

DECISION



Metcalfe
PLM2
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548
15201

FILE: B-198468

DATE: October 17, 1980

Request for Reimbursement of MATTER OF: Edward J. Brost - Real estate expenses -
Loan origination fee

DIGEST: A transferred employee paid a loan/discount fee in connection with the sale of a residence at his old duty station which is a "finance charge" within the definition of that term in section 106(a) of the Truth in Lending Act. He claims that he should be reimbursed the loan fee in lieu of the realtor fees he saved by acting as his own realtor in selling the residence. Since such loan fees may not be reimbursed under Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973), and since the employee incurred no selling expense, the claim is not payable.

The Accounting and Finance Center, Headquarters 27th Tactical Fighter Wing (TAC), Cannon Air Force Base, New Mexico, requests an advance decision concerning payment on a voucher submitted for reimbursement of \$1,350 for a loan fee discount in connection with an employee's sale of a residence in October 1979, in Minot, North Dakota, upon his transfer of station.

Payment of the loan fee is denied since such charge is a finance charge within the definition of that term in the Truth in Lending Act and is not reimbursable under Federal Travel Regulations and reimbursement may not be made even though the Government realized a savings by the employee acting as his own realtor in selling his former residence.

Mr. Edward J. Brost, an Air Force civilian employee, reported to his new duty station at Cannon Air Force Base, New Mexico, on November 8, 1979. He completed the sale of his residence at his old duty station, Minot Air Force Base, North Dakota, on October 4, 1979, and at the settlement he paid a discount/loan fee of \$1,350 from the proceeds of the sale. Mr. Brost recognizes that reimbursement of such loan fees is generally prohibited by applicable regulations. However, he indicates that he saved the Government \$3,360

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in normally reimbursable realtor fees by acting as own realtor in selling his residence at the old duty station and he claims, therefore, that reimbursement of the loan fee should be substituted with a net saving to the Government of \$2,010.

Mr. Brost points out that while paragraph C14002-1d, Volume 2, Joint Travel Regulations (2 JTR), prohibits reimbursement for loan fees/discounts, paragraph C14004-3a, 2 JTR, authorizes payment of claims for real estate purchases or sales if the total claim is reasonable in amount. Therefore, it is questioned whether the reasonableness of the claim should dictate the reimbursement where the Government realizes a net savings when an employee avoids a normally reimbursable charge but incurs a nonreimbursable charge.

Authority to reimburse a Government employee for expenses incurred in connection with the sale of a residence upon official transfer of station is found in section 5724a of title 5 of the United States Code (1976). Power to prescribe appropriate regulations implementing the above statute is given to the President. The governing regulations promulgated by the General Services Administration (GSA) under authority delegated by the President are contained in chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7), May 1973. The provisions referred to above in 2 JTR implement those statutory regulations for employees of the Department of the Air Force and other Defense Department agencies.

Federal Travel Regulations (FPMR 101-7), para. 2-6.2d (May 1973) provides in pertinent part that:

"* * * 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."

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Section 106 of the Truth in Lending Act, Title 1, Pub. L. 90-321, provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

"(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

"(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

"(2) Service or carrying charge.

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

"(4) Fee for an investigation or credit report.

"(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss."

Regulation Z (12 C.F.R. Part 226) was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, and sets forth the foregoing in substantially the same form.

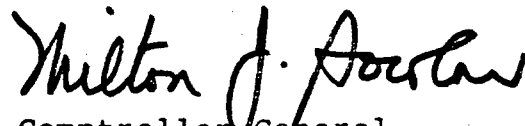
The fee claimed by Mr. Brost related to the processing and handling of his loan and was computed as 3 percent of the loan. Such a fee, which varies in total amount in direct proportion to the amount borrowed, is a "loan fee" within the meaning of section 106(a)(3) of the Truth in

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Lending Act. See B-183972, April 16, 1976, and B-168674, March 11, 1974. Thus, since the loan origination fee is a "finance charge" according to section 106 of the Truth in Lending Act and since the Federal Travel Regulations preclude reimbursement for such "finance charges," reimbursement is not allowed for the loan origination fee paid by Mr. Brost.

Although paragraph C14004-3a, 2 JTR, provides for a review and approval of reasonableness of charges for closing costs incident to the sale of a residence, it refers to the reasonableness of expenses authorized as reimbursable under appropriate travel regulations. In the present situation, payment is not authorized under the regulations to Mr. Brost for acting as his own real estate broker as he incurred no selling expense in this regard. The Federal Travel Regulations were made pursuant to law and have the force and effect of law. There is no authority for an agency to waive the requirements of these regulations and to make reimbursement to an employee other than for those items authorized by law. Compare B-198940, July 29, 1980.

Accordingly, the voucher may not be certified for payment and will be retained here.



For the Comptroller General
of the United States