

FEDERAL LAW 100 – Truth in Lending Act (Regulation z)

Outline

[I. Introduction and TILA Overview 6](#_Toc393811619)

[A. Introduction to TILA, HOEPA and MDIA 6](#_Toc393811620)

[B. Truth In Lending Act Overview 7](#_Toc393811621)

[C. Summary of Purpose of TILA and Reg. Z 8](#_Toc393811622)

[D. TILA Index 8](#_Toc393811623)

[II. APR and Finance Charge Disclosure 10](#_Toc393811624)

[A. Annual Percentage Rate (APR) (Part 1026.14) 10](#_Toc393811625)

[B. Finance Charges (Part 1026.4) 10](#_Toc393811626)

[C. Amount Financed and Total Payments (Part 1026.18) 15](#_Toc393811627)

[D. Accuracy Tolerance for Closed-End Credits (Part 1026.18(d)) 15](#_Toc393811628)

[III. Initial Early Disclosure Requirements (Part 1026.6 or 1026.18) 17](#_Toc393811629)

[A. Loan Types Covered 17](#_Toc393811630)

[B. Early Disclosure and Waiting Period 18](#_Toc393811631)

[C. General Disclosure Requirements for Closed-End Credit (§ 1026. 17) 20](#_Toc393811632)

[D. Specific Initial Disclosure Requirements 21](#_Toc393811633)

[E. Right to Rescission for Open-End Credits (Subpart B 1026.15) 22](#_Toc393811634)

[IV. The TILA Disclosure Statement 25](#_Toc393811635)

[A. Overview 25](#_Toc393811636)

[B. Requirements of Periodic Statements (Part 1026.7) 27](#_Toc393811637)

[V. Advertising Regulation (Subpart B 1026.16 and Subpart C 1026.24 for Open- and Closed-End Credit) 31](#_Toc393811638)

[A. Full Disclosure of Mortgage Terms 31](#_Toc393811639)

[B. Other Advertising Rules 33](#_Toc393811640)

[C. Enforcement (Part 108 of Consumer Protection Act) 34](#_Toc393811641)

[VI. Additional Key TILA Rules 35](#_Toc393811642)

[A. Ability-to-Repay 35](#_Toc393811643)

[B. Loan Originator Compensation and Steering (12 CFR 1026.36(d) and e)) 37](#_Toc393811644)

[VII. HOEPA and Predatory Lending (Parts 1026.32 and 1026.35) 42](#_Toc393811645)

[A. Predatory Lending Background 42](#_Toc393811646)

[B. Subprime Lending 43](#_Toc393811647)

[C. Examples of Predatory Lending Activities 43](#_Toc393811648)

[VIII. HOEPA Regulations for All Mortgages (Section 1026.32) 46](#_Toc393811649)

[IX. Higher-Priced Mortgages 48](#_Toc393811650)

[A. Background for HOEPA Section 32 and Section 35 48](#_Toc393811651)

[B. Higher-Priced Mortgage Loans (in HOEPA Section 35), Loans Covered 49](#_Toc393811652)

[C. Regulations 50](#_Toc393811653)

[X. High-Cost Mortgages (in HOEPA Section 32) 52](#_Toc393811654)

[A. Loan Types Covered 52](#_Toc393811655)

[B. Regulations 53](#_Toc393811656)

[C. TILA Disclosure for Section 32 Mortgages 54](#_Toc393811657)

**I. Introduction and TILA Overview**

1. Introduction to TILA, HOEPA and MDIA
2. Truth In Lending Act Overview
3. Summary of Purpose of TILA and Reg. Z
4. TILA Index

**II. APR and Finance Charge Disclosure**

1. Annual Percentage Rate (APR)
2. Finance Charges
3. Amount Financed and Total Payments
4. Accuracy Tolerance for Closed-End Credits

**III. Initial Early Disclosure Requirements**

Loan Types Covered

1. Early Disclosure and Waiting Period
2. Business Day Definition (Part 1026.2(6))
3. 3-Business-Day Requirement
4. Prohibitions on Fee Collection before Early Disclosure
5. 7-Business-Day Waiting Period
6. 3-Business-Day Waiting Period for Corrections
7. APR Accuracy Tolerance Level
8. General Disclosure Requirements for Closed-End Credit § 1026. 17
9. Specific Initial Disclosure Requirements
10. Right to Rescission for Open-End Credits (Subpart B 1026.15)
11. Regulation
12. Right to Rescission Form

**IV. The TILA Disclosure Statement**

1. Overview
2. Disclosure Example
3. Requirements of Periodic Statements (Part 1026.7)

**V. Advertising Regulation**

1. Full Disclosure of Mortgage Terms
2. Other Advertising Rules
3. Tax Implication
4. Advertise Only Currently Available Terms
5. Advertised Rates
6. Balloons
7. Promotional / Teaser Rates
8. Misleading Comparisons
9. Enforcement (Part 108 of Consumer Protection Act)

**VI. Additional Key TILA Rules**

1. Ability to Repay and Qualified Mortgage Standards / Ability to repay
   1. Qualified Mortgages
2. Loan Originator Compensation and Steering (12 CFR 1026.36(d) and e))
3. Loan Officer Compensation Rule 2014 Updates
4. 1026.36(e) Prohibition on Steering
5. **HOEPA and Predatory Lending (Parts 1026.32 & 1026.35)**
6. Predatory Lending Background
7. Subprime Lending
8. Examples of Predatory Lending Activities
9. **HOEPA Regulations for All Mortgages (Section 1026.32)**
10. Servicer Limitations
11. Appraisal Limitations
12. Further Advertising Limits
13. 3-Business-Day Disclosure Requirement
14. **Higher-Priced Mortgages (Section 35)**
15. Background for HOEPA Section 32 and Section 35
16. Higher-Priced Mortgage Loans (in HOEPA Section 35), Loans Covered
17. Regulations
18. **High-Cost Mortgages (in HOEPA Section 32)**
19. Loan Types Covered
20. APR Triggers
21. Regulations
22. Disclosures / Rescissions
23. Prohibitions
    1. Balloon Payment Prohibitions
    2. Negative Amortization
    3. Default Rate Limitations
    4. Prepayment Penalties
    5. Due-on-Demand Clause
24. Newly-Added Prohibitions After 2002
25. Lending Without Considering Repayment Ability and Income Verification
26. Refinancing Limitations
27. Home Improvement Proceeds
28. Regulation Evasion
29. Penalties
30. TILA Disclosure for Section 32 Mortgages

# Introduction and TILA Overview[[1]](#footnote-1)

## Introduction to TILA, HOEPA and MDIA

In this course, we are going to cover the Truth In Lending Act. Along with any discussion of TILA, there are several important amendments. One that we will spend a fair amount of time on is HOEPA. We have also included updates resulting from MDIA.

Knowing TILA well will be critical for your business with regards to regulators, litigation and reputational challenges. The main TILA components included here are:

1. **TILA** – *Truth in Lending Act (enacted in 1968, implemented by Reg. Z*).

Establishes requirements for creditors to disclose loan terms, such as the APR and various finance charges. Provides guidance on advertising and rescission. Imposes restrictions on specific types of mortgages, including adjustable-rate mortgages, reverse mortgages, and HELOCs. Prohibits certain practices relating to payments made to compensate mortgage brokers and other loan originators.

TILA will be the topic for the first section of this course.

**2. HOEPA** - *Home Ownership and Equity Protection Act (an amendment to TILA - enacted in 1994, significantly updated in 2008 and 2014, it is implemented by Reg. Z).* Provides special protections for consumers who obtain high-rate or high-fee mortgages such as prohibiting predatory lending and certain servicing practices.

We will discuss HOEPA in the second section of this course.

**3. MDIA** – *Mortgage Disclosure Improvement Act (an amendment to TILA - enacted in July 2008 effective from July 30, 2009).* Requires that refinance transactions be covered by TILA early disclosure guidelines. Requires that creditors wait 7 business days after they provide the early TIL disclosures (either electronically or by mail, fax etc.) to the borrower before closing the loan.

*We will not have a separate section on MDIA but will instead incorporate it into our other discussions.*

Though TILA was introduced in 1968, it has been amended many times to incorporate new ways to protect borrowers. Many times, the amendments were the result of newly-developed unethical practices that negatively impacted consumers. The most recent amendments came about because of industry practices that took advantage of or abused consumers. The Dodd-Frank Act identified these abusive practices and gave the Consumer Financial Protection Bureau the responsibility to finalize and implement specific mortgage industry rules.

There are several new rules that were finalized throughout 2013 and implemented in January 2014. These new rules expand definitions and create new required actions. Remember that you must stay current on all new laws and regulations. Go to <http://www.consumerfinance.gov/regulations/> to check on new regulations.

## Truth In Lending Act Overview

The Truth In Lending Act (“TILA”) was enacted in May 1968 as Title 1 of the Consumer Protection Act (CPA). TILA, as implemented by regulation Z, became effective in July of 1969. It is the most important US consumer protection law with regard to borrowing. It protects consumers' interest by requiring correct and sufficient disclosure of lending terms and costs on most types of consumer credit, including mortgage loans, auto loans, and credit card borrowing. The full Truth In Lending Act can be reviewed in the Electronic Code of Federal Regulations database (ecfr.gov) as Title 12, Part 1026.[[2]](#footnote-2)

There have been many amendments and additions made to TILA. Two of the most notable amendments include the Home Equity Loan Consumer Protection Act of 1988, and the Home Ownership and Equity Protection Act of 1994 (HOEPA).

The Mortgage Disclosure Improvement Act (MDIA) was enacted in 2008. MDIA expands the TILA disclosure arrangement to cover refinance transactions.

MDIA also requires that the early Truth In Lending disclosure be provided by the mortgage loan originator to the borrower no later than 7 business days before closing. Additionally, when the APR is outside of allowable tolerances, MDIA requires the MLO to provide a revised disclosure at least 3 business days before closing. In both cases, MDIA defines ‘Provided’ to mean that the disclosure must be hand-delivered or mailed, and the deadlines above apply to when the envelope is postmarked.

## Summary of Purpose of TILA and Reg. Z

1) Ensure proper disclosures. All mortgage loan originators must present data in the same manner to all consumers. They must also use consistent terms and language so that consumers can easily compare one offer from one creditor against a similar offer from another creditor. TILA is not meant to restrict how much the mortgage loan originator charges each mortgagor but to ensure that sufficient and reliable information is provided to consumers so that they can make an informed decision when shopping for credit.

2) Enforce specific prohibitions. For certain home equity lines of credits, adjustable-rate mortgages, mortgages with high interest rates and reverse mortgages, the government imposes additional limitations.

## TILA Index

The Truth In Lending Act (TILA) is structured in subparts A through E:

### Subpart A.

Contains generic information about the purpose and organization of the Federal TILA, some basic definitions, the method for cost calculation and certain exempt transactions. It discusses the method of determining the finance charge (1026.1-4).

### Subpart B.

Establishes rules for open-end credit such as Home Equity Lines of Credit (HELOCs). It requires that initial disclosures and periodic statements be provided and it specifies rules for advertising and rescission (1026.5-16).

### Subpart C.

Covers closed-end credit - essentially first and second mortgage and Home Equity Loans (HELs). It contains rules on initial disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising. **MDIA amendments are mostly found in this section** (1026.17-24).

### Subpart D.

Contains regulations for oral and other-than-English language disclosures plus older consumer credit protection state laws. Subpart D is not covered in this lesson; 1026.25-30.

### Subpart E.

**HOEPA amendments are mostly found in this section.** Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end loans that have rates or fees above specified amounts. Section 1026.33 requires special disclosures, including the total annual loan cost rate for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with closed-end mortgage transactions that are subject to § 1026.32. Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling.

Since many rules are repeated in different sections, we will discuss the important topics of TILA for mortgage loan originators instead of going through them section by section.

# APR and Finance Charge Disclosure

The most well-known part of TILA is probably the APR disclosure. In every credit card advertisement, you will see the APR quoted. TILA is a broad-reaching law that applies to most credit transactions in the US and all covered transactions need to disclose an APR.

## Annual Percentage Rate (APR) (Part 1026.14)

APR is the acronym for Annual Percentage Rate. The APR is a rate that takes into account all fees and charges associated with a loan. Unlike the Note Rate which is just the interest rate applied to the unpaid balance of the loan, the APR takes into account associated fees such as origination fees or commissions. For example, a mortgage may have a 5% interest/note rate but, if the borrower has to pay some fees upfront, then the APR would be higher than 5% because the total rate of the mortgage is higher than 9%. The disclosure of APR gives the consumer a full picture of the overall cost of the loan.

## Finance Charges (Part 1026.4)

The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. A higher finance charge leads to a higher APR.[[3]](#footnote-3) The interest paid by the borrower on an on-going basis, mostly with each monthly payment, would be one clear finance charge. The loan origination fee charged by the mortgage loan originator upfront is also a key part of all finance charges. As shown below, finance charges fall into two categories: Prepaid and Pre-computed.

**1)** **Prepaid Finance Charges** are paid upfront at settlement. Prepaid finance charges effectively reduce the amount of funds available for the consumer's use, usually before or at the time the transaction is consummated. Examples of finance charges frequently prepaid by consumers are borrower's points, loan origination fees, real estate construction inspection fees, odd days' interest (interest attributable to part of the first payment period when that period is longer than a regular payment period), mortgage guarantee insurance fees paid to the Federal Housing Administration and private mortgage insurance (PMI) paid to such companies as the Mortgage Guaranty Insurance Company (MGIC) (1026.2(23)).

**2) Pre-computed Finance Charges** are paid on an ongoing basis, after settlement, over the life of the mortgage (where the amount of the loan is expressed as a total that includes the principal balance as well as the finance charges computed in advance). An example is the monthly mortgage interest payment.

Since the finance charge is the cost of consumer credit as a dollar amount, it includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor. Besides charges paid to the mortgage loan originator, the following three types of charges are part of the overall Finance Charge:

1. **Third-Party Fees**. Charges by third parties if use of the third party is required by the creditor or if the creditor can earn part of the fees.
2. **Closing Agent Fees**. Charges by closing agents if the agent is required by the creditor or if the creditor can earn part of the fees.
3. **Mortgage Loan Origination Fee**. Charges by the mortgage brokers, whether paid for by the borrower directly or with loan proceeds, even if not required by the creditor and/or the creditor does not benefit from the fees.

From a mortgage loan originator’s point of view, it is important to know the components embedded in an APR. Failure to report certain fees as finance charges can be construed as an effort to deceive the borrower and as a violation of TILA. An important concept to remember in this section is that Finance Charges are the fees charged by the mortgage loan originator to the borrower for the borrower to get the mortgage loan. By this definition, we can exclude fees not directly or indirectly paid for by the borrower (e.g. Seller’s points) or fees that the borrower has to pay even if the borrower is buying a property with all cash (e.g. fees related to the title exam or pest inspection).

Since some of the fees and expenses related to getting a mortgage and buying a house are not included in the calculation of the Finance Charge, in reality the APR might not completely reflect the total costs incurred by the borrower to obtain the mortgage. As a responsible mortgage loan originator, you can help the borrower by pointing out what is missing in the APR, as it may help the borrower make a more informed decision.

There are often heated debates by mortgage professionals and consumer rights groups about what should be included in the Finance Charge, and thus in the APR. The debate is not surprising given that a lower APR percentage is more appealing to borrowers.

Another debate is the leeway given for inaccurate disclosure of the Finance Charge according to accuracy tolerances allowed by TILA. The mortgage loan originator is required to disclose all charges known at the time of disclosure. Keep in mind these charges may vary at the time of settlement and, while all charges are not incorporated into the finance charge, the MLO must be in line with the corresponding allowable fee tolerance per The Real Estate Settlement Procedure Act (RESPA) and the TILA tolerance for APR and Finance Charges. This is a critical issue because, if the Finance Charge is deemed inaccurate, the borrower might be able to back out of the mortgage (or rescind), causing the lenders to suffer losses. In a lawsuit, mortgage loan originators might be liable for actual damage or up to twice the misstatement of finance charge. In response to this issue, the Federal Reserve issued a rule in 1995 that clarified the accuracy tolerance of the Finance Charge. This rule only applies to closed-end credits, i.e. not Home Equity Line of Credit (HELOCs).

Specifically, according to the Truth-In-Lending Act, Accuracy Tolerances for Closed-End Credit (§§1026.18(d) & 1026.23(h)) state that for all loans originated on or after September 30, 1995 and secured by real property or a dwelling, the disclosed finance charge is considered accurate if it does not vary from the actual finance charge by more than $100. There are additional rules around tolerances in rescindable transactions that will be discussed later in the course material.

### Examples of Items Included in Finance Charges (Part 1026.4):

1. Interest. Interest, time-price differential, and any amount payable under an add-on or discount system of additional charges.
2. Transaction Fees. Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar home purchase paid for by all cash. Remember, charges that are required even in an all-cash transaction would not be included as long as the charges are similar in the two cases.
3. Points and the Loan Origination Fee. These charges include points, loan fees, assumption fees and similar charges.
4. Credit Guarantee Insurance. This represents premiums or other charges for any guarantee or insurance protecting the lender against the borrower's default or other credit losses. In order words, this is the fee the borrower pays to minimize the lender’s credit risk should they default. Such charges would not be necessary in an all-cash transaction.
5. Charges imposed on the mortgage loan originator by another company for purchasing or accepting a borrower's obligation, assuming the borrower is required to pay the charges in cash as an addition to the obligation or as a deduction from the proceeds of the obligation. This case occurs when the lender sells the borrower’s mortgage to another entity. Again, this charge would not be necessary in an all-cash transaction.
6. Certain appraisal, investigation and inspection fees when these services were performed after closing.
7. Premiums or other charges for credit life, accident, health, or loss-of-income insurance written in connection with a credit transaction, unless the insurance is not required by the lender, is properly disclosed and is authorized by the borrower (see Part 1026.4(d) for further information).
8. Premiums or other charges for insurance against loss of or damage to property or against liability arising out of the ownership or use of property, written in connection with a credit transaction, unless the insurance is not required by the lender, is properly disclosed and the insurance carrier is selected by the borrower (see Part 1026.4(d) for further information).
9. Discount Points. Discounts for the purpose of inducing payment by a means other than the use of credit.
10. Debt-cancellation fees. Charges or premiums paid for debt-cancellation coverage written in connection with a credit transaction, whether or not the debt-cancellation coverage is insurance under applicable law, unless it is not required by the lender, is properly disclosed to and is authorized by the borrower (see Part 1026.4(d) for further information).

### Examples of Items Excluded in Finance Charges (Part 1026.4):

In general, excluded items include any charges that would be required by a comparable cash transaction as well as any charges absorbed by the lender or seller as an incentive for the borrower.

1. Application Fees. Fees charged to all applicants for credit, whether or not credit is actually extended.
2. Fees for Unanticipated Late Payment. These are charges for actual unanticipated late payment, for exceeding a credit limit or for delinquency, default or a similar occurrence.
3. Overdraft Fees Not Agreed to in Writing. Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. The reasoning behind this exclusion is that the borrower is in control of making sure that an account is not overdrawn.
4. Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.
5. Seller's points.
6. Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.
7. Real-estate related fees. The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:
   * 1. Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.
     2. Fees for preparing loan-related documents such as deeds, mortgages, and re-conveyance or settlement documents.
     3. Notary and credit-report fees.
     4. Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations.
     5. Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.
8. Discounts offered to induce payment for a purchase by cash or check.
9. Certain security interest charges. If itemized and disclosed, the following charges may be excluded from the finance charge:
10. Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.
11. The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees paid to public officials related to determining and releasing security interest.
12. Taxes on security instruments. Any tax paid to public officials levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

## Amount Financed and Total Payments (Part 1026.18)

The **Amount Financed** is the net amount of credit extended for the consumer's use. To calculate the amount financed, all amounts and charges connected with the transaction, either paid separately by the borrower or included in the note amount, must first be identified. The note amount must then be reduced by the total amount of the prepaid finance charge to determine the amount financed. The amount financed must not include any finance charges.

(See Part 1026.4, 1026.18 and Appendices F, J and L for more information).

## Accuracy Tolerance for Closed-End Credits (Part 1026.18(d))

Under TILA and Regulation Z, finance charge disclosures for open-end credit must be accurate since there is no tolerance for finance charge errors.

Tolerances for the finance charge in a closed-end transaction are generally $5 if the amount financed is less than or equal to $1,000 and $10 if the amount financed exceeds $1,000. Tolerances for certain transactions consummated on or after September 30, 1995 are noted below.

* 1. **Mortgage secured by a dwelling (closed-end credit only):** The disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) are considered accurate if the amount disclosed as the finance charge is either understated by no more than $100 or is greater than the amount required to be disclosed. Overstatements are not violations.[[4]](#footnote-4)
  2. **Rescission rights after the three business day rescission period** (closed-end credit only): The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) are considered accurate if the disclosed finance charge is either understated by no more than .50% of 1 percent of the face amount of the note or $100, whichever is greater; or is greater than the amount required to be disclosed. Overstatements are not violations.[[5]](#footnote-5)
  3. For a refinancing of a mortgage with a new creditor, as long as there is no cash out and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) are considered accurate if the disclosed finance charge is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or is greater than the amount required to be disclosed.[[6]](#footnote-6)
  4. If the required finance charge disclosures are out of tolerance or disclosures are not delivered, the right to rescind is extended to three years.[[7]](#footnote-7)
  5. Rescission rights in foreclosure: In general, the finance charge and other disclosures affected by the finance charge will be considered accurate if the disclosed finance charge is understated by no more than $35. Overstatements are not considered violations. Also, the consumer has the right to rescind the transaction if a mortgage broker fee that should have been included in the finance charge was not included or if the creditor did not provide the properly completed notice of rescission.[[8]](#footnote-8)

# Initial Early Disclosure Requirements (Part 1026.6 or 1026.18)

Part 1026.6 of TILA requires specific details of a credit transaction to be disclosed to an applicant upon receipt of an application. The initial disclosure made to the applicant is often captured in what is called the **TILA Disclosure** document. This document is usually included with the RESPA Good Faith Estimate (GFE) document and delivered to the borrower(s) as required. The requirement of the TILA document is the best known part of TILA.

The TILA disclosure can be delivered in person or electronically, or by mail subject to the timing requirements we will discuss below. If there is more than one borrower, for a transaction not subject to rescission (like an owner occupied purchase), the disclosure can be delivered to any borrower who is primarily responsible for the loan. However, for a transaction subject to rescission (like an investment purchase or some refinances), the disclosure must be given to every borrower who has the right to rescind. [[9]](#footnote-9)

## Loan Types Covered

The Mortgage Disclosure Improvement Act (MDIA) further extended the types of mortgages subject to the TILA early disclosure requirement. In the past, the TILA disclosure requirement applied to any residential mortgage covered by RESPA or any mortgage extended to finance the purchase of a borrower’s dwelling or to finance the initial construction of a borrower’s dwelling. Now, the TILA disclosure covers “any extension of credit secured by the dwelling of a consumer.” This effectively includes refinance mortgage and home equity loans. Additionally, the TILA disclosure is now required whether or not the dwelling is the borrower’s principal dwelling. HELOCs are excluded from this last requirement.

## Early Disclosure and Waiting Period

1. **Business Day Definition (Part 1026.2(6))**

The definition of ‘Business Day’ is important to understand so that a transaction can be disclosed properly. For this particular 7-Business Day waiting period, MDIA TILA gives a narrow and precise definition, which is every day except Sundays and 10 legal public holidays. *“Business day means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 1026.15 and 1026.23, and for purposes of §§ 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.31, and 1026.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day*”. [[10]](#footnote-10)

What this means is that, when you are making initial or subsequent disclosures, a business day is defined as a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. If you are not open on a weekend day or a non-federal holiday, that day would not count in your timing. But for the RESPA-covered transactions and TILA rescission requirements, a business day is defined as all calendar days except Sundays and the legal public holidays.

1. **3-Business-Day Requirement**

For mortgages, part 1026.19 requires that the TILA Disclosure be made 3 business days after the mortgage loan originator receives the borrower’s completed application. This is an important date. TILA helps clarify that business days are days when the mortgage loan originator’s office is open to the public for carrying on substantially all of its business functions*.*

1. **Prohibitions on Fee Collection before Early Disclosure**

MDIA, in Part 1026.19(a)(1)(ii) for closed-end loans, states that mortgage loan originators are not allowed to impose any charges on mortgage applicants before the applicant receives his or her TILA disclosure in the initial phase of the mortgage application. The only fee that mortgage loan originators can require is a small fee for the actual cost of obtaining a credit report for the applicant as stated in Part 1026.19(a)(1)(iii).

The law specifically states that mortgage loan originators can assume that the applicant has received the TILA disclosure 3 business days after the disclosures were mailed. *"This ‘business day‘ means all calendar days except Sundays and the legal public holidays."*

1. **7-Business-Day Waiting Period**

Remember that the TILA disclosure needs to be provided to the applicant 3 business days after the mortgage loan originator received the application. Now, the 2008 MDIA amendment in Part 1026.19 puts an additional limit on the period during which a mortgage transaction can close. MDIA requires that the TILA Disclosure Statement be disclosed to mortgage applicants at least **7 business days** before the closing of the mortgage transaction. This 7-Business Day waiting period begins on the postmarked date when the disclosure was mailed to the borrowers, not when the borrowers received the disclosure.

Note: A borrower may modify or waive the seven-day or three-day waiting period before consummation if he/she has a bona fide personal financial emergency (such as imminent foreclosure) that necessitates consummating the credit transaction before the end of the waiting period. However, the consumer must receive accurate TILA disclosures at or before the time the consumer modifies or waives the waiting period. To modify or waive a waiting period, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation.

1. **3-Business-Day Waiting Period for Corrections**

As an added consideration, MDIA dictates that if the APR disclosed on the TILA varies by more than a certain amount (considered a ‘threshold’ amount), then the creditor needs to send out a revised disclosure with the new APR and the mortgage transaction cannot close within **3 business days** following receipt of the new disclosure agreements by the borrower. If the mortgage loan originator does not deliver the new disclosures to the borrower in person, then the borrower is deemed to have received the corrected disclosures **3 business days** after the new disclosures were mailed.

Note: If borrowers are faced with a proven personal emergency situation such as imminent foreclosure, they can waive this requirement provided that the borrowers have received the corrected disclosures and that the borrowers provide a signed written document stating their emergencies.

1. **APR Accuracy Tolerance Level**

Note that the APR change threshold mentioned above is defined in Part 1026.22. The APR is deemed accurate if it is:

* 1/8 of 1% (0.125%) above or below the APR for regular loans
* ¼ of 1% (0.25%) above or below the APR for irregular loans.

Standard 30-year fixed mortgage loans are usually regular loans. An irregular loan is a mortgage transaction that has multiple advance periods (most likely a construction loan) or irregular payments (most likely an ARM or a mortgage with varying mortgage insurance).

## General Disclosure Requirements for Closed-End Credit ([§ 1026. 17](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.2.1.1))

* 1. Creditor name and address
  2. Contract reference number
  3. **Amount Financed and itemization:** Loan amount itemized; amortization table and house sale price
  4. **Finance Charge & APR**: Also, Payment Schedule and the Total of Payments (made for the mortgage).
  5. **Other terms and conditions**. This includes Demand Conditions (conditions which state when the loan would be called before maturity), explanations for prepayment and late payment policies, the Mortgage Assumption policy, the required Earnest Money deposit and any Tax implications of the mortgage payments.
  6. **Warning of certain potential risks**. This includes a number of potential risks that may be present in the contract. For example, the fact that the borrower will lose their security interest in the home if they miss payments and that certain fees are paid to secure the lender’s interest in the home. Also, in the case of ARMs, TILA requires disclosure of the possibility of negative amortization and/or a change in interest rates. Also, specific disclosure is required for a borrower who newly refinanced, assumed a mortgage or experienced an interest adjustment in a variable-rate mortgage.[[11]](#footnote-11)

## Specific Initial Disclosure Requirements

* **Variable-Rate Loan.** Various disclosures are required for variable-rate loans. Disclosure requirements include the interest rate cap, the index used, the margin charged, the effect of a rate increase, the frequency of rate changes, and the conditions of a rate increase. Also, the booklet “Consumer Handbook on Adjustable Rate Mortgages,” prepared by the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision, needs to be made available to the consumer. Also, the borrower needs to be given examples on how changes of interest rates will affect an original loan amount of $10,000 (see 1026.19 (b) through (d) for more details about what disclosure is needed for variable-rate loans). [[12]](#footnote-12)
* **Reverse Mortgages**. Many of the requirements for reverse mortgages are the same as those which apply to regular loans. However, there are additional specific requirements. For example, the mortgage loan originator must show cash flow scenarios to applicants using the following examples:
  + (a) The annual appreciation rate of the house at 0, 4 and 8 percent
  + (b) An assumed loan period of 2 years
  + (c) An actuarial life expectancy of the youngest borrower multiplied by 1 and 1.4 and, optionally, 0.5 (see subpart D 1026.31 and 1026.33 for further information.)[[13]](#footnote-13)

Note: Certain disclosure requirements of TILA can be very specific. For example, when calculating APR, you do not need to take into account the number of days in each calendar month. Most of the time, commercial software will ensure that these calculations are done correctly and that you fulfill all the disclosure requirements.

## Right to Rescission for Open-End Credits (Subpart B 1026.15)

One significant consumer protection of TILA is to provide a right of rescission. The right of rescission allows owners(s) time to reexamine their credit agreements and cost disclosures and to reconsider whether they want to place their home(s) at risk by offering it/them as security for the credit.

### Regulation

Generally, TILA’s right of rescission applies to home equity loans or to new lender refinancing transactions as well as cash-out transactions if the home is the owners’ principal dwelling. State-level regulation may vary.

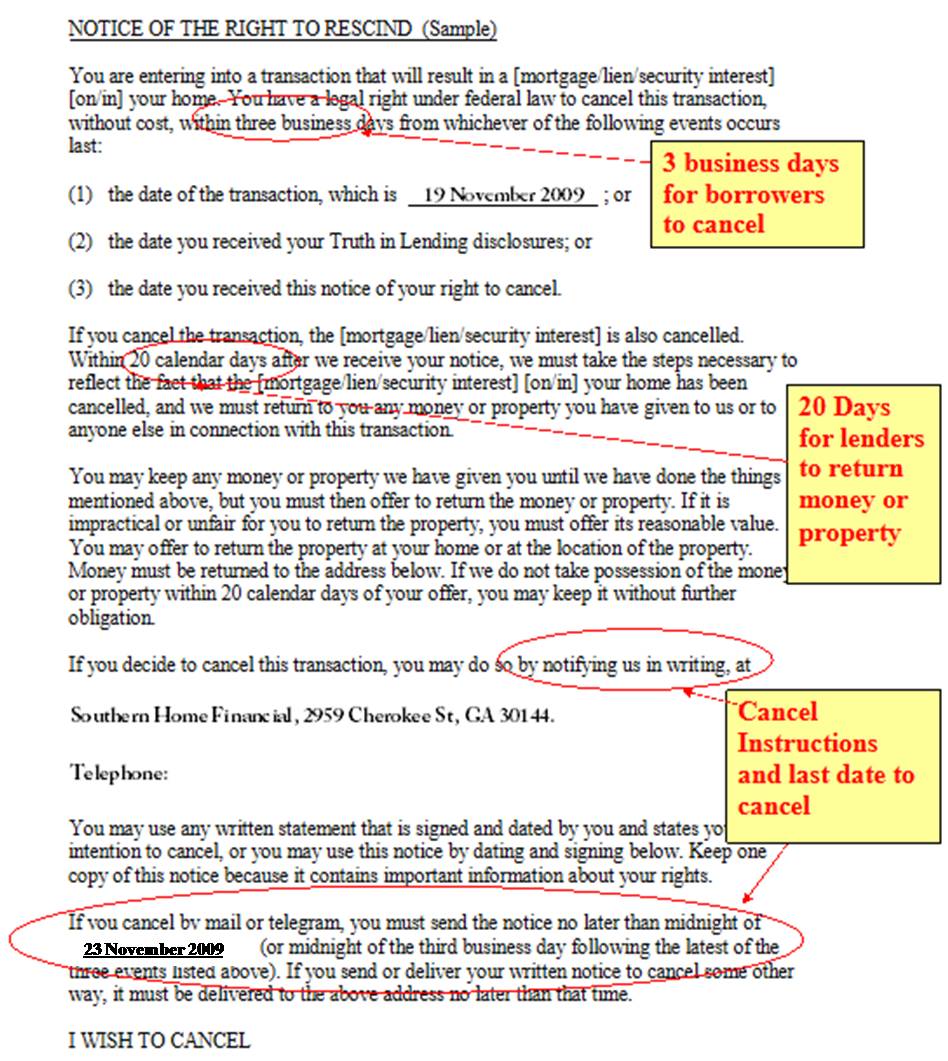
Consumers have 3 business days to evaluate a transaction and terminate the agreement without any further financial obligation. Their reason can be as simple as just a change of heart. ‘Business day’ refers to all calendar days except Sundays and the 10 legal public holidays.

Specifically, according to Reg. Z, the consumer may exercise the right to rescind until midnight of the third business day following consummation of the transaction. If the mortgage closed on Monday, then this 3-business-day period ends at midnight on Thursday.

Once the mortgage is rescinded, the security interest becomes void and, within 20 calendar days after the receipt of a notice of rescission, the lender must return all funds and/or property. The applicant is allowed to waive the right to rescind.

For a rescindable transaction, before mortgage settlement, lenders are required to deliver two copies of a document called the “Notice of The Right to Rescind” and one copy of the form that can be used for rescission by each owner of the residence. The notice must be on a separate document that identifies the date when the rescission expires, the effect of rescission and how to exercise the right to rescind. The mortgage loan originator must explain to the applicant the procedures that must be followed in order to rescind the transaction. At their choosing, the owner can rescind by mail. In this case, the rescission would be effective on the post date of the mail.

### Right to Rescission Form



Let’s look at the sample Right to Rescission form above for a moment. This is a sample given by the government that complies with TILA. More importantly, it states that the owner has the right to rescind within 3 BUSINESS DAYS from whichever of the following events occurred last: the mortgage closing date; the date the owner received the TILA disclosure; *or* the date the owner received the Right to Rescission form. This way, the law makes sure that the owners have as much time as possible to exert their right to rescind.

Borrowers are still allowed to rescind within 3 business days after they are informed of their right to do so even when mortgage loan originators delayed informing their customers of their right to rescind. For this reason, mortgage loan originators should always provide the borrowers with the TILA disclosure document and the Right to Rescission document before or during the settlement of the loan.

Regarding this 3 business day cool-off period, remember that the right to rescind can extend to 3 years if there is any inaccurate information on the disclosure documents. So, be sure to complete disclosures correctly and within the specific allowable tolerances.

Then, as explained in the text above, once the lender receives the owner’s notice to rescind, the creditor needs to return the property and money to the borrower within 20 calendar days.

Lastly, as required by law, the mortgage loan originator needs to provide the owners with instructions to rescind. The mortgage loan originator reminds the owner that they need to sign and date the notice. Here, the mortgage loan originator provides the creditor’s phone number and address where the owner is to send or deliver the notification. The mortgage loan originator also clarifies the fact that the deadline to rescind is midnight of the 3rd business day. If the rescission notice is placed in the mail, the postage stamped date is considered the delivery date.

# The TILA Disclosure Statement

## Overview

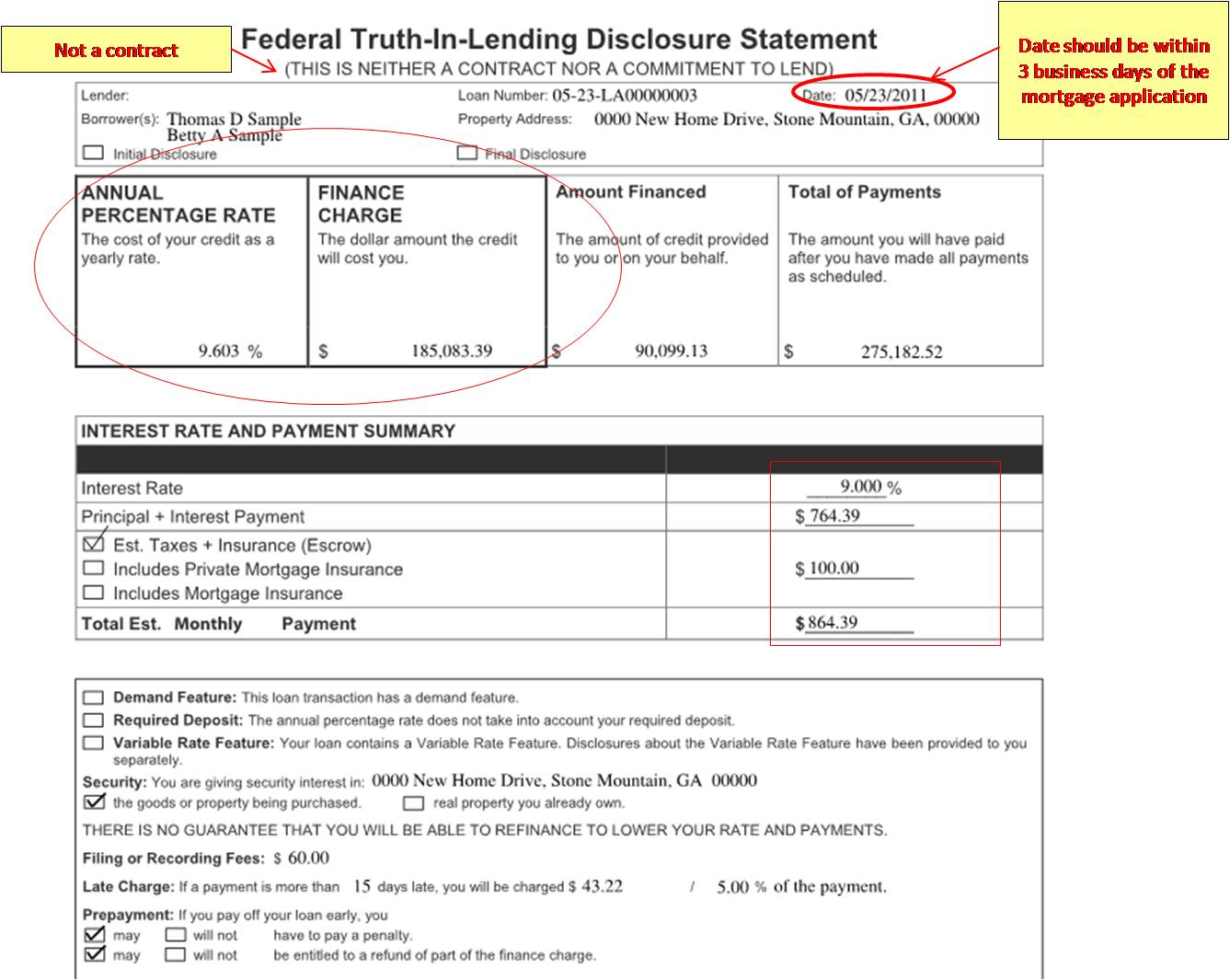
Now, let’s take a look at a sample TILA disclosure statement, which helps satisfy TILA initial disclosure requirements. As we mentioned, this disclosure, together with the Good Faith Estimate, must be given to the borrower **within 3 Business days** of the application. This is a requirement added to TILA by virtue of the HOEPA Amendment (which we will discuss later in the course).

Most mortgage loan originators usually provide the TILA disclosures and GFEs when they receive the applicants’ applications. Remember that even if the mortgage loan originator denies the loan application later than 3 business days following receipt of the application, you will still have to submit the TILA disclosure, GFE, and any other required disclosures to the applicants

The CFPB is implementing a new combined Truth In Lending Statement and Good Faith Estimate. This new form combines the information from both the GFE and the TIL, is easier for consumers to understand and is more thorough for mortgage originators. The new combined disclosures are now called ‘Loan Estimates’ and are required to be used with applications taken starting August 15, 2015. The CFPB has published resource guides to help the industry to comply with the new rules. You can find these guides on the CFPB website here <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>.

The TILA disclosure is a critical document in the loan origination process. Be as diligent as possible while filling out the TILA disclosure statement since material errors in disclosing loan terms to borrowers can potentially give borrowers rights, even years after closing, to rescind on the loan agreement (we will discuss the right to rescind later in this course).

When house prices are falling, borrowers are more likely than usual to want to get out of their loans. In such a situation, discovery of material errors in these disclosure documents can result in borrowers rescinding and leaving lenders with the property. Sometimes, MLOs can even be made to pay statutory damages back to the borrowers, not to mention court fees and attorney’s fees.



As we discussed above, the TILA document shows the APR for the borrower’s particular loan. It also shows the total finance charge, the total amount financed, and the total payments that would occur if the borrower kept the loan for 30 years. This document also discloses late fees, recording fees, and any prepayment stipulations in the mortgage. The goal is to help borrowers get a complete picture of all the costs and potential charges involved in getting mortgage loans, as well as to avoid a customer fixating on the note rates alone.

While not a TILA requirement, be aware that many TILA Disclosure Statements state that the document is neither a contract nor a commitment to lend. It is important that clients understand that the TILA Disclosure Statement has limits to its accuracy. Despite the fact that the MLO is required to disclose within a specific APR and Finance Charge tolerance to the closing costs, keep in mind that these are still estimates and that the final numbers associated with the mortgage transaction may still change within this tolerance until the final TILA Disclosure Statement is provided at least three business days before settlement. (1026.18)(d)(1) or 1026.23(g)).

The TILA disclosure also includes basic information such as the applicant's name, the property address used for collateral or the appropriate mailing address, the application number, who it is prepared by and the date it was prepared. The date is very important because, as mentioned, the TILA disclosure must be disclosed within three business days of the application date (1026.17(b)).

## Requirements of Periodic Statements (Part 1026.7)

Periodic statements based on the mortgage billing cycle need to be delivered to the consumer and specific details about the mortgage need to be in the statement, such as the finance charges, the APR, the closing date of the billing cycle and the balance on which interest is calculated (see subpart B 1026.7 for more information for open-end credit).

# 

# 

# 

# Advertising Regulation (Subpart B 1026.16 and Subpart C 1026.24 for Open- and Closed-End Credit)

There are specific requirements on advertisements by mortgage loan originators. Many of them are significantly expanded by the 2008 HOEPA amendment.

## Full Disclosure of Mortgage Terms

TILA aims to prevent the use of advertisements that only give a partial or rosy picture of a loan, which is a common tactic in predatory lending. The law states that if an advertisement mentions the amount of down payment, the monthly payment, the number of payment periods or the finance charge, then it must also disclose the down payment percentage, the terms of repayment, the APR and the risk of rate increases. If the loan is an adjustable-rate or buydown mortgage, the advertisement must also disclose that certain rates could increase during the lifetime of the mortgage.

The law specifically states that all of these relevant mortgage terms should be disclosed with equal prominence. This rule is designed to reduce the chances of consumers being misled by overly focusing on the beneficial business terms and ignoring the risky terms.

To sum up, if any of the following four items are mentioned in the ad:

* Amount of down payment
* Monthly payment
* Number of Payment Periods
* Finance Charge

then the advertiser must include the following as well:

* Down payment percentage
* Terms of repayment
* Annual Percentage Rate (not just “APR”)
* Risk of rate increases

Trigger Terms (Part 1026.24 (d))

One possible form of violation of the TILA advertising rule is the use of Trigger Terms. The expression ‘Trigger Terms’ refers to oversimplified, attention-grabbing terms used in advertisements. Some examples of Trigger Terms are:

* + - "99% financing available!"
    - "A monthly payment of only $1,000 moves you in!"
    - "Only $3,000 down; $700 PITI total monthly payment!"
    - "Only $3,000 down; 6% FHA-ARM"

TILA specifically states that, when a Trigger Term is used, all the required advertising terms should be disclosed in close proximity with equal prominence. This rule is very important.

The focus of this law is to ensure that relevant loan terms appear together so that the consumer understands the whole picture. For example, the following advertisement would comply with Regulation Z requirements because each trigger term is accompanied by a complete statement with the other financial terms nearby:

"Typical VA financing of 30-year loan: Cash price of a two bedroom is $75,000; no down payment: 360 monthly payments of $850 (including estimated taxes) at an 8.5% Annual Percentage Rate."

As you can see, this sentence incorporates a number of Trigger Terms, but they are all in close proximity.

## Other Advertising Rules

1. **Tax Implication:** On any mortgage, if the payments disclosed do not include taxes and an insurance premium, the advertiser needs to disclose clearly that the actual payment obligation will be greater.

For example, on home equity loans, companies cannot advertise the tax benefits of a home equity loan without clarifying that the loan balance which is above the fair market value of the home is not tax deductible. They must also add the disclaimer that a customer should seek advice from a professional tax consultant to ensure their eligibility for these benefits.

1. **Advertise only currently available terms**: on advertisements, terms of the mortgage should be what is *currently available* and should be disclosed in a clear and *conspicuous* way.
2. **Advertised rates**: Advertisers must show finance charges as one simple APR. If the rate changes during the life of the mortgage, the adjusted rates and time period they apply to must also be disclosed in the advertisement. For ARMs specifically, the index and margin must be disclosed and the phrases ‘Adjustable-Rate Mortgage’ or ‘ARM’ or ‘Variable-Rate Mortgage’ must appear before the word ’fixed.’
3. **Balloons**: any possible Balloon payments and the causes that trigger a Balloon payment need to be disclosed prominently.
4. **Promotional / Teaser Rate**: if the note (or interest) rate will go up in the future, the advertisement should also state the expected interest rate without the teaser discount as well as the duration of the promotional period.
5. **Misleading Comparisons**: Advertisements are prohibited from:
6. Misrepresenting claims of debt elimination by a misleading claim that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer’s existing loan terms with or obligation to another creditor.
7. Misrepresenting government endorsements by making any statement in an advertisement that the product offered is a ‘government loan program,’ or a ‘government-supported loan.’ Only an FHA loan, VA loan or similar loan program that is endorsed or sponsored by a federal, state or local government is considered a government-supported loan.
8. Comparing one mortgage with other mortgages that have different risk profiles. For example, a creditor cannot compare a Balloon with a 30-year fixed-rate mortgage.
9. Making misleading statements that adjustable-rate mortgages have a fixed interest rate.
10. Representing only selected terms in a foreign language while stating other terms in English. Also, the creditor must be sure that relevant terms are disclosed in close proximity to their use and with equal prominence.
11. Misleading use of the borrower’s current lender’s name in an advertisement that is not sent by or on behalf of the consumer’s current lender.
12. Misleading use of the term ‘counselor’ when using the term ‘counselor’ in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

## Enforcement (Part 108 of Consumer Protection Act)

TILA rules are generally enforced by the FTC. The FTC has the authority to conduct investigations, file administrative complaints and issue cease and desist orders against people who violate TILA or Regulation Z. They can impose civil penalties of up to $10,000 per violation per day on any person who violates a cease and desist order.

For more details on federal enforcement, refer to Subpart B, 1026.16 for advertising requirements for open-end credit and Subpart C, 1026.24 for requirements for closed-end credit.

Keep in mind that state regulatory agencies may also enforce advertising and other regulations of the federal Truth in Lending Act based on the individual state’s law.

# Additional Key TILA Rules

## Ability-to-Repay

As a Mortgage Originator you have a moral, ethical and legal responsibility to your borrower to help them understand how much mortgage they can afford and that they have a reasonable ability to repay. Doing this with every borrower helps you to be a more professional and trusted mortgage originator. To this end the Consumer Financial Protection Bureau has enacted rules to ensure creditors and lenders obtain and verify information that will help them determine if the borrower can repay the mortgage loan and other mortgage related obligations.

These rules amend Regulation Z, which implements the Truth in Lending Act (TILA) and implements “sections 1411 and 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which generally require creditors to make a reasonable, good faith determination of a consumer’s ability to repay any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan)” and will be effective January 10, 2014.

### Ability to Repay Determination

Under the Ability-to-Repay Rule, there are certain requirements lenders will have to follow to determine the ability of a borrower to repay the mortgage, both principal and interest over the long term. It does not set particular underwriting models but requires an underwriter, mortgage originator, creditor or lender to review and verify financial documents and records. At a minimum, a lender must consider these eight underwriting standards:

1. Current income or assets
2. Current employment status
3. Credit history
4. The monthly payment for the mortgage
5. The monthly payments on any other loans associated with the property
6. The monthly payment for other mortgage related obligations (such as property taxes)
7. Other debt obligations; including Alimony and Child Support and
8. The monthly debt-to-income ratio or residual income the borrower would be taking on with the mortgage. (Debt-to-income ratio is a consumer’s total monthly debt divided by their total monthly gross income).

An underwriter will look at current or reasonably expected income and/or assets. That means you will ask your borrower for current paystubs, W2’s, 1009’s, award letters or other documentation to support the income that is used on the application. Be aware that the Underwriter may also order an additional verification of employment immediately before the transaction closes. Verifying and documenting the assets used to qualify for the mortgage may be required just before closing as well. They will take into consideration the payment for this mortgage and other loans against the property using the highest payment that will apply in the first five years of the loan(s).

The underwriter will also consider property taxes, homeowners insurance, homeowners association dues and any other mortgage related obligations. Other obligations that may not show up on a credit report such as alimony or child support will be considered. Lenders must generally use reasonably reliable third party records to verify the information they use to evaluate the eight categories above. [[14]](#footnote-14) These would be a credit report, bank statement, award letter or other official document.

### Qualified Mortgage

In order for a lender or creditor to prove that they have taken the consumer’s situation into consideration while qualifying them for a loan, TILA offers a safe harbor or rebuttable presumption of compliance with the Ability-to-Repay rule by creating loans called Qualified Mortgages. If a creditor or lender issues a Qualified Mortgage they will have certain protections from legal action in the future if a consumer defaults on their loan.

Specifically, the statutory definition of qualified mortgage requires the creditor to: (1) Verify and document the income and financial resources relied upon to qualify the obligors on the loan; and (2) Underwrite the loan based on a fully amortizing payment schedule and the maximum interest rate during the first five years, taking into account all applicable taxes, insurance, and assessments.

Qualified Mortgages may be prime loans or higher-priced loans and they must meet certain requirements which prohibit or limit the risky features of a loan. These features include:

* No interest only loans.
* No loans where the principle can increase such as negative amortization loans.
* No loan terms over 30 years.
* No balloon payment loans except by smaller creditors in rural or underserved areas.
* No excess upfront points and fees. Fees paid by the creditor or consumer may not exceed three percent (3%) of the total loan amount, although certain “bona fide discount points” are excluded for prime loans.
* Limits debt-to-income ratios to 43% or less. For a temporary transitional period loans that do not have a 43% but meet government affordability or other standards such as they are eligible for purchase by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (Freddie Mac) will be considered Qualified Mortgages.

Section 1026.43(e)(1)(i) provides a safe harbor for qualified mortgages that are not higher-priced covered transactions. These are lower-priced loans that are typically made to borrowers who pose fewer risks. If the loan goes south, the lender will be considered to have legally satisfied the ability-to-repay requirements.

For qualified mortgages that are higher-priced loans, § 1026.43(e)(1)(ii)(A) provides a rebuttable presumption of compliance with the repayment ability requirements. These higher-priced loans are typically made to consumers with insufficient or weak credit history. If the loan goes into default, the consumer can rebut the presumption that the creditor properly took into account their ability to repay the loan.

## Loan Originator Compensation and Steering (12 CFR 1026.36(d) and e))

TILA Reg. Z rules prohibit certain practices relating to loan originator compensation. The goal of these regulations is to protect consumers from unfair and abusive practices involving payments to loan originators in the mortgage market. Before the new rules, it was common for a lender to pay a loan originator more compensation if the borrower accepted an interest rate higher than the rate required.

The prohibitions under TILA apply to closed-end loans secured by a dwelling. Open-end HELOCs, time shares and loans secured by real property if there is NO dwelling are exempt from the rules.

TILA Section 1026.36(d) rules apply to mortgage brokers and their employing companies, as well as loan officers employed by depository institutions and other lenders.

The rule states: “*In connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions.*”*[[15]](#footnote-15)*

The rule also states that a loan originator may only be compensated by the consumer or the lender or other party, but not by both.[[16]](#footnote-16)

TILA Section 1026.36(e) requires a loan originator to offer a loan that is in the consumer’s best interest. It prohibits steering a consumer to a lender offering less favorable terms in order to increase the loan originator's compensation and also provides a ‘safe harbor’ to facilitate compliance.[[17]](#footnote-17)

1. Loan Originator Compensation and Steering

(12 CFR 1026.36(d) and (e))

TILA Reg. Z rules prohibit certain practices relating to loan originator compensation. The goal of these regulations is to protect consumers from unfair and abusive practices involving payments to loan originators in the mortgage market. Before the new rules, it was common for a lender to pay a loan originator more compensation if the borrower accepted an interest rate higher than the rate required.

The prohibitions under TILA apply to closed-end loans secured by a dwelling. Open-end HELOCs, time shares and loans secured by real property if there is NO dwelling are exempt from the rules.

TILA Section 1026.36(d) rules apply to mortgage brokers and their employing companies, as well as loan officers employed by depository institutions and other lenders.

The rule states: “*In connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions.[[18]](#footnote-18)*

The rule also states that a loan originator may only be compensated by the consumer or the lender or other party, but not by both.[[19]](#footnote-19)

TILA Section 1026.36(e) requires a loan originator to offer a loan that is in the consumer’s best interest. It prohibits steering a consumer to a lender offering less favorable terms in order to increase the loan originator's compensation and also provides a ‘safe harbor’ to facilitate compliance. [[20]](#footnote-20)

The rules on originator compensation apply to transactions for which the creditor receives an application on or after April 1, 2011.

### Loan Officer Compensation Rule 1026.25 & 1026.36

*“Section 1026.25* ***Record retention****.*

*(a) General rule.*

*Requires, for each transaction subject to the loan originator compensation provisions in § 1026.36(d)(1), that the creditor maintain records of the compensation it provided to the loan originator for the transaction as well as the compensation agreement in effect on the date the interest rate was set for the transaction.*

*Section 1026.36 Prohibited acts or practices in connection with credit secured by a dwelling.*

*(a) Loan originator and mortgage broker defined.*

*States that the regulation applies to all persons who originate loans, including mortgage brokers and their employees, as well as mortgage loan officers employed by depository institutions and other lenders.*

*(d) Prohibited payments to loan originators.*

*For purposes of § 1026.36(d)(1) and (d)(2), affiliates are treated as a single* ‘*person.’*

*(d)(1) Payments based on transaction terms or conditions.*

*The rule prohibits a creditor or any other person from paying, directly or indirectly, compensation to a mortgage broker or any other loan originator that is based on a mortgage transaction's terms or conditions, except the amount of credit extended.*

*A loan originator's compensation can neither be increased nor decreased based on the loan terms or conditions. When the creditor offers to extend a loan with specified terms and conditions (such as rate and points), the amount of the originator's compensation for that transaction is not subject to change, based on either an increase or a decrease in the consumer's loan cost or any other change in the loan terms. Thus, if a consumer's request for a lower interest rate is accepted by the creditor, the creditor is not [be] permitted to reduce the amount it pays to the loan originator based on the change in loan terms. Similarly, any reduction in origination points paid by the consumer must be a cost borne by the creditor.*

*(d)(2) Payments by persons other than consumer.*

*If any loan originator receives compensation directly from a consumer in a transaction, no other person may provide any compensation to a loan originator, directly or indirectly, in connection with that particular credit transaction. Thus, no person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) may pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.*

*For purposes of this rule, payments made by creditors to loan originators are not payments made directly by the consumer, regardless of how they might be disclosed under HUD's Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA). [[21]](#footnote-21)*

New rules effective January 10, 2014 expand the definition of a loan originator to *“a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities*. “[[22]](#footnote-22) This includes employees, agents and contractors working for a creditor or originator company. It also includes a creditor that originates loans *“if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a bona fide warehouse line of credit or out of deposits held by the creditor.”[[23]](#footnote-23)*

### 1026.36(e) Prohibition on Steering

*Prohibits a loan originator from ‘steering’ a consumer to a lender offering less favorable terms in order to increase the loan originator's compensation.*

*Provides a safe harbor to facilitate compliance. The safe harbor is met if the consumer is presented with loan offers for each type of transaction in which the consumer expresses an interest (that is, a fixed-rate loan, an adjustable-rate loan, or a reverse mortgage); and the loan options presented to the consumer include:*

*(A) the loan with the lowest interest rate for which the consumer qualifies;*

*(B) the loan with the lowest total dollar amount for origination points or fees, and discount points, and*

*(C) the loan with the lowest rate for which the consumer qualifies for a loan without negative amortization, a prepayment penalty, interest-only payments, a balloon payment in the first 7 years of the life of the loan, a demand feature, shared equity, or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty, or shared equity or shared appreciation.*

*To be within the safe harbor, the loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business. The loan originator can present fewer than three loans and satisfy the safe harbor, if the loan(s) presented to the consumer otherwise meet the criteria in the rule.*

*The loan originator must have a good faith belief that the options presented to the consumer are loans for which the consumer likely qualifies. For each type of transaction, if the originator presents to the consumer more than three loans, the originator must highlight the loans that satisfy the criteria specified in the rule.”[[24]](#footnote-24)*

HOEPA – HOME OWNERSHIP AND EQUITY PROTECTION ACT (amendments to TILA from 1994-2009)

<http://www.federalreserve.gov/bankinforeg/reglisting.htm>

# HOEPA and Predatory Lending (Parts 1026.32 and 1026.35)

## A. Predatory Lending Background

Amidst the rapid growth of subprime lending, in 1994 Congress passed the Home Ownership and Equity Protection Act (HOEPA) to help curb predatory lending. HOEPA is an amendment to the Truth in Lending Act (TILA). Two significant additional amendments of HOEPA were completed in 2002 and 2008. Most TILA amendments have been aimed at preventing the exploitation of borrowers due to predatory lending practices.

HOEPA defines specific classes of loans, called Higher-Priced and High-Cost loans, which legislators deemed more vulnerable to predatory lending tactics, and prescribes a set of rules above and beyond the standard credit tolerances applicable to all loans. The types of loans covered depend primarily on the level of their APR. Many state laws are modeled on HOEPA and many of these laws expand the definition of HOEPA to cover an even greater array of loans.

Much of the recent increase in mortgage lending to previously underserved populations can be attributed to the development of the subprime mortgage market. This rapid growth has given access to consumers who were not previously served by credit markets, because they had difficulty in meeting the underwriting criteria of prime lenders.

However, the rise in the use of credit for lower-income homeowners has not come without cost. The practice has been accompanied by increasing reports of abusive, unethical, and, in some cases, illegal lending practices. Such lending practices jeopardize the twin American dreams of owning a home and building wealth.

Victims of predatory lending lose hard-earned equity in their homes and sometimes even lose their homes to foreclosure. Some people call predatory lending ‘redlining in reverse.’ While Redlining refers to the practice of mortgage loan originators who avoid lending to certain segments of the population based on race, gender or other attributes, predatory lending refers to the opposite: excessive unethical lending to a previously underserved population.

The CFPB is developing proposed regulations to implement the amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These will include expanded definitions of what a HOEPA loan is, additional restrictions on HOEPA loans and a pre-purchase counseling requirement. Since 2008 CFPB has made many changes to HOEPA. The most recent in January 2014 expanded HOEPA restrictions and thresholds and added a requirement for pre-purchase counseling.

## B. Subprime Lending

Subprime lending, in contrast to predatory lending, refers to entirely appropriate and legal lending to borrowers who do not qualify for prime rates or rates reserved for borrowers with virtually blemish-free credit histories. Premiums for extending credit to these so-called ‘subprime’ borrowers compensate lenders for the increased risk that they face and can be several percentage points above the rates that are charged on prime loans. Although some have argued that these premiums are excessive, the government expects that market forces should eliminate inappropriate spreads over time.

## C. Examples of Predatory Lending Activities

HOEPA aims to limit the subset of lending practices that are unethical, abusive and illegal. Some predatory lending involves outright fraud and deception, practices that are already illegal; however, some predatory lending is more subtle and involves the misuse of conventions that many times can be beneficial. We’ll briefly discuss several examples:

* 1. **Asset-Based Lending.** Extending credit to borrowers unable to repay the debt is called asset-based lending. This problem is exacerbated by mortgage loan originators who do not verify income. In such a case, once a borrower fails to make payments, the lender would foreclose on the property, thus obtaining the property as their asset.
  2. **Loan Flipping.** Repeatedly refinancing, or ‘flipping,’ loans for the purpose of continuously collecting fees from homeowners.
  3. **Excessive Fees.** Incorporating credit terms and products that are of questionable value to the borrower and that significantly increase the cost of credit.
  4. **Making unaffordable loans**. Establishing high loan-rate adjustments to a loan without careful consideration of the potential impact on the consumer. Sometimes the payments implicit in very high interest rates can spell financial ruin for borrowers. Sometimes the loans have high prepayment penalties so that the borrowers are trapped and have to continue paying high interest rates.
  5. **Exploiting the elderly.** Offering elderly homeowners a home equity loan even though they could qualify for a reverse mortgage due to the large amount of equity that has built up in their home. Another example is advising borrowers to draw money using a reverse mortgage and then offering to use the money for investments or home improvements or to buy other insurance products.
  6. **Exploiting people’s ignorance.** Targeting groups of people who lack knowledge of the mortgage process and market. Groups that have disproportionately been preyed upon by unscrupulous creditors are women, minorities, and lower-income households.
  7. **Dishonest servicer practices.** Failing to credit a payment to a consumer’s account when the servicer receives it, failing to provide a payoff statement within a reasonable period of time. Also, ‘pyramiding’ late fees, which means the servicer continues to charge certain late fees until all prior late fees have been paid, as opposed to just levying a charge on the original late payments.
  8. **Inflated appraisals.** Coercing or encouraging an appraiser to misrepresent the value of a home. This practice may include informing the appraiser of the minimum reported value needed to approve the loan, conditioning an appraiser’s compensation on the closure of a loan or suggesting that the appraiser will be excluded from future transactions.
  9. **Misleading Advertisements.** Propagating misleading or deceptive advertising for closed-end loans
  10. **Advance Fee Schemes.** Charging would-be borrowers upfront fees for services the promoter has no intention of providing.

# HOEPA Regulations for All Mortgages (Section 1026.32)

HOEPA designates protections specific to various mortgage types it defines by the level of the APR; however, many of these protections are the same for each defined mortgage type. First, we will discuss the following protections, which apply to all loans secured by a consumer’s principal dwelling, regardless of the loan’s APR.

1. **Servicer Limitations:** Prohibits certain servicing practices, such as failing to credit a payment to a consumer’s account when the servicer receives it, failing to provide a payoff statement within a reasonable period of time, and ‘pyramiding’ late fees. As a note, HELOCs are excluded from this regulation.
2. **Appraisal Limitations:** Prohibits a creditor or broker from coercing or encouraging an appraiser to misrepresent the value of a home. Importantly, this rule specifies not informing the appraiser of the minimum reported value needed to approve the loan, not conditioning an appraiser’s compensation on the closing of the loan and not suggesting to the appraiser that they may be excluded from future transactions based on their appraisal.
3. **Further Advertising Limits:** Prohibits misleading or deceptive advertising practices, for example, using the term ’fixed‘ to describe a rate that is not truly fixed. This also requires that all applicable rates or payments be disclosed in advertisements with the same prominence as the advertised introductory or ’teaser‘ rates. See Section IV (c) of our TILA discussion for more information.
4. **3-Business-Day Disclosure Requirement:** These rules require that Truth in Lending disclosures be provided to the borrowers early enough to enable them to shop around for a mortgage. Under HOEPA, creditors would have to provide a good faith estimate of the loan costs, including a schedule of payments, **within three business days** after a consumer applies for any mortgage loan secured by a consumer’s principal dwelling, such as a home-improvement loan or a loan to refinance an existing loan.

Before HOEPA, early cost estimates were only required for home-purchase loans. In addition, HOEPA now provides that consumers cannot be charged any fee until after the consumer receives the disclosures, except a reasonable fee for obtaining the consumer’s credit history. As you can see, MDIA extended this HOEPA 3-business day waiting period to most mortgage loans, purchase or refinance, principal dwelling or investor properties. So, now you do not have to worry about this requirement just for HOEPA. It applies to most general mortgages.

# Higher-Priced Mortgages

## Background for HOEPA Section 32 and Section 35

Now we’ll discuss the HOEPA definitions for specific loan types and the associated requirements.

Because the practice of predatory lending tends to be more prevalent in the field of subprime lending, HOEPA provides specific regulations for what they suggest are “subprime” loans. HOEPA referred to this class of loans as “Higher-Priced Mortgages.” HOEPA adopted a “Threshold Approach” to define higher-priced mortgages. Individual states that modeled their law on HOEPA have adopted the law with a different, and often more expansive, threshold.

HOEPA’s “Higher-Priced Mortgage” definition includes two main categories.

1. A broader category created in 2008 that covers general subprime loans (Section 35). (Covered in Section A below)
   1. A Federal Reserve Ruling that took effect in April 2011 included, for specific rulings, a category of “jumbo” loans
2. Another category, which was created in 1994 and amended and significantly expanded in 2002, covers only “high-cost” refinance mortgages. These are often referred to as Section 32 mortgages. (Covered in Section B below)

## Higher-Priced Mortgage Loans (in HOEPA Section 35), Loans Covered[[25]](#footnote-25)

TILA Section 1026.35 protects consumers from abusive and predatory lending practices by imposing prohibited acts and practices on certain higher-priced loans. Section 35 loans are described as:

“§ 1026.35 (a) Definitions. For purposes of this section: (1) Higher-priced mortgage loan means a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

(i) By 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;

(ii) By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or

(iii) By 3.5 or more percentage points for loans secured by a subordinate lien”[[26]](#footnote-26)  
  
The APR for higher-priced loans is compared to the Average Prime Offer Rate (APOR). Information on the APOR is available at [www.ffiec.gov/ratespread/newcalc.aspx](http://www.ffiec.gov/ratespread/newcalc.aspx).

Section 35 Higher-priced loans requirements with effective date: June 1, 2013:[[27]](#footnote-27)

* The creditor must verify the borrower’s ability to re-pay the loan
* Prepayment penalties are generally limited to the first 2 years
* The creditor must establish an escrow account for taxes and insurance for at least five (5) years
* A closed-end loan cannot be structured as an open-ended loan to evade the requirements

Section 35 Higher-priced loans requirements with effective date January 18, 2014:

* Appraisals are required for all higher-priced mortgages
* The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction

The following transactions are exempt from the appraisal and escrow requirements:

* A reverse mortgage transaction
* A transaction to finance the initial construction of a dwelling
* A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction
* A transaction originated pursuant to the United States Department of Agriculture’s Rural Development Section 502 Direct Loan Program[[28]](#footnote-28)

## Regulations

The law includes four key protections for higher-priced mortgage loans, which are determined using a threshold based on mortgage loans as opposed to U.S. Treasury securities. The threshold will be dependent upon an ‘average prime offer rate’. The four key protections relate to:

* 1. **‘Loose’ Lending**. Prohibits a lender from engaging in a pattern or practice of lending without considering the borrowers’ ability to repay the loans from sources other than the home’s value. It also prohibits a lender from making a loan by relying on income or assets that are not verified.

This section was significantly expanded in 2008. HOEPA requires that:

1. Lenders should consider expected income or assets, using the borrower’s documentation sources like their W–2, tax returns, payroll receipts, financial institution records and other third-party documents. Note that there is one case where the loan origination would not be considered a violation of HOEPA. This is where the level of income and assets that the creditor relied upon in determining the borrower’s repayment ability are not materially greater than the amounts of the consumer's income or assets.
2. A creditor must verify the applicant’s current obligations.
3. A creditor must consider mortgage-related obligations including expected property taxes and premiums for mortgage-related insurance.
4. If the term of the mortgage is equal to or greater than 7 years, a lender can comply by either assessing repayment ability using DTI or using income after the borrower paid the debt obligations. The debt amount used should be the largest payment required within the first 7 years of the mortgage.
   1. **Prepayment Penalties**

Prepayment Penalties are generally prohibited. HOEPA defines prepayment penalties as the practice of refunds of unearned interest that are calculated by any method less favorable than the actuarial method.

Exceptions to the general prohibition on prepayment penalties are allowed only with the following terms in a transaction:

1. The penalty will not apply after the two-year period following consummation;
2. The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor;
3. The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.
   1. **Escrow Creation**. Requires that the lender establish an escrow account for the payment of property taxes and homeowners’ insurance. The mortgage loan originator may only offer the borrower the opportunity to opt out of the escrow account after five years. Certain Co-ops and Condos are exempted from the escrow requirement.
   2. **Regulation Evasion**. The law prohibits mortgage loan originators from structuring a mortgage just to evade the Higher-Priced Mortgage regulations.

# High-Cost Mortgages (in HOEPA Section 32)

Section 32 of TILA governs a specific class of higher-priced mortgages called ‘high-cost’ mortgages. This definition was created in 1994 prior to the mortgage crisis in 2006-2008. Many criticize the fact that this definition is too narrow. Loans that fall under this category are often called Section 32 Mortgages because this law is listed in Section 32 of TILA.

## Loan Types Covered

Section 32 primarily affects refinancing and home equity installment loans (second mortgages) that also meet the definition of a high-rate or high-fee loan. The rules do not cover loans to buy or to build a home, reverse mortgages or home equity lines of credit. Studies by the Federal Reserve in 2000-2002 found that the practice of predatory lending in refinance is particularly severe.

### APR Triggers

* + - Effective January 10, 2014 the HOEPA triggers are:
    - For a first lien loan, the APR exceeds the Average Prime Offer Rate by **6.5%:**
    - For a first-lien transaction, if the dwelling is personal property and the loan amount is less than $50,000 the APR exceeds the Average Prime Offer Rate by **8.5**% percentage points:
    - For a subordinate lien loan the APR exceeds the Average Prime Offer Rate by **8.5%**
    - Where the transaction's total points and fees exceed **5%** of the total loan amount for a transaction with a loan amount of $20,000 or more, or the lesser of **8%** of the total loan amount or $1,000 for a transaction with a loan amount of less than $20,000.[[29]](#footnote-29)

## Regulations

The regulations covering Section 32 loans include various disclosures and prohibitions.

1. Disclosures / Rescissions

* Disclosures must be given to borrowers at least **three** business days before the loan is finalized. Loans under HOEPA are also subject to the normal three-business-day rescission period that pertains to other home equity loans. This gives HOEPA borrowers a minimum of six business days to change their minds about potential unwise mortgage contracts.
* The mortgage loan originator must give a written notice stating that the loan need not be completed, even though the borrower has signed the loan application and received the required disclosures. The notice must warn the borrower that, because the lender will have a mortgage on the home, the borrower could lose the residence and any money put into it upon failure to make payments.

1. Prohibitions
2. **Balloon payment prohibitions**. No Balloon Payments are permitted for loans with a term of less than 5 years. Balloon Payments are defined as a loan where the regular payments do not fully pay off the principal balance and a lump sum payment of more than twice the amount of the regular payments is required. This excludes bridge loans with less than a 1-year term for construction.
3. **Negative amortization** is prohibited.
4. **Default rate limitations**. After the borrower defaults, the borrower will not have to pay interest higher than before the default occurred. Also, the rebates of interest upon default may not be calculated by any method less favorable than the actuarial method.
5. **Prepayment Penalties**. Prepayment Penalties are prohibited the same way as Higher-Priced Loans are in Section 35, as discussed previously, except for one additional term: at consummation, the consumer’s total monthly debt payments (including amounts owed under the mortgage) do not exceed 50 percent of the consumer’s monthly gross income
6. **Due-On-Demand Clause**. A due-on-demand clause is prohibited, except in the following situations (note that this clause is completely different from a balloon loan, which comes due at a certain point in time by agreement):
   1. There is fraud or material misrepresentation by the consumer in connection with the loan
   2. The borrower fails to meet the repayment terms of the agreement
   3. There is an action by the borrower that adversely affects the creditor’s security
7. Newly-Added Prohibitions after 2002
8. **Lending without considering Repayment Ability and Income Verification**. A lender cannot make loans based on the collateral value of a borrower’s property without regard to the borrower’s ability to repay the loan. The lender must take into account the borrower’s current and reasonably expected income, employment, assets other than the collateral, current obligations and mortgage-related obligations. The prohibition is the same as the Higher-Priced Loans mentioned previously.
9. **Refinancing Limitations**. Creditors may not refinance a High-Cost Mortgage into another High-Cost Mortgage within the first 12 months of origination, unless the new loan is in the borrower’s best interest. The prohibition also applies to assignees holding or servicing the loan.
10. **Home Improvement Proceeds**. Proceeds for home improvement loans must be disbursed either directly to the borrower, jointly to the borrower and the home improvement contractor or, in some instances, to the escrow agent.
11. **Regulation evasion.** The law prohibits mortgage loan originators from structuring a mortgage just to evade the High-Cost Mortgage regulations.
12. Penalties

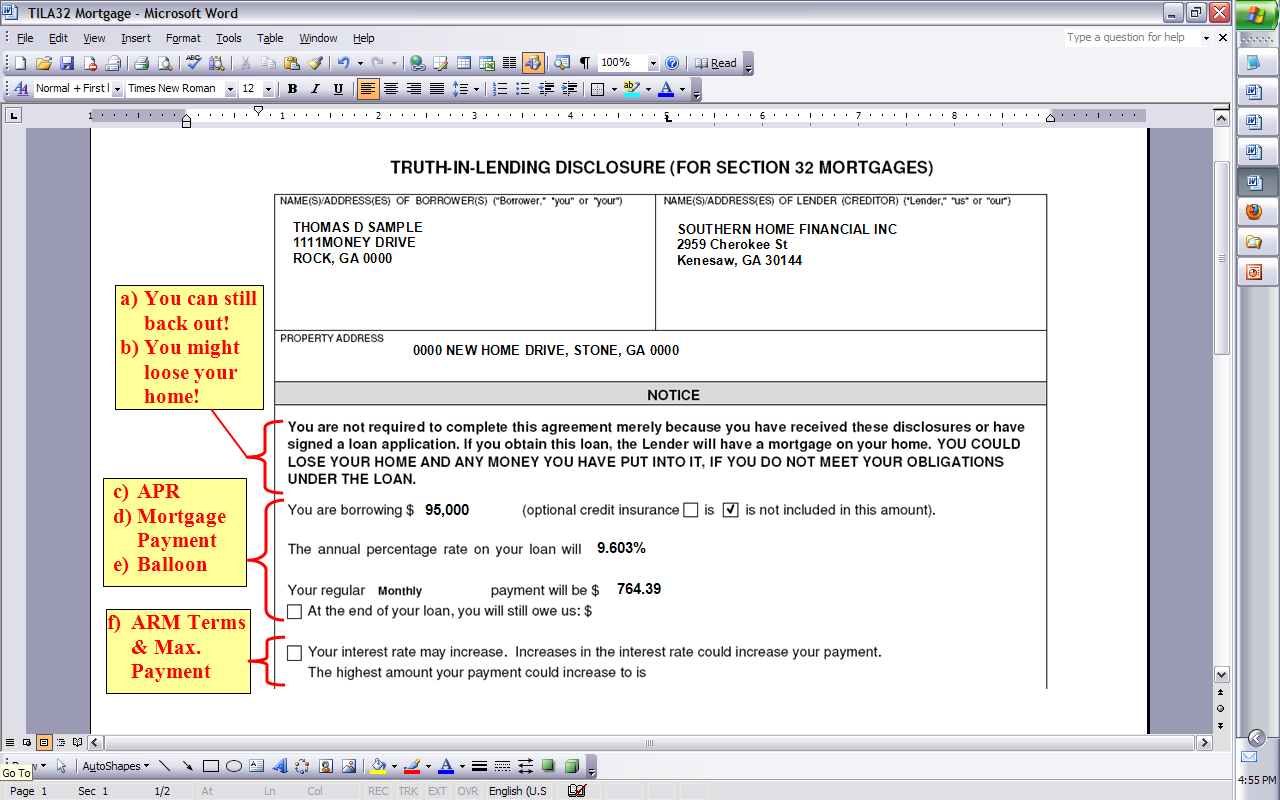
A borrower who sues a mortgage loan originator for violation of regulation regarding High-Cost Mortgages is entitled to recover all damages and fees and, in addition, is able to rescind the loan for up to 3 years.

## TILA Disclosure for Section 32 Mortgages

For a loan with an APR that meets the Section 32 Mortgage trigger, an MLO needs to provide the borrower with the TILA disclosure for Section 32 Mortgages, which covers refinance loans and home-equity installment loans.

Again, the underlying driver behind this disclosure is to alert the borrower to the potential consequences of getting this loan. The government is especially worried that the borrowers of subprime loans might enter into expensive mortgage arrangements without being fully aware of the consequences.

On the disclosure, the name of the broker/mortgage loan originator and their relevant address as well as the current address of the borrower are listed. The property address is also shown.



1. **Mortgage need not be completed**. *"You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. “* This clause is here to remind the borrowers that “IT IS NOT TOO LATE TO BACK OUT” and that they should not let other parties mislead them into going through with a loan with exorbitant terms simply because the loan application was submitted. (As you may have noticed, MDIA has requested the addition of a similar statement to the TILA Disclosure Statement).
2. **You might lose your home**. *“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 the loan.”* This clause reminds borrowers of the potential dire consequences of signing on loans they cannot afford — if they default, or fail to make mortgage payments, they will lose their homes as well as their initial investments. The government wants to make sure that borrowers understand the downside.
3. **APR**. *“The Annual Percentage Rate on your loan will be 9.603%."* Again, like the TILA Disclosure Statement, this disclosure also states the APR, which highlights other charges besides the note rate.
4. **Mortgage Payment**. Again, similar to the TILA Disclosure Statement, the monthly mortgage payment and the original loan amount of $95,000 are shown.
5. **Balloon**. “*At the end of your loan, you will still owe us: $.”* The objective of this clause is to disclose the existence of a balloon payment on the loan if applicable. Remember that Section 32 imposes restrictions on the amount of the balloon payment and that no balloon is allowed for loans with a maturity of less than 5 years.
6. **ARM**. *“Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase to is…”* If the loan is an adjustable-rate mortgage, then there should be a cap that restricts the maximum interest payment of the loan throughout the life of the loan. This clause aims to directly spell out to the borrower the meaning of the interest rate payment cap in concrete dollar terms. This dollar amount gives the borrower a more concrete idea of the potential interest rate risk.

Be sure that the borrower signs the disclosure and returns it to the MLO.

Remember that whatever disclosure shown in Section 32 Mortgages Disclosure is in addition to the standard required disclosures of RESPA and TILA.

Knowledgeable mortgage loan originators should know upfront whether a loan is a High-Cost Mortgage or not. If the loan is a High-Cost Mortgage, deliver the disclosure sooner rather than later. The law stipulates that the lender provide such disclosure to the borrower at least **3 business days before closing.** Be mindful of this 3 business day waiting period to avoid delays in your closing.

1. TRUTH IN LENDING ACT (TILA) “REG Z” (Part 1026) [↑](#footnote-ref-1)
2. Title 12: Banks and Banking  PART 1026—TRUTH IN LENDING (REGULATION Z) [↑](#footnote-ref-2)
3. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART **§ 1026.4 Finance charge (a)** [↑](#footnote-ref-3)
4. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.18](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.3.1.2)(d)(1)(i)(ii) [↑](#footnote-ref-4)
5. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.23](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.3.1.7)(g)(1)(i)(ii) [↑](#footnote-ref-5)
6. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.23](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.3.1.7)(g)(2) [↑](#footnote-ref-6)
7. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.23](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.3.1.7)(a)(3)(i) [↑](#footnote-ref-7)
8. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.23](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.3.1.7)(h)(1)(i)(ii),(h)(2)(i)(ii) [↑](#footnote-ref-8)
9. CFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART §1026.17(d)   General disclosure requirements [↑](#footnote-ref-9)
10. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.2](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.1.1.2)(6) [↑](#footnote-ref-10)
11. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.17](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.2.1.1)(a)-(e) [↑](#footnote-ref-11)
12. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.19](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.3.1.3) (b)-(d) [↑](#footnote-ref-12)
13. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART § 1026.31(2)(i)(ii) and [§ 1026.33](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.4)(b)-(c) [↑](#footnote-ref-13)
14. § 1026.43 [↑](#footnote-ref-14)
15. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(d)(1)(i)(ii)(iii), (2)(i) [↑](#footnote-ref-15)
16. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(d)(1)(i)(ii)(iii), (2)(i)(ii),(3) [↑](#footnote-ref-16)
17. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART § 1026.36(e)(1),(2)(i)(ii)(iii),(3)(i)(ii)(iii)(4) [↑](#footnote-ref-17)
18. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(d)(1)(i)(ii)(iii), (2)(i) [↑](#footnote-ref-18)
19. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(d)(1)(i)(ii)(iii), (2)(i)(ii),(3) [↑](#footnote-ref-19)
20. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(e)(1),(2)(i)(ii)(iii),(3)(i)(ii)(iii)(4) [↑](#footnote-ref-20)
21. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(d)(1)(i)(ii)(iii), (2)(i)(ii) [↑](#footnote-ref-21)
22. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(a)(1)(i) [↑](#footnote-ref-22)
23. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(a)(1)(i) [↑](#footnote-ref-23)
24. eCFR Title 12: Banks and Banking TRUTH IN LENDING (REGULATION Z) PART [§ 1026.36](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=0af7fa0fc8ba849eaf26e1619cf8b0c1&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.7)(e)(1),(2)(i)(ii)(iii),(3)(i)(ii)(iii)(4) [↑](#footnote-ref-24)
25. [TRUTH IN LENDING (REGULATION Z)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d71c964b9fa078909ef25960451fa2&n=12y8.0.2.10.18&r=PART&ty=HTML)  CFR 12 Part [§ 1026.35](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=777f9fc8013b36ce9e75c32dcc0ad771&rgn=div5&view=text&node=12:8.0.2.10.18&idno=12#12:8.0.2.10.18.5.1.6) [↑](#footnote-ref-25)
26. [TRUTH IN LENDING (REGULATION Z)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d71c964b9fa078909ef25960451fa2&n=12y8.0.2.10.18&r=PART&ty=HTML)  CFR 12 Part §1026.35(a) Prohibited acts or practices in connection with higher-priced mortgage loans [↑](#footnote-ref-26)
27. [TRUTH IN LENDING (REGULATION Z)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d71c964b9fa078909ef25960451fa2&n=12y8.0.2.10.18&r=PART&ty=HTML)  CFR 12 Part § 1026.35 (e) Repayment ability(1)-(3) [↑](#footnote-ref-27)
28. [TRUTH IN LENDING (REGULATION Z)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d71c964b9fa078909ef25960451fa2&n=12y8.0.2.10.18&r=PART&ty=HTML)  CFR 12 Part § 1026.35 (c) Appraisals for higher-priced mortgage loans (1)-(3) effective January 10, 2014 [↑](#footnote-ref-28)
29. [TRUTH IN LENDING (REGULATION Z)](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=97d71c964b9fa078909ef25960451fa2&n=12y8.0.2.10.18&r=PART&ty=HTML)  CFR 12 Part § 1026.32 (a)(1)(i)(ii) [↑](#footnote-ref-29)