

Selected Subjects

Guru Chatter*

on **Loan Fees & Late Fees**



Loans, Late Charges and Other Issues

Question: If a customer pays after the grace period and incurs a late fee month after month can it be reported to a credit bureau as being 30 days past due? Also, in the same instance, if the customer has continual late charges assessed but only makes the required monthly payment, can the payment be coded to pay interest then late charge, with remaining amount going to principal, causing a portion of the regular payment to be past due? Is there something called a "Rules of 78" and if so would that affect any of the previous?

Answer by Dan Persfull:

How late charges are controlled are state law issues. How payments are applied to the account is a matter of the loan contract signed. Rule of 78s has nothing to do with calculating late charges. It is an interest accrual method.

Answer by Andy Zavoina:

You should also review Reg. AA which prohibits the compounding of late fees on consumer loans. (Some opinions exclude mortgages from this section.) One part of the question alludes to this as the payment order would affect principal as being late. §227.15 "it is an unfair act or practice for a bank to levy or collect any delinquency charge on a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period."

Late Fees on Single Payment Note

Question: Can you charge a late fee on a single pay note?

Answer by J. Bruce:

The answer to your question would be governed by state law. Some states may allow late fees on a single pay loan; others do not.

Answer by David Dickinson:

While I agree with J. Bruce, I wonder if this question pertains to a Federal Reserve interpretation. Late Payment is defined in §226.18(l) of Regulation Z as:

Any dollar or percentage charges that may be imposed before maturity due to a late payment.

The Federal Reserve indicates that a single payment loan cannot have a late payment fee in the note or Truth in Lending disclosure as a single payment loan would not have a payment **before maturity** that is late. They do not allow a FRB regulated bank to use this term. However, you can have a "post-maturity" fee.

Late Fees Limits on Mortgage Loans

Question: Is there a required percentage (minimum or max) for late fees on mortgage loans and do you have to give fifteen days or can you give them just 10 days prior to late fee being added?

Answer by John Burnett: This is a state law issue. You will have to check the mortgage or lending laws in your state.

Answer by Andy Zavoina:

This may also vary by the loan type. Many mortgage loans enjoy a federal preemption to State usury laws, under 12 USC 1735f-7.

Early TiL Disclosure Question

Question: On the preliminary Truth In Lending disclosure, should the late charge percentage match the criteria for the state in which the applicant resides?

Answer by Dan Persfull:

Yes, unless you are allowed to export late charges under the preemption rules.

Answer by Richard Insley:

The bullet-proof answer is that the disclosure should match the terms of the note that will be used when the loan closes. That said, I don't know whether the laws of the lender's state or the laws where the dirt is located will govern details of the credit agreement. Clearly, provisions of the D/T will be governed by the jurisdiction where it will be recorded--but the note, too?

Erroneous Late Payment Report to Credit Bureau

Question: I need a little help! I am an employee of a financial institution and have a personal loan with [lender name redacted] Financial. My husband made 2 late payments and neglected to pay the late charges. The last 2 payments he made were posted towards the late charges thus making my last 2 payments insufficient by \$31.26, total. They informed me that they reported this to the credit bureau. I understand that they are in violation of Reg AA and this is wrong. They should have posted the payments as normal and billed me for the late charges. That is what we do here at our institution. What recourse do I have with them and having this removed from the Credit Bureau?

Answer by Dan Persfull:

File a complaint with the Credit Reporting Agency citing Reg. AA, copy the financial company, the state Department of Financial Institutions and the FTC (I

think they still regulate finance companies). This is a classic case of "pyramiding" late charges and that is a direct violation of Federal regulations.

Answer by Andy Zavoina:

While I would agree with Dan, there are opinions that Reg. AA doesn't apply to mortgage loans. Here is one such opinion applicable to credit unions.

Refunding Fees on Short Term Loan?

Question: We are going to be doing a swing loan at our bank for about a 2 month period. We are charging normal fees for this loan (Title Insurance, Record Mtg, Conservation, Flood Cert, Loan Administration, Recording Upcharge and Flood Cert Life). Since \$122 of the fees are Finance Charges and affect the APR, would any of the fees have to be refunded on such a short term loan?

Answer by Dan Persfull:

You need to elaborate on why you feel the fees may need to be refunded. Unless you have a state law that limits fees on such a loan, and/or if the loan is subject to HOEPA and you need to refund to bring below the thresholds, I know of no reason why you would have to.

Reasonableness/Disclosure of Subordination Fee

Question: I would sincerely appreciate it if you could assist me on the following:

Topic: Bank charges and fees related to residential lending, owner occupied residences. Exclusions from disclosure.

Issue: Disparity in fees, what if any are the Federal laws about disclosure, or affect on TIL in general?

Example: Bank A has a borrower with a second mortgage, home equity line of credit (HELOC). The senior lien is a different lender, Bank B. Borrower chooses to refinance the senior lien, but goes to a different lender, Bank C, i.e. not the bank with the HELOC, Bank A.

Bank A charges \$250.00 for the Subordination Agreement (so that Bank C can take first position).

Question: Is this fee "bona fide" and "reasonable" (language taken from Exclusion section of Jack Holtzknecht's webinar materials on page 10)?

It isn't disclosed up front, however, is it a foreseeable event that a second position lender would be required to disclose?

Bank A's fees for a preparing a Full Reconveyance are only \$45.00 plus actual recording fees as mandated by local ordinance. Since this is basically the same process as a Subordination (acquire data, type data onto form, have supervisor

review it, sign it and have it notarized), wouldn't the Subordination fee of \$250.00 compared to a Reconveyance fee of \$45.00 be unreasonable?

Are there any nuances in the regs which would prohibit this ?

Answer by Dan Persfull:

[It isn't disclosed up front, however, is it a foreseeable event that a second position lender would be required to disclose?]

Answer: The subordination is a subsequent event (that may never happen) to the original transaction. The second lien holder is under no regulatory or legal obligation to subordinate their debt.

[Question: Is this fee "bona fide" and "reasonable" (language taken from Exclusion section of Jack Holtzknecht's webinar materials on page 10)?]

Answer: Without knowing the extent of the bank's procedure, I cannot answer this question. I can tell you we charge a \$150 subordination fee to the requesting bank. We will review certain aspects of the transaction and if we are not comfortable in our current position we will not agree to the subordination.

Answer by Jack Holtzknecht:

This is a subsequent event, which would not have to be disclosed in the original TIL disclosure. Any restriction on the fee would come from state usury limits.

Increasing a Construction Loan -- Disclosures?

Question: We have a loan whose term is five years. The funds are being used for construction and the customer has come back for an increase. We have increased the loan and the term will remain at 5 years. Additional fees have been charged. Are Preliminary Disclosures and a Good Faith Estimate needed again?

Answer by David Dickinson:

If you truly did an increase (a type of modification) and not refinanced the loan, you do not need to provide any new disclosures. Refer to §226.20(a).

Maximum Late Fee Charges on Loans

Question: I am trying to find out what the maximum late fee charges that can be applied to a commercial loan. If this is regulated by the states, I need to know the specifics for Oklahoma. I would also like the same information on a consumer loan.

Answer by Dan Persfull:

Late fees will be governed by state law. You will probably get a more precise answer by posting this question in the OK state specific forum.

Keeping Funds on Withdrawn or Denied Loans

Question: If a customer withdraws or a loan is denied and costs have been incurred, do we have the right to keep funds collected and can we request payment for cost that weren't paid. I realize if a mortgage loan is rescinded all fees must be returned, but what about other loans?

Answer by Randy Carey:

You should refer to your State law regarding allowable payments prior to the extending a consumer loan. Some States prohibit an upfront payment for arranging a consumer loan. Whether some of these provisions apply to a licensed financial institution is a question for your attorney. As far as collecting for costs that you incurred but have not yet been paid by the applicant when the loan does not close, I would again check with your attorney. I would think that in order to make that stick, you would have to enter into some sort of written agreement at the time of application binding the applicant to payment.

Answer by Andy Zavoina:

We used such an agreement with our mortgage loans. Customers would apply and we had costs for credit reports, appraisals and such. If they withdrew to go to a competitor, especially if they were using our rate to get a better deal elsewhere (matching), we charged them the actual fees we paid. Often the Realtor representing them facilitated payment to avoid reputation risk problems.