

## NOTE

### WEATHERING THE SECOND STORM: HOW BUREAUCRACY AND FRAUD CURTAILED HOMEOWNERS' EFFORTS TO REBUILD AFTER SUPERSTORM SANDY

#### I. INTRODUCTION

Superstorm Sandy<sup>1</sup> (“Sandy”) destroyed the homes and lives of countless New York residents on October 29, 2012.<sup>2</sup> According to the National Hurricane Center, Sandy was *not* a hurricane when it made landfall near Brigantine, New Jersey;<sup>3</sup> it was instead a post-tropical cyclone<sup>4</sup> with seventy-knot maximum sustained winds.<sup>5</sup> Despite Sandy losing its hurricane status,<sup>6</sup> the enormous size of the storm caused a catastrophic storm surge which inundated the New York and New Jersey coastline.<sup>7</sup> The destruction received a preliminary cost estimate of approximately fifty billion dollars, which made “Sandy the second costliest cyclone to hit the United States since 1900.”<sup>8</sup>

Sandy came with strong winds, but the majority of the physical damage to homes, businesses, and infrastructure was the result of severe

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1. Merriam-Webster dictionary defines a superstorm as “a very large and powerful storm.” *Superstorm*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/superstorm> (last visited Apr. 22, 2019).

2. See ERIC S. BLAKE ET AL., TROPICAL CYCLONE REPORT: HURRICANE SANDY 1 (2013), [http://www.nhc.noaa.gov/data/tcr/AL182012\\_Sandy.pdf](http://www.nhc.noaa.gov/data/tcr/AL182012_Sandy.pdf) (providing a full synoptic history of the development of Sandy, including when the storm first made landfall).

3. *Id.* There are significant consequences when a storm is downgraded from hurricane status because insurance carriers cannot impose hurricane deductibles. *Governors Say No to Hurricane Deductibles*, CNN MONEY (Nov. 1, 2012, 12:48 PM), [http://money.cnn.com/2012/11/01/real\\_estate/sandy-hurricane-deductible/index.html](http://money.cnn.com/2012/11/01/real_estate/sandy-hurricane-deductible/index.html). This can save insureds thousands of dollars. *Id.*

4. The National Oceanic and Atmospheric Administration defines a post-tropical cyclone as “a former tropical cyclone . . . that no longer possesses sufficient tropical characteristics to be considered a tropical cyclone.” *Glossary of NHC Terms*, NAT’L HURRICANE CTR., <http://www.nhc.noaa.gov/aboutgloss.shtml> (last visited Apr. 22, 2019).

5. BLAKE ET AL., *supra* note 2, at 1.

6. *Id.*

7. *Id.*

8. *Id.*

flooding.<sup>9</sup> The flooding in New York City alone spanned fifty-one miles, covering seventeen percent of the land mass.<sup>10</sup> Over 443,000 New Yorkers lived in the areas that flooded, which included 88,700 buildings containing over 300,000 homes and approximately 23,400 businesses.<sup>11</sup> Many coastal areas were inundated with flood water reaching heights of eleven to fourteen feet above ground level in some areas.<sup>12</sup> Five of New York's coastal areas that faced the brunt of the storm surge included the Brooklyn-Queens waterfront, the east and south shores of Staten Island, south Queens, southern Brooklyn, and southern Manhattan.<sup>13</sup> These five coastal areas are home to 685,000 New Yorkers.<sup>14</sup>

The buildings in the areas along the coastlines which received the most extensive flooding were severely damaged, in many cases uninhabitable, and deemed structurally unsound.<sup>15</sup> The extent of the damage to many coastal homes was so severe that some were moved off their foundations and in other cases walls collapsed.<sup>16</sup> Another major source of complete devastation was caused by electrical fires which destroyed over 100 homes and businesses.<sup>17</sup>

As of December 2012, DOB [Department of Buildings] had tagged nearly 800 buildings as having been structurally damaged or destroyed across the five boroughs, with tens of thousands more impacted, including buildings containing nearly 70,000 housing units that were registered with FEMA [Federal Emergency Management Agency] and determined to have sustained some level of damage.<sup>18</sup>

The government's response to Sandy began almost immediately, starting on November 2, 2012, with FEMA opening the first Disaster Recovery Center in Coney Island and announcing that survivors could register for the Individuals and Households Program ("IHP").<sup>19</sup> On

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9. CITY OF N.Y., A STRONGER, MORE RESILIENT NEW YORK 11 (June 11, 2013), <https://www1.nyc.gov/site/sirr/report/report.page>.

10. *Id.* at 13.

11. *Id.* It is worth noting that a significant amount of the city's infrastructure was affected by the flooding, "including hospitals and nursing homes, key power facilities, many elements of the city's transportation networks, and all of the city's wastewater treatment plants." *Id.*

12. *Id.* "Water heights of several feet above ground level were prevalent in many coastal areas. Near Sea Gate, on the Coney Island peninsula in Brooklyn, the water reached 11 feet above ground level, and at Tottenville on Staten Island, they rose to 14 feet." *Id.*

13. *Id.* at 18.

14. *Id.*

15. *Id.* Hundreds of homes across the five boroughs were declared structurally unsound by the Department of Buildings by December of 2012. *Id.* at 14, 18.

16. *Id.* at 14.

17. *Id.*

18. *Id.*

19. *New York Three Years After Sandy*, FEMA, <https://www.fema.gov/new-york-three-years->

January 11, 2013, over \$1.1 billion was paid to national flood insurance policyholders in New York.<sup>20</sup> On February 16, 2013, the Small Business Administration (“SBA”) approved more than \$1 billion in loans, \$966 million of which were loans to repair and rebuild homes, and over \$7 million in economic injury loans.<sup>21</sup> By September 23, 2013, “[g]rants under the Individual Assistance program surpass[ed] \$1 billion.”<sup>22</sup> FEMA referred 211,970 households to the IHP, disbursed over \$1 billion to the IHP, and disbursed over \$1 billion to help individuals and families recover.<sup>23</sup> 5263 applicants received maximum grants of \$31,900 each.<sup>24</sup> Also, “[t]he SBA approved \$1.57 billion in disaster loans for 23,221 individuals and businesses. Of that, nearly \$1.3 billion was approved for homeowners and renters, and about \$267.6 million was approved for businesses.”<sup>25</sup> The most recent FEMA Recovery Milestones Report was last updated in 2016 and reported recovery figures for 2015.<sup>26</sup> Notably, on May 26, 2015, FEMA approved an additional \$211 million for the Hazard Mitigation Grant Program (“HMGP”), which increased the total amount of available funding to \$1.38 billion.<sup>27</sup> As of May 26, 2015, New York residents filed 57,289 Sandy-related insurance claims and received approximately \$4 billion in flood insurance payments for repairs and content losses.<sup>28</sup>

Despite the seemingly enormous amounts of grant money that New Yorkers received through FEMA and its various programs,<sup>29</sup> many New Yorkers are still unable to properly rebuild their homes and lives.<sup>30</sup> For many residents of New York, the road to rebuilding took years, leaving many families homeless or living in sub-standard conditions due to

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after-sandy (last visited Apr. 22, 2019). For a summary of the Individuals and Households Program, see *Assistance to Individuals and Households-Individuals and Households Program (IHP) Fact Sheet*, FEMA, [www.fema.gov/media-library/assets/documents/24945](http://www.fema.gov/media-library/assets/documents/24945) (last visited Apr. 22, 2019).

20. *New York Three Years After Sandy*, *supra* note 19.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* For a summary of the HMGP, see *Hazard Mitigation Grant Program*, FEMA, [www.fema.gov/hazard-mitigation-grant-program](http://www.fema.gov/hazard-mitigation-grant-program) (last visited Apr. 22, 2019).

29. See *New York Three Years After Sandy*, *supra* note 19 (reporting the various types of aid and amounts of aid awarded to Sandy survivors from 2012-2015).

30. See Melissa H. Luckman et al., *Three Years Later, Sandy Survivors Remain Homeless*, 32 *TOURO L. REV.* 313, 314-15 (2016) (explaining the hurdles Sandy survivors of New York and New Jersey faced due to inequities in the way aid is distributed under the Stafford Act and fraud committed under FEMA and by flood insurance companies).

delays with various government programs or insurance fraud.<sup>31</sup> Over six years later, many homes across New York are still in disrepair due to the federal and state governments' failure to properly protect their citizens from insurance fraud and provide adequate relief.<sup>32</sup>

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act"),<sup>33</sup> the federal regulations that govern the distribution of aid to Superstorm Sandy victims were meant to prevent alleged victims from "double dipping" by collecting money from more than one source for the same loss.<sup>34</sup> However, these regulations were applied unevenly and in an overbroad fashion.<sup>35</sup> This overbroad application caused honest homeowners who paid for limited insurance coverage for natural disasters to be completely excluded from receiving funds from FEMA for damages unrelated to their insurance coverage.<sup>36</sup>

Perhaps the most pervasive issue many homeowners faced was caused by insurance companies that committed fraud by doctoring engineering reports to prevent policyholders from collecting the full value of their policy.<sup>37</sup> Homeowners who were distraught and displaced from their homes were not aware of the fraudulent practices by the insurance companies and their only option was to sue their insurance carrier for fraud in an attempt to collect their insurance policies.<sup>38</sup>

This Note begins by examining the government's response to Hurricane Katrina, the implications of failure to rebuild in Louisiana, and how it changed some of the policies that affected what relief Sandy survivors would receive.<sup>39</sup> Part II discusses the Stafford Act and the federal regulations that govern disaster relief, and also provides an

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31. *Id.*; see Reuven Blau, *Hundreds of Homeowners Hit by Sandy Battling With NYC's Build It Back Program to Finish Restoring Their Homes*, NY DAILY NEWS (Oct. 27, 2017), <https://www.nydailynews.com/new-york/homeowners-hit-sandy-battle-build-back-repair-delays-article-1.3591917> (explaining the issues plaguing homeowners trying to rebuild their home through the Build It Back Program); see also *FEMA: Evidence of Fraud in Hurricane Sandy Reports*, CBS NEWS (Feb. 27, 2015), <http://www.cbsnews.com/news/fema-evidence-of-fraud-in-hurricane-sandy-reports> (describing the evidence of insurance fraud and the effects of Sandy survivors efforts to rebuild).

32. See Luckman et al., *supra* note 30 *passim*; Blau, *supra* note 31; *FEMA: Evidence of Fraud in Hurricane Sandy Reports*, *supra* note 31.

33. 42 U.S.C. §§ 5121–5208 (2012).

34. *Id.* § 5155 (Section 5155 of the Stafford Act explains the general prohibition against duplication of benefits); see also Luckman et al., *supra* note 30, at 317-19.

35. Luckman et al., *supra* note 30, at 319-21.

36. *Id.*

37. Jay M. Levin, *Potential Insurance Company Fraud in Superstorm Sandy Litigation*, INT'L RISK MGMT. INST. (Dec. 2014), <https://www.irmi.com/articles/expert-commentary/potential-insurance-company-fraud-in-superstorm-sandy-litigation>.

38. *Id.*

39. See *infra* Part II.

overview of some of the main disaster relief programs available to Sandy survivors, including FEMA grants, the Build It Back program, and SBA loans.<sup>40</sup> Further, Part II provides an overview of the National Flood Insurance Program (“NFIP”) and flood insurance policies.<sup>41</sup> Part III addresses the legal issues many homeowners have faced and continue to face while trying to rebuild.<sup>42</sup> These legal issues include the misapplication of the Stafford Act, rampant insurance fraud, FEMA’s inability to adequately address or prevent fraud, and recent legislation and its potential effects on future natural disaster relief.<sup>43</sup> Part IV argues that amending the Stafford Act is necessary to provide adequate relief in the future, and amending the National Flood Insurance Act is necessary to properly protect homeowners from fraud.<sup>44</sup> Part IV also suggests creating a new claims review process to increase transparency and fairness to policyholders who were victims of fraud.<sup>45</sup>

## II. THE HISTORY OF NATURAL DISASTER RELIEF: FROM KATRINA TO SANDY

When Hurricane Katrina devastated the coastline of Louisiana on August 29, 2005, the federal government was faced with the enormous task of rebuilding after what would be the costliest hurricane to hit the Gulf Coast.<sup>46</sup> The legislation passed in the wake of Hurricane Katrina, combined with the failure of efforts to rebuild, shaped the laws that controlled the relief efforts for future natural disasters, including Superstorm Sandy.<sup>47</sup> Subpart A looks critically at the federal government’s response to Hurricane Katrina, particularly the many failures of the Road Home Program, as well as the federal government’s reorganization of FEMA through the Post-Katrina Emergency Management Reform Act of 2006<sup>48</sup> and its impact on future disaster relief.<sup>49</sup> Subpart B explains the Stafford Act and other federal regulations

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40. *See infra* Part II.

41. *See infra* Part II.

42. *See infra* Part III.

43. *See infra* Part III.

44. *See infra* Part IV.

45. *See infra* Part IV.

46. *Hurricane Katrina Statistics Fast Facts*, CNN LIBRARY, <http://www.cnn.com/2013/08/23/us/hurricane-katrina-statistics-fast-facts/index.html> (last updated Aug. 30, 2018).

47. Polly Mosendz, *After Hurricane Katrina, A Man-Made Disaster in New Orleans*, NEWSWEEK (Aug. 19, 2015), <http://www.newsweek.com/2015/08/28/hurricane-katrina-new-orleans-rebuilding-364051.html>.

48. Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295, 120 Stat. 1394.

49. *See infra* Part II.A.

that governed federal relief efforts for Superstorm Sandy survivors.<sup>50</sup> Moreover, Subpart B discusses recent attempts to amend the Stafford Act.<sup>51</sup> Subpart C explains the federal relief programs available to Superstorm Sandy survivors (specifically the Build It Back program and SBA loans), describes how they work, and analyzes the drawbacks of these programs.<sup>52</sup> Lastly, Subpart D provides an overview of FEMA, the NFIP, and the process for filing flood insurance claims.<sup>53</sup>

### *A. The Legacy of Hurricane Katrina*

It is necessary to look back at how the federal government responded to Hurricane Katrina to understand the impact on future relief efforts launched by the federal government.<sup>54</sup> Subpart 1 provides information about the costs associated with the storm, the efforts to rebuild, and the lasting impacts of the damage.<sup>55</sup> Subpart 1 then focuses on the Road Home Program, which was one of the primary FEMA programs that provided funding for homeowners seeking to rebuild.<sup>56</sup> Subpart 2 discusses the Post-Katrina Emergency Management Reform Act of 2006, which was meant to remedy the issues FEMA faced in the wake of Hurricane Katrina.<sup>57</sup> Subpart 2 then addresses how FEMA failed to prevent similar issues following Superstorm Sandy.<sup>58</sup>

#### 1. The Federal Government's Response to Hurricane Katrina

The residents of New Orleans grimly describe the government's response to Hurricane Katrina as a man-made disaster.<sup>59</sup> The disaster came in three parts: first, a category three hurricane; second, the failure of the levees; and third, the government's involvement.<sup>60</sup> The damages totaled approximately \$125 billion, making it the costliest hurricane in U.S. history.<sup>61</sup> The federal government needed to respond to the disaster, but the legislature failed to provide an effective system for rebuilding and distributing federal aid.<sup>62</sup> The federal government provided billions

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50. *See infra* Part II.B.

51. *See infra* Part II.B.

52. *See infra* Part II.C.

53. *See infra* Part II.D.

54. *See* Mosendz, *supra* note 47.

55. *See infra* Part II.A.1.

56. *See infra* Part II.A.1.

57. *See infra* Part II.A.2.

58. *See infra* Part II.A.2.

59. Mosendz, *supra* note 47.

60. *Id.*

61. *Hurricane Katrina Statistics Fast Facts*, *supra* note 46.

62. Mosendz, *supra* note 47.

of dollars towards public works projects, rebuilding the city's infrastructure, and rebuilding the levee, all of which were successful and significantly improved the infrastructure that was in disrepair even before the storm.<sup>63</sup> However, the main program designed to help homeowners rebuild, the Road Home Program, was riddled with complications and failures.<sup>64</sup>

It is true that the government faced an unprecedented task in rebuilding New Orleans,<sup>65</sup> but there are no excuses for the bureaucratic mess that became the Road Home Program.<sup>66</sup> Many homeowners did not have insurance, so the Road Home Program was their only saving grace.<sup>67</sup> However, success stories were rare, and the program has been criticized for its numerous failures.<sup>68</sup> The program was designed to assist homeowners who did not have the financial means to rebuild.<sup>69</sup> This would be accomplished by having the "government [] pay the difference between a home's pre-storm net worth and the insurance payout the homeowner received, up to \$150,000."<sup>70</sup> The consequences of basing the amount of aid money homeowners received on the pre-storm net worth was that lower-income neighborhoods received significantly less aid money.<sup>71</sup> This caused the program to be discriminatory against African-Americans who received significantly less Road Home grant money compared to their white counterparts whose homes had a higher pre-storm net worth.<sup>72</sup> In response to the discriminatory policies of the Road Home Program, the Greater New Orleans Fair Housing Center filed suit for a potential class of over 20,000 homeowners for discrimination.<sup>73</sup> The case settled, awarding eligible homeowners \$437 million.<sup>74</sup>

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63. Jeff Adelson, *After Hurricane Katrina: How Federal Aid Helped the Region Rebuild, Improve*, GREATER NEW ORLEANS INC. (June 20, 2015), <http://gnoinc.org/news/region-news/after-hurricane-katrina-how-federal-aid-helped-the-region-rebuild-improve-advocate-staff-photo-by-john-mccusker-the-new-permanent-london-avenue-canal-pumping-station-is-under-construction-where>.

64. *Id.*

65. Elizabeth Chuck, *Bill Includes Unprecedented Flood Aid*, NBC NEWS (Dec. 19, 2005), [http://www.nbcnews.com/id/10533051/ns/us\\_news-katrina\\_the\\_long\\_road\\_back/t/bill-includes-unprecedented-flood-aid/#.WeQWK3eGO1s](http://www.nbcnews.com/id/10533051/ns/us_news-katrina_the_long_road_back/t/bill-includes-unprecedented-flood-aid/#.WeQWK3eGO1s).

66. Adelson, *supra* note 63.

67. See Mosendz, *supra* note 47; see also David Hammer, *Examining Post-Katrina Road Home Program: 'It's More Than the Money. It's the Hoops We Had to Jump Through to Do It'*, ADVOCATE (Aug. 23, 2015, 4:51 AM), [http://www.theadvocate.com/baton\\_rouge/news/article\\_f9763ca5-42ba-5a62-9935-c5f7ca94a7c4.html](http://www.theadvocate.com/baton_rouge/news/article_f9763ca5-42ba-5a62-9935-c5f7ca94a7c4.html).

68. See, e.g., Mosendz, *supra* note 47.

69. *Id.*

70. *Id.*

71. Hammer, *supra* note 67; Mosendz, *supra* note 47.

72. Hammer, *supra* note 67; Mosendz, *supra* note 47.

73. Mosendz, *supra* note 47.

74. *Id.*

Discrimination was not the only major failure of the Road Home Program; complications arose from inefficiency of the bureaucracy that was slow to provide relief money, which was caused by the ridiculously complicated application process.<sup>75</sup> Additionally, “[t]he onerous approval process required a variety of documents flood victims generally didn’t have: deeds, purchase paperwork, mortgage statements and the like. Katrina had washed them all away.”<sup>76</sup> Homeowners also faced rampant fraud<sup>77</sup> because Road Home did not provide any oversight of the contractors that homeowners hired for their repairs.<sup>78</sup>

Another failure of the Road Home Program was the government’s inability to ensure that homeowners used their grant money to rebuild their properties.<sup>79</sup> Homeowners signed a covenant to rebuild and reoccupy their homes within three years from when they accepted grants through Road Home, but this was not enough because of complications that were out of some homeowners’ control.<sup>80</sup> Due to contractor fraud and mortgage companies garnishing grant checks, not everyone had the funds necessary to rebuild.<sup>81</sup>

In the end, Road Home paid 130,000 homeowners a total of \$9 billion.<sup>82</sup> While the program helped thousands of homeowners rebuild, at the ten-year mark in August 2015, many people were still struggling to rebuild.<sup>83</sup>

## 2. The Reorganization of FEMA and its Impact on Future Disaster Relief

In response to the lessons learned from various unforeseen and unanticipated failures of efforts to rebuild after Hurricane Katrina, the federal government responded by enacting the Post-Katrina Emergency Management Reform Act of 2006 (“PKEMRA”).<sup>84</sup> The Act

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75. Adelson, *supra* note 63; Mosendz, *supra* note 47.

76. The State of Louisiana paid ICF International, a Virginia company, \$900 million to manage the Road Home Program, but the company wasted millions and set up an application process with fifty steps. Mosendz, *supra* note 47. “By January 15, 2007, Road Home had received almost 99,000 applications. It gave out only 177 payments.” *Id.*

77. *Id.* In some neighborhoods, an estimated eighty percent of the residents fell victim to contractor fraud. *Id.*

78. Adelson, *supra* note 63; Mosendz, *supra* note 47.

79. See Hammer, *supra* note 67; Mosendz, *supra* note 47.

80. Hammer, *supra* note 67. “State officials say fewer than 7,000 grantees, or about 6 percent, have failed to meet their obligations.” *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295, 120 Stat. 1394; *Post-Katrina Emergency Reform Act*, FEMA, <https://emilms.fema.gov/is230c/fem0101200.htm> (last visited Apr. 22, 2019).

“significantly reorganized FEMA, provided it substantial new authority to remedy gaps in response, and included a more robust preparedness mission for FEMA.”<sup>85</sup> While the PKEMRA provides an overhaul of many different aspects of natural disaster preparedness and response efforts, the areas that directly affect federal aid grants for rebuilding were not significantly changed.<sup>86</sup>

The PKEMRA amended the Stafford Act in areas that affect federal aid to homeowners, including the provision of aid to individuals and housing assistance.<sup>87</sup> The changes under aid to individuals specifically addresses special circumstances or unique needs of individuals with disabilities; authorizes new types of assistance including transportation, case management services to state, local, or qualified private organizations that provide assistance to victims; and requires the FEMA administrator to help reunite separated families.<sup>88</sup> The only amendment related to housing assistance that would potentially provide for more federal aid money to homeowners is the elimination of “statutory ceilings on financial aid to be provided for housing repair and replacement.”<sup>89</sup> However, this is undermined by the fact that the amendments did “not eliminate the overall cap of \$25,000 that may be provided under Section 408” of the Stafford Act.<sup>90</sup> There are no substantial changes that were expected after the numerous issues related to rebuilding during Hurricane Katrina relief efforts.<sup>91</sup>

The PKEMRA also included a pilot program to improve housing assistance to disaster victims by increasing the use of rental properties to provide temporary housing.<sup>92</sup> The pilot program allows the FEMA administrator to fund repairs and improvements of multi-family rental properties in disaster areas to increase the number of rental options for

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85. *Post-Katrina Emergency Reform Act*, *supra* note 84.

86. KEITH BEA, CONG. RESEARCH SERV., RL33729, FEDERAL EMERGENCY MANAGEMENT POLICY CHANGES AFTER HURRICANE KATRINA: A SUMMARY OF STATUTORY PROVISIONS 35-36 (2007). This report outlined the improvements to federal assistance and aid to individuals, stating that PKEMRA now addresses unique needs and special circumstances for disabled people and those with limited English proficiency and offers new transportation assistance. *Id.* While these are important additions, they do not address the bigger underlying problems that arose in the aftermath of Katrina relating to fraud and bureaucratic failures as discussed in Part II.A.1. *Id.*; *see supra* Part II.A.1.

87. CONG. RESEARCH SERV., RL33729 at 35-36.

88. *Id.*

89. *Id.* at 36.

90. *Id.* Other amendments under housing assistance include “FEMA’s authority to construct ‘permanent’ housing and adds the phrase ‘semi-permanent,’” as well as making utility costs and security deposits eligible housing assistance. *Id.*

91. *See supra* Part II.A.1.

92. CONG. RESEARCH SERV., RL33729 at 37.

displaced disaster victims.<sup>93</sup> While this program is certainly helpful for providing temporary housing for victims who need to rebuild, it does not resolve more pressing issues that affected the rebuilding efforts for homeowners during Katrina.<sup>94</sup>

Due to the enormous amount of reports of fraud by contractors and insurance companies alike, it would make sense for the PKEMRA to provide significant amendments that would help prevent fraud for future disaster relief efforts.<sup>95</sup> However, while the Act included amendments for fraud, waste, and abuse controls that mostly seek to protect the federal government from fraudulent claims, it does not provide specific relief for disaster victims.<sup>96</sup> The Act provides that the Administrator should designate funds for oversight activities, and it requires the agencies that receive federal funds to create oversight plans that describe how they intend to use funds and to include a risk assessment to identify areas with the greatest risk of fraud, waste, and abuse.<sup>97</sup> The federal agencies are also required to annually report the use of the funds to the Administrator and Congress.<sup>98</sup> Further, the Administrator must “develop and maintain internal management controls of FEMA disaster assistance programs to prevent fraud and waste by collecting information on disbursements to identify applications from persons ineligible for assistance.”<sup>99</sup> Other fraud prevention measures include the review of databases to ensure internal management controls, adoption of verification methods by the President to identify eligible recipients of federal aid, and the establishment of fraud prevention training programs.<sup>100</sup> These amendments were meant to protect the federal government, but there are no amendments that tackle the rampant insurance fraud that is partly the fault of the federal government because they provide the NFIP.<sup>101</sup>

The enactment of PKEMRA was certainly a step in the right direction because it acknowledged the significant issues with FEMA and the distribution of federal aid after Hurricane Katrina.<sup>102</sup> However, the

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93. *Id.*

94. *Id.*; *see supra* Part II.A.1.

95. *See supra* Part II.A.1.

96. CONG. RESEARCH SERV., RL33729 at 42-44.

97. *Id.* at 43-44.

98. *Id.* at 43.

99. *Id.*

100. *Id.* at 43-44.

101. *Id.* at 42-44. For a summary of the National Flood Insurance Program, see *The National Flood Insurance Program*, FEMA, <https://www.fema.gov/national-flood-insurance-program> (last visited Apr. 22, 2019).

102. *See* CONG. RESEARCH SERV., RL33729 at 1.

Act failed to provide solutions for the biggest issues during Katrina rebuilding, namely bureaucratic red tape, contractor fraud, and insurance fraud.<sup>103</sup> The enactment of PKEMRA, its reorganization of FEMA, and amendments to the Stafford Act set the stage for the recovery process for future natural disasters, including Superstorm Sandy.<sup>104</sup>

*B. Understanding the Stafford Act and How It Governed  
the Distribution of Relief During Superstorm Sandy*

To understand why homeowners were faced with so many hurdles while trying to rebuild their homes after Sandy,<sup>105</sup> it is necessary to understand the statutory authority that dictates the federal government's response to natural disasters.<sup>106</sup> The Stafford Act is the governing statutory authority for the federal government's response to natural disasters.<sup>107</sup> This Subpart explains the language and goals of the Stafford Act and identifies the administrative agencies that carry out those goals.<sup>108</sup> This Subpart will also explain the sections of the Stafford Act that this Note focuses on, specifically the sections of the Stafford Act that provide the federal aid programs that were designed to provide financial assistance to homeowners after a natural disaster.<sup>109</sup>

The Stafford Act was enacted in 1988 with the goal to “provide an orderly and continuing means of assistance by the federal government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which results from such disasters.”<sup>110</sup> The Stafford Act seeks to provide assistance after natural disasters in the following six ways:

- (1) revising and broadening the scope of existing disaster relief programs;
- (2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;
- (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;
- (4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;
- (5) encouraging hazard mitigation measures to reduce losses from disasters, including

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103. *See supra* Part II.A.1.

104. CONG. RESEARCH SERV., RL33729 at 1; *see infra* Part III.

105. *See infra* Part III.

106. *See infra* notes 110-41 and accompanying text.

107. *See infra* notes 110-41 and accompanying text.

108. *See infra* notes 110-41 and accompanying text.

109. *See infra* notes 110-41 and accompanying text.

110. 42 U.S.C. § 5121(b) (2012).

development of land use and construction regulations; and (6) providing Federal assistance programs for both public and private losses sustained in disasters.<sup>111</sup>

Once the President declares a “major disaster,”<sup>112</sup> the Stafford Act governs the distribution of various types of federal aid.<sup>113</sup> The Stafford Act grants FEMA the authority to distribute grants when the President has declared a major disaster.<sup>114</sup> FEMA is part of the Department of Homeland Security and therefore has no independent decision-making capabilities; it must report to the Secretary of the Department of Homeland Security.<sup>115</sup> Outside of FEMA and the Department of Homeland Security, other agencies “provide critical disaster recovery assistance that falls outside the scope of the Stafford Act.”<sup>116</sup> Two agencies that provide critical relief in coordination with FEMA are the Department of Housing and Urban Development (“HUD”), which provides Community Development Block Grants (“CDBG”) to aid disaster survivors in rebuilding, and the SBA, which provides economic assistance to businesses and has been used to provide aid to private homeowners as well.<sup>117</sup>

The Stafford Act covers every aspect of natural disaster preparedness and the federal government’s response to natural disasters.<sup>118</sup> However, for purposes of this Note, the focus will be on Title III (Major Disaster and Emergency Assistance Administration) and Title IV (Major Disaster Assistance Programs) of the Act.<sup>119</sup> Title III and Title IV cover the sections of the Act that relate to federal aid programs

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111. *Id.* § 5121(b)(1)–(6).

112. The Stafford Act defines a “major disaster” as:

[A]ny natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

*Id.* § 5122(2).

113. *Id.*

114. Luckman et al., *supra* note 30, at 316 (citing 42 U.S.C. § 5121).

115. *Id.* Prior to 2002, FEMA was an independent agency that reported to the President and had more independence when coordinating federal disaster response. *Id.*

116. *Id.*

117. *Id.* at 316, 319; *see* 42 U.S.C. § 5121(b).

118. Luckman et al., *supra* note 30, at 315; *see* 42 U.S.C. § 5121(b).

119. 42 U.S.C. §§ 5141–5170.

and the limitations of those programs that are designed to provide assistance to homeowners who are victims of a natural disaster.<sup>120</sup>

Title III, Section 312 (Duplication of Benefits),<sup>121</sup> provides a general prohibition of “duplication of benefits”<sup>122</sup> and works to protect the federal government from fraud and abuse by recipients of federal aid.<sup>123</sup> The general prohibition states:

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.<sup>124</sup>

This prohibition on duplication of benefits extends to other agencies that are not within the scope of the Stafford Act, such as the Community Development Block Grant Disaster Recovery Program (“CDBG-DR”), thereby preventing duplication of financial assistance from other sources ordinarily outside the scope of the Act.<sup>125</sup> Section 312(c) also authorizes the federal government to recover any duplicative benefits and hold liable any individual that has received more than one type of relief for the same loss in violation of Section 312(a).<sup>126</sup> Further, Section 314 lists penalties for misuse of funds distributed under the Act, including civil and criminal penalties as well as referral to the Attorney General.<sup>127</sup>

Title IV, Section 408(a) (Federal Assistance to Individuals and Households), allows the President to provide financial assistance—in some cases direct services—to individuals and households that cannot

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120. *Id.*

121. 42 U.S.C. § 5155.

122. A duplication of benefits is found when:

[A] beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need. The Stafford Act requires a fact-specific inquiry into assistance received by each person, household, or entity. A grantee may not make a blanket determination that a duplication of benefits does not exist for all beneficiaries or recipients under a disaster recovery program. As a result, all disaster recovery funds must be governed by policies and procedures to prevent duplication of benefits. In disaster recovery, it is common for multiple sources of funds to be used to address a single need. Any recipient receiving a duplicate benefit may be liable to the Federal government.

Luckman et al., *supra* note 30, at 318 (quotations omitted).

123. 42 U.S.C. § 5155.

124. *Id.*

125. Luckman et al., *supra* note 30, at 317-19.

126. 42 U.S.C. § 5155(c).

127. *Id.* § 5157(a)-(d).

afford the expenses and needs sustained as a direct result of a major disaster.<sup>128</sup> Section 408(b) allows the President to provide financial assistance for disaster-related housing assistance to “individuals or households who are displaced from their primary residences or whose pre-disaster primary residences are rendered uninhabitable.”<sup>129</sup> The various types of housing and financial assistance are listed and explained in detail, and include options for temporary and permanent housing.<sup>130</sup> Section 408(h) (Maximum Amount of Assistance) creates a limit on the amount of financial assistance that individuals or households can receive, providing that “[n]o individual or household shall receive financial assistance greater than \$25,000 under this section with respect to a single major disaster.”<sup>131</sup> Section 408(i) (Verification Measures) also addresses the concern of possible duplication of benefits by requiring the President to develop a system that can monitor individuals and households receiving assistance under Section 408.<sup>132</sup>

In an effort to help the Sandy recovery process run more efficiently and provide more streamlined relief, President Barack Obama signed into law the Sandy Recovery Improvement Act of 2013 (“SRIA”)<sup>133</sup> and the accompanying Disaster Relief Appropriations Act of 2013.<sup>134</sup> The enactment of SRIA provided significant changes to several aspects of Sandy relief efforts that affect individuals and homeowners, including

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128. *Id.* § 5174(a)(1). Section 408(e) (Financial Assistance to Address Other Needs) provides that the President may provide financial assistance (outside of housing needs), including: medical, dental, child care, personal property, transportation, and other expenses to an individual or household in the state who is adversely affected by a major disaster. *Id.* at (e)(1)–(2).

129. 42 U.S.C. § 5174(b)(1).

130. *Id.* § 5174(c)(1)–(4).

131. 42 U.S.C. § 5174(h).

132. The system should be used by the President or a designee of the President to:

- (1) verify the identity and address of recipients of assistance under this section to provide reasonable assurance that payments are made only to an individual or household that is eligible for such assistance;
- (2) minimize the risk of making duplicative payments or payments for fraudulent claims under this section;
- (3) collect any duplicate payment on a claim under this section, or reduce the amount of subsequent payments to offset the amount of any such duplicate payment;
- (4) provide instructions to recipients of assistance under this section regarding the proper use of any such assistance, regardless of how such assistance is distributed; and
- (5) conduct an expedited and simplified review and appeal process for an individual or household whose application for assistance under this section is denied.

*Id.* § 5174(i).

133. Sandy Recovery Improvement Act of 2013, Pub. L. No. 113-1, § 1101, 127 Stat. 39, <https://www.congress.gov/113/plaws/publ2/PLAW-113publ2.pdf>.

134. Disaster Relief Appropriations Act of 2013, Pub. L. No. 113-2, § 1101, 127 Stat. 4, <https://www.congress.gov/113/plaws/publ2/PLAW-113publ2.pdf>; *Sandy Recovery Improvement Act of 2013*, FEMA, <https://www.fema.gov/sandy-recovery-improvement-act-2013> (last visited Apr. 22, 2019).

the de-obligation of unexpended Sandy grants,<sup>135</sup> disaster relief fund reporting,<sup>136</sup> individual assistance declaration factors,<sup>137</sup> and the federal unified review process,<sup>138</sup> to name a few.<sup>139</sup> While these legislative changes provided some positive amendments to some sections of the Stafford Act that affect homeowners' access to relief funds,<sup>140</sup> they do not address the most pressing issues homeowners have faced which prevented and continue to prevent them from rebuilding.<sup>141</sup>

### *C. An Overview of Federal Natural Disaster Relief Programs Available to Sandy Survivors*

In the wake of Superstorm Sandy, FEMA and other agencies, including HUD and the SBA, provided qualifying homeowners the opportunity to receive federal aid to rebuild.<sup>142</sup> This Note focuses on these agencies specifically because they were two main sources of federal aid for Superstorm Sandy relief.<sup>143</sup> It is necessary to explain how these agencies and the relief programs they provide operate to understand the options homeowners were given by the federal

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135. *Sandy Recovery Improvement Act of 2013*, *supra* note 134. The de-obligation of Sandy grants through the Office of Management and Budget allowed FEMA to waive the requirement of grantee/sub-grantee expenditure of obligated grant funds within twenty-four months or funds would be returned to the agency. *Id.*

136. *Id.* Under the Disaster Relief Appropriations Act of 2013, FEMA is required to provide monthly reports regarding disaster relief fund spending to Congress and publish the reports on the internet. *Id.* For more information on the disaster relief fund, see *Disaster Relief Fund: Monthly Report*, FEMA, <https://www.fema.gov/media-library/assets/documents/31789?id=7247> (last visited Apr. 22, 2019).

137. *Sandy Recovery Improvement Act of 2013*, *supra* note 134. The SRIA requires FEMA "to provide more objective criteria for evaluating the need for assistance to individuals, to clarify the threshold for eligibility, and to speed a declaration of a major disaster or emergency under the Stafford Act." *Id.*

138. *Id.*

SRIA added Section 429 to the Stafford Act which directed the President to establish an expedited and unified environmental and historic preservation (EHP) process by July 29, 2014 for disaster recovery actions. The Unified Federal Environmental and Historic Preservation Review (UFR) was designed to enhance the ability of the Federal EHP review process to inform and expedite disaster recovery decisions for grant applicants and other potential beneficiaries of disaster assistance by improving coordination and consistency across Federal agencies, and assisting agencies in better leveraging their resources and tools.

*Id.*

139. *Id.* According to FEMA, "the passage of SRIA represents the most significant legislative change to the Federal Emergency Management Agency's (FEMA) substantive authorities since the enactment of the Robert T. Stafford Disaster Relief and Emergency Assistance Act." *Id.*

140. *Id.*

141. *See infra* Part III.

142. Luckman et al., *supra* note 30, at 316.

143. *See infra* Part II.C.1–3.

government and the limitations of the programs.<sup>144</sup> Subpart 1 explains the federal programs provided by FEMA, including the IHP.<sup>145</sup> Subpart 2 provides a brief overview of HUD and the CDBG-DR.<sup>146</sup> Subpart 3 provides a brief overview of the SBA and SBA loans.<sup>147</sup>

### 1. FEMA and the Individuals and Households Program

The Stafford Act provides emergency financial and physical assistance through FEMA.<sup>148</sup> The Act grants FEMA the responsibility to coordinate government relief efforts after a major disaster.<sup>149</sup> FEMA was meant to “bring an orderly and systemic means of federal natural disaster assistance for state and local governments in carrying out their responsibilities to aid citizens.”<sup>150</sup> In conjunction with FEMA’s role as the coordinator for federal relief efforts, the agency operates federal aid programs designed to provide disaster-affected states and individuals with federal recovery funds.<sup>151</sup>

FEMA’s IHP played an important role in the Sandy recovery process by “provid[ing] financial and direct services to eligible individuals and households affected by a disaster who have uninsured or underinsured necessary expenses and serious needs.”<sup>152</sup> The IHP cannot be used as a substitute for insurance; it is only meant to provide survivors with basic needs by supplementing disaster recovery efforts for individuals.<sup>153</sup> For Sandy survivors to be eligible for assistance through IHP, they must apply for assistance and meet general conditions.<sup>154</sup> Once an applicant is found to be eligible for IHP assistance, FEMA decides what types of housing assistance to provide

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144. *See infra* Part II.C.1–3.

145. *See infra* Part II.C.1.

146. *See infra* Part II.C.2.

147. *See infra* Part II.C.3.

148. *About the Agency*, FEMA, [www.fema.gov/about-agency](http://www.fema.gov/about-agency) (last visited Apr. 22, 2019).

149. *Id.* FEMA provided over one billion dollars in federal recovery aid to New Yorkers through the Individuals and Households Program. *See supra* Part I; *see also New York Three Years After Sandy*, *supra* note 19 (providing information regarding the amounts of aid dollars distributed from various programs).

150. *About the Agency*, *supra* note 148.

151. *Id.*

152. *Fact Sheet, Individuals and Households Program*, FEMA, <https://www.fema.gov/media-library-data/1528984381358-6f256cab09bfcbe6747510c215445560/IndividualsHouseholdsPrograms.pdf> (last visited Apr. 22, 2019).

153. *Id.*

154. *Id.* IHP eligibility requires the following general conditions:

[T]he applicant must be a U.S. citizen, non-citizen national, or qualified alien. FEMA must be able to verify the applicant’s identity. The applicant’s insurance, or other forms of disaster assistance received, cannot meet their disaster-caused needs. The applicant’s necessary expenses and serious needs are a directly [sic] result of a declared disaster.

*Id.*

for the individual or household and may include more than one type of assistance.<sup>155</sup> Applicants can appeal the determination of eligibility or the form of assistance provided by IHP within sixty days of the date on FEMA's award or denial letter.<sup>156</sup>

IHP provides two main types of assistance: financial housing assistance<sup>157</sup> and direct housing assistance.<sup>158</sup> The IHP can also provide financial assistance for other disaster-caused expenses under the IHP "Other Needs Assistance" provision, but some types of other needs assistance depend on the individual's or household's ability to qualify for an SBA disaster loan.<sup>159</sup> If an individual or household qualifies for an SBA loan, they may not receive personal property assistance, transportation assistance, moving assistance, or storage assistance.<sup>160</sup>

The IHP imposes limitations on recovery assistance and includes requirements for those participating in the program.<sup>161</sup> IHP's goal of recovery assistance is limited to providing supplementary recovery funds and is not meant to restore a home to its pre-disaster condition.<sup>162</sup> Any individual or household that receives any home repair assistance through IHP and is located in a "special flood hazard area" must obtain and maintain flood insurance.<sup>163</sup> One of the most problematic requirements is that survivors who received recovery assistance may be required to pay back any misused funds.<sup>164</sup> It is reasonable that the government should require the money to be spent lawfully; however, survivors are being

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155. *Id.* FEMA makes the determination of which types of housing assistance is necessary "based on disaster-caused loss, access to life-sustaining services, cost-effectiveness, and other factors." *Id.*

156. *Id.*

157. *Id.* Financial Housing Assistance "provides funds paid directly to individuals and households" for rental assistance, lodging expense reimbursement, home repair assistance, and home replacement assistance. *Id.*

158. *Id.* Direct Housing Assistance may be provided in circumstances where there is a lack of available housing resources for survivors who needed rental assistance and includes manufactured housing units, multi-family lease and repair, and permanent or semi-permanent housing construction. *Id.*

159. *Id.*

160. *Id.* Other needs assistance that is unaffected by an individual's or household's ability to qualify for an SBA loan includes funeral assistance, medical and dental assistance, child care assistance, and miscellaneous or other items assistance. *Id.*

161. *Id.*

162. *Id.* "IHP is not intended to replace private recovery efforts but to complement those efforts when needed." *Id.* "If a homeowner wishes to return their home to its pre-disaster condition, they may apply for a home disaster loan with the SBA." *Id.*

163. *Id.* A Special Flood Hazard Area is defined as "the area where the National Flood Insurance Program's floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies." *Special Flood Hazard Area*, FEMA, [www.fema.gov/special-flood-hazard-area](http://www.fema.gov/special-flood-hazard-area) (last visited Apr. 22, 2019).

164. *Fact Sheet, Individuals and Households Program*, *supra* note 152.

asked to pay back money dispersed incorrectly by FEMA.<sup>165</sup> This is problematic because by the time FEMA made requests for the aid money to be returned, many individuals had already spent the money and are now facing debt collections of sums up to \$31,900.<sup>166</sup>

## 2. HUD and the Community Development Block Grant Disaster Recovery Program

The goal of HUD is to “provide[] flexible grants to help cities, counties, and States recover from Presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations.”<sup>167</sup> In response to natural disasters, Congress can appropriate additional funding to HUD to provide financial assistance to communities through the CDBG-DR.<sup>168</sup> These grants are not available to individuals directly; instead, they are awarded to state and local governments, which become grantees, that the federal government has determined require extra financial assistance to rebuild.<sup>169</sup> The funding CDBG-DR provides supplements other federal recovery programs including FEMA and the SBA, but cannot duplicate already available funding.<sup>170</sup>

The State of New York was made a grantee and received \$4,416,882,000 in relief funds, along with the City of New York which

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165. Luckman et al., *supra* note 30, at 322; Miles Parks, *For Some Superstorm Sandy Victims, the Government Wants Its Money Back*, NPR (Apr. 13, 2015, 3:29 AM), <http://www.npr.org/2015/04/13/390442517/for-some-superstorm-sandy-victims-the-government-wants-its-money-back>.

166. Luckman et al., *supra* note 30, at 323 (citing Emily C. Dooley, *FEMA Demanding Liers Give Back Sandy Payments*, NEWSDAY (June 13, 2015, 10:46 PM), <http://www.newsday.com/long-island/fema-demanding-liers-give-back-sandy-payments-1.10538170>). “As of August 4, 2015, FEMA is attempting to collect \$14 million . . . from Sandy applicants, who it has been determined by FEMA, were improperly paid.” *Id.* (citing Emily C. Dooley, *Schumer Asks FEMA to Stop Using Treasury Department for Debt Collection*, NEWSDAY (Oct. 21, 2015, 10:53 PM), <http://www.newsday.com/long-island/schumer-asks-fema-to-stop-using-treasury-department-for-debt-collection-1.10992893>).

167. *Community Development Block Grant Disaster Recovery Program*, HUD EXCHANGE, <https://www.hudexchange.info/programs/cdbg-dr> (last visited Apr. 22, 2019).

168. *Id.* The CDBG-DR can be used to provide federal aid money to “the most impacted and distressed areas” for disaster relief, long term-recovery, restoration of infrastructure, housing, and economic revitalization. *Community Development Block Grant Disaster Recovery (CDBG-DR) Fact Sheet*, HUD EXCHANGE, <https://www.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf> (last visited Apr. 22, 2019).

169. *Community Development Block Grant Disaster Recovery (CDBG-DR) Fact Sheet*, *supra* note 168. After a state or local government becomes a grantee, the grant money is received by “state agencies, non-profit organizations, economic development agencies, citizens and businesses.” *Id.*

170. *Id.* Once grantees are awarded CDBG-DR funds they must complete several steps before they can utilize them including the “creation of a disaster recovery web page, Action Plan approval, applicable environmental reviews and the execution of a grant agreement with HUD.” *Id.*

received \$4,213,876,000.<sup>171</sup> Through those funds, HUD and the CDBG-DR sponsored the Build It Back program which provides funding to homeowners in New York to raise their homes to protect from future flood damages.<sup>172</sup> This program provided homeowners an opportunity to receive federal funds to reconstruct the foundation of their homes under the condition that the house would be raised to prevent future flood damages.<sup>173</sup> As of August 2018, the Build It Back program is nearly complete and has helped 8300 homeowners and landlords, housing a total of 12,500 families in New York City.<sup>174</sup> This included rebuilding and elevating approximately 1375 homes in waterfront communities to meet the stringent regulations for flood compliance after Sandy.<sup>175</sup>

### 3. The Small Business Association

After the President declares a natural disaster, the SBA has the authority through its Office of Disaster Assistance (“ODA”) to provide financial assistance to businesses, homeowners, and renters in the form of low-interest, long-term loans.<sup>176</sup> SBA loans were one of the primary types of “aid” provided to small business and homeowners seeking to rebuild.<sup>177</sup> Unlike grants from FEMA and other programs such as CDBG-DR, SBA loans are required to be paid back with interest.<sup>178</sup>

To qualify for an SBA disaster loan as a homeowner, the applicant must be deemed eligible, pass a credit check, and demonstrate an ability to repay the loan.<sup>179</sup> The damage amount is determined by on-site inspections, which are conducted by loss verifiers assigned to the Damage Verification Center (“DVC”).<sup>180</sup> After a loss verifier makes a

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171. *Disaster Grants and Grantee Contact Information*, HUD EXCHANGE, <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-grantee-contact-information/#hurricane-sandy-and-other-disasters-pl-113-2including-rebuild-by-design-rbd> (last visited Apr. 22, 2019).

172. *Welcome to NYC Housing Recovery*, CITY OF N.Y., <https://www1.nyc.gov/site/housingrecovery/index.page> (last visited Apr. 22, 2019).

173. *Id.*

174. *Id.* “[T]he Build It Back program has served 99.8% of approximately 8,300 homeowners (totaling 12,500 households) through either a reimbursement check, construction start, or acquisition.” *Id.*

175. *Id.* “Another 6,600 homeowners with moderate Sandy damage are being assisted with repair and reimbursement - helping neighborhoods that were not in the floodplain when Sandy hit and homeowners who did not have flood insurance.” *Id.*

176. SMALL BUS. ADMIN., STANDARD OPERATING PROCEDURES SOP 50 30 8, at 1 (Subject: Disaster Assistance Program) (July 1, 2015). “Section 7(b)(1) of the Small Business Act, as amended, authorizes the Agency’s Physical Disaster Loan Program. SBA can make loans to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters as defined by the Small Business Act.” *Id.*

177. Luckman et al., *supra* note 30, at 318-20.

178. *Id.* at 319.

179. SMALL BUS. ADMIN., *supra* note 176, at 29-31.

180. *Id.* at 88. For a complete list of the responsibilities of the loss verifiers, see *id.* at 88-89.

damage estimate, a loan officer will make all eligibility determinations.<sup>181</sup> Loan officers are responsible for analyzing verified losses, determining eligibility of damaged property, applying all restrictions and limitations, and preventing duplication of benefits to determine the adjusted verified total loss.<sup>182</sup> To determine the final eligible loan amount, the loan officers must make all required deductions, resulting in the uncompensated physical loss.<sup>183</sup> The loan amounts have statutory and regulatory maximums which limit real estate damage loans to \$200,000, personal property damage to \$40,000, refinancing to \$200,000, mitigation measures to twenty percent of the verified loss for physical damage (both real estate and personal property damage), up to a maximum of \$200,000.<sup>184</sup> As of November 2013, the SBA funded 17,092 loans for homeowners, totaling \$561,069,277.<sup>185</sup>

#### *D. An Overview of FEMA and the National Flood Insurance Program*

The U.S. Department of Homeland Security, through FEMA, oversees the NFIP.<sup>186</sup> The NFIP was created in response to the National Flood Insurance Act of 1968 (“NFIA”)<sup>187</sup> and continues to be the main source of flood insurance for the entire country.<sup>188</sup> The goals of the NFIP include providing flood insurance, improving floodplain management, and developing maps of flood hazard zones.<sup>189</sup> The NFIP does not provide insurance directly from the federal government; instead, state-licensed insurance companies sell flood insurance to customers.<sup>190</sup> These insurance companies are held accountable by state regulators who monitor their standards and levels of service.<sup>191</sup> The NFIP also sponsors the Write Your Own program, which allows private insurance

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181. *Id.* at 88-89.

182. *Id.* at 89.

183. *Id.* at 89-96.

184. *Id.* at 118.

185. SMALL BUS. ADMIN., EARLY-DEFAULTED HURRICANE SANDY DISASTER LOANS 1 (Aug. 15, 2016).

186. FEMA, NATIONAL FLOOD INSURANCE PROGRAM CLAIMS HANDBOOK 3 (Oct. 2017).

187. The National Flood Insurance Act of 1968, Pub. L. No. 90-448, 82 Stat. 572 (1968).

188. *National Flood Insurance Program (NFIP)*, NAT’L ASS’N INS. COMM’RS, [http://www.naic.org/cipr\\_topics/topic\\_nfip.htm](http://www.naic.org/cipr_topics/topic_nfip.htm) (last updated Sept. 25, 2018). Private flood insurance does exist; however, the market for private flood insurance remains small and the NFIP remains the main source of flood insurance for Americans. *Id.*

189. *Id.* “The National Flood Insurance Program aims to reduce the impact of flooding on private and public structures. It does so by providing affordable insurance to property owners, renters and businesses and by encouraging communities to adopt and enforce floodplain management regulations.” *The National Flood Insurance Program*, *supra* note 101.

190. FEMA, ANSWERS TO QUESTIONS ABOUT THE NFIP 1, 3 (Mar. 2011).

191. *Id.* at 3.

companies to write and service the Standard Flood Insurance Policy in their own name.<sup>192</sup>

Homeowners can receive a flood insurance policy through NFIP providing coverage up to \$250,000 and its contents for up to \$100,000.<sup>193</sup> NFIP provides two types of coverage: building property coverage and personal property coverage, also known as content coverage.<sup>194</sup> Building property includes the building and its foundation, electrical and plumbing systems, air conditioning systems, most appliances, permanent carpeting, permanently installed paneling, wallboard, bookcases, cabinets, detached garages, detached buildings, and debris removal.<sup>195</sup> Personal property includes clothing, furniture, electronics, curtains, portable appliances, nonpermanent carpets, freezers, washers and dryers, and some valuable items including artwork and furs.<sup>196</sup>

### III. LEGAL ISSUES

In the aftermath of Superstorm Sandy, homeowners faced many obstacles to rebuild due to the current language and implementation of the Stafford Act and rampant fraud committed by the NFIP under the supervision of FEMA.<sup>197</sup> Subpart A discusses the unfairness of the duplicative relief provisions of Section 312 of the Stafford Act, which prevent homeowners who were pressured to accept SBA loans from receiving any further grant money.<sup>198</sup> Subpart B sheds light on the most pervasive issue affecting homeowners: the rampant fraud committed by the insurance companies under the NFIP.<sup>199</sup> This Subpart also addresses the Flood Insurance Transparency and Accountability Act of 2015

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192. *What is the Write Your Own Program?*, FEMA, <https://www.fema.gov/what-write-your-own-program> (last visited Apr. 22, 2019). The NFIP offers three Standard Flood Insurance Policy forms: the Dwelling Policy form, the General Property Policy form, and the Residential Condominium Building Association Policy form. *Standard Flood Insurance Policy Forms*, FEMA, <https://www.fema.gov/national-flood-insurance-program/standard-flood-insurance-policy-forms> (last visited Apr. 22, 2019).

193. *Flood Insurance: How it Works*, FEMA (Mar. 2015), [https://www.fema.gov/media-library-data/142781128849236fb55e74d14c318db2996580527d131/Flood\\_Insurance\\_How\\_It\\_Works.pdf](https://www.fema.gov/media-library-data/142781128849236fb55e74d14c318db2996580527d131/Flood_Insurance_How_It_Works.pdf). “Renters can cover their belongings for up to \$100,000. Non-residential property owners can insure a building and its contents for up to \$500,000 each. The average premium for a yearly flood insurance policy is about \$700 per year.” *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *See infra* Part III.A–B.

198. *See infra* Part III.A.

199. *See infra* Part III.B.

(“FITA”)<sup>200</sup> and efforts by FEMA to address and resolve fraud claims.<sup>201</sup> Finally, Subpart C explains the lack of accountability of FEMA and the NFIP, as well as other concerns related to an agency accused of committing fraud on a massive scale.<sup>202</sup>

*A. Current Implementation of the Stafford Act  
Causes Harm to Homeowners*

Due to Section 312 of the Stafford Act, individuals and homeowners cannot receive duplicative relief.<sup>203</sup> While this rule makes perfect sense in theory, in practice it was applied too broadly and prevented many people from receiving any federal grant money to rebuild.<sup>204</sup> One of the main sources of relief distributed through FEMA were SBA loans, which many homeowners were pressured to take, believing it was their best option to rebuild.<sup>205</sup> FEMA and SBA loan administrators failed to properly explain to many homeowners applying for loans what the consequences of accepting an SBA loan fully entails.<sup>206</sup> Many participants of the SBA loan program “say they didn’t fully understand the potential repercussions of their loans. Now they regret taking them, saying they ruined their chances for recovery grants and left them with monthly loan payments their neighbors don’t have.”<sup>207</sup> Since the SBA loans did not cover the costs of rebuilding, many homeowners would have benefited from some federal grant money as well.<sup>208</sup> However, despite repayment requirements, SBA loans were considered grant money, preventing anyone who received an SBA loan from getting any other federal grant money.<sup>209</sup>

The amount of money homeowners received from the SBA was based on engineering reports, and in many cases, the loan amounts were

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200. Flood Insurance Transparency and Accountability Act of 2015, S. 2324, 114th Cong. (2015).

201. *See infra* Part III.B.

202. *See infra* Part III.C.

203. *See supra* Part II.B.1.

204. Luckman et al., *supra* note 30, at 320.

205. *Id.*; *see Buyer’s Remorse: Sandy Victims Regret Taking Loans Now Affecting Their Eligibility for Grants*, FOX NEWS (Dec. 14, 2014), <http://www.foxnews.com/us/2014/12/14/buyer-remorse-sandy-victims-regret-taking-loans-now-affecting-their-eligibility.html> [hereinafter *Buyer’s Remorse*].

206. *Buyer’s Remorse*, *supra* note 205. Denise Erickson, a Superstorm Sandy victim from New York who accepted an SBA loan and then was denied any other grant money, reported that “there was never the understanding that we would be pushed out of the (grant) program[.]” *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

only a fraction of the total cost of repairs needed.<sup>210</sup> If an SBA loan and other forms of aid did not cover the total cost of repairs for a particular eligible purpose, then any further aid should not be considered duplicative.<sup>211</sup> To clarify the duplication of benefits requirements, the Stafford Act provides:

Once the grantee has determined the potential award and the total assistance received or to be received, it can exclude for duplication of benefit purposes, assistance that was: (1) Provided for a different purpose; (2) Used for a different, eligible purpose; (3) Not available to the applicant; (4) A private loan not guaranteed by SBA; or (5) any other asset or line of credit available to the applicant.<sup>212</sup>

Despite the clear language of the clarification, any person who received an SBA loan was rendered ineligible for any further forms of assistance, including grant money from the federal government.<sup>213</sup>

Federal officials argue that SBA loans should be considered part of the duplication of benefits analysis because they believe that disaster victims' financial ability to qualify for loans and pay them back allows for the availability of more money for those who are less likely to afford or qualify for a loan.<sup>214</sup> Further, not everyone can qualify for federal grant money.<sup>215</sup> These are valid arguments, but they are undermined by the fact that many homeowners were pressured into accepting SBA loans they could not afford to repay.<sup>216</sup> Federal officials have also failed to take into consideration the implications of the fraud and ineffectiveness of the SBA organization which resulted in unfair loan amounts that do not adequately cover the cost of repairs, leaving those homeowners with no access to any other types of relief to make up the difference.<sup>217</sup>

Another major source of concern for Sandy survivors is the requirement imposed by the Stafford Act that any duplicative funds which were incorrectly awarded must be repaid to the federal

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210. Luckman et al., *supra* note 30, at 319-20. Undervaluation and incorrect loan amounts were a result of "systemic fraud and undervaluation, which resulted in incorrect disaster awards from Community Development Block Grants (CDBG), as well as Small Business Administration (SBA) loans." *Id.* at 315.

211. Luckman et al., *supra* note 30, at 319-20.

212. *Id.* at 318-19 (citing Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees, 76 Fed. Reg. 71,060, 71,062 (Nov. 16, 2011)).

213. *Id.* at 319-20.

214. *Buyer's Remorse*, *supra* note 205.

215. *Id.*

216. *Id.* SBA spokeswoman Carol Chastang said that loan applicants were made aware that accepting the loan would affect their ability to qualify for other relief. *Id.*

217. *See id.*

government.<sup>218</sup> This requirement spans all federal aid programs including SBA loans and FEMA's IHP grants.<sup>219</sup> While this requirement seems reasonable on its face, it is overly burdensome and in some cases impossible.<sup>220</sup> Many Sandy survivors were in the process of fighting unfair and inaccurate engineering reports, award amounts, and insurance payouts for years after Sandy, which means that once all of their claims are resolved, they may end up owing money to the government.<sup>221</sup> The IHP program sponsored by FEMA conducted an internal audit and "[a]s of August 4, 2015, FEMA is attempting to collect \$14 million from Sandy applicants, who it has been determined by FEMA, were improperly paid."<sup>222</sup> To make matters worse, in most cases the money had already been spent and now it is up to the affected homeowners to come up with potentially tens of thousands of dollars.<sup>223</sup>

*B. Rampant Fraud Committed by  
Insurance Companies and Unfair Policies*

When the President declares a natural disaster, there is a delivery sequence for types of relief.<sup>224</sup> The first in the sequence is volunteer agencies' emergency assistance programs and insurance, including flood insurance.<sup>225</sup> It is imperative that flood insurance claims are paid quickly and effectively because they are the first and, in many cases, the only type of relief for victims of a natural disaster.<sup>226</sup> The most significant issue that homeowners continue to face now, over six years later, is that they were unaware that their insurer was using engineers to make fraudulent reports of damages to their homes and are now attempting to sue to recover damages.<sup>227</sup> It was not until 2015 that FEMA shed light on these issues and acknowledged the amount of fraud homeowners faced at the hands of their insurance companies.<sup>228</sup>

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218. 42 U.S.C. § 5155(c) (2012).

219. *Id.*; Luckman et al., *supra* note 30, at 318-24.

220. *See* Luckman et al., *supra* note 30, at 322-27.

221. *Id.* at 315-16.

222. *Id.* at 323.

223. *Id.* "Individuals may find themselves having to pay sums as large as \$31,900 dollars back to the agency tasked to help them in a time of need." *Id.*; *see also FEMA Demanding Liers Give Back Sandy Payments*, *supra* note 166 (reporting that "FEMA's individual housing program can grant disaster survivors as much as \$31,900 to help with rental assistance, to replace damaged property, contents of a home, and other costs").

224. SMALL BUS. ADMIN., *supra* note 176, at 90.

225. *Id.* Examples of volunteer agencies emergency assistance programs include ARC and the Salvation Army. *Id.*

226. *Id.*; Luckman et al., *supra* note 30, at 318.

227. *FEMA: Evidence of Fraud in Hurricane Sandy Reports*, *supra* note 31.

228. *Id.*

Homeowners who maintained a flood insurance policy at the time of Superstorm Sandy were mainly insured through the NFIP.<sup>229</sup> The NFIP required all policyholders to support their flood insurance claims by submitting a completed and signed proof of loss with all supporting documentation to their insurer within sixty days of the loss.<sup>230</sup> After the proof of loss has been submitted, the insurance company would begin to review the claim and an engineer would be sent to assess the damages and create a report regarding the assessment.<sup>231</sup> Once the engineers completed their reports, they were sent to the insurance companies.<sup>232</sup> It was at that point in the process that the fraud began.<sup>233</sup>

On March 1, 2015, *60 Minutes* featured a story that shed light on the systemic fraud and abuse by insurance companies after Sandy.<sup>234</sup> The story featured interviews with: two families from New York who experienced the fraudulent process first hand; Andrew Braum, an engineer who blew the whistle on the fraud; Brad Kieserman, the head of FEMA's flood program at the time; and Steve Mostyn, an attorney who specializes in insurance litigation.<sup>235</sup> According to Mostyn, "the fraud is taking engineers' reports and changing them from saying there was structural damage to saying there's no structural damage, or giving engineers a form to fill out that already has the conclusion of no structural damage."<sup>236</sup> In support of Mostyn's statements, Andrew Braum, an engineer who worked for HiRise Engineering and inspected more than 180 homes after Sandy, stated that changes were made to his engineering reports repeatedly and he was asked to cover it up.<sup>237</sup> Braum has maintained the original reports as proof.<sup>238</sup> One example provided by

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229. *See supra* Part II.D.

230. NATIONAL FLOOD INSURANCE PROGRAM CLAIMS HANDBOOK, *supra* note 186, at 6. In the case of severe floods, FEMA may authorize proof of loss extensions. *Id.* at 7.

231. *Id.* at 5-6; Sharyn Alfonsi, *The Storm After the Storm*, CBS NEWS (Mar. 1, 2015), <https://www.cbsnews.com/news/hurricane-sandy-60-minutes-fraud-investigation>.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.* The Kaible family featured in the story reported that the city condemned the house because it had been knocked off its foundation, but after the engineer came, they received a report from the insurance company stating there was no structural damage. *Id.* The Kaible family requested another assessment and their insurer, Wright Flood, sent the same engineer from U.S. Forensic, George Hernemar, who informed the Kaibles that Wright had doctored his original report. *Id.* The Kaibles took a picture of the original report and filed a lawsuit against their insurer. *Id.*

236. *Id.*

237. *Id.*

238. *Id.* Braum discovered changes made to one of his reports which prompted him to check all of his original reports and compared them to the final copies the homeowners received. *Id.* He discovered that at least 175 of the reports (approximately ninety-six percent based on his calculations) were doctored and the ones that were not were reports in which he recommended no repairs be made. *Id.* Further, Braum stated that HiRise pressured him to sign an affidavit that he

Braum was in a report that he wrote concluding that floodwater caused the damage to the foundation, and the final report from the insurance company was completely altered to say that “[s]ettlement due to consolidation of soil caused the foundation wall to crack.”<sup>239</sup> Brad Kieserman was appointed the head of FEMA’s NFIP in March of 2015 when he admitted on national television that in his first three weeks as the head of the NFIP, he saw evidence of rampant fraud, specifically the fraudulent reports and potential criminal activity in the form of using unlicensed engineers.<sup>240</sup> According to a report dated August 19, 2013, FEMA was aware that there was proof that the engineer who inspected a home, working for the firm U.S. Forensic, was not licensed to work in New York.<sup>241</sup> Kieserman admitted that the information provided in the document to FEMA should have been elevated within the agency immediately, but was not.<sup>242</sup> According to Kieserman, he would be meeting with Mostyn to begin negotiations to settle 2000 Sandy claims and do everything he could to make the situation right.<sup>243</sup>

In response to discovering the tremendous extent of the fraud, many homeowners sued their insurance companies in an attempt to collect the full value of their policies.<sup>244</sup> The New York courts became inundated with thousands of Sandy cases and responded by investing significant resources to facilitate resolution of these cases in an efficient manner.<sup>245</sup> These cases shed light on the peer review process and other ways in which engineering and insurance companies doctored the final engineering reports to underpay thousands of homeowners.<sup>246</sup>

In *In re Hurricane Sandy Cases*, Deborah Raimey and Larry Raisfeld sued Wright National Flood Insurance (their NFIP flood insurer) to challenge the denial of their claims under their flood

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agreed with the final, doctored reports, which he declined to do. *Id.*

239. *Id.* The insurance companies have argued in defense of their heinous actions that the final reports were changed to allow for a peer review process which is a standard practice in the insurance industry. *Id.* However, Braum stated that this practice of altering the reports without the engineer’s knowledge is not peer review. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*; see, e.g., *In re Hurricane Sandy Cases*, 303 F.R.D. 17, 19 (E.D.N.Y. 2014).

245. *In re Hurricane Sandy Cases*, 303 F.R.D. at 19. The court specifically stated in its holding “that the instant dispute, which has exposed reprehensible gamesmanship by a professional engineering company that unjustly frustrated efforts by two homeowners to get fair consideration of their claims. Worse yet, evidence suggests that these unprincipled practices may be widespread.” *Id.*

246. *Id.*; see also *Raimey v. Wright Nat’l Flood Ins.*, 76 F. Supp. 3d 452, 455-56 (E.D.N.Y. 2015) (holding that “concealment of that initial report and the process that led to the new report (including conduct at the evidentiary hearing) has prejudiced plaintiffs in terms of delay and costs in this litigation, such that sanctions were warranted”).

insurance policy.<sup>247</sup> The evidence showed that U.S. Forensic and Wright National Flood Insurance Company used the peer review process to “unfairly thwart[] reasoned consideration of plaintiffs’ claim through the issuance of a baseless report.”<sup>248</sup> The peer review process was explained by George Hernemar, an engineer for U.S. Forensic who wrote the initial report, and Michael Garove, a peer review engineer for U.S. Forensic, who was assigned to review the report made by Hernemar.<sup>249</sup> Hernemar testified that he made the changes to the final report and insisted that no one else made alterations.<sup>250</sup> However, Garove testified as to how the peer review process works<sup>251</sup> and explained that he made changes to the original report based on the pictures and other information provided by the inspecting engineer.<sup>252</sup> Garove claimed that everything done in the peer review process was tracked and documented.<sup>253</sup> However, “Garove described a process by which the report authored by the inspecting engineer was *rewritten* by an engineer who had not inspected the property and whose identity remained concealed from the homeowner, the insurer and, ultimately, the Court.”<sup>254</sup> The engineer tasked with reviewing the initial report replaced the initial report of the engineer who actually inspected the property.<sup>255</sup> The final report names Hernemar as the “Engineer of Record” and does not mention Garove or the peer review process at all.<sup>256</sup> In fact, the report states that its conclusions are based on “physical evidence observed at the property” and “Site Observations,” and it further states that the work was “performed by George Hernemar” with no mention of anyone else.<sup>257</sup> The situation described in this case is only the tip of the iceberg.<sup>258</sup> The court noted that “[t]his process was limited neither to this one engineer, nor specifically to U.S. Forensic” which shows that this peer review process

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247. *In re Hurricane Sandy Cases*, 303 F.R.D. at 19.

248. *Id.* Both Wright and U.S. Forensic were mentioned in the *60 Minutes* special on Sandy fraud as companies that had engaged in doctoring engineering reports. *See* Alfonsi, *supra* note 231.

249. *In re Hurricane Sandy Cases*, 303 F.R.D. at 20-22.

250. *Id.* at 21.

251. Garove explained that he uses a software program within Microsoft Word to add and track markups, changes, and comments on the “initial document.” *Id.* at 22. In his words the “peer review process involves reviewing the contents of the report, both technically, grammatically, you know, the entire content of the report, as well as reviewing any other drawings, photographs, or any other information that the inspecting engineer would produce or provide to us.” *Id.*

252. *Id.* at 23. It is worth noting that Garove and Hernemar explained the peer review process differently, and it is likely that the process varies from company to company. *Id.*

253. *Id.*

254. *Id.* at 23-24.

255. *Id.* at 23.

256. *Id.*

257. *Id.*

258. *Id.* at 19, 25.

has potentially affected upwards of hundreds of Sandy flood insurance claims.<sup>259</sup>

*C. The Consequences of the Lack of Accountability  
of FEMA and the NFIP*

Many homeowners were defrauded by NFIP insurers and did not learn the extent of the fraud, or that it even occurred, until they could no longer appeal an existing claim.<sup>260</sup> This situation leaves the victims of insurance fraud with only one option to try and collect the full value of their policy.<sup>261</sup> They can bring a lawsuit against their insurer for fraud, but this is an expensive and potentially futile option.<sup>262</sup>

In response to FEMA's admission that they were aware of fraudulent engineering reports affecting thousands of homeowners, and the subsequent flood of litigation in response to this admission, FEMA launched the Sandy Claims Review Process ("Review Process") in March of 2015.<sup>263</sup> The Review Process was originally designed to help flood insurance policyholders who wanted to review their claims by creating a unique process designed to provide a full review of their claims.<sup>264</sup> The process had two levels.<sup>265</sup> The first level was

259. *Id.* at 25. The court relies on supporting documents submitted on the motion to assert that this practice has affected hundreds, maybe thousands of Sandy victims. *Id.*

260. *Id.* at 19 (explaining that homeowners only uncovered the truth about the peer reviewed engineer reports during the court ordered discovery process); *Appealing our Flood Insurance Claim, Fact Sheet*, FEMA, [https://www.fema.gov/media-library-data/1445375610216677b966ca615fbc30ce3d88be32611d9/FactSheet\\_FIMA\\_Appeals\\_RID\\_SC\\_101415\\_v4\(2\)accessible.pdf](https://www.fema.gov/media-library-data/1445375610216677b966ca615fbc30ce3d88be32611d9/FactSheet_FIMA_Appeals_RID_SC_101415_v4(2)accessible.pdf) (last visited Apr. 22, 2019) (explaining the appeals process for NFIP insurers, specifically that an insured must appeal a final claim decision "within 60 days of the insurer's written final decision"); *FEMA: Evidence of Fraud in Hurricane Sandy Reports*, *supra* note 31 (providing examples of two homeowners who were defrauded by their flood insurer and were forced to pursue lawsuits in an attempt to collect their policies).

261. *See Appealing Our Flood Insurance Claim, Fact Sheet*, *supra* note 260. After an insured files an appeal FEMA will respond in one of three ways. *Id.* If FEMA disagrees with the policyholder, they will provide a detailed explanation of their conclusion. *Id.* There is no additional step with the insurer for policyholders who have also been unsuccessful on appeal. *Id.*

262. Charles Lane, *After Sandy: Insurance Claim Battles Cost Homeowners, Taxpayers*, NPR (Feb. 17, 2015, 5:06 PM), <https://www.npr.org/2015/02/17/385992207/after-sandy-insurance-claim-battles-cost-homeowners-taxpayers>. "In court documents, lawyers for insurance companies estimate that legal fees could top \$100 million. Federal Magistrate Gary Brown called that number a 'really, really big problem' because that would be far more than the disputed amount." *Id.*

263. Douglas J. Pepe, *Why FEMA's Sandy Claims Review Process Isn't Working*, LAW 360 (May 25, 2016, 1:14 AM), <https://www.law360.com/articles/799820/why-fema-s-sandy-claims-review-process-isn-t-working>; *Sandy Claims Review Division Update*, FEMA (Feb. 10, 2017), [https://www.fema.gov/media-library-data/1487182028686-164dee0b34d7fc0345561a7dcfd10912/Final\\_Sandy\\_Claims\\_Review\\_Fact\\_Sheet\\_021017.pdf](https://www.fema.gov/media-library-data/1487182028686-164dee0b34d7fc0345561a7dcfd10912/Final_Sandy_Claims_Review_Fact_Sheet_021017.pdf).

264. Pepe, *supra* note 263.

265. *Id.*

administrative “desk review” by FEMA contractors.<sup>266</sup> This was a procedure which promised policyholders a “‘fair, transparent and expeditious’ review of their claims by ‘highly skilled NFIP certified adjuster[s]’ in a process that would take ‘less than 90 days to complete.’”<sup>267</sup> If the policyholder was still dissatisfied after the first level of review, “they could request a second review by a ‘highly qualified third party neutral’ who would conduct a ‘hearing involving the policyholder, the caseworker and the neutral’ and make a recommendation to FEMA on their claim.”<sup>268</sup> FEMA could choose to ignore neutral decisions, but the agency promised to “give substantial weight to the neutral’s recommendation” on all issues.<sup>269</sup>

The Review Process that was originally planned morphed into another unfair and drawn out process that deviated from FEMA’s initial promises.<sup>270</sup> FEMA used the Freedom of Information Act (“FOIA”)<sup>271</sup> as a shield to redact policyholders’ files beyond what was necessary.<sup>272</sup> This caused significant delays and compromised the materials policyholders would need to rely on to review and analyze their own files.<sup>273</sup> Despite mandating that all flood claims files “must contain draft engineering reports” that should be made “available to policyholders upon request,” in practice FEMA has only provided unaltered draft engineering reports if they were already in its possession.<sup>274</sup> The third-party review process promised review and recommendations by independent arbitrators who had no affiliation with FEMA, whose recommendations would be given “substantial weight.”<sup>275</sup> Instead, FEMA changed the standard, which resulted in neutral arbitrators being

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266. *Id.* (citations omitted).

267. *Id.* (citations omitted).

268. *Id.* (citations omitted).

269. *Id.* (citations omitted).

270. *Id.*

271. The Freedom of Information Act, 5 U.S.C. § 552 (2012).

272. Pepe, *supra* note 263.

273. *Id.* “FEMA has relied on FOIA exemptions to redact policyholder files, despite the fact that the Privacy Act itself bars agencies from relying on FOIA exemptions ‘to withhold from any individual any record which is otherwise accessible to such individual’ under the Privacy Act.” *Id.* (citations omitted).

274. *Id.* (citations omitted); see Memorandum for WYO Principal Coordinators and National Flood Insurance Program Servicing Agent W-15025, at 2 (June 1, 2015) (directing NFIP Claim Handlers to provide “full transparency on the adjustment of claims, including associated engineering services, if necessary”). The main reason policyholders were dissatisfied with the claims process and the reasons for thousands of lawsuits was that draft engineering reports were being doctored by engineering companies and the insurance companies, so it is absurd for FEMA to refuse to provide the originals when reevaluating the claims through the Review Process. Pepe, *supra* note 263; see *infra* Part III.B.

275. Pepe, *supra* note 263.

precluded from interpreting the standard flood policy or rendering any legal decision that FEMA disagrees with.<sup>276</sup> To make matters worse, when a neutral arbitrator makes a decision, it is sent directly to a “neutral review committee” within FEMA, then to a FEMA official, and then a decision is made on the file without the policyholder knowing anything about it.<sup>277</sup> The policyholder will not find out about the neutral opinion until they receive the final decision letter from FEMA, which does not include a copy of the neutral opinions or supporting documents.<sup>278</sup> These practices are in direct contradiction of the transparency FEMA promised.<sup>279</sup>

Critics of FEMA and its efforts to resolve the rampant fraud accusations have pointed to another unsettling aspect of the Review Process.<sup>280</sup> August Matties, an attorney for over 1000 policyholders fighting Sandy claims, stated that the companies hired to execute the Review Process would make more money on its contracts with FEMA than policyholders would receive through the program.<sup>281</sup> Another concern is that FEMA hired David Maurstad in 2016 as the Assistant Administrator for Federal Insurance.<sup>282</sup> Maurstad was the senior vice president of Optimal Solutions and Technologies, one of the companies that made millions handling the Review Process from 2011 through 2016.<sup>283</sup> Maurstad was acting NFIP director in 2005 when he became the subject of a lawsuit that alleged FEMA and the NFIP were engaging in wrongful conduct and systematically underpaying claims.<sup>284</sup> This is troublesome because the focus of the 2005 lawsuit mirrors the behavior that occurred again to Sandy policyholders, the resolution of which has been tasked with FEMA, who has David Maurstad as the assistant administrator for federal insurance.<sup>285</sup>

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276. *Id.*

277. *Id.*

278. *Id.* If policyholders wish to see the neutral’s reports, they have to request them on their own, which may take months, only to receive files with entire sections of the documents redacted due to various FOIA exemptions asserting privileges that do not apply to Privacy Act files. *Id.*

279. *Id.* “No published source identifies this change. Documents produced by FEMA to the author under FOIA, however, acknowledge the new standard.” *Id.*

280. Todd Shepherd, *Top FEMA Official Was Executive at Company Accused of Hurricane Claims Fraud*, WASH. EXAMINER (Sept. 13, 2017, 2:55 PM), <http://www.washingtonexaminer.com/top-fema-official-was-executive-at-company-accused-of-hurricane-claims-fraud/article/2634304> (alleging that a company called Optimal Solutions and Technologies (“OST”), working for FEMA, pressured employees to lowball claims).

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

Despite the many issues raised above, as of February 10, 2017, the Review Process has closed 14,561 claims and paid policyholders a total of \$177,629,389.<sup>286</sup> Of the 1632 NFIP policyholders who litigated their claims, 1630 cases were settled, awarding a total amount of \$164,320,515.<sup>287</sup>

#### IV. SOLUTIONS

Since there were many complex issues affecting disaster relief for Sandy survivors, a few different types of action are necessary to provide a better system for future disaster relief.<sup>288</sup> Subpart A proposes amendments to Section 312 of the Stafford Act to prohibit SBA loans from being considered in a duplicative relief analysis, to clarify existing language regarding duplicative relief to prevent the overbroad application which adversely affected homeowners after Sandy, and to protect homeowners from repayment resulting from bureaucratic mistakes and not fraud.<sup>289</sup> Subpart B advocates for reform of the NFIA to change the peer review process which will help protect policyholders from fraud and create a more effective process to challenge claims.<sup>290</sup> This Subpart also proposes new requirements under the NFIA to ensure that FEMA and the NFIP provide better assistance to homeowners through all stages of disaster relief.<sup>291</sup> Finally, Subpart C explains the need to create a claims review process that is more transparent and fair to homeowners for future disaster relief.<sup>292</sup>

In the few short years following Sandy there have been numerous hurricane<sup>293</sup> and flood related disasters<sup>294</sup> across the country.<sup>295</sup> Disasters of this magnitude are predicted to become more frequent and devastating in the future due to climate change.<sup>296</sup> The survivors of the more recent

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286. *Sandy Claims Review Division Update*, *supra* note 263.

287. *Id.*

288. *See supra* Parts II.C, III.

289. *See infra* Part IV.A.

290. *See infra* Part IV.B.

291. *See infra* Part IV.B.

292. *See infra* Part IV.C.

293. Willie Drye, *2017 Hurricane Season Was the Most Expensive in U.S. History*, NAT'L GEOGRAPHIC (Nov. 30, 2017), <https://news.nationalgeographic.com/2017/11/2017-hurricane-season-most-expensive-us-history-spd> (discussing the three major hurricanes of 2017, Harvey, Irma, and Maria); Emily Shapiro, *5 Natural Disasters That Devastated the U.S. in 2018*, ABC NEWS (Dec. 8, 2018, 5:47 AM), <https://abcnews.go.com/US/natural-disasters-devastated-us-2018/story?id=59367683> (discussing damage from Hurricanes Michael and Florence in 2018).

294. Shapiro, *supra* note 293 (describing the damage from the flooding in Montecito, California, Maryland, North Carolina, and South Carolina).

295. Drye, *supra* note 293.

296. *Id.*; Shapiro, *supra* note 293.

disasters will face the same issues as Sandy survivors, which further highlights the need for reform as proposed in this Part.<sup>297</sup>

#### A. Amending the Stafford Act

As explained earlier in Part III.A, one of the main resources available to homeowners after Sandy was SBA loans, which were the only form of aid that was required to be paid back with interest.<sup>298</sup> Many homeowners believed that accepting an SBA loan was their only option to start rebuilding their lives, and it was not until after they accepted the loans that they learned they would not qualify for any other aid.<sup>299</sup> This is inherently unfair because many homeowners who accepted the loans were being responsible and proactive, but they were made to feel like they were being punished.<sup>300</sup> Further, SBA loan amounts were issued based on damage estimates and the creditworthiness of the applicants, which meant that the loans rarely covered all of the damages and left homeowners with repair costs they could not afford.<sup>301</sup>

Title III, Section 312 of the Stafford Act is meant to protect the government from fraud by prohibiting recipients of federal aid from receiving duplicative relief.<sup>302</sup> Section 312(b) should be amended as follows:

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297. Scott Cohn, *Now Come the Insurance Headaches for Hurricane Victims - a Cautionary Tale Wherever You Live*, CNBC (Oct. 19, 2018, 5:02 PM), <https://www.cnbc.com/2018/10/19/now-come-insurance-headaches-for-hurricane-victims--a-cautionary-tale-wherever-you-live.html> (describing the headaches ahead for victims of Hurricane Florence based on the problems Sandy survivors faced); Brady Dennis, *The Country's Flood Insurance Program Is Sinking. Rescuing It Won't Be Easy*, WASH. POST (Jul. 16, 2017), [https://www.washingtonpost.com/national/health-science/the-countrys-flood-insurance-program-is-sinking-rescuing-it-wont-be-easy/2017/07/16/dd766c44-6291-11e7-84a1-a26b75ad39fe\\_story.html?utm\\_term=.544e0e59649f](https://www.washingtonpost.com/national/health-science/the-countrys-flood-insurance-program-is-sinking-rescuing-it-wont-be-easy/2017/07/16/dd766c44-6291-11e7-84a1-a26b75ad39fe_story.html?utm_term=.544e0e59649f) (explaining that, with the increasing prevalence of major disasters, the NFIP will not be able to keep up and major reform as needed for the NFIP to be successful in the future); *see infra* Part IV. In the aftermath of these post-Sandy storms there have been no changes to the Stafford Act or the NFIA that address the issues previously described in Part III for which the solutions proposed in Part IV attempt to resolve. *See* 42 U.S.C. § 5155 (2012) (there have been no amendments to § 5155 which detail the duplication of benefits); *NFIP Flood Insurance Manual*, FEMA (Oct. 2018), [https://www.fema.gov/media-library-data/1538670828969-81423feb161c06426ac157a409123f3d/1\\_reference\\_508\\_oct2018.pdf](https://www.fema.gov/media-library-data/1538670828969-81423feb161c06426ac157a409123f3d/1_reference_508_oct2018.pdf) (listing the most recent amendments and changes to the NFIA; there is no mention of reform of the peer review process); *see supra* Part III; *infra* Part IV.A–C.

298. Luckman et al., *supra* note 30, at 320; *see supra* Part III.A.

299. *See Buyer's Remorse*, *supra* note 205.

300. *Id.*

301. *Id.*

302. *See* 42 U.S.C. § 5155 (2012).

(3) *EXCEPETION*—An SBA loan shall not to be considered for duplicative relief unless it provided complete coverage for all losses suffered.<sup>303</sup> Therefore, if an SBA loan is provided that does not cover all losses suffered for a particular purpose, the government may issue other forms of federal relief if it is deemed necessary to cover the loss.<sup>304</sup>

This addition to Section 312 would allow people who received SBA loans to qualify for other federal aid if the loans did not adequately cover their losses.<sup>305</sup> This would still protect the government and insurance companies from “double dipping” or duplicative relief, as the Stafford Act initially intended, by only creating the exception when the person was not adequately covered for a particular purpose by the loan.<sup>306</sup>

Another major problem for people who received relief from the government is the recoupment of duplicative relief that was awarded due to mistakes made by the agency responsible for determining eligibility of grant money.<sup>307</sup> This means that people who accepted grant money in good faith, and who then received other aid or more insurance money later after fighting their insurers, could end up owing the government money.<sup>308</sup> Section 312(c) should address this issue by an amendment to include the following:

*(c) Recovery of Duplicative Benefits*—Any duplicative relief that was accepted in good faith and awarded as a result of mistake or during an ongoing claims process which is later resolved to provide aid that was not initially anticipated shall not be required to be repaid if the funds were properly used.<sup>309</sup>

This amendment would protect many people who were failed by the ineffective and fraudulent processes responsible for providing disaster relief and who accepted duplicative relief not resulting from fraud.<sup>310</sup>

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303. See *id.*; Luckman et al., *supra* note 30, at 319-22 (discussing the unfairness of the overbroad application of the prohibition on duplicative relief and recommending similar relief).

304. See 42 U.S.C. § 5155; *Buyer's Remorse*, *supra* note 205 (explaining that the SBA loan was not enough to rebuild and that they were prevented from receiving any further federal aid).

305. See Luckman et al., *supra* note 30, at 319-22; *Buyer's Remorse*, *supra* note 205.

306. See 42 U.S.C. § 5155 (stating that the duplication of benefits is supposed to “assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source”).

307. See 42 U.S.C. § 5155(c); Luckman et al., *supra* note 30, at 320.

308. See, e.g., Luckman et al., *supra* note 30, at 323.

309. See 42 U.S.C. § 5155(c); Luckman et al., *supra* note 30, at 320.

310. See 42 U.S.C. §§ 5121–5208; Luckman et al., *supra* note 30, at 320.

*B. Reform of the NFIA to Better  
Prevent Fraud and Provide Accountability*

In 2015, FEMA admitted to finding a systemic use of fraudulent engineering reports by engineering companies and insurance companies participating in the NFIP.<sup>311</sup> FEMA has been aware of the fraud for years and failed to take action immediately to correct their mistakes, leading many homeowners to sue their insurers in an attempt to collect the full value of their policies.<sup>312</sup> *In re Hurricane Sandy Cases* shed light on how exactly the insurance companies and engineering companies were hiding their fraudulent actions and justifying them with the peer review process.<sup>313</sup> FEMA introduced the Claims Review Process to reevaluate the insurance claims of thousands of policyholders to make sure they received the correct insurance payment.<sup>314</sup> Among other issues, the Claims Review Process fails to provide the transparency originally promised, but most importantly, it does not solve the real problem which is the use of peer review by NFIP insurers.<sup>315</sup>

FITA sought to amend the NFIA to provide transparency and accountability from FEMA during the flood insurance claims process in an effort to protect homeowners during future disaster from the massive amount of fraud proven to have occurred during Sandy.<sup>316</sup> The bill provided many necessary changes to the NFIA which would protect policyholders in the future, but did not specifically change the peer review process which was a main source of the fraud.<sup>317</sup> The bill was

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311. See Alfonsi, *supra* note 231.

312. *Id.* (noting that Brad Kieserman, the head of FEMA's flood program in 2015, reported that he was aware of the fraudulent reports as early as 2013).

313. See *In re Hurricane Sandy Cases*, 303 F.R.D. 17, 19 (E.D.N.Y. 2014).

314. *Sandy Claims Review Division Update*, *supra* note 263.

315. Pepe, *supra* note 263.

316. *Flood Insurance Transparency and Accountability Act of 2015, Summary*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/2324> (last visited Apr. 22, 2019) [hereinafter *FITA Summary*]. See generally *Flood Insurance Transparency and Accountability Act of 2015*, S. 2324, 114th Cong. (2015).

317. *FITA Summary*, *supra* note 316. This bill sought to amend the NFIA to prevent insurance companies or engineers from changing reports without documenting who made the changes or reporting the changes to the policyholder. *Id.* The bill also increased transparency by directing FEMA to

(1) create and maintain a publically searchable online database that includes specified information regarding claims filed under the Program, and (2) establish guidelines and standards to require that any engineering or litigation cost billed to the Program by a Write Your Own insurance company is justified on a case-by-case basis.

*Id.* Further, the bill provided that

[t]he Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 is amended to require FEMA to ensure that: (1) the appeals process has clear rules, forms, and deadlines; (2) these are given to a claimant at the time a claim is first denied; and (3) the

never enacted and FEMA has not acted on its own to rectify the issues with the NFIP.<sup>318</sup> Reform of the NFIA is necessary to protect policyholders who file claims with their insurance companies after a natural disaster.<sup>319</sup> A new federal law must be passed which incorporates FITA and also provides a detailed description of a uniform peer review process that is fair and transparent to policyholders.<sup>320</sup>

The use of peer review by engineering companies allowed an engineer who had never personally inspected the property to completely alter the original engineering report that was conducted by an engineer who did inspect the property.<sup>321</sup> This is counterintuitive because someone who has never personally evaluated the property should not be responsible for correcting the work of an equally qualified engineer who personally observed the property and wrote a contemporaneous report.<sup>322</sup> The new law would create a new peer review process that requires any engineer to have personally inspected the property before they can alter the original engineer's report.<sup>323</sup> The new process would begin with a properly certified engineer inspecting the property, creating a preliminary report, and documenting her findings.<sup>324</sup> A second engineer would then review the preliminary report and supporting documents from the initial inspecting engineer to determine whether they believe there are errors in the first report, and they can recommend that a third engineer inspect the property.<sup>325</sup> The second engineer would be the reviewing engineer and would not be allowed to make changes to the initial report, but instead could write their own report with their concerns and recommendations for a third engineer to inspect the property.<sup>326</sup> Next, the insurer and engineering company would send a third engineer

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policyholder's legal options are explained upon denial of appeal.

*Id.*

318. *Id.* (The latest action on this bill was that it was read twice on November 19, 2015 and then referred to the Committee on Banking, Housing, and Urban Affairs); S. 2324, 114th Cong. (2015).

319. *See supra* Part III.C.; *see also In re Hurricane Sandy Cases*, 303 F.R.D. 17, 19 (E.D.N.Y. 2014) (discussing the effects of rampant fraud which were uncovered partly through the discovery process during litigation).

320. *See supra* Part III.C.; *see also In re Hurricane Sandy Cases*, 303 F.R.D. at 19 (discussing the fraudulent peer review process used during Sandy recovery and the detrimental effects it had on policyholders' efforts to collect the fair value of the insurance policies).

321. *See Alfonsi, supra* note 231.

322. *Id.*

323. *Id.*; *see also In re Hurricane Sandy Cases*, 303 F.R.D. at 19, 21-24.

324. *See In re Hurricane Sandy Cases*, 303 F.R.D. at 19, 21-14 (showing the current process and how it allows for an engineer who has never inspected the property to completely change the report of the initial engineer who did inspect the property).

325. *Id.*

326. *Id.*

to inspect the property if they agree with the reviewing engineer's recommendation for a second opinion by a third engineer.<sup>327</sup> The third engineer would conduct their inspection and write a new report, without seeing the original report or the second reviewing engineer's report, so as to avoid being influenced by either the insurance company or the engineering company to alter the original report without cause.<sup>328</sup> After the third engineer submits her report, the initial engineer and the second engineer will discuss their reports with each other to work out any discrepancies between the two reports.<sup>329</sup> Together they will create a final report which will be used by the insurer to determine the payout amount.<sup>330</sup>

The transparency issue can be resolved by amending the NFIA to make it mandatory that flood insurance companies provide all reports and supporting documents to the policyholders, and to inform the policyholders at each step of the process what to expect.<sup>331</sup> The current peer review process is completely hidden from policyholders and allows engineers with no personal knowledge of the property to alter reports without signing them.<sup>332</sup> The NFIA should also be amended to require every stage and report to be signed by any engineer who altered it and the previous reports to be saved in their original condition.<sup>333</sup>

Lastly, the NFIA should be amended to require the appointment of a flood claim counselor who would explain the entire process from filing a claim all the way through the appeals process and work directly with policyholders.<sup>334</sup> FITA proposed an amendment to the Homeowner Flood Insurance Affordability Act of 2014<sup>335</sup> "to require the Flood Insurance Advocate to provide a direct point of contact for policyholders under the National Flood Insurance Program to discuss the status of their

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327. *Id.*

328. See Alfonsi, *supra* note 231 (discussing the policies that allowed for the fraudulent reports).

329. *Id.* This procedure seeks to prevent the peer review process from being used as a tool to lowball claims by changing the reports arbitrarily as reported by the Kaible family and as demonstrated by the testimony of engineers during Sandy litigation. *Id.*; see *In re Hurricane Sandy Cases*, 303 F.R.D. at 19, 21-24.

330. See Alfonsi, *supra* note 231.

331. *Id.*; Pepe, *supra* note 263 (discussing the issues with the Sandy Claims Review Process and focusing on the need for transparency and access to reports for homeowners to be able to fairly challenge the insurers).

332. See Alfonsi, *supra* note 231; see also *In re Hurricane Sandy Cases*, 303 F.R.D. at 19, 21-24.

333. See Alfonsi, *supra* note 231; see also *In re Hurricane Sandy Cases*, 303 F.R.D. at 19, 21-24.

334. *FITA Summary*, *supra* note 316. See generally S. 2324, 114th Cong. (2015).

335. The Homeowner Flood Insurance Affordability Act of 2014, Pub. L. No. 113-89, 182 Stat. 1020.

claim appeals and the basis of the initial decision to deny their claims.”<sup>336</sup> The amendment to FITA should go one step further by requiring the NFIP to provide a Flood Insurance Advocate or flood claim counselor once a disaster has been declared, and to reach out to all policyholders and help them through the process from start to finish.<sup>337</sup> This will provide greater transparency and require NFIP insurers to remain accountable to policyholders.<sup>338</sup>

### *C. Creating a Claims Review Process That Is Transparent and Fair*

As described above, the suggested amendments to the NFIA would change the peer review process to help prevent the systemic fraud seen in the aftermath of Sandy.<sup>339</sup> However, if policyholders feel they are being cheated and need to appeal the insurer’s decision, additional protection is needed.<sup>340</sup> FEMA’s Claims Review Process had many flaws which continued to complicate the process for homeowners.<sup>341</sup> Creating a new claims review process will help protect homeowners from fraud and provide better services when they have been affected by fraud.<sup>342</sup> The NFIA should be amended to change the Claims Review Process by removing administrative desk review and only allowing recommendations to be made by a third-party neutral.<sup>343</sup> Administrative desk review should be removed because it asks policyholders to trust a system that has already failed them.<sup>344</sup> The third-party neutral’s recommendation would receive substantial consideration by the FEMA official handling the file, and the decision would then be sent to the policyholder and the policyholder’s flood insurance advocate for review

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336. *FITA Summary*, *supra* note 316. Section 24 of The Homeowner Flood Insurance Affordability Act of 2014 requires: “The Administrator shall designate a Flood Insurance Advocate to advocate for the fair treatment of policy holders under the National Flood Insurance Program and property owners in the mapping of flood hazards, the identification of risks from flood, and the implementation of measures to minimize the risk of flood.” Pub. L. No. 113-89, 182 Stat. 1020, 1030.

337. *See* Alfonsi, *supra* note 231. Sandy survivor Mr. Kaible described the devastation he felt upon seeing his home for the first time after the storm and then the shock of reading the engineer report. *Id.* Mr. Mero also described the streets in the days after Sandy as “Armageddon.” *Id.*

338. *See FITA Summary*, *supra* note 316.

339. *See supra* Parts III.C, IV.B.

340. Pepe, *supra* note 263 (discussing the issues with the Sandy Claims Review Process and focusing on the need for transparency and access to reports for homeowners to be able to fairly challenge the insurers).

341. *Id.*; *see supra* Parts III.C, IV.B.

342. Pepe, *supra* note 263.

343. *Id.*

344. *Id.* Administrative desk review was supposed to be conducted by FEMA contractors and NFIP certified adjusters. *Id.*

before the final determination is made.<sup>345</sup> Under the current Claims Review Process, FEMA used the FOIA to prevent policyholders from receiving their entire claim files and overly redacted many crucial documents in direct violation of the FOIA.<sup>346</sup> To prevent this in the future, the NFIA should be amended to require FEMA and the NFIP to follow FOIA correctly by allowing flood insurance advocates to report these actions directly to the Inspector General.<sup>347</sup> FEMA would also be required to automatically provide not just the draft engineering reports and any markups or alterations, but the entire claims files to the policyholder's flood insurance advocate to review with the policyholder.<sup>348</sup> These amendments to the NFIA will ensure greater transparency throughout the review process and that the policyholder has all of the necessary information to review and understand her claim and subsequent appeal.<sup>349</sup>

## V. CONCLUSION

The Stafford Act was created to provide streamlined and effective relief to the victims of natural disasters through the FEMA organization.<sup>350</sup> Unfortunately, the response to Superstorm Sandy was anything but streamlined and effective; instead, thousands of homeowners in New York failed to receive adequate relief.<sup>351</sup> The consequences of the failures of FEMA to prevent the rampant insurance fraud committed by the NFIP has left homeowners without the funding and legal support needed to rebuild their homes and their lives.<sup>352</sup> Amending the Stafford Act to clarify when SBA loans should be considered in the duplicative relief analysis, and to protect homeowners from repayment when duplicative payments were the result of mistakes made by FEMA, the NFIP, and administrators of aid programs will help homeowners rebuild.<sup>353</sup> Further, the most alarming aspect of Sandy recovery, the massive insurance fraud by the FEMA-funded NFIP, can

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345. *Id.* FEMA originally promised to give third-party neutrals' recommendations "substantial weight." *Id.* In reality, FEMA "changed its published documentation to state that FEMA will only give weight to 'the factual recommendations made by the neutral reviewer[s].'" *Id.* (citations omitted). This meant that FEMA could easily reverse decisions it did not agree with, thereby rendering review by a third-party neutral meaningless. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

350. *See supra* Part II.B.

351. *See supra* Part III.

352. *See supra* Part III.

353. *See supra* Part IV.A.

be resolved by implementing amendments to the NFIA to provide necessary changes to the peer review process and provide a new claims review process which will create protection and transparency for policyholders during future disasters.<sup>354</sup>

*Veronica Pareja\**

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354. *See supra* Part IV.B–C.

\* J.D. Candidate, 2019, Maurice A. Deane School of Law at Hofstra University; M.S., Criminal Justice, 2015, LIU Post; B.A., Criminal Justice, 2015, LIU Post. First, I would like to thank my husband for supporting and encouraging me every step of the way in fulfilling my dream. I would like to thank my parents and in-laws, my siblings, my extended family, and friends for their love and support throughout all of my law school endeavors. I would like to thank my faculty advisor, Professor James Sample, and my Notes Editor, Taylor Cary, for their assistance and guidance throughout the Note writing process. I would also like to give my sincere thanks to the Volume 47 Managing Editors, Hunter Blain, Yaroslav Mankevych, and Kayley Sullivan for all of their assistance, dedication, and friendship. Lastly, publication of this Note would not have been possible without the hard work and dedication of Danielle Leavy, Nina Patel, Matthew Nevola, Matthew Murray, and the rest of Volume 47.