

DOCUMENT RESUME

03557 - [A2653815]

[Claim for Real Estate Expenses]. B-189591. December 19, 1977. 4 pp.

Decision re: Anthony R. Bayer, Jr.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: National Highway Traffic Safety Administration.

Authority: Truth in Lending Act, title I (P.L. 90-321). 5 U.S.C. 5724a(a)(4). F.T.R. (PPHR 101-7), para. 2-6.2d. 12 C.F.R. 226.4. B-185680 (1976). B-183611 (1975). B-184077 (1976). B-183958 (1976). B-182930 (1975). B-181074 (1974). 49 Comp. Gen. 483. 49 Comp. Gen. 486.

Authorized Certifying Officer Herman E. Gary, Department of Transportation, requested a decision on an employee's claim for reimbursement of certain settlement charges incurred in the sale and purchase of residences incident to a permanent change of duty station. Loan discounts and loan origination fees cannot be reimbursed because they were considered finance charges. The mortgage insurance premium and other fees were also considered nonreimbursable finance charges. (SW)

3815

03557

*st. reg
Civ. Pen.*

DECISION



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

FILE: B-189591

DATE: September 19, 1977

MATTER OF: Anthony R. Bayer, Jr. - Real Estate
Expenses - Finance Charges

DIGEST: Reimbursement of loan discount, tax service contract, bringdown endorsement, and recording assignment fees incurred incident to sale of residence is disallowed. Reimbursement of loan origination fee and mortgage insurance premium incurred in connection with purchase of residence is also disallowed. These fees are "finance charges" within the definition of Regulation 2.

This is in response to a request from Mr. Herman E. Gary, an authorized certifying officer of the Department of Transportation, concerning the reclaim voucher of Mr. Anthony R. Bayer, Jr., an employee of the National Highway Traffic Safety Administration of the Department of Transportation. Mr. Bayer has asked for reimbursement of certain settlement charges incurred in the sale and purchase of residences incident to a permanent change of station.

Under the authority of Travel Order No. 05196-05, dated March 4, 1977, Mr. Bayer was transferred from Yuma, Arizona, to East Liberty, Ohio. He sold his residence in Yuma on March 30, 1977. In connection with this transaction, he requests reimbursement of the following charges:

- | | |
|----------------------------|-----------|
| a. - Loan Discount | \$1215.00 |
| b. - Tax Service Contract | 15.00 |
| c. - Bringdown Endorsement | 10.00 |
| d. - Recording Assignment | 2.00 |

On April 14, 1977, Mr. Bayer purchased a new home in Marysville, Ohio, and asks to be reimbursed the following expenses paid by him incident to this transaction:

- | | |
|---------------------------------|-----------|
| a. - Loan Origination Fee | \$ 445.50 |
| b. - Mortgage Insurance Premium | 222.75 |

Mr. Bayer claims a total of \$1910.25.

B-189591

Statutory authority for reimbursement of the expenses of residence transactions of transferred employees is found at 5 U.S.C. 5724a(a)(4) (1970). The regulations promulgated pursuant to this statute are found in chapter 2 of the Federal Travel Regulations (FPMR 101-7, May 1973).

Paragraph 2-6.2d of the Federal Travel Regulations (FTR) specifically prohibits reimbursement of finance charges:

"* * * 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."

Regulation Z, published as 12 CFR Part 226, sets the following standards for determining what constitutes an element of a finance charge and provides in part as follows:

"(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.* * *"

Mr. Bayer asks for reimbursement of \$1215.00 he paid as a loan discount in connection with the sale of his Yuma, Arizona residence. We have held that a loan discount, which can be described as a "loan fee," is a finance charge within the meaning of that term as defined by Regulation Z. As such, there can be no reimbursement under FTR 2-6.2d. B-185680, August 4, 1976; B-183611, September 2, 1975. Accordingly, the \$1215.00 loan discount claimed by Mr. Bayer may not be certified for payment.

B-189591

The loan origination fee of \$445.50 claimed by Mr. Bayer represents a charge for the hire of money. This fee was incurred incident to his purchase of a new home in Marysville, Ohio, near his new duty station of East Liberty, Ohio. It, too, can be labeled a "loan fee" under Regulation 2. We have held such expenses to be nonreimbursable finance charges. B-183611, September 2, 1975; B-184077, February 3, 1976. Accordingly, Mr. Bayer's claim for reimbursement of the \$445.50 loan origination fee may not be certified for payment.

We have also held tax service charges to be a part of the finance charge as it is determined by Regulation 2. 49 Comp. Gen. 483, 486 (1970). In accordance with the above-quoted regulation (FTR 2-6.2d), the \$15.00 charged Mr. Bayer for a tax service contract may not be certified for payment.

Mr. Bayer claims reimbursement of a \$10.00 charge for "bringdown endorsement" and a \$2.00 charge for "recording assignment." If a creditor sells a customer's mortgage to another creditor, the title insurance policy must be endorsed over to the new mortgagee. The title insurance company charges the creditor for performing this service. The creditor, as in the situation here, passes this expense on to the customer. Similarly, when the mortgage is assigned, the assignment must be recorded. The creditor also passes this expense of his on to the customer. These fees are included in the finance charge under Regulation 2:

"* * * (8) Any charge imposed by a creditor upon another creditor for purchasing or accepting an obligation of a customer if the customer is required to pay any part of that charge in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation." 12 C.F.R. 226.4(8)(1977).

Such reimbursement is precluded by FTR 2-6.2d. Accordingly, the \$10.00 charged Mr. Bayer for the "bringdown endorsement" and the \$2.00 charged him for "recording assignment" may not be certified for payment.

In addition to the expenses discussed above, Mr. Bayer has asked reimbursement of \$222.75 he paid to Continental Mortgage Insurance, Inc. (CMI) as a mortgage insurance premium. FTR 2-6.2d does not authorize reimbursement of such expenses:

B-189591

"* * * The cost of a mortgage title policy paid for by the employee on a residence purchased by him is reimbursable but costs of other types of insurance paid for by him, such as an owner's title policy, a 'record title' policy, mortgage insurance, and insurance against damage or loss of property, are not reimbursable items of expense.* * *" (Emphasis added).

The CMI premium, as a cost paid for mortgage insurance, is not reimbursable. Furthermore, this mortgage insurance premium is part of the finance charge. Regulation 2 requires that mortgage insurance premiums be included in the calculation of the finance charge:

"* * * (7) Premium or other charge for any other guarantee or insurance protecting the creditor against the customer's default or other credit loss.* * *" 12 C.F.R. 226.4(7) (1977).

We have held, on numerous occasions, that a transferred employee cannot be reimbursed the cost of mortgage insurance. B-183958, April 14, 1976; B-182930, March 20, 1975; B-181074, August 27, 1974. Accordingly, the \$222.75 paid by Mr. Bayer to CMI for mortgage insurance may not be reimbursed.

The reclaim voucher submitted by Mr. Bayer may not be certified for payment.


Deputy Comptroller General
of the United States