Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Calculation of Debt, and Interest on Debt, Owed to Department of Housing and Urban Development

File: B-245138

Date: July 7, 1992

DIGEST

1. Secretary of Housing and Urban Development has authority under the National Housing Act to automatically reduce the amount of debt due on Federal Housing Administration (FHA) insured loans for manufactured homes by deducting the greater of the sale price or the appraised value of the home from the outstanding loan balance. As a matter of proper accounting practice, FHA may choose to reflect the compromise of the loans by booking either (a) the loan amount and then immediately adjusting that amount to an amount equal to the insurance paid or (b) the amount of the reduced loan (which equals the amount of the insurance paid by FHA).

2. Secretary of Housing and Urban Development has authority under the National Housing Act to assess interest on manufactured housing and property improvement loans made pursuant to Title I of the Act at the lesser of the rate specified in the borrower's promissory note or the Treasury rate.

DECISION

The General Counsel of the Department of Housing and Urban Development (HUD) has requested our opinion concerning the computation of debts owed HUD on defaulted manufactured home loans and the assessment of interest on those loans and property improvement loans. The request was precipitated by a difference of opinion between the Federal Housing Administration (FHA) and HUD's Inspector General (IG). The IG disagrees with FHA's current practices of computing debts owed by those who default on loans guaranteed by FHA by subtracting from the outstanding loan balance the greater of the sale proceeds or the appraised value of the manufactured home, and assessing interest on the debts at the lesser of the note rate or Treasury rate. We conclude that FHA's current practices are authorized by law.

BACKGROUND

Section 2 of Title I of the National Housing Act (NHA), 12 U.S.C. § 1703, authorizes HUD to insure approved lending institutions against losses sustained as a result of defaults by borrowers on loans made to finance the purchase of manufactured homes.[1] FHA is the agency within HUD responsible for the administration of Title I. Under the Title I program, after a default, the lender is required to obtain an appraisal of the home and to sell it. The lender then submits its claim to FHA for any loss. In calculating its loss, the lender is required by FHA regulations to deduct the greater of the sale price or the appraisal value from the outstanding loan balance. FHA then reimburses the lender in an amount not to exceed 90 percent of the lender's loss. 24 C.F.R. § 201.55. In return, the lender assigns the obligation, generally evidenced either by a retail sales contract or a promissory note, to FHA. FHA then attempts to collect from the borrower an amount equal to the outstanding loan balance minus the greater of the sale price or the appraised value, and assesses interest on the debt at the lesser of the note rate or the Treasury rate.

MANUFACTURED HOME LOAN DEBT

FHA relies on section 2(c)(2) of the NHA as authority for using the appraised value, when that amount is greater than the sale price, in computing the amount of the borrower's debt to FHA. Section 2(c)(2) authorizes the Secretary, HUD "to pursue to final collection, by way of compromise or otherwise, all claims assigned by mortgagees to the Secretary in connection with real or personal property by way of deficiency or otherwise." 12 U.S.C. § 1703(c)(2). When the appraised value is greater than the sale price, FHA shows on its books as the outstanding debt the outstanding loan balance less the appraised value, rather than the outstanding balance minus the sale price. FHA's decision to use this calculation of the debt is based on its determination that using a sale price that is less than the appraised value could result in the debtor challenging the sale as commercially unreasonable under section 9-507 (2) of the Uniform Commercial Code, and further, that as a matter of fairness, the borrower should be credited with the full value of the collateral when FHA, assignee of the loan, gave the lender the same credit.

HUD's IG asserts that proper accounting practice requires that FHA record the debt as the amount of the note less any sale proceeds, without any reference to the appraised value

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[1] A manufactured home is a mobile home.

of the home. The IG believes that if the debt is difficult to collect, section 2(c)(2) allows HUD to compromise the debt, but on a case by case basis only, instead of the automatic reduction of all such notes occasioned by the application of FHA's so-called "greater of" rule. The IG asserts that FHA's current practice of recording the amount of the debt only after the automatic reduction results in significant understatement of FHA's debt collection potential.

HUD's question regarding the calculation of the debt requires us to address two issues: first, whether HUD has authority to compromise the debt as it now does; and second, how the debt should be reflected in HUD's books.

In general, an agency's interpretation of a statute it is charged with implementing is entitled to deference and should be upheld unless irrational, arbitrary, or capricious.[2] Udall v. Tallman, 380 U.S. 1 (1965); 63 Comp. Gen. 285, 287 (1984). We have previously found the statutory grant of authority under section 2(c)(2) to be extremely broad. See 36 Comp. Gen. 697, 698 (1957). A federal court interpreting the phrase "by way of compromise or otherwise" in another HUD statute said that it "manifests Congress's intent that the Secretary have broad latitude to pursue collection of a claim." See Fox v. Commissioner of Internal Revenue, 874 F.2d 560, 564 (8th Cir. 1989) (interpreting section 726 (3) of the Housing and Urban Development Act of 1970, 42 U.S.C. § 4527). We do not view FHA's interpretation of section 2(c)(2), that the statute permits the agency to compromise the amount of manufactured home loan debts as a matter of course, to be inconsistent with the language of the statute, and we find no indication in the statute's legislative history to suggest that the Secretary's compromise authority should be applied only on a case by case basis, as the IG suggests.[3]

Whether FHA should account for the debt using its current practice or the one suggested by the IG is a management decision. Booking the debt in the amount of the outstanding loan balance less sale proceeds, as the IG suggests, and

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[2]We note that FHA has calculated the borrower's debt to the agency using the "greater of" rule since the inception of the program in 1969.

[3]Our conclusion here does not address the merits of the Secretary's determination to compromise the claims in this manner. We merely decide that the broad authority conferred upon the Secretary by section 2(c)(2) permits him to make such a compromise.

then making an immediate adjustment to reflect the write down would show the receivable to which FHA is legally entitled and would provide FHA with some measure of the cost of its debt reduction practice. From an accounting standpoint, however, either method is acceptable, provided FHA recognizes on its books the amount it actually expects to collect.

INTEREST ON MANUFACTURED HOME LOAN DEBT AND PROPERTY IMPROVEMENT LOAN DEBT

When FHA accepts the assignment of defaulted manufactured home loans and property improvement loans from the lending institutions, it records interest on the debt at the lesser of the note rate or the Treasury rate. (As a practical matter, this means that the note rate is rarely used since the Treasury rate is almost always lower.) As with the amount of the debt, the question here is whether FHA has the authority to automatically reduce the interest rate on all such notes from the rate set forth in the note to the Treasury rate.

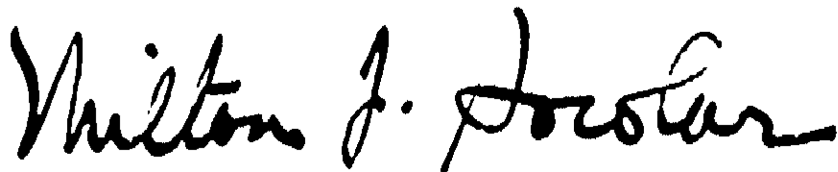
The Debt Collection Act of 1982, 31 U.S.C. § 3717, provides that an agency shall charge a minimum annual rate of interest equal to the Treasury rate unless a statute, regulation required by statute, loan agreement or contract explicitly fixes the interest. FHA believes that section 2(c)(2) standing alone furnishes the Secretary with sufficient authority to reduce the interest rate and that section 7(i)(5) of the Department of Housing and Urban Development Act (HUDA), 42 U.S.C. § 3535, provides additional authority to do so. Section 7(i)(5) provides the Secretary general authority to "consent to the modification, with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which he is a party or which has been transferred to him."

The IG believes that since the note is a "loan agreement or contract" which may explicitly fix the interest, FHA should apply the rate specified in the note, and only if none is stated, then apply the Treasury rate. While the IG does not question FHA's authority to reduce the interest rate to a level that is manageable by a particular borrower in an appropriate situation, he believes the program-wide application of the lesser rate procedure is an unauthorized forgiveness of debt and encourages delinquent borrowers to continue in their delinquency. The IG argues that FHA's authority under section 2(c)(2) of NHA and section 7(i)(5) of HUDA allow only a bilateral, negotiated type of settlement reduction as opposed to the unilateral, across

the board reduction which occurs under FHA's current procedures.

We find nothing in the Debt Collection Act which would preclude FHA from charging the Treasury rate, in lieu of the note rate, when the Treasury rate is lower. While the Debt Collection Act states that the Treasury rate will not apply if a loan agreement explicitly fixes the interest or charges, the Act does not curtail the Secretary's broad authority to compromise that debt by reducing the interest rate set forth in the notes. The legislative history of the Debt Collection Act shows a congressional intent to require the imposition of annual interest charges on delinquent debt. FHA is imposing interest on the debt here.

We do not read FHA's statutory authority as limited to reducing the interest rate solely on a case by case basis. We find nothing inherent in the language of NHA and HUDA which dictates a negotiated settlement in each instance of an interest rate reduction. As we stated previously, we view the grant of authority to the Secretary under section 2(c)(2) of the NHA, "to pursue to final collection, by way of compromise or otherwise, all claims assigned . . . ", as endowing the Secretary with broad powers to compromise debts, including that part of the debt comprised of interest.



for Comptroller General
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