

HOEPA FEES & POINTS WORKSHEET

CALCULATING WHETHER A LOAN IS A HOEPA LOAN IS A 3-STEP PROCESS:

1. Calculate the trigger fees;
2. Calculate the “total loan amount,”
3. Calculate the trigger fees as a percentage of the “total loan amount.”

STEP ONE.

Trigger Fees: From the HUD-1 and/or Itemization of the Amount Financed

A. Reg. Z, § 226.32(b)(1)(i):

All items required to be disclosed as a finance charge under § 226.4(a), and (b), except interest (including per diem interest¹), or time-price differential: *(Don't just use the creditor's characterization – independently assess whether each charge should be a finance charge.)*

_____	For _____
_____	For _____
_____	For _____
_____	For _____
_____	For _____

PLUS

B. Reg. Z, § 226.32(b)(1)(ii)

All compensation paid to mortgage brokers; *(Do not double count: if any compensation to mortgage brokers was reflected above, do not include it here. Brokers may be compensated through points, which would also fall within § 226.32(b)(1)(i).*

_____	For _____
_____	For _____
_____	For _____

¹ “Interest, including per diem interest, is *excluded* from ‘points and fees’ under section 226.32(b)(1).” Official Staff Commentary § 226.32(b)(1)(i)-1.

NOTE: *Where a broker receives compensation in the form of a yield-spread premium or interest rate upcharge on the note interest rate, it is not certain that the FRB believes the rate upcharge should be counted. Originally, the industry argued that compensation out of the interest rate was “lender-paid,” not paid by the consumer. (Cf. Official Staff Commentary § 226.32(b)(1)(ii).²) But as HUD has sensibly stated, if the consumer is paying a higher interest rate in order for the broker to receive compensation, the consumer is paying that. However, the FRB has still expressed doubt that a rate upcharge should count for another reason. All “countable” HOEPA fees and points must be “payable by the consumer at or before loan closing....” Reg. Z, § 226.32(a)(1)(ii). The question is whether a portion of the note rate meets this timing test. See, NCLC, Truth in Lending § 10.2.4.2.3 (4th Ed. 1999 & Supp.). The FRB stated in the supplementary information to its proposed HOEPA rule revision that “[i]t is not clear than an amount paid over the life of the loan and included in HOEPA’s APR trigger should also be included in the points and fees trigger as an amount paid at or before closing.” 65 Fed. Reg. 81438, 81442 - 81443 (December 26, 2000).*

PLUS

C. Reg. Z, §226.32(b)(1)(iii)

Any items listed in Reg. Z, § 226.4(c)(7), except tax escrows, which

- a) are unreasonable, or
- b) the creditor receives some compensation from it, directly or indirectly, or
- c) are paid to an affiliate of the creditor,

For _____
For _____
For _____

² The industry also argued that that would be double-counting, but that was based on a misunderstanding. When the interest rate is increased to allow for broker compensation, there is no double-counting, because interest is not counted under 226.32(b)(1)(i). It is only where the broker compensation is from points, countable under 226.32(b)(1)(i), that there is a possibility of double-counting. As explained in note 2, points (by whatever name) to a broker should be counted in either 226.32(b)(1)(i) or 226.32(b)(1)(ii), but count them only once.

PLUS (after 10/1/02)

D. Reg. Z, §226.32(b)(1)(iv)

The premiums or other charges for credit life, accident, health, or loss-of-income insurance or debt-cancellation coverage that provides for cancellation of all or part of the consumer's liability in the event of loss of life, health, or income or in the case of accident, written in connection with the loan.

_____	For _____
_____	For _____
_____	For _____

TOTAL HOEPA FEES & POINTS: _____

STEP TWO.

“Total Loan Amount” (OSC § 226.32(a)(1)(ii)-1)

The instructions for calculating the “total loan amount” given in the Official Staff Commentary § 226.32(a)(1)(ii)-1 start with the “amount financed.” However, that instruction assumes that the “amount financed” disclosed by the creditor was accurately calculated, which may not be the case. A creditor may well have low-balled the APR and finance charge by allocating charges which should, under TIL rules, be a “finance charge” to the “amount financed” instead.³ So we’ll back up a step from the OSC, and start with the note principal:

A. Note principal _____

B. Subtract all prepaid finance charges (i.e., “finance charges” included in the note principal):

Any charges which are or should be treated as “finance charges” under Reg. Z, § 226.4(a), (b). (See Steps 1-A and 1-B, above. Include any charges of a type listed in Reg. Z, § 226.4(c)(7) which you identified as “unreasonable.” (See Step 1-C, above.)

³ See NCLC, Truth in Lending, §§ 3.2.2, 3.2.3, 3.8.2, 3.8.3 and 3.11 (4th ed. 1999& Supp.) for more help in sorting out the relationship of note principal to the amount financed, and “prepaid finance charges” to both.

In going through Steps 1A and 1-B, above, you will have made an independent determination as to whether each charge imposed should have been part of the finance charge, or whether it can be legitimately counted as part of the amount financed. (Remember that a misallocation of finance charges to the amount financed is an independent TIL violation, [assuming that it exceeds the allowable tolerances for error], irrespective of whether it results in a HOEPA violation.⁴)

Also, if any charges identified in Step 1-c are “unreasonable,” those charges do not meet the test for excluding them from the TIL finance charge, either.⁵

- _____ Sum of finance charge charges identified in Step 1-A
- _____ Sum of charges in Step 1-B which were not included already in Step 1-A, and which were part of note principal.
- _____ Sum of any § 226.4(c)(7) charges which were “unreasonable” (Step 1-C, above), or were not bona fide, or otherwise did not meet the § 226.4(c)(7) test for exclusion from the finance charge.
- _____ Any per diem interest financed as part of the note principal.

= Total prepaid finance charges included in note principal: _____

C. Note principal less total prepaid finance charges included in note principal equals:

amount financed: _____ -

⁴ See NCLC, Truth in Lending, §§ 3.2.2; 3.6- 3.9 (on finance charges) and 4.6.3.2, 4.6.4.5, 7.3.10 (on tolerances).

⁵ The charges identified in Reg. Z, § 226.4(c)(7) may be excluded from the finance charge only if they are “bona fide and reasonable.” So if § 226.4(c)(7) charges are “unreasonable,” they not only count as a HOEPA fee, they should also be treated as a finance charge in general. Provided they are bona fide and reasonable, § 226.4(c)(7) charges may be excluded from the finance charge if they are payable to the creditor. However, even if they are legitimately part of the amount financed, such charges still count as part of the HOEPA fees and points trigger.

D. Subtract from the proper amount financed:

Any cost included in the amount financed (i.e., a § 226.4(c)(7) charge), which is both:

- a) included in the trigger under Step 1-C, and
- b) was financed in the loan

- _____ For _____
- _____ For _____
- _____ For _____

E. Subtract from this remainder: (after 10/1/02)

The premiums or other charges for credit life, accident, health, or loss-of-income insurance or debt-cancellation coverage that provides for cancellation of all or part of the consumer's liability in the event of loss of life, health, or income or in the case of accident, written in connection with the loan.

- _____ For _____
- _____ For _____

= "TOTAL LOAN AMOUNT" _____

STEP THREE

Calculate the percentage:

Numerator: = trigger fees from Step 1
Demoninator = "Total Loan Amount" From Step 2

_____ divided by _____ = % _____
trigger fees total loan amount

If greater than 8%, it's a HOEPA loan.