

DECISION

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

FILE: B-215699

DATE: October 2, 1984

MATTER OF: Ronald J. Walton - Real Estate Expenses -
Loan Service Fee

DIGEST:

An employee who was transferred in 1979 incurred a 1 percent loan service fee when he purchased a residence at his new duty station. Paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (May 1973), in effect at the time of the employee's transfer, prohibited reimbursement for any fee constituting a finance charge under Regulation Z, 12 C.F.R. § 226.4(a). Since a loan service fee constitutes a finance charge, the employee may not be reimbursed for any part of the fee absent a breakdown of items which are excludable from the definition of a finance charge under 12 C.F.R. § 226.4(e).

Mr. Roy J. Heinbuch, Chief of the Branch of Financial Management, Geological Survey, United States Department of the Interior, requests our decision on the claim of Mr. Ronald J. Walton, an employee of the Geological Survey. Mr. Walton requests reimbursement for a 1 percent loan service fee he incurred in connection with a permanent change of station in 1979. We hold that Mr. Walton may not be reimbursed for the loan fee, since the regulations in effect at the time of his transfer prohibited reimbursement for any fee constituting a finance charge.

BACKGROUND

By travel order dated April 20, 1979, Mr. Walton was authorized reimbursement for relocation expenses associated with his transfer from Beltsville, Maryland, to Denver, Colorado. On August 2, 1979, he settled on the purchase of a residence at his new duty station, and subsequently claimed reimbursement for a 1 percent fee represented on the settlement statement as a "loan service fee." The agency disallowed reimbursement for the loan fee, apparently concluding that the fee constituted a nonreimbursable finance charge under the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), and citing our decisions in B-171792, May 28, 1981, and B-162494, October 26, 1967.

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Mr. Walton reclaimed the 1 percent loan fee, stating that the fee is not a finance charge because it was assessed to defray the lender's administrative expenses and does not represent a mortgage discount or "points." In this regard, he has submitted letters from the lending institution which explain that the fee constitutes a "loan origination fee," covering expenses related to the evaluation of the loan application and preparation of documents. Additionally, Mr. Walton alleges that agency officials had advised him that he would be reimbursed for the 1 percent fee.

DISCUSSION

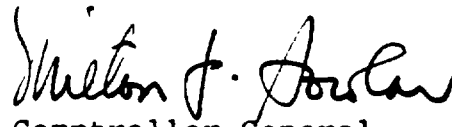
Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he incurs in selling and/or purchasing a residence pursuant to a permanent change of station. Effective October 1, 1982, the implementing regulations in FTR para. 2-6.2d were amended to specifically permit reimbursement for loan origination fees and similar charges which compensate the lender for costs of originating a loan, preparing documents, and related work. See Robert E. Kigerl, 62 Comp. Gen. 534 (1983); and Edward W. Aitken, B-214101, May 7, 1984, 63 Comp. Gen. _____. However, the authorization in FTR para. 2-6.2d for reimbursement of loan origination fees and similar charges applies only to those employees who reported to their new duty stations on or after October 1, 1982, subsequent to the time Mr. Walton was transferred. See James C. Troese, B-211107, June 10, 1983.

The provisions of FTR para. 2-6.2d (May 1973), in effect at the time Mr. Walton reported to his new duty station, prohibited reimbursement for any item of real estate expense which was determined to constitute a finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z, 12 C.F.R. § 226.4(a). The relevant part of Regulation Z expressly categorizes service charges and loan fees as part of the finance charge when they are imposed incident to or as a condition of the extension of credit. The finance charge, therefore, is not limited to interest expenses but includes charges which are imposed to defray a lender's administrative costs. See Charles E. Berg, B-198475, October 17, 1980.

Since a loan origination or service fee generally is assessed on a percentage rate basis for the purpose of defraying a lender's administrative costs, we have consistently held that such a fee is imposed, "incident to * * * the extension of credit," and therefore constitutes a finance charge under Regulation Z. See Stanley Keer, B-203630, March 9, 1982; and Charles E. Berg, B-198475, supra at 4. Accordingly, Mr. Walton is not entitled to be reimbursed for any part of the lump-sum service fee, unless he provides the agency with a breakdown of specific charges which are excludable from the definition of a finance charge by 12 C.F.R. § 226.4(e). See Stanley Keer, B-203630, above at 3.

Furthermore, it is not material that Mr. Walton may have incurred the loan fee in reliance on erroneous advice provided by agency officials. It is a well-settled rule of law that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. See M. Reza Fassihi, 54 Comp. Gen. 747 (1975), and court cases cited therein. The Government is not estopped from repudiating advice given by one of its officials if that advice is erroneous. See Joseph Pradarits, 56 Comp. Gen. 131 (1976).

For the reasons stated above, Mr. Walton's claim for a 1 percent loan fee may not be allowed.

for 
Comptroller General
of the United States