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# Equity Loan & HELOC Compliance

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# Loan File Documentation

**\*\* = specific to Home Equity Loan**

**@@ = specific to Home Equity Line**

**Application:** Regulation B requires a complete and dated application. Reg B requires a clear designation on applications whether the request is for **single or joint** credit and how it is **secured**.

**And the application should be complete....really complete!**

**Joint Credit** must be clearly documented....the intent to apply jointly. This is on your application at the top right. And the financial institution has a separate form

**Purpose** of the loan is important too and should be crystal clear.

Helps in determining HMDA coverage, RESPA coverage, etc.

## **\*\* Home Equity Loan**

**Government Monitoring Information:** All purchase and refinance loans must have the government monitoring information filled in on the application if the application was taken in person. If the application was taken by phone or received by mail, make sure it is so noted.

The information collection requirements of this section of the

regulation apply to applications for credit primarily for the **purchase or refinancing** of a dwelling that is or will become an applicant's principal residence. A creditor that receives an application for credit (1) when it is primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence and (2) when the extension of credit will be secured by the dwelling must request, as part of the application, the following information regarding the applicant(s):

- Race or national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; other (specify)
- Sex
- Marital status, using the categories married, unmarried, and separated
- Age
- Ethnicity

A dwelling is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit and a mobile or other manufactured home.

**Privacy Notice:** Must be given to all borrowers. And must be documented somehow in the file. It's on the financial institution's checklist.

**OFAC:** Must be checked prior to closing on all parties to the loan.

- OFAC should be pulled on everyone who "touches" the money.

**CIP:** File should contain notation of information from drivers license for new member. For established member, a CIF printout or completion of account information on loan summary.

- Area on loan checklist to document.
- Special form to complete
- Important Information About Procedures For Opening A New Account...on the back of the loan application.

**\*\* Home Equity Loan**

**Insurance Disclosure:** For credit life, A&H, etc.

- **Initial disclosure:** Saying we will not deny their loan if they won't get the insurance through our financial institution.
- **Subsequent disclosure:** If they buy the insurance. States the insurance is not FDIC insured.
- **Addendum Disclosure:** States the financial institution will receive a fee for selling the insurance.
- **Reg Z Disclosure:** on TIL

**Debt to Income Analysis Form:** Make this a clear analysis; substantiated with income verification. Remember to include ALL debt properly.

**Analysis/Recommendation Form:** Discussing clearly the reason to make or not make the loan.

**\*\* Home Equity Loan**

**Truth in Lending:** All loans require a final TIL. The information within the FED box is of most importance and must be accurate. The APR must be accurate within 1/8 of 1% (.125).

**@@ HELOC**

**Home Equity LOC Disclosures:** “Important Terms of our Home Equity Line of Credit” is required at application to explain how the financial institution’s program works. Copy stays in the file; original to the borrower. This information is to be given at application or within 3 business days...and document it!

- Plus the “When Your Home is on the Line” booklet.

**@@ HELOC**

**SECTION 226.5b—Requirements for Home-Equity Plans**

The requirements of this section apply to **open-end credit** secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under section 226.14(b).

(a) Form of disclosures.

(1) General. The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the **itemization of third-party fees** described in paragraph (d)(8), and the **variable-rate information** described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

**@@ HELOC**

**Content of disclosures.** The creditor shall provide the following disclosures, as applicable:

\_\_\_ Retention of information. A statement that the consumer should make or otherwise retain a copy of the disclosures.

\_\_\_ A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

\_\_\_ A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

\_\_\_ Security interest and risk to home. A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of

default.

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**Possible actions by creditor.**

\_\_\_ A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

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\_\_\_ A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

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\_\_\_ A statement of such conditions if borrower requests this info.

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**Payment terms.**

\_\_\_ The payment terms of the plan, including—

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The length of the draw period and any repayment period.

\_\_\_ An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result.

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\_\_\_ An example, based on a \$10,000 outstanding balance and a recent annual percentage rate, showing the minimum periodic payment, any balloon payment, and the time it would take to repay the \$10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit.

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\_\_\_\_ If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

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\_\_\_\_ Annual percentage rate. For fixed-rate plans, a recent annual percentage rate imposed under the plan and a statement that the rate does not include costs other than interest.

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\_\_\_\_ Fees imposed by creditor. An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

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\_\_\_\_ Fees imposed by third parties to open a plan. A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

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\_\_\_\_ Negative amortization. A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

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\_\_\_\_ Transaction requirements. Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

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\_\_\_\_ Tax implications. A statement that the consumer should consult a tax advisor regarding the deductibility of interest and

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statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

\_\_\_\_ The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a \$10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

\_\_\_\_ An historical example, based on a \$10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index-value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

\_\_\_\_ A statement that rate information will be provided on or with each periodic statement.

**@@ HELOC**

**Limitations on home-equity plans.** No creditor may, by contract or otherwise—

- (1) change the annual percentage rate unless—
  - (i) such change is based on an index that is not under the creditor's control; and
  - (ii) such index is available to the general public;

(2) terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse-mortgage transactions that are subject to paragraph (f)(4) of this section) unless—

(i) there is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) the consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(3) change any term, except that a creditor may—

(i) provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual

percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) make an insignificant change to terms.

(vi) prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which—

(A) the value of the dwelling that secures the plan

declines significantly below the dwelling's

appraised value for purposes of the plan;

(B) the creditor reasonably believes that the consumer

will be unable to fulfill the repayment obligations

under the plan because of a material change in the

consumer's financial circumstances;

(C) the consumer is in default of any material

obligation under the agreement;

(D) the creditor is precluded by government action

from imposing the annual percentage rate provided

for in the agreement;

(E) the priority of the creditor's security interest is

adversely affected by government action to the

extent that the value of the security interest is

less than 120 percent of the credit line; or

(F) the creditor is notified by its regulatory agency

that continued advances constitute an unsafe and

unsound practice.

**SECTION 226.6—Initial Disclosure Statement**

The creditor shall disclose to the consumer, in terminology consistent with that to be used on the periodic statement, each of



\_\_\_\_ Statement of billing rights. A statement that outlines the consumer's rights and the creditor's responsibilities under sections 226.12(c) and 226.13 and that is substantially similar to the statement found in appendix G.

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**Periodic Statement**

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

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\_\_\_\_ Previous balance. The account balance outstanding at the beginning of the billing cycle.

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\_\_\_\_ Identification of transactions. An identification of each credit transaction in accordance with section 226.8.

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\_\_\_\_ Credits. Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

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\_\_\_\_ Periodic rates. Each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed.

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\_\_\_\_ Balance on which finance charge computed. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, that fact and the amount of the credits and payments shall be disclosed.

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**Appraisal Notice:** The requirements have changed slightly here requiring that the borrowers **receive a copy of the notice**.

- This notice might show on the very bottom of the GFE that would cover the Home Equity Loan. But what about the Home Equity Line??

New guidelines provide that an appraiser must be selected and engaged directly by the financial institution or its agent, without influence from the borrower.

- No longer may a financial institution allow a borrower to select an appraiser from the financial institution's approved appraiser list.

New guidelines provide that within a financial institution the appraisal and appraisal evaluation process should be separate from influence by the institution's loan production process.

Therefore, the ordering and the review of appraisals must be independent of the loan approval process.

- The loan officer should not select or retain the appraiser.
- A loan assistant could choose the appraiser.
- In-house collateral valuations should not be done by the loan officer.

Appraisals and evaluations should be reviewed by qualified individuals who are not involved directly in the business development and loan approval processes. The loan officer should not be the only reviewer of the completed appraisal.

**Appraisal Standards:** The appraisal must be obtained from board approved appraisers (certified or licensed). It must state a fair and reasonable market value.

- The appraisal must utilize all three appraisal methods (cost, sales comparable, and income approach).
- The financial institution utilizes an appraisal review checklist.

**\*\* Home Equity Loan**

**RESPA:**

- **Good Faith Estimate:** This must be given within three business days of the date of application. It must show a reasonable estimate of closing costs.
- RESPA requires that one year hazard insurance premium be disclosed on the GFE & HUD as a POC item if it is required to be paid in advance.
- The agencies also require the disclosure of taxes as POC items.
- **Transfer of Servicing Disclosure:** This must be given within three business days of the date of application.
- **HUD 1 or HUD-1A:** This is signed at closing and shows

the actual closing costs. It should be within 10% of the amount estimated on the GFE. Remember insurance and taxes as POC items.

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**Right of Rescission:** The correct form must be used for:

**\*\* Home Equity Loan**

- Refinancing with the same lender
- A new rescindable loan

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**@@ HELOC**

- Open-end loans
- Increase in a loan : could be used for either

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The three day rescission period must be calculated correctly. We have the borrower(s) resign the notice at the end of the rescission period. Loan disbursements must not occur until the expiration of the rescission period.

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**Flood:** The flood determination should be obtained early on in the application process; such as when ordering the credit report. All files must contain a determination.

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If the property is located in a flood plain, a flood notice is required 10 days prior to closing. The borrowers must obtain flood insurance prior to closing.

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- **Reminder:** Flood determinations are to be made 10 days prior to closing.

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The financial institution reports business information and consumer information to a nationwide consumer reporting agency in the ordinary course of business; such information may include negative information regarding credit extended to consumers. Negative information is defined as information concerning a borrower's delinquent payments, late payments, insolvency or other form of default.

- A written notice must be in the file notifying the borrower about the financial institution's practice of furnishing negative information to a nationwide consumer reporting agency.
  - ✓ The notice can be provided either prior to/within 30 days after furnishing the negative information.
  - ✓ The notice should utilize the model language provided by the Federal Reserve Board.
  - ✓ The notice should be clear and conspicuous, and provided separately from other notices and disclosures.
  - ✓ The notice should be provided to each person, including co-borrowers and guarantors, who may be the subject of reporting by the financial institution.

**Automatic Payment:** Regulation Z looks for borrower authorization for an automatic debit to the member's deposit account for monthly payments. An Automatic Transfer Authorization must be in the file signed by the borrower(s) showing \$ amount and first authorized payment date.

# Advertising Checklist

Name of Advertisement: \_\_\_\_\_

Date of Advertisement: \_\_\_\_\_

1. Are any advertisements misleading or inaccurate?

**Yes**      **No**

2. Are disclosures clear and conspicuous?

**Yes**      **No**

3. Is the rate of finance charge stated as "annual percentage rate" or "APR"?

**Yes**      **No**      N/A

4. If annual percentage rate may increase after consummation, is that fact stated?

**Yes**      **No**      N/A

5. If any of the following are disclosed (for closed-end credit):

a. Amount or percentage of any down payment

**Yes**      **No**      N/A

b. Number of payments or period of repayment

**Yes**      **No**      N/A

c. Amount of any payment

**Yes**      **No**      N/A

d. Amount of any finance charge

**Yes**      **No**      N/A

6. Are all of the following disclosed?

a. Amount or percentage of the down payment

**Yes**      **No**

b. Terms of repayment

**Yes**      **No**

c. "Annual Percentage Rate" or "APR"

**Yes**      **No**

7. If an open-end credit ad includes any term required to be disclosed in the initial disclosure, does the ad also disclose the following terms?

a. APR

**Yes**      **No**

b. Any membership or participation fee

**Yes**      **No**      N/A

c. Any minimum, fixed transaction, activity or similar charge

**Yes**      **No**      N/A

8. Does it include a legible "Equal Housing Lender" logo?

**Yes**      **No**

9. Is credit advertising free of words, symbols, or references suggesting a discriminatory preference or exclusion in violation of the Equal Credit Opportunity Act or Fair Housing Act?

**Yes**      **No**