



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-14-2013
March 29, 2013

Interagency Statement on the Impact of Biggert-Waters Act

Summary: The FDIC, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, National Credit Union Administration, and Farm Credit Administration (the Agencies) are issuing interagency guidance to inform financial institutions about revisions to the Flood Disaster Protection Act of 1973 (the FDPA), which was amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (the Act). The interagency guidance also provides information regarding the impact of the Act on the Agencies' proposed Interagency Questions and Answers.

Statement of Applicability to Institutions Under \$1 Billion in Total Assets: This Financial Institution Letter (FIL) is applicable to all FDIC-supervised financial institutions.

Distribution:

FDIC-Supervised Institutions

Suggested Routing:

Chief Executive Officer
Chief Compliance Officer
Chief Loan Officer

Related Topics:

Biggert-Waters Flood Insurance Reform Act of 2012
Flood Disaster Protection Act of 1973

Attachment:

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Contact:

John Jackwood, Senior Policy Analyst, at
(202) 898-3991 or JJJackwood@FDIC.gov

Note:

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Highlights:

The following provisions of the Act became effective upon enactment:

- Amendments to the force placement provisions of the FDPA.
- The increase of the maximum civil money penalty for an FDPA violation to \$2,000 and the elimination of the annual penalty cap.

The following provisions of the Act are not effective until regulations are issued:

- The requirement that lenders accept private flood insurance policies if the coverage satisfies the standards specified in the Act.
- The requirement that lenders disclose to borrowers certain information regarding the National Flood Insurance Program.
- The requirement that certain lenders and servicers establish escrow accounts for flood insurance premiums and fees for any loan outstanding or entered into after July 6, 2014, that is secured by residential improved real estate or a mobile home. This provision includes an exemption for certain institutions with less than \$1 billion in assets.

**Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
National Credit Union Administration
Farm Credit Administration**

**Interagency Statement on the Impact of Biggert-Waters Act
March 29, 2013**

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration (the Agencies) developed this guidance to inform financial institutions about revisions to the Flood Disaster Protection Act of 1973 (the FDPA). This guidance discusses the effective dates of certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 (the Act), enacted July 6, 2012, and the impact of the Act on the Agencies' proposed Interagency Questions and Answers.

Biggert-Waters Act Amendments

- **Force Placement**: The FDPA provides that a lender or its servicer must notify a borrower if it determines that the flood insurance coverage on the improved real estate or mobile home serving as collateral for the borrower's loan has expired or is less than the amount required for that particular property (42 USC 4012a(e)). The notice must inform the borrower of the need to purchase flood insurance. If the borrower fails to purchase flood insurance within 45 days after notification, the lender or servicer must purchase flood insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer. The Act amends the FDPA to:
 - Provide that the premiums and fees that a lender or servicer may charge the borrower include premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide sufficient coverage amount;
 - Require the lender or servicer, within 30 days of receiving a confirmation of a borrower's existing flood insurance coverage, to terminate any force-placed insurance and refund to the borrower all force-placed insurance premiums and any related fees paid for by the borrower during any period of overlap between the borrower's policy and the force-placed policy; and
 - Require a lender or servicer to accept as confirmation of a borrower's existing flood insurance policy a declarations page that includes the existing flood insurance policy number and the identity and contact information for the insurance company or agent.

It is the Agencies' position that the force placement provisions of the Act described above became effective upon enactment.

- Civil Money Penalties: The maximum civil money penalty for a FDPA violation has been increased to \$2,000. In addition, the penalty cap per year has been deleted. It is the Agencies' position that this provision became effective upon enactment.
- Private Flood Insurance: The mandatory purchase requirement has been amended to require lenders to accept private flood insurance policies as satisfaction of the mandatory purchase requirement if the coverage provided by the private flood insurance satisfies the standards specified in the Act. In addition, regulated lenders are required to disclose to borrowers that:
 - Flood insurance under the National Flood Insurance Program (NFIP) is available from private insurance companies or from the NFIP directly;
 - Flood insurance that provides the same level of coverage as an NFIP policy may be available from private insurance companies; and
 - Borrowers are encouraged to compare policies.

This provision will be implemented by the Agencies through notice and comment rulemaking. It is the Agencies' position that this provision of the Act is not effective until regulations are issued.

- Escrow of Flood Insurance Payments: Lenders and servicers must establish escrow accounts for flood insurance premiums and fees for residential improved real estate or a mobile home, for any loan secured by such residential improved real estate or mobile home¹ outstanding or entered into after July 6, 2014. Except as may be required under applicable state law, a lender is exempt from the escrow requirement if: (1) the institution has less than \$1 billion in assets; and (2) as of July 6, 2012, the institution was not required by federal or state law to escrow taxes or insurance for the term of the loan, and it did not have a policy to require escrow of taxes and insurance.

This provision also will be implemented through notice and comment rulemaking. It is the Agencies' position that this provision of the Act is not effective until regulations are issued. The Agencies intend to publish escrow regulations in sufficient time for the industry to implement them prior to July 2014.

¹ The Act was recently amended by Public Law No. 112-281 to clarify that these provisions apply to *residential* improved real estate.

Biggert-Waters Act and Impact on Agency Guidance

The Agencies proposed question and answer 62 to address whether a borrower may be charged for the cost of flood insurance that provides coverage for the 45-day force placement period (2009 Interagency Questions and Answers, 74 FR 35914 (July 21, 2009) and 2011 Interagency Questions and Answers, 76 FR 64175 (Oct. 17, 2011)).² Because the Act addresses this issue, proposed question and answer 62 is no longer necessary.

In addition, the Agencies proposed revised question and answer 60 and proposed revisions to previously finalized question and answer 57. The Agencies do not intend to finalize proposed questions and answers 57 and 60 at this time. After final regulations have been promulgated, the Agencies expect to undertake a review of the Interagency Questions and Answers and may propose changes as appropriate.

² <http://www.gpo.gov/fdsys/pkg/FR-2009-07-21/pdf/E9-17129.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2011-10-17/pdf/2011-26749.pdf>.