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**DECISION**



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

*Request for Reimbursement of*

FILE: B-193318

DATE: September 20, 1979

MATTER OF: Robert E. Whitney - Real Estate Expenses -  
Exclusions from Finance Charge

- DIGEST:
1. Employee may be reimbursed for \$35 survey fee incident to financing purchase of a residence upon his relocation. Although assessed by the lending institution, the survey fee is expressly excluded from the definition of a finance charge by Regulation Z, 12 C.F.R. § 226.4(e)(1), the fee is reasonable in amount, and all-inclusive fee, initially characterized as a "loan origination fee," is sufficiently itemized to show the portion allocable to the survey fee. See Anthony J. Vrana, B-189639, March 24, 1978.
  2. Although assessed by the lending institution as part of a charge initially characterized as a "loan origination fee," employee may be reimbursed for recording fees if they are customarily paid by purchaser in the area and do not exceed amounts customarily charged in the locality. FTR 2-6.2c. While recording fees are not expressly excluded from the definition of a finance charge under 12 C.F.R. 226.4(e) they are not a condition for the extension of credit and, thus, are not part of the finance charge as defined by 12 C.F.R. 226.4(a).
  3. Employee may not be reimbursed for attorney fees assessed by lending institution and initially characterized as part of the "loan origination fee" unless certifying officer determines that such fees were incurred for the purposes specifically excluded from finance charges by Regulation Z, 12 C.F.R. § 226.4(e), are reasonable in amount, and insofar as the attorneys fees are sufficiently itemized to show the portion of the origination fee allocable to each excluded item.

This action is in response to a request dated October 20, 1978, from Elizabeth A. Allen, Chief, Accounting Section, of the Internal

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Revenue Service (IRS), regarding the propriety of certifying for payment a reclaim voucher in the amount of \$460 in favor of Robert E. Whitney, representing real estate expense incurred in connection with the purchase of his residence in Schwartz, Louisiana. The purchase was pursuant to a permanent change of station from Baton Rouge, to Monroe, Louisiana, in March 1978.

Mr. Whitney's claim was denied by the IRS on the basis that the \$460 amount was a loan origination fee, a cost incident to the extension of credit within the purview of Regulation Z, 12 C.F.R. § 226.4(a), which is not reimbursable under the Federal Travel Regulations (FTR) (FPMR 101-7) para. 2-6.2d (May 1973). The pertinent part of Regulation Z states:

"§ 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 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:

\* \* \* \* \*

"(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 transaction:

"(1) Fees or premiums for title examination, abstract of title, title

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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."

Reimbursement of an amount that is a finance charge is precluded by the following provision of para. 2-6.2d of the FTR:

"\* \* \* 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. \* \* \*"

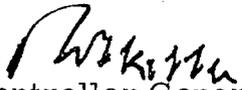
While the \$460 amount is listed in the settlement documents as a "loan origination fee," Mr. Whitney has attached to his reclaim voucher a letter dated July 25, 1978, from the People's Homestead and Savings Association that states that the \$460 loan origination fee included charges of \$225 for attorneys fees, a survey fee of \$35, and \$16 for recording fees. Since the remaining \$184 of the \$460 amount is not characterized other than as a loan origination fee, that amount is for disallowance under FTR para. 2-6.2d, quoted above. The specifically identified charges, however, may be reimbursed if the charge is expressly excluded from the finance charge by Regulation Z, 12 C.F.R. § 226.4(e) and reasonable in amount, provided that the loan origination fee is itemized to show the portion of the fee allocable to each item. Anthony J. Vrana, E-189639, March 24, 1978.

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An examination of Regulation Z, 12 C.F.R. § 226.4(e)(1) shows that fees for required property surveys are expressly excluded from the finance charge. The \$35 survey fee is reasonable and is itemized sufficiently. Therefore, under the test established in Anthony J. Vrana, supra, the \$35 survey fee may be certified for payment.

Although recovered as part of the fee charged by the lending institution and not expressly excluded from the finance charge under 12 C.F.R. § 226.4(e), recording fees are not part of a finance charge as defined by 12 C.F.R. § 226.4(a). They are assessed to meet the legal requirement for recording documentation essential to the transaction and not as a condition for extension of credit. They are not retained by the lender but are passed on to the local jurisdiction. Moreover, FTR para 2-6.2c (May 1973) specifically allows reimbursement for recording fees if they are customarily paid by the purchaser and if they do not exceed amounts customarily charged in the locality of the residence. Therefore, Mr. Whitney's claim for reimbursement of recording fees may be certified for payment if the requirements of FTR para. 2-6.2c are satisfied.

We have held that under FTR para 2-6.2c, itemization is not generally required where legal fees are claimed. See George W. Lay, 56 Comp. Gen. 561 (1977). However, that decision is not applicable to this case because the reimbursement of the finance charge here is governed by FTR para. 2-6.2d and Regulation Z. Since these authorities prohibit reimbursement of finance charges, except for certain narrowly drawn specific services, we require an itemization of these fees in order to identify the services performed and whether they may be paid. Charles W. Smith, B-189381, December 15, 1977. Therefore, the requirements of Anthony J. Vrana, supra, must be satisfied before attorneys fees can be paid. Since the record does not indicate what service the attorneys fees covered, if it can be determined that the attorneys fees were for the purposes specifically excluded from the finance charge by Regulation Z, 12 C.F.R. § 226.4(e), reasonable in amount, and sufficiently itemized, then the attorney fees can be certified for payment.

  
Deputy Comptroller General  
of the United States