How the new government regulations may

# IMPACT

FAIRWAY
Independent Mortgage Corporation

your closing dates

***As the mortgage industry continues to evolve, great efforts are being made to provide borrowers with better information that will help them when financing a home. New regulations are taking effect that will impact several aspects of the financing process – especially the timelines. We are providing the following summary to help you understand the new regulations.***

***Fairway Independent Mortgage Corporation strives to provide our customers with exceptional service. Working closely with our industry partners is imperative to accomplishing this goal.***

## *The History of HVCC and HERA*

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 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 independent, valuation protections, and enhance the overall integrity of the valuation process.

***Effective May 1st, 2009***

**HVCC:** Promotes the accuracy of appraisals by protecting appraisers from undue influence, and ensuring borrowers have sufficient notice of the appraisal report content by requiring that borrowers receive a copy of their appraisal reports no less than three days prior to their loan closing, absent a borrower-waiver of this requirement. HVCC applies to conventional loans only.

***Effective July 30th, 2009***

**HERA:** Amends the Truth in Lending Act (TIL), implemented through Regulation Z. Contains a number of provisions including the Mortgage Disclosure Improvement Act, which changes the Truth in Lending Act requirements surrounding early and final disclosures to borrowers and addresses when upfront fees may be collected. HERA applies to all primary and secondary residential loans.

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# THE FOUR MAJOR COMPONENTS

1. **THE CLOSING DATE: If the homebuyer is financing the property, the new regulations will impact, and could even dictate the closing date.**
In a typical residential purchase transaction, the homebuyer and seller agree on a closing date after which settlement service providers, including lenders, work to ensure the closing date is met. Beginning July 30, 2009, purchase contracts may still be written with a specific closing date in mind, but all parties need to understand that the earliest any home purchase transaction can close is ***<u>7 business days after</u>*** the homebuyer is issued his or her initial mortgage disclosures from the lender. (Note: At Fairway Independent Mortgage Corporation, Saturdays, with the exception of Federal holidays, do count as a business day for the purpose of initial disclosures only.)

2. **COLLECTION OF UPFRONT FEES: With the exception of a credit report fee, upfront fees cannot be collected by the lender until the initial disclosures are received by the borrower. If the disclosures are sent via overnight delivery, they are considered "received" the next business day – (excluding Saturdays) allowing the fees to be collected on the following business day. If the disclosures are mailed, they are considered "received by the borrower" three business days after mailing.**
In the past, upfront fees could be collected immediately at the time of application for both in person and phone applications. Beginning July 30, 2009, the borrower must receive his or her initial disclosures before upfront fees may be collected. The only exception is the credit report fee which may be collected at application. If disclosures are mailed, the disclosures are deemed to have been received 3 business days after mailing. If disclosures are sent via e-mail, overnight delivery or a courier service is used, the date of actual delivery may be relied upon for purposes of beginning the 3-business-day waiting period.

3. **REDISCLOSURE REQUIRED: A change of more than .125% in the Annual Percentage Rate (APR) from the initial Truth in Lending Disclosure (TIL) requires the TIL disclosures to be revised and reissued to the homebuyer. The borrower must receive a revised TIL disclosure at least 3 business days before closing, If mailed, the TIL disclosure is considered "received" 3 business days after mailing. The actual date of delivery may be relied upon if delivery is made via e-mail, overnight delivery or courier service as long as proof of actual delivery is evidenced in the loan file.**
Typically, a closing date is scheduled after the purchase contract is finalized. 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 to ensure that estimated fees are as accurate as possible early in the origination process.

4. **THE APPRAISAL: The borrower must be provided with a copy of his or her appraisal a minimum of 3 business days prior to closing.**
Borrower must receive the appraisal at least ***<u>3 business days prior</u>*** to the closing date. This means the borrower may receive his or her appraisal before or simultaneous to the lender receiving its copy. If the borrower believes the required 3-business-day review period is not necessary for whatever reason, he or she has the right to waive that requirement.

## Potential impact 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

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. The calendar below illustrates a 30-day close. It is wise to plan for at least a 30-day close.

**Other assumptions in the illustration below:**

- Homebuyer applies by phone on July 31.
- The homebuyer locks in the interest rate at least 10 business days prior to the desired close date of August 26.
- 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 change the APR more than .125% requiring a re-disclosure of the TIL which Fairway Independent Mortgage Corporation calls the Revised Disclosures. (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 August 26.
- The homebuyer signs and closes on August 26.

If the application is taken in person (instead of a phone application as in the example below), then we may be ready to close sooner because the initial disclosures are issued. The upfront fees can then 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 |
|---|---|---|---|---|---|---|
| | | | | July 30<br>**Homebuyer finalizes** purchase contract | July 31<br>Homebuyer completes application over phone<br>1<br>Initial disclosures mailed to homebuyer | August1<br>Upfront fees Wait Day 1<br>Initial disclosures Day 1 |
| 2 | 3<br>Upfront fees Wait Day 2<br>2<br>Initial disclosures Day 2 | 4<br>Upfront fees Wait Day 3<br>Earliest date upfront fees may be collected unless application taken in person<br>Initial disclosures Day 3 | 5<br>Initial disclosures Day 4 | 6<br>Initial disclosures Day 5 | 7<br>Initial disclosures Day 6 | 8<br>Earliest date to close if appraisal is not required<br>Initial disclosures Day 7 |
| 9 | 10 | 11<br>3 | 12<br>APR exceeds tolerance so must redisclose<br>*Revised disclosures mailed to homebuyer<br>APR FINAL | 13<br>Revised disclosures Mail Day 1 | 14<br>Revised disclosures Mail Day 2<br>If possible lock rate at least 10 days prior to closing | 15<br>Revised disclosures Mail Day 3 |
| 16 | 17<br>Revised disclosures Wait Day 1 | 18<br>Revised disclosures Wait Day 2<br>4 | 19<br>Revised disclosures Waitl Day 3<br>Appraisal must be completed and mailed to the homebuyer 7 days prior to closing | 20<br>Appraisal Mail Day 1 | 21<br>Appraisal Mail Day 2 | 22<br>Appraisal Mail Day 3 |
| 23 | 24<br>Appraisal Wait Day 1 | 25<br>Appraisal Wait Day 2 | 26<br>Homebuyer can sign/close<br>Appraisal Wait Day 3 | 27 | 28 | 29 |
| 30 | 31 | | | | | |

* If revised disclosures are sent by e-mail or by a courier other than the postal service <u>either</u> proof of actual delivery <u>or</u> the mailing rule may be relied on for purposes of determining whether the 3-business-day waiting period has begun.

# Working together to ensure timely closings

## - everyone plays a key role

| Homebuyer | REALTOR®/Builder | Home Mortgage Consultant | Settlement Agent/ Attorney |
|---|---|---|---|
| • Obtain a credit-checked preapproval before you start to shop for a home. (Applying in person may help expedite the process.)<br><br>• 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.<br><br>• 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.<br><br>• Review the appraisal delivery disclosure and determine whether or not you wish to waive the 3-business-day review period prior to closing.<br><br>• 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.<br><br>• Understand that a change in mortgage product could impact your APR and therefore your estimated closing date.<br><br>• Understand that changes in fees by third parties such as your settlement agent could also impact your closing date. | • 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.<br><br>• 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 change the APR more than .125% will require the lender to re-disclose the TIL – allowing 7 business days before the transaction can close, (dependent upon the delivery method of the revised disclosures). This allows 3 business days for mailing and provides the homebuyer with the time required to determine if they are comfortable with their loan choice.<br><br>• Provide the settlement agent information to the lender as early in the process as possible.<br><br>• 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 revised disclosures will likely be needed. | • Help homebuyers understand timelines and anything that can impact their closing date. It is wise to encourage homebuyers, REALTOR®, and Builders to plan for at least a 30-day close.<br><br>• Take applications and help homebuyers understand their product options.<br><br>• Issue homebuyers their initial disclosures.<br><br>• 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).<br><br>• Ensure the loan is locked at least 10 business days prior to the desired close date.<br><br>• If the APR changes more than .125% then the lender must re-disclose the TIL up to 7 business days (dependent upon the method of delivery of the revised disclosures) before the transaction may 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. | • Make sure any third party fees that impact the APR are accurate – understand any change to fees that impact the APR could lead to a required re-disclosure of the TIL if the changes collectively change the APR more than .125%. The homebuyer must be given an additional 3-business-day review period prior to closing, after receipt of the revised disclosures.<br><br>• 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 revised disclosures 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. |

**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 disclosures and revised disclosures 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 from 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 re-define "rush." The minimum number of days to close a transaction is 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 changes by more than .125%, revised disclosures will be required and will add an additional 7 business days (dependent upon the method of delivery of the revised disclosures) 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 prior to the homebuyer receiving his or her initial disclosures.

**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 cannot 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 be ready to close sooner.

**10. How do you know if the initial APR has to be re-disclosed?**
An APR change 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 by Fairway Independent Mortgage Corporation as the Revised Disclosures) a minimum of 3 business days prior to the close date.

**11. For the purpose of these new disclosure timelines, what is considered a business day?**
At Fairway Independent Mortgage Corporation, calendar days except Sundays and Federal holidays.

**12. 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.

**13. Can the revised disclosures be sent within the 7-business-day period from when the initial disclosures are issued?**
Yes, the required revised TIL can be sent within the first 7-business-day period. The revised TIL is only required when there is a change of more than .125% in the Annual Percentage Rate (APR) from the initial Truth in Lending Disclosure (TIL).

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

**15. 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.

**16. Is the 3-business-day right of recession still in effect?**
Yes, the right of rescission is still in effect for refinance transactions. The loan may close 7 business days after any TIL re-disclosure is issued (dependent upon the method of delivery of the revised disclosures), then the right-of-recession period expires.