DECISION

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

60635

FILE: B-185196 DATE: MAR 12 1976

98489

MATTER OF: Atlantic Bank of S. Jacksonville, Fla. - FHA loan insurance

DIGEST: Bank requested Federal Housing Administration reimbursement under insurance pursuant to 12 U.S.C. 1703 for loss sustained when borrower defaulted on home improvement loan. While Bank states it reported loan to FHA as required, FHA has no record that bank had applied for loan insurance and consequently bank was not billed for and did not pay the advance premium required by that statute. Further, bank had actual notice that loan is not insured until acknowledged by FHA in monthly statement and bank admittedly erred in not recognizing on timely basis omission of this loan in next monthly statement rendered by FHA. Therefore, we conclude that in absence of showing of actual negligence by FHA, loan was not insured and reimbursement would be improper.

Mr. B. C. Tyner, Authorized Certifying Officer, Department of Housing and Urban Development, (his reference AFMI:FI:CM), has requested our decision as to the propriety of certifying a voucher presented to him to cover the claim by the Atlantic Bank of South Jacksonville, Florida (Bank) for reimbursement of $1801.80 on a loss sustained by the Bank when the payee of a property improvement loan made by the Bank defaulted. The Bank had been approved under 12 U.S.C. 1703(a)(1970) as eligible for Federal Housing Administration (FHA) insurance against losses sustained, inter alia, on loans made for home improvement purposes. Upon application by the bank to the FHA for reimbursement under the provisions of 12 U.S.C. 1703 and 24 C.F.R. 201.1 et seq., the FHA denied the claim because the loan in question had not been reported to the FHA for insurance in compliance with 24 C.F.R. 201.10 and no insurance premium had ever been paid by the bank to the FHA. The FHA therefore concluded the loan was not in an insured status.

12 U.S.C. 1703(f)(1970) states that a premium shall be charged by the FHA for insurance granted under that section. It requires also that "such premium charge shall be payable in advance by the financial institution and shall be paid at such time and in such manner as may be prescribed by the Secretary [of Housing and Urban Development]." (Emphasis supplied.) See B-183784, January 29, 1976, at 4-5. 24 C.F.R. 200.174, issued under the authority of 12 U.S.C. 1703(b)(1970), states that:

> "Within 31 days after the loan is made or the note is purchased from the dealer the lender submits to the Federal Housing Administration individual reports setting forth on a prescribed form the details of each transaction. This information, including the name of the borrower, the location of the property, the amount of loan advanced, the finance charges, the date of the note, and the terms of payment is the basis for computing the insurance premium which will be due and payable by the lender and is the official record of the transaction with the Administration. This report results in the automatic insurance of the loan as soon as the required insurance premium is paid." (Emphasis supplied.)

24 C.F.R. 200.175 provides further that:

> "The regulations provide for an annual insurance charge based on a fractional percentage of the net proceeds of each loan reported for insurance. The lender is billed once a month on all loans reported for insurance during the previous period the receipt of which have been acknowledged by the Commissioner."

24 C.F.R. 201.10 also states, to the same effect, that:

> "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 or date upon which it was purchased."

To insure a home improvement loan with the FHA, a lending institution reports the loan to the FHA on form FH-4, Title I Loan Reporting Manifest. The top of the manifest bears the legend "Notice: Loans reported hereon will not be in an insured status until they appear on your monthly statement and insurance charges paid as billed. . ." Upon receipt of the manifest listing each loan, FHA lists the loan on a monthly statement which is issued to the bank. Then the bank pays the periodic premium for the loan to FHA, and the loan enters an insured status. Reporting a loan to FHA is thus the necessary first step to FHA insurance coverage for that loan. As FHA stated in its letter of April 11, 1975 to the Bank, if a loan

for which a lending institution has requested insurance does not appear on the monthly statement, the lending institution should reapply for insurance for that loan if it still desires insurance.

In the case at hand, the note was issued on March 12, 1974 and went into default on May 15, 1974. The Bank alleges that on March 12, 1974 it reported the loan to FHA as required. However, FHA has stated that it has no record of receiving the Bank's loan insurance application. Since it had no record of the application, FHA never acknowledged the loan as insured and never billed the Bank for the appropriate premium. Although the bank apparently collected the amount of the initial premium from the borrower, this was retained by the bank in a special account and never forwarded to FHA. The Bank has not affirmatively established that FHA either received the Bank's report or was otherwise negligent in handling the loan application.

The Bank stated in a letter of July 25, 1975 that due to an administrative oversight it failed to notice that the loan in question was not listed on the monthly statement it received the month after it had allegedly applied for insurance for the loan in question. However, it was on actual notice from Form FH-4 that a loan will not be considered insured until it appears on that statement and the required premium is paid. Timely review would, moreover, have disclosed the nonreceipt (or failure to acknowledge) of the report by FHA. In any case, the bank's action in placing the insurance premium collected from the borrower into one of its own internal accounts where it has remained to date removes all doubt that it was aware that a basic condition for coverage--payment of the premium--had not been met.

In circumstances very similar to the instant case, we stated in B-172965, July 16, 1971, that payment of the insurance premium in advance, as required by 12 U.S.C. 1703(f), is necessary for a loan to be eligible for insurance. It is the responsibility of each lending institution to ascertain that its premiums have been paid to FHA, and to take all steps necessary for payment. Cf. Citizens National Trust & Savings Bank of Los Angeles v. United States, 270 F.2d 128, 133 (9th cir. 1959); B-180015, November 28, 1973; B-172121, April 12, 1971.

The Bank notes that 12 U.S.C. 1703(e)(1970) permits the Secretary of Housing and Urban Development to waive compliance with the regulations governing FHA loan insurance. However, neither that section nor any other statute vests authority in the Secretary to waive compliance with a statutory requirement such as the prepayment of premiums required by 12 U.S.C. 1703 (f)(1970). For that reason the Secretary's waiver authority does not allow reimbursement of the Bank for its loss. See B-172965, supra.

Accordingly, the voucher involved, which is being returned herewith together with the claim file to the Authorized Certifying Officer, may not be certified for payment.

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosure