

5791

DUNN  
C.P.

**DECISION**



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

FILE: B-189396

DATE: March 23, 1978

MATTER OF: Douglas E. Clowers - Real Estate Expenses -  
Finance Charges

DIGEST: Disallowance of reimbursement for loan origination fee incurred by Federal employee incident to sale of residence upon transfer of official duty station is sustained. Loan origination fee is "finance charge" within meaning of that term as defined by Regulation Z issued by Board of Governors of Federal Reserve System and, thus, is not reimbursable under Federal Travel Regulations, FPMR 101-7, para 2-6.2d (May 1973). For same reason, even if fee is classified as loan discount fee, it is not reimbursable.

This action is a response to an appeal by Douglas Clowers of our Claims Division Settlement Certificate No. Z-2621419, dated August 5, 1976, disallowing his claim for reimbursement of real estate expenses incurred in connection with the sale of his residence in Middletown, Maryland, in September 1975, upon change of his official duty station from Washington, D.C., to Montgomery, Alabama.

The real estate expenses, which were disallowed, represent the loan origination fee paid by Mr. Clowers in connection with the sale of his residence. The fee of \$2,195 (5 percent of the sales price of \$43,900) was paid to the lending company that financed the purchase for the buyer. We note that on the settlement sheet which was prepared at the time the house was sold, this charge is referred to as a loan discount fee. In a letter dated November 13, 1975, from Mr. Jack E. Bloomquist, the attorney who conducted the settlement, it is stated that this fee was actually a loan origination fee and was characterized as a loan discount fee at the insistence of the mortgage lender.

Mr. Clowers points out that 28 days after arriving in Montgomery he was notified by the Air Force that the project to which he was assigned was being disbanded and, as an Army civilian, he would have to find another position. Within 24 hours of this notification, Mr. Clowers was transferred back to Washington for a permanent change of station. Mr. Clowers moved back to his former school district in the Middletown area in October 1975 thereby sustaining two permanent change of station moves in less than 2 months.

B-189396

Because of real estate market conditions in the Middletown area at that time, Mr. Clowers found it necessary to accept significantly less favorable mortgage terms than he previously had for the purchase of a comparable house at a higher sale price.

Statutory authority for reimbursement of the expenses of residence transactions of transferred employees is found at 5 U.S.C. 5724a(a)(4) (1970). The regulations promulgated pursuant to this statute are found in chapter 2 of the Federal Travel Regulations, FPMR 101-7 (May 1973).

Paragraph 2-5.2d of the Federal Travel Regulations (FTR) states in pertinent part that:

"\* \* \* Interest on loans, points, and mortgage discounts are not reimbursable. Notwithstanding the above, no fee, cost, charge, or expense is reimbursable which 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. \* \* \*"

Regulation Z, published as 12 C.F.R. § 226.4, sets the following standards for determining what constitutes an element of a finance charge and provides in part as follows:

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

\* \* \* \* \*

"(2) Service, transaction, activity, or carrying charge.

B-189396

"(3) Loan fee, points, finder's fee, or similar charge. \* \* \*"

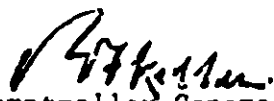
We have held that a loan origination fee, which can be described as a "loan fee," is a finance charge within the meaning of that term as defined by Regulation Z. As such, there can be no reimbursement under FTR para. 2-6.2d. Matter of Gwen C. Strickland, B-185680, August 4, 1976; Matter of Albert M. Garcia, B-183611, September 2, 1975. Accordingly, the \$2,195 loan origination fee claimed by Mr. Clowers may not be certified for payment. Even if the charge is classified as a loan discount fee, it is not reimbursable, since loan discounts are specifically stated to be nonreimbursable in FTR para. 2-6.2d.

While it is unfortunate that the condition of the real estate market caused Mr. Clowers to suffer financially, market conditions do not provide a basis for an exception to the regulations. In fact, paragraph 2-6.2e of the Federal Travel Regulations provides that:

"Losses due to prices or market conditions at the old and new posts of duty. Losses due to failure to sell a residence at the old official station at the price asked, or at its current appraised value, or at its original cost, or due to failure to buy a dwelling at the new official station at a price comparable to the selling price of the residence at the old official station, and any similar losses, are not reimbursable."

This paragraph clearly establishes the policy that the Government is not responsible for real estate losses or other problems associated with market conditions.

Accordingly, the settlement of August 5, 1976, denying the claim is sustained.

  
Deputy Comptroller General  
of the United States