The United States Army Corps of Engineers (Corps) transferred Diedra D. Cordell from Maryland to California in May 2011. Ms. Cordell sold her home in Maryland, and the Corps reimbursed her for the bulk of the transaction costs that she claimed as a result of the sale. The Corps did not reimburse her for $10,000 that she paid as a contribution to the buyer’s closing costs, however. She has asked us to review that determination.

We recently considered a similar claim in *Sharon J. Walker*, CBCA 3501-RELO, 14-1 BCA ¶ 35,533. In our decision in that case, we explained the following:

Congress has directed agencies to pay, to an employee who is transferred in the interest of the Government, expenses the employee incurs in selling a residence at an old duty station. 5 U.S.C. § 5724a(d)(1) (2012). The legislature has permitted the Administrator of General Services to define which expenses will be reimbursable. *Id.* In so doing, however, the legislature has imposed various constraints. One of them is that “[r]eimbursement for . . . expenses . . . may not exceed those customarily charged in the locality where the residence is located.” *Id.* § 5724a(d)(4). The Administrator has faithfully implemented the statute by prescribing, in the Federal Travel Regulation, that certain expenses are reimbursable “[p]rovided [that they] are customarily
charged to the seller of a residence in the locality of the old official station.”

“The term ‘customary’ must be applied strictly, for the statute on which
the regulatory phrase is based makes agencies responsible for paying
transferred employees’ closing costs only where those costs ‘are required to be
paid.’” Monika J. Dey, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744 (2001). That strict application has resulted in our holding that “[a]n expense is
‘customarily’ paid if, by long and unvarying habitual actions, constantly
repeated, such payment has acquired the force of a tacit and common consent
within a community.” Erwin Weston, CBCA 1311-RELO, 09-1 BCA ¶ 34,055
(quoting Christopher L. Chretien, GSBCA 13704-RELO, 97-1 BCA ¶ 28,701
(1996)).

The burden is on the claimant to establish by a preponderance of the
evidence that it is customary for the seller to assume some or all of the buyer’s
closing costs in the locality where the residence is located. Joseph H. Molton,
CBCA 2572-RELO, 12-1 BCA ¶ 34,930 (citing Bryan Trout, CBCA
2138-RELO, 11-1 BCA ¶ 34,727). This burden may be met in several ways. These include showing that a cost is allocated to the seller by state law or in
a pre-printed sales form, submitting historical data which show that over a
number of years a commanding percentage of sellers have contributed to
buyers’ closing costs, and submitting letters from real estate professionals
confirming that a particular cost is invariably assumed by the seller for the
(citing Weston). General, conclusive statements of customary practice and
data from a limited period of time, however, are not persuasive. Molton;
Theresa M. Grimm, CBCA 2231-RELO, 11-1 BCA ¶ 34,729; James E. Miller,
GSBCA 16123-RELO, 04-1 BCA ¶ 32,450 (2003). This is especially so
where the principal purpose of the seller’s payment to the buyer appears not
to have been to cover particular closing costs, but rather, as an inducement to
entice the buyer to purchase the house. Mahmood Ramzan, CBCA
3287-RELO, 13 BCA ¶ 35,386; Bradley K. Fossey, CBCA 3049-RELO, 13

Ms. Cordell has not even attempted to meet her burden. All she has shown us is a
memorandum from an employee in the Corps’ Sacramento District’s real estate division
which says that in “numerous PCS [permanent change of station] Claims reviewed by
Sacramento District, [the district has] approved [fees paid at closing by the seller on behalf
of the buyer] before with no problem.” Ms. Cordell maintains that “it is unfair that some are paid for those fees and some are not.”

As we have explained in *Walker* and the cases cited in that decision, whether these fees are reimbursed is dependent on whether an employee meets the test set out in statute and regulation: were the fees customarily charged to the seller of a residence in the locality in question? Because Ms. Cordell has not shown that a seller’s paying closing costs of the buyer was customary in the locality of her previous residence (Odenton, Maryland) at the time she sold that home, she may not be reimbursed for having paid some of those costs. Her payment is best construed as an inducement to entice the buyer to purchase the house.

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STEPHEN M. DANIELS
Board Judge