COMPLIANCE MAILBOX ONLINE EDITION 3

Answering questions about: loan payments from money market accounts; disclosure of fees under Reg DD; how to swap lower rates for direct debit, properly; and flood insurance and replacement costs.

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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. 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.

Reg D limits have exceptions for loans, but not gaping ones Q. Regulation D does not restrict payments made for loans at the same institution when those payments are made from a money market or savings account (12 C.F.R. 204.2(d)(2)). Does this unlimited transfer ability apply to any loans, or only loans that are in the name of the depositor? For example, would a debit made from a sole-owner money market account to pay a spouse's loan at the same bank count as one of the limited transactions? Or would it be an unlimited transaction?

A. Regulation D is not clear on this issue. We contacted the Federal Reserve's legal division for an answer. The response: The loan must be held in the same name as the money market or savings account. The reasoning: If a customer could transfer funds to any loan-even those not in the customer's name-this would create a method of circumventing the transaction limitations by making unlimited payments to third parties. In our example, the transfer would count against the six-per-month transaction limit.

Grouping fees under Reg DD Q. The Commentary to Regulation DD, regarding disclosure of fees on periodic statements, reads as follows: "... the institution must disclose separate totals for the statement period and for the calendar year-to-date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected."Must each type of fee be separately disclosed? For example, if a bank charges a fee for returning items unpaid, and a separate fee (same amount) for returning items presented against uncollected funds, plus a weekly fee for maintaining an account in overdraft status, must each of these classifications of fees be separately disclosed, or can they be lumped together?

A. The regulation states that the bank must classify fees into one of two categories: fees for paying overdrafts and fees for returning items unpaid. It appears that the bank could categorize any fee associated with either category together, which suggests that fees associated with returning items unpaid-including uncollected funds fees-would be of the same "type" and would be grouped together.

How to swap lower rates for direct debit, properly

Q. Can our bank require a customer to sign up for a direct debit of a loan payment in order for the borrower to receive a lower rate of interest on the loan?

A. Regulation E's Section 205.10(e)(1) governs the compulsory use of preauthorized transfers with respect to extensions of credit. It states: "No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account."

However, the Commentary clarifies that a creditor may offer a program with a reduced APR or other cost-related incentive, provided it is not the only loan program offered for the type of credit involved.

Flood insurance and replacement cost remains an open question

Q. If a single-family home loan requires flood insurance, does the flood insurance company need to state the replacement cost on the policy?

A. No, there is no such requirement. It would be most helpful to lenders if that was the case, and that point was addressed in ABA's May 20, 2008, comment letter when addressing "insurable value," "overall value," and other related terms mentioned in the original FAQ on Interagency Questions and Answers Regarding Flood Insurance.

The revised FAQ , which finalized some of the questions, yet also proposed a new Question 9, located on page 78, based on comments received from the original proposed FAQ and which states: "What is the insurable value of a building? "Answer: Per FEMA guidelines, the insurable value of a building is the same as 100 percent replacement cost value of the insured building. FEMA's Mandatory Purchase of Flood Insurance Guidelines defines replacement cost as ‘The cost to replace property with the same kind of material and construction without deduction for depreciation." When determining replacement cost value of a building, lenders (either by themselves or in consultation with the flood insurance provider or other professionals) should consider the replacement cost value used in a hazard insurance policy (recognizing that replacement cost for flood insurance will include the foundation), an appraisal based on a cost-value approach before depreciation deductions (not a market-value), and/or a construction cost calculation.

Please note: This Question and Answer is still in proposed status, so it has not been made effective as guidance.

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