National Disaster Assistance:

Resources for Homeowners and the Impact Within Mortgage Default

Prepared by the Legal League Special Initiatives Working Group (SIWG)

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Natural disasters include all types of severe weather, which have the potential to pose a significant threat to our health, safety, property, and community infrastructure. As we have seen an increase in the annual number of natural disasters over the last 50 years, we have also seen an increase in resources for assistance in dealing with the aftermath of a natural disaster. This paper focuses on the agencies (local, state, and federal) that assist with the specific needs of homeowners related to disruptions caused by a disaster. Specifically, we provide information related to various resources available to homeowners and servicers to respond to disruptions to mortgage obligations and assistance in handling property damage.

There are many types of assistance available from numerous agencies across the United States. Some of the agencies are local to specific communities or states, and others from the programs of federal agencies. The types of assistance range from funds to rebuild, moratoriums on mortgage default-related actions, forbearance plans, and the availability of homeowner's assistance funds to assist with household maintenance. Below is a deep dive into many of these programs and how each impacts homeowners, servicers, and lenders.

I. Federal Emergency Management Agency (Fema)

FEMA is tasked with handling all possible disasters. This includes natural disasters, such as hurricanes and earthquakes, as well as man-made ones, such as hazardous substance spills, bombings, and war. FEMA also puts a great deal of effort into disaster preparations. These preparations include hurricane-proofing homes and helping cities retrofit buildings to make them safer in the event of an earthquake. FEMA provides information to home and business owners that can help them take steps to prepare for disasters. What most people assume is that FEMA helps only after a disaster strikes.

In the aftermath of a disaster, people are left with damaged or destroyed homes, no place to work, no transportation, and destroyed or lost properties. FEMA has been set up to provide assistance in all these areas, often in coordination with local agencies such as the Red Cross and other volunteer organizations.

The first step in disaster assistance is FEMA setting up care centers to provide basic needs to the victims, such as food, water, shelter, and medical care.

Once the basic needs are taken care of, FEMA attempts to help people get back on their feet, find a place to live, and begin rebuilding. It is only when the President declares the area impacted by a major disaster that special aid programs become available.

Primarily, FEMA provides three different types of assistance:

a. Housing:

- Money to rent temporary housing or a place to live in a government housing unit if there is nowhere available to rent;
- Money for home repairs to cover damages that are not covered by insurance; and
- Grant money to replace uninsured homes that are destroyed.

b. Medical

- Assistance with medical treatment and prescriptions for disaster victims who suffer from medical conditions (whether they are related to the disaster is irrelevant);
- Dental bills; and
- Funeral expenses.

c. **Property**

- Storage, transport, and, in some cases, replacement of personal property;
- Assistance with moving expenses;
- Rebuilding and repairing public infrastructure, including roads and bridges, sewer lines in public buildings; and
- Debris removal.

Recently, the Senate voted to eliminate FEMA and create a new emergency management agency that will operate independently within the Department of Homeland Security. It is hoped that the new agency will provide more personnel and more oversight and authority.

FEMA is divided into ten (10) regional offices. These offices work with the states within their region to coordinate disaster mitigation and response. Once a disaster occurs and the President has declared it a Natural Disaster, FEMA steps in.

Declaring a Major Disaster:

FEMA cannot go into action unless the President declares a major disaster. When a disaster happens, the process usually works like this:

- Local or State officials declare a State of Emergency. Local emergency crews and first responders work to deal with the disaster as best they can.
- State agencies respond. This can include the National Guard.
- Officials assess the damage.
- The Governor of the State involved makes an official request for a disaster declaration, based on the damage assessment.
- FEMA makes a recommendation to the President, who either approves or denies the request.
- Once a President's disaster declaration is made, FEMA can start providing assistance.

What Assistance Can Be Provided:

1. Grants—Grants are provided and do not need to be paid back by the affected party. Eligible parties can receive up to $37,900.00 for housing assistance. Typically, once approved, payment is made within 10 days.

2. Small Business Administration—Small Business Administration offers low-interest disaster loans to homeowners and renters in a declared disaster area. These loans need to be repaid.

How to Apply:

- By phone
- Online
- Via the FEMA app
- In person at a Disaster Recovery Center

Qualifications:

- If FEMA funds are paid and the affected party subsequently receives insurance funds FEMA must be repaid the amount of the insurance reimbursements.

- FEMA funds are not the same as insurance and should not be used as an alternative to insurance.
- A qualified individual can still apply to FEMA for those costs that exceed the amount of insurance.

FEMA FORECLOSURE HOLDS

It is common after a FEMA disaster declaration for mortgage foreclosures to be placed on hold for at least 90 days. It is important to note that “FEMA Holds” are not directed by FEMA or part of any FEMA regulations. Instead, the holds are the result of HUD and other Government Housing Agency regulations that require holds to be placed when a disaster declaration is declared. The FHA guidelines create an automatic hold for 90 days upon the declaration of a disaster for individual assistance. The applicable provision is below:

ii. Moratorium on Foreclosures

(A) Standard

FHA-insured Mortgages secured by Properties located in a PDMDA will be subject to a moratorium on foreclosures following the disaster declaration. The foreclosure moratorium is:

- effective for a 90-Day period beginning on the date of the disaster declaration for that area (HUD may communicate further specific guidance for extension of moratorium periods for individual disasters);
- applicable to the initiation of foreclosures and foreclosures already in process; and
- considered an additional period of time approved by HUD for the Mortgagee to take loss mitigation action or commence foreclosure.

HUD provides the Mortgagee an automatic 90-Day extension from the date of the moratorium expiration date to commence or recommence foreclosure action or evaluate the Borrower under HUD’s Loss Mitigation for Borrowers in PDMDAs. The Mortgagee may also submit a request for an additional extension to HUD’s foreclosure-related deadlines via HUD’s EVARS when prohibited from performing a required activity due to the foreclosure moratorium.

The FNMA guidelines do not have an automatic hold, but servicers are required to inspect the property to confirm it is not affected by the disaster. To facilitate this, FNMA allows for a hold of 90 days, which may be extended. Since most servicers are not aware of the status of the property immediately after a disaster declaration, most servicers will place all files on hold for 90 days. Below is the applicable provision:

Initiating or Suspending Legal Proceedings

If the servicer has any doubt about the effect of the disaster event on the condition of a property or the borrower’s employment or income status, it must suspend any legal proceedings, including foreclosure proceedings, already in process until it can determine the accurate status and make its final decision on the appropriate course of action based upon its findings. The servicer must contact its Fannie Mae Servicing Representative (see F-4-02, List of Contacts) to obtain written approval before granting a suspension that exceeds 90 days.

The servicer must not initiate or complete foreclosure proceedings related to a property that has been destroyed until it evaluates the economic feasibility of pursuing the foreclosure.

Individual Assistance vs. Public Assistance

FEMA declarations will provide for two types of assistance: Public Assistance and Individual Assistance. Public Assistance provides funds to local and state governments to assist in the costs of response efforts taken by those governments. Individual Assistance provides assistance directly to individuals for rent, temporary lodging, repair, or replacement. FEMA may authorize one or both types of assistance. It is common for only Public Assistance to be awarded. For example, counties that are not directly affected by a disaster may be provided assistance in response efforts for other counties located in the states that were affected. FEMA will award Public Assistance to reimburse those counties for their response costs, but since the county was not directly affected, there is no need for individuals to receive assistance.

The foreclosure holds discussed above generally only apply when Individual Assistance is authorized. When reviewing files for foreclosure holds, servicers should review the FEMA declarations to determine which type of assistance was awarded before placing files on hold.

II. FUNDS/ASSISTANCE AVAILABLE

A. HUD DISASTER RELIEF

After the President issues a disaster declaration, the initial response is led by the Federal Emergency Management Agency (FEMA), which focuses on working with state and local responders to supply food, water, and shelter to survivors based on the nature and severity of the disaster. After the disaster declaration and FEMA's initial emergency response, HUD then provides additional support for the ongoing recovery through programs and partnerships and with the help of government funding. Congress may provide funds to the Department of Housing and Urban Development (HUD) to distribute via Community Development Block Grant Disaster Recovery (CDBG-DR) funds. Funds may also be allocated to mitigate future disaster risks and losses by implementing high-impact activities.

Community Development Block Grant Disaster Recovery (CDBG-DR) Funds

i. The CDBG-DR Program[1] allows Congress to appropriate funding for recovery needs and activities, including immediate disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization of the most impacted and distressed areas.[2]

ii. The CDBG-DR Program focuses on long-term recovery and revitalization. Funding may be used to address recovery needs that have not been met by other federal, state, or private disaster recovery programs. HUD awards grants to state and local governments, which then distribute the aid to individuals and organizations in the impacted disaster areas. The grantees must publish an action plan describing the application process and requirements, which must be available on the grantee's website.

iii. After Congress has approved CDBG-DR appropriation, HUD calculates and announces allocations and publishes notices in the Federal Register. This Notice will contain information on the following: eligible recovery activities, program requirements, and appropriation-specific waivers and alternative requirements.[3]

iv. To qualify for CDBG-DR funding, activities must meet at least one of three national objectives, identified in § 104(b)(3) of the HCD Act[4]:

   a. Benefit low- and moderate-income persons,
   b. Aid in the prevention or elimination of "slums or blight," or
   c. Meet other community development needs having a particular urgency.

[1] CDBG-DR Program was authorized under Title I of the Housing and Community Development Act of 1974 (HCD Act).
[2] DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) POLICY GUIDANCE FOR GRANTEES 2019, 1-2 (2019), https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf.
[3] Id.
[4] DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CHAPTER 3: NATIONAL OBJECTIVES (last visited January 24, 2024) https://www.hudexchange.info/sites/onecpd/assets/File/Basically-CDBG-State-Chapter-3-Nat-Obj.pdf

v. Each CDBG-DR grantee is subject to:

   a. The requirements of the applicable statute appropriating CDBG-DR funds;
   b. The Federal Register Notice allocating funds to that grantee and any subsequent Notice providing additional waivers and alternative requirements;
   c. Title I of the HCD Act and the CDBG regulations at 24 CFR Part 570, unless modified by waivers and alternative requirements included in the applicable Federal Register Notice;
   d. 2 CFR Part 200, which provides the Federal government's guidance on administrative requirements, cost principles, and audit requirements; and
   e. Section 312 of the Stafford Act, which prohibits the duplication of benefits.[5]

vi. HUD has identified 19 categories of activities that are generally eligible for CDBG-DR funding:[6]

   a. Acquisition of real property such as land, air rights, easements, water rights, rights-of-way, buildings and other real property improvements, and other interest in real property. CDBG funds may be used under this category by the grantee, other public agency, or a public or private nonprofit entity to acquire real property for any public purpose;

   b. Disposition: CDBG funds may be used to pay costs incidental to disposing of real property acquired with CDBG funds, including its disposition at less than fair market value, provided the property will be used to meet a national objective of the CDBG program. Disposition can include sale, lease, donation, or otherwise;

   c. Public facilities and improvements: CDBG funds may be used by the grantee or other public or private nonprofit entities for the acquisition, construction, reconstruction, rehabilitation, or installation of public improvements or facilities (except for buildings for the general conduct of government).

   d. Clearance: CDBG funds may be used for the demolition of buildings, removal of demolition products and other debris, removal of environmental contaminants, and movement of structures.

   e. Public services: CDBG funds may be used to provide public services (including labor, supplies, materials, and other costs), for public service that is either a new service or a quantifiable increase in the level of service.

   f. Interim assistance: CDBG funds may be used for certain activities on an interim basis, provided that the activities meet a national objective. The two subcategories of interim assistance activities are:

      a. limited improvements to a deteriorating area as a prelude to permanent improvements; and

      b. activities to alleviate an emergency condition.

   g. Relocation: CDBG funds may be used for relocation payments and assistance to displaced persons, including displaced individuals, families, businesses, non-profit organizations, and farms.

   h. Loss of rental income: CDBG funds may be used to pay housing owners for the loss of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by CDBG-assisted activities.

[5] DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) POLICY GUIDANCE FOR GRANTEES 2019, 2 (2019), https://files.hudexchange.info/resources/documents/CDBGDR-Policy-Guide.pdf.
[6] DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CATEGORIES OF ELIGIBLE ACTIVITIES, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, 2 (last visited January 25, 2024), https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-2.pdf

i. **Privately owned utilities:** The grantee, other public agencies, private nonprofit entities, and for-profit entities may use CDBG funds to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and related facilities for privately owned utilities.

j. **Rehabilitation:** CDBG funds may be used to finance the costs of rehabilitation of residential, commercial/industrial, or other (nonprofit-owned nonresidential) property.

k. **Construction of housing:** Under this category, CDBG funds may be used in certain specified circumstances to finance the construction of new permanent residential structures under two circumstances: where the project has received funding through a Housing Development Grant or the project qualifies as a last resort in that the housing is necessary to provide a suitable replacement for displaced persons.

l. **Code Enforcement:** Code enforcement involves the payment of salaries and overhead costs directly related to the enforcement of state and/or local codes. CDBG funds may be used for code enforcement only in deteriorating or deteriorated areas where such enforcement, together with public or private improvements, rehabilitation, or services to be provided, may be expected to arrest the decline of the area.

m. **Special Economic Development Activities:** CDBG funds may be used for the following special economic development activities, including commercial or industrial improvements carried out by the grantee or a nonprofit subrecipient; and assistance to private for-profit entities for an activity determined by the grantee to be appropriate to carry out an economic development project.

n. **Microenterprise assistance:** Under this category, grantees and other public or private organizations may use CDBG funds to facilitate economic development through the establishment, stabilization, and expansion of microenterprises. A microenterprise is defined as a business with five or fewer employees, one of whom owns the business.

o. **Special activities by Community-Based Development Organizations (CBDOs):** HUD authorizes grantees to designate entities as CBDOs, tasked with assisting grantees with neighborhood revitalization, community economic development, and energy conservation. In order to qualify as a CBDO, an entity must (1) be organized under state or local law to carry out community development activities; (2) maintain at least 51% of its governing body's membership as low- and moderate-income residents of its area of operation or owners, or senior officers of private establishments of the area; (3) require that members of the governing body be nominated and approved by the general membership or its governing body; (4) have as its primary purpose improvement of its geographic area of operation with a focus on the needs of low- and moderate-income persons; (5) be either nonprofit or for-profit; however, if a for-profit, only incidental monetary benefits to its members are allowed; (6) not be an agency or instrumentality of the grantee, and not permit more than one-third of its governing body to be appointed by or consist of elected or other public officials or employees of the grantee (or of any other entity that could not qualify as a CBDO), even if such persons would otherwise meet the requirements described above; (7) not be subject to the reversion of its assets to the grantee upon dissolution; and (8) be free to contract for goods and services from vendors of its own choosing.

p. **Homeownership assistance:** Grantees and their subrecipients may provide financial assistance to low- and moderate-income households to assist them in the purchase of a home.

q. **Planning and capacity building:** CDBG funds may be used for studies, analysis, data gathering, preparation of plans, and identification of actions that will implement plans.

r. **Program administration costs:** CDBG funds may be used to pay reasonable program administration costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under the CDBG or the HOME or Urban Development Action Grants (UDAG) programs related to community development activities, assisted in whole or in part with CDBG funds.

s. **Miscellaneous other activities**

vii. Timely Distribution of Funds

a. HUD's regulation at 24 CFR 570.494 defines a state's distribution of CDBG funds as timely if "all of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD."[7]

b. The terms "obligated and announced to" refer to the date on which a state officially announces the selection and award of a grant to a unit of general local government (UGLG) by means of any official letter, press release, news media announcement, public notice, or official notice of award that the state may use to notify localities and citizens that a grant has been awarded. [8]

c. The regulation also encourages states to obligate and announce 95% of funds within 12 months of the state signing its grant agreement with HUD.[9]

Community Development Block Grant Mitigation (CDBG-MIT) Funds

i. CDBG-MIT emphasizes proactive measures for long-term mitigation, seeking to enhance community resilience and reduce the impact of ***future*** disasters. These funds are pre-allocated based on the magnitude and frequency of past disasters, providing a proactive approach to disaster mitigation.

ii. The administration of CDBG-MIT involves a competitive grant process, where communities develop comprehensive mitigation plans and propose projects aligned with their specific needs and vulnerabilities.

iii. CDBG-MIT is a significant opportunity for eligible grantees to use this assistance in areas impacted by recent disasters to carry out strategic and high-impact activities to mitigate disaster risks and reduce future losses.

iv. For the purposes of this funding, mitigation activities are defined as activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship by lessening the impact of future disasters.[10]

v. Grantees must submit an action plan that includes a mitigation needs assessment that identifies and analyzes current and future disaster risks and provides the basis for the activities proposed.

vi. Goals of CDBG-MIT Funds include[11]:

1. Support data-informed investments, focusing on repetitive loss of property and critical infrastructure;
2. Build capacity to comprehensively analyze disaster risks and update hazard mitigation plans;
3. Support the adoption of policies that reflect local and regional priorities that will have long-lasting effects on community risk reduction, including risk reduction to community lifelines and decreasing future disaster costs; and
4. Maximize the impact of funds by encouraging leverage, private/public partnerships, and coordination with other Federal dollars.

[7] DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, TIMELY DISTRIBUTION OF STATE CDBG FUNDS, (last visited January 25, 2024), https://files.hudexchange.info/resources/documents/Notice-CPD-18-11-Timely-Distribution-of-State-CDBGFunds.pdf.
[8] Id.
[9] Id.
[10] CDBG-MIT Overview https://www.hudexchange.info/programs/cdbg-mit/overview/ (last visited January 29, 2024)
[11] COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION PROGRAM https://www.hud.gov/program_offices/comm_planning/cdbg-dr/cdbg-mit (last visited January 29, 2024)

B. MORTGAGE FORBEARANCE AGREEMENTS

The mortgage forbearance options available during a disaster will depend largely on the type of mortgage involved. The rules governing government-insured mortgages and the options made available to homeowners struggling to make payments after a declaration of natural disaster are somewhat uniform. When it comes to mortgage loans that are not provided by government-related entities, forbearance options offered in light of disaster hardship will be left to the discretion of the owners and servicers of these mortgages, subject to Consumer Financial Protection Bureau (CFPB) rules and regulations.

vii. Freddie Mac[12]

1. If the Servicer has not yet achieved contact, then the Servicer, at its discretion, may place a Borrower who becomes 31 or more days delinquent due to an Eligible Disaster in a forbearance plan for up to 90 days.

2. If a Borrower is 31 days or more delinquent at the time of impact due to an Eligible Disaster, the Servicer must achieve quality right party contact before approving forbearance.

3. The forbearance plan must not exceed 90 days without either achieving contact or receiving approval from Freddie Mac. If the Servicer has relevant information regarding the Borrower's current financial circumstances and/or the extent of the property damage caused by the Eligible Disaster, the Servicer should consider these factors in its evaluation decision whether to provide forbearance.

4. If the Borrower does require a relief option or the Mortgaged Premises have damage that would pose a Risk of Property Ownership to Freddie Mac, Servicers have the discretion to suspend collection and foreclosure proceedings by placing the Borrower into a forbearance plan for up to 12 months, based on the circumstances of each case. The Servicer is not required to obtain a complete Borrower Response Package from the Borrower and may offer:

    a. Forbearance of one to six months; and

    b. If necessary, one or more successive forbearance plan periods of one to six months.

5. Without prior approval from Freddie Mac, the forbearance plan may not be extended beyond a date that would cause the Delinquency to exceed a cumulative total of 12 months of the Borrower's contractual monthly Mortgage payment, including taxes and insurance if the Servicer is collecting Escrow for those expenses.

6. Servicers should reassess each impacted Borrower on a regular basis during the forbearance period to determine if forbearance should be extended up to a total of 12 months or when the hardship has been resolved.

7. If the Servicer believes forbearance beyond a total of 12 months is warranted, the Servicer should make that recommendation to Freddie Mac for consideration.

8. At the end of the forbearance period, the Servicer must reassess the Borrower's circumstances to determine whether the Borrower's hardship resulting from the Eligible Disaster has been resolved.

[12] 8404.4 Delinquency management activities following a disaster; https://guide.freddiemac.com/app/guide/section/8404.4?_gl=1*1db5jjd*_gcl_au*MTY1Mzc3MzU3Ny4xNzA2MjgxOTcy*_ga*OTY1NTg3NTg5LjE3MDYyODE5NzI.*_ga_W1VD6NP75S*MTcwNjI4MTk3Mi4xLjEuMTcwNjI4NDYwMy42MC4wLjA. (last visited January 26, 2024)

viii. Fannie Mae

1. Fannie authorizes their servicers to permit a 90-day suspension of foreclosure proceedings immediately after a disaster. This initial 90-day period may be extended, depending on the circumstances and effects of the situation. Servicers are instructed to work closely with homeowners to develop workout or relief plans to cure the delinquency.

2. Fannie has created the following workout hierarchy when a borrower is affected by a Disaster Event[13]:

    a. If the servicer achieves contact with the borrower, the servicer must evaluate the borrower for a disaster payment deferral.

    b. If the servicer determines that the borrower is not capable of maintaining the full contractual monthly PITI payment, including the amount required to repay any escrow shortage amount over a term of 60 months, or the mortgage loan is greater than 12 months delinquent, then the servicer must evaluate the borrower for a Fannie Mae Flex Modification.

    c. If the servicer does not achieve contact with the borrower, the servicer must evaluate the borrower for a disaster payment deferral.

    d. If contact has not been achieved and the borrower is delinquent for more than 12 months or otherwise ineligible for deferment, the servicer should evaluate the borrower for a Fannie Mae Flex Modification.

ix. FHA-insured Mortgages[14]

1. FHA-insured mortgages secured by properties located in a major disaster area will be subject to a 90-day moratorium on foreclosures following the disaster declaration.

2. For borrowers impacted by a major disaster through October 20, 2024, the servicer must determine the appropriate loss mitigation option:

    a. If a borrower is already on a COVID-19 Recovery Option, including a COVID Forbearance, before the date of a new PDMDA declaration, the servicer must follow the COVID-19 Recovery Option guidance.

    b. For all other borrowers in a PDMDA, the servicer must evaluate for forbearance options, and the COVID-19 Recovery Home Retention Options, regardless of the reason for default.

x. VA Loans

1. VA encourages servicers of guaranteed loans in disaster areas to extend all possible forbearance to borrowers in distress. VA regulations on Prepayments (38 CFR 36.4311), Advances (38 CFR36.4314), Loan Modifications (38 CFR 36.4315), and Supplemental Loans (38 CFR 36.4359) may be of assistance in appropriate cases. It is the loan holder's responsibility to counsel borrowers concerning assistance that may be available.[15]

[13] Fannie Mae Servicing Guide (Published 12/20/23) https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-D-Providing-Solutions-to-a-Borrower/Subpart-D1-Assisting-the-Borrower-with-Property-Related/Chapter-D1-3-Providing-Assistance-to-a-Borrower-Impacted/D1-3-01-Evaluating-the-Impact-of-a-Disaster-Event-and/1041315841/D1-3-01-Evaluating-the-Impact-of-a-Disaster-Event-and-Assisting-a-Borrower-04-12-2023.htm#Workout.20Hierarchy.20for.20When.20a.20Borrower.20Is.20Affected.20by.20a.20Disaster.20Event (last visited January 26, 2024)
[14] FHA – Servicer Loss Mitigation for Major Disasters https://www.hud.gov/sites/dfiles/SFH/documents/MO_Disaster_Loss_Mitigation_FS.pdf (last visited January 26, 2024)
[15] VA Guidance on Natural Disasters; https://www.benefits.va.gov/homeloans/documents/docs/va_policy_regarding_natural_disasters.pdf

C. STATE MORTGAGE ASSISTANCE PROGRAMS

COVID-19 Relief: some relief still available

As the COVID-19 pandemic recedes further in the rear-view mirror, much of the federal relief enacted by Congress has wound down. That being said, however, across the country, certain state-run mortgage assistance programs are still in place and seeking to assist borrowers in need, though the borrower must show an impact from COVID-19 as opposed to needing relief due to a natural disaster.

Through March 31, 2023, Housing Assistance Fund ("HAF") programs had distributed $1.2 billion in relief to borrowers.[16] "The Homeowner Assistance Fund (HAF) authorized by the American Rescue Plan Act, provide[d] $9.961 billion to support homeowners facing financial hardship associated with COVID-19. HAF funds were distributed to states, U.S. Territories, and Indian Tribes. Funds from HAF [could] be used for assistance with mortgage payments, homeowner's insurance, utility payments, and other specified purposes."[17] Borrowers needed to show that they had obtained a financial hardship due to COVID-19. Data released on February 1, 2024, by the Treasury Department contains statistics as to the amount of relief provided by the HAF program. Through September 30, 2023, 672,170 completed applications had been received nationwide, and 376,598 had been approved.[18]

States still accepting applications for HAF funds include:

California
Colorado
Georgia
Hawaii
Idaho
Iowa
Kentucky
Missouri
Montana
Nevada
New Jersey
New Mexico
North Dakota
Oklahoma
South Dakota
Utah
Virgin Islands
Washington
Washington, D.C.
West Virginia
Wisconsin
Wyoming

Some states have suspended new applications or are accepting waitlist applications. For example, in Pennsylvania, the Pennsylvania Housing Finance Agency temporarily halted receiving new applications, but the agency provides alternative resources to assist borrowers in need. Other states that have suspended new applications include Oregon, Indiana, Maine, New Hampshire, New York, and Tennessee. The remaining states have closed their funds.

State Natural Disaster Relief Programs

The Pennsylvania Emergency Management Agency ("PEMA") summarizes the scope of relief from damage caused by natural disasters as follows:

Disaster recovery is the cumulative effort of federal, state, and local governments in conjunction with non-governmental organizations and private industries pooling financial and personnel resources to assist disaster-impacted communities with:

- Reconstructing homes
- Providing housing
- Restoring health
- Social and community services
- Rebuilding the infrastructure
- Restoring natural and cultural services
- Revitalizing the economy

[16] https://home.treasury.gov/news/press-releases/jy1594
[17] https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund
[18] A link to the spreadsheet containing this data is available at: https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund

Mitigation is the measures taken to protect life and property from future disaster damages.[19]

State emergency management agency roles are to administer various federal grant and loan programs that help individual homeowners rebuild after a disaster. These state agencies work in conjunction with the Federal Emergency Management Agency ("FEMA"). A good summary of state profiles on disaster funding is available through FEMA.[20] States in regions prone to hurricane activity, including Alabama[21], Florida[22], Louisiana[23], and Texas[24], have agencies to deal with these types of disasters. See also, information on disasters in states like California.

In addition to assistance for restoration, various programs exist to assist borrowers with their home loans, including programs to provide loan modifications and forbearance agreements.

FEMA—Safeguarding Tomorrow Revolving Loan Fund Program

With regard to assistance to prevent future damage from natural disasters, the Safeguarding Tomorrow Revolving Loan Fund Program (the "RLF") was authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act.[26]

According to FEMA:

> On Dec. 19, 2023, FEMA released a funding opportunity making available $150 million for the fiscal year 2024 Safeguarding Tomorrow through On-going Risk Mitigation Revolving Loan Fund program (Safeguarding Tomorrow RLF).
>
> FEMA will provide grants to eligible applicants to award low-interest loans to communities to reduce their vulnerability to disasters, foster greater resilience and reduce disaster impacts.
>
> The program's capitalization grants provide low-interest loans to local governments most in need of financial assistance, including low-income geographic areas and underserved communities.[27]

The objective of the RLF is "to provide capitalization grants to eligible entities for revolving loan funds."[28] Further, "[t]he program's intent is to provide an opportunity for these entities to make low-interest loans to local governments most in need of financial assistance, including low-income geographic areas and underserved communities. FEMA will not be selecting projects or awarding loans."[29] The "revolving loan fund is a funding mechanism that allows entities to issue loans to local governments to finance a project or activity. After the project or activity is completed, the loans are repaid to the revolving loan fund with applicable interest. Funding associated with the revolving loan fund is continuously recycled, which allows entities to issue additional low-interest loans for the life of the revolving loan fund."[30] The types of projects contemplated by the RLF include construction that would reduce the harm of natural disasters to infrastructure.

[19] https://www.pema.pa.gov/Recovery/Pages/default.aspx
[20] https://www.fema.gov/emergency-managers/national-preparedness/frameworks/national-disaster-recovery/support-functions/rsflg/state-profiles
[21] https://www.ahfa.com/multifamily/disaster-relief/displaced-households
[22] https://www.floridahousing.org/programs/special-programs/ship---state-housing-initiatives-partnership-program/disaster-relief
[23] https://www.lhc.la.gov/disaster-recovery
[24] https://www.tdhca.texas.gov/
[25] //efaidnbmnnnibpcajpcglclefindmkaj/https://www.calhfa.ca.gov/kyhc/forms/Keep%20Your%20Home%20California%20Assistance%20in%20Disaster%20Areas.pdf
[26] PL 100-707, November 23, 1988, which amended the Disaster Relief Act of 1974, PL 93-288.
[27] https://www.fema.gov/grants/mitigation/storm-rlf
[28] https://www.fema.gov/fact-sheet/safeguarding-tomorrow-revolving-loan-fund-program-program-overview
[29] Id.
[30] Id.

III.SERVICER RESPONSIBILITIES AND HOLDS: CONTEXT

Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Mortgage Corporation) currently own approximately 70% of the residential loans in the United States as of 2023, up from about 50% during the financial crisis of 2010.[31] These two investors have had to manage more and more loans impacted by natural disasters, which have been rising in number per capita.

As of November 8, 2023, there have been 25 confirmed weather or climate disaster events with losses exceeding $1 billion each, including one drought, two floods, 19 severe storms, one tropical cyclone, one wildfire event, and one winter storm. These 2023 events resulted in 464 deaths. The annual average number of events from 1980 to 2022 was 8.1, and the annual average for the most recent five years, 2018 to 2022, was 18 events.[32]

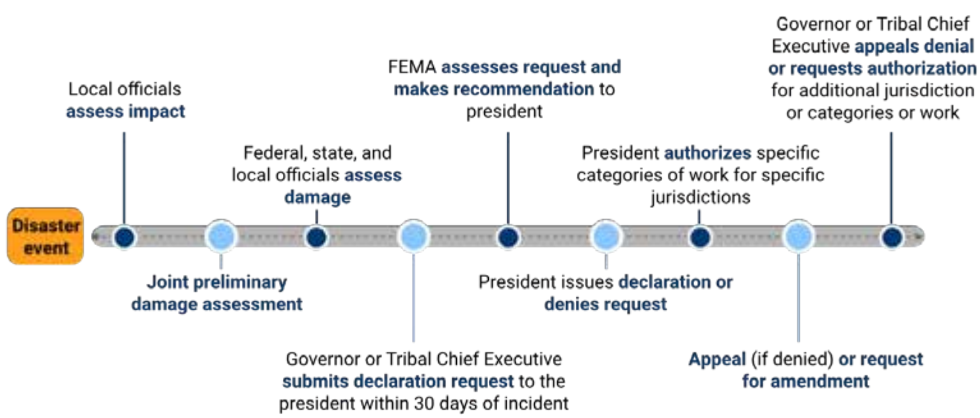
Evaluating the Impact of a Disaster Event and Assisting a Borrower

Fannie and Freddie, along with their servicer partners, continue to implement disaster protocols to assist borrowers affected by natural disasters, including waiving late fees, suspending foreclosure and legal proceedings, and offering workout options if needed.[33]

While disasters, actual and pending, are reported by the media, disaster declaration begins with a local or state declaration, after which local or state authorities escalate to the federal government and President.[34] How disasters are determined and classified has greatly changed since the 1920s, when the federal government first provided federal aid for the flooding of the Mississippi River.

FIGURE 1

Disaster declaration request process



Source: Infographic based on timelines developed by Congressional Research Services. The timeline summarizes provisions in 44 C.F.R. §§206.31-206.48

Brookings Metro

[31] https://www.nar.realtor/fannie-mae-freddie-mac-gses
[32] https://www.ncei.noaa.gov/access/billions/#:~:text=In%202023%20(as%20of%20November,and%201%20winter%20storm%20event.
[33] https://www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Disaster-Assistance.aspx
[34] https://www.brookings.edu/articles/the-us-needs-a-new-system-for-declaring-natural-disasters-and-distributing-federal-aid/

After a disaster declaration, many other programs are activated, including assistance for public clean-up and for individuals, rebuilding loans, Supplemental Nutrition Assistance Program (SNAP) benefits, and unemployment insurance, but the history of implementing this aid shows it is inefficient and often ineffective.[35] Mortgage servicers often use FEMA (Federal Emergency Management Agency) holds for loans impacted by declared disasters, and these holds too are often inefficient and ineffective.[36]

When borrowers experience a financial challenge, like the loss of a job or an extended illness, access to forbearance, temporary payment relief, loan modification, or permanent reduction in monthly payment, more often than not provides financial stability.

Natural disasters tend to impact borrowers for longer terms than financial disruptions. They involve time to determine the extent of damage and insurance coverage, and to retain contractors, much less timely rebuild. Rebuilding costs increase due to shortages, demand, price gouging, and modification options will vary between government-sponsored enterprise (GSE) borrowers, representing almost 70% of residential loans, and non-GSE borrowers. One critical component in the natural disaster rebuilding space that impacts assisting borrowers is the lack of an efficient market for rehabilitation financing, which is not easy to obtain and is not affordable. Industry observers suggest that servicers be instructed to evaluate borrower eligibility for rehabilitation financing in conjunction with a loan modification and insurance funds. This helps avoid borrowers walking away from properties with substantial damage, which exposes lenders, servicers, investors, and agencies to losses.[37]

Hazard Mitigation Role of Lending and Servicing Institutions

The Federal Housing Finance Agency has compiled mortgage help for homeowners affected by natural disasters with links to Fannie Mae, Freddie Mac, FHA, and VA resources.[38]

Fannie Mae's most current iteration of disaster borrower deferrals is Lender Letter LL2020-05, Payment Deferral, a new retention workout option jointly developed with Freddie Mac (Freddie Mac Guide Bulletin 2020-28[39]) at the direction of FHFA. This disaster payment deferral option assists borrowers with disaster-related hardship to return their mortgage to a current status after up to twelve (12) months of missed payments.

Generally, Fannie Mae and Freddie Mac's disaster payment deferral program offers servicers:

- A solution that is simple to explain to borrowers, as the amount of their delinquency moves into a non-interest-bearing balance, due and payable at maturity of the mortgage loan or earlier payoff; and all other terms of the mortgage remain unchanged.
- No trial period, resulting in fewer borrower touchpoints than required for modifications.
- An efficient automated process through Servicing Management Default Underwriter™ for evaluation and decisioning case submissions.

The Lender Letter and Guide Bulletin provide details for identifying an eligible disaster, determining borrower and property eligibility and terms, performing an escrow analysis, performing an evaluation hierarchy, reporting a deferral to GSEs, handling servicing and other fees, and so on.[40]

FHA/HUD insures its loans, which have rules tied to their insurability, and they provide direct resources for borrowers impacted by disasters. These resources are FEMA, the U.S. Small Business Administration, local

[35] See, Id.
[36] https://dsnews.com/news/03-08-2021/the-limits-of-the-fema-hold-moratorium
[37] https://www.urban.org/urban-wire/mortgage-industry-needs-modernized-disaster-recovery-toolkit
[38] https://www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Disaster-Assistance.aspx
[39] https://sf.freddiemac.com/articles/news/freddie-mac-announces-disaster-payment-deferral-and-other-servicing-updates
[40] https://singlefamily.fanniemae.com/media/23366/display?_ga=2.194906021.94474833.1597671383-464940677.1584116633; https://guide.freddiemac.com/app/guide/bulletin/2020-28?_gl=1*148vk7c*_gcl_au*MTU4NTQ2MTkwMS4xNzA2NTUzNDkx*_ga*MjAyNTU2MzI0Ny4xNzA2NTUzNDkx*_ga_W1VD6NP75S*MTcwNjU1MzQ5MC4xLjEuMTcwNjU1NDMwMS42MC4wLjA.

housing counseling agencies, and disaster recovery funds. HUD disaster resource information can be found at https://www.hud.gov/disaster_resources.

The Veterans Administration uses an approach that directs borrowers to contact FEMA, their mortgage company, and their insurance company as soon as possible. They instruct lenders to provide a condition report to property impacted by a FEMA-declared disaster, and servicers to extend all possible forbearance to borrowers, including establishing a 90-day moratorium on new foreclosures in the disaster area.

Loss Mitigation, Bankruptcy, Successors in Interest

Studies have shown that areas affected by natural disasters have increases in debt and bankruptcies following these events. People affected by disasters declare bankruptcy at a rate roughly double that of unaffected people. For borrowers experiencing financial distress that can come with a natural disaster, bankruptcy is an option, and loss mitigation within a bankruptcy case is an option.[41] For some borrowers, bankruptcy can be a tool to recover from the financial impact of a natural disaster.

Under CFPB Successor in Interest rules, "...a person to whom an ownership interest in a property securing a mortgage loan subject to this subpart is transferred from a borrower, provided that the transfer is:

(1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
(2) A transfer to a relative resulting from the death of a borrower;
(3) A transfer where the spouse or children of the borrower become an owner of the property;
(4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
(5) A transfer into an **inter vivos** trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property."[42]

In theory, if a person qualifies as a successor in interest, they could qualify to obtain forbearance relief after a natural disaster if they can manage the transfer of title to their name.

IV. INSURANCE MARKET RESPONSE (FLORIDA CASE STUDY)

Florida has been synonymous with "hurricanes," which makes that state a great case study in mass insurance claims and the resulting response by the insurance industry. As the United States faces an increase in extreme weather-related events occurring in both traditional and new areas for those types of events, it is more important than ever to analyze past trends and responses.
Citizens Property Insurance Corporation

Hurricane Andrew, one of the most infamous hurricanes, landed in Florida in 1992, causing $26.5 billion in damage. Eleven insurance companies went bankrupt while many others stopped writing or renewing policies in the state.[43] Although there was relatively mild hurricane activity over the next decade, in 2022, the Florida legislature passed legislation resulting in Chapter 627.351(6) and the creation of Citizens Property Insurance Corporation (hereafter "Citizens"). Citizens is the result of a merger of two entities to provide both windstorm coverage and general property insurance for homeowners who could not obtain insurance elsewhere.[44] Recently, Citizens again exceeded 1 million policies in 2022, becoming the largest property insurer in the state. Previously, Universal Property & Casualty Insurance Co. was the largest carrier in the state.[45]

[41] https://www.urban.org/sites/default/files/publication/100079/insult_to_injury_natural_disasters_2.pdf
[42] https://www.consumerfinance.gov/rules-policy/regulations/1024/interp-38/
[43] Citizens Property Insurance Corporation - Wikipedia
[44] Citizens Property Insurance Corporation - Wikipedia
[45] Florida's Citizens Tops 1 Million Policies, Making it Largest in State by a Third (insurancejournal.com)

Citizens underwriting more policies than private insurance carriers is a trend that repeats periodically, especially after multiple storms hit the state. The other carriers either head for bankruptcy, out of state, or raise premiums, whereby they are not competitive with Citizens. As of June 30, 2022, Citizens held $318 billion in total exposure and $2.5 billion in premiums and surcharges.[46] If too much risk is underwritten, the state will have to look to taxes as a source of funding reserves.

Florida Hurricane Catastrophe Fund

Florida also has the Florida Hurricane Catastrophe Fund (hereafter "FHCF"). The FHCF is a tax-exempt state trust fund that provides reimbursements to residential property insurance companies for a portion of their catastrophic hurricane losses in Florida. The FHCF operates exclusively to protect and advance the state's interest in maintaining insurance capacity in Florida.[47]

In 2022, Florida began passing new legislation to address the rising property insurance coverage, including but not limited to allocating relief funds, prohibiting carriers from denying coverage based on roof age, but of interesting note, creating a new standard of application of attorney fee multipliers which had been liberally applied, resulting in increased costs to consumers.[48] This last part regarding attorney's fees, along with Florida Statutes §86.121, reconfigured attorney fee-shifting provisions and limited an insured's ability to seek attorney's fees against an insurer, and when they are awarded fees, lessened the ability to seek fee multipliers. In the past, the insured could sue the insurance company without the risk of paying attorney's fees if they lost, and if they won, they often received the benefit of fee multipliers that tripled attorney's fees. Fee multipliers are generally reserved for extraordinary or novel use of the law to win a case.

The status quo before 2022 had encouraged claims to be referred to attorneys who would file on behalf of clients. This was incorporated into personal injury practices as property claims became a lucrative area for lawyers. Consumers were encouraged to hire an attorney over an adjuster who could seek fees without repercussions, which left insurance companies in the position of having to settle in most cases.

The Florida legislature has also addressed insurance company transparency and forbids claim denials for certain reasons such as roofs being 15 years old but still having several years of life left. It appears that the legal fees issue will be a great motivator in getting underwriters to consider Florida once again. On the local level, counties are requiring houses to be raised in flood zones. Although Florida has experienced increases in windstorms over the past year, the Florida government, on both local and state levels, has done some good things to address the issue.

V. JUDICIAL RESPONSE

An important consideration for servicers to keep in mind while implementing their natural disaster policies is the response of the judiciary—especially in judicial foreclosure states. Just because a servicer places a FEMA hold on all active foreclosures on properties within a specific geographical area, the courts don't necessarily have to accept the servicer's request. Courts have ruled on motions to continue a final hearing, or a motion to cancel a foreclosure sale date, in many different ways. Some courts grant continuances or sale cancellations without any issue. Those courts likely take the position that a foreclosing bank is entitled to control the timing and the manner in which they pursue a foreclosure judgment and foreclosure sale.

Alternatively, some courts will require an evidentiary showing that the property in question has experienced actual damage as a result of a natural disaster. Acceptable evidence could include affidavits as to property damage, inspection results, or photographs showing damage to the property. In these instances, as soon as a servicer's attorney is made aware of these judicial requirements and can identify particular judges and/or counties that require documentation, it is imperative that they actively communicate with servicers so that

[46] Florida's Citizens Tops 1 Million Policies, Making it Largest in State by a Third (insurancejournal.com)
[47] Florida Hurricane Catastrophe Fund - About the FHCF (sbafla.com)
[48] Governor Ron DeSantis Signs Bipartisan Property Insurance and Condominium Safety Reforms (flgov.com)

they can ensure that the necessary steps are being taken to obtain the documentation. This is important because some courts have gone as far as to threaten sanctions for a bank, servicer, and its attorney of record if a motion to continue trial, or to cancel a foreclosure sale, is filed without any direct evidence that the property was impacted by the natural disaster.

The bottom line is that the job isn't done once the properties sitting in a natural disaster zone are placed on FEMA hold. Servicers must work with their attorneys to ensure that they are made aware of upcoming trial or sale dates and that the appropriate action is being taken to ensure compliance with the judiciary's practices and policies as it relates to FEMA holds.