FEDERAL HIGHER COST/PREDATORY LENDING REGULATIONS (HPML LOANS)

Reg Z (TILA) Section 12 CFR 226 Subpart E – 226.34 & 226.35 updated 10/25/2012

PUBLIC LINK: http://www.fdic.gov/regulations/laws/rules/6500-1400.html

LOAN COVERED: __X__Conventional _X___FHA _X_VA

MAXIMUM LOAN AMOUNT COVERED: N/A

LOAN PURPOSES COVERED _X__Purchase __X__Construction/Perm

____Construction __X__Refinance _X_Home Equity/closed end ____HELOC

__X__One-time Closing __X__Purchase Plus _X__Refinance Plus ____Bridge Loan (if 12 mos or less)

_X__Home Improvement _X_One time with modification ____Reverse Mtg.

NOTE: Temporary loans are exempt but short term loans are not. If there are P&I payments, it will be audited subject to Section 35.

BORROWER(S) COVERED: Natural Persons or Trusts

PROPERTY COVERED: Borrower(s)' Primary Residence 1-4 units

TOTAL LOAN AMOUNT (TLA) N/A

APR TEST: 1ST LIEN if 1.5% or greater FNMA loan limits
2.5% for Jumbo loans with apps received 4/1/2011

SUBORDINATE LIEN if 3.5% or greater

Based upon the average prime rate offer rate published by the Federal Reserve Board published on a weekly basis. Compare the APR as of the date the interest rate is set

Test: http://www.ffiec.gov/ratespread/default.aspx

Tables for fixed rate: http://www.ffiec.gov/ratespread/YieldTableFixed.CSV

Tables for ARM: http://www.ffiec.gov/ratespread/YieldTableAdjustable.CSV

SPECIAL NOTES:
ESCROWS Required on loans with application taken after 4/1/2010 for 1-4 homes and 10/01/2010 for mfg housing

(3) *Escrows*--(i) *Failure to escrow for property taxes and insurance*. Except as provided in paragraph (b)(3)(ii) of this section, a creditor 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 required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property

Balloon notes are not allowed if the term is less than 7 years unless lender can show borrower had ability to pay or refi balloon payment.

No negative amortization

If there is a prepayment penalty then ARMS can not increase rate or payment for first 48 months and at consummation total monthly debt may not exceed 50% of consumer's monthly gross income

This has underwriting provisions

- creditors shall not extend credit based on the value of the security property without regard to the borrower's repayment ability, including the borrower's current and reasonably expected income, employment, assets other than the security property, and mortgage-related obligations, such as property taxes, mortgage insurance, and similar expenses;
- other than with respect to bridge loans of 12 months or less, creditors must verify the borrower's repayment ability by verifying the income or assets by using IRS W-2s, tax returns, payroll receipts, or third-party documentation that provide reasonably reliable evidence of the borrower's income or assets, as well as the borrower's current obligations;
- there is a presumption of compliance if the creditor verifies the borrower's repayment ability as provided in the regulation, and uses the largest payment of principal and interest scheduled in the first seven (7) years of the loan (taking into account the borrower's current obligations and mortgage-related obligations), and takes into account either the borrower's total debt to income ratio, or the borrower's income after paying debt obligations; however, the presumption does not apply to loans that provide for negative amortization or a balloon payment during the first seven (7) years of the loan.
- prepayment penalties are allowed provided they are otherwise permitted by law, are limited to two years, the penalty will not apply if the source of prepayment funds is a refinancing by the creditor or creditor affiliate, and the periodic payment of principal or interest or both is fixed for at least the first four years following consummation; and
- creditors must establish an escrow account before consummation for the payment of property taxes, homeowners' insurance, and mortgage insurance, if the loan is secured by a first lien on a borrower's principal dwelling; creditors may offer a borrower the opportunity to cancel the escrow after the first 12 months following consummation (this final provision does not become effective until April 1, 2010 (and not until October 1, 2010 if the loan is secured by manufactured housing)).

Prepayment regulation
(Same as Section 32 - HOEPA)

A loan may not include a penalty described by § 226.32(d)(6) unless:

(i) The penalty is otherwise permitted by law, including § 226.32(d)(7) if the loan is a mortgage transaction described in § 226.32(a); and

(ii) Under the terms of the loan -

(A) The penalty will not apply after the two-year period following consummation;

(B) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor; and

(C) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.

226.32 (d) (6)(7)

(6) *Prepayment penalties.* Except as allowed under paragraph (d)(7) of this section, a penalty for paying all or part of the principal before the date on which the principal is due. A prepayment penalty includes computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992,

15 U.S.C. 1615(d).

(7) *Prepayment penalty exception. A mortgage transaction subject to this section may provide for a prepayment penalty (including a refund calculated according to the rule of 78s) otherwise permitted by law if, under the terms of the loan:*

- (i) The penalty will not apply after the two-year period following consummation;
- (ii) The penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or an affiliate of the creditor;
- (iii) 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, as verified in accordance with § 226.34(a)(4)(ii); and
- (iv) The amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation.