

United States Senate

WASHINGTON, DC 20510

February 27, 2015

The Honorable Craig Fugate
Administrator
Federal Emergency Management Agency
500 C Street SW
Washington, D.C. 20410

Dear Administrator Fugate:

There have been multiple media reports regarding ongoing settlement negotiations between the Federal Emergency Management Agency (FEMA), Write Your Own (WYO) insurance companies, and Superstorm Sandy victims who are in litigation over allegations of lowballing under the National Flood Insurance Program (NFIP). We are writing to request that any resolution affords a basic standard of fairness for all victims of Superstorm Sandy as well as promulgates additional reforms to the claims process that level the playing field for policyholders.

As you know, there are 1,140 New Jersey victims of Superstorm Sandy currently in litigation, and hundreds more from New York. These victims survived the rain, storm surge, and wind only to now face a manmade disaster in the form of underpayments on flood insurance claims. We are very encouraged that there appears to be momentum to resolving these cases. Reaching a fair and just resolution would help to finally end the nightmare these victims are living as well as save significant taxpayer dollars in attorney fees.

To best accomplish the goal of fairness and justice, we encourage you to strongly take into account the following policy considerations.

First, any resolution should be as inclusive as possible to all victims, regardless of what state they live in. New Jersey victims suffered no less, nor were they spared any of the issues facing New York homeowners. To leave New Jersey victims out in the cold would be a great injustice to policyholders who expect, and deserve, nothing less than fairness.

Second, any resolution should not be limited just to those cases currently in litigation. As Senator Menendez highlighted during the July 30, 2014 Banking Committee Hearing he chaired, the claims process is badly tilted against homeowners from start to finish. Unrealistic and inflexible deadlines, a truncated statute of limitations, and the high cost of lengthy litigation all act as barriers, preventing storm victims from pursuing their day in court. Combined with the fact that up until recently the manipulation of engineering reports was hidden from all homeowners, it is clear that the number of people who filed lawsuits does not capture the full universe of victims who were harmed by an unfair claims process. Litigation should not be a prerequisite for fairness nor should arbitrary deadlines or statute of limitations be used to prejudice victims' legitimate claims, especially considering the highly questionable process.

We have been acutely aware since the 2014 Banking Committee Hearing, that FEMA's current penalty structure for WYOs making improper payments is unbalanced, creating an incentive for insurance companies to lowball claimants so as to avoid FEMA penalties. Unfortunately, we have since seen the harmful effects this unbalanced penalty structure has helped create, with WYOs manipulating engineering reports to cut the amount of money paid out to victims.


Third, we would have serious concerns with any limitation or interference with current or prospective criminal or governmental investigations into this matter. Vulnerable disaster victims should not have to face a choice between cooperating with law enforcement officials and being able to get their life back. Nor should bad actors be given any type of criminal immunity. As Judge Reyes noted recently, such attempts are "so far over-reaching, it's mind-blowing." FEMA should be fully engaged and cooperative with current and potential future criminal investigations.

Fourth, we call upon FEMA to build on the steps it has taken to increase transparency by requiring WYOs to release all documents, drafts, and emails in all cases where there are multiple iterations of engineering, adjusters' reports or estimates of damage. As Judge Brown noted in his decision, "not only did [the WYO] fail to demonstrate any legitimate need to protect the documents at issue, but that plaintiffs have overwhelmingly demonstrated a need for disclosure. In light of the unorthodox methodology employed to generate reports that resulted in a denial of plaintiffs' insurance claim, permitting defendant to withhold these documents would constitute a serious injustice." We completely agree with the Judge's well-articulated opinion and argue this commonsense principle should be adopted universally, not just for those in litigation.

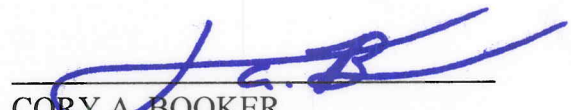
In addition to these recommendations affecting Sandy victims, we ask that you continue to make critical, underlying reforms to the claims process that focus on putting the disaster victim first. We are encouraged by the reforms you made pursuant to our meeting in December and look forward to the upcoming Menendez Task Force that is designed to balance the penalty structure for WYOs so there is no longer any perverse incentive to undervalue claims.

As you know, this is nothing short of an existential issue for many of the victims of Superstorm Sandy. Decisions and actions taken now will have a direct and irreparable impact on their recovery, well-being, and quality of life. We recognize your genuine desire to right these wrongs and pledge to continue working with you until the job is done.

Sincerely,



ROBERT MENENDEZ
United States Senator



CORY A. BOOKER
United States Senator