

DECISION



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

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FILE: B-171500

DATE:

MATTER OF: Department of Housing and Urban Development Rehabilitation Loan Program

DIGEST: Under section 312 of Housing Act of 1964, as amended, and language of 1977 appropriation act, Department of Housing and Urban Development may make new commitments for rehabilitation loans immediately after August 22, 1976, from previous appropriation balances which would otherwise become unavailable after that date. Ambiguous reference to such prior appropriations in 1977 appropriation act could be read as making prior appropriations available only during fiscal year 1977. However, this narrow construction would create hiatus in funding from August 22 to October 1, 1976, which was clearly not intended by Congress.

The Under Secretary of the Department of Housing and Urban Development (HUD) has requested our opinion as to whether the Department can commit balances, including repayments, in the section 312 rehabilitation loan fund, between August 22 and October 1, 1976.

Section 312 of the Housing Act of 1964, as amended, 42 U.S.C. § 1452b, authorizes HUD to make direct loans to finance the rehabilitation of certain classes of real property. Budget authority for the making of loans is obtained through a revolving fund, established by subsection 312(d), which consists of appropriations made from time to time and miscellaneous proceeds derived primarily from loan repayments.

Until the most recent amendment of section 312 by the Housing Authorization Act of 1976, infra, appropriations for the rehabilitation loan program were authorized for fiscal year 1976 and into the fiscal year transition quarter beginning on July 1, 1976. */ However, subsection 312(h) provided, in effect, that no loan could be made under

*/ The Act approved December 9, 1975, Pub. L. No. 94-144, 89 Stat. 800, provided a general authorization for transition quarter appropriations to continue programs for which funding was authorized on June 30, 1976.

the authority of section 312 after August 22, 1976, except under a contract, commitment, or other obligation entered into on or before that date.

Pursuant to the authorization in effect at the time, as described above, the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1976, approved October 17, 1975, Pub. L. No. 94-116, 89 Stat. 581, 583, appropriated to the section 312 revolving fund \$50 million, to remain available until August 22, 1976.

The Housing Authorization Act of 1976, approved August 3, 1976, Pub. L. No. 94-375, § 12, 90 Stat. 1067, 1074, further amended section 312 to its present form. The subsection 312(h) termination date for the making of rehabilitation loans, other than those relating to prior obligations, was extended from August 22, 1976, to September 30, 1977. Subsection 312(d) was amended by including an appropriation authorization for the program of not to exceed \$100 million for fiscal year 1977, and by adding the following new sentence to that subsection:

"The amount of commitments to make loans pursuant to this section entered into after August 22, 1976, shall not exceed amounts approved in appropriation Acts."

Finally, the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1977, approved August 9, 1976, Pub. L. No. 94-378, 90 Stat. 1095, 1097, contained the following language with respect to the rehabilitation loan program:

"For the revolving fund established pursuant to section 312 of the Housing Act of 1964, as amended (42 U.S.C. 1452b), \$50,000,000, which amount shall be augmented by any previously appropriated funds which would otherwise become unavailable after August 22, 1976: Provided, That the aggregate amount of commitments for loans made from the fund for the fiscal year 1977 shall not exceed the total of loan repayments and other income available during such period, less operating costs, plus the aggregate amount provided herein."

In his submission to us, the Under Secretary points out that the effect of the foregoing statutory provisions, particularly the

above-quoted language of Pub. L. No. 94-378, might appear to create a hiatus in funding for the rehabilitation loan program from August 22 to October 1, 1976:

"The authorization to make new commitments in the § 312 program was provided by § 12(a)(2) of the Housing Authorization Act of 1976. * * * The language of that act limited commitments that could be made in the § 312 program after August 22, 1976 to 'amounts approved in appropriation acts.'

"The 1977 Appropriations Act, which was the first appropriation act enacted subsequent to the Housing Authorization Act of 1976, obviously attempted to provide both authorization to make new 312 loan commitments after August 22, 1976, and appropriations for that purpose. However, the language of the Appropriations Act * * * could be construed to provide authority to commit only in Fiscal Year 1977, which begins on October 1, 1976. If the language of the 1977 appropriations act is so construed, the Department will have no authority to make 312 loan commitments between August 22, 1976 and October 1, 1976. Such a result would have a severely disruptive effect on the Department's Urban Homesteading Program (leaving some families who had counted on being able to move into new homes provided through the program during that period, without quarters during this hiatus) and its Community Development Block Grant Program."

The Under Secretary maintains that the foregoing possible construction is too narrow and that the intent underlying Pub. L. No. 94-378 was to continue the program after August 22, 1976, without interruption. Thus he would interpret the language of Pub. L. No. 94-378, *supra*, as including an authorization to commit immediately after August 22 "any previously appropriated funds which would otherwise become unavailable after August 22, 1976."

We agree with the Under Secretary's interpretation. As noted above, section 312(d) of the Housing Act of 1964, as amended, provides that loan commitments made after August 22, 1976, shall not exceed "amounts approved in appropriation Act." The language of Pub. L. No. 94-378 satisfies this requirement by approving for commitments after August 22, 1976, new budget authority plus the budget authority provided in the fiscal year 1976 and transition appropriation. We believe it is clear that the \$50 million in new budget authority applies only

to fiscal year 1977, and therefore does not become available until October 1, 1976. Likewise, the appropriation language contains a limitation upon the aggregate amount of loan commitments which applies by its terms only during fiscal year 1977.

However, it does not necessarily follow that the reference to previously appropriated funds must also be construed as applying only during fiscal year 1977. The statutory language is ambiguous in speaking of funds previously appropriated "which would otherwise become unavailable after August 22, 1976." (Emphasis supplied.) This language is literally consistent with the view that the prior appropriation never actually became unavailable. It could be argued that, if the prior appropriation actually expired on August 22 and was to be renewed on October 1, the language would have referred to previously appropriated funds "which became unavailable after August 22, 1976."

More fundamentally, we are convinced that to construe the language as creating such a hiatus in funding would produce an incongruous result, and one contrary to the manifest congressional intent that the rehabilitation loan program continue uninterrupted. First, our review of the legislative histories of the relevant authorization and appropriation statutes discloses absolutely no indication of a congressional intent to create any hiatus in the program after August 22. Rather, it is evident that the issue here presented arises only by virtue of the particular sequence of enactment of these statutes. We have no doubt, for example, that the fiscal year 1976 and transition appropriation for the program was originally made to expire on August 22 merely because the authorization then in effect also expired on this date.

Second, the relevant legislative histories clearly do reflect a general congressional sentiment that the rehabilitation loan program is a highly successful undertaking which merited continuation. See, e.g., S. Rep. No. 94-749, 15 (1976), H.R. Rep. No. 94-1091, 17-18 (1976) (concerning the most recent authorization legislation); H.R. Rep. No. 94-1220, 11-12 (1976), Cong. Rec., June 22, 1976 (daily ed.) H6447-49, *id.*, July 27, 1976, S12620-21 (remarks of Senator Proxmire) (concerning the 1977 appropriation bill). Of particular relevance here are several statements critical of a "stop and go phenomenon" with respect to the program as a result of prior impoundments and rescissions. H.R. Rept. No. 94-1220, *supra*, at 12; Cong. Rec., June 22, 1976, *supra*, at H6448 (remarks of Congressman Boland).

In sum, given the ambiguous language in Pub. L. No. 94-378 and the clear congressional intent that the rehabilitation loan program

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continue uninterrupted, it is our opinion that HUD may make new loan commitments immediately after August 22, 1976, against funds appropriated for the program prior to that date, including repayments.

R.F.KELLER

Acting

Comptroller General
of the United States