

Legal Opinion: GCH-0009

Index: 2.800

Subject: Conversion of Section 202 Loans

November 7, 1991

MEMORANDUM FOR: Arthur J. Hill, Assistant Secretary for
Housing-Federal Housing Commissioner, H

FROM: Frank Keating, General Counsel, G

SUBJECT: Conversion of Section 202 loans

This responds to the question whether HUD is obligated to proceed with section 202 loan closings until January 1, 1992, notwithstanding that such loan closings will reduce the amount of section 8 and section 162 rental assistance funds available for recapture as the result of conversions to the capital advance program under sections 801 and 811 of the National Affordable Housing Act. The HUD Fiscal Year 1992 appropriations act, under the heading of "Annual Contributions for Assisted Housing," includes in the funds appropriated under this heading "\$1,750,000,000 of section 8 funds arising from the conversion to the new capital advance program of projects previously reserved under section 202 of the Housing Act of 1959 as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act."

We understand that the amount of estimated potential section 8 recaptures is already below the \$1,750,000,000 amount and that each additional unit closed as a section 202 loan, rather than being converted to a capital advance, will reduce the amount available for recapture by \$90,000 of budget authority. It is in this context that the question of HUD's legal obligation to proceed with loan closings until January 1, 1992, is asked.

Although the penultimate paragraph under "Annual Contributions for Assisted Housing" obligates HUD to convert section 202 loan reservations to capital advance assistance if the loan has not been executed and recorded and if the project is making satisfactory progress, it also contains a number of constraints on such conversions. Thus, no such conversions can take place before January 1, 1992, HUD is prohibited from terminating projects not making satisfactory progress prior to January 1, 1992, and HUD "shall ensure that the processing of all projects through loan execution and recordation or the making of the capital advance is expedited." This statutory language clearly requires HUD to proceed with loan closings for borrowers that wish to do so and are able to meet HUD's normal

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requirements, prior to January 1, 1992. Although there is no legislative language explaining the intent of this language, we understand that it reflects concerns that borrowers should not be penalized by delays incident to conversion that could cause them

to lose their project site, building contractor or a building season.

It is clear that the budgetary considerations were deemed by the Congress to be secondary to the equitable treatment of borrowers that have proceeded in good faith to develop projects in accordance with HUD's requirements. Even in the absence of such explicit statutory language, we believe that the issuance of a section 202 notice of selection and fund reservation obligates HUD to proceed with normal loan processing leading to the making of the loan and project development.