

NEW YORK HIGH-COST RECAP

What loans are subject to rule:

A consumer-purpose loan made to a natural person (including a trust) secured by the borrower's principal dwelling up to the greater of \$300,000 or the FNMA loan limitations.

Fees included:

Points and fees include all direct or indirect compensation to the mortgage broker and/or creditor, as well as any financed credit insurance. Up to two bona fide discount points may be excluded from the points and fees test if the undiscounted interest rate does not exceed by more than one percentage point the comparable US Treasury Securities from the 15th of the month immediately preceding the application receipt. Any bona fide discount points funded through a grant from a government agency or 501(c)(3) organization is also excluded.

The loan is considered a high-cost transaction if:

- Points and fees exceed 5 % of total loan amount if the total loan amount is \$50,000 or more;
- Points and fees exceed 6 % of total loan amount if the total loan amount is \$50,000 or more and the loan is purchase money guaranteed by FHA or VA; or
- Points and fees exceed the greater of 6% or \$1,500 if the total loan amount is less than \$50,000.

APR threshold test:

The APR is compared against the Treasury Yield of comparable maturity of the loan as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

The loan is considered a high-cost transaction if:

First Lien: APR is 8% or higher than comparable Treasury Yield figure

Subordinate Lien: APR is 9% or higher than comparable Treasury Yield figure

Additional limitations:

- Contractors on home improvements must be paid to borrower or borrower and contractor jointly, or at borrower's election, through third party escrow agent.
- May not finance points and/or fees exceeding 3% of principal or maximum line of credit
- No prepayment penalty.
- No finance of prepayment penalty may be charged in refinance if lender or affiliate originated the original loan.
- Yield spread premiums are prohibited.

- Taxes and insurance must be escrowed at time of closing unless escrows already collected on a loan with superior lien position or borrower can provide proof of timely payments of taxes and insurance on a previous home loan for at least 12 months.
- No teaser rate of less than 6 months.
- Lender may not encourage default of borrower's existing debts in anticipation of high-cost home loan closing.
- Lender must take borrower's ability to repay into account when underwriting a high-cost home loan.
- Lender must provide a list of New York financial counselors at application along with a disclosure to consider financial counseling prior to closing.
- A high-cost home loan may not refinance an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which bears a below-market interest rate at the time of origination, or has nonstandard payment terms beneficial to the borrower, unless the lender has proof of the borrower receiving home loan counseling.
- No advance payments in excess of two periodic payments may be made from the loan proceeds.
- No modification or deferral fees.
- No oppressive mandatory arbitration clauses.
- No financing of credit insurance and other ancillary products.
- Refinancing without tangible benefit to borrower, as defined, is considered prohibited flipping.
- No balloon payment for 15 years.
- No negative amortization.
- No increased default interest rate.
- No call provision.

Disclosures required:

High cost home loan mortgages shall include a legend on top of the mortgage in 12-point type stating that the mortgage is a high cost home loan subject to N.Y. Comp. Codes R. & Regs. tit. 3, Part 41, and section 6-L of the Banking Law. If the mortgage document form is prescribed by a government-sponsored entity, such legend shall be placed on a separate document and attached to the front of the mortgage document.

Consumer Caution and Home Ownership Counseling Notice must be provided within 3 days of determining the loan is a high-cost, and at least 10 days prior to closing. This is Doc ID 3965 and 3982 in the PPDocs, Inc. document library.

Underlying Regulation:

- NY High Cost Loan Law: [NY Banking Law 6-L https://www.nysenate.gov/legislation/laws/BNK/6-L](https://www.nysenate.gov/legislation/laws/BNK/6-L)
- Restrictions and Limitations on High Cost Home Loans: [N.Y. Comp. Codes R. & Regs. tit. 3, Part 41 https://www.law.cornell.edu/regulations/new-york/title-3/chapter-1/part-41](https://www.law.cornell.edu/regulations/new-york/title-3/chapter-1/part-41)