

**DECISION**

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

11/29/83  
PHM-2

**FILE:** B-212326

**DATE:** November 29, 1983

**MATTER OF:** James W. Thomas

**DIGEST:**

1. Lump-sum loan fees, without a listing of the services covered and an allocation of the amount for each such item, are considered finance charges that are not reimbursable as real estate expenses for the purchase of a residence at the employee's new duty station. Unless amounts are stated for particular items, it cannot be determined that the charges are customary in the local area.
2. Where an employee purchased two dwellings on 50 acres of land, agency should have prorated the real estate purchase expenses even though the second dwelling was not habitable. The proration requirement of paragraph 1-6.1f of the Federal Travel Regulations applies even in the case of a single dwelling where the employee purchases a parcel of land in excess of that reasonably related to the residence site.

The issue in this case is whether Mr. James W. Thomas, an employee of the Department of Agriculture, is entitled to reimbursement of two loan fees incurred in connection with the purchase of a residence on 50 acres of land at his new duty station. No portion of either fee may be reimbursed in the absence of an itemization by the lender of the services provided and a listing of the amount allocable to each such item to assure that no portion of either fee was a finance charge and that the expenses were customary in the local area. Further, only the prorata portion of otherwise reimbursable real estate expenses reasonably related to the dwelling and residence site may be paid.

Mr. Thomas transferred from Bel Air, Maryland, to Las Animas, Colorado, on or about September 21, 1980, where he purchased a residence on August 27, 1982. At

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closing the lender, a member of the Federal Land Bank Association, charged him a "closed loan fee" of \$150 and a "loan fee" of \$900. The employing agency denied his claim for reimbursement of these real estate costs based on its determination that they were finance charges under the Truth in Lending Act and Regulation Z, 12 C.F.R. § 226.4. The agency informed him, however, that if he obtained a breakdown of the charges included in the fees and a monetary amount for each item it would reconsider his claim to determine if any part of either fee was reimbursable.

Mr. Thomas submitted a letter from the lender listing the items included in the two fees. However, the lender would not provide a breakdown of the cost for each item. The list of items follows:

- "1. Title examination to assure that the [lender] has a first mortgage on this security.
- "2. The cost of making the appraisal on the security.
- "3. Other expenses in connection with verifying the repayment ability, credit ratings, credit references and general administration costs."

Mr. Thomas also provided itemized statements from two savings and loan companies in the Las Animas area showing the loan fees they would have charged for each item had the loan been obtained from them. Although services similar to those shown by Mr. Thomas' lender are listed by each of the savings and loans, the amounts allocable to these particular items total less than \$200 and each statement includes an additional item called "loan origination fee." Unlike Mr. Thomas' lender, neither savings and loan company has indicated that any portion of its overall charge is allocable to "general administration costs."

Because the lender did not specify a dollar amount allocable to each item covered by the loan fees, the certifying officer forwarded Mr. Thomas' claim to

the Comptroller General for an advance decision. He asks whether payment may be allowed on the basis that the items listed in the lender's letter are reimbursable and that the total amount of the fees is reasonable and falls within the limitations imposed by paragraph 2-6.2g of the Federal Travel Regulations (FPMR, September 1981) (FTR).

Whether a particular expense incurred by a transferred Federal employee is reimbursable is governed by 5 U.S.C. §§ 5724 and 5724a (1976) and the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR) issued thereunder.

Paragraph 2-6.2d of the FTR (September 1981) defines the miscellaneous expenses that are reimbursable in connection with the sale and purchase of residences at the employee's old and new duty stations incident to a transfer of official station. As in effect at the date of Mr. Thomas' transfer, paragraph 2-6.2d provided that "no fee, cost, charge, or expense is reimbursable if it is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System." The pertinent part of Regulation Z, 12 C.F.R. § 226.4(a), states that the amount of the finance charge is determined as the sum of all charges payable directly or indirectly to the creditor by the customer as an incident to or as a condition of the extension of credit. Included are service, transaction, activity, and carrying charges, and loan fees, points, finder's fees, and similar charges.

In interpreting Regulation Z, this Office has stated that a finance charge is defined so as to distinguish between charges imposed as part of the cost of obtaining credit and charges imposed for services rendered in connection with a purchase or sale, regardless of whether credit is sought or obtained. Only the latter may be reimbursed under the governing law, 5 U.S.C. § 5724a(a)(4), and the aforementioned implementing regulation, FTR paragraph 2-6.2d. Accordingly, we have held that there may be no reimbursement of a lump-sum loan fee. However, if the lump-sum fee includes

specific charges which would otherwise be reimbursable, there must be a specific list of the services and an allocation of the charges that comprise the lump-sum amount, and only those items that are specifically excluded from the definition of a finance charge by 12 C.F.R. § 226.4(e) (1981), may be reimbursed. Matter of Taylor, 60 Comp. Gen. 531 (1981); Matter of Vrana, B-189639, March 24, 1978.

We are unpersuaded by the certifying officer's argument that the real estate expenses claimed by Mr. Thomas are within the total amount permitted under paragraph 2-6.2g(2) of the FTR (September 1981). This subparagraph merely prescribes a limitation on the amount that may be reimbursed in connection with the purchase of a residence. Within that maximum, real estate purchase expenses may be reimbursed only insofar as they meet the requirements of the otherwise applicable FTR provisions. In this case two of those requirements are that the expense not be a part of the finance charge and that it not exceed amounts customarily paid in the locality of the residence. FTR paragraph 2-6.2d.

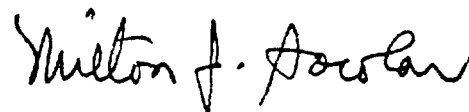
We also are unable to agree with the certifying officer's statement that all of the items listed by Mr. Thomas' lender are reimbursable or with the suggestion that the statements from the two savings and loan companies establish that fees charged by Mr. Thomas' lender were reasonable, customary, and otherwise payable. While appraisal, credit report and title examination fees are excluded from the finance charge by 12 C.F.R. § 226.4(e)(1), (5) and (6), overhead and general administrative costs are not excluded and, therefore, cannot be reimbursed under FTR, paragraph 2-6.2d. Matter of Taylor, *supra*. Moreover, the statements from the two savings and loan companies would suggest that nonreimbursable "general administration costs" account for a major portion of the \$1,050 charged by Mr. Thomas' lender. As noted above, the two companies indicated that appraisal, credit report and title examination costs constitute less than 20 percent of their overall fees. In the absence of a breakdown of the amounts Mr. Thomas' lender charged for each item excluded from the finance charge, there is no basis to

determine whether the expense of any particular item was customary and allowable. Matter of Pierson, B-209691, May 9, 1983.

Mr. Thomas states that loan origination fees and similar charges are now allowed by paragraph 2-6.2d(1) of the FTR unless specifically prohibited under paragraph 2-6.2d(2). However, this revision to the FTR applies to transfers effective on or after October 1, 1982. See GSA Bulletin FPMR A-40, Supplement 4, August 23, 1982. Mr. Thomas transferred in September 1980. At that time, reimbursement of a loan origination fee was not allowed.

We note that the house Mr. Thomas purchased at his new duty station was situated on 50 acres and that the purchase included a second dwelling, described by the employee as a "small guest house." The last sentence of paragraph 2-6.1f of the FTR provides for proration of real estate expenses so as to limit reimbursement to the portion of land reasonably related to the residence site. The employing agency determined there was no need to apportion real estate expenses since the second dwelling could not be restored to a liveable condition and had no appraised value. This determination reflects a misinterpretation of paragraph 2-6.1f which requires proration even in the case of a single dwelling if an employee purchases land in excess of that which reasonably relates to the residence site. The purchase of a 50-acre parcel generally requires proration of real estate expenses. See our guidelines for prorating in Matter of Courtney, 54 Comp. Gen. 597 (1975).

Accordingly, we find no basis to reimburse Mr. Thomas for any portion of either of the loan fees claimed, and real estate purchase expenses he has otherwise been reimbursed should be reexamined by the certifying officer for compliance with the proration requirements of FTR paragraph 1-6.1f.

*for*   
Comptroller General  
of the United States