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B-158337, Mar. 11, 1966

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B-158337, MAR. 11, 1966

TO ADMINISTRATOR, VETERANS ADMINISTRATION:

WE REFER TO YOUR LETTER OF JANUARY 13, 1966, SUBMITTING FOR OUR CONSIDERATION A QUESTION CONCERNING THE ADMINISTRATION OF THE WAIVER PROVISION OF SECTION 1820/A) (4), CHAPTER 37 OF TITLE 38, UNITED STATES CODE.

SECTION 1820/A) (4) AUTHORIZES THE ADMINISTRATOR OF VETERANS' AFFAIRS TO WAIVE OR RELEASE ANY CLAIM ARISING BY REASON OF THE HOME, FARM AND BUSINESS LOAN PROGRAMS OF CHAPTER 37, TITLE 38, UNITED STATES CODE. CLARIFY THE WAIVER AUTHORITY REGARDING THE INDEBTEDNESS OF VETERANS FOLLOWING THEIR DEFAULT ON A LOAN, THERE WAS ADDED TO THE SECTION, BY PUBLIC LAW 88-151, APPROVED OCTOBER 17, 1963, THE CLAUSE: "AND THE AUTHORITY TO WAIVE OR RELEASE CLAIMS MAY INCLUDE PARTIAL OR TOTAL WAIVER OF PAYMENT BY THE VETERAN, OR HIS SPOUSE, FOLLOWING DEFAULT AND LOSS OF THE PROPERTY WHERE THE ADMINISTRATOR DETERMINES THAT THE DEFAULT AROSE OUT OF COMPELLING REASONS WITHOUT FAULT ON THE PART OF THE VETERAN OR THAT COLLECTION OF THE INDEBTEDNESS WOULD OTHERWISE WORK A SEVERE HARDSHIP UPON THE VETERAN.'

BY RECENTLY PROMULGATED REGULATIONS, OF THE VETERANS ADMINISTRATION, PROVISION HAS BEEN MADE FOR AN APPEAL TO THE BOARD OF VETERANS APPEALS FROM DECISIONS DENYING WAIVER OF A LOAN GUARANTY INDEBTEDNESS. INCIDENT TO THAT APPEAL PROCEDURE YOU PROPOSE TO PROVIDE, ALSO BY REGULATION, THAT PAYMENTS BY A VETERAN ON A LOAN GUARANTY DEBT FOLLOWING HIS APPLICATION OR REQUEST FOR WAIVER SHALL BE REFUNDED TO HIM IF IT IS DETERMINED THAT HIS LOAN GUARANTY INDEBTEDNESS SHOULD BE WAIVED UNDER AUTHORITY OF SECTION 1820/A) (4). THE EFFECT OF THE REGULATION WOULD BE TO TREAT ALL AMOUNTS PAID BY THE VETERAN DEBTOR (INCLUDING SUMS COLLECTED BY SET-OFF) AS CONDITIONAL PAYMENTS, SUBJECT TO RETURN IF WAIVER IS GRANTED. OUR OPINION AS TO THE LEGALITY OF AN ADMINISTRATIVE REGULATION SO PROVIDING IS REQUESTED.

THE CONTEMPLATED REGULATION WOULD NO DOUBT BE PROMULGATED UNDER AUTHORITY OF SECTION 210/C),"TO MAKE ALL RULES AND REGULATIONS WHICH ARE NECESSARY OR APPROPRIATE TO CARRY OUT THE LAWS ADMINISTERED BY THE VETERANS' ADMINISTRATION AND ARE CONSISTENT THEREWITH * * *.' WE ARE OF THE OPINION THAT SUCH A REGULATION WOULD BE APPROPRIATE TO AND NOT INCONSISTENT WITH THE WAIVER PROVISION OF SECTION 1820/A) (4). IT WOULD ESTABLISH A REASONABLE ADJUSTMENT BETWEEN THE EXERCISE OF THE WAIVER AUTHORITY GRANTED BY SECTION 1820/A) (4) AND THE CARRYING OUT OF THE ADMINISTRATIVE OBLIGATION TO COLLECT DEBTS ARISING UNDER THE LOAN PROGRAMS. CF. 8 COMP. GEN. 664; BUT SEE A-27376, JULY 31, 1929, AND MARCH 12, 1930. AND WE CONCLUDE THAT THE PROMULGATION OF THE CONTEMPLATED REGULATION, CONSIDERED IN BROAD OUTLINE, WOULD BE A VALID EXERCISE OF

ADMINISTRATIVE AUTHORITY.

AS TO YOUR INQUIRY WHETHER, FOR THE PURPOSE OF PAYMENT IN THE EVENT OF WAIVER UNDER SECTION 1820/A) (4), IT IS NECESSARY THAT FUNDS RECEIVED SUBSEQUENT TO AN APPLICATION FOR WAIVER BE HELD IN A SPECIAL ACCOUNT, YOU ARE ADVISED THE USE OF A SPECIAL ACCOUNT IS NOT REQUIRED, AND THAT SUCH FUNDS MAY BE PLACED IN THE APPROPRIATE REVOLVING FUND OR LEFT IN THE APPROPRIATION IF THE WITHHOLDING OF OTHER BENEFITS IS INVOLVED.