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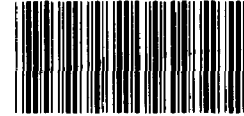


COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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JANUARY 7, 1982

The Honorable Orrin G. Hatch
Chairman, Senate Committee on
Labor and Human Resources



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The Honorable Henry A. Waxman
Chairman, Subcommittee on Health
and the Environment
House Committee on Energy and
Environment

Subject: The Agreement Between the Departments of
Health and Human Services and Agriculture
to Finance the Construction and Renovation
of Rural Health Centers Is Improper
(HRD-82-27)

We have reviewed the 1978 agreement between the Department of Health and Human Services (HHS) and the Department of Agriculture for financing the construction and renovation of rural health center facilities using Farmers Home Administration (FmHA) loans. Generally, we concluded that the repayment of FmHA loans for new construction with grant funds awarded under section 330(d) of the Public Health Service Act is improper, constitutes a circumvention of statutory restrictions, and should be discontinued. We are sending this report to you because of your oversight responsibilities regarding HHS health care programs.

SCOPE AND METHODOLOGY

We became aware of this interagency agreement during an earlier review, which evaluated the adequacy of the need determination mechanisms used to make decisions on funding grantees under HHS' urban and rural health initiatives. That review culminated in our report "Health Service Program Needs Assessments Found Inadequate" (HRD-81-63), which was provided to you on June 15, 1981.

In reviewing the loan agreement, we evaluated HHS' position regarding the use of section 330(d) grant funds to pay for community health center construction, and how it has changed over time. We gathered information on the number of loans made under the agreement as well as loan amounts and purposes for which the loans were made. We also reviewed the legality of the loan

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arrangement. Finally, we made a limited assessment of the impact of implementing certain recommendations in our needs assessment report (cited above) on health centers that had been constructed with FmHA loans. The purpose of this effort was to highlight actions that could be taken to deal with situations where health centers were completed or substantially complete.

Our audit was conducted in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" issued by the Comptroller General.

REPAYMENT OF FmHA CONSTRUCTION LOANS BY
HHS RURAL HEALTH PROJECTS IS IMPROPER

As of July 21, 1981, FmHA had made 169 loans totaling \$59 million to HHS rural health project grantees under the interagency agreement. Of this total, we believe that about \$50.7 million was improperly used to fund the construction of new facilities. HHS has relied on the enactment of section 330(d) of the Public Health Service Act in 1975 to support its change in position from not allowing grant funds to pay construction costs to an endorsement of the interagency agreement which allowed construction costs to be repaid with grant funds.

Section 330(d) of the Public Health Service Act states that grant funds may be awarded for projects to plan, develop, and operate community health centers and may include "* * * the cost of acquiring and modernizing existing buildings." (underscoring supplied). Implementing regulations also provide for the acquisition and modernization of existing buildings, and grant application guidelines state:

"Construction - Use for alteration, and renovation only. Alterations and renovations may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization. Proposed costs that constitute new construction, relocation of exterior walls, roofs and floors, or completion of unfinished shell space to make it suitable for human occupancy are considered to be construction and are unallowable unless specifically authorized by legislation and defined in program regulations."

Rural health projects that have received FmHA construction loans are generally funded under HHS' community health

center program. 1/ The community health center program originated in the mid-1960s as part of the Office of Economic Opportunity's (OEO's) neighborhood health center program, which was instituted to provide health care, employment, and training to local residents. In the late 1960s, HHS began supporting centers that were similar to the OEO neighborhood health centers, except that HHS placed less emphasis on employment and training and more emphasis on providing health services. The neighborhood health centers were later transferred to HHS and were funded under section 314(e) of the Public Health Service Act. Through an amendment in 1975 (P.L. 94-63), section 314(e) was replaced with section 330, which specifically authorized grants to support the planning, development, and operation of community health centers in areas designated by HHS as medically underserved.

As early as 1969, HHS' Office of General Counsel (OGC) took the position that section 314(e) did not authorize projects for the erection or expansion of health facilities, as shown below:

"In our opinion, section 314(e) does not authorize projects for the erection or expansion of health facilities, as such, and where the purpose of an application under that section is to secure funds to meet the costs of such construction, it may not be approved."

This position was reaffirmed by OGC in a 1971 memorandum to the Deputy Associate Administrator for Operations.

After passage of the community health center legislation in 1975, HHS implemented a rural health initiative to provide primary health care services to medically underserved rural area residents. This initiative was part of the broader community health center program funded under section 330.

In 1978, the administration announced another initiative to bring together resources for a comprehensive approach to rural health. An outgrowth of this initiative was the agreement between HHS and the Department of Agriculture to provide for the construction and renovation of rural health center facilities. Under the agreement FmHA was to set aside during each of fiscal years 1979

1/A limited number of the FmHA loans were made to migrant health centers, which are funded under section 329 of the Public Health Service Act. However, since many migrant centers also receive section 330 funds, and the prohibition against construction is the same in section 329 and 330, we did not make a separate analysis of loans to migrant projects.

through 1983 a portion of its community facility funds for rural health center loans. These loans were to be made to rural health center project sponsors for up to 100 percent of project construction and renovation costs. Repayment periods of up to 40 years at 5-percent interest were authorized. In return, HHS agreed to fund health center operating expenses to the extent appropriations allowed during the life of the loan and to permit the grantee to repay FmHA loans either through the use of grant dollars and/or grant-generated income.

After this agreement was executed, HHS' OGC was asked whether section 330(d) funds could be used to pay FmHA loans. In a January 23, 1979, response, OGC stated:

"In our opinion (though the matter is not free from doubt), a reasonable argument may be made that grant funds under sections 329(d) and 330(d) of the PHS Act may be used to pay the costs of amortizing the principal of, and paying the interest on, loans undertaken for the construction of health facilities for eligible projects, as part of the operating costs of those projects."

While OGC's position was guarded, it enabled the HHS/FmHA agreement to be implemented. In arriving at this position, OGC relied on a statement in a Senate Committee report regarding planning and development grants (section 330(c)) as support for allowing construction costs under operating grants (section 330(d)) on the theory that the legislative language from both sections was essentially the same. However, the legislation, as enacted for both planning and development and operating grants, clearly states that grant funds are to be used for the cost of acquiring and modernizing existing buildings. A reference to construction of new facilities which had been in an earlier version of the legislation was deleted.

The memorandum containing the legal opinion also recognized that the new position allowed a substantial departure from previous HHS practice, as shown below:

"It has long been the position of this office that grant funds may not be used to pay construction costs in the absence of a clear statement of legislative intention that they are available for that purpose."

Because of HHS' changing position, we reviewed the loan agreement regarding the propriety of using section 330(d) funds to repay FMHA construction loans. In our opinion, with the exception of subparagraph (d)(4)(B), which provides that a portion of fees or third-party reimbursements received by the grantee may be retained by the grantee and used for construction in the succeeding fiscal years, HHS does not have authority to use section 330(d) grant moneys to fund construction of new buildings, whether such funding is done directly, or indirectly by use of the grant funds for repayment of construction loans. We further believe that the effect of the Agriculture/HHS agreement is to make section 330(d) funds available, indirectly, to finance construction and thereby circumvent the statutory restriction.

CONCLUSIONS

HHS' practice of using section 330(d) grant funds to directly or indirectly repay FMHA loans made to finance the construction of new rural health centers under the HHS/Agriculture joint agreement is improper. In our opinion, the repayment of such loans with section 330(d) grant funds constitutes a circumvention of statutory restrictions. Therefore, we believe that HHS should not make any additional commitments to support loans for new construction, and should initiate action to discontinue its support of existing loans in instances where construction has not started. We recognize that dealing with this matter where the use of section 330(d) grant funds has been approved for the construction of a health center which is either completed or underway is more difficult. One approach HHS should consider relates to HHS' plans for implementing a recommendation in our report entitled "Health Service Program Needs Assessment Found Inadequate" (HRD-81-63, dated June 15, 1981). In that report we pointed out that the need determination mechanisms for the community health center program (section 330) did not provide adequate justification for establishing specific centers. Of 30 centers we had visited, 21 had not met minimum funding requirements. We recommended that HHS reevaluate the eligibility of existing section 330 grantees and phase out those that cannot be justified. We understand that HHS is working on the implementation of this recommendation.

The implementation of this earlier recommendation should identify health centers whose continued existence can or cannot be justified. For those health centers that cannot be justified, we believe HHS should withdraw all grant support and to the extent appropriate work with FMHA to find other uses for the facilities.

Finally, we do not believe that any useful purpose would be served by withdrawing support in locations where facilities are needed and justified, and where communities have essentially relied on the propriety of Federal Government actions.

RECOMMENDATIONS

We recommend that the Secretary of HHS:

- Stop supporting new loans for construction under the HHS/Agriculture loan agreement.
- Discontinue support of all loans for health center projects where construction has not started.
- Withdraw support for projects completed or underway where facilities are not needed and, to the extent appropriate, work with FmHA to find other uses for the facilities. A determination of need should be made during the process of implementing the recommendation in our earlier report entitled "Health Service Program Needs Assessments Found Inadequate" (HRD-81-63, June 15, 1981).

HHS COMMENTS AND OUR EVALUATION

HHS agreed with our recommendation that support be withdrawn for projects completed or underway when the health centers cannot be justified under revised needs assessment criteria. However, the Department did not concur with our recommendations that it

- stop supporting new loans for construction under the HHS/Agriculture loan agreement and
- cancel support of all loans for health center projects where construction has not started.

HHS did not concur with our analysis that the interagency agreement is improper and constitutes a circumvention of statutory restrictions. According to the Department, its OGC addressed this issue in a January 23, 1979, opinion which concluded that the statute provides sufficient support for using funds awarded under sections (329(d) and 330(d)) to repay FmHA construction loans as part of the operating costs of community and migrant health centers. HHS stated that, upon reconsidering its opinion in light of our comments, OGC continues to believe that its position is legally supported.

As a part of our analysis, we reviewed the January 23, 1979, OGC opinion referred to by HHS. We disagreed with that opinion for the reasons discussed earlier, and nothing in the Department's comments raises any new argument that would cause us to change our conclusions.

In its comments and its 1979 OGC opinion, HHS endeavored to support its contention that operating grants (section 330(d)) could be used to finance new construction by referring to a statement in a Senate report on the 1975 authorizing legislation which indicated that planning and development grants (section 330(c)) were intended to be available for construction. The statement relied on is ambiguous and could as easily be cited to show that congressional intent was to allow construction only for planning and development grants and not for operating grants. Also, another part of that Senate report contains a discussion of the community mental health centers program which is consistent with the notion that operating grants should not be used for construction and seems equally applicable to the community health center program. That part of the report states that the Committee wanted to curtail expensive new construction in favor of renovating existing buildings which are more likely to be convenient for the target population.

In the final analysis, the legislation clearly states that grant funds can be used to acquire and modernize existing buildings. When a statute is clear, as section 330(d) is, there is no need to resort to the legislative history. In this case, even if the history is taken into account, it does not strongly or unequivocally support HHS' interpretation. As mentioned on page 4, the history suggests that using 330(d) funds for new construction was deliberately prohibited in the 1975 act when a specific provision allowing grants for construction of new facilities was deleted in conference from an early version of section 330.

HHS also stated that the conclusions in our draft report are inconsistent with our proposed recommendations. The Department pointed out that the report states that HHS lacks authority to use section 330(d) funds to construct new buildings, either directly or indirectly but nevertheless recommends that it not withdraw support where facilities are needed and justified.

Our report does not specifically make the recommendation quoted in HHS' response. However, our conclusions suggest that little would be gained at this time by withdrawing support for projects completed or underway in locations where facilities are needed and justified. Our goal was to reach a practical solution to a situation resulting from an improper action that had already

taken place. If HHS withdraws support for repaying FmHA loans, the loans would likely be defaulted and FmHA's only recourse would be to foreclose and attempt to dispose of the property. FmHA's ability to dispose of the facilities in rural areas could be limited; consequently, the Federal Government may be unable to recover its investment.

Thus, if HHS wishes to continue supporting needed facilities completed or underway, it must seek legislative authority to do so. We will not object to HHS continuing its financial support during the period reasonably required by the Congress to consider and resolve this matter.

FmHA COMMENTS

FmHA responded that, when the agreement was initially executed, it relied on the opinion of HHS' OGC that sections 329 and 330 funds could be used to repay FmHA construction loans.

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We are sending copies of this report to the Secretaries of Agriculture and Health and Human Services.



Comptroller General
of the United States