

DECISION



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

FILE: B-214018

DATE: June 27, 1984

MATTER OF: Roger J. Salem - Real Estate Expenses
Loan Origination Fee

DIGEST:

A transferred employee who purchased a new residence incurred a 5 percent loan fee which was described in the loan agreement as a "loan origination fee." The agency allowed reimbursement for only 1 percent of the loan amount, based on HUD's advice that a 1 percent loan origination fee is customary in the local area, and the employee has reclaimed the additional 4 percent. The agency's determination to allow reimbursement for 1 percent of the loan amount is sustained, based on the advice provided by HUD. The employee's claim for the additional 4 percent is denied because that portion of the fee represents a nonreimbursable mortgage discount.

Mr. W. D. Moorman, an authorized certifying officer of the United States Department of Agriculture, requests our decision concerning the reclaim of Mr. Roger J. Salem, an employee of the Department's Office of Inspector General. The issue for our determination is whether Mr. Salem may be reimbursed for the full amount of the 5 percent loan fee he incurred when purchasing a residence at his new duty station, based on the lender's characterization of the entire fee as a "loan origination fee." We hold that the employee was properly reimbursed for only 1 percent of the 5 percent fee for the reasons stated below.

BACKGROUND

Effective May 1, 1983, Mr. Salem was transferred from Indianapolis, Indiana, to Chicago, Illinois. He purchased a new house in Chicago, entering into a loan agreement which required the payment of a "loan origination fee" of \$4,500,

representing 5 percent of a conventional loan of \$90,000. Although the loan documents do not identify the purpose of the 5 percent fee, the loan agreement indicates that payment of the fee reduced the annual percentage rate from 11.042 percent interest to a "contract interest rate" of 10.4 percent.

The Department of Agriculture allowed Mr. Salem reimbursement for \$900, representing 1 percent of the loan amount, based on advice from the Department of Housing and Urban Development (HUD) that lenders in the Chicago area customarily charge a loan origination fee of 1 percent. Mr. Salem reclaimed the additional 4 percent (\$3,600), disputing the agency's determination that a 1 percent loan origination fee is customary in the Chicago area. He asserts that HUD does not determine the customary loan origination fee for each locality, but uses a nationwide figure of 1 percent based on the maximum fee which may be charged to a purchaser whose mortgage is insured by the Federal Housing Administration (FHA). See 24 C.F.R. § 203.27(a)(2)(i) (1983). Also, Mr. Salem has submitted a clipping from the Chicago Tribune, dated October 23, 1983, which indicates that seven lending institutions in the Chicago area charge "loan origination points" ranging from 2 to 4 percent. Further, Mr. Salem claims that other Department of Agriculture employees transferring to the Chicago area have been reimbursed for loan origination fees which exceed 1 percent of the loan amount.

The Department of Agriculture states that, in its experience, HUD does determine the customary loan origination fee for a given locality. Further, the agency states that the "loan origination points" quoted in the Chicago Tribune survey appear to vary according to the type of financing obtained and the interest rate charged by the lender.

Against this background, the Department of Agriculture questions whether Mr. Salem may be reimbursed for an amount higher than 1 percent, based on the range of fees quoted in the Chicago Tribune survey. If not, the agency requests guidance concerning the type of documentation which would support payment of a loan origination fee higher than that which HUD has determined to be customary in the locality.

OPINION

The provisions of FTR para. 2-6.2d authorize reimbursement for various miscellaneous expenses associated with real estate transactions. Effective October 1, 1982, the General Services Administration (GSA) amended FTR para. 2-6.2d to permit reimbursement for loan origination fees. Prior to October 1, 1982, the reimbursement of loan origination fees was prohibited. The relevant part of the amended regulation provides as follows:

"d. Miscellaneous expenses.

"(1) Reimbursable items. The expenses listed below are reimbursable in connection with the sale and/or purchase of a residence, provided they are customarily paid by the seller of a residence in the locality of the old official station or by the purchaser of a residence at the new official station to the extent they do not exceed amounts customarily paid in the locality of the residence.

* * * * *

"(b) Loan origination fee;

"(2) Nonreimbursable items. Except as otherwise provided in (1), above, the following items of expense are not reimbursable.

* * * * *

"(b) Interest on loans, points, and mortgage discounts; * * *."

In commentary accompanying the amended provisions of FTR para. 2-6.2d, GSA explained that the term "loan origination fee" refers to a lender's administrative expenses in processing a loan. 47 Fed. Reg. 44,566 (1982). Similarly, we have held that the term "loan origination fee," as used in FTR para. 2-6.2d(1)(b), refers to a fee which is assessed on a percentage-rate basis to compensate the lender for expenses of originating the loan, processing documents, and related work. See B-209945, June 9, 1983, 62 Comp. Gen. ____; and Robert E. Kigerl, B-211304, July 12, 1983, 62 Comp. Gen. ____.

However, the term "loan origination fee" has also been used to refer to a mortgage discount or "points." See B-164812, September 3, 1970. Simply stated, a mortgage discount represents prepaid interest and is intended to compensate the lender for the fact that the interest rate on the mortgage is lower than that available from alternative investment opportunities. In line with the long-standing policy which prohibits payment of an employee's interest expenses, the provisions of FTR para. 2-6.2d(2)(b) expressly preclude reimbursement for interest, "points," and mortgage discounts. Based on this specific prohibition, we have consistently disallowed reimbursement for any charge which represents a mortgage discount. See Erwin E. Drossel, B-203009, May 17, 1982; and Clarence O. Stout, B-192186, October 23, 1978.

Accordingly, a lending institution's statement that a particular fee represents a "loan origination fee" cannot be accepted as the final legal characterization of the payment. See Stanley Keer, B-203630, March 9, 1982. We must examine the fee in light of the provisions of FTR para. 2-6.2d, as interpreted by decisions of this Office.

In Mr. Salem's case, it appears that the bulk of the lender's 5 percent charge represents a mortgage discount. As indicated previously, the loan agreement executed by Mr. Salem shows that the interest rate on the mortgage was adjusted downward after payment of the \$4,500 fee. Furthermore, it is inconceivable that the lender's administrative expenses could have amounted to \$4,500.

Although we presume that a portion of the 5 percent fee charged Mr. Salem was used to defray the lender's administrative expenses, we cannot identify the size of this portion from the available evidence. However, we find that the agency properly allowed Mr. Salem reimbursement for 1 percent of the loan amount, based on HUD's advice that lenders in the Chicago area customarily charge a loan origination fee of 1 percent. See FTR para. 2-6.3c. See also Gary A. Clark, B-213740, February 15, 1984.

By separate letter of today, we are advising GSA that fees which are characterized as "loan origination fees," and claimed as such under FTR para. 2-6.2d(1)(b), may actually represent mortgage discounts or points. The term "loan origination fee," as used in FTR para. 2-6.2d(1)(b), is not intended to include mortgage discounts or points, but since it is usually difficult or impossible to identify the exact amount of the lender's administrative

B-214018

expenses, we suggest in the letter that GSA amend the regulation to impose a specific percentage limitation on the amount which may be reimbursed for a loan origination fee. Pending such action, we will continue to determine claims for "loan origination fees" on a case-by-case basis.

For the reasons stated above, we hold that Mr. Salem's claim for an additional \$3,600 as a loan origination fee may not be certified for payment.

A handwritten signature in cursive script that reads "Shelton J. Foster".

Acting Comptroller General
of the United States