Final Transcript

COVID-19 Housing Insecurity and Help for Renters. May 14, 2021/12:00 p.m. CDT

SPEAKERS

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PRESENTATION

Moderator Ladies and gentlemen, thank you for standing by. Welcome to the US Department of Housing and Urban Development conference call. At this time, all participants are in listen-only mode. Later, we will conduct a question-and-answer session and instructions will be given at that time. [Operator instructions].

I would now like to turn the conference over to our host, Ms. Virginia Holman. Please go ahead.

Virginia

Thank you, and good afternoon or good morning, everyone, and welcome to today's webinar on our continuing series of webinars on the impact of COVID-19. This is another webinar presented by the Consumer Financial Protection Bureau and they're looking at housing insecurity for renters today.

Before we start the actual presentation, I need to go over some logistics. As the operator said, the audio is being recorded. We will be giving you that playback number along with the PowerPoint and a written transcript. Those will be posted in the webinar archives on HUD Exchange. That usually takes about a week.

I did send out the handouts this morning to those who had registered but they're also available in the panel on the right-hand side of your screen in the document name. You can just download it.

You can also send your questions, very important to us. Submit your questions and comments in the Questions panel, again in that right-hand side panel of your screen. Just fill in the question and there are staff watching those questions. You can also later after this webinar is over, or anytime you've got a question or comment, send it to housing.counseling@hud.gov with the topic in the subject line.

If you have registered and have logged into the webinar, you will receive a certificate from GoToWebinar within about 48 hours. So you need to print it out and save it for your records. Just as an FYI, we do not get a copy of that certificate.

And now let me turn the presentation over to Jerry Mayer, the Director of Outreach and Capacity Building in the Office of Housing Counseling. Jerry?

Jerry Thank you, Ginger, and hello, and welcome to today's webinar for housing counselors on COVID-19 housing insecurity and help for renters. Firstly, I want to thank the Consumer Financial Protection Bureau for their support of housing counseling and for bringing us this important information. And also, thank you to our HUD producers, Virginia Holman and Ben Yanetta.

Today we have two presenters from the CFPB. Michael Silver is a senior counselor in the Office of Regulations at CFPB where he has worked since

September of 2011. Michael served as the co-team lead on the CFPB's recent Fair Debt Collection Practices Act Interim Final Rule relating to evictions which is the subject of today's presentation. Michael is the Office of Regulation subject matter coordinator for RESPA and the co-lead for the CFPB team that worked on the 2019 No-Action Letter to HUD addressing lender funding of housing counseling. He's also worked on CFPB rulemakings related to debt collection, payday lending, mortgage loan originator compensation, and TILA-RESPA integrated disclosures. Prior to CFPB, Michael practiced real estate law at an international law firm. He received a JD from the George Washington University Law School and a BA from the University of Pennsylvania.

Beverly Yang is the rent content lead in the Office of Consumer Education at CFPB. An attorney by training, Beverly practiced housing and consumer law with the Land of Lincoln Legal Assistants Foundation in Southern Illinois for seven years before joining the Bureau in 2013. She has worked on the CFPB debt collection rulemakings and also served in the CFPB Office of Intergovernmental Affairs. She received a JD from Washington University School of Law and a BA from the University of New York. Beverly writes the housing content for renters on interagency housing portal as well.

But before we begin, I'd like to turn the microphone over to Ben for some polling questions and after which, we'll go right into our presentation.

Ben Great. Thank you very much, Jerry. Hello, everyone. I just have four polling questions that we're going to launch. You can make your selection now and I'll close the poll after about 75% have voted so we don't sit here waiting forever.

But, this is the first question. We would just like to know who you are, who you're representing here today. This is just valuable information for us to have so that we know really who our audience is today. We're just interested to know the audience type and we can tailor some of our presentation to your questions and the type of audience we have.

We have about 70% now so I'm going to close this poll and I'm going to share it with everybody. So, it looks like we're mostly presenting to housing counselors today. We did see there is a lot others that have joined us today. So we're going to probably have our expected audience.

At this point I'm going to start the next question. Who do you typically work with? Your clients, are they renters, homeowners, a mix, or are you new to housing counseling or do not work with either types of those clients? We're definitely getting a lot of responses on this already. It's looking mostly like it's a mix, which is not too surprising for our housing counselors.

We're at about 70% now so I will also share the results of this one. As I said, we're mostly looking at a mix of renter and homeowner type clients that you serve.

Third question is coming up now. What do you want to learn more about? Protection for renters, the new debt collection rule from CFPB, resources that you can share with rental clients, or all of the above? And, not surprisingly, most people are going with all of the above which is fair and we are definitely going to provide information on all three topics during today's presentation.

I will share the results of that one as well. As I said, most people wanted to see a little bit of everything.

And the final question we're going to ask is how familiar are you with the current COVID-19 pandemic protections and resources and renters? While we're waiting for the final polling question to finish up, I also wanted to extend my thanks to all of the great work we've been receiving from CFPB. They've been just wonderful collaborators with us over the last few months during this time of the pandemic and providing great information to our clients.

I will now close this poll and share it with the audience. Somewhat familiar is the major selection there and we expect that. We hope that you'll find very valuable information during this presentation that will increase your knowledge of resources and protections that are available to your clients.

At this time, I'd like to turn it over to the CFPB. I apologize, I'm not sure who the next presenter is, but CFPB, the floor is all yours.

Beverly

Thank you very much. Could you advance the slide, please? I'm Bev Yang, renter content lead, and I will be talking about some of the demographics and the status of evictions around the country. Then Mike Silver will talk about our eviction moratorium interim final rule and then

I'll get back to talking about some of the resources that we have for you and we hope you'll share with the people you work with.

Let's look at the next slide. I am with the Consumer Financial Protection Bureau. We are a federal agency whose mission is to protect consumers and we do this by writing rules that financial institutions and other actors need to follow also by enforcing those rules and informing consumers about their rights. We're very grateful to HUD for hosting us today so we can reach this audience who is critical to serving renters around the country, and we're also thankful for their partnership in developing the resources we'll share today on the critical topic of supporting renters.

The views that I'll share today are my own and may not represent the Bureau's views, just have to give that disclaimer upfront.

Next slide, please. So let's talk about the impacts of the coronavirus pandemic. On the next slide you'll see that renters are increasingly people of color. There are around 107 million people in 43 million households around the country who rent their homes. That's about 35% of all households around the nation, and about one-third of those rental households are families with children. So the renting population tends to be younger, lower income and less white than the home-owning population. And you'll see here blue bars represent the share of renters from each category in 2004. Pink is that share from 2019, and you'll see that the share of people of color who rent is increasing.

Next slide. These numbers are a little hard to read but this is a breakdown of households who rent by income and these numbers are from the Federal Reserve Bank of New York. So, overall, as I said before, renters are around 35% of all US households but among low income households. In the US, that number is around 70%. For moderate income households, around half rent their homes, then less than a third of people in middle and high income brackets rent. And, the income levels are based on area median income.

These numbers are from the Census Household Pulse Survey. It's a weekly survey to households around the country and the results are generally considered to be nationally representative. So, each bar represents a different race or ethnic category, so for instance brown represents renters who are white, and the pink bar represents Black renters. On the left-hand you'll see that twice the percentage of Hispanic, Black, and Asian renters said they were behind on rent payments as white renters. And on the right, nearly half of all white and Black renters said that they could be evicted in the next two months. That's a staggering percentage and an indication of housing instability that we're seeing around the nation. Then you can see the rates of housing instability around the country by using the Household Pulse Survey interactive tool, and I'll put the link in Chat.

This data comes from the Eviction Lab which tracks eviction filings in several cities and states around the country. The data doesn't cover every jurisdiction around the country but it's the biggest source for eviction data nationwide. The graph shows the difference in evictions filed between last year in 2020 and the historical average. So the light green line at the top is the average total evictions filed over the course of each year in the past. And in a typical year, a similar number of evictions is filed each month so that's why you see the line rising steadily upward. That's the number of total number of evictions filed that year historically.

And then the dark green line is the number of evictions filed in 2020. You'll see that evictions definitely slowed around the time that a national emergency was declared, around the coronavirus in about mid-March and eviction filings continued to rise but much more slowly. They actually picked up a bit after September 2020 when the CDC announced the federal moratorium and by the end of 2020 the number of filings was about half of the historic average.

You can check out this filing data for yourself as well so I'll put a link in Chat for that.

On the next slide, we're looking at the Census Household Pulse Survey again. Darker states are seeing a higher percentage of people who rent say that they're behind on rent and eviction is likely in the next two months. This percentage is lower than the 50% that you saw on earlier slides because this is a proportion of all the adults in the state instead of just renters. So the percentage of all adults who are renters, behind on rent, and think that they could be evicted in the next few months is especially high in darker areas. So you'll see that District of Columbia, Georgia, Nevada, Louisiana and Mississippi for instance are seeing more acute housing instability. But I should note that for larger states like California and Texas, the percentage may be diluted a bit because the total number of people living there is so large.

Next slide. Consumers lack awareness of their options and that's why we are so glad to be able to talk with you today about those protections. So the estimated number of tenant households that are behind on rent is around 8.8 million and there are protections for both homeowners and renters but they need to take action. Because so many are unaware of their rights, we've put together plain language resources and I'll talk about that more later.

Now I'll turn it over to Mike Silver in our Office of Regulations to talk about the CFPB's recent eviction moratorium interim final rule.

Michael Thanks very much, Bev. I'm happy to be here for this important webinar and thanks for the intro, Jerry. I'm very familiar with the great work of housing counseling through my other work on RESPA, particularly the issue of lender funding of housing counseling, which the CFPB took some action on a couple of years ago. But today, I'm here wearing a different hat, talking about the Fair Debt Collection Practices Act and the Bureau's recent interim final rule which I'll refer sometimes to as an IFR relating to the pandemic and evictions.

I am going to turn my camera on just briefly as I introduce myself so you know that the picture associated with me in the bio matches what I look like right now but I understand due to bandwidth I'm being told to turn this off, largely for the remainder of the presentation. So again happy to be here.

Just a few opening disclaimers, some are process and the last bullet is more substantive, and this repeats a bit of what Bev said earlier. The presentation is being made by representatives of the Consumer Financial Protection Bureau on behalf of the Bureau. It does not constitute legal interpretation, guidance, or advice of the CFPB. Any opinions or views stated by the presenter are the presenter's own and may not represent the Bureau's views. This document is being used in support of a live discussion. As such, it does not necessarily express the entirety of that discussion nor the relative emphasis of the topics therein.

And then finally, I do want to comment at the beginning of the presentation about the IFR about the litigation that many of you I'm sure are familiar with and may be a large question in your minds squirreling around all of this information is really the legal status of both the Centers for Disease Control eviction moratorium itself as well as the Bureau's interim final rule. I did want to address this upfront because of the pending litigation we're not able to comment really much at all on the details and the particulars as a matter of policy. But, I did want to address a couple of points upfront about this.

First, regarding the CDC eviction moratorium litigation, we're aware of the litigation. The Bureau is closely monitoring the litigation and its effects on the Bureau's FDCPA interim final rule. This does include the opinion from May 5th by Judge Friedrich in the DC District Court which vacated the CDC order nationwide. The Justice Department has filed a notice of appeal to the DC Circuit Court of Appeals and is seeking an emergency stay of the order of the District Court pending the appeal. The District Court also has granted and administrative stay of its order while it considers this motion.

Simply put, there's a lot that's in flux and there's litigation in multiple district courts across the country and in one or two cases it's going to be appeals court level as well. And these are fast-moving litigation developments so my update right now on this Friday in theory could be superseded by events very quickly. So this is just the update as of today.

The Bureau's FDCPA interim final rule that relates to the CDC order applies only to debt collectors, and we'll get into some more of the substance on this in a bit, but just to emphasize in the beginning it applies only to debt collectors "collecting the debt in any jurisdiction in which the CDC order applies." Likewise, the interim final rule only requires debt collectors to provide the required disclosures to a consumer to whom the CDC order reasonably might apply. Accordingly if the CDC order does not apply in a particular jurisdiction or with respect to a particular consumer due to a court order, the Bureau's FDCPA interim final rule does not apply.

Given the ongoing litigation in multiple jurisdictions, as I mentioned, which are in different procedural phases, the Bureau is not in a position at this time to comment further on the CDC order, litigation, and its effects if any on the FDCPA interim final rule. If you desire more specific information about these cases, please contact the Office of Public Affairs at the US Department of Justice.

Now, we understand there also may be questions about a lawsuit that was filed in District Court in Tennessee on May 3rd that challenges the Bureau's rule in contrast to litigation over the CDC order. The Bureau is opposing the motion for a temporary restraining order in this litigation and submitted a brief on May 10th for setting forth its legal arguments in support of this position. This brief may be found online through links in public news articles around the PACER court document system. This is ongoing litigation so we have no further comment.

I want to reemphasize the general point earlier that the interim final rule applies by its terms only to debt collectors collecting debt in a jurisdiction in which the CDC order applies.

With that out of the way, I would like to talk about more of the specifics of the IFR and the background. So, next slide, please. On September 4, 2020 the CDC published an agency order entitled Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19. Eviction moratoria protect public health in a number of ways. They encourage self-isolation by people who become ill or who are at risk for severe illness. Secondly, they allow state and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of the disease. Third, eviction moratoria limit the likelihood of individuals moving into close quarters in congregate or shared-living settings, such as homeless shelters, which then puts them at higher risk of contracting COVID-19. The CDC order was extended three times. In the most recent extension on March 29, 2021 the CDC order was extended to June 30, 2021.

Next slide, please. What does the CDC order do specifically? The CDC order generally prohibits a landlord or owner of the residential property or another person with a legal right to pursue eviction or possessory action from evicting for a nonpayment of rent any person protected by the CDC order from any residential property in any jurisdiction in which the CDC order applies. This prohibition applies without limitation to agents and attorneys acting on behalf of the landlord or an owner of the residential property.

There are some important limitations to the scope of the eviction moratorium, which I'd like to walk through right now quickly. First, it 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 the CDC order. It also does not apply, and I may have touched on this point at the beginning regarding the litigation, to the extent its application is prohibited by federal district court order.

Secondly, it does not cover evictions that are not based on the nonpayment of rent.

And third, it does not prevent the filing of an eviction action. The CDC order does prohibit the physical removal of a covered tenant from the property. As the FAQs issued by the CDC associated with the order make clear, "The order is not intended to terminate or suspend the operations of any state or local court, nor is it intended to prevent landlords from starting eviction proceedings provided that the actual physical removal does not take place during the period of the order."

Next slide, please. What does a tenant have to do to receive protections under the CDC order? To be covered by the CDC's eviction moratorium, a person must submit a written declaration under penalty of perjury attesting to certain eligibility criteria that generally establish that because of the person's financial situation the person is unable to make full rental payments and if evicted, likely would become homeless or would be required to move into a congregate or shared-living setting.

Notwithstanding the CDC order and its protections, the Bureau has concerns about ongoing eviction-related consumer harms, and these are the concerns underlying the action that we took with respect to the interim final rule. First, there are concerns that consumers may not have adequate awareness of the CDC eviction moratorium. The Government Accountability Office report analyzing the effectiveness of COVID-19 eviction moratoria found that some renters may not fully understand that they have to take action to become protected under the CDC order or may not understand all the required steps, including how to submit the required declaration. In the report, the GAO stated, "Clear, accurate and timely information" is "essential to keep the public informed during the COVID-19 pandemic."

Secondly, and like the first point, this is something that is discussed in the background section to the Bureau's interim final rule, the Bureau has received reports that when some renters attempt to exercise their rights under the CDC order they may be falsely informed that they are ineligible for the eviction protections or they may be discouraged from submitting a declaration. This feedback includes allegations that debt collectors have engaged in such eviction-related conduct. For instance, consumer advocates and legal aid organizations have reported instances of landlords' attorneys refusing to accept a signed tenant declaration when presented with one or advising landlords to have their property managers tell tenants who present a signed declaration that they're not eligible under the CDC order as a means of avoiding compliance with the order.

Next slide, please. So now I'm going to discuss more of the particulars of the Bureau's interim final rule. To address these concerns, on April 19, 2021, the Bureau published a rule to amend Regulation F, which implements the Fair Debt Collection Practices Act, or the FDCPA. The rule is intended to increase awareness of the CDC order and to clarify that certain misrepresentations related to the CDC order are prohibited.

There are two interventions in the interim final rule. Both of these have three predicate conditions. First, they apply to a debt collector collecting a debt in any jurisdiction in which the CDC order applies. Secondly, both interventions apply during the effective period of the CDC order. And third, both interventions apply when a debt collector is acting in connection with the collection of the debt.

The first intervention requires debt collectors to provide written notice to certain consumers that they may be eligible for temporary protection from eviction under the CDC order. The second intervention clarifies that a debt collector may not falsely represent or imply to a consumer that the consumer is ineligible for temporary protection form eviction under the CDC order.

Next slide, please. A very important point to the interim final rule relates to the scope of coverage and we've gotten a number of questions about this since the rule was released. So, who is a debt collector under the FDCPA and further, how does the rule relate to landlords and property owners? Since the interim final rule is based on FDCPA authority, it only applies to debt collectors as that term is defined in the FDCPA. Generally speaking, under FDCPA Section 8036, a person is a debt collector because the principal purpose of their business is to collect debts or because they regularly collect or attempt to collect debt.

There are some exceptions to this general definition but this is the basic framework. There is an exemption in this definition that would typically cover landlords or property managers. This is Section 8036(F)3 [ph]. Essentially what this exception says is that if you debt collect in default, you're a debt collector. If you merely collect delinquent debt, you're considered a servicer and generally would not be covered.

Attorneys who regularly engage in debt collection activity, even when that activity consists of litigation, can be debt collectors as defined in the FDCPA. And there's a Supreme Court case noted in the slide which stands for this proposition or supports this proposition. Therefore, attorneys who for example serve eviction notices or file eviction lawsuits on behalf of landlords to collect unpaid residential debt may be debt collectors.

An important point to remember is that landlords and residential property owners typically are not FDCPA debt collectors—this is due to the exception I noted earlier—and therefore, typically are not covered by the FDCPA. However, depending on the facts and circumstances, the interim final rule may cover agents and attorneys that act on behalf of landlords that those agents or attorneys are debt collectors as defined by the FDCPA. And just to reemphasize the earlier point, even if landlords and residential property owners and property managers are not covered by the FDCPA and therefore not directly covered by the Bureau's interim final rule, they would be covered under the CDC order itself.

Next slide, please. So now I'm going to give a little more detail about the notice requirement in the interim final rule. This is Section 1006.9(C)1. Section 1006.9(C)1 prohibits a debt collector from filing an eviction action for nonpayment of rent against a consumer to whom the CDC order reasonably might apply unless the debt collector discloses clearly and conspicuously and in writing that the consumer may be eligible for temporary protection from eviction under the CDC order. This disclosure must be provided on the date that the debt collector provides the consumer with an eviction notice or if no eviction notice is required by applicable law on the date that the eviction action is filed. In the rule, eviction notice "is a defined term." It means the earliest of any written notice that the laws of any state, locality, territory or tribal area required to be provided to a consumer before an eviction action against the consumer may be filed.

And the official interpretations or commentary to the rule come at 9B3-1 indicates that the term eviction notice includes for example notices to quit, notices to pay rent or quit, or notices to terminate tenancy. We understand that different jurisdictions have different nomenclature for these notices and this comment is attempting to account for that scope of those different types of notices.

Next slide, please. So there are a couple of additional details about this intervention. First, although the rule only requires a debt collector to provide the disclosure to a consumer to whom the CDC order reasonably might apply, the debt collector is not prohibited from providing a disclosure to a consumer even if the consumer might not reasonably be eligible to be a covered person under the CDC order. Plus, the rule does not require a debt collector to make an individualized determination as to a consumer's eligibility for protection under the CDC order. The background section or a preamble of the Bureau's rule goes into some detail about this.

As you know, the CDC order, and as I think I mentioned earlier, itself has five or six different specific eligibility criteria including income levels. And so we made clear in our rule that the debt collector is not required to do some sort of assessment of whether the individual consumer would actually meet those criteria given the complexity and the detail around those criteria. We're just saying that if they reasonably might apply then they have to give the disclosure.

Secondly, as mentioned, the disclosure must be clear and conspicuous. Clear and conspicuous means readily understandable. The location and type size also must be readily noticeable and legible, although no minimum type size is mandated.

Third, the disclosure must be provided on the date that the debt collector provides the consumer with an eviction notice or if no eviction notice is required by law on the date that the eviction action is filed.

Lastly, the rule does not require the disclosure to be provided more than once but it doesn't prohibit it either. The debt collector can provide the disclosure in each subsequent communication with the consumer.

Next slide, please. This is a particularly important point relating to housing counselors, as I'll walk through in a minute. So, the commentary for Section 1006.921 includes two sample language options that debt collectors may but are not required to use to comply with the disclosure requirement. So, again, the rule itself, 1006.921, provides the disclosure requirement which is rather general and high level in terms of how it's stated in the rule. The commentary gives some clarification additionally as to some sample language options that could be used but are not required to be used. The sample language alerts consumers to the possibility of protection from eviction, it prompts them to take follow-up steps and it directs them to further resources available on the Bureau's website and by telephone through the HUD Housing Counseling Program. Use of the sample language provides a safe harbor for the disclosure requirement. This is in comment 921-5.

So just to be more specific, there are two options again. The first option provides sample language that a debt collector may use to disclose that the consumer may be eligible for eviction protection solely under the CDC order. The sample language reads, "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."

The second option provides alternative sample language that covers the CDC order and other state or local moratoria. That language reads, "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."

While the rule does not require debt collectors collecting debt in jurisdictions with state or local moratoria to disclose those moratoria, the Bureau recognizes that a debt collector may nevertheless choose to do so. The Bureau also recognizes that a debt collector may be uncertain about whether the CDC order or a more protected moratorium applies so the second option provides alternative sample language that a debt collector may use to make a disclosure that covers both the CDC order and other laws. And again, this relates to the point I made earlier when describing the CDC order itself and how by its terms the CDC order did not apply in jurisdictions where there were more protective from a public health perspective moratoria at the state or local level, or tribal or territory level.

Our rule, the CFPB rule, clarifies that a debt collector does not violate the FDCPA merely because the debt collector provides this alternative sample language in a jurisdiction in which only the CDC order applies or in which the CDC order does not apply.

So again, I know that was a lot of information on this one slide but just to summarize, the rule has a high-level, general disclosure requirement. The commentary to the rule provides sample disclosure language, two different options are given, one which debt collectors may but are not required to use. One would only disclose the possibility of protection under the CDC order or federal law. The second would also cover state or local or territorial or tribal moratoria. And, there are specific callouts in the sample disclosure language for the CFPB's website, which has eviction resources, as well as HUD's phone number to reach a housing counselor. The preamble discusses the reasons for having these two different resources that are pointed to.

Next slide, please. I just want to talk briefly about the second intervention. This is in Section 1006.9(C)2, false or misleading statements about consumer ineligibility for protection. This clarifies that a debt collector may not falsely represent or imply to a consumer that the consumer is ineligible for temporary protection from eviction under the order. It specifically identifies a false, deceptive or misleading representation in connection with the collection of the debt and therefore is consistent with the existing prohibitions in FDCPA Section 807.

Next slide, please. We're getting close to the end of discussing the IFR, so just a couple of points on what the IFR doesn't do. First, it does not prohibit eviction filings as long as the disclosure is provided. As I noted earlier, the CDC order itself does not prohibit such filings. Second, and this is something I touched on just a couple minutes ago, it does not require debt collectors to disclose any state, local, tribal or territorial moratoria. However, the IFR does provide sample language for debt collectors who wish to do so.

There are reasons a debt collector may wish to do so, and this is discussed as well in the background section of the IFR. In light of the large number of potential state, local, territorial or tribal moratoria, the Bureau did not make a finding in the rule about whether it is unfair or deceptive under the FDCPA for a debt collector in the jurisdiction in which another moratorium applies not to disclose that moratorium. Nevertheless, a debt collector's failure to disclose such information to a consumer could violate the FDCPA's prohibitions on deception around fairness for the same reasons discussed in the interim final rule with respect to the failure to disclose the CDC order.

In addition, there may be some uncertainty as to whether the CDC order or the other moratoria apply. Consequently, as discussed earlier, the rule includes sample language for a debt collector to disclose both, the CDC order and other eviction moratoria.

Finally, the Bureau has not taken a position on whether the rule violations are an eviction defense. Noncompliance with the rule is not necessarily an eviction defense. The debt collector's failure to comply with the disclosure requirement is a violation of the FDCPA. A debt collector who violates the disclosure requirement may be subject therefore to statutory damages, actual damages and reasonable attorney's fees under the FDCPA. However, remedies under the FDCPA may be distinct from eviction defenses under landlord tenant law. Whether any FDCPA violation provides grounds for an eviction defense is likely a question of state or local law. The answer to this question likely involves interactions between the CDC order, the FDCPA and state and local law.

Next slide, please. The effective date for the interim final rule was May 3, 2021. The interim final rule will be in effect for the duration of the CDC order. In the event the CDC further extends the order, the Bureau expects that the requirements and prohibitions in the interim final rule will continue to apply until the expiration of any such extension.

With that, I'd like to turn it back to Bev.

Beverly

Thanks so much, Mike. I recognize that many of you may be familiar with some of the links that I've shared in Chat. Certainly appreciate you sharing them with the people you work with and links to information on websites from other organizations, I've shared those to be helpful but we have not reviewed everything for accuracy. The information and views expressed on those websites belong to the groups posting that information.

So let's talk about our resources. You can visit the housing portal yourself at this link in the Chat. We're hosting an interagency housing portal with information for both homeowners and renters here. You'll see that, and from the screenshot below that it hosts information for renters, for homeowners who are struggling to pay their mortgage and for those who are already in forbearance. It pulls together information from several housing agencies in one place and it's the result of an ongoing collaboration with HUD, of course, and also with the FHFA, VA, and USDA. The information is also available in several languages, so I'll say more about that later.

Next slide. Some of the topics that we cover are avoiding eviction, getting help with rent and utilities, making a plan to catch up, knowing your tenant and debt collection rights, and also talking to a local expert. That's you, by the way.

Next slide, please. On our page about the CDC moratorium, you can watch a short video or share that video with renters and this is about how to use the CDC declaration. It also covers eligibility and what the declaration really says.

The next slide we talk about debt collection rights and other tenant rights that people may have. So, we describe the rule that Michael covered earlier and also provide links to learn more about state and local rights, information about rights that survivors of domestic violence may have, housing discrimination rights, and also links to find help or submit complaints about any of these situations. I'll say more about submitting complaints in a bit.

Resources on the next slide are available in several languages, and so they are now available at least in Spanish, Chinese, Vietnamese, Korean, Tagalog, and Arabic languages. We are working to provide more.

Next slide. As most of you know already, Congress has appropriated over $45 billion to help renters pay for housing costs and an additional $5 billion for light, heat [ph] funding. Of the funds dedicated to federal emergency rental assistance, money can be used to cover rent, utilities and other housing costs, including late fees, security deposits and moving costs, costs of finding new housing. The payments usually go directly to landlords and utility companies and money may be available to help with moving costs, as I said earlier. Treasury recently issued new guidance and I'll talk about that next but you can visit a rental assistance directory from the National Low Income Housing Coalition and I'll put that link in Chat but you are probably quite familiar with the programs in your own area.

On the next slide, you'll see a screenshot of the NLIHC rental assistance directory. As I said, you're probably familiar with your own programs locally. You may also be aware that on May 7th Treasury announced new guidance on how the funds can be distributed. So, I'll put some links in Chat about that.

If you're not already familiar, a brief overview, the rules generally depend on the source of money. So Treasury refers to the rules as ERA1 and ERA2. ERA1 applies to the first pot of money from the Consolidated

Appropriations Act, and ERA2 to money from the American Rescue Plan. For, ERA1, the money that's currently being distributed around the country, the new guidance cuts in half the wait time for assistance when landlords don't participate. So, instead of waiting 14 days when reaching out by mail or 10 days when reaching out by phone, text, or email, now those wait times will be cut in half to 7 days and 5 days respectively. For both ERA1 and ERA2 distribution, if landlords receive direct payments for future rent, tenants cannot be evicted for not paying rent during the month covered by that rental assistance. And, that was effective May 7th when this guidance was issued.

In situations where landlords receive direct payments for back rent, programs are encouraged to prohibit eviction for nonpayment during those covered months. The guidance also encourages assistance to renters finding new housing, which has always been allowed but it just renews that encouragement and again that can cover security deposits, future rent, moving expenses, and temporary stays in a motel or hotel for families that have been displaced.

For ERA2, the second pot of money, the funds can be distributed directly to renters first and immediately without reaching out to landlords first, and programs can't deny assistance to eligible tenants just because they live in federally subsidized housing. We're working to make sure consumers understand how ERAP works and so you can look out for additional resources on our housing portal soon.

I realize we're running out of time so on the next slide just to say that here's where we're referring people for help. That's directly to you. Thank you.

And, on the next slide after that, complaints can be directed, depending on the issue that the person is experiencing, to these various forces.

On the next slide, we turn to sharing our resources and for instance we have created a social media toolkit that we can share after this webinar. It should make it easy for you to share links to our resources. I'm putting our renter page, the CC [ph] video in English and Spanish and other resources.

We also have a flyer on the next slide that you can order in bulk to be mailed to you or you can download copies to print yourself.

Now, I'll turn to questions. I realize we have very little time left but thank you.

Virginia — If you have questions, [audio drops].

Tammy — Hi, this is Tammy Dunn. There are a couple of questions in the Chat. The first one is two parts. "Would a landlord renovating a property be exempt or would someone with domestic violence protection be protected from such eviction?"

Beverly — [overlapping voices]

Michael — You can go ahead, Bev.

Beverly — Sorry, I'll let Mike answer the first part of that question but when it comes to domestic violence, there are some federal rules that protects people from eviction on the basis that they have been the victim or a survivor of domestic violence. So when there's an act of domestic violence committed against them that in itself cannot be the basis for eviction. We talk more about that on the website and provide links to file complaints.

Now Mike can talk to the first part.

Michael Thanks, Bev. So if I understand the question correctly, I believe this goes to the scope of coverage not of the Bureau's rule but rather of the CDC order itself. And, we're not best positioned to comment on the definitions in the CDC—we're relatively familiar with them but this seems—I'm not trying to evade the question but it seems like a technical question relating to the order itself.

I mean, I know that the order and its terms covers landlords and residential property owners and agents or attorneys. Those are separate terms used in the CDC order so you can draw conclusions about whether someone renovating a property, if they own the property, if they're managing the renovation of the property, those would presumably—the details would matter in terms of whether they fall within the definitions of the CDC order. But beyond that, I wouldn't want to draw a legal conclusion about the coverage of that order because it's not our order as the CFPB.

Tammy Thank you. We have another question. "Would you review again what a debt collector, as defined, responsibility is in states that have their own moratoriums?"

Michael Sure. This again is predicated on the scope of coverage of the CDC order itself. The CDC 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 the CDC order.

So, our rule built on that foundation in that sense by—the newest [ph] requirement prohibits a debt collector from filing an eviction action for nonpayment of rent against the consumer to whom the CDC order reasonably might apply. And so, there's some discussion in both the background preamble section of our rule as well as the official interpretation or commentary that speaks to debt collector obligations around the interaction of the CDC order and the state or local or tribal and territorial moratoria.

And as I mentioned earlier, the official interpretation commentary to Section 1006.921 has two sample language options that debt collectors may but are not required to use when complying with the disclosure requirement. And the second one would provide the language that would cover both federal and state or local, tribal or territorial moratoria. It's basically potentially an over-inclusive disclosure which we provide as an option for various reasons.

Number one that in a given case there may be some question about whether the federal or the state or local applies. Again it turns on the CDC order itself, which is more protective from the public health perspective. So there may be some question about that. And then secondly, there's possible FDCPA implications to failure to disclose an applicable state or local moratoria. We didn't draw a finding per se that it's a violation of the FDCPA to not disclose them but we discussed how there are risks to not disclosing them. So we do give the option and I believe we wrote in the background that we in fact expect or expected that most debt collectors would probably choose to provide the broader disclosure just to cover all of their bases.

These are third-party resources so we can't represent to their accuracy or completeness but I know there are third-party resources, such as Eviction Lab and also another website, we can find the name and pass it along if necessary, that is a legal aid consortium that has information online about state and local and other moratoria and whether they're applicable in different places. So, there's information out there but our rule accounts for this uncertainty and allows for a broader disclosure than maybe is necessary.

Tammy	Thank you so much. We're out of time. So there's a couple other questions but we will get answers to you in a week or so, via email. I will hand it back to Virginia Holman.

M	Ginger, you may be on mute right now.

Virginia	You are so right. I am on mute. I was being perfectly brilliant. [Audio drops] we'll always have. CFPB will continue to give us their resources that we can pass on to you. They have a lot of great resources on all of this.

Just as an FYI, as I said all of our webinars are in HUD Exchange in the webinar section. If in the future you want to take one, you can view it and actually click on this little green button and get credit in the HUD Exchange curriculum for that training.

And just before you go, if you would just again go to the Question box and just give us your comments. Was the webinar useful to you, to your clients? Are you going to share the information? And then any other comments that you might have. We like to get your feedback so that we continue to provide the training and information that you like and need.

Again, here are some of our basic resources: the HUD Exchange, which I'm sure you all use; housing.counseling@hud.gov for questions and comments. Don't forget if you have not taken the certification [background noise] you need to do that by August 1st. Here's the website, HUDhousingcounselors.com, where you can get the information on that training and the exam.

And again thank you for attending. We always like to do these for you and thank the folks from CFPB for helping put this together. Thank you very much.

Moderator Ladies and gentlemen that does conclude your conference for today. Thank you for your participation and for using AT&T Conference Service. You may now disconnect.