

## Selected Subjects

### Guru Chatter\* on Mortgages



#### **Adjusting the Interest Rate Daily or Monthly?**

Question: On a home mortgage loan that is a one year term with a variable rate, can you have the interest adjust daily or is there a specific regulation that requires it to be monthly?

Answer by Jack Holzknacht:

The ability to adjust the rate is generally controlled by the terms of your note and mortgage. Read your documents for the answer.

#### **Augmenting Fee Income on Mortgages**

Question: We are looking to add some fees to our closing costs. Which of these fees, if any, can we use? We are regulated by the FDIC. Administration fees, Commitment fee, Funding fee, Processing Fee, Tax Services, Underwriting Fee, Wire Transfer. We will be charging an application fee and a document preparation fee.

Answer by Richard Insley:

I favor the non-customer fee. It is charged to everyone who does not bank with you and helps to offset the loss of income because these people choose to bank with a competitor who spends more time providing good service than dreaming up new types of junk fees.

Answer by Jim Bedsole:

Per RESPA, your fees must be bona fide and reasonable. So you can't charge a wire transfer fee if there is in fact no wire transfer. As a general matter, the fees you list will all be considered finance charges and will need to be factored in calculating your TIL disclosures. As to the permissibility of the fees, this most likely will be a matter of state law. You'll need to research permissible fees for the states where you will be doing business.

I can't say that I disagree with Richard's answer, though.

#### **Multiple Indebtedness Mortgage – HmmmDA**

Question: We have a multiple indebtedness mortgage product that allows, for example, an original recorded mortgage of \$100,000 and an initial note of \$75,000 and allows the borrower at a later date to borrow up to the remaining \$25,000. The original loan and mortgage can be a refinance or a purchase. The

subsequent loans purposes can be for debt consolidation, home improvement, etc. All subsequent notes are secured by the first mortgage. We are reporting the subsequent notes for HMDA purposes. What would be the lien status of the subsequent loan? We have gotten some indication from the HMDA help desk that it could be either a first or second lien. If we treat it as a first lien we will almost always have to report a rate spread because the rates on subsequent loans are higher. If we treat it as a second lien, the rate spread will almost surely be NA.

Answer by Dan Persfull:

My best guess is these will be first lien loans. The loans are secured by one mortgage and there is no additional mortgage filed against the property. If your mortgage holds first lien position, then in my opinion advancing new money against that mortgage does affect the lien position of that mortgage.

### **Photos in Mortgage File -- One More Time!**

Question: I have heard that ECOA requirements state that a mortgage lending file may contain no photographs of the borrower or other individuals including appraisal photos, copies of driver's licenses, etc. If this is true were can it be found in writing?

Answer by Dan Persfull:

Reg. B prohibits the collection of GMI unless the loan is for the purchase or refinance (purchase money) of the borrower's primary dwelling and secured by the primary dwelling, or if you are required to collect under some other requirement, such as Reg. C.

If the loan is for a purpose other than the purchase or the refinance of the primary dwelling and secured by the primary dwelling the GMI should not be in file unless you are subject to Reg. C, a state law requires it, or if you are collecting the information for a self-test program. It should also be noted a refinance under Reg. B has a different meaning than Reg. C. If any new money is added to the loan, other than closing costs, then the loan is not a refinance for the purpose of collecting GMI under Reg. B. The loan's purpose would be for whatever the new money was to be used for.

Look to Reg. B 202.13 and the Official Staff Interpretations for guidance on collecting GMI. Reg. B does not specifically prohibit having a copy of a picture ID in file. However, if the purpose of the loan does not allow for collecting GMI either under Reg. B, state law or Reg. C then you have a problem.

Answer by Andy Zavoina:

I will take a different position based on comments from one or more regulators, representing each agency, at the ABA NRCC about two years ago when CIP was heating up. This concern, however, focused on loans where GMI wasn't permitted.

First, CIP doesn't "authorize" it. But the fact that a copy of an ID is in file was said to not be evidence of discrimination, at face value. And each agency's representative said it would not be a violation or deemed a collection of monitoring information. Nor have I heard of banks being cited for this.

That said, if there was evidence to support discrimination claims and any investigation, these could be most damaging. **Further**, and this is a big further, footnote 40 in the newest BSA Exam Manual does address this:

*Banks are not required to make and retain photocopies of any documents used in the verification process. However, if a bank does choose to do so, it should ensure that these photocopies are physically secured to adequately protect against possible identity theft. In addition, such photocopies should not be maintained with files and documentation relating to credit decisions to avoid any potential problems with consumer compliance regulations.*

When GMI is allowed, and required, I don't know why this would be an issue, less the concerns of identity theft voiced in the footnote above. For this reason, I would separate them, but to the original question, the ECOA doesn't require this.

### **Mortgage Application -- Income Verification**

Question: I recently began working in my first job after earning my college degrees. Right now, I am a straight salaried worker (no commission, no bonus, no other income). If I applied for a mortgage today, would a bank use my current income level, as shown on my pay-stubs, or would they average the last few years. While in college, I did not work, so I have no income to my credit from the last couple years. Or do they have to give me credit for my current income as long as I can prove it w/ pay-stubs. I don't have a W-2 yet, since I recently graduated.

Answer by Dan Persfull:

Most banks would use your current income based either on your pay-stubs or a verification of employment from your employer.

### **Separate Applications if not Married?**

Question: When completing a mortgage loan application, are you required to use separate applications when the borrower and co-borrower are not married?

Answer by Dan Persfull:

No, unless you require separated application for married persons applying for joint credit. You should not treat married and unmarried joint applicants any differently.

Reg. B, 202.6(b)(8);

*(8) Marital status. Except as otherwise permitted or required by law, a creditor*

*shall evaluate married and unmarried applicants by the same standards; and in evaluating joint applicants, a creditor shall not treat applicants differently based on the existence, absence, or likelihood of a marital relationship between the parties.*

Answer by John Burnett:

Note that you might need supplemental application information if the applicants' assets cannot be fairly represented using the space allowed on the application form.

### **Loan Extension or Modification - New Note Required?**

Question: When doing an extension or a modification on an installment loan or mortgage loan is a new note required?

Answer by Jim Bedsole:

No, a modification agreement will generally suffice. For a mortgage loan, you may have to record the modification agreement to maintain your lien priority.

### **TIL - Look Back for Index Value on an ARM loan**

Question: For purposes of the final TIL, what is the look back for the index value on an ARM loan? Is it 45 days prior to closing, the date of closing or other date?

Answer by Dan Persfull:

Look to the Official Staff Commentary for §226.17(c)(1)(10(i). If your contract allows a 45 day look back then the initial composite rate can be based on an index value within those 45 days.

### **Most Current Version of the CHARM Booklet**

Question: We seldom make ARM loans but I noticed our CHARM booklet has no date on it. What is the most current version of the CHARM booklet?

Answer by Andy Zavoina:

Federal Reserve FIL-48-99, June 3, 1999

<http://www.fdic.gov/news/news/financial/1999/fil9948.html> is the last update I have found. The CHARM booklet is available online and you can compare yours to this, which should be the latest version available on the FRB's web site.  
<http://www.federalreserve.gov/consumers.htm>

### **ARM Loans - Is Balloon at Maturity Acceptable?**

Question: Can an ARM loan be a balloon loan where interest and principal are paid at maturity?

Answer by Dan Persfull:

In addition, can an ARM loan be a loan where principal is paid at maturity and interest is paid monthly, quarterly, etc?

Yes.

The following is from the reference section in the OSC to §226.30.

*An adjustable-rate mortgage loan is defined in section 1204 as "any loan secured by a lien on a one- to four-family dwelling unit, including a condominium unit, cooperative housing unit, or mobile home, where the loan is made pursuant to an agreement under which the creditor may, from time to time, adjust the rate of interest."*

Answer by John Burnett:

If there are limitations on a lender's ability to offer such a product, they would be in state laws or regulations.

### **ARM Loan - Must APR Represent Worst Case Scenario?**

Question: When preparing a Truth-In-Lending on an ARM program, is it required that the APR represent the worst case scenario?

Answer by Dan Persfull:

Are you referring to the program disclosure, the early or final TIL with a fully indexed, premium or discount rate? Knowing this has an impact on the proper answer. You should review sections §§226.18 and 226.19 and their commentaries.

### **CHARM, ARM, and Closed End Variable HE Loan**

Question: Do we need to provide a CHARM booklet and ARM disclosure for a home equity second mortgage closed end loan tied to Wall Street Prime with a maturity date over 1 year?

Answer by Dan Persfull:

Yes if the loan is secured by the borrower's primary dwelling.

From the OSC to §226.19:

19(b) Certain variable-rate transactions.

*1. Coverage. Section 226.19(b) applies to all closed-end, variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end, variable-rate transaction secured by the principal dwelling.*

### **Timing of ARM Disclosure if Counteroffer**

Question: We work with mortgage brokers and have started offering an ARM. When and how do we give the ARM disclosure? The applicant may apply for a

fixed rate loan and the ARM could be offered at a later date. When would the ARM disclosure be required and how would we document the date, the 1003 could be dated before the ARM is offered.

Answer by Dan Persfull:

Here's an excerpt from the OSC to §226.19(b)(2)(1)

*If a consumer who has received program disclosures subsequently expresses an interest in other available variable-rate programs subject to 226.19(b)(2), **or the creditor and consumer decide on a program for which the consumer has not received disclosures, the creditor must provide appropriate disclosures as soon as reasonably possible** . The creditor, of course, is permitted to give the consumer information about additional programs subject to §226.19(b) initially.*

As long as you document the date of the counteroffer and supply the disclosure within a reasonable time, and before a non-refundable fee has been paid you would be within the guidelines of the regulation.