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October 2, 2020

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DELIVERED BY MESSENGER  
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Chief Justice Patience D. Roggensack  
Justice Ann Walsh Bradley  
Justice Annette Kingsland Ziegler  
Justice Rebecca Grassl Bradley  
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Justice Brian Hagedorn  
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Wisconsin Supreme Court  
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To the Honorable Justices of the  
Wisconsin Supreme Court:

Re: Legal Action of Wisconsin's and Wisconsin  
Judicare's Requested Emergency Order/s in  
the Matter of CDC Eviction Moratorium  
Compliance for Eviction Filings

This letter supplements the letter dated September 23, 2020, submitted by Giese Law Offices on behalf of the Apartment Association of Southeastern Wisconsin, Inc. (AASEW) and the Wisconsin Apartment Association (WAA) (the "Giese Letter") addressing Legal Action of Wisconsin, Inc.'s ("Legal Action") and Wisconsin Judicare Inc.'s ("Judicare") letter dated September 21, 2020, regarding their Requested Emergency Order (the "Request"). Both of these letters are enclosed for your convenience. As counsel for both AASEW and WAA, I submit this letter for your consideration which more thoroughly addresses the position of the AASEW and WAA with regard to Legal Action's and Judicare's Request.

## I. The Problem

The AASEW and WAA agree with the general statement and sentiment of the problem as set forth in Legal Action's and Judicare's Request. The AASEW and WAA agree that "[c]ircuit courts need an efficient and consistent approach to ensure compliance with the CDC moratorium on evictions." (Request, p. 1.) To supplement "the problem" set forth in Legal Action's and Judicare's Request, the AASEW and WAA provide some clarifying points and issues.

On September 1, 2020, the Center for Disease Control and Prevention ("CDC"), Department of Health and Human Services ("HHS") issued an order titled "*Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*" (the "CDC Order"). The CDC Order became effective on September 4, 2020, with its publication in the Federal Register. See 85 Fed. Reg. 55292 (Sept. 4, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19654.pdf>. The CDC Order is currently effective through December 31, 2020. The CDC Order prohibits residential landlords from pursuing eviction against any "Covered Person" under the CDC Order. A Covered Person includes any resident who provides their landlord with a declaration stating the following (a "CDC Declaration"):

- The individual has used best efforts to obtain all available government assistance for rent or housing;
- The individual either (i) expects to earn less than \$99,000 in annual income for calendar year 2020 (or no more than \$198,000 if filing a joint income tax return), (ii) was not required to report any income in 2019 to the IRS, or (iii) received a stimulus check pursuant to section 2201 of the CARES Act;
- 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 out-of-pocket medical expenses;
- 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 non-discretionary expenses; and
- 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.

The CDC Order does not relieve tenants from their obligation to pay rent. The practical effect of the CDC Order, however, will be many tenants living rent-free for the duration of the CDC Order's effectiveness. Even if such tenants are later evicted after the CDC Order is lifted and even if landlords are able to obtain judgments for the missed rent, the vast majority of judgments will be uncollectible. It is fair to say that many landlords will never recover the rent they otherwise could have collected in the absence of the CDC Order.

As a result, any emergency action taken by this Supreme Court must also include provisions that seek to preserve the rights of the landlords as well as the tenants. Given the

examples set forth in the Giese Letter, as well as the experiences of Legal Action and Judicare set forth in the Request, it is clear that courts throughout the state are taking vastly different approaches to address the CDC Order. The AASEW and WAA are most concerned with the following issues: (1) maintaining access to the courts to address the CDC Order's applicability to an eviction action; (2) the ability to challenge and inquire into the veracity of any statements made in a tenant's CDC Declaration; and (3) obtaining a court order establishing a partial rent payment schedule, if not previously established.

## **II. Request for Emergency Action**

The AASEW and WAA agree with Legal Action and Judicare that it is appropriate for this Supreme Court to take emergency action and institute a temporary rule given the inconsistency by circuit courts in their handling of eviction actions throughout the state. The AASEW and WAA generally do not oppose the core of Legal Action's and Judicare's proposed emergency order. In fact, AASEW and WAA agree that presiding officials over eviction actions should inform the defendant of the CDC Order and about the CDC Declaration. Nevertheless, the AASEW and WAA believe some additional provisions for any temporary rule are necessary to preserve the rights of both tenants and landlords.

## **III. Authority**

The AASEW and WAA do not dispute that this Supreme Court has the authority to act on a request to take emergency action by instituting temporary procedural rules for circuit courts.

## **IV. Proposed Order**

WHEREAS the Centers for Disease Control and Prevention placed a moratorium on many residential evictions and terminations of tenancy (the "CDC Order"); and

WHEREAS the CDC Order is in effect through December 31, 2020; and

WHEREAS the CDC Order provides certain protections for defendants who meet the specific criteria regarding income, and who certify under penalties of perjury that specific steps and circumstances apply ("Covered Person"); and

WHEREAS for a Covered Person to invoke the protections of the CDC 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 . . ."; and

WHEREAS it may not immediately be apparent without further inquiry whether any particular defendant qualifies as a Covered Person within the ambit of the CDC Order; and

WHEREAS a Covered Person under the CDC Order must continue to use "best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit"; and

WHEREAS Wisconsin courts will need to enforce the CDC Order efficiently and while processing a high volume of evictions at one time; and

WHEREAS the Supreme Court has administrative and superintending authority over the courts and judicial system of this state and a duty to promote the efficient and effective operation of the state's judicial system, Wis. Const. Art. VII, § 3; *In re Kading*, 70 Wis. 2d 508, 519-20; 235 N.W.2d 409 (1976), and that authority includes ensuring that the state's circuit courts provide consistent access to justice for all parties, including self-represented litigants; and

WHEREAS the constitutional and statutory rights of landlords and tenants remain in effect during the current public health crisis, as do the rights of every individual and entity to equal protection under the law and uniform access to the courts.

THEREFORE, IT IS HEREBY ORDERED:

The circuit courts shall temporarily require (through December 31, 2020) all court commissioners and judges presiding over residential eviction actions to take the following actions for eviction cases:

1. Inquire whether the basis of the plaintiff's eviction action is for the non-payment of rent;
  - a. If basis of eviction is for other reasons, continue with eviction proceedings;
  - b. If basis of eviction is for non-payment of rent, proceed as set forth below;
2. Shall make available to defendants the CDC Order and CDC Declaration by hard copy available in court and online on the court's website (enclosed is a copy of the CDC Order and Declaration);
3. Inquire whether the plaintiff in those actions has received a CDC Declaration from the defendant(s);
  - a. If the plaintiff has not received a CDC Declaration and the defendant has not appeared on the return date (default), a writ of restitution shall immediately be issued;
  - b. If the plaintiff has not received a CDC Declaration and the defendant has appeared on the return date, the presiding official shall advise the defendant of the existence of the CDC Order and the requirements to qualify as a Covered Person under the CDC Order;

- c. If the defendant affirms his/her prior awareness of the CDC Order but did not provide a CDC Declaration to the plaintiff, continue with eviction proceedings;
4. If the defendant has provided a CDC Declaration to the plaintiff, the following shall occur:
  - a. The presiding official shall provide the parties an opportunity to negotiate a stipulated agreement for the partial rent payments during the pendency of the CDC Order;
  - b. The presiding official shall allow the plaintiff to challenge the veracity or accuracy of any of the defendant's statements contained in the CDC Declaration (which have been made under penalty of perjury per the CDC Order);
5. At any hearing pursuant to a plaintiff's challenge to the CDC Declaration—and in particular a challenge based on the plaintiff's statement to the court that the defendant has not offered to pay any partial rent or an insufficient amount of partial rent—the presiding official shall require the defendant to testify and/or submit documentation concerning the defendant's reduced income and nondiscretionary expenses;
6. If after any hearing challenging the CDC Declaration the court determines the defendant otherwise qualifies as a Covered Person, the presiding official shall enter an order establishing a partial rent payment amount and a schedule upon which such payments shall be made;
  - a. The presiding official shall be guided by the provision of the CDC Order requiring the defendant to use "best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit";
  - b. If the defendant fails to make any scheduled partial rent payments as required by the order, the plaintiff may, upon notice, request issuance of a writ of restitution;
7. After the above procedures have been followed, the eviction action shall be stayed until the CDC Order expires provided, however, that either the plaintiff or the defendant may request a modification of the order for partial rent payments based on a change of circumstances.
8. The delivery of a CDC Declaration to a plaintiff or delivery of such Declaration directly to the sheriff after the writ has been issued by the court shall not stay

execution of the writ—a stay of the writ after its issuance in the action shall only be granted by the court upon motion of the defendant.

#### **V. Memorandum In Support of Proposed Order**

COVID-19 has been and remains a **public** health crisis. The CDC Order recognizes the same. In a relatively early response to the economic hardship the pandemic caused in the United States, Congress passed unprecedented legislation. This included, among many other provisions, laws to protect the loss of jobs and help sustain businesses, laws to provide extensive expansion of unemployment benefits and, in the case of the provision of health care, laws to enable the delivery of health care through alternative means while being reimbursed by the federal Medicare program.

Although some have questioned the appropriateness of these measures, others, including the Government, have found them necessary for advancement of the public good. Distressed employers under this legislation were not required to retain their workforces without subsidization under these programs, citizens were not required to go to work without payment of wages and doctors were not required to administer care without payment even when that care was delivered in a novel, but efficacious way.

The CDC Order addresses these risks, albeit fleetingly, by keeping tenants that cannot pay rent in their homes, by providing temporary immunity from eviction. Therefore, a public need is being served at the expense of the affected landlords and property owners, who deserve at the very least to have their rights and interests considered and addressed by the courts. Although the CDC Order is projected as a public health regulation, it is also a significant demand on the landlords for the benefit of the public. Landlords and property owners are being required to finance this public health initiative by housing nonpaying residents for four months while the pandemic continues. The CDC Order prevents landlords from evicting tenants for this public purpose, regardless of the negative implications and loss of income attributed to those landlords and property owners. Clearly, rental income is not just profit for landlords. When no rent is received, payment of real estate taxes, utilities, and maintenance is jeopardized, to say nothing of possible mortgage defaults and foreclosure and abandonment of much-needed low income housing.

AASEW and WAA are serving as partner-citizens in combating COVID-19; doing so in the shoes of other citizens, none of whom are called upon to directly underwrite the war on this virus—here at risk of grave economic harm. Some landlords and property owners may weather this economic burden while others will be irreparably ruined by it, causing them to default on bank covenants and lose their property to financial institutions.

The AASEW and WAA are not challenging the legality of the CDC Order at this time, however, they do believe certain clarifying instructions to the courts are necessary to preserve not only the rights and interests of the tenants, but also of the landlords. As indicated above, the

AASEW and WAA are most concerned with the following issues, each addressed in further detail below.

1. *Maintaining access to the courts to address the CDC Order's applicability to an eviction action*

Before any inquiry into whether the plaintiff received a CDC Declaration from the defendant, the court should first inquire as to whether the CDC Order is even applicable to the eviction action. The Order states:

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; (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)." The Order clearly recognizes that it is not a complete moratorium on all residential eviction actions, but focused only on those related to the non-payment of rent.

Although some courts have seemingly taken a closed approach to having any residential eviction action proceeding, the CDC Order is clear that residential evictions may proceed so long as the basis of the eviction is not for a failure to pay rent, regardless of whether the defendant is a Covered Person.

The CDC Order is also clear that the protections do not apply **until** an executed CDC Declaration is provided to the plaintiff:

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.

Regardless of whether a defendant may qualify as a Covered Person, that defendant is not afforded the protections under the CDC Order until such defendant provides an executed copy of the CDC Declaration to the plaintiff. If the CDC Declaration is not in the plaintiff's hand, the defendant is not a Covered Person. Until then, it should be made clear to the courts that residential eviction actions may still proceed until the defendant complies with that requirement.

The AASEW and WAA do not challenge Legal Action and Judicare's Request that presiding officials over eviction actions inform the defendant of the CDC Order and CDC Declaration. But the AASEW and WAA do take issue with staying an eviction action until January 2021—in Milwaukee County some have even been stayed until February—to provide time for a defendant to file a CDC Declaration, which has occurred in Milwaukee County. Any eviction action should not be stayed or dismissed simply because a defendant claims he or she intends to provide the CDC Declaration.

Legal Action seems to propose in its description of "the problem," that "at any point prior to the execution of the writ of restitution," the defendant becomes a covered person "[u]pon delivery of the declaration to the landlord." (Request, p. 1.) AASEW and WAA disagree that after a writ of restitution is granted, but before it is acted upon by the Sheriff, that a landlord would be responsible for filing any applicable stay with the court. Instead, the onus would be on the defendant to not only first provide the CDC Declaration to the plaintiff, but to also file any applicable motion to stay the execution of the writ with the court. AASEW and WAA foresee the occurrence of a writ of restitution being ordered for a matter, then the defendant trying to provide a CDC Declaration to the Sheriff as the writ is being executed. Although AASEW and WAA agrees much of this may be mitigated by ensuring defendants are aware of the CDC Order and Declaration, such an effort should not expand the coverage of the CDC Order when defendants fail to comply with its requirements.

The stay provided under the CDC Order does not apply until the CDC Declaration is provided to the plaintiff. Certainly if a defendant had been aware of the CDC Order prior to being informed by the presiding official and failed to provide a CDC Declaration, the eviction action should still proceed.

2. *Ability to challenge and inquire into the veracity of any statements made in a tenant's CDC Declaration*

Given the high cost landlords and property owners are expected to pay by being forced to accept no rent or less rent, and such rent arrears almost always being uncollectible, there must be an avenue for challenging the veracity of a tenant's CDC Declaration from the onset. Eviction court makes the most sense, as even the CDC Order states: "[t]his Order shall be enforced by Federal authorities and cooperating State and local authorities . . . ." If plaintiffs are unable to challenge such statements in eviction proceedings, the only other avenue may be to file a police report for alleged perjury in a tenant's signing of the declaration. This is not a path the AASEW and WAA wish to pursue but there must be some way for a plaintiff to challenge the ability of a tenant to sign a declaration then potentially live rent-free for months.

Courts in the State of Indiana have a very informative webpage addressing many of these issues as a result of the CDC Order, available at <https://www.in.gov/judiciary/5758.htm>. Courts in Indiana have also developed a Checklist for Evidentiary Hearing on Dispute Regarding the Declaration of Eligibility under CDC Order (enclosed is a copy of the checklist). The checklist

provides relevant inquires which may be conducted by the plaintiff or the presiding official into the veracity of the CDC Declaration, if challenged. Requiring presiding officials to inquire into these areas ensures the eviction proceedings are stayed when appropriate, and that the defendant is properly a Covered Person and not abusing the protections of the CDC Order, which address some of the concerns of the AASEW and WAA.

The CDC Declaration contains numerous requirements of a tenant, such as using best efforts to obtain government assistance for housing, affirming tenant has lost substantial amount of household income, and asserting tenant would become homeless if evicted. Most notable is the additional requirement that the tenant **continue** to use "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." The tenant is already supposed to be making partial rent payments prior to executing the CDC Declaration; however many tenants are failing to make any payments. The AASEW and WAA are most concerned with this last pledge being abused and being without a mechanism to challenge it, especially when a tenant is not making any partial payments.

In addition to the checklist referenced above, requiring the presiding official to obtain testimony or documentation concerning the defendant's reduced income and nondiscretionary expenses is appropriate, especially for instances in which the defendant has not made any partial rent payments, or a wholly insufficient amount of partial rent. Similar inquires and filings are already required by small claims and family courts when the issue of a party's ability to pay a judgment or provide alimony or child support become an issue. Forms, such as SC-506B for Financial Disclosure Statement (Small Claims) and FA-4138V for Income and Expense Statement might be helpful in assessing the defendant's ability to make partial rent payments. Requiring an inquiry into this issue assures plaintiff's rights and concerns are adequately addressed, while thwarting potential abuses.

3. *Obtaining a court order establishing a partial rent payment schedule, if not previously established*

Stipulations for dismissal are routinely entered into between the parties in order to establish a payment plan or move out date to avoid an eviction if such stated agreements are satisfied. Similarly, requiring the parties to informally discuss a stipulation for a partial rent payment schedule is beneficial for the parties and the courts. After a defendant is served with an eviction action, the initial appearance on the return date is often the first time the plaintiff may have an opportunity to discuss partial payment plans with the defendant. Typically when notices and letters from a landlord to a tenant have gone unanswered, or prior payment plans have fallen apart, eviction proceedings are usually used as a last resort. At that point, partial payment plan discussions are typically ineffective when a tenant is in such a defensive position. Because most eviction proceedings begin with the presiding official inquiring as to the parties' opportunity to work out an agreement to dismiss the matter through a joint stipulation, a similar opportunity to develop a partial rent payment schedule will help alleviate additional work, time, and resources of the parties, and the court, when the moratorium is eventually lifted.

The AASEW and WAA agree with Legal Action and Judicare that the "[e]xecution of the declaration early in the eviction process maximizes judicial economy." (Request, p. 5.) Similarly, the facilitation of negotiations or informal mediation to reach agreeable terms of a partial rent payment schedule also reduces the use of court resources. Landlords are working with tenants now more than ever before to develop rent payment plans before resorting to the eviction process. The AASEW and WAA would much prefer to have partial rent payment schedules in place without having to resort to the eviction. But once that process begins, if the parties are unable to reach a stipulation amongst themselves, the presiding official should make the determination of the appropriate level of partial rent payments the defendant must make given the evidence provided to the court.

A stipulation or order for partial rent payments benefits landlords, tenants, and the courts. It helps landlords by providing some income during the impacted time period rather than potentially losing all rental payments from the tenant. The tenant benefits by having a set payment plan to work towards paying off all amounts owed, without having the equivalent of a balloon payment at the end of the moratorium. If no rent is paid during the CDC Order, tenants will be stuck with a bill for potentially four months of rent, along with interest and penalties to all be paid immediately or face eviction. The courts benefit by minimizing the potential for being overloaded with eviction filings when the CDC Order ends. If plaintiffs are unable to obtain some relief through partial rent payments, and tenants are unconcerned with making any partial rent payments, there will undoubtedly be a mass of eviction filings the moment the CDC Order expires. The courts can help alleviate that potential influx in cases by ensuring appropriate partial rent payments are established for the duration of the CDC Order.

## VI. Conclusion

In conclusion, AASEW and WAA understand that the CDC is motivated to reduce the spread of COVID-19. To keep people in their homes-the AASEW and WAA are already actively pushing for additional emergency housing funding to avert the evictions risks. And the AASEW and WAA support Legal Action's and Judicare's Request that courts be required to inform a tenant facing eviction of the provisions of the CDC Order. But in so doing, courts should be required to present a **complete** recitation of the respective rights of tenants *and* landlords under the Order. Although the cost of this public health initiative should not be forcibly borne by property owners any more so than any other private citizen be required to have their property taken for a public good without just compensation for the same, AASEW and WAA are speaking for their many members who want to be good, collaborative citizens here and simply request that courts uniformly provide accurate and complete information of all interested parties' rights under the CDC Order. Accordingly, we respectfully request that you adopt the proposed Order set forth *supra*.

The Honorable Justices of the Wisconsin Supreme Court

October 2, 2020

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Respectfully Submitted on Behalf of  
Apartment Association of SE Wisconsin &  
Wisconsin Apartment Association,

A handwritten signature in black ink that reads "Robert S. Driscoll". The signature is written in a cursive style with a large, prominent initial "R".

Robert S. Driscoll

44336154v2

Encs.

cc Chris Donahoe, Legal Action of Wisconsin (via e-mail at [cad@legalaction.org](mailto:cad@legalaction.org))  
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# Enclosure 1 – Giese Letter



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September 23, 2020

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**Re: Request of Legal Action of Wisconsin and Wisconsin Judicare for Emergency Order/s in the Matter of CDC Eviction Moratorium Compliance for Eviction Filings**

To the Honorable Justices of the Supreme Court of Wisconsin:

The undersigned is legal counsel to the Apartment Association of Southeastern Wisconsin, Inc. (AASEW). The Wisconsin Apartment Association (WAA), which represents housing providers throughout the state, has authorized me to state that this letter also represents their position.

The federal CDC Order issued September 4, 2020 which imposed a moratorium on certain types of eviction actions has resulted in great uncertainty, inconsistency and (in our view) improper handling of eviction actions by judges and court commissioners in various counties. Guidance by the Wisconsin Supreme Court is indeed necessary.

The purpose of this letter is to advise the Court that the AASEW and WAA are in the process of retaining legal counsel in order to make a detailed response to the above-referenced Request for an emergency order. We expect that such a response would be filed very shortly.

The Court should know that I and other attorneys representing both landlords and tenants in Milwaukee County have engaged in a bench/bar meeting via Zoom on the questions raised by the CDC Order. I have also had a series of emails with Chief Judge Mary Triggiano. We requested that Judge Triggiano issue local rules or guidelines on this CDC matter but she has declined to do so.

The most important question for the Court to resolve is how the requirement in the CDC Order that tenants must use "best efforts" to pay partial rent can be enforced when that issue arises in an eviction action. This is currently being handled improperly by court commissioners and judges:

1. A judge in Rock County reportedly has dismissed pending evictions outright without giving landlords an opportunity to raise the partial payment issue or at least staying the action.

2. The judge handling evictions in Dane County has reportedly stated during a bench/bar conference call that she would not allow landlords to question a tenant's Declaration concerning ability to pay partial rent. Deputy Chief Judge William Poca in Milwaukee made a similar observation during a bench/bar conference on September 11.

3. The small claims court judge in Milwaukee County has adjourned a number of eviction cases until January where the tenant has submitted or claimed they would submit a Declaration. Such cases should be adjourned for a much shorter time so that the landlord and tenant can attempt to resolve the partial payment issue.

4. A court commissioner in Milwaukee County has imposed a requirement that landlords submit an affidavit stating that they had not received a CDC Declaration from the tenant. This has been imposed without notice and has blindsided pro se landlords in particular, resulting in an unfair delay in their case.

Finally, the Court should know that we have suggested to Milwaukee County Chief Judge Triggiano that an issue of partial rent payment might be referred for immediate mediation. The AASEW has discussed this with Mediate Milwaukee which has been doing an excellent job these past months in negotiating forbearances by landlords as they await payment of rent relief through Wisconsin's WRAP assistance.

Respectfully submitted,

Heiner Giese

Enclosure 2 – Legal Action  
and Judicare Request



September 21, 2020

Chief Justice Patience D. Roggensack  
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Re: Requested Emergency Order/s in the Matter of  
CDC Eviction Moratorium Compliance for Eviction Filings

To the Honorable Justices of the Supreme Court of Wisconsin:

**I. THE PROBLEM**

Circuit courts need an efficient and consistent approach to ensure compliance with the CDC moratorium on evictions. On September 4, 2020, the Centers for Disease Control and Prevention (CDC) ordered a halt to many residential eviction actions nation-wide, through December 31, 2020. Under the Order, evictions against “covered persons” cannot be initiated or continued for any reason except for those reasons enumerated in the Order. In order to be a “covered person” protected by the Order, the tenant must: 1) be able to truthfully swear to certain facts, 2) sign a declaration swearing to those facts, and 3) deliver the signed declaration to their landlord. Upon delivery of the declaration to the landlord at any point prior to the execution of the writ of restitution, the eviction defendant becomes a “covered” person under the act.

The purpose of the Order is to protect public health by mitigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness. The CDC concluded that homeless individuals face significantly increased risk of contracting and spreading COVID-19. The CDC writes that “[h]omelessness poses multiple challenges that can exacerbate and amplify the spread of COVID-19. Homeless shelters are often crowded, making social distancing difficult. Many persons experiencing homelessness are older or have underlying medical conditions, placing them at

higher risk for severe COVID-19–associated illness.”<sup>1</sup> Acknowledging the CDC warnings, President Trump issued an executive order addressing the eviction crisis. He wrote, “Increased shared housing is also potentially problematic to the extent it results in increased in-person interactions between older, higher-risk individuals and their younger relatives or friends.”<sup>2</sup> The President noted:

Those who are dislocated from their homes may be unable to shelter in place and may have more difficulty maintaining a routine of social distancing. They will have to find alternative living arrangements, which may include a homeless shelter or a crowded family home and may also require traveling to other States.<sup>3</sup>

His Administration, President Trump said, “must do all that it can to help vulnerable populations stay in their homes in the midst of this pandemic.”<sup>4</sup> Because the focus of the order is on preventing or minimizing the spread of this contagious disease to the community as a whole, the protections afforded by the Order should be granted as broadly as possible.

The health of the community is at risk if the protections of the Order are not granted to all who qualify for such protection. The CDC moratorium points out that people facing homelessness face difficulties adhering to public health recommendations to prevent COVID-19. These same people likely face difficulties in navigating the procedures required to prevent homelessness and further the goals of the Order. The protection of the community should not hinge on whether its most vulnerable members are savvy and capable enough to understand the process designed to keep us *all* safe.

## II. REQUEST FOR EMERGENCY ACTION

Wisconsin Judicare and Legal Action of Wisconsin, the two largest providers of civil legal services to low income people in Wisconsin, respectfully urge the Court to institute a temporary rule requiring court officials presiding over residential evictions actions to: (1) inquire whether the defendants in those actions are already “covered persons” under the Order; and (2) to permit defendants to certify at the time of any court appearance in an eviction, including but not limited to the return date, joinder, or eviction trial, that they are “covered persons” under the Order. To ensure the rule is effective, all court commissioners and circuit court judges hearing eviction matters should make available to defendants the CDC’s form Certifications, found at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>, by hard copy available in court and online on the court’s website. By ascertaining whether the tenant facing eviction is a “covered person” under the Order, the judicial system, would do its part to protect the health and welfare of the *entire* community.

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<sup>1</sup> Center for Disease Control and Prevention, Assessment of SARS-CoV-2 Infection Prevalence in Homeless Shelters — Four U.S. Cities, March 27–April 15, 2020, April 22, 2020, available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6917e1.htm>.

<sup>2</sup> Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners, August 8, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-fighting-spread-covid-19-providing-assistance-renters-homeowners/>

<sup>3</sup> Id.

<sup>4</sup> Id.

The Court should take immediate action, as circuit courts are already facing the difficult task of enforcing the federal CDC eviction moratorium, which was not designed with the Wisconsin-specific eviction procedures in mind.

### III. AUTHORITY

The Court has the authority to act on this request pursuant to Article VII of the Wisconsin Constitution and its inherent authority. *See Flynn v. Dep't of Admin.*, 216 Wis. 2d 521, 549–50, 576 N.W.2d 245, 256 (1998).

### IV. PROPOSED ORDER

The proposed solution is for the Supreme Court to issue an order in substantially the following form:

WHEREAS the Centers for Disease Control and Prevention placed a moratorium on many residential evictions and terminations of tenancy; and

WHEREAS the CDC Order is in effect through December 31, 2020; and

WHEREAS it is not immediately apparent without further inquiry whether any particular tenant qualifies as a “covered person” within the ambit of the CDC Order; and

WHEREAS Wisconsin courts will need to enforce the CDC Order efficiently and while processing a high volume of evictions at one time; and

WHEREAS the Supreme Court has administrative and superintending authority over the courts and judicial system of this state and a duty to promote the efficient and effective operation of the state's judicial system, Wis. Const. Art. VII, § 3; *In re Kading*, 70 Wis. 2d 508, 519-20; 235 N.W.2d 409 (1976), and that authority includes ensuring that the state's circuit courts provide consistent access to justice for all parties, including self-represented litigants; and

WHEREAS the constitutional and statutory rights of landlords and tenants remain in effect during the current public health crisis, as do the rights of every individual to equal protection under the law and uniform access to the courts.

**The circuit courts are ordered:** to temporarily require (through December 31, 2020) all court commissioners and judges presiding over residential eviction actions to

- a. inquire whether the defendants in those actions are already “covered persons” under the Order; and
- b. to permit the defendants in those actions to certify at the time of any court appearance in an eviction, including but not limited to the return date, joinder, or eviction trial, that they are “covered persons” under the Order.
- c. make available to defendants the CDC's form Certifications by hard copy available in court and online on the court's website.

## V. MEMORANDUM IN SUPPORT OF PROPOSED ORDERS

This Court's authority to issue emergency orders to the lower courts arises from, and is guaranteed by, the Wisconsin Constitution. *See* Wis. Const. art. VII, sec. 2. ("The judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court, such trial courts of general uniform statewide jurisdiction as the legislature may create by law, and a municipal court if authorized by the legislature. . . ."); *see also* Wis. Const. art. VII, sec. 3(1). ("The supreme court shall have superintending and administrative authority over all courts."). This Court also has such inherent powers as are "necessary" to preserve its constitutional duty to oversee the administration of justice.

Justice requires that courts enforce the law swiftly, thoroughly, and consistently, and that will be hard to do in evictions without an emergency order from this Court. About six weeks after the expiration of the federal CARES Act eviction moratorium, Wisconsin courts are faced with yet another eviction moratorium. Now, for the third time, the courts are trying to learn and apply a new and complicated order, which imposes a temporary moratorium on evictions on most residential evictions. This Order is completely unlike the last two orders. It prevents a landlord from proceeding with an eviction if the landlord has received a signed declaration from the tenant swearing to certain facts.

As with the other two eviction moratoriums, the Order's effectiveness depends on how well the parties and the courts know about and understand the brand-new law. Savvy tenants will know of the order, be able to print the declaration, and submit it to their landlord. Many tenants will not. Many landlords will not understand the ramifications of receiving the declaration or will dispute its validity or whether the CDC Order applies. Indeed, this is already happening in courts around the state.

To streamline and equalize the process of invoking the CDC's Order, court officials can ask tenants all the necessary questions at a return date, joinder hearing, or trial. At the same time, they can address concerns and questions of landlords. Many pro-se tenants will be unaware of the federal moratorium and thus will not know to submit a declaration under the CDC order or raise the issue before the court. This will inevitably lead to emergency post-judgment motions for the tenants who discover the CDC order after an eviction is ordered. Landlords and courts will be frustrated by delays, and tenants will be frustrated to defend against illegally brought evictions.

Consistency is key to ensuring equal access to justice for all litigants, as well as furthering the Order's goal of protecting the public health. Many of Wisconsin's seventy-two counties have attempted to respond individually to the public health crisis. The COVID-19 section of the Wisconsin Courts website shows many voluminous, varied, and changing emergency orders from various courts. The result is a confusing mixture of new and inconsistent protective measures and old procedural requirements.

That mixture has created peculiar difficulties for vulnerable actors in the court system, namely pro-se litigants. Pro-se litigants, who are disproportionately low-income and people of color, find themselves in a confusing and complex world, trying to protect themselves and their interests at a time when it has never been more difficult to navigate the court systems. This is especially true for

tenants and landlords, who often go unrepresented in evictions and have had to decode three completely different eviction moratoriums. Indeed, 90% of tenants in residential evictions have no representation.<sup>5</sup> These parties likely lack a thorough understanding of the layered and new CDC Order.

In these cases, uniformity means equal access to justice and public health protections in communities across the state. A uniform rule temporarily requiring courts to ascertain whether eviction defendants are “covered persons” under the Order would help guarantee that communities receive protections under the order regardless of the income, education, skill, or ability to obtain an attorney of the litigants. Moreover, court resources would be protected by reducing the number of post-judgment emergency motions filed by tenants who learn of the CDC order when the Sheriff posts a notice of eviction.

This emergency rule would not require that the courts advocate on behalf of the defendants in evictions actions. Rather, the courts would merely establish whether an eviction action was properly “commenced” under Wisconsin Statutes. A complaint for eviction, or any further action in pursuit of a judgment and writ of restitution, against a “covered person” would not be legal, because the landlord bringing it would not be “entitled to the possession” of the real property in which the covered person resides. See, Wis. Stats. s. 799.40(1). Therefore, in making inquiry into whether the defendant is covered by the Order, the courts would only be ascertaining their own capacity to proceed in the case, just as they do in determining the validity of a termination notice. Execution of the declaration early in the eviction process maximizes judicial economy.

In sum, a temporary rule requiring courts presiding over eviction actions to determine whether the defendants are covered by the CDC’s eviction moratorium would facilitate the proper administration of justice, in addition to protecting the public welfare.

## **VI. CONTACT PERSON**

The contact person for this request is: Chris Donahoe, Housing Priority Coordinator, Legal Action of Wisconsin, 230 West Wells Street, Room 800, Milwaukee, WI. Attorney Donahoe can be reached at 414.274.3431 or at [cad@legalaction.org](mailto:cad@legalaction.org).

Legal Action and Wisconsin Judicare, the co-requestors of this emergency rule, believe this rule is necessary for the administration of justice across the state and to ensure that the poor and vulnerable can still access the courts’ protection in the most difficult of times.

Respectfully submitted on behalf of  
Legal Action of Wisconsin and Wisconsin Judicare

/s/ Chris Donahoe  
Chris Donahoe, Housing Priority Coordinator  
Legal Action of Wisconsin

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<sup>5</sup> Matthew Desmond, “Unaffordable America: Poverty, housing, and eviction,” *Fast Focus* 22 (2015): 1–6, available at <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>

# Enclosure 3 – CDC Order

## 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 Witkofsky, 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

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

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

<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).

<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.

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/state/data/98/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-dashboards/>.

<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/state/data/98/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

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

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.

<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.

# Enclosure 4 – CDC Declaration

**[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.

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Signature of Declarant

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Date

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<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.

Enclosure 5 – Indiana Checklist for  
Evidentiary Hearing on Dispute  
Regarding the Declaration of Eligibility  
Under CDC Order

## Checklist for Evidentiary Hearing on Disputes Regarding the Declaration of Eligibility Under CDC Order

After placing the parties under oath for the evidentiary hearing, proceed with the following checklist of information:

- Did each tenant listed on the lease and each adult (age 18 and older) living in the rental unit prepare and provide a signed declaration to the landlord or property owner? When was the declaration provided? How was the declaration sent to the landlord or property owner – hand delivery, mail, email, etc.?
- Do the tenant(s) understand that payment of rent and compliance with other obligations under the rental agreement/lease are still required, including accrual of any fees, penalties, or interest for non-payment of rent?
- Is/Are the tenant(s) using best efforts to make timely partial payments that are as close to the full payment as possible considering other non-discretionary expenses?
  - Inquire as to the date the rent is due, the amount of the rent payment, the dates of any payments made, and the amounts of each payment made
- Did the tenant(s) use best efforts to obtain all available governmental assistance for rent or housing?
  - Note: Available government assistance means any governmental rental or housing payment benefits available to the individual or any household member.
  - Did the tenant(s) apply? If so, when and what was the result?
  - If the tenant(s) did not apply? What was the reason? Were they eligible to apply?
  - If rental/housing assistance was provided, inquire as to the program, date the assistance was requested, the amount requested, the amount received, the amount paid to landlord and date payment was made to landlord
- If the tenant(s) is/are evicted, would they: 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 they have no other available housing options?
  - Note: Available housing means any available, unoccupied residential property or other space for occupancy in any season or temporary housing, that would not violate federal, state or local occupancy standards and that would not result in an overall increase of housing costs to the tenant.

- Does one of the following criteria apply to the tenant(s)? If the answer is yes to any of the items below the tenant(s) are covered by the CDC order.
  - expect to earn no more than \$99,000 in annual income for all of the year 2020 (or no more than \$198,000 if filing a joint tax return), OR
  - was not required to report any income in 2019 to the U.S. Internal Revenue Service, OR
  - received an Economic Impact Check Payment (stimulus check) pursuant to Section 2201 of the CARES Act.
- Is/Are the tenant(s) unable to pay full rent because of a substantial loss of household income, loss of compensable hours of work or wages (reduction in hours worked) or a lay-off?
  - Note: The CDC order does not list a requirement on the part of the tenant to demonstrate a link between the income loss and COVID-19.
  - Inquire as to the dates of employment, name of employer, wages or salary prior to COVID-19, reason for leaving employment, if applicable, and wages or salary since COVID-19, receipt of any unemployment benefits, if applicable, etc.
- Is/Are the tenant(s) unable to pay full rent due to extraordinary out-of-pocket medical expenses?
  - Extraordinary medical expenses are any unreimbursed medical expense likely to exceed 7.5% of the person's adjusted gross income.
  - This does not include expenses incurred but have been not paid, or expenses for which insurance of any kind has paid on your behalf.
  - Inquire as to the person who incurred the medical expenses, amount of medical expense incurred, and the relationship of the person with medical expenses to the tenant, receipts of payments/bills may be provided
- Does the tenant(s) understand that upon expiration of the CDC order on December 31, 2020, the housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay in full may subject the tenant to eviction pursuant to state and local laws?