

# Butera & Andrews

1301 Pennsylvania Ave., NW

Washington, DC 20004

Contact: Wright Andrews

202-347-6875 – [wandrews@butera-andrews.com](mailto:wandrews@butera-andrews.com)

## Summary Chart of Title I of H. 833 as Introduced By Representative Ney on February 14, 2003

<b>CONCEPT</b>	<b>H. 833<sup>1</sup></b>
<b>Expand or Change Key HOEPA (a/k/a Section 32) “Trigger” Definitions</b>	
Coverage	Same as HOEPA
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 8% for first lien; +10% for junior lien)	X (APR > T-bill + 8% for first lien mortgage; or + 10% for second lien mortgage.)
Points & Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$480 (for the year 2002 or \$488 for the year 2003)	X (points & fees > 6 % of total loan amount for loans >\$30,000; or points & fees > 7% for loans =< \$30,000) Not more than 2 bona fide discount points may be excluded.
Change Points & Fees Definition or Include More/Different Items in Than HOEPA so Trigger May Be Reached More Often	X (the language in <b>BOLD</b> is added to and the language <del>stricken</del> is deleted from HOEPA definition: <b>[T]he term “points and fees” shall exclude prepayment fees, yield-spread premiums, and borrower credits and shall include --</b> <ol style="list-style-type: none"> <li>1) all items included in the finance charge, except interest <b>and</b> the time-price differential;</li> <li>2) all compensation paid <b>directly</b> to mortgage brokers <b>by or on behalf of the consumer (other than borrower credits)</b>;</li> <li>3) each of the charges listed in section 106(e) (except an escrow for future payment of taxes <b>or insurance</b>), unless – <ol style="list-style-type: none"> <li>(i) the charge is reasonable <b>and competitive</b>;</li> <li>(ii) the creditor receives no direct <del>or indirect</del> compensation; and</li> <li>(iii) the charge is paid to a third party <del>unaffiliated with the creditor</del>;</li> <li>(iv) such other charges as the Board determines to be appropriate.</li> </ol> </li> </ol>
Bona Fide Discount Points Defined	Any loan discount point which is paid for the purpose of reducing, and which in fact results in a bona fide reduction of, the interest rate or time-price differential applicable to the loan if the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for mortgage market transactions.
<b>Restrictions on Loan Terms</b>	
No Negative Amortization	X (negative amortization allowed if it results from periods of temporary forbearance allowed by creditor)
No Balloons (seasonal/irregular income adjustments typically OK)	X (prohibited for loans with a term of less than 5 years (like HOEPA); the Act adds an exception for seasonal or irregular income and for bridge loans made in connection with the acquisition or construction of consumer’s principal dwelling; creditor must clearly disclose balloons, and that they are permissible but not required under the above-listed circumstances)
No Call Provision (Debt Acceleration)	X (OK if acceleration due to default or pursuant to due-on-sale provision or any action or omission by consumer that adversely affects creditor’s security interest in residence or any rights of creditor in such security)
No Advance Payments (referred to as “Prepayment of Period Payments From Proceeds”)	X
No Modification or Deferral Fees	X (OK if modification results in lower APR and then only if fee is comparable to fees imposed for similar transactions that are not HCLs; this does not apply if existing HCL is in default or more than 60 days delinquent, if the modification, renewal, extension, or amendment is part of the resolution or workout of the default or delinquency)
No (or Very Limited) Prepayment Fees or Penalties	X (pp allowed only if: <ol style="list-style-type: none"> <li>1) when mortgage is consummated: consumer is not liable for monthly indebtedness payments that are &gt; 50% of his monthly gross income; and consumer’s income and expenses are verified by a statement signed by consumer, credit report, and payment records (in cases of unemployment) or by an employer;</li> <li>2) pp applies only to prepayment made with funds not obtained through refinancing by creditor or his affiliate;</li> <li>3) pp does not apply after 4 years (HOEPA currently uses 5 years as a cut-off period); and</li> <li>4) pp is not prohibited under other applicable law)</li> </ol>

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No Increased Interest Rate Upon Default	X (does not apply to changes in variable interest rate based on index, as long as changes are not due to default or permissible acceleration by creditor)
No Mandatory Arbitration Limiting Judicial Relief	X (no “oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers”; the Act provides “safe harbor” if the arbitration clause (1) established the venue for arbitration in the fed. judicial district where real property is located; (2) meets AAA standards or any comparable standards of such other organization as may be approved by the Board of Governors of the Federal Reserve System, or any official or employee of the Board duly authorized by the Board; and (3) requires creditor to bear the reasonable costs for all parties during the first 2 days; if the above requirements are met, it is presumed that the arbitration clause does not violate this Act)
No Bad Faith Avoidance of Restrictions	X (by entering into reciprocal agreements; dividing any loan transaction into separate parts; and by structuring or restructuring this loan as another form of loan; the Act provides for the definition of “reciprocal agreements;” Board may prescribe regulations to enforce this section)
<b>Limitation on Sales &amp; Marketing</b>	
No Lending Without Specific Disclosure	X (the following language is added at the end of the current HOEPA disclosure): <ul style="list-style-type: none"> <li>(1) The rate of interest and the amount of fees you pay on a loan may vary depending on which lender or broker you select.</li> <li>(2) The timing and amount of payments on debts you already are carrying contribute to the credit rating that is used to determine whether you may get a new loan and how much you will pay for that new loan. You should NOT accept any advice to ignore or delay making any payments on loans you already have, even if those loans will be paid off with the new loan.</li> <li>(3) You may get into serious financial difficulties if you use this loan to pay off old debts and then run up other new debts.</li> </ul>
No Lending Without Due Regard for Repayment Ability	X (lender should consider consumer’s current and expected income, current obligations, and employment. It is presumed that the loan was made with due regard to repayment ability if consumer’s total monthly debts, including amounts owed under the loan, do not exceed 53% of his monthly gross income. All sources of income must be <u>verified</u> by the credit application, consumer’s financial statement, credit report, or any other reasonable means; if repayment ability is based substantially on fixed income, income verification must include reasonable documentation of such fixed income, in addition to any statement by consumer. If consumer has no earned income, creditor may not rely on stated income; independent verification is required. Presumption or repayment ability <u>cannot be applied</u> in cases where consumer has a loan with balloons (where monthly payments would otherwise count towards consumer’s total monthly debts))
No Recommending or Encouraging Default on Existing Loan	X
<b>Points &amp; Fees &amp; Financing Limitations</b>	
No Refinancing of Current HCL with Another HCL During 1-year Period After Consummation	X (no mortgage broker may arrange for such refinancing; exception for this kind of refinancing: if scheduled finance charge for current HCL > scheduled finance charge for subsequent HCL by an amount > fees and charges for subsequent mortgage)
No Refinancing of Certain Low-Interest Loans	X (no refinancing of below-market interest rate or subsidized loans made by gov’n’t, gov’n’t-sponsored enterprise, or nonprofit corporation (other than mutual bank, mutual savings association, or credit union) during 10 years after consummation without express consent of holder of loan or certification from a person/organization certified under Section 106(e) of HUD Act of 1968 that creditor obtained counseling)

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Disclosure of Financing of Points and Fees	X (if any portion of p&f or other charges payable to creditor or any 3 <sup>rd</sup> party are included, directly or indirectly, in the principal amount of the loan or otherwise financed by creditor, creditor must disclose such fact to consumer together with statement that such treatment of p&f or charge is not legally required)
No Financing of Credit Insurance (except monthly premium)	X (no offer or sale of insurance, guarantee, or indemnification for repayment of outstanding balance of HCL against death, illness, accident, disability, or unemployment)
No Fee For Balance	X (if info provided by fax or courier service – fee is OK if comparable to similar transactions in connection with loans that are not HCL; if more than 4 requests per calendar year, reasonable fee is OK during remainder of year; balance info must be provided within reasonable time, no more than 5 business days)
<b>Other Provisions</b>	
Requirements Relating to Home Improvement Contracts	X (creditor may not use proceeds of HCL to make final payment or payment in full to home improvement contractor without proof of completion (i.e. signed statement by consumer))
Profiting on Foreclosures Prohibited	X (if creditor, its assignee, or their affiliate is the successful bidder at a judicial or nonjudicial foreclosure sale of a residence of a consumer that was a security for HCL, any profit realized by a creditor, its assignee, or their affiliate upon the subsequent resale or other disposition of the property that was the security for HCL shall be paid to consumer; if creditor, its assignee, or their affiliate is not the successful bidder, any surplus realized in excess of the sum of the amount to which creditor, its assignee, or their affiliate or others have a right under the law of the State where the real property that was the security for HCL is located and all foreclosure and postforeclosure expenses, etc. (as specified in the Act) shall be paid to the consumer)
Reporting Requirements	X (full file credit report with respect to all HCL must be reported at least quarterly to a consumer reporting agency; any acceptance by creditor of application for consumer credit transaction that would cause it to be defined as HCL is treated as adverse action with respect to consumer for purposes of section 615(a) –(b) and 612(b) of Fair Credit Reporting Act, except that, creditor need not refer to such action as adverse in any communication with consumer)
<b>Enforcement &amp; Liability</b>	
Amendment Related to Liability of Assignees	X (the language in <b>BOLD</b> is added to the current HOEPA assignee liability provisions: <b>(1) IN GENERAL - Any person who purchases or is otherwise assigned a high-cost mortgage shall be subject to an action under this title only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure or the underlying promissory note.</b> <b>(2) AFFIRMATIVE CLAIMS AND DEFENSES - Any person who purchases or is otherwise assigned a high-cost mortgage that was made, arranged, or assigned by a person financing home improvements to the dwelling of a consumer shall be subject to all affirmative claims and defenses which the consumer may have against the seller, home improvement contractor, broker, or creditor with respect to such mortgage or home improvements.</b> <b>(3) SAFE HARBOR - A person who maintains and exercises procedures that are reasonably adapted to prevent the acquisition of high-cost mortgages containing violations of this title, which procedures are consistent with established industry norms and practices for secondary mortgage market transactions, shall not be liable for any such violations in connection with any loan acquired pursuant to such procedures.</b> <b>(4) CLARIFICATION OF TERMS - For purposes of this title, the terms ‘purchaser’, ‘assignee’, and ‘person who purchases or is otherwise assigned’ includes -</b> <b>(A) any person acting on behalf of the purchaser or assignee; and</b> <b>(B) with regard to credit obligations secured by consumers’ dwellings included in a pool for the purpose of issuing asset-backed securities, the</b>

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	<p><b>issuer of the asset-backed security, the depositor entity holding such pool, and any affiliate of such issuer or depository entity.</b></p> <p>(5) LIMITATION ON DAMAGES - Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (1) may not exceed - (A) with respect to actions based upon a violation of this subchapter, the amount specified in section 1640 of this title; and (B) with respect to all other causes of action, the sum of - (i) the amount of all remaining indebtedness; and (ii) the total amount paid by the consumer in connection with the transaction.</p> <p>(6) OFFSET - The amount of damages that may be awarded under paragraph (5)(B) shall be reduced by the amount of any damages awarded under paragraph (5)(A).</p> <p>(7) NOTICE - Any person who sells or otherwise assigns a mortgage referred to in section 1602(aa) of this title shall include a prominent notice of the potential liability under this subsection as determined by the Board.</p>
Unintentional Violations and Seller's Right to Cure	X (no liability if appropriate restitution made within 60 days after discovering error and prior to institution of action)
Coordination of Class Action Damages With Actual Damages	X (maximum amount of damages imposed on person in class actions must be reduced by aggregate amount of actual damages for which such person is liable to members of class; ct must consider pattern and practices of person giving rise to violations)
Federal Preemption	X (lengthy provision; includes definition of "mortgage lending activities" and "law of any state;" clarifies primary enforcement authority of states with respect to state-chartered entities; exempts certain state laws from the preemption)
Determination by Board of Governors of FRS	X (Board of Governors of Federal Reserve System shall determine whether specific state law is preempted and cause such determination to be published if FR)
Effective Date	1 year after the date of enactment.
Voluntary Compliance	No civil liability if voluntary compliance within the 1 year period upon enactment.

### Summary highlights of Title I of H. 833:

- The high-cost loan threshold is reached by either of the two triggers: the APR trigger (T-bill +8% for a first lien and +10% for a second lien), the points & fees trigger (6% of total loan amount for loans > \$30,000; or 7% of total loan amount for loans =< \$30,000).
- The Act changes the points and fees definition, e.g. prepayment fees and yield spread premiums are explicitly excluded.
- **Restrictions on Loan Terms:**
  - The Act prohibits: 1) negative amortization; 2) balloons for loans with a term of less than 5 years; 3) call provision; 4) advance payments; 5) modification of deferral fees with certain exceptions; 6) prepayment penalties unless certain requirements are met; 7) increased interest rate upon default; 8) mandatory arbitration (safe harbor is provided for certain arbitration agreements); 9) bad faith avoidance of restrictions.
- **Limitations on Sales and Marketing:**
  - The Act requires: 1) specific disclosures; 2) consideration of repayment ability.
  - The Act prohibits recommendation or encouragement of default.
- **Limitations of Points and Fees:**

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- The Act prohibits: 1) refinancing of current HCL with another HCL during a 1-year period after consummation; 2) refinancing of certain low-interest loans; 3) financing of single premium credit insurance; 4) fee for balance.
- The Act requires specific disclosure of financing of points and fees.
- **Other Provisions:**
  - The Act further regulates payments under home improvement contracts, prohibits profiting on foreclosures and requires quarterly reporting to credit bureaus.
- **Enforcement and Liability:**
  - The Act amends the HOEPA provisions related to liability of assignees, and provisions related to seller's right to cure.
  - The Act provides for provisions coordinating class action damages with actual damages.
  - Voluntary compliance within 1-year period upon enactment protects creditors from civil liability.

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<sup>i</sup> Please note that only "Title I – High-Cost Mortgages" of the Act is contained in the Summary Chart. The Act includes also two other titles, "Title II – Consumer Mortgage Protection Board" and "Title III – Requirements for Mortgage Brokers," which are, however, not included in the Summary Chart.

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