



Compliance News...

FFIEC FACT Act Medical Information Examination Procedures Released

In our [April 2006 newsletter](#), we reminded you that the Fair and Accurate Credit Transactions Act, Medical Information provisions were to go into effect on April 1, 2006. The Federal Financial Institution's Examination Council (FFIEC) recently issued the Examination Procedures for this section of the FACT Act (click on the link below). If you have an upcoming examination or you are the one responsible for FACT Act compliance, you may want to review these examination procedures. These procedures are the same ones that will be used by the examiners to determine your financial institution's level of compliance with this section of the FACT Act.

<http://www.fdic.gov/news/news/financial/2006/FIL-47-2006%20Attachment.pdf>

Mid-year Compliance Check-up

We're now six months into the year and we thought it would be a good idea to provide you with some mid-year compliance check-up questions:

1. Has your financial institution completed a Bank Secrecy Act (BSA)/Office of Foreign Assets Control (OFAC) risk assessment? If so, have you recently reviewed it for accuracy?
2. Has your financial institution provided or have plans to provide annual BSA training to all personnel? Don't forget to provide training to your directors.
3. Have you reviewed your financial institution's Privacy notices? Have any of your institution's practices changed? Have you sent out the annual Privacy notices?
4. If your financial institution offers a variable rate Home Equity Line of Credit (HELOC) product, did you remember to update the 15 year historical data?
5. Did you update your Main and Branch Community Reinvestment Act (CRA) files by March 31, 2006?
6. Does your financial institution include the Regulation E Error Resolution Notice with its periodic statements? If not, remember you must mail or deliver this notice to all consumers at least once each calendar year.
7. Does your financial institution offer any type of open-end consumer credit? If so, is the billing rights notice included with the periodic statements? If not, remember you must mail or deliver the billing rights statement at least once per calendar year to all consumer open-end credit customers.
8. If your financial institution is required to comply with the Home Mortgage Disclosure Act (HMDA), all applicable entries for the 2nd quarter of 2007, should be recorded on the Loan Application Register (LAR) by July 30, 2006.
9. If you are regulated by the Office of the Comptroller of the Currency (OCC), receive more than 50 loan applications per year and are not required to report under HMDA, remember that your 2nd quarter Fair Housing Logs must be updated by July 30, 2006.
10. Have you addressed the new Regulation DD changes (see our [May 2006 newsletter](#)) that went into effect on July 1, 2006? Credit Unions have until October 1, 2006.

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

The following Q & A's were generated by a recent "Escrow" 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>.

Voluntary Escrows

Question 1. At the customer's request, is it ok to analyze their account at a higher real estate tax amount than what their previous years taxes were? In this case, the customers feel that they are going to be reassessed at a higher value and their 2006 taxes are going to take a jump from their 2005 taxes.

Answer: Yes, have the borrowers complete some type of Voluntary Additional Escrow Payment Affidavit.

Question 2. We have many customers that do not want their payment to increase from year to year. Is it ok for them to deposit the amount of the shortage and the monthly payment increases (x12) at one time and then keep their payment the same?

Answer: Yes. If there is a shortage in the escrow account after completing the escrow analysis, the customer can voluntarily pay the amount that is short and keep the payments the same. The lender cannot require the borrower to pay a lump sum if the shortage is equal to or greater than one month.

Question 3. If the customer sets up a voluntary escrow account, would we be required to escrow for flood?

Answer: The lender is not required to escrow for flood insurance premiums if the borrower voluntarily escrows for other charges. However, the lender will have the burden of proving that the escrow arrangement is truly voluntary.

Question 4. If the borrower signs the voluntary additional escrow payment affidavit, can we then disclose the higher amount on the HUD for the escrow payment?

Answer: If the escrow is voluntary, you can exceed the two month cushion but check state laws. The escrow would still be disclosed on the HUD.

Question 5. Where on the HUD do you show the voluntary escrow contributions? Are they included in the 1000 series lines or are they shown somewhere else on the HUD?

Answer: Lines 1000 – 1008 are to be used for all escrows – voluntary or mandated.

Question 6. Is an annual analysis required on a "voluntary escrow" account?

Answer: No, by definition "the term escrow account excludes any account that is under the borrower's total control." This assumes that your "voluntary escrow" account is completely under the borrower's control. Again, be sure to check with state laws. Some states govern voluntary escrows.

Cushions

Question 7. Can you collect different cushions for each item on the same escrow account?

Answer: Yes, you can have different cushions for each item.

Question 8. May a Bank collect 2 months of a cushion for PMI?

Answer: Yes, the lender may charge the borrower an amount sufficient to pay all out-flows such as taxes, insurance (hazard, flood, PMI, etc.) for the property. In addition, the lender may charge a cushion to cover anticipated expenses. The cushion is limited to 1/6 (two months) of the estimated total annual disbursements from the account.

Short Year Statements

Question 9. Construction-permanent loans: Initially during the construction period, an initial escrow analysis is provided to a customer. After 9 months of construction, the loan is converted to a permanent loan. At this point, do we have to again provide an escrow analysis to the customer since impounds have increased?

Answer: If the loan is “converted” (modified) and not replaced with a new note, then, no. You can wait until the annual analysis. If a new note is made (a refinance), then a new analysis needs to be completed and a new escrow account is established and disclosed.

Question 10. We send the annual escrow disclosure every year for all loans in the month of August, not on the 1 year anniversary. Is this wrong?

Answer: No it is not wrong, provided a “short year” initial statement is used for any loans booked since the last annual escrow analysis and before the next annual escrow analysis.

Question 11. The first year the taxes were figured on land only, if before the 1st annual analysis is run and we know what the taxes will be for the improved property, can we do a short analysis to include the larger tax amount?

Answer: Yes, you can do a short-year statement at any time.

Miscellaneous

Question 12. Staying with your example: What if you adjust the # of months for insurance to 4 months on the HUD-1 and keep the 3 months for taxes to have a total of \$400 for the initial deposit and no aggregate adjustment?

Answer: It is not permissible to manually adjust the escrow analysis to show no aggregate adjustment. You can't “make it work”. You must use the single item analysis and aggregate analysis as required by RESPA.

Question 13. If the customer does not have enough money in their escrow at the time a distribution is due, is there a regulation on how much we can “overdraw” their escrow account or is it a financial institution's decision to make on what its comfort level is?

Answer: This is totally the institution's decision; however, if you cause a deficiency in the account (negative balance), you must conduct an annual analysis.

Question 14. Again back to collecting monies to be paid prior to the first payment, depending on when the loan closes, we may go 'in the hole' to pay the first monthly PMI payment due. Again, because it is due before the first payment date, we can collect it somewhere else on the HUD, just not in escrow?

Answer: PMI payments due prior to the first payment date should be collected at closing and disclosed on line 902.

Question 15. Payment of unknown taxes. If we close a loan in Aug with first payment in Oct, taxes for Sept are unknown. We will have to pay taxes in Sept before our computation year begins. We have to escrow an estimated amount for that payment at closing. How would you handle this? My processing system will not include that tax payment.

Question 16. Taxes paid before the first P&I - loan closed in June. First payment in August. Taxes due in July. The tax bill comes July 1. Problem, if the amount to be paid is not available at closing how do we show a disbursement? If we cannot show a disbursement prior to the first payment, how do we get the taxes paid?

Answer: The payment of taxes and hazard insurance that is due prior to the first payment would be collected at closing. Taxes would be shown on lines 808-811 and hazard insurance on line 903. The escrow analysis would be completed based on the payments due within the next computation year.

Question 17. In your example, you close the loan in September and pay taxes the next year in September. Is it permissible to show the taxes that are due in the month that you close as funds to be paid prior to the first payment, but put them in the escrow so that the year-end analysis for the year of the loan is correct without manual adjustments?

Answer: I'm not sure I understand. Typically, you start an escrow the month following the date you close a loan (or even two months later). Show the taxes as due on the Settlement Statement (as described in the above question) and then they'll show up again in the escrow account computation year. You cannot collect for payments that are not due within the next 12 months. Only in-flow for what is out-flowing in the next "escrow account computation year".

Question 18. We make a construction-permanent loan where we collect interest and escrow on the construction payments made for the first six months. Is the first payment, as it relates to the escrow analysis, considered the construction period payments or is it the amortizing payments?

Answer: You have one closing of a loan. The first payment for the escrow account computation year would be when the construction period payments begin.

Question 19. If the 2nd half taxes are due in July but our computation period ends in April, can we analyze them as being paid in April vs. July in order to avoid payment shock?

Answer: No. You cannot require the borrower to pay in for something that won't be paid out during the current computation year.

Question 20. You close a purchase loan in January 2006. The 2005 taxes on the property are paid at closing by the sellers. Therefore, the borrowers do not have to pay any taxes until April 2007. If you start collecting taxes in escrow right away, you will knowingly have too much in the escrow account. Do you start collecting for taxes beginning with the first monthly payment, and then refund the excess funds when you do escrow analysis in January 2007? What is the best way to handle this?

Answer: You cannot require the borrower to pay in for something that won't be paid out during the current computation year. However, you may try to encourage them to participate via a voluntary additional escrow payment affidavit/payment shock notice in order to avoid payment shock.

Question 21. Biweekly pmts touched on in presentation. Is there a program for a bi-weekly payment?

Answer: Non of which I am aware.

Question 22. Currently, we close a construction-permanent loan and do not escrow any taxes during the construction period. Not even on the lot. We give up to a 1 year construction period. Upon completion of construction or the one year (whichever comes first) we establish the escrow account for payment of taxes. At that time we estimate what the taxes might be based on similarly valued properties in the same township. From these numbers we mail the initial escrow disclosure and ask for the initial deposit. I guess the questions are 1) Does it make sense to not escrow during construction at all? and, 2) Is the method we are using to do this something that is allowable according to the regulations?

Answer: [I'm going to answer your first question here and your second question below #23 and #24:]

I believe this is a matter of opinion and I don't have one either way. Typically I don't see banks escrow during the construction phase; however, if they do I don't think there is anything wrong with it.

Question 23. Can you escrow taxes based on an estimate for a newly constructed property? If so, do you need to show an estimate on the HUD-1 or have the customer sign a statement they understand this is an estimate?

Question 24. Doesn't Reg X state that in cases of unassessed new construction the servicer may base an estimate on the assessment of comparable residential property in the market area?

Answer: In cases of new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area. The reserves portion of the estimate should be disclosed in the 1000's series of the HUD. From that, the borrower can figure the total estimate. However, be very careful. Generally, taxes are paid in arrears. If this is your case, you don't need to estimate taxes as you are always a year behind on the payments. [24 CFR 3500.17(c)(7)]

Question 25. Would you use line 902 for PMI for PMI due before first payment date?

Answer: Yes.

Question 26. If a borrower is approved for life/disability insurance after closing, is an additional escrow analysis due before we raise their payment to cover the premium (we obviously did not know if they would be approved at closing)?

Answer: Yes. If you're going to change an escrow payment, you must conduct a new annual analysis (or at least a short year analysis).

Question 27. Can you tell me where the 'fine' schedule is or give me an idea? If we are out of compliance, my audit committee wants to know, what we could be out.

Answer: A servicer's failure to submit to a borrower an initial or annual escrow account statement meeting the requirements of this part shall constitute a violation of section 10(d) of RESPA (12 U.S.C. 2609(d)) and this section. For each such violation, the Secretary shall assess a civil penalty of 65 dollars (\$65), except that the total of the assessed penalties shall not exceed \$120,000 for any one servicer for violations that occur during any consecutive 12-month period. [24 CFR 3500.17(m)]

Question 28. Do we need to send a pay-off statement on loans sold on the secondary market?

Answer: No; however, if you are the transferrer (old servicer) you must provide a short year statement to the borrower within 60 days of the effective date of transfer. [24 CFR 3500.17(i)(4)(ii)]

Question 29. Does every account go thru analysis at the same time every year?

Answer: Not necessarily. However, this is the most efficient method of completing annual escrow analysis.

Question 30. What is the short form method of figuring escrow?

Answer: I believe you are referencing “short year statements.” A servicer may issue a short year annual escrow account statement ("short year statement") to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.

Question 31. If you have a deficiency in the escrow account, does the annual history analysis showing the negative balance satisfy the deficiency disclosure requirement?

Answer: The servicer must notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the account. This notice may be part of the annual account statement or a separate document. I don't believe when it says “part of the annual account statement” that is referring to the balance column. In my opinion, you must “notify” them of the deficiency “clearly and conspicuously.”