



DIGEST - L-CP

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

B-177413

JAN 22 1973

Mr. Ben Marcus
Authorized Certifying Officer
Farmers Home Administration
U. S. Department of Agriculture
1520 Market Street
St. Louis, Missouri 63103

Dear Mr. Marcus:

We refer to your letter of November 6, 1972, your reference FC-6(A)-EM-T33, by which you request our advance decision whether you may certify for payment the attached voucher of Miss _____ an employee of the Farmers Home Administration, U. S. Department of Agriculture, to reimburse her for rent paid on the apartment she vacated incident to a transfer from Mays Landing, New Jersey, to Newark, Delaware, effective July 9, 1972. You indicate that since Miss _____ was still liable for monthly rent payments at the time the submission was made, she may submit additional vouchers for the amounts she is required to pay.

Miss _____, and _____, leased an apartment in Somers Point, New Jersey, for the period of one year beginning May 1, 1972. Although the lease was in the names of three individuals and was signed by all of them, no provision is made therein as to the liability of each tenant. However, the tenants agreed among themselves that each would be responsible for payment of one-third of the monthly rent. After making those arrangements, Miss _____ was offered and accepted a transfer to Newark, Delaware, which became effective, as noted above, on July 9. At the time the claim was submitted, the attempts of Miss _____ and the other tenants to find another suitable person to share the apartment had been unsuccessful. The voucher submitted is for reimbursement of \$98.75 which represents Miss _____ share of the rent from July 9 through August 31, 1972 (\$42.09 for July and \$56.66 for August).

Reimbursement of lease settlement expenses as authorized by 5 U.S.C. 5724a(a)(4) is governed by the regulations in section 4 of Office of Management and Budget Circular No. A-56, revised

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August 17, 1971. The provisions in section 4.1[✓] of that regulation specifically authorize reimbursement to employees for the cost of settling an unexpired lease when the employee has only a part interest in the lease involved. The specific provision which identifies expenses which may be reimbursed, as contained in 4.2h,[✓] is as follows:

"h. Settlement of an unexpired lease. Expenses incurred for settling an unexpired lease (including month-to-month rental) on residence quarters occupied by the employee at the old official station may include broker's fees for obtaining a sublease or charges for advertising an unexpired lease. Such expenses are reimbursable when (1) applicable laws or the terms of the lease provide for payment of settlement expenses, (2) such expenses cannot be avoided by sublease or other arrangement, (3) the employee has not contributed to the expense by failing to give appropriate lease termination notice promptly after he has definite knowledge of the proposed transfer, and (4) the broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality. Itemization of these expenses is required and the total amount will be entered on an appropriate travel voucher. This voucher may be submitted separately or with a claim that is to be made for expenses incident to the purchase of a dwelling. Each item must be supported by documentation showing that the expense was in fact incurred and paid by the employee."

The law and regulations in question have not been interpreted as requiring a formal or written lease in order that an employee may recover actual and necessary expenses involved in the settlement of a lease which has not expired prior to the transfer, nor have the controlling law and regulations been interpreted as requiring reimbursement to be predicated on a settlement in accordance with specific provisions of a lease. See B-173753,[✓] September 23, 1971, B-160959,[✓] March 23, 1967, copies enclosed. The employee must demonstrate, however, that he was obligated under a lease beyond the date he was required to vacate the leased premises because of a transfer of station and that the amounts claimed were paid pursuant to a settlement which was reasonable in the circumstances.

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The fact that Miss _____ move from the apartment in question did not terminate the basic written lease is not considered to prevent reimbursement to her of the settlement costs she incurred since the controlling regulation provides for reimbursement of employees whose lease obligations are shared with others. Further, since (1) Miss _____ was obligated under the formal apartment lease to pay rent, (2) she has attempted to arrange for sublease of her share of the apartment, and (3) she has not increased her liability by failure to give prompt notification of her intent to vacate, she is entitled to reimbursement of costs claimed.

For the reasons stated the voucher which is returned herewith together with supporting papers may be certified for payment. However, Miss _____ may not be reimbursed any additional payments she is required to make under the lease in question unless she is able to demonstrate (1) that she has taken reasonable steps to find another person to take over her obligation under the lease, (2) that she has been unsuccessful in her efforts to negotiate a settlement with the landlord for termination of her liability under the lease, and (3) that the other tenants have a justifiable basis for her continuing to pay a portion of the monthly rent.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

Enclosures