



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

B-179054

September 14, 1973

Mr. Ernest N. Young
Authorized Certifying Officer
United States Penitentiary
Federal Prison Industries, Inc.
United States Department of Justice
Atlanta, Georgia 30315

31372

Dear Mr. Young:

This refers to your letter of June 7, 1973, with enclosures, requesting our decision as to whether a voucher in the amount of \$2,174.50 representing various real estate expenses incurred by Mr. Robert S. Frazier in connection with the sale of his residence at his old official station incident to a transfer from Atlanta, Georgia, to Lewisburg, Pennsylvania, may be certified for payment.

The information furnished shows that Mr. Frazier reported for duty at Lewisburg on June 12, 1972, and the sale of his residence in Atlanta was completed in December 1972. He is claiming reimbursement for certain closing costs paid by him incident to the sale of his home to a veteran through Veterans Administration financing. Your doubt in the matter arises because of the wording of paragraphs 4.1 and 4.2c of Office of Management and Budget Circular No. A-56 in force at the time this transaction took place which provided that costs of the type involved may be reimbursed only if they are required to be paid and are customarily paid by the purchaser or seller as the case may be in the location where the transaction took place.

Paragraph 4.1 of Office of Management and Budget Circular No. A-56, revised August 17, 1971, is in pertinent part as follows:

"4.1 Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government will reimburse an employee for expenses required to be paid by him in connection with the sale of one residence at his old official station; purchase (including construction) of one dwelling; at his new official station; or the settlement of an unexpired lease involving his residence or a lot on which a mobile home used as his residence was located at the old official station; provided that: * * *

[Payment of Real Estate Expenses]

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Paragraph 4.2c provided as follows:

"c. Legal and related costs. To the extent such costs have not been included in brokers' or similar services for which reimbursement is claimed under other categories, the following expenses are reimbursable with respect to the sale and purchase of residences if they are customarily paid by the seller of a residence at the old official station or if customarily paid by the purchaser of a residence at the new official station, to the extent they do not exceed amounts customarily charged in the locality of the residence; costs of (1) searching title, preparing abstract, and legal fees for a title opinion, or (2) where customarily furnished by the seller, the cost of a title insurance policy; costs of preparing conveyances, other instruments, and contracts; related notary fees and recording fees; cost of making surveys, preparing drawings or plats when required for legal or financing purposes; and similar expenses. Costs of litigation are not reimbursable."

The Strickland Realty Company which handled the sale of the house for Mr. Praxier in Atlanta stated in their letter of February 6, 1973, to him that:

"The seller is permitted by agreement to pay all costs for a vat including closing costs and prepaid items. * * *

"It is customary and usual in the Atlanta area for the seller to pay closing costs for VA and FHA financing. * * *"

The Director, Operations Division of the Department of Housing and Urban Development (HUD) Atlanta Area Office after reviewing the letter from the Strickland Realty Company stated in letter of April 3, 1973, to the United States Department of Justice that:

"I have reviewed the letter of Strickland Realty and the facts stated are true. In contacting the Veterans Administration and talking with their personnel; they stated that the seller is only required to pay the discount points.

"Therefore it is the sellers determination at the time the sales contract is drawn up as to who pays what items of the sale."

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The letter from HUD was not clear as to what the custom was in the Atlanta area regarding the seller paying the closing costs here in question when the house is purchased through Veterans Administration financing. We informally contacted the HUD office in Atlanta and were advised that in connection with transactions involving Veterans Administration financing, it was customary for the seller in the Atlanta area during December 1972 to pay closing costs. In applying the quoted provisions of Circular No. A-56, we interpret section 4.1 as a more general statement that the Government will reimburse only costs necessarily incurred in connection with real estate transactions, thus excluding such optional costs as buyer's title insurance. Section 4.2c on the other hand permits a buyer or seller to be reimbursed an otherwise necessary cost only if he, as buyer or seller, would normally pay that item of necessary costs under the custom of the area in which the transaction took place. In the absence of this rule a Government employee could improve his bargaining position at the expense of the Government. We do not believe that it is necessary under those regulations to determine what the custom in a particular area is without regard to the type of transaction involved. Accordingly, it is our position that the customs of the area as applicable to transactions involving Veterans Administration financing when that is involved should govern even though other customs may be followed in connection with Federal Housing Administration (FHA) and conventional financing. Cf. B-108440, December 24, 1969, copy enclosed. With regard to the specific items claimed we note that reimbursement for both FHA and Veterans Administration appraisals are claimed in a total amount of \$80. Only the amount of \$40 may be allowed since the cost of only one appraisal may be reimbursed. See 47 Comp. Gen. 306 (1967).

Although we are not able to determine the relationship between the closing costs shown on the "SALE CLOSING STATEMENT" and the costs shown in the realtor's letter of February 6, 1973, which apparently served as the basis for Mr. Frazier's claim, we note that reimbursement of the loan origination fee (\$225) is not authorized under section 4.2d of Circular No. A-56. See 49 Comp. Gen. 483 (1970). The \$10 fee for photos we assume was for advertising the house. Section 4.2b of Circular No. A-56 permits reimbursement of costs incurred for advertising when such costs have not been paid for by the employee in the form of a broker's fee or real estate agent's commission. In the absence of a showing of a custom to the contrary prevailing in the area that the agent is charging less than the customary fee in consideration of the employee's

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paying advertising or other costs, the fee paid the broker is presumed to represent full payment for all costs and services connected with the sale of the residence. The other items claimed are apparently reimbursable under the controlling regulations if it is shown that those items were in fact paid by Mr. Frazier in connection with the settlement of this real estate transaction.

The voucher is for handling in accordance with the above. The copies of documents furnished with your submission are retained in our file.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General
of the United States