

Legal Opinion: GCH-0068

Index: 2.800

Subject: Conversion or Termination of Sec. 202 Fund Reservations

July 29, 1992

MEMORANDUM FOR: Robert W. Wilden, Director, Assisted
Elderly and Handicapped Housing Division, HMEE

FROM: Robert S. Kenison, Associate General Counsel
Office of Assisted Housing and Community Development, GC

SUBJECT: Use of Funds Obtained from Conversion or Subsequent
Termination of Section 202 Fund Reservations

This responds to your June 26, 1992, memorandum requesting a legal opinion as to the availability of funds generated by (1) the conversion of Section 202/8 projects to Section 202 or Section 811 capital advance projects and (2) by subsequent cancellation of capital advance and project rental assistance funds reservations for such converted projects. We view these as two separate and independent actions.

Sections 801 and 811 of the National Affordable Housing Act (NAHA) and the Fiscal Year 1991 HUD Appropriations Act authorized sponsors of projects for which loans had not been executed and recorded (i.e., initially closed) to elect to convert these projects to funding under the respective capital advance programs. The Fiscal Year 1992 HUD Appropriations Act (1992 Act) required HUD to convert all previously reserved Section 202 projects to capital advance projects if the loan had not been executed and recorded and if the project was making satisfactory progress, not earlier than January 1, 1992 and no later than April 1, 1992. Upon such conversion the loan reservation was required to be terminated.

The 1992 Act further required HUD to convert each funding reservation made under Section 8 of the United States Housing Act (USH Act) or Section 202(h) of the Housing Act of 1959 to a commitment for project rental assistance under such Section 202 as amended by Section 801 of NAHA or Section 811 of NAHA for projects converted to capital advance projects. We understand that all projects in the Section 202 pipeline, totalling approximately 500 projects with 15,000 units, were converted to capital advance projects, commencing in January 1992.

The 1992 Act appropriated "\$1,750,000,000 of section 8 funds arising from the conversion to the new capital advance program of projects previously reserved under section 202 of the Housing Act of 1959 as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act" for assistance under the USH

Act. This appropriation was designated in the Conference Report table of Annual Contributions for FY 1992--Budgetary Resources as "Sec. 8 Recaptures from Sec. 202 Conversions" (H.R. Rep. 102-226, p. 18). The availability of this funding was explained as follows in the Senate Report: "These funds are no longer needed for the 202 program because of the conversion of projects to the new elderly and handicapped program which is funded through capital grants rather than as a direct loan program" (S. Rep. 102-107, p. 43). An estimated \$1,200,000,000 of Section 8 budget authority has become available as the result of conversions of direct loan projects to capital advance projects, and is thus well within the amount appropriated by the 1992 Act. We view the Section 8 budget authority made available as the result of such conversions as being merged in the general annual contributions authority. Its availability would not be affected by subsequent cancellation of the project rental assistance funds reservation for the converted project.

The second question raised is, in a case where a project is converted and subsequently cancelled during Fiscal Year 1992, whether the capital advance authority and rental assistance budget authority remains available for reuse. We are of the opinion that the converted projects, by virtue of the provisions for conversion in the 1992 Act, should be viewed as new reservations, even though the source of the funding is the funds originally reserved under the superseded program. The Section 202 loan authority would have lapsed and the Section 8 budget and contract authority would have been recaptured had the original reservations for these projects been cancelled since the reservations were made in a prior Fiscal Year. However, the converted projects--by virtue of the statutorily mandated conversion to a new status--are not subject to the same constraints. The reservations of capital advance and project rental assistance authority made during the current Fiscal Year for the converted projects have the same status as the new projects for which capital advance and project rental assistance reservations were made during March, 1992.

A total of 19 projects with 999 units having originally had Fiscal Year 1987 or earlier fund reservations became subject to cancellation on June 30, 1992. Interim Notice H 92-7 I instructed Field Offices to proceed with cancellations (except for two projects in litigation) of projects "which are not making reasonable progress in closing by June 30, 1992." Several of these projects are expected to be able to establish good cause for delay and the ability to close before the final deadline of September 30, 1992. Approximately 94 projects funded in FY 1988 will not be eligible for amendment funds after September 30, 1992 and thus will be cancelled after that date if they need amendment funds.

We are of the opinion that contract and budget authority becoming available as the result of cancellation of converted projects during the remainder of Fiscal Year 1992 would be available for reuse until September 30, 1992 and thereafter would

be subject to the provisions governing recaptures contained in the Fiscal Year 1993 Appropriations Act.