



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

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make available to public reading

Mr. John D. Dalton
District Counsel
Small Business Administration
5000 Marble, N.E. - Suite 320
Albuquerque, New Mexico 87110

Dear Mr. Dalton:

This letter is in response to yours dated August 27, 1981, concerning the relocation entitlements of your District Director, Mr. E. Maine Shafer.

You indicate that Mr. Shafer was transferred to Albuquerque from Fargo, North Dakota, in November 1979. Since then he has been unable to sell his old residence in Fargo because of depressed market conditions and a scarcity of mortgage money. Nevertheless, he intends to eventually sell the property, and when that occurs he would like to have the costs of the sale classified as reimbursable relocation expenses related to his 1979 transfer.

You also indicate that in 1980 the Small Business Administration granted Mr. Shafer a 1-year extension of time to complete the sale of his old residence and still remain eligible for reimbursement of the sale costs. That extension is due to expire on November 19, 1981. Since Mr. Shafer does not believe he will be able to sell the property by that date, he has expressed an interest in obtaining an additional extension of time from the Small Business Administration. Essentially, you question whether the agency may grant him that further extension.

Although a decision of the Comptroller General will not be issued on the basis of your letter, the following information may be of use to you.

Reimbursement to Federal employees of expenses incurred in connection with residence transactions incident to a transfer of duty stations is authorized by subsection 5724a(a)(4) of title 5, United States Code. Implementing statutory regulations are contained in the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), issued by the General Services Administration.

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Paragraph 2-6.1, FTR, currently provides in pertinent part that:

"* * * To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station * * *;
Provided, That:

* * * * *

"e. Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefor so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

The Comptroller General has repeatedly and consistently held that the above-quoted regulatory provision has the force and effect of law and may not be waived or modified in any individual case. Hence, no additional extension of time may currently be granted to an employee by an agency beyond the 2-year limit authorized, regardless of the presence of extenuating circumstances. See decisions B-193607, March 8, 1979; B-191203, May 11, 1978; B-188670, January 3, 1978; B-189043, July 1, 1977; and B-187677, December 3, 1976; copies enclosed.

However, on March 20, 1981, the General Services Administration published proposed amendments to the FTR for public comment in the Federal Register (46 FR 17791-17795). The proposed amendments would add the following sentences to subparagraph 2-6.1e, FTR:

"* * * Further, when extenuating circumstances prevent the employee from completing the sale

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and purchase or lease termination transactions in the above time frame, upon an employee's written request, the time limit may be extended beyond the 2-year period for an additional period of time not to exceed 1 additional year, by the agency head or a designee. Agencies are advised to carefully review the employee's request to ensure that the circumstances for the request indicate the additional time is necessary and the sale and/or purchase is reasonably related to the transfer."

The concerned officials of the General Services Administration have informally advised us that a final determination will probably be made in the very near future as to whether or not this amendment is to be incorporated in the FTR. In addition, those officials have informally advised us that if the amendment is adopted it will be effective prospectively only, but that if the amendment becomes effective on or before November, 19, 1981, it will provide the Small Business Administration with sufficient authority to grant Mr. Shafer an additional 1-year period of eligibility to sell his old residence and be reimbursed for the costs of the sale. Further information concerning the proposed amendment to the FTR may be obtained from the Federal Travel Management Division of the General Services Administration, telephone (202) 275-0651.

We trust this will serve the purpose of your inquiry.

Sincerely yours,

Edwin J. Monsma

Edwin J. Monsma
Assistant General Counsel

Enclosures

cc: William McDade, Director
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