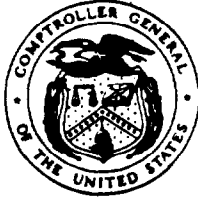


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DECISION



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

FILE: B-221162

DATE: June 10, 1986

MATTER OF: William T. Bigby

DIGEST: An employee who transferred in May 1982 may not be reimbursed for a loan reservation fee or a processing-closing fee charged by the lender in connection with his purchase of a residence at his new duty station. The reservation fee is similar to a commitment fee and the processing-closing fee is similar to a loan origination fee. Both are finance charges within the definition set forth in Regulation Z and neither may be reimbursed in view of the specific prohibition contained in Federal Travel Regulations, para. 2-6.2d (September 1981) (FTR), in effect at the time of transfer. A loan application fee charged by the same lender is excluded from the definition of a finance charge and may be reimbursed under FTR, para. 2-6.2d, as a fee similar to a VA or FHA fee for loan application.

A transferred Federal employee claims reimbursement for a loan application fee, a loan reservation fee and a processing-closing fee charged by the lender in connection with the purchase of a residence at his new duty station.^{1/} The loan reservation and processing-closing fees are finance charges which may not be reimbursed under the regulations in effect on the date of the employee's transfer. The loan application fee, however, is excluded from the definition of a finance charge and may be reimbursed as a real estate purchase expense.

Mr. William T. Bigby, an employee of the Internal Revenue Service, was transferred from Tampa, Florida, to Detroit, Michigan. He reported to his new duty station on May 4, 1982. As an incident to his transfer, he was

^{1/} Mr. G. Fannin, Certifying Officer, Internal Revenue Service, Department of the Treasury, submitted this request for a decision.

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authorized reimbursement of certain expenses in connection with the purchase of a residence at his new duty station. He claimed real estate purchase expenses including an application fee of \$100, a loan reservation fee of \$250 and a processing-closing fee of \$510. Mr. Bigby submitted a letter from his mortgage lender which states that the \$100 fee was a charge for the taking of the application, the \$250 reservation fee was a charge for holding and setting aside the mortgage loan proceeds and the \$510 processing-closing fee was a charge for processing the loan application, drafting the loan closing document and closing of the mortgage loan. The mortgagee also stated that none of these charges was for use of the mortgage loan proceeds.

The certifying officer disallowed the \$100 and \$250 charges on the premise that they appeared to be finance charges. The \$510 processing-closing fee was allowed as a loan origination fee. However, since Mr. Bigby reported to his new duty station prior to October 1, 1982, this payment is now questioned.

Mr. Bigby's entitlement to reimbursement for real estate purchase expenses is governed by the Federal Travel Regulations (FTR), para. 2-6.1 et seq., 41 C.F.R. § 101-7.003 (1982). As in effect at the time Mr. Bigby reported to his new duty station, FTR, para. 2-6.2d prohibited reimbursement for any item of real estate expense which was determined to constitute a finance charge under Regulation Z, issued by the Board of Governors of the Federal Reserve, 12 C.F.R. § 226.4(a) (1982). 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.

This paragraph of the regulations was revised effective October 1, 1982, to permit reimbursement for loan origination fees as an exception to the general prohibition against reimbursement of finance charges. See FTR, para. 2-2d(1)(b), as revised by GSA Bulletin FPMR A-40, Supp. 4 (August 23, 1982). The instructions accompanying Supplement 4 provide that the increased entitlements and allowances are effective for transferred employees who report to their new duty station on or after October 1, 1982.

Since Mr. Bigby reported to his new duty station prior to October 1, 1982, his entitlement to real estate sale expenses is governed by FTR, para. 2-6.2d, as in effect prior to the issuance of Supplement 4 and he, therefore, may not be reimbursed for any fee found to be part of the finance charge. Since a loan origination fee generally is assessed on a percentage rate basis for the purpose of defraying a lender's administrative costs, we have stated that such a fee is imposed "incident to * * * the extension of credit" and constitutes a finance charge under Regulation Z. See Stanley Keer, B-203630, March 9, 1982. The \$510 processing-closing fee paid by Mr. Bigby is equal to 1 percent of the principal amount of his mortgage loan and appears to be the same as a loan origination fee. Mr. Bigby is not entitled to be reimbursed for any part of this fee since he has not provided 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(c) (1982). See Keer, above. It appears that Mr. Bigby was reimbursed for this fee on the erroneous assumption that his relocation expense entitlements were governed by the Federal Travel Regulations as revised by Supplement 4.

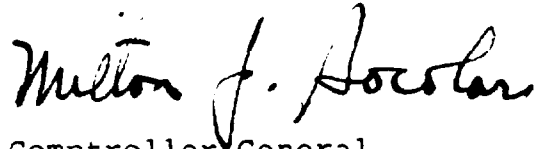
The \$250 reservation fee charged by Mr. Bigby's lender for holding and setting aside the mortgage loan proceeds is in the nature of a commitment fee. We have consistently held that a commitment fee charged incident to the extension of credit for setting aside funds for a loan at an agreed interest rate must be considered part of the finance charge which may not be reimbursed. Richard W. Jones, B-191040, November 29, 1978; George J. Wehrstedt, B-192851, May 11, 1979. See also, James W. Pierce, B-202103, July 16, 1982. Mr. Bigby, therefore, is not entitled to reimbursement for the \$250 reservation fee.

The \$100 fee claimed by Mr. Bigby was described by his mortgage lender as a "charge for taking of the application." Application fees are excluded from the definition of a finance charge provided they are charged by the lender to all applicants without regard to whether credit actually is extended. 12 C.F.R. § 226.4(c)(1). Since such a fee is not within the prohibition against payment of finance charges, a loan application fee that meets these criteria may be

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reimbursed under FTR, para. 2-6.2(d) as a fee similar to an FHA or VA fee for loan application. Mark W. Spauldin, B-214757, September 5, 1984.

Consistent with the above, Mr. Bigby is not entitled to reimbursement for the \$250 reservation fee charged by his lender. He is entitled to be reimbursed for the \$100 loan application fee, however, that entitlement is to be offset against his indebtedness for the processing-closing fee he was erroneously allowed.

A handwritten signature in black ink, reading "Milton J. Hoctor". The signature is written in a cursive style with a large, prominent "M" and "H".

Acting Comptroller General
of the United States