

LENDING: SKIP-A-PAYMENT

Question: *We are looking at offering to defer a payment in December to our consumer loan customers. The bank is wanting to charge a \$50 fee for this. Is it ok to charge that fee?*

Answer: Tis' the season. First, the FDIC addressed risks for those kind of programs in their June 2019 [Supervisory Highlights](#) (see page 5).

...snip

Findings

Several issues were identified by the FDIC regarding Skip-A-Payment programs where institutions failed to provide consumers with adequate disclosures about essential terms of Skip-A-Payment programs and their impact on consumers' loans in violation of Section 5 of the Federal Trade Commission Act.

The following are examples of issues that were identified at institutions: (1) failure to adequately disclose that enrollment in a Skip-A-Payment program would lead to paying additional interest over the life of the loan and a larger final payment; (2) failure to disclose that the Skip-A-Payment offer does not affect real estate borrowers' escrow payment obligations, resulting in some consumers incurring escrow shortages or deficiencies; and (3) the practice of assessing late fees for the month that the customer's payment was skipped.

Failure to provide consumers with the disclosures that adequately describe the terms of a Skip-A-Payment program and the financial impact on a borrower's loan could result in an unfair or deceptive practice.

Second, you don't want to skip a home equity loan payment. The rule at 7 TAC §153.11 requires regular monthly payments with some payment of principal. Arguably that rule is imposed at origination and does not prohibit modifications but is a skip-a-payment really a modification? Consult with your own legal counsel before skipping a home equity loan payment.

Finally, could you charge a fee? This is the domain of state law and not federal law. In Texas it gets very complicated. You may charge for the accrued interest, but that is on a regulated loan (i.e. consumer installment loan with a rate in excess of 10%, made under Chapter 342 of the Finance Code). However, if you have an unregulated loan (e.g. rate is 10% or less), then under section 34.203 of the Finance Code, you may charge loan fees. Make sure that the fee is reasonable. For example, you might have a \$25 doc or processing fee.

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