



## How Does the Federal Eviction Moratorium Impact the Emergency Solutions Grant and Continuum of Care Program?

*The following Q and A's provide guidance on Section 4024 of the CARES Act. Section 4024 of the CARES Act imposes a temporary moratorium on evictions. The eviction moratorium went into effect on March 27, 2020, upon the enactment of the CARES Act, and will be in effect for 120 days from that date. The temporary eviction moratorium applies to the Emergency Solutions Grant and Continuum of Care Program, as discussed below.*

For housing covered by the moratorium, the housing provider or landlord CANNOT:

1. file any new eviction action during the period of March 27, 2020 through July 24, 2020 for nonpayment of rent or nonpayment of other charges or fees;
2. charge fees, penalties, or other charges (including assessing or allowing charges to accrue) during the period of March 27, 2020 through July 24, 2020 based on the tenant's nonpayment of rent;
3. issue a notice to vacate during the period of March 27, 2020 through July 24, 2020 based on nonpayment of rent or other charges; or
4. require a tenant to vacate due to unpaid rent or fees without providing a prior notice to vacate that gives the tenant at least 30 days to vacate the unit.

The moratorium does not mean that people don't have to pay their rent. HUD strongly encourages recipients to work with those they serve to avoid evictions for unpaid rent after the moratorium ends.

The questions and answers below provide additional guidance to recipients of Emergency Solutions Grants and Continuum of Care Program funding about the 120-day moratorium on eviction filings for nonpayment.

### **Question 1: Do the moratorium protections apply to all people who are assisted through the Emergency Solutions Grants and Continuum of Care Programs?**

**Answer:** No. The CARES Act protections only cover tenants whose housing is covered under section 4024 of the CARES Act. Whether the housing is covered depends on its connection to Federal funding or tax credits or financing that is provided, backed, or assisted by the Federal government. For example, if any of the following apply, the housing is covered due to its connection with the ESG or CoC program:

- The recipient or subrecipient and the owner/landlord have an active agreement (e.g., rental assistance agreement) establishing the terms of assistance or payments under the Emergency Solutions Grants or Continuum of Care program with respect to the tenant or the tenant's unit;
- A Declaration of Restrictive Covenants is recorded against the property and currently applies Continuum of Care Program requirements to the tenant's unit, due to a previous use of Continuum of Care Program funds for acquisition, construction or rehabilitation; or
- The CoC program recipient or subrecipient receives ongoing leasing, operating, supportive services, or project- or sponsor-based rental assistance funding to operate the housing as a transitional or permanent housing project.



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However, the protections would not apply just because a person is approved to receive ESG or CoC Program assistance or receives legal services or other services that do not depend on whether the housing owner or landlord participates in the ESG or CoC program.

### **Question 2: During the 120-day moratorium on filing for evictions for nonpayment, can recipients and landlords still send late notices to residents?**

**Answer:** The CARES Act does not prohibit sending a reminder notice for late rent. However, the reminder notice must not include any new fees or charges for the nonpayment of rent, and the reminder notice cannot be a notice to vacate for nonpayment of rent or other fees.

### **Question 3: Can a recipient or landlord still evict for criminal activity or other lease violations?**

**Answer:** Yes. The eviction moratorium in Section 4024(b) of the CARES Act does not prohibit recipients or landlords from evicting tenants for lease violations other than nonpayment of rent or nonpayment of other charges. However, 24 CFR 578.91(b) requires CoC recipients to provide due process when terminating assistance to a program participant and 24 CFR 578.91(c) requires that recipients and subrecipients that are providing permanent supportive housing for hard-to-house population of homeless persons to exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases. HUD encourages all recipients of CoC and ESG Program funding – not merely permanent supportive housing recipients – to do all they can to keep the people they serve from being evicted. In addition, recipients and landlords must comply with other applicable eviction restrictions, such as the protections under VAWA for victims of domestic violence, dating violence, sexual assault, or stalking (24 CFR 576.409 and 24 CFR 578.99(j)).

### **Question 4: Can a client who was late on rent prior to the passing of the CARES Act be evicted for those late payments?**

**Answer:** If the eviction proceeding was initiated before March 27, 2020, the proceeding is not covered under the CARES Act and the eviction action can continue subject to any applicable restrictions under the program or state or local law. While the moratorium is in effect, however, all owners and landlords of covered housing are prohibited from filing new evictions for unpaid rent (no matter when the rent was due) and from providing notices to vacate based on unpaid rent (no matter when the rent was due). Also, after the moratorium ends, any notice to vacate for unpaid rent that is issued to a tenant of covered housing must provide the tenant with at least 30 days advance notice to vacate. For evictions filed before the moratorium and



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evictions from housing that is not covered, however, HUD encourages landlords and recipients to consider delaying the completion of evictions until after state or local emergencies are over. Additionally, recipients and housing owners/landlords should review their state and local laws, as many states and local governments have also enacted their own restrictions on evictions during the pandemic.

### **Question 5: Can landlords charge late fees, penalties, or other fees for late rent that was due prior to the passing of the CARES Act?**

**Answer:** Yes, fees that were charged for nonpayment of rent prior to March 27, 2020 may be collected during the moratorium. However, while the moratorium is in effect, a landlord cannot charge any new fees, charges or penalties related to nonpayment of rent in covered housing; this includes assessing interest on late fees charged in January and February.

### **Question 6: What protection does a person receive who received Emergency Solutions Grants or Continuum of Care Programs assistance when the eviction moratorium began but stops receiving assistance during the moratorium period? Is the person protected from an eviction for unpaid rent after the program assistance ends?**

**Answer:** The Federal moratorium on evictions only protects people whose housing is covered under section 4024 of the CARES Act. So if the housing is only covered as a result of the assistance provided for a particular tenant (such as the short- or medium-term tenant-based rental assistance provided with ESG funds), and that tenant stops receiving assistance under the program (for reasons other than unpaid rent), then the tenant would no longer be protected under section 4024 from any eviction filing, notice to vacate, or financial penalties for unpaid rent or fees (including rent owed while the housing was covered).

However, the landlord and tenant should make sure the unit is not otherwise covered by section 4024(a) of the CARES Act due to possible connections with another Federal housing program or financing provided, backed, or assisted by the Federal government. The tenant might also remain protected under state or local law.

### **Question 7: What other housing is covered by the eviction moratorium?**

**Answer:** The moratorium applies to any housing that meets the “covered dwelling” definition in section 4024(a) of the CARES Act. For information on housing covered due to assistance provided through other HUD programs, please see HUD’s other factsheets, Q&A, and flyers on COVID-19 and the CARES Act at <https://www.hud.gov/coronavirus>.



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**Question 8: What if a person has not resided in their unit for several days and won't respond to notices about overdue rent?**

**Answer:** Given the shelter-in-place requirements and other current restrictions on leaving housing, HUD asks that recipients and landlords be as flexible as possible. A family could have decided to quarantine with other family members, could be hospitalized, or could be prevented from returning to the unit due to an emergency declaration by the state. Recipients and landlords should not assume people they serve who are not in their units have abandoned the unit. If a recipient or landlord has reason to believe the unit has truly been abandoned they should take careful steps to document why they believe this is the case and not take any termination decisions during this 120-day period. A person's failure to respond to communication is not sufficient to proceed with termination.

**Question 9: What should a person do with an eviction notice if he or she is receiving homeless assistance?**

**Answer:** If a person served by an ESG or CoC Program project is given an eviction notice for nonpayment of rent, he or she should reach out to his or her case manager as soon as possible. If the notice does not comply with the protections under the moratorium as explained above, the tenant should inform the landlord that the landlord's actions violate section 4024 of the CARES Act. Or the recipient, subrecipient, or project sponsor can inform the landlord, if requested by the tenant.

In addition to any legal assistance that is made available under the ESG and CoC Programs, tenants in need of free legal help may refer to the American Bar Association's directory of free legal help at: [https://www.americanbar.org/groups/legal\\_services/flh-home/flh-free-legal-help/](https://www.americanbar.org/groups/legal_services/flh-home/flh-free-legal-help/).