

PRM-11

DECISION



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

personal name

10,69

FILE: B-194314

DATE: June 28, 1979

MATTER OF: Mr. Michael A. Pokorski

DIGEST: Transferred employee ^{claims for} reimbursement for loan origination fee incident to purchase of home at new location. Charges contained in such a lump-sum fee may only be reimbursed if they are excludable from finance charges under Truth in Lending Act by Regulation Z, 12 C.F.R. 226.4(e) and itemized to show the portion of the fee allocable to each item. To the extent that a portion of the loan origination fee is not itemized and a specific amount allocable, it must be presumed to be finance charges and non-reimbursable.

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This action is in response to a letter from Mr. Michael A. Pokorski, an employee of the Defense Logistics Agency, concerning his claim for reimbursement for certain real estate expenses incurred incident to his official change of station in 1977.

The file shows that incident to his official change of station, Mr. Pokorski purchased a home at his new station. According to the settlement papers, he was charged an unitemized cost of \$300 under the category of a loan origination fee. By settlement dated September 26, 1978, the claim was disallowed based on decision B-189639, March 24, 1978, which held that an unitemized loan origination fee may not be reimbursed since it was presumed to include finance charges, which, under paragraph 2-6.2d of the Federal Travel Regulations, are not reimbursable.

On reclaim, Mr. Pokorski provided an itemization totalling \$178.25. Payment was authorized on March 2, 1979. Left outstanding was a \$121.75 cost. Mr. Pokorski contends that that amount represents the fee for the escrow agent in the settlement transaction, but admits he is unable to establish it as such.

Paragraph C14002 of Volume 2 of the Joint Travel Regulations, provides in part:

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"d. Miscellaneous Costs. The following expenses are reimbursable with respect to the sale and purchase of residences * * *

- "1. FHA or VA fee for loan application,
- "2. costs of preparing credit reports,
- "3. mortgages and transfer taxes,
- "4. State revenue stamps,
- "5. fees and charges similar to those in items 1 through 4.

* * * Notwithstanding the foregoing, no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under 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.
* * *

The pertinent parts of Regulation Z, 12 C.F.R. 226.4 (1977), state as follows:

"226.4 Determination of finance charge.

"(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 types of charges"

* * * * *

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

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

* * * * *

"(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."

Regulation Z expressly categorizes loan fees as finance charges incident to or as a condition of the extension of credit by a lender. Our position that loan origination fees are finance charges under the regulation and, therefore, not reimbursable, is longstanding and based on the rationale that a fee which is stated as a fixed percentage of the amount loaned without reference to the type or extent of services actually performed by the lender is more in the nature of a charge for the hire of money than it is a charge for costs of customary services performed in the course of settlement and processing a loan. See B-183972, April 16, 1976. Thus, where it is claimed that a loan origination fee is levied to reimburse the lender for costs of specific services performed, we require an itemization of those

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charges in order to insure that reimbursement is authorized only for those charges which are not a part of finance charges.
B-184703, April 30, 1976.

In the present case, it has been established that \$172.25 of the \$300 loan origination fee is attributable to reimbursable charges. While it is contended that the remaining \$121.75 is an appropriate charge as an escrow agent fee, there is nothing in the file to show that there was an escrow agent for settlement purposes; that if there was escrow agent service, any charge was made for such service or that a specific portion of the amount paid (\$300) was attributable for that service.

In the absence of such evidence, we must presume that all sums not specifically accounted for were non-reimbursable finance charges.

Accordingly, based on the record before us, the amount claimed by Mr. Pokorski in excess of that allowed by settlement of March 2, 1979, may not be allowed. ^{previous} 8 178.25


Acting Comptroller General
of the United States