

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-182482

DATE: AUG 4 1975

MATTER OF:

Insurability of note under Title I of National Housing Act.

DIGEST:

Since note dated May 1, 1970, submitted for insurance pursuant to Title I of National Housing Act contained projected maturity date 17-days in excess of 7 year and 32-days maximum that was prescribed by statute when loan was made, claim submitted by bank--which is primarily responsible for assuring that term of note does not exceed statutory limitation--for reimbursement of its loss on note must be denied. Although note was not assigned to bank or funds disbursed thereby until May 19, 1970, statute specifically limits term of obligation or note underlying loan and makes no provision for exceptions. See B-172121, April 12, 1971.

Mr. B. C. Tyner, Authorized Certifying Officer, Department of Housing and Urban Development (HUD) has requested our advice concerning the propriety of his certifying for payment a voucher in the amount of \$2,566.55 covering a claim by the Security National Bank of Melville, New York, for reimbursement of a loss sustained on the note of Sylvester and Nilda Baez which was submitted to HUD for insurance pursuant to Title I of the National Housing Act as amended 12 U.S.C. § 1701 et seq. The bank's claim was initially denied by HUD because the term of the note was in excess of the statutory maximum of 7 years and 32 days that was in effect at the time the loan was made.

The pertinent facts and circumstances concerning this matter as disclosed in the certifying officer's letter are set forth below.

The note in question is dated May 1, 1970, and provides for 84 monthly installments of \$79.72 each beginning on July 19, 1970. This repayment schedule projects the maturity date of the note to June 19, 1977, making the term of the note 7 years and 49 days. The note was payable to the contractor, the B. Hammer Co., Ltd., and on May 19, 1970, it was purchased by the Security National Bank.

When the loan was entered into, section 2(b) of the National Housing Act, as amended, 12 U.S.C. § 1703(b) read as follows:

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"No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan * * * (2) if such obligation has a maturity in excess of three years and thirty-two days, except that the Commissioner may increase such maximum limitations to seven years and thirty-two days if he determines such increase to be in the public interest * * *."

As authorized under this section, the Commissioner did in fact increase the maximum maturity for notes of this type to 7 years and 32 days. See 24 CFR 201.2(d)(2)(i).

Since the term of the note was 17 days in excess of the maximum maturity prescribed by statute at the time the loan was entered into, HUD denied the bank's claim and so informed the appropriate bank officials by letter dated July 31, 1974, which read in pertinent part as follows:

"The note for the subject account is dated May 1, 1970 and provides for 84 installments of \$79.72, beginning July 19, 1970. This repayment schedule projects the maturity date of the note to June 19, 1977, and the term of the loan would be 7 years and 49 days. We are sorry, but the term of a Class I(a) loan is restricted by the National Housing Act to 7 years and 32 days and the Commissioner has no authority to waive this requirement."

Upon being informed of HUD's decision in this regard, Security National Bank requested, by letter dated August 15, 1974, that their claim be given further consideration for the following reason:

"While the contract to which you refer is dated May 1st, 1970, the attached enclosures will bear out that this loan was not consummated [sic] and the funds [disbursed] [sic] until May 19, 1970, making the term of this loan 7 years and 31 days."

After examining certain of the documents contained in the bank's letter, the certifying officer apparently concluded, as he states in his letter to us, that:

"It appears therefore that the note was dated prior to commencement of the work that was financed with the loan proceeds, unless the date of the note can be considered to have been made in error and that the true date was May 19, 1970, the date on which the note was purchased by the bank."

The bank is contending that although the note referred to by HUD when it denied the bank's claim is dated May 1, 1970, since the loan itself was not actually consummated and the funds disbursed until May 19, 1970, the loan actually had a term of only "7 years and 31 days, and therefore was eligible for insurance." However, HUD's decision to deny the bank's claim was based neither on the May 1 date of the contract between Mr. and Mrs. Baez and the contractor nor on the date that loan funds were disbursed but, rather, in accordance with the applicable statutory provision, was based on the repayment schedule, of the actual note, which note has a maturity of 7 years and 49 days. The relevant statutory language states that "no insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan * * * (2) if such obligation has a maturity in excess of * * *" (emphasis added) a specified period. This language clearly refers to the term of the payment note or other equivalent written document acknowledging or underlying the loan. The dates on the note are thus controlling and we are not aware of any basis on which to reduce the term of the note by reference to any subsequent assignments thereof. Accordingly, although it does appear that the note in question was not assigned to the bank until May 19, 1970 (by the B. Hammer Co., Ltd., the original payee), and the funds were not disbursed by the bank until that date, such considerations are not relevant to our determination concerning the note's eligibility for insurance and the propriety of paying the bank's claim.

However, as suggested in the certifying officer's letter, some question does exist as to whether the note itself was properly dated. In this regard it should be noted that the note which is dated May 1, 1970, contains the following legend in bold type:

"The transaction which gives rise to this note is the furnishing of goods or services for repairs, alterations or improvements upon or in connection with real property. Do not sign this note until the work is fully completed."

Examination of relevant documentary evidence in the file including the "Notice of Right of Rescission" the bank furnished to the borrowers in accordance with the provisions of 12 CFR 226.9 as well as the actual contract between Mr. and Mrs. Baez and the contractor, B. Hammer Co., Ltd., indicates that said contract which provided for the addition of certain improvements to the Baez's home was originally signed on May 1, 1970. Insofar as the work to be done was fairly extensive and presumably somewhat

time-consuming and since the rescission notice provided that the Baez's had until May 5, 1970, to cancel the entire transaction, before which time no work was to be performed under the contract, it appears that the note was signed and dated in contravention of the proviso in the note that it not be signed until the work was fully completed.

Moreover, our letter to an authorized certifying officer at HUD, B-172121, April 12, 1971, would appear to be for application here. In that case we considered the question of whether a claim on a note having a maturity of 5-years and 36 days which was 4 days more than the maximum term then prescribed by statute could properly be paid. The note was dated April 26, 1955, and provided that the first of sixty consecutive monthly installments would become due on July 1, 1955, projecting the due date for the final payment to June 1, 1970. In our letter we advised the certifying officer to deny the bank's claim, stating in pertinent part the following:

"The insured bank states that there was a typographical error in the first payment date of July 1, 1965, and that the original note should have called for the first payment to be due June 1, 1965. It states that all information for the bank records and your reports would have to be encoded from the original note and that with the date of the note being April 26, 1965, your computer should have rejected July 1, 1965, as a first payment date. It contends that you do not now have a right to disallow insurance since you accepted the bank's information and insurance premiums at inception.

"Your letter to us states that under present operating procedures your computer is programmed to detect discrepancies such as this, however, it was not so programmed in 1965 and at that time there was no procedure to catch such errors. Your letter states that it has always been your position that the accuracy of the due date and the responsibility to make certain that notes do not have maturities in excess of that permitted by the National Housing Act rests upon the insured lending institution.

"Neither the act nor the regulations require that the Government must determine whether or not a loan is insurable before the Government will accept insurance charges paid on such loan. The regulations merely outline the requirements, as does the act, that a loan must meet before a contract of insurance will be binding on the Government. Also we are in agreement with your position that the responsibility to make certain that notes do not have maturities in excess of that permitted by the National Housing Act rests upon the insured lending institution.

"The note in this case had a maturity in excess of the maximum limitation of 5 years and 32 days provided in the applicable provision of the National Housing Act quoted above. The act is specific and makes no provisions for any exception. Therefore, the voucher which is returned herewith may not be certified for payment."

Similarly, in the case before us it is clear that whether or not the note was dated prematurely, the provisions of the note as written projected a maturity date in excess of that permitted by statute, making the note ineligible for insurance at its inception. The bank clearly had sufficient information (i.e., the note and supporting documentation) before it prior to its finally processing the loan. Hence, as stated in the above-quoted decision, since neither the act nor the regulations require that the Government determine whether a loan is insurable before the Government will accept insurance charges paid thereon, the lending institution that applies to HUD for insurance, in this case Security National Bank, bears the basic responsibility for determining that "the obligation representing * * * such loan" does not have a maturity in excess of that permitted by the National Housing Act.

In accordance with the foregoing we must conclude that the voucher in question cannot be certified for payment. The voucher, together with the case file, is being returned to the Authorized Certifying Officer who submitted same.

R.F. KELLER

deputy } Comptroller General
of the United States