High-Cost, Higher-Priced…What's the Difference?
Comparison of the Similarities and Differences of Terms in Regulation Z

Regulation Z uses the terms "high-cost mortgage," "higher-priced mortgage" and "higher-priced covered transaction." The terms themselves and the rules related to each are confusingly similar. The brief narrative below and the comparison chart that follows attempt to alleviate the confusion surrounding these terms.

While Regulation Z employs each of these terms in the regulation, their use is limited to distinct, individual sections of the regulation, and their application is generally limited to that section. For example, Section 1026.32 defines a high-cost mortgage and establishes the requirements, limitations and prohibitions for these types of loans. The definition and the requirements, limitations and prohibitions in this section are applicable only to high-cost mortgages and do not apply to "higher-priced" mortgages which are covered in a different section of the regulation.

High-Cost Mortgages – Section 1026.32

A "high-cost mortgage" is any consumer credit transaction, both closed-end and open-end, that is secured by the consumer's **principal dwelling** (subject to certain exemptions) and which has either an interest rate in excess of established maximums, has points in fees in excess of established maximums or contains a prepayment penalty outside of prescribed limits. This section of the regulation establishes the requirements, prohibitions and restrictions that must be observed with respect to these types of mortgages. These requirements, prohibitions and restrictions, while they may be similar to those in other sections of the regulation, do not apply to other loan types.

This section requires the credit union to make additional disclosures, and to make certain disclosures more conspicuously than normally required. The rule also prohibits or restricts certain loan terms such as balloon payments, negative amortization, default interest rates and prepayment penalties among others.

Higher-Priced Mortgages – Section 1026.35

A "higher-priced mortgage loan" is a **closed-end** consumer credit transaction secured by the consumer's **principal dwelling** that has an interest rate in excess of established maximums depending on the amount of the loan and the lien position. This section of the regulation requires, subject to certain exemptions, a credit union to establish escrow accounts, to obtain appraisals, to provide appraisal-related disclosures, to provide a copy of the appraisal to the consumer and to determine the consumer's ability to repay. The rule also prohibits the credit union from cancelling an escrow account except under specific circumstances.

As with "high-cost mortgages," the requirements, prohibitions and restrictions for higher-priced mortgages, while they may be similar to those in other sections of the regulation, do not apply to other loan types.

Higher-Priced Covered Transactions and Qualified Mortgages – Section 1026.43

The term "higher-priced covered transaction" is used in connection with Regulation Z's requirements to determine a borrower's ability to repay and qualified mortgages. The interest rate associated with a loan is NOT (at least directly) a factor in determining whether a loan meets the requirements necessary to be considered a qualified mortgage under the general rule. The significance of a loan being designated as a “qualified mortgage” is that the creditor is **deemed** to have complied with the requirement that it make “a reasonable and good faith determination [t]hat the consumer will have a reasonable ability to repay the loan according to its terms.” This is a “safe harbor” for the credit union. A loan that is a “higher-priced covered transaction” does not receive the same protection. The determination of whether a loan is a “qualified mortgage” is made without regard to the loan’s interest rate. A loan that is otherwise a “qualified mortgage” but is a “higher-priced covered transaction” is **presumed** to comply with requirement stated above, but is not deemed to be in compliance. This presumption of compliance may be rebutted.

Column1	High-Cost Mortgage Loans Regulation Z Section 1026.32	Higher-Priced Mortgage Loans Regulation Z Section 1026.35	ATR/QM Rule Higher-Priced Covered Transaction Regulation Z Section 1026.43
Applies to	Principal Dwelling	Closed-End, Principal Dwelling	Any Transaction Secured by a Dwelling
Definition	A consumer credit transaction secured by a **principal dwelling** that **either:** a) Has an **APR** that exceeds the Average Prime Offer Rate by more than i) 6.5 percentage points for a **first-lien**, or ii) 8.5 percentage points for a **first-lien** if the dwelling is personal property and the loan amount is less than $50,000, or iii) 8.5 percentage points for a **subordinate-lien**, **OR** b) Has p**oints and fees** that exceed: i) **5%** of the total loan amount for a transaction with a loan amount of $20,000 or more, or ii) the **lesser of 8%** of the total loan amount or **$1,000** for a transaction with a loan amount of less than $20,000, **OR** c) Under the terms of the loan agreement the credit union can i) charge a **prepayment penalty** more than 36 months after consummation or account opening, or ii) charge a prepayment penalty that can exceed, in total, more than **2% of the amount prepaid**	A **closed-end** consumer credit transaction secured by the consumer's **principal dwelling** with an annual percentage rate **APR** that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set either: a) by 1.5 or more percentage points, for a loan secured by a **first lien** with a principal obligation at consummation that **does not exceed** the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; b) by 2.5 or more percentage points for loans secured by a **first lien** with a principal obligation at consummation that **exceeds** the limit in effect as of the date the transaction's interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; **OR** c) by 3.5 or more percentage points for loans secured by a **subordinate lien**.	**Any** consumer credit transaction that is **secured by a dwelling** with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by: a) 1.5 or more percentage points for a **first-lien** covered transaction, other than a qualified mortgage under paragraph (e)(5), (e)(6), or (f); b) by 3.5 or more percentage points for a **first-lien** covered transaction that is a qualified mortgage under paragraph (e)(5), (e)(6), or (f); or c) by 3.5 or more percentage points for a **subordinate-lien** covered transaction

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Exemptions	1) A **reverse mortgage** transaction subject to § 1026.33; 2) A transaction to finance the **initial construction** of a dwelling; 3) A transaction originated by a **Housing Finance Agency**, where the Housing Finance Agency is the creditor for the transaction; or 4) A transaction originated pursuant to the United States **Department of Agriculture's** Rural Development Section 502 Direct Loan Program	None	1) A home equity line of credit 2) A mortgage transaction secured by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D); 3) A reverse mortgage subject to § 1026.33; 4) A temporary or "bridge" loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling; 5) A construction phase of 12 months or less of a construction-to-permanent loan 6) An extension of credit made pursuant to a program administered by a Housing Finance Agency 7) An extension of credit by a) a creditor designated as a Community Development Financial Institution b) a creditor designated as a Downpayment Assistance through Secondary Financing Provider under HUD regulations c) a creditor designated as a Community Housing Development Organization d) a 501(c)(3) organization 8) An extension of credit made under the Emergency Economic Stabilization Act of 2008

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General Requirements	1) Provide Notice in Conspicuous Type Size - "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan." 2) Provide in Conspicuous Type Size - APR 3) Provide in Conspicuous Type Size - regular payment, minimum period payment example and any balloon payment 4) Provide in Conspicuous Type Size - a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be included in the contract by § 1026.30 5) Provide in Conspicuous Type Size - the amount borrowed and credit limit	1) Establish escrow accounts for first-liens except a) transaction secured by shares in a cooperative b) initial construction c) temporary or bridge loan d) reverse mortgage 2) Obtain appraisal except for a) qualified mortgage b) transaction secured by manufactured home c) transaction secured by mobile home, boat or trailer d) transaction to finance initial construction 3) Provide appraisal disclosure 4) Provide copy of appraisal to consumer 5) Determine Ability to Repay	None
Limitations and Restrictions	1) No balloon payment except under certain circumstances 2) No Negative Amortization 3) No payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds 4) No Increased in Interest Rate After Default 5) No rebates of interest following acceleration due to default calculated by a method less favorable than the actuarial method 6) No prepayment penalties 7) No demand feature permitting acceleration of the debt due to termination of the loan except in limited circumstances	1) May cancel escrow account only under limited circumstances 2) May charge prepayment penalty only under certain circumstances	None