**Section 1050.1335 Fees and Charges**

a) Except as prohibited by federal statute or regulation, a licensee shall not require a borrower to pay any fees or charges prior to the loan closing, except charges to be incurred by the licensee on behalf of the borrower for services from third parties necessary to process the application, such as for credit reports and appraisals, and:

1) Loan Fees

A) Loan fees, such as origination or commitment fees, including fees detailed in the Loan Brokerage Agreement, may be charged prior to closing only if a licensee is able to demonstrate either that:

i) The loan commitment is provided in writing by the funding entity and accepted in writing by the borrower; or

ii) The loan commitment provided in writing is consistent with a Loan Brokerage Agreement provided to the borrower pursuant to Section 1050.1010 of this Part and signed by the borrower.

B) The loan fee, including fees detailed in the Loan Brokerage Agreement, collected prior to closing shall be deposited in escrow by the licensee in accordance with the requirements of Section 1050.440 of this Part.

C) If the loan commitment provided by the funding entity pursuant to subsection (a)(1) is subject to any condition or conditions, and any condition is not met due to an action or lack of action on the part of the borrower, the licensee may retain the loan fee. In all other cases, if the loan does not close as agreed by the licensee and the borrower, the licensee shall refund the loan fee to the borrower.

D) A loan fee, including fees detailed in the Loan Brokerage Agreement, may be collected by a licensee even if a loan does not close if:

i) Either the fee was provided for in the loan commitment accepted in writing by the borrower or the fee was disclosed in the Loan Brokerage Agreement provided to a borrower pursuant to Section 1050.1010 of this Part and signed by the borrower, and a loan commitment was obtained by the licensee consistent with the Loan Brokerage Agreement; and

ii) The borrower withdraws the loan application; or the borrower has made a material misrepresentation on the loan application; or the borrower has failed to provide documentation necessary to the processing or closing of the loan.

2) Rate-Lock Fee

A) A Rate-Lock Fee Agreement shall be in writing and signed by both the licensee and prospective borrower and provided to prospective borrowers regardless of whether a fee is collected or the interest rate is locked or floating.

B) The Rate-Lock Fee Agreement shall state all of the following:

i) The expiration date of the Rate-Lock Fee Agreement;

ii) The amount of the loan;

iii) The maximum interest rate of the loan;

iv) The term of the loan;

v) The maximum discount (points) to be paid; and

vi) That the interest rate is locked or the interest rate is floating.

C) The licensee shall be able to demonstrate to the Director that:

i) The licensee is able to perform under the terms of the Rate-Lock Fee Agreement;

ii) Subject to verification, the information submitted by the borrower indicates that the loan will be approved in accordance with the Rate-Lock Fee Agreement; and

iii) The Rate-Lock Fee will be credited to the borrower at closing.

D) The Rate-Lock Fee shall be deposited in escrow by the licensee in accordance with the requirements of Section 1050.440 of this Part.

E) A Rate-Lock fee may be collected by a licensee even if a loan does not close if:

i) The fee was disclosed in the Rate-Lock Fee Agreement provided to a borrower and signed by the borrower; and

ii) A Rate-Lock was obtained by the licensee consistent with the Rate-Lock Fee Agreement and the borrower withdraws the loan application; or the borrower has made a material misrepresentation on the loan application; or the borrower has failed to provide documentation necessary to the processing or closing of the loan.

3) Assumption Fee

 A licensee may charge a borrower an Assumption Fee for a Federal Housing Administration (FHA) or Department of Veterans Affairs (VA) loan assumption that, by regulation, requires full credit approval prior to closing, subject to the following requirements:

A) The applicant must qualify for the extension of credit as required under:

i) The terms and conditions of mortgages given on property in Illinois that are insured by the Federal Housing Administration and dated on or after December 15, 1989 requiring prior credit approval of the Secretary of Housing and Urban Development.

ii) The terms and conditions of mortgages given on property located in Illinois that are guaranteed by the U.S. Department of Veterans Affairs (VA) dated on or after March 1, 1988 and requiring approval of VA or its authorized agent.

B) An Assumption Fee may be collected by a licensee even if a loan does not close if:

i) The fee was disclosed in an Assumption Fee Agreement provided to a borrower and signed by the borrower; and

ii) An Assumption Fee Agreement was obtained by the licensee consistent with the Assumption Fee Agreement and the borrower withdraws the loan application; or the borrower has made a material misrepresentation on the loan application; or the borrower has failed to provide documentation necessary to the processing or closing of the loan.

b) Nothing in this Section shall be interpreted to limit the right of a licensee to recover from a borrower any fee that the borrower has agreed to pay pursuant to a Loan Brokerage Agreement, a loan commitment or other written agreement entered into between the borrower and the licensee. This subsection shall not abridge Section 1050.1010(g) so as to permit an agreement or agreements in addition to the Rate-Lock Fee Agreement or the Loan Brokerage Agreement.

c) For each violation of this Section, the Director may fine a licensee up to $500 in addition to all other actions authorized under the Act and this Part.

(Source: Amended at 34 Ill. Reg. 17339, effective October 29, 2010)