

DOCUMENT RESUME

01977 - [A1052025]

[Real Estate Expenses: Loan Origination Fee]. E-106636. April 11, 1977. 4 pp.

Decision re: Donald R. Bliss; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Environmental Protection Agency.

Authority: Truth in Lending Act, title I, sec. 106, 106(e) (P.L. 90-321). 5 U.S.C. 5724a. 5 U.S.C. 5584. E-106921 (1976).

B-186734 (1976). F.I.R. (FPMR 101-7), para. 2-C.24. 12

C.F.R. 226.

Larry L. Petersen, Authorized Certifying Officer, EPA, questioned the propriety of a claim for a loan origination fee paid by a transferred employee. He may not be reimbursed any part of that charge, since it is a finance charge under the Truth in Lending Act and Regulation Z (12 C.F.R. Part 226). (Author/DJH)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: D-186636

DATE: April 11, 1977

**MATTER OF: Donald R. Bliss - Real Estate
Expenses - Loan Origination Fee**

DIGEST: Employee who reclaimed \$328.50, consisting of a charge he paid for loan origination fee, may not be reimbursed any part of that charge since it is a finance charge under the Truth in Lending Act and Regulation Z. See also para. 2-6.2d of the Federal Travel Regulations (FPMR 101-7) (May 1973).

This action is in response to a request from Mr. Larry L. Petersen, an authorized certifying officer of the United States Environmental Protection Agency (EPA) regarding the propriety of certifying for payment a reclaim voucher in the amount of \$328.50 representing a loan origination fee paid by Mr. Donald R. Bliss upon the transfer of his official duty station from New York, New York, to Seattle, Washington, in December 1976.

Mr. Petersen states that loan origination fees were not certified for payment by his office prior to April 1974. However, on April 24, 1974, EPA issued Transmittal Notice 74-24, which was interpreted as an apparent change in EPA policy as regards allowance of loan origination fees. Since that date and because of the apparent change in policy, loan origination fees were allowed. Mr. Petersen has requested clarification of the Government position with regard to the reimbursement of loan origination fees. In addition, Mr. Petersen has requested advice as to collection action for payments of loan origination fees approved after April 24, 1974.

The authority to reimburse a Government employee for expenses incurred in connection with real estate transactions upon official transfer of duty station is found in section 5724a of title 5 of the United States Code (1970). The governing regulations implementing this statute are contained in chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7), May 1973.

Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973) provides in pertinent part that:

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"* * * no fee, cost, charge, or expense is reimburseable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System."

Section 106 of the Truth in Lending Act Title I, Pub. L. 90-321 provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

"(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

"(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

"(2) Service or carrying charge.

"(3) Loan fee, finder's fee, or similar charge.

"(4) Fee for an investigation or credit report.

"(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss."

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"(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

"(3) Escrows for future payments of taxes and insurance.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z (12 C.F.R. Part 226), was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, and sets forth the foregoing in substantially the same form.

There is no exception contained in section 106(e) of the Act for the loan origination fee which must then be considered a "finance charge" in accordance with section 106(a), and since the Federal Travel Regulations preclude reimbursement for such "finance charges," reimbursement is not allowed for the loan origination fee paid by Mr. Bliss. See B-186921, November 29, 1976; B-186734, September 23, 1976 (copies enclosed).

Further development of the record indicates that EPA has clarified its policy regarding loan origination fees by its issuance of Transmittal Notice No. 76-50, June 21, 1976, directed to all Financial Management Officers.

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Action should be taken to recover payments of loan origination fees approved after April 24, 1974. In this regard it should be noted that under the express terms of 5 U.S.C. 5584, erroneous payment of travel and transportation expenses and allowances and relocation expenses payable under 5 U.S.C. 5724a may not be waived. Furthermore, EPA has informed this Office that Mr. Petersen was advised that the several payments made outside the criteria of Regulation Z were erroneous and should be recovered.

Accordingly, Mr. Bliss' voucher may not be certified for payment.

Deputy

M. K. H.
Comptroller General
of the United States