



Compliance News...

Home Equity Line Of Credit Fees and Periodic Statements...

Most financial institutions are aware that they are required to provide a periodic statement to their Home Equity Line Of Credit customers. The periodic statements are required to include the following information:

- Previous balance
- Credits
- Balance on which finance charge computed
- Annual percentage rate
- Closing date of billing cycle
- Amount of finance charge
- Identification of transactions
- Periodic rates
- Amount of finance charge
- Other charges (non-finance charges)
- Free ride period

One item of particular interest is the “Amount of Finance Charge”. Section 226.7(f) of Regulation Z states:

“the amount of any finance charge debited or added to the account during the billing cycle...shall be individually itemized and identified to show the amount(s) due...”.

This typically is not a problem as most financial institutions include the finance charge for the billing cycle on their periodic statements. However, when we look to the Official Staff Commentary of this Section, we find requirements for “start up fees” that many financial institutions overlook. Comment #8 to this section of Regulation Z states:

*“Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. **If however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement.** However, they do not have to be factored into the APR.”*

Therefore, if a financial institution allows a customer to pay “start up fees” (points, fees, flood determination and other fees which are considered finance charges) with the initial advance from their Home Equity Line Of Credit, those fees **must be separately itemized on the first periodic statement**.

In addition to the requirements mentioned above, Section 226.7(h) of Regulation Z gives even more requirements for “Other Charges” imposed either at the time of opening a Home Equity Line Of Credit **OR** during any billing cycle. These “Other Charges” (such as credit report fees, late charges, over the limit fees, annual fees, etc.) must be separately itemized and included on the first periodic statement (if any) **AND** on subsequent periodic statements.

Consider a Home Equity Line Of Credit with the following fees stated in the program disclosure:

Origination Fee	\$100	Annual Fee	\$25
Credit Report	\$10	Flood Determination	\$25
Title Search	\$50		

The itemization on the first periodic statement might look similar to the example below (be sure to use the same fee terminology on the statement that is used on the program disclosure).

<u>DATE</u>		<u>TRANSACTION DESCRIPTION</u>	<u>AMOUNT</u>	<u>BALANCE</u>
06-01-07		Open Home Equity Line Of Credit		\$0.00
06-01-07	Advance	Finance Charge: Origination Fee	\$100.00	\$100.00
06-01-07	Advance	Other Charge: Annual Fee	\$25.00	\$125.00
06-01-07	Advance	Other Charge: Credit Report	\$10.00	\$135.00
06-01-07	Advance	Finance Charge: Flood Determination	\$25.00	\$160.00
06-01-07	Advance	Other Charge: Title Search	\$50.00	\$210.00

Recently we have been made aware of several banks that have been cited for not including all fees in the finance charge and/or not itemizing the fees as required by these Sections. When the fees are not included in the finance charge calculation this most likely results in a reimbursable violation. While these rules have not changed, there appears to be more scrutiny given to periodic statements (especially by FDIC regulators). Be sure to review your statements for compliance with these requirements and let us know if we can assist you in understanding the technical aspects of these requirements or correcting any errors.

Filing SARs on Nigerian Lottery Scams...

We are often told by financial institutions that they are required to file Suspicious Activity Reports on Nigerian Lottery or similar scams. These scams are often unsolicited by the financial institution and/or their customers. Some institutions are unlucky enough to encounter these scams in a large quantity which can be very time consuming. The most recent SAR Activity Review (#11) published by FinCEN addressed this specific topic. In the issue, FinCEN reiterates its prior guidance that it is **not necessary** to file a SAR on "4-1-9" (advanced fee fraud) scams unless the institution identifies a monetary loss or the scam involves other illegal activity. This guidance is also applicable to international lottery scams. You can access this edition of the SAR Activity Review at: <http://fincen.gov/sarreviewissue11.pdf>

New HMDA Getting It Right Booklet...

The Federal Financial Institutions Examination Council (FFIEC) recently released a new edition of the HMDA Getting It Right Booklet for 2007. Last year we got the 2006 Getting It Right book in October. This year they are only 5 months behind. Excellent proof of progress in our government!

To download this new edition in .pdf format, please use the following link: <http://www.ffiec.gov/hmda/guide.htm>.

Welcome Back

Many of you will remember Amy Kudlacek. She was a consultant at Banker's Compliance Consulting until 2004 when family commitments called her away. We are pleased to announce, she's back. Amy rejoins our talented team of compliance professionals.



Mid-year Compliance Check-up

It is hard to believe that we are almost halfway through 2007. With that in mind, we felt that now is a good time to conduct a mid-year check up to ensure your compliance health for the remainder of the year.

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, 2007?
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, you have two options for delivering the billing rights notice: a) you can include it with the periodic statements; or, b) you must mail or deliver the notice 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 1st quarter should have been recorded on the Loan Application Register (LAR) by April 30. Second quarter entries must be updated no later than July 30.
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 quarterly as well.
10. Have you addressed the new Regulation DD changes (see our [May 2006 newsletter](#)) that went into effect on July 1, 2006? Credit Unions had until October 1, 2006.
11. The mandatory compliance date for use of the new FDIC signage is November 13, 2007. You can find information on obtaining the official signs at: <http://www.fdic.gov/regulations/resources/signage/index.html>. Don't wait to order the new signs. We hear it can take up to four months to receive the signs (not the stickers).
12. Have you conducted Regulation CC training with your deposit staff? §229.19(f) requires training for "each employee that performs duties subject to the Act". While training is not required to be conducted annually, it is a best practice.