**Policy 9220: Home Ownership and Equity Protection Act**

**Model Policy Revised Date: 1/3/2024**

**Introduction:**

The Home Ownership and Equity Protection Act of 1994 (HOEPA) was enacted as an amendment to the Truth in Lending Act (TILA) in response to evidence of abusive lending practices in the home-equity lending market and was amended by the Consumer Financial Protection Bureau (CFPB) with the Home Ownership and Equity Protection Act Rule. HOEPA imposes additional disclosure requirements and substantive limitations on loans bearing rates or fees above a certain percentage or amount and prohibits specific acts and practices. HOEPA also amended TILA to require additional disclosures for reverse mortgages. The requirements and limitations of HOEPA are in addition to and not in place of those contained in TILA or Regulation Z.

1. **HIGH-COST MORTGAGE** **COVERAGE.**   
   1. **COVERAGE**. HOEPA applies to a consumer credit transaction that is secured by a member’s principal dwelling that meets any of the HOEPA coverage tests under the rule, including:  
      1. Purchase-money mortgages;
      2. Refinances;
      3. Closed-end home equity loans; and
      4. Open-end credit plans (i.e., HELOCs).
      5. If the transaction is a reverse mortgage, construction loan, mortgage loan originated and directly financed by a Housing Financing Agency, or a mortgage loan originated under the USDA Rural Development Direct Loan Program it is exempt from the HOEPA Rule and the Credit Union will use the underwriting policies, procedures and standards that apply to that type of transaction.
2. **COVERAGE TESTS**.  
   1. **APR Coverage Test**. [[CUname]] (Credit Union) will initially determine if the member’s mortgage transaction is a high-cost mortgage based on the annual percentage rate (APR). A transaction is a high-cost mortgage if its APR (measured as of the date the interest rate for the transaction is set) exceeds the Average Prime Offer Rate (APOR) for a comparable transaction on that date by more than:  
      1. 6.5 percentage points for first-lien transactions;
      2. 8.5 percentage points for first-lien transactions that are for less than $50,000 and secured by personal property; or
      3. 8.5 percentage points for junior-lien transactions.
   2. **Points and Fees Coverage Test**. The Credit Union will also determine if the member’s mortgage transaction is a high-cost mortgage based on the points and fees coverage test. A transaction is a high-cost mortgage if its points and fees exceed the following thresholds:  
      1. 5% of the total loan amount for a loan amount greater than or equal to $26,092; or
      2. 8% of the total loan amount or $1,305 (whichever is less) for a loan amount less than $26,092.
3. **EXEMPTIONS.** If the transaction is a reverse mortgage, construction loan, mortgage loan originated and directly financed by a Housing Financing Agency, or a mortgage loan originated under the USDA Rural Development Direct Loan Program.
4. **REPAYMENT ABILITY**. The Credit Union will determine a member’s ability to repay a high-cost mortgage prior to consummation or account opening.  
   1. **Closed-end Credit Transactions**. When the Credit Union originates closed-end high-cost mortgages, it will satisfy the ability to repay requirements as other closed-end mortgages under Truth in Lending and the CFPB’s Ability-to-Repay and Qualified Mortgage Rule and guidance in the Ability to Repay Policy.
   2. **Open-end High-cost Mortgages**. Repayment ability will still be determined using HOEPA’s ability-to-repay rule and the Credit Union will consider:  
      1. Current and reasonably expected income or assets (verified with W-2s, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence); and
      2. Current obligations, including any mortgage-related obligations such as property taxes, required insurance premiums, community association fees, ground rent, and leasehold payments.
5. **FORM OF** **DISCLOSURES.** The Credit Union will give the member who is primarily liable, or to each member who has the right to rescind, a high-cost mortgage disclosure in addition to the disclosures otherwise required by TILA. A lender must provide disclosures with the following information in a conspicuous type size:   
   1. **Notice.** "You are not required to complete this Agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, along with any money you have put into it, if you do not meet your obligations under the loan."
   2. **The APR**. For fixed rate loans, the APR and regular periodic payment. For variable rate loans, the APR, the regular periodic payment, a statement that the interest rate and periodic payment may increase, and the amount of the maximum periodic payment, based on the maximum interest rate allowed.
   3. **The Regular Periodic Payment and Any Balloon Payment.**
   4. **The Amount Borrowed.** For a mortgage refinancing, the total amount the consumer will borrow. The disclosure of the amount borrowed will be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.
   5. **Default**. Information that explains the consequences of default.
6. **TIMING OF DISCLOSURES**  
   1. **Closing.** The Credit Union will provide the high-cost mortgage loan disclosures not less than 3 business days prior to the loan closing.
   2. **Change in Terms.** A lender may not change the loan terms if the change makes the disclosures inaccurate, unless new disclosures are provided. If a consumer finances the purchase of credit insurance or other optional products and as a result the periodic payment differs from what was previously disclosed, re-disclosure is required.
   3. **Telephone.** A lender may provide new disclosures by telephone, if the change is initiated by the consumer and the lender provides new written disclosures at loan closing, and the lender and consumer certify in writing that the new disclosures were provided by telephone, not later than three (3) business days prior to the loan closing date.
   4. **Personal Financial Emergency.** A consumer may modify or waive the 3-day waiting period to meet a bona fide personal financial emergency. The consumer must provide a dated written statement describing the emergency, specifically modify or waive the waiting period, and include the signature of all the consumers entitled to the waiting period.
7. **TRANSACTION LIMITATIONS.**A high-cost mortgage loan agreement cannot include the following terms:  
   1. **Risky Loan Features**. The Home Ownership and Equity Protection Act Rule restrict or ban certain risky loan features for high-cost mortgages. The Credit Union will follow the guidance of the HOEPA Rule for risky loan features as defined under the requirements of the rule and the Home Equity Protection Act.
   2. **Balloon Payments**. Balloon payments are generally banned for high-cost mortgages and allowed in only three circumstances:  
      1. The payment schedule is adjusted to accommodate the member’s seasonal or irregular income;
      2. The loan is a short-term bridge loan (12 months or less) to finance a new home purchase for a member selling an existing home; or
      3. The Credit Union meets criteria for serving a rural or underserved area, and the loan meets specific criteria set forth in the Bureau’s Ability-to-Repay/Qualified Mortgage Rule.
   3. **Prepayment Penalties**. The Credit Union will not charge prepayment penalties for mortgage loans that are covered transactions for HOEPA Rules.
   4. **Due-on-Demand Features**. The Credit Union will only require due-on-demand features for covered transactions under the HOEPA Rule if:  
      1. The member commits fraud or makes a material misrepresentation in connection with the loan or credit agreement;
      2. The member defaults on payment; and/or
      3. The member’s action or inaction adversely affects the Credit Union’s security interest for the loan.
   5. **Recommending Default**. The Credit Union will not recommend that a member default on a current mortgage obligation to be refinanced by a high-cost mortgage.
   6. **Modification Fee**. The Credit Union will not charge a fee to modify, defer, renew, extend, or amend a high-cost mortgage.
   7. **Late Fees**. The Credit Union will restrict late fees on high-cost mortgage loans to no more than 4% of the past due payment and will not pyramid late fees.
   8. **Payoff Statement Fees**. The Credit Union will not charge a payoff statement fee to members with high-cost mortgages.
   9. **Points and Fees**. The Credit Union will not finance points and fees into high-cost mortgage loans.
   10. **Negative Amortization**. The Credit Union will not offer negatively amortizing loans that are high-cost mortgages.
   11. **Combined Payments**. The Credit Union will not offer a payment schedule that consolidates more than two periodic payments and pays them in advance from loan proceeds.
   12. **Default Rates**. The Credit Union will not increase the interest rate on a high-cost mortgage loan in the event of default.
   13. **Acceleration**. In the case of acceleration as a result of a member’s default in payment, the Credit Union will not provide a refund of interest calculated in a manner less favorable to the member than the actuarial method.
8. **ASSIGNEE LIABILITY.** A purchaser or assignee of a high-cost mortgage loan is subject to all claims and defenses that the consumer could assert against the original lender, unless the purchaser or assignee demonstrates that a reasonable person could not determine based on the documentation that it was a high-cost mortgage covered by HOEPA.
9. **PROHIBITED ACTS AND PRACTICES.** A lender making a high-cost mortgage loan cannot:  
   1. **Home Improvement Contracts**. Pay a home improvement contractor from the proceeds of the loan other than by an instrument made payable to the consumer, jointly to the consumer and contractor, or at the consumer's election, through a third-party escrow agent.
   2. **Notice to Assignee**. Sell or assign a high-cost mortgage loan without furnishing the following prominent notice to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the lender."
   3. **Refinancing**. The Credit Union will not refinance a high-cost mortgage into another high-cost mortgage within one year after having extended credit, unless the refinancing is in the member’s best interest.
10. **HOMEOWNERSHIP COUNSELING**.  
    1. **Homeownership Counseling List**. Applicants for high-cost mortgage loans will receive a written list of homeownership counseling organizations within three business days of application.
    2. **Homeownership Counseling Certification**. Prior to making a high-cost mortgage loan the Credit Union will receive written certification that the member has received homeownership counseling on the advisability of the mortgage from a HUD-approved counselor or a state housing finance authority, if permitted by HUD.  
       1. The counseling will not be provided by a counselor affiliated with or employed by the Credit Union.
11. **PROHIBITED ACTS OR PRACTICES IN CONNECTION WITH “HIGHER-PRICED MORTGAGE LOANS.”** A “higher-priced mortgage loan” is a consumer credit transaction secured by the consumer’s dwelling with an APR that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling. The Financial Institutions Examination Council (FFIEC) publishes average prime offer rates in a table at least weekly as well as the methodology the FFIEC uses to derive these rates. A “higher-priced mortgage loan” does **not** include bridge loans, reverse mortgages, or home equity lines of credit.  
    1. **“Jumbo” Loans**. Loans that are **not** eligible for purchase by Freddie Mac because their original principal obligation is too large are widely referred to in the mortgage market as “jumbo” mortgages. Adjustments to this maximum amount are made by the Federal Housing Finance Agency (FHFA).The threshold for coverage of the escrow requirement in Section (11)(D) for jumbo loans is 2.5 percentage points in excess of the average prime rate offer for a comparable transaction, as of the date the transaction’s rate is set.
    2. **Repayment Ability**. A lender may not extend credit based on the value of the consumer’s collateral without regard to the consumer’s repayment ability (as outlined above).
    3. **Prepayment Penalties**. A loan may not include a prepayment penalty, unless it is otherwise permitted by law and under the terms of the loan:  
       1. The penalty will not apply after the 2-year period following consummation;
       2. The penalty will not apply if the source of the prepayment funds is a refinancing by the lender or an affiliate of the lender; and
       3. The amount of the periodic payment of principal or interest, or both, may not change during the 4-year period following consummation.
    4. **Escrows**. A lender may not extend a loan secured by a first lien on a principal dwelling unless an escrow account is established before consummation for payment of property taxes and premiums for mortgage-related insurance and flood insurance required by the lender.  
       1. Escrow accounts need **not** be established for loans secured by shares in a cooperative; or for insurance related to loans secured by condominium units, where the condominium association has an obligation to the condominium unit owners to maintain a master policy insuring condominium units.  
          1. The Credit Union may also qualify for an exemption to the Escrow requirement if they have assets under $10 million (adjusted annually), originated 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year, extended credit in a rural or underserved area, and have not (along with affiliates) maintained an escrow account except for those established for HPMLs when required to do so or after consummation as an accommodation to a distressed consumer
       2. Lenders or servicers may permit a consumer to cancel the escrow account only in response to a consumer’s dated written request to cancel the escrow account that is received no earlier than five (5) years after consummation.
    5. **Evasion**. In connection with credit secured by a consumer’s principal dwelling that does not meet the Regulation Z definition of open-end credit, a lender may **not** structure a home-secured loan as an open-end plan to evade the requirements of this section.
12. **REVERSE MORTGAGE TRANSACTIONS**  
    1. **Definition.** A "reverse mortgage transaction" means a nonrecourse transaction in which a mortgage or deed of trust is created against the consumer's principal dwelling, securing one or more advances and with respect to which the payment of any principal, interest, and shared appreciation or equity is due only after the consumer transfers the dwelling, the consumer ceases to occupy the dwelling as a principal dwelling, or the consumer's death.
    2. **Disclosures.** In addition to any other disclosures required by law, a lender must, not less than three (3) business days prior to closing or the first transaction under an open-end credit plan, provide the consumer with the following disclosures in conspicuous type:  
       1. A good faith estimate of the projected total cost of the reverse mortgage expressed as a table of total annual loan cost rates.
       2. A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure or has signed a reverse mortgage application.
       3. An itemization of loan terms, charges, the age of the youngest borrower and the appraised property value
       4. A statement of the annual interest rates for not less than three projected total cost appreciation rates and not less than three credit transaction periods; and
       5. An explanation of the table of total annual loan cost rates.
    3. **Projected Total Cost.** The projected total cost of credit must reflect the following factors, as applicable:  
       1. Any shared appreciation or equity that the lender will be entitled to receive;
       2. All costs and charges to the consumer;
       3. All payments to and for the benefit of the consumer;
       4. Any limitation on the liability of the consumer;
       5. Each of the following assumed annual appreciation rates for the dwelling: 0%, 4%, and 8%; and
       6. Each of the following assumed loan periods: two years, the actuarial life expectancy of the consumer, the actuarial life expectancy multiplied by a factor of 1.4 and rounded to the nearest full year, and at the lender's option, the actuarial life expectancy multiplied by a factor of 0.5 and rounded to the nearest full year.