

DECISION



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

*A. Balbin
GGM*

7837

FILE: B-167790

DATE: September 26, 1978

**MATTER OF: Small Business Administration Disaster Loan
in Rockland County, New York**

**DIGEST: Contrary to SEA's interpretation, section 405 of
Pub. L. No. 95-89 which reduced interest rates on
section 7(b)(1) disaster loans for disaster
"occurring on or after July 1, 1976 * * *," does
apply to disaster that began before July 1,
provided it was still continuing, as indicated
by official disaster declaration, on that date.
Since SEA has authority to and in fact did make
specific declaration declaring June 30, 1976, as
date of disaster on which Rockland County,
New York was flooded, SEA should reexamine
relevant information to determine if disaster
was still occurring on July 1 and whether
disaster declaration should be amended to so
provide, in which case section 405 of Pub. L. No.
95-89 would cover those disaster loans.**

This decision to the Administrator of the Small Business Administration (SBA) results from a request by Representative Benjamin A. Gilman that our Office review SBA's interpretation of section 405 of Pub. L. No. 95-89 (91 Stat. 553, 560, approved August 4, 1977), which amended section 7(b) of the Small Business Act, 15 U.S.C. § 636(b).

Section 7(b)(1) authorizes the Administrator to make loans which he deems necessary or appropriate because of "floods, riots or civil disorders, or other catastrophes." Pursuant to section 405 of Pub. L. No. 95-89, section 7(b) of the Small Business Act was amended by the insertion of an additional paragraph, reading in pertinent part as follows:

"Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property,

less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding \$10,000, and 3 per centum on the amount of such loan over \$10,000 but not exceeding \$40,000. The interest rate on the Administration's share of the first \$250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. * * *

This amendment had the effect of reducing interest rates for loans made under section 7(b)(1) with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978.

The specific question involved here has to do with a flood disaster that occurred in Rockland County, New York, in the summer of 1976. Based on the information we obtained from SBA in response to our request for a report, together with other information we have obtained, the facts concerning the disaster are set forth below.

On July 2, 1976, SBA's Central Office received a Disaster Survey Worksheet in which SBA's New York Regional and District Directors recommended approval of a disaster declaration for Rockland County. The worksheet stated that "heavy rain struck Rockland County on June 30, 1976, causing streams and brooks to overflow." Accompanying the worksheet was a letter from Governor Carey of New York to the New York Regional Director of the Federal Disaster Assistance Administration (FDAA) requesting SBA to evaluate extensive private property damage caused by flooding on June 29-30, 1976, and declare the county eligible for disaster loans. Pursuant to this request, on July 7, 1976, SBA made a formal disaster declaration which was subsequently published in the Federal Register and which read as follows:

"Rockland County and adjacent counties within the State of New York constitute a disaster area because of damage resulting from heavy rains and flooding on June 30, 1976. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 7, 1976, and for economic injury until the close of business on April 6, 1977 * * *."
41 Fed. Reg. 29233 (July 15, 1976).

B-167790

Governor Carey also requested that FDAA recommend to the President that he declare a major disaster, pursuant to the Disaster Assistance Act of 1974, Pub. L. No. 93-288, because of the severe storm and flood damage in Rockland County during the period June 29-30. FDAA advised the Governor, by letter dated July 21, 1976, that it would not do so. FDAA reaffirmed this decision after the Governor requested reconsideration, and no major disaster declaration was made by the President with respect to the Rockland County flood.

Although the SBA Declaration designated June 30, 1976, as the date of the disaster, SBA advises us that, based on a report from the National Oceanic and Atmospheric Administration, the rainfall in Rockland County was actually greater on July 1 than on June 30, 1976. Nevertheless, SBA has adopted the position that the interest rate reduction made available by section 405 of Pub. L. No. 95-89 did not apply with respect to any property damage that resulted from the Rockland County flood. In its report to our Office, SBA justified its position in this regard as follows:

"Section 405 of Public Law 95-89, which decreased interest rates retroactively to July 1, 1976, specifically limits the retroactive benefit of reduced interest rates to loans made as a result of a disaster 'occurring on or after July 1, 1976, and prior to October 1, 1978' (emphasis supplied). Extending the dates of heavy rain to include July 1, 1976, will not reduce the interest on loans made as a result of a disaster which began (occurred) prior to July 1, 1976.

"We must believe that Congress was aware of the situation concerning interest rates when it passed the Law with dates of limitation; in fact, on page 18 of Senate Report 95-184, 95th Congress, 1st Session, a list of interest rates by fiscal year for physical disaster programs is printed from 1954 through 1977 and shows the effective interest rate in 1976 to be 6-5/8 percent. Since Public Law 95-89 was passed after the occurrences of rain in June and July 1976, we reason that Congress knew the effect of limiting dates when it enacted Section 405 of Public Law 95-89 (approved August 4, 1977).

"The record of this particular disaster clearly indicates that it 'began' or occurred on June 29, 1976. The fact that it rained on June 30, 1976, and July 1, 1976, does not alter the recorded fact that the event that constituted the disaster began prior to July 1, 1976. It is not a 'clerical error' we are discussing here, as Congressman Gilman suggested. It makes no difference that it continued to rain after June 29 and 30, 1976, since the date of incidence was set by New York State officials and the Federal Disaster Assistance Administration, and we are bound by those dates.

"In speaking of monetary grants, Sutherland Statutory Construction, Section 64.02 at p. 145, Vol. 3, 4th Edition, says:

'As a means of guarding against unauthorized and unwarranted dissipation of public funds by making certain that all expenditures out of the public treasury are clearly authorized, statutes authorizing such expenditures are subject to the general rule of strict construction.'

The question before us is whether SBA's interpretation is legally correct. SBA concluded its report to us by stating that in view of the "rather harsh result," SBA would be pleased to abide by our interpretation: "if you [the General Accounting Office] can interpret the law so as to include persons who sustained damage as a result of a condition which began prior to July 1, 1976, and continued through July 1, 1976."

A careful reading of SBA's explanation of its position that the interest rate reduction provided for in Pub. L. No. 95-89 does not apply to the particular disaster in question reveals two separate reasons for its conclusion. First, SBA interprets the phrase in the statute, "occurring on or after July 1, 1976," to mean beginning on or after that date. It appears to be SBA's position that, as a matter of law, even if the declaration had specifically established a two-day disaster period beginning on June 30 and ending on July 1, the relief provided by the statute would not be available since "the event that constituted the disaster began prior to July 1, 1976."

B-167790

Second, SBA maintains that it does not matter that it continued to rain after June 29 and 30, 1976 "since the date of incidence was set by New York State officials and the Federal Disaster Assistance Administration and we [SBA] are bound by these dates." In other words, SBA argues that, as determined by officials from New York and FDAA, this disaster was not occurring on July 1, 1976, and that SBA is bound by that factual determination.

With respect to SBA's argument that, as a matter of law, section 405 of Pub. L. No. 95-89 does not apply to a disaster that began prior to July 1, 1976, even if it was continuing on July 1, we disagree for several reasons. First of all, a literal reading of the statutory language does not dictate this conclusion. The word "occur" is generally defined as meaning "take place" or "happen," not "begin." Literally, therefore, it could properly be said that a disaster that was still under way or happening on July 1, even if it had begun earlier, would be "occurring on or after July 1" and would be covered by the statute.

Moreover, although we agree with the statement in SBA's report that Congress wished to limit the retroactive relief that borrowers could receive when it established July 1, 1976, as a cut-off date, that does not in any way indicate a congressional intent to deny relief to a borrower who suffered damage from a disaster occurring on July 1, merely because the disaster was a continuing one that had started prior to that date. We reviewed the legislative history of the provision, but did not find anything that would be helpful in determining the specific intent of Congress with respect to the question of the applicability of section 405 to a continuing disaster that was under way on July 1, 1976.

However, it is clear from the legislative history of this provision that it was intended to serve a "remedial" purpose, to provide needed relief to the victims of disasters and "to avoid inequity which had occurred in the past." See S. Rep. No. 95-184, 13-18 (1977) and 123 Cong. Rec. H7803-7805 (daily edition July 26, 1977). The settled rule of statutory construction when a question arises concerning the interpretation of a remedial provision is to construe the statute liberally so as to effect the purpose for which it was enacted. In this case, that purpose was to provide an interest rate reduction for section 7(b)(1) borrowers. See 3 Sands, Sutherland Statutory Construction, §§ 60.01, et seq., as well as

B-167790

38 Comp. Gen. 207 (1958) and 41 Comp. Gen. 634 (1962). In this context, "a liberal construction is ordinarily one which makes the statutory rule or principle apply to more things or in more situations than would be the case under a strict construction." See 3 Sands, supra, § 60.01.

For the foregoing reasons it is our view that a disaster which SBA declared in an official disaster declaration, to be taking place on July 1, 1976, would be covered by section 405 of Public Law 95-89 even if the disaster had begun before that date. Having reached this conclusion, we direct our attention to the other reason for SBA's position in this matter, that regardless of how much it continued to rain after June 29 and 30, the date of "incidence" of this disaster as established by New York State officials and FDAA, was June 29 and 30, 1976. In this connection we must also consider whether SBA is bound by the dates of incidence as "established" by those officials.

We agree, in part, with SBA's position in this regard. It is clear that, regardless of the amount of rainfall on July 1, the official date of incidence of this disaster, as established by SBA in its disaster declaration published in the Federal Register, was June 30, 1976. However, based on the information we have obtained it is equally clear, notwithstanding the implication to the contrary in SBA's letter to us, that it was SBA rather than New York State or FDAA that set June 30, 1976, as the date on which the disaster occurred. This is in accordance with the statutory language contained in 15 U.S.C. § 636(b)(1) which specifically authorizes SBA "to make such loans * * * as the Administrator may determine to be necessary or appropriate because of flood, riots or civil disorders, or other catastrophies," and with the language in 15 U.S.C. § 636a, which refers to "a disaster as determined by the Administrator" in connection with the administration of section 7(b)(1) (and other) programs, and in effect distinguishes that determination from a determination by the President of a "major disaster." This is also consistent with the procedure set forth in SBA's regulations, that financial assistance may be extended to rehabilitate or replace property damaged or lost as a result of a disaster concerning which an appropriate SBA notice is published in the Federal Register. See 13 C.F.R. § 123.2(1)(1977).

Examination of SBA's Standard Operating Procedures Manual covering disaster declarations supports the view that the specific declaration made here, including establishment of the date or dates of the disaster, was in accordance with the customary procedure followed by SBA. See Appendix I of SBA's SOP 50-30-1, entitled

B-167790

Disaster Loans, which sets out disaster declaration procedures. It provides that requests for disaster declarations, either presidential declarations pursuant to the Disaster Relief Act of 1974 or SBA declarations, should be made by the Governor of the affected State directly to FDAA, which will then advise SBA if an SBA declaration has been requested. (The President, who is authorized by the 1974 Act to take various actions in connection with major disasters, has delegated a portion of that authority to the Secretary of Housing and Urban Development, Ex. Ord. No. 11795, 39 Fed. Reg. 25939 (1974). FDAA exercises the Secretary's responsibility for coordinating the activities of all Federal agencies providing disaster assistance. 42 U.S.C. § 5142(a)(Supp. V 1975).)

It is SBA's responsibility, under its procedures, to conduct an SBA disaster survey which includes information as to the type of disaster and the date it occurred. If a Presidential Declaration is made, SBA is advised of the specifics of the declaration and then may issue its own disaster declaration which would apparently conform generally to the Presidential Declaration. However, if, as in this case, a Presidential Declaration is not made, it is the sole responsibility of SBA to determine whether or not it will issue an SBA declaration. Since no Presidential Declaration was issued in this case, SBA was not bound by FDAA in any way with respect to the date or dates of this disaster.


The Governor's request to both FDAA and SBA stated that the storm and flood damage in Rockland County occurred during the period June 29-30, 1976. Although SBA (as well as FDAA) could accept the dates set forth in the Governor's request, we are not aware of anything that would require SBA to do so. In fact, SBA's internal procedures, as described above, specifically require SBA to perform a disaster survey to determine, among other information, the date on which the disaster occurred. Also, at the time the declaration was requested by the Governor, as well as when the declaration was made by SBA, the date or dates on which the disaster was officially declared to have taken place had no apparent significance in terms of interest rates (although they may have been significant for purposes of establishing the last dates for victims of the disaster to apply for assistance). Since the original letter from the Governor to FDAA requesting an SBA declaration was dated July 1, 1976, it is obvious that at that point time was considered to be of the essence.

Notwithstanding the foregoing, we agree with SBA that the mere fact that the rain continued after June 29-30, 1976, and may have increased on July 1 does not necessarily indicate that this disaster

B-167790

was still "occurring" on July 1. Our Office is of course neither authorized nor equipped to make a determination whether this disaster was still taking place on July 1. However, as stated above, SBA does have such authority and in fact did issue the declaration that established June 30 as the date of the disaster. Therefore, SBA would be authorized to review the relevant information concerning this disaster to determine whether it continued to occur on or after July 1, 1976.

In accordance with the foregoing, SBA should reexamine the facts surrounding this disaster to determine whether the disaster was still occurring on July 1. If SBA can reasonably determine that it was occurring on July 1, applying the law as we have set forth above, the disaster declaration in question should be amended, and section 405 of Pub. L. No. 95-89 would apply to loans made by SBA stemming from that disaster. Naturally, the converse would also be true if, upon conducting this review, SBA determined that no amendment to the original disaster declaration is warranted.


Acting Comptroller General
of the United States