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Lupton  
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**DECISION**



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

FILE: B-194822

DATE: September 24, 1980

MATTER OF: First National Bank of New Jersey

**DIGEST:** Bank reported property improvement loan to Department of Housing and Urban Development (HUD) for insurance coverage when loan was already in default. HUD billed Bank for premiums which were duly paid and then denied Bank's claim for indemnity. HUD had no authority to accept loan report on defaulted loan, to collect premiums, and to provide insurance coverage. 12 U.S.C. § 1703(f); 24 CFR 201.10. Loan was never insured and claim may not be paid.

The First National Bank of New Jersey (Bank) asks that we allow its insurance claim, denied by the Department of Housing and Urban Development (HUD), for reimbursement of a \$3,200 loss sustained when the borrower defaulted on a property improvement loan which the Bank maintains was Federally-insured. Upon review of the applicable law and regulations, we conclude that the claim should not be paid.

The Bank was an approved lender eligible to obtain so-called Federal Housing Administration (FHA) insurance against possible losses that it might sustain on loans made for home improvement purposes. 12 U.S.C. § 1703(a). It made such a loan to Gordon Mead in the amount of \$3,200 on a promissory note dated February 22, 1977. Through administrative oversight, the Bank failed to report the loan to HUD for insurance purposes until August 1978, after the loan was in default, when it also filed a claim for indemnification. Apparently not recognizing that the loan was in default, HUD, on its September 1, 1978 monthly billing statement, billed the Bank for the initial and first renewal premiums in the amount of \$16 each. The Bank paid these premiums on October 24, 1978, approximately two months after the claim was filed.

[REQUEST for REIMBURSEMENT  
for INSURANCE CLAIM]

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B-194822

HUD regulations prescribe procedures lenders are required to follow in reporting loans for the purpose of insurance coverage:

"Loans shall be reported on the prescribed form to the Federal Housing Administration at Washington, D.C., within 31 days from the date of the note \*\*\*. If the loan or note is not in default, the [Federal Housing] Commissioner may, in his discretion, accept a late report." 24 CFR § 201.10.

Moreover, the law requires that premiums "shall be payable in advance by the financial institution." 12 U.S.C. § 1703(f).

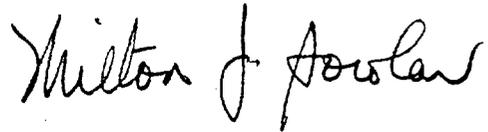
Thus, although the Commissioner has discretionary authority to accept a late report of a loan origination, he has no authority to do so with respect to a loan like this one that is in default, nor may he accept premiums after default when the law calls for them to be paid in advance.

The Bank argues that its situation differs from that in our decision B-185196, March 12, 1976, which HUD relied on in denying this claim. In that decision no insurance premium had been paid, because the bank had erroneously kept the premiums in a special account. Thus, in the earlier case, the claimant was aware that a basic condition for coverage, payment of the premiums, had not been satisfied. In the present case the Bank argues that it paid the premiums and thus established coverage.

We believe that the situations in these two cases are similar in one critical respect. In both cases the claimants were attempting to establish initial insurance coverage after the loans were in default. This is not permitted by statute and regulation. As stated above, 12 U.S.C. 1703(f) requires the payment of insurance premiums in advance for a loan to be eligible for insurance coverage. B-180015, November 28, 1973. In addition, 24 CFR 201.10, quoted above, does not permit coverage to be established after the loan is in default. The holding in B-185196, above, that payment of the premiums is a statutory prerequisite to the insurance of a loan, is applicable to this case.

B-194822

In view of the foregoing, the Bank's claim may not be paid, since the Government lacked authority, when the loan was reported and the premiums were paid, to extend insurance coverage for the loan. In this regard, HUD has properly agreed that the erroneously collected insurance premiums on the Mead loan should be refunded to the Bank.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General  
of the United States