

Selected Subjects

Guru Chatter*

on HELCOs & HOEPA



HELOC Referral - Affiliate Broker Charging a Fee

Question: If an affiliate broker refers a HELOC to the bank, can the affiliate charge a broker fee? The HELOC product the bank offers has an annual fee, but no origination fee.

Answer by Dan Persfull:

As long as the broker is performing the required number of actions to earn the fee (RESPA), and there are no state law prohibitions, the fee would be allowable.

Disclosures for HE Loans vs. Lines

Question: Are disclosures the same for Home Equity Loans as for Home Equity Lines?

Answer by Richard Insley and Dan Persfull:

The disclosures under Reg. Z would differ. For open-end credit you would need to look to Subsection B and for closed-end credit you would need to look to Subsection C.

Other regulations that would apply to both would be Reg. B, Flood, Privacy, Fair Housing Act, FCRA, Reg. C. (if you report lines) and the new provisions of the FACT Act.

Subject to HOEPA or an Exempt Bridge Loan?

Question: Bank has a loan for home improvement purposes with an origination fee. It is for a period of 3 months. At the end of that time, the loan will be refinanced into a payout real estate loan. The origination fee results in fees exceeding HOEPA limits. It is a single pay note. Is this still subject to HOEPA or is it exempt as a bridge loan?

Answer by Dan Persfull:

The only loans that are exempt are:

- Residential Mortgage Transactions
- Reverse mortgages
- Open-end credit plans

It does not sound like your loan meets any of the exemptions; therefore you would have to follow the HOEPA disclosure requirements.

Disclosures for a Fixed Rate HELOC

Question: Our bank is considering a new HELOC product whereby a portion of the HELOC may be locked at a fixed rate. For instance, the borrowers may take out a \$50,000 HELOC at a variable rate and subsequent to origination, the borrowers decide to purchase a car for \$25,000 and then want the bank to fix that \$25,000 at a specific rate. What are the disclosure requirements for the HELOC? Do we need to disclose specifics regarding the ability to fix a portion of the line? If we do fix a portion, must we provide any new disclosures?

Answer by Randy Carey:

You would have to describe this feature along with how the interest rates for the fixed portions would be determined. As long as they were still part of the overall line of credit, these fixed portions would need to be reflected on the periodic statements, but no additional disclosures would have to be provided at the time of exercising one of these options. If these were separated from the open-end line, then they would be subject to the normal closed-end disclosures at the time of set-up.

January 1, 2006 HOEPA Fee Trigger

Question: Do you know what the 2006 HOEPA fee trigger has been increased to for January 1st?

Answer by Dan Persfull:

12 CFR Part 226

[Regulation Z; Docket No. R-1231]

II. Adjustment and Commentary Revision

Effective January 1, 2006, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of \$528 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)-2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2006. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.

Editor's Note: The 2006 HOEPA Calculator has been updated to reflect this change. It is available in the [BOL Tools](#) section.

Waiving a Loan Fee on a HELOC

Question: My boss wants to waive the loan fee for a HELOC customer based on compensating balances. Is this permitted on this type of consumer product?

Answer by Dan Persfull:

Yes, as long as there is no state law prohibition.

What Determines HELOC Due Dates?

Question: What determines HELOC due dates? I know that HELOC due dates are set for the 25th of every month; however I recently had a customer ask me why it is that particular date. Truthfully, I didn't know what to tell them because I don't know (and can't find) the reason behind it.

Answer by Dan Persfull:

There is no regulatory requirement that the due date be on the 25th. We have HELOC due dates on the 1st, 5th, 10th, 15th, 20th, and 25th. Our HELOCs are tied to the DDA system and depending on what cycle their DDA falls in will depend on what billing cycle and due date the HELOC will fall in.

HELOC Rate History Disclosure

Question: When sending the early disclosure for a HELOC, does the rate history shown on the disclosure have to be from the same month each year as the month the current loan will be made?

Answer by Dan Persfull:

No. The historical example only shows the history for the past 15 years and you must update the historical example annually. Once updated, you may use that disclosure for the remainder of the year, UNLESS there is a change in the program features. You then would need to update the disclosure to reflect the program changes.

HELOC Request Exceeds Dwelling Value

Question: I have a customer that is requesting a \$200K HELOC on his residence. The appraisal came back with a dwelling value of \$155k and land value of \$237K (115 acres) for a total of \$392k appraisal value. I've never had a request that exceeded the dwelling value. Are there any regulations that restrict line amounts by dwelling value vs. land value?

Answer by Dan Persfull:

The LTV should be based on the total property's value, not just the dwelling. I have seen where just the value of the dwelling (improvements) were used to calculate the LTV.

Extension to a HELOC a Rescindable a Transaction?

Question: We are doing an extension to a HELOC. No new money is being added and no debt is being paid off. The only change is the maturity date. Is this a rescindable transaction?

Answer by Dan Persfull:

What do you mean by "an extension"? Are you extending a monthly payment, or are you extending, as in renewing, the HELOC agreement?

Extending a monthly payment would not require a new ROR, extending/renewing the HELOC agreement would.

LTV Calculations on HELOCs

Question: What are the expected LTV calculations when the subject mortgage is a HELOC to be filed in first lien position, no subordinate mortgages and no initial draw? Should the LTV and CLTV be 0% since there will be no outstanding balance (at the end of the rescission period), and the HCLTV represent the worst case LTV scenario?

Answer by Dan Persfull:

Your LTV calculations would be based on the credit limit.

Documenting HOEPA Calculations

Question: We know that we have no HOEPA loans, but, should we complete a High-Cost Mortgage worksheet and put in every loan file that is not a purchase?

Answer by Dan Persfull:

That is a business risk decision you will need to make. You will have to demonstrate how you know you have no HOEPA loans.

I periodically spot check loans, and I also have an analysis I do that demonstrates, based on our rate structures and fees, the HOEPA thresholds will only be met if we have loans on X terms. This information is distributed to the loan processors and lenders and they know if they have a loan for X terms they need to check for HOEPA before proceeding.

Timing of Notice of Interest Rate Change on HELOC

Question: How many days notice must we give to a borrower before we change the interest rate on a HELOC?

Answer by Jim Bedsole:

It depends on what is called for in your loan contract and HELOC disclosures.

Answer by Dan Persfull:

For HELOCs there is no advance notice requirement like there is with ARMs. Your contract should state that the rate is based on an index plus margin and will change the Xth day of each month. Your periodic statements would be your change notice.

HELOC on Primary Residence Only?

Question: Does a HELOC have to be done on a primary residence or can you do one on a second home?

Answer by Jim Bedsole:

This depends on state law and your internal loan policy. There is nothing from a federal regulatory standpoint that would prohibit this.

Bridge Loan - Limitations on HELOC Fees

Question: We are wondering what the limits are on loan fees. We have a HELOC product that we currently charge a \$35 annual fee on. We have a customer who would like to have a HELOC Bridge loan which we would like to charge higher fees on because of the high cost and potentially short term.

Answer by Dan Persfull:

Maximum loan fees are regulated by state law.