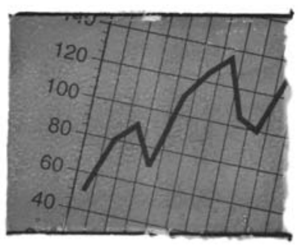

ANALYSIS OF THE NEW JERSEY BUDGET

DEPARTMENT OF BANKING AND INSURANCE

FISCAL YEAR 2013 - 2014

PREPARED BY OFFICE OF LEGISLATIVE SERVICES
NEW JERSEY LEGISLATURE • APRIL 2013

NEW JERSEY STATE LEGISLATURE

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DEPARTMENT OF BANKING AND INSURANCE

Budget Pages....... C-3, C-10, C-17, C-26, D-23 to D-29

Fiscal Summary ($000)

	Expended FY 2012	Adjusted Appropriation FY 2013	Recommended FY 2014	Percent Change 2013-14
State Budgeted	$57,973	$63,450	$63,450	—
Federal Funds	1,586	5,820	0	(100.0%)
Other	1,160	1,445	480	(66.8%)
Grand Total	$60,719	$70,715	$63,930	(9.6%)

Personnel Summary - Positions By Funding Source

	Actual FY 2012	Revised FY 2013	Funded FY 2014	Percent Change 2013-14
State	0	0	0	—
Federal	3	4	4	—
Other	486	492	511	3.9%
Total Positions	489	496	515	3.8%

FY 2012 (as of December) and revised FY 2013 (as of January) personnel data reflect actual payroll counts. FY 2014 data reflect the number of positions funded.

Link to Website: http://www.njleg.state.nj.us/legislativepub/finance.asp

Highlights

- The proposed budget recommends a $63.93 million appropriation for the Department of Banking and Insurance, a decrease of $6.785 million (9.6%) from the FY 2013 adjusted appropriation. The decrease reflects a $5.82 million reduction in anticipated federal funds and a $1.0 million decrease in dedicated or "Other funds." The department's recommended General Fund appropriation for FY 2014 is unchanged at $63.45 million.

- The department's activities are entirely funded through revenue collected from fees and assessments imposed on the industries it regulates, and in certain years, federal funding.

- The proposed FY 2014 budget anticipates $122.52 million in State revenue (page C-3) for the department, a $6.879 million decrease (5.3%) from FY 2013. The net reduction reflects a decrease of $7.475 million (66.9%) from fees collected by the New Jersey Real Estate Commission, offset by relatively minor increases of $200,000 (1.8%) from Banking - Assessments and $396,000 (1.0%) from Insurance – Licenses and Other Fees. The reduction in fees collected by the New Jersey Real Estate Commission is attributable to the fact that FY 2014 is a non-renewal year in a two-year licensing schedule.

- Although the proposed budget anticipates no new federal funding in FY 2014, the State was awarded $5.82 million in federal grants in FY 2013, a portion of which may continue to be spent in FY 2014, pursuant to provisions of the "Protection and Affordability Care Act," Pub. L.111-148, and the "Health Care and Education Reconciliation Act of 2010," Pub.L.111-152. Federal funds received in FY 2013 were comprised of $3.146 million for "Rate Review" and $2.674 million for "Exchange Establishment." Of the amount awarded for Rate Review, $2.035 million has been expended to date to implement certain provisions of the Affordable Care Act, while the remaining balance will be carried forward into FY 2014. Of the amount awarded for Exchange Establishment, $934,000 has been expended thus far; however, no additional expenditures are anticipated in FY 2013 or FY 2014 due to the recent decision by the Governor not to go forward with a State based Exchange.

- The department anticipates no new revenue from "Mortgage Settlement," a $1.0 million (100%) decrease from FY 2013 (page C-10). According to the department, the $1.0 million received for "Mortgage Settlement" represented the department's portion of the Joint State-Federal Mortgage Servicing Settlement. Under the terms of the agreement, each state's financial regulator received $1.0 million distributed through the Conference of State Bank Supervisors. At this time, it does not appear that the department has expended any of these funds although it has previously indicated that it anticipated using these funds for purposes related to overseeing certain lending practices.

Background Papers:

Fiscal and Personnel Summary

AGENCY FUNDING BY SOURCE OF FUNDS ($000)

	Expended FY 2012	Adj. Approp. FY 2013	Recom. FY 2014	Percent Change 2012-14	Percent Change 2013-14
General Fund					
Direct State Services	$57,973	$63,450	$63,450	9.4%	0.0%
Grants-In-Aid	0	0	0	0.0%	0.0%
State Aid	0	0	0	0.0%	0.0%
Capital Construction	0	0	0	0.0%	0.0%
Debt Service	0	0	0	0.0%	0.0%
Sub-Total	**$57,973**	**$63,450**	**$63,450**	**9.4%**	**0.0%**
Property Tax Relief Fund					
Direct State Services	$0	$0	$0	0.0%	0.0%
Grants-In-Aid	0	0	0	0.0%	0.0%
State Aid	0	0	0	0.0%	0.0%
Sub-Total	**$0**	**$0**	**$0**	**0.0%**	**0.0%**
Casino Revenue Fund	$0	$0	$0	0.0%	0.0%
Casino Control Fund	$0	$0	$0	0.0%	0.0%
State Total	**$57,973**	**$63,450**	**$63,450**	**9.4%**	**0.0%**
Federal Funds	$1,586	$5,820	$0	(100.0%)	(100.0%)
Other Funds	$1,160	$1,445	$480	(58.6%)	(66.8%)
Grand Total	**$60,719**	**$70,715**	**$63,930**	**5.3%**	**(9.6%)**

PERSONNEL SUMMARY - POSITIONS BY FUNDING SOURCE

	Actual FY 2012	Revised FY 2013	Funded FY 2014	Percent Change 2012-14	Percent Change 2013-14
State	0	0	0	0.0%	0.0%
Federal	3	4	4	33.3%	0.0%
All Other	486	492	511	5.1%	3.9%
Total Positions	**489**	**496**	**515**	**5.3%**	**3.8%**

FY 2012 (as of December) and revised FY 2013 (as of January) personnel data reflect actual payroll counts. FY 2014 data reflect the number of positions funded.

AFFIRMATIVE ACTION DATA

Total Minority Percent	27.3%	27.9%	28.7%	----	----

Significant Changes/New Programs ($000)

Budget Item	Adj. Approp. FY 2013	Recomm. FY 2014	Dollar Change	Percent Change	Budget Page
ECONOMIC REGULATION					
ANTICIPATED REVENUE					
Real Estate Commission	**$11,175**	**$3,700**	**($7,475)**	**(66.9%)**	**C-3**

The FY 2014 Budget Recommendation anticipates $3.7 million in revenue from the New Jersey Real Estate Commission, a $7.475 million (66.9%), decrease from FY 2013. The decrease can be attributed to the fact that FY 2014 is a non renewal year in a two-year licensing schedule.

The New Jersey Real Estate Commission issues licenses to real estate brokers and salespersons, real estate schools, and course instructors, and establishes standards of practice for the real estate brokerage profession.

APPROPRIATED REVENUE					
Mortgage Settlement	**$1,000**	**$0**	**($1,000)**	**(100.0%)**	**C-10**

The FY 2014 Budget Recommendation anticipates no new revenue from "Mortgage Settlement," a $1.0 million (100%) decrease from FY 2013.

According to the department, the $1.0 million received for "Mortgage Settlement" represents the department's portion of the Joint State-Federal Mortgage Servicing Settlement (settlement). Under the terms of the settlement, each state's financial regulator received $1.0 million distributed through the Conference of State Bank Supervisors. A review of budget data indicates that the department has not yet expended these funds. However, in its written response to questions posed by members of the Senate Budget & Appropriations Committee during the FY 2013 budget process, the department stated that it anticipated using these funds for purposes related to overseeing certain lending practices.

FEDERAL					
Affordable Care Act-Exchange	**$2,674**	**$0**	**($2,674)**	**(100.0%)**	**C-17**
Patient Protection and Affordable Care Act	**$3,146**	**$0**	**($3,146)**	**(100.0%)**	**C-17**
Actuarial Services	**$5,820**	**$0**	**($5,820)**	**(100.0%)**	**D-28**

The FY 2014 Budget Recommendation reflects a $5.82 million (100%) reduction in federal revenue (page C-17) from two sources: a $2.674 million decrease in funding for the Affordable Care Act – Exchange and a $3.146 million decrease for the Patient Protection and Affordable Care Act. The Budget Recommendation matches these reductions in federal funding with an equal reduction in the appropriation for Actuarial Services (page D-28). Specifically:

Significant Changes/New Programs ($000) (Cont'd)

Budget Item	Adj. Approp. FY 2013	Recomm. FY 2014	Dollar Change	Percent Change	Budget Page

Affordable Care Act – Exchange:
In FY 2013, the department received federal funding of $2.647 million in Exchange Planning and Exchange Establishment grants distributed pursuant to provisions of the "Protection and Affordability Care Act," Pub. L.111-148, and the "Health Care and Education Reconciliation Act of 2010," Pub.L.111-152, together more commonly known as the "Affordable Care Act." These funds were to be used to plan and explore the possibility of establishing a State Health Insurance Exchange to be operational in 2014. However, due to the decision by the Governor not to go forward with a State based Exchange, all activity exploring the establishment of an Exchange has been halted and no further expenditures are anticipated.. According to the department, of the total amount awarded for this purpose, $934,000 has been expended to date. As the federal award is a reimbursable grant, the decision to not go forward with an Exchange will not result in any unspent federal monies.

Patient Protection and Affordable Care Act:
In FY 2013, the department also received $3.146 million under the Patient Protection and Affordable Care Act (page C-17). According to the department, this funding is reflective of the Rate Review grants awarded to the State for implementing certain provisions of the Affordable Care Act. Pursuant to the Act, the federal Department of Health and Human Services must work with state insurance departments to review unreasonable rate increases for health benefits plans.

According to the department's response to the OLS Discussion Points during the FY 2013 budget process, this funding was used to hire a consultant, the Hay Group, to study the actuarial information that should be included in the rate filings, and to develop an automated process for receiving and analyzing the numerical information in rate filings published on the federal website, www.HealthCare.gov. The funding was also used, in cooperation with other states' funding, to assist the National Association of Insurance Commissioners (NAIC) in modifying the State Electronic Rate and Form Filing (SERFF) system to allow direct capture of information on rate increases. The State has also hired four additional staff, held annual rate forums, providing training and outreach efforts to stakeholders, and is preparing a report on the effectiveness of its rate review process.

According to the department, $2.035 million has been appropriated for these activities thus far and the department anticipates that the remaining funds will be carried over into FY 2014 to continue to support the associated four positions and certain other activities.

ECONOMIC REGULATION

DIRECT STATE SERVICES

Actuarial Services	**$600**	**$398**	**($ 202)**	**(33.7%)**	**D-28**

The FY 2014 Budget Recommendation includes a $202,000 (33.7%) decrease in anticipated funding for Actuarial Services. According to the department, the decrease can be attributed to a

Significant Changes/New Programs ($000) (Cont'd)

Budget Item	Adj. Approp. FY 2013	Recomm. FY 2014	Dollar Change	Percent Change	Budget Page

shift in funding between divisions, from Actuarial Services to the Bureau of Fraud Deterrence, ($82,000 increase, page D-28) and Consumer Protection Services and Solvency Regulation, ($121,000 increase, page D-28) to accurately reflect expenditures within the department. Historically, funding has been shifted between these two areas in mid year and the department is taking action to make these changes ahead of time.

Budget Item	Adj. Approp. FY 2013	Recomm. FY 2014	Dollar Change	Percent Change	Budget Page
ALL OTHER FUNDS					
Consumer Protection Services and Solvency Regulation	**$1,445**	**$480**	**($ 965)**	**(66.8%)**	**D-29**

The FY 2014 Budget Recommendation includes a $965,000 (66.8%) decrease in anticipated funding for Consumer Protection Services and Solvency Regulation. The decrease is largely attributed to the discontinuation of the one time receipt of $1.0 million in revenue from "Mortgage Settlement" in FY 2013 (page C-10).

According to the department, the $1.0 million received for "Mortgage Settlement" represented the department's portion of the Joint State-Federal Mortgage Servicing Settlement. Under the terms of the agreement, each state's financial regulator received $1.0 million distributed through the Conference of State Bank Supervisors. At this time, it does not appear that the department has expended any of these funds, although the department has previously indicated that it anticipated using these funds for purposes related to overseeing certain lending practices.

Significant Language Changes

Real Estate Guaranty Fund - Transfer to General Fund

Deletion

2013 Handbook: p. E-8
2014 Budget: p.

~~Notwithstanding the provisions of any law or regulation to the contrary, there is appropriated $1,000,000 from the Real Estate Guaranty Fund for transfer to the General Fund as State revenue.~~

Explanation

The FY 2014 Budget Recommendation eliminates current General Provisions language authorizing the transfer of $1.0 million from the Real Estate Guaranty Fund to the General Fund as State revenue. The FY 2013 transfer has been executed and the current balance of the fund is estimated to be $1.12 million.

The Real Estate Guarantee Fund was established by P.L.1976, c.112 (C.45:15-34 et seq.) to provide recovery for "any person aggrieved by the embezzlement, conversion or unlawful obtaining of money or property in a real estate brokerage transaction by a licensed real estate broker, broker-salesperson, salesperson or referral agent or an unlicensed employee of a real estate broker." The revenue in the fund is generated from fees charged upon the biennial issuance of real estate broker, broker-salesperson, salesperson or referral agent licenses. The fees charged are $20 for each broker or broker-salesperson and $10 for each salesperson or referral agent.

EXPLANATION: FY 2013 language not recommended for FY 2014 denoted by strikethrough.
Recommended FY 2014 language that did not appear in FY 2013 denoted by underlining.

Discussion Points

1a. Hurricane Sandy made landfall in New Jersey as a Tropical Storm on October 29 and wreaked havoc throughout the State, causing in excess of $37 billion in damage. The damage resulted in a lack of services severely disrupting people's lives and ability to conduct business throughout the State for several days, and for weeks and months in certain areas of the State. In the aftermath of the storm it was difficult for individuals to contact their banks and insurance providers to begin the process of recovering and rebuilding. The Department of Banking and Insurance (department) responded by conducting outreach to State licensed financial institutions and insurance providers to coordinate a response to the emergency. The department also set up mobile offices in the counties of Middlesex, Monmouth and Ocean. Staff from the department worked overtime coordinating the State's response, and to address the numerous questions raised regarding the response of the financial and insurance industries concerning hurricane deductibles, flood insurance, homeowners insurance, and public adjusters.

Question: a. Please provide to the Legislature details on the department's response to Hurricane Sandy, including the outreach that has been conducted in the community and the number of consumers assisted. What is the department's current level of activity related to Hurricane Sandy?

b. Please detail any additional expenditures incurred by the department as a result of Hurricane Sandy and indicate whether those expenditures will be recouped through federal or State funding.

1b. Prior to the onset of Hurricane Sandy, financial institutions throughout the State had to prepare by having enough cash available for customers to withdraw in the days preceding the storm. Then, after the storm, many financial institutions had to deal with the impact of the storm on their infrastructure, including flooded branches and power outages, while maintaining communication with their customers and staff as well as the department.

According to the department, all banks are required to have a Disaster Recovery Plan on file with the department that outlines the steps the institution will take in a disaster to ensure public confidence in the industry.

Subsequent to the storm, Executive Order No. 107 of 2012 directed banks to take into consideration the difficulties related to Hurricane Sandy and exercise appropriate forbearance on collection, cancellation, documentation, and other regulatory requirements, such as due dates and late fees. It has been reported that homeowners and businesses requested and received temporary deferral of their mortgage payments due to the delay in processing insurance claims and the inability of owners to conduct business due to the storm.

Question: a. What guidance did the department provide to State licensed banks in preparation for the storm?

b. How did the department communicate with banks during the immediate aftermath of the storm? How did the department ensure that consumers would be able to access their financial accounts during the immediate aftermath of the storm?

c. How many mortgages and loans held by State licensed financial institutions were affected by Hurricane Sandy? What percentage of these mortgages and loans have

Discussion Points (Cont'd)

deferred payments due to Hurricane Sandy? Has the department provided the banks with any guidance on deferrals of payments by business and residential owners who have been severely impacted by Hurricane Sandy? Does the department have any plans to provide these owners with financial assistance?

d. How many financial institutions are still not operating due to damage from Hurricane Sandy? How many banks had to move operational headquarters after Hurricane Sandy?

e. How many consumers have contacted DOBI with complaints about their financial institutions related to Hurricane Sandy? Please provide some details of these complaints and the department's related actions.

f. Does the department foresee any changes to the Disaster Recovery Plans currently required of the financial institutions? Were there any lessons learned from the response to Hurricane Sandy that the department will be using to implement changes in the future?

1c. Hurricane Sandy resulted in significant damage to property throughout the State. After the storm, individuals immediately began filing claims with their homeowners insurance carriers to restore damaged homes and repair or replace personal property. The claims process uncovered numerous problems and questions regarding homeowners insurance coverage, flood insurance coverage, hurricane deductibles and public adjusters.

Insurance carriers throughout the State were mobilized immediately after Hurricane Sandy to respond to customer requests for assistance on filing claims and for questions regarding their levels of coverage. At first, there was confusion among carriers and the general public as to whether the hurricane deductible permitted to be part of homeowners insurance policies pursuant to N.J.S.A.17:36-5.34 would be applied or if, as was the case after Hurricane Irene in 2011, the Commissioner of Banking and Insurance would issue a Bulletin prohibiting companies from applying hurricane deductibles (Bulletin No. 11-16). (For more information on the hurricane deductible, please see the background paper entitled "Hurricane Deductibles in Homeowners Insurance Policies" beginning on page 37 of this report.) On November 2, 2012, Governor Christie issued Executive Order No. 107, clarifying that due to the National Weather Service's categorization of Hurricane Sandy as a post-tropical storm at the time it made landfall in New Jersey, insurers could not apply a hurricane deductible to the payment of claims for property damage attributable to the storm.

Question: a. What guidance did the department provide to insurance providers in preparation for the storm?

b. What percentage of homeowners insurance policies written in New Jersey include a mandatory hurricane deductible? An optional hurricane deductible? Approximately what percentage of premium do policyholders save due to the current hurricane deductible?

Discussion Points (Cont'd)

c. Does the department anticipate that insurers will eliminate the availability of the hurricane deductible to insureds, as a result of declarations such as Executive Order 107?

d. Does the department anticipate recommending any changes to the administrative code regulating the hurricane deductible?

1d. Since many of the property claims from Hurricane Sandy were due to flooding from overflow of inland or tidal waters, people looked to their flood insurance, rather than their homeowners insurance, for coverage of their losses. In many instances, this was the first time individuals and businesses had incurred a flood loss and many were unaware that regular homeowners or commercial insurance does not cover this type of flood damage. Additionally, newspaper reports reflect concern that individuals were not adequately informed of their need to purchase flood insurance coverage by their insurance carriers.

Flood damage from inland or tidal water is covered through the National Flood Insurance Program (NFIP), which is run by the federal government through the Federal Emergency Management Agency (FEMA) and is purchased separately from private homeowners insurance coverage. If a property is in a designated flood zone pursuant to the Flood Insurance Rate Maps (FIRMs) and the community participates in the NFIP, individuals and businesses can purchase federal flood insurance, but are not required to do so unless mandated by their financing agency. (Please see the background paper entitled "The National Flood Insurance Program" beginning on page 31 of this report for more information.)

Unfortunately, Hurricane Sandy not only resulted in widespread flooding in designated flood zones, but also in certain areas that were not designated as flood zones, and thus not covered by the NFIP. Additionally, since there are no federal or State mandates requiring property owners to maintain flood insurance, some homeowners and businesses did not carry flood insurance.

Subsequent to the storm, FEMA issued Advisory Base Flood Elevations (ABFEs) in November, 2012. Prior to the storm, FEMA had been studying the New Jersey coastline to update the FIRMs, something that had not been done in 25 years, but FEMA had not yet completed updating the maps. The ABFEs are not final, but indicate a more current higher flood elevation in certain areas and were released to assist communities and homeowners in their reconstruction efforts. Additionally, Public Law No. 112-141, including the federal "Biggert-Waters Flood Insurance Reform Act of 2012" enacted on July 6, 2012, contained several reforms that could assist the State and local governments in implementing policies to adapt to sea-level rise and other flood impacts from climate change, including minimal requirements for building in the FIRM's.

Question: a. How many consumer inquiries did the department receive related to flood insurance? Please classify these inquiries by type.

b. How many complaints have been filed by individuals regarding the misrepresentation of insurance coverage? What steps is the department taking to ensure that individuals are aware of their coverage levels after Hurricane Sandy?

Discussion Points (Cont'd)

c. Is the department recommending any changes to the notifications currently included in homeowners insurance policies to better promote individuals' awareness of the exclusion of flood insurance in traditional homeowners insurance policies?

d. Has the department conducted any analysis, or is it aware of any analysis, of the impact of the new Advisory Base Flood Elevations on flood insurance policy costs in the applicable regions? Please share any cost estimates that the department may have with the Legislature.

e. Does the department have a position on requiring local communities to amend zoning laws to allow individuals to rebuild to the specifications required by FEMA for lower flood insurance rates?

1e. It has been widely reported that FEMA is slow in responding to claims, with a little over 50 percent of claims (37,000 of the 73,000 total) having been closed as of February 5, 2013. Conversely, as of February 15, 2013, approximately 87 percent of all insurance claims related to Hurricane Sandy had been closed. In response to the remaining open claims, the department, on February 25, 2013, announced plans to begin a new Mediation Program to give consumers the option to settle disputed cases without resorting to lawsuits. The Mediation Program will not include flood insurance claims because those claims are handled by the National Flood Insurance Program pursuant to federal regulations.

Additionally, on February 5, 2013 the department issued Order No. A13-104 requiring all insurers to respond with a complete and accurate written response to an inquiry by the department on any claim related to Hurricane Sandy within 5 working days of receipt of such claim. This is 1/3 of the 15 days normally given to insurers to respond to such a query. Reports indicate that insurers have varied widely in their response and ability to settle claims quickly after Hurricane Sandy.

Question: a. Please provide more details on the Mediation Program. Who will be operating the program? What are the costs of the program? For how long will it operate? How many cases have been handled by the program thus far?

b. How many inquiries has the department submitted to insurers on behalf of consumers? Has Order No. A13-104 had the desired effect of shortening response time for the department as well as individuals?

c. In addition to the Mediation Program and the shortened response time, what other steps has the department taken to ensure a quicker settlement of claims, both flood insurance and homeowners insurance, so individuals can begin to rebuild?

1f. Insurance providers employ adjusters to survey the damage to property after an incident and decide on the value of a claim. Individuals may also employ public adjusters to evaluate the damage and assure that a settlement is consistent with the terms of the individual's coverage. In New Jersey, public adjusters must be licensed pursuant to P.L.1993, c. 66 (C.17:22B-1 et seq.). Anticipating the need for additional public adjusters after the storm, the department established Temporary Public Adjuster Sublicenses, valid for up to 90 days from the date of the declaration of the catastrophic loss occurrence. State regulations require that the

Discussion Points (Cont'd)

public adjuster contract specify a list of services to be rendered and that the maximum fee charged must be "reasonably related to services rendered." (N.J.A.C. 11:1-37.7) However, based on department communication, press reports and testimony before Legislative committees, it appears that there are public adjusters who are taking advantage of the unprecedented need for their services and charging extremely high rates. The department issued Bulletin No. 12-16 to "remind all public adjusters… that any fees for adjusting services charged to consumers must be reasonably related to the services rendered" and that the department "will closely monitor all fees charged by public adjusters, and in particular any fees that appear excessive." Additionally, Senate Bill No. 2472, approved by the Senate Commerce Committee on February 2, 2013, provides that no licensed adjuster may accept compensation in excess of 12.5 percent of the claim payment made by the insurer, except in limited circumstances.

Adjusters are licensed every two years and pay a fee ranging from approximately $150 to $320 per license. The State historically has collected approximately $90,000 every other year in revenue from these fees. The temporary public adjuster fee is also $150.

Question: a. How many Temporary Public Adjuster Sublicenses were issued since the State of Emergency was declared by Governor Christie on October 27, 2012? How many different sponsors were associated with these sublicensees?

b. What is the total amount of revenue collected thus far in license fees from temporary licenses?

c. How many complaints regarding public adjusters has the department received in the aftermath of the storm?

d. Has the department hired additional staff to audit public adjusters' records in the aftermath of the storm? Has the department taken any administrative action against any public adjusters, temporary or otherwise, due to misconduct in the aftermath of the storm?

e. What has been the average compensation collected by adjusters on Hurricane Sandy related claims? How does this compare to adjusters' normal range of fees?

f. Does the department intend to increase the licensing fee charged to public adjusters to compensate for any additional staffing or auditing needed in the aftermath of the storm?

2. Hurricane Sandy is one in a long list of extreme weather events in the United States over the past 20 years. Industry experts, most recently in the National Climate Assessment and Development Advisory Committee's Report (draft released in January 2013), predict that the Northeast is statistically likely to endure more catastrophic weather events in the future. The combination of these weather events and the experts' warnings have led insurance companies to exercise increased caution in writing new policies in coastal areas and to apply stricter standards to the type and condition of homes they would insure. In response to FY 2013 OLS Discussion Points, the department stated that there are approximately 100 companies writing homeowners insurance throughout the State. However, 22 of these companies, which represent

Discussion Points (Cont'd)

27 percent of the market share, are only writing renewal business. Additionally, some of these companies do not write coastal policies and some consider the entire state to be coastal. The department can not be certain as to which companies continue to write new policies because there is no "take all comers" requirement in the line of homeowners insurance. Thus, there is no way for the department to be certain these companies are offering coverage in all areas of New Jersey.

Question: Please provide the 2012 New Jersey Market Share for Homeowners Insurance report and indicate: which companies are writing new business in the State and where; which companies are not writing in coastal areas; which companies only write in the surplus market; and, which companies are only writing renewal policies, and are not accepting new homeowners policies.

3 a. The FY 2012 Appropriations Act included an $8.49 million increase in federal funding for the department. The increase in federal funding included three grants related to the "Patient Protection and Affordable Care Act," Pub. L.111-148, and the "Health Care and Education Reconciliation Act of 2010," Pub.L.111-152, collectively more commonly known as the "Affordable Care Act." As described in more detail below, all of these anticipated funds were not realized by the State, due to the Executive's decision not to go forward with implementing a State Health Insurance Exchange.

The first grant anticipated $982,000 from Federal FY 2011 and $1 million from Federal FY 2012 for the Consumer Assistance Program (CAP), which is a federally funded program that enhances and expands many of the services currently provided by the department's Consumer Assistance Unit. The Consumer Assistance Unit, currently employing 9 investigators, two supervisors and a manager, is responsible for responding to consumer calls about health insurance issues of a technical or emergent nature. The staff also investigates inquiries and complaints involving all lines of insurance. According to the department's response to the OLS Discussion Points during the FY 2013 budget process, the department expended $265,019 to temporarily hire two new consumer assistance staff members, who developed resource lists for members of the public, trained department employees and assisted in setting up the data reporting system required of CAP grant recipients. The two employees were subsequently reallocated to the Rate Review grant (see Discussion Point #3b.) as of October 2011. The enhancements to the system implemented by these temporary employees were needed due to the changes required as a result of the Affordable Care Act. For example, the State may now accept complaints from, and advocate on behalf of, persons covered by self funded health benefits plans, an area in which the State was precluded from interceding prior to enactment of the Affordable Care Act.

Question: a. Please provide the number of customer inquiries, by subject area, handled by the CAP program in FY 2011, FY 2012 and thus far in FY 2013.

b. Please detail the current CAP staffing levels and any planned future hires and the associated budget for CAP.

3b. The second grant included approximately $7.4 million for Federal FYs 2011 through 2014 to enhance the department's ability to review insurance companies' rate proposals. Pursuant to the Affordable Care Act, the federal Department of Health and Human Services

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must work with state insurance departments to review unreasonable rate increases for health insurance plans. The FY 2014 Governor's Budget Recommendation indicates that $1.586 million in funds were appropriated for this purpose in FY 2012 and $5.82 million is anticipated to be appropriated in FY 2013 (page D-28).

According to the department's response to the OLS Discussion Points during the FY 2013 budget process, the department engaged the Hay Group in 2011 to study the actuarial information that should be included in the rate filings, and to develop an automated process for receiving and analyzing the numerical information in rate filings published on the federal website, www.HealthCare.gov. The funding was also used, in cooperation with other states' funding, to assist the National Association of Insurance Commissioners (NAIC) in modifying the State Electronic Rate and Form Filing (SERFF) system to allow direct capture of information on rate increases. The State has also held annual rate forums, providing training and outreach efforts to stakeholders, and is preparing a report on the effectiveness of its rate review process.

(Please see the OLS background paper, "Health Insurance Rate Review; Federal Health Care Reform Law Requirements" in the FY 2013 budget analysis book for more information.)

Question: a. Please update the Legislature on the work of the Hay Group, hired to develop an automated process for receiving and analyzing the numerical information in rate filings, as well as on the use of the enhanced SERFF system. Please detail any remaining work to be completed by the Hay Group and provide an accounting of all monies provided to the Hay Group for their services in FY 2012, FY 2013 and anticipated in FY 2014.

b. Please detail any new staff hired in FY 2013, or anticipated to be hired in FY 2014, for the Rate Review program and the anticipated duration of their employment.

c. Please detail how the department anticipates using the remaining $5.82 million, referenced in the FY 2014 Budget Recommendation? What is the timeline for the use of these funds?

d. Does the department anticipate applying for federal grants to fund continued Rate Review activities into the future? What is the timeline for these grants?

3c. The third grant, $1 million from Federal FY 2011 and $7.67 million from Federal FY 2012, was to be used to plan and explore the possibility of establishing a State Health Insurance Exchange to be operational in 2014. However, due to the decision by Governor Christie not to go forward with establishing a State based Exchange, all activity exploring the establishment of an Exchange has been halted.

The Affordable Care Act provided the states with the opportunity to establish state-based "American Health Benefit Exchanges" for individuals, and "Small Business Health Options Program Exchanges" for small businesses. A portion of the $1 million Exchange planning grant was awarded to the Center for State Health Care Policy at Rutgers, the State University, for a report outlining the State's options to establish an Exchange and to facilitate stakeholder forums. The report was issued in September 2011 and provided information on implementation options, including the possible design of a Health Insurance Exchange. The forums, held

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throughout the State until October 2011, obtained input from stakeholders with an interest in the healthcare delivery and financing systems on how the State should establish an Exchange.

The $7.674 million awarded in Federal FY 2012 was intended to "close the identified Informational Technology gaps, gather stakeholder input on specific decision points, detail a financial management plan, establish audit and fraud detection procedures, develop reinsurance and risk adjustment plants, research Medicaid network issues, analyze projected plan costs and utilization, and further develop plans and standards for plan management, including options for defining Essential Health Benefits."

Both of the awards were intended to fund the exploration of the steps needed to establish an Exchange. The FY 2011 grant was expended and the FY 2012 grant, as of January 2013, was not being used due to the Executive's decision not to go forward with a State based Exchange at this time. Governor Christie, in his veto of Senate Bill No. 2135 in December 2012, indicated that he did not want to "ask New Jerseyans to commit today to a State-based Exchange" but, that the veto should not be "interpreted as foreclosing future consideration on this matter." Indeed, the Governor indicated that he did not feel that the federal government had presented "a structured blueprint for the design and operation of a Federally Facilitated Exchange and the technical details for its linkage to each state. This uncertainty regarding the potential operation of Partnership Exchanges and Federally Facilitated Exchanges necessarily clouds the analysis of whether a State-based Exchange would be the best option of the three for New Jersey."

Question: a. Please detail any activities undertaken by the department to continue to remain aware of and involved in the establishment of other State Exchanges, Partnership Exchanges and a Federally Facilitated Exchange.

b. Is any portion of the $7.674 million awarded in Federal FY 2012 committed for work completed before the Governor's decision to forgo a State Exchange? Please elaborate, detailing the amounts committed and to whom they are committed.

c. Please discuss any information learned during the Exchange planning process that will benefit the department overall, even if a State Exchange is not operated in New Jersey.

4. Pursuant to the Affordable Care Act, individuals can now access information regarding health insurance carrier requests for rate increases on the federal website devoted to the Affordable Care Act, www.healthcare.gov. Rate review information for every state can be accessed at http://companyprofiles.healthcare.gov/ and those rate increase requests that meet the threshold of 10 percent or more are required to be on the website. A review of this website in January 2013, revealed 51 requests for rate increases meeting this threshold in New Jersey in 2011 and 2012. The 51 requests were for plans offered by three companies and ranged from 11 percent for an Oxford Health Plans (NJ) Inc. plan to 28 percent for an Aetna Life Insurance Company plan. It appears that the majority of requests were generally "approved" by the department, even though the department does not have the statutory or regulatory power to technically approve or disapprove rates, and the website and the rate review are purely for consumer information. (Please see the background paper, "Health Insurance Rate Review;

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Federal Health Care Reform Law Requirements" in the FY 2013 OLS budget analysis of the department for more information.)

Question: a. Please describe the rate review process the department employs. Please describe any instance where a rate has been deemed excessive and the insurance carrier has been instructed to re-evaluate the proposal.

b. Please provide the filed rate increase requests for FY 2012 and thus far in FY 2013 which did not meet the 10 percent threshold by each company.

c. Although the Affordable Care Act establishes a 10 percent threshold, states have the option of establishing a different threshold. Is the State contemplating a different threshold for rate review?

5. In 1992, New Jersey enacted two laws establishing two programs, the New Jersey Individual Health Coverage Program and the Small Employer Health Program that gave individuals and small employers in the State guaranteed access to health insurance coverage, regardless of health status, age, claims history, or any other risk factor.

The New Jersey Individual Health Coverage Program (IHCP), P.L.1992, c.161 (C.17B:27A-2 et seq.), was established to provide access to a broad choice of private health insurance products to any New Jersey resident who does not have access to employer-based or other group health coverage. At first, the IHCP market was robust, but starting in the mid 1990's there was a steady increase in the premium and a change in participation toward older and potentially higher risk insureds. In 1993, its first year of reporting, the IHCP detailed 156,565 covered lives. This increased to a maximum of 220,384 lives covered in 1995, gradually decreasing to 100,853 in the third quarter of 2012.

Since 2001, the Legislature has made two changes to the original IHCP intended to make more affordable policies available to a wider population. P.L.2001, c.368 (C.17B:27A-4.4 et seq.) requires health insurance carriers to offer a limited health care services plan, known as the Basic and Essential Health Care Services Plan (the "B&E Plan") that is more affordable than the standard IHCP plans, although not as generous in coverage. The act permits carriers to rate the B&E Plan by using factors for age, gender, and geographic location, but by no more than a 3.5 to 1 ratio between the highest and lowest rated plans. The B&E Plan was successful for those individuals who could choose a plan with limited coverage. It covered 814 lives in the first year of implementation (2003), increasing to 100,853 in the third quarter of 2012.

In 2008, the Legislature recognized a need for more affordable policies with full coverage. P.L.2008, c.38 (C.26:15-1 et al) modified the requirements on policies available under IHCP to make them more affordable and therefore attractive to younger uninsured persons. These modifications, including modified community rating; reduction in the number of plans required to be offered; and the addition of optional riders on the policies, were intended to control policy costs for the insureds. However, the changes do not appear to have increased the number of people choosing standard IHCP coverage, which has continued to decline each year from a maximum of 220,384 covered lives in 1995 to 44,294 covered lives in the third quarter of 2012.

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Also in 1992, the Small Employer Health (SEH) Program, P.L. 1992, c.162 (C. 17B:27A - 17 et seq.) was established to provide small employers (those with 2 – 50 employees) with the option to purchase standardized health benefits plans. The plan can be modified based on the age, gender and family status of the employees and location of the business. However, the ratio for the highest rates for a SEH plan to the lowest rates may not exceed 2:1. In 1994, its first year of reporting, the SEH program reported 694,312 covered lives. This increased to a maximum of 919,953 covered lives in 2005 and has gradually decreased to 678,508 covered lives reported in the third quarter of 2012.

Question: a. Please provide sample policy costs for individuals purchasing policies through the IHCP, for the most recent year available and for as many previous years as possible. Please explain the difference in the cost of policies over the previous years. Please comment and provide analysis on the decline in the number of covered lives through the IHCP. What factors does the department believe contributed to the decline in the number of lives covered through the IHCP?

b. Please provide sample policy costs for individuals purchasing policies through the B & E program for the three most recent years available. Please explain the difference in the cost of policies over the previous years.

c. Please provide sample policy costs for businesses purchasing insurance through the SEH program for the three most recent years available. Please explain the difference in the cost of policies over the previous years. Please comment and provide analysis on the decline in the number of covered lives under the SEH program.

d. Please comment on the anticipated effect of the Affordable Care Act's requirement for individuals to maintain insurance coverage and for employers to provide insurance coverage, in certain circumstances, on the IHCP, SEH and B&E programs.

6. In 2010, NJ Protect was launched as a new health insurance option for uninsured New Jerseyans with pre-existing medical conditions pursuant to Section 1101 of the Affordable Care Act, which established a temporary national high-risk health insurance pool to provide coverage to individuals with pre-existing medical conditions. The new pools could be administered directly by the state, or states may defer to the federal government to administer the new programs. These pools were originally meant to accept clients until 2013 and conclude in 2014 with the implementation of the Health Insurance Exchanges, which are intended to provide alternatives for individuals with pre-existing conditions to access health benefits coverage. However, a directive from the federal government required that all states cease accepting new applications for enrollment after the close of business hours on Friday, March 1, 2013. The federal Department of Health and Human Services issued this directive due to concern that the program was going to surpass its $5 billion national appropriation. Subsequently, in response to the federal directive, the department requested it be permitted to continue enrolling individuals through the end of 2013, emphasizing the State's prudent management of NJ Protect, however, the State is no longer accepting new enrollees.

The department, in its response to the OLS Discussion Points during the FY 2013 budget process, indicated that as of February 2012, New Jersey had drawn down $18.19 million from the federal government and had collected $4.15 million in premiums for NJ

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Protect costs. Furthermore, the department estimated that NJ Protect costs would equal $53.23 million by year end 2012 and $100.27 million by year end 2013.

To be eligible for NJ Protect, an individual must be: a U.S. citizen, or lawfully present in the United States; a New Jersey resident; without creditable coverage for at least six months; and have a pre-existing condition. The State offers NJ Protect through two private carriers, AmeriHealth of New Jersey and Horizon Blue Cross Blue Shield of New Jersey. The carriers began accepting applications in August 2010.

Question: a. Please provide the number of enrollees (by age group) for NJ Protect in Calendar Years 2011 and 2012 and estimated for Calendar Year 2013.

b. Please provide a report detailing the specific number of plans chosen by enrollees in Calendar Years 2011 and 2012 and estimated for Calendar Year 2013.

c. Please provide an accounting of federal funds and premiums received by the State for NJ Protect in FY 2011 and FY 2012 and estimates for FY 2013 and FY 2014. Please detail the uses of funding received.

d. What is the date that all current enrollees of NJ Protect will no longer receive coverage through NJ Protect? How does the department anticipate that these individuals will access health care services at that time?

e. Has the department received an exception from the federal government to continue to enroll individuals in NJ Protect? If so, for how long may the State continue to enroll individuals in NJ Protect?

7. The "Interstate Insurance Product Regulation Compact," P.L.2010, c.120 (C.17B:37-1 et seq.), made New Jersey a member of the Interstate Insurance Product Regulation Commission ("Commission"). The Commission is a joint public agency that administers the Interstate Insurance Product Regulation Compact ("Compact") on behalf of compacting states and develops uniform standards for certain insurance products, including annuities, life insurance, and disability income insurance.

By entering into the Compact, a state facilitates prompt review of these insurance product filings by providing insurers a single office to which a filing of an eligible insurance product may be submitted for approval. If the insurance product is approved by the Commission in accordance with its standards, the product will be accepted by the regulatory agencies in all the states that have joined the Compact. Information from the Commission indicates that 41 states and Puerto Rico are members of the Compact as of January 2013. Business in these states represents approximately 70 percent of the premium volume nationwide.

There are over 62 uniform standards in disability income, individual life, group life, annuity and long-term care product lines already adopted and available. Additional standards are in development for term life insurance and group and individual life annuities. Under the compact, insurers and third party filers seeking to have a product approved by the commission are required to file the product with, and pay applicable filing fees to, the commission.

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Question: a. How has entering into the Compact affected the department's work load? Has there been an increase in the overall time spent by department staff analyzing products approved by the commission? Has this increased the department assessment on insurance carriers?

b. What are the applicable filing fees paid to the commission by insurance providers? Please provide a comparison of fees paid to the commission relative to fees previously paid to the State? Is there any cost to the State for being a member of the Compact?

8. P.L.2011, c.25 (C.17:47B-1 et seq.), more commonly known as the "Captive Insurers Act" took effect in May 2011 and permits a captive insurance company to be licensed by the department to do business in the State in any of the lines of insurance in subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.) or Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.), generally including contracts or policies of life insurance, health insurance, annuities, indemnity, property and casualty, fidelity, guaranty and title insurance, and reinsurance, provided the captive meets certain requirements. "Captive insurance companies are insurance companies established with the specific objective of financing risk emanating from their parent group or groups." (DOBI PRN 2011-192) The act regulates captive insurance companies, which include pure captive insurance companies, association captive insurance companies, sponsored captive insurance companies, and industrial insured captive insurance companies. Prior to enactment of P.L.2011, c.25, captive insurance companies were not permitted to be domiciled in New Jersey.

The department asserted in Bulletin No.11-08 that the Captive Insurers Act "provides significant new opportunities for New Jersey business to better manage their own risk by insuring themselves through a New Jersey-based captive, instead of a captive domiciled in another state or by purchasing insurance in the commercial market." The addition of captive insurance companies to New Jersey is also intended to increase the number of professionals dedicated to the captive insurance market, such as accountants, actuaries, and managers who may all become registered service providers with the department.

Pursuant to the act, a premiums tax is collected from captive insurance companies, but the companies are excluded from the requirement to pay the special purpose apportionment (discussed in more detail in Discussion Point #11b). The tax is collected at the following rate on direct premiums for all lines of insurance, except reinsurance premiums: 0.0038 on the first $20,000,000; 0.00285 on the next $20,000,000; 0.0019 on the next $20,000,000; and 0.00072 on each dollar thereafter. Companies are required to pay the following tax rate on *reinsurance* premiums: 0.00214 on the first $20,000,000; 0.00143 on the next $20,000,000; 0.00048 on the next $20,000,000; and 0.00024 of each dollar thereafter. The tax is due on March 1 each year on the premiums the company earned in the previous calendar year. The minimum aggregate premiums tax to be paid by a company is established at $7,500 and the maximum tax is $200,000 per company.

Section 13 of P.L.2011 c.25 (C.17:47B-13) establishes the "Captive Insurance Regulation and Supervision Fund" to provide the department with a funding source to administer the Captive Insurers Act. Pursuant to statute, the commissioner is responsible for

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establishing the fees and assessments necessary for the administration of the act and all fees and assessments established in the act must be deposited into the fund.

The department promulgated regulations implementing the act (N.J.A.C. 11:28-1.1 to 1.23) in 2012. The regulations provide for a maximum $4,000 fee for the initial application review required for licensing a captive insurance company, and a $300 license renewal fee.

Question: a. Please provide the number of captive insurers, by type, that have submitted applications to be licensed in New Jersey in 2011, 2012 and thus far in 2013. How many of these have completed the application process and are licensed in New Jersey?

b. Please provide the number of other professionals--i.e., accountants, auditors and managers--that have registered to be service providers for the captive market in 2011, 2012, and thus far in 2013.

c. Please provide an estimate of premiums tax and registration fees the department anticipates from captive insurers in FY 2012 and FY 2013.

d. Please detail the expenditures made by the department for the administration of the Captive Insurers Act.

e. Please provide an accounting of the Captive Insurance Regulation and Supervision Fund, including opening and closing balances, revenues and disbursements, since inception.

f. Please indicate how many captive insurance conferences the department has held since the enactment of P.L.2011, c.25 and how often the department plans to hold such conference in the future?

g. Please indicate how many captive insurance companies have re-domesticated to New Jersey, pursuant to N.J.A.C.11:28-1.4?

9. Historically, New Jersey has struggled to contain the costs of motor vehicle insurance. Several reforms by the Legislature have attempted to resolve this problem. In the past, P.L.2003, c.89 (C.17:30A-2.1 et al) was enacted, following the "Automobile Insurance Cost Reduction Act," (AICRA) P.L.1998, c.21 (C.39:6A-1.1 et al), both of which established reforms to increase the availability of motor vehicle insurance and contain costs of that insurance. Prior to AICRA, the "Fair Automobile Insurance Reform Act of 1990," P.L.1990, c.8 (C. 17:33B-1 et al), (FAIR Act) was enacted to provide comprehensive reform of the automobile insurance system in the State. The legislation has been successful to varying degrees in containing costs. However, some requirements established pursuant to these reforms, such as "take-all-comers" and the establishment of medical fee schedules, have expired or have been amended since enactment and there have been reports that the cost of automobile insurance has again begun to increase in the State.

Question: a. Please provide the total number of automobile insurers offering automobile insurance in the State in 2011 and 2012 and thus far in 2013?

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b. Please provide the rate increases filed by these companies in 2010, 2011, 2012 and 2013. Please comment on the reasons stated for these rate increases and provide an estimate for automobile insurance rates for 2014 and 2015 in New Jersey. Does the department believe any statutory changes aimed at ensuring the availability of auto insurance and containing costs for consumers are warranted at this time?

10. Section 10 of P.L.1988, c.119 (C.39:6a-4.6) provides that the commissioner is responsible for the promulgation of medical fee schedules to be used in the reimbursement of health care providers for medical expense benefits under the personal injury protection (PIP) coverage of automobile insurance policies. Additionally, "the commissioner may contract with a proprietary purveyor of fee schedules for the maintenance of the fee schedule, which shall be adjusted biennially for inflation and for the addition of new medical procedures."

On November 5, 2012, the department adopted new rules, repealed certain rules, and made other amendments to revise the regulatory framework for the provision and payment of PIP benefits. The changes, among other things: add new procedures to the PIP medical fee schedules; require PIP vendors to be licensed in the State; implement standardized forms to be used by insurers; exclude emergency rooms from the imposition of medical fee schedules; amend the internal appeals process; and amend the alternate dispute resolution process.

The expansion of the PIP medical fee schedules was intended to lessen the reliance of providers and insurers on determining reimbursement for procedures on the "usual, customary and reasonable fee" (UCR) in those instances in which a procedure is not included in the PIP medical fee schedule. The expansion to include many more procedures on the PIP medical fee schedules is intended to standardize the cost of procedures for both providers and insurers. Standardization leads to certainty in the marketplace and less administration and cost incurred by both parties in establishing payment for a service.

Question: a. Please update the Legislature on the impact of the new PIP fee schedules on the cost of private passenger automobile insurance to consumers in New Jersey.

b. Please provide specific information on the effect of changes to the alternate dispute resolution process. Have the changes implemented to the process resulted in a shorter time frame, and thus lower cost, associated with dispute resolution? Has this had a measurable impact on PIP costs overall?

c. Please provide information on the use of UCR fees for services not included in the PIP medical fee schedule. Has there been a significant decrease in the reliance on the UCR fees due to the inclusion of more procedures on the fee schedule? Which database, or databases, are most commonly used by insurers to determine the UCR fee? Does the department anticipate changing any aspect of this process in the next year?

d. Has the department conducted any analysis of the codes billed by providers to determine any patterns in the provision of services due to modified funding structures as provided for in the regulations? If not, will the department be conducting any sort of analysis in the future?

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11a. The mission of the Department of Banking and Insurance is to regulate the banking, insurance and real estate industries in a professional and timely manner that protects and educates consumers and promotes the growth, financial stability and efficiency of those industries. The funding used to support the department is generated primarily through the collection of assessments and premiums taxes on the industries that it regulates.

P.L.2005, c.199 (C.17:1C-33 et seq.) established an assessment on all banks and other financial entities the department charters, licenses and registers for all services related to the department's financial regulation, supervision and monitoring of these entities. The Division of Banking imposes two assessments on financial entities on or around October 1 of each year: a Banking Licensing Assessment and a Banking Depositor Assessment. The assessment is based on calendar year business for the companies and fiscal year expenditures for the Division of Banking. Each year, the Director of the Division of Budget and Accounting in the Department of the Treasury certifies to the Commissioner of Banking and Insurance by category the total amount of expenses incurred by the division. These expenses include, in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of employee benefits and workers' compensation, rentals for space occupied in State-owned or State-leased buildings and all other direct and indirect costs of the administration of those functions of the department, as well as any amounts remaining uncollected from the assessment of the previous fiscal year (N.J.S.A.17:1C-35).

Question: a. Please provide the total Banking Licensing Assessment charged and revenue collected for FY 2011, FY 2012, and estimated for FY 2013. Please provide the total Banking Depositor Assessment charged and revenue collected for FY 2011, FY 2012, and estimated for FY 2013. Please provide the number of payers of each of these assessments.

b. Please provide the expenses of the division detailed in N.J.S.A.17:1C-35 and approved by the Director of the Division of Budget and Accounting in the Department of the Treasury, as well as the number of employees dedicated to the division for FY 2011, FY2012 and estimated for FY 2013.

11b. P.L.1995, c.156 (C.17:1C-19 et seq.) established a special purpose apportionment for funding expenses incurred by the Division of Insurance. The apportionment is charged to all insurers writing most classes of insurance in the State (including, but not limited to: property; fire; flood; motor vehicle; life and health; accident; title; credit; personal liability; malpractice; homeowners; and any other specified kinds of insurance) and those health maintenance organizations (HMOs) granted a certificate of authority to operate in New Jersey pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.). This assessment is used for funding the activities of the division in regulating, monitoring and supervising these carriers. The apportionment of each carrier is based on the proportion that its net written premiums for the preceding calendar year bear to the combined net written premiums of all carriers in the preceding year, except that no carrier is required to pay an apportionment that exceeds 0.10 percent of its net written premiums. Each year, the Director of the Division of Budget and Accounting in the Department of the Treasury certifies to the Commissioner of Banking and Insurance, by category, the total amount of expenses incurred by the division. These expenses include, in addition to the direct cost of personal service, the cost of maintenance and operation, the cost of employee benefits

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and workers' compensation, rentals for space occupied in State-owned or State-leased buildings and all other direct and indirect costs of the administration of those functions of the department, as well as any amounts remaining uncollected from the special purpose apportionment of the previous fiscal year (N.J.S.A. 17:1C-20).

Question: a. Please provide the amount of the total insurance special purpose apportionment for FY 2010, FY 2011, FY 2012, and estimated for FY 2013.

b. How many companies reached the individual maximum apportionment in FY 2010, FY 2011 and FY2012?

b. Please provide the expenses of the division detailed in N.J.S.A.17:1C-20 and approved by the Director of the Division of Budget and Accounting in the Department of the Treasury and provide the number of employees dedicated to the division in FY 2012.

11c. In addition to the special purpose apportionment, several different statutes subject insurance carriers to additional assessments to reimburse the department for operating expenses, including the following:

1) An assessment on insurers for all services related to the department's fraud prevention expenditures, pursuant to P.L.1983, c.320 (C.17:33A-1 et seq.). This assessment is billed and collected by the department, but is used to reimburse the Department of Law and Public Safety for the operations of its Office of the Insurance Fraud Prosecutor (OIFP).

2) An assessment on all Small Employer Health Insurance Benefits (SEH) carriers for the reasonable and necessary organizational and operating expenses of the SEH board of directors pursuant to section 16 of P.L.1992, c.162 (C.17B:27A-32).

3) An assessment on all Individual Health Coverage (IHC) Program carriers for the reasonable and necessary organizational and operating expenses of the IHC Program board of directors pursuant to section 10 of P.L.1992, c.162 (C.17B:27A-11).

4) An assessment for the Motor Vehicle Security Responsibility Fund pursuant to section 1 of P.L.1952, c.176 (C.39:6-58). The assessment is billed and collected by the department but used to reimburse the New Jersey Motor Vehicle Commission.

Question: a. Please provide an accounting of all assessments collected by the department for FY 2011, FY 2012, FY 2013 and estimated for FY 2014. Please detail this information by source, as numbered above.

11d. The New Jersey Real Estate Commission (REC), in the Department of Banking and Insurance was created to administer and enforce New Jersey's real estate licensing law, N.J.S.A. 45:15-1 et seq. The REC issues licenses to real estate brokers and salespersons, real estate schools, and course instructors, as well as establishes standards of practice for the real estate brokerage profession. The REC collects revenue from the issuance of licenses on a biennial basis as well as various other fees.

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Question: Please provide the amount of revenue collected by the REC for FY 2010, FY 2011, FY 2012, FY 2013 and estimated for FY 2014. Please detail the source of this revenue by type of transaction; for example, license renewal or other regulatory fees.

12. Section 13 of P.L.1995, c.156 (C.17:1C-31) provides that each insurer is liable for a maximum total assessment as follows: "the total amount assessable to companies in any fiscal year for all special purpose assessments made pursuant to applicable law as of the effective date of this act, including the special purpose apportionment established by this act, shall not exceed 0.25 percent of the combined net written premiums received, as defined in subsection b. of section 2 of this act, by all companies for the previous year." P.L.2010, c.21 increased the allowable percentage from 0.20 percent to 0.25 percent. In response to OLS Discussion Points during the FY 2013 budget process, the department indicated that total net written premiums for FY 2011 were $41.5 billion.

Question: a. What are the combined net written premiums for all insurers for FY 2012 and estimated for FY 2013?

b. What was the total amount assessed to, and total amount collected from, companies in FY 2012 and FY 2013? Is there any concern by the department that this number might exceed the "cap" in the near future?

13. The FY 2014 Budget Recommendation anticipates that DOBI will collect a total of $123 million in revenue (pages, C-3, C-10 and C-18) for the department. Additionally, the department anticipates collecting $18.527 million in FY 2014 for the Motor Vehicle Commission. This revenue is reported under the Department of Transportation's anticipated revenue (page C-15).

$63.45 million is recommended to be appropriated for the department's operations as represented on pages D-23 to D-29 of the FY 2014 Budget Recommendation, which is unchanged from the current year.

Question: a. Is there any other revenue collected for the department that is not referenced in the FY 2014 Budget Recommendation as the department's revenue?

b. Please provide the overall revenue collected through the department and the total amount that is dedicated to the department, the total amount transferred to other departments for their operations and the total remaining in the General Fund for other State purposes unrelated to the department's scope of activities.

14. The department is responsible for investigating in both the Banking and Insurance divisions fraud committed by licensees. In certain insurance fraud, the department investigates in coordination with the Office of the Insurance Fraud Prosecutor (OIFP) in the Department of Law and Public Safety. These investigations may result in consumer recoveries and fines imposed on the industries the department regulates. In response to FY 2013 OLS Discussion Points, the department replied that it had made the following recoveries on behalf of consumers: $29.4 million in FY 2012(as of 2/29/12); $17.5 million in FY 2011; $11.35 million in FY 2010; and, approximately $52.4 million in FY 2009.

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In its response, the department also provided a broad summary of the types of fines it collects from the different industries. Insurance companies are typically fined for improper claim denials or underpayments, use of unapproved policy forms and/or rates, transacting business without a license and failing to file required reports. Insurance producers are generally fined for misappropriation of premiums, failure to secure coverage, and forgery. Licensed financial entities and State chartered credit unions are usually fined as a result of examinations, consumer complaint handling and enforcement actions. The department stated that it had collected the following fines from the banking, insurance and real estate industries: $1.45 million in FY 2012 (as of 2/29/12); $3.85 million in FY 2011; $1.1 million in FY 2010; and $17.8 million in FY 2009.

Question: a. Please provide an inventory of all recoveries for consumers collected by the department for FY 2012 and thus far in FY 2013. Please detail this information by division.

b. Please provide a detailed inventory of the fines *levied* and fines *collected* by the department for FY 2012 and thus far in FY 2013. Please detail this information by division and by cause by industry. Please provide the collection rate for fines levied. Based on this information, does the department conclude that there are any significant increases in industry behavior punishable by fines that warrant attention by the Legislature?

c. Please detail the amount of revenue collected through fines which is retained in the Department of Banking and Insurance.

15. The New Jersey Surplus Lines Insurance Guaranty Fund, P.L.1984, c.101(C.17:22-6.70 et seq.) (the fund), administers the claims of insolvent surplus lines insurers that provided medical malpractice and homeowners coverage as eligible non-admitted insurers in New Jersey. All surplus lines companies in New Jersey are required to be members of the fund and to contribute funds for its operation.

Each member insurer must make an initial one time payment of $25,000 into the fund. Additionally, a surcharge, in an amount determined by the commissioner, is collected on any surplus lines coverage policy issued in New Jersey. The surcharge is collected by the surplus lines agent and forwarded to the fund on a quarterly basis. The amount may be adjusted annually to meet projected expenses of the fund, but it may not exceed 4 percent of the policy premium pursuant to section 6 of P.L.1984, c.101 (C.17:22-6.75). However, according to the department, this surcharge has not been collected since 1993.

Question: a. Please provide an update on the status of the New Jersey Surplus Lines Insurance Guaranty Fund, including: balances and disbursements made from the fund in the past 10 years; and estimates for FY 2013 and FY 2014.

b. Please comment on the history of the surcharge and provide the reasons why the surcharge is not collected.

Discussion Points (Cont'd)

16. P.L.2011, c. 119 revised the method for the regulation and collection of surplus lines insurance premium taxes. These revisions brought "the surplus lines law," P.L.1960, c.32 (C.17:22-6.40 et seq.), into compliance with the federal "Nonadmitted and Reinsurance Reform Act of 2010" (NRRA), which was passed by Congress as part of the "Dodd-Frank Wall Street Reform and Consumer Protection Act." Prior to the enactment of NRRA, states shared surplus lines premium tax revenue based on the location of the insured's various risks. Under NRRA, this ability to share surplus lines premium tax revenue was suspended in July 2011 until such time as New Jersey enters into a multi-state compact or agreement with one or more other states.

NRRA provides that if a state does not join such an agreement, it may collect 100 percent of the taxes due from insureds located in its state, otherwise known as "home-state" insureds. This includes the continued ability to collect all premium taxes owed by "home-state" insureds for their risks located in other states. However, as established under NRRA, a state that does not participate in a compact or agreement is precluded from collecting surplus lines premium taxes it currently receives attributable to risks situated in its state that belong to the home-state insureds of other jurisdictions.

P.L. 2011, c. 119 authorized the Commissioner of Banking and Insurance to enter into compacts or agreements with other states with respect to the collection of surplus lines premium taxes in order to maximize the tax revenue rightfully due and owing the State. As of July 2011, in the absence of an interstate compact regarding future surplus lines tax collections, all insurers for whom New Jersey qualifies as their "home state" are assessed the 5 percent surplus lines premium tax on all surplus lines insurance premiums, even if the premiums are on risks located out of the State.

At the time of enactment, it was unclear as to what affect this law would have on revenue collected by the State from surplus lines insurance premiums. According to the Department of Banking and Insurance, the State collected $42 million in revenue from the surplus lines premium tax in 2010 and approximately 80 percent of this revenue was from "home state" insureds. The remaining 20 percent of revenue was collected from insureds for whom there was uncertainty as to their "home state." The department estimated that there may be increased revenue due to capturing current out of State risks from "home state" insureds and due to increased clarity of the standardized procedures for the market participants.

Question: a. What is the current status of the State's participation in an agreement or compact with other states to collect surplus lines insurance premium taxes? Which states are part of any negotiations with the department? What is the anticipated timeline for the State's future participation in an agreement or compact with other states to collect the surplus lines tax?

b. Please provide the surplus lines tax rate assessed in the states immediately surrounding New Jersey, including: Pennsylvania, Maryland, Delaware, New York and Connecticut.

c. Please report the revenue collected from the surplus lines tax in 2012. What percentage of that revenue was from policies located in State and what percentage

Discussion Points (Cont'd)

was from policies located out of state but whose parent company identifies New Jersey as its "home state"?

17a. In addition to its responsibility to regulate and provide oversight to the insurance and banking industries, the department is also responsible for the oversight of the mortgage lending system and various other regulated professions discussed in more detail below.

a. The federal "Housing and Economic Recovery Act of 2008" (Pub.L.110-289) was signed into law in July, 2008. Among other initiatives, this act included the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" (S.A.F.E. Act). The S.A.F.E. Act defines a loan originator as an individual who takes a residential mortgage loan application and offers or negotiates terms of a residential mortgage loan for compensation or gain. The act requires the states to participate in the Nationwide Mortgage Licensing System (NMLS), established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. Each state's system must include, at a minimum, requirements that meet the established national standards for licensing loan originators. These requirements include, among other things, minimum education requirements, ethics training, background checks, proof of financial responsibility, bonding requirements and the successful completion of a written exam. The State complied with these new federal standards by enacting the "New Jersey Residential Mortgage Lending Act," (NJRMLA), sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.), which updated the current regulatory scheme to conform to the requirements of the federal S.A.F.E. Act, and replaced the "New Jersey Licensed Lenders Act" (NJLLA) (N.J.S.A.17:11C-1 et seq.) as the statutory framework for mortgage lenders.

The department, in its response to OLS Discussion Points during the review of the FY 2013 budget, revealed that there were 1,430 licenses issued to financial institutions participating in the mortgage lending business in the State in FY 2012 (as of March, 2012), pursuant to the NJRMLA. Furthermore, there were 7,178 licenses issued to individuals participating in the mortgage lending business in the State in FY 2012 (as of March, 2012). The department reported $25,900 in total revenue collected from licensees under the NJRMLA. This revenue was dedicated to the State. Additionally, $638,985 in revenue was collected by the NMLS. This is a decrease in total revenue collected and dedicated by the State under the NJLLA ($2.6 million in FY 2010, its last year of solo operation).

Question: a. Please provide the number of individuals who have been regulated, registered, and licensed by the State for FY 2011, FY 2012 and thus far in FY 2013 as participating in the mortgage lending business pursuant to the "New Jersey Residential Mortgage Lending Act."

b. Please detail the number of financial institutions, participating in the mortgage lending business, that are licensed by the State for FY 2010, FY 2011, FY 2012 and thus far in FY 2013 pursuant to the "New Jersey Residential Mortgage Lending Act."

c. Please indicate how much revenue the department has collected from each type of fee authorized under the "New Jersey Residential Mortgage Lending Act" in FY 2010, FY 2011, FY 2012 and anticipates collecting in FY 2013.

Discussion Points (Cont'd)

d. Please indicate how much revenue has been collected from New Jersey licensees by the Nationwide Mortgage Licensing System (NMLS) in FY 2010, FY 2011, FY 2012 and how much is anticipated in FY 2013.

e. Has the shift toward licensure and regulation occurring through the NMLS resulted in less department staff dedicated to reviewing mortgage licensees? What has the impact of these changes been on the department's budget for this division?

17b. In addition to licensing and regulating individuals employed in the mortgage industry, the department also licenses and regulates several other professional groups, including: debt adjusters (P.L.1979, c.16 (C.17:16G-1 et seq.)); home repair contractors (P.L.1968, c.224 (C.17:16C-95 et seq.)); insurance producers (P.L.2001, c. 210 (C.17:22A-26 et seq.)); pawnbrokers (R.S.45:22-1 et seq.); and public adjusters (P.L.1993, c.66 (C.17:22B-1 et seq.). Each of these individuals pays a fee to be licensed, and in some cases, to renew that license. These fees are intended to fund the administrative costs of providing oversight of these professions.

Question: a. Please provide the current initial fee and the renewal fee for each of these professions.

b. Please provide the annual revenue collected from each of these fees for the previous five fiscal years.

c. Please provide the annual cost to administer these programs for the previous five fiscal years and the number of full time equivalent staff assigned to licensing and regulatory activities per year, per profession.

18. The Workers Compensation Security Fund (WCSF) (R.S.34:15-105) is a depository for monies received from assessments levied against mutual and stock insurance carriers writing workers' compensation insurance in the State. The revenue in the fund is disbursed to persons entitled to receive workers' compensation from a carrier when that mutual or stock carrier is determined to be insolvent.

In January 2010, P.L.2009, c. 327 (C.34:15-105.1 et al.) was enacted, transferring responsibility for the management, administration and claims activities of the WCSF from the Department of Banking and Insurance to the New Jersey Property-Liability Insurance Guaranty Association (PLIGA).

PLIGA is a "private, nonprofit, unincorporated, legal entity" given certain statutory obligations to act as a safety net for policyholders and claimants in the property and casualty insurance marketplace pursuant to N.J.S.A.17:30A-1 et seq. As an independent entity, PLIGA is not included in the State budget, and the WCSF is no longer a State-administered fund.

In response to FY 2013 OLS Discussion Points, the department estimated that the WCSF would receive \$15.3 million in assessments and would have total expenditures of \$17.34 million in FY 2012, with an ending balance in the WCSF of \$82.2 million.

Discussion Points (Cont'd)

Question: Please provide an accounting of all resources and expenditures for the WCSF for FY 2011, FY 2012 and estimated for FY 2013, including, with respect to revenues: services and assessments and investment earnings; and with respect to expenditures: economic planning, development and security expenses and transfers to other funds (both State and PLIGA held). Please include the balance of the fund, both at the beginning of each fiscal year and projected for the end of each fiscal year. Please provide details for the dividend in FY 2011, FY 2012 and FY 2013.

19. Pursuant to P.L.2010, c.32 the former Division of Insurance Fraud Prevention (DIFP), was renamed and reconstituted as the Bureau of Fraud Deterrence. The former division was originally established under the Department of Banking and Insurance, but its functions were transferred to the Department of Law and Public Safety pursuant to Reorganization Plan No. 007-1998. The Bureau is now located in DOBI and consists of all civil investigators formerly assigned to the Office of the Insurance Fraud Prosecutor (OIFP) in the Department of Law and Public Safety, (other than those assigned to the Case Screening, Litigation and Analytical Support Unit), and those additional administrative and clerical support personnel transferred from the OIFP to the Bureau within DOBI. The OIFP was established in the Department of Law and Public Safety, pursuant to section 32 of the "Automobile Insurance Cost Reduction Act" (AICRA), P.L.1998, c.21 (C.17:33A-16). P.L.2010, c.32 provided that the OIFP retain responsibility for all criminal prosecutions and investigations of fraud, including the County Prosecutors' Reimbursement Program.

The functions of the Bureau and the OIFP are funded through the Insurance Fraud Prevention assessment (page C-4, FY 2013 Budget Recommendation). The Insurance Fraud Prevention assessment is an assessment on certain insurers for reimbursement of all costs related to the activities and responsibilities of the OIFP and the Bureau. Pursuant to section 8 of P.L.1983 c. 320 (C.17:33A-8), as amended by P.L.2010, c.32, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, on or before September 1 in each year, certify the total amount of expenses incurred by the State in connection with the administration of insurance fraud prevention in the previous fiscal year. This amount is then apportioned among the insurance companies by the department and an assessment is paid by the insurance companies prior to December 31 of each calendar year for expenses accrued in the previous fiscal year.

The County Prosecutors' Reimbursement Program is administered by the OIFP, but funded through the Insurance Fraud Prevention assessment collected by DOBI. The program was established pursuant to section 44 of P.L.1998, c.21 (C.17:33A-28) to provide reimbursement to the County Prosecutors' offices for their activities undertaken in connection with investigating and prosecuting insurance fraud.

Question: a. Please update the Legislature on the activities of the Bureau of Fraud Deterrence, including the number of cases being investigated and the types of fraud discovered.

b. Please provide expenses as they were certified by the Department of the Treasury pursuant to N.J.S.A.17:33A-8 for FY2012. Please break the expenses down to include, at a minimum, the direct cost of personal service, the cost of maintenance and operation, the cost of retirement contributions made, workers' compensation paid for

Discussion Points (Cont'd)

and on account of personnel, rentals for space and all other indirect or direct costs of the administration.

c. Please provide the annual awards for the County Prosecutors' Reimbursement Program for each award year since its inception and its estimated cost for FY 2014.

20. The Department of Banking and Insurance appears to be increasing the use of electronic registration for many of the services it provides both licensees and consumers. For example, insurance carriers and real estate licensees can renew and apply for licenses on the department's website and consumers can submit consumer complaints electronically. However, there also appear to be numerous licensees who must download forms from the website and mail them back to the department. For example, pawn brokers, debt adjusters, home repair contractors and check cashers must all submit through a regular mail service and there is no live chat option for consumers to access real time contact with a staff person from the Consumer Assistance Program.

Question: Does the department anticipate increasing the number of licensees who can submit license applications electronically? Does the department foresee adding any real time electronic customer service to its Consumer Assistance Program? What are the barriers to increasing electronic communication with the public and licensees?

Background Paper: The National Flood Insurance Program

The National Flood Insurance Program (NFIP) is a federally operated and subsidized insurance program available for individuals to purchase limited coverage for losses sustained due to inland or tidal water. The NFIP has recently drawn much scrutiny in the State due to the overwhelming devastation to property caused by Hurricane Sandy in October, 2012. The Department of Banking and Insurance is responsible for the oversight of homeowners insurance carriers and for assisting consumers in resolving any questions they may have regarding homeowners insurance. However, the NFIP is a federal program and the department has indicated it does not have oversight in the NFIP's handling of flood insurance claims, other than to act as a contact with NFIP on behalf of State residents, as appropriate.

According to the Federal Emergency Management Agency (FEMA), as of August 31, 2012, the NFIP had more than 5.5 million policies in force nationwide, covering approximately $1.2 trillion in property. In New Jersey, 236,000 policies were in force at that time, covering approximately $5.4 billion in property.[1] As of March 11, 2013, FEMA had made payments on $2.7 billion in claims to the NFIP from New Jersey residents for damaged sustained in Hurricane Sandy.

For decades, until the creation of the NFIP in 1968, the national response to flood disasters was limited to providing flood control projects such as dams, levees, and sea walls, and providing disaster relief after a flood occurred. This approach, however, did not reduce losses or discourage real estate development in flood-prone areas. Although flood insurance was available from private insurers during this period, it became increasingly more expensive and difficult to obtain. Insurers became unwilling to underwrite the risk of floods because of their catastrophic nature and because of adverse selection - those most likely to make flood insurance claims were the main purchasers of flood insurance.

The National Flood Insurance Act of 1968 established the NFIP.[2] The NFIP facilitates the nationwide availability of flood insurance through federal subsidies, and in return for these subsidies, requires local communities to adopt land use control and flood prevention measures that shift development away from flood-prone areas in order to reduce losses during floods. Thus, as an alternative to relying on flood control projects and disaster relief, the NFIP combines incentives for flood hazard mitigation efforts at the community level and insurance protection through a national program. The NFIP makes flood insurance available for losses to homes, businesses, public buildings, and other structures if the municipality or other community participates in the NFIP.[3] The NFIP is administered by the Federal Emergency Management Agency (FEMA), which is an agency of the U.S. Department of Homeland Security.

Subsequent to the National Flood Insurance Act of 1968, various aspects of the NFIP were revised through the enactment of the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994, the Flood Insurance Reform Act of 2004, and the Biggert-Waters Flood Insurance Reform Act of 2012.

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[1] www.fema.gov

[2] 42 U.S.C. ss.4001 et seq.

[3] Generally, a "community" is any political subdivision, such as a city, municipality, town, township, borough or village, or an unincorporated area of a county. For ease of reference, the term "municipality" will be used hereinafter to mean any form of community. "Answers to Questions About the NFIP," FEMA, May, 2006, p.4.

Background Paper: The National Flood Insurance Program (Cont'd)

Only flood insurance policies cover damages from floods; regular homeowners insurance policies do not.[4] Under FEMA regulations, a "flood" is defined as a general and temporary condition of partial or complete inundation of normally dry land areas from overflow of inland or tidal waters or from the unusual and rapid accumulation or runoff of surface waters from any source.[5] Generally, coverage for water damage under a homeowners insurance policy is limited to other elements that allow water to enter a home. For example, if a windstorm results in damage to a roof, the resulting damage from water entering through the roof would likely be covered under the homeowners insurance policy.

ELIGIBILITY OF MUNICIPALITIES TO PARTICIPATE IN NFIP

Participation in the NFIP is based on participation by municipalities, because adequate flood hazard mitigation involves appropriate municipal ordinances and land use planning. A municipality establishes its eligibility to participate in the NFIP by adopting floodplain management measures in special flood hazard areas to regulate new construction and substantial improvements to existing structures in order to minimize future flood damage.[6]

"Floodplain management measures" refer to a municipality's program of corrective and preventive measures for reducing future flood damage, including zoning, subdivision and building requirements.

"A special flood hazard area" is essentially a high-risk flood area - an area within a floodplain having a 1 percent or greater chance of flooding in any given year (also commonly known as a 100-year flood). Special flood hazard areas are delineated on Flood Insurance Rate Maps issued by FEMA to individual municipalities. The maps also indicate moderate and minimum flood risk areas and they are available for review in a local repository, such as a town hall or a county building, or at FEMA's Map Service Center which can be accessed at https://msc.fema.gov.

"Substantial improvements" include any rehabilitation, addition or other improvement of a building when the cost of the improvement equals or exceeds 50 percent of the market value of the building before the start of construction of the improvement.

FEMA's regulatory requirements with respect to floodplain management measures are the minimum measures acceptable for a municipality to participate in the NFIP. A municipality or a state can adopt more stringent requirements.[7]

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[4] New Jersey law requires issuers of homeowners insurance to provide certain written notices to policyholders that homeowners insurance policies do not cover flood damage, but that coverage may be available through the NFIP. See P.L.2000, c.84 (C.17:36-5.31 et seq.) and N.J.A.C. 11:1-5.5.

[5] 44 C.F.R. 9.4

[6] Each state's Governor designates an agency to coordinate NFIP activities in the State. These agencies assist municipalities in developing and adopting floodplain management measures. In New Jersey, the NFIP State Coordinator is within the Department of Environmental Protection, Bureau of Dam Safety & Flood Control.

[7] See 44 C.F.R. s.60.1 et seq., and "Answers to Questions About the NFIP," FEMA, May, 2006, p.25. In New Jersey, the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.) provides a statutory basis for the New Jersey Department of Environmental Protection to apply higher standards. See also N.J.A.C. 7:13-1.1 et seq.

Background Paper: The National Flood Insurance Program (Cont'd)

Nationally, almost all municipalities with serious flooding potential participate in the NFIP. If a municipality chooses not to participate in the NFIP, flood insurance under the NFIP is not available in that municipality and federal disaster relief assistance will not be provided for permanent repair or reconstruction of buildings damaged by flooding that are located in special flood hazard areas.

Almost all municipalities in New Jersey currently participate in the NFIP. The five municipalities that do not participate are: the Borough of Fieldsboro in Burlington County, the Borough of Newfield and the Township of South Harrison in Gloucester County, and the Borough of Audubon Park and the Borough of Hi-Nella in Camden County.

NFIP FLOOD INSURANCE POLICIES:COVERAGE, COVERAGE LIMITS, RATES, AND CLAIMS

Coverage

The NFIP Standard Flood Insurance Policy covers physical losses directly caused by a flood. Losses resulting from flood-related erosion and mudslides are also covered. A building and its contents are treated separately under the NFIP, so that coverage can be purchased for either or both.

Although coverage is limited for flood damage in basements and other areas below the lowest elevated floor of the building, some of the items generally covered are as follows:

- Building coverage includes: the building and its foundation, electrical and plumbing systems, central air conditioning, furnaces, water heaters, refrigerators, stoves, and dishwashers.

- Contents coverage includes: clothing, furniture, electronic equipment, curtains, portable and window air conditioners, and clothes washers and dryers.

Flood insurance policies contain a complete list of items covered under building and contents coverage, respectively. Information about coverage can also be obtained from the NFIP's Summary of Coverage, which can be accessed at www.floodsmart.gov.

Flood insurance coverage is available only on a one-year prepaid basis. There is normally a 30-day waiting period after purchase before flood insurance coverage becomes effective but certain exceptions may apply so as to shorten the waiting period. NFIP flood insurance policies require minimum deductibles which are applied separately to the building and contents coverage. Higher deductibles are available.[8]

[8] Some private insurance companies provide excess flood insurance coverage above the NFIP limits. Private insurance companies are not prohibited from providing their own flood insurance policies directly to consumers without NFIP involvement, but very few choose to do so.

Background Paper: The National Flood Insurance Program (Cont'd)

Coverage Limits

The following are the maximum limits of NFIP Regular Program coverages available for the Standard Flood Insurance Policy:[9]

Building Coverage	Maximum Insurance
Single Family Dwelling	$250,000
Other Residential	$250,000
Non-Residential or Small Business	$500,000
Contents Coverage	
Residential	$100,000
Non-Residential or Small Business	$500,000

Rates

The NFIP establishes flood insurance premium rates which are based on the amount of coverage purchased, location, age of the building, building occupancy, the design of the building and, for buildings in special flood hazard areas, the elevation of the building. Buildings in moderate-to-low risk areas may be eligible for lower rates than those charged in special flood hazard areas. The NFIP also allows, through its Community Rating System (CRS), for discounted flood insurance rates for policyholders in return for their municipality's voluntary adoption of floodplain management activities that exceed the minimum NFIP program criteria. Discounts range from 5% to 45%, depending on the extent to which the municipality's activities meet CRS criteria.

Claims

To file a claim for a flood loss, a policyholder should immediately report the loss to the insurer or agent who wrote the policy. A claims adjuster will then be assigned and will provide the policyholder with a "proof of loss" form which must be filed within 60 days of the date of loss. A proof of loss is a sworn statement by the policyholder that substantiates the insurance claim.

Generally, in the event of loss from a flood, claims under buildings and contents coverage are adjusted on an actual cash value basis, which is the cost to replace the insured property at the time of loss, less the value of its physical depreciation. However, replacement cost coverage - the cost to replace that part of a building that is damaged without depreciation - is available if the building is: (1) a single-family dwelling; (2) the policyholder's principal residence; and (3) insured for at least 80% of the replacement cost of the building at the time of the loss, up to the maximum amount of insurance available at the inception of the policy term.[10]

[9] Participation by a municipality in the NFIP consists of two phases: the Emergency Program and the Regular Program. The maximum limits provided are for the Regular Program. The Emergency Program is an initial, temporary phase, designed to provide a limited amount of coverage until the municipality complies with more comprehensive floodplain management measures so as to qualify for the Regular Program.

[10] See NFIP Summary of Coverage, accessible at www.floodsmart.gov.

Background Paper: The National Flood Insurance Program (Cont'd)

PURCHASING FLOOD INSURANCE

NFIP flood insurance is available for eligible buildings in all areas of participating municipalities, not just in special flood hazard areas. However, certain buildings are not eligible for NFIP flood insurance: (1) buildings over water or principally below ground; (2) buildings which FEMA determines have been declared by the state or local zoning authority to be in violation of state or local floodplain management measures; and (3) buildings constructed or substantially improved since October 1, 1983 and located in designated Coastal Barrier Resource System areas.[11]

Flood insurance under the NFIP can be purchased for eligible properties through two sources: (1) insurance agents and brokers who deal directly with FEMA; and (2) private insurance companies who participate in FEMA's "Write Your Own" (WYO) program.

In 1983, FEMA invited all licensed property and casualty insurance companies to participate in its WYO program. The program is designed to increase sales of NFIP policies by taking advantage of the private insurance industry's established marketing channels. The WYO program allows participating insurers to issue NFIP flood insurance policies and service these policies by collecting premiums and adjusting claims, while the NFIP reinsures 100% of the policy coverage. The coverage issued and premiums charged by WYO insurers are the same as those for policies issued directly by the NFIP.

Initially, under the National Flood Insurance Act of 1968, the purchase of flood insurance was entirely voluntary. However, since the enactment of the federal Flood Disaster Protection Act of 1973, federally regulated lending institutions are prohibited from making a mortgage loan in a special flood hazard area in a participating municipality unless the property and any personal property securing the loan are covered by flood insurance for the life of the loan.[12] Given the extent to which federal regulators have at least some involvement in regulating lending institutions, virtually every mortgage transaction is subject to the requirement that the owner have flood insurance if the property is in a special flood hazard area in a participating municipality.[13]

NFIP AUTHORIZATION AND FUNDING

Since its authorization first expired in 2008, the NFIP has operated on the basis of temporary authority in the form of 17 short-term extensions provided by federal law. Most recently, however, with the enactment of the Biggert-Waters Flood Insurance Reform Act of 2012, the NFIP has been extended through September 30, 2017. Some industry analysts project that this five-year reauthorization will provide needed stability for the program and the municipalities and insurers that participate in it.

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[11] "Answers to Questions About the NFIP," FEMA, May, 2006, p.10.

[12] A lending institution cannot require an amount of flood insurance in excess of the credit extended or the maximum coverage available under the NFIP, whichever is less. 42 U.S.C.A. s.4012a. A lending institution can make a mortgage loan in a special flood hazard area in a non-participating municipality if the lender notifies the owner that federal disaster relief assistance will not be available for flood damage to that property. 42 U.S.C.A. s.4106.

[13] See "Answers to Questions About the NFIP," FEMA, May, 2006, p.13.

Background Paper: The National Flood Insurance Program (Cont'd)

Funding for the NFIP has long been a matter of some uncertainty. Initially, the NFIP was funded, in part, by appropriations from the federal government. From 1986 until 2005, the NFIP was self-supporting because policy premiums covered all claims and expenses. However, in 2005, the NFIP incurred approximately $17 billion in flood claims caused by Hurricanes Katrina, Rita, and Wilma. Since that time, there have been several years in which claims exceeded premiums, thereby exacerbating NFIP's financial condition and culminating in an $18 billion debt to the U.S. Treasury, which must be repaid with interest. Until recently, under federal law, the NFIP had a $20.8 billion cap on the amount of money it could borrow from the U.S. Treasury.[14] Reacting to the unprecedented amount of claims expected to be filed in connection with Hurricane Sandy, Congress passed an increase in the borrowing authority of the NFIP to $30.5 billion, which President Obama signed into law on January 6, 2013.

[14] See, generally, *National Flood Insurance Program: Background, Challenges, and Financial Status*, Congressional Research Service, March 4, 2011.

Background Paper: Hurricane Deductibles in Homeowners Insurance Policies

New Jersey statutes and regulations allow homeowners insurance companies in New Jersey to use a hurricane deductible program under certain conditions. These laws generally allow insurers that make the appropriate filings with the Department of Banking and Insurance, to use mandatory hurricane deductibles of up to 5% and optional hurricane deductibles of up to 10%. See N.J.S.A. 17:36-5.33 et seq. and N.J.A.C. 11:2-42.7 et seq. If the insurer is permitted to use a mandatory hurricane deductible, and chooses to do so, the insurer does not have to offer the insured an opportunity to remove the deductible in return for payment of the higher premium. If the insurer is permitted to use an optional hurricane deductible, and chooses to do so, the insured can refuse the hurricane deductible, in which case the insurer would charge a higher premium.

Although a standard homeowners insurance deductible is a flat dollar amount - usually between $500 and $1,000 - a hurricane deductible reduces the amount of payment to a homeowner for a claim by a percentage of the home's insured value. Although rates may vary, they are reportedly between 2 to 5 percent of the home's insured value. For example, if a home is insured for $400,000 with a 4 percent hurricane deductible, for a loss caused by a hurricane, the homeowner would have to pay the first $16,000 needed to repair the home before the insurance coverage begins. Thus, hurricane deductibles typically have a much greater financial impact on a homeowner than a standard deductible.

In New Jersey, the use of hurricane deductibles came about through a recommendation of the Task Force on the Availability of Homeowners Insurance in the Coastal Region. The Task Force was created pursuant to an Assembly Joint Resolution and met several times in 1998-99 to consider a variety of issues regarding homeowners insurance in coastal regions. As one means to address the rising concerns about the availability and cost of homeowners insurance in coastal regions, the Task Force recommended consideration of allowing insurers to use hurricane deductibles to adjust rates to more accurately reflect the risks associated with property damage from hurricanes. That recommendation led to the enactment of statutes authorizing hurricane deductibles in certain areas and under certain circumstances as a means to attract more insurers to the market so as to increase competition and provide more coverage choices for homeowners in those areas where the homeowners insurance market had "tightened up." See N.J.S.A. 17:36-5.33 et seq.

As noted above, an insurer must file for approval with the Department of Banking and Insurance to use hurricane deductibles. Deductibles may be used in coastal areas designated by 112 zip codes which are listed in the department's regulations. In addition, insurers may file with the department for approval to use hurricane deductibles in areas not designated by the zip codes. In reviewing a request to use deductibles in these other areas, the department must consider: (a) an insurer's exposure to catastrophic hurricane losses; (b) associated reinsurance costs; and (c) potential impacts to the insurer's solvency. N.J.A.C. 11:2-42.9.

CRITERIA FOR HURRICANE DEDUCTIBLES TO APPLY

In order for homeowners insurance companies to apply hurricane deductibles to claims for property damage, certain weather-related criteria, as set forth in regulations adopted by the

Background Paper: Hurricane Deductibles in Homeowners Insurance Policies (Cont'd)

Department of Banking Insurance, must be met. Specifically, N.J.A.C. 11:2-42.7, and its incorporation by reference of N.J.A.C. 11:2-42 App. Exhibit D., provides uniform policy language for homeowners policies that use hurricane deductibles, as follows:

> "This deductible applies, as described below, in the event of direct physical loss to property covered under this policy, caused directly or indirectly in the event of a hurricane named by the National Weather Service or its successor from which sustained hurricane force winds of 74 miles per hour or greater have been measured in New Jersey by the National Weather Service (regardless of whether the sustained force winds reach the risk insured under the policy) and shall replace any other applicable deductible in that event."

In actual practice, homeowners insurance companies in New Jersey have yet to apply hurricane deductibles to policy claims because no storm has qualified since the deductibles were first authorized by statute. In the case of Hurricane Irene in 2011, the Commissioner of Banking and Insurance issued a bulletin prohibiting homeowners insurance companies from applying hurricane deductibles because the National Weather Service did not report winds in the State that met the regulatory criteria. In the case of Hurricane Sandy, Governor Chris Christie issued Executive Order No. 107, prohibiting homeowners insurance companies from applying hurricane deductibles because the National Weather Service categorized Sandy as a post-tropical storm.

DISCLOSURES TO HOMEOWNERS

New Jersey law requires that homeowners insurance companies provide policyholders with certain disclosures regarding policies that contain hurricane deductibles. These disclosures, which must be given with the issuance of each new policy and at renewal, include:

- whether the hurricane deductible is optional or mandatory;
- the circumstances and conditions under which the hurricane deductible will apply to the policy;
- an explanation of how application of the hurricane deductible will affect the settlement of a claim, the coverages to which the hurricane deductible will apply, and a specific example of a claim settlement; and
- if applicable, an explanation of how the insured may qualify for a lower hurricane deductible or the elimination of the hurricane deductible, including whether payment of an additional premium is a criteria for qualification. N.J.A.C. 11:2-42.8.

ADDITIONAL CONSIDERATIONS

The use of hurricane deductibles is currently allowed in 18 states. These states allow homeowners insurance companies to apply various forms of hurricane deductibles, with different "deductible triggers" - usually when the National Weather Service officially names a tropical storm, declares a hurricane watch or warning, or defines a storm's intensity.

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Most recently, in the aftermath of Hurricane Sandy, insurance companies and insurance trade associations have raised several issues as to the decisions in several states that hurricane deductibles could not be applied. In addition to New Jersey, Governors or insurance regulators in New York, Connecticut, Delaware, Rhode Island, Pennsylvania, Maryland and the District of Columbia disallowed the application of hurricane deductibles with respect to claims related to Hurricane Sandy. North Carolina was the only state to allow hurricane deductibles to be charged. Reportedly, insurers have recently indicated that although the purpose of the deductibles is to help keep the cost of insurance competitive in coastal areas, homeowners insurance premiums may have to be revisited if states continue to re-categorize hurricanes as post-tropical events, or if weather-related events otherwise cause enormous property damage and hurricane deductibles cannot be applied.

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