

MAJOR ISSUES / CONCEPTS IN “PREDATORY LENDING” LEGISLATIVE DEBATE

CONCEPT	Notes
<b>Expand or Change Key HOEPA (a/k/a Section 32) “Trigger” Definitions</b>	
Lower Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 10%)	
Change Point & Fee Definitions or Include More Items Than HOEPA so Trigger May Be Reached More Often (HOEPA = points & fees > greater of 8% of total loan amount or \$451)	
Expand HOEPA to cover open-end credit transactions	
Apply certain restrictions to non-HOEPA loans	
<b>Restrictions on Loan Terms</b>	
No Negative Amortization	
No Balloons (seasonal/irregular income adjustments typically OK)	
No Call Provision (Debt Acceleration)	
No Advance Payments	
No Modification or Deferral Fees	
No Increased Interest Rate After Default	
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan	
No Enforcement if HCL Contract Leaves Blanks	
No Prepayment Fees or Penalties (or Very Limited)	
No Mandatory Arbitration Limiting Judicial Relief	
<b>Limitation on Sales &amp; Marketing</b>	
No Recommending or Encouraging Default on Existing Loan	
No Loan “Flipping” / Require “Tangible Net Benefit”	
No Lending Without Due Regard for Repayment Ability (HOEPA applies only in “pattern & practice” cases)	
No Lending Without Prior Credit Counseling	
<b>Point &amp; Fee &amp; Financing Limitations</b>	
Limit or Prohibit Financing of Points & Fees or Other Charges Payable to 3 <sup>rd</sup> Parties	
No Points & Fees if HCL Refinances Lender’s or Affiliate’s HCL	
No Financing of Prepayment Fees	
Limit Broker Fees and/or Total Charges	
No Financing of Credit Insurance (except monthly premium)	
<b>Additional Disclosures</b>	
Disclose total amount of Brokers’ Fees (direct & indirect), including “yield spread premiums”	
Disclose whether or not broker is borrower’s agent	
Notice At or Prior to Application in Debt Consolidation Loans	

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that Aggregate Amount & Number of Payments May Increase	
Notice at Application that Loan Not Necessarily Least Expensive & Should Shop Around	
Translate Certain Loan Documents into Language Other Than English (if another language used during discussions)	
Stronger HOEPA-Type Warnings	
Additional Notices When Foreclosing	
<b>Other Provisions</b>	
Home Improvement Contract Proceeds Must Be Payable Jointly to Borrower & Contractor, or at Borrower’s Option to agreed upon 3 <sup>rd</sup> Party Escrow Agent	
Required Reporting to Credit Bureaus	
Additional Governmental Reporting Requirements (e.g., extend HMDA-type reporting)	
Federal Preemption of State Laws / National Uniformity [Industry proposals]	
<b>Enforcement &amp; Liability</b>	
Substantial Monetary Penalties	
Add Right to Cure	
Violations Deemed Unfair & Deceptive Acts & Practices	
<b>Other Concepts</b>	
Various Other Restrictions on Home Improvement Lending / Contracting	
No Compensating, Coercing or Intimidating Appraiser to Influence Judgment on Property Value	
Prohibit payment of “yield spread premiums” (“YSPs”)	
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)	
Lender May Not Make Investments Backed By Loans That Violate Statute	
Broker Deemed to be Borrower’s Agent (e.g., like California)	
National / Tougher State Licensing for Brokers / Originators	
Prohibit securitizing loans that violate “predatory lending” restrictions	
Enhance Prohibitions on racial/ethnic “targeting”	
Apply Restrictions at City / County Levels	