



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

09/688

E-179240

August 27, 1973

Mr. Maurice F. Row
Authorized Certifying Officer
Federal Bureau of Investigation
United States Department of Justice

Dear Mr. Row:

We refer to your letter of July 16, 1973, on the certification of Special Agent Robert L. Frye's claim for expenses incurred in connection with the sale of his residence at his old duty station following his transfer to a new duty station.

The record furnished shows that Mr. Frye was officially transferred from Selma, Alabama, to Montgomery, Alabama, on August 4, 1970. Shortly after receiving notification that he was to be transferred, Mr. Frye listed his residence with a real estate company for sale and subsequently listed it with several other companies in the area as well. Due to the depressed housing market in Selma, a buyer for the residence was not located until the spring of 1972. Although a sales contract was signed July 24, the sale did not reach final settlement until September 25, apparently because the buyer had difficulty obtaining a loan. Prior to an October 28, 1972 amendment of the applicable regulation, section 4.1e of Office of Management and Budget (OMB) Circular No. A-56, provided that expenses incurred in the sale of a residence incident to transfer were not reimbursable unless the settlement date for the sale was within the first year after the transfer. One year extensions of the one-year limitation could be granted by the agency only if there was litigation in process which was delaying settlement or if a contract for sale had been entered into within the first year but circumstances prevented the settlement from occurring before the end of that year. In 52 Comp. Gen. 43 (1972) it was held that a one-year extension was authorized if a contract for sale had been signed in the first year, regardless of whether the contract was still in existence at the end of the year. That decision, however, did not go so far as to permit extensions to be granted in cases where a valid contract had not been entered into within the initial one-year period.

The October 1972 amendment provided for an extension of up to one year of the one-year limitation "regardless of the reasons therefor so long as it is determined that the particular residence transaction is

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reasonably related to the transfer of official station." See paragraph 2-6.1a, Federal Travel Regulations, FPMR 101-7, May 1973, the regulation now in force.

The record in Mr. Frye's case gives no indication that there was litigation in process in connection with the sale, or that a sales contract had been entered into by the end of Mr. Frye's first year at his new duty station. Thus, under the standards of section 4.1e in effect prior to October 1972, Mr. Frye's situation did not qualify for an extension of the time limit on reimbursable transactions.

Under the new regulation, Mr. Frye would probably have been able to receive an extension of up to one year. However, even the latest transaction, the final settlement, took place more than a month before the effective date of the new amendment. Valid regulations may be amended prospectively to increase or decrease benefits authorized within the scope of the controlling statute, but there is no general authority to make amendments to regulations retroactively effective. B-178522, June 21, 1973; B-176586, March 12, 1973. See generally, 32 Comp. Gen. 315 (1953). It is noted further that even if the October 1972 amendment had been in force at the time Mr. Frye transferred and sold his residence, he would not have automatically qualified for reimbursement because settlement of the transaction did not take place until more than 2 years after the transfer. Current regulations (paragraph 2-6.1e FTR, *supra*), provide that settlement must be within one year of transfer or within an additional one-year period if an extension of time is granted by the agency.

For the reasons stated the voucher which is returned herewith together with supporting papers may not be certified for payment.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

Enclosure

R.D. 8/12/73

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