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

B-114860

JUN 23 1977

The Honorable Patricia Schroeder
House of Representatives

Dear Mrs. Schroeder:

This is in further reply to your December 22, 1976, request that we review Mr. and Mrs. Charles Henry's dispute with the Federal Housing Administration, Department of Housing and Urban Development.

We talked to Department of Housing and Urban Development officials at the Central Office in Washington, D.C., the Denver Regional Office, and the Denver Insuring Office. We also reviewed pertinent regulations, handbooks, and policies and examined the information and correspondence available in the case files and the legislative history of section 226 of the National Housing Act (12 U.S.C. 1701).

The Henrys submitted a $37,500 bid, pursuant to a Federal Housing Administration advertised solicitation for bids in that amount, on a house the Federal Housing Administration had acquired following foreclosure proceedings. The Department established the sales price and indicated it would accept bids only at that price; the Henrys were selected as the successful bidders. Purchase of the property was completed in September 1972, and it was insured by the Federal Housing Administration. The Henrys maintained that the Department failed to tell them the appraised value of the house they purchased.

The Federal Housing Administration regulation pertaining to appraisal notice requirements is contained in 24 C.F.R. 203.15, dated 1972. This requirement states:

> "An application with respect to insurance of mortgages on one- or two-family dwellings must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling the said person will deliver to the

> purchaser of such property a written statement in form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner."

The Department's lawyers interpret this regulation to involve four parties:

> "It is clear that this regulation has literal applicability only to situations which involve a four party transaction. That is, where (1) HUD/FHA is insurer of a mortgage given by, (2) an eligible purchaser-mortgagor and accepted by, (3) an FHA-approved mortgagee to facilitate a sale by (4) a willing seller. * * * The appraisal is the determination of value for mortgage insurance purposes and is used by HUD/FHA as an underwriting consideration."

In a three-party transaction, as with the Henrys, the Federal Housing Administration is both the seller and the insurer of the mortgage, and the other parties are the mortgagor and the mortgagee. Even in a three-party transaction, purchasers are told the Department's property valuation by virtue of clause (d) of the Conditions of Sale in the Department's Standard Retail Sales Contract. Clause (d) states:

> "The Purchaser agrees that the sales price of the property set forth in Item B (obverse) is the FHA value, and acknowledges that he was informed of the sales price before execution of this contract."

After reviewing the pertinent regulations, we believe that the Department's position is reasonable.

Moreover, the regulation's appraisal notification requirements reflect the requirements of section 226 of the National Housing Act, as added by section 126 of the Housing Act of 1954, 68 Stat. 607, 12 U.S.C. 1715q (1970). The purpose of section 226, as interpreted by the Supreme Court in United States v. Neustadt, 366 U.S. 696 (1961) at 708-709, is primarily to protect the Government and its insurance funds and is only incidentally to benefit purchasers, such as the Henrys. Consequently, even if clause (d) were considered totally ineffective as a device for informing purchasers of

the appraised property value, the Federal Housing Administration's failure to furnish the Henrys with a written statement of the appraised value appears legally inconsequential considering the court's conclusion.

Successful court action by the Henrys appears doubtful. This conclusion is based on Neustadt, which found the United States not liable for misrepresentation to purchasers who, relying on a Federal Housing Administration appraisal, paid above the fair market value of the property, and such lower court decisions as Cason v. United States, 381 F. Supp. 1362 (D.C.W.D. Mo., 1974) aff'd 510 F.2d 123, that denied recovery for home purchasers claiming relief for breach of contract on a third-party beneficiary theory.

After reviewing the procedures the Department followed in establishing an appraisal price and the disposition procedures in selling the Henrys the property located at 2885 Monaco Parkway, Denver, Colorado, we believe that appropriate requirements were met and that the Department acted properly and reasonably in the disposal of this property.

Sincerely yours,

P.T. Kirkham

Acting Comptroller General
of the United States