision to extend the Moratorium for another 30 days is based on the understanding that the eviction Moratorium must end in such a way that it does not increase public health risks and that massive numbers of renters have support when the

Moratorium ends. The White House is continuing to meet with the CDC and many other players to do everything they can to prevent all unnecessary evictions. They are depending on housing programs to provide feedback on how the White House can do more to help and what the critical needs are at the local level. The White House encourages everyone to provide feedback and advice about how it can more effectively help renters.

One questioner asked what more will be done about public education about resources that are available? Mr. Sperling commented they will take an active approach and there are many landlords unaware of how the Moratorium and the Emergency Rental Assistance (ERA) Program correlate. Different groups of people need to be reached in different ways. He noted the White House must work together with organizations to educate the public, and learn from local organizations about the most effective way to reach different groups of people. Last week, the U.S. Department of Treasury (Treasury) published marketing materials that are landlord- and tenant-facing to educate these groups. Both governmental and private partnerships are being leveraged to distribute this information.

II. Whole of Government Approach

a. Webinar Discussion

In tandem with the announcement of the one-month extension of the CDC eviction moratorium, the Biden Administration announced the “Whole of Government” approach to preventing a tsunami of evictions of low-income tenants once the Moratorium expires. Both Mr. Sperling and Mr. Poyo spoke about various elements of the Whole of Government approach.

First, they addressed and emphasized existing programs, particularly the Emergency Rental Assistance Program and other federally-funded programs. Mr. Poyo commented that Coronavirus State and Local Fiscal Recovery Funds dollars could be used for eviction prevention and eviction diversion efforts. Treasury's updated Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions (FAQs) is found here:

<https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

Concerning evictions for non-payment of rent, Mr. Poyo noted courts can eliminate backlogs of overdue rent and may take other preventative measures to help renters.

A questioner asked what happens if program administrators are not adapting and being more effective. Mr. Sperling noted the White House is doing everything it can to help. One of these methods is to reallocate funds to those programs that are effectively using ERA funds to help those renters in need. Mr. Poyo commented that housing organizations implementing an ERA program for the first time may not be as transparent as they would like to be, but Treasury will try to publish more guidance to help organizations increase their transparency and effectiveness.

Treasury has provided a method through which housing programs can provide a letter of commitment to those who are not currently under an obligation to pay rent. The tenants can then take this letter to future landlords to help give the landlords confidence the tenants could pay the rent through rental assistance.

Mr. Sperling commented that the Administration recognizes many housing authorities are having to create new programs to address the new housing crisis created by the COVID-19 pandemic. He noted the Administration was pleased to see that the rental assistance programs implemented were making a difference. However, Treasury is concerned that even if the May 7, 2021, guidance addressed the fact that funds could be used for prospective housing, it may not have clearly addressed whether programs could provide assistance to someone who has already become homeless. Treasury recognizes this lack of clarity and is working to provide more guidance in the future.

b. Details of the Whole of Government Approach

The Whole of Government approach involves the following elements (unfortunately, most of the details discussed and contained in the White House memorandum are focused on states and cities, and not on the Tribal Government programs):

- **Urge State and Local Courts to Participate in Eviction Diversion Efforts.** Associate Attorney General Vanita Gupta sent a letter to state courts encouraging them to adopt anti-eviction diversion practices that will benefit families, tenants, landlords, and the courts themselves. The Justice Department letter points to actions that courts can implement immediately to help confront this problem. The letter also directs courts to federal resources they can use to support diversion programs and to tools developed by the National Center for State Courts that can help judges ensure landlords and tenants have an opportunity to tap into available resources and mediate their dispute. A copy of the letter is available here: <https://www.justice.gov/asg/page/file/1405886/download>
- **Highlight that American Rescue Plan Funds for State and Local Governments and for Emergency Rental Assistance Can Be Used to Fund Eviction Diversion Plans, Including Counseling, Navigator, and Legal Services.** The American Rescue Plan Act included additional funding for the Emergency Rental Assistance Program, and established a new Homeowner Assistance Fund program. Treasury and other departments will be continuing to do outreach to inform stakeholders of the availability and use of these resources. Treasury has developed “marketing materials” to reach tenants regarding the availability of such resources. Mr. Poyo says that we will be “pressing” over the next 45 days to get the word out.
- **Convene a White House Summit for Immediate Eviction Prevention Plans.** The White House, in collaboration with the American Bar Association (ABA), Legal Services Corporation (LSC), and National Conference of Bar Presidents (NCBP), is convening local government, judicial, legal, and community leaders from 50 cities to develop community-specific solutions to provide vulnerable families access to counsel, divert evictions, and connect renters and landlords to available resources. The goal is for the White House to support and facilitate coordination among these stakeholders in developing locally-tailored solutions that incentivize the use of emergency rental assistance and keep tenants stably housed, while also providing a model for the coordination required in communities across the country to fully address the eviction crisis. The first summit will take place on Wednesday, June 30, 2021, beginning at 10:00 AM Pacific/11:00 AM Mountain/Noon

Central/1:00 PM Eastern. The first hour is open to the public. The next three hours will be invitation-only (for representatives of 50 cities with a high eviction possibility). You can register here:

https://pitc.zoomgov.com/webinar/register/WN_e_tXrnzvTpyCbaATA9Q2Iw

- **Accelerate and Broaden State and Local Delivery of Emergency Rental Assistance by Providing Clarity on Bulk Payments, Aiding Americans Experiencing Homelessness, and Overcoming Language and Disability Barriers.** Building off the revised ERA Program Guidance published May 7, 2021, Treasury is highlighting promising practices of communities implementing effective rental assistance programs, as well as releasing new guidance to support states' and localities' rapid deployment of Emergency Rental Assistance to protect vulnerable families from the threat of eviction. Treasury's guidance seeks to do the following:
 - Encourage partnerships with courts to actively prevent evictions and develop eviction diversion programs. ERA Program funding can be used to help families at risk of eviction remain in their homes, especially when programs work with courts to connect such families and their landlords with mediation and emergency rental assistance resources, engage providers of housing stability services for active support, and enter into agreements with courts to cover the costs of eviction diversion activities.
 - Help families experiencing homelessness gain access to assistance. For vulnerable families without a current rental obligation—necessary for emergency rental assistance eligibility—Treasury is creating a commitment letter process to help those families gain access to assistance. ERA can help families who have lost, or are at imminent risk of losing, their housing, to get stably housed by paying for relocation assistance, prospective rent, security deposits, and temporary hotel accommodations.
 - Drive towards equal access by removing language and cultural barriers in securing emergency rental assistance. Treasury is encouraging grantees to provide culturally and linguistically-relevant housing stability services and to conduct outreach in multiple languages so that eligible families do not face unnecessary barriers to access. Grantees who cannot provide such services themselves should be engaging partners with the capacity to do so to ensure equal access to emergency rental assistance for all eligible households.
 - Provide a streamlined payment option for utility providers and large landlords to make accessing emergency rental assistance on behalf of multiple tenants easier and more attractive. Treasury is clarifying how grantees may achieve economies of scale by obtaining information in bulk from utility providers and landlords with multiple units to help speed determination of eligibility of households and to bundle, in a single payment, approved amounts for the benefit of multiple tenants.

- Push grantee coordination to reduce the confusion, burdens, and delays in providing assistance created by differences in locally-imposed requirements among programs operating in the same regions. Grantees providing services to overlapping or neighboring areas should collaborate to develop consistent or complementary policies to avoid unnecessary confusion or burdens for families or landlords seeking aid.
- Highlight grantees who are implementing effective practices to ensure that assistance quickly reaches the renters who need it most. Treasury is highlighting promising practices from the field, including successful examples of partnership with local court systems and legal services to divert evictions and prevent housing insecurity as well as programs taking advantage of options to reduce documentation barriers that keep eligible families from benefiting from ERA. Here is a link to the Treasury “promising practices” webpage: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices>
- **Ensure that the 30-day Eviction Notice Requirement for Federally-Backed Properties is Enforced.** The Department of Housing and Urban Development (HUD)/Federal Housing Administration (FHA) and United States Department of Agriculture (USDA) will ensure that no landlord (public or private) whose underlying financing is backed by the federal government (e.g., HUD/FHA or USDA), purchased or securitized by the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae), or that is receiving assistance from the federal government may require a tenant to vacate their unit for non-payment of rent until 30 days after the landlord has provided the tenant with a notice to vacate.
- **Make Clear the Fair Housing Act Must Be Followed.** Evictions disproportionately affect communities of color, people with disabilities, women, and other members of protected classes. Tenants with disabilities who are facing eviction are entitled to reasonable accommodations in the eviction process. In some cases, in bringing eviction actions, housing providers may also engage in practices that violate the federal Fair Housing Act. HUD is providing guidance to help prevent Fair Housing Act violations and collaborating with the Department of Justice (DOJ) to publicize this guidance. Landlords and renters can visit hud.gov/fairhousing for details on guidance.
- **Leverage Government Information Channels to Reach Vulnerable Tenants and Landlords:** The Administration is seeking to raise awareness about emergency rental assistance, including tapping multiple federal agencies to take actions to inform tenants and landlords of available emergency rental assistance including:
 - Publishing on Treasury’s website a list of more than 590 links to state, local and tribal government ERA programs. Treasury’s website will also link to the Consumer Financial Protection Bureau’s (CFPB) interagency housing hub, where CFPB has published information about ERA designed to be easily accessible to consumers. Here is the link to that website: [https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-](https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program/promising-practices)

[rental-assistance-program/program-index](#)

- Conducting outreach to HUD grantees, HUD-assisted households, and housing providers who receive HUD assistance. HUD is working to encourage housing providers who receive HUD assistance to send information on the Emergency Rental Assistance Program in their community to tenants, ensuring HUD grantees are collaborating with the Emergency Rental Assistance Program in their community, and continuing to provide guidance that explains how the Emergency Rental Assistance Program can help HUD-assisted households.
- Sharing program information with the USDA's Supplement Nutrition Assistance Program (SNAP) beneficiaries and the Social Security Administration's Supplemental Security Income (SSI) recipients. USDA will encourage State Departments of Social Services to share information on Treasury's ERA and HUD's Emergency Housing Vouchers with SNAP recipients. The Social Security Administration will support external outreach efforts by directly sharing information with SSI recipients as well as elevating awareness through their websites and social media platforms.
- Conducting targeted outreach to vulnerable tenants. HUD is working closely with the Consumer Financial Protection Bureau (CFPB) to step up outreach efforts to vulnerable tenants and inform them of federal assistance available to avoid eviction through extensive earned and paid media campaigns, close collaboration with state and local housing offices and public housing authorities, and the promotion of resources—such as toolkits and renter-oriented materials—for tenants and guidance to housing providers about eviction prevention best practices and emergency rental assistance. The CFPB has a website that is a one-stop, go-to resource for up-to-date information on CFPB's relief options, protections, and key deadlines for renters. Here is the link:

<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/>

- Aligning philanthropic supports. HUD is developing a Memorandum of Understanding with Melville Charitable Trust (MCT) to build the capacity of community-based organizations, cities, states, and Tribes to administer federal relief dollars efficiently and equitably. MCT is the largest foundation in the U.S. devoted exclusively to preventing and ending homelessness. MCT will coordinate the philanthropic sector to target new capacity building resources in communities disproportionately impacted by the pandemic to fill gaps in service of new federal programs.

If you have any questions about the consultation discussed in this memorandum or would like assistance preparing comments, please do not hesitate to contact me at egoodman@hobbsstrauss.com, or by phone at (503) 242-1745.