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DECISION



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

FILE: B-214243

DATE: July 26, 1984

MATTER OF: E. Louis Fry -- Relocation Expenses / Loan Origination Fee and VA Funding Fee

DIGEST:

Employee who was transferred effective December 20, 1981, incurred loan origination and VA funding fees incident to purchase of home at new duty station. His loan origination and VA funding fees are finance charges under 15 U.S.C. § 1605(a) and under Regulation Z (12 C.F.R. 226.4) and are not reimbursable under para. 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR) in effect at the time of the transfer. The 1982 amendment to FTR paragraph 2-6.2d allowing reimbursement of a loan origination fee is applicable only for employees whose effective date of transfer is on or after October 1, 1982. Since the employee's transfer took place prior to that date, the amendment is not applicable to him.

This decision is in response to a request for an advance decision submitted by Mr. Richard P. Griffith, Chief, Division of Financial Management, Office of Surface Mining, Department of the Interior, Denver, Colorado, concerning the propriety of reimbursing Mr. E. Louis Fry for a loan origination fee and a Veterans Administration (VA) funding fee in connection with his permanent change of station. For the reasons set forth below, Mr. Fry may not be reimbursed for either the loan origination fee or the VA funding fee.

The loan origination fee and VA funding fee in Mr. Fry's reimbursement voucher were denied by the Office of Surface Mining on the basis that they were finance charges under the Truth in Lending Act, Title I, Pub. L. 90-321, May 29, 1968, 82 Stat. 146, 15 U.S.C. §§ 1605(a), and Regulation Z issued by the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 226 (1982), and thus not reimbursable under the Federal Travel Regulations, FPMR 101-7, para. 2-6.2d (September 1981) (FTR). Mr. Fry was transferred effective December 20, 1981. The

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settlement on his purchase of a home at his new permanent duty station took place on January 27, 1983.

LOAN ORIGINATION FEE

Reimbursement of relocation expenses is governed by the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). Paragraph 2-6.2d of the FTR, in effect at the time of Mr. Fry's transfer, prohibits reimbursement of any item which is found to be a finance charge under Regulation Z, 12 C.F.R. § 226.4(a) (1981). The items comprising a finance charge are listed in subsection 226.4(a) and the items that may be excluded from finance charges in real estate transactions are listed in subsection 226.4(e). The pertinent part of Regulation Z provides:

"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 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:

- "1. * * * any amount payable under a discount or other system of additional charges.
- "2. Service, transaction, activity, or carrying charge.
- "3. Loan fee, points, finder's fee, or similar charge."

Thus, the relevant part of Regulation Z, quoted above, 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.

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 the 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. Thus, under the provisions of FTR para. 2-6.2d, in effect at the time of Mr. Fry's transfer, reimbursement may not be made for a loan origination fee, unless the fee is broken down into specific charges which are excludable from the definition of a finance charge by 12 C.F.R. § 226.4(e). See Keer, above.

Mr. Fry notes that the General Services Administration has issued a change to FTR para. 2-6.2d to allow reimbursement of the loan origination fee incurred when buying a residence at the new official station. GSA Bulletin FPMR A-40, Supplement 4, August 23, 1982. However, the revision is effective only for employees whose effective date of transfer (date the employee reports for duty at the new official station) is on or after October 1, 1982. Unfortunately, as noted above, Mr. Fry's effective date of transfer was December 20, 1981. Therefore, the revision to the FTRs allowing the reimbursement of loan origination fees is not applicable to Mr. Fry.

VA FUNDING FEE

Section 1829 of Title 38, United States Code, added by the Omnibus Budget Reconciliation Act of 1982, Public Law 97-253, 96 Stat. 805 (1982), provides that a "loan fee" in the amount of one-half of 1 percent of a housing loan made, guaranteed, or insured by the VA must be collected from the veteran purchaser and remitted to the Administrator of the VA as a condition precedent to the VA making, guaranteeing, or insuring a loan. The fee is a user charge which is deposited into the U.S. Treasury as miscellaneous receipts.

The "loan fee" or "funding fee" is not the same as the VA fee for loan application. It is imposed in addition to a loan origination fee, which is a fee payable by the borrower to the lending institution and is limited by the VA to an amount not to exceed 1 percent of the amount of the loan. 38 C.F.R. § 36.4312(d)(2) (1982). The loan origination fee compensates the lender for expenses

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incurred in originating the loan, preparing documents, and related work.

We held that a prior VA funding fee imposed by the Veterans' Readjustment Benefits Act of 1966, 38 U.S.C. § 1818(d) (repealed in 1970), was not reimbursable under section 4.2d of Office of Management and Budget Circular A-56 (June 1969), a predecessor to FTR para. 2-6.2d. 49 Comp. Gen. 483 (1970). Specifically, we determined that the prior funding fee constituted a finance charge since, like the current funding fee, it is paid by the veteran purchaser incident to and as a condition precedent to his obtaining from the creditor a loan that is guaranteed by the VA. Further, the fee was not specifically excluded from the definition of a finance charge by 12 C.F.R. § 226.4(e).

The current VA funding fee imposed by the Omnibus Budget Reconciliation Act of 1982 is substantially similar to the prior funding fee discussed in 49 Comp. Gen. 483, above. In Veterans Administration, B-209945, June 9, 1983, 62 Comp. Gen. 456, we found that the current fee is also not excluded from the definition of a finance charge by the current provisions of 12 C.F.R. § 226.4(e). Based on the rationale stated in our earlier decision, we concluded that the VA funding fee constitutes a finance charge within the meaning of Regulation Z, since it would only be imposed in connection with the extension of credit, as opposed to a charge imposed for services rendered without regard to whether credit is sought or obtained. See Donald W. Espeland, B-186583, March 30, 1978. Therefore, reimbursement of the current VA funding fee is prohibited by FTR para. 2-6.2d, regardless of whether the fee may be considered similar to a loan origination fee or any of the other expenses authorized by FTR para. 2-6.2d(1).

Accordingly, we hold that both the loan origination fee and the VA funding fee paid by Mr. Fry constitute nonreimbursable items of real estate expenses.

for Milton J. Fowler
Comptroller General
of the United States