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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

August 10, 2021

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Comptroller Dodaro:

On August 3, 2021, the Center for Disease Control and Prevention (CDC) issued an eviction moratorium titled “Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community Transmission of COVID-19 to Prevent the Further Spread of COVID-19.”¹ I write to seek your determination of whether the eviction moratorium constitutes a rule for purposes of the Congressional Review Act (CRA).

As you are aware, the CRA relies on the definition of “rule” found in 5 U.S.C. § 551(4):

‘[R]ule’ means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

Based upon this broad definition, the Government Accountability Office (GAO) has rightly pointed out that “agency pronouncements may be rules within the definition of 5 U.S.C. § 551, and the CRA, even if they are not subject to notice and comment rulemaking requirements under section 553.”² Though the CDC did not pursue notice and comment rulemaking, the eviction moratorium appears to be generally applicable, prospective in nature, and designed to interpret law. For these reasons, I respectfully request that you evaluate whether the eviction moratorium is a “rule” under the CRA.

¹ Center for Disease Control and Prevention, Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community Transmission of COVID-19 to Prevent the Further Spread of COVID-19 (Aug. 3, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>.

² Gen. Accountability Office B-323772, at 3 (Sept. 4, 2012), available at <https://www.gao.gov/assets/b-323772.pdf>.

Furthermore, since the CDC's eviction moratorium is having a significant impact on the legal and property rights of landlords and renters, please respond determinatively by August 16, 2021. I stand ready to assist and answer any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Pat Toomey". The signature is written in a cursive style with a large, looping initial "P" and a long horizontal stroke extending to the right.

Pat Toomey
Ranking Member