



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Farmers Home Administration - Authority to
Terminate Accrual of Interest

File: B-223816

Date: June 17, 1988

DIGEST

The Farmers Home Administration (FmHA) appears to have broad statutory authority that would allow it to terminate the accrual of interest on the guaranteed portion of defaulted loans. However, under the regulations FmHA has promulgated to implement its statutory authority, FmHA may only terminate the accrual of interest on loans in limited circumstances if the borrower is eligible for such a debt reduction in accordance with the applicable regulatory requirements.

DECISION

This decision is in response to a request from the Administrator of the Farmers' Home Administration (FmHA) for a decision from our Office as to FmHA's authority "to administratively terminate interest accrual" on the guaranteed portion of defaulted loans in certain circumstances. While it is our view, for the reasons set forth hereafter, that FmHA does have statutory authority that would allow it to terminate the accrual of interest on defaulted loans in the circumstances cited, we believe its authority to do so has been restricted by the regulations it has adopted to implement the statute. Under those regulations, FmHA may only terminate the accrual of interest on a loan in limited circumstances if the borrower is eligible for such a debt reduction in accordance with the applicable requirements set forth in the regulations.

BACKGROUND

FmHA has been approving requests from its state offices to terminate the accrual of interest on the guaranteed portions of defaulted loans. FmHA has been adhering to this policy "on an administrative basis" in order to make the Business and Industry Division of FmHA "function in a manner consistent with the private sector." After questions were raised about the legality of the practice by the Office of General Counsel of the Department of Agriculture, FmHA

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submitted the matter to us for our "concurrence in this interest accrual termination policy."

As explained in the submission, FmHA would like to continue "to administratively terminate interest accrual" when requested by its state offices in the following circumstances:

"1) FmHA has repurchased the guaranteed portion of the loan from the holder(s), 2) There will likely be a loss on the loan, and 3) The lender has terminated interest accrual on the unguaranteed portion of the loan."

FmHA sets forth various reasons to support its proposal. We have summarized FmHA's reasons below.^{1/}

1. FmHA's termination of interest accrual on loans of this type "would be consistent" with the policy in the private sector.
2. The termination of interest accrual would tend to expedite the liquidation process.
3. The termination of interest accrual is already permitted once an order for relief in bankruptcy is entered.
4. Accrued interest is shown as an asset on FmHA's "book," creating a false impression to anyone reviewing FmHA's operations since FmHA "knew from the beginning it was uncollectible."

ANALYSIS

Our Office has consistently held that, unless specifically authorized by statute, the officers and agents of the government do not have any authority to waive contractual rights which have accrued to the United States or to modify existing contracts to the detriment of the United States without adequate legal consideration or a compensating benefit. See 45 Comp. Gen. 224, 227 (1965); 44 Comp. Gen. 746, 749 (1965); and 41 Comp. Gen. 169, 172 (1961). See also Union National Bank v. Weaver, 604 F.2d 543, 545 (7th Cir. 1979), which endorsed our unpublished decision B-181432, March 13, 1975.

^{1/} FmHA's submission cited six separate reasons from which we have culled the four main arguments that FmHA relies on to support its proposal.

This rule is clearly applicable to the defaulted loans that are the subject of FmHA's proposal. As explained in the submission, FmHA is proposing to terminate the accrual of interest on the guaranteed portion of loans after repurchase by FmHA. Under Paragraph X(D) of the Lender's Agreement (Form FmHA 449-35), the holder of the guaranteed portion of a loan must assign "all rights, title, and interest in the loan" to FmHA when it requests payment from FmHA. Upon payment by FmHA, FmHA is "subrogated to all rights of Holder(s)." This includes the holder's right to receive interest on the unpaid principal at the interest rate specified in the note. It is this right to accrued interest on the outstanding balance of the guaranteed portion of the loan that FmHA is proposing to relinquish. Unless FmHA receives valid legal consideration or a compensating benefit, it cannot waive its right to accrued interest on these loans, in the absence of specific statutory authority to do so. See B-226058, July 21, 1987.

In our view, none of the reasons cited by FmHA in its submission constitute the type of compensating benefit that is required in order for FmHA to relinquish its contractual rights to receive interest on the guaranteed portion of the loans at the stated rate. The reasons set forth by FmHA represent an attempt to justify its proposal from a policy, rather than a legal, standpoint. Our Office has consistently held that such policy considerations are not a valid substitute for adequate consideration and cannot be used to justify an agency's waiver of the government's rights under a contract. See B-226058, July 21, 1987; B-223329, October 17, 1986 (66 Comp. Gen. ____); and 35 Comp. Gen. 56, 59 (1955).

As stated above, however, our Office has recognized that, even in cases where there is no compensating benefit, the government's rights under a contract may still be waived if there is specific statutory authority to do so. See 62 Comp. Gen. 489 (1983) and B-226058, July 21, 1987. FmHA's enabling legislation contains such a provision which authorizes the Secretary of Agriculture, acting through FmHA and its Administrator, to:

"(d) compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require, to carry out this chapter. The Secretary may release borrowers or others obligated on a debt incurred under this chapter from personal liability with or without payment of any

consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim, except that no compromise, adjustment, reduction, or charge-off of any claim may be made or carried out--

"(1) on terms more favorable than those recommended by the appropriate county committee utilized pursuant to section 1982 of this title; or
"(2) after the claim has been referred to the Attorney General, unless the Attorney General approves;" 7 U.S.C. § 1981(d).


Clearly, this provision gives the Administrator of FmHA considerable discretion to compromise, adjust, reduce, or charge off claims against borrowers, whether or not FmHA receives any consideration for agreeing to relinquish its right under the loan agreement in this fashion. We think that this provision would authorize FmHA to adjust or reduce the borrower's obligation under a loan by terminating the accrual of interest on the unpaid balance of the loan in the circumstances cited in FmHA's submission.

However, FmHA's broad discretion under 7 U.S.C. § 1981(d) appears to have been significantly restricted by the regulations FmHA has adopted to implement the statute. See 7 C.F.R. Part 1864--Debt Settlement. These regulations set forth the policies and procedures under which FmHA exercises its statutory authority to adjust (reduce), cancel, or charge off debts owed to it. See 7 C.F.R. § 1864.2. In our view, FmHA's proposal to administratively terminate interest accrual on guaranteed loans purchased by FmHA if there is "likely" to be a loss on the loan and the lender has terminated interest accrual on the unguaranteed portion of the loan, is not consistent with its authority under these regulations. For example, under 7 C.F.R. § 1864.3, FmHA's authority to compromise or adjust (reduce) claims is conditioned upon the borrower's payment or promise to pay FmHA a lesser amount to satisfy the entire debt. Other conditions further limit FmHA's authority under this regulatory provision.

Under FmHA's proposal, as we understand it, however, FmHA would unilaterally reduce its claim against a borrower by the amount of interest that would otherwise accrue on the unpaid guaranteed balance of the loan without obtaining any payment or assurance of payment from the borrower with respect to the balance remaining after the adjustment. This is not consistent with the concept of compromise or adjustment of a claim as set forth in FmHA's own regulations. See 7 C.F.R. §§ 1864.2(a)(1) and (2), and 1864.3.

Similarly, FmHA's authority under the regulations to charge off or cancel debts is limited to special circumstances. For example, FmHA is authorized to take such actions if there is no known security for the loan or if the borrower has disappeared, died, or declared bankruptcy. See 7 C.F.R. §§ 1864.4, 1864.5 and 1864.7. FmHA's proposal to terminate the accrual of interest, however, is not limited to loans or borrowers that fall within these categories.

Thus, while we think that FmHA would have the authority under 7 U.S.C. § 1981(d) to adopt this proposal to terminate the accrual of interest on defaulted loans in the circumstances cited, it is our view that such authority has been restricted by the regulations FmHA has adopted. Accordingly, since these regulations have the full force and effect of law, it is our opinion that unless or until such regulations are changed, FmHA may only terminate the accrual of interest on a loan if the borrower is eligible for such a debt reduction under the applicable regulations.

for 
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