

United States Senate

WASHINGTON, DC 20510

July 8, 2016

The Honorable Craig Fugate
Administrator
Federal Emergency Management Agency
500 C Street SW
Washington, D.C. 20472

Dear Administrator Fugate:

We are writing to urge you to address the serious shortcomings associated with the National Flood Insurance Program's (NFIP) relationship with its private contractors. While we acknowledge the Federal Emergency Management Agency (FEMA) has recently taken steps to address these issues we raised over two years ago, these actions are far too little and have come far too late.

As you know, we have spent the last three and a half years demanding justice for Sandy survivors, while exposing profound flaws and mismanagement in the NFIP, both on the part of FEMA and private Write Your Own (WYO) insurance companies. Through a series of hearings and investigations, we uncovered a troubling pattern of Sandy survivors being underpaid by their WYO adjusters, with virtually no corrective oversight from FEMA. Indeed, it appears FEMA took a hands-off approach on all aspects – from processing insurance claims, to fighting homeowners in court – and put blind faith in its private contractors and lawyers to do right by Sandy survivors. But as we know, this trust was gravely misplaced and led to an injustice that is still not remedied even today. Exacerbating FEMA's failure to mitigate this poor performance by its contractors was the Agency's broken appeal process, which was anything but fair and transparent, and an outside legal counsel whose behavior a federal judge deemed "deserving of a level of admonishment rarely seen in federal litigation." So while it's certainly troubling that FEMA spends approximately one-third of policyholder premiums – not on repairing storm-damaged homes, but on private contractors – what's most egregious is the cut-rate service policyholders received and continue to receive, despite paying first-class prices.

These systemic failures made it necessary for FEMA to establish an unprecedented process to allow all Sandy survivors to have their claims reviewed. While we led the charge to urge FEMA to give New Jerseyans and New Yorkers a second shot at having their claim reviewed, this was far from an ideal option as homeowners are still waiting for what they deserve, despite over three and a half years passing since Sandy struck our shores. These delays are even more frustrating after the Agency gave early assurances that all reviews would be adjudicated within 90 days – yet another promise unfulfilled. This all could have been avoided if FEMA was more vigilant in overseeing its private contractors and did the job right the first time.

These costly mistakes show that it is absolutely critical that FEMA regain control over the NFIP, which is why we urge you to go further and fundamentally reform the way FEMA does business with its contractors to truly make policyholders the priority. Specifically, WYOs and other private contractors should be paid commensurate with the value of service they provide. The current compensation structure pays these contractors the same regardless of how many claims they got wrong – rewarding quantity, rather than quality. WYOs should be held accountable for the work they do and be liable for lowballing claims, just like they are currently liable for overpaying claims.

In addition, WYOs should be required to provide to FEMA and subsequently to policyholders and their advocates, any and all documentation that was produced to process their claim or adjudicate an appeal. From adjuster files to engineer reports, policyholders pay for these services out of their annual premiums, so at the very least they deserve full and unfettered access to this documentation.

But even with increased accountability, adjusters and WYOs will inevitably still make mistakes, which is why it's critically important that FEMA fixes its appeal process. And while we appreciate FEMA's acknowledgement that its own appeal system is fundamentally broken, much more needs to be done to make it fair, and transparent. Amongst other things, FEMA should not hold disaster survivors to a 60-day deadline to appeal a ruling, especially while the Agency acknowledges it does not consistently meet its own, longer, 90-day deadline to respond to appeals. We exposed this double standard nearly two years ago and it's well past time it's remedied. If an entire Federal agency with thousands of employees cannot meet a 90 day deadline, it's unfair to hold homeless disaster victims who may have just lost everything, to comply with a shorter deadline.

Additionally, policyholders should have the option of appealing their claim to an independent, third-party arbitrator. Many policyholders understandably lost faith in FEMA's ability to rule objectively in the appeal process. Providing policyholders with the option to have their claim reviewed by experts that are independent from FEMA or the WYOs will go a long way towards restoring trust in this process.

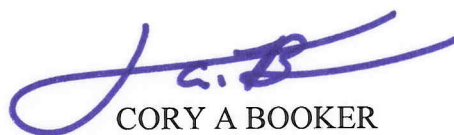
Finally, the way FEMA handles lawsuits from dissatisfied policyholders needs to dramatically change. Due to the systemic lowballing and lack of a real appeals process we noted above, hundreds of Sandy survivors were forced to hire attorneys and sue FEMA to get what they deserved. Instead of providing a streamlined method to resolve these disputes, FEMA's privately hired attorneys employed a series of hard-nosed tactics in an effort to deny homeowners legal redress. In one startling example, FEMA's counsel withheld evidence from policyholders, engaging in what the Judge described as "a shocking attempt to curtail inquiry." To add insult to injury, the millions of dollars in attorney fees paid to FEMA's counsel, came out of the pocket of the very people they were fighting in court. FEMA needs to take charge of this process and focus its efforts to ensure every plaintiff gets what they are entitled to, not spend extensive resources just to win cases on technicalities.

In light of all these shortcomings, FEMA should carefully review whether these reforms are enough, or if the NFIP could more efficiently and cost-effectively, service policyholders without WYOs acting as the middleman. We owe it to all of the policyholders and disaster survivors to consider every option and search under every stone until we get this right. We look forward to working with you and vigilantly exercising our oversight authority to ensure this program is fixed and that the people affected by Superstorm Sandy get the quality coverage and service they deserve.



ROBERT MENENDEZ
United States Senator

Sincerely,



CORY A BOOKER
United States Senator