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DECISION MEMORANDUM

Subject: Submission of Amendment to Bankruptcy Act to Facilitate Filing by New York City

This Memorandum discusses the question whether the Administration should support new legislation providing for the orderly restructuring of municipal debt in the event of a default. Rod Hills and Nino Scalia have drafted such legislation. OMB is circulating it to interested agencies for comment.

Financial Status

On September 29, the New York Court of Appeals held unconstitutional the provisions of the new state legislation which mandated purchases of MAC bonds by certain state employee pension plans. If, on the basis of this decision, the remaining pension plans covered by the legislation refuse to purchase MAC securities, there is a strong possibility that the financial package designed to get New York City through December 1 may collapse. In that event, New York City may run out of cash as early as October 7 and would default on \$453 million of notes on October 17.

Over the longer term, New York City faces a large cash shortage during the December - March period. This is not a problem of overspending, but rather one of the timing of receipts. While waiting for April tax payments, the City must borrow to pay its expenses for December - March.



Mayor Beame has estimated the shortage at \$1 billion. Treasury is trying to obtain data to confirm this estimate but, since only city officials have the figures, Treasury has been experiencing delay. They do expect to receive it shortly.

Background

When any large entity is perceived to be in financial difficulties, all creditors -- security holders, other lenders, vendors, employees -- strive to maximize their opportunities for payment. When the difficulties reach the point of giving rise to legal causes of action -- i.e. default -- creditors pursue their claims in court. In addition to demanding payment in cash, such lawsuits would also seek an injunction pending the outcome of the litigation against the payment by the debtor of other claims. Since more than one court will normally have jurisdiction to hear such claims, the debtor is likely to be faced with conflicting injunctions and in effect be prohibited from paying anyone. This quandary is particularly serious in the case of a municipal default, where such an injunction could well prohibit payments for essential services: police, fire protection, and the like.



Under our legal system, protection for the debtor is provided by the bankruptcy laws. The Constitution gives the Federal government the sole power to provide for bankruptcy and Congress has exercised that power by enacting a comprehensive set of laws, each of which, in the final analysis, confer upon a single Federal judge the authority to determine how the debtor's resources will be apportioned among creditors. Through this mechanism, all creditors can be treated fairly and the essential needs of the debtor preserved.

Existing Municipal Bankruptcy Law

Existing law governing municipal bankruptcies is, as a practical matter, of no value to any but the smallest municipal governments. The fundamental flaw in the law is that it in effect requires that the debtor -- the city--- and its creditors -- the security holders -- resolve the ultimate issue before coming to court. It does so by requiring as a condition to the filing of a petition in bankruptcy (the event which establishes Federal court jurisdiction), the concurrent filing of a plan of debt reorganization and assents to such a plan by a majority in interest of the creditors. In short, existing law fails to provide a mechanism for re-ordering the relationships between the city and its creditors.



These infirmities have been widely recognized. The Commission on the Reform of the Bankruptcy Laws of the United States, created in 1970, recommended elimination of the prior assent requirement and other improvements. These recommendations are embodied in S. 235 and H.R. 32, now pending in Congress.

The Hills/Scalia Proposal

The Hills/Scalia proposal is substantively the same as this pending legislation. It was prepared as a separate bill because the pending bills effect a comprehensive reform of all bankruptcy laws and will undoubtedly be the subject of extended consideration. Further to minimize interference with Congress' comprehensive review, the proposal leaves the existing municipal bankruptcy provisions intact, instead taking the form of a separate chapter of the laws, applicable only to cities with population in excess of 1,000,000.

Functionally, the proposal has three operative provisions:

1. A municipal government (of the appropriate size) could enter bankruptcy by filing a petition alleging that it was unable to meet its obligations as they mature;
2. The filing of such a petition would confer plenary jurisdiction on the court in which it was filed and effect an automatic stay of all lawsuits brought by creditors against the city;



3. During the proceeding, with the approval of the court for good cause, the city would be authorized to borrow additional funds and assign a first priority of payment to the notes issues in consideration. (This provision is important with respect to the New York City cash shortage problem discussed above.)

Pros and Cons

Pros

- Would provide Federal assistance in dealing with New York City's problems with no current or future financial commitment.
- Would avoid conflicting litigation, thus assuring the flow of revenues for essential services.
- Would allow for an orderly restructuring of the City's short term debt.
- Would provide a vehicle for temporary borrowing to smooth out cash flow imbalances.
- Would reflect Administration concern with the problem and a willingness to take action in appropriate areas.

Cons

- Could be interpreted as favoring default.
- Could be interpreted as callous in that it reinforces USG unwillingness to provide financial assistance.



Questions Presented

Two questions are presented:

1. Whether the Administration should support such legislation, and
2. If so, whether the Administration should take the lead in introducing the legislation and seeking its immediate enactment.

The Yeo/Dunham/Hills/Scalia/Collier group believes that such legislation is necessary and recommends Administration support. They have no recommendation on the degree of Administration leadership.

Decision

1. Whether to support legislation.

Support _____

Do Not Support _____

Other _____

2. Whether to take lead on pressing legislation.

Take Lead _____

Do Not Take Lead _____

Other _____



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 3, 1975

MEMORANDUM FOR WILLIAM SEIDMAN

FROM: CALVIN J. COLLIER *Calvin J. Collier*

SUBJECT: Provisions of Federal Bankruptcy Law for
Municipalities: New York City

In his September 24th prepared testimony before the Joint Economic Committee, Secretary Simon said, "We have prepared, and will shortly submit to the Congress, legislation amending Chapter 9 of the Federal Bankruptcy Act to facilitate use of the protections of that Act by New York City. In addition, we are also studying the feasibility of a Chapter 11 type reorganization procedure as an alternative mechanism."

The House Judiciary Committee, having noticed this statement, has called hearings for Monday, October 6, and has invited the Justice Department to testify. During the last week, OMB has coordinated the clearance of draft legislation prepared by Justice. Over this weekend, the legislation will be finalized.

Justice now seeks guidance with respect to the proper approach for its testimony. There are two options:

- Option 1. Submit a cleared bill and explain its provisions in prepared testimony. This option delivers on Secretary Simon's commitment and probably would be most helpful to the Committee in their deliberations. Its primary disadvantage is that it might heighten criticism of the Administration for neglecting the problems of New York City.
- Option 2. Testify about the specific shortcomings of existing law, indicate a willingness to work at the staff level with the Committee, share with the Committee our current "draft" of a bill, but



do not formally transmit the legislative proposal. This approach would be helpful to the Committee, but would probably generate resentment that the Administration is vacillatory. Moreover, the Justice witness would undoubtedly be faced with the question of when the Administration would actually transmit a proposal.

Since the Justice Department (Assistant Attorney General Antonin Scalia) must prepare testimony tomorrow for delivery on Monday, prompt guidance is necessary.

cc: James T. Lynn



THE WHITE HOUSE

WASHINGTON

October 6, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

L. WILLIAM SEIDMAN

FROM:

JAMES E. CONNOR *JEC*

SUBJECT:

Provision of Federal Bankruptcy Law for
Municipalities: New York City

Confirming phone call to your office today, the President reviewed your memorandum of October 4 on the above subject and approved the following option:

Option 2 - Testify about the specific shortcomings of existing law, indicate a willingness to work at the staff level with the Committee, share with the Committee our current "draft" of a bill, but do not formally transmit the legislative proposal.

Please follow-up with appropriate action.

cc: Don Rumsfeld



10/17/75

The City of New York was unable to raise sufficient funds to meet \$449 million in obligations due today. The City, after a number of valiant efforts to avoid it, is now in technical default of some of its obligations.

It's apparent that payments by the City on its debt obligations will have to be deferred, as the fiscal belt-tightening now underway leads to the eventual restoration of the credit of the City of New York.

I will submit to Congress on Monday, the day they reconvene, proposed legislation that will provide for a voluntary petition of bankruptcy for the City to be accepted in the appropriate Federal Court. This legislation will provide a means for the reconstitution of the outstanding debt of New York City.

It is important to recognize what today's default means, but most importantly, what it does not mean.

--- It means that if my proposals are accepted a number of investors in New York City securities will not be paid immediately, but as financial reforms proceed, will be paid eventually.---

It means that the deficit spending of the City must, as quickly as possible, be eliminated. This will call for sacrifices and some pain by many city residents and employees as well as the investors in City securities.



The default does not mean that the City of New York, our greatest city, our center of finance and trade will, as some have irresponsibly stated, go down the drain. The life of the City will go on. Its talented citizens will continue to make their great contributions to our country and to the rest of the world and the throbbing urban life of the metropolis will continue undaunted.

I expect New Yorkers to pull together to get over this time of difficulty. I have heard many doomsayers claim that the "special interests" within the City will each push for their own selfish ends. There are some who believe that some of the municipal unions will tie up the City with strikes if any attempts are made to curtail the City's payrolls or reduce some less than urgent City services.

This, in my view, does a discredit to the citizens of New York City. They have shown great creativeness and ingenuity in the past and I firmly believe that as we all look back at this unfortunate period in New York City's brilliant history that the citizens of New York and those of the Nation as a whole will be proud of the way New York handled its problems.



2nd Draft

The City of New York was unable to raise sufficient funds to meet \$449 million in obligations due today. The City, after a number of repeated efforts to avoid it, is now in technical default of some of its obligations.

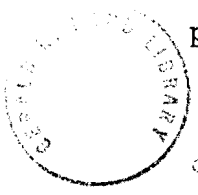
It is apparent that payments by the City on its debt obligations will have to be deferred, as the fiscal belt-tightening now underway leads to the eventual restoration of the credit of the City of New York.

The Justice Department has been working with the staff of the House Judiciary Committee in preparing for prompt introduction of legislation to provide for a voluntary petition of bankruptcy for the City to be filed in the appropriate Federal Court. This legislation will provide a means for the reconstitution of the outstanding debt of New York City -- a means needed in addition to the State legislation which has already been passed. This new legislation should be passed promptly by the Congress.

It is important to recognize what today's default means, and perhaps more importantly, what it does not mean.

--- It means that, if the legislation I have described is promptly enacted, a number of investors in New York City securities will not be paid immediately, but as financial reforms proceed, can be paid eventually.

--- It means that the deficit spending of the City must, as quickly as possible, be eliminated. This will call for sacrifices and some inconveniences by many city residents and





employees.

-- With appropriate bankruptcy legislation, it need not mean that the flow of essential governmental services will be interrupted.

The default does not mean that the City of New York, as some have feared, will go down the drain. The life of the City will go on. Its talented citizens will continue to make their great contributions to our country and to the rest of the world and the throbbing urban life of the metropolis will continue unabated.

We continue to believe that the financial effects of this default can be contained and limited to those who hold New York City securities.

I expect New Yorkers to pull together to get through this time of difficulty. I have heard many doomsayers claim that the "special interests" within the City will each push for their own selfish ends. There are some who believe that some of the municipal unions will tie up the City with strikes if any attempts are made to curtail the City's payrolls or reduce some less than urgent City services.

This, in my view, does a discredit to the citizens of New York City. They have shown great creativeness and ingenuity in the past and I firmly believe that, as we all look back at this unfortunate period in New York City's brilliant history, that the citizens of New York and those of the Nation as a whole will be proud of the way New York handled its problems.

M. C. Mills
M.C.

Mr. Seidman, per your request. Sorry
it took so long to get a copy.

Jan Ireland
Personal Secy.

ARKANSAS.

94TH CONGRESS
1ST SESSION

H. R. 10221

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1975

Mr. MILLS introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To provide additional fiscal assistance to local governments and to extend revenue sharing for local governmental units for four additional years.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) so much of the State and Local Fiscal Assistance



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1 Act of 1972 as precedes section 103 thereof is amended to
2 read as follows:

3 **“TITLE I—FISCAL ASSISTANCE**
4 **TO LOCAL GOVERNMENTS**
5 **“Subtitle A—Allocation and Payment**
6 **of Funds**

7 **“SEC. 101. SHORT TITLE.**

8 “This title may be cited as the ‘Local Fiscal Assistance
9 Act of 1975’ ”.

10 **“SEC. 102. PAYMENTS TO LOCAL GOVERNMENTS.**

11 “Except as otherwise provided in this title, the Secre-
12 tary shall, for each entitlement period, pay out of the Trust
13 Fund to each unit of local government a total amount equal
14 to the entitlement of such unit determined under section 108
15 for such period. Such payments shall be made in install-
16 ments, but not less often than once for each quarter, and
17 shall be paid not later than 5 days after the close of each
18 quarter. Such payments for any entitlement period may be
19 initially made on the basis of estimates. Proper adjustment
20 shall be made in the amount of any payment to a unit of
21 local government to the extent that the payments previously
22 made to such government under this subtitle were in excess
23 of or less than the amounts required to be paid.”.

24 (b) Sections 104 and 105 of such Act are amended to
25 read as follows:



1 "SEC. 104. PROHIBITION ON USE AS MATCHING FUNDS BY
2 LOCAL GOVERNMENTS.

3 " (a) IN GENERAL.—No unit of local government may
4 use, directly or indirectly, any part of the funds it receives
5 under this subtitle as a contribution for the purpose of ob-
6 taining Federal funds under any law of the United States
7 which requires such government to make a contribution in
8 order to receive Federal funds.

9 " (b) DETERMINATIONS BY SECRETARY OF THE
10 TREASURY.—If the Secretary has reason to believe that a
11 unit of local government has used funds received under this
12 subtitle in violation of subsection (a), he shall give reason-
13 able notice and opportunity for hearing to such government.
14 If, thereafter, the Secretary of the Treasury determines that
15 such government has used funds in violation of subsection
16 (a), he shall notify such government of his determination
17 and shall request repayment to the United States of an
18 amount equal to the funds so used. To the extent that such
19 government fails to repay such amount, the Secretary shall
20 withhold from subsequent payments to such government
21 under this subtitle an amount equal to the funds so used.

22 " (c) INCREASED LOCAL GOVERNMENT REVENUES.—
23 No unit of local government shall be determined to have
24 used funds in violation of subsection (a) with respect to any
25 funds received for any entitlement period to the extent that



1 the net revenues received by it from its own sources during
2 such period exceed the net revenues received by it from its
3 own sources during the one-year period beginning July 1,
4 1971 (or one-half of such net revenues, in the case of an
5 entitlement period of 6 months).

6 “(d) DEPOSITS AND TRANSFERS TO GENERAL
7 FUND.—Any amount repaid by a unit of local government
8 under subsection (b) shall be deposited in the general fund of
9 the Treasury. An amount equal to the reduction in payments
10 to any State government or unit of local government which
11 results from the application of this section (after any ju-
12 dicial review under section 143) shall be transferred from
13 the Trust Fund to the general fund of the Treasury on the
14 day on which such reduction becomes final.

15 “(e) CERTIFICATES BY LOCAL GOVERNMENTS.—The
16 Secretary is authorized to accept a certification by the chief
17 executive officer of a unit of local government that the State
18 government or unit of local government has not used any
19 funds received by it under this subtitle for an entitlement
20 period in violation of subsection (a), unless he determines
21 that such certification is not sufficiently reliable to enable him
22 to carry out his duties under this title.

23 “SEC. 105. CREATION OF TRUST FUND; APPROPRIATIONS.

24 “(a) TRUST FUND.—

25 “(1) IN GENERAL.—There is hereby established



1 on the books of the Treasury of the United States a
2 trust fund to be known as the 'Local Government Fiscal
3 Assistance Trust Fund' (referred to in this subtitle as the
4 'Trust Fund'). The Trust Fund shall remain available
5 without fiscal year limitation and shall consist of such
6 amounts as may be appropriated to it and deposited in
7 it as provided in subsection (b). Except as provided in
8 this title, amounts in the Trust Fund may be used only
9 for the payments to local governments provided by this
10 subtitle.

11 "(2) TRUSTEE.—The Secretary of the Treasury
12 shall be the trustee of the Trust Fund and shall report
13 to the Congress not later than March 1 of each year on
14 the operation and status of the Trust Fund during the
15 preceding fiscal year.

16 "(b) APPROPRIATIONS.—

17 "(1) IN GENERAL.—There is appropriated to the
18 Trust Fund, out of amounts in the general fund of the
19 Treasury attributable to the collections of the Federal
20 individual income taxes not otherwise appropriated—

21 "(A) for the fiscal year beginning July 1,
22 1976, \$6,500,000,000;

23 "(B) for the fiscal year beginning July 1,
24 1977, \$6,650,000,000;



1 “(C) for the fiscal year beginning July 1,
2 1978, \$6,800,000,000;

3 “(D) for the fiscal year beginning July 1,
4 1979, \$6,950,000,000; and

5 “(E) for the period beginning July 1, 1980,
6 and ending December 31, 1980, \$3,550,000,000.

7 “(2) NONCONTIGUOUS STATES ADJUSTMENT
8 AMOUNTS.—There is appropriated to the Trust Fund,
9 out of amounts in the general fund of the Treasury
10 attributable to the collections of the Federal individual
11 income taxes not otherwise appropriated—

12 “(A) for each of the fiscal years beginning
13 July 1, 1976, July 1, 1977, July 1, 1978, and
14 July 1, 1979, \$4,780,000; and

15 “(B) for the period beginning July 1, 1980,
16 and ending December 31, 1980, \$2,390,000.

17 “(3) DEPOSITS.—Amounts appropriated by para-
18 graph (1) or (2) for any fiscal year or other period
19 shall be deposited in the Trust Fund on the later of (A)
20 the first day of such year or period, or (B) the day after
21 the date of enactment of this Act.

22 “(c) TRANSFERS FROM TRUST FUND TO GENERAL
23 FUND.—The Secretary shall from time to time transfer from



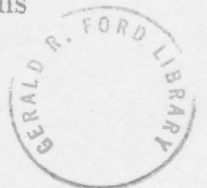
1 "SEC. 110. AUTHORITY FOR LOCAL GOVERNMENTAL UNITS
2 TO ISSUE 'SPECIAL REVENUE SHARING
3 BONDS' GUARANTEED BY THE UNITED
4 STATES GOVERNMENT IN CASE OF CRITICAL
5 NEED.

6 "(a) APPLICATION.—The chief executive officer of any
7 unit of local government may apply under this section for
8 debt obligation guarantees from the United States in amounts
9 and upon conditions set forth in this section, such guaranteed
10 obligations to be known as Special Revenue Sharing Bonds.

11 "(b) SECRETARY TO APPROVE APPLICATION.—If the
12 Secretary of the Treasury determines that the unit of local
13 government has a critical need for immediate funds, he shall
14 approve the application of such unit upon the meeting of the
15 following conditions:

16 "(1) Debt obligations qualifying for guarantees
17 under this section shall be obligations of the unit of local
18 government the interest on which qualifies for exemption
19 from taxation under section 103 of the Internal Revenue
20 Code of 1954 as amended; and

21 "(2) Debt obligations guaranteed under this section
22 shall not exceed in total amount outstanding at any time
23 the total amount to which such issuing unit of local
24 government shall become entitled under the provisions
25 of this Act; and



1 “(3) Such debt obligations qualifying for guaran-
2 tees under this section shall mature in accordance with
3 the schedule of payments under the provisions of this
4 Act in such manner that at no time shall amounts of
5 obligations guaranteed under this section exceed amounts
6 which shall become due under this Act but which have
7 not at such time become due and payable; and

8 “(4) *Provided, however,* That no such debt obliga-
9 tions shall be guaranteed under this section unless the
10 State government of which the local government is a unit
11 thereof shall guarantee the interest to become due and
12 payable thereon. Guarantees of interest by an agency,
13 corporation, or instrumentality of the State government
14 shall be accepted in lieu of the State’s guarantee where
15 the Secretary certifies that such agency, corporation, or
16 instrumentality has legal authority to provide such guar-
17 antee and would insure payment of such interest should
18 the unit of local government issuing such bonds default
19 on such interest payments.

20 “(c) SPECIAL REVENUE SHARING BONDS.—Debt
21 obligations guaranteed by the Federal Government under the
22 provisions of this section shall bear on their face the endorse-
23 ment ‘Special Revenue Sharing Bonds’; and further ‘The
24 Principal Amount of This Obligation Guaranteed by the
25 United States’.



1 “(d) BONDS TO CONTAIN SECRETARY’S ENDORSE-
2 MENT.—Bonds issued under the provisions of this section
3 shall upon certification by the Secretary that all provisions
4 of this section have been met be endorsed by the Secretary
5 of the Treasury.

6 “(1) Such certification shall be made only upon a
7 showing by the unit of local government that the gov-
8 ernment has a critical need for such funds; and

9 “(2) Only upon a showing that such bonds are
10 endorsed on their face with language insuring the State
11 government’s guarantee of the interest to become due
12 and payable on such obligations; and

13 “(3) Only upon a showing that a trust fund for the
14 deposit of the proceeds of such obligations has been
15 created as required under section 123 (a) (1) of this
16 Act and that the additional requirements of that section
17 have been met to the satisfaction of the Secretary.

18 “(e) AUTHORITY OF THE SECRETARY TO WITHHOLD
19 PAYMENTS AND TO REDEEM SPECIAL REVENUE SHARING
20 BONDS.—The Secretary or his delegate shall promulgate
21 regulations under this section providing for sufficient assur-
22 ance that the provisions of this section relating to amounts
23 of guaranteed obligations under this section do not exceed
24 allowable amounts and to insure that no entitlement under
25 this Act shall be paid unless and until obligations maturing



1 at the date of such entitlement have been discharged inclusive
2 of interest due and payable. In promulgating the regulations
3 under this subparagraph, the Secretary shall—

4 “(1) provide for withholding of payments to such
5 issuing unit of local government until such time as
6 such government has established that maturing obli-
7 gations and interest payments due and payable have
8 been discharged in full; and

9 “(2) provide that at no time shall such guar-
10 anteed obligations exceed the total amount of funds
11 under this Act which have not been dispersed to the
12 issuing unit of local government; and

13 “(3) provide that when it appears to the Secre-
14 tary or his delegate that such payments on maturing
15 obligations are in default or likely to be in default,
16 the Secretary, on his own initiative, or at the request
17 of the chief executive officer of the unit of local govern-
18 ment shall pay directly to the holders of such guaran-
19 teed obligations amounts then due and payable in dis-
20 charge of the Federal guarantee, such amounts being
21 drawn from the then current entitlement of the default-
22 ing unit of local government.”.

23 (f) Sections 121, 122, and 123 of such Act are amended
24 to read as follows:

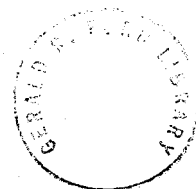


1 "SEC. 121. REPORTS ON USE OF FUNDS; PUBLICATION.

2 " (a) REPORTS ON USE OF FUNDS.—Each unit of local
3 government which receives funds under subtitle A shall, after
4 the close of each entitlement period, submit a report to the
5 Secretary setting forth the amounts and purposes for which
6 funds received during such period have been spent or obli-
7 gated. Such reports shall be in such form and detail and
8 shall be submitted at such time as the Secretary may pre-
9 scribe.

10 " (b) REPORTS ON PLANNED USE OF FUNDS.—Each
11 unit of local government which expects to receive funds
12 under subtitle A for any entitlement period shall submit a
13 report to the Secretary setting forth the amounts and pur-
14 poses for which it plans to spend or obligate the funds which
15 it expects to receive during such period. Such reports shall
16 be in such form and detail as the Secretary may prescribe
17 and shall be submitted at such time before the beginning of
18 the entitlement period as the Secretary may prescribe.

19 " (c) PUBLICATION AND PUBLICITY OF REPORTS.—
20 Each unit of local government shall have a copy of each re-
21 port submitted by it under subsection (a) or (b) published
22 in a newspaper which is published within the State and has
23 general circulation within the geographic area of that gov-
24 ernment. Each unit of local government shall advise the news



1 media of the publication of its reports pursuant to this sub-
2 section.

3 **"SEC. 122. NONDISCRIMINATION PROVISION.**

4 “(a) IN GENERAL.—No person in the United States
5 shall on the ground of race, color, national origin, or sex
6 be excluded from participation in, be denied the benefits of,
7 or be subjected to discrimination under any program or
8 activity funded in whole or in part with funds made avail-
9 able under subtitle A.

10 “(b) AUTHORITY OF SECRETARY.—Whenever the
11 Secretary determines that a unit of local government has
12 failed to comply with subsection (a) or an applicable regu-
13 lation, he shall notify the Governor of the State in which
14 the unit of local government is located of the noncompliance
15 and shall request the Governor to secure compliance. If
16 within a reasonable period of time the Governor fails or
17 refuses to secure compliance, the Secretary is authorized (1)
18 to refer the matter to the Attorney General with a recom-
19 mendation that an appropriate civil action be instituted; (2)
20 to exercise the powers and functions provided by title VI
21 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ; or (3)
22 to take such other action as may be provided by law.

23 “(c) AUTHORITY OF ATTORNEY GENERAL.—When a
24 matter is referred to the Attorney General pursuant to sub-



1 section (b), or whenever he has reason to believe that a
2 unit of local government is engaged in a pattern or practice
3 in violation of the provisions of this section, the Attorney
4 General may bring a civil action in any appropriate United
5 States district court for such relief as may be appropriate,
6 including injunctive relief.

7 **"SEC. 123. MISCELLANEOUS PROVISIONS.**

8 “(a) ASSURANCES TO THE SECRETARY.—In order
9 to qualify for any payment under subtitle A for any entitle-
10 ment period, a unit of local government must establish (in
11 accordance with regulations prescribed by the Secretary, and,
12 after an opportunity for review and comment by the Gov-
13 ernor of the State in which the unit of local government is
14 located, to the satisfaction of the Secretary that—

15 “(1) it will establish a trust fund in which it will
16 deposit all payments it receives under subtitle A;

17 “(2) it will use amounts in such trust fund (in-
18 cluding any interest earned thereon while in such trust
19 fund) during such reasonable period or periods as may
20 be provided in such regulations;

21 “(3) it will use amounts in such trust fund (includ-
22 ing any interest earned thereon while in such trust fund)
23 only for priority expenditures (as defined in section
24 103 (a)), and will pay over to the Secretary (for de-
25 posit in the general fund of the Treasury) an amount



1 equal to 110 percent of any amount expended out of such
2 trust fund in violation of this paragraph, unless such
3 amount is promptly repaid to such trust fund (or the vio-
4 lation is otherwise corrected) after notice and oppor-
5 tunity for corrective action;

6 “(4) it will provide for the expenditure of amounts
7 received under subtitle A only in accordance with the
8 laws and procedures applicable to the expenditure of
9 its own revenues;

10 “(5) it will—

11 “(A) use fiscal, accounting, and audit pro-
12 cedures which conform to guidelines established
13 therefor by the Secretary (after consultation with
14 the Comptroller General of the United States);

15 “(B) provide to the Secretary (and to the
16 Comptroller General of the United States), on
17 reasonable notice, access to, and the right to ex-
18 amine, such books, documents, papers, or records
19 as the Secretary may reasonably require for pur-
20 poses of reviewing compliance with this title (or,
21 in the case of the Comptroller General, as the Comp-
22 troller General may reasonably require for purposes
23 of reviewing compliance and operations under sub-
24 section (c) (2); and

25 “(C) make such annual and interim reports



1 (other than reports required by section 121)
2 to the Secretary as he may reasonably require;

3 “(6) all laborers and mechanics employed by con-
4 tractors or subcontractors in the performance of work on
5 any construction project, 25 percent or more of the costs
6 of which project are paid out of its trust fund established
7 under paragraph (1), will be paid wages at rates not
8 less than those prevailing on similar construction in the
9 locality as determined by the Secretary of Labor in ac-
10 cordance with the Davis-Bacon Act, as amended (40
11 U.S.C. 276a—276a-5), and that with respect to the la-
12 bor standards specified in this paragraph the Secretary
13 of Labor shall act in accordance with Reorganization
14 Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat.
15 1267) and section 2 of the Act of June 13, 1934, as
16 amended (40 U.S.C. 276c);

17 “(7) individuals employed by it whose wages are
18 paid in whole or in part out of its trust fund established
19 under paragraph (1) will be paid wages which are not
20 lower than the prevailing rates of pay for persons em-
21 ployed in similar public occupations by the same em-
22 ployer; and

23 “(8) in the case of a unit of local government as de-
24 fined in the second sentence of section 108 (d) (1) (re-
25 lating to governments of Indian tribes and Alaskan na-



1 tive villages), it will expend funds received by it under
2 subtitle A for the benefit of members of the tribe or
3 village residing in the county area from the allocation
4 of which funds are allocated to it under section 108
5 (b) (4).

6 Paragraph (7) shall apply with respect to employees in any
7 category only if 25 percent or more of the wages of all em-
8 ployees of the unit of local government in such category are
9 paid from the trust fund established by it under paragraph
10 (1).

11 “(b) WITHHOLDING OF PAYMENTS.—If the Secretary
12 determines that a unit of local government has failed to
13 comply substantially with any provision of subsection (a) or
14 any regulations prescribed thereunder, after giving reason-
15 able notice and opportunity for a hearing to the chief execu-
16 tive officer of the unit of local government, he shall notify the
17 unit of local government that if it fails to take corrective ac-
18 tion within 60 days from the date of receipt of such notifica-
19 tion further payments to it will be withheld for the remainder
20 of the entitlement period and for any subsequent entitlement
21 period until such time as the Secretary is satisfied that ap-
22 propriate corrective action has been taken and that there
23 will no longer be any failure to comply. Until he is satisfied,
24 the Secretary shall make no further payments of such
25 amounts.



1 “(c) ACCOUNTING, AUDITING, AND EVALUATION.—

2 “(1) IN GENERAL.—The Secretary shall provide
3 for such accounting and auditing procedures, evaluations,
4 and reviews as may be necessary to insure that the ex-
5 penditures of funds received under subtitle A by units
6 of local government comply fully with the requirements
7 of this title. The Secretary is authorized to accept an
8 audit by a State of such expenditures of a unit of local
9 government if he determines that such audit and the
10 audit procedures of that State are sufficiently reliable to
11 enable him to carry out his duties under this title.

12 “(2) COMPTROLLER GENERAL SHALL REVIEW
13 COMPLIANCE.—The Comptroller General of the United
14 States shall make such reviews of the work as done by
15 the Secretary, the State governments, and the units of
16 local government as may be necessary for the Congress
17 to evaluate compliance and operations under this title.”.

18 (g) Subsection (b) of section 141 of such Act is
19 amended to read as follows:

20 “(b) ENTITLEMENT PERIOD.—For purposes of this
21 title, the term ‘entitlement period’ means—

22 “(1) The one-year periods beginning on July 1 of
23 1976, 1977, 1978, and 1979.

24 “(2) The period beginning July 1, 1980, and end-
25 ing December 31, 1980.”.



1 (h) Subsection (a) of section 143 of such Act is
2 amended—

3 (1) by striking out “State which receives a notice
4 of reduction in entitlement under section 107 (b), and
5 any State or”; and

6 (2) by striking out “State or”.

7 (i) Section 145 of such Act is amended by striking
8 out “State government or” each place it appears.

9 SEC. 2. The amendments made by this Act shall apply
10 to entitlement periods (within the meaning of section 141
11 (b) of the Local Fiscal Assistance Act of 1974) beginning
12 on or after January 1, 1976.



94TH CONGRESS
1ST SESSION

H. R. 10221

A BILL

To provide additional fiscal assistance to local governments and to extend revenue sharing for local governmental units for four additional years.

By Mr. MILLS

OCTOBER 20, 1975

Referred to the Committee on Government Operations



October 20, 1975

WHEREAS, the City of New York has -- pursuant to Section 8 of the New York State Financial Emergency Act for the City of New York -- submitted on October 15, 1975 to the Emergency Financial Control Board a Financial Plan for the City and covered organizations for the fiscal years of the City ending June 30, 1976, June 30, 1977, and June 30, 1978; and

WHEREAS, the members of the Board and -- at their direction -- the Special Deputy Comptroller for the City of New York and the State Budget Director have reviewed the Financial Plan submitted by the City; and

WHEREAS, upon request of the Board the City has modified its Financial Plan with respect to capital expenditures; and

WHEREAS, the City has modified its Financial Plan as originally submitted, in accordance with the assumptions in the attached Statement;

NOW THEREFORE, the Board hereby

RESOLVES, that pursuant to Section 8 of the New York State Financial Emergency Act for the City of New York, the Financial Plan submitted by the City on October 15, 1975, as subsequently modified, is approved to be effective October 20, 1975.



SECTION I

INTRODUCTION AND ASSUMPTIONS

Introduction

This document presents a summary of the joint City-Emergency Financial Control Board three-year financial plan developed pursuant to the requirements of Chapter 868 of the Laws of 1975, as amended. The plan demonstrates a feasible path from the City's present state of fiscal imbalance to a balanced budget for the fiscal year commencing on July 1, 1977, and relies on several essential assumptions as outlined below. In particular, it assumes that there will be available a Federal guarantee for taxable notes at an interest rate of eight and one-half percent in a principal amount of approximately \$6 billion.

A key feature of the financial plan is that it prescribes a system of reports and milestones to assist the City, the EFCB, and other interested parties to monitor the execution of the plan, the complete details of which, respecting the expenditure plan and the capital plan, will be provided within fifteen days. More details on the expenditure programs of covered organizations over which the City has no control and their impact on the Financial Plan will also be required.

On the basis of the Board's review to date, cash reductions in the City's capital budget by approximately \$390 million over the period to June 30, 1978, have already been included in the plan. As part of an ongoing review, all capital projects will be reevaluated to determine the extent to which they should be discontinued or stretched out in view of the urgent cash shortage.

The monitoring system will provide guidance regarding possible modifications which may be required in light of experience over the period of the plan. This monitoring system will be supported by the conversion of the City's financial reporting system to the State Comptroller's uniform system of accounts for municipalities, as modified for New York City.

There have been many recommendations from public and private groups regarding areas and functions which may be particularly susceptible to cost reductions or eliminations. At the request of the Board, the City will be asked to comment on these suggestions and implement them when practical.



Assumptions

1. Revenues:
 - a. City revenues are estimated in accordance with those delivered by the EFCB as of September 30, 1975, with some modifications concerning real property tax changes required by alternative debt service assumptions.
 - b. On a cash basis, it is assumed that the State will repeat its advances of various State aid funds in the final quarter of the City fiscal year. In City fiscal year 1974-75, such advances totaled \$785 million.
2. Expenses:
 - a. It is assumed that there will be no wage increases for municipal employees for the duration of the plan above the 1975-76 levels as described in the City's submission, Schedule A.
 - b. It is assumed that the City's cost for welfare and medicare programs will remain constant throughout the plan period.
 - c. The plan does not address the questions concerning accrual and funding of the City's pension plans, pending recommendations from the Mayor's Management Advisory Board headed by Richard Shinn. Pension surplus reversion to the City and certain covered organizations is assumed at \$104.6 million for City fiscal year 1975-76, and approximately \$135 million for fiscal year 1976-77 and \$165 million for 1977-78.



3. Reductions:
- a. Some of the cost reductions proposed by the City in practice may not be implemented in the exact manner contemplated in the City plan. In some cases, the City will have to be prepared to implement these reductions to the same dollar amount through alternative means.
 - b. Covered organizations will be required to comply with expenditure limitations as contained in the City's submission or as subsequently modified by the City with the approval of the EFCB. The City will be asked to bear primary responsibility for monitoring compliance with the plan on behalf of the Board, and the Board will use its authority to assure such compliance.
 - c. The Board notes that the City's Financial Plan provides that operating items in the capital budget will be reduced by \$30 million on a cash basis in the current City fiscal year and by \$50 million in each of the succeeding years resulting in a cumulative total of \$80 million in 1976-77 and \$130 million in 1977-78.
4. Financing:
- a. The success of the Plan rests on the assumption that over the life of the Plan there will be available approximately \$6 billion in principal amount of Federally guaranteed, taxable notes, bearing 8 1/2% annual interest. It is assumed that an entity authorized by law to issue such notes will be issuer thereof.



SECTION II

FINANCIAL PLAN

The revenues and expenses in the attached schedules agree with the City's financial plan except that the adopted new capital budget levels, and adopted financing option assumptions have affected debt service charges and real property tax revenues.



TABLE #

SUMMARY OF FINANCIAL PLAN
(in Millions of Dollars)

		City Fiscal Year		
		1975-76(a)	1976-77	1977-78
A	1. REVENUES			
	2. Real Estate Taxes	2,081	3,265	3,234
	3. General Fund (b)	3,471	4,197	4,422
	4. State and Federal Aid	2,606	4,258	4,369
	5. Other Revenues	<u>234</u>	<u>272</u>	<u>260</u>
	6. Total Revenues	<u>8,392</u>	<u>11,992</u>	<u>12,294</u>
B	7. EXPENSES (excluding debt service)			
	8. Expense Budget	7,479	10,634	10,697
	9. Reserve for Overrun	<u>--</u>	<u>100</u>	<u>100</u>
	10. MINUS Reductions	<u>7,479</u>	<u>10,734</u>	<u>10,797</u>
		<u>- 92</u>	<u>- 462</u>	<u>- 724</u>
	11. Total Expenses	<u>7,387</u>	<u>10,272</u>	<u>10,073</u>
C	12. NET SURPLUS BEFORE DEBT SERVICE + <i>capital expenditures</i> (line 6 minus line 11)	1,005	1,720	2,221
	<i>Capital expenditures</i>	<u>1147</u>	<u>1100</u>	<u>930</u>
D	13. NEEDED FOR DEBT SERVICE (See Table B)	<u>1,669</u>	<u>2,190</u>	<u>2,191</u>
E	14. SURPLUS OR (DEFICIT) (line 12 minus line 13)	<u>(664)</u>	<u>(470)</u>	<u>30</u>

(a) October - June only.

(b) City submission shows MAC debt service deducted from General Fund.

*Assumptions contained in Section I, Introduction.



CAPITAL BUDGET
(Cash Outlay in Millions of Dollars)

City Fiscal Year

1975-76 1976-77 1977-78

Expense Items	<u>1975-76</u>	<u>1976-77</u>	<u>1977-78</u>
1. Personal Service	\$ 237.1	\$ 217.5	\$ 197.9
2. Other than Personal Service	111.1	101.9	92.7
3. Fringe Benefits	42.6	39.1	35.6
4. Lease of Facilities	92.7	92.7	92.7
5. Vocational Education	174.9	160.4	145.9
6. Manpower Training	38.6	35.4	32.2
 Total	 <u>\$ 697.0</u>	 <u>\$ 647.0</u>	 <u>\$ 597.0</u>
 Mitchell-Lama Housing	 <u>\$ 209.9</u>	 -0-	 -0-
 Construction			
. Transit Authority	181.1	169.2	138.1
. Environmental Protection	152.9	151.9	126.4
. Municipal Services	86.2	35.7	18.8
. Education	165.4	75.1	37.9
. Other	267.8	156.3	106.6
 Total	 <u>\$ 853.4</u>	 <u>\$ 588.2</u>	 <u>\$ 427.8</u>
 CAPITAL BUDGET TOTAL	 <u>\$1,760.3</u>	 <u>\$1,235.2</u>	 <u>\$1,024.8</u>
 Effects of Reduction			
. Expense Items	677.0	605.2	555.2
. Construction Items	875.8	481.2	339.3
. Plus Reserve	46.3	13.6	34.5
 REVISED CAPITAL BUDGET TOTAL	 <u>\$1,600.0</u>	 <u>\$1,100.0</u>	 <u>\$ 930.0</u>



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(Cash Outlay in Millions of Dollars)

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Construction			
Transit Authority	181.1	169.2	138.1
Environmental Protection	152.9	151.9	126.4
Municipal Services	86.2	35.7	18.8
Education	165.4	75.1	37.9
Other	267.8	156.3	106.6
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October 22, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN

SUBJECT: New York Financial Situation

In accordance with your request, I have talked to Charis Walker about his views.

His definite view is that the risk of the consequences of default are too high to allow the City to go under. His concern now is that a good bill come to your desk. His proposal is an RFC type lending organization with a flinty-eyed banker in command (Ed Yeo, possibly).

He thinks that as soon as Lud Ashley's committee has completed its hearings we should meet with him to try to construct a sound bill. He offered to work on our behalf if so requested. He does not think that any bill will pass unless the Administration supports such action.

cc: Mr. Rumsfeld

bcc: Mr. Rumsfeld

LWS:rnk
rbp;tto;chron

EYES ONLY/CONFIDENTIAL

Determined to be Administrative Marking
Date 2/24/83 By GP



10/28/75

NYC

OUTLINE OF HOW A PROCEEDING FOR THE ADJUSTMENT
OF DEBTS OF A MAJOR MUNICIPALITY
WOULD PROGRESS

The city would file a petition under a proposed new Chapter XVI of the Bankruptcy Act. The petition would state that the petitioner is insolvent or unable to pay its debts as they mature and that the city desires to work out an adjustment of its debts with its creditors.

With the filing of the petition, the statute would provide for an automatic stay of suits by creditors so that the essential functions of the city would not be disrupted. This stay, essentially an injunction, would continue until the proceeding is terminated unless the United States district court for good cause altered or amended the stay as to certain creditors.

All creditors identified by the petitioner would be given notice of the initiation of the proceeding. The petitioner would file lists of its debts and the creditors. Unless a particular creditor's claim is disputed, the listing would serve to establish the claim so the court would not be burdened with the filing by creditors of countless proofs of claim. The creditor whose claim is disputed would file a proof of claim and would have to establish it to the court's satisfaction.

The petitioning city would endeavor to work out a compromise with creditors. This might take the form of payment in full but over a longer

4



period of time, or it might involve compromise for less than the full amount due the creditors, or a combination.

While the city is negotiating with its creditors and trying to work out a compromise with them essential governmental functions would continue. The statute would provide authority for the city to borrow money. Because the city might have trouble borrowing, the legislation would authorize the court to provide that such loans to the city would be paid ahead of other creditors. While the court could not, under the Constitution as interpreted by the Supreme Court, interfere with essential Governmental or political functions of the city, it could withhold approval of borrowings which are for nonessentials.

As soon as the city comes up with a plan of compromise the terms of the compromise proposal would be sent to all creditors and they could vote to approve or disapprove the compromise. Votes would be counted by classes of creditors and any class of creditors disapproving the plan could be dealt with by the court by providing for payment of the value of their claims in another way. Thus the court would provide for some method of payment which would give these particular creditors the true value of their claims and this would not necessarily be the face value of the claims.

There would be opportunity for contest before the court as to whether a particular plan of compromise should be finally approved by the court. However, the plan, if approved, would be binding on all persons and creditors and all debts of the city dealt with by the plan would be wiped



out except to the extent saved by the plan. The city would be obligated to abide by the plan and deposit new bonds, cash or property in accordance with the court-approved proposal and see that its terms are carried out. The court would retain jurisdiction until it was satisfied that the terms of the plan were being met satisfactorily by the city and that further court supervision was not required.



10/23/75
Nye

**OUTLINE OF HOW A PROCEEDING FOR THE ADJUSTMENT
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