

Legal Opinion: GCH-0045

Index: 2.810

Subject: Cancellation of Section 202/8 Fund Reservation

February 24, 1992

MEMORANDUM FOR: Robert W. Wilden, Director, Assisted  
Elderly and Handicapped Housing Division, HMEE

FROM: Robert S. Kenison, Associate General Counsel  
Office of Assisted Housing and Community Development, GC

SUBJECT: Cancellation of Section 202/8 Fund Reservation  
Torrington VOA Elderly Housing, Inc.

This responds to your February 5, 1992, memorandum requesting advice as to whether it would be legally permissible to reinstate reservations of Section 202 loan authority and Section 8 contract and budget authority (referred to hereinafter as "section 8 funds") terminated in the period between October 1 and October 7, 1991. The Section 202 loan and Section 8 contract and budget authority were reserved in Fiscal Year 1986 and the Denver Office processed the forms deobligating the funds on October 4, 1991.

The Office of Housing issued a Book Memorandum to HUD Field Offices on September 12, 1991, advising that no further deobligations of funds should occur until October 1, 1991, but that these offices "may proceed with deobligation of Section 202 and Section 8 funds beginning October 1, 1991, unless you are notified to the contrary." On October 7, 1991, a similar memorandum directed that no further reservations shall be cancelled pending approval of the Fiscal Year 1992 Appropriations Act and determination of its effect. The Appropriations Act provided that no project not making satisfactory progress shall have its loan reservation terminated before January 1, 1992. We understand that the subject project was the only one whose funding was terminated during this one-week time period.

Since the Section 8 reservation was terminated in Fiscal Year 1992, the contract and budget authority recaptured were rescinded, pursuant to the Fiscal Year 1992 HUD Appropriations Act, and are therefore not available to restore the Section 8 funding that was terminated. The Fiscal Year 1986 HUD Appropriations Act authorized loans to be made in the amount of \$631,033,000 in the year 1986. The effect of terminating the reservation of Section 202 loan funds made in Fiscal Year 1986

was to cause this authority to lapse. Action to restore this funding would be a Fiscal Year 1992 obligation which could not be

made from funds available for obligation only in Fiscal Year 1986.

Since the reservations of Section 202 loan authority and Section 8 contract and budget authority which were terminated cannot be reinstated, the further question is raised as to whether the circumstances of the termination are such as to afford a legally acceptable basis to provide currently available funding for this project outside the competitive process. We do not believe that Section 102 of the HUD Reform Act contains authority to provide current year's funding outside the competitive process because of inequities or mistakes in processing involving prior year's funding.

In any event, we do not find such a justification in the circumstances of the Torrington VOA project. As already pointed out, the Denver Office complied with instructions received from the Office of Housing in regard to the termination of funding. In reviewing the processing history of this project we find that the Sponsor selected a succession of new sites which resulted in processing delays and otherwise failed to meet the deadlines established in successive time extensions. The maximum three-year time period from fund reservation to start of construction provided in 24 CFR section 885.230 would have ended for this project in September 1989. In September 1990 the Sponsor was afforded a 90-day extension to submit an acceptable conditional commitment application, which it failed to do. Notwithstanding this failure, the Denver Office recommended and Central Office approved an extension to July 30, 1991, with the understanding that the project would be under construction by September 30, 1991 or the fund reservation would be terminated. Although the Denver Office indicated that, if a firm commitment application was received by September 9, 1991, the loan could be closed by September 30, 1991; the Sponsor failed to meet this deadline, with the result that the fund reservation was terminated.

Although it has been indicated that this project was the only one terminated in the period October 1-7, 1991, we understand that more than 50 Fiscal Year 1986 and 1987 fund reservations were terminated during Fiscal Year 1991. In any event, the history of this project does not support the conclusion that termination of the funding was erroneous or improper. If the Sponsor still desires funding for this project, it will need to apply under the Fiscal Year 1992 Notice of Fund Availability for the Section 202 Program.