

DECISION

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

FILE: B-186783

DATE: AUG 20 1976 98649

MATTER OF:

Robert R. Pugh - Relocation Expenses -
Initial Service Charge

DIGEST:

Transferred civilian employee of Army Corps of Engineers seeking reimbursement of initial service charge incurred incident to purchase of new residence may not be reimbursed since Federal Travel Regulations, FPMR 101-7, (May 1973), para. 2-6.2d preclude reimbursement of any item determined to be finance charge under Federal Reserve Board Regulations. Reliance on superseded regulation can form no basis for reimbursement. Survey, photograph, and legal (closing) fees may be reimbursed because they are excludable from finance charge.

This action is taken in response to an appeal by Mr. Robert R. Pugh, an employee of the Department of the Army, U.S. Corps of Engineers, of a settlement letter DWZ-2554130-KBH-2 issued by our Claims Division on May 6, 1975, denying his claim for reimbursement of an initial mortgage service charge of \$490.

The record discloses that, pursuant to Travel Order No. 456, issued August 20, 1973, Mr. Pugh was transferred from Pineville, West Virginia, to Paintsville, Kentucky, and that he incurred certain expenses incident to the purchase of a new residence. The Loan Settlement Statement, dated August 23, 1973, included \$630 as an "Initial Service Charge", which was 2 per cent of the mortgage loan. No further itemization of the \$630 was set out in the Settlement Statement. However, the record does contain an unsigned and undated "Itemization of Closing Costs" on the stationery of the mortgagee, the First Federal Savings and Loan Association, Paintsville, Kentucky, which breaks down the fee as follows:

"First Itemization

"Survey	\$ 35.00
"Legal fees (closing loan)	100.00
"Photo	5.00
"Various services, such as clerical help for taking application - preparing instruments to put on computer - putting on computer. Also, prorated cost of computer service in Cincinnati, cost of supplies, etc.	490.00
"Total	<u>\$630.00"</u>

The record also contains another, inconsistent breakdown of the \$630 fee dated February 8, 1974, under the signature of George E. Branham, Executive Vice President of the First Federal Savings and Loan Association. This letter, which is addressed to Mr. Pugh, contains the following itemization:

Second Itemization

Legal Fees	\$ 47.00
Loan Committee Fees (includes photo)	20.00
Survey	35.00
Processing of loan (consisting of 14 charges apparently representing the prorata apportionment of the bank's overhead costs)	528.00
Total	<u>\$630.00</u>

On October 12, 1973, Mr. Pugh's claim was partially allowed in the amount of \$140, for the survey, legal fees (closing), and photo expenses, based on the first itemization, the only one then available. The Army found the \$140 to be reasonable in amount and customarily paid by a purchaser in the locality where the property was purchased. Our Claims Division concurred in the Army's determination. Since Mr. Pugh was given a travel

advance in excess of allowed expenses, he was found to be liable to the Government for \$514.64, of which, only the disallowance of the initial service charge of \$490 is still being contested.

The present appeal is based on the contention that the \$490 of the initial service charge incurred by Mr. Pugh constitutes a reimbursable fee under the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR) and Regulation Z, 12 C.F.R. § 226.4 (1976). Mr. Pugh states that the expenses were incurred in good faith reliance upon superseded regulations.

The controlling regulation is FTR para. 2-6.2d, which provides in pertinent part, that:

"* * * Notwithstanding the above, 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. * * *"

Regulation Z, promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, is set forth in section 226.4 of Title 12 Code of Federal Regulations (CFR):

"(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 customer, and imposed 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 type of charges.

* * * * *

"(2) Service, transaction, activity, or carrying charge.

"(3) Loan fee, points, finder's fee, or similar charges.

* * * * *

"(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 not be included in the finance charge with respect to that 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." (Emphasis added.)

We have consistently held that pursuant to the above, which was applicable to Mr. Pugh's transfer, loan origination fees or initial service charges incurred incident to or as a condition of the extension of credit to finance the purchase of a new residence are not reimbursable because they constitute finance charges. B-184077, February 3, 1976; 49 Comp. Gen. 483, 486 (1970); B-169367, April 17, 1970; B-171956, November 27, 1970.

In applying the above regulation to Mr. Pugh's expenses, it is clear that the "processing of loan" charges, as designated in both itemizations represent costs includable in the finance

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charge within the meaning of 12 C.F.R. 225.4(a). Since it constitutes a finance charge under Regulation Z, the Federal Travel Regulations preclude reimbursement. B-178235, May 7, 1973.

The next question raised is the reimbursement of survey, legal fees (closing) and photo expenses incurred by Mr. Pugh incident to the extension of credit. The record, however, is inconsistent. The amount of the survey is not in dispute, since \$35 is indicated on both itemizations from the mortgagee. Also, \$5 of photo expense is listed on the first itemization and is incorporated into "loan committee fees" in the second itemization. However, the expense incurred for legal fees (closing) is in conflict. The first itemization, which is the amount previously allowed, indicates \$100, while the second indicates \$47. It is our view that, since \$47 in legal fees (closing) was indicated in a signed, later, and more comprehensive itemization of the initial service charge, that amount must be the amount used in determining the total reimbursement.

It is clear that the three charges in the second itemization for survey, photo, and legal fees (closing) are reimbursable to the employee since they are specifically excluded from the determination of the finance charge, as defined in subsection 5 C.F.R. § 226.4(e) (1976), provided they are bona fide, reasonable in amount and not incurred for the purpose of circumventing or evading Regulation Z. B-179659, October 10, 1973. Since such a determination was made by the Department of the Army, reimbursement is authorized.

The final question raised by the record involves the fact that the employee relied upon section 4.2d of superseded Office of Management and Budget (OMB) Circular No. A-56 (Revised, October 12, 1966), which specifically provided for reimbursement for lender's loan origination fees. However, when OMB Circular No. A-56 was again revised effective June 26, 1969, authority to reimburse employees for loan origination fees was removed. 49 Comp. Gen. 483 (1970). This revised regulation was incorporated into, and superseded by the FTR which was in effect at the time of Mr. Pugh's transfer.

Accordingly, the Claims Division determination of the Government's claim against Mr. Pugh is modified to reflect the

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reimbursement of the \$47 instead of \$100 for legal fees (closing). Therefore Mr. Pugh's liability is determined to be \$567.64.

R.F. KELLER
Deputy Comptroller General
of the United States