



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: William P. Annable - Real Estate Expense - Loan  
Origination Fee

File: B-221103

Date: September 19, 1986

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### DIGEST

Transferred employee claimed 4 percent loan origination fee but agency limited reimbursement to 1 percent, based on HUD's advice that a 1 percent loan origination fee was customary in the locality of the employee's new residence at the time of the purchase. However, subsequent information from HUD revealed that in financing both at claimant's lending institution and in the metropolitan area of claimant's new home, 2 percent loan origination fee was typical. Since the local HUD office now states that a 2 percent loan origination fee is customary for the locality, the employee may be reimbursed an additional 1 percent for a total of 2 percent reimbursement.

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### DECISION

Mr. W. D. Moorman, an authorized certifying officer for the United States Department of Agriculture (Agriculture), has requested our decision on Mr. William P. Annable's claim for the full amount of a 4 percent loan origination fee he incurred when purchasing a residence at his new duty station. For the reasons stated below, we find that 2 percent is the customary rate for a loan origination fee in that locality and that Mr. Annable may be reimbursed for that amount.

### BACKGROUND

Effective June 24 1984, Mr. Annable was transferred from Amherst, Massachusetts, to Honolulu, Hawaii. He financed the purchase of a new residence in the Honolulu area by obtaining an adjustable rate, conventional mortgage, and incurred a 4 percent loan origination fee in the amount of \$4,588.

The agency (Agriculture) allowed Mr. Annable reimbursement for a 1 percent loan origination fee, suspending the additional 3 percent based on advice from the Honolulu office of the Department of Housing and Urban Development (HUD) that

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local lending institutions customarily charge a 1 percent fee. However, subsequent information obtained from the Honolulu HUD office stated that the interest rate for fixed rate conventional loans during the period of August 1984 was in the 14 to 14 1/2 percent range and carried a 2 percent loan origination fee. However, Mr. Annable obtained an adjustable rate mortgage loan with an initial interest rate of 12 1/4 percent and, as indicated, an origination fee of 4 percent. The 4 percent origination fee charged was reportedly due to the nature and non-saleability of the adjustable rate loan in the secondary market.

Mr. Annable reclaimed reimbursement for the disallowed 3 percent fee, contending that the total fee constituted the loan origination fee and that the total amount of 4 percent was customary at the time he obtained his mortgage. Further, Mr. Annable submitted a "Financial Summary" dated September 5, 1984, prepared by the Honolulu Board of Realtors Multiple Listing Service which lists loan fees for mortgage lenders on Oahu, Hawaii. The summary shows a range of fees from 1 percent to 5 1/4 percent with the largest concentrations at the 2 to 2 1/2 percent range, the next largest at the 4 to 5 percent range, and a significant number at 3 percent. In only one instance was the loan fee below 2 percent.

Against this background, the agency questions whether it may allow Mr. Annable's claim for the full 4 percent loan origination fee.

#### DISCUSSION

Under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he or she incurs in selling and purchasing a residence pursuant to a permanent change of station. Effective October 1, 1982, the implementing regulations in paragraph 2-6.2d(1) of the Federal Travel Regulations, FPMR 101-7 (Supp. 4, August 23, 1982) (FTR) incorp. by ref., 41 C.F.R. § 101-7.003 (1983), 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 Veterans Administration, 62 Comp. Gen. 456 (1983). 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 Mary C. Saucedo, B-219545, January 15, 1986.

A complicating feature of a loan origination fee is that many lenders will include a mortgage discount or "points" in the charges made, especially where the method of charging is as a percentage of the loan. We have defined a mortgage discount or "points" as being part of the price paid for the hire of money where the interest rate charged on the loan is below the mortgage market level, or lower than the interest rate income available to the lending institution from alternative investment opportunities. B-164812, September 3, 1970; and Roger J. Salem, 63 Comp. Gen. 456 (1984).

In our decision in Salem we considered a situation in which a particular lending institution charged 5 percent of the loan as a loan origination fee. After reviewing the record, we expressed the view that the amount charged was so unreasonable that it could not possibly represent only administrative costs associated with the making of the loan but rather represented a mortgage discount. We stated that since much of the charge represented a mortgage discount, we would give great weight to the information provided by HUD which determined that the customary charge in the area where the home was purchased was 1 percent of the loan. Therefore, we held that in the absence of a definitive showing that the customary charge was higher, reimbursement was limited to 1 percent. Salem, cited above.

Mr. Annable correctly notes that there is nothing in the loan documents to show that the interest rate on his mortgage was adjusted downward after he paid the 4 percent fee. However, the lack of evidence that the 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). Christopher P. Jolly, B-217081, March 8, 1985.

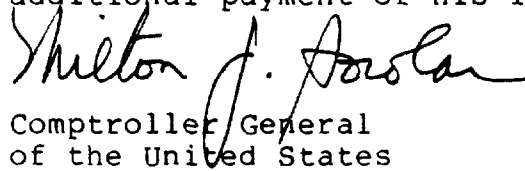
As we stated previously, FTR para. 2-6.2d(1) limits reimbursement for a loan origination fee to the amount customarily paid in the locality of the employee's new residence. In Gary A. Clark, B-213740, February 15, 1984,

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 the prevailing loan origination fee charged in the area, and is controlling in the absence of evidence overcoming that presumption. See also Jolly, cited above.

In this case, HUD's advice that a 2 percent loan origination fee is customary in Honolulu creates a rebuttable presumption as to the prevailing rate in that area. Although Mr. Annable has submitted a survey compiled by the Board of Realtors in Honolulu showing that many lending institutions did charge 4 percent or more as a loan origination fee, the survey also showed that more institutions charged 2 percent as a loan origination fee. Therefore, we do not find that this information is sufficient to demonstrate that lenders in the Honolulu area typically charged a 4 percent fee.

Under the circumstances, Mr. Annable has not rebutted the presumption that only a 2 percent loan origination fee was customary in the Honolulu area, and he may not be reimbursed for a higher amount. In view of the fact that the limitation expressed in paragraph 2-6.2d of the FTR is that the reimbursement may "not exceed the amount customarily paid," and based on the information from HUD, Mr. Annable may be reimbursed one-half of his 4 percent fee of \$4,588. Since he has already been reimbursed \$1,147, an additional \$1,147 may be certified for payment to him for his loan origination fee.

Mr. Annable has also requested interest on any funds which may be paid to him as a result of this claim. It is a well-settled rule of law that interest may be assessed against the Government only under an express statutory or contractual authority. See John H. Kerr, 61 Comp. Gen. 578, 580 (1982), and cases cited therein. Neither the statutory authority for the reimbursement of relocation expenses nor any other applicable statute specifically provides for the payment of interest on claims for real estate expenses incurred pursuant to relocation. Therefore, Mr. Annable is not entitled to receive interest on the additional payment of his loan origination fee.

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Comptroller General  
of the United States