

## Compliance Mailbox Online Edition 1

Answering questions about: HMDA and trusts; spousal signature issues; "overdraft savings; and more

Leslie Callaway, CRCM, ABA Compliance Project Manager, and Mark Kruhm, CRCM, ABA Senior Compliance Analyst, and other ABA experts, answer ABA member questions here and in the print edition of ABA Banking Journal. Member banks only may submit questions to: [compliance@aba.com](mailto:compliance@aba.com). Callaway and Kruhm work in ABA's Compliance Center. For more services from the Center, see the bottom of this blog.

**Disclaimer:** Our answers do not provide, nor are they intended to substitute for, professional legal advice. The answers in this column were current as of the date of publication of this blog.

Does HMDA cover mortgages to trusts?

**Q.** If we make a mortgage to a formal Trust, does the Home Mortgage Disclosure Act require us to collect government monitoring information (GMI) and income information for the signers?

**A.** The Guide to HMDA Reporting: Getting it Right! states: "If the borrower or applicant is not a natural person (a corporation or partnership, for example), use the codes for 'not applicable'." (See page A-5, I.D.1.b.)

A formal trust is typically considered a separate legal entity, and would therefore be reported using "NA." However, if the signers are also borrowing as individual co-applicants, the bank would collect the government monitoring information and income of the signers, and the bank would report it as appropriate for any co-applicant. In contrast, if they are signing only as representatives of the trust, then the bank would not collect this information.

Handling spousal signature issues

**Q.** When may our bank require a spouse's signature on loan documents? We are in a community property state.

**A.** The spousal signature rules of Regulation B are different depending on whether the credit is secured or unsecured. According to Regulation B, if a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default: for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

In either case, however, it is unlawful to require the non-obligated spouse to sign the note.

What about "overdraft savings"?

**Q.** Occasionally your customers' savings accounts become overdrawn, due to an automated clearinghouse transaction or a deposited check that is returned unpaid. We would like to offer an overdraft line of credit that links to these savings accounts. Does federal law permit that?

**A.** Yes ... and no. Section 204.2(e)(5) of Federal Reserve's Regulation D defines a "transaction account" as an account where: "Deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others or to a deposit account of the depositor."

So, linking a savings account to a line of credit for overdraft protection is not prohibited, per se. However, that action will change that savings account to a transaction account for reserve purposes. In other words...it will no longer be a savings account

## Handling Reg DD disclosures at ATMs

**Q.** Currently, we disclose the available balance at our ATMs. Pursuant to the Regulation DD requirements, we will be changing that to only display the current balance, as of 1/1/2010. Do we need to re-disclose to our customers about this change, or can we put a notice on our ATMs to let them know of this change?

**A.** Assuming that: you currently define the terms "available balance" and "current balance" in your deposit account agreement; and that you are defining the "available balance" as the balance that includes funds available through an overdraft protection service and "current balance" to mean the customer's balance that does not include any additional amounts, then it appears that no change-in-terms notice would be required under Regulation DD. However, to avoid confusion, you might want to consider a notice at the ATM explaining that the balance does not include any protection amount, but represents their current actual available balance. Be sure to state that the notice is applicable to your bank customers only, such as stating "for customers of X bank . . . your balance reflects..."

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