

Legal Opinion: GMP-0140

Index: 7.380, 7.475
Subject: FOIA Appeal: Title I Lender Information

January 15, 1993

Mr. Alan J. Kappeler
Director of Governmental Affairs
The Logs Group
1201 New York Avenue, N.W.
Suite 530
Washington, D.C. 20005

Dear Mr. Kappeler:

This is in response to your Freedom of Information Act (FOIA) appeal dated November 24, 1992. You requested a list of the five most frequent filers of claims by lenders participating in the Property Improvement Loan Program under Title I of the National Housing Act, 12 U.S.C. Section 1703 et seq. You requested that the list identify each Title I approved lender and the number of filed claims for 1990 and 1991, with a breakout between manufactured housing and property improvement loans. Your request for this information was denied under Exemption 8 of the FOIA by Anna-Marie Kilmade Gatons, Director, Executive Secretariat, in a letter dated November 16, 1992, (FOIA Control No.: FI-309502D).

I have determined to affirm the initial denial.

Exemption 8 of the FOIA, 5 U.S.C. Section 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. Section 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. Financial institutions under Title I of the National Housing Act, 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. Section 201.1). An approved financial institutionThe 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). 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.

The insurance claim activity of lenders is one means by which the Department monitors the lenders' performance on their Title I loan portfolios. To disclose this information would compromise the Department's ability to effectively supervise the lenders' operations, in contravention of our statutory mandate. See, *McCullough v. FDIC*, 1 GDS 80,194, at 80,495 (D.D.C. 1980), 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. Therefore, I have determined to withhold the insurance claim activity you requested under Exemption 8.

You state that the number of Title I claims filed or paid in any fiscal year should be disclosed because this information is periodically made available by the Department in public budget documents. However, I am advised by Robert Coyle, Director, Title I Insurance Division, that any information contained in budget documents concerning Title I claims is not broken down by individual lenders.

Under 24 C.F.R. Section 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.

You have the right to judicial review of this determination under 5 U.S.C. Section 552(a)(4). Judicial review of my action on this appeal is available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, or in the judicial district where the records you seek are located.

Very sincerely yours,

George L. Weidenfeller
Deputy General Counsel (Operations)

cc: Yvette Magruder