



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

30735

B-177632

May 18, 1973

Mrs. Mary M. Rydquist
Authorized Certifying Officer
Bureau of Land Management
United States Department of the Interior
Denver Federal Center, Building 50
Denver, Colorado 80225

Dear Mrs. Rydquist:

This refers to your letter of December 5, 1972 (reference 1376 (D-832)), requesting an advance decision as to the legality of certifying for payment certain items previously disallowed and now reclaimed on a voucher presented for payment by Mr. Albert Romeo. The items in question are expenditures incurred by Mr. Romeo incident to the purchase of a house at his new official duty station at the time he transferred from Yuma, Arizona, to Baker, Oregon, effective June 14, 1972. They are described by Mr. Romeo in a memorandum supporting his claim as follows:

* * * when I purchased a home at my new official station in Baker I found I had to pay the Real Estate commission of \$900.00, as required by local custom. Attached to my original claim was a letter dated August 4, 1972, verifying this payment by me. * * *

The second item disallowed was a \$100.50 mortgage prepayment charge paid by me. This amount was paid at the time of closing and was required to secure the mortgage. Since this was an additional expense incurred as a direct result of my purchase, I feel it is definitely reimbursable. Availability of desirable housing in Baker is almost non-existent and a purchaser is at the mercy of the seller and financial institution.

The \$12.50 Tax Service Fee is a charge by the bank for payment of taxes. I was required to deposit into escrow an amount (\$230.00) to be applied to future taxes. The bank then pays the taxes and charges a fee for this required service. This is done to assure that the taxes will not become delinquent. Since it is a required service and resultant fee I feel I am entitled to reimbursement for the added expense.

[Claim for Reimbursement of Real Estate Expenses]

~~718310~~ 091930

B-177632

The \$161.00 Lenders Origination Fee is simply the amount charged by the bank for their total services performed in granting and finalizing the mortgage to enable me to purchase a home at my new location.

As to the first item described, the real estate commission, your letter confirms Mr. Romeo's statement concerning the scarcity of housing at Baker, Oregon, and that it is not unusual for the purchaser of a house to be required to pay the real estate commission normally assumed by the seller.

With respect to the second item, the amount of \$100.50 described by Mr. Romeo as a "mortgage prepayment" charge, this appears to be the same as an expenditure listed on the loan Closing Statement as "Mortgage Insurance Premium:NGIC."

None of the items reclaimed may be certified for payment for the following reasons:

Subsection 4.2a of Office of Management and Budget Circular No. A-56 provides as follows:

a. Broker's fees and real estate commissions. A broker's fee or real estate commission paid by the employee for services in selling his residence is reimbursable but not in excess of rates generally charged for such services by other brokers in the locality of the old official station. No such fee or commission is reimbursable in connection with the purchase of a home at the new official station. (Underscoring supplied.)

This provision of the statutory regulation clearly precludes reimbursement of the brokerage fee. See B-171824, March 15, 1971, copy enclosed.

Subsection 4.2d of Circular No. A-56 provides, in pertinent part, as follows:

d. Miscellaneous costs. The following expenses are reimbursable * * * if they are customarily paid * * *. A charge made for prepayment of a mortgage or other security instrument in connection with the sale of a residence at the old official station is reimbursable to the extent the terms in the mortgage or other security instrument provide for such cost. * * * The cost of a mortgage title policy

B-177632

paid for by the employee on a residence purchased by him is reimbursable but costs of other types of insurance paid for by him, such as * * * mortgage insurance * * * are not reimbursable items of expense. * * * 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. * * * (Underscoring supplied.)

The \$100.50 item if as described by Mr. Romeo was a "mortgage prepayment charge," may not be allowed since it would not be payable when incurred incident to the purchase of a residence under the above-quoted regulation. If, instead, the charge was, as described on the Closing Statement, a mortgage insurance premium, the above-quoted regulation also specifically precludes reimbursement. See B-177636, March 13, 1973, copy enclosed.

The tax service charge of \$12.50, and the loan origination fee of \$161.00, itemized on the "Disclosure Statement for Real Estate Loan" supplied by the lender in compliance with the Truth in Lending Act, are finance charges as defined in that Act, and, in accordance with the above-quoted regulation, may not be reimbursed to the employee. See 49 Comp. Gen. 483 (1970), and B-177636, supra.

As stated above, none of the real estate transaction expenses claimed may be certified for payment. The voucher, with accompanying papers, is returned herewith.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States