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Ten Commonly Asked Questions about the Recent Flood Insurance Changes under the Biggert-Waters Act

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1. What is the Biggert-Waters Act?

The Biggert-Waters Flood Insurance Reform Act was signed by the President in 2012. It extends the National Flood Insurance Program (NFIP) for another 5 years and makes major changes to the program, including important changes to flood insurance premium rates for policyholders. Many of the rate changes went into effect on October 1, 2013. Other changes, as discussed below, are expected to be implemented in 2014.

2. Why was the Act passed?

Congress passed the Biggert-Waters Act in an attempt to make the National Flood Insurance Program more fiscally sound and to address the program's financial deficit, which has been caused by payouts for claims after hurricanes and other storms, such as Katrina and Sandy. Another goal of the Act is to build a reserve fund for the program.

3. What are some of the most significant changes to the National Flood Insurance Program under the Act?

The Act seeks to eliminate subsidized flood insurance premiums in approximately 1.12 million policies (the 20% that are currently subsidized at less than full-risk rates out of over 5 million total flood insurance policies) so that people will pay full-risk premiums. Other discounts, such as grandfathering (which allows a home that was built according to earlier standards to keep its rating after the flood maps are changed) and Preferred Risk Policy Eligibility Extensions, will also be phased out. The other 80% of flood insurance policyholders already pay full-risk rates, so they will not be affected by dramatic premium increases under the Act.

<u>Principal Dwellings (occupied 80% or more of the year)</u>

Major changes are already occurring to insurance premiums. The changes to policies on principal dwellings differ depending on whether the property was built pre-FIRM (Flood Insurance Rate Map) or post-FIRM. This refers to the date that a particular community adopted its Flood Insurance Rate Map. In St. Petersburg, the pre-FIRM date is May 28, 1971, and in Tampa, the date is June 18, 1980.

Post-FIRM properties that were built after the FIRM date do not receive subsidized rates and will not be affected by the large rate increases under the Act; they will continue to be subject to routine annual increases (see below).

Pre-FIRM properties that are paying subsidized rates, however, may be subject to substantial rate increases. If a homeowner purchased or assumed a policy for a pre-FIRM principal dwelling before July 6, 2012, then the rates will continue to be subsidized until certain events occur. Specifically, if that pre-FIRM principal dwelling is sold, if the current flood insurance policy lapses and is reinstated, if the property is substantially improved or experiences severe repetitive losses (4 or more claims of over $5,000 or 2 claims that are greater than the property value), or if a new policy is purchased, then full-risk rates will apply immediately. If a homeowner purchased or assumed a policy for a pre-FIRM principal dwelling after July 6, 2012, then the policyholder may receive a non-renewal notice so that the policy can be rewritten. As mentioned below, the homeowner would then be required to submit an elevation certificate, photographs, and other documents.

<u>Non-Primary Properties (occupied less than 80% per year)</u>

Non-primary pre-FIRM residential and business properties will experience annual premium increases of 25% until the rate is full risk.

<u>Mapping</u>

It is also expected that after the flood maps are changed, properties affected by the changes will experience increased rates (20% of the difference over five years until the rate is full risk).

<u>Routine Annual Increases</u>

With very limited exceptions, all flood insurance policies will likely experience a 5% rate increase. This rate increase is designed to help fund the reserve fund. Additionally, routine annual increases (up to the 20% cap) will still occur.

4. Who will be affected by these changes?

The Act will impact certain homeowners who have been paying subsidized flood insurance premiums. Approximately 20% of policyholders under the National Flood Insurance Program have paid subsidized rates, and some of those policyholders will see large premium rate increases.

5. What areas will be the most heavily impacted?

Those pre-FIRM properties that receive subsidized rates will be heavily impacted. Pinellas County will be strongly affected because it has the most subsidized flood insurance policies in the country. Between Pinellas County and Hillsborough County, it is estimated that over 55,000 homes could be affected.

6. What can policyholders expect?

If a policyholder's flood insurance policy falls into one of the categories that requires a full-risk rate to be applied, then his or her rate will likely be increased each year, or in certain cases, the rate will increase immediately to a full-risk rate (for example, if the property is sold). Premium changes that are due to the new flood maps will be phased in over a five-year period. Additionally, a homeowner whose rate is no longer subsidized may have to submit certain documentation to his or her insurance agent, including a flood insurance elevation certificate, photographs of the building, and a renewal application.

7. What are some of the concerns about the Act?

Many smaller single-family homes on or near the water will be affected by this Act, which could make it more difficult for many homeowners to afford flood insurance. Also, lenders could see increased penalties ($2,000 civil penalty with no annual limit) under the Act if the homes that they finance do not have the appropriate flood insurance. In addition, many, like Governor Scott, are concerned with the potentially negative impact this Act might have on Florida's recovering real estate market.

8. How will this Act affect the real estate market?

The Act will have a negative effect on areas that experience major premium increases. This could make it much more difficult for a homeowner to sell his or her home because prospective buyers may be hesitant to purchase a property when the insurance premium (which is required for a federally-regulated mortgage in certain high-risk flood zones) will be so expensive.

9. How will this Act affect lenders?

In addition to increased civil money penalties for lenders, the Biggert-Waters Act amended certain provisions of the Flood Disaster Protection Act that affect lenders. Lenders that receive confirmation that a borrower has flood insurance must terminate force-placed insurance and refund any premiums from the force-placed policy for the time during which the borrower's policy overlaps with the force-placed policy. This must be done within 30 days after the lenders receive the confirmation. Also, lenders may charge borrowers for premiums and fees that the lenders incur as of the lapse date of the flood insurance policy or the date on which the amount of coverage under the policy was insufficient. The Act also affects what documentation a lender must accept to confirm that a borrower has flood insurance coverage; a declarations page with the policy number and insurance company or agent's contact information must be accepted by the lender.

After regulations are issued, other provisions of the Act that affect lenders will go into effect. For example, private flood insurance policies that meet certain specified standards will satisfy the flood insurance requirement. Additionally, regulated lenders will have to make certain disclosures to borrowers about the availability of NFIP flood insurance and private flood insurance. Regulations will also eventually require lenders to set up escrow accounts for premiums from certain types of residential real estate for loans entered into after July 6, 2014, that are secured by the residential property. This requirement will be subject to some exemptions.

10. What can be done to minimize the negative effects?

In June 2013, the United States House of Representatives passed an amendment that would have delayed the increased rates for one year. Recently, Senator Bill Nelson filed an amendment to a House Journal Resolution that would delay the implementation of the rate increases, but the partial government shutdown over the budget and Obamacare has put it on hold. The Mississippi Department of Insurance is also suing the federal government over the Act.

Some have suggested that a voucher program and loan program should be implemented to help lower-income families afford flood insurance. Homeowners may have a few options to lower their rates, including obtaining an elevation certificate and submitting photographs and other required documents, which may or may not help that owner to obtain lower rates depending on the property's current elevation. Additionally, homeowners could elevate their homes above the Base Flood Elevation (BFE) and perform floodproofing measures. FEMA's NFIP Flood Insurance Manual further defines the terms and explains what cancellation notices may be issued.

New construction rates will be less for those building above the BFE and including specific mitigation features, such as breakaway walls. For example, certain buildings that are 1 foot above the BFE could receive an annual rate reduction of 39%, and certain buildings that are 2 feet above the BFE could receive an annual rate reduction of 48%. Finally, eligible policyholders in communities that participate in the Community Rating System (CRS) program may receive an additional discount (5–45%) on their premiums. The discount rates for St. Petersburg, Tampa, and other participating cities can be found in the CRS section of the NFIP Flood Insurance Manual.

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