From: Anonymous

Proposal: 1462 (RIN 7100-AE00)-Reg H - Loans in Areas Having Special Flood Hazards

Subject: Reg H - Loans in Areas Having Special Flood Hazards

Comments:

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Proposal:Regulation H - Loans in Areas Having Special Flood Hazards [R-1462]
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Your comment: It is recommended that the Agencies clarify the proposed rule to further explain the date on which a flood insurance policy "expires" and the date on which a borrower has experienced a "lapse" in flood insurance coverage. And given this explanation, provide clarification on when a creditor may charge a borrower for force placed insurance premiums and fees. For example, flood insurance policies offered through the National Flood Insurance Program (NFIP) will generally have a 30-day grace period during which the borrower can submit his or her required premium payment and still maintain continuous coverage under the policy. Therefore, if the policy "expires" on Day 1, but the borrower pays the required premium on Day 30, there was never a "lapse" in coverage, although the policy did "expire".

Because creditors do not know if a borrower will pay the required premium within the grace period, some will decide, for various reasons, to make the decision to force place a flood insurance policy on Day 1 after policy expiration. While the Biggert-Waters Act and the proposed rule make it clear that a creditor may charge borrowers for premiums and fees incurred for coverage beginning on the date on which the flood insurance coverage lapsed or did not provide sufficient coverage, clarification is needed regarding what date should be used: the date of policy expiration or the date on which the grace period ended and the borrower was no longer able to maintain continuous coverage under the policy.

For example, consider a flood insurance policy that expires on December 1, 2013, but which offers a 30-day grace period. The borrower has until December 31, 2013 to pay the required premium to maintain continuous coverage under the policy. If the creditor force places flood insurance on December 2, 2013 and the borrower pays the required premium on December 20, 2013, may the creditor charge the borrower for premiums and fees for that 18-day period (December 2nd & December 19th) since, although the policy expired, the insurance coverage was continuous and never lapsed?

It is important to clarify the Agencies' expectations in this area because "policy expiration" does not necessary mean "lapse in insurance coverage". Even the language in the proposed rule uses the term "expiration" when it states on Page 43:

"Additionally, the Agencies interpret the Act to permit a regulated lending institution to force-place a flood insurance policy purchased on behalf of a borrower that is effective the day after expiration of a borrower's original insurance policy to ensure that it is continuous. Such a practice will ensure that institutions complete the force-placement of flood insurance in a timely manner upon lapse of the policy and that there is continuous insurance coverage to protect both the borrower and the institution."

It would seem that a creditor that chooses to force place a flood insurance policy after the expiration of the policy but prior to the end of the policy's grace period would be making a risk-based decision to either risk losing the collateral (in the event neither the creditor nor the borrower obtain flood insurance) or risk losing the amount of the premium paid by the creditor (if both the creditor and, eventually within the grace period, the borrower pay the premium). While it seems logical that charging a borrower for the force placed flood insurance premiums during an allowable grace period would constitute dual coverage (if the borrower ultimately pays the premium within the grace period to maintain continuous coverage), it is recommended that the proposed rule specifically address this situation.