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

February 6, 1980

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The Honorable John P. Murtha
House of Representatives

Dear Mr. Murtha:

This is in response to your request for a legal opinion concerning the attempts by the Small Business Administration (SBA) to recover funds it loaned to individuals who suffered flood damage in the Johnstown area of Pennsylvania in July 1977.

Pursuant to section 7(b)(1) of the Small Business Act (15 U.S.C. § 636(b)(1) (1976)), SBA is authorized to make loans that it determines "to be necessary or appropriate because of floods, riots, or civil disorders, or other catastrophes." As a result of a Presidential disaster declaration on July 21, 1977, the Administrator of SBA determined that several counties within Pennsylvania, which had been designated by the Federal Disaster Assistance Administration (FDAA), constituted a disaster area because of damage resulting from severe storms and flooding beginning about July 19, 1977." 42 Fed. Reg. 39173 (August 2, 1977). In accordance with that declaration, SBA approved many applications for disaster relief loans from individuals within the disaster area.

Subsequently, on April 28, 1978, the State of Pennsylvania enacted legislation authorizing the Governor to make grants of up to $4,000 to any person who suffered the damage or destruction of non-business or non-farm personal property as the result of the July 1977 flood. PA. Laws, 1978-51, approved April 28, 1978. It appears that at least some of the State grants made pursuant to this legislation may have gone to individuals who had previously received an SBA disaster loan.

It is SBA's position that, pursuant to section 315 of the Disaster Relief Act of 1974 (Pub. L. No. 93-288, approved May 22, 1974, 42 U.S.C. § 5155 (1976)), all individuals who received both a State grant and an SBA disaster loan must promptly repay that portion of the disaster loan that is determined to have been "duplicated" by the later State grant.

You suggest that SBA's attempts to require disaster loan recipients who later received a State grant to make an immediate lump-sum loan repayment to SBA of the amount of the State grant, even though the loan was not delinquent, are not justified. You state:

> "* * * It certainly appears to me that, because the losses covered by the loan money are for specific items and the grant money is comprehensive regarding the total loss, these two forms of assistance are not related in any form whatsoever. Also, the SBA loan is simply a partial interest subsidy and the grant is a totally different form of assistance."

Following our customary procedure, we requested the Administrator of SBA to provide us with his views on this matter. In its response, SBA's position was set forth as follows:

> "* * * We think the intent [of section 315] is clear that where there exists duplication of benefits from any source we must collect that amount that is duplicative and return it to the Treasury. The law makes no mention that would indicate the delinquency status of a loan is a determinant or necessary factor. These are not additional payments on a loan. They reduce the size of the loan and the borrower pays that much less on his loan.
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> "It is our opinion that funds for comprehensive loss rather than specific loss are still duplicative benefits. The form or nature of the assistance is not material under the law. Whether or not the additional funds duplicate federal funds to assist disaster victims is the critical point. For example, if we have made a loan and the borrower/victim receives additional insurance proceeds, those proceeds must be applied to the loan. We apply these funds on an inverse order of maturity basis in order to lessen the maturity of the loan and afford the borrower/victim some savings in interest.
>
> "* * * We would prefer to sit down with each victim who is also a borrower receiving a State grant and make a determination of duplicate benefits. If there is duplication we expect to be paid and return to the Treasury the amount of the duplication. If there is no duplication the borrower/victim gets to keep the State grant."

Section 315 of the Disaster Relief Act of 1974, which SBA relies upon as the basis for its attempts to collect from loan recipients those amounts determined to represent "duplicate benefit", reads as follows:

"(a) The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program.

"(b) The President shall assure that no person, business concern, or other entity receives any Federal assistance for any part of a loss suffered as the result of a major disaster if such person, concern, or entity received compensation from insurance or any other source for that part of such a loss. Partial compensation for a loss or a part of a loss resulting from a major disaster shall not preclude additional Federal assistance for any part of such a loss not compensated otherwise.

"(c) Whenever the President determines (1) that a person, business concern, or other entity has received assistance under this chapter for a loss and that such person, business concern or other entity received assistance for the same loss from another source, and (2) that the amount received from all sources exceeded the amount of the loss, he shall direct such person, business concern, or other entity to pay to the Treasury an amount, not to exceed the amount of Federal assistance received, sufficient to reimburse the Federal Government for that part of the assistance which he deems excessive."

(The President has delegated much of his authority under the 1974 Act, including his authority pursuant to section 315, first to FDAA, and more recently to the Federal Emergency Management Agency (FEMA). See Exec. Order No. 11795, 39 Fed. Reg. 25939 (1974); Exec. Order No. 12148, 44 Fed. Reg. 43239 (1979).)

We agree with SBA that section 315 is intended to avoid a situation in which disaster victims receive "financial assistance" from any Federal agency for the same portion of a loss for which they also receive financial assistance from any other source. Clearly, this prohibition of duplicate benefits applies whether or not the other funding comes from another Federal program, a State program, or a private source.

Moreover, in our view, the term "financial assistance" as used in section 315 includes the type of low interest (and relatively high risk) disaster loans here involved, made by SBA pursuant to section 7(b) of the Small Business Act. (In this regard, see section 3(a)(3) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4003(a)(3) (1976), which specifically defines "financial assistance" for purposes of that Act to include loans and grants.) Accordingly, we believe that the section 315 prohibition on duplicate benefits is applicable to a situation in which the two types of assistance involved are in different forms, i.e. a Federal loan and a State grant.

Similarly, the fact that the Federal assistance is a loan for a specific portion of the victim's loss, and is repayable, whereas the State assistance is a non-repayable grant of a more "comprehensive" nature in that it is not identified to any portion of the overall loss, does not preclude a determination of duplicate benefits. As subsections 315 (a) and (b) expressly state, the prohibition on duplicate benefits applies whenever disaster assistance is received from more than one source for the same portion of a disaster loss. We agree with SBA that the critical issue is not the form or nature of the assistance furnished, but "whether or not the additional funds duplicate federal funds to assist disaster victims." Of course, determinations of duplicate benefits would have to be made on a case-by-case basis, as SBA indicates is being done, rather than by treating all of these borrowers in identical fashion.

However, section 315 standing alone does not authorize SBA to compel borrowers, who are otherwise complying with the terms of their SBA loans, to repay, before the due date set by the terms of the loan agreement, the amount they later received in a State grant which is determined to be duplicative. Subsections 315 (a) and (b) enjoin the President to prevent duplication but they do not provide, as does subsection 315(c), for recovery of the excessive benefits when duplication occurs. Under subsections 315 (a) and (b), if the State of Pennsylvania had made these grants before SBA had acted, the recipients would not have been entitled to receive subsequent disaster loans from SBA for the same losses covered by the grants. However, in the situation, before us, there was no duplication of benefits at the time the SBA made the loans, since the State grants were made later.

Subsection 315(c) is the only provision in section 315 that specifically authorizes recovery when, as here, the recipient of Federal assistance subsequently receives "duplicate" benefits from some other source. Although subsection (c) does authorize recoupment of all Federal assistance that is determined to have been excessive, there

are problems with applying that provision to these facts. First, the responsibility for making the determination of duplicate benefits which, according to the statute, is the President's, has been delegated first to FDAA and later FEMA. Equivalent authority has not been delegated to SBA. Moreover, unlike section 315(a), section 315(c) does not indicate that this responsibility is to be shared with any other Federal agency. Our interpretation of subsection 315(c) in this regard is consistent with SBA's own position as set forth in its Standard Operating Procedures Manual concerning "Duplication of Benefits" which reads as follows:

> "SBA is responsible for establishing DL [disaster loan] processing procedures that will avoid, to the extent possible, any duplication of benefits received by any disaster victim. However, the Disaster Relief Act of 1974 gives the Federal Disaster Assistance Administration (FDAA) the responsibility for policing disaster operations to avoid duplication of benefits and for collecting any duplicate benefits from the disaster victims who receive them." (Emphasis added.)

Second, and perhaps more significant, the reimbursement requirement in section 315(c), unlike the corresponding language in subsections (a) and (b), only applies to disaster assistance "under this chapter", i.e., furnished pursuant to the Disaster Relief Act of 1974. It is clear, however, that the loans in question were made by SBA pursuant to its own statutory authority to make disaster loans, set forth in section 7(b)(1) of the Small Business Act. Accordingly, we do not believe that the language in 315(c), requiring the Federal Government to collect any amount of Federal assistance to disaster victims that is determined to have been duplicated by assistance from other sources can, by itself, give SBA authority to unilaterally accelerate repayment of these loans if the terms of the loan agreement did not so provide.

Although SBA's formal response to our Office concerning this question appears to base its ability to recoup entirely on section 315 of the Disaster Relief Act of 1974, we have subsequently been advised informally by SBA that the loan authorization agreement which a borrower is required to sign prior to receiving any loan funds does provide for repayment of duplicate assistance. Typical language reads as follows:

> "Borrower hereby assigns all grants, awards, payments, insurance proceeds and any other funds from any source, received or to be received, as compensation for loss for which the SBA disaster loan is to replace or rehabilitate, to the extent of the outstanding

balance due on the SBA loan, which moneys are to be applied to the SBA loan as payment in inverse order of maturity."

Based on such a provision, a borrower is clearly required to pay to SBA that portion of a State grant award, whether received before or after the SBA disaster loan was made, that represents compensation for a loss for which the disaster victim also received the loan from SBA. Furthermore, no question can be raised as to the validity of this provision since, in our view, it is entirely consistent with the implicit purpose of section 315, to avoid the situation in which disaster victims receive duplicate benefits.

In accordance with the foregoing, we agree with SBA's attempts to recover, and apply against the outstanding balance of these disaster loans, those amounts that it determines to represent duplicate benefits.

We note that the Conference Committee on S.918, 96th Congress, a bill which would amend the Small Business Act, has recommended enactment of an amendment to section 7(b) of that Act which would address the matter of duplication of disaster benefits. If enacted, section 117 of this legislation would provide that any State grant made on or before July 1, 1979, shall not be considered to be "compensation" for the purpose of applying subsection 315(b) to an SBA disaster loan funded under sections 7(b)(1) (2), or (4). H.R. Rep. No. 96-705, 10, 58 (1979). The House of Representatives adopted the conference report on December 19, 1979 (125 Cong. Rec. H12261). Although the Senate subsequently rejected the conference report, it adopted an amended version of S.918 that contained identical language in section 117. 126 Cong. Rec. 359 (daily ed., January 24, 1980). As of January 29, 1980, the House and Senate had not reached final agreement on the legislation. We recognize that the proposed amendment, originally introduced on the floor of the Senate (125 Cong. Rec. S6062-63, daily ed., May 16, 1979), was intended to remedy the situation you are concerned with. However, it might not do so, in our view, because the amendment limits the applicability only of subsection 315(b) which as explained above, is not the basis for SBA's legal authority to recover duplicate benefits from those disaster loan recipients that received them.

Sincerely yours,

Milton J. Socolar

For The Comptroller General
of the United States