

Executive Summary Proposed Amendments to Regulation Z*

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Coverage:	All lenders, including depository institutions and non-depository mortgage companies
Proposed effective date:	October 1, 2008 (comment period expires February [20], 2008)
Three major components:	<ol style="list-style-type: none">(1) New prohibitions on higher-priced mortgage loans and expansion of remedies(2) New restrictions and prohibitions for closed-end mortgage loans(3) Revised disclosure requirements for advertising and in connection with closing
Statutory authority:	Home Ownership and Equity Protection Act (“HOEPA”), Truth-in-Lending Act Section 129(1)(2)

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I. New Prohibitions on Higher-Priced Mortgage Loans

- “Higher-priced mortgage loan” defined as *closed-end* consumer-purpose loan secured by consumer’s *principal dwelling* in which the TILA annual percentage rate (APR) at consummation exceeds yield on comparable Treasury securities by 3% or more for first liens or 5% or more for subordinate liens. This is based on the existing Home Mortgage Disclosure Act (HMDA) “rate spread” reporting requirements.
- Four new prohibitions on higher-priced mortgage loans (“HPML’s”)
 - Engaging in pattern or practice of extending credit based on value of the collateral and without regard to consumer’s ability to repay
 - This engrafts an existing HOEPA rule to HPML’s
 - “Bridge loans” with a term of more than 12 months and construction loans are not covered
 - A rebuttal presumption of violation arises if the creditor engages in a “pattern or practice” of *failing to* (1) verify and document consumers’ repayment ability, (2) base ability-to-repay determination on fully indexed rate for ARMs or on fully-amortizing payment (including PITI), or (3) consider consumers’ DTI or residual income after paying obligations
 - “Safe harbor” against liability if creditor has reasonable basis to believe ability to repay for at least 7 years, considering factors identified in the proposed rule and other relevant factors
 - For both HOEPA loans and HPML’s, clarification that (1) “pattern or practice” is based on totality of circumstances, (2) it may be appropriate to take into account expected changes in employment, and (3) creditor may rely on assets other than collateral in determining repayment ability
 - Creditors prohibited in HPML’s from relying on amounts of income (including expected income) or assets in extending credit *unless* the creditor verifies such amounts
 - Verification *may be* based on W-2s, tax returns, payroll receipts, bank statements or other reasonably reliable third party statements (including VOE’s)

- “Safe harbor” against liability for creditor or who fails to verify income or assets if to have done so would not have altered the decision to extend credit or the terms of credit
- Limits on prepayment penalties for HPML’s, as per the existing HOEPA rule
 - Prepayment penalties may be imposed only in certain circumstances
 - Outright prohibition for 60 days prior to reset date for ARM’s
- Escrows for property taxes and insurance required, with borrower “opt out” 12 months after loan closing
- Prohibition on “structuring” closed-end loans as open-end

II. Prohibited Acts and Practices in Closed-End Residential Mortgages

- General prohibitions and limitations on closed-end consumer credit transactions secured by consumer’s principal dwelling; not limited to HOEPA loans or HPML’s
- Three main provisions cover the gamut of origination, underwriting and servicing: (1) limits on mortgage broker compensation, (2) appraiser “coercion” is outlawed, and (3) prohibited loan servicing practices
- Creditors prohibited from paying *mortgage broker compensation* unless the mortgage broker first enters into a written agreement with the consumer containing specified provisions
 - The written agreement must clearly and conspicuously state (1) total dollar amount of compensation broker will receive from all sources, (2) the consumer will pay all compensation even if paid directly by the creditor, and (3) creditor payments to a mortgage broker may influence the broker to offer certain products or terms not in the consumer’s interest or not most favorable consumer otherwise could obtain
 - Amount of compensation to mortgage broker cannot exceed the total compensation stated in this agreement, although indirect broker compensation still permitted

- New federal requirements may not apply if mortgage broker compensation otherwise is regulated by state law or regulation
- Mortgage broker compensation not prohibited if it is not determined by reference to the interest rate (YSP)
- Creditor or mortgage broker *must not coerce*, influence or encourage an *appraiser* to misrepresent the value of a consumer’s principal dwelling
 - Examples of prohibited acts include retention depending on value or failure to compensate appraisers based on outcome
 - Creditors prohibited from extending credit if creditor knows or has reasons to know of coercion, etc.
- Loan servicing practices prohibited - *i.e.*, a servicer must not –
 - Fail to credit payments on date of receipt (similar to prompt credit of payments rule for open-end credit under existing Regulation Z)
 - Impose late fee “pyramiding”
 - Fail to provide consumer with schedule of specific fees and charges that servicer may impose, written reasonable time after consumer’s request
 - Fail to provide timely payoff statements

III. Advertising and Disclosure

- Whenever rate or payment included in advertisement for closed-end or open-end credit secured by a dwelling, all rates or payments that will apply over term of loan (and time periods for which those rates or payments apply) must be disclosed with equal prominence and in close proximity to the advertised rate or payment
- Strengthening of clear and conspicuous standard, as it applies to advertisements, for both closed-end and open-end mortgage advertisements
- Prohibition on the following practices in advertisements for closed-end mortgage loans:
 - Advertising “fixed” rates or payments without adequately disclosing that the interest rate or payment amounts are “fixed” only for a limited period of time, rather than for the full term of the loan;

- Comparing an actual or hypothetical consumer’s current rate or payment obligations and the rates or payments that would apply if the consumer obtains the advertised product, unless the advertisement states the rates or payments that will apply over the full term of the loan;
 - Advertisements that characterize the products offered as “government loan programs,” “government-supported loans,” or otherwise endorsed or sponsored by a federal or state government entity, unless the loans are government-supported or sponsored loans, such as FHA or VA loans;
 - Advertisements that prominently display the name of the consumer’s current mortgage lender, unless the advertisement also discloses the fact that the advertisement is from a mortgage lender that is not affiliated with the consumer’s current lender;
 - Advertising claims of debt elimination if the product advertised would merely replace one debt obligation with another;
 - Advertisements that falsely create the impression that the mortgage broker or lender has a fiduciary relationship with the consumer; and
 - Foreign-language advertisements in which certain information, such as a low introductory “teaser” rate, is provided in a foreign language, while required disclosures are provided only in English.
- Revisions to current rule to require creditors to provide early good faith estimate disclosures to consumers in both purchase money and non-purchase money closed-end mortgage transactions
 - Creditor or any other person prohibited from imposing a fee on the consumer in connection with the consumer’s application for a closed-end mortgage transaction until after the consumer has received early disclosures
 - This fee restriction would not apply to a reasonable and *bona fide* fee for obtaining the consumer’s credit history, such as a credit report fee

IV. Civil Liabilities and Remedies

- Expanded consumer right-of-rescission (3 years after consummation) for HPML’s (*other than* purchase loans, construction loans and certain refinancings with same creditor) that violate new HPML rules

- This is the case for any rule adopted under TILA § 129(1)(2) (HOEPA), even if the rule does not encompass HOEPA loans
 - As per existing law, right of rescission applies against creditors *and* assignees of HPML's
- Violation of other new rules would subject creditors to existing TILA remedies and penalties, as well as administrative enforcement by federal banking agencies or FTC
 - TILA remedies today include actual damages, fixed statutory damages, special statutory damages and court costs and attorneys fees