

Legal Opinion: CIM-0116
Index: 3.346
Subject: Capital Plaza South

April 8, 1999

Jack Cann, Esquire
Housing Preservation Project
570 Asbury Street, Suite 208
St. Paul, MN 55104

Re: Capital Plaza South

Dear Mr. Cann:

I am in receipt of your letter of April 1, 1999 to Mel Belin of my staff. In that letter, you note that he advised you of our position that a section 221(d)(4) project receiving section 8 assistance is not, for purposes of a proposed loan prepayment, covered by section 250 of the National Housing Act (NHA).

While Mr. Belin has advised me that some of the quotations in your letter, which were attributed to him, were out of context and reflected a misunderstanding of what he had said, the overall position he did express to you (i.e., that a section 221(d)(4) project which receives section 8 assistance is not covered by section 250 of the NHA) has, indeed, been our position since the mid-1980s. In that regard, I am enclosing a copy of a February 15, 1985 memorandum on this issue from Charles J. Bartlett, then Assistant General Counsel, Multifamily Mortgage Division. Mr. Bartlett notes that "section 250(a) may properly be construed as applying only to projects with certain types of subsidized mortgages (i.e., those assisted under section 236 and the proviso to section 221(d)(5) of the NHA and section 101 of the Housing and Urban Development Act of 1965)." The memorandum excludes from the coverage of section 250(a) any projects with unsubsidized mortgages that receive section 8 assistance. The memorandum provides that "the prepayment of an otherwise unsubsidized mortgage [such as the section 221(d)(4) mortgage for Capital Plaza South] would not affect the interests of tenants receiving section 8 project-based or 'finders-keepers' assistance, since such assistance is provided irrespective of the mortgage."

In approving a prepayment for the Capital Plaza South project, HUD was not obligated to make the section 250(a) findings designed to protect the interests of low-income tenants. HUD, nonetheless, made a significant effort to protect all section 8 residents at the project. For

example, HUD signed a use agreement (dated 3/30/99) that will remain in effect until September 1, 2019. Under that agreement, the owner has agreed to "accept any renewal or extension of the HAP Contract or any contract under a program designated by the Secretary as a successor to the section 8 Program." HUD has agreed, "[t]o the extent authorized by law and to the extent that appropriated funds are available," to "provide Section 8 assistance under section 8 or any successor program with respect to 36 units [the current number of section 8 units] at the project.", HUD even made an effort to protect the interests of tenants at the Capital Plaza South project, who do not receive the benefit of section 8 assistance, through par. 4(e) of the use agreement which puts a cap on the rent for such units at the fair market rent.

I trust this information answers your inquiry.

Sincerely,

John J. Daly
Associate General Counsel
for Insured Housing

Enclosures