30638

RLM I

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

FILE: B-217081 **DATE:** March 8, 1985

MATTER OF: Christopher P. Jolly - Real Estate Expenses - Loan Origination Fee

DIGEST:

Transferred employee claimed 3-3/4 percent loan origination fee but agency limited reimbursement to 1 percent, based on HUD's advice that a 1 percent loan origination fee is customary in the locality of the employee's new residence. The information provided by HUD creates a rebuttable presumption as to the prevailing loan origination fee, and the employee has not submitted evidence to rebut this presumption. Accordingly, the employee may not be reimbursed for an additional 2-3/4 percent fee.

The Director of the Office of Administration, U.S. Department of Transportation, Federal Highway Administration, requests our decision on the claim of Mr. Christopher P. Jolly. Mr. Jolly requests reimbursement for a loan origination fee which exceeds the customary rate for the locality of his new residence, as established by the Department of Housing and Urban Development (HUD). We hold that Mr. Jolly may not be reimbursed for an amount greater than the customary charge quoted by HUD, absent evidence that the prevailing rate is higher.

FACTS

Effective January 26, 1984, Mr. Jolly was transferred from Pierre, South Dakota, to Albany, New York. He financed the purchase of a new residence in Albany by obtaining an adjustable rate mortgage, and incurred a 3-3/4 percent loan origination fee in the amount of $1,995.25.

The agency allowed Mr. Jolly reimbursement for a 1 percent loan origination fee, based on advice from the Albany, New York, office of HUD that lenders in the Albany area customarily charge a fee of 1 percent. In suspending reimbursement for the additional 2-3/4 percent, the agency cited our decision in Roger J. Salem, B-214018, June 27, 1984, 63 Comp. Gen. 456. In that decision, discussed more

031422

fully below, we denied an employee's claim for 4 percent of a 5 percent fee characterized by the lending institution as a "loan origination fee," determining that the bulk of the fee represented a nonreimbursable mortgage discount.

Mr. Jolly reclaimed reimbursement for the disallowed 2-3/4 percent fee, contending that his situation is distinguishable from that involved in Salem. Specifically, Mr. Jolly asserts that the 3-3/4 percent fee he incurred represents a bona fide loan origination fee, and not a mortgage discount, because: (1) his loan agreement did not provide that payment of the 3-3/4 percent fee would reduce the interest rate on his mortgage; (2) the settlement statement indicates that he was not assessed any fee for a mortgage discount; and (3) the lending institution has explained that the 3-3/4 percent fee was assessed to cover costs of loan origination.

Against this background, the agency questions whether it may allow Mr. Jolly's claim for the additional 2-3/4 percent fee.

DISCUSSION

Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he incurs in selling and/or purchasing a residence pursuant to a permanent change of station. Effective October 1, 1982, the implementing regulations in para. 2-6.2d(1) of the Federal Travel Regulations, FPMR 101-7 (Supp. 4, August 23, 1982) (FTR), were amended to permit reimbursement for loan origination fees and similar charges which are not specifically disallowed by FTR para. 2-6.2d(2). See Robert E. Kigerl, 62 Comp. Gen. 534 (1983). The term "loan origination fee," as used in FTR para. 2-6.2d(1), refers to a lender's fee for administrative expenses, including costs of originating the loan, processing documents, and related work. See 62 Comp. Gen. 456; and Kigerl, cited above. Reimbursement for a loan origination fee is limited to the amount customarily charged in the locality of the employee's new residence. See 5 U.S.C. § 5724a(a)(4), as implemented by FTR para. 2-6.2d(1). See also Patricia A. Grablin, B-211310, October 4, 1983.

In Roger J. Salem, cited by the agency, an employee incurred a 5 percent loan fee which was characterized on the settlement statement as a "loan origination fee." The agency allowed the employee reimbursement for 1 percent of the loan amount, based on HUD's advice that a 1 percent loan origination fee was customary in the locality. We denied the employee's claim for the additional 4 percent, determining that the bulk of the lender's 5 percent charge represented a mortgage discount or "points," reimbursement for which is specifically prohibited by FTR para. 2-6.2d(2)(b). In reaching this determination, we noted that the employee's loan agreement showed that payment of the 5 percent fee reduced the interest rate on his mortgage, and that it was inconceivable that the lender's administrative expenses could have amounted to 5 percent of the loan amount.

We agree with Mr. Jolly that the facts of his case are distinguishable from those involved in Salem. Specifically, we find nothing in the loan documents to show that the interest rate on his mortgage was adjusted downward after he paid the 3-3/4 percent fee. However, the lack of evidence that the 3-3/4 percent fee included a mortgage discount does not mean that the entire fee is reimbursable as a loan origination fee under FTR para. 2-6.2d(1).

As we stated previously, FTR para. 2-6.2d(1) limits reimbursement for a loan origination fee to the amount customarily paid in the locality of the employee's new residence. In Gary A. Clark, B-213740, February 15, 1984, we held that an agency may rely on technical assistance provided by the local office of HUD in determining the customary loan origination fee for a given locality. We recognized in Clark that the information supplied by HUD does not establish inflexible rates or limit the charges which may be imposed by lenders. However, we held that this information creates a rebuttable presumption as to

30638

the prevailing loan origination fee charged in the area, and is controlling in the absence of evidence overcoming that presumption.

In this case, HUD's advice that a 1 percent loan origination fee is customary in Albany creates a rebuttable presumption as to the prevailing rate in that area. Although Mr. Jolly incurred a loan origination fee in excess of 1 percent, he has not submitted any evidence showing that lenders in the Albany area typically charge a higher rate. Under these circumstances, Mr. Jolly has not rebutted the presumption that a 1 percent loan origination fee is customary in the Albany area, and he may not be reimbursed for a higher amount.

Accordingly, based on the present record, Mr. Jolly may not be reimbursed for an additional 2-3/4 percent loan origination fee.

Milton J. Socolar
Comptroller General
of the United States