

# How the New Government Regulations May Impact Closing Dates

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The mortgage industry is certainly undergoing many changes to help provide homebuyers better information when it comes to financing a home. We're providing this document to help you understand some of the new regulations and investor requirements that are taking effect – especially those that impact timelines. We are dedicated to working with our industry colleagues to help ensure these changes do not detract from an outstanding experience for our mutual customers.

## HERA and HVCC - background information

In 2008, the Home Ownership and Equity Protection Act (HOEPA) and the Housing and Economic Recovery Act (HERA) were passed by Congress, and the Federal Reserve Board published the regulations under the Truth in Lending Act. These regulations were written to provide a more transparent, level and fair regulation of the real estate industry; to add additional steps to help prevent deceptive lending practices; and to protect consumers by making them more informed – and therefore more confident – in their home financing choices. In addition, Fannie Mae and Freddie Mac adopted the Home Valuation Code of Conduct (HVCC) in 2008 to reinforce appraiser independence, valuation protections, and enhance the overall integrity of the valuation process.

*Effective  
May 1, 2009*



### **HVCC:**

Promotes the accuracy of appraisals by shielding appraisers from undue influence, and ensuring that borrowers have sufficient notice of appraisal content by requiring that borrowers receive a copy of their appraisal reports no less than three days prior to the closing of their loan absent a borrower waiver of this requirement.

*Effective  
July 30, 2009*



### **HERA:**

Amends the Truth in Lending Act (TIL), implemented through Regulation Z. Has a number of provisions including the Mortgage Disclosure Improvement Act, which changes the Truth in Lending Act requirements surrounding early and final disclosures to homebuyers and addresses the timing of when fees can be charged.

## Four key elements you need to know

### **1** If the homebuyer is financing the property, these new regulatory and investor guidelines will impact — and could even dictate — the closing date.

Historically, homebuyers and sellers would agree on a closing date, and then service providers – including lenders – would work as best they could toward meeting that date. Going forward, purchase contracts can still be written with a specific closing date in mind, but all parties need to take into account that the earliest any home purchase transaction can close is **7 business days** after the homebuyer is issued his or her initial mortgage disclosures from the lender. (Note: Saturdays, with the exception of federal holidays, do count as a business day for the purpose of disclosures only.)

### **2** Upfront fees cannot be collected by the lender (except for a credit report fee) until the initial disclosures are received. If the disclosures are overnighted, they are considered “received” the next business day — (excluding Saturdays) allowing the fees to be collected on the following business day.

Historically, upfront fees could be collected immediately at the time of application for both in person and phone applications. Moving forward, the homebuyer must receive his or her initial disclosures before upfront fees can be collected. The only exception is the credit report fee which can be collected at application.

### **3** The homebuyer must be provided with a copy of his or her appraisal a minimum of 3 business days prior to closing.

To help expedite the process, we have elected to have a copy of the appraisal issued directly to the homebuyer – and the homebuyer must receive the appraisal at least **3 business days prior** to the mortgage closing. This means the homebuyer may receive his or her appraisal before or simultaneous to the lender receiving their copy. If the homebuyer believes the 3-business-day required review period is not necessary for whatever reason, he or she has the right to waive that requirement.

### **4** An increase of more than .125% in the Annual Percentage Rate (APR) from the initial Truth in Lending Disclosure (TIL) requires the TIL disclosure to be revised and reissued to the homebuyer. The homebuyer must receive a revised TIL disclosure at least 3 business days before closing, providing the homebuyer with the time required to determine if the homebuyer is comfortable with his or her loan choice. If mailed, the TIL disclosure is considered “received” 3 business days after mailing.

A more typical contract date may be 30-45 days — or possibly longer (such as with a new construction loan). Considering that many things occur and may be changed or finalized throughout the course of the transaction, there are a number of things that can impact the homebuyer’s APR. Therefore it is critical on the front end to ensure that estimated fees are as accurate as possible.

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*Go to page 4 to see how these elements play out in a calendar.*

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#### Potential impacts to the APR

- Unlocked rate
- Change in loan amount
- Product change
- Rate re-lock due to market improvement
- Change in closing date
- Changes to fees, inclusive of settlement agent fees

# The new mortgage process and timeline

Perhaps the easiest way to understand the new process and timelines required by these regulations for a primary residence or second home purchase transaction is with a calendar. Since most transactions are not “rush” deals — but rather close in a 30-60 day timeframe, the calendar below illustrates a desired 30-day close. It is wise to plan for at least a 30-day close.

## Other assumptions in the illustration below:

- The homebuyer applies on the first of the month.
- The application is taken over the phone.
- The homebuyer locks in the interest rate at least 10 business days prior to the desired close date of July 30.
- A home equity loan was not added to the transaction (doing so would require the same disclosure timelines to start for the home equity loan).
- The estimated fees increased the APR more than .125% requiring a re-disclosure of the TIL which we call the PreClosing TIL. (The revised APR was final.)
- The appraisal was ordered and came in at or above value, and the homebuyer received his or her copy at least 3 business days prior to the desired close date of July 30.
- The homebuyer signs and closes on July 30 (the last day of the required final disclosure review period).

If the application is taken in person (instead of a phone application in the example below), then we may be ready to close sooner because the initial disclosures are issued and the upfront fees can be collected at application.

**Note:** Saturdays are considered a business day only for the purposes of disclosures, unless they are a Federal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		June 30 Homebuyer finalizes contract of sale on a residential property	July 1 Homebuyer makes phone application	2	3 Initial disclosures printed and overnighted to homebuyer	4 Federal holiday
5	6 Initial disclosures Day 1 Overnight mail received by customer	7 Initial disclosures Day 2 Earliest date allowed to collect upfront fees – unless the application was taken in person	8 Initial disclosures Day 3	9 Initial disclosures Day 4	10 Initial disclosures Day 5	11 Initial disclosures Day 6
12	13 Initial disclosures Day 7 Earliest date to close if appraisal is not required.	14	15	16	17	18
19	20 Assume desired close date is July 30: Ideally rate locked at least 10 business days prior to close	21	22 Appraisal must be completed and mailed to the homebuyer 7 business days prior to close	23 PreClosing TIL must be mailed. APR is final	24 PreClosing TIL Mail Day 1	25 PreClosing TIL Mail Day 2
26	27 PreClosing TIL Mail Day 3; PreClosing TIL received	28 Appraisal Minimum Day 1 PreClosing TIL Homebuyer Review Day 1	29 Appraisal Minimum Day 2 PreClosing TIL Homebuyer Review Day 2	30 Appraisal Minimum Day 3 PreClosing TIL Homebuyer Review Day 3 Homebuyer can sign/close	31	

## Working together to ensure timely closings - everyone plays a key role

Homebuyer	REALTOR®/Builder	Home Mortgage Consultant	Settlement Agent/ Attorney
<ul style="list-style-type: none"> <li>• Obtain a credit-checked preapproval before you start to shop for a home. (Applying in person may help expedite the process.)</li> <li>• Review the timeline and potential impacts with your home mortgage consultant so you can keep your REALTOR® or Builder informed. It is wise to plan for at least a 30-day close.</li> <li>• In the initial disclosure packet you receive, the impacts of the new regulations and investor requirements are outlined. Make sure to pose any questions to your home mortgage consultant.</li> <li>• Know that these new regulations and investor requirements are in place to ensure you have time to consider your loan choice and feel confident to move forward.</li> <li>• Review the appraisal delivery disclosure and determine whether or not you wish to waive the 3-business-day review period prior to closing.</li> <li>• Understand that the interest rate on your loan impacts the APR. This means that until you lock in your rate, an exact APR cannot be determined. Minimally plan on locking at least 10 business days prior to the date you wish to close.</li> <li>• Understand that a change in mortgage product could impact your APR and therefore your estimated closing date.</li> <li>• Understand that changes in fees by third parties such as your settlement agent could also impact your closing date.</li> </ul>	<ul style="list-style-type: none"> <li>• Set realistic expectations upfront and throughout the transaction with the listing agent, the seller and the homebuyer in regards to potential closing dates. It is wise to plan for at least a 30-day close.</li> <li>• Discuss these new provisions with your settlement agents immediately to avoid unnecessary delays down the road. It is critical that any third party fees that impact the APR are accurate because any change of fees that increases the APR more than .125% will require the TIL — allowing 7 business days before the transaction can close. This allows 3 business days for mailing and provides the homebuyers with the time required to determine if they are comfortable with their loan choice.</li> <li>• Provide the settlement agent information to the lender as early in the process as possible.</li> <li>• Make sure the homebuyers understand that their interest rate impacts their APR and that until that rate is locked (which is at their discretion), the initial TIL will not be accurate, so a PreClosing TIL disclosure will likely be needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Help homebuyers understand timelines and anything that can impact their closing date. It is wise to encourage homebuyers, REALTORS®, and Builders to plan for at least a 30-day close.</li> <li>• Take applications and help homebuyers understand their product options.</li> <li>• Issue homebuyers their initial disclosures.</li> <li>• Collect fees. (Note: unless the initial disclosures are handed to the homebuyer the same day as you take his or her application, fees cannot be collected until the customer has received his or her initial disclosures).</li> <li>• Ensure the loan is locked at least 10 business days prior to the desired close date (4 business days for the Reverse Fixed Rate product).</li> <li>• If the APR increases more than .125% then the lender must re-disclose the TIL 7 business days before the transaction can close (4 business days for the Reverse Fixed Rate product). This allows 3 business days for mailing and provides the homebuyers with the time required to determine if they are comfortable with their loan choice.</li> </ul>	<ul style="list-style-type: none"> <li>• Make sure any third party fees that impact the APR are accurate – understanding any change to fees that impact the APR could lead to a required re-disclosure of the TIL if the changes collectively increase the APR more than .125% ("PreClosing TIL"). The homebuyer must be given an additional 3-business-day review period prior to closing, after receipt of the PreClosing TIL.</li> <li>• Work proactively on providing a preliminary HUD with accurate fees to lenders at least 10 business days before closing. This will enable lenders to issue a PreClosing TIL 7 business days prior to the scheduled closing date. This allows 3 business days for mailing and provides the homebuyers with the time required to determine if they are comfortable with their loan choice.</li> </ul>
<h3>The best way to expedite the close is to lock in the rate and fees as soon as possible.</h3>			
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## Frequently asked questions

### 1. How do these new requirements impact applications taken prior to their effective dates?

- For HVCC, applications with an identified property prior to May 1, 2009 are not impacted.
- For HERA, applications with an identified property prior to July 30, 2009 are not impacted.

### 2. Do the timing requirements for the issuance of the initial disclosure and re-disclosure, and fee collection apply to investment properties?

No. These requirements only apply to primary residence and second home transactions.

### 3. The final TIL must be received 3 business days prior to closing. Is that 3 full days?

Closing can occur on the third business day **after** receipt. We must allow 3 business days for mailing, then the homebuyers have the 3-business-day review period required to determine if they are comfortable with their loan choice.

### 4. What if the homebuyer adds a home equity loan or line of credit after the initial application? How are disclosures impacted?

- **Home equity loan:** The initial disclosure period starts over and all disclosures must be issued for the home equity loan.
- **Home equity line of credit:** There is no impact.

### 5. What if the homebuyer is delayed in paying his or her upfront fees?

If the upfront fees are not provided by the homebuyer in a timely manner, this will likely impact the lender's ability to order certain vendor services (e.g., the appraisal) and move forward with processing the loan until the upfront fees are received. This could affect our ability to provide the best level of service and to meet the desired closing date.

### 6. Can last minute/rush deals still be accommodated?

The new regulations and investor guidelines definitely redefine "rush." The minimum number of days to close a transaction 7 business days after the initial disclosures are delivered or placed in the mail. Remember, however, this would be a best-case scenario. If the APR increases by more than .125%, a PreClosing TIL will be required and will add an additional 7 business days to the timing. This allows 3 business days for mailing and provides the homebuyers with the time required to determine if they are comfortable with their loan choice. It is wise to plan on a minimum of 30 days to close.

### 7. Can the credit report fees be collected at the time of application?

Yes. The credit report fee is the only fee that can be collected at application.

### 8. When a phone application is taken, can a post-dated check, credit card or other payment information be collected and held until upfront fee payment is allowed?

No. Fees or payment information can not be collected prior to the allowed upfront fee collection date which is the next business day after the initial disclosures are received. If this is an in-person application, issuance of disclosures and collection of upfront fees may happen on the same day.

### 9. Can fees be collected at an in-person application?

Yes. If the application is taken in person, this may help us to close sooner.

### 10. How do you know if the initial APR has to be re-disclosed?

An APR increase of more than .125% from the initial TIL requires the lender to update and re-issue — and the homebuyer to receive — the new and final APR via the Truth in Lending (TIL) disclosure (referred to as the PreClosing TIL) a minimum of 3 business days prior to the close date. If the change is less than .125%, then no re-disclosure is required.

### 11. For the purpose of these new disclosure timelines, what is considered a business day?

All calendar days except Sundays and Federal holidays.

### 12. How does the new fee collection regulation impact *Builder Best*<sup>®</sup> and *Builder Best Expanded Options* loans?

**Builder Best** locks allow for rate locks prior to fee collection; however, the fee/deposit cannot be collected until the customer has received his/her initial disclosures. If the disclosures are overnighted, they are considered "received" the next business day.

### 13. Fees may not be collected from the homebuyer until the next business day after the initial disclosures are received (unless an in-person application was taken). Can seller-paid fees be collected before that time? For example, it is common in some areas that the seller pays the appraisal fee.

No, the homebuyer on the application must have received the initial disclosures before any fees can be collected on behalf of the homebuyer. This includes any party, including the seller, associated with the transaction.

**14. Can the TIL re-disclosure be sent within the 7-business-day period from when the initial disclosures are issued?**

Yes, the required re-disclosure of the PreClosing TIL can be sent within the first 7-business-day period. The PreClosing TIL is only required when there is an increase of more than .125% in the Annual Percentage Rate (APR) from the initial Truth in Lending Disclosure (TIL).

**15. Can the loan be locked at the time of application if fees have not been collected yet?**

Yes.

**16. Do these regulations and investor requirements only impact purchase transactions or are refinances subject to these same guidelines?**

Both purchase and refinance transactions are impacted.

**17. Is the 3-business-day right of rescission still in effect?**

Yes, the right of rescission is still in effect for refinance transactions. The loan can close 7 business days after any TIL re-disclosure is issued, then the right-of-rescission period begins. The loan can fund after the rescission period expires.

# Let's work together

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