Dotsford

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

FILE: B-220889 **DATE:** June 2, 1986

MATTER OF: Howard Crider - Real Estate Expenses - Local Custom

DIGEST:

Transferred employee sold his residence at his old duty station to a buyer who obtained VA financing. Certain fees in excess of the amounts permitted as charges to the VA borrower/buyer were charged to and paid by the seller. When asked for a report on the custom in the area the local HUD office stated that more than 50 percent of the lenders were charging these fees to the sellers, and that this percentage was growing. While the phrase "customary in the area" is not susceptible of precise definition we conclude that, if the number of lenders charging a particular fee is "50 percent and growing," the requirement of the Federal Travel Regulations that the fees be customary in the area is met. Therefore, the employee may be reimbursed for the fees paid, provided that the amounts do not exceed the amounts customary for the area.

This decision is in response to a request from the Naval Facilities Engineering Command, Western Division, Department of the Navy (referred to hereafter as the agency) for our determination concerning Mr. Howard Crider's entitlement to reimbursement for certain real estate expenses he paid in connection with the sale of his residence. For the reasons set forth below, we hold that Mr. Crider is entitled to the reimbursement claimed.

Mr. Crider was transferred from San Diego, California, to San Bruno, California, and reported to his new duty station July 30, 1984. He sold his residence at his old duty station to a purchaser who obtained Veterans Administration (VA) financing, with settlement taking place on August 9, 1985. The expenses in question are described through references to entries on the settlement statement as follows:

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"(809) Document Fee - $37.50 - Cost to seller by lender for processing documents for a VA loan.

"(811) Processing Fee - $200 - lender charge to seller to process documents in connection VA loan.

"(812) ALTA Bringdown - $40 - Insures title if loan assigned by lender to another party.

"(1105) Document Preparation - $15 - Lender charge to seller for preparation of documents in connection with VA loan."

The agency states that the local Department of Housing and Urban Development (HUD) office has advised the agency that, "although these items are not 'customary' they are being charged more frequently now than in the past." Additionally, the agency states that the above fees cannot be charged to the buyer because the financing is VA financing.

Because of the ambiguity of the HUD report, we informally contacted the San Diego office of HUD. We were advised that more than 50 percent of the lenders in the area were charging sellers fees of the type set forth above, and that this percentage was growing. Additionally, HUD advised that, where the financing obtained was VA financing, the borrower/buyers could not be required to pay these fees because they were already being charged the maximum amounts permitted by the governing VA regulations.

Section 5724a(a)(4) of Title 5, United States Code, authorizes reimbursement of the expenses an employee incurs in selling and purchasing a new residence, but limits the amount of such reimbursement to the amount customarily charged in the locality where the residence is located. This limitation is restated and expanded with regard to all the expenses enumerated above in Part 2, Chapter 6 of the implementing regulations, the Federal Travel Regulations, FPMR 101-7 (September 1981) incorp. by ref., 41 C.F.R. 101-7.003 (1984) (FTR). Under the various paragraphs of Chapter 6 that relate to the expenses claimed here, before these expenses may be reimbursed it must be shown that these expenses are customarily paid by the seller in the area of the old duty station. This requirement is in addition to the requirement that the amounts not exceed the amounts customarily charged in the locality of the residence.

Although the original report from HUD stated that these fees were not customarily charged in the area, we believe that the supplementary information we obtained that more than 50 percent of the lenders were charging these fees is controlling. While the phrase "customary in the area" is not susceptible of precise definition, we believe that if the number of lenders charging a particular fee is "50 percent and growing," the charging of that fee is customary in the area for the purposes of satisfying the FTR requirements.

Accordingly, the reimbursement claimed for the fees listed above may be paid as long as the amounts claimed do not exceed the amounts customarily charged in the area.

for Milton J. Socolar
Comptroller General
of the United States