Forced Mortgage Payoff bureaucracy created by state government increases disaster victim homelessness.

Original post location: https://www.truckandtools.com/disaster/bureaucracy.asp?gdyk=219
Published: 9-2-2019 Revised: 9-26-2019

HUD Guidance June 14, 2019: "Funds are not available to an applicant if the applicant does not have legal control of the funds when they are received." Efforts to prevent homelessness by HUD may be sabotaged by states added bureaucracy to recovery funds..

Freddie Mac and Fannie Mae holders of and guarantors of most first lien mortgage loans in the USA do offer some protections but it limited in scope when a home is substantially damaged or condemned because of the natural disaster.

Government insured mortgages such as FHA, VA, provide protections but may not be documented as clearly as Freddie Mac or Fannie Mae.

Remaining Mortgage Loans in the United States are not afforded the government insured mortgages. Relief from foreclosure or mortgage pay off after a natural disaster is at the discretion of the owners and servicers of the mortgage. They will be subject to the rules of mortgage modifications put in place by the Consumer Financial Protection Bureau (CFPB).

What rights do homeowners have to secure their NFIP Flood Insurance or Private Insurance from being used by the owner of the mortgage or the servicers of the mortgage that wants to apply the full amount of insurance to the mortgage? Once the homeowner signs the two party check what security does the homeowner have that the mortgage owner or servicer of the mortgage isn't going to simply use the insurance money to pay off the mortgage and close the account?

Similarly, what security does the mortgage owner have that the homeowner will in fact reconstruct the home that is substantially damaged or condemned?

Will lenders work within guidelines, policy and procedures to assist the homeowner?

Will lenders make determinations based on the default status prior to the disaster?

Will lenders take this as an opportunity to close out the loan to reduce risk of ownership change from default?

Will lenders not grant the option because of market value, construction costs and homeowners available cash funds to reconstruct or substantially improve the real-estate?

How do homeowners determine when their mortgage owners and/or servicers are reviewing the homeowners account to use insurance funds to pay off the mortgage?

- Is the home located in a disaster areas?
    - Visit: disasterassistance.gov
- Who owns the mortgage?
    - Visit Freddie Mac or Fannie Mae
    - Private Lenders / Mortgage owners
- Is the mortgage status acceptable?
- History of the mortgage and homeowners payments.

"...insurance proceeds will be applied to the restoration of the property as long as the restoration and repair are "economically feasible" and the lender's "security is not lessened." If the repairs do not satisfy both conditions, then the security instrument directs the lender to apply the insurance proceeds to the debt. "

In nearly all substantially damaged homes as determined by FEMA Verified Loss inspectors and with homes condemned by local municipalities the "Security" is lessened and nearly always it is not economically feasible to reconstruct the home within guidance provided by FEMA, HUD, State and local municipal codes.

Example: In 2016 a 2,865 sqft home was flooded with 5 foot of standing water for 3 days. FEMA inspectors, City inspectors, State managed HUD inspectors determined the home to need substantial improvements to be given an occupancy permit because of the flood damage.

NFIP Insurance adjusters determined the homes value to be $230,000 less depreciation and it's maximum amount of insurance was $170,000 which $150,000 was paid.

FEMA Verified Loss list the home as having 60% damage. City municipal code required the home to be reconstructed which also required the home to be elevated because it was located in a Special Flood Hazard Area (SFHA) and was documented below base flood elevation.

Soon the costs to reconstruct the home reached over $300,000 with all the required federal, state and local requirements. The servicer of the mortgage was aware of the requirements and of the value toward the mortgage. It was clear the homeowner would not have enough funds to reconstruct the home the same sizes as the original home so the servicer of the mortgage then applied all deposited NFIP Flood insurance proceeds to the payment of the mortgage debt.

The mortgage servicer was to release the insurance money as needed to make repairs. Once the repair costs increased past the amount of total insurance payout the mortgage then became an At Risk mortgage and paid by the servicer.

To define this as a Forced Mortgage Payoff would be easy if every state government agency working with HUD Grants were to read servicer and mortgage owner policies.

FEMA Notice 2011: "The applicant would need to submit a letter from either the lender or insurer advising that the payoff was required and not optional. "

State Grantees Notice: "FEMA National Flood Insurance Program (NFIP) Insurance. Exception: Insurance proceeds taken by a mortgage company as a forced mortgage payoff will not be counted as a duplication of benefits as long as documentation from the mortgage company evidences the payoff was involuntary. The applicant will need to provide a letter from the lender on company letterhead stating that the mortgage payment was force paid or involuntarily paid directly from the insurance company to the lender. "

2017: The Disaster Relief Options for FHA Homeowners page on HUD's website states: &ldquoYour lender may enter into a forbearance plan, or execute a loan modification or a partial claim, if these actions will help retain and pay for your home."

3.3.4 Insurance
"For borrowers who have hazard or flood insurance, the rules regarding the disbursement of proceeds may be found in the HUD Handbook, which states that the servicer must "ensure that hazard or flood insurance claims are filed and settled as expeditiously as possible." (170) A servicer is required to release promptly to the borrower all proceeds received for coverage of a borrower's personal property, temporary housing, and other transition expenses. A "Viable Repair Plan" is a plan for repairs of a mortgaged Property within the amounts available through insurance proceeds and borrower funds. After approving a Viable Repair Plan, a servicer must expedite the release of insurance proceeds for required home repairs. The servicer may apply insurance proceeds payable for home damages to arrearages and or reduction of the unpaid principal balance if the amount of the proceeds exceeds the costs to repair the damage to the home or if the proceeds are insufficient to repair the damage based on a certified repair estimate and the borrower is unable to show that s/he has additional funds from other sources to complete the repairs."

Mortgage Processes

1. Notify servicer of disaster and provide good contact information.
2. Who owns the loan?
    - Loans owned by the government-sponsored entities, Fannie Mae or Freddie Mac, or insured by the government (FHA, VA, RHS) will be governed by applicable guidelines. Mortgage relief for other mortgages will be left to the discretion of the owners and servicers of these mortgages.
3. Loan current or in default?
    - For loans in default consider how long the loan has been in default, long-term affordability of the home and whether there is equity to be saved.
4. Can the homeowner maintain payments?
    - No, Forbearance or Other Loss Mitigation Options
    - Yes, After a covered loss occurs, the insurance company issues a claim check identifying both the borrower and the mortgage lender, or servicer, as payee. Because the lender or servicer is also a payee, it effectively controls the disbursement of the proceeds to the borrower.
5. Distribution of Insurance Proceeds.
    - Who signs first?
        - Usually the homeowner is required to sign first.
    - What about personal property proceeds?
        - These should be disbursed immediately to the homeowner?

- Are repairs feasible?
    - This will determine whether funds are applied to repairs or the Unpaid Balance (UPB).
- Is there gap funding available through federal, state or local programs?

Many servicers have similar rules on the distribution of insurance proceeds after a natural disaster.

HUD Handbook 4000.1: III. SERVICING AND LOSS MITIGATION
A. Title II Insured Housing Programs Forward Mortgages
3. Programs and Products - Presidentially-Declared Major Disaster Areas
iii. Monitoring of Repairs to Substantially Damaged Homes

(A) Definition
A building is considered to be "Substantially Damaged," as defined in the National Flood Insurance Program (NFIP) regulations, when "damage of any origin is sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred."

(B) Standard
The Mortgagee must take appropriate actions to ensure that repairs to Substantially Damaged Properties comply with the federal building elevation standards, including those established by FEMA. The Mortgagee must ensure compliance with any higher applicable building elevation standard adopted by the state or local government.

Reference: [HUD Handbook 4000.1 2016]

FEMA National Flood Insurance Program (NFIP) Insurance

- Definition: Payments for loss to dwellings under NFIP insurance policies are deducted from the grant the applicant is eligible to receive. Payments for contents or other expenses are not deducted from the applicant's funding assistance award.
- Verification: The Program will collect flood insurance payment information from the applicant through the application process. In addition, the Program will work directly with NFIP to verify the information provided by the applicant.
- Exception: Insurance proceeds taken by a mortgage company as a forced mortgage payoff will not be counted as a duplication of benefits as long as documentation from the mortgage company evidences the payoff was involuntary. The applicant will need to provide a letter from the lender on company letterhead stating that the mortgage payment was force paid or involuntarily paid directly from the insurance company to the lender.

Private insurance

- Definition: All property or casualty insurance, including flood, settlement amounts for loss to dwellings are deducted from the applicant's funding assistance award. Private insurance payments for contents or other expenses are not deducted from the applicant's funding assistance award.
- Verification: Insurance proceeds are initially determined by RLHP through applicant provided information. Program applicants will authorize the Program to contact third-party private insurance providers to verify information provided by the applicants within their applications. Third party re-verification will only occur if the applicant self-attests a claim has been filed and the applicant is

unable to provide a claim summary.

- Exception: Insurance proceeds taken by a mortgage company as a forced mortgage payoff will not be counted as a duplication of benefits as long as the applicant provides adequate documentation. The applicant will need to provide supporting documentation demonstrating the mortgage payment was involuntary and the RLHP will attempt to verify this information with the applicant's mortgage company. Voluntary mortgage payoff using insurance proceeds is a duplication of benefits that will be counted in an applicant's award calculation.

Research Notes, Other documents

•HUD FR-6109-N-02: V.A.21. Prohibition on forced mortgage payoff. In some instances, mortgage agreement terms require homeowners to repay the balance of the mortgage loan with assistance received to rehabilitate, reconstruct or elevate the home in order to make the home more resilient. CDBG-MIT funds, however, may not be used to repay a mortgage loan in whole or in part under this type of "forced mortgage payoff" provision. The ineligibility of a forced mortgage payoff with CDBG-MIT funds does not affect HUD's long standing guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a duplication of benefits.

Original post location: https://www.truckandtools.com/disaster/bureaucracy.asp?gdyk=219

Published: 9-2-2019 Revised: 9-26-2019