

DECISION

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

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FILE: B-211310**DATE:** October 4, 1983**MATTER OF:** Patricia A. Grablin**DIGEST:**

1. An employee may be reimbursed the loan origination fee she incurred incident to purchasing a house on December 23, 1982, at her new duty station since, effective October 1, 1982, the Federal Travel Regulations, as amended, authorize reimbursement of such fees. Although previously the regulations did not authorize reimbursement of such fees, the amended regulation is not inconsistent with the authorizing statute, 5 U.S.C. § 5724a and is now authority to reimburse employees for loan origination fees.
2. Effective October 1, 1982, the Federal Travel Regulations authorize reimbursement of loan origination fees for a transferred employee purchasing a house. Such a fee, however, may be reimbursed only if bona fide and only to the extent the fee does not exceed amounts customarily paid in the locality of the residence. Furthermore, the total reimbursable expense in connection with the purchase of a residence, including the loan origination fee, is subject to an overall limitation of 5 percent of the purchase price or \$5,000, whichever is less.

The question in this case is whether a transferred Federal employee, Ms. Patricia A. Grablin, may be reimbursed a \$1,325 loan origination fee in connection with the purchase of a residence at her new duty station.¹ We

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1. This question was presented as a request for advance decision by the Comptroller, Los Angeles District, U.S. Army Corps of Engineers.

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find Ms. Grablin may be reimbursed for the loan origination fee if the fee is determined not to exceed the amount customarily paid in the locality since the Federal Travel Regulations were changed effective October 1, 1982, to specifically authorize reimbursement for loan origination fees.

Background

Ms. Grablin, a civilian employee of the Army Corps of Engineers, was transferred from Omaha, Nebraska, to Los Angeles, California. In connection with this transfer she was authorized travel expenses on October 13, 1982, including reimbursement of expenses associated with the sale or purchase of a residence. She reported for duty at Los Angeles on November 29, 1982, and subsequently purchased a residence in the vicinity of Los Angeles on December 23, 1982. Among the expenses she incurred in purchasing the residence was a loan origination fee of \$1,325 paid to the institution which placed her mortgage loan. The fee was shown on her settlement statement as a loan origination fee computed as 1.5 percent of the loan amount plus \$50.

The Corps of Engineers withheld reimbursement of the loan origination fee because of doubt as to the application of Volume 2 of the Joint Travel Regulations (2 JTR), paragraph 14002-1d(1)2, which authorizes reimbursement of a loan origination fee for an employee whose effective date of transfer is on or after October 1, 1982. The doubt arises because prior to October 1982 a loan origination fee or similar charge was considered a finance charge under the Truth in Lending Act, Title I, Public Law 90-321, as amended, 15 U.S.C. § 1601, et seq. (1976), and as such was not reimbursable under the applicable regulation. While the agency officials are aware that the recent change to the regulations provides that loan origination fees are reimbursable, they still were concerned about paying the fee because of the lack of case precedents in this area to provide guidance. In particular they question whether there is a limit to the amount which may be reimbursed for a loan origination fee and what charges constitute a reimbursable loan origination fee.

Discussion

The travel entitlements for civilian employees of the Department of Defense are set out in Volume 2 of the JTR which, since it concerns civilian employees of the executive branch of the Government, must be consistent with the provisions of the Federal Travel Regulations (FTR). The FTR includes the statutory regulations promulgated under 5 U.S.C. § 5724a authorizing allowances for expenses incurred by employees in connection with residence transactions. The provisions of 2 JTR and the FTR for reimbursement for loan origination fees are in substance identical. See 2 JTR, para. C14002-1d (ch. 208, February 1, 1983); and FTR, FPMR 101-7, para. 2-6.2d (September 1981), as amended by GSA Bulletin FPMR A-4, General, supplement 4 (August 23, 1982), both of which were effective October 1, 1982.

Before the October 1, 1982 amendments to the regulations, we had construed a lump-sum loan origination fee as a finance charge within the meaning of the Truth in Lending Act as implemented by Regulation Z, 12 C.F.R. § 226.4. See, e.g., Matter of Miller, B-197366, April 28, 1980. We recognized that prior to its revision in October 1982, FTR para. 2-6.2d prohibited reimbursement for any real estate expenses constituting a finance charge under the Truth in Lending Act. The relevant part of Regulation Z categorizes 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 Matter of Keer, B-203630, March 9, 1982. Thus, under the prior provisions of FTR para. 2-6.2d, we disallowed reimbursement for a loan origination fee, unless the fee was broken down into specific charges which were excludable from the definition of a finance charge by 12 C.F.R. § 226.4(e). See Keer, above.

The revised provisions of FTR para. 2-6.2d (and 2 JTR para. 14002-1d) specifically authorize reimbursement for certain charges, including loan origination fees, as follows:

- "(a) FHA or VA fee for the loan application;
- "(b) Loan origination fee;
- "(c) Cost of preparing credit reports;
- "(d) Mortgage and transfer taxes;
- "(e) State revenue stamps;
- "(f) Other fees and charges similar in nature to those listed above, unless specifically prohibited in (2) below
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"(2) Nonreimbursable Items. Except as otherwise provided in (1), above, the following items of expense are not reimbursable:

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- "(e) No fee, cost, charge or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, and Regulation Z issued in accordance with Pub. L. 90-321 by the Board of Governors of the Federal Reserve System, unless specifically authorized in (1) above * * *."

We have held that this revised regulation now allows reimbursement of a loan origination fee even if the fee constitutes a finance charge under Regulation Z. This does not conflict with the statute, 5 U.S.C. § 5724a(a)(4), the regulation is implementing since the terms of the statute do not prohibit reimbursement of real estate expenses constituting a finance charge under Regulation Z. Matter of Kigerl, B-211304, July 12, 1983, 62 Comp. Gen. ____.

Thus, our precedents regarding whether to authorize reimbursement for loan origination fees are primarily based on the regulations applicable. Thus, since Ms. Grablin's effective date of transfer was on or after October 1, 1982, her reimbursement should be determined under the new regulations which authorize payment of a loan origination fee.

As to the limits on the amount which may be reimbursed an employee for a loan origination fee, two provisions of the FTR are relevant to this inquiry. First is FTR para. 2-6.2d(1), referred to above, which states that the various reimbursable items listed there, including a loan origination fee, are reimbursable "to the extent they do not exceed amounts customarily paid in the locality of the residence." The other is FTR para. 2-6.2g(2), which sets overall limitations on an employee's reimbursement for expenses in connection with the purchase of a residence at a new duty station at 5 percent of the purchase price or \$5,000, whichever is less. Accordingly, where an employee submits a request for reimbursement of a bona fide loan origination fee which does not exceed the amount of such a fee customarily paid in the locality and, which with all other expenses connected with the purchase of the residence is within the overall limits discussed above, the employee may be reimbursed the total expenses.

As to whether a loan origination fee is bona fide, the Truth in Lending Act as implemented by Regulation Z requires an itemized disclosure statement of the various expenses connected with the financing of a residence. Therefore, generally the indication in the disclosure statement that the employee was charged a loan origination fee will be of sufficient probative value to warrant payment. Of course, if there is some basis for doubt that a loan origination fee was actually paid, the agency may require the employee to submit further evidence to support the request for reimbursement. Where doubt still remains, the case should be submitted to our Office for resolution.

Conclusion

In Ms. Grablin's case the loan origination fee of \$1,325 along with other reimbursable charges appears to fall below the overall limitations of FTR para. 2-6.2g(2). Therefore, if it does not exceed the amount customarily paid

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for such a fee in the locality of her residence, she is entitled to reimbursement.

for *Winston J. Aochaw*
Comptroller General
of the United States