

Section 32 High Cost Mortgage (HCM aka HOEPA)

1026.31 HCM Disclosure Timing Requirements

1026.32 Requirements for High Cost Mortgages

1026.34 Prohibited Acts or Practices

Background	<p>HOEPA protections from 1994 were expanded by the CFPB in 2013 under their authority granted by the Dodd Frank Act. The scope of coverage was broadened from former “HOEPA loans” to include all “high-cost mortgages”, with the requirements primarily remaining in Section 32 of Reg Z. The following terms are interchangeable and refer to the same thing:</p> <ul style="list-style-type: none"> • Section 32 loan • HOEPA loan • High-cost mortgage • HCM
Coverage (1026.32)(a)	<p>ALL “High-Cost Mortgages”, which are consumer credit transactions secured by the principal dwelling. Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Purchase money loans • Refinances • Closed-end home equity loans • HELOCs • Home improvement loans / home remodels • Manufactured housing (titled as real property or personal property) • Any lien position • Any type of interest rate (fixed or variable) • Any loan term
Exemptions (1026.32)(a)	<p>The following loan types are exempt from coverage:</p> <ul style="list-style-type: none"> • Reverse mortgages • Initial construction loans (borrower interim) • Construction phase of construction-to-permanent loan* • Originated or directly financed by Housing Financing Agency (HFA) • USDA Rural Development Section 502 Direct Loan Program • Vacation / Second homes <p>* When disclosed as a one-time-close, a single APR reflecting appropriate charges from both phases must be calculated according to Reg Z’s Appendix D and compared to the APOR of a comparable permanent loan. Also, a single amount of points and fees from both phases must be calculated and compared with the total loan amount to determine coverage under Section 32. If the loan is determined to be an HCM, only the permanent phase is subject to requirements of 1026.32 and .34.</p>

Coverage Tests and Thresholds (1026.32)	There are three separate HOEPA coverage tests for both closed- and open-end loans. A (non-exempted) loan will be determined to be an HCM if it meets <u>any one</u> of these tests:	
1. APR to APOR Test: APR exceeds APOR https://ffiec.cfpb.gov/tools/rate-spread		
First lien (regular or jumbo loan)		6.5%
First lien, loan amount under \$50,000 and secured by personal property		8.5%
Subordinate lien		8.5%
2. Points and Fees Test: Amount exceeds specific thresholds		
Loan amount of \$21,549 or more (2019) / \$21,980 (2020)		5%
Loan amount less than \$21,549 (2019) / \$21,980 (2020)		Lesser of 8% or \$1,077 (2019) / \$1,099 (2020)
3. Prepayment Penalty: Timing or amount thresholds		
Timing		Can be charged more than 36 months after consummation / acct opening
Amount		Exceeds more than 2% of amount prepaid
Determination of APR (1026.32)	The APR calculated for Section 32 compliance is different from the APR disclosed on TRID disclosures. Use the following rules to compute the APR: <ul style="list-style-type: none"> • Fixed rate loan: use the interest rate in effect on the date you set it • Variable with an index: Use the <i>greater</i> of the introductory rate (if any) or the fully-indexed rate (which results from adding the max margin permitted at any time to the index value as of the date rate is set) • Any other variable rate: use the maximum rate possible 	
What is INCLUDED in Point and Fees Test (1026.32)(b)	In general, the calculation of points and fees for HOEPA will be the same as that for ATR / QM. Include: <ul style="list-style-type: none"> • Finance charges, per 1026.4(a) and (b), <i>unless excluded, see below</i> • Loan originator compensation, paid directly or non-directly • Real estate related fees retained by the lender or affiliate • Premiums for any credit ins payable at or before consummation if creditor is the beneficiary; or debt cancellation / suspension coverage • Maximum prepayment penalty that may be collected if allowed • Prepayment penalty incurred in a refinance with same creditor or affiliate • Charges paid by third parties • Creditor-paid charges • If open-end: <ul style="list-style-type: none"> ○ Participation fees payable at or before account opening ○ Draw fees 	

<p>What is EXCLUDED from Point and Fees Test (1026.32)(b)</p>	<p>Exclude:</p> <ul style="list-style-type: none"> • Interest or time price differential (i.e. odd days interest) • Fed/State gov't sponsored MIPs or guarantee fees • Bona Fide third-party charges NOT retained by the creditor, loan originator, or an affiliate of either • Reasonable real estate related fees, if NOT paid to creditor or affiliate • Mortgage insurance premiums (MIP) • Private Mortgage Insurance (PMI): <ul style="list-style-type: none"> ○ If payable <i>after</i> consummation: exclude the entire amount ○ If payable <i>at or before</i> consummation (i.e. up-front PMI): only exclude the amount in excess of FHA UFMIP, and only if unused portions are automatically refundable at payoff • Bona Fide Discount Points (must reduce interest rate): <ul style="list-style-type: none"> ○ Up to 2 points if the interest rate without discount is within 1% of APOR (or NHA Avg rate for personal prop principal dwellings) ○ Up or 1 point if the interest rate without discount is within 2% of APOR (or NHA Avg rate for personal prop principal dwellings)
<p>Special Disclosure Requirements (1026.32)(c)</p>	<p>Lenders must provide a written disclosure 3 bus days prior to loan closing. If loan is rescindable, give it to each consumer with rescission rights. Provide:</p> <ul style="list-style-type: none"> • A notice in conspicuous font size that states: <p><i>“You are not required to complete this agreement merely because you have received these disclosures or signed a loan application. If you obtain this loan the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under this loan”</i></p> • APR • If variable, a statement that the interest rate and payment may increase, and the maximum rate and payment possible • Closed-end credit: <ul style="list-style-type: none"> ○ Total amount borrowed ○ Regular, fully amortizing payment (for every payment level, if applicable; and if there is a discounted / premium rate, the initial payment and payment in effect thereafter) ○ Balloon payment (if applicable) • Open-end credit: <ul style="list-style-type: none"> ○ Total credit limit at the time account is opened ○ Example of first minimum periodic payment for draw period ○ First minimum periodic payment for any repayment period ○ Balance outstanding at beginning of any repayment period <ul style="list-style-type: none"> ▪ Example based on the consumer borrowing the full line with no additional extensions; only making minimum payments; and APR remaining constant during both draw & repayment periods ○ Balloon payment (if applicable) ○ Disclaimer that example payments are based on a maxed-out line; are not actual payments; and actual minimum periodic pymts will depend on amount borrowed, applicable interest rate, and any extra payments

**Disclosure
Timing
Requirements
And Other
Information
(1026.31)**

The disclosure required by 1026.32 must be provided:

- In writing, in a form the consumer can keep (may be provided electronically, subject to E-SIGN compliance)
- At least 3 business days* prior to loan consummation / account opening
- Upon any change in terms that makes the disclosures inaccurate
 - The change in terms disclosure may be provided by telephone, if:
 - The consumer initiates the change; and
 - Prior to consummation / acct opening, the consumer and creditor sign a statement that the new disclosures were provided properly
- The 3 business day waiting period may be waived by the consumer for a bona-fide financial emergency (same as to waive a right of rescission). The consumer must give a written statement describing the emergency and specifically asks for a waiver. It must be signed by all borrowers, and a pre-printed is generally prohibited.

Under § [1026.32](#), "business day" has the same meaning as the rescission rule in comment 2(a)(6)-2—all calendar days except Sundays and the Federal legal holidays listed in 5 U.S.C. 6103(a). However, while the disclosure rule under §§ 1026.15 and 1026.23 extends to midnight of the third business day, the rule under § 1026.32 does not. For example, under § 1026.32, if disclosures were provided on a Friday, consummation or account opening could occur any time on Tuesday, the third business day following receipt of the disclosures. If the timing of the rescission rule were to be used, consummation or account opening could not occur until after midnight on Tuesday.

In addition:

- Disclosures must reflect the legal obligation terms
- Based on the best information available, and if unknown, must state that it is an estimate
- Discloses affected by per-diem interest are accurate if based on information know to the creditor at the time preparation
- If there are multiple creditors, they shall agree among themselves who shall provide the disclosure
- If there are multiple applicants, the disclosure shall be provided to the consumer who is primarily liable, unless rescindable, in which case it must be provided to all consumers with a right to rescind
- If the creditor is acting in good faith, inadvertent errors will not be a violation if the creditor promptly takes action in accordance with 1026.31(h)

<p>Prohibited Loan Features (1026.32)(d)</p>	<p>The following features are restricted or banned for HCMs, as they are deemed to be overly risky to consumers:</p> <ul style="list-style-type: none"> • No balloon payment (more than 2x regular periodic payment), <i>except</i>: <ul style="list-style-type: none"> ○ Payments adjusted for seasonal / irregular income; ○ Bridge loans of 12 months or less in connection with purchase or construction of principal dwelling ○ Balloon QMs made by rural / underserved small creditors under 1026.43(f)(i)–(vi); or post-consummation transfers under .43(f)(2) ○ Open-end credit. Repayment period with no further draws: Balloon allowed for payment transition from draw period to repayment period. No repayment period: balloon payment restriction applies. • No negative amortization • No advance payments (payment schedule consolidates more than 2 periodic payments and pays them in advance from loan proceeds) • No increased interest rate upon default • No rebates (unfavorable calculation of interest due to be rebated to a consumer in connection with loan acceleration resulting from default) • No prepayment penalties (if a loan is an HCM, including only from the prepayment penalties test, then all prepayment penalties must be stripped from the loan). • No acceleration of debt (due-on-demand feature) <i>unless</i>: <ul style="list-style-type: none"> ○ The consumer commits fraud / material representation ○ The consumer defaults on payment ○ The consumer’s action / inaction adversely affects collateral
<p>Other Prohibited or Restricted Acts or Practices (1026.34)</p>	<ul style="list-style-type: none"> • Anti-evasion rule: Cannot purposefully structure loan to evade HOEPA • Refinances, Mods, and Default. Creditor cannot: <ul style="list-style-type: none"> ○ Recommend default on an existing loan to be refinanced by an HCM ○ Charge a fee to modify, defer, renew, extend or amend an HCM ○ Refinance any HCM into another HOEPA loan within 1 year, unless in the best interest of the borrower • Late fees: Restricted to 4% of past due payment, and only a single late fee may be imposed for any past due payment • Other fee prohibitions: <ul style="list-style-type: none"> ○ No pyramiding of fees ○ Generally, no fee to generate a payoff statement • Finance charges included in the Points and Fees test cannot be financed • Loan Proceeds: Funds cannot be paid directly to a contractor, but must be paid to borrower and contractor jointly or through 3rd party escrow • Cannot sell an HCM to the secondary market without providing an HCM notice to the assignee • Lender must verify repayment ability based on ATR requirements (including open-end loans normally exempt from ATR) • An HCM cannot be originated without mandatory post-disclosure, pre-loan counseling: <ul style="list-style-type: none"> ○ Creditor must receive written certification that consumer completed counseling from an independent HUD-approved counselor