



Compliance News...

Previously Filed SARs, High Risk Customers & Enhance Due Diligence

When reviewing or creating a list of the financial institutions high-risk customers, don't forget to include existing customers on which you have previously filed a Suspicious Activity Report (SAR). The fact is, if you file a SAR on someone and continue to keep them as a customer, they inherently create a heightened risk for the financial institution. Therefore, the financial institution should include this customer on the high risk customer list and apply enhanced due diligence policies, procedures and processes accordingly.

Recently we have seen financial institutions file a SAR on a customer for structuring, kiting, etc., explain to the customer that what they are doing is illegal and then drop it. Don't let these customers fall through the cracks. Filing the SAR is only the first step. Filing a SAR does not grant the bank immunity from future suspicious activities that are not identified due to the lack of increased monitoring.

The examiners are looking at these customers very closely. Therefore, these customers deserve your attention. The examiners will ask you about your enhanced due diligence policy, procedures and processes with regard to these customers. Be prepared to discuss them in detail.

New Regulation DD Rules (Overdraft Programs) Effective July 1, 2006

Wait! Don't disregard this article just because you don't offer one of the "automated" overdraft programs often referred to as "Bounce Protection" or "Overdraft Protection." The new rules include two issues with which every financial institution must comply as well as the items for those institutions that offer automated overdraft programs. The rules applying to all financial institutions are summarized in numbers one and two below and the additional rules for those offering the automated overdraft programs are continued in numbers three and four below. Additionally, the chart on the next page provides a quick reference for applicable advertisements and periodic statement disclosures triggered by advertisements and promotions of Overdraft Programs.

Final Rule: www.federalreserve.gov/boarddocs/press/bcreg/2005/20050519/attachment.pdf

1. **All financial institutions** must:

- a. Disclose (in the initial account disclosures) the categories of transactions for which an overdraft fee may be imposed. An exhaustive list is not required. It is sufficient to state, as applicable [Commentary to §230.4(b)(4)#5]:

"An overdraft fee applies to overdrafts created by check, in-person withdrawal or other electronic means."

*You do not need to notify existing customers with revised disclosures.

- b. Separately itemize fees on periodic statements (i.e. overdraft fees from NSF fees). If fees are paid more than once per statement period, the statement may list each fee and the day it was accessed or group the fees together and disclose a total dollar amount for fees of that type. If fees are grouped together, the description must make it clear that the dollar amount represents more than a single fee (i.e. "Total Fees for Checks Written This Period") [§230.6(a)(3)].
2. **Any financial institution that promotes the payment of overdrafts:** must disclose, on each periodic statement, the total amount of fees or charges imposed on the account for paying overdrafts and for returning items unpaid. The totals must be provided for the statement period and the calendar year to date [§230.11(a)].
3. **Any financial institution that promotes the payment of overdrafts in an advertisement** must disclose each of the following in the advertisement: [§230.11(b)]
- Applicable fees or charges;
 - Categories of transactions covered;
 - Time period consumers have to repay or cover any overdraft; and,
 - Circumstances under which the financial institution would not repay an overdraft.
4. **Prohibited advertisements:** [Commentary to §230.8(a)#10]
- Advertising an overdraft service as a line of credit;
 - Stating the financial institution will honor all checks or authorize payment of all transactions overdrawing an account;
 - Advertising to consumers that they may maintain a negative balance in their account; when, in fact, they must bring it positive promptly;
 - Advertising the service as protection against bounced checks when it actually covers all transactions that may overdraw a consumers account; and,
 - Advertising "free" or "no cost" when a maintenance or other fee is or can be associated.

Promoting Overdraft Programs

Type of Advertisement	Advertisement Disclosures [§230.11(b)(1)]	Periodic Statement [§230.11(a)(1)]
Broadcast and electronic media (TV and radio), (NOT Internet, ATM screen, telephone response machines and e-mail).	No	Yes
Internet site	Yes	Yes
ATM screens	Yes, but only disclose amount of fee.	Yes
Telephone response machines	Yes, but only disclose amount of fee.	Yes
E-Mail	Yes	Yes
Print media	Yes	Yes
Newspaper	Yes	Yes
Brochures	Yes	Yes
Telephone solicitations	Yes	Yes
Periodic statement message of overdraft limit	Yes	Yes
Balance that contains overdraft limit, including balance on ATM receipt	Yes	Yes
ATM receipts	No (unless balance contains overdraft limit).	Yes
Indoor signs	No, if disclose <i>“fees may apply”</i> & <i>“contact an employee for more information about applicable fees and terms”</i> .	Yes
Outdoor media	No	Yes
Consumer-initiated inquiry	No, except overdraft information provided in response to balance inquiry made through automated system such as ATM or voice response.	No, except overdraft information provided in response to balance inquiry made through automated system such as ATM or voice response.
In-person discussions	No	No
Advertisements for Lines of Credit (subject to Regulation Z)	No	No
Information on periodic statement or notice about specific overdraft	No	No
Notice that completing transaction may trigger an overdraft fee	No	No
Disclosures required by law.	No	No
Terms in agreement that bank may pay overdraft	No	No
Informational materials about overdrafts if they do not specify the bank’s overdraft service.	No	No

Banker's Compliance Consulting Q & A Forum...

The following Q & A's were generated by a recent "HUD 1/1A Settlement Statements" Webinar presented by Banker's Online and taught by David Dickinson, President of Banker's Compliance Consulting. The following website has complete information regarding past and future Bankers Online webinars: <http://www.bollearningconnect.com>.

Fees Paid Outside of Closing:

Question: I've read it on Bankers Online before and you also state here that fees, even though not passed on to customers, such as a credit report fee must be listed as POC on the HUD statement. The fee is different for each report, does it mean we must call the credit bureau each time or do you suggest we state a range? Our bank has not been doing this but has not been criticized by examiners.

Question: Do we disclose lender paid PMI?

Question: We do not charge our borrowers a credit report fee. Does the actual fee paid by the bank still have to be listed on the HUD-1A?

Answer: ALL fees are to be listed on the Settlement Statement, even lender paid fees. If the fee varies, it is best to list the lowest fee in the range.

Real Estate Taxes:

Question: Please also emphasize that we need to list property taxes and hazard/flood insurance, which are already in place and being paid by the borrowers in the case of home improvement, home equity or refinancing, as "POC" on the HUD.

Question: Please clarify - if we are escrowing for taxes and insurance do we still need to disclose the annual cost as "POC"?

Answer: From page 2 of the Webinar packet:

Purchase Loans:

Taxes. Identify the proration of taxes on lines 211 and 511. If the bank is escrowing for the next year, show the reserves on line 1004 as well.

Hazard Insurance. Identify the hazard and flood insurance premiums required at closing as "POC". Also identify the term and to whom the premiums are paid on lines 903 and 904, respectively. If the bank is escrowing for the next year also show these reserves on lines 1001 and 1006, respectively.

Non-Purchase Loans (refinance, home equity, home improvement):

Taxes.

If the bank is not escrowing for taxes, identify the fee and term on lines 808-811 as "POC".

If the bank is escrowing for taxes, identify the fees on line 1004.

Hazard Insurance.

If the bank is not escrowing for insurance, identify the premiums, term and to whom paid on lines 903 and 904 (flood) as "POC".

If the bank is escrowing for hazard insurance, identify the fees on lines 1001 (hazard) and 1006 (flood).

Fees for Real Estate Taxes?

Question: Do we put in lines 808-811, the actual real estate taxes or the fee incurred?

Question: Lines 808-811 fees for real estate taxes should be listed on the lines verses actual taxes?

Answer: The line item instructions state (emphasis added):

*Lines 808 through 811 are used to list additional items payable in connection with the loan including a CLO access fee, a mortgage broker fee, fees for **real estate property taxes** or other real property charges.*

I do not believe HUD intended to separate the actual tax expense from fees for real estate taxes. Nowhere else in the line item instructions are fees separated from actual costs.

Good Faith Estimates and Settlement Statements:

Question: Do the lines on the good faith and the lines on the HUD need to match for the additional 800 lines?

Question: We are interested in finding out how differences between the initial GFE and the final HUD can be explained and when they are allowable?

Answer: The lines from the GFE should correspond to the Settlement Statement. There are no “allowable” tolerances. The GFE should be your best estimate. It is not a Good Faith “Exactment”. You should be able to explain all of the differences (a fee was not expected to be imposed, a fee increased, etc.).

Miscellaneous Questions:

Question: Line 1107 on HUD 1. Attorney's fees under page 1, are they common errors?

Answer: In our opinion, this is a common error. There is no official list of common errors, however.

Question: As a wholesale lender, suppose our brokers want to change a fee (junk or borrower paid broker fee) from what they initially disclosed on their GFE? In other words, they want us, as the lender, to pick up different fees at closing than what they had on initial GFE.

Answer: If a fee is legitimately left off of the GFE, then this is fine, but you make it sound like junk fees are being added as a “bait and switch” tactic. This should not be allowed. This is exactly what HUD is trying to prevent with the GFE.

Question: If we made a loan for construction of a homestead and 12 months later approved permanent financing, we do not order survey, flood, etc again. Do we list them as “POC” on the HUD?

Answer: In the most technical sense, yes. However, I rarely see this done.

Question: If using this disclosure in transactions where its use is not required, can examiners still cite violations if the disclosure is not correct?

Answer: They shouldn't. If RESPA doesn't apply, you can't have a violation of RESPA.

Question: Should we list our underwriting fee (Desktop Underwriter) on the HUD as “POC”? (Lender always pays.)

Answer: If you actually pay this fee to a third party, then yes, you must list the fee (even lender paid fees are listed). If this is not a third party fee and you never pass it on to any borrowers, then it shouldn't be listed.

Question: Why are the fees under 1109 and 1110 different from the amounts in the columns? Usually our lender fee matches the borrower's column.

Answer: The borrower's portion of the title insurance could be the exact amount of the Lender's portion if that is all the borrower is paying for and the seller is paying for the entire Owner's policy. I have never seen this, however.

Typically, the totals of 1109 and 1110 will **not** match the fees in the borrower's column. The line item instructions state (emphasis added):

Lines 1108 through 1110 are used for information regarding title insurance. Enter the total charge for title insurance (except for the cost of the title binder) on Line 1108. Enter on Lines 1109 and 1110 the individual charges for the Lender's and owner's policies. Note that these charges are not carried over into the Borrower's and Seller's columns, since to do so would result in a duplication of the amount in Line 1108. If a combination Lender's/owner's policy is purchased, show this amount as an additional entry on Lines 1109 and 1110.

Question: What date should the proration of taxes be paid through on line 211, the settlement date or the day before the settlement date?

Answer: This is not a regulatory question which I can answer. List the date that is agreed to in the purchase agreement.

Question: We charge an origination fee to cover the credit report fee and title examination fee. Do we need to list these as “POC”?

Answer: Yes. If you'd like, you can identify them as lender paid.

Question: On line 1105, if the lender's doc prep fees are reflected there, is that ok?

Answer: Yes.

Question: Tax service fees would not go into 808 - 811?

Answer: Yes, this is where the tax service fee should be listed.

Question: The bottom of page 1 of the materials says we must list payees for all fees; however, the government recording fees on the samples provided do not list the names of the government agencies. Is that an exception?

Answer: There is no exception listed in the regulation, yet very few banks list the government agencies to which recording/perfection fees are paid. Additionally, I have never seen this cited as a violation or even mentioned as a comment in a regulatory examination. Although I can't argue that it is not needed, there is only one answer (the government agency) that could be listed vs. a third party fee could be paid to various companies. I assume this is why I've never seen an issue made of this deficiency and why I did not list it in the examples.

Question: A title company recently said to us that they are doing away with HUD statements and prepared Borrower's Statements instead - even though all charges were itemized, the form was not the HUD model form with the line items. Is it a requirement to use the HUD model form?

Answer: Unfortunately, you must provide a HUD approved Settlement Statement to the borrower(s) before closing the loan. Section 3500.9 allows some minor changes to the disclosure; however, the line items must appear.

Question: A large commercial appraisal costs \$1,000, the bank will pay \$500 and the customer will pay \$500. How would this be disclosed on line 803?

Answer: You would need to choose two lines. For instance, line 803 could list the customer's portion of the fee and line 808 could list the bank's portion as "POC".

Question: How do you list the earnest money off the commission? Do you put it under 501, 506 or adjust by commission on back?

Answer: The earnest money would be listed on line 501 of the seller's column of the Settlement Statement. This money is off-set against the sales price (the 400's on the Statement).

Question: What would go in on the lines after 811 but still within that series?

Answer: Numerous fees could be listed here. Fees such as tax service fee, flood determinations, etc.

Question: Is it acceptable for the attorneys to complete line 1102 separately if they are doing the title search, rather than adding that fee to line 1107? They have commented that for their billing purposes, it would be helpful in keeping it separate from the item numbers shown on line 1107.

Answer: Yes. In fact, if they can spit out the title search, they must.

Question: Please clarify line 203 in regards to an 80-10-10 loan.

Answer: Line 202 would identify the loan in which the Settlement Statement is being prepared. Line 203 could list the 2nd lien (10%) loan.

Question: If the closing attorney is only preparing the final HUD for the closing docs, should line 1105 be listed on the items charged for in the attorney fees on line 1107?

Answer: First, section 3500.12 prohibits a fee for preparation of Settlement Statements, escrow statements and Truth in Lending disclosures. The attorney cannot be paid for preparing the Settlement Statement. So to answer your question, you should NOT list line 1105 in this case but more importantly you cannot pay anyone to prepared this disclosure. Here's the section:

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for or on account of the preparation and distribution of the HUD-1 or HUD-1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act, 15 U.S.C. 1601 et seq.

Second, let's assume that the attorney is preparing other documents in which compensation can be provided. If so, all applicable lines should be identified below line 1107.

Question: For funds withheld from the seller for carpet repairs, for example, how is the borrower getting credit for the funds?

Answer: On page 11 of the packet, I listed “withheld for carpet repairs” on line 506 of the Settlement Statement. I made up this example to demonstrate variations in the disclosure. The \$1,000 probably should have been shown in the 200 series as a credit to the borrower as well.

Question: A loan secured by a current principal dwelling and a new purchased dwelling is rescindable. We have the borrower sign the note and Truth in Lending disclosure three days prior to closing on the purchase so funds are available. What date goes on the HUD-1?

Answer: The date that the borrower signed the note and Truth in Lending disclosure, which is the date you settled this loan.

Question: If we use a title company to produce the HUD-1, but we close the buyer’s side. What address would be used? Ours (the lender) or the title company?

Answer: The address where the loan is closed. I assume this is at the bank in your example.

Question: In section D, if you have 2 borrowers with different addresses, do you have to list both addresses or just the primary borrower?

Answer: Technically, yes.