

FEMA RESPONDS TO COMPLAINTS FROM SANDY VICTIMS, AGREEING TO CONSIDER REFORMS

Agency announces plan of action, including new advocate, and will reopen nearly 300 closed claims. Months of pressure from storm survivors and lawmakers in New Jersey and New York culminated Friday with the Federal Emergency Management Agency committing to reform key parts of the National Flood Insurance Program. The program covers more than five-and-a-half million policyholders across the country, and it's been an important part of the Sandy recovery, paying out more than 144,000 claims totaling in excess of \$8 billion. But it's also come under harsh criticism from some storm victims, who've charged that the rules governing the public-private management of the program have incentivized insurance companies to pay far less than they should to settle claims. About 1,500 flood-insurance cases throughout the region remain stuck in litigation. The changes announced Friday are aimed at shining more sunlight on the flood-insurance process, increasing oversight and accountability, and balancing the scales more in favor of policyholders. For starters, FEMA is asking insurance companies being sued to release draft engineering reports to ensure the integrity of their claims decisions. It will convene a task force to look into possible problems with payouts and the insurance companies responsible for making them. It also said that it will appoint a new advocate, whose job will be to help Sandy victims negotiate the claims and appeals process. Further, the agency will reopen almost 300 closed claims. The vast majority of homeowners who have flood insurance use the National Flood Insurance Program, meaning that the federal government is basically the guarantor of their policy. But while Washington foots the bill when these people file claims, it's private, so-called "Write Your Own" companies that actually write the policies and issue the payouts. Since this is taxpayer money, however, they're under constant pressure not to pay a dime more than homeowners are due, or else those companies might have to pay that excess money back to the federal government. Critics say that fear has led to insurance companies systematically underpaying claims in the aftermath of Sandy. In one recent case, a judge ruled that an engineering report of a Long Island couple's home was falsified to deny them coverage. The homeowners

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sued their insurance company after they discovered that the report had been rewritten to say that Sandy was not the cause of damage to their home. In responding, Judge Gary Brown said there had been “reprehensible gamesmanship” and that the “unprincipled practices may be widespread.” He ordered all Sandy-involved insurance companies in the Eastern District of New York to turn over thousands of draft reports to homeowners who may also have been similarly affected. In the weeks since, lawmakers led by Sen. Robert Menendez (D-NJ) have been mounting pressure on the federal government to investigate whether storm victims in New Jersey and other parts of New York might have faced similar situations. “There needs to be transparency, so that insurance companies can’t get away with sticking it to homeowners,” Menendez said in a recent news release. “While I certainly understand the need to protect taxpayer dollars from waste, fraud and abuse, I equally want to protect homeowners from getting swindled out of money they deserve.”

FEMA heeds call for reforms Last Friday, days after members of New Jersey and New York’s congressional delegation met with FEMA Administrator Craig Fugate to press for reforms, the federal agency finally said it was willing to consider changes. “FEMA is aware of reports that certain Write Your Own insurance companies may not have treated NFIP policyholders in litigation fairly or resolved litigation in a timely manner,” a spokesman said in a statement, adding that the agency does not take such concerns lightly. “Each policyholder deserves to be paid for every dollar of their covered flood losses, and taxpayers deserve to know that we remain good stewards of taxpayer dollars.”

To address the concerns about “disreputable engineering practices” by insurers and their contractors, Fugate sent a letter to insurance companies on Friday, asking them to “provide the transparency necessary to address these serious concerns head on.” Although Judge Brown’s decision applied only to Long Island and parts of New York City, Fugate asked Write Your Own companies in all Sandy-affected areas — including New Jersey — to release all internal, draft engineering reports to policyholders involved in lawsuits. “Unnecessary litigation tactics or failure to resolve litigation in a timely manner could result in excessive legal fees and costs which are ultimately reimbursed from the National Flood Insurance Fund,” he said.

Task force to be formed Next on the list of reforms, FEMA has asked Menendez to convene a task force within the next few weeks – composed of representatives of Congress, FEMA and the insurance companies – to figure out how to balance the sanctions in the future, so insurers would be penalized equally, not just when they pay out too much, but when they pay out too little as well. Fugate also vowed to quickly name a new Flood Insurance Advocate to serve as a resource for policyholders trying to navigate the claims and appeals process. Though it’s been overshadowed by some of the other announcements, Benjamin Rajotte, director of the Disaster Relief Clinic at Touro Law Center on Long Island called that “one of the greatest reforms.” He said the public interest community and private attorneys have been taking on cases to fill a void that’s existed precisely because policyholders haven’t

had an advocate working within the program on their behalf. “When you’re the policyholder, when you’re the homeowner, and you believe that you’ve been undervalued or you’ve been denied coverage, you’re really left on your own,” he said. “The whole proof of loss requirement and deadlines, the statute of limitations and the number of hurdles and hoops that you have to jump through has devolved into a ‘gotcha game’ kind of mentality. Having the Office of the Flood Insurance Advocate there will make it more of a collaborative enterprise to ensure that a lot of the problems we’ve seen won’t resurface again.” In addition to these other reforms, FEMA has also pledged to reopen and consider the appeals of 270 policyholders who experienced damage from Sandy but had their appeals dismissed because they missed a FEMA deadline. In his letter to insurance providers, Fugate noted the enormous progress that has been made since Sandy, but he added, “we have some serious work to do in the weeks ahead to restore the faith of the courts, the Congress and the public.” Reporter Charles Lane from public radio station WSHU contributed to this story.