




Mortgage Bankers Association 2008 Federal Regulatory Update – Post Closing Issues

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Truth In Lending Act – New HOEPA Rule Amending Regulation Z

Final Rule Issued July 14, 2008. “To better protect consumers and facilitate responsible lending.”

- “Higher Priced Mortgage Loan” Protections
- All Mortgage Loan Protections
- Additional Advertising Standards for Closed- and Open-end Credit Secured By Residential Dwellings

“Higher Priced Mortgage Loan” Definition Intended to Cover All Subprime Loans Secured by Principal Dwelling but generally exclude Prime Loans.

First lien mortgage loans: APR is 1.5 percentage points or more above a Freddie Mac index – “Average Prime Offer Rate.” Junior lien mortgage loans: APR is 3.5 percentage points or more above “Average Prime Offer Rate.”

Federal Reserve Board could alter these APR thresholds after comments to its Proposed HMDA Rule are vetted.

Nontraditional mortgage products, government guaranteed loans, jumbo loans and portfolio loans that fall within these APR thresholds are covered.

Excluded from Coverage: Mortgage loans secured by investment residential properties; HELOCs; Reverse Mortgages; Construction Loans; Bridge Loans of 12 months or less.

“Higher Priced Mortgage Loan” Protections – Effective October 1, 2009; All subject to HOEPA penalties for non-compliance

(1) Must Analyze Borrower’s Ability to Repay Based on Consumer’s Income or and not on prospects of home value appreciation. To do otherwise constitutes **AN UNFAIR BUSINESS PRACTICE**.

Rebuttable presumption of compliance where the creditor verifies and documents borrower’s repayment ability; utilizes either a DTI ratio or residual income ratio (income remaining after debts paid); AND determines repayment ability using fully indexed rate (unless IO payments for the first 7 years or more) and highest monthly payment during first 7 years (unless discounted rate is good for the first 7 years or more or a balloon loan having a term of 7 years or more).

There is no rebuttable presumption of compliance afforded to neg am loans and balloon loans with a term shorter than 7 years.

“Higher Priced Mortgage Loan” Protections – Effective October 1, 2009

- (2) Prohibits a lender from relying on income or assets that it does not verify to determine Ability to Repay not only the loan with interest, but also property taxes, homeowners insurance and other mortgage-related expenses, using **reliable third-party documents. No Stated Income Loans.** Examples: W-2 forms, tax returns, payroll records, bank statements, letter from employer, and check-cashing receipts. Comments address the self-employed and commissioned employees.

NOTE:: This HOEPA Rule’s “Ability to Repay” standard does NOT preempt state law ability to repay standards or CSBS/AARMR/NACCA ability to repay standards adopted by states as Subprime Lending Guidelines. See later slides for further details.

“Higher Priced Mortgage Loan” Protections – Effective October 1, 2009

(3) There can be no prepayment penalty if the payment can change in the initial 4 years. If not payment change in the initial 4 years, the prepayment penalty period cannot last beyond the first 2 years (from loan consummation) or applicable to refinancing by the creditor or its affiliate.

“Higher Priced Mortgage Loan” Protections – Effective April 1, 2010 except for loans secured by manufactured homes, effective October 1, 2010.

(4) Mandatory impounding for property taxes and homeowner’s insurance for all first lien higher priced mortgage loans during the first 12 months of the loan. Creditors may offer the borrower the opportunity to cancel their escrow payments after one year. Limited exemption for condominiums and cooperatives when the association or board pays the insurance under a master policy.

All Mortgage Loan Protections – Effective October 1, 2009

- (1) Creditors and mortgage brokers are prohibited from coercing or encouraging real estate appraisers to misstate a home's value.
- (2) Prohibits certain Loan Servicing Practices – pyramiding late charges; credit consumer's loan payments as of the date of receipt; provide a loan payoff statement within a reasonable time of request.

All Mortgage Loan Protections – Effective October 1, 2009

(3) Expanded use of Initial TIL Statement – The Initial TIL with good faith estimate of loan costs and schedule of payments, must be provided on ALL mortgage loans secured by a consumer's principal dwelling, including refinancing and home improvement loans. Initial TIL Statement must be given prior to loan consummation or mailed to the borrower(s) within 3 business days of receipt of the loan application. Prohibits the creditor or any other person from collecting an advance fee, other than a reasonable and bona fide credit report fee, prior to giving the Initial TIL Statement.

Additional Advertising Standards – All Mortgages; Effective October 1, 2009

Amends advertising rules for both open-end and closed-end mortgage products, including applying “clear and conspicuous” standard.

Whenever rate or payment appear in an advertisement, all rates or payments that will apply over term of loan must be disclosed with equal prominence and in close proximity to advertised rate or payment.

New clear and conspicuous standards adopted for Internet, television and oral advertisements.

Additional Advertising Standards – Closed-end Residential Mortgages

(1) Disclosure of interest rate in advertisements (other than TV and Radio) – if more than one simple interest rate will apply during the life of the advertised loan product, each simple interest rate must be disclosed, the period of time it will apply, and the corresponding APR. For variable rate loans, must disclose the (reasonably current) index and margin. Clear and conspicuous standard.

(2) Disclosure of payments in advertisements (other than TV and Radio) – If more than one payment amount will apply during the life of the advertised loan product, the amount of each payment variance must be disclosed, including a balloon payment, the period of time it will apply, and for first lien mortgage products only, the fact that the payment quoted does not include amounts for property taxes and homeowners insurance and, if applicable, that the actual payment obligation will be greater. For variable rate loans, must disclose payment amount based on the (reasonably current) index and margin. Clear and conspicuous standard.

Additional Advertising Standards – Closed-end Residential Mortgages

(3) Bans 7 “Deceptive or Misleading” Advertising Practices:

- Advertising payment as “fixed” when not fixed for full loan term
- When including a comparison between actual or hypothetical credit payments or rates vs. the payments or rates available under the advertised product, the advertisement must state all applicable payments or rates for the advertised product and the corresponding time intervals for which they apply. “Save \$300 per month on \$300,000 loan” = implied comparison between advertised product and consumer’s current loan payment.
- Advertising loans as “government” or “government sponsored” or other government endorsed loans programs when they are not.

Additional Advertising Standards – Closed-end Residential Mortgages

- Prominently displaying the name of the consumer’s current lender unless the advertisement also discloses that the advertising lender is not associated with or acting on behalf of the current lender.
- Advertising claims of debt elimination when really the product is designed to replace one debt with another. Examples of misleading advertisements: “Get yourself out of debt...Forever!” “Pre-payment penalty waiver.” “Refinance today and wipe your debt clean.”
- Misleading use of the term “counselor” in advertising to create a false impression that the lender or mortgage broker has a fiduciary relationship with the consumer.
- Foreign language advertisements that present some trigger terms or required disclosures in the foreign language, such as initial rate or payment, but that revert to English for other trigger terms or required disclosures such as information about the fully-indexed rate or fully amortized payment.

Additional Advertising Standards – Home Equity Plans

(1) Discounted and premium rates – If an advertisement (other than TV or Radio) states a discounted initial APR, the advertisement must also state in equal prominence and in close proximity to the discounted initial APR, the period of time it will remain in effect, and a reasonably current APR in effect using applicable index and margin.

(2) Balloon payment – If an advertisement (other than TV or Radio) discloses a minimum periodic payment amount that would result in a final balloon payment if only the minimum payments are made,, the advertisement must also state in equal prominence and in close proximity to the stated minimum periodic payment amount that a balloon payment will result, and the amount and timing of the balloon payment that will result if the consumer makes only the minimum payment amount for the maximum allowed period.

Additional Advertising Standards – Home Equity Plans

(3) Promotional APRs or Payments – If an advertisement (other than TV or Radio) states a promotion annual percentage rate or payment, the advertisement must also state in equal prominence and in close proximity to each listing of promotional APR or payment, the period of time it will apply. In the case of a promotional APR, the full APR based on reasonably current index and margin must be included. In the case of a promotional payment, the amounts and time periods applicable for each promotional payment must be included. Envelopes, banner advertisements and pop-up advertisements excluded.

PROLOGUE TO Truth In Lending Act – New HOEPA Rule Amending Regulation Z

(1) The Federal Reserve Board announced on the same date it issued these final rules a Proposal to amend Regulation C – HMDA – to add a comparable definition of “higher priced mortgage loan” and require rate spread information on these loan products to capture in HMDA reporting a lender’s subprime lending activity for the prior year. Comments were due August 29, 2008.

(2) The Federal Reserve Board further announced that it will begin a “top-down” review of all TILA mortgage loan disclosures in the Fall, 2008, coinciding with Housing and Economic Recovery Act of 2008, Division B, Title V – Mortgage Disclosure Improvement Act. The agency has publicly invited HUD to abandon its RESPA proposal and join the Federal Reserve in jointly crafting consumer disclosures in mortgage lending.

PROLOGUE TO Truth In Lending Act – New HOEPA Rule Amending Regulation Z

(3) The Federal Reserve Board dropped a proposed requirement in its HOEPA rules that would have prevented creditors from paying mortgage brokers on higher priced mortgage loan transactions more than agreed by the consumer in a written broker agreement, **including Yield Spread Premiums**. The issue of YSPs will again be considered during the Federal Reserve Board’s “top-down” review of mortgage disclosures.

PROLOGUE TO Truth In Lending Act – New HOEPA Rule Amending Regulation Z

(4) Housing and Economic Recovery Act of 2008, Division B, Title V – Mortgage Disclosure Improvement Act

Amends TILA to require disclosure 7 days before closing and any correction of a stated APR 3 days before closing. TILA disclosures for residential mortgage loans must contain a new statement: “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.” It also requires disclosures to better explain ARM products through examples, including how monthly payment adjust based on interest rate changes and the maximum payment.

Effective one year from enactment (signed by President Bush on July 31, 2008).

CSBS/AARMR/NACCA SUBPRIME LENDING GUIDELINES

Underwriting Standards

- (1) In order to hedge a borrower's "payment shock" when a hybrid ARM recasts, a subprime lender should evaluate the **borrower's ability to repay** the debt by its final maturity at the *fully indexed rate* and assuming a *fully amortizing repayment schedule* based on the term of the loan.
- (2) Subprime lender's debt-to-income ratio (DTI) analysis should include, among other things, an assessment of the borrower's total monthly housing-related payments – principal, interest, property taxes and hazard insurance (PITI) – as a percentage of gross monthly income.

As of July, 2008, 40 states plus the District of Columbia have adopted these Underwriting Standards. Additional states have adopted standalone underwriting standards that include evaluating the **borrower's ability to repay**.

IDENTITY THEFT – FEDERAL TRADE COMMISSION RELEASES “RED FLAG” RULES IN JUNE, 2008

Joined by the federal bank regulatory agencies and the NCUA, the FTC issued regulations (the Red Flags Rules) requiring financial institutions and creditors to develop and implement written identity theft prevention programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. The programs must be in place by November 1, 2008, and must provide for the identification, detection, and response to patterns, practices, or specific activities – known as “red flags” – that could indicate identity theft.

Who must comply with the Red Flags Rules?

The Red Flags Rules apply to “financial institutions” and “creditors” with “covered accounts.”

Financial Institution = state or national bank, a state or federal savings and loan association, a mutual savings bank, a state or federal credit union, or any other entity that holds a “transaction account” belonging to a consumer. include state-chartered credit unions and certain other entities that hold consumer transaction accounts.

Transaction account = a deposit or other account from which the owner makes payments or transfers. Transaction accounts include checking accounts, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

Who must comply with the Red Flags Rules?

Creditor = any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit (Broker); or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. Examples: finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies, as well as non-profit and government entities that defer payment for goods or services. Creditors who are not financial institutions come under the jurisdiction of the FTC.

A covered account is an account used mostly for personal, family, or household purposes, and that involves multiple payments or transactions. Covered accounts include credit card accounts, mortgage loans, automobile loans, margin accounts, cell phone accounts, utility accounts, checking accounts, and savings accounts. A covered account is also an account for which there is a foreseeable risk of identity theft – for example, small business or sole proprietorship accounts.

Complying with the Red Flags Rules

Beginning November 1, 2008, Financial Institutions and Creditors must develop a written program that identifies and detects relevant warning signs – or “red flags” – of identity theft. Supplement A to Appendix A of these Rules lists 26 illustrative examples of events indicating ID Theft broken down to 4 categories:

- (1) Alerts, Notifications or Warnings from a Consumer Reporting Agency
- (2) Suspicious Documents
- (3) Suspicious Personal Identifying Information
- (4) Unusual Use of, or Suspicious Activity Related to, the Covered Account.

The program must also describe appropriate responses that would prevent and mitigate the crime and detail a plan to update the program. The program must be managed by the Board of Directors or senior employees of the Financial Institution or Creditor, include appropriate staff training, and provide for oversight of any service providers.

How flexible are the Red Flags Rules?

The Red Flags Rules allow for development of a written program that is appropriate for the Financial institution's and Creditor's size and complexity, as well as the nature of their operations. Utilize the Guidelines issued by the FTC, the federal banking agencies, and the NCUA (ftc.gov/opa/2007/10/redflag.shtm) to design the program.

A supplement to the Guidelines identifies 26 possible red flags -- examples that financial institutions and creditors may want to use as a starting point. They fall into five categories:

- alerts, notifications, or warnings from a consumer reporting agency;
- suspicious documents;
- suspicious personally identifying information, such as a suspicious address;
- unusual use of – or suspicious activity relating to – a covered account; and
- notices from customers, victims of identity theft, law enforcement authorities, or other businesses about possible identity theft in connection with covered accounts.

THANK YOU FOR YOUR ATTENTION.

QUESTIONS AND ANSWER SEGMENT