HOEPA Loans under the Dodd-Frank Act

12 C.F.R. 1026.32

Effective January 10, 2014

Definition & Coverage

High Cost Mortgage Loan - A closed-end or open-end consumer loan, secured by a consumer's principal dwelling, in which:

- **The APR exceeds the APOR by**:
  - 6.5% or more for a first lien, or
  - 8.5% or more for a first lien if the dwelling is personal property and loan amount is less than $50,000, or
  - 8.5% or more for a subordinate lien transaction,

OR

- **The total points and fees exceed**:
  - 5% of the total loan amount on transactions $20,000 or more, or
  - The lesser of 8% or $1,000 if total loan amount is less than $20,000.

OR

- **There is a prepayment penalty that may**:
  - Be charged more than 36 months after consummation, or
  - The prepayment penalties exceed more than 2% of the amount prepaid.

These loans may also be referred to as HOEPA loans or Section 32 loans. There are a few exemptions from HOEPA coverage. They are:

- Reverse mortgages
- Transactions to finance the initial construction of a dwelling
- Transaction originated by a Housing Finance Agency as lender
- USDA Rural Development Section 502 Direct Loan Program
- Business purpose loans not governed by Regulation Z

Total Loan Amount – For closed-end loans, the amount calculated by taking the amount financed and deducting any cost that is included as points and fees and financed by the lender. For open-end loans, the total loan amount is the credit limit for the plan when opened.

HOEPA Threshold for Closed & Open-End Loans	
APOR Test	
First lien	6.5%
First lien on personal property/loan amount less than $50,000	8.5%
First lien, jumbo loan	N/A
Subordinate lien	8.5%
Points & Fees Test	
Loan amount of $20,000 or more	5%
Loan amount less than $20,000	lesser of 8% or $1,000
Prepayment Penalty *	
Timing	Chargeable more than 36 months later
Amount	Exceeds more than 2% of prepaid charges

* Pre-payment penalties are generally prohibited in HOEPA loans. The pre-payment penalty test identifies loans with such penalties, and then requires any such penalties be stripped from the loan. Federal credit unions are already prohibited from charging any pre-payment penalties under the Federal Credit Union Act. However, the recovery of fees by the lender to reimburse the lender for costs advanced to the borrower at closing are not considered pre-payment penalties. For HOEPA, if recovery of these can happen beyond 36 months after consummation, these fees are considered pre-payment penalties. Per NCUA Legal Opinion Letter OL2008-0731, the time limit for recovery of fees is determined by the law setting the standard, which in this case is HOEPA at 36 months. Therefore, any recovery of costs by a credit union beyond 36 months in this context is prohibited.

HOEPA Points and Fees Test

Finance Charges and Other Items Included
Finance charges **(Example - points, fees)**
Mortgage loan originator compensation *
Real-estate related fees if lender or an affiliate retains the fee **(Example - Doc prep fees, appraisal/evaluations, title services)**
Premiums paid at/before consummation or account opening for credit life, credit disability or related insurance for which the lender is the beneficiary
Maximum prepayment penalty
Total prepayment penalty applicable if borrower refinances existing mortgage loan with **current lender,servicer, or affiliate of either**
Fees charged for participation in open-end credit plan payable at or before account opening **(Example - Annual fee, membership fee, participation fee)**
Any transaction fee charged for a draw on an open-end plan **(Example - Draw fee)**

* This should only include non-employee broker compensation that can be attributable to a particular loan.

HOEPA Points and Fees Calculation

Finance Charges and Other Items NOT Included		
Real-estate related fees that lender or an affiliate do not retain		
Interest/time-price differential **(Example - Odd days interest)**		
Premiums/charges in connection with Federal or State programs for guaranty/insurance protecting lender against consumer default or credit loss **(Example- Federal or state mortgage insurance premiums)**		
Private Mortgage Insurance 1. **If payable AT or BEFORE consummation** - The amount equal to comparable federal or state mortgage insurance premiums under National Housing Act programs, and only if unused portions are refundable at payoff. 2. **If payable AFTER consummation** - The entire amount.		
Bona fide 3rd party charges (unless required in points and fees)		
Up to 2 points * if the interest rate (without discount) is within **1 percent** of the: 1. APOR - For all principal dwellings that are not personal property. 2. NHA Average Rate - For all principal dwellings considered personal property.	OR	**Up to 1 point** [3] if the interest rate (without discount) is within **2 percent** of the: 1. APOR - For all principal dwellings that are not personal property 2. NHA Average Rate - For all principal dwellings considered personal property.

* A bona fide discount point for closed-end loans is 1% of the loan amount paid by the borrower that reduces the interest rate for the transaction. For open-end loans, it is 1% of the plan's credit limit when the account is opened, paid by the borrower and reduces the interest rate.

Notes for HOEPA Loans

Disclosure requirements for HOEPA: (12 C.F.R. §1026.32(c)). Lenders must provide a disclosure three (3) business days prior to loan closing that contains the following:

- Notice in a conspicuous font size – "You are not required to complete this agreement merely because you have received these disclosures or have 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 the loan."
- APR
- Closed-end loans- regular payment; minimum periodic payment example; balloon payment. Open-end loans- example of first minimum periodic payment for draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of the repayment period. Additional disclosures for open-end loans include statements as applicable for balloon payments, example payments showing first minimum periodic payments at current APR if maximum borrowed under plan and no additional extensions of credit are made, and a disclaimer that example payments are not actual payments and will depend on borrower activity with respect to the line of credit.
- Variable-rate transactions – a statement that the interest rate and monthly payment may increase and the amount of the single maximum monthly payment based on the maximum interest rate that may be imposed under the contract.
- For closed-end – the total amount borrowed. For open-end – the credit limit for the plan when the account is opened.

Other Requirements for HOEPA Loans:

- A HOEPA loan cannot be extended until counseling has been completed and the certificate provided stating that counseling was completed.
- The lender is not prohibited from processing any loan while waiting for the borrower to obtain counseling.
- The lender must provide a list of counselors and agencies, which is made available by the CFPB and/or HUD, within three (3) days of application along with the early disclosures.
- Counseling for a loan with any particular lender must occur after the disclosures are received.
- Any fees associated with the counseling must be disclosed on the GFE as part of the costs.
- The certificate for a HOEPA loan must contain:
  - The name of the consumer(s) who obtained counseling,
  - The date of the counseling,
  - The name and address of the counselor,
  - A statement that the consumer(s) received counseling on the advisability of the mortgage based on the terms provided in the early disclosures, and
  - A statement that the counselor verified the consumer(s)' receipt of the required early disclosures for the type of loan and the final disclosures.

Prohibited Practices for HOEPA: (12 C.F.R. §1026.32(d))

- **Balloon payment** – A payment that is more than two times the regular periodic payment. Exceptions exists for payment schedules that are adjusted to seasonal or irregular borrower income, a bridge loan connected with the acquisition or construction of consumer's principal dwelling, and certain balloon payments on Qualified Mortgages.
- **Negative amortization** – A payment schedule with regular periodic payments that result in an increase in principal balance.
- **Advance payment** – A payment that consolidates more than two periodic payments and pays them in advance from the proceeds.
- **Increased interest rates** – An increase in the interest rate after a default.
- **Rebates** – A refund calculated by a method less favorable than the actuarial method for rebates of interest arising from a loan acceleration due to default.
- **Acceleration of debt** – This prohibition does not apply if there is fraud or material misrepresentation by the borrower in connection with the loan, the borrower fails to meet repayment terms resulting in a default, or there is action or inaction by the borrower that adversely affects the security for the loan or the lender's rights in the security. In such instances the lender may demand payment of the outstanding balance due.

Other Requirements and Prohibitions for HOEPA (12 C.F.R.§1026.34)

- **Repayment ability** – A lender must verify repayment ability based on the ATR Requirements. Please refer to the ATR/QM Guide for more information.
- **Anti-evasion rule** – The lender cannot structure a loan with the intent to evade the requirements for HOEPA loans.
- **Financing certain fees** – Lenders cannot finance charges for credit life, disability, A&H, debt suspension insurance or the like.
- **Proceeds of a HOEPA loan** – A lender cannot distribute the proceeds of a HOEPA loan directly to a contractor. Proceeds may only be distributed to the borrower and contractor jointly or through a third-party escrow agent at the election of the borrower and pursuant to an agreement between the borrower, lender, and contractor.
- **Late fees** – Late fees are capped at 4 percent. Only a single late fee may be imposed for any past due payment.
- **Refinancings, Modifications and Default** – A lender cannot refinance one HOEPA loan into another HOEPA loan within 1 year unless in the best interests of the borrower. A lender cannot recommend or encourage default on an existing loan. A lender may not charge a borrower any fee to modify, renew, extend or amend a HOEPA loan or to defer any payment due under the terms of the loan.
- **Assignment** – A lenders must provide a notice to a purchaser or assignee of the loan that the loan is a HOEPA loan.
- **Payoff statement** – A lender may not charge for a pay-off statement.