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**DECISION**



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

15202

*[Request for Reconsideration]*

FILE: B-198475

DATE: October 17, 1980

MATTER OF: Charles E. Berg - 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. Charles E. Berg requests reconsideration of our Claims Division's February 14, 1980 denial of his claim for reimbursement of a loan origination fee of \$570 incurred incident to his purchase of a residence upon the transfer of his official duty station from Fairbanks, Alaska, to Aurora, Colorado. The denial is sustained.

Mr. Berg's claim was denied 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.

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"(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 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) Fees 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."

With his letter requesting reconsideration of our February 14, 1980 decision, Mr. Berg submits a letter from First Capitol Mortgage Company, from which he received his mortgage, which states that the fee of \$570 represents his charge for processing his loan and is based upon the loan amount and not considered discount points. (In the present situation, it is 1 percent of \$57,000 and listed on the settlement statement as the loan origination fee.) He

further includes a letter from the Veterans Administration, Denver, Colorado, which states that the \$570 is a loan origination fee, that Internal Revenue Service (IRS) regards it as a charge for the lender's services in preparing loan documents and not deductible as an itemized interest expense, and that it is not considered a part of the finance charge. He forwards excerpts from a Housing and Urban Development (HUD) publication and from the Department of Transportation (DOT) Travel Regulations in support of his contention that the fee covers the lender's administrative costs of processing the loan and is reimbursable.

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 a finance charge as defined in the Truth in Lending Act, Title I, Public Law 90-321, May 29, 1968, 82 Stat. 146, as amended 15 U.S.C. 1601-1667. The primary purpose of the Truth in Lending Act 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 uninformed 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 Truth in Lending Act and the implementing provision of Regulation Z.

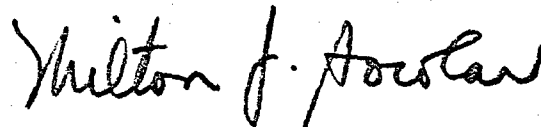
It is these provisions, rather than the lending institution's characterizations, which are determinative in deciding what fees are nonreimbursable finance charges. This is so regardless of the fact that the loan origination fee may not be deductible for tax purposes and notwithstanding HUD's description of the fee as relating to the lender's administrative costs. Matter of Donald W. Espeland, B-186583, March 30, 1978. In accordance with the provisions of paragraph 226.4 of Regulation Z, we have held that a service charge or fee, not identified

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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.

The loan origination fee claimed by Mr. Berg related to the processing and handling of his loan and was computed as 1 percent of the loan. Such a fee which varies in total amount in direct proportion to the amount borrowed is more in the nature of a charge for the hire of money than reimbursement for administrative costs of processing the loan. As such, this fee may be described as a "loan fee" within the meaning of section 106(a)(3) of the Truth in Lending Act. See B-168674, March 11, 1974; B-177806, January 2, 1973. No exception for loan origination fees is contained in section 106(e) of the Act. The fact that Veterans Administration (VA) regulations may permit a lender to charge a loan origination fee in connection with a VA loan does not alter the fact the fee is charged incident to or as a condition of the extension of credit and not otherwise shown to be for items excluded from the finance charge. Thus since the loan origination fee is a "finance charge" according to section 106 of the Truth in Lending Act and since the Federal Travel Regulations preclude reimbursement for such "finance charges," reimbursement is not allowed for the loan origination fee paid by Mr. Berg.

Accordingly, the action of our Claims Division in denying reimbursement of the loan origination fee is sustained.



For the Comptroller General  
of the United States