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

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

HOEPA – Basic Facts & Rumors

- Fleet Finance vs. 60 Minutes
 - TILA Amendments 1994 – *Section 32*
 - Designed to Discourage High Cost Lending
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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 Fees and 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 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

- Under HOEPA, the term *TOTAL LOAN AMOUNT* means the Note Amount, less the total Points & Fees.
 - It is NOT correct to conclude that *TOTAL LOAN AMOUNT* is the same as the *AMOUNT FINANCED* on the Truth In Lending Disclosure.
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Calculating Points & Fees (2)

- Loan Amt Per Promissory Note \$100,000
 - (less) Total Points & Fees (ex) 5,000
 - (equals) Total Loan Amount 95,000
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- Points & Fees % = $5000/95000 = 5.623\%$
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HOEPA Disclosure

- 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

- You made a HOEPA loan by mistake!
 - Likely, you didn't deliver that HOEPA pre-closing disclosure. Now What ?
 - Only one answer for an inadvertent violation of Federal HOEPA rules.
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Inadvertent High Cost Loans

- Violation has been committed.
 - Cant go back.
 - Refinance the HOEPA loan with another loan immediately, making whatever sacrifice is required to fall below the thresholds.
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HOEPA's Progeny

- Dozens of states have enacted individual High Cost regulations.
 - Rules can be drastically different from one to another.
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State Additions

- Flipping
 - Prepayment Restrictions
 - Tangible Net Benefit
 - Reduced Thresholds
 - ARM Wrinkles
 - Creative Definitions
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