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**DECISION**



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

FILE: B-196402 *[Claim For Reimbursement of]* DATE: June 5, 1980  
MATTER OF: Michael E. Forrest - Real Estate Expenses -  
Vermont Housing Finance Agency Fee

**DIGEST:** Fee was imposed on lending institution by Vermont Housing Finance Agency for purchasing from lending institution Government employee's low interest mortgage loan incident to purchase of residence at new duty station. Fee, which was passed on to employee, is a finance charge under Regulation Z, 12 C.F.R. § 226.4(a)(8), and therefore is not reimbursable under para. 2-6.2d of Federal Travel Regulations.

AGC 0435

Mr. H. Larry Jordan, an authorized certifying officer, National Finance Center, United States Department of Agriculture, has requested a decision on the claim of Mr. Michael E. Forrest, an employee of the Department, for reimbursement of a fee of \$187.50 imposed by the Vermont Housing Finance Agency (VHFA) incident to the purchase of a residence at his new permanent duty station. Mr. Jordan is of the opinion that the fee is not reimbursable because it is a finance charge. We agree for the reasons stated below.

The statutory authority under which Mr. Forrest's claim arises is section 5724a(a)(4) of title 5, United States Code. It provides that Federal agencies may, in accordance with prescribed regulations, reimburse their employees for certain expenses incurred by them in purchasing a residence at a new permanent duty station. This provision of law is implemented by the Federal Travel Regulations (FTR), FPMR 101-7, May 1973, which, in paragraph 2-6.2d, provides that "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 is codified in title 12 of the Code of Federal Regulations (C.F.R.), Part 226.

As to the facts in this case, VHFA is an instrumentality of the State of Vermont whose primary purpose is to facilitate the acquisition of housing by persons and families of low and moderate income. To this end it is authorized to purchase from lending institutions mortgage loans (loans evidenced by notes secured by mortgages) made to low and moderate income persons and families at rates of interest

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less than the prevailing rate and to assess fees and charges for expenses and reserves. See sections 601-623, Title 10, Vermont Statutes Annotated.

The fee here in question was paid to VHFA by the lending institution, The Merchants Bank, and was passed on to Mr. Forrest. It was listed on the Disclosure Statement for Real Estate Loan as "Administration fee to Vt. Housing Finance Agency." The bank explained the charge to Mr. Forrest in these words:

"I hope that the following excerpt from the Mortgage Loan Purchase Agreement between the Vermont Housing Finance Agency and The Merchants Bank will satisfactorily explain the fee of \$187.50 (.005 of the amount of the mortgage) charged you at closing and indicated on the Settlement Statement dated February 17, 1978:

'Initial Fee. The Mortgage Lender shall pay to the Agency as an initial fee of the Agency an amount equal to one percent of each Mortgage Loan made by the Mortgage Lender; provided that such amount shall be reduced by the amount the mortgagor is required to pay as a fee, charge or premium necessary to obtain the applicable insurance or guarantee on the Qualified Mortgage.'

"The fee is charged by Vermont Housing Finance Agency for processing 'low-interest' mortgage loans. It is comparable to an FHA or VA application fee.

"The fee is excluded from the finance charge under Section 226.4(e)(5) of Regulation Z, as no portion of the fee is retained by the Lender."

VHFA itself explained its fee to Mr. Forrest in this manner:

"This letter is to confirm that a one-half of one percent fee was charged you at your loan closing as a result of you qualifying under one of our low interest loan Single Family Programs. The fee is used to help pay the administrative costs incurred by the Vermont Housing Finance Agency in operating our Single Family Programs."

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Concerning these explanations we note that the VHFA fee in this case was only one-half of one percent because another one-half of one percent was charged Mr. Forrest for mortgage insurance by the Vermont Home Mortgage Guarantee Board. As to FHA and VA fees for loan applications, these are distinguishable from the VHFA fee because they are specifically listed as reimbursable in FTR 2-6.2d and because they cover costs for such things as appraisals and credit reports which are specifically excluded from the definition of finance charges by 12 C.F.R. § 226.4(e). B-169790, July 2, 1970; B-174106, October 21, 1971. Moreover, the bank's reference to Regulation Z appears to be to be to the provision in 12 C.F.R. § 226.4(e)(5) which excludes appraisal fees from finance charges. However, the disclosure statement indicates that Mr. Forrest was charged \$75 for appraisal services in addition to the VHFA fee. Further, the fact that no portion of the fee was retained by the bank, the initial lender, does not preclude the fee from being a finance charge. See 12 C.F.R. § 226.4(a) which provides that finance charges may be payable to a third party and 49 Comp. Gen. 483 (1970). Finally, concerning VHFA's explanation, unitemized charges characterized as administrative costs or overhead expenses have consistently been held to be finance charges. Kenneth DeFazio, B-191038, November 28, 1978; Anthony J. Vrana, B-189639, March 24, 1978.

In final analysis it seems clear that the VHFA charge sprang from the Mortgage Loan Purchase Agreement between VHFA and The Merchants Bank and that it was a fee which was charged the bank by VHFA for purchasing Mr. Forrest's low interest mortgage loan from the bank.

The provision of Regulation Z defining finance charges, 12 C.F.R. § 226.4(a)(8), is as follows:

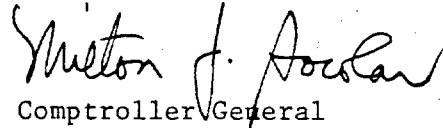
"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as 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:

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"(8) Any charge imposed by a creditor upon another creditor for purchasing or accepting an obligation of a customer if the customer is required to pay any part of that charge in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation."

It is our opinion that the VHFA fee here in question falls within the purview of this provision of Regulation Z. It is therefore a finance charge the reimbursement of which is prohibited by FTR 2-6.2d. Accordingly, Mr. Forrest's claim may not be allowed.



For the Comptroller General  
of the United States