

Selected Subjects

Guru Chatter*

on **Reg Z, Rescission and More**



Waiving ROR Three Day Waiting Period

Question: Can a borrower waive the three day waiting period on a refinance?

Answer by Dan Persfull:

Only in a bona fide financial emergency. Losing a deal if the loan does not close does not qualify; replacing the furnace in 20 degree weather would. You may want to review 226.15 and 226.23's sections on waiver.

Answer by Andy Zavoina:

This question is coming up more frequently because customers want to take advantage of a better rate, need the funds for an investment or just don't want to wait and the lending officer wants to accommodate them. This allowance is meant to be an exception to the rule and a very serious exception at that. It is not to be done because of poor planning. As Dan noted, the waiver is only to be allowed in the event of a "bona fide financial emergency." If you grant such an exception to the rules, you need to consider the impact this could have 6 months or 6 years down the road. If the borrower ever falls in dire straits, this is a topic their attorney will review and may discuss with your institution. The discussion may start out something like this: "In that we were not really granted a rescission period, we'd like that now. Please forward a Cashier's Check representing our payments for the last 5 years and a lien release. Our bankruptcy attorney will coordinate the repayment plan for the amount borrowed."

ROR on Property Vested in Family Trust

Question: When lending to an individual whose property is vested in the name of the family trust, is there rescission for the occupants of the dwelling? (keep in mind that we are not lending to the trust; it is simply granting the collateral) As I understand Regulation Z; the regulation is clear that if you are lending to the individual, they are subject to Reg. Z, however, I have a handout from a seminar [that a co-worker attended] that contradicts that by saying that if the loan is to the individual, but vested in the trust, then only the beneficiaries of the trust receive rescission.

Answer by Dan Persfull:

A trust is not a consumer for the purposes of 226.15 and .23, therefore the ROR does not apply to a trust. However, your state laws may have rescission rules that are more stringent.

Rescission on Refi By New Lender

Question: Does a right to rescind apply on a loan secured by a primary residence, if it is a refinance, with no new money, but with a different lender? And under this same scenario, what if the new loan is only under one of the original borrower's names (husband and wife are divorced)? Does that change the answer?

Answer by Dan Persfull:

The rescission rules would apply. The "no cash out" exemption only applies if the loan is being refinanced by the same lender.

The fact it is being refinanced by only one of the parties also does not affect the right to rescind. This sounds like the one party is refinancing due to a divorce "buy out". The applicability of the right of rescission in these transactions is discussed in the Official Staff Commentary to Reg. Z at 226.2(a)(24).

Rescission and Disclosure Errors

Question: When a borrower exercises his right of rescission of a consumer loan, does the rescission preclude any lender TIL liability for less than perfect disclosures made as to the rescinded loan?

Answer by Dan Persfull:

In my opinion it would. You have to refund all charges paid by the borrower, including interest, therefore you are making the borrower whole.

Rescission on a Construction Loan with a Wrinkle

Question: We have a fixed rate loan we're doing to construct a residence and refinance the land the customer already owns. Our collateral will be a 1st deed of trust on the land and new home they're constructing. My question is, does the customer have the right to rescind the transaction if they live in a trailer on the property we're taking as collateral?

Answer: If you are taking a security interest in the MH then rescission would apply. If you are not, then rescission would not apply.

Retention Period on a Rescinded Loan

Question: What is the retention period on a rescinded loan? The loan has not been booked on the loan system since the customer cancelled it prior to booking.

Answer by Dan Persfull:

You would still have to follow the retention requirements of any applicable regulation pertaining to the loan, i.e. Reg. B.

Bona Fide Personal Financial Emergency

Question: For the purposes of a waiver of a consumer's right of rescission, can you provide examples of a bona fide personal financial emergency, excluding, of course, natural disasters? Specifically, consider this situation: Seller refuses to transfer title unless funds are delivered at the closing, because the funds are needed immediately for seller's purchase of another property. Seller threatens lawsuit. Buyer has no other source of funding. Sale price: \$500K Loan: \$500K, secured by Current Principal Residence, which is on the market for sale.

Answer by Dan Persfull:

This is poor planning, not a bona-fide personal financial emergency in my opinion. You could have your customer sign the necessary loan documents and disclosures 3 business days before the scheduled title transfer. That way you have the ability to disburse the funds at the "title" closing.

Purchase of Resort Home in Hawaii

Question: We have a borrower who would like to get a loan in his own name to purchase a resort-style home in Hawaii and divide the ownership into fifths. Once the division is complete he will own one-fifth of the property. Is this a consumer or commercial loan request?

Answer by John Burnett:

There isn't enough information here to determine the answer. For example, if he's planning to sell shares in 4/5 of the property and retain the 1/5 interest for rental purposes, you may have a commercial application. On the other hand if he's planning to share a vacation home with his four siblings or friends, it's probably a consumer transaction.

Answer by Dan Persfull:

This has been answered [here](#) .

<http://www.bankersonline.com/ubbthreads/showflat.php/Cat/0/Number/292626/an/0/page/0#292626>

Loan to Trust -- Consumer Loan or Not?

Question: We are doing a loan to a trust for construction purposes. Can this be done as a consumer loan? Will there be ROR? What about early disclosures?

Answer by Dan Persfull:

Yes you can disclose as a consumer loan. OSC 226.3(a)(1).

ROR would not apply unless an individual's primary dwelling is securing the construction loan.

Early disclosures would not apply.

Home Equity Loan on Residence/Business

Question: Can a home equity loan be made on a building used as a principal residence and business combined?

Answer by Dan Persfull:

Yes. The purpose of the loan will determine if it will require Reg. Z disclosures.

Rescission in Combo Refi/Purchase

Question: My question is with regard to the right of rescission in a combination refinance/purchase type of transaction. The scenario is this: Client owns primary residence (coop unit A), which is encumbered with a mortgage from our institution. He comes to us for financing to purchase unit B, which will be combined with unit A to make one large apartment. We are going to refinance his existing unit mortgage and provide the purchase funds as well under one Note and mortgage. Does rescission apply? Note: the "new" money advanced is supported with LTV guidelines by the new unit alone (in case this makes a difference).

Answer by Dan Persfull:

Rescission would apply. See the Official Staff Commentary to 226.23(a)(1)(4).

To Modify or to Refinance? That is the Question.

Question: If you are lowering the loan payment per a customer request, can that be handled through a modification agreement or would you have to treat the loan as a refinance? If you lower the payment with a modifications agreement, are any other disclosures required, ie., TIL?

Answer by Randy Carey:

Whether or not you can do this with a modification would be a matter of State law. If it doesn't rise to the level of a refinance, there would be no additional disclosures required. If you are extending the term of the loan (since you are lowering the payment) you would have to comply with the flood hazard requirements.

Answer by Andy Zavoina:

§226.20 of Reg. Z will also help as to what will trigger new disclosures. In part it tells you that a refi requires new disclosures and it defines what constitutes a refi.

The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in §226.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

Modifying an Open or Closed-end Credit Plan

Question: What disclosures if any are required when modifying either an open or closed-end credit plan and no new funds are extended? The modification would either lower the interest rate or change the term and in some cases do both.

Answer by Jack Holzknacht

Generally, if you modify the existing transaction by having the customer sign a new note (refinance), the transaction is considered to be a new transaction and new disclosures are required. If a modification agreement is used, then the transaction is not a refinance, and no new disclosures are required.

"Open-end Credit"?

Question: We offer different types of lines of credit, including credit cards. But since all credit lines except credit cards have a maturity or expiration date, are they really considered "open-end credit"? Can you offer a clear definition of what "open-end credit" means?

Answer by Dan Persfull:

Every credit card I have has an expiration/maturity date. It's up to the issuer whether to renew that card at its expiration/maturity date.

Open-end credit is well defined at 226.2(20).

Notary Fees & the APR

Question: Do notary fees affect the APR?

Answer by Dan Persfull:
The OSC to 226.4(e)

3. Notary fees. In order for a notary fee to be excluded under §226.4(e), all of the following conditions must be met:

- The document to be notarized is one used to perfect, release, or continue a security interest.
- The document is required by law to be notarized.
- A notary is considered a public official under applicable law.
- The amount of the fee is set or authorized by law.

Does the HOEPA Test Apply?

Question: A discussion has arisen within our ranks regarding the need to test for HOEPA under "refinancings". The definition of "refinance" as used for HOEPA may be the trouble spot. If a customer has a 1st mortgage consumer real estate loan originally for the purchase of the home and decides to do a debt consolidation that includes the real estate loan, is it subject to HOEPA? Since HOEPA is targeted at equity loans and what we would have is a first mortgage on the loan refinanced with cash out, does the HOEPA test apply?

Answer by Dan Persfull:
The exempt loans are found at 226.32(a)

(2) This section **does not apply** to the following:

(i) A residential mortgage transaction. (You need to look to 226.2 for the definition of a residential mortgage transaction and a refinancing will not meet that definition.)

(ii) A reverse mortgage transaction subject to §226.33.

(iii) An open-end credit plan subject to subpart B of this part.

Changing the Rate on a Balloon Loan

Question: If we are doing a consumer loan that has a balloon payment, at the end of the original term can we change the interest rate or does it have to stay the same until the loan is fully amortized?

Answer by David Dickinson:

First, refer to the legal terms of your agreement. This may prohibit or allow you to change terms.

I'm not exactly sure what you are asking, but if you are asking "Can we prepare a modification agreement that has a different interest rate rather than prepare a whole new loan?" the answer is "yes". Refer to §226.20(a) of Regulation Z for more information.

Answer by Dan Persfull:

You will also want to look to state law, especially if this is a non real estate secured loan. In the state of IN, if the loan is not secured by real estate, the loan has to be renewed at no less favorable terms than the original terms, this includes the interest rate.

Need Guidance for 1-4 Family ARM Program

Question: Our bank is wanting to start providing an ARM program for 1-4 family. What are the main things I need to compile a list of notices and requirements that are needed to comply for this program. Can anyone direct me to a site with a list of doc's that are required? ANY help is appreciated.

Answer by Dan Persfull:

Read 226.19(b) and its Commentary. You will find a model disclosures in Appendix H. Also contact your document preparation software vendor for assistance and make sure you don't have any state specific requirements to consider.

You will also need to comply with the disclosure requirements of 226.17 and .18.