

DECISION



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

FILE: B-216251

DATE: February 25, 1985

MATTER OF: Mark Kroczyński - Real Estate Expenses -
Loan Origination Fee - Hazard Insurance

DIGEST:

1. A transferred employee purchased a new residence and was charged 1 percent of his loan, plus \$250, as a "loan origination fee." He was reimbursed the 1 percent and now claims the additional \$250. Under Federal Travel Regulations (FTR) para. 2-6.2d(1)(b), such fees are reimbursable not to exceed amounts customarily charged. Since HUD advised that the customary range of fee charged in the area is 1 to 1-1/2 percent of the loan, the maximum of the customary range may be used for FTR purposes and when reduced to a dollar amount, establishes the not to exceed amount which may be reimbursed in any one case. Thus, the employee may be reimbursed an additional amount up to the maximum of 1-1/2 percent.

2. A transferred employee purchased hazard insurance on his new residence as a condition of obtaining a mortgage loan. He claims reimbursement based on his agency's "Employees Relocation Guide" publication as authority. The Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), which are specifically authorized by law and have the force and effect of law, strictly govern the relocation expense entitlements of Federal employees. The cited publication is administrative and does not have the force and effect of law. Therefore, to the extent that such publication may be inconsistent with provisions of the FTR it is not binding on the Government. See decisions cited.

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3. A transferred employee was required to purchase hazard insurance as a condition of obtaining a mortgage loan. He claims that since it was property insurance and required by the lender, it is reimbursable. The term "property insurance" is a term describing, generally, all types of real or personal property insurance and is not a term used in the FTR to describe such potentially reimbursable cost. Under FTR, para. 2-6.2(d)(1) only the cost of one type of property insurance, title insurance, may be reimbursed and then only if it is required by a lender. Hazard insurance is another type of property insurance which relates to financial protection against loss or damage to structures or improvements to real estate, occasioned by specific catastrophic events. Since FTR, para. 2-6.2(d)(2)(a) specifically precludes reimbursement of the costs of loss and damage insurance, the claim may not be paid.

This decision is in response to a request from an Authorized Certifying Officer, Internal Revenue Service (IRS), Southwest Region, Department of the Treasury. The matter involves the entitlement of one of its employees to be reimbursed certain real estate related expenses which were incurred incident to a permanent change-of-station transfer in June 1983. We conclude that the employee may be reimbursed, in part, for the following reasons.

BACKGROUND

Mr. Mark Kroczyński, an IRS employee, received a permanent change-of-station transfer from New York, New York, to Lake Charles, Louisiana. He reported for duty at his new station on June 11, 1983.

By supplemental travel voucher, Mr. Kroczyński sought reimbursement for expenses incurred attendant to the purchase of a residence in the area of his new duty station, in the amount of \$1,510. All of the expenses claimed on that voucher, including a 1 percent loan origination fee, with the exception of an additional \$250 fee charged by

the lending institution, and \$283 fee charged as a premium for hazard insurance, were allowed. The two items which were disallowed, were disallowed for the reason that the \$250 charge by the lending institution in addition to the 1 percent loan origination fee was not a customary charge in that area, and that insurance against loss or damage to property is not reimbursable, citing to Internal Revenue Manual (IRM) 1763, section 593(1)(d)(2).

Mr. Kroczyński submitted a reclaim voucher for the disallowed items. In support of entitlement, he asserts that the information supplied the agency concerning loan origination fees only pertains to FHA loans and that since his was a conventional loan the additional \$250 charge is properly reimbursable. In support of reimbursement for the cost of hazard insurance, he refers to the Internal Revenue Service, Employees Relocation Guide, Document 6076 (Rev. 1/83), which provides, in part, that property insurance is a nonreimbursable expense "if purchased for the protection of you and not required by the lender." He asserts that the lender required him to purchase and maintain such insurance as one of the conditions contained in his mortgage loan agreement.

DECISION

The provisions governing reimbursement for real estate expenses incident to a transfer of duty station are contained in 5 U.S.C. § 5724a (1982), and regulations issued thereunder. Those regulations are contained in Chapter 2 of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), as amended, in part, by GSA Bulletin FPMR A-40, Supp. 4 (October 1982). Since these regulations are specifically authorized by law, they have the force and effect of law. In the absence of terms in the law or the regulations otherwise permitting, the provisions of the FTR may not be modified by agency regulations or waived in an individual case by the employing agency or our Office. See Dominic D. D'Abate, B-210523, October 4, 1983, 63 Comp. Gen. 2, and Charles R. Stebbins, B-215263, October 1, 1984. Therefore, an employee's right to be reimbursed for relocation expenses is strictly limited to that authorized by statute and the Federal Travel Regulations.

Loan Origination Fee.

Paragraph 2-6.2d of the FTR, as amended by GSA Bulletin FPMR A-40, Supp. 4 (October 1982), provides, in part:

"d. Miscellaneous expenses.

"(1) Reimbursable items. The expenses listed below are reimbursable in connection with the * * * purchase of a residence, provided they are customarily paid * * * 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;"

A loan origination fee, generally, is a fee assessed a mortgagor by a lending institution to compensate the lender for the time and expenses associated with originating a loan, such as, processing documents, securing a credit investigation on the prospective mortgagor and performing other related activities. While the most common method of charging for these expenses is stating it as a percentage of the amount to be loaned, the charge for those services can also be stated as a set charge not specifically tied to the amount of the loan, or, as in the present case, a percentage of the loan, plus a set charge.

A complicating feature of a loan origination fee is that many lenders will include a mortgage discount or "points" to 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, B-214018, June 27, 1984, 63 Comp. Gen. 456.

In decision Roger J. Salem, above, we considered a situation in which a particular lending institution charged 5 percent of the loan as a loan origination fee. On analysis, 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 or a reasonable approximation thereof and concluded that the excess represented a mortgage discount add on. We ruled, therefore, that since much of the charge represented

a mortgage discount, we would give great weight to the information provided by the Department of Housing and Urban Development (HUD). Since they determined that the customary charge in the home purchase locality was 1 percent of the loan, we held that in the absence of a definitive showing that the customary charge there was higher, reimbursement was limited to 1 percent.

In the present case, we have been informally advised through the HUD office servicing the Lake Charles, Louisiana, area that the customary method of charging a loan origination fee is as a percentage of the loan and that the customary percentage range is between 1 and 1-1/2 percent of the loan. The method used by the particular lending institution servicing Mr. Kroczyński's account, i.e., 1 percent of the loan, plus \$250, clearly is a departure from the customary method of charging. However, when all percentages are reduced to dollar amounts in this case, he paid \$552 as a loan origination fee. Since the upper limit of the customary range of fee charging in that locality was 1-1/2 percent, that limit may be used to establish the not to exceed amount in this case. On that basis, the maximum loan origination fee on his loan (\$30,200), would have been \$453. In view of the fact that the limitation expressed in paragraph 2-6.2d of the FTR, as amended, is that the reimbursement may "not exceed the amounts customarily paid," and based on the information from HUD, Mr. Kroczyński's reimbursement is limited to \$453. Since he has already been reimbursed \$302, an additional \$151 may be certified for payment to him for his loan origination fee.

Hazard Insurance

Mr. Kroczyński has sought reimbursement for the cost of this insurance by asserting that it is an otherwise reimbursable property insurance item described in his agency's relocation guide, because its purchase was required by his mortgage lender.

The publication in question (Internal Revenue Service, Employees Relocation Guide, Document 6075 (Rev. 1/83)), merely provides employees with a general outline of their rights and responsibilities on permanent change-of-station transfers. The Federal Travel Regulations govern employee relocation expense entitlement. Thus, to the extent that the cited publication may be inconsistent with the FTR, any erroneous information contained therein is not binding on the Government. See D'Abate and Stebbins, above.

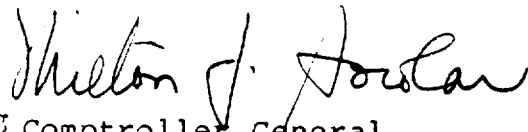
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Paragraph 2-6.2d(2) of the FTR provides in part:

"(2) Nonreimbursable items.

"(a) * * * insurance against loss or damage of property * * *."

The term "property insurance" is a broad generic term often used to describe, generally, all types of insurance an individual may purchase which relates to ownership or possession of property, real or personal. The FTR provisions regarding insurance cost reimbursement do not deal in such a broad descriptive term. They deal only with certain specific types of property insurance. For example, under FTR para. 2-6.2(d)(1), the only insurance costs which are deemed reimbursable are the premiums charged for a mortgage title insurance policy where required by the lender as a condition of the loan, and an owner's title insurance policy, under certain stipulated circumstances. In contrast to that type of insurance, hazard insurance is typically insurance which provides financial protection against loss or damage to structures and improvements to real estate, occasioned by specific potentially catastrophic events, such as, fire, flood, windstorm or earthquake. Regardless of whether a lending institution requires the purchase of such insurance as a condition of making the mortgage loan, since FTR para. 2-6.2d(2)(a) provides, without exception, that the cost of loss and damage insurance is nonreimbursable, Mr. Kroczyński's hazard insurance cost claim may not be certified for payment.



Acting Comptroller General
of the United States