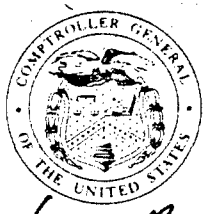


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DECISION



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

[Request for Reimbursement of]

FILE: B-198901

DATE: October 3, 1980

MATTER OF: Martin L. Berdan - Real Estate Expenses *involving*
Loan Commitment Fee

DIGEST: Federal employee, upon transfer, paid 3/4 of 1 percent of the amount of a loan on purchase of a residence as a commitment fee to the lending institution. Commitment fee is a "finance charge" within the definition of that term in section 106(a) of the Truth in Lending Act and thus not reimbursable under Federal Travel Regulations, para. 2-6.2d (May 1973).

The issue presented in this case upon a request from an authorized certifying officer of the Internal Revenue Service is whether a loan commitment fee paid by a Federal employee on purchase of a residence upon transfer may be reimbursed. Since the commitment fee is a "finance charge" within the definition of that term in section 106(a) of the Truth in Lending Act, it is not reimbursable under Federal Travel Regulations, para. 2-6.2d (May 1973).

Approved

Mr. Martin L. Berdan, an employee of the Internal Revenue Service, was authorized to incur expenses on the purchase of a residence in connection with a transfer of official duty station from Champaign, Illinois, to Waco, Texas. Mr. Berdan submitted a voucher claiming reimbursement of \$345 for a "commitment fee" which he paid to the lending institution. The loan disclosure statement shows that the commitment fee represented 3/4 of 1 percent of the loan which was in the amount of \$46,000. In addition the statement shows that no "loan origination fee" was charged to the buyer.

Mr. Berdan asserts that the lending institution takes the position that the commitment fee is not a finance charge and since the Internal Revenue Service does not allow a deduction of this item as an interest expense under the tax code, it should be reimbursable to him as a miscellaneous expense incident to his transfer to Texas.

Authority to reimburse a Government employee for expenses incurred in connection with the purchase of a residence upon official transfer of station is found in 5 U.S.C. § 5724a (1976).

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The governing regulations promulgated incident to that authority are contained in chapter 2, part 6, of the Federal Travel Regulations (FPMR 101-7) (May 1973), paragraph 2-6.2d, of which 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 1, Public Law 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

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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.

"(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."

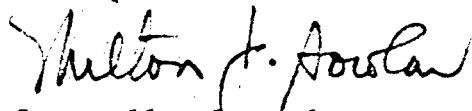
Regulation Z (12 C.F.R. Part 226) was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, and sets forth the foregoing in substantially the same form.

[The commitment fee claimed by Mr. Berdan related to the processing and handling of his loan and was computed as 3/4 of 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.] Compare B-168674, March 11, 1974; B-177306, January 2, 1973. [No exception for loan fees is contained in Section 106(e) of the Act. Thus,

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since the commitment fee is a "finance charge" as described in 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 commitment fee paid by Mr. Berdan. Whether or not an item of expense is reimbursable under the Federal Travel Regulations is not dependent upon the name given the expense or whether or not it may be tax deductible under the Internal Revenue Code.

Accordingly, the voucher may not be certified for payment.



For the Comptroller General
of the United States