



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-216006

September 27, 1984

Ms. S. A. Evans  
Director, Office of Finance & Accounting  
U.S. Department of Housing and  
Urban Development  
Washington, D.C. 20410

Dear Ms. Evans:

Your letter of July 31, 1984, posed a number of questions concerning Housing for the Elderly and Handicapped projects currently being investigated by our Office and with respect to which informal inquiries have been issued by our audit staff. These questions are currently under consideration, and we anticipate issuing a decision in the near future.

As you know, at issue is the question of whether an identity of interest exists between the sponsor, contractor and management company for this project, which would be prohibited by section 202 of the Housing Act of 1959. As codified at 12 U.S.C. § 1701q(a)(2)(A) this Act would prohibit anyone associated with the sponsor from receiving a profit from a project. It does so by defining the corporations eligible to participate as sponsors for projects as being private institutions or foundations:

"\* \* \* no part of the earnings of which inures to the benefit of any member, founder, contributor, or individual;"

See also the HUD implementing regulation, 24 C.F.R. § 885.5 (1984).

We understand that work has been suspended on the Somerset Lane Project (#043-EH126), with which your letter was primarily concerned, because your office would not certify additional payments to the borrower until this Office ruled on the legality of the project and the liability of the certifying officer for approving such payments.

We have been concerned by reports received from congressional offices that elderly persons who had been told that apartments in the Somerset Lane Project would be available by

September 1, have in some cases, terminated their previous leases or other housing arrangements and may have difficulty in finding alternate housing. We understand that the Somerset Lane Project is more than 90 percent complete at this time.

In order to alleviate any further inconvenience that would be caused by additional delays, I wish to assure you that the General Accounting Office will not take exception to further disbursements necessary to complete this project so long as they cover only the necessary costs of the contractor and do not include any direct or indirect profits. In addition to profits by the contractor, HUD should assure that any subcontractor affiliated with the contractor or any company with which the principal of the firm is associated will not receive profits from the project. We agree with the suggestion made by Mr. [redacted] in his memorandum of July 13, 1984, that, at a minimum, an amount should be retained to cover such profits but feel that HUD should take whatever other steps are necessary to assure that no direct or indirect profits are being paid.

This letter does not address other questions raised in your letter. However, in light of the purposes of the section 202 program, it would not be in the interests of the Government to terminate the Somerset Lane Project when it is substantially complete. Other remedies are available to recover any unlawful direct or indirect profits accruing to contract parties.

We hope that this letter will be helpful in providing information for you to proceed with the Somerset Lane Project, and that you will now be able to make available, with the controls indicated, sufficient funds to complete this project. We will provide a decision on this matter and the other questions you raised as soon as possible.

Sincerely yours,

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel