DECISION

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

FILE: B-209691 DATE: May 9, 1983

MATTER OF: William R. Pierson

DIGEST:

Loan closing costs charged as a lump-sum fee in the purchase of a residence are considered finance charges under 12 C.F.R. § 226.4(a), despite a contrary characterization by the lending institution on the loan documents. Therefore, under Federal Travel Regulations, para. 2-6.2d (1981), an employee transferred to a new duty station may not recover loan closing costs incurred in purchasing a residence at the new duty station where the fee is charged as a lump-sum with no breakdown of what part, if any, may be reimbursed under 12 C.F.R. § 226.4(e).

The issue in this case is whether Mr. William R. Pierson, an employee of the Department of the Interior's Bureau of Reclamation, is entitled to be reimbursed for loan closing costs he incurred when purchasing a new residence in Ord, Nebraska, after being transferred from a position in Salida, Colorado, to one in Ord. Because our decisions and the applicable regulations characterize a lump-sum loan closing fee as a nonreimbursable finance charge, Mr. Pierson is not entitled to reimbursement for any part of the fee.

In purchasing his new residence in Nebraska, Mr. Pierson incurred loan closing costs of $3,150. This fee was paid in cash at the time of the purchase and was listed as a cost not included in the finance charge on the Federal Truth-in-Lending Disclosure Statement. Nevertheless, Mr. Pierson's initial claim was denied by an authorized certifying officer of the Bureau because, apparently, the loan closing fee was deemed to be a nonreimbursable finance charge. Mr. Pierson contests this decision and characterization.

In an attempt to clear up the matter, the certifying officer solicited an explanation of the charge from the financial institutions involved in the transaction. The

Federal Land Bank Association described the fee as a "prepaid charge which covers various [bank] operating expenses such as attorney's fees, appraisal charges, loan processing, and other typical operating expenses." The Federal Land Bank of Omaha described it as a fee "to assess new or existing borrowers those costs associated with obtaining new money from the bond market when the cost of financing has an adverse effect on the Banks [sic] average cost of bonds and capital position." With this additional information, the certifying officer concluded again that the closing fee was part of the finance charge, despite the fact that the loan disclosure statement indicated otherwise. Mr. Pierson now seeks a decision from our Office.

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 * * *."

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. Matter of Taylor and Keyes, B-208837, December 6, 1982; Matter of DeFazio, 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 listed in § 226.4(e). Matter of Taylor and Keyes, supra; Matter of Turley, B-204015, September 18, 1981; Matter of Zich, 54 Comp. Gen. 827 (1975). If, however, 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 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. Matter of Taylor and Keyes, supra; Matter of Taylor, 60 Comp. Gen. 531 (1981).

According to the above guidelines, the $3,150 lump-sum loan closing fee of Mr. Pierson is a nonreimbursable finance charge. Although this conclusion is contrary to the lender's characterization of the fee on the Truth-in-Lending Disclosure Statement, the definition of a finance charge set forth in Regulation Z is controlling. While the description of the Federal Land Bank Association indicates that some or all of the closing costs may fit within one or more of the reimbursable fee exceptions under subsection (e) of 12 C.F.R. § 226.4, the individual costs attributable to each item are not listed and, therefore, it is not possible to determine whether any part of the lump-sum fee is

reasonable or reimbursable. Accordingly, Mr. Pierson's reclaim voucher may not be certified for payment.

Milton J. Socolar

for Comptroller General
of the United States