



To: North Carolina Legislature Government Oversight Committee
From: Legal Aid of North Carolina, Disaster Relief Project
Re: ReBuild NC and NCORR Policy and Practice Issues
Date: 12/5/2022

INTRODUCTION

Legal Aid of North Carolina, Inc. (LANC) would like to thank the committee for its request that we present written comments and recommendations regarding the Rebuild NC Homeowner Recovery Program (Rebuild NC). LANC began representing clients in cases against Rebuild in 2019. During that time, we have opened around 650 cases where Rebuild NC or NCORR is listed as the adverse party. The services that we provide to clients in this program generally include, but are not limited to, identifying additional owners in heirship cases and/or providing ownership documentation, assisting with the Rebuild NC applications, providing advice about the process, appealing unfavorable eligibility or duplication of benefits determinations, and assisting with construction issues. The level of service that we provide to any individual client depends on several factors and varies from client to client. Since 2019, approximately 99 cases have been resolved with some sort of decision either favorable or unfavorable from Rebuild NC.

We have worked closely with staff at the North Carolina Office of Recovery and Resiliency (NCORR) during our work with clients involved in the Rebuild process to address our clients' needs and concerns. LANC staff communicates with staff from Rebuild NC on a daily basis. We have appreciated the efforts made by NCORR to provide our staff with open lines of communication during this very long process. However, since we began working with clients in 2019, LANC has observed some ongoing concerns regarding the Rebuild NC process. This memo will address each of them in turn, following the structure of the current Rebuild NC CDBG-DR Homeowner Recovery Program Manual, along with recommendations for policy and implementation improvements.

0.14 COMPLAINTS AND APPEALS (p.16-17)

Problems

In all prior versions of the Rebuild NC manual, applicants were allowed at least two (2) levels of appeal and, in the earliest version (4/9/19), were allowed a third appeal to the Secretary of the Department of Safety. In the current version, released August 1, 2022, applicants are allowed only one appeal. In all previous versions of the manual, the appeals policy stated that appeals would be decided "within 30 days." The current version of the manual provides "[t]he Program will provide written response to the applicant within 15 working days of receipt of the written appeal." In practice, this has meant that an applicant receives acknowledgement that the appeal was received and is not provided a timeline for an appeal determination. In all prior versions of the manual, Rebuild NC was required to provide written communication that included the reason for the delay to the applicant if the decision exceeded the deadline. In practice, this written communication occurred sporadically at best. Most of our clients received no communication regarding their pending appeals.



Our clients have experienced significant delays in appeals decisions under all versions of the appeals rule. This has proved true even when the Rebuild NC team initially made decisions contrary to applicable federal law. NCORR was aware of and acknowledged the error, but our clients continued to experience delayed appeals determinations. In some cases, our clients have experienced delays in excess of six (6) months and occasionally over twelve (12) months. As of the date of this memo, applicants still do not receive regular updates about the status of appeals. Often, when the Appeals Team provides updates, they will report that they need no additional documentation to issue a decision, citing no reason for the delay.

The ability to submit a formal, written complaint is provided in the two most recent versions of the manual. Once an applicant submits a written complaint, Rebuild NC staff are supposed to respond within fifteen (15) working days. However, our clients experience delays in receiving responses to their formal, written complaints that are similar to the delays they experience in the appeals process.

Recommendations

We recommend that Rebuild NC select a consistent appeals process that contains at least two levels of appeal with consistent deadlines for each appeal determination. At least one level of appeal should be to an agency outside of NCORR. NCORR should adhere to the deadlines mandated in the manual.

1.2 APPLICANT COMMUNICATION (p.26)

Problems

Per the manual: “The Program will ensure that all applicants have updated information regarding the status of their application and award. The Program will use various methods of communication including but not limited to the following: • Phone calls • Written correspondence (e-mail, direct mailings, text messages) • In-person meetings • Mobile-friendly website Applicants requiring special accommodations or who wish to inquire about accommodations at the ReBuild NC Centers should contact the Program’s Section 504 Coordinator by dialing the call center.”

Communication from Rebuild NC staff (both internal and contract staff) to the applicants has been a consistent problem. Rebuild NC case managers do not keep applicants updated and often say they “cannot see all of the file” when asked questions about progress, next steps, reason for delay, etc. For example, case managers may tell an applicant that they are in Step 4 but be unable to provide a meaningful explanation regarding why an applicant is still in that step. Additionally, applicants may receive an update from their case manager only to speak with someone else at Rebuild NC and receive different, sometimes contradictory, information.

Rebuild NC experienced a high level of staff turnover even before the contract between NCORR and Horne LLP was terminated. Case managers leave or applicants are assigned to different case managers, but applicants are not informed of these changes. Often, an applicant only learns of a change when a case manager’s phone number is no longer in service. When calling main number to determine their new case manager, applicants are often told that Rebuild NC staff will inform the case manager to call the applicant but will not provide the case manager’s contact information to the applicant. This is especially problematic when an applicant is involuntarily withdrawn for failure to communicate with their case manager (*discussed in more detail below*).

Recommendations

Rebuild NC should establish a mobile-friendly, online portal for applicants that is updated regularly by Rebuild NC staff. This portal should contain all information relevant to the status of the applicant's file, including but not limited to, documents, action items, communication between the applicant and their case manager, etc. This portal should provide a means for applicants to communicate with their case managers. Communication should be acknowledged and returned within twenty-four (24) hours of its submission to the portal. The portal should contain an online chat function that is monitored by dedicated Rebuild NC staff with the ability to obtain answers for applicants when case managers are unavailable.

1.3 APPLICANT RESPONSIBILITIES (p.26-27)

Problems

1.3.1 "Ongoing Records Production and Retention": Applicants are expected to maintain records of all documentation necessary to process their application. However, often applicants provide case managers with original documents because they do not have the means to make copies. Case managers do not make copies for applicants. Unfortunately, documents are frequently lost, misplaced, or otherwise not found in an applicant's file and applicants are unable to provide the document again. Case managers frequently request the same documents repeatedly. Even when applicants are able to provide documents multiple times it can be both costly and time-consuming to do so since many do not have easy access to printers, fax machines, or postage.

1.3.2 "Involuntary Program Withdrawal": Applicants face the threat of being involuntarily withdrawn from the Rebuild NC for failure to provide requested application information and for failure to communicate with their case manager. However, applicants who are asked to provide additional documentation are rarely provided with a deadline by which to submit it. As described above, poor communication from case managers and frequent turnover leads to applicants sending emails to unmonitored addresses or making calls to voicemails that no one is checking. Many applicants have had more than four different case managers since submitting their initial application and they are rarely informed of a change. Additionally, applicants are not always informed about the possibility of being involuntarily withdrawn, even in instances where they have been in contact with Rebuild NC staff. In several instances in which the applicants' case managers changed multiple times, the applicants did not know who to contact but were withdrawn for failure to communicate. In several cases, LANC has been forced to appeal the involuntary withdrawal of an applicant even though the withdrawal was clearly the fault of the Rebuild NC case manager.

1.3.4 "Stop Work": In all prior versions of the manual, "applicants whose environmental review has not been completed are required to stop all existing repair work." Incomplete repair work was not and still is not considered "non-duplicative assistance," (*discussed further below*) and therefore, it would not reduce an applicant's duplication of benefits calculation. Until the last version of the manual, there was no written policy or procedure for an applicant to request approval from the program to complete emergency repairs after the environmental review. The last version of the manual stated: "Certain emergency repairs, at the discretion of NCORR and in compliance with 24 CFR 58.34(a)(10), may not jeopardize eligibility. Emergency repairs are reviewed and must be approved by NCORR on a case-by-case basis."

Many applicants have needed emergency repairs as their homes continue to deteriorate around them. Some applicants trying to get program approval from emergency repairs were made to wait for months with no updates or clear explanation for the delay. In one instance, an applicant's roof caved in while she waited over six months for the program to approve her request for an emergency repair. As recently as this summer, applicants were told that any repair work would leave them at risk of withdrawal from the program. Examples include an applicant being told they could tie a tarp on their roof but could not otherwise secure it, an applicant being told they could only lay plywood over holes in their floor but could not secure the plywood, and an applicant being told they could not repair stairs leading to their exterior door. Although LANC staff made attempts to advise applicants regarding which types of emergency repairs are permitted under the relevant federal guidance found at 24 CFR § 58.34(a), Rebuild NC staff consistently misinforms applicants that any emergency work makes them ineligible for assistance. Additionally, applicants asking for emergency repair approval have been told they must "withdraw these requests in order to receive award letters" and then did not receive award letters for months.

Recommendations

The process of involuntarily withdrawing applicants should cease altogether. Until communication issues within the Rebuild NC program are addressed, it is fundamentally unfair to expect applicants to meet arbitrary and uncommunicated deadlines or face being kicked out of the program. Furthermore, the threat is unnecessary as Rebuild NC can simply administratively close applicants' files where communication is lost. If an applicant with an administratively closed file reaches out to the program subsequently, their file can be reopened if funding is still available.

The current version of the manual improves the emergency repair process. Applicants are now able to perform those activities that fall under the exemptions of 24 CFR § 58.34(a) including "[obtaining] assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration." While LANC supports the changes to the emergency repair process, many repairs that applicants could have made two or three years ago have now deteriorated to the point that they cannot be addressed with a minor emergency repair. Additionally, charity funding that was available from small repairs in the past is almost nonexistent now. NCORR has indicated that they will contract with local Long Term Recovery Groups (LTRGs) and/or Volunteer Organizations Active in Disaster (VOADs) to complete these repairs. However, LANC is not aware of a timeline for implementation of this strategy.

1.4 LIMITED ENGLISH PROFICIENCY (LEP) (p.27)

Problems

Whether or not an applicant needs translation services is up to the applicant's case manager. Applicants needing translation services have been required to use family members as translators and, in one instance, an applicant was asked to voluntarily withdraw from the program but was not provided a translator and was asked to sign withdrawal documents in English.

Recommendations

Rebuild NC should provide qualified, paid translators and interpreters for all applicants who need them. Additionally, Rebuild NC should have a clear policy for how to request and access these translation services.

2.3.3 REQUIRED OWNERSHIP DOCUMENTS (p.34)

Problems

The Rebuild NC Program generally requires that an applicant must have owned and occupied the damaged property as their primary residence at the time of either Hurricane Matthew or Florence. Acceptable documentation of ownership is typically either a general warranty deed or will with the applicant's name listed. Many applicants who own the land and their home have obtained that ownership through heirship. This means that they inherited their property through North Carolina laws of intestate succession and own the property along with other heir owners. The number of owners depends on how many generations have passed the property through intestate succession.

The current manual states “[s]pecial ownership conditions, such as a trust, a life estate, and heirship are reviewed by the program and a determination of eligibility is made on a case-by-case basis. The applicant is required to attest by signing the Homeowner Grant Agreement that no other party has the right to claim ownership or everyone who has the right to claim ownership has agreed to participate in the program or could not be located.” The attestation requirement is difficult for owners of heir property who may be unable to determine which other relatives share an ownership interest in their property without the assistance of a lawyer and may not be on good terms with their co-owners. Moreover, this requirement is not in accordance with North Carolina property law, which holds that all co-owners in a tenancy-in-common have an equal, undivided interest in and right to use the property that they own together.

Recommendations

Rebuild NC should adopt the new FEMA policy regarding proving an ownership interest in heir property. FEMA recently made changes to its proof requirements for owners of heir property and now requires the following:

“A self-declarative statement... includ[ing] all of the below items:

1. The address of the disaster-damaged residence.
2. Length of time you lived in the disaster-damaged home, as your primary residence, prior to the Presidential disaster declaration.
3. Your or your co-applicant's name and signature.
4. A copy of the decedent's death certification.
5. The major elements of the following statement and additional explanation:

‘I have made a good faith effort ... to obtain and provide a copy of acceptable ownership documentation. I was unable to obtain this documentation because [provide an explanation of the circumstances that prevent standard ownership verification].’

AND the major elements of the following statement:

‘As the nearest relative of the deceased in the line of succession, my ownership includes all the rights and obligations of the deceased. The decedent's name is _____, and they died on _____. I understand I must submit the death certificate along with this declaration. I hereby declare under penalty of perjury that the foregoing is true and correct.’”

2.3.6 PRIORITIZATION OF APPLICANTS AND INCOME REQUIREMENTS (p.36)

Problems

The manual states, “LMI households will have first priority. All elements of a file being otherwise equal, the LMI applicant will advance before other applications for assistance.” We have seen no evidence of these applicants being a priority over other applicants who do not meet LMI criteria.

Recommendations

Rebuild NC should follow its stated guidance regarding serving applicants of low-to-moderate income in a way that prioritizes their applications and moves them through the application process as quickly as possible.

2.5 TEMPORARY RELOCATION ASSISTANCE (TRA) (p.39)

Problems

TRA payments often take months to be issued, which either prevents applicants from finding stable rental housing or repeatedly puts them in danger of eviction due to payment delays. As a result of delayed payments, we have had multiple clients threatened with eviction and in danger of eviction proceedings. This includes instances in which our clients were living with a family member, friends or hotel. Applicants are encouraged to choose between living with family/friends or living in a hotel as they await construction of their new homes. However, approved motels are not extended-stay hotels and, therefore, do not have adequate accommodation (stove, fridge, etc.) necessary for long-term stays. Thus, such stays cost applicants additional money and resources for a variety of reasons, including increased transportation costs and increased food costs due to an inability to prepare meals. Applicants are also informed that if they choose family/friends, they cannot later move to a hotel and vice versa. This has left many applicants without stable housing when family/friends, who are expecting them to stay 3-4 months, kick them out because they have been there much longer than anticipated. Of note: Rebuild NC allows those applicants who are in Step 5 to request emergency TRA if their living conditions are unsafe. However, Rebuild NC has not provided any guidance regarding what type of living conditions meet the definition of “unsafe.” In one instance, an applicant’s minor child fell through the floor and was injured, snakes and possums got into the home through holes in the flooring, and the home had electrical damage presenting a fire hazard, but the applicant was denied emergency TRA.

Recommendations

Rebuild NC should change their standard operating procedures to pay TRA at the first of the month instead of when it is over. They should prioritize these payments and, when possible, should make them directly to the applicant to avoid issues with landlords. The policy on emergency TRA should be written and include clear criteria for eligibility.

3.0 DUPLICATION OF BENEFIT (DOB) CHECK (p.46-57)

Problems

3.7 “Non-Duplicative Assistance”: The manual defines “non-duplicative assistance” as “[f]unds received for repair that have already been used to repair the home.” In cases where an applicant has received “non-duplicative assistance,” Rebuild NC utilizes Xactimate software to provide monetary value of prior repairs instead of accepting receipts from the applicants that would tend to show the actual cost of the repairs. Xactimate calculates its values based on the fair market cost of repairs in the applicant’s county.

Therefore, repairs made in a county with a low median income are valued lower than repairs made in a county with a higher median income. This negatively impacts applicants when they provide documentation (receipts, contracts, etc.) of the actual amount spent on repairs but Xactimate values their repairs lower, leaving applicants responsible for the difference in cost even though they spent the prior assistance towards the intended purpose. Additionally, the repairs that were not completed or the repairs that need to be redone are not counted towards their non-duplicative totals, placing an added burden on applicants despite having spent prior assistance appropriately.

3.9.1 “Escrowed Funds”: Rebuild NC previously required applicants to pay the amount of any benefits determined to be duplicative into an escrow account before receiving their award. Escrowed funds paid by applicants, or on behalf of applicants, by charity organizations have not been deposited in a timely manner. In multiple cases, checks have expired, requiring either the applicant or community organization to reissue them at additional cost to either the applicant or community organization. Cashier’s checks/money orders have been returned without explanation. In some cases, it has taken months for the escrowed funds to show up on the applicant’s file. Applicants receive no notice or acknowledgment when payment is received. These delays prevent applicants from signing their grant agreement and being moved to the construction phase of the program.

Recommendations

Rebuild NC should allow applicants to self-certify they have spent all previous assistance towards its intended purpose. Alternatively, Rebuild NC should utilize Xactimate software only in the absence of actual documentation. Rebuild NC should also allow applicants to submit evidence of work that was not completed for reasons such as a lack of funds, lack of materials, contractor fraud, etc. Rebuild NC should track escrow payments, informing applicants of receipt, and should process those payments within thirty (30) days.

5.0 GRANT DETERMINATION (p.73)

Problems

The Rebuild NC program manual does not provide a specific timeframe for when an applicant should expect to receive an award determination. Thus, even applicants who ultimately receive a favorable determination without needing an appeal experience significant delays from the date of application to receiving the award determination letter. LANC has clients that applied in 2019 and 2020 who have yet to receive an award determination.

Recommendation

Rebuild NC should provide applicants with a clear timeline from the date of application to end of construction and should communicate, in writing, any and all delays, the reason(s) for the delay, and the estimated amount of time the delay will add to the process.

6.7 CONTRACTOR-APPLICANT GRIEVANCES (p.89)

Problems

Once an applicant enters the “construction phase” (Step 7), they sign a Homeowner-Contractor Rehabilitation Agreement. This agreement contains standards regarding both the pace and quality of contractor work. It also contains penalties that can be assessed against contractors for failing to meet these standards. Clauses in the contract provide for liquidated damages. Claims or disputes regarding a



variety of issues (including a time extension) where the damages alleged are under \$50k are subject to an informal dispute resolution process. Claims or disputes where the damages alleged are over \$50k are subject to a formal dispute resolution process. However, another clause in the contract also states "NCORR may act on behalf of Owner [applicant] to enforce Contractor's performance under this Agreement." These two clauses are contradictory and create confusion as to whether the applicant or NCORR has the power to enforce the contract against the contractor. The contract provides for liquidated damages at \$250/day when construction is delayed past 150 days after the homeowner receives the "Notice to Proceed." However, the contract allows NCORR to approve construction delays. LANC is not aware of any incidence where NCORR sought any liquidated damages due to construction delays on behalf of any homeowner.

NCORR has been either unable or unwilling to intervene to enforce construction warranties, leaving it to the applicant to attempt to enforce the contractors' duty to make repairs. Per the manual, construction on the applicant's home is warranted for one (1) calendar year. During that time, an applicant may submit warranty claims for any construction issues present in the home. It appears that Rebuild NC staff are either unwilling or unable to ensure that contractors fix construction issues and have not enforced warranties. Instead, applicants are told they may pursue an action against the contractor separately. For instance, some applicants that have clear structural issues but Rebuild NC has encouraged them to seek repairs from LTRGs or VOADs, putting another burden on cash-strapped charitable organizations instead of enforcing the warranty claims. Here again, the Homeowner-Contractor Rehabilitation Agreement does not provide clear recourse and limits the applicant who can be undermined in any claims by NCORR acting on behalf of the owner/applicant.

Recommendations

Rebuild NC should utilize liquidated damages where appropriate to avoid construction delays. Construction contracts should not afford NCORR the right to approve delays and construction issues in place of the homeowner/applicant. The contract should clearly provide applicants the ability to seek damages in an appropriate court and, if Rebuild NC unwilling to enforce construction warranties, should do away with the warranties and instead provide for applicants to enforce their rights against contractors in court.

CONCLUSION

NCORR has made numerous changes to Rebuild NC policy throughout the course of these programs. Likewise, it has made repeated changes to program staff. These constant changes to staff and policy have contributed to the sometimes seemingly insurmountable delays applicants experience. It also leads to a lack of consistency in the treatment of applicants. Numerous applicants have been denied or withdrawn from the program due to policies that have since been changed. While LANC generally supports most of the most recent changes to the Rebuild NC policy manual, we believe that applicants who are no longer a part of program due to old policies should be informed that they may now qualify and that they should be provided with an opportunity to reapply. Beyond that, policies should be applied uniformly to all applicants, Rebuild NC staff should be sufficiently trained in program policies and implementation and in how to communicate that information to applicants, and NCORR should establish and *adhere to* clear deadlines for all steps of the Rebuild NC program. Any future changes to the program should be made with an eye to fundamental fairness and equity, and in an effort to quickly



repair the homes of our North Carolina citizens who have been waiting in some cases since 2016 for a safe and habitable place to live.

Respectfully submitted,

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