TRID Help: Simplify the Fee Tolerances for Third Party Charges

One of the biggest challenges faced by banks and lenders resulting from the new TRID rules is the timely and accurate disclosure of information on the initial Loan Estimate. This challenge is being addressed in a few ways. One is to have the originator take a preliminary application (not all six items), then try to determine and contact the intended title provider to obtain their fees needed for disclosure. This is a tedious and time consuming task which delays the application, the disclosure and the entire process. Why is it done this way? The lenders say so they can provide more precise fee information to the applicant. Maybe, but is it worth the efforts? Let’s examine an alternative.

The allowable tolerance for a lender’s specific fees, e.g. Application fee, Commitment fee, as well as those for the services for which a borrower cannot shop, e.g., appraisal and credit, is pretty straightforward. Once disclosed these fees may not change unless there is a bona fide (justified) circumstance change that directly effects a specific fee.

Such changes are limited, since the lender is expected to know these types of fees when issuing the Loan Estimate. Fees for their services, like the processing or commitment fee, normally do not change after taking an application. The fee for an appraisal, the credit report and flood certs should remain the same, even in the event of a loan type or amount change. One exception is the discount charge which could increase with an increase in the loan amount.

Sure there may be some extenuating circumstances that result in an increase in the appraisal or credit fees, but for the most part these are limited so these fees, once disclosed, should remain constant. So we come down to the fees disclosed by the lender in Section C. These are the fees for any services related to, or required in connection with, the services for which a borrower may shop. Herein lays the potential for a tolerance violation.

To avoid delays, as an alternative, a lender may issue a loan estimate immediately upon taking an application by using the fees of the provider(s) listed in their List of Service Providers. Remember, a lender must provide a disclosure listing at least one provider for each service for which a fee is disclosed in Section C (the services that the borrower may shop for).

The lender can negotiate the fees for the services that will be required to close the loan ahead of time with the providers on the list. This can be a specific set of fees for services or a flat fee encompassing all services. This can be done by state, by region, by area, or nationally. A fee table can be created to identify the provider and the fees that will be charged, depending on the location of the property being financed. By disclosing the fees that would be charged for the title services required based on the providers disclosed on the lender’s list, the lender is in compliance with the law, and they can provide the consumer a basis to shop for these services from other providers. After all isn’t that the intent?

In the end, if the borrower selects a provider not listed on the Lender’s list of Service Providers, all bets are off and there is no tolerance limit on that/those fee(s) for service(s). However, when the Borrower chooses a provider for a service from one that is listed on the lender’s list, a 10% aggregate fee tolerance limit may come into play. The aggregate amount of the fee(s) paid for the services to providers listed on the lender’s list, may not exceed the aggregate amount of such services initially disclosed in
Section C of the Loan Estimate by more than 10%. For this reason it is very important that a lender accurately discloses those fees for which a borrower may shop using the fees which would be charged by those providers of such services appearing on their provider list. By doing so, they protect themselves from a future tolerance violation when one of those providers is selected.

This process allows a Lender more time to contact the borrower, once a loan is approved, to find out the closing agent chosen. When it is one that is not on the Lender’s provider list, the lender has the time to contact that agent and obtain their fees and costs. These are then used to issue the final LE and initial Closing Disclosure. In such cases, the Lender is relieved of any potential fee tolerance violations since the closing agent is not on their list but is instead one chosen by the consumer.

When the borrower decides to use the services of one of the providers on the Lender’s list, the Lender may expedite the issuance of their final LE and initial Closing Disclosure. By initially disclosing the fees that would be charged by those providers, they are protected from a violation when the borrower chooses one of the providers, as these fees should be pre-negotiated. The final LE and initial CD may be issued using the fees as originally disclosed on the initial Loan Estimate, continuing to use the fees that will be charged the consumer by their disclosed service provider(s).

To protect against potential fee tolerance violations, while also expediting the issuance of the initial Loan Estimate and Closing Disclosure, a lender need only initially disclose the pre-negotiated fees for the Section C services that would normally be charged by those providers they disclose to the consumer on their List of Service Providers.

Remember, these fees may only increase, once disclosed, as the result of a bona fide change in circumstances. Such changes are very limited when it comes to the Section C fees, which should have been negotiated with your disclosed providers in advance. A change may not be made as the result of an error in under disclosing the fee initially. Like the fees in Sections A & B, once properly disclosed, changes should be minimal.

**Lend, and disclose, responsibly my friends.**

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**About the Author — Michael L. Vitali - SVP/Chief Compliance Officer**

Mike Vitali presently serves as the Senior Vice President and Chief Compliance Officer of LoanLogics, monitoring regulatory developments and their practical implications for the mortgage lending industry. His duties include the research, interpretation and analyzing of existing and proposed legislation related to the industry to recommend policy and/or procedure changes to maintain continued quality and compliance with all applicable laws, rules and regulations, investor requirements, and standard mortgage practices. In his more than 40 years in the mortgage industry, in senior level management, he has gained experience in all areas of mortgage lending, risk management and compliance.

Mike is a past President of the MBA of Greater Philadelphia, is a charter member and was the second Chairman of the MBA of Pennsylvania, and a past board member and Legislative Chair of both associations. He is a recipient of the 1998 Mortgage Banker of the Year Award from the MBA of Greater Philadelphia, and the 2003 Chairman’s Award from the MBA of PA, and currently serves on several compliance related task forces for MBA.