

DECISION



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

FILE: B-210291

DATE: April 13, 1983

MATTER OF: Rural Electrification Administration
Guaranteed Loans--Payment of Servicing Costs

DIGEST: Rural Electrification Administration (REA) may not use funds either from its annual appropriation or REA's Revolving Fund to pay, on a non-reimbursable basis, for the cost of servicing REA guaranteed loans made by the Federal Financing Bank (FFB). Definition of a guaranteed loan under 7 U.S.C. § 936 as one which is initially made, held, and serviced by a legally organized lender agency, together with other provisions in REA's and FFB's legislation, indicate that since FFB acts as the lender, REA can only perform servicing function as FFB's agent on a reimbursable basis.

This decision is in response to a request from the Administrator of the Rural Electrification Administration (REA) for our opinion concerning the payment of costs incurred in connection with the servicing of REA guaranteed loans made by the Federal Financing Bank (FFB). The Administrator's specific question is whether he has authority "to use funds appropriated under the RE Act or in the Rural Electrification and Telephone Revolving Fund for the purpose of servicing FFB obligations, repayment of which is guaranteed pursuant to § 306 of the RE Act, on an unreimbursable basis where there have been no defaults on the obligations?"^{1/} For the reasons set forth hereafter, we do not believe the Administrator of REA has such authority.

^{1/} The Administrator's letter contained a second question as to whether FFB was "required to provide for the servicing of REA-guaranteed loans assuming REA does not undertake such servicing?" Subsequently, we were informed by an REA official that it was withdrawing its second question. Therefore, our decision does not formally respond to that question. However, since the two questions were not unrelated, our answer to the remaining question may have some bearing on the question that was withdrawn as well.

Under section 306 of the Rural Electrification Act of 1936, as amended, 7 U.S.C. § 936, REA is authorized to provide financial assistance to borrowers for the purpose of rural electrification by guaranteeing 100 percent of loans made by "legally organized lending" agencies. In 1981, this provision was amended by section 165(b) of the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 379, to provide that at the request of any borrower of a loan to be guaranteed by REA "the loan shall be made by the Federal Financing Bank * * *."

Although the 1981 amendment requires FFB to make REA-guaranteed loans at the request of the borrower, FFB had already been making REA guaranteed loans under the terms of the Loan Commitment Agreement between FFB and REA, dated August 14, 1974. Under the terms of the Agreement, FFB agreed to purchase "obligations guaranteed by the Administrator of REA" under the Rural Electrification Act. Paragraph 5(b) of the Agreement provides that any loan servicing required with respect to these loans "shall be performed by REA on behalf of FFB." That paragraph further provides that "REA shall be reimbursed by FFB for such loan servicing pursuant to section 10 of the Federal Financing Bank Act of 1973 at the rate of two one-thousandths of one percentum (0.00002) per annum of the amounts owed on guaranteed loans at the end of each calendar year."

It appears that FFB is interested in modifying the Loan Commitment Agreement to provide for REA to service the FFB loans on a nonreimbursable basis. Hence, REA has presented this question as to its authority to use its appropriated funds or moneys in the Revolving Fund to pay the servicing costs without reimbursement from FFB.

As recognized in the Administrator's letter, this is not the first time a question has arisen concerning the FFB-REA Agreement. In B-162373-O.M., July 31, 1979, we answered a question raised by one of our audit divisions as to the legality of FFB acting as "a lender in the first instance" by purchasing the REA-guaranteed note from the borrower. ^{2/} In our opinion we concluded "that the REA/FFB arrangement does not violate the respective statutory authorization of either agency."

^{2/} 7 U.S.C. § 936 had not yet been amended to require FFB to make these loans if requested to do so by the borrower.

With respect to the "servicing" issue, we observed that the REA-FFB arrangement might appear to conflict with the statutory definition of a guaranteed loan because REA and not FFB "services the loan and retains physical possession of the loan instrument". However, we concluded that no such conflict existed because REA serviced the loan on a reimbursable basis as the agent for FFB which was legally entitled as the holder of the note to receive the borrower's payments after collection by REA. We said that this was consistent with section 10 of the FFB Act which authorizes FFB to utilize the services of another Federal agency on a reimbursable basis. Our conclusion also relied heavily on REA's explanation that the servicing arrangement between FFB and REA did not violate the statutory scheme since FFB assumed the lender's servicing responsibility "by paying REA therefor", in accordance with a provision in the FFB Act "which confers authority on it and on other federal agencies to arrange for performing, on its behalf, actions like loan servicing."

Thus, it is clear that our opinion upholding the legality of the REA-FFB arrangement, as well as REA's explanation of its legality, relied to a considerable degree on the fact that, while REA was actually performing the loan servicing function, it was doing so as agent for FFB on a reimbursable basis.

As stated above, 7 U.S.C. § 936 was amended in 1981 to require FFB to act as the lender in making these guaranteed loans if requested to do so by the borrower. However, this amendment did nothing to alter the nature of the relationship between FFB and REA or shift the responsibility of paying servicing fees from FFB to REA. Nor did the amendment change the definition of a guaranteed loan in 7 U.S.C. § 936 as "one which is initially made, held and serviced by a legally organized lending agency and which is guaranteed by the Administrator hereunder." Therefore, at least when the loan is first made, the original lender must bear the responsibility of servicing these loans either by performing the servicing directly or by paying for the cost of the servicing if conducted by its agent.

Moreover, we note that the word "initially" was added to the definition of a guaranteed loan by section 1 of Pub. L. No. 94-124 approved November 4, 1975, as part of an amendment making it clear that REA-guaranteed loans could be assigned. See S. Rep. No. 94-424, 94th Cong., 1st Sess. 2, 3 (1975). The addition of the word "initially" was not intended to permit shifting the burden of servicing the loan from the originating lender to REA. In our opinion, the only way the original lender might free itself of the responsibility for paying for the servicing of the loan

would be by shifting it to an assignee in connection with an assignment of the loan. Servicing the loan could not become the obligation of REA unless and until the loan went into default.

Since, under the statute, the servicing of the loan is the responsibility of the lender rather than REA, it is our view that REA cannot use its own funds to pay for the costs of the servicing. It can perform the servicing so long as it is reimbursed for the costs by the lender.

Examination of the REA and FFB legislation provides additional support for our position. As we stated in our 1979 opinion, section 10 of the FFB legislation, 12 U.S.C. § 2289(10), provides that the FFB has the power "to act through any corporate or other agency or instrumentality of the United States, and to utilize the services thereof on a reimbursable basis * * *." (Emphasis added.) Although this provision is not written in mandatory terms, it certainly suggests that it was the intent of the Congress that when FFB uses the services of another agency, as it is clearly doing in this case, it should reimburse the agency for those services.^{3/} Contrast this provision with the language contained in section 403 of the Rural Electrification Act of 1936, as amended, 7 U.S.C. § 943(b), which provides that in performing its statutory responsibilities the Rural Telephone Bank may use "the facilities and the services of employees of the Rural Electrification Administration or any other agency of the Department of Agriculture, without cost to the telephone bank * * *."

Our position finds further support if we analyze the language contained in 7 U.S.C. § 932(b) which governs the liabilities and uses of the Revolving Fund--one of the two possible sources that REA could use to pay the servicing costs, if allowed. Under that section the assets of the Revolving Fund are available only for certain stated purposes, one of which is described as follows:

"(7) payment of taxes, insurance, prior liens, * * * expenses for necessary services, including construction inspections, commercial appraisals, loan servicing, * * * and other program services, and other expenses and advances authorized in section 907 of

^{3/} Also, note 31 U.S.C. § 1535 which provides for services to be performed by one agency for another on a reimbursable basis.

this title in connection with insured loans.
Such items may be paid in connection with
guaranteed loans after or in connection with
the acquisition of such loans or security
thereof after default, to the extent deter-
 mined to be necessary to protect the interest
 of the Government, or in connection with any
 other activity authorized in this Act;"
 (Emphasis added.)

In its letter to us setting forth its position concerning this matter, the Department of the Treasury, on behalf of FFB, maintains that the last phrase-- "or in connection with any other activity authorized in this Act"--is very broad and encompasses expenses for the servicing of guaranteed loans prior to default. We disagree. The express statutory language provides that with respect to guaranteed loans, as opposed to insured loans, servicing and other expenses can be paid "after default" if necessary to protect the Government's interest. Treasury's interpretation would require us to conclude that the final phrase of the last sentence essentially nullified the first part of the sentence which we underlined above. That would violate a basic canon of statutory construction and would require us to adopt a strained interpretation of the express statutory language.

As we read 7 U.S.C. § 932(b)(7), the Revolving Fund can be used to pay all of the different kinds of expenses, including loan servicing, for insured loans--which are defined in 7 U.S.C. § 935(c) as loans "which are made, held, and serviced by the Administrator * * *." However, with respect to guaranteed loans, these kinds of expenses can only be paid after or in connection with a default. Finally, with respect to other REA activities, not involving insured or guaranteed loans, the Revolving Fund can be used to pay such expenses, if necessary.

Moreover, we do not believe that the use of any of REA's current appropriations to pay for these servicing costs without reimbursement from FFB would be consistent with the recently expressed intent of Congress in connection with its enactment of the Agriculture, Rural Development, and Related Agencies Appropriation Act, 1983, Pub. L. No. 97-370, 96 Stat. 1887, approved December 18, 1982. The conference report on the appropriations bill reads as follows in this respect:

"Under a long-standing agreement between the Rural Electrification Administration and the Federal Financing Bank, FFB has reimbursed REA for its billing and collection costs on FFB loans guaranteed by REA. The conferees have been advised that the REA-FFB agreement expired on November 30, 1982, and has not been renewed because of FFB's reported refusal to continue this reimbursement process. In view of the fact that the 1981 amendments to the Rural Electrification Act now direct the FFB to make loans under an REA guarantee at the request of the borrower, FFB's legal obligation to make loans under REA's guarantee is not contingent upon the existence of an agreement between the two agencies. REA is expected to continue providing billing and accounting and related services on existing and new loans made by FFB under an REA guarantee, and FFB is expected to continue reimbursing REA for this service." (Emphasis added.) See H. Rep. No. 97-957, 97th Cong. 2d Sess. 17 (1982).

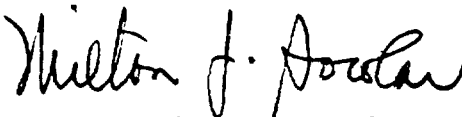
In its letter to us, Treasury also makes several other arguments to support its position. Treasury argues that in adopting the 1973 amendment to the REA legislation, Pub. L. No. 93-32, 87 Stat. 65, which added the loan guarantee section to the statute, both the Congress and the Administration intended to retain "REA's traditional and time proven role as a loan maker and servicer of loans." See H. Rep. No. 93-91, 93rd Cong., 1st Sess. 27 (1973). While we would not necessarily dispute Treasury's contention that one of the objectives of the legislation was to retain REA's role as maker and servicer of loans, Public Law 93-32 did much more than just establish a loan guarantee program. For example, as stated above, the Act established an insured loan program in which REA does act as the "maker and servicer of loans". Obviously, when REA guarantees a loan made by another lender it is not functioning as a loan maker. Similarly, we do not believe that the Congress intended for REA to fill the role of loan servicer in connection with guaranteed loans made by lenders other than REA. If Treasury's contention were correct, REA would be responsible for servicing, or paying for the servicing, of all of its guaranteed loans, including those made by private, non-Governmental lenders. This would not be reasonable in our view and would not be consistent with the way in which loan guarantee programs of other agencies operate.

In addition, Treasury argues that as an alternative to the theory that REA has the authority to pay for the servicing of guaranteed loans, REA could redefine "servicing" in such a manner "as to coincide with the services currently provided by FFB." Under this view, functions currently performed by FFB, such as "processing and making disbursements, interest rate and prepayment cancellation, determination of principal and interest payment schedules and payment monitoring," would be considered loan servicing and would remain the responsibility of FFB. On the other hand, what REA now does and characterizes as servicing would be redefined as "program administration", and would be paid for by REA as administrative expenses.

We cannot endorse this approach. The statute specifically refers to loan servicing. While that term is not defined in the legislation we must presume, in the absence of any contrary indication, that in using the term "servicing"--a not uncommon term in the banking industry--Congress intended it to be given its generally accepted meaning. Accordingly, REA would not be justified in redefining that term so as to arbitrarily exclude those functions and tasks that are generally performed by lenders in connection with managing and overseeing the loans they make. In this respect, we note that in paragraph 5(b) of the 1974 Loan Commitment Agreement between FFB and REA, FFB apparently agreed that REA was performing "loan servicing" for FFB under 7 U.S.C. § 936 and not "program administration."

Having resolved the basic question we must address one final point raised by REA informally. That is, we would have no objection if REA determines that the current annual charge of .0002 per centum on the outstanding balance of guaranteed loans that is paid by FFB under the 1974 Agreement is either too high or too low and should be adjusted accordingly. However, the rate to be assessed against FFB should represent, as closely as can be determined, the actual cost to REA of performing the servicing functions that would otherwise have to be performed by FFB as the lender.

In accordance with the foregoing, the Administrator of REA may not use funds either from its annual appropriation or in the Rural Electrification and Telephone Revolving Fund to pay, on a non-reimbursable basis, for the cost of servicing REA guaranteed loans made by FFB.

for 
Comptroller General
of the United States