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DECISION



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

FILE: B-194974

DATE: May 5, 1981

MATTER OF: [REDACTED] - Loan Origination Fee

DIGEST: Employee's claim for loan origination fee and amounts placed into escrow for future taxes and insurance is denied. FTR para. 2-6.2d does not permit reimbursement of items determined to be finance charges under the Truth in Lending Act, property taxes, or insurance.

By a letter dated February 13, 1981, Ms. Lena M. Jones, an Authorized Certifying Officer with the Department of Housing and Urban Development (HUD), requested an advance decision regarding the reclaim voucher of Mr. [REDACTED] for a loan origination fee and for amounts placed in escrow for taxes and insurance. For the reasons stated below we hold that Mr. [REDACTED] is not entitled to reimbursement for these items.

The record shows that Mr. [REDACTED], an employee of HUD, was transferred from Washington, D.C., to Dallas, Texas, in 1978. Incident to this transfer he purchased a home in Carrollton, Texas, in January 1979, which he financed with a Veterans Administration (VA) loan. Mr. [REDACTED] has been reimbursed for the expenses of a permanent change of duty station, including the purchase of a new residence, under the provisions of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). However, his claim for a loan origination fee in the amount of \$584 and escrow money for future taxes and insurance in the amount of \$161.66 was disallowed by his agency in accordance with our decision, Matter of [REDACTED], B-183972, April 16, 1976.

PL 90-321 May 29, 1968 82 Stat. 148

The [REDACTED] decision states, in part, that a loan origination fee is a finance charge within the meaning of section 106(a) of the Truth in Lending Act which may not be reimbursed under the Federal Travel Regulations. Mr. [REDACTED] believes that the disallowance of his claim for the loan origination fee on this basis is inconsistent with the fact that the fee is not deductible for income tax purposes. He has provided material from the Internal Revenue Service which indicates that a loan origination fee paid in connection with a VA loan is not interest,

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and, cannot be used as a tax deduction. In addition, he has provided material from VA and Department of Housing and Urban Development publications which indicate that it is an accepted practice for a lender to charge a loan origination fee to cover its costs of originating and closing a loan. Thus, he contends that reimbursement for such a charge is warranted.

A Federal employee's entitlement to be reimbursed for the expenses incurred in connection with the purchase of a residence at a new duty station or the sale of a residence at the old duty station is governed by 5 U.S.C. § 5724a(a)(4) (1976) and the implementing regulations contained at Part 2, chapter 6 of the Federal Travel Regulations. Paragraph 2-6.2d of the FTR specifically precludes reimbursement of any expense incurred in connection with the sale or purchase of a house that is determined to be part of the finance charge as defined in the Truth in Lending Act. The primary purpose of the Truth in Lending Act is to assure a meaningful disclosure of credit terms so that a consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit. See 15 U.S.C. § 1601. Therefore, the 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. The finance charge, therefore, is not limited to interest. Service charges imposed in connection with the extension of credit are specifically listed as finance charges under the Truth in Lending Act and the implementing provisions of Regulation Z, 12 C.F.R. 226.4(a) which states in pertinent part:

"§ 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

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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.

* * * * *

"(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 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 trust account for future payments of taxes, insurance, and water, sewer, and land rent.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

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It is these provisions rather than the characterizations of the Internal Revenue Service, HUD, VA, or the lending institution which are determinative in deciding what fees are nonreimbursable finance charges. In accordance with the provisions of paragraph 226.4 of Regulation Z, we have held that a service charge or fee, not identified as being in payment of an otherwise allowable expense, is to be considered a finance charge. See Matter of [REDACTED], B-184703, April 30, 1976. As noted in Matter of [REDACTED], B-186583, March 30, 1978, the fact that the loan origination fee is not deductible as an interest charge under income tax rules and is customary, as indicated by HUD publications, does not change the fact that it is a finance charge under the Truth in Lending Act, which may not be reimbursed. Mr. [REDACTED]'s claim for reimbursement of the \$584 loan origination fee, therefore, must be denied.

Mr. [REDACTED] correctly indicates that amounts placed into an escrow account for future payments of taxes and insurance are excluded from the finance charge. See 12 C.F.R. 226.4(e)(3), quoted above. They, nonetheless, are not reimbursable. The \$161.66 amount claimed represents two months' proration of property taxes and insurance for which Mr. [REDACTED] was responsible in connection with the purchase of his residence in Texas. Reimbursement for property taxes and insurance against damage or loss of property is specifically precluded by FTR para. 2-6.2d.

Accordingly, the voucher may not be certified for payment.

Milton J. Bowler

Acting Comptroller General
of the United States