7 May 1981

Mr. E. Stanley Legg
Deputy Comptroller for Administration
State of New York
Department of Audit and Control
A.E. Smith Building
Albany, New York 12246

Dear Mr. Legg:

Pursuant to: (1) the Memorandum of Understanding executed in April 1978 between The City of New York (the "City"), the New York State Department of Audit and Control (the "Department") and the Municipal Assistance Corporation For The City of New York (the "Corporation"); (2) the Agreement dated March 4, 1976 between the Department and the Corporation; and (3) the Repayment Agreement dated June 13, 1977 between the City and the New York State Emergency Financial Control Board, the Corporation is obligated to provide compensation to the Department equal to direct and indirect costs for certain services performed with regard to review of the City's finances, subject to termination by either of the parties upon 60 days prior written notice. For the period through March 31, 1980, the Department requested reimbursement for indirect (overhead) in addition to direct costs. Although the matter of overhead charges was then in dispute between the City and the Department, the Corporation included them in its payments to the Department for the periods through March 31, 1980.

An examination of the Corporation's records shows that beginning April 1, 1980, the Department has not requested reimbursement by the Corporation of any overhead costs, but only of direct expenses. However, the Corporation has continued to accrue overhead charges on an estimated basis for the periods beginning April 1, 1980 as liabilities in the Corporation's accounts, and has continued to include them as such in its published financial statements. It is our understanding from both the City and the Department that the Department will no longer request reimbursement for such overhead charges, that the Department considers the Corporation to have no liability for any overhead charges for the period April 1, 1980 through June 30, 1981, and that the Corporation will make no payment to the Department therefor.
Accordingly, it is our intention to remove these accrued overhead charges as liabilities from our accounts and financial statements. In conjunction with that intention, our independent accountants, Price Waterhouse & Co., have requested us to obtain a statement affirming your position, as follows: The Department will not seek reimbursement of overhead costs from the Corporation for any period between April 1, 1980 and June 30, 1981.

If you are in agreement with this statement, please so indicate either by returning to me a copy of this letter signed in the space provided below or, if you prefer, by sending me a letter containing the statement affirming your position as set forth in the underlined portion of the preceding paragraph.

Sincerely,

[Signature]

Steven J. Kantor
Treasurer

Affirmed:

NEW YORK STATE DEPARTMENT
OF AUDIT AND CONTROL

By: ____________________________ (Signature)

______________________________ (Name)

______________________________ (Title)

______________________________ (Date)
PRESS RELEASE

Comer S. Coppie, Executive Director, today released a letter that he delivered to Mayor Koch expressing his concern about certain recent developments and problems that, in his judgment, could threaten a balanced City budget this year and the City's ability to make substantial progress toward a GAAP-balanced budget in subsequent years.

Mr. Coppie stated that these matters, which might require the implementation of a portion of the City's contingency program, must be addressed in the City's quarterly modification to the Financial Plan to be submitted to the Control Board.

A copy of the letter is attached.
October 11, 1979

Honorable Edward I. Koch
Mayor
City Hall
New York, New York 10007

Dear Mayor Koch:

I am concerned about certain recent developments and problems that, in my judgment, could threaten a balanced City budget this year and the City's ability to make substantial progress toward a GAAP-balanced budget in subsequent years. In the four months since the Control Board approved the City's FY1980-FY1983 Financial Plan, two disturbing trends have developed that could call into question the City's long-term ability to control expenditures. In addition, certain specific difficulties affecting City spending have become more pronounced. I wish to call these matters to your attention so that they can be addressed in conjunction with the forthcoming quarterly Financial Plan submission.

Two emerging general expenditure trends give rise to concern. First, no clear pattern of planned underspending in significant amounts seems to be reflected in the City's financial plan statements and quarterly allocation plans. As I am sure you recall, an important consideration in Control Board review and approval of the Financial Plan this past June was your commitment to a policy of monitorable underspending during the current year. Adherence to this policy is of particular importance given the several specific problems, described below, that have already developed during the current fiscal year.

Second, it appears that the City continues to fund new, recurring expenditures with non-recurring revenues. This trend was noted by the Control Board and other monitors at the time of your Executive Budget submission.
Your proposal regarding the sanitation workforce is the most recent example of this practice. It is not the Control Board's function to determine the City's spending priorities. However, the funding of additional expenditures in FY1980 through debt service savings that may not recur and in subsequent fiscal years through productivity savings that may not be realized is of concern.

In addition, recent Financial Plan Statements reflect an expansion of the City-funded workforce to a level significantly above that contemplated last June. Any net expansion of the City's workforce must be viewed with some alarm, given the substantial budget gaps that must be dealt with in the later years of the Financial Plan.

My concern over these two trends is heightened in light of the following specific problems that have become evident since June. These problems affect both the initial and the later years of the Financial Plan.

1. Current information regarding the Health and Hospitals Corporation revenue base and expenditure base appears to indicate a deterioration of the Corporation's FY1980 financial condition, which may well continue into subsequent years. Our analysis of HHC's own data shows that the first quarter's Medicaid collections this year were less than the comparable total last year, even though the Plan projects a significant increase. This could augur a revenue shortfall in excess of $100 million.

   In addition, it appears that less than $10 million of the $26 million of HHC expenditure reductions reflected in the Financial Plan are now scheduled to be implemented. Moreover, additional expenditures of approximately $30 million may be required to fund additional Social Security costs and to meet other requirements.

   Taken together, these developments indicate a potential HHC deficit of over $80 million for FY1980 after application of the reserves provided in the Financial Plan for that purpose. Even larger deficits may be threatened for subsequent years and the Financial Plan provides no reserves in those later years to cover the deficits.

   It is necessary for the forthcoming Financial Plan submission to deal with these problems. It should also reflect changes currently contemplated in the hospital restructuring program and should embody a firm implementation plan for the revised program.
2. The City has reported that the Board of Education may incur a substantial budget shortfall in FY1980. It appears that expenditure overruns are occurring in several areas, that required savings reflected in the adopted budget are not being achieved, and that intragovernmental education aid may be less than anticipated. Taken together, these may constitute a problem of $40-$80 million. It will be necessary for the forthcoming submission to describe the specific measures that the City intends to take to meet this problem.

3. It is apparent that the receipt of Westway funds, estimated at $80 million for the 1980 fiscal year, may not occur when expected. The City's own milestone plan for the receipt of these funds has been altered to reflect delays in the procedure, and there is increasing evidence that the Westway project will be subject to several additional court challenges that could further delay receipt of the funds. It may well be appropriate for the City to assume that this amount will not be received during the current fiscal year.

If Westway is no longer available as a source of funding for the labor reserve in FY1980, I believe that other measures should be developed to maintain that reserve at its current level in this fiscal year. Moreover, it appears appropriate that the January, 1980 submission provide additional information to demonstrate the City's capability to fund its next labor settlement.

4. It may be appropriate for the forthcoming submission to deal with several other issues that I have been discussing with members of your staff. For instance, the immediate effect and the long-term implications of current national economic trends may necessitate adjustments to baseline revenue and expenditure projections. Current projections of intergovernmental aid to the City may have to be re-evaluated in light of adverse fiscal and economic developments and other claims upon State and Federal resources. In addition, the problems of the Transit Authority, which are now the subject of planning and discussion by the Authority, the State, the City and other parties, have profound implications for the City's economic base and budgetary condition and should be again considered in the context of the Financial Plan submission.

Finally, it is appropriate at this time to determine whether any part of the contingency program submitted to the Board in June should be implemented. The several problems discussed above may require implementation of a portion of the program to maintain budget balance during the current year. Since the aggregate value of the program for the current
year shrinks over time, prompt implementation would assure maximum benefit this year. In addition, it has proven desirable for the City, in each successive Financial Plan submission, to show progress in reducing the size of projected future year budget gaps. Implementing some part of the program could help achieve that goal.

I am well aware of the City's success in surmounting problems in the past and I am anxious that this record be continued. I hope that this airing of issues in advance of the City's submission of a first quarter modification to the Financial Plan will be of use in dealing with the matters involved.

Sincerely yours,

Comer S. Coppie

cc: Honorable Hugh L. Carey
Governor, State of New York

Honorable Edward V. Regan
Comptroller, State of New York

Honorable Harrison J. Goldin
Comptroller, City of New York

Mr. Gilroye A. Griffin, Jr.
Dr. John C. Sawhill
Mr. Stanley S. Shuman
I. Stages of Oversight

A. Review Stage

1. When in effect: beginning July 1, 1979, in any fiscal year not described under Approval Stage

2. Budgetary and Financial Requirements
   a) Rolling three-year financial plan
   b) Balanced budgets (accounting principles determined by State Comptroller); supporting data to be submitted with budget
   c) Deficits to be funded in succeeding year
   d) Contingency reserve fund
   e) Independent audits; regular reports
   f) Contracts to be costed and certified by Mayor as complying with financial plan
   g) Debt Service Fund (trustee for property tax or other revenue)
   h) Strict limitations on short-term debt

3. Powers of MAC: same as current MAC powers

B. Approval Stage

1. When in effect: 1979 Fiscal Year and any other Fiscal Year if 1) preceding Fiscal Year ended with a deficit, and 2) it appears to MAC that such Year will also end with a deficit.

2. Budgetary Requirements: Same as Review Stage.

3. Powers of MAC
   a) Approval of Financial Plan, Expense Budget and modifications prior to taking effect.
   b) Approval of borrowings if consistent with limitations on issuance of debt.
   c) Enforcement of compliance with other budgetary and financial requirements.
II. Membership (Two Alternatives)

A. 9 members appointed by the Governor with Senate approval, of which
   1 member is recommended by Clearing House Banks,
   1 by New York City Pension Funds (Municipal Labor Committee),
   1 by New York City Controller,
   1 by New York City Mayor,
   1 by New York State Comptroller

B. 11 members appointed by the Governor with Senate approval of which
   3 are recommended by the Mayor,
   1 by the New York City Pension Funds (Municipal Labor Committee),
   1 by the Clearing House Banks,
   1 by the New York State Comptroller,
   1 by the New York City Comptroller.

III. Other Considerations

A. Whether there is a stage of supervision that is greater than "Approval Stage," e.g., other EFCEP powers such as control of bank accounts, contract approval.

B. Whether other events might "trigger" "Approval Stage," e.g., default, failure to make mandatory payments.

C. Whether and how oversight extends to Capital Budget.
April 23, 1979

Honorable James R. Brigham, Jr.
Director of the Budget
1210 Municipal Building
New York, New York 10007

Dear Mr. Brigham:

In previous letters to you on the subject of milestone monitoring, both from this office and jointly with the Executive Director of the Financial Control Board, we described the type of information that the City should provide in the monthly progress reports required under the Control Board resolution of February 14, 1979. In essence, we stated that the milestones for tracking agreed upon programs should delineate the necessary timing and progression of events which would have to take place, and the estimated savings or revenues which would have to accrue at specified intervals, in order for the City to achieve its cost reduction or revenue enhancement objectives. The scheduled events and estimates would then serve as targets against which actual occurrences would be measured monthly to determine whether the planned results are likely to be achieved.

Although your letter of March 27, 1979 to Mr. Coppie and me contains useful information on the current status of certain programs, the data do not generally provide the essential components for an ongoing milestone monitoring system. Your presentation relating to the Educational Construction Fund Bond Sale comes closest to meeting the requirements noted above and might serve as a guide in developing milestones for the other programs.

I am aware that the nature of the specific milestones to be established by the City for each program will probably vary due to the different kinds of programs to be monitored. What is needed in each case, however, is a chronology of the focal dates and events which have to take place in order for each program to reach its financial plan objective, and monthly status reports indicating whether the programs are on target. Where no change has occurred in a given month, a notation to that effect would be in order. Any slowdown or failure to meet the planned timetable would require a determination by the City as to its effect on the financial plan estimate.
For your guidance, an attachment to this letter comments on certain of the programs to be monitored, citing examples of the areas which should be addressed. These comments are not meant to be all-inclusive either as to programs or events to be tracked, but may be of assistance in focusing on the type of data we require. A list embracing these and other programs which were identified for milestone monitoring was distributed at a meeting on February 21 which was attended by representa-tives of the Control Board, the City Comptroller and your office, and is attached hereto.

We look forward to receiving your monthly report conforming to the format described in this letter on or about April 30, 1979. If you have any specific questions, please call me or Irving Cohen and we will respond promptly.

Sincerely,

[Signature]

Sidney Schwartz

SS/ga

cc: Comer Coppie
    Martin Ives
    Robert Vagt
    FCB Members
    MAC Members
Baseline

Revenues
1. Status of real estate tax inequality suits
2. '97F bond sale
3. Vendor restricted settlement
4. Westway
5. Status of disallowance reserve
   a) monthly listing of draft and final reports received proposing disallowances
6. CETA
   a) Status of proposals for waivers
   b) action being taken to reduce service impact of staff turnover
   c) indirect cost reimbursement

Expenditures
1. Personal Service
   a) personnel plan by funding source and agency; and actual performance against that plan
   b) City funded attrition plan (including BE) containing gross hires and gross separations and reporting actual performance
   c) City funded monthly average salary plan and actual performance (which would indicate upward creep)
2. Overtime expenditure monitoring
3. In Rem Program
   a) status of negotiations on CD funding
   b) status of housing in-take and out-take and program expenditures
4. Move to cotemporality
5. IPA's
6. Validation of FY 1978 encumbrances and GAAP impact

Cash Flow
1. Lease or sale of Rikers Island to New York State
2. Status of Mitchell-Lama mortgage sales
Program to Eliminate the Gap (PEG)

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<tr>
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<th>Proposed Report Starting Date</th>
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<td>March 1979</td>
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<td>July 1979</td>
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1. Status of plans to increase State and Federal aid  x
2. Covered organization subsidy reduction  x
3. Civilianization plan by agency  x
4. Use of two man crews in Sanitation  x
5. Board of Higher Education tuition increase  x
6. Transfer to Board of Education of school crossing guards  x
7. Maintain FY 1978 Fire Department manning levels  x
8. OTIPS cost containment  x
9. Cost containment programs contained in State budget  x
10. Change in real estate tax payment dates  x
11. Change in veterans exemptions  x
Suggested List for Milestone/Monitoring System (cont'd.)

Covered Organizations

Proposed Report Starting Date
March 1979        July 1979

Transit Authority
A. Baseline
   1. Additional State Aid  x
   2. Increased Federal Aid  x
   3. Savings program /    x

B. Gap Closing Program
   1. Additional State/Federal Aid  x
   2. Contingency program x
   3. Additional management actions x

C. COLA III (to be paid through productivity increases) x

Board of Higher Education
1. Expenditure reductions to fund reserves x
2. Fall and spring flash enrollment x
3. Tuition collection by month x

Health and Hospitals Corporation
1. Projected opening -- Woodhull x
2. Variance of patient revenue x
   collections from plan
3. Variance of City funds to HHC x
4. Personnel totals x
5. Inpatient, Outpatient, ER workloads x
6. Disallowances filed through utilization review, PSHOs, etc x
7. Medicaid appeals, medicare settlements x

Housing Authority
1. OTIS cost containment x

City University Construction Fund
1. Status of suit on termination costs x
Status of Real Estate Tax Inequality Suits

The City has indicated that it will routinely report on the status of the Rego Park and Con Edison cases. The monitoring mechanism should also track other significant events related to the inequality issue, including prospective legislative relief and the status of other related suits which could affect the ultimate resolution of the inequality question.

Status of Reserve for Disallowances

The City has indicated that it will evaluate and report on the status of State and Federal aid disallowances as timely as possible. We believe that a monthly report is needed which would show:

- Cash disallowances taken year-to-date (by program and the time period covered by the audit);
- Disallowances identified but not yet taken (by program and time period);
- A listing of State and Federal audits in progress (i.e., potential disallowances) and the potential magnitude of the disallowances;
- Evaluation of the adequacy of the remaining reserve for disallowances.

CETA

- Status of Proposals for Waivers—The reporting format for the status of waivers should include a timetable for planned formal submissions to the appropriate Federal agencies and any other actions necessary to secure the waivers. Estimates of response dates by these officials should be factored into this timetable. The monthly status reports should include copies of the formal application for waivers.

- Employee Termination and Transfer Planning—This monitoring system will necessarily be interrelated with the planned timetable for the proposals for waivers. The system should reflect a comprehensive plan as to how the City proposes to achieve compliance with the mandates of the revised CETA legislation. Alternate plans should be prepared in anticipation of possible denial of requested waivers, etc.

The milestone plan should incorporate the following:

A monthly forecast by agency of CETA personnel changes, showing the number of CETA employees on board as of 3/31/79, with forecast number of new hires, transfers to City funding, and terminations each month.
Monthly forecasts of CEFTA personnel changes by title (e.g., policemen, firemen, teachers, sanitationmen) for employees earning over $13,200, showing new hires, transfers to City-funded positions, and terminations.

Monthly forecasts of average salaries of CEFTA employees.

Indirect Cost Reimbursement - As the actual rate (amount) of reimbursement for these costs is determined through negotiations between City and U.S. Department of Labor (DOL) officials, a schedule should be prepared which will reflect planned dates of formal submissions by the City and anticipated dates of responses from DOL.

Westway

The City has indicated that it will provide a listing of events necessary to complete the Westway project, in connection with its FY 1980 budget. A timetable covering the following events should be included in such listing:

- The estimated completion date of hearings being held by the State Department of Environmental Conservation (SDEC) on the Indirect Source Permit (ISP); also the anticipated timing schedule for briefs and reply briefs.

- The hearing officer's recommendations on the ISP to the Commissioner of SDEC.

- The SDEC Commissioner's decision on the ISP.

- The SDEC Commissioner's issuance of the ISP.

- The hearings and recommendations to be made by the City Planning Commission and Community Boards.

- The issuance by the Army Corps of Engineers of a permit for landfill and dredging, and a certificate of navigability.

- The State request to the Federal Highway Administration (FHWA) for permission to acquire the Westway right-of-way.

- FHWA approval of acquisition.

- State notification to the City of the intent to acquire.

- City submission of voucher to State.

- Receipt of the funds.

- Monthly reports should also provide the status of the following should they occur: (a) litigation in connection with the Westway project; (b) disagreement between State and City regarding the value
of the land to be acquired for right-of-way; and (c) Federal budget cutbacks relating to this project.

Capital Programs

Milestone reporting in this area should relate to the progress of capital projects planned or currently under construction having an estimated total cost of $10-million or more. Both the cost and estimated date of completion should be noted for each of the following phases leading to the completion of the project:

. Preparation of project scope.

. Preparation of project design (including environmental requirements).

. Approval of scope and design by the Mayor and Board of Estimate.

. Advertisement for bids.

. Award of contract.

. Progress of project through major construction phases (foundation and structure, plumbing and drainage, electrical work, heating and ventilating, etc.)

. Completion of project.

Prior Year Encumbrances

The following information should be provided on a monthly basis pertaining to prior year encumbrances. The data should be categorized by agency and object code.

. Opening balances - beginning of current year.

. Amount liquidated during the current month and year-to-date.

. Outstanding amounts determined to be invalid based on the most recent review.

. Valid amounts to be liquidated.

We are aware that some of this information is discussed in two reports which we receive (ACER 110 and 120). However, these reports do not provide separate data on prior year encumbrances nor do they include the portion found to be invalid.

The City should also provide a timetable indicating when a final determination will be made as to the status of FY 1978 encumbrances and the nature of the adjustments that may be required.
Inter-Fund Agreements (IFA's)

The current reporting on IFA activities in the monthly Financial Plan Statements is inadequate for monitoring purposes. This is best illustrated in the February 1979 Financial Plan Statements where the City has recognized only $3 million of IFA revenues to date, but is still anticipating $76 million for FY 1979.

We therefore recommend that the City submit a monthly plan on an agency basis projecting employee man-days and costs related to the performance of IFA activities. This plan should then be compared with actual time distribution results as contained in documentation from the affected agencies.

Status of Mitchell-Lama Mortgage Sales

We suggest that the workplan and schedule referred to in the City's letter of March 27 follow the format of the progress reports for the 223(f) refinancing which were prepared by HDA in FY 1977 for submission to the Control Board. The timetable should be further expanded to track the progress of the sale of HDC bonds, if that is the method of refinancing used.

Vendor Restricted Payments

The court decision which was issued on February 27, 1979 mandated that the State pass on to the City the $34 million of Federal funds it received on the City's behalf. A timetable should be developed which outlines any other further actions which may impact on the ultimate receipt by the City of these funds; i.e., the issuance of a court order implementing the decision, further appeals related to the case, etc. In addition, the City has indicated that it was still negotiating with the State as to whether additional funds may be available in association with the award. To the extent that such additional funds may be included in future Plan submissions, revised or additional milestones should be developed.

Personal Services

- Personnel Plan - The City has noted that it anticipates developing a new personnel reporting mechanism. We expect that an annual personnel plan will be submitted detailed by month, segregating personnel by major funding sources, i.e., City, CETA, CD and fully-funded State and Federal positions. Monthly reports should measure actual performance against that plan.

- City-Funded Gross Hires and Separations - We received a gross hires and separations plan by funding source for December 1978 through June 1979. However, this plan was not broken out by month. A comparable annual plan for FY 1980 detailed by month should be submitted with the Executive Budget. An estimate as to when monthly reports of actual experience against this plan will be available should also be furnished.
City-Funded Monthly Average Salary Plan - While this information can be derived through manipulation of IPMS data, we feel the results may not accurately reflect average salaries. The improved reporting system which the City states will be implemented for FY 1980 should reflect both regular salaries and additional compensation. Actual experience should be reported against this plan.

Overtime Expenditures

The City has stated that a new off-line system is being developed which will provide overtime data on a current basis. The milestone monitoring system should indicate the agencies which will be included, an annual projection detailed by month, comparisons of actual results vs. plan, and the date when this system will be operable.

In Rem Program

We have received the City's report to HUD dated February 28, 1979 with regard to the City's position on the In Rem program. Monthly reportings should reflect the status of the negotiations with regard to the amount of CD funds to be made available for In Rem purposes and ancillary areas (i.e., designation of neighborhood strategy areas). In addition, the City should submit an annual plan detailed by month, and monthly reporting of actual performance against that plan, of housing in-take and out-take, rent collections, and expenditures.

Coterminality

We anticipate that this required program will be addressed explicitly in the FY 1980 Executive Budget and that an implementation plan with an identification of related costs will be developed.

Program to Eliminate the Gap (PEG) - City Budget

We anticipate receiving detailed explanations of how individual PEG programs (City, State and Federal) relate to and are reflected in the FY 1980 Executive Budget. Where applicable, this should also include FY 1981 PEG actions, the achievement of which requires implementation in FY 1980 (e.g., accelerated real estate tax collections). In conjunction with these programs, the City should identify the progression of events which must occur to achieve the objectives, and the anticipated timing of these events. Monthly targets should be established and actual performance should be reported monthly against such targets.

Transit Authority

Status of State Aid - Milestones should be developed to track the critical points involved in obtaining the planned level of State aid, including the identification of specific amounts in the Governor’s budget, passage by the State Legislature, and confirmation of the cash flow schedule from the State to the TA.
. Status of Federal Aid - Critical points in the process of obtaining Federal aid should be identified, including the TA's applications for specified amounts, inclusion of such amounts in the President's budget, Congressional action, impact of any supplemental bills, and confirmation of the cash flow from the Federal government to the TA.

. Additional Management Actions to Reduce the TA Gaps - These programs should be described in detail, indicating how they will be accomplished and how much they will save. Monthly timetables should be developed as a basis for tracking implementation and monthly savings to determine whether actual performance is on target.

. COLA III - A milestone monitoring mechanism should be established for the individual productivity programs which will fund the COLA III payments, including monthly estimates of savings and COLA III costs, and a timetable for the implementation of each program. Actual results should be measured against these targets.

Health and Hospitals Corporation

. Woodhull Hospital - The status of HHC's plans to open Woodhull should be reported upon monthly.

. Monthly Variances - Explanations should be furnished for the monthly variances reported in the Financial Plan Statements. This could be presented either by supplementing the existing reports or through separate submissions.

. Excess Hospital Beds - Monthly status reports should be presented on all aspects of this vital issue, including the projected reports of the Task Force and HSA; the status of OMB's staff report on hospital closings; timetable for implementation of plan, detailing savings to be accomplished; status of coordination of the City plan with HSA's regional plan; status of State approvals to Decertify beds; detailing of plans to reduce HHC's workforce; itemization of cost savings by month, planned and actual; projection of patient revenue impact by month, etc.

. FTE Personnel - Headcounts should be reported on both a targeted and actual basis by category - general care, mental health, CHPA, grants - to track attrition.

. Workload - For each of the four workload categories - inpatient, outpatient, skilled nursing facilities and emergency room - targets and actual number of days/visits should be reported monthly, together with explanations of variances and annual forecasts compared with plan.
Social Security Contributions – Monthly reports should be submitted showing the status of the City's appeal of the decision requiring funding of Social Security assessments for the period from 1975 to date.

- Disallowances - Monthly reports should include notices of disallowances by source (PSRO, State onsite review, audit); dollar value of disallowances for the month and cumulative year-to-date; comparison with plan figures year-to-date and revised annual forecasts, if appropriate.

- Appeals - Monthly status of Medicaid rate appeals and Medicare audit settlements should be presented showing number of appeals filed, number resolved, number pending, with dollar values; also payments received, both monthly and year-to-date, compared to targets.

Board of Higher Education

- Expenditure Reductions to Fund Reserves - Details of the cost reduction programs should be reported, including anticipated dollar savings, timetable for implementation, and performance against targets by month.

- Fall and Spring Flash Enrollments - These figures should be reported when received.

Housing Authority

- OITS Cost Containment - Monthly reports should identify the cost containment programs, dollar savings to be gained from each, timetables for implementation, and comparison of performance against targets.

City University Construction Fund

The status of the contractors' suits for termination costs should be reported monthly.

Educational Construction Fund Bond Sale

The City submission outlined the sequence of events necessary to realize the ECF revenues in FY 1979. If ECF and the City do not intend to proceed with the bond sale until FY 1980, a revised timetable should be submitted, indicating the anticipated amount of the bond sale and the amount of funds to be transmitted to the City, from both the bond proceeds and rent revenues.
NEW YORK STATE FINANCIAL CONTROL BOARD
Monitoring Proposal

RESOLUTION

WHEREAS, the City submitted proposed Modification No. 79-4 to the Financial Plan for review and approval by the Control Board, accompanied by a proposed Program to Eliminate the Budget Gap for FY1980; and

WHEREAS, the Financial Plan, as approved by the Board, contemplates that at least $250 million of City actions in FY1980 may be required in order to balance the budget for that fiscal year; and

WHEREAS, the City has agreed (a) to establish, on a trial basis, a monitoring system providing for monthly progress reports on projects or programs to be identified and mutually agreed upon by representatives of the Mayor, the Control Board, the Office of the Special Deputy Comptroller ("OSDC") and the City Comptroller; (b) to provide for periodic reports on the implementation of programs required to close the budget gap currently projected for FY1980; and (c) to provide additional detail on proposals to close the budget gap currently projected for FY1981; (d) to provide periodic reports on the development of programs to close the budget gap currently projected for FY1981; and (e) to consider an acceleration of the budget planning process in order to assure that adequate provision is made to deal with the budget gap currently projected for FY1981; and

WHEREAS, it is agreed by all involved parties that it is in the best interests of the City to avoid unnecessary, duplicative and unduly burdensome reporting requirements and to provide only for reports and a reporting system that are reasonably necessary to the monitoring process and, to the extent possible, co-ordinated with the other reporting requirements of the City; it is therefore

RESOLVED, that the City will establish, on a trial basis, monitoring system providing for monthly progress reports on programs to be identified and mutually agreed upon by representatives of the Mayor, the Control Board, the OSDC and the City Comptroller, which shall include programs to close the budget gap currently projected for FY1980 which require implementation prior to July 1, 1979; and further
RESOLVED, that the City will provide periodic reports on the implementation of programs required to close the budget gap currently projected for FY1980, in such form and containing such detail as shall be agreed to by representatives of the Mayor, the Control Board, the OSDC and the City Comptroller, with the first such report to be issued July 31, 1979 and successive reports to be issued monthly thereafter; and further

RESOLVED, that the Financial Plan submission in May 1979 will be accompanied by a description of individual City actions proposed to close the budget gap then projected for FY1981, such description to be agency-specific only with respect to programs that involve individual agencies rather than citywide implementation; and further

RESOLVED, that the City will provide periodic reports on the development and implementation of programs to close the budget gap projected in the Financial Plan for FY1981, in such form and containing such detail as shall be agreed to by representatives of the Mayor, the Control Board, the OSDC and the City Comptroller, with the first such report to be issued September 30, 1979 and successive reports to be issued monthly thereafter; and further

RESOLVED, that representatives of the Mayor, the Control Board, the OSDC and the City Comptroller will periodically confer and report to the Control Board on the budget planning process and the necessity and feasibility of accelerating the budget planning process in order to assure that adequate provision is made to deal with the budget gap projected for FY1981 in the Financial Plan; and further

RESOLVED, that in order to avoid unnecessary, duplicative and unduly burdensome reporting requirements, representatives of the Mayor, the Control Board, the OSDC and the City Comptroller will periodically confer and review the reports required of, and reporting requirements applicable to, the City pursuant to this resolution and other agreements and provisions of law, to determine whether such reports may be combined, coordinated or eliminated in order to minimize the reporting burden of the City and to provide only such reports as are reasonably necessary to the monitoring process.
April 23, 1979

Honorable James R. Brigham, Jr.
Director of the Budget
1210 Municipal Building
New York, New York 10007

Dear Mr. Brigham:

In previous letters to you on the subject of milestone monitoring, both from this office and jointly with the Executive Director of the Financial Control Board, we described the type of information that the City should provide in the monthly progress reports required under the Control Board resolution of February 14, 1979. In essence, we stated that the milestones for tracking agreed upon programs should delineate the necessary timing and progression of events which would have to take place, and the estimated savings or revenues which would have to accrue at specified intervals, in order for the City to achieve its cost reduction or revenue enhancement objectives. The scheduled events and estimates would then serve as targets against which actual occurrences would be measured monthly to determine whether the planned results are likely to be achieved.

Although your letter of March 27, 1979 to Mr. Coppie and me contains useful information on the current status of certain programs, the data do not generally provide the essential components for an ongoing milestone monitoring system. Your presentation relating to the Educational Construction Fund Bond Sale comes closest to meeting the requirements noted above and might serve as a guide in developing milestones for the other programs.

I am aware that the nature of the specific milestones to be established by the City for each program will probably vary due to the different kinds of programs to be monitored. What is needed in each case, however, is a chronology of the focal dates and events which have to take place in order for each program to reach its financial plan objective, and monthly status reports indicating whether the programs are on target. Where no change has occurred in a given month, a notation to that effect would be in order. Any slowdown or failure to meet the planned timetable would require a determination by the City as to its effect on the financial plan estimate.
For your guidance, an attachment to this letter comments on certain of the programs to be monitored, citing examples of the areas which should be addressed. These comments are not meant to be all-inclusive either as to programs or events to be tracked, but may be of assistance in focusing on the type of data we require. A list embracing these and other programs which were identified for milestone monitoring was distributed at a meeting on February 21 which was attended by representatives of the Control Board, the City Comptroller and your office, and is attached hereto.

We look forward to receiving your monthly report conforming to the format described in this letter on or about April 30, 1979. If you have any specific questions, please call me or Irving Cohen and we will respond promptly.

Sincerely,

[Signature]

Sidney Schwartz

SS/ga

cc: Comer Coppie
    Martin Ives
    Robert Vagt
    FCB Members
    MAC Members
Baseline

Revenues

1. Status of real estate tax inequality suits x
2. BCF bond sale x
3. Vendor restricted settlement x
4. Westway x
5. Status of disallowance reserve
   a) monthly listing of draft and final reports received proposing disallowances x
6. CFTA
   a) Status of proposals for waivers x
   b) action being taken to reduce service impact of staff turnover x
   c) indirect cost reimbursement x

Expenditures

1. **Personal Service**
   a) personnel plan by funding source and agency; and actual performance against that plan x
   b) City funded attrition plan (including BE) containing gross hires and gross separations and reporting actual performance x
   c) City funded monthly average salary plan and actual performance (which would indicate upward creep) x
2. Overtime expenditure monitoring x
3. In Rem Program
   a) status of negotiations on CD funding x
   b) status of housing in-take and out-take and program expenditures x
4. **Move to coterminality** x
5. **IFAs** x
6. Validation of FY 1978 encumbrances and GAAP impact

Cash Flow

1. Lease or sale of Rikers Island to New York State x
2. Status of Mitchell-Lama mortgage sales x
Program to Eliminate the Gap (PEG)

1. Status of plans to increase State and Federal aid

2. Covered organization subsidy reduction

3. Civilianization plan by agency

4. Use of two man crews in Sanitation

5. Board of Higher Education tuition increase

6. Transfer to Board of Education of school crossing guards (see notes)

7. Maintain FY 1978 Fire Department manning levels

8. OIPS cost containment

9. Cost containment programs contained in State budget

10. Change in real estate tax payment dates

11. Change in veterans exemptions

Proposed Report Starting Date
March 1979
July 1979
Suggested List for Milestone/Monitoring System (cont'd.)

Covered Organizations

Proposed Report Starting Date
March 1979        July 1979

Transit Authority

A. Baseline
   1. Additional State Aid  x
   2. Increased Federal Aid  x
   3. Savings program  x

B. Gap Closing Program
   1. Additional State/Federal Aid  x
   2. Contingency program  x
   3. Additional management actions  x

C. COLA III (to be paid through productivity increases)  x

Board of Higher Education

1. Expenditure reductions to fund reserves  x
2. Fall and spring flash enrollment  x
3. Tuition collection by month  x

Health and Hospitals Corporation

1. Projected opening -- Woodhull  x
2. Variance of patient revenue collections from plan  x
3. Variance of City funds to HHC  x
4. Personnel totals  x
5. Inpatient, Outpatient, ER workloads  x
6. Disallowances filed through utilization review, PSROs, etc  x
7. Medicaid appeals, medicare settlements  x

Housing Authority

1. OTPS cost containment  x

City University Construction Fund

1. Status of suit on termination costs  x
Status of Real Estate Tax Inequality Suits

The City has indicated that it will routinely report on the status of the Rego Park and Con Edison cases. The monitoring mechanism should also track other significant events related to the inequality issue, including prospective legislative relief and the status of other related suits which could affect the ultimate resolution of the inequality question.

Status of Reserve for Disallowances

The City has indicated that it will evaluate and report on the status of State and Federal aid disallowances as timely as possible. We believe that a monthly report is needed which would show:

- Cash disallowances taken year-to-date (by program and the time period covered by the audit);
- Disallowances identified but not yet taken (by program and time period);
- A listing of State and Federal audits in progress (i.e., potential disallowances) and the potential magnitude of the disallowances;
- Evaluation of the adequacy of the remaining reserve for disallowances.

CETA

- Status of Proposals for Waivers-The reporting format for the status of waivers should include a timetable for planned formal submissions to the appropriate Federal agencies and any other actions necessary to secure the waivers. Estimates of response dates by these officials should be factored into this timetable. The monthly status reports should include copies of the formal application for waivers.

- Employee Termination and Transfer Planning - This monitoring system will necessarily be interrelated with the planned timetable for the proposals for waivers. The system should reflect a comprehensive plan as to how the City proposes to achieve compliance with the mandates of the revised CETA legislation. Alternate plans should be prepared in anticipation of possible denial of requested waivers, etc.

The milestone plan should incorporate the following:

A monthly forecast by agency of CETA personnel changes, showing the number of CETA employees on board as of 3/31/79, with forecast number of new hires, transfers to City funding, and terminations each month.
Monthly forecasts of CETA personnel changes by title (e.g., policemen, firemen, teachers, sanitationmen) for employees earning over $13,200, showing new hires, transfers to City-funded positions, and terminations.

Monthly forecasts of average salaries of CETA employees.

- Indirect Cost Reimbursement - As the actual rate (amount) of reimbursement for these costs is determined through negotiations between City and U.S. Department of Labor (DOL) officials, a schedule should be prepared which will reflect planned dates of formal submissions by the City and anticipated dates of responses from DOL.

Westway

The City has indicated that it will provide a listing of events necessary to complete the Westway project, in connection with its FY 1980 budget. A timetable covering the following events should be included in such listing:

- The estimated completion date of hearings being held by the State Department of Environmental Conservation (SDEC) on the Indirect Source Permit (ISP); also the anticipated timing schedule for briefs and reply briefs.

- The hearing officer's recommendations on the ISP to the Commissioner of SDEC.

- The SDEC Commissioner's decision on the ISP.

- The SDEC Commissioner's issuance of the ISP.

- The hearings and recommendations to be made by the City Planning Commission and Community Boards.

- The issuance by the Army Corps of Engineers of a permit for landfill and dredging, and a certificate of navigability.

- The State request to the Federal Highway Administration (FHWA) for permission to acquire the Westway right-of-way.

- FHWA approval of acquisition.

- State notification to the City of the intent to acquire.

- City submission of voucher to State.

- Receipt of the funds.

- Monthly reports should also provide the status of the following should they occur: (a) litigation in connection with the Westway project; (b) disagreement between State and City regarding the value
of the land to be acquired for right-of-way; and (c) Federal budget cutbacks relating to this project.

**Capital Programs**

Milestone reporting in this area should relate to the progress of capital projects planned or currently under construction having an estimated total cost of $10 million or more. Both the cost and estimated date of completion should be noted for each of the following phases leading to the completion of the project:

- Preparation of project scope.
- Preparation of project design (including environmental requirements).
- Approval of scope and design by the Mayor and Board of Estimate.
- Advertisement for bids.
- Award of contract.
- Progress of project through major construction phases (foundation and structure, plumbing and drainage, electrical work, heating and ventilating, etc.)
- Completion of project.

**Prior Year Encumbrances**

The following information should be provided on a monthly basis pertaining to prior year encumbrances. The data should be categorized by agency and object code.

- Opening balances - beginning of current year.
- Amount liquidated during the current month and year-to-date.
- Outstanding amounts determined to be invalid based on the most recent review.
- Valid amounts to be liquidated.

We are aware that some of this information is discussed in two reports which we receive (ACER 110 and 120). However, these reports do not provide separate data on prior year encumbrances nor do they include the portion found to be invalid.

The City should also provide a timetable indicating when a final determination will be made as to the status of FY 1978 encumbrances and the nature of the adjustments that may be required.
Inter-Fund Agreements (IFA's)

The current reporting on IFA activities in the monthly Financial Plan Statements is inadequate for monitoring purposes. This is best illustrated in the February 1979 Financial Plan Statements where the City has recognized only $3 million of IFA revenues to date, but is still anticipating $76 million for FY 1979.

We therefore recommend that the City submit a monthly plan on an agency basis projecting employee man-days and costs related to the performance of IFA activities. This plan should then be compared with actual time distribution results as contained in documentation from the affected agencies.

Status of Mitchell-Lama Mortgage Sales

We suggest that the workplan and schedule referred to in the City's letter of March 27 follow the format of the progress reports for the 223(f) refinancing which were prepared by HDA in FY 1977 for submission to the Control Board. The timetable should be further expanded to track the progress of the sale of HIDC bonds, if that is the method of refinancing used.

Vendor Restricted Payments

The court decision which was issued on February 27, 1979 mandated that the State pass on to the City the $34 million of Federal funds it received on the City's behalf. A timetable should be developed which outlines any other further actions which may impact on the ultimate receipt by the City of these funds; i.e., the issuance of a court order implementing the decision, further appeals related to the case, etc. In addition, the City has indicated that it was still negotiating with the State as to whether additional funds may be available in association with the award. To the extent that such additional funds may be included in future Plan submissions, revised or additional milestones should be developed.

Personal Services

Personnel Plan - The City has noted that it anticipates developing a new personnel reporting mechanism. We expect that an annual personnel plan will be submitted detailed by month, segregating personnel by major funding sources, i.e., City, CETA, CD and fully-funded State and Federal positions. Monthly reports should measure actual performance against that plan.

City-Funded Gross Hires and Separations - We received a gross hires and separations plan by funding source for December 1978 through June 1979. However, this plan was not broken out by month. A comparable annual plan for FY 1980 detailed by month should be submitted with the Executive Budget. An estimate as to when monthly reports of actual experience against this plan will be available should also be furnished.
City-Funded Monthly Average Salary Plan – While this information can be derived through manipulation of IFMS data, we feel the results may not accurately reflect average salaries. The improved reporting system which the City states will be implemented for FY 1980 should reflect both regular salaries and additional compensation. Actual experience should be reported against this plan.

Overtime Expenditures

The City has stated that a new off-line system is being developed which will provide overtime data on a current basis. The milestone monitoring system should indicate the agencies which will be included, an annual projection detailed by month, comparisons of actual results vs. plan, and the date when this system will be operable.

In Rem Program

We have received the City’s report to HUD dated February 28, 1979 with regard to the City’s position on the In Rem program. Monthly reporting should reflect the status of the negotiations with regard to the amount of CD funds to be made available for In Rem purposes and ancillary areas (i.e., designation of neighborhood strategy areas). In addition, the City should submit an annual plan detailed by month, and monthly reporting of actual performance against that plan, of housing in-take and out-take, rent collections, and expenditures.

Coterminality

We anticipate that this required program will be addressed explicitly in the FY 1980 Executive Budget and that an implementation plan with an identification of related costs will be developed.

Program to Eliminate the Gap (PEG) – City Budget

We anticipate receiving detailed explanations of how individual PEG programs (City, State and Federal) relate to and are reflected in the FY 1980 Executive Budget. Where applicable, this should also include FY 1981 PEG actions, the achievement of which requires implementation in FY 1980 (e.g. accelerated real estate tax collections). In conjunction with these programs, the City should identify the progress of events which must occur to achieve the objectives, and the anticipated timing of these events. Monthly targets should be established and actual performance should be reported monthly against such targets.

Transit Authority

Status of State Aid – Milestones should be developed to track the critical points involved in obtaining the planned level of State aid, including the identification of specific amounts in the Governor’s budget, passage by the State Legislature, and confirmation of the cash flow schedule from the State to the TA.
Status of Federal Aid – Critical points in the process of obtaining Federal aid should be identified, including the TA’s applications for specified amounts, inclusion of such amounts in the President’s budget, Congressional action, impact of any supplemental bills, and confirmation of the cash flow from the Federal government to the TA.

Additional Management Actions to Reduce the TA Gaps – These programs should be described in detail, indicating how they will be accomplished and how much they will save. Monthly timetables should be developed as a basis for tracking implementation and monthly savings to determine whether actual performance is on target.

COLA III – A milestone monitoring mechanism should be established for the individual productivity programs which will fund the COLA III payments, including monthly estimates of savings and COLA III costs, and a timetable for the implementation of each program. Actual results should be measured against these targets.

Health and Hospitals Corporation

Woodhull Hospital – The status of HHC’s plans to open Woodhull should be reported upon monthly.

Monthly Variances – Explanations should be furnished for the monthly variances reported in the Financial Plan Statements. This could be presented either by supplementing the existing reports or through separate submissions.

Excess Hospital Beds – Monthly status reports should be presented on all aspects of this vital issue, including the projected reports of the Task Force and HSA; the status of OMB’s staff report on hospital closings; timetable for implementation of plan, detailing savings to be accomplished; status of coordination of the City plan with HSA’s regional plan; status of State approvals to decertify beds; detailing of plans to reduce HHC’s workforce; itemization of cost savings by month, planned and actual; projection of patient revenue impact by month, etc.

FTE Personnel – Headcounts should be reported on both a targeted and actual basis by category – general care, mental health, CETA, grants – to track attrition.

Workload – For each of the four workload categories – inpatient, outpatient, skilled nursing facilities and emergency room – targets and actual number of days/visits should be reported monthly, together with explanations of variances and annual forecasts compared with plan.
Social Security Contributions - Monthly reports should be submitted showing the status of the City's appeal of the decision requiring funding of Social Security assessments for the period from 1975 to date.

Disallowances - Monthly reports should include notices of disallowances by source (PSRO, State onsite review, audit); dollar value of disallowances for the month and cumulative year-to-date; comparison with plan figures year-to-date and revised annual forecasts, if appropriate.

Appeals - Monthly status of Medicaid rate appeals and Medicare audit settlements should be presented showing number of appeals filed, number resolved, number pending, with dollar values; also payments received, both monthly and year-to-date, compared to targets.

Board of Higher Education

Expenditure Reductions to Fund Reserves - Details of the cost reduction programs should be reported, including anticipated dollar savings, timetable for implementation, and performance against targets by month.

Fall and Spring Flash Enrollments - These figures should be reported when received.

Housing Authority

OITPS Cost Containment - Monthly reports should identify the cost containment programs, dollar savings to be gained from each, timetables for implementation, and comparison of performance against targets.

City University Construction Fund

The status of the contractors' suits for termination costs should be reported monthly.

Educational Construction Fund Bond Sale

The City submission outlined the sequence of events necessary to realize the ECF revenues in FY 1979. If ECF and the City do not intend to proceed with the bond sale until FY 1980, a revised timetable should be submitted, indicating the anticipated amount of the bond sale and the amount of funds to be transmitted to the City, from both the bond proceeds and rent revenues.
The following is a list of questions which may be expected to be asked at the Oversight Hearings next week:

1. Given the well received City Note sale a few weeks ago, why does the City need any guarantees?

2. Why was the November sale of MAC Bonds unsuccessful and what is its effect on MAC's future ability to issue its bonds in accordance with the Four-Year Financing Plan?

3. With respect to the State budget, how much is there for the City next year in the budget and how much of that will recur in Fiscal Years 1981 and 1982.

4. With respect to the City's expense budget, should the City be required to do the Level II program at this time? (Felix' statements last week to the effect that cuts are not being made by the City early or often enough will undoubtedly be quoted by Proxmire). There may be questions concerning specific items in the budget, such as Health and Hospitals Corporation and Transit Authority (for which the Control Board sees gaps in Fiscal '80 of $25 million and $20 million, respectively), personal services and federal aid for CETA and In Rem housing.

5. With respect to the City's seasonal financing needs:

   a. Why were the guarantees permitted to be issued without there being in place seasonal financing commitments for the next four years? This question will probably be addressed to Treasury, who will respond that given the likelihood of a market for City Notes in FY 1980, MAC's capacity to issue seasonal notes, and their discussion with banks and pension funds respecting the likelihood of their making commitments next year, Treasury determined that it was prudent to go ahead and issue the guarantees.

   b. Are there ways in which the State can further aid the City to reduce its seasonal needs? The City has advised Elinor Bachrach that the City's seasonal needs can be reduced two ways: first, their April needs can be reduced if the State Comptroller pays over
sales and stock transfer tax on the 13th of April
instead of the 15th of April. We have indicated that
we do not object to this; second, their June peak
needs can be reduced, and perhaps eliminated, if
the State were to make aid payments at the beginning
of June, which are customarily made on June 25th
(we understand these payments to be made from the
proceeds of the state's spring borrowing).

6. With respect to the City's capital budget:

a. Should the financing plan not be reduced by at
least $100 million, since the City shows a $100
million capital plan reduction in its financial
plan submission made on January 15?

b. Should the plan not be reduced further in light of
the City's own statements to the effect that capital
spending will lag considerably in FY 1980 and 1981?

The City is still in the process of formulating its position
on this issue. Phil Toia is waiting for a detailed report
from Jerry Walsh, his construction coordinator, as to whether
the City's capital spending can be expedited so as to enable
the City to commit (not necessarily spend) $2.2 billion by
the end of FY 1982.

With respect to the $100 million shortfall, the City has
requested that $100 million in guarantees be issued for
back-bonding purposes (some guarantees have already been
issued for back-bonding). This would have the effect of
permanently increasing the City's working capital. Treasury
is not terribly pleased about acquiescing in this plan
change but will probably try to keep its options open at the
Oversight Hearings. FY 1980 and 1981 underspending may
present a more difficult question. Even if Treasury agrees
that commitments rather than spending are the test, and the
City can show that commitments will be in place by FY 1982,
Treasury may take the position that guarantees should not be
made until the commitments are actually in place.

As long as it appears that the City will indeed have commitments
to the full extent of the $2.2 or $2.3 billion in place by the
end of FY 1982, bonds should be issued during the four year
period in accordance with the existing Plan to avoid a market
perception that the City will be caught in a crunch at the end of
the four year period. One way to accomplish this in FY 1980
is for MAC to issue refunding bonds which it had planned to
issue in FY 1981 or 1982 in lieu of all or a portion of the City capital bonds it had intended to issue in FY 1980. The City's capital program, to the extent not financed by MAC, would be financed by the federal guarantees and budgetary relief resulting from our refunding would be available to the City earlier than anticipated, diminishing budget gaps in FY 1981 and 1982. As we try to chart the City's progress in meeting the goals of its capital plan. We should review the report commissioned by us last year respecting the City's capital program.

City Budget

Following is a chart which represents preliminary views of the Special Deputy State Comptroller on the City's head program and revised for your plan. As to FY 1980, we are advised by the FCB that their preliminary view is that if the City implements Levels I and II, the FY 1980 gap will be $183 million increased by the HHC gap.
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**PEG**

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Level II $110M

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*Other unspecified, reserve for adjustments*
26 October 1978

Ruth M. Wallick, Esq.
Subcommittee on Economic Stabilization
U.S. HOUSE OF REPRESENTATIVES
2129 Rayburn House Office Building
Washington, D. C. 20515

Dear Ruth:

Thank you for your letter of September 22, 1978, requesting that you be put on the mailing list to receive copies of MAC communications relating to the loan guarantee program. Although we do not maintain a formal mailing list, we will be delighted to provide you with any official MAC communications as we issue them.

We very much appreciate the good working relationship we have had with you and the subcommittee staff over the past months and the assistance you provided during the consideration of P.L. 95-339. I hope that you will call us if you have any questions or requests that we can assist you with in the performance of your oversight responsibilities.

My warmest regards.

Yours sincerely,

Eugene J. Keilin
Executive Director

EJK:bba
Mr. Eugene Keilin  
Municipal Assistance Corporation  
2 World Trade Center  
32nd Floor  
New York, NY 10047

Dear Gene:

With the New York loan guarantee legislation enacted, the Subcommittee on Economic Stabilization has a responsibility to maintain close and continuous oversight of City, State and Federal performance under the terms of the Act. This is particularly true in light of the one-House veto and annual dollar restriction provisions of P.L. 95-339.

In order to maintain an efficient oversight effort and to be knowledgeable about important issues on a timely basis, Chairman Moorhead has directed me to request that the Subcommittee be placed on the Municipal Assistance Corporation's mailing list to receive copies of all official MAC communications pertaining to the loan guarantee program. You and your staff have been most accommodating when we have requested materials or information, but if we could receive documents on a routine basis it would greatly expedite our work.

With best regards,

Sincerely,

Ruth M. Wallick
Counsel
MEMORANDUM

TO: Members of the Board of Estimate
    Members of the City Council LOBR Committee

FROM: Carol Bellamy

RE: Oversight of the Legislative Office
    of Budget Review

DATE: March 2, 1978

Set out here to afford a basis for discussion are our proposals for guidance of the Legislative Office of Budget Review, designed to implement the mandate set forth in §45 of the Charter. To tie our proposals to the existing LOBR structure, which we believe is basically sound and designed to enable LOBR both to carry out its statutory duties and to develop a professional and knowledgeable staff, we refer at numerous points to the office's operating divisions. These are described in detail in Exhibit A; Exhibit B provides information concerning the proposed staff of these divisions.

At the outset, we wish to make clear a basic assumption which underlies all our proposals. LOBR is intended to be an independent and, above all, professional fiscal arm of the Board and Council. Therefore, whatever oversight provisions are adopted, they should be carefully structured so that only the broadest outlines are handed to the office,
making Board and Council needs clear but permitting the Director and his staff maximum latitude in applying their professional fiscal expertise to such questions as what work can be undertaken, what its scope should be and what product will most usefully serve the needs of both bodies. The lawyer-client relationship furnishes an appropriate analogy.

SUMMARY

We briefly summarize our recommendations:

1) Establish a joint oversight committee, as authorized by the Charter, composed of seven members from each body. The committee would establish and review broad policy and annual work priorities. It would be structured as follows:

   Board:  Council President
          Comptroller
          Borough Presidents of Manhattan, Bronx, Brooklyn, Queens, Staten Island

   Council: Vice-Chairman
           Minority Leader
           Finance Committee Chairperson
           4 Council Members, selected with a view toward insuring representation of all standing committees
           Chair: Finance Committee Chairperson) alternating Council President

2) Establish an executive committee, composed of the joint committee chair and one or two representatives from each body, which would be responsible for liaison, dissemination of information and general monitoring to resolve conflicts in demands for LOBR's services. It would meet at least monthly and could convene the entire committee as required.

3) Premulgate operating procedures outlining: (a) priorities for ongoing work and special requests; (b) the format and distribution mechanism for reports and other work products; and (c) means of coordinating with staff of Council committees, Board of Estimate members and other budget agencies to avoid duplication and insure maximum efficiency.
The remainder of this memorandum explains these proposals in detail, starting with the third in order to give context to the recommendations concerning oversight committee structure and work.

**Operating Procedures**

We believe promulgation of written operating procedures setting out the basic parameters for LOBR's performance of its Charter-mandated duties essential, to enable the office itself and members of the bodies it serves to know what is expected and how services will be delivered. Following are the issues we raised in our previous memorandum:

1. What budget review priorities need to be established? Who is to establish them, and in what manner?

2. How is approval for priority of special assignments to be given?

3. Will the Director have authority to proceed with a request without prior approval? Is any such request to be reported, regardless of the requirement for prior approval; and if so, to whom and how?

4. Who will receive LOBR's reports? Who will approve their release and distribution?

5. Will budget review and analysis be reviewed prior to release to the full Board and Council? If so, by whom?

**1. Substantive Work, Priorities and Approval of Requests**

Section 45 of the Charter directs LOBR to:

1. "Review and analyze proposed budgets and departmental estimates, and requests for new taxes or changes in taxes, budget modifications and capital borrowings;" and

2. "Assist the council and board of estimate in their review of the performance and management of city agencies."
Within this mandate, there are essentially three types of work to be performed: (1) ongoing review and analysis of all aspects of both the expense and capital budgets; (2) studies performed at the special request of the Board or Council standing committees; and (3) responses to requests for information. The first should require very little in the way of oversight once the office is fully operational and one budget cycle completed; however, good liaison, as opposed to oversight, will be critical here. The third should require oversight only to make certain that undue burdens are not placed on the office's staff, since the requests should be limited to those requiring information-retrieval only. The second area will be the main focus of the oversight committee's work; even it can be easily manageable if certain ground rules are established.

a) Ongoing Work

The core of LOBR's work will be its analysis of and report on the Executive Budget, commencing with work on departmental estimates and carrying through the final adoption. Analysis of proposed budget modifications and requests for new taxes or changes in taxes (§124) will also be done on a routine basis, as will review and analysis of the Mayor's Management Report (§12). Ultimately, analysis of the fiscal impact of proposed legislation should be added. (Until the office is fully staffed, we believe this work should be done only in answer to special requests, as experience of other budget offices has shown it to be extremely time-consuming).
Ongoing work will be performed principally by the Division of Budget Process and Review, whose staff members will continue activities already begun, working closely with the agencies to produce a programmatic analysis of the budget, with units of appropriation defined so as to provide information permitting legislative decision-making.* The Division of Tax and Fiscal Analysis, will also clearly be involved in monitoring revenue and tax projections but will not be intimately involved with agencies or with day-to-day analysis. Rather, this division will perform the following functions to enable legislative appraisal of revenue projections and more concrete consideration of program alternatives:

1. prepare independent forecast of City revenues;

2. review the City's current revenue forecast and procedures;

3. prepare forecasts of municipal expenditures which are dependent upon economic conditions (welfare payments, for instance); and

4. prepare independent tax analysis.

The objective of both divisions' work will be to provide the Council and Board with professional, non-partisan analysis of proposed expenditures and revenues, with explanations of alternatives set out according to expressed concerns of these bodies. Ongoing consultation between the Director and the oversight committee will insure clear articulation of these concerns. The close relationship of Budget Pro-

*For example, LBSR will present the Police Department's budget in a format enabling review of expenditures allocated to programs such as foot patrol and auto patrol. The current budget fails to present a complete picture of any of these programs, merely describing salaried personnel by title and placing clearly related expenses, such as automobile maintenance, under separate budget codes.
cess staff with departmental personnel and the resulting day-to-day flow of information will immeasurably enhance the quality of fundamental data, as it has following creation of similar fiscal agencies in other jurisdictions. Revenue expertise within the same office will give both Board and Council a total budget picture to which they currently do not have access. The reports produced will furnish both bodies with a solid data base for budget consideration. Their staffs will then be able to focus on policy questions and matters of particular interest to Council and Board member constituents.

The budget review cycle will begin with submission of departmental estimates in December, pursuant to Charter §112. LOBR will review and analyze these estimates, raising their own issues and questions and discussing these with the oversight committee members and staff of Council committees and Board. As a result of these discussions, the Council and Board will be able to submit comprehensive questions to departments concerning requested appropriations and proposed expenditures prior to the joint hearings conducted in February. This will enable the preliminary budget work done by the Council and Board to be truly meaningful so that early involvement mandated by the Charter Revision Commission can have its intended effect.

Analysis of the executive budget itself can begin as soon as figures become reasonably fixed in the processing by the Office of Management and Budget. Continuing cooperation with this agency will enable LOBR to work with preliminary budget figures so that by submission of the Preliminary Budget on April 15, a comprehensive draft version of an annual budget report will be in the wings and ready for submission
to the Council and Board in time for the joint hearings commencing on April 21. The report's format should be determined by the Director after consultation with the oversight committee. It will discuss the program implications of each department's budget, and, as mentioned above, provide Board and Council with alternatives for consideration. We would envision the final report's being available within two weeks after presentation of the Executive Budget (May 1, pursuant to Charter § 116).

Familiarity with budget figures and with departmental operation will also permit sound analysis of the Mayor's Management Report. LOBR's work for the Board and Council can consist here, as with departmental estimates, of raising issues and pinpointing deficiencies to be addressed in joint hearings. The Office should also participate actively in the preparation of reports of findings and recommendations.

We also proposed that the LOBR staff be requested to assist the Board and the Council with the joint budget hearings (there are two sets -- February, on departmental estimates; late April and early May, on the final executive budget) and with hearings on the Mayor's Management Report (between February 20 and March 14). Staff members should be present and available both to respond to questions and to comment on agency presentations, including presentations by the Office of Management and Budget.

Professional analysis of the relatively small number of budget modifications coming within the purview of Charter § 124 will also assist the Board and Council in their determinations. Specific issues to be addressed as these modifications arise can be determined by the Director in close consultation with the
oversight committee and, when appropriate, with Council and Board representatives and staff specializing in the relevant substantive areas. A simple report describing the effect of the modification and possible alternatives should be considered routine.

Finally, it will be expected that LOBR will be available to testify before the Board and Council following written reports on proposed budget modifications and proposed requests for new taxes, as well as on analysis of the fiscal impact of proposed legislation once that work is undertaken.

b) Special Studies

LOBR's service to the Council and Board in the performance of special fiscal studies will be an important aspect of its functions, complementing ongoing budget analysis. It is with respect to such studies that the problem of coordination between the two bodies will be most acute. It is not necessarily true, for example, that both bodies will have identical work requirements. Council standing committees may wish to initiate studies designed to facilitate their review of agency operations and enable them to make informed recommendations on agency budgets. Board members may prefer to focus on indepth analysis of local service problems brought to light through Community and Borough Boards, or on City-wide complaint patterns established by the Ombudsman's office.

It is absolutely essential to insure that LOBR serves Board and Council equally. Similarly important is that this be effected in a manner which does not compromise the office's professionalism or hinder its ability to serve City-wide interests, whatever the origin of the need for studies. This is not to say neighborhood problems
should not be the subject of study. It means rather that such items should be viewed as triggering mechanisms for broader investigation and analysis, reflecting the fact that difficulties with street light maintenance in one locality (for example) are most likely the result of more comprehensive problems and may even be aggravated if analysis is restricted.*

Most of the work performed as a result of special requests will be done by the Division of Policy Analysis, working with the other office divisions as needed. We believe the focus should be on insuring equal allocation of LOBR's services and work performed, rather than equal allocation of the Division's staff. We believe that although certain needs for investigation will arise throughout the year, the major portion of this division's work will be ascertainable in advance. We therefore propose that it proceed according to an annual work plan, established by the Director working closely with the oversight committee, beginning shortly after the commencement of the fiscal year -- a time when the issues brought to light in the budget adoption process will still be fresh. He could work either with the group as a whole throughout the process, or at first with each body to determine its individual needs.

The annual plan would set broad priorities for LOBR's work, and outline the major studies expected to be undertaken. Quarterly review of the plan would insure its being carried out in a manner consistent with the changing needs of Board and Council. Finally, more

*This is a fundamental systems principle and cannot be ignored if LOBR is to provide the professional assistance the Charter Revision Commission intended.
frequent monitoring by a smaller body than the entire oversight committee would permit the undertaking of studies the need for which may not be foreseeable. Oversight committee decisions would give weight to particular needs as changing conditions warrant, and most importantly, would take into account the fact that a report prepared at the request of one body may be of equal use to the other. To the extent that staff of the Division of Policy Analysis is not involved in project work, members could of course be made available to assist Board and Council staffs.

Other possibilities for work assignments were considered. Administratively, the simplest coordination could be effected by taking requests in turn from each body, or by making the staff of the Division directly responsible to one body or the other, either on a rotating basis or permanently split. However, we do not believe such an approach gives due weight to the professional nature of the office -- it might, in fact, undermine it. Nor does it seem the best geared to promoting of City-wide interests. Permanent assignment would, in effect, augment the staffs of the recipients rather than provide complemental, professional assistance, as the Commission intended. Duplication of staff positions within LOBR itself would undoubtedly be required, since Board and Council would surely need assistance in overlapping or identical substantive areas. Loss of LOBR staff might well ensue as a result of perceived loss of professionalism. Thus, while it will undoubtedly be more difficult, particularly since the Board and Council are unaccustomed to working together, we opt for allocation of assignments through the joint oversight committee.
It should be clear at the outset, from a glance at the Charter, that requests for studies will be honored only from the following sources:

(1) Council standing committees, through their chairpersons, or liaison persons designated in writing;

(2) the whole Council, through a duly-adopted resolution;

(3) the Board of Estimate, either by resolution of the whole or written request of individual members.

Basic to insuring adequate coordination is a requirement that all requests for special studies be submitted in writing, and that they be as detailed as possible so that there will be no doubt about the scope of the work. We think requests should be submitted to the Director, rather than being channeled through the oversight committee. The committee will of course be responsible for selection, but its deliberations will be more efficient if supplemented by knowledge of LOBR's assessment of the proposed study's staff and time requirements. Pre-study consultation between the Director and the initiator of the study will facilitate coordination as well.

To facilitate smooth operation of the office, all requests for studies should be kept by the Director. A central file should be available to any member of either body who wishes to review it. Furthermore, LOBR should, in cooperation with the oversight committee, publish a quarterly report, showing all requests which have been submitted and their disposition.
c) Requests for Information

While requests for special studies will be honored only as indicated above, LOBR can respond to requests "for information only" on a regular basis. Such requests, since they will entail little work, may originate from any member of either body. To the extent practicable, they should be submitted in writing, but it is recognized there may be limited instances in which this will not be possible.

It must be clearly understood by all exactly what is comprehended by the phrase "information only." We believe LOBR should be able to supply any readily accessible, usable form of data compiled as a result of its ongoing analytical work and that performed in response to approved requests for special studies.* Put another way, any request the response to which does not involve compilation of data or preparation of a report should be honored.

2. Distribution and Review of Reports

The mechanism established for review and distribution of LOBR's reports must give effect to the principle that the office is a professional agency. However, since the Board and Council will clearly not wish to bear the brunt of unfavorable publicity just or not resulting from reports, the question of pre-release review of work arises.* Certainly, LOBR could be required to

*Obviously LOBR, as a professional fiscal agency, will conduct its own internal review of its work, as does any accounting firm or similar entity. We speak here of scope, comprehensiveness, possible policy questions and the like.
circulate drafts to the oversight committee in advance of general release. However, we believe such a procedure may create more problems than it solves. Confidentiality would be of paramount importance, and the tendency for information to be leaked is well-known. The distortion resulting from press (and other) access to incomplete reports and pieces of studies can be extremely harmful and would seriously compromise the professional nature of LOBR's work. We thus opt for distribution which does not entail review. We believe close work with the oversight committee prior to publication will insure that the wishes of Council and Board are heeded.

At the same time, it is clearly necessary to provide for the understandable desire of those initiating requests for special studies to reap the advantages of publicity resulting from their findings. Therefore, we propose that rules for distribution be geared to the type of report to be distributed. Reports published as a result of ongoing work -- budget analysis, tax and revenue analysis, review of Management Reports -- should be distributed upon their publication to all members of the Council and the Board. Reports prepared as a result of requests for special studies, on the other hand, should be given to the initiator in advance in order to permit the initiator to make them public at his or her discretion.

We emphasize that mere issuance of a report by LOBR need not result in the adoption of its conclusions by either the Board or the Council -- or, in the case of a report prepared for
a standing committee, by the committee. At the same time, we do not believe any form of censorship should be imposed. Any recurrent displeasure with LOBR's work can be more appropriately dealt with through consultation with the oversight committee.

3. Coordination and Liaison

Crucial to LOBR's operation as intended by the Charter will be its coordination and liaison with other offices and with staffs of the bodies it serves. The benefits from effective coordination are twofold: avoidance of wasteful duplication and ultimate improvement in the quality of budget work on all sides as a result of continuous flow of information. The proposals we make here are for the most part not properly included in operating by-laws but will rather be part of LOBR's internal procedures -- as many of the items already are.

Avoidance of duplication will be relatively easy if LOBR maintains a central file describing its work-in-process, with access permitted by any interested agency. (Coordination with the Comptroller's Office will be particularly important) LOBR should issue a monthly report, describing the studies and projects underway, and listing the requests submitted and their disposition.

LOBR should also -- as it has already begun to do -- establish solid liaison with each City agency, including the Office of Management and Budget. Relationships with the latter may be adversarial in nature to a certain extent, but flow of information can only be beneficial. Liaison with the staff of
Council committees and with the staff of Board of Estimate members* should also be of high priority. We suggest that names of liaison persons and their jurisdictions be given in writing and distributed so that responsibility is clearly established and the frustration resulting from lack of clear guidelines avoided.

Finally we suggest that LOBR maintain a manual containing policy statements on such items as professional non-partisanship, procedures for testimony before Board and Council, rules for consultant services, and personnel policy. (The list is by no means exhaustive.) Availability of such information will insure that Board and Council members understand LOBR's operations and permit the oversight committee to suggest changes when the need is perceived.

OVERSIGHT COMMITTEE

We believe the establishment of a joint oversight committee, to set policy and priorities and to serve as a clearinghouse for handling of requests for other than routine work, is absolutely essential to the efficient functioning of LOBR. Only in this way can it be assured LOBR will serve both bodies equally, without duplication of the work of other entities. The Charter Revision Commission, moreover, explicitly acknowledged this need when it authorized the mechanism for joint guidance -- without precedence in the history of the two bodies.

*Appointment of persons with fiscal expertise to these staffs will allow liaison to be most effective.
Two points should be made prior to a discussion of our recommendations for committee make-up. First, we cannot emphasize too strongly how important it is that the oversight committee understand its function is not to dictate, even though ultimate responsibility for overall guidance and broad policy rests with it. Rather, it should work closely with the Director to be sure the work requested of the office (a) is of a City-wide nature and appropriate to its intended functions; and (b) can be performed in a thoroughly professional manner within time constraints. Second, we believe monitoring can be accomplished most efficiently if the entire committee determines broad priorities and a smaller body meets on a frequent basis to deal with matters not susceptible of resolution on an annual basis. The joint committee will, in addition to establishment of broad priorities, have as its province the approval of LOBR's annual budget appropriation and subsequent modifications and establishment of broad policies for matters such as personnel and outside contracting.*

1. The Committee Structure

We propose that the joint committee be composed of seven delegates from each body LOBR serves. The Board of Estimate will be represented by the five Borough Presidents, the Comptroller and the City Council President. The Council membership should consist of the Vice-Chairman, the Minority Leader, the Chairperson of the Finance Committee and four Council members.

*An example of broad personnel policy is the current requirement that all LOBR staff members be City residents.
selected in a manner approved by the whole Council.

A few comments concerning our choices for committee membership. First, we believe equal representation of Board and Council basic to sound functioning. Second, the Mayor should not participate -- the very essence of LOBR is to provide genuine balance to the Mayor's extensive budget powers. Third, we believe that whatever the Council's procedure for selecting its representatives, it should insure that all standing committees are, as nearly as possible, represented. Assistance with these committees' agency oversight functions will be a principal LOBR activity, and equal access by all of them should be a goal.*

The presence of the Finance Committee Chairperson is essential since the bulk of LOBR's work will require ongoing dialogue between that committee's staff and LOBR personnel. The other choices for membership simply reflect the basic principles that representation of the entire membership of both bodies and a City-wide perspective on the office's work are crucial.

2. The Executive Committee

The fourteen-member body is large for effective functioning on a regular basis. However, we believe this make-up affords the best means for insuring that all relevant policy matters are considered, that all Council standing committees can make their needs known effectively and that City-wide priorities can be established through representation of borough and City-wide officials.

*It may well be that the current LOBR Committee of the Council meets these criteria.
To enable effective operation, however, we propose establishment of an executive committee to carry out day-to-day liaison between LOBR and the Board and Council and to be responsible for authorization of projects not comprehended within the annual plan, as amended quarterly.

The executive committee should be composed of the joint committee chairperson and one or two members from each legislative body. It should meet monthly or more frequently, as its duties demand, to review requests and assist in setting priorities. Active participation by the Director is essential. We suggest that the executive committee, be responsible for determining which requests for work should be dealt with on an immediate basis and which are more appropriately left for inclusion in the annual plan. The executive committee would be empowered to call meetings of the entire committee whenever matters requiring general policy determinations arose.

3. The Joint Committee Chairperson

We believe the oversight committee should be chaired to reflect the joint service LOBR is to perform and to insure the priorities of both Council and Board are met. We propose that a delegate from the Board alternate with one from the Council, and that the Council's representative be the Finance Committee Chairperson and the Board's the Council President. As the persons responsible for chairing joint proceedings on all budget activities, both are necessarily involved with budget matters for the better part of the calendar year. The Council President is ideally suited
by virtue of her relationship to both bodies: she can be expected to be cognizant of the needs of both, to know where they are likely to overlap and thus to see that the office serves both effectively. The Finance Committee Chairperson will bring special expertise which will be invaluable. Both provide a City-wide perspective, the former because of constituency, the latter because of substantive responsibilities.

4. Miscellaneous

Provisions for filling of vacancies and delegation of duties should be part of promulgated rules. Because the past rules and practices of the two bodies are different, we believe that each should conform to its own provisions, with the proviso that they be communicated in writing to the oversight committee as a whole.

A majority of the entire oversight committee should constitute a quorum and, if an executive committee is established, action should be by a majority of the entire body as well. If the proposal for an executive committee is not accepted, however, thought should be given to permitting final action of the joint committee be a majority of those present and voting. Recording of proceedings and votes should be required in the same manner as for Council committees.
**EXHIBIT A**

**Division of Budget Process and Review**

This division represents the core of LOBR's mandate. It has responsibility for reviewing the budget in sufficient depth to enable explanation of the budget to the Council and Board in simple programmatic terms. In addition, this division will by its thorough preparation and contact with agencies be in a position to effect such marginal changes in budget priorities, as may be indicated by members of the Council and Board.

Normally new personnel will enter the office through this division.

**Division of Policy Analysis and Management and Program Review**

This division will be responsible for broad programmatic audits appropriate to the needs of a legislative body. Such programs as curriculum development in the Board of Education, general eligibility enforcement in the social services area, and the program of street maintenance in the Department of Highways furnish examples of subjects for study. This division will prepare substantial studies for the benefit of the Board and Council, and also for the development of LOBR, since the studies will contribute to the budget review process in subsequent years. It is from this division that LOBR will seek to make suggestions to Council and Board on priorities for the City.

It is anticipated that there will be substantial movement of personnel between this division and that of Budget Process.

**Division of Tax and Fiscal Analysis**

This division will have the responsibility for monitoring the overall size of the budgets in the context of the City's ability to finance its needs. To accomplish this, the division will provide independent revenue forecasts, a review of the forecast officially prepared for the City, a forecast of those municipal expenditures which are dependent upon economic conditions, tax analyses and studies of the impact of budgeting legislation on the City's economic development.

**Office of the Counsel**

A small staff will provide the office with independent legal services and legislative drafting. Among the responsibilities of the unit will be interpretation of the new Charter and evaluation of State legislation and its impact on the City's budget and ability to finance its needs.

(The above was prepared from LOBR's own statement of divisional responsibilities.)
EXHIBIT B

Division of Budget Process and Review

1 Assistant Director
2 General Associates
12 Staff Associates

3 Legislative Services Assistants

Division of Policy Analysis

1 Assistant Director
1 Principal Associate
2 General Associates
6 Staff Associates

4 Legislative Services Assistants

Division of Tax and Fiscal Analysis

1 Assistant Director
1 Principal Associate
2 General Associates
6 Staff Associates

2 Legislative Services Assistants

Office of the Counsel

1 Counsel
1 Principal Associate

2 Legislative Services Assistants
I. Stages of Oversight

A. Review Stage

1. When in effect: beginning July 1, 1979, in any fiscal year not described under Approval Stage

2. Budgetary and Financial Requirements

   a) Rolling three-year financial plan
   b) Balanced budgets (accounting principles determined by State Comptroller); supporting data to be submitted with budget
   c) Deficits to be funded in succeeding year
   d) Contingency reserve fund
   e) Independent audits; regular reports
   f) Contracts to be costed and certified by Mayor as complying with financial plan
   g) Debt Service Fund (trustee for property tax or other revenue)
   h) Strict limitations on short-term debt

3. Powers of MAC: same as current MAC powers

B. Approval Stage

1. When in effect: 1979 Fiscal Year and any other Fiscal Year if 1) preceding Fiscal Year ended with a deficit, and 2) it appears to MAC that such Year will also end with a deficit.

2. Budgetary Requirements: Same as Review Stage.

3. Powers of MAC

   a) Approval of Financial Plan, Expense Budget and modifications prior to taking effect.
   b) Approval of borrowings if consistent with limitations on issuance of debt.
   c) Enforcement of compliance with other budgetary and financial requirements.
II. Membership (Two Alternatives)

A. 9 members appointed by the Governor with Senate approval, of which
  1 member is recommended by Clearing House Banks,
  1 by New York City Pension Funds (Municipal Labor Committee),
  1 by New York City Comptroller
  1 by New York City Mayor,
  1 by New York State Comptroller

B. 11 members appointed by the Governor with Senate approval of which
  3 are recommended by the Mayor,
  1 by the New York City Pension Funds (Municipal Labor Committee),
  1 by the Clearing House Banks,
  1 by the New York State Comptroller,
  1 by the New York City Comptroller.

III. Other Considerations

A. Whether there is a stage of supervision that is greater than "Approval Stage," e.g., other EFCB powers such as control of bank accounts, contract approval.

B. Whether other events might "trigger" "Approval Stage," e.g., default, failure to make mandatory payments.

C. Whether and how oversight extends to Capital Budget.
Proposed Elements of a Reconstituted MAC

1. As at present, its power would derive from the State, preferably with the full concurrence and partnership of the City.

2. It would have continuing responsibility for assisting in meeting the City's financial needs; that the City's budget is always in a state of balance; and that other appropriate safeguards for investors are instituted and preserved.

3. The first priority would probably be the establishment (pursuant to necessary State legislation) of trusteeed revenue streams for new note holders as well as all existing bond holders. Other safeguards, such as a contingency reserve, would also be developed.

4. All appointments will be made by the Governor, with the consent of the State Senate; just under half of the appointments will be on the recommendation of the Mayor.

5. There will be an appropriate mix of public officials and others.

6. The "budgetary watchdog" functions will be carried out, in the first instance, through recommendations by a special subcommittee whose members have professional expertise. All final decisions, however, will remain the prerogative of the Board as a whole.

7. The blessings and the cooperation of the federal government (as well as the State and City) may be required in order to "wean" the City away from its current heavy dependence on Washington as a source of financing.

September 21, 1977
An Oversight and Review Mechanism for New York City Finances:  
A Proposal to Break an Impasse

There seems to be a fair amount of consensus on the proposition that some type of mechanism is required to provide assurance to the market about New York City’s finances. This consensus breaks down, however, on the vital details of the mechanism’s operations, such as exactly what it will do and who its members will be.

The major dichotomy is between market and political considerations. From the market point of view, the mechanism should be insulated from political inputs and politicians, and should consist of fiscally skilled individuals in whom the market has confidence, and whose decisions are motivated only by the requirement to maintain budget balance.

The argument from the political side is that the right to review and change budgetary decisions is a political prerogative which cannot be abdicated to anyone other than elected officials. (At its extreme, it might be argued that nobody should second-guess New York City’s elected officials, but this position is disproved by the EFCB, the majority of whose members are public officials, but with the State rather than the City exercising control).

Objectively, both the market and the political arguments must be considered valid, and the challenge to those who would like to see the City reenter the bond market is to find a way to harmonize the
two apparently opposing requirements. One way that may merit consideration would involve the creation of two Boards: An **oversight Board** which could require the City to have a truly balanced budget; and a **Review Board** which would act as a "Court of Appeals" with respect to decisions of the Oversight Board.

The essence of such a two-tier approach is that the Oversight Board would be strictly market orientated and structured in response to market requirements, while the Review Board would, like the present EFCB, give elected officials a majority of the votes although it would also be dedicated to the maintenance of fiscal probity.

Given the parameters just indicated, the composition of the two Boards could involve all types of combinations and permutations. What is indicated below should be considered only as illustrative.

**Oversight Board**

This should consist of a small number of people with the highest degree of integrity and expertise; perhaps as few as three members would suffice. They might be either full-time or part-time, or a combination such as two part-time members plus an Executive Director who would serve on a full time basis and have a vote.

**Review Board**

Like the EFCB, it may be best to have the Review Board include the Governor, the Mayor, the State Comptroller, and the City Comptroller. In addition, the two part-time members of the Oversight Board could
be voting members of the Review Board. (The full time Executive Director of the Oversight Board might serve as Executive Director also of the Review Board but without a vote.) Also, one or two additional members may be appointed to the Review Board from specific interest groups, upon nomination of those groups. Thus, one might come from the Municipal Employees Union and one from the banking/business community. In all cases, however, public officials should have a majority of the votes. This does not necessarily mean that if there are four members who are not public officials there must be five members who are, since the problem of maintaining a majority of public officials can be solved simply by giving a double vote to one of the public officials, presumably the Governor. In other words, the voting strengths of the members of the Review Board may look something like this:

<table>
<thead>
<tr>
<th>Member</th>
<th>Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor</td>
<td>2</td>
</tr>
<tr>
<td>Mayor</td>
<td>1</td>
</tr>
<tr>
<td>State Comptroller</td>
<td>1</td>
</tr>
<tr>
<td>City Comptroller</td>
<td>1</td>
</tr>
<tr>
<td>Oversight Board Members</td>
<td>2</td>
</tr>
<tr>
<td>Representatives of Unions</td>
<td>1</td>
</tr>
<tr>
<td>Representatives of Banking/Business</td>
<td>1</td>
</tr>
<tr>
<td>of which public officials have 5 votes</td>
<td>9</td>
</tr>
</tbody>
</table>

**Inter-Action between the Oversight Board and the Review Board**

As indicated above, the Oversight Board would have to certify a budget as balanced before it could go into operation. Likewise it would have to certify, for each major budget modification, that
budget balance was being maintained before the modification could go into effect. The Oversight Board's decision would be final unless three or more members of the Review Board requested that the decision be examined by the Review Board. If a majority of the Review Board then votes to overturn the decision of the Oversight Board, that then becomes the final word.

Problems

Needless to say, one can conjure up all sorts of problems with the above approach. These would run the gamut from the precise composition of the two Boards to the potential chaos that would ensue if the two Boards would end up being at loggerheads. Indeed, there could be a very strong temptation to reject the above idea because of the prospective problems and complications - until one starts to consider the alternatives of having a single Board, which would get us right back to the dichotomy between market and political requirements. The existence of two Boards may well bring about problems and complications, but in a less-than-perfect world, this may be the least of the various potential evils.

8/16/77
Proposal for Third Party

The role of an independent third party should not be fixed, but should change in response to change in the City's financial operations and results. I see three phases of financial operation, matched by three roles for the third party.

I. Phase Zero [Monitor]

The City has operated for two consecutive years with audited balanced budget results, has adopted a balanced budget for the third year, has complied with such other requirements as are called for under financial plan, cash flow plan and capital budget, and has substantial access to public debt markets. These measures would constitute Phase Zero. The third party, if it is not MAC, would disappear. MAC would review City operations as provided in § 3038-3040 of its statutes, with revision as appropriate.

II. Phase One [Approve]

The City has had deficits in excess of $100 million in each of two successive years, or has had a one-year deficit in excess of $250 million, or is in comparable non-compliance in other regards. This triggers Phase One, in which the third party comes into being with the right to approve budgets, certify for borrowing, and independently cost major contracts. In the event of two consecutive $100 million deficits, two subsequent years in balance and adoption of a third balanced budget return the City to Phase Zero. In the case of a $250 million or larger deficit, if the City cannot make up the entire amount in the second year, it will be required to balance years three and four and adopt a balanced budget for year five in order to return to Phase Zero.
III. Phase Two [Control]

The City is unable to return to a balanced budget after operating under Phase One. Deficits, even in small amounts, continue. This triggers Phase Two, which is essentially a return to the Control Board. The Governor and Mayor become members of the Board, with Governor as Chairman. Board not only must approve budgets, but must also approve borrowings and contracts and hold the City's bank accounts. This is the City's current Phase. Movement to Phase One would follow one year of balanced budget and adoption of a second year balanced budget.

The City would have to move through Phase One in returning to Phase Zero or Phase Two.

Other triggers might include:

1. Amounts in Reserve Fund.
2. Substantial failure to follow budget procedures.
4. Other failures in cash flow, financial plan or capital budget.
The City and the Municipal Assistance Corporation have previously announced publicly their proposal for the City to repay $984 million for Notes of the City formerly subject to Moratorium, and to deal with the $819 million of such notes subject to voluntary deferral of repayment. The principal elements of this repayment proposal are:

1. **Voluntary deferral of repayment of principal on certain MAC Bonds**
   The New York Clearing House Banks, employee retirement systems and sinking funds hold $1.8 billion of MAC Bonds. MAC has requested that these holders agree voluntarily to reinvest $137 million in principal amount paid February 1, 1977 and further that these holders defer principal payments due in 1978-1981. The combination of reinvestment and deferral would produce savings in MAC debt service funding requirements of $206 million in the current fiscal year, which would be made available for repayment of Notes.

2. **City Cash**
   The City is actively engaged in a program to sell certain Mitchell-Lama mortgages which it holds. The City's current plan calls for sales producing proceeds of approximately $200 million in the current fiscal year, which money would be made available for repayment of Notes. An additional $150 million of proceeds may become available in the balance of calendar 1977 and if received would also be available to note-holders.

3. **Sale of Securities**
   The balance of $450 to $600 million would come from sale of City and MAC securities, over and above City bond sales to the retirement systems already agreed to. While any public offering is subject to market conditions, a MAC offering is contemplated as soon as the Clearing House Banks agree to
resume their traditional role as underwriters. Sale of City bonds is conditioned upon a public market becoming available. In the present context, the larger portion of financing would be by MAC, and the smaller portion by the City. Section II of this memorandum presents the elements which the City and MAC believe are necessary to re-open the public market for City securities.

4. Refinancing of Notes held by Banks and Pension Funds

In addition to the Notes held by the public, the Clearing House Banks and the Pension Funds hold $819 million of Notes. On November 26, 1975 these holders voluntarily agreed to extend maturities on these Notes. The City and MAC have proposed that these holders exchange such Notes for City or MAC securities having terms substantially identical to those contained in the November 26, 1975 Agreement.

In pursuing these proposals, the City and MAC have stated their willingness to negotiate higher interest rates wherever an extension of current maturities has been requested. City labor representatives have indicated their willingness to defer principal repayments on MAC bonds and to accept MAC or City securities for their City Notes, subject to similar agreement by the Banks, and have stated that they seek no increase in existing interest rates. MAC has further requested that debt service savings resulting from any voluntary deferral be available to support new MAC bond sales.

While addressing the immediate financial crisis brought about by the Moratorium decision, this proposal is also intended to deal
with the longer-term financing of the City. The Moratorium solution, if implemented, would clean up all short-term debt currently on the City's balance sheet other than the truly seasonal loans from the Federal government and the City notes held by MAC (and MAC has stated its present intention not to present such notes for payment of principal or interest). The elements in Section II, if legislated and, to the extent required, covenanted, are intended to allow the City to require access to the public markets, and to be able to finance at least all of its long-term financing needs once it has achieved a balanced budget. The proposal for deferral of principal repayment on MAC bonds is made in large part because it helps to smooth out the repayment of City debt and MAC debt service funding, which presently is heavily weighted toward the current and immediate future years.
Financial Plan

The City shall be required to prepare a Financial Plan prior to the commencement of each fiscal year covering such fiscal year and the two succeeding fiscal years, which shall reflect for each fiscal year covered by the Plan:

(1) projected revenues and expenditures for such year; and
(2) projected sources and uses of cash for such year.

All such projected revenues and expenditures and sources and uses of cash shall be set forth by major category and in sufficient detail to enable potential City investors to make an independent judgment as to whether the City, operating under such Plan may be expected to adopt realistically balanced budgets during the period covered by such Plan, as contemplated by the Act. Appendix -- annexed to this Memorandum sets forth a proposed format for such Plan.

In the event that the City prepares a Financial Plan in which projected expenditures for any fiscal year covered thereby exceed projected revenues for each year, the City shall describe in such Plan, in reasonable detail, the method or methods by which the City would eliminate such excess in order to produce a realistically balanced budget for such year.

The City shall be required to modify a Financial Plan at any time following its adoption and prior to adoption of a subsequent Financial Plan in the event that to reflect any occurrence or occurrences, the net effect of which would be to create an excess of expenditures over revenues greater than $-,-,-,-,-,-,-,-,-,-,-,-,-.-,-.
March 4, 1977

The Honorable Abraham D. Beame  
Mayor, The City of New York  
Office of the Mayor  
New York, New York 10007

Dear Mr. Mayor:

On behalf of major New York City banks, I enclose herewith a memorandum detailing the measures we believe must be adopted before New York City securities can receive wide public market acceptance. Such acceptance is essential to the long-term financial viability of the City, and we believe that now is the proper time to confront the difficult decisions which must be made in order to accomplish it. As we have stressed over the past many months, the funding requirements of the City are so very large as to be far beyond the investment capability of banks in New York State and to require more than a patchwork addressed only to the short-run problem of the Moratorium Notes. The City's ongoing substantial financial needs, which appear to be $3 billion to $4 billion annually for the years immediately ahead, are greatly in excess of any funding possibilities of MAC.

The enclosed memorandum constitutes a closely interrelated package of nine points and is based upon our appraisal of market requirements. As such, it is, in some measure, a matter of judgment. Others experienced in the municipal securities markets may, of course, have other views. As far as we are concerned, however, the statement contains our best judgment of the requirements of the market.

I understand that there is a substantial consensus among your representatives and our working committee with respect to various aspects of eight of the nine points in the
The Honorable Abraham D. Beame

-2- March 4, 1977

constructive plan which you presented on February 15th. This consensus is reflected in the attached statement. Moreover, there is agreement between you and us as to the need for a review mechanism. Our statement sets forth the components we believe to be necessary in order to re-establish, for the long run, market confidence in the fiscal structure of the City.

Mr. Mayor, I want to emphasize that the very considerable efforts which we have made, in cooperation with you and your representatives, to construct a sound program have been directed solely to the purpose of achieving our common goal -- re-establishing the financial credibility of the City.

The various steps of the program will, as you know, require New York State, and complementary New York City, legislation. Once the principles of the fiscal program have been found acceptable, the enthusiastic cooperation of all concerned officials and interested groups will be required to present the program to the Governor and the state legislature and to support appropriate legislative measures.

Of course, the most urgent and immediate program is settlement of the Moratorium Notes. In your letter of February 24th you presented four elements of a plan for that purpose consisting of:

1. MAC stretch;

2. Use of cash generated by sale of Mitchell-Lama mortgages;

3. Public sale of new City bonds and/or MAC securities; and

4. Refinancing of notes held by banks and pension funds.

Our view, which appears to coincide with yours, is that the best prospect for funding the amount required to meet the City's $1.8 billion problem would be distributed on the following basis:
1. $200 million from sales to the banks and pension and sinking funds of First Resolution MAC bonds in the aggregate amount of $137 million maturing in 1987 and an agreement to effect, by methods to be agreed upon, the postponement or resetting of maturities of certain First Resolution MAC bonds held by the banks and pension and sinking funds for the purpose and with the result of establishing MAC's capacity to issue additional First Resolution Bonds. Higher interest rates on the respective issues will be negotiated to reflect the longer maturities.

2. $200 million to $300 million from sales by the City of Mitchell-Lama mortgages, of which we understand you intend that at least $200 million would be obtained before June 30, 1977.

3. $500 million to $600 million of new City bonds and of MAC First Resolution bonds to be sold in the public market, when market conditions permit.

4. Acquisition by the banks and pension funds of new City bonds by reinvesting the proceeds of payment of the Moratorium Notes held by the banks and pension funds, such new City bonds to have an average life similar to that provided for such Notes in the November 26, 1975 Agreement.

The New York City banks would be willing to agree to participate in such a financial plan, on the condition that prior to implementation of the steps to be undertaken by the banks there would be (i) acceptance of the fiscal program we have submitted, (ii) enactment of the appropriate State and City legislation, (iii) incorporation in the new City bonds of protective provisions outlined in our enclosed statement, (iv) purchase by March 31, 1977 by the pension funds of at least $600 million of additional City bonds, which we understand is the amount called for by the City's Financial Plan, in accordance with the Financial Plan and paragraph 7 of the November 26, 1975 Agreement, with a maturity schedule that does not unduly weaken the fiscal structure of the City, (v) satisfactory resolution of the litigation involving the legality of the application of revenue streams to support MAC securities which, we understand, is now on appeal to the Court of Appeals, and settlement of the various law suits against you, the City, the Comptroller and various banks and investment bankers concerning the sale of City securities, (vi) assurance that the State will continue the $800 million
advance of City aid for this fiscal year of the City and, (vii) no restriction on the negotiability of City and MAC bonds issued in connection with the financial plan.

On behalf of my colleagues, I sincerely trust that you will accept our efforts to present what we believe to be a sound financial and fiscal program. Our working committee is available to meet with your representatives and to explain and clarify any points of the program about which there may be any question.

Very truly yours,

[Signature]
MEMORANDUM

1. Debt Service Fund

A Debt Service Fund shall be created effective July 1, 1977 into which all City real estate tax payments will thereafter be deposited. To effect this, the Local Finance Law will need to be amended by the State legislature. City bonds issued after the enactment of the legislation will have the benefit of a covenant requiring maintenance of the Fund.

Tax payments made to the City Comptroller will be remitted in kind (no commingling) to a bank for deposit in a special trust account. The bank will be responsible for administration and investment of the Fund. A portion of each tax receipt as determined by a formula will be retained in the Fund over the course of the year in amounts sufficient to meet annual debt service. At the end of each day the bank will pay over to the City for the account of the General Fund of the City the balance of tax payments collected during the day remaining after the portion retained under the formula. Debt service payments will be made by the bank to the Paying Agent for a particular City debt obligation upon instruction as to maturity or interest payment date by the Paying Agent.

The Debt Service Fund will be for the benefit of all outstanding debt obligations of the City, at least
to the extent that they are constitutionally protected, not just new bonds.

The procedure for investment of the Debt Service Fund would be as follows: The bank would invest retained amounts in the Debt Service Fund (in accordance with pre-established instructions and procedures) in U.S. Government and U.S. Agency securities of such duration as would provide cash for maturities and interest payments for the City's debt service during the fiscal year. Earnings from such investments will be accumulated separately and applied to reduce debt service for the first quarter of the next fiscal year.

The formula will be initially based on budgeted figures (as approved by the Review Board) and will be adjusted whenever necessary to reflect changes in debt service requirements by reason of debt issuances during the year not reflected in the initial budget. The formula will call for the retention in the Fund of that proportion of each real estate tax payment collected equal to annual debt service as a percentage of real estate tax levy for the fiscal year less a reserve for uncollectibles.

For the foregoing to work, it is estimated that the Fund will need a substantial amount at July 1 because of the insufficiency of real estate tax collections in July and August to meet debt service payments in those two months. Therefore, the City presumably must borrow such amount in July of every year to meet the need.
The Debt Service Fund will retain amounts calculated pursuant to the formula set forth in Appendix I.

2. Balanced Budget

The City will be required to adopt prior to the beginning of each fiscal year a balanced budget for current revenues and expenditures. Prior to adoption, the approval of the Review Board (see item 9 and Appendix II) will be required. The Review Board's functions will not include any determinations as to the political policy or social wisdom of the purposes of expenditures or the sources of revenues.

a. The budget will be prepared, subject to the exceptions indicated in the next paragraph, in conformity with generally accepted governmental accounting principles (GAGAP), as contained in the following authoritative sources: Governmental Accounting, Auditing, and Financial Reporting (1968) published by the National Council on Governmental Accounting (NCGA); Audits of State and Local Governmental Units (1974) published by the American Institute of Certified Public Accountants (AICPA); other pronouncements of the NCGA and AICPA published from time to time and pronouncements of the Financial Accounting Standards Board.

The City will be able to continue with its present non-GAGAP practices in connection with the capital budget, fixed asset and pension areas so long as such deviations (i) do not become more pronounced and (ii) the City uses its best efforts to adjust to GAGAP practices as soon as feasible; provided, however, that expense items must be eliminated from the City's capital budget within seven years.
Where there is more than one acceptable accounting principle, the City will not be able to change from one acceptable principle to another without the approval of the City's independent public accountants.

b. At the time of the submission to the Review Board of the proposed annual budget, the City will submit a statement of the assumptions underlying the budgeted revenues and expenses and a certificate of the Mayor stating that such assumptions are reasonable and that operation within the budget is feasible.

c. Revenues will be provided in the proposed annual budget at amounts no higher than those in the prior year and expenditures at amounts no less than those in the prior year (as contained in the budget as modified for the prior year), unless, in either case, they are based upon a Justification Document approved by the Review Board filed by the City on a timely basis. Justification Document means a written certificate setting forth facts determined, and actions completed, forming an existing basis for a reasonable expectation, based on quantifiable, justifiable trends or events, that revenue will actually be collected or realized in the budget year or that amounts of appropriations will be sufficient for expenditures thereafter, as the case may be. Change in an approved method of "trending" any revenue or expense will require filing of a Justification Document and Review Board approval.

d. Any deficit in the preceding fiscal year (which, assuming compliance with budget modification and budgetary control procedures, will arise only as a result of unforeseeable revenue shortfalls or uncontrollable expense increases)
will be required to be included in full as an expenditure appropriation in the budget for the following year. In the event that the annual audit report made for the preceding fiscal year by independent public accountants and received during the budget year were to change the amount of the prior year deficit provided in the budget, the City will be required to modify the current year budget to reflect such change.

e. In general, the City will be required to maintain during the year a balanced budget for the full year (except for an uncontrollable deficit as defined in item 5 below). Any circumstance or trend that develops during the budget year that could reasonably be expected to result in a year-end deficit of any kind will be required to be reported to the Review Board.

f. Any proposed budget modification which involves a transfer from one agency to another, or which would result in any unit of appropriation being increased or decreased by more than 5 percent from the budget as adopted for such unit of appropriation shall be deemed material and will require the prior approval of the Review Board. Any change in a unit of appropriation category, for purpose of this calculation, must be approved by the Review Board. All other budget modifications will be promptly reported to the Review Board.

3. **Budgetary Controls**

   The City will establish and maintain internal controls including, but not limited to, monthly revenue and expenditure plans, quarterly allocations of budgeted appropriations, personal service limitations and an adequate encumbrance system.
All current expenditures, including debt service, are to be provided for by budgeted appropriations and only items so provided for can be paid.

4. Limitations on Short-Term Debt

State (and, to the extent necessary for consistency, City) legislation and covenants related to bonds of the City will prohibit the incurrence by the City of short-term debt except pursuant to and in accordance with Sections 23.00 (Bond Anticipation Notes), 24.00 (Tax Anticipation Notes), 25.00 (Revenue Anticipation Notes) and 29.00 (Budget Notes) of the Local Finance Law as now in effect and will, in addition, provide in each case for the further limitations and conditions set forth below:

a. Tax Anticipation Notes ("TANs") -- The principal amount of TANs issuable in any fiscal year shall be limited to 90% of the amount of anticipated taxes and assessments actually levied for, or to be levied, in such fiscal year pursuant to a budget approved by the Review Board after deduction of a reserve for uncollectible items and certain debt service specified below payable in such fiscal year. The reserve to be deducted for uncollectible items with respect to taxes and assessments in any fiscal year shall be the greater of (i) the amount of taxes and assessments budgeted to be uncollectible from such fiscal year's tax levy, (ii) the average of amounts of taxes and assessments uncollected at the end of each of the preceding three fiscal years from such years' tax levy and (iii) the amount of taxes and assessments uncollected at the end of the preceding fiscal year from such year's tax levy. The
debt service to be deducted in any fiscal year shall include all debt service payable in such fiscal year on general obligation debt, except principal payments on bond anticipation notes and revenue anticipation notes, provided, however, that debt service need not be deducted to the extent that 100% of the proceeds of TANS is deposited in the Debt Service Fund. Maturities of TANS shall be so scheduled that budgeted amounts of anticipated taxes (after the deduction of a reserve for uncollectible items and debt service as and to the extent provided above) are to be received prior to such maturity date.

TANS may not be issued prior to the beginning of the fiscal year in which anticipated taxes and assessments are budgeted to be received from such fiscal year's levy, and may not be issued in anticipation of the collection of taxes or assessments levied for, but uncollected in, any fiscal year preceding the fiscal year of issuance.

b. Revenue Anticipation Notes ("RANs") -- RANs may only be issued in any fiscal year in anticipation of specific revenue budgeted to be received in such fiscal year in a budget approved at the time of such issuance by the Review Board. However, only RANs (in a principal amount up to an amount equal to 5% of aggregate State and Federal aid budgeted to be received in a fiscal year) issued in anticipation of revenues "earned" in the second half of such fiscal year and payable on or before October 31 of
the next fiscal year, may be outstanding at the end of such fiscal year. The principal amount of RANs which may be issued in anticipation of the receipt of a specific revenue shall not exceed:

(i) in the case of a revenue receivable from the State or the United States Government the amount of which has been certified by appropriate officials of the State or the United States Government, as the case may be, prior to the issuance of the RANs, 95% of the amount of such revenue so certified;

(ii) in the case of specified taxes, rents, rates, charges, or other income as such terms are defined in Section 25.00a of the Local Finance Law (herein "City tax revenues"), 75% of the lower of (a) the actual collections of the specified City tax revenue in the fiscal year preceding the fiscal year of issuance, or (b) the amount of the specified City tax revenue budgeted (in a budget approved by the Review Board) for the fiscal year of issuance;

(iii) in the case of amounts of a specified revenue receivable from the State or the United States Government, not certified as provided in (a) above, 75% of the lower of (a) actual collections of the specified revenue in the fiscal year preceding the fiscal year of issuance or (b) the amount of the specified revenue in a budget approved by the Review Board for the fiscal year of issuance, provided that the program in respect of which such amount is receivable was in existence in the prior fiscal year.
(iv) In the case of revenues receivable from the State or the United States Government under a program not in existence in the fiscal year preceding the fiscal year of issuance, 75% of the authorized estimates by the State or the United States Government of the revenues receivable under such program.

Notwithstanding the foregoing, the State or the United States Government may purchase RANs issued in anticipation of 100% of specified aid from the purchasing government, but the amount of such RANs must be otherwise determined as set forth above in (i) or (iii), as the case may be, and RANs may be issued to the Contingency Reserve Fund (see item 5 below) in anticipation of 100% of a specified revenue, but the amount of such RANs must be otherwise determined as set forth above in (i), (ii), (iii) or (iv), as the case may be.

Revenues from the State or the United States Government may be anticipated only in respect of programs authorized, at the time of issuance of RANs, to continue through the maturity date of such RANs. Note resolutions for RANs shall indicate the specific revenue anticipated, including the amount, source (governmental program or tax revenue source) and estimated date of receipt. Upon receipt, revenues anticipated by an issue of RANs are to be deposited in a segregated bank account under the control of the City Comptroller and held in trust for, and applied by the Comptroller solely to the payment of, such issue of RANs upon maturity.
c. Budget Notes ("BNS") -- BNs may be issued only to fund an uncontrollable deficit, as defined in connection with permissible payments from the Contingency Reserve Fund. BNs sold other than to the Contingency Reserve Fund must be repaid on or before October 31 in the fiscal year next following that in which the deficit to be funded was incurred. BNs issued to the Contingency Reserve Fund must be repaid in nine equal monthly installments prior to the March 31 of the fiscal year next following the fiscal year in which the deficit to be funded was incurred.

d. Bond Anticipation Notes ("BANs") -- The aggregate amount of BANs outstanding at any one time in a fiscal year may not exceed 25% of the aggregate principal amount of bonds issued in the preceding fiscal year. All BANs must mature within three months of the date of issuance and may thereafter be renewed for only one three-month period.

e. Interfund Borrowing -- Operating funds may be expended for capital purposes or advanced to capital accounts only where the need is so immediate that BAN or bond financing could not practically fill such need, and all such advances must be paid within 120 days.

f. The City may issue other types of short-term debt that are not now but may in the future be authorized by law, provided that the Review Board shall have determined that the issuance of such debt in the amounts and upon the
terms proposed by the City will be within the approved modified budget and is not likely to have an adverse effect on the credit standing of the City and the public market for its securities.

g. Guaranties, Moral Obligations and Contingent Obligations -- The City will not guarantee directly or indirectly the obligations of another, or in any manner endorse (other than endorsement of negotiable instruments for collection or deposit in the ordinary course of business) or discount obligations of another with recourse, or in effect guarantee or agree to pay directly or indirectly the obligations of another through any arrangement, contingent or otherwise. This prohibition shall not apply to guaranties or moral obligations issued in connection with existing authorizations under existing programs.

5. Contingency Reserve Fund

The provisions of the Local Finance Law will be supplemented to provide for the creation and maintenance by New York City of a fund entitled "Contingency Reserve Fund." The fund will be in the custody of the City Comptroller and maintained as a separate bank account segregated from other money of the City. City Bonds issued after the creation of the Contingency Reserve Fund will have the benefit of a covenant requiring maintenance of that fund as described below.

Each annual City budget, commencing with the budget prepared for fiscal 1978, will provide for appropriation of an
amount equal to 1% of total budgeted revenues for the year, such appropriated amount to be paid into the Contingency Reserve Fund in equal monthly payments. In case of a budget modification based on an estimate of increased revenues, such budget modification shall include an increased appropriation to the Contingency Reserve Fund so that through equal monthly payments during the balance of the year the amount appropriated to the Contingency Reserve Fund for that year will equal 1% of total budgeted revenues as so modified. If a budget modification is made in recognition of a reduction in budgeted revenues, the amounts appropriated to the Contingency Reserve Fund during the balance of the year may be reduced so that the total amount appropriated to such fund during the year shall at least equal 1% of total budgeted revenues as so modified.

At such time as the City Comptroller shall certify that the amount of the Contingency Reserve Fund is equal to 5% of total revenues received by the City as set forth in the annual audited financial report of the City for the fiscal year next preceding the year in which such certification is made, appropriations to the Contingency Reserve Fund may be discontinued and need not be resumed so long as the amount of the Contingency Reserve Fund exceeds the Required Reserve which shall be the greater of 5% of such next preceding year's total audited revenues and 5% of the total budgeted revenues, as most recently modified, for the then current fiscal year.
The money in the Contingency Reserve Fund may be invested in short-term U.S. Treasury securities or in RANs, TANs or Budget Notes of the City. RANs may be purchased when issued against budgeted revenues in an amount not less than 100% of the principal amount of RANs. RANs and TANs shall bear interest payable into the Fund at the market rate prevailing on the date of issuance. RANs and TANs sold to the Fund must be redeemed prior to the end of the fiscal year in which they are issued. At the end of each fiscal year the fund shall not contain any investment other than cash, short-term U.S. Treasuries and Budget Notes of the City. All earnings on investments of money in the fund will accrue to and become part of the fund except that such earnings shall become a part of the general revenues of the City at any time when the total amount in the fund is at least equal to the Required Reserve.

Budget Notes may be sold to the Contingency Reserve Fund on an interest-free basis in order to fund an uncontrollable deficit as defined below. In each year when there are Budget Notes in the Contingency Reserve Fund at the commencement of the fiscal year, the budget will provide for appropriations to the Contingency Reserve Fund in each of the first nine months of such fiscal year of an amount equal to one-ninth of the total amount of Budget Notes in the fund at the commencement of such year. In the event that the annual audited financial report of the City shall show a deficit which is larger than the amount of Budget Notes in the Contingency Reserve Fund at
the commencement of the year, Budget Notes in the amount of such difference shall be promptly sold to the Contingency Reserve Fund and such additional Budget Notes shall be retired by March 31 of the then current fiscal year by equal monthly appropriations to the Contingency Reserve Fund.

In the event that revenues from sources other than aid from higher levels of government are received during a fiscal year in amounts larger that the estimates of such revenues included in the budget for such year, the amounts of such surpluses shall, so long as the Contingency Reserve Fund is below the Required Reserve, be paid into the Contingency Reserve Fund as received. Any surplus remaining at the end of the fiscal year shall be paid into the Contingency Reserve Fund to the extent that the Fund is then below the Required Reserve.

"Uncontrollable deficit" for any fiscal year is caused by an expenditure excess or revenue deficiency in respect of an approved budgeted amount caused by any of the following, to the extent that in the case of expenditures revenues are unavailable to pay the same, (a) amounts unconditionally payable for obligations contracted by the City (prior to the beginning of the fiscal year), which state or federal law requires the City to pay, which amounts can be determined by reference to the terms of the obligation contract and any state or federal laws applicable to such obligation (examples are debt service and pensions); (b) the cost to the City of services,
benefits or payments which the City is required by state or federal law to provide, when a total cost or the minimum scope and unit cost of the service, benefit or payment are fixed by state or federal law (examples are medical assistance and public assistance programs); (c) amounts payable pursuant to judgments, and, subject to prior approval of the Review Board, amounts payable pursuant to settled or compromised claims, and awards and determinations made by a court, officer, body, agency or person acting in a quasi-judicial or administrative capacity in accordance with state or federal law; (d) expenses required to meet an emergency arising from an unforeseeable occurrence or condition which creates unusual peril to the lives or property of the public (examples are epidemic, material diminution of vital public services, riot, earthquake, storm, flood); (e) other amounts required to be paid during the budget year which, in the opinion of the Review Board, were not reasonably foreseeable when the budget was adopted or modified; and (f) a deficiency at the end of the such year in actual revenue collections as compared with budgeted revenues; provided, however, that expenses of the kind referred to in clauses (a) through (e) above shall in no event include amounts payable for an obligation contracted by the City during the budget year on account of goods, services or benefits received by the City at any time prior to the contracting of such obligation.
6. Reporting

The City will publish monthly, quarterly and annual reports. The annual reports will include both a report on the economic condition of the City and financial statements prepared in conformity with GAGAP. Monthly and quarterly reports will include analysis of variance between actual and budgeted revenues, expenses and cash.

7. Financial Plan

The City will be required at the time it prepares each annual budget to prepare and submit to the Review Board, in addition, a financial plan covering the three fiscal years beyond the budget year. The City will be required to submit a revised financial plan to the Review Board before January 1 of each fiscal year. The three-year plan will be composed of a projection of revenues and expenditures and a sources and uses of funds statement, with each year shown separately.

In addition, the City will be required to prepare at the same time it prepares its annual budget a monthly cash flow estimate for the budget year.

The three-year financial plan and 12-month cash flow estimate will be prepared on a summary basis showing revenues and expenditures and sources and uses of funds by major categories in reasonable detail consistent with the level of detail in the categories set forth below and consistent with GAGAP.
a. Revenue and Expenditure Projections

Revenues
Taxes
Real Estate Taxes
Sales Taxes
General and Financial Corporation Taxes
Other Taxes
Federal and State Revenue Sharing
Grants in Aid
Federal - Public Assistance
Medical Assistance
Education
Other
State - Public Assistance
Medical Assistance
Education
Other
Less Disallowances
Other Revenue and Transfers
Funds Allocated from Capital Budget
Total Revenues

Expenditures
Public Assistance (Social Services, CIB)
Medical Assistance (HSA and HHC)
Education (Ed. of Ed, Higher Ed)
Public Safety and Judicial (Police, Fire, D.A.)
Other
Pensions
Debt Service
MAC Debt Service
Surplus (Deficit) before necessary budget-balancing actions to be taken
Required actions to be taken
Total Expenditures

b. Cash Flow Projections (Sources and Uses of Funds)

Uses of Cash
From Operations
(Surplus) Deficit
Capitalized Expenses
Funds from Operations
Capital Spending
City Funds
State and Federal Funds
Repayment of Short-term Borrowings
City Notes
Federal Loan
State Advances
Increase in Accounts Receivable
Decrease in Encumbrances and Accounts Payable
Other
Total Uses
Sources of Cash

Proceeds from Short-term Borrowings
  Federal Loan
  City Notes
  State Advances
Proceeds from Long-term Borrowings
  Public Sales
  Sales to Pension Funds and Sinking Funds
Receipt of State and Federal Capital Funds
Proceeds from Sale of Assets
Decrease in A/R
Increase in A/P
Other
Total Sources
  Net Sources (Uses) of cash
  Cash – beginning of year
  Cash – end of year

Whenever any financial plan shows an excess of expenditures over revenues in any fiscal year covered by the plan, there will be included as part of the plan an explanation of the actions or combinations of actions proposed by the City to eliminate such excess. This explanation will be in such reasonable detail as required by the Review Board to enable it to determine whether such actions are feasible and reasonably likely to result in the elimination of such excess.

8. **Independent Audit**

The City will be required to retain independent public accountants to audit the financial statements of the City annually and report thereon. The first audit will be conducted for fiscal year 1978 and will be conducted each year thereafter, all on a timely basis. The scope of the audit shall be sufficient to allow the auditor to render an opinion without an exception or qualification as to the scope of the audit. The financial
statements will be audited in conformity with generally ac-
cepted governmental auditing standards, as contained in the
Statements on Auditing Standards (1976) published by the
American Institute of Certified Public Accountants; and in
Standards for Audit of Governmental Organizations, Programs,
Activities and Functions (1972) published by the U. S. General
Accounting Office and Audits of State and Local Governmental
Units (1974) published by the American Institute of Certified
Public Accountants as they may be changed from time to time by
such bodies.

An internal control review and a special review as
to the reasonableness of the methodology and assumptions of
the City's budget and monthly cash flow estimate will be
conducted annually by such independent public accountants
and submitted to the Review Board before adoption of such
budget for fiscal 1979 and each year thereafter.

The independent public accountants will also review
(but not audit) quarterly reports and report annually on com-
pliance with debt requirements.

Any proposed change in the accounting firms con-
ducting the annual audits will be required to be reported
and explained to the Review Board by the City.

9. Review Mechanism

The banks have proposed a new independent entity
as a review mechanism. See Appendix II entitled "Review
Board" for the details of the banks' proposals.
Formula for Debt Service Fund

The Debt Service Fund will retain amounts calculated as follows:

First: The portion of real estate tax receipts that will be retained in the Debt Service Fund will be a percentage (the Debt Service Percentage) determined as follows on the basis of the annual budget approved by the Review Board prior to commencement of the fiscal year.

The Numerator will consist of the total of the following:

A. Principal of and interest payments on all long-term indebtedness payable in the fiscal year (including any interest payable on bonds issuable during such year in accordance with the Capital Budget);

B. Interest to maturity on any short-term indebtedness outstanding at the end of the prior fiscal year;

C. Budgeted interest payable during such fiscal year on all short-term indebtedness estimated to be incurred during the fiscal year;

D. Principal of TANS and RANs which have not been retired within 2 years after the date of original issuance;

E. Principal of BANs which have not been retired within 6 months after the date of original issuance;
F. Principal of Budget Notes outstanding at the commencement of the fiscal year;

G. Less any direct cash contributions from the City's General Fund other than proceeds from the sale of TANs.

The Denominator will consist of the following:

A. The total amount of City real estate taxes levied for the fiscal year;

B. Less a reserve for uncollectible taxes for the fiscal year. The reserve to be deducted for uncollectible taxes in any fiscal year will be the greater of (1) the amount of taxes and assessments budgeted (in a budget approved by the Review Board) to be uncollectible for such fiscal year, (2) the average of amounts of taxes and assessments uncollected at the end of each of the preceding three fiscal years, and (3) the amount of taxes and assessments uncollected at the end of the preceding fiscal year.

Second: In the event of an issue of debt obligations (other than TANs) during a fiscal year, and the debt service for such issue would be required to be included in the Numerator of the Debt Service Percentage but is not, an additional portion of real estate taxes collected subsequent to such issuance will be retained in the Debt Service Fund. Such portion would be a percentage, to be applied in addition to the Debt Service Percentage, computed as follows:
A. The numerator will consist of the debt service payable on such issue in such year.

B. The Denominator will be the Denominator in the Debt Service Percentage prorated over the remainder of the fiscal year subsequent to such issuance.

Third: In the event TANs are issued in a fiscal year, with respect to each such issue, either of the following alternative formulas for retention of additional amounts in the Debt Service Fund may be adopted with the approval of the Review Board; provided, however, TANs the proceeds of which are deposited in the Debt Service Fund pursuant to the proviso set forth in the next to the last sentence of paragraph a in item 4, amounts must be retained in respect of such issue pursuant to alternative formula II below:

Alternative I. An amount in respect of each issue of TANs in a fiscal year will be retained in the Debt Service Fund as follows:

1. "Available Taxes" in respect of any issue of TANs shall mean an amount equal to the Denominator of the Debt Service Percentage (as adjusted from time to time) prorated over the life of such TANs minus the Debt Service Percentage of such Denominator so prorated [i.e., the amount of taxes expected to be collected over the life of the TANs minus the portion of such taxes to be retained for other debt service over such life];
2. When 90% of the amount of Available Taxes in respect of any TAN issue then uncollected equals the principal amount of such TAN issue, all Available Taxes thereafter collected shall be retained in the Debt Service Fund.

Alternative II. An amount in respect of each issue of TANs in a fiscal year shall be retained or deposited in the Debt Service Fund as follows:

1. That portion from the original proceeds of such TANs equal to the Debt Service Percentage; plus

2. After any such issuance of TANs all real property taxes collected are to be retained in the Debt Service Fund until full provision is made for the payment of principal of such TANs.
APPENDIX II

Review Board

A new review board (the "Review Board") will be created by the New York State legislature, with complementary New York City legislation as may be necessary or appropriate to carry out the intent and purposes of the State legislation. The Review Board legislation will be for the benefit of the City and its bondholders and will have the following provisions:

I. Composition, Administration and Duration of the Review Board:

A. three members will be appointed by the Governor, subject to confirmation by the State Senate, for staggered terms of three years; members may be reappointed;

B. none of the three appointees may be an elected official, or an employee of either a union or a bank;

C. one of the three members will be appointed by the Governor from among persons recommended in writing by the Mayor;

D. as more fully explained below, the Review Board will have the power to request the Governor to become a member, and, upon his assenting to such request, both the Governor and the Mayor will immediately become full voting members (with the Governor as Chairman);
E. the Chairman may be salaried (and will be designated by the Governor); the other two members will be non-salaried (at least through June 30, 1983);

F. the members are to have the assistance of a professional staff to perform their review and other functions and they may engage such outside experts as they determine may be helpful;

G. the Review Board will have the power to hold hearings, issue orders and otherwise carry out its functions under such procedures as it may adopt;

H. all actions by the Review Board shall be by majority vote;

I. the State will fund the Review Board's budget and will be reimbursed by the City;

J. the Review Board will be appointed as soon after passage of the enabling legislation as possible and will commence its functions within 90 days after confirmation, and, subject to the consent of the Federal government under the New York City Emergency Loan Agreement, the Emergency Financial Control Board will cease to exist;

K. The Review Board will continue for the life of new City bonds which are granted the benefits of the enabling legislation.
II. Approval, Modification and Review of the City's Annual Budget and Related Documents:

A. Prior to the beginning of each fiscal year, the City will prepare and submit to the Review Board for approval the following documents:

1. a balanced budget for current revenues and expenditures for the fiscal year (the "Budget");

2. a capital cash flow budget for the fiscal year (the "Capital Budget");

3. a month-by-month cash flow estimate for the fiscal year (the "Cash Flow Estimate");

4. a three-year financial plan as described in item 7 of the Memorandum (the "Financial Plan");

and none of these documents may be adopted without prior approval of the Review Board;

B. Prior to making any material modification (as defined in item 2 of the Memorandum) of the Budget, such modification must be submitted by the City to the Review Board and the Review Board must approve or disapprove the modification within 20 business days;

C. In addition to action taken under A and B above, the Review Board will review the Bud-
get, the Capital Budget, the Cash Flow Estimate and the Financial Plan at the following times:

1. at such times as the Review Board in its discretion may determine;
2. within 45 days after the end of each quarter during the fiscal year;
3. within 30 days after receipt of the audited financial statements of the City and of the internal control review prepared by the City's auditors;
4. prior to any City borrowing;

D. In addition to action taken under A, B and C above, the Review Board will be required to regularly reexamine revenue estimates after initial adoption of the Budget, the Capital Budget, the Cash Flow Estimate and the Financial Plan; the City will submit a modification of any of the affected documents when required by changes in revenue estimates; provided, however, changes in revenue estimates may be made only after approval by the Review Board of any material modification.
III. General Oversight Powers and Functions:

A. The Review Board will receive from the City monthly, quarterly and annual reports and the City will have the duty to prepare and submit the reports described in item 6 of the Memorandum. The Review Board will have the power to obtain whatever information or records are necessary or convenient in its judgment to carry out its responsibilities, including data from the Covered Agencies;

B. The Review Board will have the power to approve or disapprove an outside independent public accountant to be retained by the City to audit its financial statements and report thereon (and if the name of a satisfactory accountant is not submitted by June 15 of each year, then the Review Board shall pick such accountant);

C. The Review Board will be required to retain a nationally known independent expert to estimate the cost of all major (as defined in regulations to be issued by the Review Board) contracts and long-term obligations (other than debt issued in the public market) of the City. The staff of the Review Board will prepare cost estimates for other than major (as defined) contracts and long-term obligations. The resulting cost estimates (major and other than major) will be binding for any and all purposes;
D. The Review Board will ensure that there is an effective system of controls so that expenditures do not exceed available cash not held or dedicated for any other purpose;

E. The Review Board will ensure that all current expenditures, including debt service, are provided for by appropriation pursuant to the Budget and that only such appropriated items are paid;

F. The Review Board will be required to provide, prior to each issuance of securities by the City, a certificate which shall state that (1) the Board has approved the Budget, Capital Budget, Cash Flow Estimate and Financial Plan as then in effect, and (2) the City has not failed to comply with any outstanding order issued by the Board in the exercise of its functions, or (3) in the event that the Board has waived such approval or compliance in any respect, a specification of the respect in which such waiver was granted and the reasons therefor; the City may not issue any securities without provision by the Review Board of such certification.

IV. Criteria Applicable to Functions of the Review Board:

A. The Review Board may disapprove the Budget, the Capital Budget, the Cash Flow Estimate and the Financial Plan, or any material modification
thereof, in accordance with the procedure
outlined under section II above, if, in the
judgment of the Review Board, such Budget,
Capital Budget, Cash Flow Estimate or Financial
Plan is not properly balanced or is otherwise
unsatisfactory to protect the City's credit;

B. The definitions, limitations, standards and all
other criteria and material outlined in items 1
through 8 of the Memorandum will govern the
Review Board in the performance of its functions
and the making of judgments in connection with
the enabling legislation.

V. Sanctions and Remedies:

A. Expenditures may only be made pursuant to an
appropriation forming part of a budget approved
by the Review Board;

B. The legislation will provide for civil penalties
for non-willful violations and will make
willful violation a misdemeanor; and the Review
Board may bring suit or prefer charges thereunder;

C. One or more of the following sanctions or
remedies may be applied by the Review Board in
its discretion at any time the City fails to
have a properly approved (or not disapproved)
Budget, Capital Budget, Cash Flow Estimate and
Financial Plan, or if the City acts contrary to
the modification procedures outlined under section II above, or in the event the City fails or refuses to comply with any order of the Review Board;

1. the Review Board may withhold its certification with respect to borrowing;

2. the Review Board may bring legal proceedings (Article 78 or otherwise);

3. the Review Board may request the Governor to become a member, and, upon his acceding to such request, both the Governor and the Mayor will immediately become full voting members (with the Governor as Chairman), and thereafter the Review Board will have the following powers, duties and general functions:
   a) to create a Review Board Fund on the following terms:
      i) all revenues received by the City, unless exempted by the Review Board, are revenues of the Review Board Fund for the account of the Review Board;
      ii) all funds and accounts established by the City are included in the Review Board Fund unless expressly prohibited by federal law;
iii) for purposes of assuring compliance with the City's duties, the Review Board will establish procedures:
(x) for deposits into the Review Board Fund and the Debt Service Fund;
(y) for disbursements from the Review Board Fund and the Debt Service Fund;

iv) if it determines that amounts in the Review Board Fund are insufficient to meet expenditures, provide for disbursement from such Fund in the following order of priority: debt service not provided for by the Debt Service Fund; payment of other liabilities having statutory or contractual priority over remaining liabilities of the City; and, lastly, payment of
other liabilities on an allocated basis;
b) to disapprove of (and thereby preclude the City from entering into) any contract and any long-term obligation;
c) to formulate and adopt before the beginning of a fiscal year the Budget, the Capital Budget, the Cash Flow Estimate and the Financial Plan in the event that the City shall, for any reason, fail to submit or to adopt, after approval by the Review Board, such documents;
d) to modify the Budget, the Capital Budget, the Cash Flow Estimate and the Financial Plan to conform them, if the City fails to propose the necessary modifications, to revised revenue estimates or revised expenditure limitations due to the expenditure by the City (or a Covered Agency) of funds at a
rate that would exceed the aggregate expenditure limitation for the City (or Covered Agency) prior to the expiration of the fiscal year;

D. City bondholders will have the right to sue to compel the Review Board to perform its functions in accordance with the legislation.
9. Monitoring compliance

MAC will monitor the City's compliance with all requirements on a regularly scheduled basis. The current MAC board of directors would be reconstituted and divided equally between City and State appointees plus a chairperson selected by the Board. MAC will employ an executive director and a professional staff capable of performing required review functions with complete access to the records of the City. The MAC budget will be approved by its board and by the budget director of the State, and will be funded by taxes and other revenues appropriated to MAC.

Specifically, MAC will perform the following monitoring functions:

(1) Review of the executive budget submitted by the Mayor to determine whether it is balanced;

(2) Review of the budget adopted by the Board of Estimate and City Council to determine whether it is balanced;

(3) Quarterly review of budget condition to determine that budget is balanced;

(4) Determination that reporting and auditing requirements are being fulfilled;

(5) Determination that a financial plan for the three years subsequent to the budget year has been modified as required;

(6) Determination that the Reserve Fund is properly appropriated and used;

(7) Determination that limitations on short term debt are complied with;

(8) Determination that Debt Service Funds are properly provided and used;

(9) Determination that the required internal controls are in place.

(10) ...
In addition, MAC may review all City financings to determine whether they are consistent with the financial plan and budget, and it may review any other aspect of the City's financial management which it believes to be necessary in determining the fiscal soundness of the City. MAC will report the results of any review it undertakes to the Mayor, with notice to the Governor together with any recommendations for improvement or for other action that it deems appropriate. The Mayor shall respond to any recommendations within 30 days of receipt.

With reference to specific findings of statutory non-compliance, MAC must review such findings with the City. After such review, if MAC believes that the City is not in compliance it will make its determination public and report it to the Governor. MAC then will have a cause of action to enforce statutory requirements. In any such action, MAC will have the burden of proof. The standard of proof will be "reasonableness." Non-compliance must be material.
RLS/jmc
1/13/77

CONFIDENTIAL - FOR KEILIN'S EYES ONLY

Y = Yonkers Special Finance and Budget Act (Y Act)
N = Newark Qualified Bond Act (QBA)

Supervisory Control

Y. has a fiscal agent - State Comptroller; responsible for debt service fund; reviews budget for compliance with Y Act; formal approval or disapproval of justification document when submitted by City (City may not take action until and unless Fiscal Agent approves); enforcement agent for bondholders' contract with City.

N. must submit budgets for approval to a State agency (Division of Local Government Services) (all municipalities must adhere to Local Budget Law); in addition, under QBA, another State agency (Local Finance Board) approves all future capital projects and receives various reports. (Under QBA, optional submission by any N.J. municipality to Local Finance Board which determines whether municipality is entitled to issue qualified bonds and conditions with respect to future operations of the municipality.)

Contractual Safeguards with Bondholders

In Y. the budget provisions; maintenance of, and segregation of certain taxes in, the Debt Service Fund; continuation of Fiscal Agent and functions; restrictions on budget notes to pay certain personnel pay increases during budget year; no diversion of current funds for bond funds; segregation of bond proceeds by project - no commingling.

N. No direct contract with bondholders with respect to matters other than the general obligation promise to pay; however, City has
an obligation to the Local Finance Board to obtain approvals for capital projects and for reporting. Enforceable and releasable by the Local Finance Board if the best interest of the City is served. Board has "indicated" no approval of future debt if impairs marketability of outstanding bonds. Budget Law is not a contract with bondholders but if amended would probably be for updating to "accrual" system and for all N.J. municipalities.

Debt Service Fund

Y. Segregation of a percentage of real estate taxes as received; Debt Service Fund maintained by Fiscal Agent.

N. State pays directly to paying agent from certain State aid moneys to service debt (State has use of such moneys until debt service due date) - City is required to levy real estate tax to pay the bonds and when bonds are paid from State aid then real estate tax money is released for use for general City purposes. State aid subject to State appropriation (probably available to all creditors if City is in bankruptcy).

State Covenant

Y. has State pledge not to repeal statute and provides that State can be sued if it attempts to do so. Covenant is contract between State and bondholders since purchase of Y. Bonds deemed evidence of valuable consideration received by the State.

N. The budget provisions of the Local Budget Law are not subject to a State covenant - the provisions of the QBA of withholding State aid to pay the Bonds are the subject of a State covenant. Statute provides that it will not repeal or create any
lien on the State aid prior to the lien of the bondholders - State does not agree that it will always make the appropriation.

Power of the State to Pass Law

Y. Specific constitutional provision together with a home rule message-purpose-to restore credit of Y. and to preclude recurrence of past practice which created fiscal emergency.

N. Maintenance of strong financial credit in N.Y. municipalities; QBA available and optional for all municipalities - purpose - sound credits in N.J. but can be strengthened by segregating State aid flow.

Reserve Fund

Y. does not have a funded or required reserve fund but the 1976-1977 budget had a built-in surplus of $5 million to "fund" a portion of the accumulated deficit. Balance of accumulated deficit funded by bonds. With budget controls in effect on revenues, the City probably will end up with surplus at end of 1977-1978 year even if City increases expenditures in 1977-1978 budgets. Thus, starting with a surplus, the City should have previous year surplus to appropriate.

Y. does reserve for uncollected taxes (non cash reserve).

N. does not have a reserve fund. Local Budget Law has provision for reserve for uncollected taxes.
Audit Requirements

Y. requires independent annual audits by CPA; CPA required to report any default by City in its contract (such as commingling bond funds).

N. State statute requires annual independent audit by licensed registered municipal accountants. Audit is to include recommendations for improvement of financial practices.

Budget Provisions (more detail to come from HER)

Y. Budget provisions impose a floor on expenditures and a ceiling on revenues based upon last audited years results with no formula adjustments. City permitted to increase revenue estimates and decrease expenditure estimates upon approval of a justification document setting forth facts and actions completed providing a basis for a reasonable expectation; State and federal aid same as last year; the program still in effect unless larger amount is certified by appropriate State or federal officer.

During the year limitations on transfers of appropriations and emergency, supplemental or increased appropriations; budget must be adopted prior to the commencement of fiscal year.

N. generally modeled after the model cash basis budget law; budget adopted generally two months after the beginning of the budget year and expenditures and revenues based on the year preceding the budget year (rather than the last audited year); must include "cash deficit" of preceding year unless reserved for under a surplus revenue reserve fund established and available for such purpose; no budget may be adopted unless approved by Commissioner of Local Government;
less stringent on ceilings and floors as a result of such approval requirements. Restrictions on operation of budget during the year - emergency appropriations over a certain percentage subject to approval by a State agency. Approvals of State agencies in N.J. generally without real standards and discretionary with the State agency.

New N.J. State law limits for all N.J. municipalities increases of more than 5% over amounts appropriated for previous year unless funded from sources other than the real estate tax or necessitated by emergencies approved by a State agency or for certain other mandated expenses.
APPENDIX II

State Oversight Throughout the Nation

The following information is based on material prepared at the beginning of this year, and numerous bills for increased oversight were pending in various state legislatures at that time. Keeping in mind that there may have been changes in the past nine months, we list below those states which, in early 1977, had oversight requirements.

As can be seen, almost half of the States in the Union (24) had some sort of oversight early this year. While many of them are not industrial states, it is noteworthy that oversight exists to some extent in industrial states such as California, Massachusetts, Michigan, New Jersey and Ohio. The prognosis for the future is that this phenomenon will become more prevalent over time.

Alaska - If municipality participates in State revenue sharing program, it must submit a budget to the Director of Local Government Assistance of the Department of Community and Regional Affairs.

California - All budgets of local units are submitted to State.

Colorado - If at the end of the year, budget is unbalanced, the condition must be corrected next year.

Connecticut - State statute requires local units to have a balanced budget and if deficits should occur they must be appropriated in the next fiscal year.

Indiana - In order to sell bonds, local unit must have approval of State Levy Control Board.

Kansas - State Board of Education must approve all bonding done by local boards of education.

Kentucky - All counties submit their budgets and any amendments to their budgets annually to the State Local Finance Officer of the Department of Local Government which has the power of approval. The State Local Finance Officer also has authority to approve or disapprove all bond issues of counties.

Louisiana - All debt with maturity in excess of 90 days must be approved by the State Bond Commission. Locality must present source of revenues for debt repayment and that the revenues will be sufficient. Commission has established standards for debt issuance.

Maine - State requires balanced budget; however, any deficit must be appropriated in next fiscal year.
Maryland - Local units must pay off operating deficit in ensuing year.

Massachusetts - Under certain conditions, i.e., when local units' amount of debt exceed statutory debt limit, approval of State is required before debt can be sold.

Michigan - State has authority to approve the authorization of debt and bonds and notes proposed to be issued.

New Hampshire - State requires balanced budgets for local units. Such budgets are submitted to State Commissioner of Revenues and Administration to review appropriations. If the budget does not follow procedure as specified by law, the Commissioner has power over the cancellation of appropriations and the approval of tax rates.

New Jersey - No budget may be adopted without the approval of the State Director of Local Affairs who grants approval after establishing that the budget is balanced and the budget is on cash basis.

For local units, State prescribes accounting methods, requires that annual, independent audit be conducted, and provides a post audit annually.

State approval of emergency appropriations over 3%.

For certain local units, State must approve the authorization and issuance of all borrowing and requires the submission on a monthly basis of revenues, expenditures and progress on capital projects.

New Mexico - The State Department of Financial Administration, Local Government Division, holds budget hearings and has the power to approve or disapprove any local unit's budget. In addition, each unit (monthly for cities, quarterly for counties) must report on current revenues and expenditures.

North Carolina - State Local Government Commission is authorized to approve bonds and notes proposed to be issued by any local unit.

State Local Government Commission conducts sale of bonds and notes of local units.

State Local Government Commission maintains a continuing review of local funds and accounts.

Uniform accounting system established by the State. Local units are required to have annual independent audits.
Ohio - Local units must submit budgets for county review.

South Carolina - If event of default is imminent with respect to a local unit of government, the State can withhold State revenue sharing payments and utilize them to pay debt service.

South Dakota - Local units are required to have a balanced budget but can have a shortfall which must be paid off in the following fiscal year.

Tennessee - Cash Basis Budget Law for local units.

Any local government entity with any amount of notes outstanding at the end of a fiscal year must submit next year's budget to the State Division of Local Finance for approval. In addition, about 90% of counties have their budgets prepared by the State Division of Local Finance.

Virginia - State oversight deals primarily with counties, which are predominant local units of government. Counties are required to be audited annually either by the State Auditor's Office or by a CPA approved by the State Auditor, who issues specifications which must be followed in an audit and a suggested code of accounts.

Limited oversight with respect to municipalities through State Commission on Local Debt.

Washington - Local units are required to have and maintain a balanced budget. Any shortfall must be made up before the end of the fiscal year.

West Virginia - State requires that all municipal budgets be submitted to State Tax Commissioner who must approve budget before it can be adopted. Main factor in review is the reasonableness of revenue and expenditure estimates.

The State acts as fiscal agent for local municipalities and debt service moneys are paid from municipalities to a State sinking fund.

Wyoming - Local units must have and maintain a balanced budget. If a deficit is foreseen, local unit must reduce services and/or raise taxes.

October 25, 1977
MEMORANDUM

July 29, 1976

TO: Mr. Sidney Schwartz, Mr. Herbert Elish
FROM: Stephen Berger

The Emergency Financial Control Board, at its June 23, 1976 meeting, passed a resolution requiring that "Representatives of the City, the Control Board, the Special Deputy Controller and MAC will confer and agree upon a method for monitoring actual revenues and expenditures of the City during FY 1977 and for implementing other alternative reductions or revenues as necessary."

My staff has done a review of the interim monitoring system now being put in operation by the City. As a result of their review, several questions have emerged which I feel should be discussed, before we address the City about this item. In addition, your own evaluation may indicate additional areas of concern.

The interim system is an important step forward for this year. However, there appear to be several areas in which it should be improved immediately to increase its capability to monitor FY 77 revenues and expenditures.

- Concerning encumbrances, the system does not appear to adequately address the need to control the inevitable year-end rush by agencies to spend the remaining, as yet unencumbered funds. The City should consider imposing a ceiling on additional encumbering of funds around March 1 and subsequently require central approval for additional encumbering by an agency. Such a system would undoubtedly result in considerable savings for the City.
- The interim systems do not appear to adequately monitor the capital budget, particularly the true capital expenditures included in the budget. This is particularly a problem in that the presentation of contracts by the City to the EFCB does not relate the contracts to the Financial Plan in any way. Some additions should be made to the monitoring system so that the capital budget can be adequately monitored.

- The interim monitoring system does not identify those particular areas of cost reduction which were included in the Mayor's Plan to Close the Budget Gap. As a result, it does not appear possible to identify slippage in action requirements quickly, and therefore to determine when other cost reduction programs drawn from the $85 million list of standby cuts should be put in place.

- The system does not seem to track or control the transfer of personnel from one funding source to another within the budget. Should an employee initially budgeted on a line supported by federal aid be reallocated to a line funded through tax levy funds, the system would not pick it up. This means that tax levy expenditures are not really under control. An additional mechanism for handling this problem should be implemented immediately.

- The interim systems do not include periodic reports on revenues. A revenue reporting package should immediately be included within the system.

With these additions, the interim financial management system, as a temporary measure, appears to be adequate for FY 77. I have some concerns, however, about its relationship to the IFMS system in FY 78. I understand that the implementation of certain key portions of the IFMS is behind schedule, particularly the conversion to the new Payroll Subsystem. Because of the potential delays with the IFMS, I wonder if the interim system will not be, in fact, the operating City system until well after the beginning of FY 78. If this is the case, some other addition will have to be made to the system for use in FY 78, particularly those which would allow it to monitor part-time employees, control the accumulation and payment of overtime, and expand the encumbrance system to more than the original five agencies.

I would appreciate the opportunity to have our staff discuss these questions with your staff as soon as possible.
February 4, 1976

Mr. Herbert Elish
Municipal Assistance Corporation
Two World Trade Center
New York, New York

Dear Herb:

Enclosed is the balance of the draft memorandum I sent you this morning -- this balance dealing with the powers of the Control Board to enforce compliance with the financial plan.

Also enclosed is a rough draft from John Connorton for the introductory section of the memo. In this redraft, the questions presented would be much more closely related to the discussions that have actually gone on at the Control Board meetings and focus more directly on some of the specific proposals that have been discussed. I think this idea is entirely correct and will make the memorandum much more effective. I hope you agree. In any event, I will be working ahead to carry out this theme through the balance of the memorandum.

Sincerely,

Peter R. Haje

Encs.

BY HAND
Powers of the Board in Enforcing Compliance with the Financial Plan. When the Financial Emergency Act was under consideration, there were concerns that the City or covered organizations might expend funds during a fiscal year at a rate that would exceed the aggregate expenditure limitations before the end of the year and that they might expend funds for purposes not covered by the financial plan, in either case leaving insufficient money to carry out the financial plan in each of its fiscal years.

The Legislature's response to these concerns was to give the Board power to enforce compliance with the financial plan. This power is found in provisions of the Financial Emergency Act that:

1. Give the Board control over the actual expenditure of funds by the City and the covered organizations (Section 9.1);

2. Require that such funds be disbursed "by the Board in accordance with the approved financial plan" and pursuant to such procedures as the Board may adopt "controlling the disbursement of moneys from the fund... in order to assure compliance with the financial plan" (Sections 9.1 and 9.3);

3. Establish the priority in which the Board is to allocate the disbursement of moneys from its fund should the Board determine that such fund will be insufficient to
meet all expenditures in the amounts and at the times required by the financial plan (Section 9.5);

4. Require modification of the financial plan by the City (subject of course to Board approval) in the event of the City or a covered organization "shall expend fund at a rate that would exceed aggregate expenditure limitations for the [C]ity or a covered organization prior to the expiration of the fiscal year" (Section 9.3(f)).

It is important to note that the responsibility falls on the City, not on the covered organizations, to modify the financial plan in the event of overspending by the City or by covered organizations and to allocate available moneys if there are insufficient funds to pay all expenditures contemplated by the financial plan. If the Board determines that the amount in its fund would not be sufficient to perform the financial plan in full, then, in the period before the modifications of the plan are proposed by the City, the statutory order of priority to be followed by the Board in disbursing moneys is first, debt service, second, payment of other liabilities having statutory or contractual priority, and third, "payment of other obligations on an allocated basis as specified by the [C]ity for expenditures in accordance with the financial plan provided that, in the event that the [C]ity fails to so specify, the [B]oard may withhold payment of any such other obligations or may direct their payment pro rata" (Section 9.5).
In addition to its negative enforcement powers through its ability to control the disbursement of moneys, the Board has the express power to issue "such orders to officials of the City and of the covered organizations as it deems necessary to accomplish the purposes of [the Financial Emergency Act], including but not limited to timely and satisfactory implementation of an approved financial plan. Any order so issued shall be binding upon the official to whom it was issued and failure to comply with such order shall subject the official to the penalties described in section 11 of [the Financial Emergency Act]" (Section 7.1(h)).

Under section 11, officers or employees of covered organizations are prohibited from:

1. Incurring any liability in excess of the amount available therefor under the financial plan as then in effect;

2. Entering into a contract or incurring a liability without approval by the Board (unless such approval is not required by the Board's regulations) and unless in compliance with the financial plan as then in effect;

3. Taking any action in violation of any valid order of the Board or refusing or failing to take any action required by any such order; or
4. Preparing or certifying any information or report to the Board or any of its agents that is false or misleading or, upon learning that any such information is false or misleading, failing to advise the Board promptly (Sections 11.1 and 11.2).

The penalties for violating any of the above prohibitions are expressly set forth in the Financial Emergency Act. They are:

1. "Appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office. Such suspension or removal may be affected by order of either the [G]overnor or the [M]ayor" (Note: not the Board); and

2. If a knowing and willful violation, conviction of a misdemeanor (Section 11.3).

If an officer or employee of the City or any covered organization violates any of the above prohibitions, the Mayor or the chief executive officer of such covered organization is responsible for immediately reporting such fact to the Board, together with the statement of the action taken with respect to such violation (Section 11.4).
Background and Questions Presented

At a special emergency session of the Emergency Financial Control Board (the "Board") held on January 30, 1976, various members of the Board, as well as the Chairman of the Municipal Assistance Corporation ("MAC") who was in attendance, expressed the belief that strong "management control" had to be imposed on the City of New York (the "City") and certain major covered organizations such as the Board of Higher Education, the Board of Education and the Health and Hospitals Corporation in order to insure the success of a three-year financial plan. Considerable discussion was had on the importance of establishing program controls and priorities. The discussion centered on the proposal of CUNY, a covered organization, to achieve certain reductions in expenditures by a four-week furlough in the Spring of 1976 without pay.

Certain legal questions arose in the context of that power of the discussion as to the extent of the Board or the City to reject CUNY's proposal.

Could, for instance, the Board and/or the City reject the furlough proposal on the policy grounds that a furlough which resulted in the closing of CUNY for a month was objectionable per se? Or did the Financial Emergency Act require that there be a determination by the Board and/or the City that the
furlough proposal would not achieve the expenditure reductions necessary to limit the expenditures of CUNY to the aggregate expenditures allocated to CUNY in the three-year financial plan? Was the Board and/or the City entitled to reject the furlough proposal on the grounds that the expenditure reductions effected thereby in the fiscal year ending in 1976 were insufficient? Or on the grounds that they were sufficient for the fiscal year ending in 1976, but resulted in no savings in subsequent fiscal years and so may fail to represent the required progress toward the balanced budget goal? If CUNY decided to eliminate its entire graduate program in order to achieve the necessary cuts could the Board and/or the City reject the proposal on the policy grounds that such cuts would destroy the very core and character of the University?

Such questions in turn led to larger and more complex questions concerning the nature and extent of the Board’s power in general regarding the particular purposes or programs for which funds may be expended by the City and certain covered organization under the financial plan and regarding the amount and timing of such expenditures.

This memorandum was prepared at the request of the Board in order to examine the questions raised above.
MEADOWS v. MOSES
44 N.Y.S. 3d 697

MEADOWS et al. v. MOSES et al.
Supreme Court, Special Term, New York County.
Feb. 8, 1938.

1. Municipal corporations \(\cong 217(3)\)
   Officers \(\cong 11\)
   The constitutional provision pertaining to state and municipal civil service applies in connection with conventional and stable duties of the functionaries of civil government, and not to duties in connection with new construction by the public authorities. Const. art. 5, § 6; Civil Service Law, § 1 et seq.

2. Municipal corporations \(\cong 217(3)\)
   It is not the intent of the Civil Service Law or of the act creating the Triborough Bridge Authority to interfere with the actual construction of the project by requiring the employment of only civil service employees. Public Authorities Law, § 550 et seq.; Civil Service Law, § 1 et seq.

3. Municipal corporations \(\cong 217(3)\)
   Triborough Bridge Authority in making contract with private engineering concern for construction of bridge is under no legal duty to require the employment as engineer inspectors only persons whose names appear upon the municipal civil service eligible list for such position. Public Authorities Law, § 550 et seq.; Civil Service Law, § 1 et seq.

Proceeding by Carl O. Meadows and Edward J. McAndrew, petitioners, against Robert Moses, Chairman, and others, respondents, on petitioners' application for an order to compel respondent Triborough Bridge Authority to employ as engineer inspectors for a particular bridge construction work only persons whose names appear on civil service eligible list for position of engineer inspectors.

Application denied.

Charles Belous, of Long Island City, for petitioners.

Paul Windels, Corp. Counsel, of New York City (Jeremiah M. Evarts, of New York City, of counsel), for respondents.

CHARLES B. McLAUGHLIN, Justice.

This is an application by petitioners, designated on the preferred Municipal Civil Service List of the City of New York as “Engineer Inspector Grade 3”, for an order under Article 78 of the Civil Practice Act, to compel the Triborough Bridge Authority to employ as Engineer Inspectors for the Bronx-Whitestone Bridge construction work only persons whose names appear upon eligible lists for the position of Engineer Inspectors.

Petitioners contend that they have been injured and deprived of their employment by the act of the Authority in letting out a contract for the construction of the bridge. It is claimed that by this contract, inspection and supervisory work necessary in connection with the project
have been turned over to the private contractor and that as a result the
duties which would normally be performed by petitioners are now being
done by the employees of the contractor. It is contended that this
procedure on the part of the Authority in addition to violating petitioners' rights is against the interests of the public.

[1] The principal ground of objection urged by petitioners is that
the Authority's acts are in violation of the provisions of § 6, Article V,
of the Constitution of the State of New York. The recent ruling of the
Court of Appeals in the case of Matter of Social Investigator Eligibles
Association v. Taylor, 268 N.Y. 233, 197 N.E. 262, 264, would seem to
indicate that the section would not apply to a situation such as this,
but would be applicable rather in connection with "conventional and
stable duties of the functionaries of civil government."

[2] The construction of a bridge is to be distinguished from maintaining it after its completion. The latter would concededly be a stable and continuing function which would call for employment of civil service employees whereas the former is merely temporary or transient, and best accomplished by direct contracts. We do not believe that it was ever the intention of the legislature either by the Civil Service Law or by the Act creating the Authority, Public Authorities Law, § 550 et seq., to interfere with the actual construction of a project such as this by requiring the employment of only civil service employees. This is borne out by the fact that it has been the custom of the City in the past to enter into independent engineering contracts with private firms in connection with large construction projects, for the purpose of supplying designs and specifications and performing the engineering inspection services in respect to the actual construction. A definite indication with regard to the policy of the state on this question is revealed in the veto of a bill passed during the last legislative session which was aimed to prevent the employment of outside technicians in professional firms on projects of this kind and to compel in their stead the employment of persons on the civil service lists.

The Authority, by the Act creating it, has been fully authorized to
make necessary contracts and as an incident of such power it follows
that the Authority would not have the right to interfere with the execution of such contracts by private concerns in preventing the use of their employees. Another important fact to be considered is that this project is being financed by private capital pursuant to a resolution authorizing the issuance and sale of bonds for the purpose of completing the project. The resolution imposes upon the Authority the duty of completing the project with expedition and at a minimum cost. To restrict the contractual rights of the Authority and to compel employment of civil service employees might very well impair the rights of the bondholders who were possibly induced to subscribe by reason of the manner in which similar projects have been recently successfully completed.

[3] The Authority in proceeding as it has is merely carrying out the mandate of the Act by which it was created. The granting of petitioners' application would be an interference with the function and pur-
pose of the Authority and would hamper and impede it in the successful prosecution of its duties. Petitioners have failed to show that the Authority has exceeded its prerogatives or that it has been guilty of violating any law of the City or State, in making its contracts with private engineering concerns. Motion is denied.

179 Misc. 969

COHEN v. COHEN.
Supreme Court, Special Term, Kings County.
March 26, 1943.

1. Divorce ⇨310
Husband was entitled to modification of alimony order so as to relieve him of obligation of making further payments for support of daughters who had attained their majority.

2. Divorce ⇨310
Husband was entitled to have alimony reduced nunc pro tunc as of date when daughters reached their majority, rather than as of date of application for reduction.

Action by Minnie Cohen against Nathan Cohen. On defendant's motion to modify report of official referee regarding alimony. Motion granted and report modified and, as modified, confirmed.

Noah Feldman, of Brooklyn, and L. K. Katz, of New York City, for plaintiff.

Michael M. Kirsch, of New York City, for defendant.

SWEZEF, Justice.


[2] The only other question that remains to be determined is whether the alimony should be reduced nunc pro tunc as of the date of the application or when the daughters reached their majority. A somewhat similar situation was presented in Probst v. Probst, 259 App.Div. 1090, 21 N.Y.S.2d 294. There the court held that to permit the recovery by the mother of support for the son after he had attained his majority would be an unjust enrichment of her. An examination of the record on appeal in that case discloses that the questions whether the amount of the alimony awarded by a final judgment is indivisible and whether the
MEMORANDUM

TO: FELIX ROHATYN
    GEORGE GOULD

FROM: HERBERT ELISH

On Wednesday, January 14, 1976, at the request of
Al Strazzullo, Regional Manager of the United States
General Accounting Office, Jim Keegan and I met with
Mr. Strazzullo and four members of his staff.

They had asked for a briefing of the respective roles
of MAC and EFCB, as one of a series of meetings with
City and State officials. I explained the MAC financing
role and asked what possible interest the GAO could have
in MAC, in light of the Corporation's limited involvement
with the Credit Agreement.

Mr. Strazzullo stated that the GAO is authorized to
audit MAC by the New York City Seasonal Financing Act.

There is an outstanding legal disagreement between the
GAO and MAC as to their audit powers over MAC. Significantly,
we did not agree to permit such audits in the Credit
Agreement although the City and State did.

To date the GAO is not forcing the issue but since they
still consider it an open question I thought you should
be kept up to date.

HE: jc

cc: Allen Thomas
MEMORANDUM

To Messrs. Ellinghaus
Rohatyn
Flynn
Elish

From Allen L. Thomas

Subject Municipal Assistance Corporation

I enclose our opinion dated today with respect to the power of Municipal Assistance Corporation to require that the City of New York agree to fulfill the conditions and take the actions outlined in the Corporation's July 31, 1975 Program before making additional funds available to the City.

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

/brt

A.L.T.
August 4, 1975

Municipal Assistance Corporation
For The City of New York
c/o William M. Ellinghaus
1095 Avenue of the Americas
New York, New York 10036

Gentlemen:

You have requested our opinion with respect to the power of Municipal Assistance Corporation For The City of New York (the "Corporation") to require that The City of New York (the "City") agree to fulfill certain conditions and take certain actions as outlined in the program released by the Corporation on July 31, 1975, a copy of which is annexed hereto (the "Program"), before the Corporation would make additional funds available to the City.

We have reviewed the Program and the New York State Municipal Assistance Corporation Act and the Municipal Assistance for the city of New York Act (hereinafter collectively referred to as the "Act") and have made such other investigations of law and fact as we have deemed necessary in order to form the opinions herein expressed.
Based upon the foregoing, we are of the opinion that:

1. Pursuant to Sections 3035 and 3037 of the Act, the Corporation is empowered to issue its notes and bonds in exchange for short-term obligations of the City and to pay to the City amounts required by the City to enable the City to pay, at maturity, the principal of and interest on any short-term obligations of the City or to pay operating expenses of the City. The Corporation is not obligated to make any such exchange or payment to the City and may exercise its discretion in determining whether to do so in a manner designed to fulfill its purpose of "creating investor confidence in the soundness of the obligations of [the] City..." and to facilitate the sale of the Corporation's notes and bonds.

2. Pursuant to Section 3038 of the Act, the Corporation is obligated to require (subject to certain limited modifications in the discretion of the Corporation) that the City agree to observe and perform the conditions set forth in such Section 3038 before making any exchanges for maturing City short-term obligations or payments to the City. The conditions referred to in Section 3038 are not, however, exclusive and the Corporation may, in the exercise of its discretion under Sections 3035 and 3037 and pursuant to its general powers, impose conditions additional
to those set forth in Section 3038 of the Act as prerequisites for any exchanges or payments to be made by the Corporation to the City. Any such additional conditions should be rationally related to the effectuation of the Corporation's statutory purposes.

3. Accordingly, the Corporation may require that those conditions outlined in the Program be agreed to by the City prior to any future payments by the Corporation to the City or exchanges by the Corporation for maturing short-term obligations of the City.

Very truly yours,

Paul, Weiss, Rifkind, Wharton & Garrison

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
MUNICIPAL ASSISTANCE CORPORATION PROGRAM

Talk of New York as a city in crisis has been so common that to say it again runs the danger of being ignored. But this time the crisis is not only real and imminent, but also of an extent greater than any faced in the past, even during the years following the Great Depression of 1929. Between now and the middle of December, the City must redeem approximately $2,573,504,000 in outstanding notes and bonds. It must also pay the day-to-day operations of its government. It cannot do either unless the Municipal Assistance Corporation for the City of New York can sell its bonds. While the Corporation's bonds are backed by a strong independent revenue source they are viewed by investors with suspicion. It is clear that in the eyes of the financial community the Corporation's future is inextricably tied to the City.

To this end the Municipal Assistance Corporation supports the fiscal austerity program announced by the Mayor today. In addition, we offer the following program. Part of the program must be carried out by City, State and Federal elective officials. Part we intend to implement within the context of our legislation. Before presenting this program, we wish to reaffirm our belief in and commitment to the democratic process. We do not wish to govern New York. We hope only to assist the elected leaders of the City through a very difficult crisis.
Assumptions of the Program

In our deliberations, the Directors of the Municipal Assistance Corporation made the following assumptions:

First, to create an atmosphere in which Municipal Assistance Corporation bonds can be marketed and to provide a smooth transition for City bonds again to be sold, dramatic changes must be made in the way this city conducts its business.

Decisions about the quantity and level of City services must be made within a context of fiscal responsibility. This means the City must reach, in rapid steps, the point where it spends less than what it receives in local, state and federal revenues.

Second, limits or cuts on the current and future budgets should be made with conscious concern for equity. Sacrifices will have to be shared by all New Yorkers, concern for social needs cannot be ignored.

Third, the City's program must be long-term. While drastic, immediate cuts are necessary, they are useless if simply restored in next year's budget. The initial cuts must be accompanied by a long term rigorous program which reduces the scope and breadth of city government.
Fourth, we recognize the considerable tax burden our citizens have borne and every effort must be made to limit if not prevent future increases.

Fifth, City employees should not confront continuing threats of massive layoffs. The immediate and long-term steps we recommend can minimize or even obviate future layoffs, provided those steps are implemented fully.

Sixth, improvements in the management of the city must accompany the City's fiscal reorganization. The tight fiscal controls recommended here can be implemented only by a tough, skilled management group.

We believe that to balance the budget, to restore the confidence of the financial community whose resources we need in order to survive, to guarantee the survival of New York City there is an urgent need to alter the traditional view of what city government can and should do. What is required is a fundamental rethinking of the level and quality of services this city provides its citizens.

With these assumptions the Municipal Assistance Corporation recommends the following proposals for New York City, the State and Federal Governments, and for the financial community:
Wage Freeze for Management

In addition to the wage freeze requested by the Mayor, we recommend that a program be implemented for managerial employees in the form of a wage freeze as of June 30, 1975.

Ten percent salary cut for Elected Officials

Helping New York move quickly toward fiscal responsibility should be a shared task. We recommend that the City's elected officials demonstrate their participation in the austerity program by voluntarily reducing their own salaries by 10% if they have not already done so.

Expense Ceiling

The fiscal sacrifices which will be taken by City employees are important but short term. The current crisis requires even more difficult controls on overall City expenditures. Our legislation requires us to monitor the City's fiscal practices and beginning in the fiscal year 1977-78 certify that the City's budget is in balance.

One of the clearest and most positive steps that can be taken amid the uncertainties that surround the City budget is to place a limit on overall City expenditures.
Such a limit must be tight enough to insure that the City moves in rapid steps to implementation of accounting and budget reforms within the context of a balanced budget. But within this limit the City will need reserve flexibility to accommodate changes over which it presently has no control but to which it must respond, such as changes in social services costs or shortfalls in revenues.

Accordingly, the Corporation proposes an expenditure limit on the City budget for funds other than State and Federal aid at the level of the 1975-76 budget, plus the establishment of a reserve of $150 million. The Corporation will review City expenditures and income quarterly as authorized by its legislation, to monitor such a program. The limit and reserve provisions are proposed to extend for three years, with annual review of the use and amount of the reserve fund.

The Corporation will work with the City immediately to define the details of the expense ceiling.

Limit on Local Taxes

During the three years the ceiling on tax levy funds is in operation there should be a limit on new City taxes. New York City residents already pay the highest taxes of any city in the country. Further taxes on individuals would be unduly burdensome. Further taxes on businesses would serve to accelerate the loss of jobs in New York City. Clearly this limit on local taxes cannot be absolute. For example, there is a constitutional obligation to levy real estate taxes adequate to meet debt service requirements.
Management and Productivity

In order to achieve the required fiscal austerity with the least diminution of services being delivered to the public, it is indispensable that productivity be increased. That goal can be reached only by substantial reforms in management.

This is not a simple task for an enterprise as large and complex as the City of New York which must be concerned not only with fiscal limitations, but with its humane mission.

In short, while the City must learn to live within its means, and indeed because the City must do so, it must make the most efficient use of its resources and especially of its human resources.

It follows that the City's management must be supplied with the tools which its vast responsibility requires. Recourse to professional advice in this area is unavoidable.

In order that the Corporation may discharge its mandate, the City and the Corporation need to cooperate with each other in the formulation and initiation of reforms in management and auditing the results achieved. The Corporation will equip itself with the necessary professional expertise in order to be of maximum assistance in programming the inevitable changes and in establishing a rational order of priorities in the allocation of scarce resources.
New York's largest employer needs the services of a sophisticated, experienced, skilled management apparatus. That is the condition of its survival without drastic service declines in the next decade.

Special Studies

Special studies are required for Pension Reform, Housing and Social Services which have enormous impact on life in the city and its fiscal management. The Corporation will undertake to examine these problems in cooperation with the City.

Capital Budget

It has been the practice of New York City to fund from the capital budget some items which should properly be expense budget items. In recent times the annual sum of capitalized expenditures has exceeded $700 million. Consistent with its legislative mandate, the Corporation will oversee the process of restoring these operating expenses to the proper place. In the City's current fiscal year, items totalling $30 million should be transferred from the capital to the expense budget. While this action is not specifically required by legislation, it is representative of the acceleration of efforts to deal with the City's fiscal situation.

Scrutiny of the capital budget also indicates that there are cash savings which could be realized in this fiscal year by selectively holding up on some new site acquisitions, new designs, new equipment, new starts, etc. These cuts would exempt projects directly connected with public health and safety. A net saving of $150 million in expenditures can be achieved by holding in abeyance selected capital projects.
Participation of the Financial Community

We believe the financial community has an obligation to become a full partner in the effort to save New York City. We expect the banking community to increase its participation in the selling and holding of Municipal Assistance Corporation obligations, and to consider reducing interest rates, which actions would have a long-term favorable impact on the expense budget.

The State and Federal Governments' Contribution

The City must play the major role in its fiscal reconstruction, but other levels of governments also have roles to play.

A. The State Government

We believe there are three immediate steps which should be taken by New York State:

First, the State should take over the full cost of the City's present contribution to prisons and its court system.

Second, the State's Budget Bureau should begin a thorough re-examination of the programs to which it mandates New York City contributions.

Third, the Legislature should enact a measure similar to the Federal Anti-Deficiency Act of 1933. This would make it a criminal offense for any official to commit or spend funds in excess of the amounts authorized by law.
B. The Federal Government

There are any number of steps the Federal Government could take
to ease New York City's hard times. Among the most pressing are:

First, support for Municipal Assistance Corporation bonds by
having the Federal Reserve Bank buy Municipal Assistance Corporation bonds
and by having a Federal guarantee for the Corporation's bonds, a guarantee
that would increase their market acceptability and reduce their interest
rate at no cost to the Federal government.

Second, assumption by the Federal government of the full cost
of programs which deal with problems of national rather than local origin.
The two most obvious examples are welfare and health insurance.

Conclusion

In presenting this program we reaffirm our faith in our City,
it's citizens, unions and institutions. They have never been asked to
meet a greater challenge. The crisis can be solved only by joint
sacrifice, imagination and hard work. All qualities New Yorkers have
in abundance.

July 31, 1975
II. POWERS

A. Current MAC powers

1. Review of City budgets, quarterly expenditure plans and expenditure reports

2. Approval of City short-term borrowing to determine compliance with law

3. Review of City compliance with accounting, budgeting and financial reforms

4. Duty to determine City compliance with statute and inform public officials and public of any noncompliance

B. Restructured MAC

1. Financial Requirements

   a. City to continue current requirements, such as budget balanced in accordance with State Comptroller's accounting principles, independent audits, internal controls, regular reports, three-year financial planning

   b. City to adopt further financial reforms, such as setting aside property tax in debt service fund, limiting use of short-term debt, agreeing to make up any deficits in next succeeding fiscal year, establishing and funding a contingency reserve

2. Review Function

   a. When City budget balanced

      (i) EFCB expires

      (ii) MAC reviews all aspects of City financial practice, including whether budgets balanced, reserve funds properly established, bonds and notes properly issued

      (iii) Duty to determine City compliance with statute and inform public officials and public of any noncompliance
b. If deficits (or other specified problems) occur

(i) MAC assumes additional enforcement powers, such as power to approve budgets as balanced or power to approve borrowing

(ii) New powers lapse after period of City compliance

c. If deficits (or other problems) persist or worsen

(i) MAC assumes powers like those of EFCB

(ii) New powers lapse after period of City compliance
- Discuss or our bonus?
- Margin 92-93
- Call - maybe yes, maybe no
- How many managed to? 9?

- Price 10

- Drawn to 13 5 pm
- Bid Wed 15
- Decline 23