

**DECISION**

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

PLM-1  
Gibson  
120063

**FILE:** B-208837

**DATE:** December 6, 1982

**MATTER OF:** Jerry D. Taylor and Samuel R. Keyes -  
Real Estate Expenses - Finance Charge

**DIGEST:** Two transferred employees incurred finance charges in the form of loan closing fees. Although, in each instance, the lender states that the fee does not constitute a finance charge, the Government is not bound by a lending institution's characterization of a payment, but must examine the charge against Regulation Z (12 C.F.R. § 226.4 (1982)). Since there is no itemization of specific expenses included in the loan closing fees, and lump-sum loan fees generally are regarded as nonreimbursable finance charges under Regulation Z, the employees' claims may not be paid.

Anita R. Smith, an authorized certifying officer of the U.S. Department of Agriculture, National Finance Center, requests a decision on reclaim vouchers submitted by Messrs. Samuel R. Keyes and Jerry D. Taylor, for reimbursement of loan closing fees in the amounts of \$2,421.25 and \$2,212, respectively. For the reasons set forth below, we hold that the amounts in question may not be certified for payment, since a loan closing fee constitutes a finance charge within the meaning of Regulation Z, 12 C.F.R. § 226.4(a) (1982).

Mr. Keyes was transferred from Souderton, Pennsylvania, to Bristol, Virginia, in August 1981. He purchased a residence at his new duty station, financing it through the East Tennessee Federal Land Bank Association. Mr. Keyes filed a claim requesting reimbursement of \$2,421.25 in closing costs, composed of a 2 percent loan fee imposed by the Federal Land Bank, and a 1-1/4 percent fee imposed by the Federal Land Bank Association.

Mr. Taylor, who transferred from Halstead, Kansas, to Dodge City, Kansas, in December 1981, financed the purchase of a residence at his new duty post through

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the Federal Land Bank Association of Dodge City. The \$2,212 closing fee claimed by Mr. Taylor was described on the settlement statement as a 7 percent charge to defray costs of processing the loan.

In both instances, the agency denied reimbursement of the lump-sum fees claimed, stating that, absent itemization of allowable expenses, the fees must be regarded as nonreimbursable finance charges.

Both employees reclaimed the loan closing fees. Mr. Keyes submitted with his voucher a letter from the East Tennessee Federal Land Bank Association which states that the fee is not a finance charge, and indicates that the fee "could be construed" as covering expenses associated with appraisal of the real estate, processing and closing of the loan, recordation, and building inspection. The voucher submitted by Mr. Taylor is accompanied by a letter from the Federal Land Bank Association of Dodge City, stating that the fee is not a finance charge, and indicating that, "[o]ur closing fees have never been broken down to determine how much is assessed for credit check, appraisal fees, etc."

The agency questions whether the banks' statements with respect to the nature of the loan closing fees provide a basis for reimbursement of those fees, or whether, instead, payment is precluded in the absence of itemization of specific expenses included within those fees.

Paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), defining which miscellaneous expenses are reimbursable in connection with the purchase and sale of residences 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 \* \* \*."

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The relevant part of Regulation Z, 12 C.F.R. Part 226, 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 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:

\* \* \* \* \*

"(2) Service, transaction, activity, or carrying charge.

"(3) Loan fee, points, finder's fee, or similar charge."

In determining whether or not a particular payment is a finance charge, the statement of a lending institution cannot simply be accepted as the final legal characterization of the payment. Rather, agency reviewing officials must examine the item in light of Regulation Z, 12 C.F.R. § 226.4, and decisions of this Office. Kenneth De Fazio, B-191038, November 28, 1978.

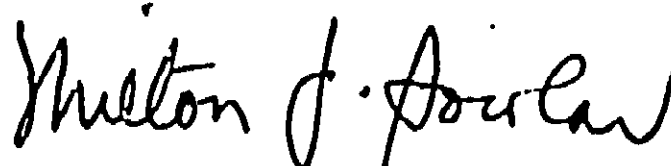
Regulation Z expressly categorizes loan fees as finance charges when they are imposed incident to, or as a condition of, the extension of credit. We have consistently held that a lump-sum fee for the processing or closing of a loan falls within the definition of a finance charge under Regulation Z, and not within any of the excludable items. Robert A. Zich, 54 Comp. Gen. 827 (1975); B-181037, July 16, 1974. If, however, the lump-sum fee includes specific charges which would

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otherwise be reimbursable, there must be a specific list of the services and an allocation of the charges that are included in 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) may be reimbursed. Ronald S. Taylor, 60 Comp. Gen. 531 (1981).

Thus, it is clear that the loan closing fees Messrs. Keyes and Taylor were required to pay the Federal Land Bank Association represent finance charges within the meaning of Regulation Z (12 C.F.R. § 226.4(a)). While the banks' statements concerning the nature of the closing fees indicate that the fees may cover reimbursable expenses, such as costs of appraisals and credit checks, these costs are not specifically listed. Therefore, it cannot be determined whether any of the items covered by the loan closing fees are excludable from the definition of a finance charge, nor can it be determined whether the amounts allocable to the services are reasonable for the area.

Accordingly, the employees' reclaim vouchers may not be certified for payment.

  
for Comptroller General  
of the United States