

CFPB's Interim Final Rule: Pandemic Debt Collection Practices Effective May 3

April 26, 2021

On April 19, 2021, the CFPB announced that it issued an [interim final rule](#) (IFR) in support of the Centers for Disease Control and Prevention (CDC)'s residential eviction moratorium (CDC Order), which will be effective May 3, 2021. The CFPB's rule (summarized [here](#)) requires debt collectors to provide written notice to tenants of their rights under the CDC Order and prohibits debt collectors from misrepresenting tenants' eligibility for protection from eviction under the moratorium.

The CFPB issued the rule because it believes that consumers were not aware of their rights under the CDC moratorium, and because debt collectors pursuing evictions may have been misrepresenting tenants' rights. The CFPB found that the failure of debt collectors to disclose the protections available under the CDC Order can violate the FDCPA with immediate consequences to health and safety. The Bureau also issued the rule to provide guidance on how debt collections can comply with the CDC Order.

The IFR provides that during the effective period of the CDC Order, in any jurisdiction where it applies, the debt collector must disclose to the consumer, clearly and conspicuously in writing, that the consumer may be eligible for temporary protection from the eviction under the CDC Order. In addition, the debt collector may not falsely represent or imply to a consumer that the consumer is ineligible for temporary protection from eviction under the CDC Order.

While the CDC Order does not apply in any state, local, territorial, or tribal areas with a moratorium on residential evictions that provides the same or greater level of public-health protection than the CDC Order, the IFR does not require debt collectors in those areas to comply with the IFR, but they may do so without running afoul of the rule or the FDCPA.

The Bureau provided two sample, but not mandatory, [options for the disclosure](#) (along with a website and phone number):

OPTION 1

Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under federal law.

Learn the steps you should take now:

- Visit www.cfpb.gov/eviction
 - Or call a housing counselor at 800-569-4287
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OPTION 2

Because of the global COVID-19 pandemic, you may be eligible for temporary protection from eviction under the laws of your state, territory, locality, or tribal area, or under federal law.

Learn the steps you should take now:

- Visit www.cfpb.gov/eviction
 - Or call a housing counselor at 800-569-4287
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The IFR defines the terms “consumer,” “debt” (including unpaid residential rent), and “debt collector” (including third-party eviction agents and attorneys) as they are defined in the FDCPA. The “CDC Order” refers to the CDC’s eviction moratorium, as may be extended. The term “eviction notice” means the earliest of any written notice that the laws of any state, locality, territory, or tribal area require to be provided to a consumer before an eviction action against the consumer may be filed. If no pre-filing notice is required, it refers to the eviction action. The disclosure may be provided more than once.

The Bureau is seeking comments on the IFR, which applies through the duration of the CDC Order. That order is set to expire on June 30, 2021, but may be extended. Mortgage servicers should carefully evaluate this rule, particularly where foreclosing lenders become landlords subject to the IFR. For example, in some jurisdictions, where there may be rent control or other regulation of properties subject to legitimate, unexpired leases, tenants enjoy protections and may not be evicted or forced to vacate prior to specified events, including non-payment of rent.

Our attorneys at McGlinchey will continue to monitor foreclosure moratoriums and related rules and guidelines. If you need help understanding or interpreting this information or have any other questions, please contact McGlinchey’s [COVID-19 CFS Litigation Task Force](#).

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