



FEDERAL RESERVE BANK *of* KANSAS CITY

April 8, 2013

Interagency Statement on the Impact of Biggert-Waters Act

To the Chief Executive Officer of Each Tenth District State Member Bank, Bank Holding Company, and Savings and Loan Holding Company:

On March 29, 2013, the Board of Governors of the Federal Reserve System (Federal Reserve Board) issued a letter regarding interagency guidance on the impact of the Biggert-Waters Act (Act).

The Federal Reserve Board, in conjunction with 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 guidance to inform financial institutions about several provisions of the Act that will become effective when the Agencies publish implementing regulations, as well as two lender-related provisions of the Act concerning force placement and civil money penalties, which became effective immediately upon enactment.

A copy of the CA Letter 13-2 is attached. Please direct any questions concerning the guidance to the Consumer Affairs Department of the Federal Reserve Bank of Kansas City at (800) 333-1010, extension 8812488, or via email at linda.painter@kc.frb.org.

Sincerely,

Michael R. Steckline
Assistant Vice President

Enclosure



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SANDRA F. BRAUNSTEIN
DIRECTOR
DIVISION OF CONSUMER
AND COMMUNITY AFFAIRS

CA 13 -2

March 29, 2013

**TO THE OFFICERS AND MANAGERS IN CHARGE OF CONSUMER AFFAIRS
SECTIONS AND TO EACH DOMESTIC BANKING ORGANIZATION SUPERVISED
BY THE FEDERAL RESERVE:**

SUBJECT: Interagency Statement on the Impact of Biggert-Waters Act

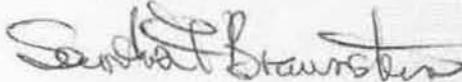
Applicability to Community Banking Organizations: This guidance applies to all state member banks, including those with \$10 billion or less in consolidated assets.

On July 6, 2012, Congress amended the Flood Disaster Protection Act of 1973 when it enacted the Biggert-Waters Flood Insurance Reform Act of 2012 (the Biggert-Waters Act). Certain provisions of the Biggert-Waters Act impact regulations and guidance that the federal financial institution supervisory agencies have provided to lenders to assist them in complying with federal flood insurance statutes. In response, 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 the attached guidance to inform financial institutions about these provisions of the Biggert-Waters Act.

This guidance identifies and describes several provisions of the Biggert-Waters Act that will become effective when the Agencies publish implementing regulations. The guidance further discusses two lender-related provisions of the Biggert-Waters Act, those addressing force placement and civil money penalties, which became effective immediately upon enactment. The Biggert-Waters Act revises the maximum civil money penalty for a violation of the Flood Disaster Protection Act to \$2,000 per violation. The Board of Governors may assess civil money penalties up to the statutory maximum for flood insurance violations that occurred on or after July 6, 2012.

Federal Reserve Banks are asked to distribute this letter and the accompanying guidance to state member banks and bank holding companies, as well as to supervisory and examination staff. If you have any questions concerning this guidance, please contact Lanette Meister at (202) 452-2705.

Sincerely,



Attachment: Interagency Statement on the Impact of Biggert-Waters Act

**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 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>.