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J. Botaford

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DECISION



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

FILE: B-186583

DATE: March 30, 1978

**MATTER OF: Donald W. Espeland - Real Estate Expenses -
Loan Origination Fee**

**DIGEST: Employee may not be reimbursed loan
origination fee incurred incident to
financing a house purchased upon his
relocation since fee is finance charge
within the meaning of Regulation Z,
12 C.F.R. 226.4(a).**

Mr. Donald W. Espeland has requested us to reconsider decision B-186583, April 11, 1977, in which we denied his claim for reimbursement of a loan origination fee incurred incident to his purchase of a residence upon the transfer of his official duty station from Denver, Colorado, to Des Moines, Iowa.

Mr. Espeland's claim was denied by the Department of Labor on the basis that the loan origination fee represented a cost incident to the extension of credit within the purview of Regulation Z, 12 C.F.R. 226.4(a), and was thus not reimbursable under the Federal Travel Regulations (FPMR 101-7) paragraph 2-6.2d (May 1973). The pertinent part of Regulation Z states:

"§ 226.4 Determination of finance charge.

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

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"(2) Service, transaction, activity,
or carrying charge.

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

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"(e) Excludable charges, real property transactions. The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this part, shall not be included in the finance transaction:

"(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

"(2) Fee for preparation of deeds, settlement statements, or other documents.

"(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

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

"(5) Appraisal fees.

"(6) Credit reports."

Mr. Espeland contended that the Department of Labor's determination was improper for several reasons. He stated that while preparing his original voucher for reimbursement of permanent change of station expenses, he used a voucher example from the Department of

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Labor Travel Regulations which showed the loan origination fee as a reimbursable item. As we explained in our decision of April 11, 1977, the voucher example probably showed the loan origination fee as a reimbursable item because it had been reimbursable under Bureau of the Budget Circular No. A-56 until June 26, 1969, when that regulation was revised.

Mr. Espeland also stated that he was informed by our Claims Division that if the bank's services in connection with the mortgage loan had been provided by an escrow agent, the loan fee would have been reimbursable because the fee would not have been based on a percentage of the mortgage. Mr. Espeland argued that in denying reimbursement for a loan fee computed on a flat percentage rate but allowing reimbursement of an escrow agent's fee, the General Accounting Office arbitrarily and capriciously denies equal benefits to all Government employees.

The escrow fee for which we allow reimbursement generally covers the costs incurred by the escrow agent for the preparation and recording of documents and for handling the escrow funds. These costs are payable whether or not a mortgage loan is involved, in other words, whether the transaction is for cash or credit. In such circumstances, when it is clear that no part of the fee is related to the extension of credit, we have allowed reimbursement of the escrow agent's fee. See B-170007, July 13, 1970.

Mr. Espeland also argued that it is improper to consider the loan origination fee to be incident to the extension of credit within the purview of section 226.4 of Regulation Z in view of the Department of Housing and Urban Development's (HUD) definition of a loan origination fee as a lender's compensation for expenses incurred in originating the loan, preparing documents, and related work.

As additional support for his position, Mr. Espeland relied upon statements made in chapter 24 of Internal Revenue Service (IRS) Publication 17 concerning interest deductions. In particular, he quoted a portion of that publication which states that for tax purposes a loan origination fee or similar charge is not deductible as interest if it is compensation for specific services performed by the lender, including "the cost of preparing mortgage note or deed of trust, settlement fees, notary fees, etc." Mr. Espeland referred to an example set forth in Publication 17 wherein a purchaser of a residence paid

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a 1 percent "loan origination fee" in connection with a home mortgage loan obtained from a lending institution and insured by the Veterans Administration. Citing this example as identical to his situation, Mr. Espeland quotes the conclusion reached in the example: "The amount of the one point loan origination fee in this situation is not interest." Mr. Espeland apparently equates the terms "interest" and "finance charge" and assumes that fees attributable to bank services are reimbursable. In our decision of April 11, 1977, we responded to Mr. Espeland's arguments by stating that his "entitlement is statutory in nature, and is provided for by the cited regulations. Therefore, it is not relevant that the fee is not deductible for interest charges as stated in IRS Publication 17, nor is it relevant as to its definition in a HUD pamphlet."

In his letter requesting reconsideration of our April 11, 1977, decision, Mr. Espeland again focuses on the definition of a finance charge. He states that the crux of his case is whether the loan origination fee is a loan fee imposed incident to the extension of credit and therefore not reimbursable under paragraph 226.4(a)(3) of Regulation Z, or whether it is a fee for the preparation of deeds, settlement statements, or other documents, and, as such, is reimbursable under paragraph 226.4(e)(2).

With his request for reconsideration, Mr. Espeland has submitted a letter from the Iowa-Des Moines National Bank, from which he received his mortgage, wherein John R. Burkholder, a Senior Real Estate Loan Officer, stated that the 1 percent fee is not imposed as a condition of the extension of credit. Mr. Espeland points out that his loan fee included a \$75 charge for an appraisal fee, a reimbursable expense, and questions why the appraisal fee was included if the loan fee was actually imposed incident to the extension of credit as we have held.

In support of his contention that the loan origination fee is not a finance charge Mr. Espeland has also submitted an article from the Dallas Morning News dated Sunday, April 17, 1977, which reads as follows:

"Q. When we bought a house last year, our mortgage company charged a "loan origination fee" of 1½ per cent of the loan as well as other charges for credit report,

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photo, title insurance and recording fees. Is the loan origination fee deductible from our income tax?' - H.B.

"A. No. A loan origination fee not associated with discount points but for unspecified services is added to the cost basis of your house, that is, the cost is adjusted upward by the amount of the fee and most of the other settlement costs. If you sell the house later at a profit, the gain will be decreased by the amount of the loan origination fee and any taxes due will be less as a result."

Under paragraph 2-6.2d of the Federal Travel Regulations, reimbursement of expenses incurred in connection with the sale or purchase of a house depends on whether that expense is the result of a finance charge as defined in the Truth and Lending Act (TILA). The primary purpose of the TILA is to assure a meaningful disclosure of credit terms so that a consumer will be able to compare more readily the various credit terms available to him and avoid the unformed use of credit. See 15 U.S.C. 1601. Therefore, the finance charge is defined so as to distinguish between charges imposed as part of the cost of obtaining credit and charges imposed for services rendered in connection with a purchase or sale regardless of whether credit is sought or obtained. The finance charge, therefore, is not limited to interest, and service charges imposed in connection with the extension of credit are specifically listed as finance charges under the TILA and the implementing provisions of Regulation Z.

It is these provisions, rather than the lending institution's characterizations, which are determinative in deciding what fees are nonreimbursable finance charges. In accordance with the provisions of paragraph 226.4 of Regulation Z, we have held that a service charge or fee, not identified as being in payment of an otherwise allowable expense, is to be considered a finance charge. See Matter of James J. Beirs, B-184703, April 30, 1976. Thus, in the absence of further itemization, the fact that the loan origination fee included the reimbursable appraisal fee does not permit us to assume that the balance of the fee contains similar items.

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Mr. Espeland has enclosed an article by the Chief Economist of the Mortgage Banking Association from which he quotes the following excerpt:

"The average cost for originating a loan was \$482 in 1974, which was 1.9 percent of the average loan closed. With income of only \$266, the average loss per loan was \$216 or 0.8 percent of the average loan. These figures are based on preliminary tabulations of 1974 data from 25 firms.

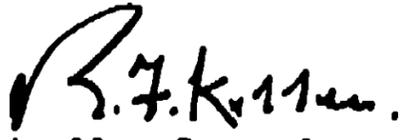
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"Very simply, origination costs far exceed the 1 percent limit imposed on FHA and VA loan origination fees."

Mr. Espeland has asked if this audit meets our requirement of itemization since it shows that a 1-percent loan fee does not cover the costs of originating the loan. In light of the preceding discussion, it is clear that this is not sufficient. No amount of a loan origination fee may be reimbursed in the absence of an itemized statement by the lender indicating with particularity the exact portion of the loan fee attributable to services which are excluded by paragraph 226.4(e) of Regulation Z from the computation of a finance charge. See Matter of Charles W. Smith, B-189381, December 15, 1977.

With reference to the article from the Dallas Morning News, we must point out that although it is stated there that the loan origination fee may be added to the cost basis of the house, IRS Revenue Ruling, 67-297 provides that it cannot be taken into account in completing the taxpayer's gain or loss upon a subsequent sale or exchange. A copy of that ruling is enclosed.

In accordance with the above, our decision B-186583, April 11, 1977, denying Mr. Espeland's claim is affirmed.


Deputy Comptroller General
of the United States