

Legal Opinion: GCH-0071

Index: 2.600, 2.651  
Subject: Section 11(b) Refunding

June 10, 1993

Ms. Susan E. Juroe  
Miller, Canfield, Paddock and Stone  
1150 Connecticut Ave., N.W.  
Suite 1100  
Washington, D.C. 20036-4104

Dear Ms. Juroe:

This is in response to your letter of May 13, 1993, which asks three questions concerning the planned issuance of taxable bonds to redeem the Section 11(b) bonds on projects in LaFollette, Tennessee; Macon, Georgia; and Lehigh, Pennsylvania. It is our understanding that all three projects are subject to the old 11(b) regulations (i.e., the Notification of Selection was sent to the owners prior to April 5, 1979, the effective date of the new 11(b) regulations, and the owners did not request that the projects to be processed under the new 11(b) regulations).

Question Number 1: The HUD regulations applicable to these three projects do not explicitly exclude taxable refundings. Section 811.106(d) provides that "issuance of obligations to refund outstanding permanent obligations is prohibited." Section 811.102 defines obligations as bonds and notes issued to provide permanent financing for low-income housing projects. These provisions can be read to include taxable as well as tax-exempt obligations which gives HUD the right to approve the refunding when section 11(b) bonds are redeemed. HUD Central Office would review the transaction for the general reasonableness of the financing terms, including a comparison of the Refunded Bonds and Refunding Bonds debt service, Sources and Uses as to issuance costs and use of reserves consistent with the Refunded Bonds Trust Indenture, and the issuing agency's certification that any reserve funds released from the Trust Indenture to it shall be used for project purposes or in support of low income housing programs.

Question Number 2: Assuming that HUD Central Office approves the refunding, the potential reductions in section 8 contract rents addressed in Section 8(c)(2)(C) of the United States Housing Act of 1937 do not apply to these transactions because we understand the projects will not be refinanced in such a way as to reduce the periodic payment of the owners.

Question Number 3: Local HUD offices have the authority to approve the pledge and assignment of housing assistance payments contracts to bond trustees, provided that HUD Central Office (Financial Services Division) has approved the refunding.

This letter only addresses your questions with respect to applicable 11(b) regulations. It does not address any other regulations that may be

applicable to such projects such as the New Construction or Substantial Rehabilitation section 8 regulations or FHA mortgage insurance regulations.

Sincerely,

Michael H. Reardon  
Assistant General Counsel  
Assisted Housing Division