

DOCUMENT RESUME

08016 - [C3388455]

[Reimbursement of Loan Origination Fee Including a Fee To Cover Administrative Expenses and a Commitment Fee]. H-191040. November 29, 1978. 3 pp.

Decision re: Richard W. Jones; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters II.

Organization Concerned: Department of the Air Force: Cannon AFB, NM.

Authority: 41 C.F.R. 226. F.T.R. (FPMR 101-7). B-189639 (1978).

An advance decision was requested concerning a transferred employee's entitlement to reimbursement for a loan origination fee which he paid in connection with purchase of a home at his new duty station. Reimbursement was prohibited since a portion of the fee described by the bank as administrative expenses and the balance which it described as a commitment fee were finance charges under the applicable regulation and were, therefore, not reimbursable. (HTW)

DECISION

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

8456

FILE: B-191040

DATE: November 29, 1978

MATTER OF: Richard W. Jones - Commitment Fee

DIGEST: A transferred employee paid a lump-sum loan origination fee of \$525 that was described by the bank as \$350 to cover administrative expenses and \$175 as a commitment fee to reserve the funds for the loan. Both portions of the fee are finance charges under Regulation Z and are not reimbursable. There can be reimbursement only when the charges are itemized and excludible from the definition of finance charge. The commitment fee is clearly required as an incident to the extension of credit, and, as such, is part of the finance charge.

This action is in response to a request for an advance decision submitted by the Accounting and Finance Officer, Headquarters 27th Tactical Fighter Wing (TAC), Cannon Air Force Base, New Mexico, concerning the authority for reimbursing Mr. Richard W. Jones for a loan origination fee incurred incident to his purchase of a residence at his new duty station.

Mr. Jones reported to his new duty station at Cannon Air Force Base on July 23, 1973, and settled on his new residence on August 23, 1973. At that time he paid a loan origination fee of \$525. The nature of this fee was explained in a letter dated May 29, 1974, from Mr. Larry J. Fechter, Assistant Vice President of the Citizens Bank of Clovis. The letter stated that:

"Of the Five Hundred Twenty Five Dollars collected, One Hundred Seventy Five Dollars of that was used for a commitment fee to set aside the funds for your loan at the agreed interest rate. The other Three Hundred Fifty Dollars is used to cover our time and effort expended in gathering the necessary documentation to qualify the loan to meet normal Banking standards. This could be considered administrative expense."

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The entire \$525 was reimbursed, and the question now is whether or not Mr. Jones should be required to repay all or any part of that amount.

Reimbursement of relocation expenses is governed by the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR). Paragraph 2-6.2d of those regulations prohibits reimbursement of any item which is found to be a finance charge under Regulation Z. In determining whether or not an item is part of a finance charge, the reviewing officials must examine it in light of Regulation Z (12 C.F.R. § 226.4 (1978)) and our decisions. The items comprising a finance charge are listed in subsection 226.4(a) and the items that may be excluded in real estate transactions are listed in subsection 226.4(e).

We have held that there may be no reimbursement of a lump-sum loan origination fee. However, if the lump-sum fee includes specific charges which would otherwise be for allowance there must be a specific list of the services or charges that comprise the lump-sum amount, and only those items that are specifically excluded from the definition of a finance charge by 12 C.F.R. § 226.4(e) (1978), may be reimbursed. Matter of Anthony J. Vrana, B-189639, March 24, 1978. In the instant case, the bank's statement regarding \$350 of the total charge, describes it as covering administrative expenses. Such a nonspecific statement is insufficient to justify payment and there may be no reimbursement of that amount.

Regarding the balance of \$175, we have not discovered a case dealing with a charge called a commitment fee, and that term is not used in Regulation Z. However, the general definition in 12 C.F.R. § 226.4(a) states that a finance charge includes:

"* * * 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 * * *."

The bank states that the commitment fee was the cost of setting aside the funds for Mr. Jones' loan at the agreed interest rate. In the circumstances it is clear that the commitment fee was a

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charge that was incident to the extension of credit and must be considered to be part of the finance charge.

Accordingly, the entire \$525 should be collected from Mr. Jones.

R. J. K. 1/14
Deputy Comptroller General
of the United States