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JUL 3 1979

The Honorable Bill Gradison
House of Representatives

Dear Mr. Gradison:

This responds to your inquiry about authority to cancel the debt owed to the United States by the financially troubled Valley Homes Mutual Housing Corporation.

Valley Homes is a non-profit, tenant-owned, cooperative housing project consisting of 53 multi-family housing units constructed during World War II in Lincoln Heights, Ohio. The Government National Mortgage Association (GNMA) is the mortgagee and note holder on the loan which financed the tenants' purchase of the project. The note has run for 25 years and is due and payable on August 1, 1979. Total arrearages of principal and interest on the note amount to over \$400,000.

You have requested GNMA to cancel the debt on the basis that the Government originally sold the project to Valley Homes at an inflated price which was inconsistent with the law governing the sale, and that the cost of collection may well exceed the amount that could be recovered. However, GNMA has advised you that, with the exception of the Federal Claims Collection Act, 31 U.S.C. § 951 *et seq.*, it has no statutory authority to cancel indebtedness to the Government. Accordingly, you have requested this Office to review GNMA's statutory authority and determine whether its understanding of the law is correct regarding cancellation of indebtedness to the Government.

We have reviewed the statutory authority of the national mortgage associations contained in 12 U.S.C. § 1716 *et seq.* Under provisions of 12 U.S.C. § 1723a, GNMA has the following express powers:

"* * * to enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or the Commonwealth of Puerto Rico, or with any political subdivision thereof, or with any person, firm, association, or corporation; to execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; in its corporate name, to sue and to be sued, and to complain and to defend, in any court

of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property; to conduct its business without regard to any qualification or similar statute in any State of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; to lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may deem necessary or appropriate; to prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; to accept gifts or donations of services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

"(b) Determination with respect to obligations and expenditures. Except as may be otherwise provided in this title, in the Government Corporation Control Act [31 U.S.C. §§ 841 et seq.], or in other laws specifically applicable to Government corporations, the Association shall determine the necessity for and the character and amount of its obligations and expenditures and the manner in which they shall be incurred, allowed, paid, and accounted for."

From our analysis of the above-quoted provisions, we believe that GNMA has broad authority to settle claims arising out of its activities. Specifically, it has the power to sue and be sued, to dispose of property in such manner as it deems necessary or appropriate and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business. We have held that Government corporations with similar statutory authority had the power to waive an indebtedness to the Government (Pension Benefit Guaranty Corporation - Waiver Authority, B-190806, April 13, 1978) or to compromise a claim in certain circumstances. (B-193347, December 21, 1978; and 25 Comp.

Gen. 685 (1946). Thus we believe that GNMA may in proper circumstances forego collection of an indebtedness to the Government under the authority contained in 12 U.S.C. § 1723a.

The Federal Claims Collection Act governs collection actions by agencies and Government corporations once it is determined that a claim is to be asserted by them on a debt arising out of their activities. Section 4 of the Act, 31 U.S.C. § 953, states that the Act does not increase or diminish existing specific agency (including Government corporations) authority "to settle, compromise or close claims." For this reason, the Federal Claims Collection Act does not itself constitute claims settlement authority, and does not affect GNMA's own settlement authority in 12 U.S.C. § 1723a as indicated above.

Notwithstanding the issue of GNMA's authority to settle this debt by cancellation or waiver, GNMA has indicated that there is no basis to waive its claim against Valley Homes, because the original sale was in compliance with applicable law, and that there is no basis to compromise the claim because collection of the indebtedness is feasible through foreclosure and sale proceedings. On the basis of the present record, we concur with GNMA's assessment.

We have reviewed the contention that the Government sold the Valley Homes project to the cooperative at an inflated price and that this disposition of the property was not consistent with the intent of the Lanham Act (42 U.S.C. § 1521 et seq.), governing the disposition of war and veterans' housing, in order to determine whether this could be the basis for an allowable claim by Valley Homes. Valley Homes has alleged certain irregularities regarding the 1954 sale of the project, including the fact that the price was above appraised value and the fact that, contrary to what HUD now alleges, there was no competitive bidding.

In a memorandum provided to us by HUD, its Acting Associate General Counsel, Finance and Administrative Law Division; explains that the Valley Homes project was permanent housing and was sold under the provisions of 42 U.S.C. § 1587 which governs the sales of permanent housing. That provision allows sales "* * * upon such terms as the Administrator [of Housing and Home Finance] shall determine, * * *", but requires full payment of the agreed-upon amount within 25 years at an interest rate of not less than 4 percent. The memorandum states that the sale of the Valley Homes project in 1954 conformed to the requirements and intent of the Lanham Act and that acceptance by the Government of a price which was more than the appraised value was not precluded by the Lanham Act and can be construed as being consistent with the public interest.

The sale of Valley Homes occurred in 1954 (25 years ago) and it appears from the record before us that the sale, including the price and terms, thereof was the result of mutual agreement between the

Government and Valley Homes, with Valley Homes having the advice of counsel in connection with its purchase. Although the statute involved did not require competitive bidding the record before us--although not completely clear--indicates that the housing project was sold to Valley Homes following the publication of an announcement of sale (as distinguished from a public auction) and that apparently Valley Homes was the successful bidder. Further there was nothing in the statute involved that precluded the Government from accepting an offer that exceeded an appraised value. The fact that Valley Homes in an arms-length transaction in 1954 (and with the advice of counsel) paid a price higher than an appraised value for the property in question would not, in our opinion, provide a basis for either cancelling a debt due, or allowing a claim against, the United States.

In sum, while we believe that GNMA has authority to forego collection of an indebtedness to the Government in a proper case, we do not believe that the facts involved in the case at hand justify the exercise of such authority..

One method of obtaining the cancellation of the indebtedness of Valley Homes to the Government would be through a private relief bill. This possibility was discussed by a representative of this Office with a staff member of the Housing and Community Development Subcommittee, House Committee on Banking, Finance and Urban Affairs, on May 11, 1979. During this discussion, it was requested that we include draft legislative language for a private relief bill in our response to your request. We have therefore prepared the enclosed bill as a drafting service, without taking any position on the merits of such legislation.

We trust the above information is responsive to your needs.

Sincerely yours,

B.F. KELLER

Deputy
Comptroller General
of the United States

Enclosure

A BILL

For the relief of Valley Homes Mutual Housing Corporation

Be it enacted by the Senate and House of Representatives of the

United States of America in Congress Assembled, that the Valley Homes Mutual Housing Corporation, Lincoln Heights, Ohio, a nonprofit tenants' cooperative, is hereby relieved of liability to the United States in the amount of \$ _____, representing the unpaid balance and interest arrearages on a promissory note issued to the United States by the Corporation in 1954, in partial consideration for certain World War II housing conveyed to the Corporation by the United States. The Government National Mortgage Association is hereby directed to release the mortgage securing such note.