

Comparison of Section 32(HOEPA) Regulation; Current Rules vs. January 10, 2014 CFPB Changes

As of 7/10/13- Venessa Snell

	HOEPA (12 CFR § 1026.32) High-Cost Mortgage Loans Current parameters through January 09, 2014	HOEPA (12 CFR § 1026.32) High-Cost Mortgage Loans As of January 10, 2014
General	1994 TILA amendments apply to homeowners that already owned their homes and entered into loans that met or exceeded specific cost parameters. TILA 2008/2009 amendments enhance existing HOEPA protections to align with the HPML restrictions effective 10/1/09.	2013 CFPB TILA amendments apply to Borrowers that purchase or already own their homes and entered into loans that met or exceeded specific cost parameters. These amendments enhance existing HOEPA protections to align with the QM and ATR restrictions effective 01/10/14.
Loan Type	<p>Principal dwelling only -1st and 2nd liens fixed rate or adjustable rate mortgages including:</p> <ul style="list-style-type: none"> • Refinancing of closed-end Purchase Money or home equity loan • Closed-end Home Equity Loan 	<p>Principal dwelling only -1st and 2nd liens fixed rate or adjustable rate mortgages including:</p> <ul style="list-style-type: none"> • Purchase Money Loans • Refinancing of closed-end Purchase Money or home equity loan • Closed-end Home Equity Loan • Home Equity Lines of Credit (HELOC) • Actual “Bridge Loans” to obtain principal dwelling • Home Improvement(interest or P&I) • Temporary
Exemptions	<p>HOEPA definitions do not currently include;</p> <ul style="list-style-type: none"> • Purchase Money Loans • Construction Loans • Actual “Bridge Loans” (not temporary financing) • Home Equity Lines of Credit • Reverse mortgages • Non-owner occupied refinances and second home mortgages 	<p>HOEPA definitions will not include;</p> <ul style="list-style-type: none"> • Initial Construction Loans(Borrower Interim) • Reverse mortgages • Originated or directly financed by Housing Financing Agency (HFA) • Originated or directly financed USDA Rural Development Section 502 Direct Loan Program • Non-owner occupied and second home purchases and refinance mortgages
Thresholds	No Prepayment Penalty Test	<p>Prepayment Penalty Coverage Test: Loan is high-cost if you charge a prepayment penalty;</p> <ul style="list-style-type: none"> • More than 36 months after consummation or account opening; or • In an amount more than 2% of the amount prepaid.

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Thresholds	<p>Thresholds based on either APR Test or Points & Fees Test:</p> <p>APR Test: A closing date APR that exceeds the yield on Treasury securities with comparable maturities as of the 15th day of the month immediately preceding application by more than</p> <ul style="list-style-type: none"> • 8.0 % points for first-lien loans or • 10.0 % points for subordinate-lien loans <p style="text-align: center;">-OR-</p> <p>Points and Fees Test: Points and fees exceeding the greater of</p> <ul style="list-style-type: none"> • 8 % of the total loan amount or, • \$625 in HOEPA fees for 2013 (fee threshold updated annually). <p>Points and Fees include;</p> <ul style="list-style-type: none"> • All items required to be disclosed in §1026.4(a) and §1026.4(b), except interest or time-price differential; • All compensation paid to mortgage brokers • All items listed in §1026.4(c)(7), unless reasonable, and creditor or affiliate receives no direct or indirect compensation for charge; • Premiums for any credit insurance premiums 	<p>Thresholds based on either APR Test or Points & Fees Test:</p> <p>www.ffiec.gov/ratespread/newcalc.aspx</p> <p>APR Test: A closing date APR that exceeds the APOR as of the date the interest rate was set</p> <ul style="list-style-type: none"> • 6.5 % points for first-lien loans or • 8.5 % points for subordinate-lien loans • 8.5 % points for first-lien loans if dwelling is personal property and less than \$50,000 <p style="text-align: center;">-OR-</p> <p>Points and Fees Test: Points and fees exceeding the greater of</p> <ul style="list-style-type: none"> • 5 % of the total loan amount if loan amount is \$20,000 or more; or • The lesser of 8% or \$1,000 for loan amounts less than \$20,000 (adjusted annually); or <p>Points and Fees include;</p> <ul style="list-style-type: none"> • All items required to be disclosed in §1026.4(a) and §1026.4(b); -Except for interest or time-price differential; and any Federal or State agency guaranty or mortgage insurance; Non-Agency MI payable after consummation; or for Non-Agency MI payable at or prior to closing, the amount in excess of FHA UFMIP; • Less excludable discount points; • All compensation or fees paid directly or indirectly to creditor, loan originator or its affiliates known at consummation; • All items listed in §1026.4(c)(7), unless reasonable, and creditor or affiliate receives no direct or indirect compensation for charge; • Premiums for any credit insurance payable at or before consummation; • Maximum Prepayment Penalty that may be collected if allowable; and • Total Prepayment penalty incurred if the borrower refinances with creditor or its affiliate. <p>Open-End additionally includes</p> <ul style="list-style-type: none"> • Participation fees payable at or before account opening; • Fees charged to consumer to draw funds from the credit line.

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Disclosure	<p>HOEPA disclosure must be given 3 business days prior to closing. If transaction is rescindable, give to each consumer who has the right to rescind. The following must be included in HOEPA disclosures:</p> <ul style="list-style-type: none"> • “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application. If you obtain this loan the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under this loan” <p>PLUS</p> <ul style="list-style-type: none"> • APR; • Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment; • Variable rate transaction, statement that interest rate and payment may increase and the maximum rate and payment possible; <p>Amount borrowed (note amount with notation if amount includes optional credit insurance or debt-cancellation coverage).</p>	<p>HOEPA disclosure must be given 3 business days prior to closing. If transaction is rescindable, give to each consumer who has the right to rescind. The following must be included in HOEPA disclosures:</p> <ul style="list-style-type: none"> • “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application. If you obtain this loan the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under this loan” <p>PLUS</p> <ul style="list-style-type: none"> • APR; • Amount of the regular monthly (or other periodic) payment and the amount of any balloon payment; <p>-Open-end ;based on borrowing full line of credit with no further extensions, borrower making minimum payments, and APR remaining constant during both draw period and any repayment period.</p> <p>-Examples to include; first minimum periodic for draw period, first minimum periodic for repayment, and balance outstanding at the beginning of any repayment period.</p> <p>-Example section must include a statement indicating that these are not the consumer’s actual payments and that actual minimum periodic payments will depend on amount borrowed, interest rate applicable to that period and whether the consumer pays more than the required minimum periodic payment</p> <ul style="list-style-type: none"> • Variable rate transaction, statement that interest rate and payment may increase and the maximum rate and payment possible; • Amount borrowed ; Credit limit (note amount with notation if amount includes optional credit insurance or debt-cancellation coverage.) <p>-Open-end amount must indicate the borrower’s total credit limit for the plan at the time the account is opened.</p>

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Underwriting	<p>May not rely on the collateral securing the loan without regard to consumer’s ability to repay. Lender may consider current and reasonably expected income, employment, assets other than collateral, current obligations and mortgage-related obligations.</p> <p>Mortgage related obligations include; but are not limited to, property taxes, insurance premiums including PMI, HOA or condo fees, secondary mortgage payments taken at or before closing in addition to this transaction’s mortgage payment.</p>	<p>May not rely on the collateral securing the loan without regard to consumer’s ability to repay. Lender may consider current and reasonably expected income, employment, assets other than collateral, current obligations and mortgage-related obligations.</p> <p>Mortgage related obligations include; but are not limited to, property taxes, insurance premiums including PMI, HOA or condo fees, secondary mortgage payments taken at or before closing in addition to this transaction’s mortgage payment.</p>
Prohibition	<ul style="list-style-type: none"> • May not structure a home-secured loan as an open-end plan to evade Regulation Z’s HOEPA provisions. 	<ul style="list-style-type: none"> • *Open-end plan now included in definitions.
Prohibition	<p>May not impose a prepayment penalty at any time if any of the following is true:</p> <ul style="list-style-type: none"> • Other applicable law prohibits such penalty; • The consumer’s principal and/or interest mortgage payment can change during the first 4 years of the loan term (i.e., adjustable rate mortgage with first change during first 4 years); or • The source of the prepayment funds is a refinancing by the same mortgage lender or an affiliate. • The consumer’s total monthly debt payments (at loan consummation), including amounts owed under the mortgage, exceed 50% of the consumer’s monthly gross income. 	<p>May not impose a prepayment penalty at any time if the loan violates any of the HOEPA rules.</p>

<p>Prohibition</p>	<p>May <u>not</u></p> <ul style="list-style-type: none"> • impose, with limited exception, a balloon payment on loans with a term of less than 5 years; • impose negative amortization; • collect advance payments, i.e., the consolidation and collection of more than 2 periodic payments, paid in advance from the loan proceeds; • increase an interest rate upon default; • include, with limited exception, a due-on-demand clause; • unfairly calculate interest due to be rebated to a consumer in connection with loan acceleration resulting from default; • make, with limited exception, a direct payment of loan proceeds to a home improvement contractor, payable solely in the name of the contractor; • fail to furnish the required Regulation Z notice to an assignee of a high-cost mortgage (informs the assignee this mortgage is subject to special TILA protections and the assignee could be liable for claims and defenses the consumer could assert against the lender); • Refinance a high-cost mortgage made by the same lender into another high-cost mortgage to the same homeowner within 1 year of consummation unless the refinancing is in the homeowner’s interest, e.g., a lower interest rate. 	<p>May <u>not</u></p> <ul style="list-style-type: none"> • impose, with limited exception, a balloon payment on loans with a term of less than 5 years; • Balloon exception for “bridge loans of 12 months or less” • impose negative amortization; • collect advance payments, i.e., the consolidation and collection of more than 2 periodic payments, paid in advance from the loan proceeds; • increase an interest rate upon default; • include, with limited exception, a due-on-demand clause; • unfairly calculate interest due to be rebated to a consumer in connection with loan acceleration resulting from default; • make, with limited exception, a direct payment of loan proceeds to a home improvement contractor, payable solely in the name of the contractor; • fail to furnish the required Regulation Z notice to an assignee of a high-cost mortgage (informs the assignee this mortgage is subject to special TILA protections and the assignee could be liable for claims and defenses the consumer could assert against the lender); • Refinance a high-cost mortgage made by the same lender into another high-cost mortgage to the same homeowner within 1 year of consummation unless the refinancing is in the homeowner’s interest, e.g., a lower interest rate.
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