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Administrative Interpretation No. 3.202-7708

A SUPERVISED LENDER AND A CONSUMER MAY AGREE THAT REASONABLE CHARGES FOR TITLE EXAMINATION AND APPRAISAL IN CONNECTION WITH A POTENTIAL LOAN TO BE SECURED BY AN INTEREST IN LAND BE COLLECTED IN ADVANCE OF THE LOAN AND BE NON-REFUNDABLE IF A LOAN IS NOT CONSUMMATED.

You have asked whether a supervised lender may charge for and collect in advance the reasonable cost of title examination and appraisal in connection with a potential loan that is to be secured by real property, and whether these charges may be non-refundable.

Consumer Protection Code Section 3.202 allows certain charges in addition to the loan finance charge to be contracted for and received in connection with a consumer loan:

- (d) with respect to a loan secured by an interest in land, the following "closing costs," if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this Act:
 - (i) fees or premiums for title examination....
(Emphasis added)

The definition of loan finance charge in Section 3.109 [S.C. Code §37-3-109(1976)] includes "charges incurred for investigating the collateral or credit-worthiness of the debtor" in Subsection (1)(b). (Emphasis added) Thus if a supervised lender actually makes a consumer loan, the charge for title examination is a permissible additional charge while the charge for appraisal must be included in the loan finance charge. Your question, however, is whether a supervised lender may collect these charges in advance of making a consumer loan.

It is the opinion of this Department that a supervised lender may charge for title examination and appraisal in advance of making a consumer loan to be secured by an interest in land if the consumer is told the amount and that these charges are non-refundable if a loan is not consummated, and

the consumer agrees to pay in advance under these conditions. If for some reason the loan is not consummated, the supervised lender would not be obligated to refund the money paid for the title examination and appraisal. The creditor would, however, be subject to Consumer Protection Code Section 6.111 [S.C. Code §37-6-111 (1976) (as amended)] which provides in part:

- (1) The Administrator may bring a civil action to restrain a person to whom this Part applies from engaging in a course of:

...;

- (c) conduct of any of the types specified in paragraph (a) or (b) [concerning unconscionability] with respect to transactions that give rise to or that lead persons to believe will give rise to consumer credit transactions....
(Emphasis added)

If the loan is consummated, different rules apply for treatment of the two charges depending upon whether or not the transaction is rescinded. If the loan is rescinded in accordance with Federal Reserve Board Regulation Z Section 226.9 [12 C.F.R. §226.9] implementing Truth in Lending Act Section 125 [15 U.S.C. §1635], the charges for both title examination and appraisal must be refunded to the consumer. Subsection (d) of Regulation Z Section 226.9 provides that "when a customer exercises his right to rescind [a consumer credit transaction secured by an interest in real property used or expected to be used as the principal residence of the customer], he is not liable for any finance or other charge." E.g., Federal Reserve Board Letter No. 1078 of July 13, 1976 [5 CCH Consumer Credit Guide ¶31,418].

If, on the other hand, the rescission period expires and credit is actually extended, the charge for appraisal must be included in the finance charge and therefore reflected in the annual percentage rate. The charge for title examination, while it is a permissible additional charge in connection with a consumer loan, cannot be included in the principal because payment would not have been deferred. Consumer Protection Code Section 3.107(3)(c)(ii) [S.C. Code Section 37-3-107(3)(c)(ii)(1976)].

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