

## Selected Subjects

Guru Chatter\*

on Finance Charge



### **Auto Dealer Doc Fee and the Prepaid Finance Charge**

Question: Auto Dealers Charge a \$50.00 documentation fee. It is a fee that is charged for all vehicle purchases. As long as this fee is paid by all buyers, then I assume it does not need to be calculated as a prepaid finance charge when it is added into the amount financed total for dealer loan paper. Would this be correct?

Answer by David Dickinson:

You are correct. If the fee is charged for all purchases (whether cash or credit), then it is not a finance charge.

### **Is the Escrow Fee a Finance Charge?**

Question: Is the escrow fee calculated as part of the APR if it is going to be paid in cash at closing?

Answer by Dan Persfull:

Yes. The borrower's method of payment does not matter. If the fee/charge falls in the finance charge category it will affect the APR.

### **APR & Finance Charge Disclosures in the TILA Box**

Question: If the Bank is offering a short-term, unsecured lending program with a 12-month same as cash option, does the APR and Finance Charge in the TILA box need to be disclosed based on the non-"same as cash" terms or at 0%?

Answer by Richard Insley: We don't have any details about these terms, so it's impossible to answer this question. As a general rule, disclosures would only be required if there is a Finance Charge exceeding \$.00 or the loan is payable in more than 4 payments.

### **Closing Fees as Prepaid Finance Charges**

Question: I am reviewing a construction/perm loan. On the HUD-1 there are several charges that I am in question about being a prepaid. Are the following fees considered prepaids: Commitment fee, courier fee, tax service fee?

Answer by Dan Persfull:

Commitment fee - yes. It is a fee associated with the loan and there would not be a comparable fee in a cash transaction.

Courier fee - yes. If you require the use of a courier the fee is a FC. If all similar loans have courier fees, you'd be hard pressed to argue you don't require the use of a courier.

Tax service fee - yes. This fee is for a service (tracking tax payments) that is to be performed after consummation of the loan.

Answer by Andy Zavoina:

Two tests here are, is it a finance charge, and when is it paid. By definition, to be prepaid it must be "paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time." And you already understand these are finance charges. More information on these is on page 95 of the OCC's TILA Manual.

### Settlement Fee as Finance Charge

Question: Certain lenders don't want to include the Settlement/Escrow fee in their final TIL, and they don't feel that §226.4(a) really mandates it. Can you give me some assistance in justifying this?

Answer by Dan Persfull:

§226.4(a) may not mandate it, but the Official Staff Commentary does.

4(a)(2) Special rule; closing agent charges.

2. Required closing agent. If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under §226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under §226.4(a). **A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum closing fee excluded under §226.4(c)(7).**

### Third Party Closing Agency Fee

Question: Is a settlement/closing fee charged by a third party closing agent a finance charge if the charge was for services that are excluded from the finance charge calculation on a real estate mortgage loan (e.g., closing document preparation and review)? The bank requires the use of a third party closing

agent, however, the customer is given a choice of which agent to use and the bank does not retain any portion of the fee.

Answer by Dan Persfull:

No. See the Official Staff Commentary to §226.4(a)(2) 2.  
<http://www.bankersonline.com/regs/226/regzcomm.txt>

### **Payment of Past Due Taxes -- Finance Charge?**

Question: If a lender requires delinquent property taxes to be paid by the customer at or before closing, do the taxes have to be treated as a Prepaid Finance Charge?

Answer by Dan Persfull:

No. See the Official Staff Commentary to 226.4(a)(1)(i).  
<http://www.bankersonline.com/regs/226/regzcomm.txt>

### **Prepaid Fees Deducted from Amount Financed?**

Question: If the seller pays the prepaid fees should it still be deducted from the amount financed?

Answer by Dan Persfull:

No. Fees not paid by the borrower are not finance charges.

### **Discrepancy in Prepaid Finance Charges**

Question: I am the compliance officer in a small bank in North Texas. I have been auditing our real estate files and am finding a discrepancy in the prepaid finance charges. Our attorney who prepares most of our documents includes the escrow fee charged by the title company in the prepaid finance charge. My understanding of the regulation is that if it is a fee that would be also charged in a similar cash transaction, this is not a finance charge, am I correct?

Answer by Dan Persfull:

That's correct, but if these are refinancings then there would be no comparable cash transactions to compare them to.