



**Comptroller General
of the United States**

Washington, D.C. 20548

B-230951

March 10, 1989

The Honorable Doug Bereuter
House of Representatives

Dear Mr. Bereuter:

This letter is in response to your request dated March 22, 1988, for our Office to review the legal interpretation rendered by the Farmers Home Administration (FmHA) concerning section 304 of the Housing and Community Development Act of 1987, Pub. L. No. 100-242, 101 Stat. 1818, 1894 (1988) (codified at 42 U.S.C. § 1472, note). It is FmHA's position that section 304 of the Housing and Community Development Act, which provides for a rural housing guaranteed loan demonstration program, cannot be implemented unless funding authority for the demonstration program is provided or approved in an appropriation act. Furthermore, FmHA maintains that since FmHA's appropriation for fiscal year 1988 does not refer to guaranteed rural housing loans, in general, or to the guaranteed loan demonstration program, in particular, FmHA could not fund the demonstration program in fiscal year 1988. For the reasons set forth hereafter, we concur with FmHA's position.

BACKGROUND

The Secretary of Agriculture, acting through FmHA, is authorized under section 502 of the Housing Act of 1949, as amended (Housing Act), 42 U.S.C. § 1472, to make rural housing loans to eligible low income applicants capable of repaying the loans in full, plus interest. In 1965, Congress amended the Housing Act by adding section 517, 42 U.S.C. § 1487, which established the Rural Housing Insurance Fund and which authorized the Secretary of Agriculture to insure and guarantee loans that satisfied the requirements for section 502 loans. Under 42 U.S.C. § 1487(c), insured loans are loans made by the Secretary using funds from the Rural Housing Insurance Fund.^{1/} The

^{1/} The Secretary may then sell such loans, on an insured or uninsured basis, and deposit the proceeds realized from the sale in the Rural Housing Insurance Fund. 42 U.S.C. § 1487(c) and (g).

Secretary also is authorized by 42 U.S.C. § 1487(d) to "insure the payment of principal and interest on loans made by lenders other than the United States," i.e., to guarantee loans made by private lenders. While such loan guarantees do not involve the obligation of any federal funds by FmHA, unless and until the borrower defaults and FmHA is required to honor its guarantee, 42 U.S.C. § 1487(j) provides that the moneys in the Rural Housing Insurance Fund may be used to make the required payment to the lender or holder of a guaranteed note upon default by the borrower.

The question you asked us arose upon enactment of the Housing and Community Development Act of 1987, Pub. L. No. 100-242, 101 Stat. 1815, February 5, 1988. Section 304 of that Act provides for the establishment of a rural housing guaranteed loan demonstration program by the Secretary of Agriculture, acting through FmHA, as follows:

"(a) ESTABLISHMENT OF DEMONSTRATION. - The Secretary of Agriculture (referred to in this section as the "Secretary") shall carry out a rural housing guaranteed loan demonstration program under which the Secretary shall, to the extent of amounts provided in appropriation Acts, provide guaranteed loans in accordance with section 502, section 517(d), and the last sentence of section 521(a)(1)(A), of the Housing Act of 1949.

"(b) AMOUNT AVAILABLE FOR DEMONSTRATION. - (1) There shall be available for guaranteed loans under this section for any fiscal year in each State an amount equal to whichever of the following is lower:

"(A) 10 percent of the total loan authority allocated under section 502 of the Housing Act of 1949 to the State for the fiscal year.

"(B) The average, during the preceding 3 fiscal years, of the funds allocated to the State under section 502 of the Housing Act of 1949 that have not been utilized." (Emphasis added)

Your question concerns the proper interpretation of the phrase "to the extent of amounts provided in appropriation Acts," and whether that language requires "specific approval language in an appropriation Act in order for the Secretary

of Agriculture to implement" the guaranteed loan demonstration program.

While it is FmHA's position that funding authority for the guaranteed loan demonstration program must be approved in an appropriation act,^{2/} you take the position that:

"it was Congress' intent to fund the Section 304 loan demonstration from amounts in the Rural Housing Insurance fund authorized for loans under Section 502, notwithstanding the fact that a rural housing guaranteed loan demonstration is not mentioned in appropriation language."

Moreover, you state that:

"the Fiscal Year 1988 Continuing Resolution for Appropriations does, in fact, provide appropriations approval language for obligation and use of the section 502 loan insurance and guarantee authority in the aggregate."

ISSUE

The issue you raised has two separate, albeit related, parts. First, as a general matter, we must determine whether section 304 of Public Law 100-242 requires specifically approved authority in FmHA's annual appropriation as a precondition to FmHA implementation of a rural housing guaranteed loan demonstration program. Second, if section 304 so requires, we must then determine whether Congress approved or provided authority for the guaranteed loan demonstration program in FmHA's appropriations for fiscal years 1988 and 1989.^{3/}

^{2/} Memorandum dated January 25, 1988, from FmHA's Assistant General Counsel, Community Development Division to the Director of FmHA's Budget Staff. See also letter dated April 29, 1988, to our Office from Vance R. Clark, Administrator, FmHA, and the attached memorandum (copies enclosed).

^{3/} While you did not ask us to determine whether authority had been provided for the guaranteed loan demonstration program in FmHA's appropriation for fiscal year 1989, presumably because it had not yet been enacted when your letter was written, we nonetheless have addressed that question.

ANALYSIS

Section 304 of Public Law 100-242 provides that the Secretary of Agriculture "shall carry out a rural housing guaranteed loan demonstration program under which the Secretary shall, to the extent of amounts provided in appropriation Acts," guarantee loans to eligible borrowers in accordance with his existing authority under 42 U.S.C. § 1472, 42 U.S.C. § 1487(d), and the last sentence of 42 U.S.C. § 1490a(a)(1)(A). (Emphasis added.) By enacting section 304 using such mandatory language, the Congress apparently expected the Secretary of Agriculture to establish a guaranteed loan demonstration program. Nevertheless, the phrase "to the extent of amounts provided in appropriation Acts"^{4/} cannot be ignored.

In our view, that phrase imposes a clear limitation on the Secretary's authority to implement the rural housing guaranteed loan demonstration program. This language contemplates that the final decision as to the amount of loans that the Secretary may guarantee in carrying out the demonstration program is to be left to the Congress in the annual appropriation process. Necessarily, therefore, if FmHA's annual appropriation does not specifically approve or authorize FmHA to make any guaranteed loans in a particular fiscal year, then FmHA would be unable to carry out the demonstration program in that year.

^{4/} We note that a very similar phrase, further emphasizing its significance, in our view, is contained in section 301(a) of Public Law 100-242. This provision authorizes funding levels for FmHA's rural housing loan programs as follows:

"(1) The Secretary may, to the extent approved in appropriation Acts, insure and guarantee loans under this title during fiscal years 1988 and 1989 in aggregate amounts not to exceed \$1,775,395,000 and \$1,794,925,000, respectively, as follow:

"(A) For insured or guaranteed loans under section 502 on behalf of borrowers receiving assistance under section 521(a)(1) or receiving guaranteed loans pursuant to section 304 of the Housing and Community Development Act of 1987, \$1,104,000,000 for fiscal year 1988 and \$1,116,144,000 for fiscal year 1989."
(Emphasis added.)

Our interpretation of the language in section 304 does not mean that amounts in the Rural Housing Insurance Fund would be unavailable to honor FmHA's guarantee with respect to any guaranteed demonstration loans that FmHA was authorized to make. As explained above, funds in the Rural Housing Insurance Fund are available to make insured loans (directly out of the Fund) and to make payments to holders of guaranteed rural housing loans (made by private lenders) when a borrower defaults. See 42 U.S.C. § 1487(c),(d),(j). However, while the moneys in the Rural Housing Insurance Fund would be available for payments to lenders with respect to any rural housing demonstration loan that FmHA was authorized to guarantee (assuming the borrower defaulted), the limiting language in section 304(a) only allows FmHA to guarantee rural housing loans to the extent it is authorized to do so in its annual appropriation.

This does not mean that FmHA's appropriation must specifically authorize FmHA to guarantee rural housing demonstration loans in order for FmHA to implement the demonstration program. Since the rural housing demonstration program authorized under section 304 of Public Law 100-242 relies on FmHA's preexisting and independent authority to guarantee rural housing loans, contained in 42 U.S.C. §§ 1472 and 1487(d), the statutory requirement in section 304(a) (and in section 301(a)) would be satisfied, in our view, if FmHA's annual appropriation for a particular fiscal year authorized it to make guaranteed loans in any specified amount in that year.^{5/}

We must now examine FmHA's annual appropriations for fiscal years 1988 and 1989 to determine whether or not FmHA was authorized to implement the demonstration program in fiscal year 1988 or is authorized to do so in the current fiscal year. FmHA's annual appropriation for fiscal year 1988,

^{5/} This assumes that any general loan guarantee authority set forth in FmHA's annual appropriation does not contain any restrictions or limitations, express or implied, on the use of such authority to implement the guaranteed loan demonstration program. For example, since section 304(c) of Public Law 100-242 provides that guaranteed demonstration loans shall only be made to "borrowers with moderate incomes that do not exceed the median income of the area," any general loan guarantee authority containing conditions or restrictions that are not compatible with the "moderate income" limitation would not be available for the purpose of guaranteeing such demonstration loans.

which is contained in Public Law 100-202, 101 Stat. 1324, 1329-337, (1987), provides funding for FmHA's rural housing programs as follows:

"From funds in the Rural Housing Insurance Fund, and for insured loans as authorized by title V of the Housing Act of 1949, as amended, \$1,844,990,000, of which not less than \$1,794,420,000 shall be for subsidized interest loans to low-income borrowers, as determined by the Secretary, and for subsequent loans to existing borrowers or to purchasers under assumption agreements or credit sales; . . ."

FmHA's annual appropriation for fiscal year 1989, contained in Public Law 100-460, approved October 1, 1988, provides funding for rural housing programs using identical language and in identical amounts. Therefore, our conclusions are the same with respect to the appropriations for both years.

Obviously, the appropriations language quoted above does not refer to FmHA's guaranteed rural housing loan program, in general, or to its guaranteed demonstration loan program, in particular. Moreover, the reference to "insured loans as authorized by title V of the Housing Act of 1949" was not intended to include guaranteed loans as well. The legislation that established the Rural Housing Insurance Fund distinguishes between insured and guaranteed loans. See 42 U.S.C. § 1487. In fact, 42 U.S.C. § 1487(e) specifically provides that the "guaranteed loan program shall be operated separately from the insured loan program . . . and no funds designated for one program may be transferred to another program."^{6/} Also, section 301(a) of Public Law 100-242 (quoted in footnote 4) refers to FmHA's authority to "insure and guarantee loans", further indicating that the statutory references in FmHA's appropriation acts to "insured" loans were not intended to include guaranteed loans, as well.

Accordingly, since FmHA's appropriations for fiscal years 1988 and 1989 do not authorize FmHA to guarantee rural housing loans in general, or to guarantee rural housing demonstration loans in particular, these appropriations do

^{6/} In its memorandum of April 23, 1988, FmHA advised us that since fiscal year 1982, FmHA's appropriation acts have not authorized FmHA to guarantee any rural housing loans and that accordingly, the guaranteed loan program has been "dormant" from 1982 to the present.

not satisfy the statutory requirement in section 304 of Pub. L. No. 100-242. Therefore, we agree with FmHA that FmHA was not authorized to implement the rural housing guaranteed loan demonstration program in fiscal year 1988 and, absent enactment of the requisite appropriation language, would not be authorized to do so in fiscal year 1989.

We trust that the foregoing opinion has been responsive to your request. This opinion will be made available to the public in 30 days unless released sooner by your office.

Sincerely yours,



for Comptroller General
of the United States

Enclosures