

Legal Opinion: GMP-0087

Index: 7.380

Subject: FOIA Appeal: Names and Addresses of Mortgagees

June 19, 1992

Kenneth Joel Haber, Esq.
17033 Briardale Road
Rockville, Maryland 20855

Dear Mr. Haber:

This is in response to your Freedom of Information Act (FOIA) appeal dated April 29, 1992. You appeal the March 31, 1992 partial denial by Anna-Marie Kilmade Gatons, Director, Executive Secretariat, (FOIA Control No.: FI-287756T). Ms. Gatons withheld, under Exemption 5, the names and addresses of mortgagees from notice letters of possible violations and from notice letters of administrative actions, issued to mortgagees by the Mortgagee Review Board in January and February, 1992.

I have determined to affirm, in part, under Exemption 8 and reverse, in part, the initial denial.

Exemption 8 exempts from disclosure 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." 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 are exempt from disclosure. *McCullough v. FDIC*, 1 GDS 80,194 at 80,495 (D.D.C. 1980).

Under HUD's regulatory authority a financial institution may participate in the HUD/FHA mortgage insurance program upon filing a request for approval by the FHA Commissioner. Approval of a financial institution's application constitutes an agreement between the institution and the FHA Commissioner which shall govern the institution's continued approval subject to the Department's regulatory requirements. See 24 C.F.R. Part 203.

The Mortgagee Review Board exercises the authority of the Secretary with respect to administrative actions against mortgagees for their failure to conduct their activities in conformity with HUD/FHA requirements. Such administrative actions can include a letter of reprimand, an order of probation, a suspension, or withdrawal of approval. See Section 202(c)(1) of the National Housing Act, 12 U.S.C. 1708(c)(1), {added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235}, and 24 C.F.R. 25.3.

The notice letters to the mortgagees of possible violations of HUD/FHA requirements are documents relating to lending institutions' compliance with HUD's regulatory requirements and fit within the statutory definition of Exemption 8. Consumers Union v. Heimann, 589 F.2d 531 (D.C. Cir. 1978). The notice letters involve a preliminary stage in the Department's oversight responsibilities of mortgagees' compliance with HUD/FHA requirements. Disclosure of the identities of the mortgagees from the notice letters before the mortgagees have had the opportunity to exercise their rights to file a written response or request a hearing (see 202(c)(4) of the National Housing Act, 12 U.S.C. 1708(c)(4), and 24 C.F.R. 25.6, 25.7) would compromise the Department's ability to effectively supervise the lenders' operations, in contravention of our legal mandate.

Accordingly, I have determined to affirm the denial of the identities and addresses from the notice letters of possible violations to the mortgagees under Exemption 8. I have also determined under HUD's regulations, 24 C.F.R. 15.21, that the public interest militates against release of the withheld information.

I have determined to reverse the initial denial with respect to the withholding of the names and addresses of mortgagees from notices of administrative actions taken by the Mortgagee Review Board. Section 202(c)(5) of the National Housing Act, 12 U.S.C. 1708(c)(5), requires that HUD publish in the Federal Register a description of, and the cause for, administrative action against a HUD-approved mortgagee by the Mortgagee Review Board. Consequently, the notice letters of administrative actions are public information and releaseable under the FOIA. Therefore, the identities and addresses of the mortgagees redacted from three notice letters of final settlement issued in January and February, 1992, can be disclosed pursuant to your request. Unexpurgated copies of these letters are enclosed.

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

Very sincerely yours,

C.H. Albright, Jr.
Principal Deputy General Counsel

Enclosures

cc: Yvette Magruder
Phillip Kesaris