Still Underwater: The Need for Temporary Foreclosure and Mortgage Relief for Victims of Future Natural Disasters

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Over four years ago, Superstorm Sandy decimated New York and New Jersey. Homes were destroyed, individuals were displaced, and the costs of repairing damaged properties were enormous. Many Superstorm Sandy victims could not maintain their monthly mortgage payments, and as a result faced foreclosure.

This Note proposes that New Jersey adopt legislation providing temporary foreclosure and mortgage relief to victims of future natural disasters. Part II of this Note describes FEMA's origination and its role in assisting natural disaster victims. Part III outlines Superstorm Sandy's destructiveness and its impact on homeowners. Part IV explains the National Flood Insurance Program and specifically why so many Superstorm Sandy victims had underpaid flood insurance claims. Part V describes HUD's role in helping natural disaster victims and the state sponsored programs in New York and New Jersey that used grants from HUD to assist Superstorm Sandy victims. Parts VI and VII outline additional problems, such as foreclosure, that Superstorm Sandy victims faced while trying to return to their homes. Part VIII examines New Jersey legislation that provides temporary foreclosure and mortgage relief for Superstorm Sandy victims. Finally, Part IX describes the terms of this Note's legislative proposal and the policy basis for enacting temporary foreclosure and mortgage relief for victims of future natural disasters.

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I. Introduction

Despite making landfall over four years ago, Superstorm Sandy (Sandy) continues to affect homeowners in New York and New Jersey. Many Sandy victims have not yet rebuilt or returned to their homes.[1] Rebuilding has been stalled by the underpayment of flood insurance claims,[2] contractor fraud,[3] and ineffective state programs designed to rebuild and repair damaged homes.[4] While these problems persisted, Sandy victims incurred substantial costs, including repairing their homes, making mortgage payments on the damaged homes, and paying rent for temporary housing.[5] For many Sandy victims these burdensome costs led directly to foreclosure proceedings. Realizing the injustice of subjecting natural disaster victims to foreclosure proceedings, New Jersey enacted legislation that provided temporary foreclosure and mortgage relief for Sandy victims.[6] Although this legislation was significant, it did not reconcile the struggle of the previous three years.

This Note argues that in order to ensure future victims of natural disasters are not subjected to the same hardships as those experienced by Sandy victims, New Jersey should enact legislation providing temporary foreclosure and mortgage relief for victims of future natural disasters.[7] Such legislation would ensure that victims of future natural disasters will not lose their homes because of the government's ineffective programs and responses to natural disasters.

Part II provides a historical overview of the Federal Emergency Management Agency (FEMA) and the United States' history of assisting natural disaster victims. Part III outlines Sandy's destructiveness and impact on homeowners. Part IV addresses the National Flood Insurance Program (NFIP) and describes how

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1. *See* Mark Di Ionno, *Summer is Back -- Except for Some Sandy Victims*, NJ.COM (last updated June 16, 2016, 12:47 PM), http://www.nj.com/news/index.ssf/2016/06/summer_is_back_--_except_for_some_sandy_victims_di.html [https://perma.cc/UD4K-XTBD].
2. *See infra* Part IV.B.
3. *See infra* Part V.A.4.
4. *See infra* Parts V.A.1, 2, 3.
5. *See Hurricane Sandy Hit Poor Residents the Hardest*, THE HUFFINGTON POST (Mar. 6, 2013), http://www.huffingtonpost.com/2013/03/06/hurricane-sandy-poor_n_2815782.html [https://perma.cc/9VCV-N8J9].
6. *See infra* Part XIII.
7. *See infra* Part IX.

FEMA underpaid the flood insurance claims of thousands of Sandy victims. Part V describes the Department of Housing and Urban Development's (HUD) use of Community Development Block Grants (CDBG) and the failures of state programs in New York and New Jersey that received such grants. Parts VI and VII address additional problems, such as recoupment notices and foreclosure, that Sandy victims faced while trying to rebuild and return to their homes. Part VIII outlines how the New Jersey Legislature and Governor Chris Christie eventually enacted legislation providing temporary foreclosure and mortgage relief for Sandy victims. Finally, Part IX lays out this Note's proposal for implementing temporary foreclosure and mortgage relief for victims of natural disasters.

II. Federal Emergency Management Agency

The federal government has been assisting victims of natural disasters since the early nineteenth century.[8] As the twentieth century progressed, more federal entities, like the Federal Bureau of Public Records, obtained the individual authority to assist natural disaster victims.[9] The federal government's role continued to expand in the 1960s and 1970s, with Congress enacting the National Flood Insurance Act of 1968 and the Disaster Relief Acts of 1970 and 1974.[10] All three pieces of legislation demonstrate the federal government's willingness to assist victims of natural disasters.

Despite the federal government's increased role during the mid 1970s, relief efforts were difficult to coordinate and implement because there was no single federal entity overseeing the individual federal agencies assisting natural disaster victims.

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8. *See* FEMA, https://www.fema.gov/about-agency [https://perma.cc/9CTW-47ZN] (last visited Feb. 17, 2017) (legislation was passed to assist a New Hampshire town devastated by a large fire).

9. In 1934, the Bureau of Public Roads was permitted to provide funding for damaged highways and bridges and in 1965 the United States Army Corps of Engineers obtained more control over implementing flood control projects. *Id.*

10. *See* National Flood Insurance Act of 1968, Pub. L. No. 90-448, 82 Stat. 572 (codified as amended at 42 U.S.C. §§ 4001–4130 (2012)) (creating the Federal Insurance Administration, making flood insurance available to homeowners); Disaster Relief Act 1970, Pub. L. No. 91-606, 84 Stat. 1744 (codified as amended at 42 U.S.C. §§ 5121–5207 (2012)) (permitting tax assistance and issuance of federal loans to natural disaster victims); Disaster Relief Act of 1974, Pub. L. No. 93-288, 88 Stat. 143 (codified as amended at 42 U.S.C. §§ 5121–5207 (2012)) (permitting the President to execute disaster declarations).

This disjointed coordination spurred President Jimmy Carter to sign an executive order that consolidated the individual federal agencies into one overarching entity: FEMA.[11] The executive order overhauled the structure and operations of the federal government's disaster relief system and allowed FEMA to coordinate the federal government's emergency preparedness and response activities.[12] However, the executive order did not address the intersections between federal agencies and state and local governments.[13]

In 1988, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)[14] amended the Disaster Relief Act of 1974 and granted FEMA the ability and responsibility to coordinate relief efforts across state, local, and federal levels. Under the Stafford Act, state and local governments may receive FEMA resources after the state's governor calls a state of emergency and writes a formal letter to the President requesting relief under the Stafford Act.[15] FEMA may oversee recovery efforts after the President grants relief to the state by presidential declaration.[16] Throughout the 1990s, FEMA implemented effective responses to several natural disasters, including the Midwestern floods of 1993 and the Northridge earthquake of 1994.[17]

FEMA's success stemmed from several factors, including its operation as an independent federal agency. FEMA's independence encouraged efficient decision making, which is necessary to assist victims of natural disasters.[18] However, after the September 11 terrorist attacks, President George W. Bush created the

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11. *See* Exec. Order No. 12,127, 3 C.F.R. § 376 (Apr. 1, 1979).

12. Tonya Adamski et al., *FEMA Reorganization and the Response to Hurricane Disaster Relief,* 3 PERSPS. IN PUB. AFFS. 6 (Spring 2006), http://www.asu.edu/mpa/v3.pdf [https://perma.cc/5N3T-6R3M].

13. *Id.* at 7.

14. 42 U.S.C. §§ 5121–5207 (2012).

15. *See* Anna Shoup, *FEMA Faces Intense Scrutiny*, PBS NEWSHOUR (Sept. 9, 2005, 12:02 PM), http://www.pbs.org/newshour/updates/government_programs-july-dec05-fema_09-09/ [https://perma.cc/S6WS-VLCN].

16. 42 U.S.C. § 5170 (2012).

17. *See* Farhad Manjoo, *Why FEMA Failed*, SALON (Sept. 7, 2005, 3:18 PM), http://www.salon.com/2005/09/07/fema_3/ [https://perma.cc/2JPW-646N].

18. As an independent agency, FEMA focused primarily on natural disaster relief and mitigation, not combating terrorism, and had grant making authority. Elaine C. Kamarck, *Make FEMA Independent Again*, GOVERNING (Mar. 1, 2006), http://www.governing.com/columns/mgmt-insights/Make-FEMA-Independent-Again.html [https://perma.cc/4EZ6-ARNJ].

Department of Homeland Security (DHS).[19] In 2003, FEMA was consolidated within the newly formed DHS.[20] There are currently twenty-two agencies within DHS.[21] Restructuring FEMA under DHS altered FEMA's mission "from disaster management to management of terrorist activities."[22]

On August 29, 2005, FEMA's new structure and placement within DHS was tested when Hurricane Katrina (Katrina) struck New Orleans.[23] Katrina remains the most expensive natural disaster in the history of the United States, and among the most deadly.[24] FEMA's response was an abject failure.[25] According to a Congressional Select Bipartisan Committee tasked with investigating the government's preparation for and response to Katrina, a "[l]ack of communications and situational awareness paralyzed command and control . . . [and] [t]he readiness of FEMA's national emergency response teams was inadequate and reduced the effectiveness of the federal response."[26] FEMA's response was not only ineffective and constrained by red-tape,[27] but was "one of the most extraordinary displays of scams, schemes and stupefying bureaucratic bungles in modern history, costing taxpayers up to two billion dollars."[28] Examples of the pervasive fraud include individuals claiming federal benefits for the deaths of children (despite not having any children) and a local government "order[ing] nearly half a billion dollars worth of mobile homes that are still empty. . . ."[29]

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19. *See* The Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (codified as amended at 6 U.S.C. §§ 101–557 (2012)).

20. *See Who Joined DHS,* DEP'T OF HOMELAND SEC., https://www.dhs.gov/who-joined-dhs [https://perma.cc/G8XZ-7RU7] (last visited Feb. 17, 2017) (follow "Chronology of Events").

21. *Id.*

22. Adamski et al., *supra* note 12, at 11.

23. *See Hurricane Katrina Statistics Fast Facts*, CNN (last updated Aug. 23, 2006, 5:02 PM), http://www.cnn.com/2013/08/23/us/hurricane-katrina-statistics-fast-facts/ [https://perma.cc/6GXT-MZXA].

24. *See* H.R. REP. NO. 109-377, at 7 (2006).

25. *See, e.g.*, Chris Edwards, *Hurricane Katrina: Remembering the Federal Failures*, CATO INST. (Aug 27, 2015, 2:56 PM), https://www.cato.org/blog/hurricane-katrina-remembering-federal-failures [https://perma.cc/23EG-XJUX].

26. H.R. REP. NO. 109-377, at 3.

27. *See* Pam Fessler, *Red Tape Ties Up Katrina Funds*, NPR (Feb. 5, 2007, 3:23 PM), http://www.npr.org/templates/story/story.php?storyId=7190013 [https://perma.cc/7CSB-DZ83].

28. Eric Lipton, *'Breathtaking' Waste and Fraud in Hurricane Aid*, N.Y. TIMES (June 27, 2006), http://www.nytimes.com/2006/06/27/washington/27katrina.html [https://perma.cc/G82A-JFFJ].

29. *Id.*

After the inept response to Katrina, Congress enacted the Post-Katrina Emergency Management Reform Act of 2006,[30] which "reorganize[d] FEMA, expand[ed] its statutory authority, and impose[d] new conditions and requirements on the operations of the agency."[31] Specifically, FEMA was afforded more organizational autonomy and an elevated status within DHS.[32] Furthermore, FEMA's primary mission was no longer the management of terrorist activities:

> The primary mission of [FEMA] is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.[33]

In addition to rectifying FEMA's organizational dysfunction, Congress sought to limit the enormous waste and fraudulent spending that occurred after Katrina.[34] FEMA's next opportunity to execute a swift and effective response to a destructive hurricane came in 2012, when Sandy decimated the coastlines of New York and New Jersey.

III. THE FORMATION AND DESTRUCTION OF SUPERSTORM SANDY

On October 22, 2012, a tropical depression formed in the Caribbean Sea near Nicaragua.[35] As the storm traveled across the

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30. Post-Katrina Emergency Management Reform Act of 2006, Pub. L. No. 109-295, 120 Stat. 1355 (codified as amended at 42 U.S.C. § 5170a (2012)).

31. KEITH BEA ET AL., CONGRESSIONAL RESEARCH SERVICE, FEDERAL EMERGENCY MANAGEMENT POLICY CHANGES AFTER HURRICANE KATRINA: A SUMMARY OF STATUTORY PROVISIONS 1 (Nov. 15, 2016), https://training.fema.gov/hiedu/docs/federal%20em%20policy%20changes%20after%20katrina.pdf [https://perma.cc/E655-BX3A].

32. *Id.* at 6.

33. 6 U.S.C. § 313(b)(1) (2012).

34. 152 CONG REC. H3329 (daily ed. May 25, 2006) (statement of Rep. Jindal) ("I have an amendment to reduce FEMA waste, fraud, and abuse.").

35. *See* William Drye, *A Timeline of Hurricane Sandy's Path of Destruction*, NAT'L GEOGRAPHIC (Nov. 2, 2012), http://voices.nationalgeographic.com/2012/11/02/a-timeline-of-hurricane-sandys-path-of-destruction/ [https://perma.cc/Q2SX-G98M].

Caribbean it progressed from a tropical storm[36] to a Category One hurricane[37] to a Category Two hurricane.[38] The National Weather Service named the hurricane Sandy.[39] Although Sandy weakened to a tropical storm as it moved through the Bahamas, it regained strength and became a Category One hurricane as it headed towards the United States.[40] In preparing for Sandy's arrival, New York and New Jersey each instituted a state of emergency on October 26 and October 27, 2012, respectively.[41] President Barack Obama also implemented a state of emergency for New York and New Jersey.[42]

On October 28, 2012, Sandy traveled parallel to the coasts of Georgia, South Carolina, and North Carolina.[43] A combination of a high-pressure cold front, a full moon, and the hurricane's slow speed turned the Category One hurricane into a hybrid superstorm.[44] Additionally, Sandy's storm surge passed through three periods of high tide before making landfall,[45] which caused water levels to reach as high as thirteen feet above average low tide water levels.[46]

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36. *See* Karl Tate, *Timeline of Hurricane Sandy's Week of Destruction (Infographic)* LIVESCIENCE (Nov. 1, 2012, 4:06 PM), http://www.livescience.com/24473-timeline-of-hurricane-sandy-s-week-of-destruction-infographic.html [https://perma.cc/3GRZ-35CU].

37. *See* Drye, *supra* note 35.

38. *See* Tate, *supra* note 36.

39. *See* Drye, *supra* note 35.

40. *Id.* (the death toll in the Caribbean was estimated at seventy or more).

41. *Governor Cuomo Declares States of Emergency in New York in Preparation for Potential Impact of Hurricane Sandy*, OFFICE OF THE GOVERNOR (Oct. 26, 2012), https://www.governor.ny.gov/news/governor-cuomo-declares-state-emergency-new-york-preparation-potential-impact-hurricane-sandy [https://perma.cc/29JF-R9HS]; N.J. Exec. Order No. 2012-107 (Oct. 27, 2012), http://nj.gov/infobank/circular/eocc107.pdf [https://perma.cc/G7ZA-VXY9].

42. *Obama Signs Emergency Declaration for States of New York, New Jersey*, CBS N.Y. (Oct. 28 2012, 11:58 AM), http://newyork.cbslocal.com/2012/10/28/obama-signs-emergency-declaration-for-state-of-new-york/ [https://perma.cc/T5HA-J9ER].

43. Drye, *supra* note 35.

44. *See* Dina Spector, *Why You Should Be Terrified of Hurricane Sandy*, BUS. INSIDER (Oct. 27, 2012, 10:47 AM), http://www.businessinsider.com/hurricane-sandy-frankenstorm-dangerous-2012-10 [https://perma.cc/UU6S-XMES].

45. *See* Michael D. Lemonick, *Sandy's Storm Surge Explained and Why It Matters*, CLIMATE CENT. (Oct. 29, 2012), http://www.climatecentral.org/news/hurricane-sandys-storm-surge-explained-and-why-it-matters-15182 [https://perma.cc/7VW2-ZHFP] (stating that Sandy was especially catastrophic because the periods of high tide were higher than average due to the presence of full moons).

46. *See* Andrew Freedman, *32-Foot-Plus Waves From Hurricane Sandy Topple Records*, CLIMATE CENT. (Nov. 13, 2012), http://www.climatecentral.org/news/32-foot-wave-from-hurricane-sandy-topples-records-noaa-finds-15241 [https://perma.cc/57XA-229P].

On October 29, 2012, Sandy struck the New Jersey coastline,[47] "the most densely populated region in the [United States]."[48] It was powerful and destructive,[49] inflicting catastrophic damage to homeowners[50] and businesses.[51] Prior to landfall, experts projected ten to twenty billion dollars in total economic damages.[52] After Sandy hit the New Jersey coastline, estimated damages increased to thirty to fifty billion dollars.[53] If the projected damages proved accurate, Sandy would be the third costliest hurricane in the history of the United States, behind Hurricanes Katrina and Andrew.[54]

While high-income homeowners could afford to live in temporary housing, rebuild their homes, and make requisite mortgage

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47. *See* U.S. DEP'T OF COMMERCE, ECONOMIC IMPACT OF HURRICANE SANDY: POTENTIAL ECONOMIC ACTIVITY LOST AND GAINED IN NEW JERSEY AND NEW YORK 1 (2013), http://www.esa.doc.gov/sites/default/files/sandyfinal101713.pdf [https://perma.cc/YPU5-KWT4].

48. *See* U.S. DEP'T OF HOUS. & URBAN DEV., HOUSING PLAN AS A PLATFORM FOR OPPORTUNITY: A MEMO TO THE AMERICAN PEOPLE 7 (2017), https://portal.hud.gov/hudportal/documents/huddoc?id=HUDExitMemo010517.pdf [https://perma.cc/3RCK-AJNL].

49. Despite losing its "Category 1" status prior to landfall, Sandy was especially destructive because its eye "smashed into the Jersey coast at local high tide. On top of that, the moon . . . was full leading to a higher than normal 'spring tide'. The storm surge — an additional [nine] feet or more of water piled up against the coast by furious winds and crashing ocean waves. . . ." Malcolm J. Bowman, *Superstorm Sandy — How Did It Happen and Are We Prepared For the Future*, UNITED UNIV. PROFS. STONY BROOK WEST CHAPTER NEWSLETTER, Feb. 2014, at 9, http://www.seagrant.sunysb.edu/media/sandy12/UUPInsight-Sandy020113.pdf [https://perma.cc/8QGY-36QK].

50. 346,000 homes in New Jersey alone sustained damage. N.J. DEP'T OF ENVTL PROT., DAMAGE ASSESSMENT REPORT ON THE EFFECTS OF HURRICANE SANDY ON THE STATE OF NEW JERSEY'S NATURAL RESOURCES 1 (2015), http://www.nj.gov/dep/dsr/hurricane-sandy-assessment.pdf [https://perma.cc/U7BS-EWDZ].

51. Chris Isidore, *Sandy's Economic Impact*, CNN MONEY (Oct. 30, 2012, 3:32 PM), http://money.cnn.com/2012/10/30/news/economy/sandy-economic-impact/ [https://perma.cc/LK6Z-VL3Q] ("The total cost of property damage and lost business is estimated to run between $10 billion to $20 billion. . . .").

52. Mary Walsh & Nelson D. Schwartz, *Estimate of Economic Losses Now Up to $50 Billion*, N.Y. TIMES (Nov. 1, 2012), http://www.nytimes.com/2012/11/02/business/estimate-of-economic-losses-now-up-to-50-billion.html?_r=0 [https://perma.cc/CVC2-855S].

53. *See* Walter Kurtz & Sober Look, *What Hurricane Sandy Means for the US Economy*, BUS. INSIDER (Nov. 4, 2012, 6:29 AM), http://www.businessinsider.com/hurricane-sandys-impact-on-the-us-economy-2012-11 [https://perma.cc/7WHU-NUV5]; *see also* Walsh & Schwartz, *supra* note 52 (New York and New Jersey were projected to shoulder nearly two thirds of the total damage).

54. Steve Liesman, *Sandy's Economic Cost: Up to $50 Billion and Counting*, CNBC (Oct. 31, 2012, 11:43 AM), http://www.cnbc.com/id/49622885 [https://perma.cc/D5UB-YY5Z] (Katrina had an "estimated loss of $146 billion, and Andrew [had] losses estimated at $44 billion.").

payments, lower-income homeowners were not as fortunate.[55] According to New York University's Furman Center, "1,800 owners of one-to four-family homes in the [New York City] surge area had foreclosure proceedings started against them in the two years prior to the storm."[56] Following Sandy, these low-income homes were forced underwater from impending foreclosures and the costs of recovering from Sandy.

Similarly, the seventy-seven percent of Americans that at the time were living paycheck to paycheck did not escape Sandy's wrath.[57] In 2013, only "one in four Americans ha[d] enough money in their savings account to cover at least six months of expenses, enough to help cushion the blow of a job loss, medical emergency or some unexpected event[.]"[58] A natural disaster like Sandy, is the type of "unexpected event" that most Americans cannot financially withstand. Once Sandy decimated homes with mortgages, the costs of recovery combined with the accumulation of mortgage payments made widespread foreclosure inevitable.

IV. FLOOD INSURANCE

It took nearly three months for Congress to enact legislation to help Sandy victims. First, the National Flood Insurance Act was amended in 2013 to temporarily increase FEMA's borrowing capacity.[59] Weeks later, Congress amended the Disaster Relief Appropriations Act, which provided an additional sixty billion dollars for disaster relief agencies to use during emergencies.[60] Additionally, President Obama created a Hurricane Sandy Rebuilding Task Force, which coordinated the federal government's re-

55. *See* David Rohde, *The Hideous Inequality Exposed by Hurricane Sandy*, THE ATLANTIC (Oct. 31, 2012), http://www.theatlantic.com/business/archive/2012/10/the-hideous-inequality-exposed-by-hurricane-sandy/264337/ [https://perma.cc/8LSE-L93F] (explaining the disparity in Sandy effects by stating that "[t]hose with a car could flee. Those with wealth could move into a hotel. Those with steady jobs could decline to come into work. But [New York City's] cooks, doormen, maintenance men, taxi drivers and maids left their loved ones at home [and went to work].").

56. N.Y.U. FURMAN CTR. FOR REAL ESTATE & URBAN POL'Y, SANDY'S EFFECTS ON HOUSING IN NEW YORK CITY 8–9 (2013), http://furmancenter.org/files/publications/SandysEffectsOnHousingInNYC.pdf [https://perma.cc/G44F-SP9C].

57. *See* Angela Johnson, *76% of Americans are Living Paycheck-to-Paycheck*, CNN MONEY (June 24, 2013, 2:53 PM), http://money.cnn.com/2013/06/24/pf/emergency-savings/ [https://perma.cc/P3UF-GNYD].

58. *Id.*

59. Hurricane Sandy Relief Bill, Pub. L. No. 113-1, 127 Stat. 3 (2013).

60. Disaster Relief Appropriations Act of 2013, Pub. L. No. 113-2, 127 Stat. 4 (codified as amended at 42 U.S.C. §§ 5121–5207 (Supp. 2015)).

building efforts.[61] Although Congress took an important first step by allocating additional funds for FEMA to distribute, FEMA's execution of the relief efforts was flawed.

A. NATIONAL FLOOD INSURANCE PROGRAM

In 1968, Congress enacted the National Flood Insurance Act,[62] which created the National Flood Insurance Program (NFIP).[63] The program addressed the "personal hardships and economic distress" caused by flood disasters,[64] as well as the private insurance industry's inability to carry out effective flood insurance policies.[65] Most importantly, Congress found that the NFIP could:

> [P]romote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to flood losses; and [ ] the objectives of a flood insurance program should be integrally related to a unified national program for flood plain management and, to this end, it is the sense of Congress that within two years following the effective date of this chapter the President should transmit to the Congress for its consideration any further proposals necessary for such a unified program, including proposals for the allocation of costs among beneficiaries of flood protection.[66]

In an effort to ensure the NFIP's efficient operation, the National Flood Insurance Act has been amended several times,[67] and is

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61. Exec. Order No. 13,632, 77 Fed. Reg. 241 (Dec. 14, 2012).

62. The National Flood Insurance Act of 1968, Pub. L. No. 90-448, 82 Stat. 572 (codified at 42 U.S.C. §§ 4001–4130
(2012)).

63. *Id.*

64. 42 U.S.C. § 4001(a) (2012).

65. 42 U.S.C. § 4001(b) (2012) (finding that "many factors ha[d] made it uneconomic for the private insurance industry to make flood insurance available to those in need of such protection on reasonable terms and conditions[.]").

66. 42 U.S.C. § 4001(c) (2012).

67. *See* Flood Disaster Protection Act of 1973, Pub L. No. 93-234, 87 Stat. 975 (codified as amended at 42 U.S.C. §§ 4001–4130 (2012)); Coastal Barrier Resource Act of 1982, Pub L. No. 97-348, 96 Stat. 1653 (codified at 16 U.S.C. 3501 (2012)); National Flood Insurance Reform Act of 1994, Pub L. No. 103-325, 108 Stat. 2255 (codified as amended at 42 U.S.C. §§ 4001–4130 (2012)); Flood Insurance Reform Act of 2004, Pub. L. No. 108-264 (codified as amended at 42 U.S.C. §§ 4001–4130 (2012)); Biggert-Waters Flood Insurance Reform Act of 2012, Pub L. No. 113-89, 128 Stat. 1020 (codified as amended at 42 U.S.C.

currently administered by FEMA.[68] NFIP policies cover up to $250,000 for home coverage and $100,000 worth of coverage for contents within a home.[69]

Although FEMA oversees the NFIP, FEMA contracts with private insurance companies to manage and oversee the policies of individual homeowners.[70] These policies are known as "write your own programs."[71] The mechanics of obtaining flood insurance and how these policies are paid out is not straightforward. First, FEMA partners with approximately eighty private insurance companies.[72] Second, individual homeowners buy a flood insurance policy from one of the private insurance companies.[73] The homeowner's premium is based on several factors, including "the amount of coverage purchased; the deductible amount selected; the flood zone; location; age of the building; building occupancy; and design of the building (foundation type)."[74] Third, after the homeowner files a claim for flood loss,[75] the private insurance company, *not FEMA,* investigates the home's damage and determines how much money the homeowner will receive.[76] The private insurance companies "retain a percentage [of the homeowner's premium] to cover basic expenses" and also receive fees from FEMA "for handling claims and other activities."[77]

Although the premiums paid by homeowners are meant to cover losses from natural disasters, some natural disasters are so damaging that losses cannot be covered by the premiums alone.[78] Private insurance companies pay out the NFIP claims from a pool

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§§ 4001–4130 (2012)); Homeowner Flood Insurance Affordability Act of 2014, Pub L. No. 113-89, 128 Stat. 1020 (codified at 42 U.S.C. §§ 4014(g), 4015 (Supp. 2015)).

68. *See* FEMA, ANSWERS TO QUESTIONS ABOUT THE NFIP 1 (2011), https://www.fema.gov/media-library-data/20130726-1438-20490-1905/f084_atq_11aug11.pdf [https://perma.cc/7Z8L-CLR8].

69. *See id.* at 18.

70. *See What is the Write Your Own Program*, FEMA, https://www.fema.gov/what-write-your-own-program [https://perma.cc/F6FC-4G58] (last visited Feb. 17, 2017).

71. *Id.*

72. *See* Kate Worth & Dan Nolan, *Can FEMA's Flood Insurance Program Afford Another Disaster*, FRONTLINE (May 24, 2016), http://www.pbs.org/wgbh/frontline/article/can-femas-flood-insurance-program-afford-another-disaster/ [https://perma.cc/AS4Z-8K9D].

73. *See* FEMA, *supra* note 68, at 10.

74. *Id.* at 11.

75. *See id.* at 23.

76. Worth & Nolan, *supra* note 72.

77. *Id.*

78. *Id.*

of money used to fund the flood program.[79] The pool includes premiums received from homeowners.[80] As natural disasters become costlier, the number of flood insurance claims filed and amount of damage to homes increases. As a result, the pool of funds used to pay NFIP claims may run out during severe natural disasters. When the money runs out, taxpayers — through FEMA — pay the outstanding remainder.[81]

While the NFIP is not available to all homeowners, some individuals are required to purchase an NFIP policy.[82] Individuals may only purchase flood insurance policies through the NFIP if the property is located in a participating community.[83] Community participation is voluntary, and most participating communities are located in areas with serious flooding potential.[84] On the other hand, homeowners with federal mortgages living in "high-risk areas" — meaning that there is a one in four chance of flooding during a thirty-year mortgage — must purchase flood insurance through the NFIP.[85] Sandy demonstrated that having a flood insurance policy through NFIP does not guarantee that the policy owner will receive an appropriate amount of relief, if any relief at all.

B. UNDERPAYMENT OF FLOOD INSURANCE CLAIMS

Sandy's extreme flooding damaged homes throughout New York and New Jersey.[86] Homeowners with NFIP policies filed

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79. *See* Laura Sullivan, *Business of Disaster: Insurance Firms Profited $400 Million After Sandy*, NPR (May 24, 2016, 7:28 PM), http://www.npr.org/2016/05/24/478868270/business-of-disaster-insurance-firms-profited-400-million-after-sandy [https://perma.cc/FXT9-KD3G].

80. *See id.*

81. *Id.*

82. *See* FEMA, *supra* note 68, at 11.

83. *See Community Participation in the National Flood Insurance Program (NFIP) Vital to Home and Business Owners*, FEMA (July 6, 2004), https://www.fema.gov/news-release/2004/07/06/community-participation-national-flood-insurance-program-nfip-vital-home-and [https://perma.cc/P24R-CD3DPERMA].

84. *See* FEMA, *supra* note 68, at 4, 7.

85. *FEMA Flood Zone Information*, http://www.belleviewfl.org/DocumentCenter/View/407 [https://perma.cc/VR7F-KJZJ] (last visited Apr. 25, 2017) (defining high risk areas as "areas with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30-year mortgage").

86. *See* Christian Quintero, *Storm Surge Caused Major Damage During Hurricane Sandy*, U.S. GEOLOGICAL SURV. (last updated Oct. 27, 2014, 1:09 PM), https://www2.usgs.gov/blogs/features/usgs_top_story/storm-surge-caused-major-damage-during-hurricane-sandy/ [https://perma.cc/WFW9-MJB4] (stating that more than 182,000 New Jersey residents have received some form of assistance for Sandy-related damages).

flood insurance claims and engineers and adjusters of the private insurance companies determined the amount of damage to each home and how much money each homeowner received.[87] However, the engineers and adjusters allegedly undervalued the damage to homes affected by Sandy.[88] Policyholders claimed that the insurance companies used faulty engineering reports to undervalue the damage to their homes, which decreased the estimated amount of money required to repair the homes.[89] The allegations resulted in policyholders filing nearly 1,500 lawsuits for the underpayment or outright denial of NFIP flood insurance claims.[90]

The *In re Hurricane Sandy Cases*[91] illustrate the type of fraudulent engineering reports created in the wake of Sandy. In this case, an engineer inspected a home and reported the damage.[92] However, another engineer — not the engineer who visited the home — wrote the report.[93] The homeowner was unaware that the report would be written by anyone other than the engineer who personally saw the home's damage.[94] The report, which was based on nothing more than a review of photographs taken by the initial engineer,[95] was then used to deny the homeowner's

87. *See supra* Part IV.A.

88. *See e.g.*, David W. Chen, *Hurricane Sandy Victims Say Damage Reports Were Altered*, N.Y. TIMES (Feb. 16, 2015), http://www.nytimes.com/2015/02/17/nyregion/hurricane-sandy-victims-say-damage-reports-were-altered.html [https://perma.cc/5HXU-SUFW]. *See also* Complaint at ¶¶ 9–15, *In re* Hurricane Sandy Cases, No. 14-cv-00461 (E.D.N.Y. Jan. 21, 2014).

89. *See e.g.*, Scott Gurian, *Are Insurance Adjusters Lowballing Estimate for Hurricane Sandy Damages?*, N.J. SPOTLIGHT (Apr. 22, 2015), http://www.njspotlight.com/stories/15/04/21/are-insurance-adjusters-lowballing-estimates-for-hurricane-sandy-damages/ [https://perma.cc/LYR6-AC6G] (Judy Hickerson, whose home suffered severe water damage after Sandy, is an example of when insurance companies undervalued the damage inflicted by Sandy. The initial calculation performed by Ms. Hickerson's insurance company totaled repairs at $73,000. However, when a contractor specializing in insurance repairs undertook his own estimate using the same software and standards as the initial estimator, he found the damage to be nearly double that estimate. According to the contractor, the disparity resulted from a multitude of factors, including the insurance company cutting corners by excluding basic necessities such as cleaning and repairing the home's siding. The contractor found that "there's no way in good conscience he could have rebuilt the house as the insurance company suggested," citing health problems associated with not cleaning the home's exterior and the likelihood of future damage resulting from the rusting nails and the popping out of the housing's siding.).

90. *See* Laila Kearney, *FEMA Settles First Wave of NY, NJ Sandy Insurance Litigation*, REUTERS (Mar. 3, 2015, 4:59 PM), http://www.reuters.com/article/us-usa-sandy-insurance-idUSKBN0LZ2KM20150303 [https://perma.cc/M7UG-39BE].

91. 303 F.R.D. 17 (E.D.N.Y., Nov. 7, 2014).

92. *Id.*

93. *Id.* at 23.

94. *Id.*

95. *Id.* at 19.

flood claim.[96] The federal district court described the case as "expos[ing] reprehensible gamesmanship by a professional engineering company that unjustly frustrated efforts by two homeowners to get fair consideration of their claims."[97] The court went on to say that "[w]orse yet, evidence suggest[s] that these unprincipled practices may be widespread."[98]

C. FEMA REVIEWS FLOOD INSURANCE CLAIMS

In response to the mounting allegations of underpaying policyholders, FEMA permitted the review of NFIP Sandy claims.[99] Obtaining a review is an extensive process. First, an NFIP–certified adjuster reviews the policyholder information and orders a visit to the damaged property.[100] At the conclusion of the site evaluation, the adjuster presents a revised amount of aid to the policyholder.[101] At that point, the policyholder can either accept the recommended amount or request that a third party review the amount.[102] If the third party reviewer recommends that the policyholder receive additional aid, "then the policyholder will sign a Proof of Loss statement and return it to the adjuster. FEMA will then direct the insurance company to process the payment."[103] This new process spurred roughly 12,000 policyholders to reopen their claims.[104]

Despite this newfound opportunity, several claimants refrained from participating in the claims review process.[105] Some

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96. *Id.*

97. *Id.*

98. *Id.*

99. *See The Hurricane Sandy Claims Review Process*, FEMA, https://www.fema.gov/hurricane-sandy-claims-review-process [https://perma.cc/T25M-58D7] (last visited Feb. 17, 2017) (if necessary, engineering surveys are also ordered).

100. *See* FEMA, SANDY CLAIMS REVIEW PROCESS 1, https://www.fema.gov/media-library-data/1465845639204-7bc3ddef9c3f399fc3b83da5b94e9646/Infographic_Sandy_Claims_Process_June_2016.pdf [https://perma.cc/VP9N-W4RZ].

101. *See id.*

102. *See id.*

103. *Id.*

104. *See* Joe Ryan, *More Than Half of Sandy Victims in FEMA Review Underpaid on Insurance*, NEWSDAY (last updated Sept. 4, 2015), http://www.newsday.com/business/more-than-half-of-sandy-victims-in-fema-review-underpaid-on-insurance-1.10808650 [https://perma.cc/3RUX-PTJ4].

105. *See* Mark Di Ionno, *FEMA Re-Opens Claims, but Some Sandy Victims Say 'No Thanks'*, NJ.COM (last updated June 15, 2015, 8:03 AM), http://www.nj.com/news/index.ssf/2015/06/fema_re-opens_claims_but_some_sandy_victims_say_no.html [https://perma.cc/8RGU-UW8N] (finding that policyholders are "beaten down" from the arduous claims process that has taken over two years).

felt "beaten down" after nearly three years of fighting with bureaucratic agencies and others were fearful that whatever aid they received would be rescinded if FEMA determined that the initial amount of aid was too high.[106] The claims review process was additionally burdensome because it was difficult for homeowners to document and attribute damages to a natural disaster that occurred more than three years prior.[107]

FEMA's initial review revealed that most Sandy victims were underpaid. FEMA admitted that "more than half of homeowners who asked to have their settlements reexamined were underpaid by an average of nearly $16,000."[108] Although FEMA has denied any intentional wrongdoing, one of its former contractors alleges that FEMA required that he estimate damages within a specific dollar range that was dictated by a software program that produced "artificially low numbers."[109] The underpayment of flood insurance claims impeded recovery and prevented Sandy victims from repairing their damaged homes.

V. Department of Housing and Urban Development

In addition to the funds obtained from FEMA through flood insurance policies, Sandy victims also sought relief from other federal agencies, like HUD, whose "mission is to create strong, sustainable, inclusive communities and quality affordable homes for all."[110] One of HUD's signature programs, the CDBG Program, was an integral form of assistance for Sandy victims.[111]

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106. Karen Wall, *FEMA Deadline to Request Sandy Claim Reviews Just 10 Days Away*, PATCH (Sept. 5, 2015, 8:32 AM), http://patch.com/new-jersey/brick/fema-deadline-request-sandy-claim-reviews-just-10-days-away-0 [https://perma.cc/8RGU-UW8N].

107. *See supra* Part III.

108. Ryan, *supra* note 104 ("[T]he shortfalls ranged from $130 to $104,000, and the average underpayment was $15,890, FEMA said.").

109. Nicole Gaudiano, *Ex-FEMA Contractor Says Agency Shortchanged Superstorm Sandy Victims*, USA TODAY (last updated Apr. 28, 2016, 5:48 PM), http://www.usatoday.com/story/news/politics/2016/04/28/ex-fema-contractor-says-agency-shortchanged-superstorm-sandy-victims/83655976/ [https://perma.cc/69YJ-Q4NA].

110. *Mission*, U.S. DEP'T OF HOUS. & URBAN DEV., https://portal.hud.gov/hudportal/HUD?src=/about/mission [https://perma.cc/ZJJ5-WQE6] (last visited Feb. 17, 2017).

111. *See Community Development Block Grant Program — CDBG*, U.S. DEP'T OF HOUS. & URBAN DEV., https://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs [https://perma.cc/ZZ2V-R8CS] (last visited Feb. 17, 2017).

A. COMMUNITY DEVELOPMENT BLOCK GRANTS

In 1974, President Ford created the CDBG Program,[112] which "provides local communities the flexibility to decide for themselves how best to meet their own community development needs."[113] The amount of grants provided to state and local governments is determined by several factors, including "population, poverty, and other housing variables."[114] CDBGs may also assist victims of natural disasters. "In response to presidentially declared disasters, Congress may appropriate additional funding for the CDBG Program as Disaster Recovery grants (CDBG–DR) to rebuild the affected areas and provide crucial seed money to start the recovery process."[115] CDBG–DR grants are only issued "in extraordinary circumstances that have resulted in significant unmet needs for long-term recovery."[116] State and local governments may use the CDBG–DR funds for a variety of activities, including but not limited to repairing homes and buildings damaged by a natural disaster.[117] The CDBG–DR grants supplement, and do not replace, funding from disaster programs implemented by other federal agencies, such as FEMA.[118] After Sandy, Congress passed The Disaster Relief Appropriations Act of 2013, which made sixteen billion dollars available for CDBG–DR funds.[119] As a result, New York and New Jersey used the newly appropriated funds to implement programs with the purpose of helping Sandy victims return to their homes.

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112. *See The Community Development Block Grant (CDBG) Program's 40th Anniversary*, U.S. DEP'T OF HOUS. & URBAN DEV., https://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/CDBG_Turns_40 [https://perma.cc/ZW9T-Z9U6] (last visited Feb. 17, 2017).

113. *Id.*

114. *Id.*

115. *CDBG–DR Eligibility Requirements*, U.S. DEP'T OF HOUS. & URBAN DEV., https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-eligibility-requirements/ [https://perma.cc/9SBP-B6C9] (last visited Feb. 17, 2017).

116. U.S. DEP'T OF HOUS. & URBAN DEV., COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG–DR) FOR 2011 DISASTERS FREQUENTLY ASKED QUESTIONS (FAQS) 3 (2012), https://portal.hud.gov/hudportal/documents/huddoc?id=cdbg_dr_faq.pdf [https://perma.cc/FM48-BK73].

117. U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 115.

118. *See id.*

119. Notice, 78 Fed. Reg. 14,329 (March 5, 2013).

1. *New York City: Build it Back*

HUD allotted over four billion dollars to New York City for Sandy recovery activities.[120] New York City then allocated approximately three billion dollars for rebuilding and repairing damaged homes.[121] The Build it Back program, instituted by Mayor Michael Bloomberg, uses HUD funds to repair homes that were damaged by Sandy.[122] Under Build it Back, homeowners are afforded four options: (1) repair their home, (2) rebuild build their home, (3) receive reimbursement, or (4) allow for acquisition.[123] Having a home repaired or rebuilt requires using a contractor, either one appointed by Build it Back or one selected by the homeowner, and the repairs or rebuilding must meet federally imposed building requirements.[124]

Although its goal of assisting homeowners was well-intentioned, Build it Back has been described as a "categorical failure."[125] From June 1, 2013 to August 1, 2014, Build it Back paid $6.8 million to contractors for incomplete work and paid hundreds of thousands of dollars to contractors who double billed New York City.[126] Most importantly, New York City residents were prevented from returning to their homes and rebuilding their lives. If a home is being rebuilt, families must find alternative forms of housing. In many cases, when Build It Back provided an estimated date for the families to return home, that date was eventually extended by an additional six months.[127] The ar-

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120. *See Sandy Funding Tracker*, CITY OF N.Y., http://www1.nyc.gov/sandytracker/#83020237 [https://perma.cc/BZM9-6NCK] (last visited Feb. 17, 2017).

121. *See id.*

122. *See Mayor Bloomberg Announces NYC Build It Back Program to Help New Yorkers With Homes Damaged By Hurricane Sandy Recover And Rebuild*, CITY OF N.Y. (June 3, 2013), http://www1.nyc.gov/office-of-the-mayor/news/185-13/mayor-bloomberg-nyc-build-it-back-program-help-new-yorkers-homes-damaged-by [https://perma.cc/YN8F-GDKL].

123. *See id.*

124. *See Homeowners and Renters*, CITY OF N.Y., http://www.nyc.gov/html/recovery/html/homeowners/homeowners-renters.shtml [https://perma.cc/DSY8-YFN4] (last visited Feb. 17, 2017).

125. Nicholas Rizzi, *Build it Back Was a 'Categorical Failure,' Its Creator Says*, DNA INFO (July 12, 2016, 3:28 PM), https://www.dnainfo.com/new-york/20160712/ocean-breeze/build-it-back-was-categorical-failure-its-creator-says [https://perma.cc/U89W-GN6A].

126. *See* Kate Honan, *City Paid $7M for Incomplete Work in Build It Back Program, Audit Says*, DNA INFO (Mar. 31, 2015, 5:20 PM), https://www.dnainfo.com/new-york/20150331/far-rockaway/city-paid-7m-for-incomplete-work-build-it-back-program-audit-says [https://perma.cc/BB27-D76D].

127. *See* Anna Saunders, *Held Hostage by Build it Back 4 Years After Hurricane Sandy*, SILIVE (last updated Oct. 27, 2016, 12:41 PM), http://www.silive.com/news/index.ssf/2016/10/held_hostage_by_build_it_back.html [https://perma.cc/U4PY-PSXT].

chitect of Build it Back aptly explained the problems with creating and operating this type of program in such a short time period:

> [T]he root of the problem is that no local or state government, regardless of its capability, can successfully create and setup in a few months what amounts to a multi-billion dollar corporation with hundreds of employees and contractors, numerous storefront locations, a broad based marketing campaign and integrated customer service operations while tens of thousands of desperate customers must wait anxiously for help as hope dwindles.[128]

In response to the program's ineffectiveness, Mayor Bill de Blasio overhauled Build it Back.[129] Under Mayor de Blasio's reforms, New York City "took over direct management of Build it Back centers, expanded eligibility, dramatically increased its community presence, and aggressively moved relief dollars to homeowners."[130] Despite the program's rebound, the fact remains that Sandy victims still could not return to their homes for several years and during that time homeowners faced a greater likelihood of foreclosure.

2. *New York State: New York Rising*

In June 2013, Governor Andrew Cuomo established the Governor's Office of Storm Recovery (GOSR).[131] The GOSR advises state programs in spending federally allocated funds for assisting victims of natural disasters.[132] The New York Rising Community Reconstruction Program (NY Rising), is an example of a New York state program that receives federal funding and guidance

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128. Rizzi, *supra* note 125.

129. *See Marking Sandy Anniversary, Mayor De Blasio Announces that Build It Back Program will be Complete by End of 2016*, CITY OF N.Y. (Oct. 29, 2015), http://www1.nyc.gov/office-of-the-mayor/news/769-15/marking-sandy-anniversary-mayor-de-blasio-that-build-it-back-program-will-be-complete-by/#/0 [https://perma.cc/JQ85-UTCA].

130. *Id.*

131. GOVERNOR'S OFFICE OF STORM RECOVERY, NEW YORK RISING: 2012–2014: HOUSING, SMALL BUSINESS, COMMUNITY RECONSTRUCTION PLANS, INFRASTRUCTURE 6 (2015), http://stormrecovery.ny.gov/sites/default/files/uploads/gosr_report_letter_full_high.pdf [https://perma.cc/WYW8-YF5P].

132. *See id.*

from the GOSR.[133] The program uses HUD CDBG–DR funds to assist homeowners, businesses, and communities recover from Sandy.[134] NY Rising's Interim Mortgage Assistance Program (IMA) was crafted to assist Sandy victims that were paying a monthly mortgage and rent for temporary housing.[135] "NY Rising's IMA provides assistance for monthly mortgage costs (interest, principal taxes, and escrow), up to $3,000 per month, [for] up to twenty months."[136]

However, there are several problems with NY Rising. First, because this is a grant program, not everyone is entitled to aid from NY Rising.[137] In order to receive assistance, Sandy victims must adhere to the program's rules, which require applicants to provide several materials documenting the damage to their home.[138] Documenting and attributing damages to a four-year-old natural disaster is difficult because as time passes other events may occur and create doubt as to whether Sandy or the other event caused the damage. Second, unlike flood insurance agreements where there is a contract in place, NY Rising does not create a contractual relationship and therefore Sandy victims who are denied aid through NY Rising have no legal remedy to dispute the denial of aid.[139] Finally, as evidenced by the continued displacement of Sandy victims, the process takes entirely too

133. *See* STATE OF NEW YORK, NY RISING COMMUNITY RECONSTRUCTION PROGRAM OVERVIEW 4 https://stormrecovery.ny.gov/sites/default/files/documents/NY-Rising-Community-Reconstruction-Program-Overview.pdf [https://perma.cc/GCZ8-R7J3].

134. *See* GOVERNOR'S OFFICE OF STORM RECOVERY, NY RISING: 2012–2015 5 (2016), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/GOSRreport102915.pdf [https://perma.cc/C4QY-2XKP].

135. *See* STATE OF NEW YORK, NY RISING INTERIM MORTGAGE ASSISTANCE (IMA) PROGRAM FREQUENTLY ASKED QUESTIONS (2014), https://stormrecovery.ny.gov/sites/default/files/uploads/ima_faq_06_10_14.pdf [https://perma.cc/Z84N-PP7S].

136. *Id.*

137. After homeowners submit an application they are contacted by a "Customer Representative" to go over what work the applicant is *eligible* for. *Program Eligibility and Forms*, GOVERNOR'S OFFICE OF STORM RECOVERY https://stormrecovery.ny.gov/homeowner-resources-and-forms [https://perma.cc/Z8TH-5QCF] (last visited Feb. 17, 2017) (emphasis added).

138. Under the "Forms" and "Fact Sheets" sections of NY Rising's official website, there are over fifty forms listed. *Id.*

139. NY Rising coordinates its own appeals process, denying its applicants an independent review of NY Rising decisions. STATE OF NEW YORK, NY RISING HOUSING RECOVERY SINGLE FAMILY PROGRAM FAQ 3–4 (2016), https://stormrecovery.ny.gov/sites/default/files/crp/community/documents/20160425_SFH_FAQ_FINAL.pdf [https://perma.cc/U8L7-B7LN].

long.[140] Prolonged waiting times are particularly troublesome when rebuilding a home is contingent on construction that cannot be performed during the winter months. NY Rising needs to become more streamlined so that claims can be processed quicker, which would allow Sandy victims to return to their homes.

3. *New Jersey: RREM*

In response to Sandy, New Jersey Governor Chris Christie implemented the Reconstruction, Rehabilitation, Elevation, and Mitigation (RREM) Program, which provides eligible homeowners with grants of up to $150,000.[141] The amount of assistance a homeowner receives depends on the cost of repairs and the amount of funding the homeowner has already received for home repairs from other sources, like FEMA.[142]

Like the processes under NY Rising and Build it Back, receiving aid through RREM is convoluted and the program is riddled with problems. The first step in receiving aid from RREM is to submit an application with the State.[143] The State then determines whether the homeowner is eligible for funding after reviewing the application and calculating the amount of damage to the home.[144] Applicants have experienced lengthy waiting times.[145] Even though 40,000 homes were severely damaged by

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140. *See The Long Beach City Council Voices Displeasure with New York Rising Program, Offers Recommendations*, CITY OF LONG BEACH, http://www.longbeachny.gov/index.asp?Type=B_PR&SEC=%7B33BD7D65-42BC-45CB-ABAB-A6E2B4FB1BFB%7D&DE=%7B4CEB1E86-F74E-4468-BBFA-E967BA3F422F%7D [https://perma.cc/S933-4WBU] (last visited Feb. 17, 2017) (stating that NY Rising's long process is preventing residents from returning to their homes).

141. *See About the Reconstruction, Rehabilitation, Elevation, and Mitigation (RREM) Program*, STATE OF N.J. DEP'T OF CMTY. AFFAIRS, http://www.renewjerseystronger.org/homeowners/rrem/about-the-rrem-program/ [https://perma.cc/V2SG-5JR8] (last visited Feb. 17, 2017).

142. *See id.*

143. *See Step 1 — Notice of Funding*, STATE OF N.J. DEP'T OF CMTY. AFFAIRS, http://www.renewjerseystronger.org/homeowners/rrem/rrem-program-step-by-step/step-1-notice-of-funding/ [https://perma.cc/GE84-9HA9] (last visited Feb. 17, 2017).

144. *See Step 2 — Initial Site Inspection and Environmental Review*, STATE OF N.J. DEP'T OF CMTY. AFFAIRS, http://www.renewjerseystronger.org/homeowners/rrem/rrem-program-step-by-step/step-2-initial-site-inspection-environmental-review/ [https://perma.cc/F64G-BDMB] (last visited Feb. 17, 2017).

145. *See* Kim Lueddeke, *Slowly Rebuilding After Sandy, but Thousands Still Displaced While Working with New Jersey Program*, NORTHJERSEY.COM (last updated May 11, 2015, 2:06 PM), http://archive.northjersey.com/news/slowly-rebuilding-after-sandy-but-thousands-still-displaced-while-working-with-n-j-program-1.1330907?page=all [https://perma.cc/F7WX-TG7J].

Sandy, and 15,000 homeowners applied for aid through RREM, only 328 homes had been completely rebuilt as of January 2015.[146] Other problems with RREM include the wrongful denial of funding,[147] and the hiring of contractors that were previously accused of not completing projects.[148]

The program's ineffectiveness is demonstrated by the 3,700 homeowners originally deemed eligible for RREM that have since withdrawn from the program.[149] Housing advocates have proclaimed that streamlining payment schedules and construction deadlines would provide homeowners quicker and more efficient relief.[150] Additionally, there have been allegations that RREM was so poorly run that it may have to reimburse HUD for nearly forty three million dollars because New Jersey failed to oversee the contractor hired to distribute federal money through RREM.[151]

4. *Contractor Fraud*

Under Build it Back, NY Rising, and RREM, homeowners were often overcharged or defrauded by contractors hired to repair their homes. Although there were countless victims, each affected homeowner was subjected to the violation of basic contractual issues: breach of contract and fraud. Contractors either failed to complete the construction project while pocketing the homeowners' money, performed the project at an unacceptably

146. *See* Phil Gregory, *Only 328 N.J. Homes Done Rebuilding from Sandy with RREM Money*, NEWSWORKS (Jan. 16, 2015), http://www.newsworks.org/index.php/local/new-jersey/77424-only-328-nj-homes-done-rebuilding-from-sandy-with-rrem-money [https://perma.cc/HH4L-QMRN].

147. *See* Erin O'Neil, *NJ's Housing Grant Programs Were 'Massively Botched,' Advocates Claim*, NJ.COM (last updated Feb. 6, 2014, 10:55 AM), http://www.nj.com/politics/index.ssf/2014/02/sandy_housing_program.html [https://perma.cc/ZSN6-EKSZ] (RREM wrongfully rejected over 79% of its applicants).

148. *See* Elaine Quijano, *The Horror Stories of New Jersey's Sandy Relief Program*, CBS NEWS (June 2, 2015, 6:56 PM), http://www.cbsnews.com/news/the-horror-stories-of-new-jerseys-sandy-relief-program/ [https://perma.cc/Q8NF-SFXA].

149. *See* Lueddeke, *supra* note 145.

150. *See id.*

151. *See* Tom Johnson, *Hurricane Sandy Survivors Face a New Threat — From the State*, NJ SPOTLIGHT (Oct. 28, 2016), http://www.njspotlight.com/stories/16/10/27/hurricane-sandy-survivors-face-a-new-threat-from-the-state/ [https://perma.cc/UJ24-GJXJ].

slow pace, or claimed to be licensed, when they were actually unlicensed and ill-equipped to perform the construction.[152]

Even when Sandy victims could prove that a contractor created additional damages to their home, monetary compensation was not guaranteed. An attorney who has been assisting Sandy victims for over four years has found many contractors to be essentially judgment proof, meaning they lack insurance or do not have the financial means to pay the judgments awarded to defrauded victims.[153] For most Sandy victims, every dollar was critical.[154] The inability to enforce judgments against fraudulent contractors was yet another impediment to recovery.

VI. RECOUPMENT NOTICES

Sandy victims faced a litany of obstacles in recovery: underpayment of flood insurance claims,[155] fraudulent contractors,[156] and ineffective state programs keeping families out of their homes for an inexcusable amount of time.[157] To make matters worse, FEMA mailed nearly 3,500 recoupment notices requesting that certain Sandy survivors pay back funds they received from

152. *See* Nicholas Huba, *Barnegat Contractors Arrested on Sandy Fraud*, PRESS OF ATLANTIC CITY (Oct. 12, 2015), http://www.pressofatlanticcity.com/news/crime/police/barnegat-contractors-arrested-on-sandy-fraud/article_1618d96a-7126-11e5-8b75-2b66ed375af9.html [https://perma.cc/LD4T-AY5F] (contractor indicted for cheating Sandy victims out of $250,000); David P. Willis, *Sandy Contractor Fined $940G for False Promises*, ASHBURY PARK PRESS (June 4, 2015, 2:56 PM), http://www.app.com/story/money/business/consumer/2015/06/04/shorepro-contractors/28483921/ [https://perma.cc/6FTN-KCMD] (contractor found to have made false promises to homeowners by not completing the work, which the homeowner paid for); *Contractor Frank Lewery Admits Sandy Fraud*, NEWS 12 N.J. (Apr. 1, 2014, 6:39 AM), http://newjersey.news12.com/features/sandy/contractor-frank-lewery-admits-sandy-fraud-1.7568184 [https://perma.cc/R9WE-N9EK] (Staten Island contractor did not complete repairs after taking deposits from homeowners); *Toms River Contractor Pleads Guilty to Forgery*, COURIER-POST (Jan. 8, 2014, 8:23 PM), http://www.courierpostonline.com/story/news/2014/01/08/toms-river-contractor-pleads-guilty-to-forgery-/4381871/ [https://perma.cc/8CGM-CJE2] (contractor pled guilty for working as an unregistered and unlicensed contractor).

153. *See* Interview with Seth M. Rosner, in Mineola N.Y. (Nov. 24, 2015). Mr. Rosner was the Nassau County Bar Association's Pro Bono Attorney of the year in 2014 for his commitment to assisting Sandy victims.

154. *See* Kira Lerner, *Sandy Victims Say Low-Income Residents Got "Screwed" by Christie's Recovery Programs*, THINKPROGRESS (May 29, 2015), https://thinkprogress.org/sandy-victims-say-low-income-residents-got-screwed-by-christie-s-recovery-programs-b498474b0a8b#.f1mzlvszh [https://perma.cc/GJ4L-KMCC] (The importance of every dollar is demonstrated by the fact that as of May 2015, "thousands of residents [were] still waiting for their homes to be rebuilt or their funding to come through.").

155. *See supra* Part IV.B.

156. *See supra* Part V.A.4.

157. *See supra* Parts V.A.1, 2, 3.

FEMA.[158] The recoupment notices were sent for a variety of reasons, including homeowners providing the wrong address during their application for aid, FEMA making a clerical error, or the alleged duplication of benefits.[159] Prior to the recoupment notices, FEMA reopened the nearly 144,000 flood insurance claims and during that review homeowners may have received additional funding from programs like NY Rising and RREM.[160] Thus, if homeowners received funding from those programs, and were provided additional funding after FEMA's review of flood insurance claims, then the homeowners would have to give back certain amounts of funding because of a duplication of benefits.[161]

The notices were likely in response to FEMA's wasteful spending after Katrina.[162] Post Katrina, FEMA sent out approximately 90,000 similar recoupment notices.[163] The Katrina notices were mitigated by the passage of the Disaster Assistance Recoupment Fairness Act of 2011,[164] which "grant[ed] FEMA [the] additional authority to waive debts incurred as a result of improper payments[.]"[165] However, that legislation expired prior to Sandy's landfall. Thus, United States Senators from New York and New

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158. *See* Jean Mikle & Russ Zimmer, *FEMA Asks Some Sandy Aid Recipients to Give it Back*, USA TODAY (last updated Nov. 29, 2014, 4:51 PM), http://www.usatoday.com/story/news/nation/2014/11/29/fema-wants-some-sandy-victims-to-return-aid-/19669243/ [https://perma.cc/MPU2-45BK].

159. *See, e.g.*, 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 [https://perma.cc/7SV4-UBBY].

160. *See* Jason M. Cieri, *Governor Cuomo asks HUD to Waive DOB for Sandy Victims*, LEXOLOGY (Sept. 15, 2015), http://www.lexology.com/library/detail.aspx?g=9a33172c-e483-4113-9dac-5819b1b28675 [https://perma.cc/7GNN-EXTH] (quoting a FEMA spokesperson as saying that after Katrina, "FEMA has worked diligently to put protections and processes in place that reduce the instance of improper payments").

161. *See id.*

162. *See* Alice Speri, *FEMA Is Trying To Get Back $5.8M in Hurricane Sandy Aid Money*, VICE NEWS (Sept. 11, 2014 4:40 PM), https://news.vice.com/article/fema-is-trying-to-get-back-58m-in-hurricane-sandy-aid-money [https://perma.cc/9LS4-NSVB].

163. *See* Parks, *supra* note 159.

164. Disaster Assistance Recoupment Fairness Act of 2011, Pub. L. No. 112-74, § 565, 125 Stat. 786, 982–83 (2011).

165. *Schumer, Gillibrand: Superstorm Sandy Victims Should Not Be Blindsided By FEMA Recoupment Letters Asking to Return Thousands in Much-Needed Sandy Relief Dollars; Senators Announce Legislation to Require FEMA to Waive Debts for Victims of Disasters Since 2012* (Feb. 19, 2015), https://www.schumer.senate.gov/newsroom/press-releases/schumer-gillibrand-superstorm-sandy-victims-should-not-be-blindsided-by-fema-recoupment-letters-asking-to-return-thousands-in-much-needed-sandy-relief-dollars-senators-announce-legislation-to-require-fema-to-waive-debts-for-victims-of-disasters-since-2012 [https://perma.cc/6UHN-KLSK].

Jersey introduced new legislation that would have permitted FEMA to waive certain debts resulting from the duplication of benefits.[166] The legislation was proposed, in part, because the Senators understood that the recoupment notices disproportionately affected middle and low-income homeowners.[167] Sixty two percent of notices were sent to households with annual incomes of less than $50,000, while only thirteen percent of notices were sent to homeowners with annual incomes greater than $100,000.[168] Although the legislation was not passed and FEMA has since rescinded many of its recoupment notices,[169] the recoupment notices are another example of the seemingly endless problems Sandy victims continue to experience while trying to recover.

VII. FORECLOSURES IN NEW YORK AND NEW JERSEY

Sandy created uninhabitable homes and displaced many homeowners. The displacement disproportionally affected Sandy victims from modest economic means.[170] Upper-income homeowners could afford the costs of rebuilding their home, keep up to date with mortgage payments, and withstand the costs of contractor fraud and the underpayment of flood insurance claims.[171] But the accumulation of all these costs hacked away at the prospect of middle and low-income Sandy victims repairing and returning to their homes.

During October 2012, New Jersey experienced a one hundred and forty percent increase in foreclosure activity from the previous year, while New York's foreclosure rate climbed one hundred and twenty three percent.[172] After Sandy, 125,000 homes in the

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166. S. 406, 114th CONG. (2015).

167. *See* Parks, *supra* note 159.

168. *See id.*

169. *See* Emily C. Dooley, *FEMA Cancels Superstorm Sandy Relief Claw Back of $5.4M*, NEWSDAY (last updated May 21, 2016, 5:56 PM), http://www.newsday.com/long-island/fema-cancels-superstorm-sandy-relief-paybacks-totaling-5-4m-1.11824648 [https://perma.cc/QJ8C-XBU3].

170. *See* THE HUFFINGTON POST, *supra* note 5.

171. Because only one out of five claims for FEMA assistance were filed by homeowners with annual incomes over $90,000, it can be inferred that homeowners with annual incomes over $90,000 were able to financially withstand Sandy's destruction because they did not seek government assistance. *See id.*

172. *See* Les Christie, *Foreclosure Mess Awaits States Hit By Superstorm Sandy*, CNN MONEY (Nov. 16, 2012, 5:27 AM), http://money.cnn.com/2012/11/16/real_estate/sandy-foreclosures/ [https://perma.cc/PLT7-9VRQ].

areas hit hardest by Sandy were already in some stage of foreclosure.[173] Understanding that Sandy's financial destruction would increase the rate of foreclosures, HUD provided a ninety-day moratorium on foreclosures for properties located in major disaster relief areas days after Sandy made landfall.[174] This ninety-day period was extended on January 31, 2013 for an additional ninety days.[175] However, the two moratoriums provided inadequate relief to homeowners. Thus, on April 11, 2013, HUD announced that before the commencement of foreclosure proceedings, borrowers must be evaluated "for a [f]orbearance, which allows for one or more periods of reduced or suspended [mortgage] payments without specific terms of repayment."[176]

Despite the moratoriums, the foreclosure rate in New York and New Jersey continued to rise in 2013. Foreclosure activity increased thirty-three percent in the metropolitan area compared to the first nine months of 2012.[177] As foreclosure continued to plague Sandy victims in 2015, President Obama signed and enacted the Superstorm Sandy Relief and Disaster Loan Program Improvement Act (Sandy Relief Act).[178] After finding that many Sandy homeowners and small businesses were unable to apply for financing through the Small Business Administration, the Sandy Relief Act sought to provide homeowners and small businesses the opportunity to acquire the necessary aid to rebuild and repair their homes and businesses.[179]

Governmental efforts to assist Sandy victims facing foreclosure were sub-par. The prospect of paying months or years of missed mortgage payments, plus the costs of rebuilding or repairing a home, plus the rental costs of a new living arrangement, all

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173. *See id.*

174. *See* Letter from U.S. Dep't of Hous. & Urban Dev. to All FHA-Approved Mortgages (Nov. 16, 2012), http://portal.hud.gov/hudportal/documents/huddoc?id=12-23ml.pdf [https://perma.cc/FP3E-QE2G].

175. *See* Letter from U.S. Dep't of Hous. & Urban Dev. to All FHA-Approved Mortgages, Single Family Servicing Managers (Jan. 31, 2013), http://portal.hud.gov/hudportal/documents/huddoc?id=13-06ml.pdf [https://perma.cc/79XD-JUYB].

176. Letter from U.S. Dep't of Hous. & Urban Dev. to All FHA Single Family Approved Mortgagees, Single Family Servicing managers (Apr. 11, 2013), http://portal.hud.gov/hudportal/documents/huddoc?id=13-11ml.pdf [https://perma.cc/33QQ-UE8G].

177. *See New York City and Long Island Foreclosures Continue to Increase a Year After Hurricane Sandy Hit*, REALTYTRAC (Oct. 29, 2013), http://www.realtytrac.com/news/foreclosure-trends/new-york-city-and-long-island-foreclosures-continue-to-increase-a-year-after-hurricane-sandy-hit-2/ [https://perma.cc/2UY5-Q7SZ].

178. Pub. L. No. 114-88, 129 Stat. 686 (codified at 15 U.S.C. §§ 631–657 (Supp. 2015)).

179. *Id.*

make recovering from Sandy an untenable situation for individuals with modest economic means.

VIII. NEW JERSEY LEGISLATION

A. CHRISTIE VETOES 2015 BILL

On February 5, 2015, members of the New Jersey Assembly introduced legislation to protect Sandy victims against foreclosure.[180] The proposed legislation would have prevented "the foreclosure of any mortgage obligation on any real property that was damaged by [Sandy] . . . for a period of 36 months immediately following the enactment of the bill."[181] The legislation's sponsors believed that the three-year moratorium would provide Sandy victims "some financial breathing room as they try to rebuild their homes and their lives."[182] On December 17, 2015 the Assembly legislation was substituted for an identical bill (2015 Bill) initiated in the New Jersey Senate.[183]

In addition to providing a three-year foreclosure moratorium, the 2015 Bill also assisted homeowners not facing foreclosure. If a homeowner was repairing or rebuilding a home damaged by Sandy, and therefore juggling rent for temporary housing and the mortgage of the damaged home, the homeowner was allowed to apply for the postponement of mortgage payments on the damaged home for three years.[184] The moratorium applied to all homeowners eligible for RREM funding,[185] and homeowners would be notified of their eligibility by the Department of Community Affairs (DCA).[186] The 2015 Bill additionally provided that a mortgage's interest rate during the moratorium would be the "same rate agreed upon in the original mortgage, and there shall be no fees assessed for the forbearance, or penalty for early repayment."[187] Homeowners that received the forbearance, however, would still have to pay property taxes and maintain the prop-

180. A4139, Assemb. 216th Leg. Sess. (N.J. 2015).
181. *Id.* at 3:10–14.
182. *Id.* at 3:14–17.
183. S2577, Sen. 216th Leg. Sess. (N.J. 2015).
184. *Id.* at 3:34–47.
185. *Id.* at 3:28–31.
186. *Id.* at 4:26–31.
187. *Id.* at 4:9–11.

erty.[188] The Assembly passed the 2015 Bill by a vote of 56–14 and the Senate voted in favor by a vote of 27–6.[189] The 2015 Bill was then delivered to Governor Christie's desk.

Unfortunately for Sandy victims, Governor Christie conditionally vetoed the 2015 Bill on January 11, 2016, which was the last day of the legislative session.[190] Governor Christie vetoed the "well-intentioned bill" because he felt the courts, and not the DCA, were best equipped to determine if a homeowner's mortgage was eligible for the moratorium.[191] Assemblyman Gary Schaer's frustration with Governor Christie's veto was emblematic of the frustration felt by Sandy victims:

> This was a critical bill that went to the Governor in mid-December and he waited nearly a month and sent us back a completely rewritten bill, fraught with legal and logistical questions, with just a few hours remaining in our legislative sessions. . . . Essentially, the governor's rewritten bill would have forced homeowners who suffered damage to go to court to stay their foreclosure. We're talking about folks who have yet to receive their relief aid, who are currently paying a mortgage on a house that is not livable, while paying rent and whatever repair costs are needed to move back into their primary residence. Most of these people do not have the money or time to navigate the burdensome legal system.[192]

Because the veto occurred on the legislative session's last day, the New Jersey Legislature did not have time to amend the 2015 Bill and therefore the legislative process had to start over from the beginning in the next legislative session.[193]

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188. *Id.* at 4:38–41, 5:5–7.

189. *See* NEW JERSEY STATE LEGISLATURE, http://www.njleg.state.nj.us/bills/BillView.asp [https://perma.cc/PZD9-ERA7] (on the left-hand side follow "Prior Sessions," then follow the "2014–2015" hyperlink, then follow "Bill Number" and search within the search bar for "A4139," then follow the "A4139" hyperlink) (last visited Feb. 17, 2017).

190. *See id.*

191. Michael Symons, *Plan to Ban Sandy Foreclosures for Three Years Vetoed*, ASBURY PARK PRESS (Jan. 22, 2016, 5:33 PM), http://www.app.com/story/news/politics/new-jersey/2016/01/22/christie-vetoes-sandy-foreclosure-moratorium/79195058/ [https://perma.cc/F2CT-YDML].

192. Press Release, Assembly Democrats, *Schaer on Christie Sandy Relief Veto: Storm Victims are Paying the Price for the Governor's Neglect* (Jan. 14, 2016), http://assemblydems.com/Article.asp?ArticleID=10562 [https://perma.cc/W5TF-VETP].

193. *See id.*

B. REVISED BILL IS PASSED

Sixteen days after Governor Christie's veto, the New Jersey Assembly introduced bill number A333 (2016 Bill), which addresses many of the problems with RREM and provides foreclosure protection for Sandy victims.[194]

1. *Addressing RREM Problems*

The 2016 Bill addresses several problems with RREM. First, the uncertainty about when RREM projects will be completed and when applicants will receive RREM funding. All RREM applicants are now provided with "a personal timeline" that estimates when the applicant will receive funding and when the project will be completed.[195] Specifically, applicants will be given dates for when they will receive fifty percent and one hundred percent of their awarded RREM money.[196] Second, the improper denial of RREM applications. Applicants that have been denied RREM funding must be provided "an explanation of any decision to deny an application for aid, and an explanation of how to remedy the application, when possible, and continue the appeals process."[197] Third, the non-performance or improper performance by RREM contractors. An applicant will be granted an extension for the completion of their project if the delay was due to the "non-performance or non-availability of the contractor, or delays by the department in approving the contractor associated with the project."[198] Fourth, the RREM's lack of transparency. The DCA must publically report the reason for any application denial since the beginning of the recovery effort, and conduct reasonable efforts to contact applicants that have previously withdrawn from the RREM program.[199]

2. *Addressing Foreclosure and Mortgage Payments*

The 2016 Bill, like the 2015 Bill, addresses the fiscal hardships of maintaining mortgage payments for a home that is unin-

194. A333, Assemb. 217th Leg. Sess. (N.J. 2016).
195. *Id.* at 3:24–31.
196. *Id.* at 3:36–41.
197. *Id.* at 4:21–23.
198. *Id.* at 4:30–35.
199. *Id.* at 6:16–46.

habitable. First, the 2016 Bill defines a "Sandy-impacted homeowner" as:

> a homeowner who as of October 29, 2012, occupied a home as his or her primary residence that, as a result of Superstorm Sandy, sustained: (1) damage of at least $8,000, or (2) more than one foot of water on the first floor as determined by [FEMA] pursuant to the applicable RREM . . . policies and procedures for whom one or both of the following are true: (1) the homeowner received rental assistance from [FEMA] as a result of damage to his or her primary residence due to Superstorm Sandy; or (2) the homeowner has been approved for assistance through the RREM . . . program.[200]

Thus, the 2016 Bill offers temporary protection for homeowners who are receiving assistance from FEMA or RREM and whose homes were severely damaged by Sandy. The temporary protection will be granted if the homeowner shows "good cause,"[201] which includes the "receipt of rental assistance from [FEMA] as a result of damage to the homeowner's primary residence due to [Sandy], or approval for assistance through the RREM . . . program[.]"[202] The stay will end on either July 1, 2019 or one year after the homeowner receives a certificate of occupancy, whichever date is earlier.[203]

Regardless of whether the home is currently subject to foreclosure, a Sandy-impacted homeowner may apply for a forbearance of mortgage payments with the DCA if mortgage payments were current as of August 10, 2015.[204] Similar to the dates for concluding a stay of foreclosure proceedings, the forbearance period will end on either July 1, 2019 or one year after a certificate of occupancy is issued.[205] If a forbearance is granted, the interest rate will remain the same as the rate identified in the original mortgage.[206] The forbearance provision will provide Sandy victims temporary financial relief while trying to rebuild their homes.

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200. *Id.* at 3:1–13.
201. *Id.* at 8:31–36.
202. *Id.* at 8:41–46.
203. *Id.* at 9:1–4.
204. *Id.* at 7:46–48.
205. *Id.* at 8:14–17.
206. *Id.* at 8:24–30.

Similarly, given the harmful nature of foreclosures to homeowners and the economy as a whole,[207] staying foreclosure proceedings will reduce the number of displaced families and provide financial security to Sandy victims trying to rebuild and return to their homes.

Although Governor Christie objected to the DCA determining whether a homeowner was eligible for the temporary protection afforded by the 2015 Bill, the 2016 Bill grants similar authority to the DCA. The Commissioner of the DCA must notify Sandy-impacted homeowners of their eligibility for a forbearance or stay of foreclosure, make information concerning eligibility publically available, and notify courts and state mortgage lenders about what properties and individuals are eligible for a forbearance or stay of foreclosure.[208]

On June 30, 2016, the Assembly passed the 2016 Bill by a vote of 63–4.[209] Although the Senate had been crafting its own version of the 2016 Bill,[210] the Senate's bill was replaced by the Assembly's version on December 19, 2016.[211] That same day, the Senate voted unanimously, 36–0, to approve the 2016 Bill.[212]

Even though the 2016 Bill did not address Governor Christie's concerns with the 2015 Bill,[213] Governor Christie signed the bill into law on February 10, 2017.[214]

IX. THE NEED FOR PREVENTATIVE FORECLOSURE RELIEF

The underlying purpose of New Jersey's recently enacted legislation is to help Sandy-impacted homeowners by freezing mortgage payments and staying foreclosure proceedings.[215] Sandy

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207. *See* THOMAS KINGSLEY ET AL., THE URBAN INST., THE IMPACTS OF FORECLOSURES ON FAMILIES AND COMMUNITIES 6–12 (May 2009), http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411909-The-Impacts-of-Foreclosures-on-Families-and-Communities.PDF [https://perma.cc/NHM5-5YTK] (finding that foreclosures costs include displacement, financial insecurity, and personal/familial stress).

208. A333, Assemb. 217th Leg. Sess. (N.J. 2016), at 9:4–29.

209. *See* NEW JERSEY STATE LEGISLATURE, http://www.njleg.state.nj.us/bills/BillView.asp [https://perma.cc/PZD9-ERA7] (last visited Feb. 17, 2017) (on left hand side follow the "Bills 2016–2017" hyperlink, then follow "Bill Number" and search within the search bar for "A333," then follow the "A333" hyperlink) (8 abstained).

210. S2300, Sen. 217th Leg. Sess. (N.J. 2016).

211. *See* NEW JERSEY STATE LEGISLATURE, *supra* note 209.

212. *See id.*

213. *See supra* Part VIII.A.

214. *See* NEW JERSEY STATE LEGISLATURE, *supra* note 209.

215. *See* N.J. SEN. CMTY. & URBAN AFFAIRS COMM., STATEMENT TO ASSEMBLY, No.333, Assemb. 217-333, at 2 (2016), http://www.njleg.state.nj.us/2016/Bills/A0500/333_I1.PDF

was not the first natural disaster to hit New Jersey,[216] and it certainly will not be the last.[217] When the next natural disaster strikes, its victims may have to rebuild a damaged home, pay monthly mortgage payments, and pay rent for temporary housing. If FEMA's handling of NFIP claims and New Jersey's infective RREM program have taught us anything,[218] it is that victims of natural disasters cannot rely on swift and efficient government action after natural disasters. It took New Jersey over four years to ensure that Sandy victims would not lose their homes because of missed mortgage payments on uninhabitable homes.[219] Because New Jersey leads the nation in foreclosure activity,[220] it is unclear what specific impact Sandy had on the number of foreclosure filings, but experts agree that Sandy "definitely plays a part" in New Jersey's current foreclosure crisis.[221] In order to prevent future natural disaster victims from being subjected to the same types of housing issues experienced by Sandy victims, this Note proposes that New Jersey pass legislation that stays foreclosure proceedings and provides a forbearance on mortgage payments for homes damaged by a natural disaster, if the natural disaster requires a state of emergency and New Jersey receives disaster related aid from FEMA or HUD.

[https://perma.cc/PA4D-JYPM] ("in order to address the economic crisis that many families continue to experience as a result of Superstorm Sandy, this bill offers temporary protections against foreclosure to certain Sandy victims.").

216. On August 28, 2011, Hurricane Irene damaged nearly 930,000 homes and businesses. Len Melisurgo, *Hurricane Irene: New Jersey's Forgotten Storm*, NJ.COM (Aug. 27, 2013, 11:32 AM), http://www.nj.com/news/index.ssf/2013/08/hurricane_irene_flashback_the_forgotten_storm_of_2011.html [https://perma.cc/7YKH-KH98].

217. *See Are Natural Disasters Increasing?*, THE BORGEN PROJECT (June 14, 2015), https://borgenproject.org/natural-disasters-increasing/ [https://perma.cc/DNH7-YK3E] ("the number of natural and geophysical disasters taking place each year is noticeably skyrocketing.").

218. *See supra* Part IV, Part V.B.

219. *See supra* Part VIII.B.

220. *See* Kathleen Lynn, *New Jersey Leads Nation in Foreclosures*, NORTHJERSEY.COM (last updated Dec. 15, 2016, 12:06 AM), http://www.northjersey.com/story/money/2016/12/14/nj-leads-nation-foreclosures/95423742/ [https://perma.cc/99SR-GUV9].

221. Russ Zimmer, *New Storm: Foreclosures rise for Sandy Victims*, USA TODAY (last updated Feb. 14, 2015, 8:36 PM), http://www.usatoday.com/story/news/nation/2015/02/14/new-storm-foreclosures-rise-sandy-victims/23434391/ [https://perma.cc/T9Q9-AHGM].

A. STATUTORY LANGUAGE OF THIS NOTE'S PROPOSAL

1. *Sufficiently Limited Population*

This Note's proposal only applies to homeowners whose homes sustained serious damage from a critical natural disaster. "Homeowners" will be defined as individuals who used the damaged home's address as their primary residence.[222] "Serious damage" will be defined as either a specific monetary figure, like the $8,000 used in New Jersey's 2016 Bill,[223] or specific amounts of physical damage, like the one foot water mark in New Jersey's 2016 Bill,[224] that required the homeowner to seek assistance from FEMA or a state sponsored program that used CDBG–DR funds from HUD. "Critical natural disaster" will consist of three elements: (1) the New Jersey Governor must declare a state of emergency because of a natural event, (2) the President must sign a disaster declaration for New Jersey in response to the natural event, and (3) New Jersey residents must have the option to apply and receive funds from FEMA or state sponsored programs using CDBG–DR funds from HUD to recover from the natural event.

The parameters of this Note's proposal are similar to the restrictions within New Jersey's 2016 Bill.[225] Narrowing the definition of "homeowner" to homes used as a primary residence prevents this Note's proposal from being applied to "vacation homes." Similarly, only homes that suffer serious physical or monetary damages will be eligible. The difference between this Note's proposal and the 2016 Bill is that the 2016 Bill is limited to homeowners affected by a specific natural disaster, Sandy,[226] whereas this Note's proposal applies to homeowners affected by future natural disasters.

222. *See* A333, Assemb. 217th Leg. Sess. (N.J. 2016), at 3:1–3.
223. *See id.* at 3:4.
224. *See id.* at 3:5–8.
225. *See id.* at 3:4–13.
226. *See id.* at 3:14–15.

2. *Stay Foreclosure Proceedings; Forbearance on Mortgage Payments*

Like the 2016 Bill, this Note's proposal stays foreclosure proceedings for qualified homeowners. The DCA Commissioner will notify all homeowners that are eligible for the stay. The qualified homeowner then applies for the stay with the Court overseeing the proceeding, and the Court will grant the stay if the homeowner receives rental aid through FEMA or a state sponsored program receiving CDBG–DR funds from HUD.[227] The stay is not indefinite, and will be lifted either one year after the homeowner receives the certificate of occupancy or two years after the natural disaster, whichever comes first.[228]

Similarly, if a qualified homeowner is not undergoing a foreclosure proceeding and was up to date on mortgage payments as of the day of the natural disaster, they will be eligible to apply for a forbearance on mortgage payments.[229] The DCA Commissioner will be authorized to approve forbearance applications,[230] and the interest rate during the forbearance will not be modified.[231] The forbearance will conclude either one year after the homeowner receives the certificate of occupancy or two years after the natural disaster, whichever comes first.[232]

B. POLICY BASIS FOR THIS NOTE'S PROPOSAL

1. *Consistent with the Goal of Homeownership*

The purpose of this Note's proposal is to provide temporary relief to natural disaster victims by allowing homeowners to retain ownership of their homes. The federal government has found that homeownership strengthens financial security, families, communities, and economic growth.[233] Homeownership is such an important initiative that during the late 1990s banks and

227. *See id.* at 8:41–46.
228. *See id.* at 9:1–2.
229. *See id.* at 7:46–48.
230. *See id.* at 8:3–7.
231. *See id.* at 8:24–30.
232. *See id.* at 8:14–17.
233. *See* U.S. DEP'T OF HOUS. AND URBAN DEV., THE NATIONAL HOMEOWNERSHIP STRATEGY: PARTNERS IN THE AMERICAN DREAM 1-1–1-2 (1995), http://www.globalurban.org/National_Homeownership_Strategy.pdf [https://perma.cc/C3CL-P5VS].

Government Sponsored Enterprises, Fannie Mae and Freddie Mac,[234] began altering underwriting standards so that low and middle-income Americans could afford mortgages and become homeowners.[235] The trend continued during the early 2000s when subprime mortgages, which are mortgages issued to borrowers who do not qualify for traditional loans,[236] composed nearly forty-eight percent of new residential mortgages in 2006.[237] Eventually, subprime borrowers could not keep up with their payments and the number of foreclosures increased sharply from 2006 to 2007.[238] Although the government bailed out the financial institutions that brought about the housing crisis,[239] homeowners were not protected from foreclosure.[240]

The difference between the subprime homeowners and victims of natural disasters is that victims of natural disasters do not

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234. Fannie Mae and Freddie Mac fund "mortgages by purchasing loans directly from primary market mortgage originators, such as mortgage bankers and depository institutions, and holding these loans in portfolio, or by acting as a conduits and issuing mortgage backed securities (MBS), which are then sold in the capital markets to a wide variety of investors." U.S. DEP'T OF HOUS. AND URBAN DEV., HUD'S AFFORDABLE LENDING GOALS FOR FANNIE MAE AND FREDDIE MAC, 1 (2001), https://www.huduser.gov/portal/Publications/PDF/gse.pdf [https://perma.cc/M5Z3-5XBU].

235. *See* FEDERAL RESERVE BANK OF BOSTON, CLOSING THE GAP: A GUIDE TO EQUAL OPPORTUNITY LENDING 13–16 (1992), http://www.thebrokenwindow.net/papers/c/closingt.pdf [https://perma.cc/9QTN-TBDE] (suggesting that lenders decrease minimum loan amounts, obligation ratios, down payments and closing costs of prospective buyers, while simultaneously giving less weight to a buyer's credit history, source of income and employment history).

236. *See* Christine Daleiden, *Understanding Subprime Mortgages*, 12 HAW. B.J. 1, 6 (2008); *see also In re* First All. Mort. Co., 471 F.3d 977, 984 (9th Cir. 2006) (describing subprime mortgage buyers as "'house rich' but 'cash poor' [and] having built up equity in [their] home but in little else, and ha[ving] a lower net income than the average borrower.").

237. *See* Robert Utt, *The Subprime Mortgage Market Collapse: A Primer on the Causes and Possible Solutions*, THE HERITAGE FOUND. (Aug. 22, 2008), http://www.heritage.org/report/the-subprime-mortgage-market-collapse-primer-the-causes-and-possible-solutions [https://perma.cc/NQW6-8WDQ].

238. *See* U.S. DEP'T OF HOUS. AND URBAN DEVEL., REPORT TO CONGRESS ON THE ROOT CAUSES OF THE FORECLOSURE CRISIS 7 (2010), https://www.huduser.gov/portal/publications/foreclosure_09.pdf [https://perma.cc/D39X-Y9AW] (finding that "[i]n part, the sharp increase [of foreclosures] in 2007 reflects the much higher foreclosure start rate — up more than a full percentage point from 2006. . . .").

239. *See* Norbert J. Michel, *Lehman Brothers Bankruptcy and the Financial Crisis: Lessons Learned*, THE HERITAGE FOUND. (Sept. 12, 2013), http://www.heritage.org/report/lehman-brothers-bankruptcy-and-the-financial-crisis-lessons-learned [https://perma.cc/B9HH-QPQJ].

240. The Obama administration did implement the Home Affordability Modification Program ("HAMP"), but banks and other lenders were not required to participate in HAMP. U.S. DEP'T OF THE TREASURY, HOME AFFORDABLE MODIFICATION PROGRAM GUIDELINES 1 (2009), https://www.treasury.gov/press-center/press-releases/Documents/modification_program_guidelines.pdf [https://perma.cc/5E7L-REPH].

take affirmative steps towards foreclosure. Even though many subprime borrowers did not understand the technicalities of their mortgage,[241] they still willingly signed a mortgage they could not afford.[242] Another difference between the two groups is that natural disasters are caused by uncontrollable environmental forces. Although this Note does not discuss the merits of providing relief to subprime borrowers, the juxtaposition between subprime borrowers and victims of natural disasters demonstrates that even if the government has not previously protected homeowners from foreclosure, foreclosure relief should not be banned in all situations. Providing temporary homeowner relief for victims of future natural disasters will allow these individuals to retain their primary means of wealth — their homes.[243]

2. *Consistent with the History of Assisting Natural Disaster Victims*

Since the nineteenth century, the federal government has provided assistance to victims of natural disasters.[244] The United States has demonstrated a propensity to assist natural disaster victims by creating FEMA, whose mission is to help citizens recover from natural disaster,[245] and the National Flood Insurance Program, which addressed the personal and financial difficulties caused by floods. Government assistance, however, does not always provide efficient and effective relief for victims.[246] In order to ensure that victims are given a fair chance to recover from unpredictable natural disasters, it is imperative that legislation be

241. *See House of Cards: The Mortgage Mess*, CBS NEWS 1, 2 (Jan. 25, 2008), http://www.cbsnews.com/news/house-of-cards-the-mortgage-mess/ [https://perma.cc/53KF-E7V8] (telling the story of a couple who signed a mortgage without knowing the mortgage's monthly payments would eventually increase to amounts the couple could not afford).

242. *See id.* (despite not knowing the details of their mortgage, the couple still took the step to sign the mortgage).

243. *See* Rex Nutting, *How the Bubble Destroyed the Middle Class*, MARKET WATCH (July 8, 2011, 12:01 AM), http://www.marketwatch.com/story/how-the-bubble-destroyed-the-middle-class-2011-07-08 [https://perma.cc/Y2NY-DEMZ] (finding that during the Great Recession, "[f]or the 22 million families right in the middle of the income distribution . . . about 90% of their assets was in the house.").

244. *See* FEMA, *supra* note 8.

245. *See FEMA's Mission Statement*, FEMA, https://www.fema.gov/media-library/assets/videos/80684 [https://perma.cc/EH24-ZWMS] (last visited Feb. 17, 2017).

246. *See supra* Part II (discussing government failures during Hurricane Karina), Part IV (describing FEMA's failures when responding to Sandy), Part V.A.3 (outlining the shortcomings of New Jersey's RREM program).

enacted so that any government errors or inefficiencies do not come at the expense of natural disaster victims. New Jersey's 2016 Bill is evidence that legislation protecting homeowners affected by natural disasters is timely, appropriate, and consistent with the United States' history of assisting natural disaster victims.

X. Conclusion

Because Sandy occurred over four years ago, its effects have escaped the consciousness of most Americans. But victims continue to repair and try to return to their homes that were damaged by Sandy. The delayed recovery has several causes, including the underpayment of flood insurance claims,[247] ineffective state programs like RREM,[248] and contractor fraud.[249] While these problems persisted for over four years, Sandy victims were forced to pay monthly mortgage payments on uninhabitable homes, the costs for repairing the uninhabitable homes, and rent for temporary housing. Most Americans do not have enough savings to withstand these types of unpredicted and substantial costs.[250] As a result, when natural disasters occur in the future, homeowners that sustain home damage attributable to the natural disaster should be provided temporary relief from foreclosure proceedings and mortgage payments. The temporary relief provides victims the opportunity to restore their own lives, and the lives of their families, to normalcy.

247. *See supra* Part IV.B.
248. *See supra* Part V.A.3.
249. *See supra* Part V.A.4.
250. *See* Johnson, *supra* note 57.