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

B-177306

JAN 2 1973

Mrs. Luella S. Howard
Authorized Certifying Officer
Office of the Secretary of Transportation
Department of Transportation

Dear Mrs. Howard:

We refer to your letter dated October 17, 1972, with enclosures, requesting our decision as to whether a reclaim voucher in the amount of \$392.50 in favor of [redacted], an employee of the Department of Transportation, may be certified for payment in view of the circumstances hereinafter described.

The record indicates that under Travel Authorization No. TS 20312, dated September 23, 1971, [redacted] was authorized a change of official duty station from Washington, D. C., to Seattle, Washington.

Upon completion of the subject transfer, [redacted] submitted vouchers for the reimbursement of those costs incurred incident to his move to Seattle, Washington. In the administrative processing of the vouchers there was suspended therefrom, inter alia, the amount of \$392.50. Such amount is now being claimed by [redacted] in the present reclaim voucher.

The \$392.50 now being sought for reimbursement appears to constitute a loan origination fee which a lending institution is allowed to charge for processing a loan under regulations of the Veterans Administration (also referred to as a VA funding fee) and \$10 for a tax registration charge. With regard to the former, we note that the \$382.50 fee was described as a "Bank Loan Fee" on the settlement sheet dated January 24, 1972, which was issued by the Washington Mutual Savings Bank (the lender) at the time of settlement on a new residence in Bellevue, Washington. Furthermore, it is noted that the \$382.50 fee charged by the bank was exactly 1 percent of the loan amount involved.

Analysis of correspondence attached to the reclaim voucher reveals that [redacted] apparently feels that reimbursement of a loan origination fee (VA funding fee) is not prohibited by the controlling regulations, that is, Office of Management and Budget (OMB) Circular No. A-56, revised August 17, 1971.

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Service fees such as loan origination or VA funding fee for the processing of mortgage payments were at one time proper for reimbursement. See B-169740, May 28, 1971, copy herewith, which concerned a transaction that occurred prior to the June 29, 1969, revision of OMB Circular No. A-56. The revision removed loan origination fees from the listing of reimbursable expenses but in general prohibited reimbursement for expenses which are determined to be a part of the finance charge under the Truth in Lending Act.

Section 4.2d of OMB Circular No. A-56, revised August 17, 1971, states in pertinent part:

" * * * 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.
* * *"

Under such provision whenever an item of expense incident to a real estate transaction constitutes a finance charge within the contemplation of Regulation Z reimbursement therefor is precluded. Section 106 of the Truth in Lending Act is in part as follows: 15 USC
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"(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.

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"(5) Premium or other charge for any guarantee or insurance protecting the creditor 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 CFR, 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 item here involved relates to the application, processing and servicing of [redacted] loan and is clearly a "loan fee" within the meaning of section 106(a)(3) of the Truth in Lending Act. It should be noted that such a fee does not come within the items excluded under section 106(e) of the act. Accordingly, reimbursement of the \$382.50 item is precluded. See B-171056, November 27, 1970; B-173814, October 21, 1971; and B-175889, June 19, 1972, copies enclosed.

As to the tax registration charge of \$10, the record does not indicate whether such charge is for tax service paid by the employee purchaser to the escrow holder incident to proration of the tax obligations of the parties involved (buyer and seller) or if it is a charge

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levied by the State of Washington for recordation. If the \$10 item has to do with proration of taxes, it would not be reimbursable. 49 Comp. Gen. 483, 486 (1970). On the other hand if it is in the nature of a recording fee, it would appear to be reimbursable under section 4.2c of OMB Circular No. A-56, insofar as it would represent a cost customarily paid by the purchaser of a residence in the State of Washington.

The vouchers with accompanying papers are returned herewith for handling in accordance with the foregoing.

Sincerely yours,

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

Enclosures