



The State of South Carolina

Department of Consumer Affairs

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September 8, 1981

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Administrative Interpretation No. 3.210-8109

APPRAISAL FEE, WHETHER OR NOT PAID TO A THIRD PARTY, IS PART OF THE FINANCE CHARGE AND THEREFORE SUBJECT TO REBATE UPON PREPAYMENT IN FULL.

You asked whether an appraisal fee, incurred in connection with a loan secured by realty and paid to a third party not an employee of the lender, must be rebated when the loan is prepaid in full or in part. We assume for purposes of your question that a consumer loan as defined in Section 37-3-104 (1976 as amended) and governed by the Consumer Protection Code's rate and charge provisions is involved.

As we stated in Administrative Interpretation No. 3.202-7613 of November 23, 1976, an appraisal fee is part of the finance charge and is not a permissible additional charge. The definition of loan finance charge in Section 37-3-109(1)(b) (Cum. Supp. 1980) specifically includes "charges incurred for investigating the collateral... irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made." While the definition excludes additional charges under Section 37-3-202 (Cum. Supp. 1980), appraisal fees, unlike certain other "closing costs" in connection with a loan secured by an interest in land, are not permissible additional charges regardless of the nature of the security.

Section 37-3-209 (Cum. Supp. 1980) gives the consumer the right to prepay in full the unpaid balance of a consumer loan at any time without penalty. Therefore, when a consumer loan is only partially prepaid, the Consumer Protection Code does not require a rebate of any of the finance charge. Neither does it prohibit a rebate upon partial prepayment. However, when a consumer loan entered into after September 28, 1976 is prepaid in full, Section 37-3-210 (Cum. Supp. 1980) must be consulted for a determination whether a rebate of unearned finance charge is required and if so, how to compute it. In general, precomputed consumer loans require a rebate of unearned finance charges upon prepayment in full.

You argued that because an appraisal fee is earned when the outside appraiser completes his report on the property it should not be subject to rebate. You reasoned that because the lender cannot recover funds paid to the outside appraiser in the event of prepayment in full due to the appraiser's having performed according to his contract with the lender, the consumer should not be entitled to a rebate of the charge. In your opinion, the requirement that the lender rebate a part of the appraisal fee under these circumstances is in the nature of a penalty. And finally you said that the consumer has received the full benefit of the appraisal once it has been made regardless of whether he pays back the loan as originally scheduled or prepays it.

TELEPHONES (AREA CODE 803)

ADMINISTRATION
758-3017

CONSUMER COMPLAINTS
758-2040

PUBLIC INFORMATION
758-7546

NOTIFICATION
758-8587

CONSUMER ADVOCACY
758-4926

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Despite your arguments to the contrary, we are not convinced that the appraisal fee should be treated any differently from any other part of the finance charge. The Consumer Protection Code generally regulates the charges that may be made by the creditor to the consumer in connection with a consumer credit transaction and not charges that may be contracted for between the creditor and a third party. Although the outside appraiser may have "earned" his charge to the creditor for appraisal services when the appraisal is performed according to their contract, it does not follow that the creditor has then likewise "earned" a portion of the finance charge made to the consumer equal to the appraisal fee.

The finance charge is defined broadly to include all credit related charges payable by the consumer which are imposed by the lender as an incident to the extension of credit. While the finance charge may consist of several separately identifiable components, it is nonetheless the overall charge made by the creditor to the consumer covering the cost of credit and is subject to all applicable provisions such as maximum rates and rebate upon full prepayment. The portion of the finance charge that is considered earned at a given time relates to the time of prepayment rather than services performed.

You cited the Truth in Lending Act before and after recent amendments [15 U.S.C. §§1601 et seq.] and Federal Reserve Board Regulation Z before [12 C.F.R. §226.4(e)(5)] and after revision [12 C.F.R. §226.4(c)(7)(iii)] as authority for excluding an appraisal fee from the finance charge and therefore from the requirement of rebate upon prepayment. Although the Federal Truth in Lending Act and Federal Reserve Board Regulation Z contain requirements for disclosure to consumers for purposes of both Federal and State law, they do not affect maximum rate and charge provisions of the Consumer Protection Code. See A.I.'s No. 3.301-7915 of August 3, 1979 and No. 2.301-8107 of September 1, 1981. In our opinion, an appraisal fee is as much a part of the finance charge and therefore subject to rebate for purposes of the Consumer Protection Code as is a component such as an origination fee or discount points. See A.I. No. 3.109-8010 of September 3, 1980.

In summary, it is the opinion of this Department that because an appraisal fee is part of the finance charge it is subject to the requirements for rebate of unearned finance charges in Section 37-3-210 regardless of to whom the fee is paid, unless the lender had no notice of it when he made the loan.

Roy C. Harms
Acting Administrator

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