
Home Owner's Equity Protection Act (*HOEPA*)

*A Primer on Avoiding High Cost and
Predatory Lending Pitfalls in Today's
Mortgage Jungle*

More Facts and Rumors

- HOEPA is applicable to :
 - Closed End Loans
 - Owner Occupied Primary Residence
 - Non-Purchase Money Transactions
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High Cost Loan Defined

- Under HOEPA, a mortgage is considered to be a High Cost Loan if it includes terms that exceed certain thresholds established for the Points & Fees or Annual Percentage Rate.
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Thresholds (1)

- *APR* - A mortgage is considered a High Cost/HOEPA loan if the APR exceeds the Applicable Treasury Index (H.15) by
 - *8 pts (First Mortgages)*
 - *10 pts (Second Mortgages)*
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H-15

<http://www.federalreserve.gov/releases/h15/update/>

Selected Daily Interest Rates from Federal Reserve

The Appropriate Index

- Select rate of a comparable maturity as of 15th of the preceding month.
 - If 15th falls on weekend or holiday, choose the last daily rate published prior to the 15th.
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Thresholds (2)

- Points & Fees - A Mortgage is considered to be a High Cost loan if the total Points & Fees* paid by the consumer at, or prior to closing exceed 8%.
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Points & Fees

- For purposes of Sec.32, Points & Fees includes:
 - All Traditional Finance Charges, except Prepaid Interest;
 - Mortgage Broker Fees paid directly by consumer;
 - Any Fees Paid to an Affiliate of the Lender;
 - Single Premium Insurance payments;
 - Fees excluded from Finance Charge if deemed unreasonable, or if Lender retains the fee.
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Calculating Points & Fees (1)

- Important Definition (*Correction !*)
 - Under HOEPA, the term *TOTAL LOAN AMOUNT* means the Note Amount
 - *less the total Points & Fees,*
 - *Less any Odd Days Interest;*
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Calculating Points & Fees (2)

- Loan Amt Per Promissory Note \$100,000
 - (less) Total Points & Fees (ex) 5,000
 - (less) Odd days Interest 250
 - (equals) Total Loan Amount 94,750
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- Points & Fees % = $5000/94750 = 5.277\%$

HOEPA Disclosure

- IF YOU HAD AN IDEA TO INTENTIONALLY CLOSE A HIGH COST/HOEPA LOAN:
 - *A Loan above the thresholds must disclose to borrower all pertinent loan terms 3 days prior to closing.*
 - *Any change in terms requires new disclosure and new 3 days.*
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Inadvertent High Cost Loans

Q. We closed a loan that inadvertently exceeded the Federal HOEPA threshold. How do we fix it?

A. Once the violation has occurred there is no cure provision. Only action to take is to refinance the mistake with another loan – correcting and refunding as necessary.

HOEPA's Progeny

- Dozens of states have enacted individual High Cost regulations.
 - Rules can be drastically different from one to another. State laws can be more and less restrictive than the federal.
 - Ex. Cure Provisions
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State Additions

They can also be significantly more problematic.

- *Flipping*
 - *Prepayment Restrictions*
 - *Tangible Net Benefit*
 - *Reduced Thresholds*
 - *ARM Wrinkles*
 - *Creative Definitions*
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HOEPA Old & New

- *Recent New Regulations have changed the face of HOEPA, and will boldly go where no High Cost considerations have gone before.*
 - *The following points are just an example of the kinds of changes about to become effective.*
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HOEPA Old & New

Higher-Priced Mortgage Loans

Secured by consumers' principal dwellings:

First Lien Threshold - 1.5 percentage points above Index Rate

Second Lien Threshold - 3.5 percentage points above Index Rate

Board will derive Index rates from Primary Mortgage Market Survey® (PMMS) and publish rates at least weekly

Board will adjust rates to include points

HOEPA Old & New

Higher-Priced and HOEPA-Covered Loan Prohibitions

Extending credit without determining borrower's ability to repay;

Relying on income and/or assets and failing to verify them using reasonably reliable third party documentation;

Requiring prepayment penalties except in accordance with certain requirements; and

Failing to establish an escrow account for taxes and insurance for at least one year.

HOEPA Old & New

Documenting Ability to Repay

- **Creditor must verify income and assets to support repayment ability.**
 - ***Creditor can rely on W-2 forms, tax returns, payroll receipts, financial records or other document providing reasonably reliable evidence, except statement solely from consumer.***
 - ***No violation where creditor can show amounts of consumer's income or assets the creditor relied on were not materially greater than what the creditor could have documented at closing.***
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HOEPA Old & New

- New regulations take effect on October 1, 2009 (except for Escrow provisions which begin in 2010.)
 - Not too early to begin asking the important questions, nor to establishing the necessary standards and checkpoints for compliance.
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