

Home Equity Lines of Credit Gaps in Coverage & Exemptions from Regulations



National
Consumer Law
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Consumers with HELOCs have substantially fewer and weaker protections than homeowners with other types of mortgages:

- The federal Flood Disaster Protection Act does not require servicers to escrow for flood insurance for HELOCs.¹
- The Electronic Funds Transfer Act does not apply to HELOCs.²
- The minimum number of loans a lender must originate before becoming subject to the Home Mortgage Disclosure Act (HMDA)³ data reporting requirements is significantly higher for HELOCs than closed-end loans.⁴

Parts of the Truth in Lending Act and Regulation Z⁵ exclude or have weaker coverage for HELOCs:

- Under TILA, the APR for a HELOC includes only interest—all other finance charges are disregarded when calculating the APR.⁶
- TILA's restrictions on loan originators, their compensation, and steering do not apply to HELOCs.⁷
- TILA's bans on mandatory arbitration clauses and on financing credit insurance only apply to HELOCs secured by the consumer's *principal* dwelling.⁸
- TILA's duty to underwrite for ability to repay only applies to high-cost HELOCs.⁹
- TILA's additional protections for higher-priced mortgage loans do not apply to HELOCs.¹⁰
- TILA's ban on imposing fees before the creditor has provided the required early disclosures or account-opening disclosures does not apply to HELOCs.¹¹
- The ban on pyramiding late fees for closed-end mortgages¹² only applies to high-cost HELOCs.¹³
- The TILA-RESPA integrated disclosure rules and forms do not apply to HELOCs.¹⁴
- Lenders are not required to provide the good faith estimate (HUD-1) described in Regulation X.¹⁵ Instead HELOCs are only subject to the special HELOC requirements in Regulation Z,¹⁶ which are substantially less consumer-friendly.
- The disclosures for regular credit cards and those tied to a HELOC cannot be compared, making it difficult for consumers to know which credit card to use.

Protections added by the Credit CARD Act of 2009 do not apply to credit cards issued in connection with HELOCs:

- The limitations on penalty fees do not apply to HELOC cards,¹⁷ including the CFPB's proposed \$8 safe harbor for late fees.
- The 25% cap on fees charged to the credit line do not apply to HELOC cards.¹⁸

The Real Estate Settlement Procedures Act and Regulation X¹⁹ also have weaker rules for HELOCs.

- In general, RESPA's servicing rules do not apply to HELOCs whenever the Act or rule uses the term "mortgage loan."²⁰
- The duty to provide a transfer of servicing statement, the 60-day ban on late fees, and the 60-day safe harbor for payments sent to the old servicer do not apply to HELOCs.²¹
- The duty to respond to a qualified written request,²² including notices of error and requests for information, does not apply to HELOCs.²³
- HELOC creditors and servicers are not subject to the Regulation X duty to respond to a request for the name of the note owner.²⁴
- The Regulation X obligation for servicers to maintain certain policies and procedures does not apply to HELOCs.²⁵
- The Regulation X requirements pertaining to loss mitigation,²⁶ early intervention,²⁷ and maintaining continuity of contact²⁸ do not apply either.

For more information, contact National Consumer Law Center Staff Attorney Andrew Pizor (apizor@nclc.org) or (202) 452-6252 ext. 106.

Endnotes

¹ 42 U.S.C. § 4012a(d)(1). See *generally* National Consumer Law Center, Mortgage Lending § 7.7 (2d ed. 2014), updated at www.nclc.org/library.

² *Shames-Yeakel v. Citizens Fin. Bank*, 677 F. Supp. 2d 994, 1006-1007 (N.D. Ill. 2009) (construing statute).

³ See *generally* National Consumer Law Center, Mortgage Lending § 3.15 (2d ed. 2014).

⁴ Compare 12 C.F.R. § 1003.2(g)(1)(v)(A) (25 loan threshold for closed-end credit) with § 1003.2(g)(1)(v)(B) (200 loan threshold for HELOCs).

⁵ See National Consumer Law Center, Truth in Lending Ch. 8 (9th ed. 2015), updated at www.nclc.org/library (chapter on HELOCs).

⁶ Reg. Z §§ 1026.6(a)(3)(vi), 1026.14(b), 1026.14(c)(3), 1026.40 (prefatory); Reg. Z Off'l Interpretations § 1026.14(b)-1. See National Consumer Law Center, Truth in Lending § 8.1.5 (9th ed. 2015).

⁷ Reg. Z § 1026.36(b), (d)-(f).

⁸ Reg. Z § 1026.36(b), (h)-(k).

⁹ Reg. Z §§ 1026.34(a)(4) ("In connection with an open-end, high-cost mortgage, a creditor shall not open a plan for a consumer where credit is or will be extended without regard to the consumer's repayment ability as of account opening"); Reg. Z § 1026.43(a)(1) (excluding HELOCs from ability-to-repay rule for mortgages); § 1026.51(a)(1)(i) (excluding HELOCs from ability-to-repay rule for open-end credit).

¹⁰ Reg. Z § 1026.35(a)(1) (defining "higher-priced mortgage loan" as closed-end credit).

¹¹ Reg. Z § 1026.19(e)(1)(i) and (e)(2) (limitation on pre-disclosure fees for loans subject to integrated disclosure rule, which excludes HELOCs); § 1026.5(b)(1)(iv) (restricting pre-disclosure fees for open-end credit but excluding HELOCs).

¹² Reg. Z § 1026.36(c)(2).

¹³ Reg. Z § 1026.34(a)(8)(i), (iii) (ban on pyramiding for all high-cost mortgages).

¹⁴ Reg. Z § 1026.19(e)(1), (f)(1).

¹⁵ Reg. X § 1024.7(h).

¹⁶ Reg. Z § 1026.40.

¹⁷ Reg. Z § 1026.52(b).

¹⁸ Reg. Z § 1026.52(a).

¹⁹ See *generally* National Consumer Law Center, Mortgage Lending § 3.2 (2d ed. 2014) (describing RESPA).

²⁰ Reg. X § 1024.31 (defining "mortgage loan" as "any federally related mortgage loan, as that term is defined in §1024.2 subject to the exemptions in §1024.5(b), but does not include open-end lines of credit (home equity plans).").

²¹ 12 U.S.C. § 2605(a)-(d); Reg. X § 1024.33(b) and (c).

²² 12 U.S.C. § 2605(e)

²³ Reg. X §§ 1024.35 and 1024.36.

²⁴ Reg. X § 1024.36(d).

²⁵ Reg. X § 1024.38.

²⁶ Reg. X § 1024.41.

²⁷ Reg. X § 1024.39.

²⁸ Reg. X § 1024.40.