

Dick Patrick  
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**DECISION**



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

**FILE:** B-205149

**DATE:** June 4, 1985

**MATTER OF:** Walter E. Sidak

**DIGEST:**

A loan closing fee charged an employee who borrowed money in connection with the construction of a home at his new duty station was a "finance charge" which may not be reimbursed under travel regulations in effect at the time of the transfer. The employee's submission of correspondence from the lending institution advising that the charge was for the use of money borrowed at below the prevailing market rate confirms that the fee was in fact a finance charge.

Mr. Walter E. Sidak an employee of the Department of the Interior, asks that we reconsider our decision of December 23, 1981, denying his claim for reimbursement of a loan closing fee he incurred incident to his transfer from Phoenix, Arizona, to Ord, Nebraska, on February 1, 1980.<sup>1/</sup> Since the additional information he has submitted in support of his request for reconsideration fails to establish that all or any part of the loan closing fee was not included in the finance charge, our denial of Mr. Sidak's claim is sustained.

The loan closing fee of \$981 represented 3 percent of the amount Mr. Sidak borrowed to finance the construction of a residence near his new duty station. The fee was characterized on the Federal Truth In Lending Disclosure Statement furnished by his lender as a "prepaid finance charge." In our decision of December 23, 1981, we disallowed Mr. Sidak's claim on the basis of paragraph 2-6.2d of the Federal Travel Regulations which prohibits reimbursement as a real estate expense of any amount found to be a finance charge under Regulation Z, 12 C.F.R. § 226.4. Subsequent to that decision, through the certifying officer, Mr. Sidak asserted

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<sup>1/</sup> Ms. Kathryn E. Mitchell, Authorized Certifying Officer, Bureau of Reclamation, Lower Missouri Region, submitted the request for reconsideration.

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that the \$981 charge was not a prepaid finance charge but rather a closing cost fee covering surveys, appraisal fees, expense of a credit report, escrow fees, notary fees, legal fees for title opinion, and expenses for preparing conveyances. He stated that these settlement costs were not separately claimed because they were included in the \$981 loan closing fee.

By letter of May 11, 1982, addressed to the certifying officer our General Counsel responded to that assertion, noting that a finance charge is defined at 12 C.F.R. § 226.4(a) 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 or not a particular fee is a finance charge does not depend on how or when the fee is paid or the manner in which it may be characterized by the lender. The certifying officer was further advised that certain of the items that Mr. Sidak claimed were covered by the \$981 fee were excluded from the finance charge by 12 C.F.R. § 226.4(e). As a condition to reimbursement, however, the lump-sum amount must be itemized by the lender to show the portion of the fee allocable to each item specifically excluded from the finance charge by 12 C.F.R. § 226.4(e). Robert E. Whitney, 58 Comp. Gen. 786 (1979), and cases cited therein.

Mr. Sidak has not furnished an itemization of the expenses that he earlier indicated were covered by the \$981 fee. Instead, he has furnished letters from his lender, the Federal Land Bank of Omaha, and the Federal Land Bank Association indicating that the fee in question was for the use of the money he borrowed. Both letters indicate that the loan closing fee was to protect existing borrowers from subsidizing borrowers who acquire loans substantially below prevailing market rates. Since a "finance charge" is a fee to the borrower for the use of money, the two letters in fact confirm that the fee is a "finance charge" that is not reimbursable. Neither supports Mr. Sidak's earlier claim that the fee was for particular services excluded from the finance charge.

Finally, we note that FTR para. 2-6.2d was changed by GSA Bulletin FPMR A-40, Supp. 4, August 23, 1982, to allow reimbursement of a loan origination fee if customarily paid

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by the seller or purchaser, as the case may be, in the local area where the home is located. The amount of the loan origination fee reimbursable by the Government may not exceed the amount customarily charged in the locality of the residence. Since the FTR allowance of a loan origination fee became effective only for transfers occurring on or after October 1, 1982, it is not reimbursable to Mr. Sidak, who transferred on February 1, 1980.

*for* Milton J. Poister  
Comptroller General  
of the United States