



Office of the
Comptroller of the Currency

THE ADMINISTRATOR OF NATIONAL BANKS

WASHINGTON, D.C. 20220

October 16, 1970

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Legal aspects

S. Leigh Curry, Jr., Esquire
Associate General Counsel
Department of Housing and
Urban Development
451 Seventh Street, S. W.
Washington, D. C. 20410

Dear Mr. Curry:

I am sending you for your information a copy of the Comptroller's letter of October 16, 1970, on the eligibility of publicly offered obligations guaranteed by the Secretary of Housing and Urban Development under the provisions of the New Communities Act of 1968 for purchase, dealing in, underwriting and unlimited holding by national banks under the banking law.

This letter deals with the Attorney General's opinion of October 1, 1970, which your Secretary requested in order to improve the marketability of such obligations. You will be particularly interested in the second full paragraph on page two which states the conclusion of the Comptroller that such obligations would be marketable and eligible for dealing in and underwriting by national banks if in connection with issuances of each guaranty your Secretary makes the same representation which he made to the Attorney General.

Sincerely yours,

Radcliffe Park

Radcliffe Park
Associate Chief Counsel

Enclosure

MN-1603



THE ADMINISTRATOR OF NATIONAL BANKS

WASHINGTON, D.C. 20220

October 16, 1970

Office of the
Comptroller of the Currency

Mr. David G. Taylor, Vice President
Continental Illinois National Bank
and Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois 60690

Dear Mr. Taylor:

In your letter of September 29, 1970, you request confirmation that publicly offered obligations guaranteed under the provisions of the New Communities Act of 1968, 42 U.S.C. 3901, et seq., would be eligible for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

The New Communities Act of 1968 authorizes the Secretary of Housing and Urban Development to guarantee bonds and other obligations issued by new community developers and provides that the guaranty shall be incontestable in the hands of a qualified holder of the guaranteed obligation except for fraud or material misrepresentation on the part of such holder. It also provides that such bonds must be issued to and held by investors approved by or meeting the requirements prescribed by the Secretary or if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary. These provisions raise questions as to the marketability of an obligation when the Federal guaranty is available only to a restricted class of holders. These questions, however, appear to be resolved by an opinion issued by the Attorney General on October 1, 1970. The opinion relates to obligations to be sold with the approval of the Secretary to a group of underwriters for resale to the general public. The Secretary had approved the underwriters and would approve, prior to the issuance of the guaranty, the terms and conditions of the offering to the public. Significantly, the Secretary also represented to the Attorney General that there is no restriction with respect to the identity or types of investors eligible to purchase or hold the obligations.

The Attorney General ruled that the underwriters and those who purchase obligations from them in the course of the public offering

Mr. David G. Taylor

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are qualified holders and that the fraud or material misrepresentation which could void the government guaranty would of necessity be limited to statements or conduct on which the government relied when issuing the guaranty.

While the Attorney General's opinion does not go beyond the initial offering to the public, it would seem to follow that subsequent purchasers in a secondary market would also be holders and entitled to the benefits of the guaranty.

It is our conclusion that publicly offered obligations guaranteed under the provisions of the New Communities Act of 1968 would be marketable and therefore eligible for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24 if the Secretary represents that there is no restriction with respect to the identity or types of investors eligible to purchase or hold the obligations.

We will be glad to consider the eligibility of the bonds proposed by Park Forest South Developers when the necessary supporting information is ready for review.

For your convenience, I am enclosing a copy of the Attorney General's opinion of October 1, 1970.

Sincerely yours,

William B. Camp
Comptroller of the Currency

Enclosure