

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-215334**DATE:** October 24, 1984**MATTER OF:** Erling Steven Lye**DIGEST:**

An employee who purchased a home at his new duty station is not entitled to reimbursement of a loan origination fee since the fee is a finance charge that may not be reimbursed under the regulations in effect at the date of the employee's transfer. Although the lender itemized the fee, that itemization shows that the fee covered the administrative expense of issuing the loan as opposed to costs excluded from the definition of finance charges and generally incurred for the purchase of a home without regard to the manner in which that purchase was financed.

Mr. Erling Steven Lye, an employee of the Veterans Administration, appeals an adverse settlement of our Claims Group denying his claim for reimbursement of a "Veterans Administration loan application fee" charged by the lending institution financing the purchase of his home at his new duty station.^{1/} Since the charge was in the nature of a loan origination fee not reimbursable under regulations in effect at the time of the transfer, we sustain the Claims Group's settlement.

Background

Mr. Lye was transferred from Irmo, South Carolina, to Minneapolis, Minnesota, on February 21, 1982. He subsequently purchased a home near Minneapolis. The settlement sheet he was furnished on July 29, 1982, in connection with the closing of that purchase lists a 1 percent fee of \$940 charged to him as the purchaser. Mr. Lye claims that he is entitled to reimbursement of the \$940 charge based on the lender's explanation that the charge is a "Veterans Administration loan application fee," and that it covers the following:

^{1/} Claims Group settlement certificate Z-2850255, June 30, 1983.

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"1. Taking Application--	\$185.00
"2. Ordering Credit Report, Deposit Verifications and Employment Verifications--	185.00
"3. Underwriting the Credit Package--	185.00
"4. Submission of Loan to Veterans Administration for approval--	200.00
"5. Issuing Firm Commitment and sending Closing Package to the Title Company--	<u>185.00</u>
"Total Origination Cost	\$940.00"

Although item "2" refers to a credit report, our records contain a "Purchaser's Closing Statement" showing that Mr. Lye paid a charge of \$45 for a credit report in addition to the \$940 loan origination fee. Consequently, we presume that the \$185 amount allocated to item 2 covers the lender's administrative costs exclusive of the \$45 payment to a third party for the credit report itself. The "Purchaser's Closing Statement" also shows that in addition to the \$940 fee, Mr. Lye was charged other "mortgage loan expenses" including recording fees, appraisal fees, survey or plat drawing, title exam and insurance, judgment search, and mortgage registry.

Law and Conclusions

Whether a particular real estate expense incurred by a transferred Federal employee is reimbursable is governed by 5 U.S.C. § 5724a and the implementing regulations, the Federal Travel Regulations, para. 2-6.2 (Supp. 2, Sept. 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1983).

Paragraph 2-6.2d of the Federal Travel Regulations, defines which miscellaneous expenses are reimbursable in connection with the sale and purchase of residences at the employee's old and new duty stations incident to a transfer of official station. As in effect at the date of Mr. Lye's transfer, it specifically provides that no fee, cost,

charge, or expense is reimbursable if it is determined to be a part of the finance charge under the Truth in Lending Act, Title I, 15 U.S.C. §§ 1601-1667, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. The pertinent part of Regulation Z, 12 C.F.R. § 226.4(a), states that the amount of the finance charge includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. Included are "service, transaction, activity, and carrying charges" as well as "points, loan fees, assumption fees, finder's fee, and similar charges."

In interpreting Regulation Z, we have stated that a finance charge is defined so as to distinguish between charges imposed as part of the cost of obtaining credit and charges imposed for services rendered in connection with a purchase or sale, regardless of whether credit is sought or obtained. Only the latter may be reimbursed under the governing law, 5 U.S.C. § 5724a(4), and FTR para. 2-6.2d as in effect at the date of Mr. Lye's transfer. Accordingly, we have held that there may be no reimbursement of a lump-sum loan origination fee. However, if the lump-sum fee includes specific charges which would otherwise be reimbursable, there must be a specific list of the services and an allocation of the charges that comprise the lump-sum amount, and only those items that are specifically excluded from the definition of a finance charge by 12 C.F.R. § 226.4(c), may be reimbursed. Ronald S. Taylor, 60 Comp. Gen. 531 (1981); Anthony J. Vrana, B-189639, March 24, 1978.

The costs expressly excluded from a finance charge by § 226.4c are:

"(c) Charges excluded from the finance charge. The following charges are not finance charges:

"(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

"(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

"(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.

"(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

"(5) Seller's points.

"(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

"(7) The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

"(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

"(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

"(iii) Notary, appraisal, and credit report fees.

"(iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

"(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the act."

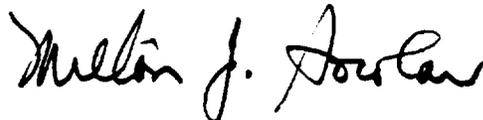
While the lender in the present case later characterized the \$940 fee as a "Veterans Administration

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Loan Application Fee," we consider that its initial designation--"loan origination fee"--describes its true nature as a "service, transaction, activity, or carrying charge" subject to Regulation Z and therefore not reimbursable. It apparently covered general administrative expense or overhead of the lender, and was imposed as part of the cost of obtaining credit rather than as a charge in connection with the purchase or sale of the property. The lender's itemization of the \$940 fee tends to confirm this characterization, since the five items evidently comprised administrative tasks performed by the lender in order to issue the loan. None of the itemized amounts were charges of the type expressly excluded from the finance charge by § 226.4c quoted above. In fact, Mr. Lye was charged additional amounts for excluded costs separate and apart from the \$940 fee.

Paragraph 2-6.2d, of the FTR was revised by GSA Bulletin FPRM A-40, August 23, 1982, to allow reimbursement of a loan origination fee. The revised regulation, however, applies to transfers effective on or after October 1, 1982. Since Mr. Lye's transfer was effective in February of 1982, that regulation does not provide a basis to reimburse him for the loan origination fee here in issue.

Accordingly, the voucher for the \$940 fee may not be certified for payment.



Acting Comptroller General
of the United States