

HOLD IT! WHAT VARIATIONS ARE TOLERATED?



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Loan Estimates (LE), Closing Disclosures (CD), Settlement Service Providers (SSP) and what constitutes Good Faith? In other words, what changes are allowed?

In two previous newsletters, we've discussed Loan Estimates (LE) and the Closing Disclosures (CD). This issue will cover allowable changes after these documents are presented.

To get started, let's talk about "good faith". Creditors are responsible for ensuring that the figures stated in the Loan Estimate are **made in good faith** and **consistent with the best information reasonably available** to the creditor at the time they are disclosed. With a few exceptions discussed below, the actual charges imposed on the Borrower in the CD **MAY NOT exceed** what was disclosed on the LE. If actual charges are more than what was stated in the LE, AND if they do not fit the criteria below, then the LE is considered not in good faith, and the Creditor will be liable*.

Before we get started on Variations, it's important to note that along with the LE, Creditors are responsible for providing Borrowers with a written list of settlement service providers (SSPs) who can perform required duties (this list could include title insurance companies, inspectors, and surveyors). Borrowers have the right to "shop" for some of these services, and can either use an SSP from the Creditor's list or find their own.



NO VARIATION = ZERO TOLERANCE—The following charges cannot change at all; the charges disclosed on the LE must = actual charges on the CD:

- Transfer Taxes
- Fees paid to the Creditor, mortgage broker, or an affiliate of either (example: origination fees)
- Fees paid to an unaffiliated SSP if the Creditor did not permit the Borrower to shop for services



10% CUMULATIVE TOLERANCE—The following charges may change, but are subject to the 10% cumulative tolerance rule. The sum of these charges on the CD cannot increase by more than 10% from what was disclosed on the LE:

- Recording fees
- Charges for third-party services where the charge is not paid to the creditor or the creditor's affiliate
- Charges for a service required by the creditor if the creditor permits the consumer to shop and the consumer selects a third-party service provider on the creditor's written list



OK TO CHANGE - CREDITOR HAS NO CONTROL—As long as the LE was issued with the best information reasonably available at the time the disclosure was provided, these charges are allowed to change by any percentage:

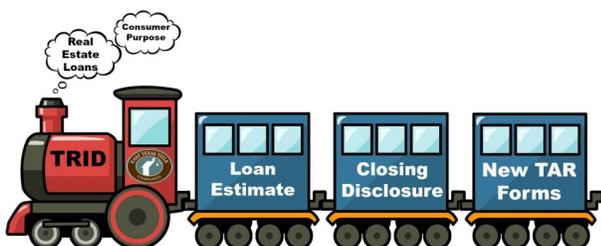
- Prepaid interest
- Property insurance premiums
- Amounts placed into an escrow, impound, reserve or similar account
- Charges for a service required by the creditor if the creditor permits the consumer to shop and the consumer selects a third-party service provider NOT on the creditor's written list
- Charges for a service NOT required by the Creditor which were paid to third-party service providers

AN EXAMPLE

On the LE, a Creditor discloses charges for surveying and includes the fees charged by surveyors on their written provider list (SSP). The Borrower is **allowed to shop** for surveyors and chooses to use the services of their neighbor, who is a qualified surveyor, but who is **not on the Lender's SSP list**. If the Borrower's neighbor charges more for services than the surveyors on the Lender's written SSP list, the Borrower **must pay the fee** and the LE is still considered issued in good faith, even if the actual charge is more than 10% over the LE. However, if the Borrower chooses a surveyor **from the Lender's SSP list**, the actual fee imposed is subject to the **10% cumulative tolerance rule**.

**If the amounts paid by the Borrower at closing exceed the amounts disclosed on the LE beyond the applicable tolerance threshold, the Creditor must refund the excess to the consumer no later than 60 calendar days after closing.*

We will be covering all of these topics and more in a practical, easy-to-understand format in our [upcoming training sessions](#). In addition, I am always available to [answer your questions](#), so please let me know how I can help.



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