

**DOCUMENT RESUME**

01978 - [AIC52026]

[Real Estate Expenses: Loan Origination Fee]. E-186583. April 11, 1977. 4 pp.

Decision re: Donald W. Espeland; by Robert P. 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: Department of Labor.

Authority: Truth in Lending Act, title 7, sec. 106, 106(e) (P.L. 90-321). 5 U.S.C. 5724a. B-186734 (1976). E-185344 (1976). B-185621 (1976). B-176665 (1973). B-183972 (1976). B-175374 (1972). B-176875 (1975). F.T.R. (FPMR 101-7), para. 2-6.2, 2-6.2d. F.T.R. (FPMR 101-7), para. 2-1.2. 12 C.F.R. 226.

The Department of Labor questioned the propriety of a reclaim voucher for a loan origination fee paid by a transferred employee. The prior disallowance was sustained, as the charge is a finance charge under the Truth in Lending Act and Regulation Z (12 C.F.R. Part 226). (DJM)

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Robert Heitzman  
Civ. Pers.



**DECISION**

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

01978

FILE:

DATE: APR 11 1977

MATTER OF: B-186583

Donald W. Espeland - Real Estate Expenses -  
Loan Origination Fee

DIGEST:

Employee who reclaimed \$465, consisting of a charge he paid for loan origination fee, and whose original claim was disallowed by the administrative agency 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 an authorized certifying officer of the United States Department of Labor, dated May 20, 1976, regarding the propriety of certifying for payment a reclaim voucher in the amount of \$465 in favor of Mr. Donald W. Espeland representing real estate expenses in connection with the purchase of a residence in October 1975, in Des Moines, Iowa. The purchase was pursuant to a permanent transfer of station from Denver, Colorado. Mr. Espeland had originally submitted a claim for a loan origination fee of \$540, subsequently reduced to \$465 after being granted an appraisal fee allowance of \$75. The \$465 balance, which was disallowed, is the subject matter of the present reclaim voucher, and represents the loan origination fee paid by Mr. Espeland in connection with the purchase of his residence.

Mr. Espeland contends there is a contradiction between past decisions of our Claims Division regarding loan origination fees and the definition of a loan origination fee stated by the United States Department of Housing and Urban Development (HUD), and Publication 17 of the Internal Revenue Service (IRS). Further, Mr. Espeland states that HUD employees are reimbursed a loan origination fee; this Office allows Escrow Agents fee, which is inconsistent; and a provision of the Department of Labor's regulations is in error.

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.

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

"\* \* \* no fee, cost, charge, or expense is reimbursable 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."

\* \* \* \* \*

"(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.

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

"(3) Escrows for future payment 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.

The administrative cost computed at 1½ percent of the loan, claimed by Mr. Espeland is also known as a loan origination fee, and its purpose is to cover the various costs of processing and handling the loan. In fact the bank advised Mr. Espeland by letter, December 17, 1975, that a loan origination fee is the same as its service fee or administration cost. And Mr. Espeland clearly states on his voucher that the claimed amount is a loan origination fee.

We have held that this fee is a "loan fee" within the meaning of section 106(a)(3) of the Truth in Lending Act. See B-186734, September 23, 1976; B-185621, April 27, 1976; B-183972, April 16, 1976. As such, there is no exception contained in section 106(a) of the Act for this 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. Espeland.

Mr. Espeland's 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. Specific regulations preclude its reimbursement. See B-176879, April 2, 1975, copy enclosed. And HUD employees, like most other Government employees, are subject to these same regulations. See FTR, para. 2-1.2 (May 1973).

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We also fail to discern any inconsistency in allowance of an Agent's Escrow fee because it is reimbursable under FTR, para. 2-6.2 (May 1973). Where there is nothing in the record to indicate that the escrow fee was incident to the extension of credit, it is allowable. B-185344, September 23, 1976; B-176463, February 20, 1973; B-175374, April 12, 1972.

We note that the apparent discrepancy in the Department of Labor's regulation cited by Mr. Espeland, is an example of a payment voucher dated 1969. We therefore point out that previously the loan origination fee was a reimbursable expense under Bureau of the Budget Circular No. A-56 until June 26, 1969, when that regulation was revised. This revision, which excluded the loan origination fee from allowable expenses, was carried over into the succeeding regulation, the FTR para. 2-6.2d which was the applicable regulation when Mr. Espeland's transfer was effected. This fact could account for the discrepancy.

Accordingly, the voucher may not be certified for payment.

**R. J. KELLER**

[Deputy] **Comptroller General  
of the United States**