

24503

DECISION



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

FILE: B-208479

DATE: March 16, 1983

MATTER OF: Harvey C. Varenhorst - Real Estate
Expenses - Loan Origination Fee

DIGEST:

Transferred employee paid a lump-sum, 1 percent investigating and processing fee of \$794 on mortgage loan to lending institution in connection with purchase of residence at new duty station. Since fee was stated to be a loan origination fee, it is a finance charge within the meaning of Regulation Z (12 C.F.R. Part 226), reimbursement of which is precluded, absent itemization to show that items are excluded from the definition of a finance charge by 12 C.F.R. § 226.4(e).

Mr. Harvey C. Varenhorst, an employee of the Drug Enforcement Administration, Department of Justice, has appealed Settlement Certificate Z-2830908, dated April 19, 1982, issued by our Claims Group, which denied his claim for reimbursement of a 1 percent loan origination fee. The fee of \$794 on the mortgage loan was incurred in connection with Mr. Varenhorst's purchase of a residence in Manassas, Virginia, incident to his change of official station from Miami, Florida, to Washington, D.C., in September 1979. Mr. Varenhorst has submitted a reclaim voucher in the amount of \$794 representing the loan origination fee.

The sole issue for determination is whether Mr. Varenhorst is entitled to reimbursement of the loan origination fee. For the reasons hereafter stated, the fee may not be reimbursed.

Mr. Varenhorst contends, in essence, that he was ordered to transfer from Miami to Washington, D.C.; that his travel orders authorized reimbursement of necessary, reasonable, and customary expenses incurred in the sale and purchase of residences at the old and new duty stations; that the Real Estate Settlement Procedures Act of 1974, as amended in 1975, states that a loan origination fee is a

024883

reasonable, necessary, and customary expense in the purchase of a residence; and that the lending institution and a realtor state that the fee is a reasonable, necessary and customary expense in the purchase of a residence in the Manassas, Virginia, area.

Whether a particular expense incurred by a transferred Federal employee is reimbursable is governed by 5 U.S.C. §§ 5724 and 5724(a) (1976), and the implementing regulations, the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), not by the Real Estate Settlement Procedures Act.

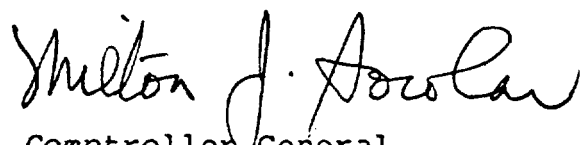
Paragraph 2-6.2d of the FTR defines which miscellaneous expenses are reimbursable in connection with the sale and purchase of residences at the employee's old and new duty stations incident to a transfer of official station. Paragraph 2-6.2d provides that no fee, cost, charge, or expense is reimbursable if it is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, 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 is determined as the sum of all charges payable directly or indirectly to the creditor by the customer as an incident to or as a condition of the extension of credit. Included are service, transaction, activity, and carrying charges, and loan fees, points, finder's fees, and similar charges.

In interpreting Regulation Z, this Office has 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 the aforementioned implementing regulation, FTR para. 2-6.2d. 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(e) (1979), may be reimbursed. Ronald S. Taylor, 60 Comp. Gen. 531 (1981); Anthony J. Vrana, B-189639, March 24, 1978.

In the instant case, the lending institution reports that the \$794 charge is an investigating and processing fee, and is also called a loan origination fee. The lender further states that the fee here is reasonable and is customarily charged on all loans in the Manassas, Virginia, area and must be paid by the borrower. The record before us does not contain any listing or other explanation of the services or charges that comprise the lump-sum amount of \$794. Thus, it is clear that the lump-sum payment by Mr. Varenhorst to the lending institution represents a finance charge within the meaning of Regulation Z, 12 C.F.R. § 226.4(a), no part of which is reimbursable absent an itemization to show the items are excluded from the definition of a finance charge by 12 C.F.R. § 226.4(e). Michael A. Pokorski, B-194314, June 28, 1979

Paragraph 2-6.2d of the FTR has recently been revised, effective October 1, 1982, to allow reimbursement of the loan origination fee. However, reimbursement of the fee was not allowable at the time of Mr. Varenhorst's transfer in 1979. Accordingly, the reclaim voucher may not be certified for payment. The settlement action of April 19, 1982, by the Claims Group, which denied reimbursement of the loan origination fee, is sustained.

Mr. Varenhorst has requested information as to any recourse for his claim through the court system or whether any other hearing process is available. In this regard, there is no further administrative appeal from our decision, and 28 U.S.C. §§ 1346(a)(2) and 1491 state which claims are cognizable in the District Courts of the United States and the United States Claims Court, where a claim such as Mr. Varenhorst's would be heard.

for 
Comptroller General
of the United States