

# How the new government laws and investor requirements may impact closing dates

The mortgage industry is certainly undergoing many changes to help provide consumers better information when it comes to financing a home. We're providing this document to help you understand some of the new laws and investor requirements that are taking effect—especially those that impact timelines.

## HOEPA, HERA-MDIA and HVCC — background information

In 2008, amendments to 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, Regulation Z. These laws 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 consumers have sufficient notice of appraisal content by requiring that consumers receive a copy of their appraisal reports no less than 3 days prior to the closing of their loan absent a consumer waiver of this requirement.

*Effective  
July 30, 2009*

### **HERA-MDIA:**

Amends the Truth in Lending Act (TILA), 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 consumers and addresses the timing of when fees can be charged.

# Four key elements you need to know

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

Historically, all parties to the transaction would agree on a closing date, and then work as best they could toward meeting that date. Going forward, 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 financing transaction can close is **7 business days after** the consumer is issued his or her initial mortgage disclosures from the lender.

**2** Upfront fees cannot be collected by any party, including the lender and broker, (except for a credit report fee) until the initial disclosures are received by the consumer. If the lender chooses to mail the disclosures (including overnight delivery), the consumer is considered to have received them 3 business days after they are mailed.

Historically, upfront fees could be collected immediately. Starting July 30, 2009, upfront fees cannot be collected, including the appraisal fee, until the lender is reasonably certain that the consumer has received the disclosures. If hand delivered, fees can be collected immediately, or if mailed, the consumer is considered to have received the disclosures 3 business days after mailing. The only exception is the credit report fee which can be collected at application.

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

The consumer must receive the appraisal at least **3 business days prior** to the mortgage closing. If the consumer 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 in the Annual Percentage Rate (APR) from the initial Truth in Lending disclosure (TIL) that exceeds the tolerances in Regulation Z requires the TIL disclosure to be revised and reissued to the consumer. The consumer must receive a revised TIL disclosure at least 3 business days before closing, providing the consumer with the time required to determine if he or she is comfortable with his or her loan choice. If the lender chooses to mail the disclosure, the TIL disclosure is considered “received” 3 business days after mailing. If a TIL disclosure must be reissued, be sure to allow for the mailing days plus the borrower review days when scheduling the closing date.

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 consumer’s APR. Therefore it is critical that estimated fees are as accurate as possible.

Wait requirement period	Required wait time (in business days)
1. Initial disclosure review	7 days after delivery or mailing
2. Upfront fee collection	Immediate, or if disclosures are mailed, 3 business days after mailing
3. Consumer appraisal review	3 days to review prior to closing
4. TIL re-disclosure due to APR increase in excess of Regulation Z tolerances	3 days after receipt to review prior to closing

Potential impacts to the APR
<ul style="list-style-type: none"> <li>• Unlocked rate</li> <li>• Change in loan amount</li> <li>• Change in mortgage product</li> <li>• Change in closing date</li> <li>• Changes to fees, inclusive of settlement agent fees</li> </ul>

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

Consumer	REALTOR®/Builder	Mortgage Broker/ Originator	Settlement Agent/ Attorney
<ul style="list-style-type: none"> <li>• Obtain a credit-checked preapproval before you start to shop for a home.</li> <li>• Review the timeline and potential impacts with your mortgage broker/originator so you can keep your REALTOR® or Builder informed. It is wise to plan for at least a 30-day close.</li> <li>• Review the initial disclosure packet you receive. Make sure to pose any questions to your mortgage broker/originator.</li> <li>• Know that these new laws and investor requirements are in place to ensure you have time to consider your loan choice and feel confident to move forward.</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.</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 consumer 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 in excess of the Regulation Z tolerances will require a re-disclosure of the TIL—3 business days for the consumer to determine if they are comfortable with their loan choice. If mailed, allow for an additional 3 business days for delivery.</li> <li>• Provide the settlement agent information to the mortgage broker/originator as early in the process as possible.</li> <li>• Make sure the consumers understand that their interest rate impacts their APR and that until that rate is locked, the APR may change, so a subsequent TIL disclosure will likely be needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Help consumers understand timelines and anything that can impact their closing date including changes to the APR. It is wise to encourage consumers, REALTORS®, and Builders to plan for at least a 30-day close.</li> <li>• Take applications and help consumers understand their product options.</li> <li>• Issue consumers their initial disclosures.</li> <li>• Fees cannot be collected until after the consumer receives his or her initial TIL disclosures. If the lender chooses to mail them, the consumer is considered to have received them 3 business days after they are mailed. The only exception is the credit report fee which can be collected at application.</li> <li>• Understand that any change to fees that impacts the APR could lead to a required re-disclosure of the TIL. If the APR increases in excess of the Regulation Z tolerances then the lender must re-disclose and provide 3 business days for the consumer to determine if they are comfortable with their loan choice. If mailed, allow for an additional 3 business days for delivery.</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 re-disclosure of the TIL (if they collectively increase the APR in excess of the Regulation Z tolerances). The re-disclosure requires the consumer be given an additional 3 business days review period prior to closing, after receipt.</li> <li>• Work proactively on providing a preliminary HUD with accurate fees to lenders enabling them to issue the TIL 3 business days prior to the scheduled closing date for the consumer to determine if they are comfortable with the loan choice. If mailed, allow for an additional 3 business days for delivery.</li> </ul>

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**The best way to possibly expedite the close is to lock in the rate and fees as soon as possible.**

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# Frequently asked questions

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

- For HVCC, applications taken prior to May 1, 2009 are not impacted.
- For HERA-MDIA, applications taken prior to July 30, 2009 are not impacted.

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

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

## 3. Do the disclosure wait periods begin when the broker provides disclosures or when the lender issues disclosures?

The wait periods, for charging initial fees, for reviewing the appraisal, and for reviewing the re-disclosed TIL begin when the consumer receives the disclosures/appraisal from the lender.

## 4. How many days does the consumer have to review the rediscovered TIL?

Lenders must allow 3 business days for mailing, then the consumers have a 3-business-day review period to determine if they are comfortable with their loan choice. Closing can occur on the third business day of the review period.

## 5. What if the consumer 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.

## 6. Can the credit report fee be collected for a preapproval (credit only - no property identified) application?

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

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

An APR increase from the initial TIL that is in excess of Regulation Z tolerances requires re-disclosure of the new and final APR via the Truth in Lending (TIL) disclosure a minimum of 3 business days prior to the close/sign date for the consumer to determine if they are comfortable with their loan choice. If mailed, allow for an additional 3 business days for delivery.

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

Yes, the re-disclosure of the TIL can be sent within the first 7-business-day period, but the consumer must still be given 3 business days prior to the close/sign date, plus, if mailed, an additional 3 business days for delivery. The review period begins on the date the consumer receives the revised TIL.

## 9. Do these laws and investor requirements only impact purchase transactions or are refinances subject to these same guidelines?

Both purchase and refinance transactions are impacted, unless it is an investment property.

## 10. Is the 3-business-day right of rescission still in effect?

Yes, the right of rescission is still in effect for refinance transactions.

**For more information, contact me today:**