



Quick Guide to the July 14, 2008 HOEPA Rules

- **Background** - On July 14, 2008, the Board of Governors of the Federal Reserve (the Board) adopted final rules under the Truth in Lending Act (TILA) and the Home Ownership and Equity Protection Act (HOEPA), amending Regulation Z. Under HOEPA, the Board has authority to prohibit acts or practices in connection with mortgage lending that the Board finds unfair, deceptive or designed to evade HOEPA and with respect to mortgage refinancings associated with abusive lending practices or otherwise not in the best interest of the borrower. The final rule in many areas tracks the proposed rule but there are some important changes.
- **Generally**, the rule still: (1) prohibits certain acts or practices for “higher priced” or subprime mortgage loans and loans that meet HOEPA’s cost triggers; (2) prohibits other acts or practices for all closed-end credit transactions secured by a consumer’s principal dwelling; (3) prohibits certain misleading or deceptive advertising practices in connection with closed-end mortgages; and (4) requires earlier consumer disclosures for closed end mortgages secured by a principal dwelling.
- **Redefinition** - Notably, changes the definitions for determining what constitutes a “higher priced or subprime loan” receiving greater regulation. First lien mortgages are “higher priced” if they are 1.5 percentage points above the average prime offer rate issued by Freddie Mac. Second lien loans are “higher priced” if they are 3.5 percentage points over the same index. (The proposed rule used Treasuries as the bases for comparison and was objected to by MBA and other trade organizations as imprecise and overly expansive to cover subprime mortgages. MBA will be analyzing the new standards which the Board proposes to apply also to reporting of higher priced loans under HMDA, with comments due August 29, 2008.)
- **Higher priced loans** (and high cost HOEPA loan under 1-3 below) - Prohibits a creditor from: (1) extending credit based on the collateral and without regard to ability to repay; (2) extending credit based on income or assets unless the creditor verifies such amounts based on reasonably reliable third-party documents; (3) imposing prepayment penalties if the payment can change in the first four years of the loan or the prepayment penalty extends beyond the first two years of the loan’s term; or (4) making a loan without also establishing an escrow account for property taxes and homeowners insurance. A creditor is permitted, but not required, to allow the borrower to opt out of an escrow account after twelve months.
- **All closed end loans** - Prohibits creditors and mortgage brokers from coercing, influencing or encouraging appraisers to misrepresent the value of a dwelling and loan servicers from engaging in certain loan servicing practices including crediting payments on the day of receipt, failing to

provide a payoff statement with a reasonable time or pyramiding of late fees. The final rule dropped a proposed requirement that a current schedule of servicing fees be provided to borrowers within a reasonable time upon request. It also dropped a proposed requirement prohibiting creditors from paying mortgage brokers unless the broker entered into a written agreement from the consumer specifying the total amount of the broker's compensation because staff said consumer testing revealed the disclosure would confuse consumers.

- Misleading or deceptive advertising - Adopts the proposal to prohibit seven practices such as using the term "fixed" in a misleading manner.
- Early disclosures - Broadens the requirement for early disclosures under TILA to all closed end mortgage transactions secured by the consumer's principal dwelling including refinance loans and closed end home equity loans not simply closed-end purchase loans.
- Effective dates - Except for the escrow rules, rules would become effective on October 1, 2009. Escrow requirements would become effective on April 1, 2010, except such requirements would be effective for manufactured homes on October 1, 2010.
- Questions - MBA will provide a more detailed summary shortly. If you have any questions, please contact Ken Markison, MBA Associate Vice President and Regulatory Counsel at 202 557-2930 or kmarkison@mortgagebankers.org.