

### How new government regulations can impact your closing.

Recently there have been a number of significant changes to federal laws, regulations and statutes as well as new legislation regarding the lending and real estate industries and real estate transactions. Each change affects homebuyers and sellers, but they all aim to standardize or further regulate the real estate and lending industries in order to further increase transparency and improve the real estate transaction experience for consumers.

#### The effects of new regulations on your closing date

Two pieces of legislation enacted by the federal government are the Home Ownership and Equity Protection Act (HOEPA) and the Housing and Economic Recovery Act (HERA). The Federal Reserve Board published the regulations for complying with HOEPA and HERA in the Truth in Lending Act. Both HOEPA and HERA will affect the timing of real estate transactions.

For example, one particular **HERA** provision, the Mortgage Disclosure Improvement Act, changes requirements for early and final disclosures to homebuyers, and affects when fees can be charged.

Also in 2008, Fannie Mae and Freddie Mac adopted the **Home Valuation Code of Conduct (HVCC)**, which promotes the accuracy of appraisals by shielding appraisers from undue influence and ensures 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 unless the borrower waives this requirement. The HVCC will not be implemented on Federal Housing Administration (FHA) loans.



#### How the timing of closings may be affected

**For homebuyers financing the purchase through a lender, these new guidelines can greatly impact closing dates – possibly even dictating the timing.**

Prior to these new regulations, homebuyers and sellers would agree to a date and were only limited by the speed with which their service providers could get everything done. Now, **the earliest any home purchase transaction can close is seven business days after the initial mortgage disclosures are received by the borrower.** (NOTE: With the exception of federal holidays, Saturdays count as a business day for the purpose of disclosures.)\*

**Initial disclosures must now be received by the borrower before upfront fees can be collected by the lender.**

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 their initial disclosures before upfront fees can be collected. The only exception is the credit report fee, which may be collected at application. This adds more time to the overall process. 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.

\*Truth in Lending Act – Regulation Z.

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### The homebuyer must be provided with a copy of their appraisal at least three business days prior to closing.

This can add time to the overall process unless the appraiser sends a copy of the appraisal simultaneously to the homebuyer and lender. The homebuyer may, if they feel the three business-day review period is unnecessary, waive this requirement.

### The homebuyer must receive a revised Truth in Lending (TIL) disclosure at least three business days before closing, providing the homebuyer with the time required to decide if they are comfortable with their loan choice. If mailed, the TIL disclosure is considered received three business days after mailing.

An increase of more than 0.125% in the Annual Percentage Rate (APR) from the initial TIL requires the disclosure be revised and reissued to the homebuyer. 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.

### Potential impacts to the APR

The following events can affect the APR and predicate the sending of a new TIL:

- 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 timing required by these regulations for a primary residence or second-home purchase transaction is with a day-by-day timeline. Since most transactions close in a 30-60-day time frame, the calendar at the right illustrates a desired 30-day close. It is wise to plan for at least a 30-day close.

### A sample timeline of a transaction under the new regulations for a 30-day scheduled closing:

#### Monday, Day 1

Homebuyer applies for loan over the phone the day after finalizing the contract on a residential property

#### Wednesday, Day 3

The loan originator prepares and overnights the initial disclosures to homebuyer

#### Thursday, Day 4

Initial disclosures received by homebuyer

#### Friday, Day 5

Earliest date upfront fees can be collected by loan originator

#### Thursday, Day 11

Earliest possible date to close (if appraisal is not required)

#### Friday, Day 19

Optimally, homebuyer locks in interest rate 10 business days prior to desired closing date to allow enough time for originator to lock in APR

#### Tuesday, Day 23

Appraisal completed and mailed seven required business days prior to close; pre-closing Truth in Lending (TIL) disclosure mailed seven required business days before closing (sent if necessary as a result of the APR increasing by more than 0.125% from initial disclosures)

#### Friday, Day 26

Pre-closing TIL received by homebuyer; homebuyer receives copy of appraisal by this date at latest (three business days prior to closing)

#### Tuesday, Day 30

Closing occurs

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### Notes:

If the application is taken in person (instead of through a phone application as used in the example), then the closing may occur earlier because the initial disclosures are issued and the upfront fees can be collected at application.

Saturdays are considered a business day only for the purposes of disclosures, unless they are a federal holiday.

### How new regulations enhance your ability to gather information

The **Secure and Fair Enforcement for Mortgage Licensing Act (SAFE)**, a part of HERA, may not affect your timing but does affect your experience. SAFE is intended to provide uniform licensing standards for loan originators and encourage states to participate in a comprehensive licensing database of all loan originators called the Nationwide Mortgage Licensing System and Registry (NMLSR).

The NMLSR was created to be a resource and tool for borrowers with the following goals:

- Help ensure that loan originators be required to “act in the best interests of the consumer”
- Give consumers easy access to a loan originator’s history and any disciplinary/enforcement actions taken against the originator
- Call for uniform education and licensing requirements
- Accountability and tracking of loan originators

To enable these goals to be reached, as part of the NMLSR, all loan originators will be assigned a unique identifier. This will permanently identify a loan originator in the system and enable easier public access to the employment history and any enforcement actions taken against any originators.

Also aiming to provide consumers with more information and to make it easier to look for better deals is the **Real Estate Settlement Procedures Act (RESPA)**. Originally created in 1974 to make comparison shopping for settlement services easier for consumers, RESPA was mainly intended to eliminate the ability of unscrupulous agencies, lenders,

lawyers, etc. to provide kickbacks and referral fees to other parties involved in the transaction. This was done to keep consumers’ costs from being driven up by this dishonest behavior.

In 2008 changes were made to RESPA that greatly affect the way information is provided to the homebuyer by their lender and their title company. Under RESPA, lenders must now provide their borrowers with a Good Faith Estimate (GFE) that includes a summary of the key terms of the loan as well as a summary of the total settlement charges and loan origination charges.

The rule requires that the GFE settlement charges remain available for 10 business days to allow the borrower to comparison shop with other loan originators.

RESPA creates tolerance levels of change for costs laid out in the GFE so that no consumer will have to pay a wildly different amount for their actual closing costs than those detailed in the Good Faith Estimate.

Finally, RESPA prohibits home sellers from requiring homebuyers to purchase title insurance from a particular company, either directly or indirectly as a condition of sale in order to maintain the freedom of choice for homebuyers when deciding upon a title company.

**To find more information on real estate transactions and how these regulations may impact your closing, contact your lender or local Stewart Title office.**

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Sources: Housing and Economic Recovery Act (<http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.03221>); Home Valuation Code of Conduct ([http://www.freddiemac.com/singlefamily/home\\_valuation.html](http://www.freddiemac.com/singlefamily/home_valuation.html)), Truth in Lending Act – Regulation Z (<http://www.fdic.gov/regulations/laws/rules/6500-1400.html>) and Real Estate Settlement Procedures Act ([http://www.hud.gov/offices/hsg/ramh/res/respa\\_hm.cfm](http://www.hud.gov/offices/hsg/ramh/res/respa_hm.cfm)).

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