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STATE OF NEW YORK
ALBANY

Brian F. Curran
Assemblyman, 21st District

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October 10, 2013

Acting Secretary Rand Beers
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Acting Secretary Beers:

While I've written correspondence to your predecessor, Janet Napolitano, several times since Hurricane Sandy devastated many parts of my Assembly District on the South Shore of Long Island, I am quite dismayed that I have never received a response.

Thousands of my constituents are being harmed, unable to receive compensation for damages sustained by Sandy's floodwaters, by an unintended loophole in the National Flood Insurance Program (NFIP), which is under your jurisdiction. I am referring, of course, to the Earth Movement Exclusion.

In my recent correspondence, dated September 16, 2013, I detailed how flood insurance coverage was being denied to thousands of homeowners who possess flood insurance plans and incurred damage – moderate to severe – to their homes as a direct result of Hurricane Sandy.

While I have been working closely with state, county, and town officials on this matter – and have won the support of U.S. Senators Charles Schumer and Kirsten Gillibrand – New York State has decided to do what the federal government can't or, even worse, won't do.

Governor Andrew M. Cuomo has designated funding to cover earth movement denials to the Sandy victims in New York State. This should have been accomplished by the cabinet department you oversee, but it was not. The State of New York stepped in to fill that hole.

However, the state cannot extend the statute of limitations for FEMA Denials. While Senators Schumer and Gillibrand have been instrumental in extending the deadline for filing proof of loss forms, one of the unintended consequences of this was that the amount of time homeowners have to file suit against FEMA was never lengthened. Rather, the federal government's inaction could be

construed as a belief that Sandy victims do not understand their rights and are unable to seek relief on a technicality – the expiration of the statute of limitations.

In order to prevent Sandy victims from having a false sense of security in this matter, the deadline for proof of loss was extended but the statute of limitations requiring people sue within one year of receipt of their denial from FEMA was not yet changed – your department should amend the regulations immediately.

It's the next logical step to extend the ability to file suit against NFIP to one year after the proof of loss denial. While I am hopeful that FEMA did not intend to create this unintended consequence for thousands of homeowners, I hope that it is quickly changed so that my constituents may preserve their rights to be adequately protected.

I continue to work with many Long Islanders, including Michele Mittleman of Freeport – herself a Sandy and “Earth Movement” exclusion victim – to seek a change in the verbiage of the “Earth Movement” loophole denial.

That's why I request a change in the wording that would allow the current law to state “the deadline for filing suit is one year after receipt of written proof of loss denial.”

I remain hopeful that your office will respond to the needs of the victims of Sandy who are trying to rebuild and move forward.

I would appreciate a reply within ten business days. You can reach me at 516-561-8216 to discuss this matter further.

Sincerely,

Brian Curran
Member of Assembly, 21st AD

CC: Senator Charles Schumer
Senator Kirsten Gillibrand
Governor Andrew M. Cuomo
Craig Fugate, FEMA Administrator