

FOIA Appeal: Lenders in Property Imp. Loan Program

Legal Opinion: GMP-0035

Index: 7.380

Subject: FOIA Appeal: Lenders in Property Imp. Loan Program

January 13, 1992

Ms. Patricia A. Brent  
Washington Document Service, Inc.  
450 Fifth St., N.W.  
Suite 1110  
Washington, D.C. 20001

Dear Ms. Brent:

This is in response to your Freedom of Information Act (FOIA) appeal dated November 8, 1991. In a letter dated September 24, 1991, you requested 10 categories of documents relating to lenders participating in the Property Improvement Loan Program under Title I of the National Housing Act, 12 U.S.C. 1703 et seq. Your request was granted in part in a letter dated October 11, 1991, issued by the Executive Secretariat (FOIA Control No.: FI-272870A). The Executive Secretariat denied items 1, 2, and 9 of your request under Exemption 8 of the FOIA. These items involved the following documents:

1. any reports, memoranda or other documents identifying the 20 lenders with the largest aggregate volume of loans insured by HUD pursuant to the Title I Program for each of the years 1983, 1984, 1985, 1986, 1987 and 1988.
2. any reports, memoranda or other documents identifying those lenders participating in the Title I Program that had the highest aggregate dollar amount of insurance claim denials for each of the years 1983, 1984, 1985, 1986, 1987 and 1988.
9. any reports, memoranda or other documents that set forth those lenders participating in the Title I Program whose insurance coverage reserve account for insurance claims made under the Title I Program was exhausted during the period between 1983 and 1988.

I have determined to affirm the withholding of documentation pertaining to items 2 and 9 of your request under Exemption 8 and to reverse the initial denial of item 1 of your request.

I am affirming the withholding of documents under items 2 and 9 of your request because insurance claim activity and reserve account solvency are means by which the Department monitors a lender's performance on its Title I loan portfolio. To disclose this information would compromise the Department's

ability to effectively supervise the lender's operation, in contravention of our statutory mandate.

Under Title I of the National Housing Act, financial institutions are approved to originate and service Title I property improvement and manufactured home loans in accordance with a Contract of Insurance with the Department. (See 24 C.F.R. 201.1). An approved financial institution<sup>1</sup> originates and services Title I loans, reports these loans to HUD for insurance coverage, and receives insurance benefits on its losses on defaulted loans in exchange for the payment of premiums.

Exemption 8 of the FOIA, 5 U.S.C. 552(b)(8), covers matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

Under HUD's supervisory authority with respect to the Title I Program, (see 24 C.F.R. 201.43), the Department may invoke Exemption 8 to withhold information about, or related to, the condition and operations of financial institutions involved in the Title I Program. All records concerning a financial institution's condition and operations and in the possession of a Federal agency responsible for the regulation or supervision of the financial institution can be withheld under the exemption. *McCullough v. FDIC*, 1 GDS 80,194, at 80,495 (D.D.C. 1980).

Under 24 C.F.R. 15.21 I have determined that the public interest in protecting effective HUD supervision of Title I lending institutions militates against release of the withheld information.

I am reversing the denial of item 1 of your request, pertaining to information identifying the 20 lenders with the largest aggregate volume of loans insured by the Department, under the Title I Program for the period 1983 to 1988, since identification of the lenders will not adversely impact the Department's responsibilities regarding the supervision of lender operations.

<sup>1</sup>The term "financial institution" under Exemption 8 is not limited to depository institutions. See *Public Citizen v. Farm Credit Administration*, C.A. No. 90-5290 (D.C. Cir. 1991). Mortgage lenders participating in the Government National Mortgage Association's Mortgage-Backed Securities Program are "financial institutions" under Exemption 8. *Barron Financial Group v. HUD*, C.A. No. SA CV 91-95-GLT (RWRx) (C.D. Calif. 1991).

I am providing a copy of this decision to the Title I Insurance Division of the Office of Manufactured Housing and Regulatory Functions and directing that they immediately provide you with the information pertaining to item 1 of your request.

You have the right to judicial review of this determination under 5 U.S.C. 552(a)(4).

Very sincerely yours,

Shelley A. Longmuir  
Deputy General Counsel