November 22, 2024

The Honorable Sandra Thompson
Director
Federal Housing Finance Agency
400 7th Street SW
Washington, DC 20219

Dear Director Thompson,

The Housing Policy Council[1] respectfully submits this letter as your team gathers information on the challenges affecting the availability, adequacy, and affordability of property insurance for single-family residential homes and condominium projects. Key segments of this letter were also shared with Fannie Mae and Freddie Mac (the Enterprises) in response to their recent survey on property insurance issues.

Concerns with Enterprise Insurance Surveys

Earlier this month we[2] expressed our concerns with the process and substance of the Enterprise insurance surveys.[3] We recommended that the Enterprises use the confidential survey instrument to collect information from the property and casualty insurance industry, rather than lenders and servicers. Direct engagement with the insurance industry would enhance the Enterprises' knowledge and understanding of existing practices and possibilities for residential and project-level hazard insurance coverage. Our discussions with insurance companies and their trade associations indicate that they can provide critical insights to address the challenges posed by the Enterprise 2024 Bulletins and underlying policy.

Recommendation for a Transparent Process

If additional information from the lending community is needed, we suggest initiating a transparent and public Request for Input (RFI) process. An RFI, informed by discussions

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[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.

[2] See ABA, HPC, and MBA letter from November 18th.

[3] We expressed concern that the surveys had the potential to exacerbate the industry's uncertainties as they failed to acknowledge or address the full range of unintended consequences resulting from the unachievable standards articulated in the 2024 Bulletins. Indeed, neither the Bulletins nor the surveys acknowledge that the newly announced policy is inconsistent with some state and federal regulations, and they do not provide clear or practical expectations for action when a servicer identifies insufficient coverage.

with the insurance industry and other impacted participants, could present FHFA's specific objectives and enable all stakeholders the opportunity to understand the concerns and options under consideration. This approach would allow lenders and servicers to contribute constructively to the process.

Challenges with Current Policies

The discussion under this heading is intended to illustrate the complex challenges and issues that should be covered in a transparent industry dialogue following an RFI. We consider this information directly responsive to some of the Enterprise survey questions.[4]

We reiterate that lenders and servicers are not insurance experts and must rely on the underwriting performed by insurance companies, particularly Replacement Cost Value (RCV) determinations. The expectation that a lender or servicer could obtain a third party RCV estimate and use that information for compliance with Enterprise guidance presents numerous issues. Given the variety of third-party models available, there is no single and uniform measure of RCV; RCVs can be expressed in various ways, based on different factors, points in time, or in ranges. Therefore, an RCV produced by a third-party model may conflict with the figure on an insurance policy, if that figure is presented on the policy at all (which will not always be the case). A lender or servicer is not in a position to question or negotiate insurance coverage with either the insurance company (with which there is no contractual relationship) or the consumer and this could be construed as acting in the capacity of an insurer that may lead to violations of state insurance licensing laws.

Further, as FHFA and the Enterprises are aware, insurers do not always provide the data points necessary for lenders and servicers to determine the adequacy of the coverage amount or, provide layered and nuanced documentation with variations in terminology that make it impossible to affirm the coverage meets GSE requirements. Even in cases where a lender or servicer is able to discern that the RCV coverage is insufficient and the borrower cannot or will not address the shortage, the Enterprise policy position is untenable. It is critical that GSE policies be revised to provide clear, practical, and commercially viable guidance for how to address cases of insufficient insurance or lack of data from insurers in a manner that does not further reduce affordable housing supply, cause customer harm, increase regulatory risk for servicers, or require burdensome or costly solutions for either consumers or servicers. The absence of lender-placed gap insurance products and the burden of additional premiums on consumers, highlight the need for reliance on licensed property and casualty insurers.

State regulations, which may conflict with Enterprise guidance, further complicate the situation. We have attached a short list of some of the problematic state regulations and want to highlight here that inserting the lenders and servicers into an insurance

[4] We are not identifying those questions in this letter out of respect to the nondisclosure agreement.

intermediary role poses undue legal and litigation risk. To manage such risk, lenders and servicers would need to dedicate substantial resources to establish new practices and set up rigorous controls, adding inefficiency and expense to mortgage lending that is simply not necessary, when property and casualty insurers are prepared to meet the insurance needs of homeowners with policies that provide adequate coverage.

Call to Action

In sum, the Enterprise 2024 Bulletins present policies that don't align with the existing insurance industry practices and the state regulatory requirements. The property and casualty insurance industry and the state insurance regulators are aware of the challenges and are in the best position to help FHFA and Enterprises explore feasible policy options (for both single family residential, which we focused on in this letter, and for condo projects, which present a similar set of difficulties). In addition, the issues highlighted in this letter are complex and can't be tackled by the GSEs and FHFA alone. There are also interagency interests that need to be included in the industry dialogue – including consumer protection (CFPB), prudential (OCC, Fed, FDIC), and state regulators of non-banks mortgage companies, and state insurance commissioners - which underscores the need for a well-informed industry dialogue following sourcing of views using a well-crafted RFI.

We appreciate the opportunity to reiterate these concerns and to reaffirm our perspective that FHFA and Enterprises would benefit from additional engagement with the property and casualty insurance industry. If we can be of assistance in furthering that dialogue, please do call on us. We stand ready to engage with FHFA and other stakeholders on this important topic.

Yours truly,

Edward J. DeMarco

Edward J. DeMarco
President
Housing Policy Council

Problematic State Laws and Regulations

California Caps on Replacement Cost Payments

California has faced rising issues with wildfires, especially in the last decade. Insurers in the state have become increasingly cautious about offering full replacement cost policies.

- Result: While insurers do offer replacement cost policies, many now include caps on how much they will pay for rebuilding costs, often requiring additional riders for full protection. Homeowners may find that these caps limit their ability to rebuild their homes completely if costs exceed the policy limits due to inflation or high demand for construction.
- Code Upgrade Costs: California also mandates that homes destroyed by wildfires or other disasters must be rebuilt to meet current building codes. Insurers are not always required to cover the full cost of these upgrades unless policyholders have purchased additional "Ordinance or Law" coverage.

Texas Actual Cash Value Requirements for Certain Policies

In Texas, especially in high-risk areas prone to hurricanes (e.g. the Gulf Coast), some policies issued through state-sponsored insurance pools (like the Texas Windstorm Insurance Association or TWIA) may only offer actual cash value coverage by default for certain types of damage.

- Result: Homeowners who purchase policies through TWIA or TFPA may only receive compensation based on ACV of their property unless they purchase a separate replacement cost endorsement.
- Limitations on Windstorm Coverage: In some parts of Texas, due to frequent hurricane damage, insurers have chosen to offer only ACV policies for windstorm coverage, leaving homeowners with limited rebuilding funds unless they negotiate additional endorsements. TFPA dwelling policies only provide ACV coverage for roofs.

Louisiana Actual Cash Value for Older Homes

Louisiana, especially areas prone to hurricanes, like New Orleans and the Gulf Coast, often face stricter insurance regulations due to frequent natural disasters.

- Result: In Louisiana, older homes, especially those more than 40 years old, may only qualify for actual cash value policies due to the increased risk and difficulty in estimating replacement costs. Homeowners who own older properties may struggle to find replacement cost coverage unless they agree to costly upgrades or repairs before the policy is issued.

Florida Actual Cash Value for Roofs

Florida's high risk of hurricanes and the resulting damage to roofs have led to specific insurance regulations focused on roof coverage.

- Result: Many insurers in Florida, particularly after Hurricane Irma (2017) and Hurricane Ian (2022), have shifted to offering actual cash value for roof replacements. Homeowners must purchase additional endorsements to get full replacement cost coverage for roofs, which can significantly increase their premiums.
- Roof Age Limitations: FL senate bill 76 requires property insurers to offer ACV for roof claims that are over 10 years old. The bill's purpose is to reduce the number of frivolous claims that are filed after a hurricane, which can drive up insurance premiums for everyone.