In accordance with Section 409 of the Resolution of the Municipal Assistance Corporation for the City of New York Establishing The City of New York Bond Guaranty Fund adopted November 14, 1978 (the "Resolution"), WE HEREBY CERTIFY that there are no bonds of The City of New York held by the Pension Funds (as defined in the Resolution) and guaranteed by the United States of America, the principal of and interest on which remains unpaid.

IN WITNESS WHEREOF, we have hereunto set our hands as of the first day of July 1986.

THE CITY OF NEW YORK

By:  
EDWARD I. KOCH  
Mayor

By:  
HARRISON J. GOLDIN  
Comptroller
1 October 1984

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK
30 West Broadway/14th Floor
New York, New York 10015

Attention: Mr. Patrick Crowley
Trust Officer
Corporate Trust Department

Ladies and Gentlemen:

In accordance with Section 303(1) of the Resolution of the Municipal Assistance Corporation For The City of New York (the "Corporation") Establishing the City of New York Bond Guaranty Fund adopted November 16, 1978 (the "Guaranty Fund Resolution"), you, as Depository under Section 401 of the Guaranty Fund Resolution, pursuant to appointment under a separate resolution of the Corporation adopted November 16, 1978, are hereby directed to transfer, on October 1, 1984, $2,445,883.75 from the Guaranty Fund established pursuant to Section 301 of the Guaranty Fund Resolution (Account No. M95-78) to the account of the Corporation at United States Trust Company of New York, 45 Wall Street, New York, New York 10005 (Account No. 095114).

After giving effect to the transfer directed herein, the balance on deposit in the Guaranty Fund will be $42,051,416.31 valued at amortized cost plus accrued interest as of October 1, 1984, and the Funding Level, determined pursuant to Section 102(8) of the Guaranty Fund Resolution, will be $40,879,929.84.

Please advise us in writing of the transfer directed in this letter.

Sincerely,

Quentin B. Spector
Treasurer

cc: Mr. Pat V. Santivasci
Assistant Vice President
United States Trust Company of New York
By Messenger

20 September 1984

Morgan Guaranty Trust Company
of New York
30 West Broadway/14th Floor
New York, New York 10013

Attention: Mr. Patrick Crowley
Trust Officer
Corporate Trust Department

Ladies and Gentlemen:

In accordance with Section 303(1) of the Resolution of the Municipal Assistance Corporation For The City of New York (the "Corporation") Establishing the City of New York Bond Guaranty Fund adopted November 16, 1978 (the "Guaranty Fund Resolution"), you, as Depository under Section 401 of the Guaranty Fund Resolution, pursuant to appointment under a separate resolution of the Corporation adopted November 16, 1978, are hereby directed to transfer, on September 20, 1984 $4,090,000.00 from the Guaranty Fund established pursuant to Section 301 of the Guaranty Fund Resolution (Account No. M95-78) to the account of the Corporation at United States Trust Company of New York, 45 Wall Street, New York, New York 10005 (Account No. 095114).

After giving effect to the transfer directed herein, the balance on deposit in the Guaranty Fund will be $44,356,256.82 valued at amortized cost plus accrued interest as of September 20, 1984, and the Funding Level, determined pursuant to Section 102(8) of the Guaranty Fund Resolution, will be $40,879,929.84.

Please advise us in writing of the transfer directed in this letter.

Sincerely,

Quentin B. Spector
Treasurer

cc: Mr. Pat V. Santivasci
Assistant Vice President
United States Trust Company of New York
May 21, 1984

Dear Dennis:

Some time ago, Steve Kantor asked Treasury's advice on a matter pertaining to the MAC Guarantee Fund. I hope you will accept my apologies for the delay in this response.

The issue, as I understand it, concerns the treatment of bond proceeds raised by the City to satisfy the 15 percent prepayment requirement [in accordance with Section 103(11)(A) of the Loan Guarantee Act], which are placed in escrow until the guaranteed bonds are refunded. In particular, the question is whether it is acceptable to Treasury for MAC to reduce the balance in the Guarantee Fund on the day that the City escrows funds for prepayment purposes, or whether MAC should instead continue with the current practice of not reducing the balance in the Guarantee Fund until the bonds are actually refunded by the City's escrow agent on a scheduled interest payment date.

Treasury's Office of General Counsel has reviewed the matter and has determined that the approach currently used by MAC in calculating the necessary balance in the Guarantee Fund should not be changed. Recent developments in bankruptcy law have raised questions as to whether funds deposited with an escrow agent can be recovered by a trustee in a bankruptcy proceeding—it is conceivable that such funds could be recaptured as a "voidable preference." The implication of this possibility is, of course, that the Federal government may continue to be liable for principal and interest payments on the guaranteed bonds for which the City has escrowed funds for prepayment, at least until the City's escrow agent actually refunds the bonds on a scheduled interest date.

If you have any further questions in this matter, please do not hesitate to contact me.

Sincerely,

[Signature]

Robert W. Rafuse, Jr.
Deputy Assistant Secretary
(State and Local Finance)

Mr. T. Dennis Sullivan II
Executive Director
Municipal Assistance Corporation
for the City of New York
One World Trade Center
New York, New York 10048
By Messenger

3 May 1984

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK
30 West Broadway/14th Floor
New York, New York 10015

Attention: Mr. Patrick Crowley
Trust Officer
Corporate Trust Department

Ladies and Gentlemen:

In accordance with Section 303(1) of the Resolution of the Municipal Assistance Corporation For The City of New York (the "Corporation") Establishing the City of New York Bond Guaranty Fund adopted November 16, 1978 (the "Guarantee Fund Resolution"), you, as Depository under Section 401 of the Guaranty Fund Resolution, pursuant to appointment under a separate resolution of the Corporation adopted November 16, 1978, are hereby directed to transfer, on May 3, 1984, $13,527,268.89 from the Guaranty Fund established pursuant to Section 301 of the Guaranty Fund Resolution (Account No. M95-78) to the account of the Corporation at United States Trust Company of New York, 45 Wall Street, New York, New York 10005 (Account No. 095114).

After giving effect to the transfer directed herein, the balance on deposit in the Guaranty Fund will be $57,063,056.80, valued at amortized cost plus accrued interest as of May 3, 1984, and the Funding Level, determined pursuant to Section 102(8) of the Guaranty Fund Resolution, will be $56,272,702.88.

Please advise us in writing of the transfer directed in this letter.

Sincerely,

[Signature]

T. Dennis Sullivan II
Executive Director

cc: Mr. Pat V. Santivasci
Assistant Vice President
United States Trust Company
of New York
Mr. Steven J. Kantor
Deputy Executive Director
and Treasurer
Municipal Assistance Corporation
For The City of New York
Suite 8901, 1 World Trade Center
New York, New York 10048

Dear Steve:

I have read the letter from Robert W. Rafuse, Jr., Deputy Assistant Secretary of Treasury which responded to your November letter to him on the proper method of calculation of the interest portion of the "funding level" under the Guaranty Fund Resolution.

In my judgment, Mr. Rafuse's reference to "schedules of actual interest payments . . ." is consistent with the interest to maturity method of calculation. Accordingly, because as I had previously advised you, the interest to maturity method of calculation is not inconsistent with the Guaranty Fund Resolution or the other relevant materials, I think it is acceptable for you to calculate the funding level requirement on that basis.

If you have any other questions about this matter, please call me.

Best regards.

Sincerely,

Allen L. Thomas

ALT:ka

cc: Stephen J. Weinstein, Esq.
8 November 1982

Mr. John Carnevale
Financial Analyst
Office of State and Local Finance
5130-B
UNITED STATES TREASURY DEPARTMENT
15th and Pennsylvania, N.W.
Washington, D. C. 20220

Dear Mr. Carnevale:

You have asked the Municipal Assistance Corporation For The City of New York to inform you as to its proposed interpretation of the funding level described in Section 102(8) of the Guaranty Fund Resolution (the "Resolution") approved by the Board of Directors of the Municipal Assistance Corporation For The City of New York on November 14, 1978. Section 102(8) of the Resolution reads as follows:

(8) "Funding Level" means an amount equal to five per centum of (i) the unpaid principal amount of all bonds and (ii) the maximum amount of interest payable on all Bonds, the principal of which remains unpaid as of the date of calculation, in any period of twelve consecutive months;

The Corporation proposes to calculate the funding level by determining the bonds outstanding on the date of calculation and computing the interest due on those bonds during the next 12 months. Thus, if any bond matured in the next 12 months, the interest payable would be calculated from the calculation date to the maturity date.

The Corporation believes this interpretation is consistent with the terms and conditions in the Resolution, the Agreement to Guarantee, and Public Law number 95-339.

If you have any further questions or comments, please do not hesitate to contact me.

Sincerely,

Steven J. Kantor
Deputy Executive Director and Treasurer

SJK:bba
8 November 1982

S. Weinstein, M. Gillman

S. Kantor

Guaranty Fund Requirement

Enclosed please find a copy of a proposed letter to John Carnevale of the U.S. Treasury Department regarding the calculation of the Guaranty Fund Requirement.

Please allow me to provide some background on this issue. In connection with the preparation of the quarterly statements for the period ending September 30, 1982, I asked Larry Flood to calculate the Guaranty Fund requirement. Larry calculated the interest portion of the requirement to be 5% of the amount of interest that would actually be paid on the bonds during the next 12 months. In the past, we had calculated the requirement to be 5% of the interest to be paid on the bonds if all the bonds were outstanding for the next 12 months, in otherwords, assuming no bonds mature.

Naturally, Larry's method results in a lower requirement. The difference in calculation methods is particularly dramatic this year as 1) there will be no further issuance of Guaranty Bonds and 2) a larger number of Guaranty Bonds are beginning to mature. Thus, the calculation method determines the amount available to be withdrawn for the Guaranty Fund in each year. Over the life of the bonds there will be no difference in the total amount withdrawn; however, the difference in FY 1983 is approximately $2 million. Any amounts removed from the Guaranty Fund go to the City as debt service savings.

I spoke to Allen Thomas concerning this issue when it first arose (it was a Friday afternoon and you were both out and depending on his answer, it could have affected the numbers in this quarter). It was his opinion that the language could be read either way. Although he believed the old method was more consistent with the intent of the legislation (as the guarantees continue for 30 days after the payment of interest), he did feel that the second method was not inconsistent. Allen advised that we not change the method of calculation without discussing the matter with Treasury.

I have discussed the matter with John Carnevale, who in turn discussed the matter with Bob Rayfus. Their position is that it is a "non issue." However, they would like a letter from us explaining our position (and the proposed change) to show to their counsel before signing off.

After your review, I plan to forward the attached letter to Allen for his approval and then on to Treasury.

cc: L. Flood
DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Assistant Secretary

October 29, 1982

DIRECTOR OF BUDGET

Dear Alair:

Secretary Regan's letter of July 13, 1982 to Mayor Koch urges recognition in the City's financing plan of its obligation, under Section 103(11)(A) of the Loan Guarantee Act, to prepay guaranteed bonds. I understand that, coupled with the Secretary's decision not to approve the City's request for a waiver for FY 1983, this advice is being interpreted as implying that Treasury will require the full mandated prepayments during fiscal years 1984-86, and that it would therefore be prudent for the Financial Control Board (FCB) to insist that the City's new financing plan provide for the full prepayments each year implied by the 15 percent requirement.

In fact, the Act requires Treasury to evaluate requests for waivers or modifications of the requirement on a yearly basis in light of all relevant factors. These include—among others—conditions in the tax-exempt market, the ratings assigned to the City's general-obligation bonds, the progress of your capital spending program, the rate of increase in construction costs, and the City's overall budgetary situation. Clearly, provision should be made in the financing plan for the 15 percent prepayment in FY 1983. However, nothing in the Secretary's letter should be interpreted as implying that the full amounts should necessarily be included for fiscal years 1984-86.

I understand that your immediate problem is deciding on an appropriate assumption regarding what amounts of prepayments may be reasonable for fiscal years 1984-86. The decision on this assumption rests solely with the City and the FCB. Although I can offer you no specific advice, I would like to underline the Department's general position as it is articulated in the Secretary's letter:

I am prepared to use my authority to modify the requirement to ensure that the annual amount of the prepayment does not impose an unreasonable burden on the City... My decision not to approve your request for a waiver at this time should not be interpreted as necessarily precluding future waivers or modifications...

If I can be of further assistance in clarifying Treasury's position on this issue, please let me know.

Sincerely,

Roger Mehle

Ms. Alair A. Townsend, Director
Office of Management and Budget
City of New York
New York, New York 10007
April 30, 1982

The Municipal Assistance Corporation For The City of New York
Suite 8901
One World Trade Center
New York, New York 10043

Gentlemen:

You have asked us to advise you regarding

(1) certain provisions relating to The Municipal Assistance Corporation For The City of New York (the "Corporation") included in (a) the Agreement to Guarantee (the "Guarantee Agreement"), dated November 15, 1978 by and among the United States of America (the "United States"), acting by and through the Secretary of the Treasury (the "Secretary") pursuant to the New York City Loan Guarantee Act of 1978, P.L. 95-339 (the "Guarantee Act"), the State of New York (the "State"), The City of New York (the "City"), the New York State Financial Control Board (the "Control Board") and the Corporation, and (b) the resolution dated November 14, 1978 of the Board of Directors of the Corporation...
(the "Guarantee Resolution") pursuant to which the Corporation has created and authorized the deposit of moneys in a fund (the "Guarantee Reserve Fund") as required by Section 103(8)(B) of the Guarantee Act; (2) the temporary failure by the Corporation to comply with certain provisions of the Guarantee Agreement and the Guarantee Resolution and the manner in which such failure was corrected; and (3) whether the Corporation has incurred any continuing liability as a result of such failure or must take any further action with respect to correcting such failure.


Under the Guarantee Agreement, the United States undertook to issue guarantees ("Guarantees") of the payment of the principal of and interest on bonds of the City issued pursuant to the Guarantee Act in accordance with the financing plan for the City described in the Guarantee Agreement.

By the terms of the Guarantee Agreement and the Guarantee Act, the issuance of any Guarantee is subject to a determination by the Secretary that certain conditions have been met. One such condition is that the Corporation shall have created the Guarantee Reserve Fund. The Guarantee Reserve Fund was established pursuant to the Guarantee Resolution and consists of a trust fund in which the Corporation
deposits moneys from time to time. The purpose of the Guarantee Reserve Fund is to provide in part for payment of principal of or interest on the bonds of the City to which Guarantees relate ("Guaranteed City Indebtedness") or reimbursing the United States for payments made under any such Guarantee. The Guarantee Agreement provides that no Guarantees may be issued unless an amount equal to five percent of the sum of the principal amount of and one year's interest on the outstanding Guaranteed City Indebtedness and the Guaranteed City Indebtedness then to be issued shall have been deposited in the Guarantee Reserve Fund. The Guarantee Resolution does not, however, obligate the Corporation to maintain the Guarantee Reserve Fund at any level.

Another condition precedent to the issuance of any Guarantee is that, as of any closing date (a "Closing Date") under the Guarantee Agreement, no event of default shall have occurred. An event of default occurs under the Guarantee Agreement (i) if any representation or warranty made by the Corporation in the Guarantee Agreement or in any certificate delivered pursuant thereto shall prove to have been incorrect in any material respect when made or (ii) if the Corporation fails to perform or observe any covenant, agreement or provision to be performed or observed by it under the Guarantee Agreement and such default shall not have been cured within
30 days after written notice of the default has been given from the Secretary.* Under Section 6.19(a) of the Guarantee Agreement, the Corporation covenants and agrees not to take any action inconsistent with the rights of the Secretary under the Guarantee Resolution. No other covenant, agreement or provision of the Guarantee Agreement appears to be relevant for the purposes of this discussion.

On each Closing Date the Corporation must certify, among other things, that (a) it has performed all of its agreements to be performed under the Guarantee Agreement, (b) no event or condition which constitutes an event of default with respect to the Corporation, and no event or condition which, with the passage of time or the giving of notice or both would constitute such an event of default, has occurred and is continuing and (c) the amount required to be deposited in the Guarantee Reserve Fund has been so deposited.

2. Failure under Guarantee Agreement and Correction.

We have been informed by the Corporation that, on January 26, 1982, the Corporation discovered that the Guarantee Reserve Fund had been inadvertently underfunded as a result of the Corporation's miscalculation of the relevant amount of interest on the Guaranteed City Indebtedness then outstanding and then to be issued. On

* Other events of default are listed in Article 7 of the Guarantee Agreement, but are not relevant for purposes of this discussion.
November 11, 1981, the only Closing Date that occurred during the period of such underfunding, the value of the Guarantee Reserve Fund stood at $66,803,494.88. The value of such Fund on that date should have been $68,213,118.92, a difference of $1,409,624.04. Through the accrual of interest the balance in the Guarantee Reserve Fund reached the required level on January 25, 1982. On January 26, 1982 the Corporation transferred an additional $500,000 to the Fund.

In order to determine whether an underfunding of the Guarantee Reserve Fund could be considered an event of default pursuant to Article 7 of the Guarantee Agreement two provisions must be considered. As noted above, an event of default occurs if any representation or warranty made by the Corporation in the Guarantee Agreement or in any certificate delivered pursuant thereto shall prove to have been incorrect in any material respect when made. The underfunding of the Guarantee Reserve Fund did not render the representations and warranties contained in the Guarantee Agreement incorrect when made. However, the certificate delivered by the Corporation on the November 11, 1981 Closing Date was incorrect. In that certificate the Corporation certified that it had deposited in the Guarantee Reserve Fund the amount required to be deposited by it.
Because the Guarantee Reserve Fund, on that date, contained 2% less than the amount required to be contained in it by the Guarantee Agreement, such certification was incorrect. Insofar as such 2% difference is deemed to make the issued certificate "incorrect in [a] material respect", then an event of default under the Guarantee Agreement was created by the issuance of such certificate.

As noted above, the Guarantee Reserve Fund reached the required level on January 25, 1982, thereby curing the underfunding. Although the Guarantee Agreement does not explicitly state that an event of default no longer exists once such default has been cured, we believe this to be the normal and proper interpretation. Accordingly, although the Secretary would have had the right, assuming the materiality test was met, to take action under Section 7.1 of the Guarantee Agreement during the period from November 11, 1981 to January 25, 1982, as of January 25, 1982, the event of default ceased to exist and the Secretary no longer had the right to act under such Section 7.1 under the Guarantee Agreement.

An event of default may also occur under the Guarantee Agreement if the Corporation takes any action inconsistent with the rights of the Secretary under the Guarantee Resolution. Upon examination of the provisions of the Guarantee Resolution, we have concluded that the underfunding of the Guarantee Reserve Fund does not constitute
any such inconsistency. As noted above, the Resolution imposes no obligation on the Corporation to maintain the Guarantee Reserve Fund at any particular level. Nor is there any other provision which is relevant. However, even if the actions of the Corporation were deemed inconsistent with the rights of the Secretary under the Guarantee Resolution, there is no event of default unless such inconsistency shall not have been cured within 30 days after the Secretary has given written notice of such default. We have been informed by the Corporation that no such notice has been given.

3. Continuing Liability or Further Action.

Section 7.1 of the Guarantee Agreement provides that if an event of default occurs, the Secretary may proceed to protect and enforce the rights of the United States through a variety of remedies. Such remedies, as applicable to the Corporation, include (a) bringing suit against the Corporation for amounts then due with respect to the Guarantee Reserve Fund and (b) bringing suit or other action to (i) enforce any obligation under the Guarantee Agreement, (ii) enforce any provisions of applicable law or (iii) enjoin any acts or things which are in violation of the Guarantee Agreement which are applicable to the Corporation. Such remedies pertain only where amounts are due with respect to the Guarantee Reserve Fund or the Corporation is in
violation of some provision of the Guarantee Agreement or applicable law. Because the Guarantee Reserve Fund currently contains the amount required and any failure by the Corporation has since been corrected, the Corporation has incurred no continuing liability with respect to its underfunding of the Guarantee Reserve Fund. We have been informed that the Corporation has advised the City and the Secretary of the temporary underfunding of the Guarantee Reserve Fund. We believe it is not necessary for the Corporation to inform any other party or give any other notice of such underfunding or to take any further action with respect thereto.

Very truly yours,

Paul, Weiss, Rifkind, Wharton & Garrison

PAUL, WEISS, RIFKIND, WHARTON & GARRISON