

Legal Opinion: GCH-0049

Index: 2.600
Subject: Bond Refunding for Three Pre-FAF Projects

March 31, 1992

Mr. Peter R. Dwars
Director
Illinois Housing Development
Authority
401 N. Michigan Avenue
Chicago, Illinois 60611

Dear Mr. Dwars:

This is in response to your letter of January 21, 1992, concerning the refunding of the bonds for three pre-FAF projects. It is your opinion that under the existing Annual Contributions Contract (ACC) and Housing Assistance Payments Contract (HAP) for each project, no basis exists for HUD to unilaterally reduce contract rents as a result of the mortgage rate reduction that will result from a refunding. You plan to reduce the interest rates payable by the owner on the loans to an interest rate to be established on the basis of negotiations between the Authority and the owner of each development.

The contract rents in part reimburse the owner for the cost of producing the units. Therefore, it is appropriate that the contract rents be reduced to reflect this reduced cost when the project is refinanced to prevent the owner from receiving a financial windfall in the form of excessively high contract rents. The applicable contracts take such an eventuality into account.

Section 1.9(e) of the HAP Contract for one of the projects, dated 11/75, provides:

If the actual debt service under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the Contract Rents currently in effect shall be reduced commensurately, and the amount of the savings shall be credited to the Project Account. . . .

In addition, Section 2.7(g) of the HAP Contract for the other two projects, dated 8-80, provides:

If the actual debt service to the Owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents are based, due to lower interest rates or to a longer term on the permanent financing, the initial Contract rents, or the Contract Rents then in effect, must be reduced commensurately and the amount of the

savings credited to the project account.

Section 8(c)(2)(C) of the United States Housing Act of 1937, as amended, provides:

The Secretary may not reduce the contract rents in effect on or after April 15, 1987 for . . . projects assisted under this section (including projects assisted under this section as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payment of the owner. (Emphasis added.)

Based on the above, it is our opinion that HUD may unilaterally reduce contract rents if the owner's debt service is reduced.

Very sincerely yours,

Robert S. Kenison
Associate General Counsel
Office of Assisted Housing
and Community Development