



**Oversight of Multifamily
Borrowers' Compliance with
CARES Act and Freddie Mac
Tenant Protections and
Freddie Mac's Response to the
Potential Financial Impact of
COVID-19**



OIG-2022-003

March 24, 2022

Executive Summary

Congress chartered Freddie Mac to, among other things, “provide stability in the secondary market for residential mortgages” and “increas[e] the liquidity of mortgage investments and improv[e] the distribution of investment capital available for residential mortgage financing.” Freddie Mac’s multifamily business “provides liquidity and support to the multifamily mortgage market through a variety of activities that include the purchase, securitization, and guarantee of multifamily loans . . .”

In March 2020, the onset of the COVID-19 pandemic prompted Congress, FHFA, and Freddie Mac to act to protect the interests of tenants in multifamily properties financed by federally backed multifamily mortgage loans. Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act), which imposed a 120-day moratorium that prohibited all borrowers with federally backed multifamily loans (referred to in this report as “borrowers,” “lessors,” or “landlords”) from filing legal actions to recover possession of a covered dwelling unit from a tenant solely due to the nonpayment of rent or other fees or charges. The Act also prohibited multifamily borrowers whose loans were in forbearance from evicting tenants, or initiating eviction actions against tenants, during the forbearance period solely for the nonpayment of rent. Freddie Mac’s forbearance program provides the same tenant protections and also requires borrowers in forbearance to notify eligible tenants in writing and inform them of the available protections. In June 2020, at FHFA’s direction, Freddie Mac expanded its tenant protections requirement for borrowers entering into a forbearance to allow tenants to pay back missed rent payments over a “reasonable time,” rather than in one lump-sum payment at the end of the forbearance period.

When Freddie Mac announced its multifamily forbearance program in March 2020, it stated that the program “can provide relief for up to 4.2 million renters across more than 27,000 properties.” Ultimately, borrowers for only a small fraction of those properties have sought and received temporary forbearance from making mortgage payments: about 5 percent of outstanding Freddie Mac loans received forbearance; of these, about 0.7 percent remained in forbearance and about 13 percent were in their repayment phase as of January 25, 2022, according to Freddie Mac. Approximately 26,250 rental units remain covered by some form of the program’s tenant protections.

We undertook this special project, in part, to determine how Freddie Mac monitored multifamily servicers’ and borrowers’ compliance with the CARES Act’s and Freddie Mac’s forbearance program tenant protections. A Freddie Mac representative informed us that Freddie Mac does not actively monitor multifamily borrowers’ compliance with legal requirements. Instead, Freddie



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Mac relies on primary mortgage servicers, typically the seller/servicer that originated the loan, to conduct the routine administration of the loan. In addition, according to Freddie Mac, it does not have the legal authority or the ability to directly enforce a multifamily borrower's compliance with the CARES Act. FHFA shared this view. FHFA's former Director explained in a 2020 response to a Senate inquiry: "Because [Freddie Mac is] not part of the tenant/landlord relationship, compliance with the CARES Act eviction moratorium is primarily the responsibility of the property owner. The CARES Act does not identify a direct enforcement mechanism, and [Freddie Mac does] not have legal standing to intervene in an eviction proceeding."

However, Freddie Mac's loan agreements require multifamily borrowers to comply with "all laws, ordinances, rules, regulations and requirements of any Governmental Authority having jurisdiction over the Mortgaged Property" Freddie Mac interprets this provision to include the CARES Act. Freddie Mac's forbearance agreements include comparable provisions.

As of August 2021, Freddie Mac has required certain borrowers to certify their compliance with the tenant protection requirements set forth in the CARES Act or other similar laws. This requirement only applies to loans that Freddie Mac owns or for which it serves as master servicer, a relatively small portion of the loans it has financed. The Enterprise plans to audit servicers' receipt and maintenance of the required certifications in 2022.

In 2020, FHFA forwarded to Freddie Mac allegations it received from a nonprofit group that asserted Freddie Mac borrowers may have violated the CARES Act moratorium on evictions. The Enterprise took action to investigate these and other allegations that its borrowers violated the Act or its forbearance agreements. Freddie Mac worked with its servicers to investigate 83 allegations. According to its tracking database, servicers issued three "reservation of rights" letters to borrowers, at Freddie Mac's request, to document the potential violations of the CARES Act.

Freddie Mac officials told us that there may have been more violations, but Freddie Mac personnel did not communicate directly with the borrower and property manager and could not request more information from them to make a determination. According to Freddie Mac, some possible violations did not warrant further action given their outcome. Freddie Mac generally did not treat an eviction notice or eviction filing made during the moratorium as a violation of the CARES Act if the landlord later cancelled the eviction or the tenant moved out after receiving an eviction notice. Its tracking database recorded 19 instances of "cancelled evictions" and 14 instances where the tenant moved out after receiving an eviction notice; in total, about 40 percent of the investigated allegations.



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We also undertook this special project to assess how Freddie Mac forecasts evictions and estimates their potential financial impact on the Enterprise and its lender counterparties. Freddie Mac explained that it does not forecast evictions directly because of the limited amount of data. Instead, it prepares forecasts using third-party occupancy and vacancy data, which incorporate evictions, to assess the strengths and weaknesses of the multifamily market, and Freddie Mac monitors its multifamily properties' income and vacancy levels through financial reports. As part of its risk management, Freddie Mac temporarily imposed debt service reserve requirements on borrowers for certain loans to ensure that they had funds available to make principal (if applicable) and interest payments should the property experience economic stress due to the pandemic. Freddie Mac also increased its multifamily loan loss reserves during 2020. FHFA stated that it is confident that Freddie Mac's multifamily portfolio is "not seeing significant credit risk at this time."

We concluded that Freddie Mac does not actively monitor its borrowers' compliance with the tenant protections of the CARES Act or its forbearance agreements. Freddie Mac states that it does not have the authority or ability to directly enforce the CARES Act and it relies on servicers to administer its forbearance agreements. It also relies on its servicers to conduct the investigations into allegations of borrower noncompliance with the CARES Act or its forbearance agreements. Freddie Mac emphasized that borrowers are obligated under the loan documents to comply with applicable law. In limited circumstances, borrowers supply certifications of their compliance and servicers collect them on Freddie Mac's behalf. Freddie Mac asserted that it plans to audit the servicers' processes for doing so.

We make no recommendations in this report.

This report was prepared by Jon Anders, Lead Program Analyst, and Jason Ramserran, Program Analyst, with assistance from Angela Choy, Assistant Inspector General for Evaluations. We appreciate the cooperation of FHFA staff, as well as the assistance of all those who contributed to the preparation of this report.

This report has been distributed to Congress, the Office of Management and Budget, and others and will be posted on our website, www.fhfaig.gov, and www.oversight.gov.

/s/

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ABBREVIATIONS

CARES Act or the Act	Coronavirus Aid, Relief, and Economic Security Act
Enterprises	Fannie Mae and Freddie Mac, collectively
FHFA or the Agency	Federal Housing Finance Agency
Forbearance Program	Freddie Mac's COVID-19 Forbearance Relief Program
OCA	FHFA's Office of the Chief Accountant

BACKGROUND

Freddie Mac's Multifamily Business Model

Congress chartered Freddie Mac to, among other things, “provide stability in the secondary market for residential mortgages” and “increas[e] the liquidity of mortgage investments and improv[e] the distribution of investment capital available for residential mortgage financing.”¹ Freddie Mac’s multifamily business “provides liquidity and support to the multifamily mortgage market through a variety of activities that include the purchase, securitization, and guarantee of multifamily loans . . .” According to the Enterprise, its “primary business model” in multifamily housing “is to acquire loans that lenders originate and then pool those loans into mortgage-related securities . . .”

As a participant in the secondary mortgage market, Freddie Mac does not lend directly to borrowers.² Rather, the Enterprise directly engages with lenders, mortgage servicers, and investors. On the lender side, Freddie Mac purchases multifamily loans from an approved network of about 30 lenders. Although Freddie Mac holds a number of multifamily loans in portfolio, the Enterprise principally purchases multifamily loans for the purpose of pooling them into securities, which it then sells to investors.³ The administration of Freddie Mac’s multifamily securities involves multiple parties, including a master servicer and a primary servicer, usually selected by Freddie Mac.⁴

During the securitization process, Freddie Mac typically sells a pool of multifamily loans to a third-party securitization trust that issues bonds based on those loans; after which, Freddie Mac no longer retains an ownership interest in the loans. For its most common securitization structure, known as a “K-Deal,” Freddie Mac sells multifamily loans to a third-party trust, purchases certain bonds issued by the trust, and deposits them into a separate Freddie Mac trust. (See Figure 1, below.) It then sells guaranteed “K Certificates” to “senior bond investors” that are backed by those guaranteed bonds. The senior bonds are the first to

¹ See Federal Home Loan Mortgage Corporation Act, Sec. 301(b)(1), (3) (Pub. Law. 91-351, as amended).

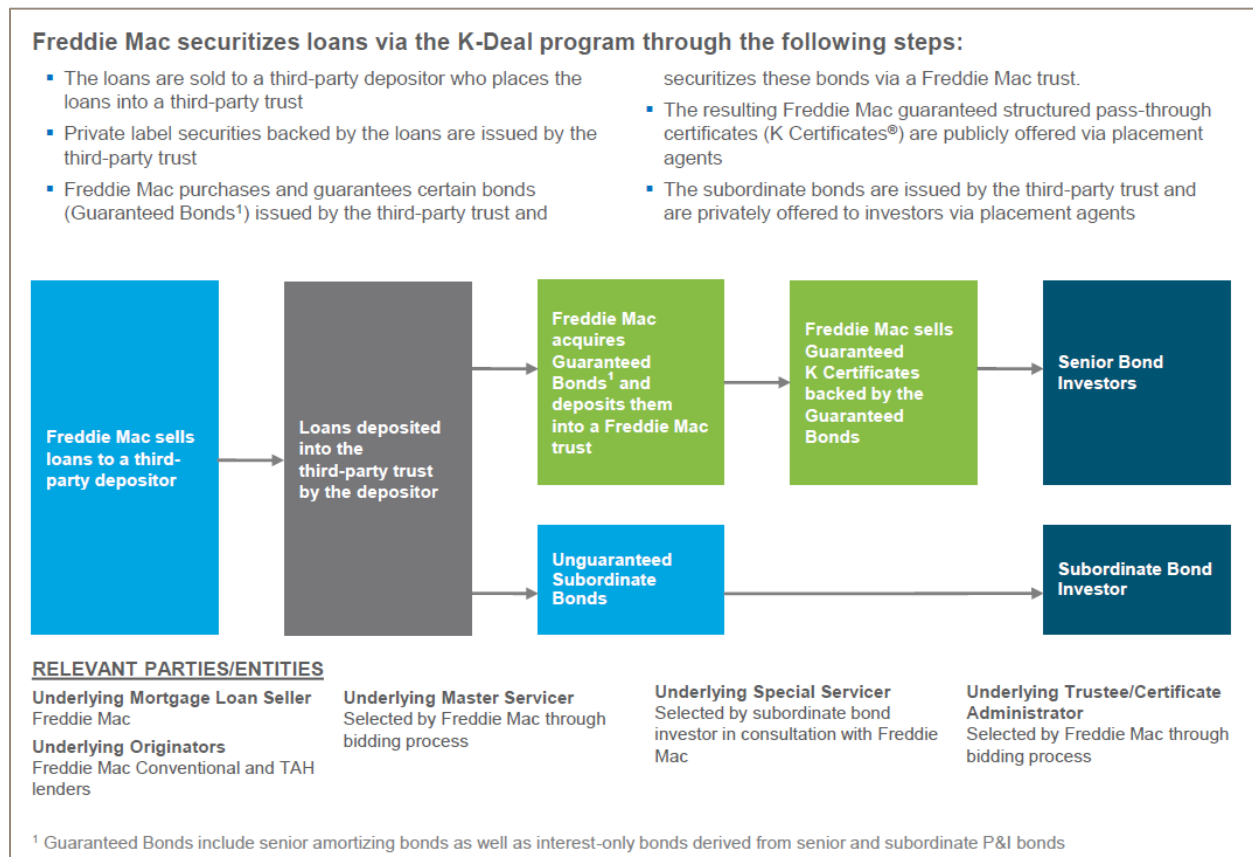
² According to Freddie Mac, multifamily borrowers are commercial entities, such as property developers, and not individuals, as is the case in single-family lending. FHFA told OIG that borrowers in the Enterprises’ multifamily business typically are entities that have the property as their only asset.

³ As of September 30, 2021, approximately 98% of the Enterprise’s multifamily loan purchases were intended for future securitization.

⁴ A master servicer is responsible for servicing the loan on behalf of a securitization trust. The master servicer, among other things, collects payments from borrowers, passes on funds to trustees, provides loan performance reports to bondholders (investors), and oversees the activities of the primary servicer. The primary servicer is responsible for the day-to-day administration of each multifamily loan, such as collecting mortgage payments and monitoring the financial and physical operation of the property that serves as collateral for the loan.

receive bond payments and would be the last to incur losses, if they had not been guaranteed by Freddie Mac. Freddie Mac settled \$63.5 billion in K-Deal securities in 2021, representing 78 percent of its securitization volume.

FIGURE 1: FREDDIE MAC'S K-DEAL SECURITIZATION PROCESS



Source: Freddie Mac, *Multifamily Securitization Overview Investor Presentation*, at 38 (Sep. 30, 2021).

FHFA's Role as Supervisor and Conservator of Freddie Mac

FHFA, created by Congress in 2008, is charged by the Housing and Economic Recovery Act of 2008 with supervision of Fannie Mae and Freddie Mac (together, the Enterprises). Its mission is, among other things, to ensure that the Enterprises operate safely and soundly so that they serve as a reliable source of liquidity and funding for housing finance and community investment.⁵

In September 2008, FHFA placed the Enterprises into conservatorship because FHFA determined that their deteriorating earnings and capital threatened their ability to operate in

⁵ See generally, 12 U.S.C. § 4513 (duties and authorities of the FHFA Director).

a safe and sound manner and fulfill their statutory mission.⁶ FHFA succeeded to “all rights, titles, powers, and privileges of the [Enterprises], and of any stockholder, officer, or director . . .” of each Enterprise.⁷ As conservator, the Agency has the power to take actions necessary to put each Enterprise in a “sound and solvent condition,” and actions appropriate to carry on the Enterprises’ business, and to preserve and conserve their assets and property.⁸ When acting as conservator, FHFA states that it “has the powers of the management, boards, and shareholders of Fannie Mae and Freddie Mac” and, through defined delegations of authority to the Enterprises’ respective boards of directors, allows “Fannie Mae and Freddie Mac [to] continue to operate as business corporations.”⁹

The Onset of the COVID-19 Pandemic Prompted Congress, FHFA, and Freddie Mac to Act to Protect the Interests of Tenants in Multifamily Properties Financed by Federally Backed Multifamily Mortgage Loans

The early stages of the COVID-19 pandemic brought widespread economic disruption in what Freddie Mac has described as “the most severe, yet shortest, recession our nation has ever seen.”¹⁰ The U.S. Bureau of Labor Statistics reported that employment levels fell sharply in the spring of 2020 at the onset of the COVID-19 pandemic. The unemployment rate rose quickly and by April 2020, it spiked to 14.8 percent, the highest level since 1948, driven by over 22 million job losses from January through April 2020, according to the Congressional Research Service.¹¹ It reported in October 2021 that these pandemic job losses were more likely to fall on renters than homeowners, which threatened their housing.¹² The report noted

⁶ See [Statement of FHFA Director James B. Lockhart at News Conference Announcing Conservatorships of Fannie Mae and Freddie Mac](#) (Sept. 7, 2008); [Statement by Secretary Henry M. Paulson, Jr. on Treasury and Federal Housing Finance Agency Action to Protect Financial Markets and Taxpayers](#) (Sept. 7, 2008). Through the Senior Preferred Stock Purchase Agreements with the U.S. Department of the Treasury, as amended, each Enterprise was provided access to over \$200 billion of Treasury support. Through December 2021, the Enterprises together have received \$191.5 billion in taxpayer-funded draws under those agreements. See FHFA, [2020 Annual Report to Congress](#), at 1 (June 15, 2021).

⁷ 12 U.S.C. § 4617(b)(2)(A). The full text of the statute reads, “The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to (i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and (ii) title to the books, records, and assets of any other legal custodian of such regulated entity.”

⁸ See 12 U.S.C. §§ 4617(b)(2)(A)(i), (b)(2)(B)(iv), and (b)(2)(D).

⁹ See FHFA’s webpage on Conservatorship – “FHFA’s Role as Conservator” (online [here](#)) (accessed Feb. 24, 2022).

¹⁰ Freddie Mac, [2022 Multifamily Outlook](#), at 4 (Jan. 7, 2022).

¹¹ Congressional Research Service, [Unemployment Rates During the COVID-19 Pandemic](#), at 2, 5 (Aug. 20, 2021).

¹² Congressional Research Service, [Pandemic Relief: The Emergency Rental Assistance Program](#), at 1 (Oct. 21, 2021).

that, in response to the Household Pulse Survey conducted by the U.S. Census Bureau, millions of renters reported they had issues paying their rents and were facing eviction.¹³

Congress Established Protections for Tenants Residing in Properties Secured by Federally Backed Multifamily Mortgage Loans Under the Coronavirus Aid, Relief, and Economic Security Act

Congress enacted the CARES Act on March 27, 2020, to respond to the economic and public health impacts of the pandemic. The CARES Act contained two provisions—sections 4023 and 4024—that provided eviction protections to tenants residing in an applicable property that had a “federally backed multifamily mortgage loan.” The Act defined “federally backed multifamily mortgage loan” to include, among other things, a multifamily mortgage loan that is purchased or securitized by Freddie Mac or Fannie Mae.¹⁴ The Urban Institute estimated that these protections would cover slightly more than one quarter of the rental units in the United States, including approximately 8 million rental units in properties backed by multifamily mortgage loans purchased or securitized by Fannie Mae and Freddie Mac.¹⁵

CARES Act Payment Forbearance for Multifamily Borrowers

Under Section 4023 of the CARES Act, a qualifying borrower with a “federally backed multifamily mortgage loan” could request forbearance from paying the scheduled mortgage payment, subject to the conditions that a borrower that received a forbearance could not, for the duration of the forbearance, evict or initiate an eviction against a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees and charges, and could not charge such tenants late fees or penalties or other charges for late payment of rent.¹⁶ Forbearance is a temporary period during which a mortgage borrower may, without penalty, pause mortgage payments and not be subject to default or foreclosure. With respect to the process for obtaining a forbearance, the borrower would submit the request for forbearance to the mortgage servicer. The servicer was obligated to provide

¹³ Challenges remain for many renters. Citing the U.S. Census Bureau’s Household Pulse Survey, the Joint Center for Housing Studies reported that 15 percent of renter households were behind on rent in the third quarter of 2021. See Joint Center for Housing Studies of Harvard University, [America’s Rental Housing 2022](#), at 30 (Jan. 21, 2022). It found that low-income, Black, and Hispanic renters had the highest relative percentages of households in arrears, in part due to widespread income losses during the pandemic.

¹⁴ See CARES Act, Sections 4023(f)(2) and 4024(a)(5)(B), respectively.

¹⁵ See Goodman, Laurie; Kaul, Karan; and Neal, Michael, [The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That’s One in Four US Rental Units](#) (Urban Institute) (April 2, 2020).

¹⁶ See CARES Act, Sections 4023(b) (borrower’s request for forbearance), 4023(d) (renter forbearance protections during forbearance period), and 4023(e) (notices to tenants). To be eligible for forbearance under the Act, covered borrowers had to be current on their mortgage payments as of February 1, 2020, and affirm to their loan servicer that they were experiencing financial hardships due to the COVID-19 pandemic.

forbearance for up to 30 days and could extend the initial 30-day forbearance period for up to an additional 60 days at the borrower's request. The availability of forbearance under the CARES Act expired on December 31, 2020, for multifamily borrowers.

CARES Act 120-Day Moratorium on Eviction Filings

Congress provided eviction protections to tenants of certain multifamily properties under Section 4024 of the CARES Act. Section 4024(b) established a mandatory 120-day moratorium on covered eviction filings that began on the date of enactment of the CARES Act (March 27, 2020). Specifically, it stated that “lessors” (i.e., landlords) of properties with federally backed multifamily loans (and certain other “covered properties”) may not 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 “charge fees, penalties, or other charges to the tenant related to such nonpayment of rent.”¹⁷ Section 4024(c) prohibited the lessor of a covered dwelling unit from issuing a notice to vacate to the tenant until after the expiration of the 120-day moratorium and prohibits the lessor from requiring a tenant to vacate the premises until at least 30 days after the lessor provides the tenant with a notice to vacate.¹⁸ Notably, the CARES Act does not expressly address FHFA's or the Enterprises' respective roles in enforcing the Act's tenant protections under Section 4024.

Freddie Mac's Multifamily Forbearance Relief Program Offered Additional Tenant Protections

In coordination with FHFA, on March 24, 2020 (three days before the CARES Act was enacted), Freddie Mac announced its COVID-19 Forbearance Relief Program (forbearance program) to aid multifamily borrowers and tenants affected by the coronavirus. The forbearance program allows borrowers whose properties are financed with a Freddie Mac multifamily loan that was fully performing as of February 1, 2020, to pause their loan payments for 90 days by, among other things, showing a COVID-19-related financial hardship and obtaining lender approval.¹⁹ Like CARES Act forbearance, Freddie Mac's

¹⁷ The tenant protections in Section 4024 also applied to rental units in properties with federally backed single family loans and properties that took part in federal assistance programs, such as Section 8 Project-Based Rental Assistance or rural housing voucher programs.

¹⁸ Unlike the CARES Act's temporary eviction moratorium, Congress did not establish an end date for the 30-day notice to vacate requirement.

¹⁹ On June 29, 2020, Freddie Mac announced three supplemental relief options, known as Forbearance 2.0, for existing forbearance plan holders who continued to experience COVID-19 hardships. This allowed for extensions of forbearance, up to a total of 6 months, and the repayment period, from 12 months to up to 24 months, if approved.

program bars borrowers from evicting a tenant based solely on nonpayment of rent and from charging the tenant late fees or penalties due to nonpayment during the forbearance period.

At FHFA's direction, on June 29, 2020, Freddie Mac expanded its required tenant protections for new, extended, or amended forbearance arrangements. These protections required borrowers to allow tenants to pay back missed rent payments over a "reasonable time," rather than in one lump-sum payment at the end of the forbearance period. They also prohibited borrowers from charging tenants late fees for nonpayment of rent through the repayment period.

To increase tenants' awareness of available protections, on August 4, 2020, FHFA directed the Enterprises to require borrowers to notify eligible tenants about their protections in writing.²⁰ It also directed the Enterprises to require borrowers in forbearance to provide certifications to their lenders that all mandated notifications had been provided to tenants and that they would provide such notifications to new tenants until the property became current on its loan obligations.²¹

Freddie Mac Provided Tenants with Resources and Information Through Its Website and Hotline and Communicated CARES Act Requirements to Servicers

In a June 2020 letter to the then-Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, Freddie Mac stated that it, or the master servicer for securitized loans, lacked the contractual ability to require its multifamily borrowers to notify tenants of their rights under the CARES Act. Instead, the Enterprise provided tenants with information through its website and hotline. In April 2020, FHFA instructed Freddie Mac to produce an online lookup tool that would allow tenants to determine whether their building is secured by a Freddie Mac loan. At FHFA's direction, Freddie Mac also included on its website information on how to locate types of assistance that may be available to tenants in properties with loans that Freddie Mac owns or has securitized.²² Further, the Enterprise maintains a free Renter Helpline (1-800-404-3097) to provide renters with information on federal and state housing assistance. The helpline's resources include budget and credit counseling as

²⁰ Specifically, these requirements included written notice of (1) forbearance-period protections, to be provided within 14 days of the onset of a new, extended, or amended forbearance agreement; (2) expiring and continuing forbearance protections, given at least 10 days prior to the end of the forbearance period; and (3) the potential for the accrual of late fees for late or missed rent payments, to be provided within 10 days of the end of the borrower's repayment period.

²¹ According to FHFA's directive, the lender shall retain the certification and, upon demand from the lender, "the borrower must show records that notices were provided."

²² FHFA collaborated with the Consumer Financial Protection Bureau and the Department of Housing and Urban Affairs to develop a central website for tenant assistance information. Renters struggling to meet their housing costs can find resources through the Consumer Financial Protection Bureau's website: [Help for homeowners and renters \(consumerfinance.gov\)](https://www.consumerfinance.gov/help-for-homeowners-and-renters).

well as options for managing debt. Freddie Mac sent flyers to its servicers in April 2020 and August 2021, for further distribution to borrowers, to publicize rental assistance resources.

In addition, Freddie Mac communicated with its servicers regarding the applicability of the CARES Act requirements. This communication initially occurred through guidance on its forbearance program, which required compliance with the Act as a condition of the forbearance agreement. After the CARES Act eviction moratorium expired in July 2020, Freddie Mac reminded borrowers of the Act's ongoing requirements, that is, the 30-day notice to vacate requirement and the prohibition on charging fees and penalties to tenants for missed rent during the moratorium. In August 2021, Freddie Mac directed primary servicers for loans it owned or where it acted as the master servicer to send reminder notices to borrowers regarding the CARES Act's 30-day eviction notice requirement.

Freddie Mac Made Credit Policy Adjustments and Increased Multifamily Loan Loss Reserves During the Pandemic as Part of Its Risk Management

Freddie Mac Established Debt Service Reserve Requirements for Certain Multifamily Loans

Beyond offering payment relief to borrowers, Freddie Mac took steps to mitigate its own financial risk stemming from the pandemic. In Spring 2020, Freddie Mac temporarily imposed debt service reserve requirements on certain newly originated multifamily loans to ensure that borrowers had funds available to make principal (if applicable) and interest payments should the property experience economic stress due to the pandemic.²³ Covered borrowers had to set aside 6 to 18 months' worth of debt service reserves, depending on the loan type and credit characteristics.

The purpose of the temporary debt service reserves was to offset possible reductions in a property's cash flow resulting from uncollected rent. In September 2020, Freddie Mac management briefed the Board of Directors that "our debt service reserves will bridge gaps due to reduced rental collections on loans originated during the COVID-19 pandemic" and "even at [a] 65% collection rate, the debt service reserve would last over two years." Freddie Mac informed us that, as of November 2021, only 12 out of the approximately 5,500 loans purchased since the spring of 2020 made draws against their debt service reserves. Freddie Mac began scaling back the reserve requirements in May 2021, and eliminated them for most circumstances by January 2022, following improvements in the multifamily market and strong occupancy and rent collection rates among its multifamily portfolio.

²³ Freddie Mac waived the debt service requirement for certain targeted affordable housing loans as well as low-leverage conventional loans with less than 10 percent declines in rent collections.

Freddie Mac Increased Its Multifamily Loan Loss Reserves in 2020

Freddie Mac and other financial institutions establish reserves, or allowances, for expected losses on loans and other assets from the time they are acquired, and then update those estimates each reporting period. The loss estimates are expected to incorporate both historical and forward-looking information, such as reasonable and supportable forecasts, under current accounting guidance.²⁴ In response to the worsening economic conditions of the early pandemic, Freddie Mac increased its multifamily loan loss reserves from a reported \$68 million on January 1, 2020, to \$223 million in the third quarter of 2020. It then reduced them to \$97 million a year later, according to its financial disclosures. Forecasted and actual improvement of economic indicators, such as multifamily housing prices and net operating income, was the primary driver of the reduction in reserves, according to the Enterprise.

FHFA Has Not Identified Concerns with the Adequacy of Freddie Mac’s Multifamily Loan Loss Reserves

FHFA has not identified concerns with the sufficiency of Freddie Mac’s loan loss reserves over the past two years in either its supervisory capacity or its conservator capacity. During 2020 and 2021, FHFA credit risk examiners monitored the asset quality of Freddie Mac’s multifamily business, including the adequacy of its loan loss reserves. Examiners did not issue any adverse examination findings related to Freddie Mac’s multifamily loan loss reserves based on these 2020 and 2021 monitoring activities. In FHFA’s role as Freddie Mac’s conservator, its Office of the Chief Accountant (OCA) performs limited reviews of Freddie Mac’s financial disclosures before the Enterprise files those disclosures with the Securities and Exchange Commission. Based on our review of pertinent FHFA records, OCA officials have not raised concerns about the adequacy of Freddie Mac’s multifamily loan loss reserve levels during recent reviews of its financial disclosures.²⁵

DISCUSSION AND ANALYSIS

A Small Portion of Freddie Mac’s Multifamily Loans Received Forbearance and Relatively Few Rental Units Remain Covered by the Program’s Protections

When Freddie Mac announced its multifamily forbearance program in March 2020, it stated that the program “can provide relief for up to 4.2 million renters across more than 27,000

²⁴ For a discussion of the methodology supporting Freddie Mac’s allowance for credit losses, see Freddie Mac, [2021 Annual Report on Form 10-K](#), at 178-183 (Feb. 10, 2022).

²⁵ We also reviewed Freddie Mac’s audit committee meeting materials and did not find evidence of management concerns as to the sufficiency of the loan loss reserve levels during 2020 and 2021.

properties.” Ultimately, borrowers for only a small fraction of those properties have sought and received forbearance, and relatively few rental units in those properties remain covered by the program’s tenant protections. As of January 25, 2022, a total of about 5 percent of Freddie Mac multifamily loans had received forbearance since the program’s inception, according to Freddie Mac.²⁶ Of these loans, about 0.7 percent remained in forbearance, and about another 13 percent were in their repayment phase. Freddie Mac informed us that, as of December 31, 2021, 406 rental units continued to be covered by forbearance period protections and another 25,847 units were covered by the repayment-period restrictions on lump-sum payments of back rent and penalties for late or missing rent. In addition, the Enterprise reported that, as of December 2021, 94 percent of loans that had exited forbearance had fully repaid their forbore payments or were currently making payments.

Lack of Enforcement Authority Under the CARES Act and Limited Contractual Rights Complicate the Compliance Landscape

Freddie Mac Stated That It Does Not Have the Legal Authority to Directly Enforce Borrower Compliance with the CARES Act

According to Freddie Mac, it does not have the legal authority or the ability to directly enforce a multifamily borrower’s compliance with the CARES Act.²⁷ FHFA shared this view of Freddie Mac’s role in congressional correspondence. FHFA’s former Director explained FHFA’s position in a September 2020 letter to Senator Jon Tester:

Because the Enterprises are not part of the tenant/landlord relationship, compliance with the CARES Act eviction moratorium is primarily the responsibility of the property owner. The CARES Act does not identify a direct enforcement mechanism, and the Enterprises do not have legal standing to

²⁶ Freddie Mac informed us that only 158 loans had received additional relief through Forbearance 2.0 as of January 2022. Multifamily borrowers made the bulk of the forbearance requests during the early stages of the COVID-19 pandemic, with most new multifamily forbearances occurring in April and May 2020—the two months following Freddie Mac’s March 2020 announcement.

²⁷ In 2020, we undertook a review of the Enterprises’ oversight of single-family mortgage servicers’ compliance with Section 4022 of the CARES Act and implementing guidance. Similar to Freddie Mac’s approach with multifamily seller/servicers and borrowers, we learned that the Enterprise relied on representations and warranties made by each single-family servicer that it complies with applicable law and regulations. See [OIG, *Oversight by Fannie Mae and Freddie Mac of Compliance with Forbearance Requirements Under the CARES Act and Implementing Guidance by Mortgage Servicers*](#) (OIG-2020-004, July 27, 2020).

intervene in an eviction proceeding. They have neither the legal authority to halt a filing nor the standing to challenge it in court.²⁸

An August 2020 media article reported that the Agency said it is not an enforcement agency but had taken steps to address violations of the CARES Act.²⁹ The Federal Trade Commission and the Consumer Financial Protection Bureau issued a joint statement in March 2021 that announced their intent to monitor and investigate improper eviction practices by multistate landlords, eviction management services, and private equity firms.³⁰

All Multifamily Borrowers Are Obligated Under Freddie Mac Contractual Agreements to Comply with the Law

Freddie Mac states that it lacks direct enforcement authority under the CARES Act; however, a borrower covenant in its loan agreements requires multifamily borrowers to comply with “all laws, ordinances, rules, regulations and requirements of any Governmental Authority having jurisdiction over the Mortgaged Property . . .” Freddie Mac interprets this covenant to include the CARES Act. Further, the loan agreements require borrowers to “at all times maintain records sufficient to demonstrate compliance with the provisions of this [covenant].”

A borrower’s breach of these terms could trigger a non-monetary default, which could cause all amounts owed by the borrower to become immediately due. In Freddie Mac’s view, these potential consequences encourage borrower compliance. Forbearance agreements with borrowers include comparable provisions. Those agreements require borrowers to comply with “all restrictions on tenant evictions set forth in the CARES Act [and] this Agreement” and make clear that the failure to do so could result in termination of the agreement. In addition, borrowers in forbearance must certify through the agreement that they will continue to remain in compliance with the CARES Act and the forbearance agreement.³¹

²⁸ FHFA Director Mark Calabria, Letter to Senator Tester and 27 other senators (Sep. 11, 2020). Former Director Calabria wrote this letter in response to a letter from Senator Tester and the other senators that requested FHFA, the Department of Housing and Urban Development, and the Department of Agriculture to ensure that the CARES Act and other rental protections are enforced.

²⁹ See Nova, Annie, [How the CARES Act failed to protect tenants from eviction](#) (CNBC) (Aug. 29, 2020).

³⁰ The joint statement reads, in pertinent part: “[e]victing tenants in violation of the [Centers for Disease Control and Prevention], state, or local moratoria, or evicting or threatening to evict them without apprising them of their legal rights under such moratoria, may violate prohibitions against deceptive and unfair practices, including under the Fair Debt Collection Practices Act and the Federal Trade Commission Act. We will not tolerate illegal practices that displace families and expose them—and by extension all of us—to grave health risks.” See Federal Trade Commission and Consumer Financial Protection Bureau, [Joint Statement by FTC Acting Chairwoman Rebecca Kelly Slaughter and CFPB Acting Director Dave Uejio](#) (Mar. 29, 2021).

³¹ Freddie Mac also requires borrower certification of compliance with the forbearance-period tenant notification requirements.

An Enterprise representative informed us that Freddie Mac does not actively monitor multifamily borrowers' compliance with legal requirements. According to Freddie Mac, it has no direct relationship with borrowers or tenants. Under Freddie Mac's business model, the owner of the multifamily loan, be it Freddie Mac or a securitization trust, relies on primary mortgage servicers, typically the seller/servicer that originated the loan, to conduct the day-to-day administration of the loan.

Freddie Mac Tracked Allegations of Borrower Noncompliance and Worked with Servicers to Investigate Those Allegations

Freddie Mac Servicers Investigated 83 Allegations of Borrower Noncompliance with the CARES Act's Eviction Moratorium and Freddie Mac's Forbearance Agreements

Freddie Mac began tracking and addressing allegations of borrower noncompliance with the CARES Act and its forbearance agreements in the summer of 2020. As of November 2021, it had tracked 101 allegations, almost all of which related to eviction notices and filings during the CARES Act's 120-day moratorium from late March to late July 2020.³² Most of the allegations—81 of the 101—were concentrated within Maricopa County, Arizona. A nonprofit group submitted many of the allegations directly to FHFA in May 2020, and FHFA passed the allegations along to Freddie Mac without providing any formal instructions or expectations on resolving them.³³

Freddie Mac referred the bulk of the allegations to its servicers for investigation. Before doing so, Freddie Mac officials first verified whether the Enterprise had financed the loan in question and that the loan remained active. If the loan was no longer active, that is, if it had been paid off or the multifamily property no longer served as collateral for the loan, a Freddie Mac representative told us that Enterprise staff set it aside and took no other actions. According to Freddie Mac's tracking database, this applied to 18 of the 101 allegations that Freddie Mac tracked. Freddie Mac referred the remaining 83 allegations to the applicable servicer and asked the servicer to investigate the allegations and contact the borrower by the end of the next business day to do so.

Freddie Mac multifamily staff evaluated the results of the servicers' investigations for evidence of borrower violations of the CARES Act. Multifamily officials, with the assistance of legal counsel, reached an independent opinion on whether the activity appeared to be a

³² Freddie Mac received only one allegation of an improper eviction during a property's forbearance period. It did not substantiate the allegation because the property in question had not received forbearance.

³³ Freddie Mac received two allegations through its consumer assistance hotline; the majority of the allegations came from a nonprofit group. See Private Equity Stakeholder Project, [*Despite Pandemic and Eviction Moratoriums, Private Equity Landlords File Hundreds of Eviction Cases*](#) (June 2, 2020) for a description of the allegations.

violation of the Act and then shared their opinion with the servicer to determine whether the servicer concurred with Freddie Mac's opinion. According to Freddie Mac, if both parties agreed that a violation had occurred, Freddie Mac directed the servicer to "remind the borrower of the requirements of the law and/or our forbearance agreement and instruct it to correct the situation."

Freddie Mac Found Few Instances of Potential Borrower Violations of the CARES Act Through Its Review of the 83 Allegations

In June 2020, following its review of the initial 36 allegations, Freddie Mac's then-CEO David Brickman wrote to Senator Sherrod Brown that the Enterprise had found "no evidence of significant noncompliance with the eviction moratorium set forth in the CARES Act by owners of rental properties financed by Freddie Mac." That trend continued as it reviewed more allegations. According to Freddie Mac's tracking database, at Freddie Mac's request, servicers issued three "reservation of rights" letters to borrowers to document the potential violations of the loan documents due to noncompliance with the CARES Act.³⁴ Freddie Mac officials told us that these letters demanded that the issue be resolved and reserved the servicer's right to exercise contractual remedies.³⁵

Based on the data Freddie Mac maintains with respect to the allegations, it appears that many of the borrowers/lessors listed in the allegations had issued an eviction notice or filed an eviction complaint during the CARES Act 120-day moratorium period; however, the number of confirmable CARES Act violations among those allegations is uncertain. Freddie Mac told us that there were instances that may have been violations, but they did not communicate directly with the borrower, or the property manager, and could not reach out to them for more information.³⁶ Instead, they had to rely on the servicer's investigation and the level of detailed information the servicer provided in its response to Freddie Mac in order to assess the validity of the allegations. According to Freddie Mac, some possible violations did not warrant further action given their outcome. For example, Freddie Mac generally did not treat an eviction notice or eviction filing made during the moratorium as a violation of the CARES

³⁴ Freddie Mac informed us that it observed confusion among borrowers between the CARES Act's eviction moratorium and an executive order issued by Arizona's Governor. Unlike the CARES Act, the Arizona executive order allowed for the filing of eviction complaints against tenants for nonpayment of rent. See State of Arizona Executive Order 2020-14, Postponement of Eviction Actions (Mar. 24, 2020). Regarding conflict between local laws and orders and the CARES Act, the former FHFA Director stated, "[w]here such laws or orders provide differing dates, differing requirements, or create new liabilities, it becomes difficult for federal programs to operate in a seamless fashion."

³⁵ Freddie Mac officials informed us that a reservation of rights letter for a technical default of the loan agreement, such as for noncompliance with laws, primarily serves as a warning to the borrower.

³⁶ Freddie Mac asserted that when it does not own the loan or it is not the master servicer on the loan, it has limited access to information regarding borrower compliance with the CARES Act because it has no standing to demand the underlying information. This was the case for 73 of the 83 allegations that were investigated.

Act if the landlord later cancelled the eviction.³⁷ Freddie Mac officials recorded 19 instances of “cancelled evictions” in their allegation tracking database. The same principle applied to instances where a tenant had already moved out after receiving an eviction notice, which occurred 14 times according to the database.³⁸ These instances accounted for about 40 percent of the investigated allegations.

In Limited Circumstances, Freddie Mac Requires Multifamily Borrowers to Provide to the Loan Servicer a Certification of Their Ongoing Compliance with the CARES Act

As of August 2021, Freddie Mac has required certain borrowers to certify their compliance with “the tenant protection requirements (such as the 30 days’ prior notice to vacate for nonpayment of rent) set forth in the CARES Act or other similar laws.” Those borrowers are required to provide the certification to their primary servicer, not to Freddie Mac. This certification requirement applies only to multifamily loans that Freddie Mac owns (i.e., loans it has not securitized in a K-Deal or other program) or for which it acts as the master servicer. In practical terms, the borrower certification requirement applies to a relatively small percentage of the Enterprise’s book of business because, consistent with its multifamily business model, Freddie Mac securitizes most of its multifamily loans. Freddie Mac will begin auditing servicers’ receipt and maintenance of the required certifications in 2022.

Freddie Mac Does Not Forecast Evictions

We also undertook this special project to assess how Freddie Mac forecasts evictions and estimates their potential financial impact on the Enterprise and its lender counterparties. A Freddie Mac official explained that the Enterprise does not forecast evictions directly because of the limited amount of data. Instead, it prepares forecasts using third-party occupancy and vacancy data, which incorporate evictions, to assess the strengths and weaknesses of the multifamily market. In addition, Freddie Mac monitors its multifamily properties’ income and vacancy levels through financial reports submitted by servicers. As discussed earlier, as part of its risk management, Freddie Mac temporarily imposed debt service reserve requirements on borrowers for certain loans to ensure that they had funds available to make principal (if applicable) and interest payments should the property experience economic stress due to the pandemic. Freddie Mac also increased its multifamily loan loss reserves from \$68 million on January 1, 2020, to \$223 million in the third quarter of 2020, and then reduced

³⁷ A Freddie Mac representative explained that Freddie Mac’s review of a servicer’s investigation could have occurred several months after the eviction notice was given or the filing was made, and the situation may have already been resolved. In such a case, Freddie Mac told us there was little to be done from the Enterprise’s perspective.

³⁸ Freddie Mac’s tracking database reflects that servicers issued reservation of rights letters to borrowers in response to one of the instances of a cancelled eviction and two times where the borrower moved out after receiving an eviction notice.

them to \$97 million a year later. FHFA officials told us that they are confident that Freddie Mac’s multifamily portfolio is “not seeing significant credit risk at this time.”

CONCLUSIONS

We undertook this special project, in part, to determine how Freddie Mac monitored multifamily servicers’ and borrowers’ compliance with these tenant protections. With respect to the 120-day moratorium on evictions, the CARES Act prohibition applies to the lessor, not Freddie Mac. Freddie Mac states that it does not have the legal authority or ability to directly enforce borrowers’ compliance with the CARES Act and does not actively monitor borrowers’ day-to-day activities or compliance with the law. That said, multifamily borrowers are obligated under Freddie Mac’s loan documents to comply with applicable laws, and a borrower’s breach of these terms could trigger a non-monetary default.

During 2020 and 2021, Freddie Mac worked with its servicers to investigate allegations that borrowers had violated the CARES Act moratorium or the terms of its forbearance agreements. Our review confirmed that filings had been made during the moratorium period and that Freddie Mac personnel performed their own assessment of the circumstances based on information provided by the servicers. According to Freddie Mac’s tracking system, servicers reserved their rights, at Freddie Mac’s request, with respect to three instances of apparent noncompliance with the CARES Act. However, Freddie Mac generally did not treat an eviction notice or eviction filing made during the moratorium as a violation of the CARES Act if the landlord later cancelled the eviction or the tenant moved out after receiving an eviction notice.

We determined that Freddie Mac does not actively monitor borrowers’ compliance with the tenant protection requirements of its forbearance agreements. According to Freddie Mac, it has no direct relationship with borrowers and tenants under its secondary mortgage market business model. It relies on the primary mortgage servicers to engage with borrowers on forbearance and other routine loan administration matters.

We also noted that Freddie Mac requires multifamily borrowers, for portfolio loans and securitized loans where Freddie Mac is the master servicer, to certify their compliance with the Act and provide that certification to the relevant servicer. Freddie Mac expects servicers to collect borrower certifications and ensure borrowers’ compliance with certification requirements. Freddie Mac performs onsite audits of servicer compliance with its requirements, and Enterprise officials asserted that Freddie Mac will include servicers’ collection of borrower certifications in its 2022 audits.

We also undertook this special project to assess how Freddie Mac forecasts evictions and estimates their potential financial impact on the Enterprise and its lender counterparties. Freddie Mac explained that it does not forecast evictions directly because of the limited amount of data. Instead, it prepares forecasts using third-party occupancy and vacancy data, which incorporate evictions, to assess the strengths and weaknesses of the multifamily market, and Freddie Mac monitors its multifamily properties' income and vacancy levels through financial reports. As part of its risk management, Freddie Mac temporarily imposed debt service reserve requirements on borrowers for certain loans and increased its multifamily loan loss reserves during 2020. FHFA stated that it is confident that Freddie Mac's multifamily portfolio is not "seeing significant credit risk at this time."

We make no recommendations in this report.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objectives of this evaluation were to assess how Freddie Mac: (1) monitored multifamily servicers' and borrowers' compliance with the tenant protections required by FHFA for borrowers' forbearance and repayment periods, and (2) forecasted and monitored rental collections and evictions and estimates the potential financial impact of evictions on the Enterprise and its lender counterparties.

To achieve these objectives, we reviewed Freddie Mac's (1) guidance to servicers concerning forbearance and the CARES Act; policies and procedures for multifamily loan surveillance, watchlist oversight, and investor reporting; (2) internal watchlist reports and other reports on multifamily loan performance, including rent collection tracking reports; (3) board reporting; (4) eviction allegation tracking database; and (5) external communications concerning its investigation of eviction allegations. We also reviewed FHFA's monitoring of Freddie Mac's multifamily asset quality in 2020 and 2021 and its limited review of Freddie Mac's financial disclosures for that period.

We interviewed FHFA and Freddie Mac staff to confirm their expectations for the potential financial impact from evictions and better understand whether Freddie Mac has monitored servicer and borrower compliance with CARES Act and forbearance-related tenant protection requirements.

We provided FHFA an opportunity to respond to a draft of this evaluation. The Agency provided technical comments on the draft report, which we considered in finalizing this report.

This special project was conducted between October 2021 and February 2022 under the authority of the Inspector General Act and in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (December 2020).

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