



Council for Affordable and Rural Housing

Serving the Affordable Housing Needs of Rural America

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VIA E-MAIL: (nancieann.bodell@usda.gov)

Ms. Nancie-Ann Bodell
Deputy Administrator
Multifamily Housing, Rural Development
United States Department of Agriculture
1400 Independence Avenue, SW
Room 5014, STOP 0701
Washington, DC 20250-0701

Re: CARES Act Section 4024(c) Is No Longer In Effect

Dear Ms. Bodell:

Thank you for the opportunity to informally confer over the past few weeks on various topics. I would like to reach out on another topic, and review more formally with you. We appreciate the explanations about recent notice multifamily owners received about the Agency's position about 30-day notices. The language at issue is:

Section 4024(c)1 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) states 'The lessor of a covered dwelling unit may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate'. This protection is not time limited by the CARES Act and does not expire. Many states already require a 30-day notice for evictions; however, if your property is in a state without that restriction, this change must be implemented immediately. The Agency is in the process of updating the Handbooks to include this requirement.

We believe further discussion is warranted and, we respectfully request the Agency publish a notice withdrawing this instruction. We are writing because this instruction is very clearly not accurate. It may or may not become material because we expect that most state and local laws already provide for such notice—and at this time the CDC Order imposing an eviction moratorium for non-payment of rent evictions likely moots any such notice issue. Moreover, CARH members are keenly aware that the tenants are their customers and there is much effort to work with tenants and to avoid unnecessary evictions. Still, stating that there is a new federal 30-day eviction notice will confuse matters because, as we hope you will agree, below, there is no such statute in effect.

The 30-day notice is not an independent statutory provision that applies to covered properties for all time. From the plain language of Section 4024, subsection (c) is integrated into and part of this

single section. Section 4024 provided a one-time 30-day notice for causes of eviction arising during the specified 120-day time period. In no uncertain terms, the 30-day time period is time limited.

Section 4204 is one section with three constituent components. Each of the three subsections rely on one another and reasonably cannot be separated. Subsection (a) is the definitions section defining what Section 4024 applies to. Subsection (b) is the actual eviction moratorium. By its term is time limited, 120 days beginning March 27, the date of the enactment of the CARES Act and Section 4024, and ending 120 days later on July 24. Subsection (c) contains the notice provisions, but the plain language is clearly tied into the rest of Section 4024's 120-day time period. Subsection (c)(1) provides that after the end of this 120-day period, the owner cannot require the tenant vacate "before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate". Subsection (c)(2) then provides the notice cannot issue until after the 120-day period in (b).

This 30-day notice refers only to grounds arising in relation to that 120-day period. There is no language in any respect that indicates that 30 days applies ad infinitum or gives subsection (c) separate and independent vitality. Attachment A is the text of Section 4024.

Clearly, Section 4024 "prohibited eviction of tenants from "covered dwellings" for failure to pay rent (or fees associated with failing to pay rent) during the period between March 27 and July 24. That provision, of course, has expired. Second, it prohibited landlords from charging such tenants fees related to late payment of rent. Finally, it prohibited landlords from giving tenants notice to vacate during the moratorium period and required at least thirty days for notices given after the moratorium expired. If default occurred after July 24, the 30-day notice requirement under 4204 does not apply.

Dona Lewandowski, JD, UNC School of Government, "Summary Ejectment in the Time of Covid, Part 1: The CARES Act, <https://civil.sog.unc.edu/the-cares-act-eviction-moratorium-expired-so-why-am-i-still-seeing-this-affidavit/> (October 8, 2020). It is clear that Subsection (c) "bars those landlords from issuing a notice to vacate during the 120-day period." "Cares Act Eviction Moratorium", Congressional Research Service, <https://crsreports.congress.gov/product/pdf/IN/IN11320> (April 7, 2020).

A similar issue has been very recently litigated and the relevant points of statutory interpretation have been recently addressed on a related point of the CDC Order. The federal District Court in the Northern District of Ohio ruled last week in *Skyworks, Ltd. v. Centers for Disease Control*, Case No. 5:20-cv-2407 (March 10, 2021), on a similar argument there that cherry-picking authorities is an improper agency action. There the Court noted the basic tenets of statutory interpretation, we must look at the statutory language itself, and where the language is plain, there is no room for further interpretation:

When construing a statute, the Court determines and gives effect to the intent of Congress as expressed in the statute it enacted. *See, e.g., Donovan v. FirstCredit, Inc.*, 983 F.3d 246, 253 (6th Cir. 2020) (citations omitted). The Court begins "where all such inquires must begin: with the text of the statute itself." *United States v. Ron Pair Enters., Inc.*, 489 U.S.

235, 241 (1989) (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985)). Where the statute's language is plain, the inquiry also ends with the text.

Id. (emphasis added). We cannot look at isolated words or phrases taken out of context. We must consider the entire text of Section 4024. When viewed, in context, we see a single legislative instruction, defined, limited in duration and scope, with a notice provision integrated to occur at the expiration of the 120-day moratorium period. Nothing more

When reading a statute, the Court “consider[s] the entire text, in view of its structure and of the physical and logical relation of its many parts.” *Hueso v. Barnhart*, 948 F.3d 324, 333 (6th Cir. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 24, at p. 167 (2012)). A court may not look to isolated words or phrases taken out of context to determine a statute's meaning, but instead must account for both the specific text and the broader scheme. *Gundy v. United States*, 139 S. Ct. 2116, 2126 (2019) (citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U. S. 365, 371 (1988); *Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 321 (2014)).

Id. (emphasis added).

Following these clear precedents in statutory interpretation leads to one unmistakable conclusion--Section 4024 is a single section providing a single, finite 120-day moratorium with a one-time notice procedure. The statutory text is plain and clear on its face and not reasonably susceptible to any other conclusion. There was a single moratorium against eviction for nonpayment of rent, it existed from March 27, 2020 to July 24, 2020.

Eviction (or other action ordering a tenant to vacate) could thereafter be instituted on a 30-day notice. The only relevant eviction process would be one where grounds to evict for nonpayment arose during that 120-day time period. There is no language that authorizes any part of this Section to apply to any other grounds for eviction or any event of nonpayment before or after the 120-day period.

Accordingly, this the above-noted RD statement is clearly in error and a misapplication of law. We respectfully request RD withdraw that statement. We appreciate your time and attention to this matter.

Sincerely,



Colleen M. Fisher
Executive Director

Attachment A

SEC. 4024. TEMPORARY MORATORIUM ON EVICTION FILINGS.

(a) DEFINITIONS.—In this section:

(1) COVERED DWELLING.—The term “covered dwelling”

means a dwelling that—

(A) is occupied by a tenant—

(i) pursuant to a residential lease; or

(ii) without a lease or with a lease terminable under State law; and

(B) is on or in a covered property.

(2) COVERED PROPERTY.—The term “covered property” means any property that— (A) participates in—

(i) a covered housing program (as defined in section

41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a))); or

(ii) the rural housing voucher program under section 542 of the Housing Act of 1949 (42 U.S.C. 1490r); or

(B) has a—

(i) Federally backed mortgage loan; or

(ii) Federally backed multifamily mortgage loan. (3) DWELLING.—The term “dwelling”—

(A) has the meaning given the term in section 802 of the Fair Housing Act (42 U.S.C. 3602); and

(B) includes houses and dwellings described in section 803(b) of such Act (42 U.S.C. 3603(b)).

(4) FEDERALLY BACKED MORTGAGE LOAN.—The term “Federally backed mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1 to 4 families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(5) FEDERALLY BACKED MULTIFAMILY MORTGAGE LOAN.— The term “Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that—

(A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) MORATORIUM.—During the 120-day period beginning on the date of enactment of this Act, the lessor of a covered dwelling may not—

(1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or

(2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.

(c) NOTICE.—The lessor of a covered dwelling unit—

(1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and

(2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).