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What is Section 32?

Section 32 is an amendment to Regulation Z, the Federal Truth In Lending Law. Section 32 affects certain residential mortgage transactions, and is primarily a lending disclosure law, but includes specific prohibitions.

Types of Loans Excluded from Section 32
Purchase-money loans, home equity lines of credit and loans on non-owner occupied dwellings are not subject to Section 32.

Information Required for Disclosure by a Lender to a Borrower
For loans that qualify for disclosure under Section 32, there is generic information required to be disclosed, regardless of the terms of the loan. Also, there is information required to be disclosed about the specific terms of the loan.

Generic disclosure language required
* You are not required to complete this agreement merely because you have received these disclosures or have signed an application.
* If you obtain this loan, the lender will have a mortgage on your home. You could lose your home and any money put into it if you do not meet your obligation under the loan.

Loan-specific disclosure required
* Fixed rate - The APR, and the amount of the regular monthly payment (after any discount period if there is one), a statement that the interest rate may increase and the amount of the maximum monthly payment under the terms of the loan.

Re-disclosure required
* If the APR or the regular payment amount changes prior to closing, but after the required disclosure has been made, a re-disclosure and an additional three-day waiting period is required.

When Disclosure Must Be Received by a Borrower
Disclosure must be in writing and received by the borrower from the lender no less than three (3) business days prior to the date of loan closing.

Specific Situations That Cause a Loan to Be Subject to Section 32 Requirements
There are two situations that will cause a specific loan to be subject to Section 32 disclosure and prohibition requirements. A loan will be subject to Section 32 if either situation occurs. Both situations do not have to occur.

APR
If the APR of the loan exceeds the corresponding Treasury security rate by more than 10%, the loan is subject to Section 32. The corresponding Treasury security issue is determined by matching the month in which the loan application is made and the loan maturity with the Treasury security issue in that same month and with the same term of maturity. To determine the Treasury security rate to use for a specific calendar month, refer to Treasury security rates published on the 15th of the previous month.

Example of a loan subject to Section 32: Loan application month and like-maturity of a corresponding Treasury security issue has a rate 6.5%, but the loan rate (APR) is 17%, which is 10.5% greater than the Treasury security rate.

Points and Fees
Points and certain fees paid by the borrower, plus any compensation paid to the broker by the lender, must not exceed the greater of $400 or 8% of the total loan amount.

As a practical matter, loans of $5,000 or less are subject if appropriate points and fees exceed $400. Loans in excess of $5,000 have to be measured by the 8% rule.

Calculation of Loan Amount - When determining whether the ratio of fees to the "Total Loan Amount" exceeds 8%, the regulation requires that any real estate closing costs paid to the lender or its affiliate be included in the "Amount Financed" under "Truth In Lending" must be subtracted from the actual "Amount Financed" to arrive at the "Total Loan Amount" to be used in the 8% calculation.

* Points and fees to be included in the 8% calculation:
  - Prepaid finance charges, such as loan fees, points, origination fees, escrow fees, maintenance fees, and application fees.
  - All compensation paid to brokers, either by the borrower or the lender.
* Fees not included in the 8% calculation:
  - Fees for real estate closing costs, such as credit report fees, appraisal fees, title insurance fees, document preparation fees, and recording fees.
  - Credit insurance premiums, such as life and disability, paid to an affiliate.

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Prohibitions for the Lender If a Loan Is Subject to Section 32
If a loan is subject to Section 32, the following prohibitions will apply:

* Balloon payments on loans with maturities of less than five (5) years are not permitted.
* Negative amortization is not permitted.
* Actuarial refunds are required in the case of pre-computed loans under specific situations, as stated in Section 32.
* No prepaid loan payments can be required of the borrower out of the loan proceeds of more than two (2) payments.
* Prepayment penalties (in states where permitted by law):
  - Prepayment penalties are not permitted on subject loans if the borrower's total monthly debt-to-(gross) income ratio exceeds 50%.
  - Regardless of the 50% debt-to-income rule, no prepayment penalty can be assessed on loans refinanced by the same lender in whose name the existing loan was closed.
  - Prepayment penalties cannot be assessed beyond five (5) years of the loan date.

This letter is for informational purposes only and should not be relied upon as legal advice. The following tests are available to help you determine whether the Section 32 disclosure is required. The formula is generic and can be modified to suit your needs. Please consult legal counsel with questions regarding disclosure requirements.

Date loan Application Received:	**Maximum APR (T-Bill + 10):**
Loan Term:	
Proposed Note Rate:	**Proposed APR: %**
Proposed Payment: $	
T-Bill Rate Used: %	**Margin Used: %**

Ten Point Test: Fails Ten Point Test **Eight Point Test: Fails 8 Point Test** **Section 32 Mortgage: YES**