

FTC FACTS for Consumers

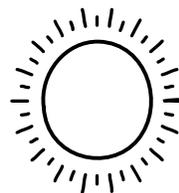
ftc.gov

FOR THE CONSUMER

FEDERAL TRADE COMMISSION

1-877-FTC-HELP

High-Rate, High-Fee Loans (HOEPA/Section 32 Mortgages)



If you're refinancing your mortgage or applying for a home equity installment loan, you should know about the Home Ownership and Equity Protection Act of 1994 (HOEPA). The law addresses certain deceptive and unfair practices in home equity lending. It amends the Truth in Lending Act (TILA) and establishes requirements for certain loans with high rates and/or high fees. The rules for these loans are contained in Section 32 of Regulation Z, which implements the TILA, so the loans also are called "Section 32 Mortgages." Here's what loans are covered, the law's disclosure requirements, prohibited features, and actions you can take against a lender who is violating the law.

What Loans Are Covered?

A loan is covered by the law if it meets the following tests:

- for a first-lien loan, that is, the original mortgage on the property, the annual percentage rate (APR) exceeds by more than eight percentage points the rates on Treasury securities of comparable maturity;
- for a second-lien loan, that is, a second mortgage, the APR exceeds by more than 10 percentage points the rates in Treasury securities of comparable maturity; or
- the total fees and points payable by the consumer at or before closing exceed the larger of \$583 or eight percent of the total loan amount. (The \$583 figure is for 2009. This amount is adjusted annually by the Federal Reserve Board, based on changes in the Consumer Price Index.) Credit insurance premiums for insurance written in connection with the credit transaction are counted as fees.

The rules primarily affect refinancing and home equity installment loans that also meet the definition of a high-rate or high-fee loan. The rules do not cover loans to buy or build your home, reverse mortgages or home equity lines of credit (similar to revolving credit accounts).

What Disclosures Are Required?

If your loan meets the above tests, you must receive several disclosures at least three business days before the loan is finalized:

- The lender must give you a written notice stating that the loan need not be completed, even though you've signed the loan application and received the required disclosures. You have three business days to decide whether to sign the loan agreement after you receive the special Section 32 disclosures.
- The notice must warn you that, because the lender will have a mortgage on your home, you could lose the residence and any money put into it, if you fail to make payments.
- The lender must disclose the APR, the regular payment amount (including any balloon payment where the law permits balloon payments, discussed below), and the loan amount (plus where the amount borrowed includes credit insurance premiums, that fact must be stated). For variable rate loans, the lender must disclose that the rate and monthly payment may increase and state the amount of the maximum monthly payment.

These disclosures are in addition to the other TILA disclosures that you must receive no later than the closing of the loan.

What Practices Are Prohibited?

The following features are banned from high-rate, high-fee loans:

- All balloon payments — 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 — for loans with less than five-year terms. There is an exception for bridge loans of less than one year used by consumers to buy or build a home: In that situation, balloon payments are not prohibited.

- Negative amortization, which involves smaller monthly payments that do not fully pay off the loan and that cause an increase in your total principal debt.
- Default interest rates higher than pre-default rates.
- Rebates of interest upon default calculated by any method less favorable than the actuarial method.
- A repayment schedule that consolidates more than two periodic payments that are to be paid in advance from the proceeds of the loan.
- Most prepayment penalties, including refunds of unearned interest calculated by any method less favorable than the actuarial method. The exception is if:
 - the lender verifies that your total monthly debt (including the mortgage) is 50 percent or less of your monthly gross income;
 - you get the money to prepay the loan from a source other than the lender or an affiliate lender; and
 - the lender exercises the penalty clause during the first five years following execution of the mortgage.
- A due-on-demand clause. The exceptions are if:
 - there is fraud or material misrepresentation by the consumer in connection with the loan;

- the consumer fails to meet the repayment terms of the agreement; or
- there is any action by the consumer that adversely affects the creditor's security.

Creditors also may not:

- make loans based on the collateral value of your property without regard to your ability to repay the loan. In addition, proceeds for home improvement loans must be disbursed either directly to you, jointly to you and the home improvement contractor or, in some instances, to the escrow agent.
- refinance a HOEPA loan into another HOEPA loan 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.
- wrongfully document a closed-end, high-cost loan as an open-end loan. For example, a high-cost mortgage may not be structured as a home equity line of credit if there is no reasonable expectation that repeat transactions will occur.

How Are Compliance Violations Handled?

You may have the right to sue a lender for violations of these requirements. In a successful suit, you may be able to recover statutory and actual damages, court costs and attorney's fees. In addition, a violation of the high-rate, high-fee requirements of the TILA may enable you to rescind (or cancel) the loan for up to three years.

Where to Go for More Information

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.



Facts for Consumers

The Federal Trade Commission (FTC) is the nation's consumer protection agency. Here are some tips from the FTC to help you be a more savvy consumer.

1. Know who you're dealing with. Do business only with companies that clearly provide their name, street address, and phone number.
2. Protect your personal information. Share credit card or other personal information only when buying from a company you know and trust.
3. Take your time. Resist the urge to "act now." Most any offer that's good today will be good tomorrow, too.
4. Rate the risks. Every potentially high-profit investment is a high-risk investment. That means you could lose your investment — all of it.
5. Read the small print. Get all promises in writing and read all paperwork before making any payments or signing any contracts. Pay special attention to the small print.
6. "Free" means free. Throw out any offer that says you have to pay to get a gift or a "free" gift. If something is free or a gift, you don't have to pay for it. Period.
7. Report fraud. If you think you've been a victim of fraud, report it. It's one way to get even with a scam artist who cheated you. By reporting your complaint to 1-877-FTC-HELP or ftc.gov, you are providing important information to help law enforcement officials track down scam artists and stop them!

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Federal Trade Commission
Bureau of Consumer Protection
Division of Consumer and Business Education

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