

HIGH-COST and HIGHER-PRICED MORTGAGE LOAN GUIDE

January 1, 2022

	HIGH-COST MORTGAGE LOANS (HCML/HOEPA) §1026.32	HIGHER-PRICED MORTGAGE LOANS (HPML) §1026.35
Coverage	Consumer-credit transaction (open & closed-end), secured by consumer's principal dwelling , which trip <u>either</u> the APR or Points and Fees triggers described below.	Closed-end consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds the APR trigger described below.
APR Trigger	The transaction's final APR ¹ exceeds the average prime offer rate (APOR) as of the date the interest rate is set for a transaction of a comparable loan term by more than: <ul style="list-style-type: none"> • 6.5% for a first-lien transaction • 8.5% for a first-lien transaction if the dwelling is personal property (such as a mobile home only loan) and the loan amount is less than \$50,000 • 8.5% for a subordinate-lien transaction 	The transaction's final APR exceeds the APOR as of the date the interest rate is set for a transaction of a comparable loan term by more than: <ul style="list-style-type: none"> • By 1.5% or more for loans secured by a first lien with a principal obligation at consummation that does not exceed Freddie Mac's loan limit as of the rate set date; • By 2.5% or more for loans secured by a first lien with a principal obligation at consummation that exceeds the Freddie Mac limit in effect as of the rate set date; or • By 3.5% or more for loans secured by a subordinate lien.
Points & Fees² Trigger	<ul style="list-style-type: none"> • 5% of the total loan amount³ for a transaction with a loan amount of \$22,969 or more for applications dated on or after January 1, 2022; (adjusted annually); or • The lesser of 8% of the total loan amount³ or \$1,148 for a transaction with a loan amount of less than \$22,969 for applications dated on or after January 1, 2022; (the \$1,148 and \$22,969 figures will be adjusted annually) 	N/A

Footnotes:

1 – Transaction APR must be calculated as follows:

- If APR will not vary during the term of the loan or credit plan, use the interest rate in effect as of the date the interest rate is last set;
- If the interest rate may vary during the term of the loan or credit plan in accordance with an index (internal or external), use the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the value of the index rate in effect as of the date the interest rate for the transaction is last set, or the introductory interest rate, whichever is greater; and
- If the interest rate may or will vary during the term of the loan or credit plan, other than as described above (such as a step-rate loan), use the maximum interest rate that may be imposed during the term of the loan or credit plan.

2 - "Points & Fees" is defined in § 1026.32(b)(1) & (2) and detailed on the IBA Guide titled "Points & Fees per 1026.3(b)" located [here](#).

3 - "Total loan amount" for a closed-end credit transaction is calculated by taking the amount financed, as determined in § 1026.18(b), and deducting any cost listed in § 1026.32(b)(1)(iii), (iv), or (vi) that is both included as points and fees under § 1026.32(b)(1) and financed by the creditor. The "total loan amount" for an open-end credit plan is the credit limit for the plan when the account is opened.

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Prepayment Penalty Trigger	<ul style="list-style-type: none"> • Closed-end credit - a charge imposed for paying all or part of the principal before the due date, other than a waived, bona fide third-party charge the creditor imposes if the consumer prepays all the principal 36 months or sooner after origination • Open-end credit - a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived, bona fide third-party charge the creditor imposes if the consumer terminates the open-end credit plan 36 months or sooner after origination 	N/A
Exempted Transactions	<ul style="list-style-type: none"> • A reverse mortgage transaction • A transaction to finance the <u>initial</u> construction of a dwelling • A transaction originated by a Housing Finance Agency where the Housing Finance Agency is the creditor • A U.S. Dept. of Agriculture RD section 502 Direct Loan Program 	Specific exemptions identified for Appraisal and Escrow requirements detailed below
Additional Requirements, Limitations & Prohibitions related to covered transactions	<p>Required Disclosure - Creditor must provide Section 32 disclosure at least 3 business days prior to closing, that discloses:</p> <ul style="list-style-type: none"> • Borrower does not have to complete agreement and warning he/she could lose their home; • APR • Closed-end payment information - regular payment, minimum periodic payment example and balloon payment (if applicable) • Open-end payment information - minimum periodic payment for draw period, first minimum periodic payment for repayment period, balance outstanding at beginning of repayment period, balloon payment if applicable, statement about disclosed minimum periodic payment and statement that example payments are not actual payments due • Variable rate information (statement that interest rate and monthly payment may increase, amount of max. monthly payment based on max. interest rate) • Amount borrowed/credit limit 	<p>Appraisal Requirement – Before closing an HPML, creditor must first obtain a written appraisal completed by certified or licensed appraiser including an interior physical visit of the property to be mortgaged.</p> <p>Appraisal Disclosure – Creditor must provide a disclosure to the consumer within three business days of application notifying consumer they will receive a copy of the appraisal.</p> <p>Appraisal Copy</p> <ul style="list-style-type: none"> • Creditor must provide consumer with a <u>free</u> copy of the appraisal no later than 3 business days prior to consummation (if loan that is not closed, no later than 30 days after creditor determines loan will not be closed). • Three-day delivery period <u>cannot</u> be waived

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Additional Requirements, Limitations & Prohibitions related to covered transactions (cont.)	<p>Limitations - HCML cannot have (see §1026.32(d)):</p> <ul style="list-style-type: none"> • Balloon payments (except for balloon payment QMs, bridge loans of 12 months or less , or payment schedule adjusted for seasonal employment) • Negative amortization • Advance payments • Increased interest rate • Rebates • Prepayment penalties <p>Demand feature permitting debt acceleration, see exceptions</p>	<ul style="list-style-type: none"> • <u>Appraisal Transaction Exemptions:</u> <ul style="list-style-type: none"> ○ Qualified mortgages as defined in 1026.43(e) and (f) ○ Loans in amount \$28,500 or less, adjusted annually ○ Transactions secured by mobile home, boat, or trailer ○ Transaction to finance initial construction of dwelling ○ Bridge loans with maturity of 12 months or less where purpose is connected to acquisition of dwelling intended to be principal residence ○ Reverse mortgage subject to 1026.33 ○ Transactions secured by new manufactured home and land or an existing manufactured home subject to conditions in 1026.35(c)(2)(viii) ○ Streamline refinances, subject to conditions in 1026.35(c)(2)(vii) <p>Second Appraisal Requirement - Required if HPML purpose is purchase of applicant’s <u>principal</u> dwelling, when purchasing a home that has been “flipped”⁴ by the seller.</p> <ul style="list-style-type: none"> • Bank cannot charge customer for second appraisal. • Multiple exemptions, see§ 1026.35(c)(4)

Footnotes:

4 – A property has been “flipped” if (1) the seller acquired the property 90 or fewer days prior to the date of the consumer’s agreement to acquire the property and the price in the consumer’s agreement to acquire the property exceeds the seller’s acquisition price by more than 10 percent; or
 (2) The seller acquired the property 91 to 180 days prior to the date of the consumer’s agreement to acquire the property and the price in the consumer’s agreement to acquire the property exceeds the seller’s acquisition price by more than 20 percent.

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January 1, 2022

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Additional Requirements, Limitations & Prohibitions related to covered transactions (cont.)	<p>Prohibited Acts or Practices related to HCML (see §1026.34):</p> <ul style="list-style-type: none"> Prohibits payment directly to home improvement contractors Required notice to assignee Restrictions on refinancing within one year Repayment ability Pre-loan counseling required Prohibition on recommending default Prohibition on modification or deferral fees Limitation on late fees (4% limit after 15 days past) Payoff statements (fee restrictions and delivery) Prohibition on financing points and fees Prohibition on structuring loans to evade requirements 	<p>Escrow Requirement – Creditor must establish escrow for property taxes and mortgage-related insurance, prior to closing, for lender-required items if HPML secured by first lien on dwelling, except:</p> <ul style="list-style-type: none"> • <u>Escrow Small Creditor Exemption (must meet all four)</u>: <ul style="list-style-type: none"> ○ Asset size for creditor and affiliates less than \$2.236 billion as of preceding December 31st (adjusted annually) ○ Creditor and affiliates originated 2,000 or fewer first lien loans secured <u>by a dwelling</u> in either of preceding two years that were <u>sold to investors or under commitment to sell</u> ○ In preceding year, originated at least one first lien covered transaction in a rural or underserved area ○ Neither creditor or affiliate maintains escrows, other than for HPMLs established between April 1, 2010 – June 17, 2021 or those established after consummation to avoid default • <u>Escrow EGRRCPA Section 108 Exemption (must meet all four)</u>: <ul style="list-style-type: none"> ○ Asset size for creditor and affiliates of \$10.473 billion or less as of preceding December 31st (adjusted annually) ○ Creditor and affiliates originated 1,000 or fewer first lien loans secured by borrower’s <u>principal dwelling</u> in the preceding year (<u>include ALL covered loans regardless of whether portfolio or sold</u>) ○ In preceding year, originated at least one first lien covered transaction in a rural or underserved area ○ Neither creditor or affiliate maintains escrows, other than for HPMLs established between April 1, 2010 – June 17, 2021 or those established after consummation to avoid default

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- **Escrow Transaction Exemption:**
 - A transaction secured by shares in a cooperative
 - A transaction to finance the initial construction
 - A temporary or "bridge" loan with a loan term of twelve months or less
 - A reverse mortgage transaction
 - Insurance premiums for condos or other common interest properties in which participation in a governing association that maintain a master policy insuring all dwellings is required