

**THE FLOOD INSURANCE CLAIMS PROCESS IN
COMMUNITIES AFTER SANDY: LESSONS
LEARNED AND POTENTIAL IMPROVEMENTS**

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING, TRANSPORTATION, AND COMMUNITY
DEVELOPMENT

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING THE NATIONAL FLOOD INSURANCE PROGRAM'S CLAIM
PROCESS IN THE AFTERMATH OF HURRICANE SANDY

JULY 30, 2014

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



Available at: <http://www.fdsys.gov/>

U.S. GOVERNMENT PUBLISHING OFFICE

91-460 PDF

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

TIM JOHNSON, South Dakota, *Chairman*

JACK REED, Rhode Island	MIKE CRAPO, Idaho
CHARLES E. SCHUMER, New York	RICHARD C. SHELBY, Alabama
ROBERT MENENDEZ, New Jersey	BOB CORKER, Tennessee
SHERROD BROWN, Ohio	DAVID VITTER, Louisiana
JON TESTER, Montana	MIKE JOHANNIS, Nebraska
MARK R. WARNER, Virginia	PATRICK J. TOOMEY, Pennsylvania
JEFF MERKLEY, Oregon	MARK KIRK, Illinois
KAY HAGAN, North Carolina	JERRY MORAN, Kansas
JOE MANCHIN III, West Virginia	TOM COBURN, Oklahoma
ELIZABETH WARREN, Massachusetts	DEAN HELLER, Nevada
HEIDI HEITKAMP, North Dakota	

CHARLES YI, *Staff Director*

GREGG RICHARD, *Republican Staff Director*

DAWN RATLIFF, *Chief Clerk*

SHELVIN SIMMONS, *IT Director*

JIM CROWELL, *Editor*

SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND COMMUNITY DEVELOPMENT

ROBERT MENENDEZ, New Jersey, *Chairman*

JERRY MORAN, Kansas, *Ranking Republican Member*

JACK REED, Rhode Island	BOB CORKER, Tennessee
CHARLES E. SCHUMER, New York	PATRICK J. TOOMEY, Pennsylvania
SHERROD BROWN, Ohio	MARK KIRK, Illinois
JEFF MERKLEY, Oregon	TOM COBURN, Oklahoma
JOE MANCHIN III, West Virginia	DEAN HELLER, Nevada
ELIZABETH WARREN, Massachusetts	RICHARD C. SHELBY, Alabama
HEIDI HEITKAMP, North Dakota	

WILLIAM RUDER, *Republican Subcommittee Staff Director*

JASON TUBER, *Legislative Assistant*

C O N T E N T S

WEDNESDAY, JULY 30, 2014

	Page
Opening statement of Chairman Menendez	1
Opening statements, comments, or prepared statements of:	
Senator Booker	2
Prepared statement	32
Senator Schumer	
Prepared statement	32
WITNESSES	
Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security	4
Prepared statement	33
Responses to written questions of:	
Senator Reed	44
Senator Schumer	47
Senator Warren	48
Donald Griffin, Vice President, Property Casualty Insurers Association of America	23
Prepared statement	38
Maryann Flanigan, Supervising Attorney, New Jersey Legal Services, Hurricane Sandy Legal Assistance Project	25
Prepared statement	41

THE FLOOD INSURANCE CLAIMS PROCESS IN COMMUNITIES AFTER SANDY: LESSONS LEARNED AND POTENTIAL IMPROVEMENTS

WEDNESDAY, JULY 30, 2014

U.S. SENATE,
SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND
COMMUNITY DEVELOPMENT
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Subcommittee met at 9:59 a.m., in room 538, Dirksen Senate Office Building, Senator Robert Menendez, Chairman of the Subcommittee, presiding.

OPENING STATEMENT OF CHAIRMAN ROBERT MENENDEZ

Chairman MENENDEZ. This hearing will come to order.

We have two panels today to examine the National Flood Insurance Program's claim process, particularly how it was administered in the aftermath of Superstorm Sandy. This is in response to the hundreds of letters, emails and phone calls I have received from desperate homeowners looking for help.

And so let me thank our first panelist this morning when he gets here, FEMA Administrator Fugate, for being here to shed some light on what we must do to fix the process and make sure that it is a fair process with clear guidelines for homeowners in my State and around the country.

Through their circumstances, and though their circumstances after Sandy may have varied, their stories follow a common thread. They did the responsible thing. They have faithfully paid for flood insurance for 10, 20, or even 30 years. They never had a claim until Sandy devastated their houses, only to find out it was not enough.

They assumed, since they had insurance, that they would be made whole and have the resources necessary to rebuild. They survived the wind and the rain and storm surge only to face another nightmare—a flood insurance claim process that threatened to take what the storm had not.

One of my constituents, Doug Quinn, who is with us here today, who I had the pleasure of meeting on Monday, said that when he contacted my office he said, "I was in my home the night the flood waters rushed in. I waded out through waist-deep water at midnight while electrical transformers exploded and houses burned down. That was the easy part. It is the year and a half since then that has been the tragedy."

Doug had maximum coverage of \$250,000 and received estimates of up to \$254,000 in damages, but he only received \$90,000, a third of what he needed to rebuild.

And Doug is not alone. The fact is the entire claims process, from the initial filing to the way claims are processed to the appeals process, is tilted against homeowners like Doug.

Another constituent of mine, Steve Picciano, from Ortley Beach, appealed his settlement to FEMA, but after repeatedly inquiring about its status FEMA finally acknowledged it sent a response to the wrong address.

A couple from Keansburg was only able to recover \$21,000 even after a public adjuster confirmed there was more than 4 times that amount, or \$87,000, in damage. When the couple tried to challenge the settlement, they were repeatedly told their case was closed.

Underpayments and overly complex requirements; the runaround from FEMA on the appeals process; arbitrary, inflexible deadlines; overuse of highly technical exemptions—all highlight a program that in my view clearly needs improvement.

While FEMA, of course, needs to prevent taxpayers and prevent waste, fraud, and abuse, it is also necessary to protect policyholders and ensure that they are treated fairly. The question is how we strike the proper balance between protecting taxpayers against overpayments while not systemically shortchanging hard-working families who played by the rules.

I think we should agree—and I would hope Administrator Fugate would agree—that the process needs to be made fair. Homeowners want to know what common-sense reforms FEMA can make to stop focusing disproportionately on overpayment while neglecting to protect qualified homeowners from being low-balled and unable to rebuild.

We need answers, and I hope this hearing will help us get there. I hope our witnesses will address the issue of homeowners in New Jersey, and I am sure elsewhere, who have had to threaten litigation just to get their insurance company to make them whole in time of disaster after they have paid their premiums and played by the rules.

Affordable, accessible and robust flood insurance is critical to the prosperity and economic future of my State and every State that suffers the effects of a storm like Sandy. The stakes are simply too high to get it wrong, and I look forward to hearing from the Administrator and from our second panel on how we can absolutely be certain we get it right.

I understand Senator Booker has joined us and would like to make a statement.

I have already asked our colleague from Louisiana; at this point, he does not want to make a statement. So that is why I have turned to you.

STATEMENT OF SENATOR CORY A. BOOKER

Senator BOOKER. Well, I want to first and foremost thank the Chairman, who is also my senior Senator. He has been—since the time I was a mayor when Sandy hit—simply heroic, frankly, in your attention to the needs of our citizens in so many hundreds of thousands that were affected by Superstorm Sandy.

Your outstanding and persistent work is something I greatly appreciate now as your colleague. I am honored to be a partner with you, bringing attention to this important issue.

I do want to thank Senator Vitter as well, someone that has a deep and personal experience with this issue and had to struggle with it and fight with it during the aftermath of Katrina, and I appreciate his leadership as well, as the example he is modeling for myself in my early days here in the U.S. Senate.

I want to thank, say thanks to, Administrator Fugate for being here. It is good to see him, and I welcome him.

And, a special welcome to Ms. Flanigan. I want to thank her for her work on the Hurricane Sandy legal Assistance Project.

As Chairman Menendez and one of my other colleagues, Senator Schumer, know well, the effects of Superstorm Sandy, though the storm may have come and gone, the effects continue to be felt in grievous manners every single day by people all across the State of New Jersey.

The stories, as Senator Menendez pointed out, are countless. They continue to come to our office—stories of families who experienced the pain of the storm but now are going through extraordinarily painful, difficult, challenging processes. They were uprooted, but now the challenges they face and continue to face are simply unimaginable and outside of the glare of the media.

I very much appreciate the Chairman, who has used this Subcommittee to examine how the insurance claim process has proceeded after Superstorm Sandy.

The way it has proceeded is unacceptable. It is not what Americans should have to endure. When you have your homes destroyed, when you have your lives leveled, your possessions rotted by water and wind, you should have systems in place that empower you through this process and work to make you whole again, not systems that, as some constituents have told us, put you in a constant fight just to get what you deserve, make you have to spend upwards of a full-time job just doing what should be a matter of course and with greater ease.

In a time that we should be serving, we are now seeing our constituents, instead, suffer. Thousands upon thousands—this is not an exception to the rule, but thousands upon thousands of homeowners have been stymied at every step of the claims process, from experiencing filing problems to struggling through appeals processes, to finding their final insurance payments being far below what they expected or believe they deserve.

I have heard challenges like Senator Menendez's that continue to come in our offices, by phone or dropping in, in our mobile office hours, people seeking us out for help—challenges from people like Colleen and Brian Hennen. The Hennens have had to take their insurance company to court to dispute hundreds of thousands of dollars of damages after their Monmouth County home was destroyed and condemned after Sandy, expending themselves the legal resources, the energy and the time and the emotional challenges of just fighting for what they justly deserve.

I have heard from a small business owner in Long Beach Island, whose shop took on two feet of water and has had to struggle to haggle, to fight with claims adjusters, while waiting patiently for

months and at times over a year to be compensated in a piecemeal manner, with only portions of their claims satisfied.

Like Senator Menendez, we regularly hear from New Jerseyans who have been paying insurance premiums for years and years and years—thousands and thousands of dollars of paying insurance premiums. But now, when they need their insurance company the most, they are left out in the cold.

These New Jerseyans are struggling to pay their mortgages, to rebuild their homes, all while trying to work regular business hours, but at the same time battling their insurance providers for funds to which they are entitled.

These stories, as Senator Menendez knows, go on and on and on.

Now it is New Jersey. But when the next storm hits, when the next tornado comes, when the next flood waters rise, what will other Americans experience if we do not get this system right and make it fair and make it honorable, reflecting of the best spirit of America?

So I want to thank you again, our witnesses, and I hope this hearing helps shine lights on the needed reforms to ensure that policyholders—to ensure that Americans—receive the payments that they deserve when disaster strikes.

Thank you, Chairman.

Chairman MENENDEZ. Thank you, Senator Booker. Thank you for your advocacy. I could not have a better partner in trying to help us in this fight.

And, thank you for joining us today.

If no other Member wishes to make a statement, our first panelist today is Craig Fugate, the Administrator of the Federal Emergency Management Administration.

Mr. Administrator, your full statement will be included in the record, without objection. I would ask you to summarize it in about 5 minutes, and then we will get into a Q&A.

STATEMENT OF CRAIG FUGATE, ADMINISTRATOR, FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF HOMELAND SECURITY

Mr. FUGATE. Thank you, Mr. Chairman, Senator Vitter, Senator Booker.

Flood insurance, of all the programs I administer, is probably one of the most complex and challenging. It is a program that was originally created in 1968, not as a consumer policy but as a policy to protect the lending institutions that provided the funds to back the mortgages.

Over time, Congress has recognized that only providing coverage for the structure itself did not meet the needs, so you directed the flood insurance program to begin providing insurance for contents.

But one of the key elements of this—and these are decisions made prior to this Administration—was that the flood insurance program would not be a replacement value program. This is what most people are familiar with oftentimes in their homeowner's policy, whether they have a fire, a tornado, where their coverage is based upon replacement of losses.

The National Flood Insurance Program does not run that way. It runs as what they call an actual cash value program. An exam-

ple: If I have a refrigerator that is perfectly fine and working, but it is 10 years old at the time of a flood, the replacement cost does not count. It is the depreciate value of that at 10 years.

And so for many people who have actual cash value and are not familiar with that, when they look at their policy, they have paid for \$100,000 worth of contents; they have \$250,000 in many cases, the maximum amount that we provide for the mortgage.

But as an actual cash value, we are limited to only reimbursing and paying out what the cash value was at the time.

And there are certain deductibles that are within that. As far as with the primary coverage it is only to the building itself, not to any of the outbuildings, decks or other things that maybe another policy would cover.

And, again, this makes it rather challenging as a different policy than people are familiar with. So that is part one.

Part two has been in the servicing of those claims. As Senator Menendez points out, post-Katrina and other events, it was looking at improper payments, both under and over, and trying to reduce that percentage.

We do look at both overpayments and underpayments. Underpayments—we do this through audits and reviews, where we find that the payment that was made was not should have been paid and should have been more. We also look at overpayments and seek those funds back under the improper payment reviews that we are required to do.

But, again, it is not a standard homeowner's policy that people are familiar with. This is part of the reason why when you do purchase flood insurance we do have a homeowner's guide to go with it that we give you at the time of the insurance because it is different, to explain that.

And we have looked at what we found in Sandy. Because of the sheer volume of claims, we made some decisions early on to take some risk and do some partial payments on the front end, particularly if we could provide estimated amounts against total damages to get people back in their homes and make repairs without waiting for the full settlement.

We, again, try to adjudicate these in the interest of paying what is the claim and not try to use this program to somehow reduce payments. Our goal is to pay what the actual cash value is to the extent possible.

Where there are disagreements, there is an appeals process. If the appeals process fails, there is the opportunity to take this to litigation.

I have asked staff to continue to review this, and in several cases that Senator Menendez has pointed to me, I am also concerned with some of the irregularities.

So I have asked the inspector general to step in and look at some of the cases you have referred to us, Senator, because I am not sure, given that there are players beyond FEMA, that I can answer this just looking at internal reviews.

And in some cases you have asked questions that staff have not been able to provide me what is the management and oversight of that; is that sufficient?

So I have asked the IG in several cases to look at this, not only from the standpoint of were the payments being made appropriate but also to audit the management of that and ensure that we have the accurate and adequate controls, that we provide rapid payments, appropriate to the losses, with not making fraud prevention our only goal. But the goal is to ensure rapid, accurate payments to the claimants at the time of the disaster based upon their coverage.

With that, Mr. Chairman, I will turn it back over.

Chairman MENENDEZ. Well, thank you.

Let me go over a series of things.

And I am glad to hear that you have asked the inspector general to look at the program because I think the program has significant faults, as I have experienced by listening to a wide range.

After 40 years of public life, I have a basic philosophy. If I hear one person complain about something, maybe they are just not happy. If I have two or three people complain about it, maybe it is a coincidence. When I have hundreds complain about it, something is wrong.

So tell me; what is the penalty for a Write-Your-Own that makes an overpayment, meaning it pays a flood insurance claimant too much?

Mr. FUGATE. They have to—

Chairman MENENDEZ. Can you put your microphone on?

Mr. FUGATE. Sorry, Senator.

They have to reimburse the flood insurance program at the determination that there was an overpayment.

Chairman MENENDEZ. And what happens if FEMA determines that a Write-Your-Own has made an underpayment, meaning that it pays a flood insurance claimant too little?

Mr. FUGATE. Then we have to go back and pay the claimant the difference of the underpayment to what was actually owed.

And we also look at the record and percentages that Write-Your-Owns have of over and underpayments. There is a review board made up of Write-Your-Owns and FEMA staff that would then look at that and see, if this is a pattern, is it in excess of what we would expect to see as an error rate, are there underlying trends, and what remedial actions may be taken address that, whether it is further training or other sanctions.

Chairman MENENDEZ. So a Write-Your-Own can be threatened with being thrown out of the program for a pattern of underpayments, but there is no direct, tangible monetary consequence like there is for an overpayment.

Mr. FUGATE. Well, again, with the overpayments, when they have to pay that back—and they have to make a decision whether they absorb that cost or seek that back from the person they paid to—it is not in their interest to get this wrong because it is for them, for public relations purposes, just as negative if they have to go back and seek money back and the losses to them are based upon that as well as having to pay back the flood insurance fund.

Chairman MENENDEZ. But a Write-Your-Own would not have to pay the difference it had underpaid a policyholder in the same way it would have to reimburse FEMA for an overpayment.

Mr. FUGATE. Again, Senator, the flood insurance program ultimately makes the payments, and if there are overages or underages, it has to be made up in the flood insurance program.

So the Write-Your-Owns are a conduit, but if you overpay, that has to come back into the flood insurance; if it is an underpay, it still comes out of the flood insurance.

The Write-Your-Owns get percentages for handling claims, but the actual payments are basically to the flood insurance program. Overage and underages have to be balanced out in that account.

Chairman MENENDEZ. Well, my point is there are no direct monetary penalties for a Write-Your-Own that makes underpayments.

I understand the overpayments.

The only action that FEMA takes with regard to underpayments is to conduct more audits if the improper payment rate reaches 20 percent and then, potentially, kick out the Write-Your-Own of the program if the problem continues.

So, if that is the case, let me ask you; in the 40-plus years that the National Flood Insurance Program has been operating, how many Write-Your-Owns have been thrown out of the program due to repeated patterns of underpaying claims?

Mr. FUGATE. I am not aware of any, Senator.

Chairman MENENDEZ. OK. So, if there are none in 40 years, either they are doing an exceptional job or we are not doing a particular good job of conducting the type of audit and doing the type of metrics and information to determine whether there are underpayments taking place in a systematic fashion.

If an insurance company pays a claimant too much money, it is on the hook for every dollar it overpaid while at the same time, if any insurer pays a claimant too little, the penalty is, in practice, nonexistent.

So, to me, in terms of incentives, this structure clearly seems to influence the Write-Your-Owns to be more conservative when adjusting for claims, which leads to policyholders being low-balled.

Mr. FUGATE. The response to that, Senator, is again part of what we want to look at is the trend, but the other part of that is they are paid a percentage of the total claim. So, if they are underwriting, then they are actually reducing what their reimbursables are.

And, again, these are rather expensive policies to service. So I am sure the Write-Your-Owns want the right balance, that they are not underwriting claims unnecessarily because the penalty then again is based upon their reimbursables for the expenses of doing the program.

Chairman MENENDEZ. Well, let's talk about that "incentive."

The reality is that the Write-Your-Owns actually have had the amount that they would be paid on commission cut to less than half of what it was prior to 2009. So they used to get 3.3 percent commission. That number was reduced to 1.5 in 2009, which further diminishes their incentive to make the settlement as full as possible.

And when you compare the incentive to the threat that the Write-Your-Own faces of an overpayment punishment, this drastically reduced commission is dwarfed by the threat of clawback and overpayment punishment.

And so, look, I do not want anybody to be overpaid. I want to safeguard the taxpayers' money. But I do not want anybody to be underpaid—paid less than what they are due.

You were not here for my opening statement, but one of my constituents, who sits in the audience, even at actual cash value received clearly far less than his actual cash value damages.

And so his story is a story that is replicated by literally hundreds of others in our State. So we have got to get this set of balance right.

And when the insurance companies basically say, well, if I get in a position where I am considered overpaying, I am going to have to pay that back versus if I am far more conservative and underpay, I do not have the risk. If there is an error to be made, I am going to make it on the side of underpaying, not overpaying, because at the end of the day the consequences to me are greater than the incentives are to me to do the right thing.

And so we have got to find a way in which we can create the right balance because there is a reason that the statute treats underpayment equally. It does not say that it is less important than overpayment. It says it is to be treated equally. And that is not what is happening.

I have a series of other questions, but I have colleagues here. So let me turn to them.

Senator Vitter.

Senator VITTER. Thank you, Mr. Chairman, and thank you, Mr. Administrator.

First of all, let me express support for everything your States are going through in the aftermath of Sandy, and I certainly want to continue to be supportive of all of us addressing that in a full and robust and effective way. So, please count me in on all of that.

And this hearing is certainly important in that regard.

But I also wanted to take the opportunity, since we have the Administrator here, to ask him more broadly about some flood and FEMA issues, and so I am going to use my time doing that.

Mr. Administrator, we have talked before, particularly in the midst of the Biggert-Waters debate and fixing that, about the fact that according to a RAND study, which was commissioned by FEMA—this was back in September 2013—only 49 percent of homeowners required by law to have flood insurance actually bought it. And so that is clearly an issue in terms of making the program solvent.

I found that figure amazingly low. I think that is, again, clearly an issue in terms of making the program sustainable.

When we talked about it in the past, you pointed, basically, as the only necessary fix or the prime fix, to something that we did pass into law, which was a major increase in the penalty for that, from a few hundred dollars to \$2,000.

What is the experience so far in terms of that getting people's attention and dramatically increasing, or not, that 49 percent figure?

Mr. FUGATE. Senator Vitter, I think we are going to have to wait and see. This will be kicking in as we see policies or mortgages or some kind of transaction that would bring about that you have to have it.

The issue has been, were people purchasing flood insurance which, with federally backed mortgages, purchasing that is a requirement?

And they either have to buy flood insurance or an equivalent from the private sector.

But the issue raised was, was this being enforced from the lenders' perspective to ensure that if they were in that special risk area they were purchasing flood insurance?

So, as we go through implementing the law and we see those transactions, a lot of this will be done through the mortgage companies that are making these loans because the penalty is, if they are not doing that, that is where the penalties kick in.

Senator VITTER. So besides increasing—let me ask it a different way.

Besides increasing the penalty, are we doing anything differently in terms of tracking and proactive enforcement?

Mr. FUGATE. Again, we are working with former Secretary Shaun Donovan at HUD, to work with a lot of the Federal lenders to make sure that this was being communicated, that with a federally backed mortgage, if you are in a special risk area, you are required to have flood insurance equivalent to the National Flood Insurance Program or a private policy if your State provides that you can get that equivalent, as a condition of that mortgage. So a lot of it has been on the education front.

Senator VITTER. OK. Well, I mean, in my opinion that word was out. That has always been a bottom-line policy. Certainly in a place like Louisiana, everybody knows that. But the figure was still 49 percent.

Let me ask the same question a different way. Is FEMA doing anything to track policyholders versus those required to purchase insurance, to just basically look at the two lists and see the overlap or lack of overlap?

Mr. FUGATE. We could look at that, Senator—and it grows—but again, I really would have to ask staff to provide that in writing because one of the challenges is, if you can identify how many homes are in the special risk area, you then have to determine how many of those have federally backed mortgages and that would trigger the requirement.

So we could look at how many are written, how many homes are there and what that delta is, but it would not tell us what percentage of them have it.

You could probably look at the area and make some educated guesses, depending upon the age of the homes, but it would be something that we would have to go back and actually pull that and get a sample.

Senator VITTER. Well, I am not just talking about numbers. I am talking about actual lists to compare, to proactively compare, OK, who has the requirement, who has the insurance.

And it does not sound like anyone is doing that, and if the figure is really as low as 49 percent, we need to do that.

In our previous conversation, you basically say, well, you increase the figure and you also increase the risk; you increase coverage.

Well, that is true, but I have to believe that the folks not buying insurance tend to have lower risk.

So I have to believe that the program is going to move far ahead financially the higher you get that participation figure.

Mr. FUGATE. I understand, Senator.

Senator VITTER. OK. Another issue we talked about previously that started me is the Write-Your-Own margin.

Last time we talked, I think studies showed the Write-Your-Own margin was 30 percent when these folks doing Write-Your-Own policies assume none of the risk; so, basically, 30 percent for doing the paperwork, for facilitating that.

Now I know there is work involved, but 30 percent seems like a huge margin when they assume absolutely none of the risk.

Has that changed any, or is there any effort at FEMA to reduce that?

Mr. FUGATE. Yes, Senator. We are looking at that.

That was a flat rate. Particularly when you look at policies out of the special risk area, when you are talking about policies that only pull maybe \$350 or \$500, there is a cost of writing that.

But, as you pointed out, with Biggert-Waters and now even with homeowners' affordability, when you start seeing premiums in thousands of dollars, does that flat percentage rate make sense?

So we have asked the flood insurance administrator to work with Write-Your-Owns on what that should look like, given the increased rates, as rather a flat percentage. Should it be more scaled to the work involved, and what does that cost?

Obviously, these are businesses. We do not want to price businesses out of servicing the policies, but it should not, as you point out, be a reward for writing the more expensive policies beyond which their expenses and reasonable benefit to them would incur.

Senator VITTER. And, roughly, what do you think the timeline will be to come to a conclusion in terms of new policy?

Mr. FUGATE. Since we just went from one reauthorization to another substantial rewrite, Senator, I would need to get with staff and ask them what that is going to be.

We have been focused on implementing the program to stop the increases and to begin the refunds. So this would be an additional to ask them to look at and get back to you on that timeframe.

Senator VITTER. If you could get back to me.

And if I could just have 30 seconds in closing, Mr. Chairman, let me make the broader point that I think we really need to look at the cost side, at the administrative cost side, of this program.

When we talk about the flood insurance program being in the red, there is an assumption that we are basically subsidizing a lot of risk.

Well, in fact, from 1978 to 2013, we took in a lot more dollars in premiums than we paid out in claims. We took in 13 percent more dollars in premiums than we paid out in claims.

Now I know there are other costs, like mitigation, which is not pure administrative cost and that reduces risk, but I think a lot of the problem is the administrative and cost side of the program, both in Government and in the Write-Your-Own program. And I think we need to continue to look at that and continue to get the participation rate way up from 49 percent.

Chairman MENENDEZ. Thank you, Senator.

We look forward to working with you and appreciate your offers of continuing support for our efforts.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman, and thank you, Administrator Fugate.

When Congress passed Biggert-Waters a few years ago, homeowners got blindsided by significant rate increases and new flood zone maps.

And many of us worked together to design and to draft the bipartisan Homeowners Flood Insurance Affordability Act, which gave homeowners immediate relief on huge rate increases. And I was glad to be part of that process, but I am still concerned about the ongoing mapping process.

Last week, during testimony before the Senate Appropriations Committee, you stated that about 50 percent of the flood maps are up to date, about 40 percent need to be reviewed to figure out if they are OK, and about 8 to 10 percent are clearly out of date and have to be changed.

Now these new flood maps create a lot of difficulties for homeowners in Massachusetts and all around the country. And a particular point of contention has been that the flood maps do not analyze individual homes so that people are swept into flood zone designations based on a general area, not on the risks their home may face if it is a few feet higher or a few feet lower than their neighbors. And this lack of detail often requires homeowners who want to challenge a flood zone designation to have to go out and hire a survey just to be able to tell where they are.

So I was very glad to hear you say last week that FEMA is working with engineers to implement a digital mapping technology that will map individual homes and make sure that the flood maps are more accurate.

So I just want to be clear on this part. Will this technology mean that FEMA flood designations can go home by home so that each homeowner will know the elevation and, therefore, their part of the risk that their home faces?

Mr. FUGATE. Yes, Senator, that is the goal.

What we are talking about doing is we are working and partnering with the USGS, the U.S. Geological Survey, and that most of our mapping has always been not structure-based but just a train underneath it.

Senator WARREN. Right.

Mr. FUGATE. With ground-based LIDAR and other techniques, it is actually possible—and there has been some work done that shows this actually can be cost-effective—to shoot an elevation that would show us in most homes that base flood elevation.

I do not think it will be 100 percent because some structures, even from the outside, you cannot tell what that first floor is, and that is what determines your base elevation. So, if you have got a partial basement or something, that may be hard to see.

But, in general, our goal would be to get to the accuracy in the maps where we can, most of the time, make the determination from the digital elevations without requiring further survey. I do

not think it will eliminate for all cases, but for the majority of them. And it would give us a better tool to rate that risk.

Senator WARREN. All right. So we will be going property by property, and that information then would be available to the homeowners.

Mr. FUGATE. Exactly.

Senator WARREN. So, if the homeowner wants to say, wait a minute, we are higher than the others around here, for example, then they have already got the information, in effect, for free in this process. Good.

So when do you anticipate that the digital mapping technology will be in widespread use by FEMA?

Mr. FUGATE. Well, again, we are very much in the pilot phase. We want to make sure that as we go forward with this—we have seen some interesting demonstrations that we think lead us there.

That is why we are partnering with USGS, which is our primary national GIS map manager, to go: Can we build that elevation? What areas should we do it in?

I do not think we can do it in every part of the country, but certainly where we have populations at risk from flooding.

And then, what does that look like, and how do we incorporate that into our current maps—because this is, again, something that will then determine local ordinances of how they build in the future, and the more accurate the maps, the better the outcomes will be.

Senator WARREN. Well, fair enough.

But the question I asked is, what kind of timetable do you think you have on this?

Mr. FUGATE. My experience has been until I have more information I could not give you the timetable of when we would implement.

We are, right now, working with USGS on the feasibility of looking at some of this and going and saying, does this work, and can we do some pilots to demonstrate it works? And then that will tell us what it would take and how long it takes to roll this out across the country.

Senator WARREN. Well, what happens in the meantime to people who have been newly designated into flood zones that they think are not accurate and they want to challenge it?

Mr. FUGATE. Well, again, as you pointed out, the process is the flood maps are for the area, not per structure, and they would still have to produce elevation certificates to determine what height they are.

And that is something we are looking at. How do we address that in the intermediate stage while we look at where the technology can take us?

This technology is probably, I would say right now, proof of concept, another year or two to get that, and then it would be the implementation.

I am optimistic. Some of the early work says this could be faster than our current techniques.

But I am not sure. So we wanted to do the proof of concept. We want to work with USGS.

But, to me, the gold standard for mapping is digital elevation maps that are accurate enough to do structure-by-structure determinations versus I just do the area and then I still have to go back and do survey work to get those base flood elevations.

Senator WARREN. Well, I appreciate that.

I really want to say here, though, this is a real hardship on people who are newly being designated in these flood zone areas. The costs of coming back and appealing so that you are not required to carry flood insurance that, factually, you believe you should not have to carry is really important to these families.

And so if we see a new way to deal with this on the horizon that would be more accurate, save people money, perhaps reduce the need for appeals, but certainly reduce the cost of the appeals, then I think you have to start thinking about that in terms of what happens to people in the meantime.

And telling people, well, sorry, our science has not caught up, but we are almost on the threshold, but in the meantime you have either got to spend a lot of money on flood insurance that you may not need or a lot of money challenging flood insurance cannot be the right place for a homeowner.

So I urge you to think about what should happen in the interim as you move toward this science and, in the interim, how it is that we better serve families who have newly been added to these flood zones.

Mr. FUGATE. We will, Senator.

Senator WARREN. Thank you, Mr. Chairman.

Chairman MENENDEZ. Thank you, Senator.

Let me ask you, Administrator; the flood insurance Reform Act of 2004 established an appeals process and required FEMA to respond to appeals within 90 days. Did FEMA comply with this requirement in the months after Sandy?

Mr. FUGATE. No, sir. We exceeded that, and we had to beef up and bring in more staffing for that program to handle the caseload.

It was not until, I believe, January of this year that we cleared that block and are currently meeting the requirement to be within 90 days or less.

Chairman MENENDEZ. How many appeals during this window were not responded to?

Mr. FUGATE. Off the top of my head, Senator, I would have to respond for the record.

It was in, I believe, more than the hundreds. I think it was in the thousands, but I do not have a specific number.

Chairman MENENDEZ. We have asked this question, and we are told that you do not track these data. If that is the case, that you do not track the data on the program, it is necessary to understand how it is or is not working.

And if you do not track this information, I do not know how exactly you know there is a problem until it gets so big that you realize there is a problem.

And if you track the information, it would give you an opportunity to intervene earlier in the process before you have a problem.

But one of my big problems here is the consequences, right?

So the law says it is 90 days. And if you fail to comply with the law, then leaving disaster victims in limbo for months is not only bad enough; it also jeopardizes their legal rights because FEMA is arguing in court that the 1-year statute of limitations for lawsuits begins when the Write-Your-Own creates a first denial, not after the appeal process is complete or a proof of loss is filed.

Now an average citizen without a law degree, they are going to assume that they should wait for the appeal to be completed before they go ahead and file a lawsuit.

So while disaster victims are waiting 4, 5, or 6 months or more for FEMA to rule on their appeal, the window for their legal rights is quickly closing, especially a person who is not versed in the law, which actually creates—I am not saying that you do it, but it creates potentially a perverse incentive for FEMA to delay so that appeals are reduced in terms of the number of lawsuits.

Mr. FUGATE. Well, Senator, we have no incentive not to pay claims. The normal time to file your claim is within 60 days of an event. We have expanded that to 2 years. We are trying as many cases as we can to address the backlog of appeals.

The statute of limitations in the case which you state, quite honestly, is what the attorneys have determined, working with Justice, but that does not preclude a judge from determining the statute of limitations does not apply in this case, in these lawsuits.

But in most cases I would rather get the cases resolved and not have to wait for legal remedy.

Chairman MENENDEZ. Let me just say you may not say you have an incentive, but at the same time that FEMA is not meeting its deadlines under the law it is strictly imposing deadlines on policyholders. In fact, 270 claims were summarily rejected because the policyholders, who had suffered through the second largest natural disaster in our Nation's history, missed one of FEMA's imposed deadlines.

So we have the ultimate hypocrisy and double standard here. You do not have to live under the deadline, and there is no consequence to you—not you personally, no consequence to the agency—for not meeting the deadline, but there is a consequence for the policyholder for not meeting the deadline. That is when people think poorly of their Government.

Mr. FUGATE. I understand, Senator. Direction would be appreciated.

But I also have to operate within the regulations of the programs, and where I can, we are trying to get these cases resolved and settled.

Chairman MENENDEZ. Well, the regulations under the program involve the law, which supersedes regulations, which say you have to respond in 90 days.

Do you think it is fair that disaster victims were forced to comply with FEMA-imposed deadlines while FEMA fails to comply with its own deadlines?

Mr. FUGATE. Again, Senator, with the claims and the number of appeals and staffing that up, we did not meet the deadlines. We worked—

Chairman MENENDEZ. Well, I hope you will look at those 270 cases that you, from my perspective, arbitrarily and capriciously

decided: They did not hit a specific deadline. So, therefore, you know what? You are closed. But we get to go ahead and not respond in not only 90 days, but 120 days, 150 days.

Some cases that we have are 180 days before you all responded and then no consequence to you but consequences to the policyholders. That is fundamentally unfair.

Let me ask you; do you track the percentage of appeals that overturned in favor of the policyholder?

Mr. FUGATE. Not that I am aware of, Senator.

Chairman MENENDEZ. Well, if you do not track that, it seems to me that that is information that is critically important to determine whether the claims process is working efficiently.

I mean, I think that there is a high successful appeal rate is a red flag that initial claims adjusting is flawed, which would give you the wherewithal to say we need to do something here. But in the absence of knowing that information, there is no drive to be able to deal with it.

Let me ask you this; what about the new—that we put in the law on Biggert-Waters a flood insurance advocate?

There are people who have no idea that, number one, they have an appeal process. And those who do engage in an appeal process, who have never had to file a flood insurance claim, go alone through the appeal process or litigation and need help to navigate the process.

Our flood insurance bill created a flood insurance advocate, and we are trying to convince you at FEMA that this position should help policyholders with filing claims and appeals in addition to questions about the policy itself and mapping.

Is that something that FEMA will consider?

And if not the flood advocate, is there any entity at FEMA for helping policyholders go through each of the steps of the appeal process?

Mr. FUGATE. Senator, my staff basically did not want me to go into a lot of details about this because they are still formulating it.

But I said, well, I do not agree. I think we have to make this. Since this is an advocate, how do we create them as an independent office, not part or subservient to the flood insurance program?

I do not think they should be limited to just looking at map disputes. I think on a day-to-day basis we have to have an advocacy office which provides the basis to look at the customers and represent the customers on issues dealing with that.

But in a Sandy-like event that office would be too small. So how would we expand that capability during those kinds of events?

So I am looking at this as an advocate for the consumers, not for any one section of Write-Your-Owns or only to limit itself to map issues.

So we are looking at how to structure that.

Senator, I do appreciate the fact that this came after the President's proposed budget and you have, through the Senate and the House, provided funding to establish this office. That is a key step in moving forward since this will be a new initiative as we go forward into the future budget.

But it is something that I am very serious about, that I want this office to be the voice of the consumers and be the focal point for consumers for all flood insurance issues and not limit it to just maps.

Chairman MENENDEZ. Well, look, I hope that that ends up being the case, and I agree with you on what your perspective is as to what the advocate should be.

I also hope that we get a better data management system because I think that is critical, to be able to know the consequences of low-balling individuals even under current value that is taking place. Certainly, we have hundreds of cases in that regard, and I think that without the data management you cannot make intelligent decisions.

And I know that you are very capable of making intelligent decisions, but you cannot make intelligent decisions if you do not have the information on which to do it.

Senator Schumer, would you like to—

Senator SCHUMER. I would. Thank you, Mr. Chairman.

First, I want to thank you, Mr. Chairman, for your diligence and partnership on Sandy. Our States are recovering and recovering well in good part because of your leadership.

And I would like to thank Senator Booker for his leadership on this issue as well.

Our New York-New Jersey, Senator Gillibrand and myself, work great with you guys.

I also want to thank Administrator Fugate. I think FEMA has done an excellent job overall. There are things I disagree with, obviously, but an excellent job overall in helping us with Superstorm Sandy.

In fact, just yesterday we were able to announce that NYC Langone Hospital received \$1.13 billion from FEMA to recover the damage. We worked well together. It is a new way of doing things, where they get the money more up front so they do not have to have 30 different applications, and that is because of the good work of FEMA.

So now that you know I have praised you, you know I am going to have a point that you will not particularly—that is not a positive one.

I have a serious point of concern related to flood insurance claims that have come straight from constituents on Long Island and New York City. I must raise it to your level.

I am doing this in concert with Senator Gillibrand, who I know has talked to you about this as well. She is not on this Committee, and so I am asking the questions, but it is really from both of us.

It appears that a select few attorneys hired by Write-Your-Own insurance companies and paid by FEMA are cashing in on the backs of struggling homeowners. There are still many homeowners trying to resolve their home insurance claims and receive compensation for their losses.

I have learned that for each day a homeowner in New York waits to settle their claims there are attorneys benefiting from dragging these cases out. These are attorneys hired not by FEMA but by insurance companies for policies underwritten by flood insurance,

and it appears they are using legal tactics to prevent homeowners from being paid back for their losses.

I do not intend to be critical of you, Administrator Fugate, but because FEMA underwrites the Write-Your-Own policies and pays the legal expenses, I want to raise these concerns to your attention and consider what can be done to spare homeowners from the grips of overly litigious attorneys who have no incentive to try and resolve matters. In fact, they may have an incentive to stretch it out; they get more hourly fees. And the homeowners there are unable to deal with the issue.

So these are my questions.

And I am going to ask my entire statement go in the record.

Chairman MENENDEZ. Without objection.

Senator SCHUMER. But we have been told that attorneys for the Write-Your-Own insurance companies are drawing out the legal battles with homeowners in an effort to drive up billable hours.

The kicker is that the Write-Your-Own insurance companies are not even paying the legal bills for their attorneys. You are; FEMA is.

So let me get into my specific questions here.

First, given all of what I have mentioned, I read in a letter that defense counsel representing Write-Your-Own companies before the Eastern District of New York filed with the court on June 18th that the current prediction of the costs from Sandy as the total defense fees from just this 1 event are likely to exceed the total defense costs incurred by NFIP for all flood insurance events for the previous 20 years, that FEMA's legal bills might exceed \$25 million.

There was a letter saying that in the Eastern District.

So, given all of that, first, will you perform an audit of the Write-Your-Own insurance companies' expenses and implement internal concerns for two reasons, two-fold—one, to make sure that FEMA is not overpaying, two, to make sure that homeowners are not stuck in lengthy legal battles and taxpayers are not reimbursing companies for excessive and inappropriate litigation costs?

Mr. FUGATE. Senator, I went one further. I turned this over to the IG. I have enough concern that I have too many pieces of this of what does not appear to be what the practice was supposed to be.

We provided additional guidance to Write-Your-Owns, what we think are going to be acceptable legal fees. We have made it very clear that if there is fraud alleged it should be referred to the Justice Department. If this is an honest disagreement over what is eligible versus what the Write-Your-Owns are, I would much rather look at the administrative remedies versus the court costs.

But in any case, based upon concerns that when I heard the issues being raised, it hit the threshold that something does not sound right, I am not sure FEMA has—we do not have any investigatory authorities. That is only vested in the DHS IG. So we have asked the IG to take a look at this.

Senator SCHUMER. But something smells wrong to you. We are not saying that something is wrong, but it is worth investigating, for sure.

Mr. FUGATE. I have heard from too many cases of concerns that I cannot answer myself, and since I am not empowered to conduct investigations with outside parties, I have asked the Department's inspector general to take a look at this.

We have also provided additional guidance back to the Write-Your-Owns on what we think are adequate defense of these.

But, again, our goal is if we think it is fraud it should go to the Justice Department, but we should not be just litigating as a delaying tactic to not pay claims.

Senator SCHUMER. Right. I have heard—and if the Chair will indulge me for just a minute more.

I have heard that there are situations where the litigation costs exceed the cost of settlement.

So, first, are you aware if this has happened, and second, shouldn't there be some rule that that should not be?

Mr. FUGATE. Again, these are things I have heard, Senator. That is why I have asked staff to reach back out to the Write-Your-Owns.

And, again, this refers back to the administrative remedies. If there are opportunities to settle, I want to take all the administrative actions versus protractive court cases as a remedy here.

Senator SCHUMER. Right. Now, as part of the flood insurance bill that was passed, there was language that would allow homeowners to receive credit for partial mitigation.

This is a separate question really, right? I will submit that one in writing because I know my colleagues are eager.

But I would urge you to do the strongest possible oversight. Something really seems wrong here, and we need it checked out—lawyers and insurance companies taking advantage of homeowners and taking advantage of the U.S. Government and FEMA's payment system.

Mr. FUGATE. Again, Senator, I know of no actual wrongdoing, but I have concerns. And because I do not have the ability to do these types of investigations, I have asked the DHS IG to look at this matter.

Senator SCHUMER. Thank you very much.

Chairman MENENDEZ. Thank you, Senator.

I would like to give Senator Booker an opportunity to ask any questions.

Senator BOOKER. I really appreciate it and appreciate the thorough questioning, pointing out a lot of the issues, Senator Menendez, that I have as well.

Just very quickly, first of all, I just want to say, again, my office has worked well with your agency. I am just very grateful, Honorable Fugate, for how really dedicated of a public servant you are. I just want to make sure I say that for the record.

I understand from your testimony that these numbers of insurance claims are large. The ones that have missed deadlines go into the hundreds. The number of cases that are dismissed as a result go into the hundreds. Is that correct?

Mr. FUGATE. I believe so, yes, Senator.

Senator BOOKER. OK. And how does this compare to other disasters like Hurricane Katrina coming through?

Is there something we have seen in the Sandy claims where people are missing more deadlines, or are these numbers commensurate?

Mr. FUGATE. I would have to go back and respond for the record and give you what we saw from Katrina to Sandy.

My sense is that overall we actually saw fewer appeals and things of that nature, but the deadlines—again, the 60-day claim deadline we suspended for 2 years.

We know there are some additional claims when it comes to some of the mitigation that will come in further out.

And, again, we were focused initially on doing some things to get money in people's pockets—partial expenses, immediate repairs—without waiting for final settlement.

So in some cases, as Senator Menendez said, we missed deadlines. But on the other case, we were trying to do some things to try to speed up a process, to get people back in their homes.

So it is trying a balancing act. We did not achieve that proper balance.

But as far as comparing Sandy to a lot of the large-scale events, I will ask staff to prepare in writing if your staff can say here is what you want to measure.

And if we have those data—as Senator Menendez said, one of my challenges is where I do or do not have data, but where I have it I can show you what those comparisons were.

Senator BOOKER. OK. And just, again, I want to be specific. Shifting gears now, back to what Senator Schumer was talking about, every time—so if I miss a deadline, I file a lawsuit.

This is very costly to your agency. The estimate I got—and I want to confirm it—is about \$19,000 per lawsuit, correct?

Mr. FUGATE. If we provided that number, I would assume that is accurate.

Senator BOOKER. OK. And that just seems a lot of taxpayer numbers, as Senator Schumer was saying.

Mr. FUGATE. Particularly, Senator, when you factor in these are \$250,000 in property and \$100,000 in contents. So litigation is something that is very costly for all parties, and the flood insurance program pays for the litigation on behalf of the Write-Your-Owns.

So, again, I do not think litigation is a good resolution, but it is the option when all else fails for people.

Senator BOOKER. But seeing the high number of litigation claims and the gross amount of taxpayer dollars being expended, this is something that obviously you are committed to auditing and figuring out a way that we can reduce this in the future?

Mr. FUGATE. Yes, Senator, and also make sure that, again, I want a clear brightline.

And this is a very rare event, but when there is fraud, this is a criminal justice matter. It should not be civil litigation.

If we are looking at our civil litigation where we have disputes, we have to make sure costs are reasonable to the claims. We should not be spending tens of dollars to defend dollars in claims differences.

So we are committed to looking at that but also how do we make sure that if there are differences in civil that we are not spending tens of dollars to defend possible claims of dollars.

Senator BOOKER. And the last thing—and then I am done—is just the tracking system you all have in place is from the time I was in grade school and back in the early 1980s. This system is costly to maintain. It has not been updated in the ways that it should and provides only a limited access.

To me, transparency is such an important part of Government's responsibility.

And according to FEMA officials the system is neither efficient nor effective and does not adequately support the program's mission.

The GAO testified in 2010 that identifying and correcting errors in submissions required 30 days to 6 months and that, in general, the claims processing cycle itself took 2 to 3 months.

This system has to be changed, has to be upgraded, has to be brought into the modern system.

Can you just really quickly tell me what the process is going to be for addressing that as rapidly as possible and bringing us into the 21st Century era, not back in the days when I had a very large afro?

[Laughter.]

Mr. FUGATE. Senator, in looking at technology acquisition in the Federal Government, when I got here, one of the first things I dealt with was a situation where the NextGen flood program was in such disarray. The IG found that I had significant conflict of interest. The program was not performing. We ended up shutting it down. That was a \$40 million loss.

And I have been around and seen a lot of Federal procurements where even more dollars in trying to acquire this technology resulted in we did not get where we wanted to go.

And in that timeframe, as Senator Menendez will tell you, there has been a lot of difficulty in reauthorizing the flood insurance program. So we ran for a long time, reauthorized weeks to months.

So we did not have the stability to go: What is the program, and how do we go forward?

Now that we have the Homeowners Flood Insurance Affordability Act, we have now been working and scoping and building the program to start that process.

I do not know if it is going to be quick, but the one thing I want to make sure is we are not building a system that is a Frankenstein monster. I want to build it modular. I want to get it right. We have been scoping this, and I want to go forward because I do not want to own the next \$40 million we spend on a system that cannot do what it was supposed to do.

Senator BOOKER. Thank you, Senator Menendez.

Chairman MENENDEZ. Senator Schumer.

Senator SCHUMER. Thank you.

I have one more question. I thank the Chairman for his indulgence.

I have been told that there is only one attorney who does all of the litigation for the Write-Your-Owns, which would mean his billing, if it is 25 to \$50 million in expenses, is to him.

To boot, I have heard he is from New Orleans.

First question, is that true?

Second, what is the mechanism for selecting the attorneys? Is it totally up to the insurance companies? Do you oversee it? Do you have any say in it? And should that change?

Mr. FUGATE. Again, Senator, without getting into too much detail since I have asked the IG to look at this, those are my understandings.

Write-Your-Owns do select their attorneys. Oftentimes, they use attorneys that have had experience in this before. So, obviously, after Katrina, there were a lot of claims down there.

Senator SCHUMER. Only one? There is only one?

Mr. FUGATE. I do not know that for sure, Senator. That is, again, why I have asked the IG to look at it.

Senator SCHUMER. That is what I have been told.

Mr. FUGATE. Again, I have heard this, and that is why I have asked the IG to look at this and determine if that is the case and what is going on.

Senator SCHUMER. You have heard that there might be just one doing it all.

Mr. FUGATE. Yes, sir.

Senator SCHUMER. OK.

Mr. FUGATE. For the majority of the cases, yes.

Senator SCHUMER. Then I hope you will look into this.

Changes we may need to do regulatorily or statutorily—the IG is looking into specifics.

Mr. FUGATE. Yes, sir, Senator.

And this is what I have asked the IG. I have asked him for both looking at this to determine what is going on and also make management recommendations of how we should front-end.

That is, again, one of the functions of the IG. It is not just to find fraud and waste but to help us invoke management so that we minimize that and get the value and the programs delivered the way they are supposed to.

Senator SCHUMER. Thank you.

Thank you, Mr. Chairman.

Chairman MENENDEZ. Thank you.

Mr. Administrator, we have a vote going on.

Let me make four key points to you, and we are either going to get an administrative response or we are going to get a legislative response.

I would prefer that it be an administrative response so we can work together, but if it has to be legislative, so be it.

We have a standard, in my view, that is stacked against process and a standard that is stacked against policyholders. There are uneven penalties for underpayment versus overpayment. There are uneven incentives as it relates to underpayment versus overpayment.

I do not want anybody getting a dime that they should not get. By the same token, I do not want a policyholder who has done the right thing for 10, 20, 30 years, in some cases, getting low-balled simply because the process is stacked against them.

So we have got to figure out a structural effort to create a greater balance.

Second, if the policyholder has to live by deadlines, so does FEMA. And if FEMA cannot live under those deadlines, then the policyholder should have the opportunity to have the same period of time that you cannot live by extended so that they do not have their rights foreclosed.

I think to have the expectation that an average citizen is Perry Mason is totally unacceptable.

And so I think there is a double standard, and that is not a double standard that we should have. Disaster victims already have enough challenges as they deal with this question.

Number three, we have got to get these data, help you get this data system running, because we cannot know and I do not know how it is that claims, the numbers of those who are appealed, the numbers who successfully appeal, the numbers that litigate and successfully appeal. I cannot tell the size of this problem and whether there is a systematic problem or just an occurrence problem. We need to get that straight.

And we need a flood insurance advocate who not only is dealing with the immediacy of rates and flood maps but is an advocate as to the totality of what happens to someone with flood insurance. And I think in that, hopefully, we are in agreement, listening to your comments.

It is just simply wrong from my perspective that we have a system when not one Write-Your-Own in 40 years has ever been kicked out of the program because they consistently low-balled policyholders. Now maybe they are all doing a great job, but every time I hear these hundreds of cases I think something is wrong.

So we look forward to working with you.

I do want to applaud you in the aftermath of Sandy. You were on the scene. You were engaged. Your people were fantastic.

But once the storm went aside, in the immediacy, this program is what for a lot of people is their lifeline—the difference between being able to get back in their homes and not being able to get back in their homes.

Doug Quinn, who is one of my constituents, is a Marine. He served his country honorably. He did the right thing. He paid his policies. He did not ever make a claim until Sandy came along.

To step into his home, as I did this past Monday, and to see that now so much time after Sandy he still cannot live there with his daughter is just not acceptable. Not acceptable.

So I hope we can work together to make this right. In the absence of that, we will see a legislative response to it.

Mr. FUGATE. Senator, as I told you, I will do as much as I can administratively. And when I hit the walls, where the attorneys tell me I cannot go any further, I will communicate to you that I have hit a wall and I need your help.

Chairman MENENDEZ. If you need legislative responses, you let me know, and we will be deducing our own. But if you need legislative responses, I am always willing to pursue it. We have got to make this program right.

Mr. FUGATE. As you helped us with Biggert-Waters when you asked me the question and I told you I hit the wall, you were willing to step forward on what had to be done to change that law.

So, again, my history is when I cannot get to where you think I need to be I want to let you know. We may not agree to the reasons, but if my attorneys or my programs are not able to go any further I need to be up-front with you that I do not have a way forward; it may require legislation. But as much as I have the administrative ability, I will continue to work.

Chairman MENENDEZ. We are ready and able and willing to go, and we will do so if you bring us information, or in the absence of seeing a change that creates a greater equity in this process, we will do it ourselves.

With the thanks of the Committee for your appearance, for our next panel, we have two votes, one that is just ending, then another one immediately. So we should be back in 10 minutes.

This hearing is in recess subject to the call of the Chair.

[Recess.]

Chairman MENENDEZ. This hearing will come back to order.

Thank you to our second panel for bearing with us as we had votes on the floor.

Our second panel today includes Donald Griffin of the Property Casualty Insurers Association of America and Maryann Flanigan, Supervising Attorney of the New Jersey Legal Services of the Hurricane Sandy Legal Assistance Project.

Thank you to both of you for joining us.

Your full statements will be included in the record, without objection. I would ask you to summarize them in about 5 minutes or so, so we can engage in some questions and answers.

And, with that, Mr. Griffin, we will start off with you.

**STATEMENT OF DONALD GRIFFIN, VICE PRESIDENT,
PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA**

Mr. GRIFFIN. Thank you, Senator. It is a pleasure to be here.

My name is Don Griffin, and I am Vice President of Personal Lines with the Property Casualty Insurers Association of America. I also chair the Write-Your-Own Flood Insurance Coalition.

PCI is composed of more than 1,000 member companies representing the broadest cross section of any national trade association. PCI members also include two-thirds of the Write-Your-Own insurers that partner with FEMA to administer the National Flood Insurance Program.

Thank you for the opportunity to appear before you today. My testimony is provided on behalf of PCI.

PCI commends the Subcommittee for highlighting the merit in taking some time while information and memories are fresh to review lessons learned from Sandy. This will be helpful, too, as Congress, the NFIP and the WYOs prepare for the fast-approaching 2017 NFIP reauthorization.

WYOs' first priority is our policyholders. We want a program that works to protect policyholders and that is simple enough for everyone in the marketplace to understand so that consumers know what they need to buy, agents can explain how the coverage works and insurers can correctly service the program.

So how are claims handled?

Well, Congress passes legislation that generally establishes how the NFIP is to work, FEMA sets the rule, and the WYO insurers service the policyholders and the Federal Government.

The compensation paid to insurers to administer the claims is offset by the expenses incurred to pay claims adjusters, legal fees, and other administrative costs. The WYOs are the third-party administrators for the NFIP and the Federal Government.

WYO insurers do, however, have significant incentives to keep their policyholders happy and to follow Federal flood insurance claims regulations.

Decisions on flood claims payments are made by the adjusters. When policyholders experience a flood loss, they contact their insurance agent or WYO insurer. The insurer then assigns a trained, certified flood claims adjuster who may be an employee of the WYO or an independent contractor. The flood claims adjuster determines the amount payable on any claim based on very specific guidelines established and rules established by the NFIP.

Ultimately, WYO insurers are responsible for any overpayments, and the WYOs are audited regularly by the Federal Government.

WYOs are generally compensated in proportion to the amount of the loss paid. The compensation formulas are set by the NFIP and periodically updated. In 2009, for example, as you pointed out earlier, Senator, in response to a GAO recommendation subsequent to Katrina, the claims compensation formula was refined by reducing the portion tied to the claim value and adjusting the payment based on the WYO's premium volume.

There are also specific processes in place for policyholders to appeal claims decisions to the NFIP. The most appeals process was put in place as a result of the passage of the Flood Insurance Reform Act of 2004.

Finally, administering and marketing the flood insurance program is very complex and expensive, and the number of insurers willing to do so has declined significantly in recent years. Many WYOs have determined that the reputational, legal and financial risks are too great. Unfortunately, as fewer insurers market flood insurance, fewer consumers will purchase this needed protection.

So what did we learn from Sandy?

In the immediate aftermath of any natural catastrophe, it is critical for local, State, and Federal officials to coordinate their efforts to get people back to their homes and businesses to begin remediation and rebuilding. Insurers need to be at the table during pre and postdisaster planning and coordination. It is also essential to the rebuilding process that local officials, Government and law enforcement allow insurers and claims adjusters into damaged areas as soon as it is safe, at least as soon as the property owners are provided access.

An issue that arose following Superstorm Sandy was the lack of available trained flood insurance adjusters. Most certified flood adjusters are located in areas that frequently flood. Often, States implement reciprocal recognition of claims adjusters from other States to help. However, sometimes it is difficult, given the impact of the event and the number of requests, to process the necessary paperwork needed in a timely manner, leading to delays in responding to claimant needs.

PCI supports Federal legislation to require more reciprocal claims adjuster recognition.

In conclusion, sir, PCI will be hosting a National Flood Conference next year in D.C., with FEMA and all the different flood insurance stakeholders attending, to discuss how to simplify and improve the program in advance of the next Congressional reauthorization cycle.

We look forward to working with you on your concerns and would welcome your participation at our national conference.

On behalf of PCI and our member companies, thank you for the opportunity to present our views today. We look forward to working with you to protect consumers and improve the National Flood Insurance Program.

I would be happy to answer any questions.

Chairman MENENDEZ. Thank you very much.

Ms. Flanigan.

STATEMENT OF MARYANN FLANIGAN, SUPERVISING ATTORNEY, NEW JERSEY LEGAL SERVICES, HURRICANE SANDY LEGAL ASSISTANCE PROJECT

Ms. FLANIGAN. Thank you, Senator Menendez, for having us here today. Thank you for this opportunity to appear on behalf of the New Jersey Legal Services System and on behalf of New Jersey residents who were affected by Storm Sandy.

With funding from the Robin Hood Foundation, the Hurricane Sandy New Jersey Relief Fund and the State of New Jersey, Legal Services was able to begin providing legal assistance within 2 weeks after Sandy left the State via our toll-free statewide hotline.

LSNJ is the major legal assistance provider in the State of New Jersey for Sandy victims, and we have provided legal assistance in more than 2,500 cases to residents who were affected by Sandy. Even now in July of 2014, 21 months after the storm, new Sandy clients continue to contact our offices on a daily basis. Many of these clients contact us for assistance with flood insurance claims.

Sandy-affected New Jersey residents have sought assistance from Legal Services on a number of issues that highlighted the need for legislative attention, but one of the most prominent issues has involved underpayment or erroneous denials of flood insurance claims. Literally, hundreds of New Jerseyans have come to us for help with their flood insurance denials and underpayments.

We have served as a critical resource for these disaster victims but especially for those in the low to moderate-income population.

Today, I will speak about the barriers that Sandy victims face when filing flood insurance claims, and I will highlight areas which can benefit greatly from careful attention and improvement.

First, flood insurance companies routinely undervalue claims, thereby creating barriers to repairing and rebuilding. Almost every client who has contacted us regarding a flood insurance issue has had a problem involving an insufficient offer.

In one case, an adjuster from the Midwest suggested a claim for approximately \$40,000 less than what the client needed in order to meet the covered repairs. After examining the line-by-line estimate prepared by the adjuster, it was very clear that materials could not be purchased in New Jersey for the unit prices listed.

This low-balling of flood insurance claims happens all too often and results in the insured suffering an unreasonable delay in making needed repairs to the home. The insured must then either sacrifice quality by finding a way to purchase materials for a cheaper price, or they must accrue additional expenses by taking out loans to cover the cost of repairs.

In one particularly egregious case, a homeowner carried homeowner and flood insurance through the same WYO, and when the client's home was damaged on a sea-facing avenue, suffering approximately four feet of flood damage, the flood insurance department denied the client's claim, stating that the damage was caused by wind-driven rain, and meanwhile, the homeowner insurance department denied the claim, stating that the damage was caused by flood water.

The client had to appeal both claims, and several months passed before the homeowner insurance department finally sent a structural engineer to prepare a report about the causes of damage. The client used that structural engineer report from the homeowner department to submit to the flood department.

At that point in time, the flood insurance department finally handled the claim more fairly, but the client had been displaced from her home for approximately 7 months at this point. And this was finally when the flood insurance department began to assess the scope of flood damage.

A potential Federal remedy for this issue would be modification of the existing incentive and penalty system for flood insurance companies when claims are undervalued.

The second point I will address is the process for appealing or submitting a flood insurance claim is excessively complicated and WYOs do often create extra requirements with which the insured must comply. Oftentimes, the insurance companies offer little support or guidance to their insureds.

A couple in Union Beach, New Jersey, submitted a proof of loss to their WYO in order to appeal the denial. They eventually received notice that their proof of loss was denied. The insured company did not explain the reason for denial or offer any guidance for what the couple could submit in order to lead to a reassessment or approval of the claim.

Another client in Toms River, New Jersey, wanted to speak with her flood claim agent regarding her appeal, but the claim agent said he could not speak to her because the client had hired a public adjuster. Although there is no regulation prohibiting an insurance agent from speaking to the insured after a public adjuster was hired, several clients tell us that their flood insurance agents refuse to speak with them.

A potential Federal remedy would be straightforward guidance from the NFIP to all flood insurance companies, which establishes a standard requirement that WYOs refrain from creating extra requirements in the flood claim process.

The third point is that the statute of limitations for filing a lawsuit should not begin to run until the proof of loss has been submitted and denied in whole or in part. The SFIP strictly limits and reserves the rights of client claims if they are not submitted within the appropriate timeframe.

A potential Federal remedy would be amending FEMA regulations so that the limitations timeline does not begin to run until there is a partial or complete denial of a submitted proof of loss.

The fourth point is that the complexities of the flood claim appeals process have a particularly negative impact on low to moderate-income insureds. IN some ways, New Jerseyans who are low to moderate-income were the worst affected by Hurricane Sandy. Not only were they displaced and forced to incur additional expenses, but they also may have lost income if their jobs were affected by Sandy.

A potential Federal remedy to reduce the costs for low to moderate-income insureds who have to go through the appeal process by trying to hire attorneys would be simplifying the flood insurance claim appeal process and establishing a robust flood advocate as authorized under the Homeowner Flood Insurance Affordability act so that insureds would be better equipped to effectively handle their appeals without incurring attorney expenses.

And if I may just quickly address my fifth point, thank you.

Policy coverage terms should be written in clearer language, and coverage should be more comprehensive in the case of a total loss due to flood damage. Many clients do not understand their coverage terms, and they do not understand that a flood insurance policy does not indemnify for a total loss in the way that most homeowner insurance policies do.

A potential Federal remedy would be modifying standard flood insurance policy language so that policies are written in clearer terms and a directive from the NFIP requiring flood insurance agents to explain coverage limits to the insured.

Thank you.

Chairman MENENDEZ. Well, thank you both for your testimony and your insights.

Let me start with you, Mr. Griffin.

I understand that in response to a perceived pattern of flood claim overpayments following Hurricane Katrina, in 2009, the National Flood Insurance Program changed the way that it compensates Write-Your-Own companies and adjusters for adjusting and paying flood claims.

According to your testimony today, the calculation changed from 3.3 percent of the claim to 1.5 percent of the claim value plus 1 percent of the premiums written. Is that correct?

Mr. GRIFFIN. That is correct, Senator.

Chairman MENENDEZ. Now, however well-reasoned the 2009 claims payment compensation may have been, couldn't reducing the percentage of claim value paid to handle a claim also reduce the claim handlers' incentive to make certain they are including all amounts due the policyholder in every claim?

Mr. GRIFFIN. Well, Senator, it could. However, as I mentioned before, the insurer's reputation in many cases is on the line.

Most of the Write-Your-Owns sell additional products in addition to the flood policy. They sell auto or home or business policies. So they have an incentive to get it right because they want to make sure that policyholder is satisfied and stays with them for the other business that they have.

Chairman MENENDEZ. Well, I understand that, but let's see how the structure actually works to affect the decision-making process.

Prior to Katrina, the NFIP did not apply the Improper Payments Act to Write-Your-Own claim payments. Since then, the NFIP has applied the Improper Payments Act to Write-Your-Owns. What impact does that change have on Write-Your-Owns?

Mr. GRIFFIN. Well, as you have heard earlier in testimony, if there is an overpayment situation, the WYOs are required to reimburse FEMA for that money. So they must pay back out of their own assets.

Chairman MENENDEZ. So insurance companies have been obviously more concerned about making overpayments based upon the set of circumstances under which they now find themselves having to, in essence, pay clawback, what FEMA considers as an overpayment.

Mr. GRIFFIN. That is correct, sir.

Chairman MENENDEZ. Now, Write-Your-Owns can be held liable for overpayments on flood claims they handle. Do you think being held financially liable for overpaying a flood claim is a pretty strong incentive for Write-Your-Owns to make certain that flood claim payments include nothing that could even arguably be deemed an overpayment?

Mr. GRIFFIN. Yes, sir, it does.

Chairman MENENDEZ. And isn't it a fact that Write-Your-Owns can appeal FEMA's determination of a claim that was overpaid?

Mr. GRIFFIN. I am not sure how they can, whether they can do that, or not. They may be able to appeal that process.

Chairman MENENDEZ. My understanding is they cannot appeal FEMA's determination that a claim was overpaid.

So, basically, if you are making a decision about overpayment versus just payment and it is a question for you and you can clawback—FEMA can clawback the money—and you cannot appeal it and say, no, we think we made the right determination, well, I think human nature is going to indicate exactly what is going to happen in cases like that.

What if we coupled the impact of the overpayment penalty with the 2009 reduction in the percentage of the claim that the National Flood Insurance Program pays for claims handling?

Wouldn't it be fair to assume a claims handler, with less of a financial stake in the claim value and an awareness they could be held financially liable if any portion of the claim value is later deemed an overpayment, might think twice before settling on the larger of two equally well supported claim values?

Mr. GRIFFIN. It could, Senator, but again, remember the adjuster's job is to follow the rules that are set up by FEMA and apply them fairly so that the number of disputes with regard to claims payments are minimized.

Chairman MENENDEZ. I gather that, but I also can see from my experience in New Jersey that if there is an error it is made on the side of underpayment—I will call it that—versus overpayment because of the system, the way it is stacked.

Are there any penalties assessed by the National Flood Insurance Program on underpayments made by Write-Your-Owns?

Mr. GRIFFIN. No, there are not, sir.

Chairman MENENDEZ. OK. So the bottom line is that if you overpay you can—if they think you overpaid, FEMA can claw it back; and if you underpay, there is no penalty.

So that is part of a balance that seems to me to be totally unbalanced.

Do you know if the National Flood Insurance Program even tracks underpayments for Write-Your-Owns?

Mr. GRIFFIN. I was not aware that they did. I heard Administrator Fugate talk about the fact that they do have some information on that, but it sounds like their data has not been well kept over the years.

Chairman MENENDEZ. They conduct audits, but there are no tangible penalties for underpayments.

Would it be accurate to say that the disincentives that the National Flood Insurance Program imposes on overpayments outweigh those that are imposed on underpayments?

Mr. GRIFFIN. It could, sir. Yes, it could, but as I say, we do not have the data to know how this is being handled. So it is hard for us to say how it would be an entirely disincentive.

Our job is to try and make sure that the policyholder gets every dollar they are entitled to under the rules that are established and apply them fairly. If there are questionable amounts, then obviously, they will err on the side of conservatism.

Chairman MENENDEZ. There are hundreds of cases that we have. And not every case that comes to me do I believe is automatically valid; maybe there is a misinterpretation of the policy or the law.

But there are plenty of cases that I have reviewed with my staff to get a good grasp of this, in which clearly there is, my words, low-balling taking place. And whether that low-balling is intentional or out of concern of the consequences of the way the program is stacked, it just simply is unacceptable.

Let me ask Ms. Flanigan; can you describe the most common obstacles that policyholders are experiencing?

Ms. FLANIGAN. The most common obstacles that policyholders are facing involve undervaluation of claims, erroneous denials, extensive delays in communication from the flood insurance providers and the lack of clear guidance from the insurance companies about how the policyholders can effectively pursue appeals.

Chairman MENENDEZ. And in view of that, do you believe that the claims and appeal process is clear and easy to understand?

Ms. FLANIGAN. I believe the claims and appeal processes could be much easier to understand. There is room for a lot of improvement in the way that the processes are explained in the standard flood insurance policy, and claim agents might be able to provide more meaningful assistance to policyholders if they are trained to assist insureds throughout the appeal and claims processes.

Chairman MENENDEZ. Now FEMA is trying to throw out many New Jersey lawsuits based on the statute of limitations rather than getting to the merits of the case to see whether there has been low-balling.

And FEMA takes the position that the clock starts on the statute of limitations when the homeowner receives any letter saying the word, denial, even if the policyholder has not yet submitted a proof of loss form.

Don't you think that a completed claim requires a proof of loss form?

Ms. FLANIGAN. I do think that a completed claim requires a proof of loss form. There cannot really be a claim if the claim—if the insured has not submitted a proof of loss form. There is no way to really deny or even approve the claim.

And the current scheme sets up so many barriers to effective processing of appeals and particularly for low and moderate-income clients. They do not often have the resources to actually even have an attorney to help them with the case or help with submitting a proof of loss, and they end up at a significant disadvantage.

Chairman MENENDEZ. And don't you think that it is ridiculous for FEMA to argue that the statute of limitations can run even before the homeowner has ever submitted a proof of loss?

Ms. FLANIGAN. It does not seem to make sense that the statute of limitations would run before a homeowner submits a proof of loss.

Chairman MENENDEZ. Well, this is—I appreciate both of your testimonies because what I have come to believe is that structurally the system is stacked against policyholders.

And when the risk for an insurance company is greater for overpayment than any real consequence for underpayment, well, that dictates to me what is going to happen when it is not clear-cut and even maybe where it is. The incentives are on one side of the ledger and not on the other side of the ledger.

I think that there is a clear problem with the appeals process, one, for people even knowing about it and, two, for being able to navigate it and understand it.

Three, I think that if you have to live by a deadline as a policyholder, FEMA should live its deadlines as policyholders. I mean as the overall under the statutory provisions of the law that say that they need to be able to respond in 90 days, or if not, there should be some extension.

It is pretty ridiculous to toll the statute of limitations before there is even a proof of loss. I have not practiced law in a while, but there are some fundamental principles that do not take a rocket scientist to figure out.

And these elements in which in 40 years not one Write-Your-Own has been ultimately taken out of the program for underpayment is just beyond the scope of imagination. Yet, I am sure that there are those who, with overpayments, have faced that consequence or a consequence of some significance.

So we need to change this.

And I have to be honest with you. I appreciate Legal Services and everything they have done, but my God, we should not have to have people go to Legal Services to work this process, or in the case—I do not know; do you have to have income qualifications in this particular program of Legal Services.

Ms. FLANIGAN. Through our Hurricane Sandy Legal Assistant Project, we have a varying kind of income eligibility qualification. And, fortunately, due to the funders that I mentioned earlier, we are able to assist just about any client who comes to us for assistance with a flood insurance issue.

Chairman MENENDEZ. That is good to hear because I know, normally, Legal Services has some type of income criteria.

But the bottom line is that this is about real people, real lives, real families, who do the right thing. They pay their premiums. They follow the rules. They obey the law. And, when it comes time when they have a need, you do not have the law actually living up to their expectation and their needs.

Now I understand about current policy value, but that does not dictate the results we are getting in so many of these cases. We are getting far below current value realities.

And I think we have to do a better job of educating the public about what these policies mean when people are buying them.

Now in some cases they have no choice. If they have a mortgage, the mortgage company insists on having flood insurance policies, but at least they should clearly understand.

For those who have to get flood insurance as a result of holding a mortgage, or for those who do not have a mortgage, they should understand what the flood insurance policy is and is not going to pay.

And I do not think people get to read the fine print in a way that makes it very clear. I think there are some very clear statements up front that can be made that people will understand the nature of what their policies are.

So we need to ultimately work to get a balance here at the end of the day.

And, as I said to the Administrator, we have got to end the low-balling. We have got to live by the law. If policyholders have to live by the law, so does FEMA. We have got to have the data that drives us. And we have to have flood insurance advocates, as you suggest, being able to make the case, along with well-established institutions like Legal Services.

And I hope the industry is—and I appreciate your offer, and I am happy to take you up on it. I hope the industry is willing to work with us to get this right because I do agree that the industry's reputation is at stake.

And, while FEMA takes a fair share of the brunt, the other reality is an industry that has to do the right thing and has to stand up for its policyholders and has to ultimately, legitimately argue back with FEMA when they are overarching.

And I think that maybe you are in a disproportionate set of circumstances where you feel you cannot do that. But if you are going to have companies that write these policies, we have got to get a just result for these policyholders.

So we look forward to working with you on that.

Well, you have been very helpful in helping us fill out the record here and understanding some of the challenges.

This hearing record will remain open to the close of business tomorrow.

And with the thanks of the Committee, this hearing is adjourned.

[Whereupon, at 11:57 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

PREPARED STATEMENT OF SENATOR CHARLES E. SCHUMER

Administrator Fugate, first let me say that I know how hard you have worked and the strides that FEMA has made in helping the New York/New Jersey region recover from Superstorm Sandy. In fact, just yesterday we were able to announce that NYU Langone Medical Center would receive \$1.13 billion from FEMA to help it recover from damage caused by Sandy. That is just one example, but it is certainly emblematic of all the good work that FEMA has done in getting money out the door to help the region recover and build back stronger.

I do have a serious point of concern related to flood insurance claims that have come straight from constituents on Long Island and in New York City, that I must raise to your level.

It appears that a select few Attorneys hired by Write-Your-Own insurance companies, and paid by FEMA, are cashing in on the backs of struggling homeowners.

As you know, there are still many homeowners trying to resolve their home insurance claims and receive compensation for their losses. I have learned that for each day a homeowner in New York waits to settle their claim, there are attorneys benefiting from dragging these cases out.

These attorneys are hired by the insurance companies for policies underwritten by the National Flood Insurance Program, and it appears they are using legal tactics to prevent homeowners from being paid back for their losses.

So, I do not intend to be critical of you, Administrator Fugate, but because FEMA underwrites these Write-Your-Own policies and pays the legal expenses I want to raise these concerns to your attention and consider what can be done to spare homeowners from the grips of overly litigious attorneys who have no incentive to try to resolve matters these matters quickly or efficiently.

So, let me tell you what we have heard. Policyholders whose claims have been denied by these insurance companies have the ability to pursue legal action to resolve a dispute over the coverage that they believe they are entitled. And the insurance companies are certainly entitled to defend the determinations that they've made and the compensation that they believe is appropriate. However, we have been told that these insurance companies almost exclusively hire one law firm from Louisiana to litigate all of the claims brought by policyholders. And even more concerning, there are serious allegations that these attorneys have relied upon troubling legal tactics to continue to deny homeowners a resolution to their flood insurance claims.

We have been told that attorneys for the Write-Your-Own insurance companies are attempting to draw out legal battles with homeowners in an effort to drive up their own billable hours while contemporaneously causing policyholders to drop these lawsuits because of their own mounting legal expenses. FEMA has left oversight of these legal matters to the insurance companies themselves, but there seems to be a perverse incentive structure in place that promotes these cases going to trial rather than being subject to an audit that calls into question the terms of a settlement.

Denying homeowners who have suffered immense losses from Sandy and are struggling to get back on their feet is bad enough, but the kicker is that these Write-Your-Own insurance companies are not even paying the legal bills for their attorneys that are dragging out these cases—the Federal Government is paying.

I will get into a few of my specific questions in a moment, but the bottom line is that FEMA must have significant oversight of these legal matters not only to ensure that Federal dollars are not being wasted in unnecessary legal defense fees but also to ensure that homeowners are not being purposefully denied compensation for their losses that they suffered during the storm.

PREPARED STATEMENT OF SENATOR CORY A. BOOKER

Thank you, Mr. Chairman, and thank you to the Subcommittee for allowing me to participate in this important hearing today.

Thanks to Administrator Fugate for being here, and welcome to Mr. Griffin.

And a special welcome to Ms. Flannigan—thank you for the work of the Hurricane Sandy Legal Assistance Project.

As Chairman Menendez and Senator Schumer know well, the effects of Superstorm Sandy continue to be felt every day by people across New Jersey and New York.

The stories are countless—of the families uprooted and facing challenges unimaginable to most of us.

I very much appreciate the Chairman using his Subcommittee to examine how insurance claims have been processed after Superstorm Sandy.

Thousands upon thousands of homeowners have been stymied at every step of the claims process, from experiencing filing problems, to struggling through the appeals process, to finding their final insurance payout being far below what they expected.

I've heard of these challenges from people like Colleen and Brian Hennen. The Hennens have had to take their insurance company to court to dispute hundreds of thousands of dollars of damages after their Monmouth County home was destroyed and condemned after Sandy.

I've heard from a small business owner in Long Beach Island whose shop took on 2 feet of water and has had to haggle with claims adjusters while waiting patiently for months—and at times over a year—to be compensated piecemeal with only portions of their claims.

Like Senator Menendez, I regularly hear from New Jerseyans who have been paying insurance premiums for years, but now when they need their insurance company the most, they're left out in the cold. These New Jerseyans are struggling to pay their mortgage, rebuild their home, and work regular hours while battling their insurance providers for funds to which they are entitled.

The stories go on.

So, thank you again to our witnesses and I hope this hearing helps shed light on the reforms needed to ensure that policyholders receive the payments they deserve.

PREPARED STATEMENT OF CRAIG FUGATE

ADMINISTRATOR, FEDERAL EMERGENCY MANAGEMENT AGENCY, DEPARTMENT OF
HOMELAND SECURITY

JULY 30, 2014

Introduction

Good morning Chairman Johnson, Ranking Member Crapo, and Members of the Subcommittee, I am Craig Fugate, Administrator for the Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA). I appreciate the opportunity to be here today to discuss the National Flood Insurance Program (NFIP) and claims paid as a result of Hurricane Sandy.

More than 144,000 NFIP policyholders submitted notices of flood loss stemming from Hurricane Sandy, and the NFIP has paid out more than \$8.1 billion in flood claims to enable these policyholders to rebuild homes, businesses and communities. These policyholders made the proactive decision to protect themselves by investing in flood insurance. We have an obligation to these insured survivors, and to the taxpayers, to administer this program well and we take this responsibility very seriously.

Since Hurricane Sandy made landfall in 2012, FEMA's Federal Insurance & Mitigation Administration (FIMA) has been hard at work to help in the recovery, processing Hurricane Sandy-related insurance claims, and implementing the Biggert-Waters Flood Insurance Reform Act and the Homeowners Flood Insurance Affordability Act (HFIAA).

At this point, more than 99 percent of the flood insurance claims related to Hurricane Sandy that were filed by homeowners have been closed. There are only approximately 640 claims still outstanding.

In this testimony, I will discuss the NFIP and, in particular, our claims and appeals processes, policies, and successes.

Claims Related to Hurricane Sandy

FEMA moved quickly to process Hurricane Sandy-related claims. The average claim payment related to Hurricane Sandy is \$61,000, with the NFIP paying claims totaling more than \$8.1 billion.

When Hurricane Sandy made landfall, 236,000 NFIP policies were in place in New Jersey. As a result of the storm, 74,000 Hurricane Sandy claims were made in New Jersey. Of those, only 1,300 were appealed. Differences have been resolved among the adjusters, the policyholders, and the policyholders' contractors and local building materials suppliers. Based on preliminary data, we expect there may be only 453 Sandy lawsuits filed in New Jersey. This means that 98.2 percent of the claims were resolved.

In New York, 169,000 policies were in place when Hurricane Sandy hit. As a result of the storm, 57,000 claims were made in New York. Of those, only 885 were appealed. Based on the preliminary data, we expect there may be only 400 Sandy lawsuits filed in New York. This means that 98.5 percent of these claims were resolved. The remaining open claims are due to mitigating factors such as ongoing liti-

gation, requests for additional payment, or outstanding requests for Increased Cost of Compliance (ICC) benefits.

NFIP policyholders may also be eligible for up to \$30,000 in ICC coverage to bring their building into compliance with their community's floodplain ordinance. Elevation, relocation, demolition, and flood proofing are all covered options under ICC coverage.

In New Jersey, 7,000 policyholders submitted claims for ICC coverage and the NFIP has paid out \$69 million thus far. In New York, 1,500 policyholders submitted claims for ICC coverage and the NFIP has paid out \$12 million thus far.

Efforts To Process Claims Rapidly Post-Sandy

The NFIP effectively responded to the postdisaster needs of its policyholders by creating a rapid claims process and by instituting programmatic changes that significantly reduced the procedural burden on policyholders. For example, we deployed our Director of Claims and other key NFIP leaders to the impacted area where they worked directly with the States to find ways to accelerate assistance and payments to policyholders. These changes included:

- Authorizing advance payments of up to \$5,000 for claims prior to meeting with adjusters for inspections;
- Authorizing another advance payment of up to \$25,000 for certain mechanical elements of the building to get heating and electricity restored; and
- Authorizing an additional \$5,000 for necessary permanent repairs to doors and windows to secure a given building once heating and electricity were restored.

These claim advances, known as the 5/25/5 initiative, enabled policyholders to get back into their homes as soon as possible with necessary heat and electricity. Additionally, we extended the grace period for payment of NFIP renewal premiums. We also gave policyholders extensions to file their proof of loss statements. For Hurricane Sandy, NFIP policyholders have up to 2 years after the date of loss to file their proofs of loss.

In addition, the NFIP established community Flood Response Offices in New York and New Jersey to provide services to NFIP flood-certified adjusters, as well as Adjuster Certification Workshops in New Jersey. On-site Adjuster Briefings also educated an expanded corps of flood-certified adjusters on program changes made specifically to meet the needs of communities impacted by the storm. To bolster the numbers of adjusters who were able to respond to Hurricane Sandy claims, the NFIP implemented emergency adjuster certification for adjusters who were actively flood certified during the past 2 years, granting them a 12 month certification extension. This emergency adjuster certification made an additional 5,000 adjusters available to handle the large influx of claims related to the storm.

Early on, the Associate Administrator of FIMA went to the impacted States with senior leadership and met with State emergency management officials and State insurance commissioners to identify ways to get claims resolved expeditiously and to identify any concerns. The NFIP also deployed expert staff to work in the Governor's Office in New Jersey, worked closely with the Governor's office in New York, and sent experts to work with the FEMA Joint Field Offices in New Jersey and New York.

Increased Borrowing Authority

When Hurricane Sandy made landfall, the NFIP owed the U.S. Treasury \$17 billion to cover losses stemming from Hurricanes Katrina and Rita. Existing authorities only allowed the NFIP to borrow an additional \$3 billion before reaching the \$20.7 billion cap. The NFIP used modeling from previous hurricane flood events and geospatial technology to estimate potential claims as a result of Hurricane Sandy, and estimated the borrowing cap could be hit as soon as early January 2013.

On December 31, 2012, Congress amended the National Flood Insurance Act of 1968 (NFIA) to increase FEMA's borrowing authority from \$20.7 billion to \$30.4 billion. This enabled FEMA to cover losses stemming from Hurricane Sandy. The President signed this bill into law (Pub. L. No. 113-1) on January 6, 2013, increasing FEMA's borrowing authority and allowing the Agency to continue paying flood insurance claims from Hurricane Sandy. We are grateful to Congress for this legislation, which was part of the supplemental the administration requested.

National Flood Insurance Program Background and Coverage Basics

National Flood Insurance Program Background

Established by Congress in 1968, the NFIP helps communities better understand their flood risk, and provides affordable flood insurance to help lessen the devastating consequences of flooding in communities that agree to adopt and enforce

floodplain ordinances consistent with the criteria developed by FEMA for sound land use in the floodplain. In 1973, Congress amended the NFIP to prohibit Federally backed lenders from making loans secured by property located in a special flood hazard area unless the property was covered by flood insurance for the life of the loan.

The NFIP serves as the foundation for national efforts to reduce the loss of life and property from flood. The program identifies areas of special flood hazards and flood risk zone data, and through its floodplain management criteria and grants, mitigates the long-term risks to people and property from the effects of flooding, and offers flood insurance in participating communities.

The NFIP works closely in partnership with more than 80 participating private insurance companies—commonly known as Write-Your-Own (WYO) companies—to market, sell, administer and adjust claims for policyholders. By encouraging sound floodplain management efforts, the NFIP is estimated to save the Nation \$1.7 billion annually in avoided flood losses.

The NFIP supports 5.2 million policies, representing \$1.2 trillion of coverage in force. The average claim paid is approximately \$61,000.

Coverage Basics

The NFIP pays claims for direct physical loss by flood to the policyholder's insured property. For family dwellings that house one to four families, the NFIP offers up to \$250,000 in direct physical loss due to flood, and up to \$100,000 for contents coverage with a deductible. When a loss is covered under the policy, the NFIP will only pay that part of the loss that exceeds the deductible. The same is true for contents coverage, which has a separate deductible.

NFIP Replacement Cost Value and Actual Cash Value

Property insurance contents claims are settled using two different methods.

The Actual Cash Value settlement (ACV) is at the replacement cost at the time of loss, less the value of its physical depreciation. This means if the policyholder has a 10-year-old couch that can be replaced on the date of loss for \$2,000 but the physical depreciation on the date of loss due to wear and tear and the age of the piece is \$1,000, the ACV settlement will be \$1,000. Put simply, the couch was worth \$1,000 on the date of loss. To pay more than the item is worth, especially in a residual market, has been long considered to be the policyholder's windfall.

The Replacement Cost Value (RCV) settlement is based on the replacement cost of the item at the time of loss without any deduction for physical depreciation. In the above "couch" example, if an RCV endorsement is purchased by the owner, that claim would be settled at \$2,000 rather than the ACV of \$1,000. Some RCV contents endorsements limit the payment to a multiple of the ACV. In the above, even if there was a limit of twice the ACV, the full \$2,000 would be paid. However, if the couch was older and in worse condition than in this example, the full RCV might not be paid.

The cost of an RCV contents policy would significantly increase the premium required for contents coverage and would also be very expensive for the NFIP. All of this would translate into higher premiums for contents coverage.

In all cases, the value of the NFIP insured building does not include the value of land or any other improvement (building or nonbuilding structure) on the same parcel of land.

The NFIP policy is an actual cash value (ACV) policy for all building and contents, with very limited exception applicable to primary residential buildings insured up to 80 percent of the dwelling's full replacement value. ACV means settlement amounts are based on the actual cash value of the property less depreciation at the time of loss for all building and content claims. Paying only the actual value of property on the date of loss is typical for many residual market insurance programs, especially those, like the NFIP, that are premium sensitive.

Building claims under the terms of the Residential Condominium Building Association Policy (RCBAP) are settled at RCV, subject to a coinsurance clause, that allows the policyholder to be a coinsurer in return for purchasing building limits that are less than 80 percent of the full replacement cost of the building or the maximum NFIP limits available, \$250,000, times the number of units in the building.

All other buildings are insured at ACV. Building depreciation is also physical depreciation because of age, wear, and tear. In a building, for example, elements like paint and wall covering will depreciate considerably more quickly than framing wood. However, deteriorated framing lumber with damage that is not associated with the current flood will not be worth as much as the same age wood that had not deteriorated.

HVAC systems and water heaters also have shorter life spans than framing. In all buildings, the condition of materials is considered in determining the deprecia-

tion and ultimately the dwelling's ACV. This could mean several hundred dollars, and in some cases of a building in poor condition it could mean a difference of thousands of dollars in claim payments, but would be commensurate with the actual value of the building.

For eligible principal residences, the NFIP will settle building claims based on replacement cost values. This means the NFIP will pay to repair or replace the damage to the dwelling after application of the deductible and without deduction for depreciation. FEMA does not offer replacement coverage for contents. Were FEMA to offer replacement coverage for buildings and contents, it would result in significantly higher premiums.

All NFIP claims are individually adjusted to give personal attention to each policyholder's losses and an NFIP flood certified adjuster is assigned to each claim. Building and contents claims both require a site visit. The determination of physical depreciation requires the adjuster to not only make a depreciation determination based on the age of either a contents item or a building element, but also to take into consideration the condition of the item or element on the date of loss. Often the adjuster will find items or elements that have been purchased or installed for an extended time, but are in pristine condition. In these cases, only a small amount of depreciation will be charged. Also, relatively recent purchases or installations may be in poor condition requiring a heavier depreciation charge. The adjusters are experienced in these determinations, which add an additional degree of fairness to the ultimate ACV of a contents item or building element.

Other Coverage Factors

Among other exclusions, the NFIP excludes coverage for decks and provides limited coverage in basements.

Much like traditional homeowner's policies, the standard flood insurance policy includes a clause that requires the insurer—in this case the NFIP—to name the policyholder and any known mortgagee on all Building, Coverage A claim payments. The NFIP must include the lender's name on these payments to protect their collateral allowing continued lending in flood-prone areas.

In addition, for eligible risks, some private insurance markets provide citizens flood insurance for coverage in excess of the maximum NFIP limits.

Claims Process and Improper Payments

Claims Process

FEMA is committed to efficiently and quickly resolving claims with the help of its WYO partners, with the ultimate goal of getting all funds that can be paid legally into the hands of eligible policyholders as soon as possible. All insurers of real property and their contents are similarly concerned about getting claim funds in the hands of their policyholders as quickly as possible.

The claims process was adjusted for Hurricane Sandy survivors to modify the proof of loss filing requirement. (Steps 10–14 represent minor modifications to the regular claims process to represent proof of loss—normally the proof of loss is due 60 days after the date of loss.)

The claims process is as follows:

1. The policyholder calls their insurance agent to report the loss.
2. The policyholder's insurance agent reports the claim to either the WYO Company or the Direct Servicing Agent (DSA).
3. The WYO Company/DSA (insurer) verifies that coverage was in force on the date of loss.
4. If coverage was in force before the flood was in progress, the insurer assigns the claim to an independent claims adjusting firm hired by the insurer.
5. The adjusting firm assigns the claim to an independent NFIP flood-certified adjuster hired by the adjusting firm.
6. The adjuster contacts the policyholder within 24 to 48 hours to schedule an appointment to visit the policyholder's property, with the visit itself usually occurring within 72 hours of the assignment.
7. The adjuster meets with the policyholder at the property. During this scoping visit, which can last hours or several days for larger projects, the adjuster will:
 - a. Inspect the property to verify that direct physical loss by or from flood has occurred (as defined in the Standard Flood Insurance Policy (SFIP));
 - b. Offer to recommend an advance payment (if appropriate). The adjuster must take care to consider the size of the recommended advance against the probable loss and the deductible;

- c. Scope the loss, to include measuring, taking pictures, diagramming, and noting specific damage, and documenting serial and model numbers of damaged major appliances and electronics;
 - d. Meet with the policyholder to discuss the policy, explain the claim process, answer any question, and establish reasonable expectations;
 - e. If the policyholder also has contents coverage, the adjuster explains the contents process and provides inventory sheets to list the damaged contents, the current replacement cost value, age, and other details; and
 - f. If applicable, identify the need for expert opinions from engineers regarding foundation damage and accountants or salvors for commercial stock or inventory claims.
8. After completing all assigned scoping visits, the adjuster writes the NFIP flood claim repair estimates and closing papers, which are detailed and contain room-by-room, line-by-line estimates of flood damage.
 9. The adjuster sends a copy of the completed estimate to the policyholder and informs the policyholder that the estimate is only a recommendation. Only the insurer has the authority to determine what will actually be paid.
 10. The adjuster sends a copy of the completed estimate, contents claim and closing papers to the insurer.
 11. The insurer examines the adjuster's closing documents to verify that the adjuster's recommended payment is correct and is the maximum amount that can be paid legally.
 12. The WYO Company/DSA then makes the payment to the policyholder. Payment is typically made in two checks—one for building and one for contents. The building claim check must name any mortgagee known at the time of payment.
 13. If the policyholder considers the payment inadequate, he/she must submit to his/her insurer a complete, proof of loss signed and sworn to by the policyholder attaching all documentation supporting the additional requested amount should be sent to the insurer.
 14. The insurer must consider the valid proof of loss and determine whether additional reimbursement is appropriate.

Improper Payments

FEMA is the steward of Federal funds under the NFIP and is committed to reducing and eliminating waste, fraud, and abuse. FEMA and WYO companies take this responsibility very seriously. Particular focus was placed on this priority after Hurricane Katrina, when overpayments occurred and FEMA subsequently built a greater number of safeguards into programs across the agency. These changes have decreased improper payments over time, and increased confidence in the programs that are designed to assist survivors. FEMA tracks all improper payments through an audit of payments consistent with the Improper Payment Information Act. As demonstrated in the chart below representing NFIP payments, improper payments have decreased over time due to strengthened oversight and a commitment to educating WYO companies on potential penalties for noncompliance. The data collected does not differentiate overpayment, underpayment, or fraud.

Fiscal Year	Allocated Improper Payments Percentage	Threshold
2008	6.38% (FEMA Improper Payment Rate)*	2.5 % (Threshold)** (first year tracked)
2009	2.22%	2.5%
2010	1.21%	1.5%
2011	0.75%	1.5%
2012	0.02%	1.5%

*These are FEMA's results for the years of its participation. This tracking does not differentiate underpayments, overpayments or fraud.

The NFIP claims mechanism incentivizes adjusters to recommend accurate claims payments, and pay accurate claims quickly. Adjuster compensation amounts are on a schedule of payments based on the amount the policyholder is paid. NFIP insurers

receive 1.5 percent of paid claims for their Unallocated Loss Adjustment Expenses, those expenses that cannot be allocated to an individual claim, for instance, the opening and operation of a catastrophe office. Neither the adjusters nor the insurers get paid until the policyholder gets paid.

While underpayments are rare, they are treated as a critical error in dealing with the WYO company at fault and closely monitored through an auditing process. If an audit finds that a WYO company has made improper payments in 20 percent or more of their claims, FEMA requires a follow up audit within 12 months. This process helps ensure proper oversight.

Additionally, complaints and concerns are tracked and assessed during operational reviews of WYO companies.

Proof of Loss Extension

The NFIP policy requires policyholders to submit a valid proof of loss with supporting documentation to the NFIP insurer within 60 days from the loss. For Hurricane Sandy, FEMA extended the deadline for submitting a proof of loss from 60 days to 24 months after the loss.

Appeals process

Once the NFIP insurer has issued a final written denial, in whole or part, of a claim, the policyholder may appeal the denial to FEMA. This process is detailed in the *NFIP Flood Insurance Claims Handbook*, which is provided to the policyholder.

Prior to filing an appeal, policyholders should:

1. Try to resolve coverage issues with the adjuster or the adjuster's supervisor.
2. If the adjuster's supervisor can't resolve your issues, the policyholder should contact the NFIP insurer's claims representative and ask for assistance.
3. If policyholder still has questions or concerns, the policyholder should send the formal appeal along with the supporting documentation directly to the Associate Administrator for the Federal Insurance and Mitigation Administration.
4. Prior to issuing an appeal decision, the Associate Administrator may request additional documents from the policyholder or the insurer and may conduct a reinspection. After gathering the documentation, the Associate Administrator will issue written appeal decision.
5. A policyholder who does not agree with the appeal decision has the option of filing suit against the NFIP insurer within 1 year of the date the insurer denied the claim.

Of the more than 144,000 insurance claims received in the aftermath of Hurricane Sandy, 2,800 or 1.9 percent have been appealed. This large influx of appeals caused a backlog that FEMA worked quickly to resolve. A monthly plan was established to resolve the issue, which involved leveraging existing claims resources as well as bringing in additional claims, correspondence, and quality control resources. Because of these efforts, this backlog was cleared in January 2014.

As of July 11, 2014, there were 122 total outstanding NFIP claims appeals and there were none that are over 90 days old.

Conclusion

Through the NFIP, tens of thousands of survivors better understand how to mitigate their risk and when a flood does occur, have received payments that are helping them to rebuild their homes, businesses and communities. FEMA has an obligation to these survivors and to be good stewards of taxpayer dollars. We take this responsibility very seriously and have put a process in place that effectively settles legitimate claims and has a low improper payment rate.

We are grateful to Congress for the supplemental borrowing authority provided in the aftermath of Hurricane Sandy, and we look forward to working with Congress as we close out the few remaining claims.

PREPARED STATEMENT OF DONALD GRIFFIN

VICE PRESIDENT, PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

JULY 30, 2014

My name is Don Griffin and I am vice president of personal lines with the Property Casualty Insurers Association of America (PCI). PCI is composed of more than 1,000 member companies, representing the broadest cross section of insurers of any national trade association. Our members write more than \$195 billion in annual

premium and 39 percent of the Nation's home, auto, and business insurance, reflecting the diversity and strength of the U.S. and global insurance markets.

PCI members also include two-thirds of the "Write-Your-Own" (WYO) insurers that partner with FEMA to administer the National Flood Insurance Program (NFIP). I also chair the WYO Flood Insurance Coalition that includes all the primary insurer trade associations and WYOs. My testimony today is provided on behalf of PCI. Thank you for the opportunity to appear before you today on behalf of PCI and our members.

Background on Flood Insurance Claims Payments

PCI commends the Subcommittee for highlighting the merit in taking some time while information and memories are fresh to review lessons learned from Sandy. Further, identifying and recording lessons learned from Sandy will be helpful too as Congress, the NFIP and WYOs prepare for the fast approaching 2017 NFIP reauthorization.

Congress passes legislation that generally establishes how the NFIP is to work, FEMA sets the rules, and WYO insurers service the policyholders and the Federal Government. The compensation paid to insurers to administer claims is offset by the expenses incurred to pay claims adjusters, legal fees, and other administrative costs. The WYOs are the third-party administrators for the NFIP for the Federal Government. WYO insurers do have significant incentives, however, to keep their policyholders happy and to follow Federal flood insurance claims regulations.

Decisions on Federal flood insurance claims payments are made by claims adjusters. When policyholders experience a flood loss, they contact their insurance agent or WYO insurer. The insurer then assigns a flood claims adjuster, who may be an employee of the WYO or an independent contractor. The flood claims adjuster determines the amount payable on a claim based on very specific guidelines and rules established by the NFIP. Ultimately the WYO insurers are responsible for any overpayments and WYO insurers are audited regularly by the Federal Government under the Improper Payments Elimination and Recovery Act (IPERA) to ensure that they follow Federal requirements and do not overpay claimants.

Claims adjusters and the independent contracting firms they represent are generally compensated in proportion to the amount of the loss paid. The compensation formulas are set by the NFIP and periodically updated. For example, in response to GAO recommendation subsequent to Katrina, in 2009 the claims compensation formula was refined by reducing the portion tied to the claim value and adjusting payment based on the WYO's NFIP premium volume. There are also specific processes in place for dissatisfied policyholders to appeal claims decisions to the NFIP. The most recent appeals process was put in place as a result of the passage of the Flood Insurance Reform Act of 2004.

Insurers with unhappy policyholders face both individual consumer retention risks and reputational risks, particularly since most people are unaware that the rules for determining most flood insurance claims are set by the Federal Government and insurers do not have a direct risk-bearing interest.

Finally, administering and marketing the flood program is very complex and expensive, and the number of insurers willing to do so has declined significantly in recent years. Many WYOs have determined that the reputational, legal, and financial risks are too great. Unfortunately, as fewer insurers market flood insurance, fewer consumers will purchase flood insurance.

Lessons Learned From Superstorm Sandy and Potential Areas of Reform

Governmental Coordination

In the immediate aftermath of a natural catastrophe it is critical for local, State, and Federal officials to coordinate their efforts to get basic services up and running as quickly as possible to get people back to their homes and businesses to begin remediation and rebuilding. Insurers need to be at the table during pre- and postdisaster emergency planning and coordination. It is also essential to the rebuilding process that local law enforcement and Government officials allow insurers and claims adjusters into damaged areas as soon it is safe—at least as soon as property owners are provided access.

An issue that arose with Superstorm Sandy, was the lack of available flood insurance adjusters, and that can delay the claims settlement and the rebuilding process. Most flood insurance adjusters are located in areas that frequently flood. Often States implement reciprocal recognition of claims adjusters from other States to help. Often the State insurance department grants such access, with the proper credentials, but sometimes it is difficult, given the impact of the event and the number of requests, to process the necessary paperwork needed in a timely manner, leading

to delays in responding to claimant needs. PCI also supports Federal legislation to require more reciprocal claims adjuster recognition.

Flood Insurance Advocate

The Homeowners Flood Insurance Affordability Act (HFIAA) established the office of the Flood Insurance Advocate. In light of the considerable Congressional changes to the Federal flood insurance program last term through the Biggert-Waters Flood Insurance Reform Act (BW-12) and this year in the HFIAA, WYOs hope that the Advocate can be a central location to respond to inquiries by consumers, Congress and the media. As mentioned previously, the program is very complex and there are many questions regarding recent legislation and mapping. We understand that the NFIP has established the goal of filling that position by the end of this year and hope the Administrator will be able to find candidates with an understanding of mapping, flood insurance, and claims—that will all be needed for the Flood Advocate to best serve consumers and the NFIP.

Mitigation

Preparation is a key factor in minimizing financial loss after a natural catastrophe. Strong, uniform statewide building codes that are regularly updated play a significant role in reducing the risk of injury or death to homeowners during a natural catastrophe. Structures built or retrofitted to comply with the most recent edition of the *International Building Code*, and other recognized building standards, incur less property damage during a significant weather event. Less property damage following an event reduces the need for Federal disaster aid, and can help expedite a community's recovery after a natural catastrophe. PCI promotes strong building codes and responsible land use policies, which are crucial for all stakeholders, to promote public safety and to be as prepared as possible for the next hurricane, tornado, or flood disaster.

Private Sector Participation

The increased complexity of the NFIP, along with increased costs for low-risk, voluntary NFIP policyholders also risk decreasing NFIP participation. Together, these and other pressures could lead to additional adverse selection in the future, increased taxpayer exposure and the need for additional Federal aid following the next major catastrophe. Growing the number of both policyholders and insurers will benefit both taxpayers and the NFIP.

PCI also supports increasing private sector involvement in flood insurance. BW-12 included a provision expressly authorizing FEMA to obtain reinsurance from the private market. PCI looks forward to working with companies and regulators to make certain consumers and other marketplace participants are properly educated and protected as this area develops.

Program Growth and Risk Spread

Insurers participating in the WYO program are responsible for helping administer more than 80 percent of the NFIP business. Unfortunately, despite continued expensive education and outreach efforts by WYO companies, the number of homeowners and businesses purchasing flood insurance protection has peaked at about 5.5 million policyholders. This level of insurance protection is far below the needs of vulnerable consumers. Future storms will continue to expose gaps in both the number of consumers who are uninsured for flood risk as well as the many families and businesses that are underinsured for their exposures. Consumers need to be educated about the importance of having flood insurance and encouraged to continue purchasing it. Likewise, more needs to be done to assure that BW-12 provisions designed to incentivize lenders to require flood coverage are having the intended effect.

Conclusion

The NFIP is an essential program to protecting millions of American businesses and families from catastrophic risk. PCI's WYO companies appreciate the opportunity to service the Federal Government and consumers and welcome a discussion with the Committee about how to improve the claims process. PCI also welcomes the Committee's interest in reforms addressing many of the lessons learned from Superstorm Sandy, including the need for better Government cooperation with industry, the need for the Federal flood advocate to address consumer questions, the benefits of improved mitigation efforts, the need for more private sector involvement and expansion of flood insurance coverage to better protect individual and business consumers.

On behalf of PCI and our member companies, thank you for the opportunity to present our views today. We look forward to working with you to protect consumers and improve the National Flood Insurance Program.

PREPARED STATEMENT OF MARYANN FLANIGAN

SUPERVISING ATTORNEY, NEW JERSEY LEGAL SERVICES, HURRICANE SANDY LEGAL ASSISTANCE PROJECT

JULY 30, 2014

Thank you for this opportunity to appear here today on behalf of the New Jersey Legal Services system, and on behalf of New Jersey residents who were affected by Storm Sandy. With funding from the Robin Hood Foundation, the Hurricane Sandy New Jersey Relief Fund and the State of New Jersey, Legal Services was able to begin providing legal assistance within 2 weeks after Sandy left our State. LSNJ established a statewide hotline (888-222-5765) which still operates and receives calls daily. LSNJ is the major legal assistance provider in the State of New Jersey for Sandy victims. Through our hotline, Web site, and targeted outreach, we have provided legal assistance in more than 2,500 cases to residents who were affected by Sandy. We have assisted even more residents through educational materials which are accessed through our Web site and distributed as flyers throughout the State. Even now in July of 2014, 21 months after the storm, new Sandy clients continue to contact our offices on a daily basis; many of these clients contact us for assistance with flood insurance claims.

Sandy-affected New Jersey residents have sought assistance from Legal Services on a breadth of issues that highlighted the need for legislative attention in certain areas, but one of the most prominent issues has involved underpayment or erroneous denials of flood insurance claims. Literally hundreds of New Jerseyans have come to LSNJ for help with their flood insurance denials and underpayments. Legal Services has served as a critical resource for disaster victims in need of assistance, especially for victims in the low to moderate income population. Today I will speak about the barriers that Sandy victims face when filing flood insurance claims, and I will highlight areas which can benefit greatly from careful attention and improvement.

1. Flood Insurance Companies Routinely Undervalue Claims, Thereby Creating Barriers To Repairing and Rebuilding

Almost every client who contacted LSNJ regarding a flood insurance issue had the same problem: the flood insurance claim offer was insufficient. Flood insurance carriers often subcontract the adjustment of flood claims to adjusters from all over the country; an adjuster from the midwest adjusted a client's claim for flood loss at approximately \$40,000 less than what the client needed in order to make the covered repairs. After examining the line-by-line estimate prepared by the adjuster, it was clear that materials could not be purchased in New Jersey for the unit prices listed. This low-balling of flood insurance claims happens all too often, and results in the insured suffering an unreasonable delay in making needed repairs to the home. The insured must either sacrifice quality by finding a way to purchase materials which are within the covered price range, or accrue additional expenses by taking out loans to cover the cost of repairs and other living arrangements while fighting for a fair settlement offer.

One particularly egregious case occurred when a homeowner carried homeowner and flood insurance through the same private Write-Your-Own (WYO) insurance company. The client's home was on a sea-facing avenue on which all of the homes suffered approximately 4 feet of flood damage. The flood insurance department denied the claim stating that the damage was caused by wind-driven rain and the homeowner insurance department denied the claim stating the damage was caused by flood water. The client had to appeal both claims and several months passed before the homeowner insurance department sent a structural engineer to prepare a report regarding causes of damage. The client used the structural engineer report as evidence of flood damage, and the flood insurance department then handled her claim more fairly. At that point in time, the client had been displaced from her home for approximately 7 months before the flood insurance department began to assess the scope of flood damage to her home.

A potential Federal remedy for this issue would be modification of the existing incentive and penalty system for flood insurance companies when claims are undervalued.

2. The Process for Appealing or Supplementing a Flood Insurance Claim Is Excessively Complicated and Write-Your-Own (WYO) Insurance Companies Often Create Extra Requirements With Which the Insured Must Comply. The Insurance Companies Offer Little Support or Guidance to Their Insureds

When clients contact LSNJ for assistance with a flood insurance claim, we start out by providing a simplified explanation of how to appeal an underpayment or denial. While the National Flood Insurance Program (NFIP) requires “detailed repair estimates” in the Standard Flood Insurance Policy (SFIP) Dwelling Form 44 CFR § 61 APPENDIX A (1)(VII)(H)(4)(f.), WYOs tend to reject detailed estimates if they are not prepared by specific software which creates an estimate report in an identical format to the one prepared by the claim adjuster. The insurance companies often do not offer any clear explanation or guidance to the insured when the estimate is rejected.

By the time that the client contacts us, the client typically has had several conversations with the flood claim agent about the underpayment or denial. After we explain the flood insurance appeal process, clients often express gratitude for the information and state that they did not understand the appeal process before speaking with LSNJ. That is to say, the client did not receive a clear explanation of the appeal process from the flood claim agent. Clients also tell stories of unreturned phone calls and emails to claim agents, and the clients tend to have a sense of dismay about the entire flood claim process.

After a couple in Union Beach, New Jersey, submitted a proof of loss to appeal their denial, they received notice that their proof of loss was denied. The insurance company did not explain the reason for the denial or offer guidance for what could be submitted in order to lead to a reassessment or approval. Another client in Toms River wanted to speak with her flood claim agent regarding her appeal, and the claim agent said he could not speak to her because she hired a public adjuster. Although there is no regulation prohibiting an insurance agent from speaking to the insured after a public adjuster has been hired to assist with the claim, several clients tell us that their flood insurance agents refuse to speak with them. Then, when these clients have difficulty getting in touch with their public adjusters, they are in the dark about the progress of their appeal and they have no idea when they might be able to return to a normal and stable living situation.

A potential Federal remedy would be straightforward guidance from the NFIP to all flood insurance companies which establishes a standard requirement that WYOs refrain from creating any extra requirements in the flood claim process.

3. The Statute of Limitations for Filing a Lawsuit Should not Begin To Run Until a Proof of Loss Has Been Submitted and Denied in Whole or in Part

Client claim rights are limited severely by the lawsuit statute of limitations built into the SFIP. The statute of limitations clause explains that the client must file suit within 1 year of the first partial or whole denial of the flood insurance claim, without regard to the submission or review of a proof of loss. Therefore, clients may find themselves fighting with the insurance company for several months over a proof of loss form without any clear decision (approval or denial) while the statute of limitations clock is ticking. Then the client may still be fighting for an approval or denial of the proof of loss when the statute of limitations time runs out. If the proof of loss is subsequently denied, the client then has no recourse through the judicial process and must resort back to fighting the insurance company with another proof of loss through the same exact process.

A potential Federal remedy would be amending FEMA regulations so that the limitations timeline does not begin to run until there is a partial or complete denial of a submitted proof of loss form.

4. The Complexities of the Flood Claim Appeal Process Have a Particularly Negative Impact on Low to Moderate Income Insureds

Low to moderate income New Jerseyans affected by Sandy were in some ways the worst-off in the flood insurance claim process. Not only were they displaced and forced to incur additional expenses in the relocation or rebuilding processes, but they also may have lost income if their jobs were affected by Sandy. When these clients sought assistance navigating the flood insurance appeal process, they found themselves unable to afford attorney fees. If they were fortunate enough to find an attorney who would provide services on a contingent fee basis, the low to moderate income client then had to make the hard decision of figuring out how to possibly repair the home with only two-thirds of what they needed to get from the insurance company. In many situations, attorneys would not take flood insurance appeal

claims because the respective recovery amounts might be too low to compensate for the work required. With limited resources, LSNJ has been able to assist many of these low to moderate income New Jerseyans in navigating the appeal process. However, these clients find themselves struggling to pursue the appeal because of the costs for hiring a structural engineer or a contractor who can provide a “detailed estimate” in the format that the flood insurance provider wants. Also, these clients sometimes are unable to devote sufficient time to thoroughly preparing the appeal because of employment responsibilities and other day-to-day obligations.

A potential Federal remedy would be simplifying the flood insurance claim appeal process and establishing a robust flood advocate as authorized under the Homeowner Flood Insurance Affordability Act so that insureds would be better equipped to effectively handle their appeals without incurring attorney expenses.

5. Policy Coverage Terms Should Be Written in Clearer Language and Coverage Should Be More Comprehensive in the Case of a Total Loss Due to Flood Damage

Many clients do not understand their coverage terms. They do not understand that the flood insurance policy does not indemnify for a total loss in the way that typical homeowner insurance policies do. A client whose home is covered for \$250,000 under the flood insurance policy does not expect to hear that although the home was substantially damaged and needs to be completely rebuilt after suffering five feet of flood water damage, the flood insurance policy will only pay for the part of the home which was damaged by flood water—even if that amount is less than \$250,000. Policy terms should be written in clearer language and explained to the insured whenever the policy is renewed.

A potential Federal remedy would be modifying SFIP language so that policies are written in clearer terms and a directive from the NFIP requiring flood insurance agents to explain coverage limits to the insured.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR REED
FROM CRAIG FUGATE**

Q.1. One of the complaints that is often raised about the National Flood Insurance Program (NFIP) concerns the accuracy of flood maps. To help address this criticism, I worked on a provision of the Biggert-Waters Act to establish a Technical Mapping Advisory Council or TMAC. This interagency and stakeholder group will help advise FEMA on the development of flood maps, including how to evaluate and depict future risk due to phenomena like sea-level-rise. I'm pleased that 2 years after the authorization of the TMAC a slate of members was finally appointed a few weeks ago.

Can you discuss how you will be utilizing the TMAC to improve the quality of flood maps and to help individuals and communities understand future risks?

Can you also comment about how FEMA, through TMAC and with other Federal agencies such as NOAA and the U.S. Geological Survey, is working to give States and localities technical information and data that might help them mitigate their flood risk for the short and long-term?

A.1. The Technical Mapping Advisory Council (TMAC) will be preparing written recommendations in a future conditions risk assessment and modeling report that will be submitted to the Federal Emergency Management Agency (FEMA) Administrator. The report is due 1 year after the first public meeting of the TMAC, which will be held at the U.S. Geological Survey (USGS) on September 30 and October 1, 2014. The future conditions risk assessment and modeling report is a one-time report specifically called for in the Biggert-Waters 2012 legislation that will be produced in parallel with the first annual recommendations report. The separate annual report, also due to the FEMA Administrator 1 year after the first public meeting of the TMAC, will contain, among other things, recommendations on how to improve the quality of flood maps. An annual recommendations report will be produced each year until the TMAC is stood down. The TMAC is comprised of members and representatives of various Federal, State, and local governments. This includes representatives from the USGS, National Oceanic and Atmospheric Administration (NOAA), the U.S. Army Corps of Engineers (USACE), and other representatives. In addition, the TMAC includes members of recognized associations or organizations, such as the American Society of Civil Engineers and the Association of State Flood Plain Managers.

The Agency has been working with other Federal agencies to conduct sea level rise proof of concept studies in conjunction with organizing and standing up the TMAC. The studies are being conducted for parts of San Francisco County, CA, and portions of Pinellas and Hillsborough Counties, FL. The objectives of the studies are to test methods for incorporating sea level rise data into FEMA's flood maps, as well as develop a product (sea level rise tool) that could actually be used by these Counties for informational nonregulatory purposes. The sea level rise tool will be similar to (but improved upon to consider differences in Pacific coast versus Atlantic coast methodologies) that developed by the cooperative effort of FEMA, USACE, NOAA, and the U.S. Global Change Research Program (USGCRP) for the coastal Counties/Boroughs of New Jersey and

New York that were impacted by Hurricane Sandy. FEMA is working closely with NOAA, USACE, and the USGCRP in the development of these newer tools. Finally, it should be noted that the TMAC will be briefed on the findings (some preliminary) of these sea level rise efforts so that the information and data can be used in formulating recommendations on how to mitigate and understand flood risk for the short and long-term.

Q.2. One reason there is less confidence in flood maps is that so many maps have not been updated in years, decades in some cases. When they are updated, they can seem abrupt and arbitrary to the public. In Rhode Island we've only recently seen updates for coastal maps that go back to the 1970s and 1980s. There are other maps in the State that are still that old. According to the Association of State Floodplain Managers, it would cost about \$275 million per year simply to maintain proper maps on a 5 year interval. That figure does not include the fact that many flood risk maps have not yet been updated with new engineering and hydrologic data, and some lower risk areas have never been mapped. Unfortunately, the Administration's request for discretionary funding for flood mapping and risk analysis has declined sharply in the last few years. This year, the budget request cuts mapping yet again. I'm pleased that Chairman Landrieu has increased this funding be increased to \$100 million in the Senate Homeland Security Appropriations bill. But even if we hold that number, it would be less than a quarter of the authorized level. I know that you have many priorities to address in the budget request, but assuming the State Floodplain Managers are correct, how will we get to the point where maps are updated and accurate with the level of funding that FEMA is currently dedicating to this mission?

A.2. The budget for Flood Hazard Mapping and Risk Analysis has experienced reductions in the last several years. Increases in flood insurance fee income have partially offset this reduction. The available budget has allowed FEMA to moderately maintain the Nation's flood hazard maps: however, it has limited FEMA's ability to advance and/or develop new analyses in many areas. FEMA is exploring efficiencies and innovations, internally and in partnership with the private sector, that may impact mapping operations (i.e. factors that drive improvements to technology, processes, or map production). Additionally, FEMA is looking to leverage State, local, and tribal data and resources along with other Federal Agencies' data to advance the mapping program. Through these potential efficiencies and innovations, FEMA is seeking ways to make more progress on mapping within the existing budget; however, we anticipate that these efficiencies could only further offset budget reductions, but wouldn't be enough to return our Flood Hazard Mapping and Risk Analysis activities to historical performance levels when available resources were higher.

Q.3. The Homeowner Flood Insurance Affordability Act included a study I authored on the feasibility of establishing community-based flood insurance options. The idea being that such policies might give communities a way to increase participation, encourage mitigation, and reduce premiums. Along with the affordability study authorized under the Biggert-Waters Act, this will help inform the

conversation for the next NFIP reauthorization in just a few of years (2017). Can you give a sense of FEMA's timing to complete this study?

A.3. FEMA is working diligently to complete each of the studies and reports required by both the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014. The contract for this study is expected to be executed by the end of September 2014, with a completion date of August 2015. FEMA will make every effort to perform all interval reviews quickly in order to provide the report to congress by the September 2015 due date.

Q.4. States with federally declared disasters typically are eligible for HMGP grants equal to 15 percent of the total Individual Assistance and Public Assistance that FEMA provides following a Presidentially declared disaster. In following the experience of Rhode Island, my impression is that FEMA's rules make it hard for States to use their HMGP funds in the limited amount of time they are available. In fact, States, particularly those that have little familiarity with HMGP, may wind up returning portions of their grants because they cannot execute projects quickly enough.

Is it your experience that States wind up returning a portion of their HMGP funds? If so, what percentage of HMGP funds is returned? What steps can and should be taken to make sure that States are able to use their full HMGP allotments on good, effective projects?

A.4. Since 1988, FEMA has awarded approximately \$12.3 billion Hazard Mitigation Grant Program (HMGP) grants for 928 separate declarations. Overall, approximately \$8.6 billion of the \$12.3 billion has been obligated.

States are required to submit applications for HMGP consideration within 12 months of the declaration. By regulation, this time limit is extendable with justification for up to 6 months. In rare situations FEMA has allowed additional time for States to solicit, develop and submit applications. The period of performance begins with the opening of the application period (i.e., the date of the declaration) and ends no later than 36 months from the close of the application period. At the State's request, the period of performance can be extended for up to 12 months with justification. The grantee is expected to complete all grant activities and to incur costs during the period of performance.

To date, \$145.3 million of \$1.26 billion has been obligated for Sandy declarations. The States of New York and New Jersey still have open application periods. They have not yet submitted projects for all available funding, although approximately \$500 million worth of HMGP projects are in process.

A State may choose to take one or more actions below to ensure full use of HMGP funds.

- States and local communities are encouraged to develop viable preevent mitigation plans that clearly identify at risk, or vulnerable target structures or areas so that they can reduce time developing projects after an event. These Hazard Mitigation Plans are required in order to receive HMGP project grants. FEMA is working to provide additional guidance and support

to improve the quality of the planning process, which includes an interagency effort with the Partnership for Sustainable Communities to ensure that appropriate data and tools for risk assessments are made available and to promote better alignment of related programs to ensure more coordinated planning support. Local plans can address actions to address climate change and adapt to changing risk environments. Examples are identifying at-risk structures, obtaining current elevation data and prioritizing actions that include freeboard as a way to account for future risk. Areas affected by wildfire may have increased flooding risk due to the loss of ground cover. Local plans can be adjusted to assess changing risks and to prioritize high value mitigation opportunities. FEMA encourages communities to develop local plans that work best for their hazards. The minimum regulatory requirements for acceptable plans may meet the needs of a community, while another may prefer to add detail, technical data and prioritization preferences. FEMA provides technical assistance and training to States and communities to promote a planning process that is inclusive across disciplines and results in a plan with clearly implementable actions.

- States may submit applications for Advance Assistance. FEMA is conducting a pilot program that provides up to 25 percent of the total HMGP ceiling, up to \$10 million for States to collect data, assist communities developing projects, and set up program management processes.
- States that are unable to submit complete, eligible applications may request application period extensions.
- States may request technical assistance to develop projects and/or determine cost-effectiveness, or to implement cost share options that may reduce local or individual cost shares. FEMA provides technical assistance to States and local applicants—at the State’s request.
- States may request training in the areas of application development and review, and for determining cost effectiveness, and other program requirements. FEMA provides training at State’s request for State staff, as well as local community officials that may have program roles. Understanding FEMA program requirements sets a firm base for States and local communities as they implement post disaster recovery and mitigation plans and initiatives.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCHUMER
FROM CRAIG FUGATE**

Q.1. In March Congress passed the Homeowner Flood Insurance Affordability Act and the legislation contained language that would allow for homeowners to receive credit for alternative forms of mitigation done to their homes when traditional mitigation efforts such as elevation may be impractical. In New York, we currently have homeowners in the process of rebuilding both in the existing and in the soon-to-be mapped floodplain and it is important for them

to know what actions they can or should take to help make their homes safe and keep premiums low.

So, can you give us an update on how these provisions of the law are being implemented, how these alternative forms of mitigation will be taken into account in the calculation of risk premium rates, and what homeowners should know in order to take advantage of these alternative mitigation options?

A.1. As directed by the law, FEMA is currently studying how homeowners might receive credit for alternative forms of mitigation. This study is under contract, with an expected completion date of February 2015. The report is due to Congress by March 15, 2015.

FEMA is currently working to identify potential alternative mitigation measures as required under Sec. 26 of the HFIAA of 2014. Examples of the types of alternative mitigation measures under consideration include use of hydrostatic openings, elevating all building utilities, floodproofing all building utilities, use of flood-damage resistant materials, use of floodwall without gates, abandoning the lowest floor, and elevating lowest interior floor. FEMA is conducting a comprehensive review of many alternative mitigation measures to determine their initial feasibility for both flood protection and potential flood insurance premium discounts.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN
FROM CRAIG FUGATE**

Q.1. Once FEMA determines that digital mapping technology is an effective and accurate flood mapping tool, how long do you anticipate it would take for FEMA to implement the widespread use of digital mapping technology?

A.1. FEMA began implementing digital mapping technologies around 2000. Over the course of the next 10 years, FEMA's flood mapping program:

- Eliminated 95 percent of paper map distribution
- Transitioned from printing presses and a paper inventory to an all-digital mapping inventory
- Provided modernized geospatial data and maps for 92 percent of the Nation (of which all were aligned with the best available topographic data and approximately half of the stream miles were validated, provided with new engineering study, or updated with new engineering analysis)

In 1999, FEMA was distributing 2.5 million paper maps each year. FEMA began the transition to digital regulatory products by scanning the entire map inventory and creating an easy-to-use tool online to view and print official copies of a portion of the standard flood maps. These customized products were called FIRMettes. Downloading and printing FIRMettes soon replaced much of the demand for paper maps.

By 2003, paper map demand stabilized below 1 million maps per year, and FEMA was initiating the Flood Map Modernization Program. The Flood Map Modernization Program republished flood maps for 65 percent of the land area of the United States, covering 92 percent of the Nation's population as digital geospatial FIRM

databases, static digital map images, and paper maps. The Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (Pub. L. No. 108-264) (commonly referred to as the *Flood Insurance Program Reform Act of 2004*) added a provision allowing FEMA to treat digital geospatial data as official, equivalent to the paper maps. FEMA developed policy to implement this change, which was published in 2007. At the same time, FEMA introduced the National Flood Hazard Layer (NFHL). The NFHL is a digital geospatial data product composed of all FIRM databases available nationally and updated daily as revisions to flood maps are processed. The NFHL is available live via the Web through open Web mapping service interfaces.

In 2008, FEMA announced it would discontinue nearly all distribution of paper maps, beginning with maps finalized in October 2009. FEMA focused on reorienting internal production processes to emphasize the FIRM database as the primary product, instead of the static digital and paper flood maps. This was critical to the flood determination industry transition from paper to digital products. Beginning October 1, 2009, FEMA eliminated all paper distribution of flood maps, except a single paper copy when revised to affected communities to support the incorporation of the flood maps into local land use ordinances. This reduced the annual distribution of paper maps to fewer than 100,000 units annually.

Similarly, FEMA has been encouraging the adoption of LIDAR technology for flood mapping since the 1990s. FEMA published one of the first LIDAR specifications in 1999 which became the industry standard for a number of years. FEMA has worked actively with the USGS and other Federal Agencies on LIDAR acquisition and standards through the National Digital Elevation Program. In 2010 FEMA adopted new accuracy standards for all flood map updates and requiring all new elevation data purchased to follow the current USGS LIDAR specification. This year, FEMA is working very closely with USGS to help launch the 3D Elevation Program (3DEP) as a strategy to acquire updated digital elevation for the Nation cooperatively at a lower cost. The 3DEP is designed as an 8 year plan to achieve national coverage.

Q.2. What steps is FEMA taking to educate the public and broaden the base of the flood insurance program to nonrequired homeowners?

Are there additional steps that Congress or the agencies should take to would encourage nonrequired homeowners to participate in the program?

How would expanded participation of nonrequired homeowners impact the solvency of the flood insurance program?

A.2. The National Flood Insurance Program has a decade-long public education campaign—FloodSmart—which seeks to explain the benefits of protecting yourself financially from flood damage. FloodSmart is a multifaceted campaign which includes paid advertising through a variety of media (television, radio, print, billboards, Web) as well as direct mail, advanced Web tools for determining flood risk and policy information at <http://www.FloodSmart.gov>, public service announcements, earned media through public relations and other activities designed specifically to

reach the general public. FloodSmart provides extensive resources in the aftermath of disasters to assist those impacted by the disaster file their insurance claims, but also to reach those in areas nearby, but not directly impacted, to educate them about flood risk and protection when it is uppermost in their minds.

The FloodSmart program has intentionally mixed its investments in paid media outreach in communities with a high propensity to purchase (usually those at elevated risk of flooding) along with communities where overall flood probability may be lower, but flood consequences will be high when waters do rise. Unfortunately, we have found that without a recent flood history or floods making headlines elsewhere, interest in flood insurance coverage is generally low. As the economy rebounds though, and family funds become more available, the National Flood Insurance Program (NFIP) is seeing an uptick in interest in flood insurance.

All FloodSmart materials directed to the public go through a rigorous six-step review process to ensure they are completely accurate and are as easy to read and digest as possible. Likewise, many materials are available in Spanish and other languages as well as being 508 compliant for those with sight or hearing impairments.

As part of our ongoing efforts within Mitigation and the NFIP, FEMA has established strong partnerships with numerous professional organizations and associations. These partnerships include the Association of State Floodplain Managers (ASFPM), the National Association of Flood and Stormwater Management Agencies (NAFSMA), the National Association of Counties (NaCo), as well as numerous insurance associations, the National Association of Realtors (NAR), the Mortgage Bankers Association of America (MBA), the American Bankers Association (ABA) and other groups at the State and local levels. NFIP representatives also meet quarterly with Federal regulatory agencies with oversight for the lending industry and federally secured loans.

Since May 2013, FEMA has trained more than 19,000 insurance agents and 45,500 total insurance professionals (lenders, adjusters, realtors, others) on the flood insurance program and ways to reduce flood risk.

In May 2014, the NFIP released a series of Public Service Announcements aimed directly at understanding flood risk. The wildly popular “Protect What Matters” campaign, which can be viewed at <https://www.floodsmart.gov/>, is already being widely shown in Tier 1 and Tier 2 markets in Florida, the Gulf Coast, Hawaii, and other areas and has already earned more than \$1 million in free advertising airtime in its first 8 weeks.

FEMA, through its Risk Mapping, Assessment, and Planning (Risk MAP) program, releases new flood maps and data as available, giving communities across America access to helpful, authoritative data that they can use to make decisions about flood risk. The Risk MAP program assists communities nationwide to assess flood risks and encourages mitigation planning and actions to avoid or minimize damage in the face of future disasters. Through more precise flood maps, risk assessment tools, and outreach support, Risk MAP strengthens local communities’ ability to make informed decisions about reducing risk. A key element of Risk MAP is engaging local officials and other community leaders throughout the

process, to discuss the community's flood risk and identify mitigation strategies and actions to reduce that risk. Throughout the flood mapping process, FEMA and community leaders host events to inform residents of their community's risk to flooding.

In July 2014, FEMA redesigned the Flood Map Service Center (MSC), the public portal to access flood mapping products. The MSC Web site and supporting help information make it simpler for homeowners and professionals to access important flood risk information and tools. National Flood Determination Association (NFDA) and Risk MAP's public-facing customer service representatives provided design input to increase the site's usability. In addition to regulatory products, nonregulatory flood risk maps and data are available on the MSC and provide an alternative means to help understand risk.

FEMA's Risk MAP managers meet regularly throughout the year with ASFPM and NAFSMA to share information and ideas. As another example of our collaboration with professional organizations and associations, Risk MAP conducted a workshop at the National Association of Counties (NaCo) annual conference in New Orleans, Louisiana, last month to demonstrate how to access and use Risk MAP tools to help inform their communities about flood risk.

The NFIP has a long history of working with Congress and other agencies to promote flood awareness generally and flood insurance specifically. Any actions taken by Congress or other agencies to help spread the message of protecting oneself from the financial ruin floods can bring is an additional step in the right direction. The NFIP stands ready to assist Congress or other agencies in partnering on disseminating these messages.

There is no doubt that increasing the number of properties insured—especially in lower risk areas—will spread the liability of the flood insurance program across a much larger pool of policyholders. It is a basic tenet of insurance: spreading risk across multiple policies is much safer financially than concentrating risk across a few. Additional policies would definitely bolster the NFIP's financial ability to withstand a major flood event, as well as pay off debt more quickly and increase the Reserve Fund more quickly.

While FEMA continues to make modest headway into increasing flood coverage in low- to moderate-risk areas, dramatic increases are unlikely due to several factors including awareness of the availability of flood insurance in lower-risk areas, limited acceptance of flood risk outside of SFHAs, and the cost of insurance. Possible solutions include:

- expanding mandatory purchase of flood insurance for federally regulated mortgages in the 0.2 percent (500 year) flood risk zone,
- expanding mandatory purchase for all properties financed through a federally regulated lender,
- increased emphasis on non-SFHA participation in Community Rating System communities,
- consider implementing incentives identified in the Affordability study currently being conducted as part of HFIAA,

- encouraging State insurance regulators/legislators to place greater value and emphasis on flood insurance training for agents.