

DECISION



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

FILE: B-211304

DATE: July 12, 1983

MATTER OF: Robert E. Kigerl - Loan Origination Fee

DIGEST

Employee may be reimbursed the loan origination fee he incurred incident to purchasing a house on December 1, 1982, at his new duty station since paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), as amended, specifically authorizes reimbursement for such a fee. Revised FTR para. 2-6.2d represents a change from the predecessor regulations, as interpreted by decisions of this Office, in that it specifically allows reimbursement for a fee that may constitute a finance charge within the meaning of Regulation Z, 12 C.F.R. § 226.4(a) (1982). Nevertheless, the revised regulation is consistent with the authorizing legislation in 5 U.S.C. § 5724a(a)(4) (1976), and, therefore, will be followed by this Office.

This decision is in response to a request for an advance decision submitted by Mr. Harold T. Ownby, an authorized certifying officer of the General Accounting Office, concerning reimbursement of a \$725 loan origination fee paid by Mr. Robert E. Kigerl in connection with the purchase of a residence at his new duty station. We hold that the amount in question may be certified for payment since paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), as amended by GSA Bulletin FPMR A-40, General, Supplement 4, October 1, 1982, specifically authorizes reimbursement for loan origination fees.

By travel order dated October 8, 1982, Mr. Kigerl was authorized reimbursement of relocation expenses associated with his transfer from Albany, New York, to Eglin Air Force Base, Florida. On December 1, 1982, he settled on the purchase of a residence at his new duty station, and subsequently claimed reimbursement for various closing costs, including a lump-sum loan origination fee in the amount of

\$725. The certifying officer withheld reimbursement for the loan origination fee, questioning whether such a fee could be paid under FTR para. 2-6.2d, which was revised in October 1982, to expressly allow reimbursement of loan origination fees, while still generally disallowing reimbursement of finance charges. Specifically, he states that the authorization for reimbursement of loan origination fees contained in revised FTR para. 2-6.2d appears to conflict with our decisions under the predecessor regulation, in which we held that a lump-sum loan origination fee is not reimbursable since it constitutes a finance charge within the meaning of the Truth in Lending Act, Title I, Public Law 90-321 (TILA), as amended, 15 U.S.C. § 1601, et seq. (1976), and the implementing provisions of Regulation Z, 12 C.F.R. § 226.4 (1982). In the event that we decide that a loan origination fee is reimbursable under FTR para. 2-6.2d, the certifying officer has asked us to determine under FTR para. 2-6.2d(1)(f) which other real estate expenses constituting part of the finance charge under Regulation Z are reimbursable as items "similar in nature" to loan origination fees and other expenses specifically authorized in FTR para. 2-6.2d(1)(a-e).

Under 5 U.S.C. § 5724a(a)(4) (1976), an employee may be reimbursed for the expenses he incurs in selling and/or purchasing a residence pursuant to a permanent change of station. The provisions of FTR para. 2-6.2d delineate the miscellaneous real estate expenses for which a transferred employee may be reimbursed.

Prior to its revision in October 1982, FTR para. 2-6.2d prohibited reimbursement for any real estate expense which was determined to constitute a finance charge within the meaning of the TILA, specifically 15 U.S.C. § 1605, as implemented by Regulation Z. The primary purpose of the TILA is to assure a meaningful disclosure of credit terms so that a consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit. See 15 U.S.C. § 1601. Therefore, the 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.

The relevant part of Regulation Z expressly categorizes service charges and loan fees as part of the finance charge when they are imposed incident to or as a condition of the extension of credit. Since a loan origination fee generally is assessed on a percentage rate basis for the purpose of defraying a lender's administrative costs, we have stated that the fee is imposed, "incident to * * * the extension of credit," and therefore constitutes a finance charge under Regulation Z. See Stanley Keer, B-203630, March 9, 1982. Thus, under the prior provisions of FTR para. 2-6.2d, we disallowed reimbursement for a loan origination fee, unless the fee was broken down into specific charges which were excludable from the definition of a finance charge by 12 C.F.R. § 226.4(e). See Keer, above.

The revised provisions of FTR para 2-6.2d specifically authorize reimbursement for loan origination fees, providing in relevant part 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.

"(a) FHA or VA fee for loan application;

"(b) Loan origination fee;

"(c) Cost of preparing credit reports;

"(d) Mortgage and transfer taxes;

"(e) State revenue stamps;

"(f) Other fees and charges similar in nature to those listed above, unless specifically prohibited in (2), below;

* * * * *

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

* * * * *

"(e) No fee, cost, charge, or expense determined to be part of the finance charge under the Truth in Lending Act, Title I, Pub. L. 90-321, and Regulation Z issued in accordance with Pub. L. 90-321 by the Board of Governors of the Federal Reserve System, unless specifically authorized in (1), above * * *." (emphasis added).

As pointed out by the certifying officer, the revised regulation represents a departure from the prior provisions of FTR 2-6.2d, as interpreted by decisions of this Office, in that it allows reimbursement for a loan origination fee even though that fee may constitute a finance charge within the meaning of Regulation Z. That departure, however, is not inconsistent with the authorizing legislation in 5 U.S.C. § 5724a(a)(4), since the statute does not, by its own terms, prohibit reimbursement of real estate expenses which are determined to constitute a finance charge within the meaning of Regulation Z. Rather, the prohibition against reimbursement of fees constituting part of the finance charge under Regulation Z originally was established by the Office of Management and Budget (OMB) in section 4.2d of OMB Circular No. A-56 (June 1969), pursuant to the President's authority under 5 U.S.C. § 5724a to administer the relocation expense provisions contained therein. By Executive Order 11609, 36 Fed. Reg. 13,747 (1971), as amended, the President delegated his authority under section 5724a to the Administrator of General Services. Pursuant to that authority, the General Services Administration (GSA) promulgated the May 1973 version of the FTR, paragraph 2-6.2d of which continued to disallow reimbursement for any real estate expense determined to constitute a finance charge within the meaning of the TILA, as implemented by Regulation Z. Under the same authority, GSA may now authorize reimbursement of a loan origination fee, even though that fee constitutes a finance charge under Regulation Z.

In this regard, it should be noted that our decisions concerning the reimbursability of loan origination fees have been based on, and have not prescribed rules independent of, the successive regulations implementing 5 U.S.C. § 5724(a)(4). Thus, we previously allowed reimbursement for loan origination fees based on section 4.2d of Bureau of the Budget Circular No. A-56 (October 1966), which was promulgated prior to enactment of the TILA and specifically authorized reimbursement for loan origination fees. 47 Comp. Gen. 213 (1967). Subsequently, we disallowed reimbursement for loan origination fees when section 4.2d of OMB Circular No. A-56 was revised in June 1969 to remove those fees from the listing of reimbursable expenses and to prohibit reimbursement for any expense determined to constitute a finance charge within the purview of the TILA. See B-168513, December 29, 1969. As noted previously, we continued to disallow reimbursement for loan origination fees under FTR para. 2-6.2d, which prohibited reimbursement for any item found to constitute a finance charge under the TILA, as implemented by Regulation Z. See Keer, above.

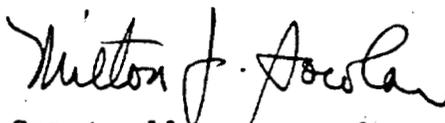
Since our determinations whether or not to allow reimbursement for loan origination fees have depended on the regulations then in effect, and have not established rules independent of those regulations, it cannot be said that the revised provisions of FTR para. 2-6.2d "conflict" with our prior decisions denying reimbursement for loan origination fees. Accordingly, based on the specific authorization contained in FTR para. 2-6.2d, as amended, we hold that Mr. Kigerl may be reimbursed the \$725 loan origination fee he incurred in connection with his purchase of a residence at his new duty station.

Additionally, the certifying officer has asked us to list real estate expenses constituting part of the finance charge under Regulation Z which may be reimbursed as "charges similar in nature" to loan origination fees and other expenses specifically authorized in FTR para. 2-6.2d(1)(a-e). Under FTR para. 2-6.2d, fees and charges which are regarded as similar to the expenses for which reimbursement is specifically authorized in FTR 2-6.2d(1) may be reimbursed only if such expenses do not constitute a finance charge within the meaning of the TILA, as implemented by Regulation Z. FTR para. 2-6.2d(2)(e). Accordingly, in determining whether or not an item of real estate

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expense not specifically listed in FTR para. 2-6.2d(1) is reimbursable under that provision as a similar fee or charge, the particular item must be examined in light of Regulation Z and decisions of this Office. Because the terminology used in characterizing real estate expenses varies so greatly from one part of the country to another, we do not believe that we should attempt to list the expenses that would fall within the catch-all provision discussed above. Each expense must be individually examined in the manner described.

For the reasons stated above, the \$725 loan origination fee claimed by Mr. Kigerl may be certified for payment.

for 
Comptroller General
of the United States