

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: April 2013 **NO:** 13-RA-03
TO: Federally Insured Credit Unions
SUBJ: Guidance on Biggert-Waters Flood Insurance Reform Act of 2012
ENCL: [Interagency Statement](#) on Impact of Biggert-Waters Act

Dear Board of Directors and Chief Executive Officer:

The purpose of this Regulatory Alert is to notify you of changes to the National Flood Insurance Program (NFIP) and upcoming rulemakings to address statutory amendments.

Background

On July 6, 2012, President Obama signed into law the Biggert-Waters Flood Insurance Reform Act of 2012, (Biggert-Waters Act), which reauthorizes and reforms the NFIP through September 30, 2017.

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), and the Farm Credit Administration (FCA) (collectively, the Agencies) have agreed on guidance to inform financial institutions about revisions to the Flood Disaster Protection Act of 1973 (Flood Act). You can download a copy of the interagency statement by clicking [here](#).

The Biggert-Waters Act addresses a wide range of reforms including:

- Phasing out subsidies for many properties;
- Raising the cap on annual premium increases from 10 percent to 20 percent;
- Allowing owners of multifamily properties to purchase NFIP policies;
- Imposing minimum deductibles for flood claims;
- Requiring the NFIP administrator to develop a plan for repaying the debt incurred from Hurricane Katrina; and
- Establishing a technical mapping advisory council to deal with map modernization issues.

Additional amendments and timelines that affect federally insured credit unions directly are addressed below.

Major Biggert-Waters Act Provisions

- **Force Placement:** The Flood Act requires a lender or its servicer to notify a borrower if it determines that the flood insurance coverage on improved real estate or a 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 the lender's 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. The Biggert-Waters Act amended the Flood Act 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;
 - 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 including the existing flood insurance policy number and the identity and contact information for the insurance company or agent.

The forced placement provisions described above became effective July 6, 2012.

- **Civil Money Penalties:** Effective July 6, 2012, the maximum civil money penalty for a Flood Act violation was increased to \$2,000 per day. The Biggert-Waters Act deleted the cap on penalties per year.
- **Private Flood Insurance:** The mandatory purchase requirement was 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 Biggert-Waters Act. Additionally, regulated lenders will be required to disclose to borrowers that:
 - Flood insurance under the 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 disclosure provision will be implemented by the Agencies through a proposed rule and comment period. It will become effective after final 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 the residential, improved real estate or mobile home¹ outstanding or entered into after July 6, 2014.

Most credit unions will be exempt from the escrow requirement if: (1) the credit union has less than \$1 billion in assets, and (2) as of July 6, 2012, the credit union 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 escrow provision will also be implemented through a proposed rule and comment period and will become effective after final regulations are issued. The Agencies intend to publish escrow regulations in sufficient time for the industry to implement them prior to July 2014.

Additional Biggert-Waters Act Timelines

As of January 1, 2013, homeowners with subsidized insurance rates on non-primary residences began receiving a 25 percent increase each year until premiums reflect full risk rates.

Effective August 1, 2013, owners of business properties with subsidized premiums will receive a 25 percent increase each year until premiums reflect full risk rates.

Owners of property not insured as of July 6, 2012, with a lapsed NFIP policy, or with a policy that was purchased after July 6, 2012, will receive policies with full-risk rates.

In 2014, other property owners, including non-subsidized policyholders that are affected by map changes, will have full-risk rates phased in over five years at a rate increase of 20 percent per year to reach full-risk rates.

Impact of Biggert-Waters Act on Interagency Guidance

In 2009, the Federal Reserve Board, FDIC, OCC, NCUA, FCA, and the Office of Thrift Supervision adopted Interagency Questions and Answers to provide additional clarity about the NFIP. 74 Fed. Reg. 35914 (July 21, 2009).

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.

¹ The Biggert-Waters Act was recently amended to clarify that these provisions apply to *residential* improved real estate. Pub. L. 112-281, 126 Stat. 2485 (January 14, 2013)

If you have questions, please contact NCUA's Office of Consumer Protection at 703-518-1140 or ComplianceMail@ncua.gov, your regional office, or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman