JULY 2020 UPDATE

FORECLOSURES, EVICTIONS, & UTILITY CUTOFFS:

EXPIRING PROTECTIONS FOR PEOPLE FACING HARDSHIP DURING THE PANDEMIC

BY JASON BAILEY & COTY MONTAG | JULY 2020

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> **To ensure that low-income renters are not faced with eviction or homelessness now or once any applicable federal or state moratorium is lifted, federal, state, and local governments must provide emergency rental assistance to low-income renters, particularly those who have suffered financially because of COVID-19.**

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I
INTRODUCTION

II
THE IMPACT OF THE COVID-19 PANDEMIC ON BLACK COMMUNITIES

III
FORECLOSURE AND EVICTION MORATORIUMS

IV
POLICY PROPOSALS

I

Introduction

Nearly

30%

of owners and renters did not make their housing payments in May and June.

32%

of households missed their housing payments in July.

This spring, the Thurgood Marshall Institute published a comprehensive report and short brief on the housing challenges faced by homeowners and renters during the COVID-19 pandemic. The report and brief provided details on legislative measures related to foreclosures, evictions, and utility shutoffs that were enacted to protect and assist individuals impacted by the health crisis. As we enter into the fifth month of the pandemic in the United States, many of these measures have expired or are set to expire this summer. However, the economic impacts of the pandemic have not lessened, as millions of people across the nation continue to struggle to pay their mortgage, rent, and utility bills. Indeed, nearly 30% of owners and renters did not make their housing payments in May and June, and 32% of households missed their housing payments in July. Experts have warned of a coming housing apocalypse if additional measures are not taken to assist those affected by the pandemic. Widespread loss of housing will simply worsen the pandemic as families struggle with the loss of means to social distance, isolate, and ensure basic cleanliness through daily access to facilities to bathe, shower, and wash their hands.

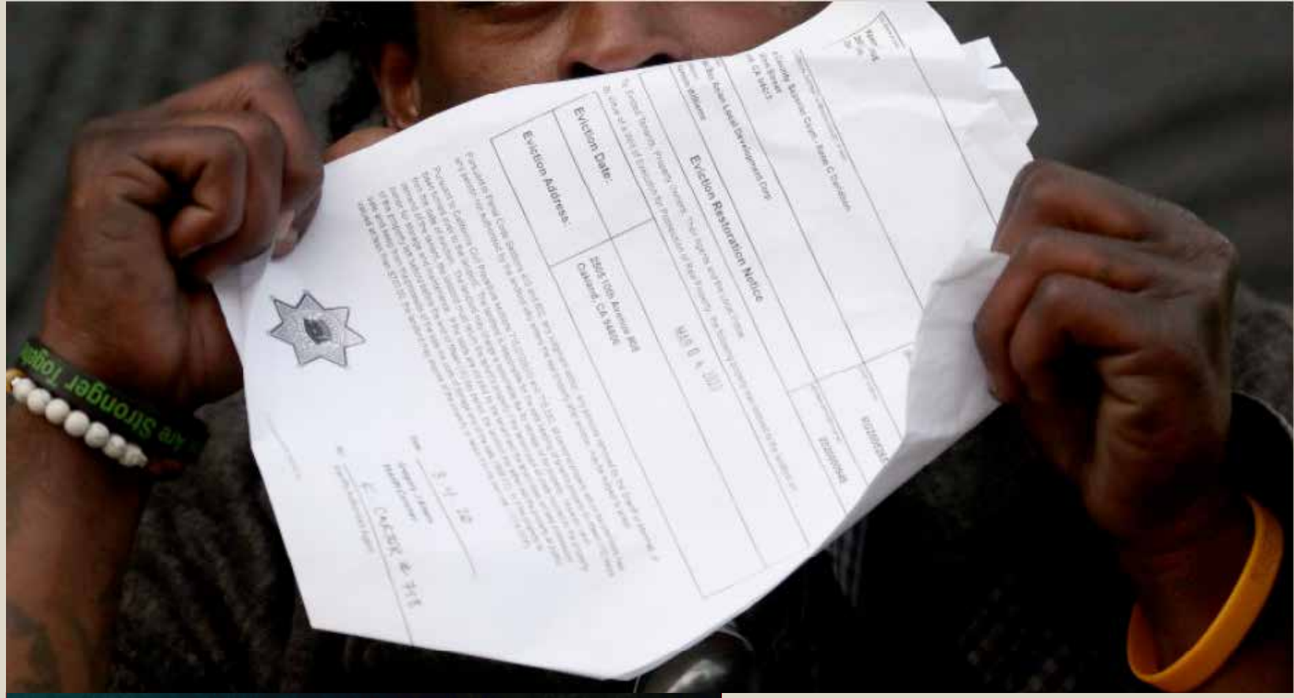
> **This updated bulletin provides details on these expiring measures and calls for federal, state, and local leaders to renew efforts to safeguard communities from the devastating economic impacts of the pandemic.**

II

The Impact of the COVID-19 Pandemic on Black Communities

As of July 12, approximately 132,000 people in the United States have died of the coronavirus, with nearly 3.3 million infections nationwide. The Centers for Disease Control and Prevention estimated that actual infections may be at least 10 times higher than reported figures. There is no question that Black Americans have been disproportionately affected by the pandemic: nationwide, Black people comprise about 23% of deaths in the U.S. due to coronavirus, despite making up only 13% of the overall population. In at least 32 states, Black people are dying of coronavirus at rates that exceed their portion of the population.

The disproportionate health impacts of the virus on the nation's Black population also have economic effects. Black workers, particularly women, have been disproportionately impacted by job losses over the last several months. As a result, Black homeowners and tenants are at a higher risk of losing their homes through foreclosure and eviction during the crisis. The Urban Institute determined that Black homeowners and renters were more likely than whites to miss their May housing payment.



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AS OF JULY 12, 2020

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III Foreclosure and Eviction Moratoriums

REMINDER: The moratoriums described here typically do not relieve you of the obligation to pay, but simply extend the payment period. To get the protections of these moratoriums, ***you must act***. See our report or brief for important information about where to get help.

HOMEOWNERS: Moratoriums on Foreclosures for Federally Backed Mortgages Extended Until August 31

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act, a $2 trillion stimulus aid package, was enacted on March 27, 2020. Under the Act, the federal government has provided relief for some homeowners and renters who have been affected by the coronavirus pandemic. However, many of the Act's provisions are set to expire this summer. For instance, the CARES Act's provision prohibiting lenders and servicers of federally backed mortgages—including loans owned or insured by the Federal Housing Administration ("FHA"), the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), or Veterans Administration ("VA")—from foreclosing on homeowners expired on May 17. This moratorium was extended to June 30 through guidelines issued on May 14. The moratorium has now been extended further: the Federal Housing Finance Agency ("FHFA") announced on June 17 that Fannie Mae and Freddie Mac will extend the moratorium on foreclosures for single-family properties until at least August 31. The FHA and the VA have similarly extended their foreclosure moratoriums through August 31.

RENTERS: Moratoriums on Evictions in Federally Supported Housing Scheduled to Expire July 25 or August 31, Depending on the Program

The CARES Act also provides for a federal eviction moratorium for renters in certain types of properties, including properties with a federally backed mortgage loan or federally backed multiproperty mortgage loan; properties covered under the Violence Against Women Act (which includes public housing, the Section 8 Housing Choice Voucher Program, and project-based public housing); properties subject to the Rural Housing Voucher Program; and properties participating in the Low Income Housing Tax Credit. The Urban Institute estimated that the federal eviction protections apply to only 28% of the overall rental market.

These protections, however, will soon expire. The CARES Act only provides tenants in federally supported housing with 120 days of eviction relief. Thus, the Act's eviction moratorium is set to expire on July 25. The FHFA and FHA have extended eviction protections for renters living in properties with certain loans backed by those agencies until August 31. The FHFA's eviction moratorium applies to tenants living in properties with single-family mortgages backed by Fannie Mae or Freddie Mac. The FHA's eviction moratorium applies only to tenants living in properties with FHA-

Black households run the risk of suffering additional economic losses, as evidenced by the last housing crisis.

insured Title II Single-Family and Home Equity Conversion mortgages.

On June 29, the FHFA announced additional protections for tenants who live in multifamily properties with Fannie Mae and Freddie Mac-backed mortgages. Specifically, landlords of multifamily properties that receive a forbearance on their mortgages must suspend all evictions for renters who are unable to pay rent while the property is in forbearance. In addition, if a landlord seeks an extension of their forbearance or modifies their repayment schedule, the landlord must give tenants at least a 30-day notice to vacate; waive late fees or penalties for nonpayment of rent; and allow tenants to repay back rent over time and not in a lump sum.

It is important to remember that the FHFA and FHA protections only apply to renters living in properties with applicable federally backed mortgages. This means that other renters covered by the CARES Act, such as those living in public housing or participating in the Housing Choice Voucher Program, will not be protected from eviction as of July 25. An important reminder, however, for public housing tenants and voucher holders: if your income has declined (e.g., due to job loss from the pandemic), you may be eligible for a reduction in your monthly rent payment.

Further, other tenants living in properties ***not*** subject to the CARES Act's protections have been at risk of eviction for non-payment of rent during the pandemic unless their state or municipality enacted an eviction moratorium. While a number of states and localities banned evictions during the initial period of the pandemic (covering all rental properties, not just those covered by the CARES Act), many of these protections have now expired or will expire soon. By the end of May, about half of the states had lifted eviction protections for renters. For example, although COVID-19 infections have recently skyrocketed in Texas, the state resumed eviction proceedings in mid-May. On June 1, the Mississippi Secretary of State tweeted to landlords that they were free to resume evictions. Evictions in North Carolina resumed on June 21, and some renters faced eviction threats during the pandemic. Louisiana resumed evictions on June 15. Other states never issued eviction protections for renters not covered by the CARES Act during the pandemic. For example, Arkansas never enacted protections for renters despite its increasing COVID-19 infection rate, which went up by 30% in early June.

AUGUST 31

The FHFA and FHA have extended eviction protections for renters living in properties with federally backed loans until August 31.

Fannie Mae and Freddie Mac will extend the moratorium on foreclosures for single-family properties until at least August 31.

The FHA and the VA have similarly extended their foreclosure moratoriums through August 31.

For more information on state eviction protections during the pandemic, visit the Policy Scorecard developed by the Eviction Lab and Columbia Law Professor Emily Benfer.

IV

Policy Proposals

HEROES ACT

$3 trillion
stimulus package

$1,200
economic impact payments

$200 billion
hazard pay fund for essential workers

The COVID-19 pandemic is far from over. While most states have reopened for business in some capacity, millions of Americans are still out of work and unable to make their mortgage or rent payment or pay their utility bills. To ensure that the most vulnerable members of our society receive adequate protection from foreclosures, evictions, and shutoffs, we recommend that federal, state, and local officials adopt the following policies:

Enact the HEROES Act or similar legislation to protect homeowners

On May 15, 2020, the House of Representatives passed the Health and Economic Recovery Omnibus Emergency ("HEROES") Act, a $3 trillion stimulus package that includes a number of provisions aimed at providing relief to workers and renters. By early July, however, the HEROES Act had not yet received a hearing or vote in the Senate. Passage of the HEROES Act is necessary to help Americans who are currently struggling to pay their rent, mortgage, and utility bills because of the economic downturn induced by the pandemic.

Like the CARES Act, the HEROES Act would provide for direct economic impact payments of up to $1,200 to certain households. It would also establish a $200 billion fund to provide hazard pay to essential workers. The Act would provide significant housing relief, including $100 billion in emergency assistance to help low-income renters pay their rent and utility bills during the pandemic. Additionally, it would impose a 12-month moratorium on evictions and foreclosures and expand such protections to all renters and homeowners (not just those covered by the CARES Act).

12-month
moratorium on evictions and foreclosures

$100 billion
emergency assistance to help low-income renters pay their rent and utility bills

Extend Eviction Protections & Provide Further Rental Assistance

The federal government must do more to ensure that all renters are protected from evictions during the pandemic. Unsurprisingly, Black and Latinx renters are expected to be disproportionately affected by the expiration of the CARES Act and other housing-related moratoriums. While the FHFA and FHA recently extended the protections afforded to certain renters under the CARES Act through the end of August, tenants in public housing, for example, will not benefit from any extension. However, these tenants may be eligible for a rent adjustment if they have lost income. All renters deserve long-term protection in light of the uncertain duration of the pandemic. Passage of the HEROES Act would provide prolonged relief to all financially impacted renters as they recover from the economic downturn. At a minimum, the protections in the CARES Act—for all owners and renters covered by the Act—should be extended well past the end of August.

> **Shut-offs should not be on the list of worries that people who are struggling financially have, along with keeping themselves safe from this pandemic.**

SHERRILYN IFILL

LDF PRESIDENT & DIRECTOR-COUNSEL

EXPIRES JULY 28

California's extended eviction moratorium only runs through July 28

EXPIRES END OF JULY

North Carolina's extended moratorium on utility shutoff will expire at the end of July

States must also move to extend eviction protections. While some states have issued extensions, these will soon expire. For example, California's extended eviction moratorium only runs through July 28. In other states, extended moratoriums may expire between now and August.

In addition to extending moratoriums, more needs to be done to minimize the financial hardship that tenants will face once the national health crisis ends. Tenants are still responsible for their rent despite the implementation of the CARES Act and other eviction moratoriums. Thus, a tenant who has accumulated a large amount of arrears may be threatened with eviction once any applicable moratorium is lifted. This is expected to lead to a mass wave of evictions in the coming months—the effects of which will impact the housing market for years to come.

To ensure that low-income renters are not faced with eviction or homelessness now or once any applicable federal or state moratorium is lifted, federal, state, and local governments must provide emergency rental assistance to low-income renters, particularly those who have suffered financially because of COVID-19. As stated above, passage of the HEROES Act is imperative to ensuring that families can continue to stay in their homes throughout the pandemic, as it includes $100 billion in emergency rental assistance to help low-income renters avoid homelessness.

Continue to Ban Water Shutoffs and Restore Water Service

The United States was already in the throes of a water affordability crisis before the onset of the pandemic, but the spread of COVID-19 demonstrates that access to running water is a human rights issue. Public health experts warn that our entire community can become ill from the virus when some people do not have the ability to regularly wash their hands. Families must be able to access water and other essential services regardless of their ability to pay.

HEROES ACT

$1.5 billion

in assistance for water and wastewater expenses to low-income and other adversely affected consumers

In addition to protecting renters and homeowners financially impacted by the pandemic, the HEROES Act provides protections for residential water (and energy) services by requiring states and utilities receiving federal emergency funds to implement policies preventing shutoffs during the pandemic and prohibiting the assessment of late fees for nonpayment during the emergency period. In addition, the Act provides $1.5 billion in assistance for water and wastewater expenses to low-income and other adversely affected consumers. Passage of the HEROES Act is important to ensure that the most vulnerable among us have access to water and other essential utilities until the end of the ongoing public health crisis.

It is also imperative that state and local governments extend their moratoriums on water shutoffs and reconnect water service to customers during the pandemic. While numerous jurisdictions across the country implemented moratoriums on water service shutoffs for the initial period of the pandemic, many of these measures have expired or are set to expire shortly. Some states, like Florida and Georgia, never issued a statewide ban on shutoffs, but the local moratoriums issued by municipalities are now expiring. North Carolina's extended moratorium will expire at the end of 2020.

The failure to expand or institute moratoriums on utility shutoffs could exacerbate the pandemic by leaving our most vulnerable citizens at greater risk of contracting the virus.

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A Report by the Thurgood Marshall Institute at NAACP Legal Defense and Educational Fund, Inc.

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The Thurgood Marshall Institute is a multidisciplinary center within the NAACP Legal Defense Fund. Launched in 2015, the Institute complements LDF's traditional litigation strengths and brings critical capabilities to the fight for racial justice, including research and targeted advocacy campaigns. The Institute also houses LDF's Archives—a collection of materials chronicling the legal history of the Civil Rights Movement.

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