Regulators Citing First HELOC Statement Violations

By Jeff Thompson, CRCM

It has come to our attention that regulatory agencies have been citing banks for failing to itemize finance charges on the first periodic statement in a Home Equity Line of Credit (HELOC) arrangement. These findings result in reimbursable violations of the rule, and the examiners are citing a bank's ignorance of this rule as a hole in its Compliance Management System (CMS). Read on for our analysis of this situation.

The regulators are citing Regulation Z (12 CFR 1026.7(a)(6) if banks fail to itemize certain costs that are added to the outstanding balance of a HELOC, usually at closing, which should also be shown on the very first periodic statement. The rules reads, "The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable" and paragraph 6 is entitled "Amount of finance charge and other charges." They likely should have added (i) to the citation, as 12 CFR 1026.7(a)(6)(i) reads, "Finance charges. The amount of any finance charge debited or added to the account during the billing cycle, using the term finance charge. The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified." If you do add a legitimate finance charge to that first periodic statement (vs. the borrower paying it in cash), it should affect the APR for that month, and that month only.

In one examination report we were privileged to read, the regulators go on to say, "A review of HELOC periodic statements covering the initial draw period revealed that finance charges were not itemized as required. Specifically, the flood insurance certification fee and the tax service fee, must be itemized and disclosed as finance charges, using that term." We take issue with a portion of this finding.

We agree that a tax service fee, which is a fee for a service that will be ongoing during the life of the loan, should be a finance charge, and should be itemized if charged in a HELOC loan setting and added to the initial loan balance. However, our reading of flood insurance certification fee is that it is a fee for the initial determination of a property's inclusion in or exclusion from, a flood hazard area. In that instance, the fee is not a finance charge, as noted at 12 CFR 1026.4(c)(7)(iv). If the fee included ongoing life of loan monitoring, only that portion of the overall fee would be a finance charge, as again it pays for a service that will be performed on an ongoing basis throughout the life of the loan. This is important because generally, there is no tolerance for open-end credit reimbursements.

With this information, we recommend that you review all the fees you are charging in relation to HELOCs, and determine if those fees are taken as part of the initial draw against the line, adding to the outstanding balance. If those fees are indeed finance charges, they should be itemized and labeled as such, and those fee amounts should affect the APR for that month. Other fees charged, such as the annual fee (which is not a finance charge) should also be itemized, but may not affect the APR. If you have any questions regarding what is and what is not a finance charge, please give UBB Compliance Services a call.

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