

3

OFFICE OF THE PRESIDENT

TO: LARRY BEVINSON  
(~~John~~ Califano)

To Larry Bevinson  
EXECUTIVE  
PE2  
HS  
PE13

FROM: HARRY McPHERSON

~~For your info - then to Central File.~~

ber 25, 1965

Central Files

OCT 29 1965

ur letter of October 20th with

working with you and Bob  
the committee in doing what

I can to help develop some imaginative and meaningful  
recommendations for the President's consideration in the  
field of housing.

Over the years I have followed the policy of  
not charging the government for transportation or per diem  
for my services on various governmental committees,  
commissions and agencies. Accordingly, I am returning  
the form which you sent me.

Kindest personal regards.

Sincerely,

Walter P. Reuther

WPR:ob  
oeiu 42

Mr. Harry C. McPherson, Jr.  
Special Assistant to the President  
The White House  
Washington, D. C.

Nothing else sent to  
Central Files as of 11/9/65

EXECUTIVE (2)

HUD-2

FEL

FA 170

October 25, 1965

FOR THE PRESIDENT

FROM Joe Califano

There are two ways to move forward on equal opportunity in housing:

1. By extending the Executive Order to cover all new housing, the construction of which is financed by any institutions supervised, regulated or insured by the federal government, or

2. To present to the Congress next year a broader legislative proposal.

You will recall that we discussed this issue briefly with the Attorney General and Lee White in connection with the reorganization of civil rights and in terms of the President's Committee on Equal Opportunity in Housing which is chaired by Governor Lawrence. Neither of the above alternatives is without serious difficulty, but with your predisposition toward acting in this area with the support of the Congress, I am inclined to recommend the first alternative. Katzenbach, Lee White and Governor Lawrence agree, but the issue is a close one and we need your guidance because (a) you are unquestionably the best judge of which route to take, and (b) we must move with dispatch on the housing committee to avoid an explosion and to get both these groups to support the route you decide to take.

The Executive Order - The pressure for an Executive Order stems from the "stroke of the pen" remark President Kennedy made during the Presidential campaign in 1960. The Order would amend the current Executive Order (which applies only to extend it to cover all new housing, the construction of which is financed by any institution supervised, regulated or insured by the federal government. Such an extension would require action on the part of the Federal

Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency and the Federal Deposit Insurance Corporation. These agencies would require all banks and savings and loan associations, on pain of losing their federal charters or deposit insurance,

October 23, 1965

EXECUTIVE

FI 4/ FG 170  
FG 170  
FG 170-5

(3)

Dear Congressman:

May I acknowledge your letter of October 27 to the President regarding the rent supplement program.

As you know, the President is in Texas for a short period, and your letter is being sent to him immediately.

Sincerely yours,

Lawrence F. O'Brien  
Special Assistant  
to the President

<sup>X</sup>  
Honorable James Harvey  
House of Representatives  
Washington, D. C.

jl/jc

*Yellow*  
Nothing else sent to  
Central Files as of 5/6/66



Office of the Attorney General  
Washington, D. C.

EXECUTIVE

76170

76135

October 29, 1965

MEMORANDUM FOR THE PRESIDENT

Re: Appointment and designation of officers of the  
Department of Housing and Urban Development

The Department of Housing and Urban Development Act provides that the Act shall take effect 60 calendar days after the Act is approved by the President. Since you approved the Act on September 9, 1965, the effective date of the Act is November <sup>9</sup>8, 1965. On that date, under Section 5 of the Act, all of the functions, powers and duties of the Housing and Home Finance Agency, its officers and constituent agencies, will be transferred to and vested in the Secretary of the Department of Housing and Urban Development. Under Section 9 of the Act, all of the positions and agencies within HHFA, and HHFA itself, will on that date cease to exist. Accordingly, it is essential that some action be taken on or before November <sup>9</sup>8, 1965 that will have the effect of enabling someone to exercise

the authority-conferred by the Act upon the Secretary of Housing and Urban Development.

Although there are some legal problems involved, <sup>as to salaries</sup> it seems to us entirely clear that you have the authority to make recess appointments to the seven positions (Secretary, Under Secretary, four Assistant Secretaries, and General Counsel) which are subject to Senate confirmation. The recess appointment power may be exercised at any time between November <sup>9</sup> 8, 1965, and January 10, 1966, the date when the Senate will again be in session. Under a number of precedents, it would not be proper for you to make a recess appointment before the vacancy actually occurs on November <sup>9</sup> 8, 1965.

In addition, the Act provides an alternative method of filling temporarily the new offices it creates. Section 11(b) authorizes you to "designate" any person who was an officer of the HHFA immediately prior to November <sup>9</sup> 8, 1965, to fill on an acting basis any of the new offices until January 7, 1966, or until the office is filled with the advice and consent of the Senate, whichever occurs earlier.

You are, therefore, authorized to designate officials of HHFA to perform the duties of the new Department on an interim basis, and need not make a recess appointment in order to prevent a vacuum from existing when the new agency comes into existence on November ~~8~~<sup>9</sup>, 1965.

Under the language of the Act, you could make a "designation" on November ~~8~~<sup>9</sup> or on any date thereafter. However, during any period of time between November ~~8~~<sup>9</sup> and the date of any such designation the affairs of all of the agencies being transferred to the new department would be at a standstill. So far as I can determine it would not be possible to pay the employees of those agencies since no action would have been taken to put them on the payroll of a new agency when their former agencies were abolished.

Any interim designation you might make pursuant to Section 11 of the Act would, in accordance with the express terms of the statute, expire as a matter of law on January 7, 1966. You would, therefore, be obliged to make recess appointments on or before that date in order to avoid a

hiatus until such time as the Senate should confirm your nominees to the seven new positions that require Senate confirmation.

We have examined very closely into what would happen if you failed to make recess appointments on or before January 7, 1966. Although we will continue to study this matter in an attempt to develop some alternative courses of action, it is now our strong view that a failure to make recess appointments would involve prohibitive risks. The precedents in this area are extremely unfavorable. On one occasion in 1880, in a somewhat related situation, it was held pursuant to an Attorney General's opinion that the Navy could not be paid until a new Secretary was formally confirmed by the Senate. I consider a number of the unfavorable precedents in this area to be of dubious validity. However, in view of their existence and the particular terms and history of the Department of Housing and Urban Development Act, I would strongly counsel against permitting a "hiatus" situation to arise.

In this connection, I would like to point out that the consequences of a failure to act on November <sup>9</sup> 8, 1965, would be even worse than the consequences of a failure to act by January 7, 1966. To the extent that there are remote possibilities of finding a way of bridging a gap, they depend on someone's having been lawfully designated in the first instance to exercise the powers of the new Secretary so that he could staff the new Department, delegate authority, and provide the new Department with a structure and departmental regulations.

Respectfully,

*Hubert H. H. H. H.*  
Attorney General

In view of the legal situation, you have two realistic alternatives between now and November 9:

1. Appoint someone as Secretary of Housing and Urban Affairs (either Weaver or someone else) or
- (2) <sup>Reassign</sup> ~~Appoint~~ Weaver as Acting Secretary pending your selection of a permanent Secretary on January 8 (two days before Congress reconvenes) on the theory that you have not made up your mind and do not want to make any appointment until Congress reconvenes.

Katzenbach believes that if you have not made up your mind the best thing to do is <sup>Reassign</sup> ~~appoint~~ Weaver as Acting Secretary. <sup>Money and I agree with</sup> Schultz believes that unless you have a man other than Weaver by November 9, you should appoint Weaver as Secretary (rather than merely Acting).

If you do not appoint Weaver, we should find another job for him, because it is unlikely that he would want to be Under Secretary. The pay of the Secretary of Housing and Urban Affairs is \$35,000; the Under Secretary gets \$28,500. As Director of HHFA, Weaver now gets \$30,000.

For your information, the text of Section 11 of the Act follows:

*on the other hand,*

QUOTE: Sec. 11. (a) The provisions of this Act shall take effect upon the expiration of the first period of sixty calendar days following the date on which this Act is approved by the President, or on such earlier date as the President shall specify by Executive order published in the Federal Register, except that any of the officers provided for in sections 3(a), 4(a), and 4(b) of this Act may be nominated and appointed, as provided in such sections, at any time after the date this Act is approved by the President.

(b) In the event that one or more officers required by this Act to be appointed, by and with the advice and consent of the Senate, shall not have entered upon office on the effective date of this Act, the President may designate any person who was an officer of the Housing and Home Finance Agency immediately prior to said effective date to act in such office until the office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act. UNQUOTE

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

Housing  
Urban Develop

10-31-65  
5:30P

Friday, October 29, 1965  
5:50 p.m.

EXECUTIVE  
FG170  
FG245

FOR THE PRESIDENT

The attached memorandum, if approved, would inform the regional offices in HHFA how to operate as regional offices of the Housing and Urban Development Department.

It is purely administrative. There is not a word in it that confers powers on Weaver or on any other officer that he does not now possess. It affects accounting procedures, deposits, invoices, etc. Its purpose is to assure continuity of administrative operations in the new Department. It is to be signed, not by Weaver, but by the Administrative Officer in HHFA.

As Nick's memo points out, the Department does come into being on November 8. Whether or not a Secretary is appointed, the Department will then exist and HHFA will cease to exist. For that reason I recommend that you approve the sending out of this administrative memorandum next week, so that HHFA regional offices may be prepared to act as Departmental offices on November 9.

*Harry*

Harry C. McPherson, Jr.

Approve

Disapprove

RECEIVED  
MAR 15 1967  
GENERAL FILE

Check with Califano.

LBJ/mf  
10-31-65  
10:00p

*Memorandum*

TO : ALL REGIONAL ADMINISTRATORS

DATE:

FROM : Lewis E. Williams, Office of Administration

SUBJECT: Administrative Matters Concerning Departmental Status

The Department of Housing and Urban Development Act establishes the Department of Housing and Urban Development effective November 9, 1965, and transfers to the Secretary and the Department all of the functions, powers, and duties of the HHFA and its officers, employees, and offices.

There are certain administrative mechanics which we can be prepared to handle between now and November 9th without prejudice to the major decisions to be made by the Secretary.

For purposes of the kinds of administrative actions which need to be taken between now and November 9th the HHFA Regional Offices will be called Department of Housing and Urban Development Regional Offices, and the organization entity now known as the Office of the Administrator, HHFA, will be called the Office of the Secretary, Department of Housing and Urban Development.

Continuity in operations is legally assured under the savings provisions of the Act which continue in full force and effect until modified "All rules, regulations, orders, authorizations, delegations or other actions duly issued, made, or taken by or pursuant to applicable law, prior to the effective date of this Act, by any agency, officer, or office pertaining to any functions, powers and duties transferred by this Act...."

Under this provision, all delegations of authority and other authorizations to take action are extended by the Act until action is taken to modify or rescind them. Thus, until you are advised to the contrary, you and your staff may assume that existing delegations and authorizations to take administrative actions remain in effect after the effective date of the Act.

The following items cover only those actions which I believe you can initiate or be prepared to initiate for HHFA Regional Office activities. The FHA, FNMA, and PHA regional offices will be advised by their own Central Offices of actions to be taken by them.

Accounting and Fiscal

Symbols and Codes. Appropriation and fund account symbols will not be changed, but Treasury will initiate changes in their titles to reflect Departmental status, and advise us of the changes when they are made. This may not happen before the effective date of Departmental status, and until further advice is received, present appropriation and fund account symbols and titles should continue in use.

Certifying Officers and Cashiers. Arrangements are being concluded with Treasury to continue under the Department the existing designations and authority of cashiers and certifying officers, and no further action will be required at the field level with respect to currently designated cashiers and certifying officers. Requests for appointment of new certifying officers or rescission of existing authority should be accomplished under present procedures.

Allotments in effect on November 8 will be continued after that date, subject to change in the usual manner, and with present accounting and reporting requirements continuing in effect.

Deposits. Please purchase a new rubber stamp for use in depositing checks on and after November 9, 1965, to read as follows:

(Office Deposit Symbol)

Pay to the order of the Treasurer of the United States,  
any Federal Reserve Bank or Branch or General Depository  
for credit to the Treasurer of the United States. This  
check is in payment of an obligation to the United States  
and must be paid at par. N. P. Do not wire non-payment.

Department of Housing and Urban Development

Invoices. Until a new supply of forms is received, Form H-216 (8-55), Invoice, should continue to be used for billings. In the lower left-hand side of the form, the name "Housing and Home Finance Agency" should be crossed out and "Department of Housing and Urban Development" typed in its place.

Tax Withholding Forms. We have been advised by the Internal Revenue Service that we may use our existing supply of Forms W-2, in reporting earnings for calendar year 1965, even though they are imprinted with HHFA, OA as the name of the employer. Employees in preparing their individual income tax returns may show either HHFA or the Department as the employer. We plan to make a Staff Bulletin announcement to employees on this subject at an appropriate time before issuance of the W-2's to employees.

Payroll and Retirement Cards. Existing pay cards may be continued in use through this calendar year without change. Existing retirement

cards may have to be changed to reflect the new name of the employing agency; we will advise you further on this as soon as full information is available.

### Personnel

Standard Form 50, Notification of Personnel Action. Actions effective on or after November 9 must bear the legend "Department of Housing and Urban Development, Office of the Secretary," under Item 33, Code, Employing Department or Agency. We are working with the Civil Service Commission on a new Agency code, which will be reported to you as soon as the new code is established at the Commission. The "Reporting Number" ordinarily entered in Item 35 will remain the same until changed by the Civil Service Commission. Instructions on terminology to be used in recording transfers between major components of the Department on SF-50's will be sent you soon.

Personnel Records. You will be advised separately of any changes necessary in existing personnel records to reflect the change in the name of the employing agency.

Procedures. Present procedures and authorities for processing personnel actions will continue as at present until notice of change.

Civil Service Commission. We are advising the Central Office of the Civil Service Commission of the change in name and status, and will send you a copy of our letter. Although we are asking that the CSQ Central Office notify all of its field officials concerned with the change, you may want to assure that they are advised as the need arises.

### General Services

Forms. You received a memorandum from Mr. Hudson on this subject dated October 11. As indicated in that memorandum and its attachments, our general approach to the forms problem is that (1) we will continue to use without change, until depleted, forms which are used internally within the office or agency, or between this agency and established clients; (2) we are reprinting here with the Department name, forms for which stock is low or depleted or which have to be reprinted with new nomenclature for other reasons, for distribution and use after November 9th, and (3) contract and related forms which for legal reasons will have to be revised for use after the 9th will either be reprinted and sent you by then, or will be the subject of separate instructions as to methods of adapting existing stocks for use after the effective date of Departmental status.

There will probably be many cases where it will be necessary or desirable to change the name on a form which is being continued in use without reprinting. For this purpose, we are sending you twenty single-line rubber stamps with the name "Department of Housing and Urban Development." You may purchase more if you need them, and you may also purchase other rubber stamps which you feel you may need in your office for similar purposes - stamps which include the region number and address of the regional office, for example.

Stationery. As indicated in Mr. Hudson's October 11th memorandum, letterheads, envelopes and labels are being printed and will be distributed by the 9th. We are also printing a supply of long and short form Government Memorandums with the name of the Department, for distribution to you by the 9th.

Change in Name on Signs, etc. Signs, bulletin boards, display materials, and the like should be changed on the 9th to substitute the name of the Department and of the Regional Office. Where such signs appear on the exterior of public buildings or on lobby bulletin boards, you will probably have to arrange to have this done through the Regional Public Buildings Service. These changes should be made also at field offices under your jurisdiction, but project signs should not be changed now.

Telephones. The GSA Telecommunications Section should be notified in writing of the change in name from HHFA to Department of Housing and Urban Development for locations serviced by the GSA switchboards. This information should also be made available to the Information Operator and noted for inclusion in the next telephone directory.

Mail. Local post offices (in regional and field office cities) should be notified of the change in name, as should commercial communications services such as Western Union.

Travel. Travel orders issued under existing authority will remain in effect, and existing supplies of Form H-25, Travel Order - Request and Authorization; should continue to be used with appropriate over-typing until the new Travel Order Form DHUD-25 is available.

Transportation Request books which are outstanding and stamped with the HHFA identification may continue to be used until further notice. We anticipate that notices to Post Offices will pick up billings from transportation companies addressed to HHFA-OA.

As new Transportation Requests are issued after November 9th they should be stamped in the "Bill to" space with the new Department identification: Department of Housing and Urban Development, Office of the Secretary, (Address of Regional Office). You should purchase locally the necessary rubber stamps for this purpose.

Contract Symbols. We have requested and expect approval of the General Accounting Office to continue the use of the letter "H" as the symbol for our contracts.

Building Passes and Identification Cards may continue in use without change except where a significant change in position title occurs after that date and a new Identification Card has to be issued to reflect such a change. If any such changes in title occur after the 9th, you should notify the affected employees to request your Division of Administration to supply a new card. Since the new card will be a duplicate of the earlier one except for the position title, a memorandum request may be substituted for the usual application forms.

Purchase Orders. Existing supplies of purchase order forms should continue to be used until new ones are issued, with the new name typed in after November 9th to assure proper billings. You should prepare a notice to holders of purchase orders for which services are supplied over a period of time, to advise the vendors of the change in name for purpose of billings after the 9th. Billings made to the Housing and Home Finance Agency after the 9th may, of course, be paid in the usual fashion, but we should try to keep these within reasonable limits.

General Services Administration. We expect to send a letter to the central office of General Services Administration advising of the change in name and status of the agency, and requesting that notice be supplied to the various regional offices and bureaus of GSA. In the meantime, as the need arises, you may wish to assure that those parts of GSA with which you do business are aware of the change.

Property. New decals for property identification of new property acquisitions are being prepared and will be sent you. No change in decals on existing property is planned for the present.

Assistant Administrator  
(Administration)



## FEDERAL HOUSING ADMINISTRATION



Series and Series No.

TO: ALL ASSISTANT COMMISSIONERS, WASHINGTON  
DIVISION HEADS AND INSURING OFFICE DIRECTORS

Control No. Date

SUBJECT: DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT -- ADMINISTRATIVE MATTERS

Effective November 9, 1965, all of the functions, powers, and duties of the Federal Housing Commissioner are transferred to the Secretary of Housing and Urban Development by the provisions of the Department of Housing and Urban Development Act.

The Act provides for the continued existence of the Federal Housing Administration within the Department, to be headed by one of the Assistant Secretaries designated as the Federal Housing Commissioner.

The Act also continues in full force and effect, until modified, "All rules, regulations, orders, authorizations, delegations or other actions duly issued, made, or taken by or pursuant to applicable law, prior to the effective date of this Act, by any agency, officer, or office pertaining to any functions, powers and duties transferred by this Act ..." This provision has the effect of extending all existing delegations of authority and of continuing the effectiveness of all regulations, orders, directives, and manual provisions. It enables the Federal Housing Administration to continue operations without interruption. No changes are required in existing FHA instructions and procedures except as indicated in the letters to field office directors and approved mortgagees dated October 27, 1965. In other respects, business will be continued as in the past.

Changes announced in the October 27 letters are of the utmost importance in providing for an orderly transition. The Act provides for the transfer to the Secretary of Housing and Urban Development of all FHA properties and other assets. Having in mind the special techniques incident to the transfer of title to real property, it is essential that on and after November 9, 1965, the Secretary of Housing and Urban Development be identified as the grantee or grantor in all conveyances of property to and from the Department. This also applies to assignments of mortgages, and the Secretary should be identified as the mortgagee in any purchase money mortgages taken back in connection with the sale of FHA acquired properties.

A new supply of publications and forms, which now bear the name "Housing and Home Finance Agency" and which are for distribution to or use by the public, has been ordered with the name of the Department of Housing and Urban Development shown in lieu of Housing and Home Finance Agency. These supplies will be distributed to field insuring offices promptly upon receipt. In the event that such supplies have not reached you by November 9, the name "Housing and Home Finance Agency" should be over stamped with "Department of Housing and Urban Development" on any publications issued on or after November 9. Rubber stamps for this purpose are being sent to field offices. Any supplies, forms, or stationery bearing the name "Federal Housing Administration," but not the name "Housing and Home Finance Agency," may continue to be used.

So that all constituent elements of the Housing and Home Finance Agency may be fully informed concerning actions taken throughout the agency on these administrative matters in connection with the establishment of the new department, you are also receiving instructions to regional administrators and other constituents of the Housing and Home Finance Agency. Such instructions are for informational purposes only and, as indicated above, require no changes in FHA procedures, authorizations or delegations.



# PUBLIC HOUSING ADMINISTRATION

HOUSING AND HOME FINANCE AGENCY

WASHINGTON XX D. C. 20413

CIRCULAR

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TO: Central Office Division and Branch Heads  
Regional Directors

FROM: Commissioner  
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SUBJECT: Administrative Matters Concerning Departmental Status

The Department of Housing and Urban Development Act establishes the Department of Housing and Urban Development effective November 9, 1965, and transfers to the Secretary and the Department all of the functions, powers, and duties of the HHFA and of its officers, employees, and offices.

Continuity in operations is legally assured under the savings provisions of the Act which continue in full force and effect until modified "All rules, regulations, orders, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to applicable law, prior to the effective date of this Act, by any agency, officer, or office pertaining to any functions, powers and duties transferred by this Act...."

Under this provision, all delegations of authority and other authorizations to take action are extended by the Act until steps are taken to modify or rescind them. Thus, until you are advised to the contrary, you and your staff may assume that all existing delegations and authorizations to take action remain in effect after the effective date of the Act.

Between now and November 9 we can make preparations for the handling of certain administrative mechanics without prejudice to the major decisions to be made by the Secretary. The following paragraphs contain information and instructions on such matters for use within the PHA. Other constituents and offices within the HHFA will be advised by their own heads on matters of a similar nature.

## Accounting and Fiscal

Symbols and Codes. Appropriation and fund account symbols will not be changed, but Treasury will initiate changes in their titles to reflect Departmental status, and advise us of the changes when they are made. This may not happen before the effective date of Departmental status, and until further advice is received, present appropriation and fund account symbols and titles should continue in use.

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Certifying Officers and Cashiers. Arrangements are being concluded with Treasury to continue under the Department the existing designations and authority of cashiers and certifying officers, and no further action will be required with respect to currently designated cashiers and certifying officers. Requests for appointment of new certifying officers or rescission of existing authority should be accomplished under present procedures.

Allotments and Allowances in effect on November 8 will be continued after that date, subject to change in the usual manner, with present accounting and reporting requirements continuing in effect.

Deposits. Under the PHA's present accounting system all deposits are made through our Comptroller's Office in the Central Office with the exception of revenues taken in by the two federally owned projects in Oklahoma. The Fort Worth Regional Director should direct the Housing Managers of these two projects to procure rubber stamps for use in making deposits on and after November 9. The rubber stamps should read as follows:

(Office Deposit Symbol)

Pay to the order of the Treasurer of the United States,  
any Federal Reserve Bank or Branch or General Depository  
for credit to the Treasurer of the United States. This  
check is in payment of an obligation to the United States  
and must be paid at par. N. P. Do not wire non-payment.

Department of Housing and Urban Development

Invoices. All PHA billings are handled by the Central Office except for billings made by the two directly operated projects in Oklahoma. The Fort Worth Regional Office and the two Housing Managers will be advised later concerning the Departmental nomenclature to be used on invoices.

Tax Withholding Forms. We have been advised by the Internal Revenue Service that we may use our existing supply of Forms W-2, in reporting earnings for calendar year 1965, even though they are imprinted with HHFA, PHA, as the name of the employer. Employees in preparing their individual income tax returns should show the Department of Housing and Urban Development as the employer. We plan to advise employees on this subject at an appropriate time before issuance of the W-2's to employees.

Payroll and Retirement Cards. Existing pay cards may be continued in use through this calendar year without change. Existing retirement cards may have to be changed to reflect the new name of the employing agency; we will advise you further on this as soon as full information is available.

(Cont'd)

Personnel. Since personnel actions are processed and approved in our Central Office, with one exception, there need be no change in the procedures now followed by the Regional Offices and directly operated projects. The one exception has to do with employment by Field Agreement. On and after November 9, present authorizations to employ by Field Agreement are cancelled and all proposed appointments must be forwarded to the Personnel Branch, Central Office, until further notice.

You will be advised separately of any changes necessary in existing personnel records to reflect the change in the name of the employing agency.

#### General Services

Forms. Our general approach to the forms problem is as follows:

1. We will continue to use without change, until present stocks are depleted, forms which are used internally within the PHA and the HHFA, or between the PHA and Local Authorities, except that
2. Contract and other forms which for legal reasons will have to be revised for use after November 9 will be the subject of separate instructions as to methods of adapting existing stocks for use after the effective date of Departmental status.
3. All forms not included in items 1 and 2 above and not covered by specific instructions elsewhere in this Circular should be stamped with the name "Department of Housing and Urban Development," and the "HHFA-PHA" identification should be obliterated. Regional Offices may purchase such stamps as they may need for this purpose. As we are able, existing Central Office stocks of such forms will be overprinted for this purpose.

Stationery. In the interest of economy, we will continue to use until further notice our existing stocks of memorandum and other internal use stationery items (such as transmittal slips and desk memorandum pads) without changing the agency identifications. If possible, we will distribute before November 9 a limited supply of letterheads and envelopes for external use bearing the Departmental identification. In any event, we will communicate with you on or before the 9th with more specific information on this subject.

Changes in Name on Signs, etc. Signs, bulletin boards, display materials, and the like should be changed on the 9th to substitute the name of the Department; all references to PHA should be deleted. Where such signs appear on the exterior of public buildings or on lobby bulletin boards, Regional Offices may if necessary arrange to have this done through the Regional Public Buildings Service.

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Telephones. The GSA Telecommunications Section should be notified in writing of the change in name from HHFA to Department of Housing and Urban Development for locations serviced by the GSA switchboards. Arrangements should be made with GSA locally to provide for the proper referral of your messages. The Information Operator should also be advised of the change in name.

Travel. Travel orders issued under existing authority will remain in effect, and existing supplies of Form PHA-90, Request for and Authorization of Official Travel, should continue to be used with appropriate over-typing for the heading until a new travel order form is available.

Transportation Request books which are outstanding and stamped with the existing identification may continue to be used until further notice. We anticipate that notices to Post Offices will pick up billings from transportation companies addressed to PHA.

As new Transportation Requests are issued after November 9th they should be stamped in the "Bill to" space with the following: Department of Housing and Urban Development, Room 601, Longfellow Building, Washington, D.C. 20413.

Contract Symbols. We have requested and expect approval of the General Accounting Office to continue the use of the letters "Haph" as the symbol for our contracts.

Building Passes and Identification Cards may continue in use without change except where a significant change in position title occurs after November 9 and a new Identification Card, Form PHA-1810, has to be issued to reflect such a change. Where any such changes in title occur, a memorandum requesting a new Identification Card should be sent to the Director of the Office Services Branch or the Regional Chief of Office Services. Existing stocks of Forms PHA-1805 and PHA-1810 should be used with appropriate over-typing or stamping to show the Departmental identification.

Purchase Orders. Existing supplies of purchase order forms should be used until new ones are issued, with the new Departmental name and proper street address and room number typed in after November 9th to assure proper billings. You should prepare a notice to holders of purchase orders for which services are supplied over a period of time, to advise the vendors of the change in name for purpose of billings after the 9th. Billings made to the Public Housing Administration after the 9th may, of course, be paid in the usual fashion, but we should try to keep these within reasonable limits.

General Services Administration. We expect to send a letter to the central office of General Services Administration advising of the change

(Cont'd)

in name and status of the agency, and requesting that notice be supplied to the various regional offices and bureaus of GSA. In the meantime, as the need arises, you may wish to assure that those parts of GSA with which you do business are aware of the change.

Property. New decals for identification of new property acquisition will be sent you as soon as possible. No change in decals on existing property is planned for the present.

Reference Points for Questions. I have designated the following officials to act as reference points for questions which arise on any of the matters dealt with in this Circular:

- On matters having legal implications, including contractual and related matters

General Counsel

- On matters of an administrative nature

Assistant Commissioner  
for Administration

Commissioner

DRAFT

TO: All Agency Managers  
FROM: J. S. Baughman  
SUBJECT: Administrative Matters Incident to the Establishment  
of the Department of Housing and Urban Development

Pursuant to the Department of Housing and Urban Development Act, Public Law 89-174, approved September 9, 1965, the new Department will come into being on, if not before, November 9, 1965. Although the effective date is not expected to be prior to November 9, 1965, it could be advanced by Executive Order. On and after the effective date FNMA will be a corporation within the Department of Housing and Urban Development, but FNMA's status will otherwise remain unchanged.

On and after such effective date, in any forms, documents, etc. in which you have heretofore used "Housing and Home Finance Agency" you should use, instead, the name of the new department. For example, position descriptions on Optional Form 8 that become effective on or after the effective date of the establishment of the department must reflect "Department of Housing and Urban Development," under item 11, "Department, agency, or establishment." Similarly, on or after such effective date, wherever you have heretofore used "Administrator of the Housing and Home Finance Agency" or "Housing and Home Finance Administrator" you should use, instead, "Secretary of Housing and Urban Development."

Attached for your information are copies of administrative memoranda being issued by the Office of the Administrator and the other constituents of the HHFA.

J. S. Baughman  
President

EXHIBITIVE  
FG170  
FG135

FFA063  
OO WTE10  
DE WTE 113

FROM: JOE CALIFANO  
TO : THE PRESIDENT  
CITE: WH50336

UNCLAS E F T O

OCTOBER 29, 1965

FOR THE PRESIDENT  
FROM JOE CALIFANO

EFTO

THERE FOLLOWS THE TEXT OF A MEMORANDUM FROM THE ATTORNEY GENERAL ON APPOINTMENT AND DESIGNATION OF OFFICERS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

"THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT PROVIDES THAT THE ACT SHALL TAKE EFFECT 60 CALENDAR DAYS AFTER THE ACT IS APPROVED BY THE PRESIDENT. SINCE YOU APPROVED THE ACT ON SEPT 9, 1965, THE EFFECTIVE DATE OF THE ACT IS NOVEMBER 9, 1965. ON THAT DATE, UNDER SECTION 5 OF THE ACT, ALL OF THE FUNCTIONS, POWERS AND DUTIES OF THE HOUSING AND HOME FINANCE AGENCY, ITS OFFICERS AND CONSTITUENT AGENCIES, WILL BE TRANSFERRED TO AND VESTED IN THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. UNDER SECTION 9 OF THE ACT, ALL OF THE POSITIONS AND AGENCIES WITHIN HHFA, AND HHFA ITSELF, WILL ON THAT DATE CEASE TO EXIST. ACCORDINGLY, IT IS ESSENTIAL THAT SOME ACTION BE TAKEN ON OR BEFORE NOVEMBER 9, 1965 THAT WILL HAVE THE EFFECT OF ENABLING SOMEONE TO EXERCISE THE AUTHORITY CONFERRED BY THE ACT UPON THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

ALTHOUGH THERE ARE SOME LEGAL PROBLEMS INVOLVED AS TO SALARIES, IT SEEMS TO US ENTIRELY CLEAR THAT YOU HAVE THE AUTHORITY TO MAKE RECESS APPOINTMENTS TO THE SEVEN POSITIONS (SECRETARY, UNDER SECRETARY, FOUR ASSISTANT SECRETARIES, AND GENERAL COUNSEL) WHICH ARE SUBJECT TO SENATE CONFIRMATION. THE RECESS APPOINTMENT POWER MAY BE EXERCISED AT ANY TIME BETWEEN NOVEMBER 9, 1965, AND JANUARY 10, 1966, THE DATE WHEN THE SENATE WILL AGAIN BE IN SESSION. UNDER A NUMBER OF PRECEDENTS, IT WOULD NOT BE PROPER FOR YOU TO MAKE A RECESS APPOINTMENT BEFORE THE VACANCY ACTUALLY OCCURS ON NOVEMBER 9, 1965.

IN ADDITION, THE ACT PROVIDES AN ALTERNATIVE METHOD OF FILLING TEMPORARILY THE NEW OFFICES IT CREATES. SECTION 11(B) AUTHORIZES YOU TO "DESIGNATE" ANY PERSON WHO WAS AN OFFICER OF THE HHFA IMMEDIATELY PRIOR TO NOVEMBER 9, 1965, TO FILL ON AN ACTING BASIS ANY OF THE NEW OFFICES UNTIL JANUARY 7, 1966, OR UNTIL THE OFFICE IS FILLED WITH THE ADVICE AND CONSENT OF THE SENATE, WHICHEVER OCCURS EARLIER. YOU ARE, THEREFORE, AUTHORIZED TO DESIGNATE OFFICIALS OF HHFA TO PERFORM THE DUTIES OF THE NEW DEPARTMENT ON AN INTERIM BASIS, AND NEED NOT MAKE A RECESS APPOINTMENT IN ORDER TO PREVENT A VACUUM FROM EXISTING WHEN THE NEW AGENCY COMES INTO EXISTENCE ON NOVEMBER 9, 1965.

UNDER THE LANGUAGE OF THE ACT, YOU COULD MAKE A DESIGNATION ON NOVEMBER 9 OR ON ANY DATE THEREAFTER. HOWEVER, DURING ANY PERIOD OF TIME BETWEEN NOVEMBER 9 AND THE DATE OF ANY SUCH DESIGNATION THE AFFAIRS OF ALL OF THE AGENCIES BEING TRANSFERRED TO THE NEW DEPARTMENT WOULD BE AT A STANDSTILL. SO FAR AS I CAN DETERMINE IT WOULD NOT BE POSSIBLE TO PAY THE EMPLOYEES OF THOSE AGENCIES SINCE NO ACTION WOULD HAVE BEEN TAKEN TO PUT THEM ON THE PAYROLL OF A NEW AGENCY WHEN THEIR FORMER AGENCIES WERE ABOLISHED.

ANY INTERIM DESIGNATION YOU MIGHT MAKE PURSUANT TO SECTION 11 OF THE ACT WOULD, IN ACCORDANCE WITH THE EXPRESS TERMS OF THE STATUTE, EXPIRE AS A MATTER OF LAW ON JANUARY 7, 1966. YOU WOULD, THEREFORE, BE OBLIGED TO MAKE RECESS APPOINTMENTS ON OR BEFORE THAT DATE IN ORDER TO AVOID A HIATUS UNTIL SUCH TIME AS THE SENATE SHOULD CONFIRM YOUR NOMINEES TO THE SEVEN NEW

WE HAVE EXAMINED VERY CLOSELY INTO WHAT WOULD HAPPEN IF YOU FAILED TO MAKE RECESS APPOINTMENTS ON OR BEFORE JANUARY 7, 1966. ALTHOUGH WE WILL CONTINUE TO STUDY THIS MATTER IN AN ATTEMPT TO DEVELOP SOME ALTERNATIVE COURSES OF ACTION, IT IS NOW OUR STRONG VIEW THAT A FAILURE TO MAKE RECESS APPOINTMENTS WOULD INVOLVE PROHIBITIVE RISKS. THE PRECEDENTS IN THIS AREA ARE EXTREMELY UNFAVORABLE. ON ONE OCCASION IN 1880, IN A SOMEWHAT RELATED SITUATION, IT WAS HELD PURSUANT TO AN ATTORNEY GENERAL'S OPINION THAT THE NAVY COULD NOT BE PAID UNTIL A NEW SECRETARY WAS FORMALLY CONFIRMED BY THE SENATE. I CONSIDER A NUMBER OF THE UNFAVORABLE PRECEDENTS IN THIS AREA TO BE OF DUBIOUS VALIDITY. HOWEVER, IN VIEW OF THEIR EXISTENCE AND THE PARTICULAR TERMS AND HISTORY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT, I WOULD STRONGLY COUNSEL AGAINST PERMITTING A "HIATUS" SITUATION TO ARISE.

IN THIS CONNECTION, I WOULD LIKE TO POINT OUT THAT THE CONSEQUENCES OF A FAILURE TO ACT ON NOVEMBER 9, 1965, WOULD BE EVEN WORSE THAN THE CONSEQUENCES OF A FAILURE TO ACT BY JANUARY 7, 1966. TO THE EXTENT THAT THERE ARE REMOTE POSSIBILITIES OF FINDING A WAY OF BRIDGING A GAP, THEY DEPEND ON SOMEONE'S HAVING BEEN LAWFULLY DESIGNATED IN THE FIRST INSTANCE TO EXERCISE THE POWERS OF THE NEW SECRETARY SO THAT HE COULD STAFF THE DEPARTMENT, DELEGATE AUTHORITY, AND PROVIDE THE NEW DEPARTMENT WITH A STRUCTURE AND DEPARTMENTAL REGULATIONS."

IN VIEW OF THE LEGAL SITUATION, YOU HAVE TWO REALISTIC ALTERNATIVES BETWEEN NOW AND NOVEMBER 9:

1. APPOINT SOMEONE AS SECRETARY OF HOUSING AND URBAN AFFAIRS (EITHER WEAVER OR SOMEONE ELSE) OR

(2) DESIGNATE WEAVER AS ACTING SECRETARY PENDING YOUR SELECTION OF A PERMANENT SECRETARY ON JANUARY 8 (TWO DAYS BEFORE CONGRESS RECONVENES) ON THE THEORY THAT YOU HAVE NOT MADE UP YOUR MIND AND DO NOT WANT TO MAKE ANY APPOINTMENT UNTIL CONGRESS RECONVENES.

KATZENBACK BELIEVES THAT IF YOU HAVE NOT MADE UP YOUR MIND THE BEST THING TO DO IS DESIGNATE WEAVER AS ACTING SECRETARY. HARRY AND I AGREE WITH KATZENBACK. ON THE OTHER HAND, SCHULTZE BELIEVES THAT UNLESS YOU HAVE A MAN OTHER THAN WEAVER BY NOVEMBER 9, YOU SHOULD APPOINT WEAVER AS SECRETARY (RATHER THAN MERELY ACTING).

IF YOU DO NOT APPOINT WEAVER, WE SHOULD FIND ANOTHER JOB FOR HIM, BECAUSE IT IS UNLIKELY THAT HE WOULD WANT TO BE UNDER SECRETARY. THE PAY OF THE SECRETARY OF HOUSING AND URBAN AFFAIRS IS \$35,000; THE UNDER SECRETARY GETS \$28,500. AS DIRECTOR OF HHFA, WEAVER NOW GETS \$30,000.

FOR YOUR INFORMATION, THE TEXT OF SECTION 11 OF THE ACT FOLLOWS:

"SEC. 11. (A) THE PROVISIONS OF THIS ACT SHALL TAKE EFFECT UPON THE EXPIRATION OF THE FIRST PERIOD OF SIXTY CALENDAR DAYS FOLLOWING THE DATE ON WHICH THIS ACT IS APPROVED BY THE PRESIDENT, OR ON SUCH EARLIER DATE AS THE PRESIDENT SHALL SPECIFY BY EXECUTIVE ORDER PUBLISHED IN THE FEDERAL REGISTER, EXCEPT THAT ANY OF THE OFFICERS PROVIDED FOR IN SECTIONS 3(A), 4(A), AND 4(B) OF THIS ACT MAY BE NOMINATED AND APPOINTED, AS PROVIDED IN SUCH SECTIONS, AT ANY TIME AFTER THE DATE THIS ACT IS APPROVED BY THE PRESIDENT.

(B) IN THE EVENT THAT ONE OR MORE OFFICERS REQUIRED BY THIS ACT TO BE APPOINTED, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL NOT HAVE ENTERED UPON OFFICE ON THE EFFECTIVE DATE OF THIS ACT, THE PRESIDENT MAY DESIGNATE ANY PERSON WHO WAS AN OFFICER OF THE HOUSING AND HOME FINANCE AGENCY IMMEDIATELY PRIOR TO SAID EFFECTIVE DATE TO ACT IN SUCH OFFICE UNTIL THE OFFICE IS FILLED AS PROVIDED IN THIS ACT OR UNTIL THE EXPIRATION OF THE FIRST PERIOD OF SIXTY DAYS FOLLOWING SAID EFFECTIVE DATE, WHICHEVER SHALL FIRST OCCUR. WHILE SO ACTING SUCH PERSONS SHALL RECEIVE COMPENSATION AT THE RATES PROVIDED BY THIS ACT FOR THE RESPECTIVE OFFICES IN WHICH THEY ACT."

ESAB53

OO WTE:10

EE WTE 113

FROM: JOE CALIFANO  
TO: THE PRESIDENT  
REF: WH93336

UNCLAS E F T O

ESTD

OCTOBER 29, 1965

FOR THE PRESIDENT

FROM JOE CALIFANO

THERE FOLLOWS THE TEXT OF A MEMORANDUM FROM THE ATTORNEY GENERAL ON APPOINTMENT AND DESIGNATION OF OFFICERS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

95 OCT 29 PM 6:13

FRIDAY

"THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT PROVIDES THAT THE ACT SHALL TAKE EFFECT 60 CALENDAR DAYS AFTER THE ACT IS APPROVED BY THE PRESIDENT. SINCE YOU APPROVED THE ACT ON OCT 9, 1965, THE EFFECTIVE DATE OF THE ACT IS NOVEMBER 9, 1965. ON THAT DATE, UNDER SECTION 5 OF THE ACT, ALL OF THE FUNCTIONS, POWERS AND DUTIES OF THE HOUSING AND HOME FINANCE AGENCY, ITS OFFICERS AND CONSTITUENT AGENCIES, WILL BE TRANSFERRED TO AND VESTED IN THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. UNDER SECTION 9 OF THE ACT, ALL OF THE POSITIONS AND AGENCIES WITHIN HMFA, AND HMFA ITSELF, WILL ON THAT DATE CEASE TO EXIST. ACCORDINGLY, IT IS ESSENTIAL THAT SOME ACTION BE TAKEN ON OR BEFORE NOVEMBER 9, 1965 THAT WILL HAVE THE EFFECT OF ENABLING SOMEONE TO EXERCISE THE AUTHORITY CONFERRED BY THE ACT UPON THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

ALTHOUGH THERE ARE SOME LEGAL PROBLEMS INVOLVED AS TO SALARIES, IT SEEMS TO US ENTIRELY CLEAR THAT YOU HAVE THE AUTHORITY TO MAKE RECESS APPOINTMENTS TO THE SEVEN POSITIONS (SECRETARY, UNDER SECRETARY, FOUR ASSISTANT SECRETARIES, AND GENERAL COUNSEL) WHICH ARE SUBJECT TO SENATE CONFIRMATION. THE RECESS APPOINTMENT POWER MAY BE EXERCISED AT ANY TIME BETWEEN NOVEMBER 9, 1965, AND JANUARY 19, 1966, THE DATE WHEN THE SENATE WILL AGAIN BE IN SESSION. UNDER A NUMBER OF PRECEDENTS, IT WOULD NOT BE PROPER FOR YOU TO MAKE A RECESS APPOINTMENT BEFORE THE VACANCY ACTUALLY OCCURS ON NOVEMBER 9, 1965.

IN ADDITION, THE ACT PROVIDES AN ALTERNATIVE METHOD OF FILLING TEMPORARILY THE NEW OFFICES IT CREATES. SECTION 11(C) AUTHORIZES YOU TO "DESIGNATE" ANY PERSON WHO WAS AN OFFICER OF THE HMFA IMMEDIATELY PRIOR TO NOVEMBER 9, 1965, TO FILL ON AN ACTING BASIS ANY OF THE NEW OFFICES UNTIL JANUARY 7, 1966, OR UNTIL THE OFFICE IS FILLED WITH THE ADVICE AND CONSENT OF THE SENATE, WHICHEVER OCCURS EARLIER. YOU ARE, THEREFORE, AUTHORIZED TO DESIGNATE OFFICIALS OF HMFA TO PERFORM THE DUTIES OF THE NEW DEPARTMENT ON AN INTERIM BASIS, AND NEED NOT MAKE A RECESS APPOINTMENT IN ORDER TO PREVENT A VACUUM FROM EXISTING

UNDER THE LANGUAGE OF THE ACT, YOU COULD MAKE A "DESIGNATION" ON NOVEMBER 9 OR ON ANY DATE THEREAFTER. HOWEVER, DURING ANY PERIOD OF TIME BETWEEN NOVEMBER 9 AND THE DATE OF ANY SUCH DESIGNATION THE AFFAIRS OF ALL OF THE AGENCIES BEING TRANSFERRED TO THE NEW DEPARTMENT WOULD BE AT A STANDSTILL. SO FAR AS I CAN DETERMINE IT WOULD NOT BE POSSIBLE TO PAY THE EMPLOYEES OF THOSE AGENCIES SINCE NO ACTION WOULD HAVE BEEN TAKEN TO PUT THEM ON THE PAYROLL OF A NEW AGENCY WHEN THEIR FORMER AGENCIES WERE ABOLISHED.

ANY INTERIM DESIGNATION YOU MIGHT MAKE PURSUANT TO SECTION 11 OF THE ACT WOULD, IN ACCORDANCE WITH THE EXPRESS TERMS OF THE STATUTE, EXPIRE AS A MATTER OF LAW ON JANUARY 7, 1966. YOU WOULD, THEREFORE, BE OBLIGED TO MAKE RECESS APPOINTMENTS ON OR BEFORE THAT DATE IN ORDER TO AVOID A HIAIUS UNTIL SUCH TIME AS THE SENATE SHOULD CONFIRM YOUR NOMINEES TO THE SEVEN NEW POSITIONS THAT REQUIRE SENATE CONFIRMATION.

WE HAVE EXAMINED VERY CLOSELY INTO WHAT WOULD HAPPEN IF YOU FAILED TO MAKE RECESS APPOINTMENTS ON OR BEFORE JANUARY 7, 1966. ALTHOUGH WE WILL CONTINUE TO STUDY THIS MATTER IN AN ATTEMPT TO DEVELOP SOME ALTERNATIVE COURSES OF ACTION, IT IS NOW OUR STRONG VIEW THAT A FAILURE TO MAKE RECESS APPOINTMENTS WOULD INVOLVE PROHIBITIVE RISKS. THE PRECEDENTS IN THIS AREA ARE EXTREMELY UNFAVORABLE. ON ONE OCCASION IN 1950, IN A SOMEWHAT RELATED SITUATION, IT WAS HELD PURSUANT TO AN ATTORNEY GENERAL'S OPINION THAT THE NAVY COULD NOT BE PAID UNTIL A NEW SECRETARY WAS FORMALLY CONFIRMED BY THE SENATE. I CONSIDER A NUMBER OF THE UNFAVORABLE PRECEDENTS IN THIS AREA TO BE OF DUBIOUS VALIDITY. HOWEVER, IN VIEW OF THEIR EXISTENCE AND THE PARTICULAR TERMS AND HISTORY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT, I WOULD STRONGLY COUNSEL AGAINST PERMITTING A "HIAIUS" SITUATION TO ARISE.

IN THIS CONNECTION, I WOULD LIKE TO POINT OUT THAT THE CONSEQUENCES OF A FAILURE TO ACT ON NOVEMBER 9, 1965, WOULD BE EVEN WORSE THAN THE CONSEQUENCES OF A FAILURE TO ACT BY JANUARY 7, 1966. TO THE EXTENT THAT THERE ARE REMOTE POSSIBILITIES OF FINDING A WAY OF BRIDGING A GAP, THEY DEPEND ON SOMEONE'S HAVING BEEN LAWFULLY DESIGNATED IN THE FIRST INSTANCE TO EXERCISE THE POWERS OF THE NEW SECRETARY SO THAT HE COULD STAFF THE NEW DEPARTMENT, DELEGATE AUTHORITY, AND PROVIDE THE NEW DEPARTMENT WITH A STRUCTURE AND DEPARTMENTAL REGULATIONS."

IN VIEW OF THE LEGAL SITUATION, YOU HAVE TWO REALISTIC ALTERNATIVES BETWEEN NOW AND NOVEMBER 9:

1. APPOINT SOMEONE AS SECRETARY OF HOUSING AND URBAN AFFAIRS (EITHER WEAVER OR SOMEONE ELSE) OR

(2) DESIGNATE WEAVER AS ACTING SECRETARY PENDING YOUR SELECTION OF A PERMANENT SECRETARY BY JANUARY 8 (TWO DAYS BEFORE CONGRESS RECONVENES) ON THE THEORY THAT YOU HAVE NOT MADE UP YOUR MIND AND DO NOT WANT TO MAKE ANY APPOINTMENT UNTIL CONGRESS RECONVENES.

KATZENBACK BELIEVES THAT IF YOU HAVE NOT MADE UP YOUR MIND THE BEST THING TO DO IS DESIGNATE WEAVER AS ACTING SECRETARY. HARRY AND I AGREE WITH KATZENBACK. ON THE OTHER HAND, SCHULTZ BELIEVES THAT UNLESS YOU HAVE A MAN OTHER THAN WEAVER BY NOVEMBER 9, YOU SHOULD APPOINT WEAVER AS SECRETARY (RATHER THAN MERELY ACTING).

IF YOU DO NOT APPOINT WEAVER, WE SHOULD FIND ANOTHER JOB FOR HIM, BECAUSE IT IS UNLIKELY THAT HE WOULD WANT TO BE UNDER SECRETARY. THE PAY OF THE SECRETARY OF HOUSING AND URBAN AFFAIRS IS \$35,000; THE UNDER SECRETARY GETS \$28,500. AS DIRECTOR OF HUSA, WEAVER NOW GETS \$33,000.

FOR YOUR INFORMATION, THE TEXT OF SECTION 11 OF THE ACT FOLLOWS:

"SEC. 11. (a) THE PROVISIONS OF THIS ACT SHALL TAKE EFFECT UPON THE EXPIRATION OF THE FIRST PERIOD OF SIXTY CALENDAR DAYS FOLLOWING THE DATE ON WHICH THIS ACT IS APPROVED BY THE PRESIDENT, OR ON SUCH EARLIER DATE AS THE PRESIDENT SHALL SPECIFY BY PROCLAMATION PUBLISHED IN THE FEDERAL REGISTER, EXCEPT THAT THE PROVISIONS PROVIDED FOR IN SECTIONS 3(a), 4(a), AND 5(a)

WEAVER AND I AGREE WITH SCHULZBERG. ON THE OTHER HAND, SCHULZBERG BELIEVES THAT UNLESS YOU HAVE A MAN OTHER THAN WEAVER BY NOVEMBER 9, YOU SHOULD APPOINT WEAVER AS SECRETARY (RATHER THAN MERELY ACTING).

IF YOU DO NOT APPOINT WEAVER, WE SHOULD FIND ANOTHER JOB FOR HIM, BECAUSE IT IS UNLIKELY THAT HE WOULD WANT TO BE UNDER SECRETARY. THE PAY OF THE SECRETARY OF HOUSING AND URBAN AFFAIRS IS \$35,000; THE UNDER SECRETARY GETS \$28,500. AS DIRECTOR OF HHA, WEAVER NOW GETS \$33,000.

FOR YOUR INFORMATION, THE TEXT OF SECTION 11 OF THE ACT FOLLOWS:

"SEC. 11. (A) THE PROVISIONS OF THIS ACT SHALL TAKE EFFECT UPON THE EXPIRATION OF THE FIRST PERIOD OF SIXTY CALENDAR DAYS FOLLOWING THE DATE ON WHICH THIS ACT IS APPROVED BY THE PRESIDENT, OR ON SUCH EARLIER DATE AS THE PRESIDENT SHALL SPECIFY BY EXECUTIVE ORDER PUBLISHED IN THE FEDERAL REGISTER, EXCEPT THAT ANY OF THE OFFICERS PROVIDED FOR IN SECTIONS 3(A), 4(A), AND 4(C) OF THIS ACT MAY BE NOMINATED AND APPOINTED, AS PROVIDED IN SUCH SECTIONS, AT ANY TIME AFTER THE DATE THIS ACT IS APPROVED BY THE PRESIDENT.

(B) IN THE EVENT THAT ONE OR MORE OFFICERS REQUIRED BY THIS ACT TO BE APPOINTED, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL NOT HAVE ENTERED UPON OFFICE ON THE EFFECTIVE DATE OF THIS ACT, THE PRESIDENT MAY DESIGNATE ANY PERSON WHO WAS AN OFFICER OF THE HOUSING AND HOME FINANCE AGENCY IMMEDIATELY PRIOR TO SAID EFFECTIVE DATE TO ACT IN SUCH OFFICE UNTIL THE OFFICE IS FILLED AS PROVIDED IN THIS ACT OR UNTIL THE EXPIRATION OF THE FIRST PERIOD OF SIXTY DAYS FOLLOWING SAID EFFECTIVE DATE, WHICHEVER SHALL FIRST OCCUR. WHILE SO ACTING SUCH PERSONS SHALL RECEIVE COMPENSATION AT THE RATES PROVIDED BY THIS ACT FOR THE RESPECTIVE OFFICES IN WHICH THEY ACT."

DTG:292742Z OCTOBER 1965

ETC

# THE WHITE HOUSE

OUTGOING MESSAGE



WHASA

PRECEDENCE

CLASSIFICATION

DATE

FROM: Joe Galliano

TO: THE PRESIDENT

INFO:

CITE: WH 50336

OCT 23 PM 6:13

FRIDAY

PAGE \_\_\_\_\_ OF \_\_\_\_\_

EFTO

October 29, 1965

FOR THE PRESIDENT

FROM Joe Califano

There follows the text of a memorandum from The Attorney General on Appointment and Designation of Officers of the Department of Housing and Urban Development:

*Quote*. The Department of Housing and Urban Development Act provides that the Act shall take effect 60 calendar days after the Act is approved by the President. Since you approved the Act on September 9, 1965, the effective date of the Act is November 9, 1965. On that date, under Section 5 of the Act, all of the functions, powers and duties of the Housing and Home Finance Agency, its officers and constituent agencies, will be transferred to and vested in the Secretary of the Department of Housing and Urban Development. Under Section 9 of the Act, all of the positions and agencies within HHFA, and HHFA itself, will on that date cease to exist. Accordingly, it is essential that some action be taken on or before November 9, 1965 that will have the effect of enabling someone to exercise

EFTO

EFTO

the authority conferred by the Act upon the Secretary of Housing and Urban Development.

Although there are some legal problems involved, <sup>as to salaries</sup> it seems to us entirely clear that you have the authority to make recess appointments to the seven positions (Secretary, Under Secretary, four Assistant Secretaries, and General Counsel) which are subject to Senate confirmation. The recess appointment power may be exercised at any time between November 9, 1965, and January 10, 1966, the date when the Senate will again be in session. Under a number of precedents, it would not be proper for you to make a recess appointment before the vacancy actually occurs on November 9, 1965.

In addition, the Act provides an alternative method of filling temporarily the new offices it creates. Section 11(b) authorizes you to "designate" any person who was an officer of the HHA immediately prior to November 9, 1965, to fill on an acting basis any of the new offices until January 7, 1966, or until the office is filled with the advice and consent of the Senate, whichever occurs earlier.

EFTO

EFTO

You are, therefore, authorized to designate officials of HHFA to perform the duties of the new Department on an interim basis, and need not make a recess appointment in order to prevent a vacuum from existing when the new agency comes into existence on November 3, 1965.

Under the language of the Act, you could make a "designation" on November 9 or on any date thereafter. However, during any period of time between November 3 and the date of any such designation the affairs of all of the agencies being transferred to the new department would be at a standstill. So far as I can determine it would not be possible to pay the employees of those agencies since no action would have been taken to put them on the payroll of a new agency when their former agencies were abolished.

Any interim designation you might make pursuant to Section 11 of the Act would, in accordance with the express terms of the statute, expire as a matter of law on January 7, 1966. You would, therefore, be obliged to make recess appointments on or before that date in order to avoid a

EFTO

EFTO

hiatus until such time as the Senate should confirm your nominees to the seven new positions that require Senate confirmation.

We have examined very closely into what would happen if you failed to make recess appointments on or before January 7, 1966. Although we will continue to study this matter in an attempt to develop some alternative courses of action, it is now our strong view that a failure to make recess appointments would involve prohibitive risks. The precedents in this area are extremely unfavorable. On one occasion in 1880, in a somewhat related situation, it was held pursuant to an Attorney General's opinion that the Navy could not be paid until a new Secretary was formally confirmed by the Senate. I consider a number of the unfavorable precedents in this area to be of dubious validity. However, in view of their existence and the particular terms and history of the Department of Housing and Urban Development Act, I would strongly counsel against permitting a "hiatus" situation to arise.

EFTO

EFTO

In this connection, I would like to point out that the consequences of a failure to act on November 9, 1965, would be even worse than the consequences of a failure to act by January 7, 1966. To the extent that there are remote possibilities of finding a way of bridging a gap, they depend on someone's having been lawfully designated in the first instance to exercise the powers of the new Secretary so that he could staff the new Department, delegate authority, and provide the new Department with a structure and departmental regulations. *LN QUOTE*

← EFTO

In view of the legal situation, you have two realistic alternatives between now and November 9:

- 1. Appoint someone as Secretary of Housing and Urban Affairs (either Weaver or someone else) or
- (2) <sup>Designate</sup> ~~Appoint~~ Weaver as Acting Secretary pending your selection of a permanent Secretary on January 8 (two days before Congress reconvenes) on the theory that you have not made up your mind and do not want to make any appointment until Congress reconvenes.

Katzenbach believes that if you have not made up your mind the best thing to do is <sup>designate</sup> ~~appoint~~ Weaver as Acting Secretary. <sup>Harry and I agree with</sup> Schultze believes that unless you have a man other than Weaver by November 9, you should appoint Weaver as Secretary (rather than merely Acting). <sup>Katzenbach</sup>

If you do not appoint Weaver, we should find another job for him, because it is unlikely that he would want to be Under Secretary. The pay of the Secretary of Housing and Urban Affairs is \$35,000; the Under Secretary gets \$28,500. As Director of HHFA, Weaver now gets \$30,000.

For your information, the text of Section 11 of the Act follows:

Harry and I agree with Katzenbach - On the other hand,

EFTO

7 7

QUOTE: Sec. 11. (a) The provisions of this Act shall take effect upon the expiration of the first period of sixty calendar days following the date on which this Act is approved by the President, or on such earlier date as the President shall specify by Executive order published in the Federal Register, except that any of the officers provided for in sections 3(a), 4(a), and 4(b) of this Act may be nominated and appointed, as provided in such sections, at any time after the date this Act is approved by the President.

(b) In the event that one or more officers required by this Act to be appointed, by and with the advice and consent of the Senate, shall not have entered upon office on the effective date of this Act, the President may designate any person who was an officer of the Housing and Home Finance Agency immediately prior to said effective date to act in such office until the office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act. UNQUOTE

EFTO

EXECUTIVE

11-4/65  
FG 170

FG 745

H47-2

HS

Dear Marjorie:

I very much appreciated your letter of October 19 concerning Robert C. Weaver and the new Cabinet post.

As you have probably gathered, I intend to be very careful in selecting the Secretary of Housing and Urban Development. This is an extremely important post, and I want to get the very best man for it. If Bob Weaver is that man, I will appoint him. But I want to be sure that he is.

I value your judgment and I appreciate your sharing your thoughts with me.

With warmest regards,

Sincerely,



Mrs. Marjorie M. Lawson  
701 RCA Building \*  
1725 K Street, N. W.  
Washington, D. C. 20006

LBJ:JWM:JBC:JM:bb

RECEIVED  
NOV 3 1965  
CENTRAL FILES

11/1

**Paul:**

For your information, files of letters  
etc. signed and dispatched from the  
Ranch.

*MJD R*

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

Tuesday, October 26, 1965  
3:00 p.m.

MEMORANDUM FOR THE PRESIDENT

I have prepared the attached reply to Marjorie McKenzie Lawson for your signature with the thought that you would wish to evidence a personal review of her comments concerning Bob Weaver. If you desire it otherwise, I will change it accordingly.

*John W. Macy*  
John W. Macy, Jr.

attachment

*sent for  
Ranch  
10-30-65  
am*

LAW OFFICES  
MARJORIE MCKENZIE LAWSON  
701 RCA BUILDING  
1725 K STREET, N. W.  
WASHINGTON 6. D. C.  
FEDERAL 8-5870

October 19, 1965

President Lyndon B. Johnson  
The White House  
Washington, District of Columbia

Dear Mr. President:

As one who has had an abiding interest in housing, both as a human and a civil rights problem, as well as considerable professional experience in its production and financing, I hope that you will give favorable consideration to the appointment of Dr. Robert C. Weaver as the first Secretary of the new Department of Housing and Urban Development.

It is quite obvious that a number of hatchets are being wielded against Dr. Weaver because he is a Negro, just as they were in evidence when he was appointed to his present post. Conversely, civil rights organizations may not be pounding loudly at the White House door in his behalf.

What is important, in my view, is that Dr. Weaver, as the first Negro in the Cabinet, would be there because he is able to fill an unusually complex and urgent post with skill and imagination. There are many other sensitive positions in the Government, both in the Cabinet and out, to which Negroes who have credentials in race relations and among Negro voters may aspire. The wonderful selection of Thurgood Marshall as U. S. Solicitor General is an example of such a choice.

The work that Bob Weaver has done as HHFA Administrator has been in the interest of this Nation and the security of its people. We are only beginning to understand, in a public way, the close correlation between housing and the economic and social condition of a

Page 2  
President Lyndon B. Johnson  
October 19, 1965

population. In the development and support of the Sec. 221 (D)(3) program for low and moderate income housing by non-profit and limited distribution private developers, Dr. Weaver has provided the only effective tool for housing a vast and neglected segment of the U. S. housing market. He has pioneered the rent supplement program as a logical extension of this concept of devising a private industry solution for a problem even larger than the public housing needs of this country, needs still unmet after agonizing governmental effort, at federal, state and city levels.

With the trained eye of the economist, Dr. Weaver understands the interaction of housing supply and community resources. In addition, he realizes that there must be planning and cooperation by all sectors of the community, public and private, if urban life is to be not just endurable, but also rewarding. In the many changes that must be made if our cities are to survive, Negroes living in the ghettos at the core of every city will be the most affected of all of the people. No one could plot these changes with more understanding and integrity than the man who has been forging the tools to make escape from the mess we are in possible. Such work has been more important than making the housing agency either a model of equal employment opportunity or the special province of the housing industry

Some measure of Dr. Weaver's aware and humane concerns in housing can be seen also on the international level. Recently, HHFA, on the initiative of its International Housing Division, co-sponsored with AID an International Housing Seminar during which some 60 representatives from 27 countries were introduced to urban problems and programs in the eastern United States and Puerto Rico. I attended some of the early sessions, including a luncheon at which the Vice President spoke most appealingly, and also the debriefing session at the UN Secretariat last week. I had the feeling, as I listened to the comments of architects, engineers


Page 3  
President Lyndon B. Johnson  
October 19, 1965

and land planners from developing nations around the world that this one conference had done a great deal to make friends for the United States and to produce results back home, more perhaps than many very ambitious undertakings.

Mr. President, I have the greatest respect for your untrammelled right to select the members of your Cabinet. I also believe deeply in your resolve to provide a better life for all of the people. I think Bob Weaver has the intellectual strength and moral courage to help you put the disadvantaged in decent homes, good neighborhoods and democratic communities. I hope you do not mind that I have felt impelled to say a word in his behalf.

With highest esteem and best wishes for your continued recovery and good health, I am,

Sincerely,



Marjorie M. Lawson

MML:em

EXECUTIVE  
FH 170  
FH 135

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Office of the Attorney General  
Washington, D. C.  
OCT 30 1965

MEMORANDUM FOR THE PRESIDENT

Re: Consequences of non-designation of officers of the Department of Housing and Urban Development.

This is in response to your request for a memorandum on the consequences of your taking no action prior to November 9, 1965, either to appoint officials of the new Department or to designate former HHFA officials to act temporarily as such officials pursuant to Section 11(b) of the Department of Housing and Urban Development Act.

It is quite obvious that the possibility of your taking no action at all prior to the effective date of the Act never entered the mind of any of the concerned members of the Congress.

The Congress devoted considerable time and attention to attempting to insure that you would have available plenty of alternative courses of action and would not be unduly limited by the terms of the Act. Thus, the Congress anticipated that it would no longer be in session on the effective date of the Act. It was concerned that the provision for a delayed effective date should not operate to limit your freedom of action.

Accordingly, there was included in the Act a provision designed to avoid any restriction on your power to seek confirmation of your nominees for these posts in advance of the effective date of the Act. Section 11(a) provides not only that you may accelerate the effective date but also adds expressly that "any of the officers provided for in Sections 3(a), 4(a), and 4(b) of this Act may be nominated and appointed, as provided in such sections [i.e., with the advice and consent of the Senate], at any time after the date this Act is approved by the President."

The Congress also knew, of course, that you had the power to make recess appointments as provided in Article II, Section 2, clause 3 of the Constitution. Again, however, the Congress was concerned that your freedom of action not be unduly limited by the provision in the Act establishing an effective date. It anticipated that you might not be ready to make appointments by that date. It therefore included in the Act a provision giving you a third alternative, in addition to the two that you would otherwise have. Section 11(b) provides that if the officials

of the new Department have not "entered upon office" on the effective date of the Act, you "may designate any person who was an officer of the Housing and Home Finance Agency immediately prior to said effective date to act in such office until the office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur."

This provision is not, of course, in any way compulsory; it uses the word "may." Congress was not trying to restrict your ability either to seek confirmation of your appointees during the last session of Congress or to make recess appointments. It was concerned, rather, with enlarging your freedom of action by providing an additional alternative.

Having provided courses of action by which you could, in effect, accelerate or postpone the effective date of the Act by 60 days either way, Congress apparently gave no thought to the possibility that you might want to let the effective date come and go without taking any of the alternative courses authorized by the Act. That this is true is obvious from the

fact that if you take no action the provisions of the Act seem to require results that range from the chaotic to the whimsical.

I am confident that Congress had no thought whatever of forcing your hand. Certainly there is nothing in the Act that purports to direct you to act now or at any other time. However, because of its failure to consider the possibility that you would not wish to act, Congress made no sensible provision for that eventuality and to that extent inadvertently limited your freedom of action.

If you take no action prior to November 9, 1965, the following consequences seem required by the plain terms of the Act:

(1) All of the functions, powers, and duties of the HHFA, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of those agencies, will be transferred to the Secretary of the new Department by operation of law.

(2) All of the old agencies, and the jobs now being filled by Dr. Weaver and his principal deputies and assistants, will cease to exist. This result is accomplished by the last sentence of Section 9 of the Act, which provides: "The positions and agencies heretofore established by law in connection with the functions, powers and duties transferred under Section 5(a) shall lapse." This language was unquestionably intended to refer to the jobs of the Administrator, the Deputy Administrator, and the Commissioners of the Federal Housing Administration and Public Housing Administration, all of whom are Presidential appointees. It probably also covers the jobs of the General Counsel and of the Commissioners of the Community Facilities Administration and the Urban Renewal Administration.

(3) Under Section 7 of the Act, the personnel of HHFA and its constituent agencies, other than the officials referred to in paragraph (2) above, would automatically be transferred to the new Department.

(4) Under Section 9(c) of the Act, all rules, regulations, orders, authorizations, delegations, or other actions in effect on the effective date of the Act would continue in full force and effect until modified by the Secretary or other appropriate officer of the new Department. Because of this provision it would probably be possible to issue orders that would make it possible to pay the personnel of, and to carry on routine business in, the new Department.

The result of inaction thus would be that the new Department, while established and in business, would be headless. The jobs of the principal officers of the old agencies, and the old agencies themselves, would be abolished.

If you took no action prior to November 9, 1965, we might try to maintain either (1) that none of the transfers of functions or personnel contemplated by the Act had yet taken place, or (2) that, while all of the transfers of lower-level personnel were effective, the provision abolishing the former agencies and the offices of Weaver and his colleagues was not yet effective. Both of these contentions would put heavy

reliance on the proposition that Congress did not foresee that you would fail to act in any of the ways provided for in the statute, and that, therefore, its provisions must be given a loose construction in order to avoid chaotic results that Congress obviously did not want to happen.

Proposition (1) above would require us to contend that, although the Act expressly establishes an effective date, the effectiveness of its provisions was also impliedly conditioned on the appointment or designation of someone to perform the duties of the Secretary. Thus, the argument would assert, since the Act transfers all of the old agencies' functions to the new Secretary, it cannot be given legal effect until there is a Secretary. This contention seems to me not only erroneous as a matter of law but implausible even from a layman's point of view since it would give no effect whatever to the effective date established by the Act.

Proposition (2) would involve the contention that, while the new Department would come into existence on the effective

date, the last sentence of Section 9(c) (abolishing Weaver's job as head of HHFA) would go into effect only upon the appointment of the new Secretary. The language of Section 9 does not support this conclusion, but the terms there used ("shall lapse") are at least different from the terms used elsewhere in the Act ("are hereby transferred," "there is hereby established," etc.). Under this contention, the business of FHA, for example, would be done in the name of the new Department, but Weaver would continue to be the Administrator of HHFA and be paid as such. Although he could not issue any orders as head of the new agency, he presumably would be able to supervise its personnel as a practical matter because it would be apparent that he had your support in so doing. Since his position as head of an agency with no employees would be anomalous, to say the least, it would be likely to get considerable attention and unfavorable comment.

The decision as to the validity of these two arguments cannot be confined entirely within the Executive Branch or even within the government. The General Accounting Office,

now under an Acting Comptroller-General, as you know, would have to accept those arrangements if Dr. Weaver and his principal colleagues are to be parties. Also, since the constituent agencies of the new Department deal with both municipalities, investment bankers, and the validity of what the Department does will have to be determined by their counsel. I believe that conservative counsel should advise against entering into any contractual or financial relationships with the new Department until it has a head duly appointed or designated in accordance with the Act. It is possible also that the validity of acts of the Department during this period would be tested in the courts.

I believe that the arguments under which Dr. Weaver could be kept on without being designated as acting head of the new agency are legally unsound. I also believe that their unsoundness will be widely apparent. Although they can be asserted, I would urge you to consider whether the feebleness of our basis for inaction might not make a failure to act

seem much more decisive and controversial than a routine, interim designation pursuant to Section 11(b) of the Act.

At Joe Califano's suggestion, I am appending a draft press release illustrating what might be issued sometime during the coming week if you were to decide to make a designation pursuant to Section 11(b). The "designation" itself would be a simple document, naming all the acting officials, which would be published in the Federal Register on or before November 9.

Respectfully,

Attorney General

Attachment

DRAFT PRESS RELEASE

The White House announced today that President Johnson has decided to exercise the authority afforded by Section 11(b) of the Housing and Urban Development Act to defer the appointment of the Secretary and other officials of the new Department of Housing and Urban Development until the Senate has reconvened and is in a position to consider his nominations. During the interim, the affairs of the new Department will be carried on by the Administrator and other officials of the Housing and Home Finance Agency, who will continue to perform essentially the same duties as in the past. The designation of such officials pursuant to Section 11(b) will be published in the Federal Register on or before November 9, 1965, the effective date of the Act.

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SENT TO  
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8:05 PM

31 OCT 65

EXECUTIVE

FH 140  
FH 135

EBAG71  
PP WTE10  
DE WTE 143

1965 OCT 1 01 05

FROM: JOE CALIFANO  
TO : THE PRESIDENT  
CITE: WH50359

UNLCAS

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON  
OCTOBER 31, 1965

FOR THE PRESIDENT

FROM JOE CALIFANO

THERE FOLLOWS THE TEXT OF A MEMORANDUM FROM THE ATTORNEY GENERAL DATED OCTOBER 31, 1965, ON THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

QUOTE. UNDER THE PROVISIONS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT, THE NEW DEPARTMENT COMES INTO EXISTENCE ON NOVEMBER 9 UNLESS YOU CHOOSE TO ACCELERATE THAT DATE BY EXECUTIVE ORDER. THERE IS NO PROVISION WHICH GIVES YOU POWER TO POSTPONE THAT DATE.

THE ACT DOES PROVIDE THAT YOU MAY NAME THE NEW SECRETARY AT ANY TIME AFTER SIGNATURE BEFORE NOVEMBER 9 OR FOR 60 DAYS AFTER NOVEMBER 9. IN ANTICIPATION THAT YOU MIGHT NOT WISH TO ACT ON OR BEFORE THE NEW DEPARTMENT CAME INTO BEING ON NOVEMBER 9, CONGRESS FURTHER PROVIDED THAT YOU "MAY" DESIGNATE ANY OFFICER OF HHFA "TO ACT IN SUCH OFFICE (I.E., SECRETARY) UNTIL SUCH OFFICE IS FILLED AS PROVIDED IN THIS ACT OR UNTIL THE EXPIRATION OF THE FIRST PERIOD OF SIXTY DAYS FOLLOWING SAID EFFECTIVE DATE, WHICHEVER SHALL FIRST OCCUR."

WHILE CONGRESS PROVIDED THESE ALTERNATIVES I THINK IT DID NOT CONTEMPLATE OR PROVIDE FOR THE ALTERNATIVE THAT YOU MIGHT WISH TO TAKE NEITHER COURSE OF ACTION. THERE IS, THEREFORE, NO PROVISION TO COVER THIS CONTINGENCY AND NO THOUGHT SEEMS TO HAVE BEEN GIVEN TO THE CONSEQUENCES OF NO PRESIDENTIAL ACTION ON OR BEFORE NOVEMBER 9.

THE FOLLOWING RESULTS WOULD SEEM REQUIRED BY THE PLAIN TERMS OF THE ACT:

(1) ALL OF THE FUNCTIONS, POWERS, AND DUTIES OF THE HHFA, OF THE FEDERAL HOUSING ADMINISTRATION AND THE PUBLIC HOUSING ADMINISTRATION IN THAT AGENCY, AND OF THE HEADS AND OTHER OFFICERS AND OFFICES OF THOSE AGENCIES, WILL BE TRANSFERRED TO THE SECRETARY OF THE NEW DEPARTMENT BY OPERATION OF LAW. IF NO ONE IS DESIGNATED BY YOU TO ACT AS SECRETARY, THERE IS A SERIOUS QUESTION AS TO WHETHER ALL THESE FUNCTIONS, POWERS AND DUTIES CAN BE EXERCISED BY ANYONE; THAT IS, THEY MAY LAPSE.

(2) ALL OF THE OLD AGENCIES, AND THE JOBS NOW BEING FILLED BY DR. WEAVER AND HIS PRINCIPAL DEPUTIES AND ASSISTANTS, WILL CEASE TO EXIST. THIS RESULT IS ACCOMPLISHED BY THE LAST SENTENCE OF SECTION 9 OF THE ACT, WHICH PROVIDES: "THE POSITIONS AND AGENCIES HERETOFORE ESTABLISHED BY LAW IN CONNECTION WITH THE FUNCTIONS, POWERS AND DUTIES TRANSFERRED UNDER SECTION 5(A) SHALL LAPSE." THIS LANGUAGE WAS UNQUESTIONABLY INTENDED TO REFER TO THE JOBS OF THE ADMINISTRATOR, THE DEPUTY ADMINISTRATOR, AND THE COMMISSIONERS OF THE FEDERAL HOUSING ADMINISTRATION AND PUBLIC HOUSING ADMINISTRATION, ALL OF WHOM ARE PRESIDENTIAL APPOINTEES. IT PROBABLY ALSO COVERS THE JOBS OF THE GENERAL COUNSEL AND OF THE COMMISSIONERS OF THE COMMUNITY FACILITIES ADMINISTRATION AND THE URBAN RENEWAL ADMINISTRATION.

(3) UNDER SECTION 7 OF THE ACT, THE PERSONNEL OF HHFA AND ITS CONSTITUENT AGENCIES, OTHER THAN THE OFFICIALS REFERRED TO IN PARAGRAPH (2) ABOVE, WOULD AUTOMATICALLY BE TRANSFERRED TO THE NEW DEPARTMENT.

(4) UNDER SECTION 9(C) OF THE ACT, ALL RULES, REGULATIONS ORDERS, AUTHORIZATIONS, DELEGATIONS, OR OTHER ACTIONS IN EFFECT ON THE EFFECTIVE DATE OF THE ACT WOULD CONTINUE IN FULL FORCE AND EFFECT OF THE NEW DEPARTMENT. THIS PROVISION MAKES IT POSSIBLE TO PAY THE PERSONNEL OF, AND TO CARRY ON ROUTINE BUSINESS IN, THE NEW DEPARTMENT.

THE RESULT OF INACTION THUS WOULD BE THAT THE NEW DEPARTMENT, WHILE ESTABLISHED AND IN BUSINESS, WOULD BE HEADLESS. THE JOBS OF THE PRINCIPAL OFFICERS OF THE OLD AGENCIES, AND THE OLD AGENCIES THEMSELVES, WOULD BE ABOLISHED.

OBVIOUSLY, CONGRESS DID NOT INTEND SUCH RESULTS. WHILE IT COULD NOT COMPEL YOU TO ACT -- AND DID NOT SEEK TO DO SO -- I BELIEVE IT THOUGHT THAT THE LAW PROVIDED YOU SUFFICIENT FLEXIBILITY SO THAT BY YOUR ACTION THESE CONSEQUENCES WOULD BE AVOIDED.

THE MAJOR DIFFICULTY LIES IN SECTION 11(A) WHICH SAYS THAT "THE PROVISIONS OF THIS ACT SHALL TAKE EFFECT UPON THE EXPIRATION OF THE FIRST PERIOD OF SIXTY CALENDAR DAYS FOLLOWING THE DATE ON WHICH THIS ACT IS APPROVED BY THE PRESIDENT..." (EMPHASIS ADDED). THIS PROVISION TRIGGERS SECTION 9(C) (ABOLISHING POSITIONS AND AGENCIES HERETOFORE ESTABLISHED BY LAW) AND 5(A) (VESTING THOSE FUNCTIONS IN THE NEW SECRETARY) AND 7(A) (TRANSFERRING PERSONNEL, ETC. TO THE NEW DEPARTMENT). THE PROBLEMS CAUSED BY THUS AUTOMATICALLY BRINGING THE NEW DEPARTMENT INTO BEING NO LATER THAN NOVEMBER 9 COULD ONLY BE RESOLVED BY AN ARGUMENT WHICH WOULD POSTPONE THE "EFFECTIVE DATE" OF THE ACT DESPITE THE SEEMINGLY CLEAR LANGUAGE OF SECTION 11(A).

THE BEST ARGUMENT TO THIS EFFECT WOULD BE THAT, ALTHOUGH THE ACT EXPRESSLY ESTABLISHES AN EFFECTIVE DATE, THESE PROVISIONS ARE ALSO IMPLIEDLY CONDITIONED ON THE APPOINTMENT OR DESIGNATION OF SOMEONE TO PERFORM THE DUTIES OF SECRETARY. THUS THE ARGUMENT WOULD ASSERT THAT SINCE THE ACT TRANSFERS ALL THE OLD AGENCIES' FUNCTIONS TO THE NEW SECRETARY, IT CANNOT BE GIVEN LEGAL EFFECT UNTIL THERE IS SOMEONE APPOINTED OR DESIGNATED FOR THAT POSITION. YOUR INACTION, UNDER THIS ARGUMENT, WOULD HAVE THE RESULT OF POSTPONING THE EXPRESS EFFECTIVE DATE OF THE LEGISLATION AND RETAINING THE STATUS QUO.

THE DIFFICULTIES WITH THIS ARGUMENT ARE OBVIOUS. IT RUNS COUNTER TO THE EXPRESS LANGUAGE OF SECTION 11(A) AND, THEREFORE, WOULD FOCUS CONSIDERABLE ATTENTION ON YOUR INACTION. THERE IS NOTHING IN THE LEGISLATIVE HISTORY TO SUPPORT THIS INTERPRETATION. FURTHERMORE, THERE IS NO GUARANTY THAT IT WOULD BE PRESUASIVE TO THE ACTING COMPTROLLER GENERAL WHO WOULD HAVE TO APPROVE IF DR. WEAVER AND HIS COLLEAGES WERE TO BE PAID. AND, FINALLY, SINCE THE CONSTITUENT AGENCIES OF THE NEW DEPARTMENT DEAL WITH BANKS, INVESTMENT HOUSES, MUNICIPALITIES, PRIVATE CONTRACTORS, ETC., THE VALIDITY OF ALL SUCH ACTION WOULD HAVE TO BE APPRAISED BY PRIVATE COUNSEL.

THE EXPRESS LANGUAGE OF SECTION 11(A), THE REFERENCES TO THE ACT'S "EFFECTIVE DATE" AND THE FLEXIBILITY GIVEN BY PERMITTING THE DATE TO BE ACCELERATED AND BY PERMITTING INTERIM APPOINTMENTS UNDER SECTION 11(B) FOR A FURTHER SPECIFIC 60 DAY PERIOD ALL MILITATE AGAINST AN INTERPRETATION WHICH WOULD, IN EFFECT, LEAVE THE "EFFECTIVE DATE" COMPLETELY IN YOUR DISCRETION.

FROM A LEGAL POINT OF VIEW A DESIGNATION PURSUANT TO SECTION 11(B) OF THE ACT IS CLEARLY PREFERABLE. I THINK THIS COULD BE PHRASED IN SUCH A WAY AS TO MAKE IT APPEAR NOT ONLY ROUTINE BUT REALLY THE DECISION OF CONGRESS RATHER THAN ANY AFFIRMATIVE ACTION ON YOUR PART. BUT IT DOES NOT AVOID THE MAJOR PROBLEM THAT THE HEAD OF THE DEPARTMENT WOULD BE "ACTING SECRETARY".

I AM ATTACHING A DRAFT PRESS RELEASE.

RESPECTFULLY,

NICHOLAS DEB. KATZENBACH  
THE ATTORNEY GENERAL

#### DRAFT PRESS RELEASE

THE WHITE HOUSE ANNOUNCED TODAY THAT PRESIDENT JOHNSON HAS DECIDED TO DEFER THE APPOINTMENT OF THE SECRETARY AND OTHER OFFICIALS OF THE NEW DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT UNTIL JANUARY WHEN THE SENATE WILL BE IN A POSITION TO CONSIDER PROMPTLY HIS NOMINATIONS. UNDER THE LAW ENACTED AT THE LAST SESSION AND APPROVED BY THE PRESIDENT SEPTEMBER 9, 1965 THE PRESIDENT HAS THE OPTION OF MAKING RECESS APPOINTMENTS OR PERMITTING THE AFFAIRS OF THE NEW DEPARTMENT TO BE CARRIED ON BY OFFICIALS OF THE HOUSING AND HOME FINANCE AGENCY, WHO WILL CONTINUE TO PERFORM ESSENTIALLY THE SAME DUTIES AS IN THE PAST. FORMAL CONFIRMATION OF THIS DECISION WILL BE PUBLISHED IN THE FEDERAL REGISTER ON OR BEFORE NOVEMBER 9, 1965, THE EFFECTIVE DATE OF THE ACT.

(NOTE: THE FORMAL DESIGNATION COULD BE IN TERMS OF THE OFFICES RATHER THAN PERSONS; FOR EXAMPLE, "THE DIRECTOR OF THE HOUSING AND HOME FINANCE AGENCY WILL PERFORM THE DUTIES AND FUNCTIONS OF THE OFFICE OF SECRETARY." IT COULD BE SIGNED "BY ORDER OF THE PRESIDENT" BY A MEMBER OF THE WHITE HOUSE STAFF. RESPONSES TO QUESTIONS OF THE PRESS COULD BE IN TERMS OF THE LAW, RATHER THAN YOUR ACTION; FOR EXAMPLE, "IS THE PRESIDENT DESIGNATING DR. WEAVER, ACTING SECRETARY?" ANSWER: THAT IS WHAT THE LAW PROVIDES; OR THE ACT PROVIDES THAT OFFICIALS OF HHFA WILL PERFORM THESE FUNCTIONS.) UNQUOTE

THE POSITIONS AND PERSONNEL INVOLVED IN THE TOP JOBS AFFECTED BY THE ACT ARE:

ADMINISTRATOR, ROBERT WEAVER, \$30,000  
DEPUTY ADMINISTRATOR AND GENERAL COUNSEL, MILTON SEMER, \$28,500  
FEDERAL HOUSING COMMISSIONER, PHIL BROWNSTEIN, \$27,000  
PUBLIC HOUSING COMMISSIONER, MARIE MAGUIRE, \$27,000  
URBAN RENEWAL COMMISSIONER, BILL SLAYTON, \$27,000  
COMMUNITY FACILITIES COMMISSIONER, VACANT, \$27,000

MAKING THEM GS 18,5 RATHER THAN MAKING THEM ACTING PRESIDENTIAL APPOINTEES WOULD IN EVERY CASE RESULT IN A REDUCTION IN PAY.

IF, DESPITE THE FOREGOING MEMORANDUM, YOU ARE STILL OF THE OPINION THAT YOU SHOULD NOT MAKE ANY "ACTING" DESIGNATIONS, I BELIEVE THE FOLLOWING ACTIONS SHOULD BE TAKEN:

1. THERE SHOULD BE AN OPINION OF THE ATTORNEY GENERAL TO SUPPORT THE STATUS QUO (WHICH, AS INDICATED IN KATZENBACH'S EARLIER MEMO, WOULD HAVE TO OVERRULE A PRIOR OPINION AND WHICH WOULD PROBABLY BE CONSIDERED QUESTIONABLE).
2. WE WOULD HAVE TO GET THE COMPTROLLER GENERAL TO GO ALONG WITH SUCH AN OPINION AND PAY THESE OFFICIALS AT THEIR EXISTING SALARIES (WE WOULD REALLY HAVE A TEMPEST IF YOU DID NOTHING, THE ATTORNEY GENERAL SUPPORTED YOU AND THE COMPTROLLER GENERAL REFUSED TO PAY WEAVER AND THE OTHER TOP OFFICIALS).
3. WE SHOULD GET MANSFIELD, MCCORMACK, DIRKSEN, ET AL AND THE COMMITTEE CHAIRMEN, IN EFFECT, TO CONCUR IN YOUR ACTION AS CONSISTENT WITH THE INTENT OF CONGRESS.

WHETHER YOU DECIDE TO DESIGNATE WEAVER "ACTING" OR NOT DO ANYTHING, THE SOONER THAT DECISION IS MADE KNOWN TO THE PUBLIC THE BETTER OFF WE WILL BE BECAUSE AS THE EFFECTIVE DATE OF THE ACT COMES CLOSER, TENSION AND EXCITEMENT BUILDS IN WASHINGTON. FURTHER IN EITHER CASE, WE SHOULD DECIDE WHETHER YOU WISH TO TALK TO WEAVER PERSONALLY OR WHETHER YOU WANT ME OR SOME OTHER MEMBER OF THE STAFF TO TALK TO HIM AND THE OTHER OFFICIALS

DTG: 312310Z OCT 65

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FOR COMM CENTER USE

# THE WHITE HOUSE

OUTGOING MESSAGE



WHASA

PRECEDENCE

CLASSIFICATION

31 DEC 61  
DATE

RECEIVED  
WHASA

12 23 10

FROM: JOE CALIFANO

TO: THE PRESIDENT

INFO:

CITE: WH 50359

PAGE \_\_\_\_\_ OF \_\_\_\_\_

## THE WHITE HOUSE

WASHINGTON

October 31, 1965

FOR THE PRESIDENT

FROM Joe Califano

There follows the text of a memorandum from the Attorney General dated October 31, 1965, on the Department of Housing and Urban Development:

Quote, Under the provisions of the Department of Housing and Urban Development Act, the new Department comes into existence on November 9 unless you choose to accelerate that date by Executive Order. There is no provision which gives you power to postpone that date.

The Act does provide that you may name the new Secretary at any time after signature before November 9 or for 60 days after November 9. In anticipation that you might not wish to act on or before the new Department came into being on November 9, Congress further provided that you "may" designate any officer of HHFA "to act in such office (i. e., Secretary) until such office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur."

While Congress provided these alternatives I think it did not contemplate or provide for the alternative that you might wish to take neither course of action. There is, therefore, no provision to cover this contingency and no thought seems to have been given to the consequences of no Presidential action on or before November 9.

The following results would seem required by the plain terms of the Act:

(1) All of the functions, powers, and duties of the HHFA, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of those agencies, will be transferred to the Secretary of the new Department by operation of law. If no one is designated by you to act as Secretary, there is a serious question as to whether all these functions, powers and duties can be exercised by anyone; that is, they may lapse.

(2) All of the old agencies, and the jobs now being filled by Dr. Weaver and his principal deputies and assistants, will cease to exist. This result is accomplished by the last sentence of Section 9 of the Act, which provides: "The positions and agencies heretofore established by law in connection with the functions, powers and duties transferred under Section 5(a) shall lapse." This language was unquestionably intended to refer to the jobs of

the Administrator, the Deputy Administrator, and the Commissioners of the Federal Housing Administration and Public Housing Administration, all of whom are Presidential appointees. It probably also covers the jobs of the General Counsel and of the Commissioners of the Community Facilities Administration and the Urban Renewal Administration.

(3) Under Section 7 of the Act, the personnel of HHFA and its constituent agencies, other than the officials referred to in paragraph (2) above, would automatically be transferred to the new Department.

(4) Under Section 9(c) of the Act, all rules, regulations orders, authorizations, delegations, or other actions in effect on the effective date of the Act would continue in full force and effect until modified by the Secretary or other appropriate officer of the new Department. This provision makes it possible to pay the personnel of, and to carry on routine business in, the new Department.

The result of inaction thus would be that the new Department, while established and in business, would be headless. The jobs of the principal officers of the old agencies, and the old agencies themselves, would be abolished.

Obviously, Congress did not intend such results. While it could not compel you to act -- and did not seek to do so -- I believe it thought that the law provided you sufficient flexibility so that by your action these consequences would be avoided.

The major difficulty lies in Section 11(a) which says that "the provisions of this Act shall take effect upon the expiration of the first period of sixty calendar days following the date on which this Act is approved by the President..." (emphasis added). This provision triggers section 9(c) (abolishing positions and agencies heretofore established by law) and 5(a) (vesting those functions in the new Secretary) and 7(a) (transferring personnel, etc. to the new Department). The problems caused by thus automatically bringing the new Department into being no later than November 9 could only be resolved by an argument which would postpone the "effective date" of the Act despite the seemingly clear language of Section 11(a).

The best argument to this effect would be that, although the Act expressly establishes an effective date, these provisions are also impliedly condi-

tioned on the appointment or designation of someone to perform the duties of Secretary. Thus the argument would assert that since the Act transfers all the old agencies' functions to the new Secretary, it cannot be given legal effect until there is someone appointed or designated for that position. Your inaction, under this argument, would have the result of postponing the express effective date of the legislation and retaining the status quo.

The difficulties with this argument are obvious. It runs counter to the express language of Section 11(a) and, therefore, would focus considerable attention on your inaction. There is nothing in the legislative history to support this interpretation. Furthermore, there is no guaranty that it would be persuasive to the acting Comptroller General who would have to approve if Dr. Weaver and his colleagues were to be paid. And, finally, since the constituent agencies of the new Department deal with banks, investment houses, municipalities, private contractors, etc., the validity of all such action would have to be appraised by private counsel.

The express language of Section 11 (a), the references to the Act's "effective date" and the flexibility given by permitting the date to be accelerated and by permitting interim appointments under Section 11(b) for a further specific 60 day period all militate against an interpretation which would, in effect, leave the "effective date" completely in your discretion.

From a legal point of view a designation pursuant to Section 11(b) of the Act is clearly preferable. I think this could be phrased in such a way as to make it appear not only routine but really the decision of Congress rather than any affirmative action on your part. But it does not avoid the major problem that the head of the Department would be "Acting Secretary".

I am attaching a draft press release.

Respectfully,

Nicholas deB. Katzenbach  
The Attorney General

#### DRAFT PRESS RELEASE

The White House announced today that President Johnson has decided to defer the appointment of the Secretary and other officials of the new Department of Housing and Urban <sup>Development</sup> until January when the Senate will be in a position to consider promptly his nominations. Under the law enacted at the last session and approved by the President September

9, 1965 the President has the option of making recess appointments or permitting the affairs of the new Department to be carried by officials of the Housing and Home Finance Agency, who will continue to perform essentially the same duties as in the past. Formal confirmation of this decision will be published in the Federal Register on or before November 9, 1965, the effective date of the Act.

(Note: The formal designation could be in terms of the offices rather than persons; for example, "The Director of the Housing and Home Finance Agency will perform the duties and functions of the office of Secretary." It could be signed "By order of the President" by a member of the White House staff. Responses to questions of the press could be in terms of the law, rather than your action; for example, "Is the President designating Dr. Weaver, Acting Secretary?" Answer: That is what the law provides; or the Act provides that officials of HHFA will perform these functions.) UNQUOTE

The positions and personnel involved in the top jobs affected by the Act are:

Administrator, Robert Weaver, \$30,000  
Deputy Administrator and General Counsel, Milton Semer, \$28,500  
Federal Housing Commissioner, Phil Brownstein, \$27,000  
Public Housing Commissioner, Marie Maguire, \$27,000  
Urban Renewal Commissioner, Bill Slayton, \$27,000  
Community Facilities Commissioner, Vacant; \$27,000

Making them GS 18's rather than making them acting Presidential appointees would in every case result in a reduction in pay.

If, despite the foregoing memorandum, you are still of the opinion that you should not make any "Acting" designations, I believe the following actions should be taken:

1. There should be an opinion of the Attorney General to support the status quo (which, as indicated in Katzenbach's earlier memo, would have to overrule a prior opinion and which would probably be considered questionable).
2. We would have to get the Comptroller General to go along with such an opinion and pay these officials at their existing salaries (we would really have a tempest if you did nothing, the Attorney General supported you and the Comptroller General refused to pay Weaver and the other top officials).
3. We should get Mansfield, McCormack, Dirksen, et al and the Committee Chairmen, in effect, to concur in your action as consistent

with the intent of Congress.

Whether you decide to designate Weaver "Acting." or not do anything, the sooner that decision is made known to the public the better off we will be because as the effective date of the Act comes closer, tension and excitement builds in Washington. Further in either case, we should decide whether you wish to talk to Weaver personally or whether you want me or some other member of the Staff to talk to him and the other officials.

MEMORANDUM FOR THE PRESIDENT

Re: Appointment and designation of officers of the Department of Housing and Urban Development

The Department of Housing and Urban Development Act provides that the Act shall take effect 60 calendar days after the Act is approved by the President. Since you approved the Act on September 9, 1965, the effective date of the Act is November 8, 1965. On that date, under Section 5 of the Act, all of the functions, powers and duties of the Housing and Home Finance Agency, its officers and constituent agencies, will be transferred to and vested in the Secretary of the Department of Housing and Urban Development. Under Section 9 of the Act, all of the positions and agencies within HHFA, and HHFA itself, will on that date cease to exist. Accordingly, it is essential that some action be taken on or before November 8, 1965 that will have the effect of enabling someone to exercise

the authority conferred by the Act upon the Secretary of Housing and Urban Development.

Although there are some legal problems involved <sup>as to salaries,</sup> it seems to us entirely clear that you have the authority to make recess appointments to the seven positions (Secretary, Under Secretary, four Assistant Secretaries, and General Counsel) which are subject to Senate confirmation. The recess appointment power may be exercised at any time between November 8, 1965, and January 10, 1965, the date when the Senate will again be in session. Under a number of precedents, it would not be proper for you to make a recess appointment before the vacancy actually occurs on November 8, 1965.

In addition, the Act provides an alternative method of filling temporarily the new offices it creates. Section 11(b) authorizes you to "designate" any person who was an officer of the HHFA immediately prior to November 8, 1965, to fill on an acting basis any of the new offices until January 7, 1966, or until the office is filled with the advice and consent of the Senate, whichever occurs earlier.

You are, therefore, authorized to designate officials of HHFA to perform the duties of the new Department on an interim basis, and need not make a recess appointment in order to prevent a vacuum from existing when the new agency comes into existence on November 8, 1965.

Under the language of the Act, you could make a "designation" on November 3 or on any date thereafter. However, during any period of time between November 8 and the date of any such designation the affairs of all of the agencies being transferred to the new department would be at a standstill. So far as I can determine it would not be possible to pay the employees of those agencies since no action would have been taken to put them on the payroll of a new agency when their former agencies were abolished.

Any interim designation you might make pursuant to Section 11 of the Act would, in accordance with the express terms of the statute, expire as a matter of law on January 7, 1966. You would, therefore, be obliged to make recess appointments on or before that date in order to avoid a

hiatus until such time as the Senate should confirm your nominees to the seven new positions that require Senate confirmation.

We have examined very closely into what would happen if you failed to make recess appointments on or before January 7, 1966. Although we will continue to study this matter in an attempt to develop some alternative courses of action, it is now our strong view that a failure to make recess appointments would involve prohibitive risks. The precedents in this area are extremely unfavorable. On one occasion in 1880, in a somewhat related situation, it was held pursuant to an Attorney General's opinion that the Navy could not be paid until a new Secretary was formally confirmed by the Senate. I consider a number of the unfavorable precedents in this area to be of dubious validity. However, in view of their existence and the particular terms and history of the Department of Housing and Urban Development Act, I would strongly counsel against permitting a "hiatus" situation to arise.

In this connection, I would like to point out that the consequences of a failure to act on November 8, 1965, would be even worse than the consequences of a failure to act by January 7, 1966. To the extent that there are remote possibilities of finding a way of bridging a gap, they depend on someone's having been lawfully designated in the first instance to exercise the powers of the new Secretary so that he could staff the new Department, delegate authority, and provide the new Department with a structure and departmental regulations.

Respectfully,

Attorney General

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10/31/65

RECEIVED

9:35 P.M. SUNDAY 31 OCTOBER 1965

*LS*

EEA002  
PP WTE 10  
DE WTE 142

FROM: JOE CALIFANO  
TO : THE PRESIDENT  
CITE: WH50360

UNCLAS

THE WHITE HOUSE  
WASHINGTON

OCTOBER 31, 1965

TO: THE PRESIDENT

FROM: JOE CALIFANO

FOR YOUR INFORMATION, THERE FOLLOWS THE FULL TEXT OF THE  
ACT TO ESTABLISH A DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

PUBLIC LAW 89-174  
89TH CONGRESS, H. R. 6927  
SEPTEMBER 9, 1965

AN ACT

79 STAT. 667

TO ESTABLISH A DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND  
FOR OTHER PURPOSES.

DEPARTMENT OF  
HOUSING AND  
URBAN DEVELOPMENT  
ACT.

"BE IT ENACTED BY THE SENATE AND  
HOUSE OF REPRESENTATIVES OF THE  
UNITED STATES OF AMERICAN IN  
CONGRESS ASSEMBLED, THAT THIS ACT MAY  
BE CITED AS THE "DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT ACT".

DECLARATION OF PURPOSE

SEC. 2. THE CONGRESS HEREBY DECLARES  
THAT THE GENERAL WELFARE AND SECURITY OF  
THE NATION AND THE HEALTH AND LIVING  
STANDARDS OF OUR PEOPLE REQUIRE, AS A  
MATTER OF NATIONAL PURPOSE, SOUND DEVELOP-  
MENT OF THE NATION'S COMMUNITIES AND  
METROPOLITAN AREAS IN WHICH THE VAST  
MAJORITY OF ITS PEOPLE LIVE AND WORK.

TO CARRY OUT SUCH PURPOSE, AND IN RECOGNITION  
OF THE INCREASING IMPORTANCE OF HOUSING AND  
URBAN DEVELOPMENT IN OUR NATIONAL LIFE, THE  
CONGRESS FINDS THAT ESTABLISHMENT OF AN EXECUTIVE  
DEPARTMENT IS DESIRABLE TO ACHIEVE THE BEST  
ADMINISTRATION OF THE PRINCIPAL PROGRAMS  
OF THE FEDERAL GOVERNMENT WHICH PROVIDE ASSISTANCE  
FOR HOUSING AND FOR THE DEVELOPMENT OF THE  
NATION'S COMMUNITIES; TO ASSIST THE PRESI-  
DENT IN ACHIEVING MAXIMUM COORDINATION OF  
THE VARIOUS FEDERAL ACTIVITIES WHICH HAVE A  
MAJOR EFFECT UPON URBAN COMMUNITY, SUBURBAN,  
OR METROPOLITAN DEVELOPMENT; TO ENCOURAGE THE  
SOLUTION OF PROBLEMS OF HOUSING, URBAN DEVELOP-  
MENT, AND MASS TRANSPORTATION THROUGH STATE,  
COUNTY, TOWN, VILLAGE, OR OTHER LOCAL AND PRI-  
VATE ACTION, INCLUDING PROMOTION OF INTERSTATE,  
REGIONAL, AND METROPOLITAN COOPERATION; TO  
ENCOURAGE THE MAXIMUM CONTRIBUTIONS THAT MAY  
BE MADE BY VIGOROUS PRIVATE HOMEBUILDING AND  
MORTGAGE LENDING INDUSTRIES TO HOUSING, URBAN  
DEVELOPMENT, AND THE NATIONAL ECONOMY; AND TO  
PROVIDE FOR FULL AND APPROPRIATE CONSIDERATION.

RECEIVED  
DEC 9 1965  
GENERAL INVESTIGATION

ESTABLISHMENT OF DEPARTMENT

APPOINTMENT OF  
SECRETARY.

SEC. 3. (A) THERE IS HEREBY ESTABLISHED AT THE SEAT OF GOVERNMENT AN EXECUTIVE DEPARTMENT TO BE KNOWN AS THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HEREINAFTER REFERRED TO AS THE "DEPARTMENT"). THERE SHALL BE AT THE HEAD OF THE DEPARTMENT A SECRETARY OF HOUSING AND URBAN DEVELOPMENT (HEREINAFTER REFERRED TO AS THE "SECRETARY"), WHO SHALL BE APPOINTED BY THE PRESIDENT BY AND WITH THE ADVICE AND CONSENT OF THE SENATE. THE DEPARTMENT SHALL BE ADMINISTERED UNDER THE SUPERVISION AND DIRECTION OF THE SECRETARY. THE SECRETARY SHALL RECEIVE COMPENSATION AT THE RATE NOW OR HEREAFTER PRESCRIBED BY LAW FOR THE HEADS OF EXECUTIVE DEPARTMENTS.

DUTIES.

(B) THE SECRETARY SHALL, AMONG HIS RESPONSIBILITIES, ADVISE THE PRESIDENT WITH RESPECT TO FEDERAL PROGRAMS AND ACTIVITIES RELATING TO HOUSING AND URBAN DEVELOPMENT; DEVELOP AND RECOMMEND TO THE PRESIDENT POLICIES FOR FOSTERING THE ORDERLY GROWTH AND DEVELOPMENT OF THE NATION'S URBAN AREA'S; EXERCISE LEADERSHIP AT THE DIRECTION OF THE PRESIDENT IN COORDINATING FEDERAL ACTIVITIES AFFECTING HOUSING AND URBAN DEVELOPMENT; PROVIDE TECHNICAL ASSISTANCE AND INFORMATION, INCLUDING A CLEARINGHOUSE SERVICE TO AID STATE, COUNTY, TOWN, VILLAGE, OR OTHER LOCAL GOVERNMENTS IN DEVELOPING SOLUTIONS TO COMMUNITY AND METROPOLITAN DEVELOPMENT PROBLEMS; CONSULT AND COOPERATE WITH STATE GOVERNORS AND STATE AGENCIES, INCLUDING, WHEN APPROPRIATE, HOLDING INFORMAL PUBLIC HEARINGS, WITH RESPECT TO FEDERAL AND STATE PROGRAMS FOR ASSISTING COMMUNITIES IN DEVELOPING SOLUTIONS TO COMMUNITY AND METROPOLITAN DEVELOPMENT PROBLEMS AND FOR ENCOURAGING EFFECTIVE REGIONAL COOPERATION IN THE PLANNING AND CONDUCT OF COMMUNITY AND METROPOLITAN DEVELOPMENT PROGRAMS AND PROJECTS; ENCOURAGE COMPREHENSIVE PLANNING BY THE STATE AND LOCAL GOVERNMENTS WITH A VIEW TO COORDINATING FEDERAL, STATE, AND LOCAL URBAN AND COMMUNITY DEVELOPMENT ACTIVITIES; ENCOURAGE PRIVATE ENTERPRISE TO SERVE AS LARGE A PART OF THE NATION'S TOTAL HOUSING AND URBAN DEVELOPMENT NEEDS AS IT CAN AND DEVELOP THE FULLEST COOPERATION WITH PRIVATE ENTERPRISE IN ACHIEVING THE OBJECTIVES OF THE DEPARTMENT; AND CONDUCT CONTINUING COMPREHENSIVE STUDIES, AND MAKE AVAILABLE FINDINGS, WITH RESPECT TO THE PROBLEMS OF HOUSING AND URBAN DEVELOPMENT.

(C) NOTHING IN THIS ACT SHALL BE CONSTRUED TO DENY OR LIMIT THE BENEFITS OF ANY PROGRAM, FUNCTION, OR ACTIVITY ASSIGNED TO THE DEPARTMENT BY THIS OR ANY OTHER ACT TO ANY COMMUNITY ON THE BASIS OF ITS POPULATION OR CORPORATE STATUS, EXCEPT AS MAY BE EXPRESSLY PROVIDED BY LAW.

UNDER SECRETARY AND OTHER  
OFFICERS AND OFFICES

UNDER SECRETARY,  
ASSISTANT SECRETARIES.  
APPOINTMENT.

FEDERAL HOUSING  
COMMISSIONER.

ASSISTANT SECRETARY FOR ADMINISTRATION.

DIRECTOR OF  
URBAN PROGRAM  
COORDINATION.

SEC. 4. (A) THERE SHALL BE IN THE DEPARTMENT AN UNDER SECRETARY, FOUR ASSISTANT SECRETARIES, AND A GENERAL COUNSEL, WHO SHALL BE APPOINTED BY THE PRESIDENT BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, WHO SHALL RECEIVE COMPENSATION AT THE RATE NOW OR HEREAFTER PROVIDED BY LAW FOR UNDER SECRETARIES, ASSISTANT SECRETARIES, AND GENERAL COUNSELS, RESPECTIVELY, OF EXECUTIVE DEPARTMENTS, AND WHO SHALL PERFORM SUCH FUNCTIONS, POWERS, AND DUTIES AS THE SECRETARY SHALL PRESCRIBE FROM TIME TO TIME. THERE SHALL BE IN THE DEPARTMENT A FEDERAL HOUSING COMMISSIONER, WHO SHALL BE ONE OF THE ASSISTANT SECRETARIES, WHO SHALL HEAD A FEDERAL HOUSING ADMINISTRATION WITHIN THE DEPARTMENT, WHO SHALL HAVE SUCH DUTIES AND POWERS AS MAY BE PRESCRIBED BY THE SECRETARY, AND WHO SHALL ADMINISTER, UNDER THE SUPERVISION AND DIRECTION OF THE SECRETARY, DEPARTMENTAL PROGRAMS RELATING TO THE PRIVATE MORTGAGE MARKET.

(B) THERE SHALL BE IN THE DEPARTMENT AN ASSISTANT SECRETARY FOR ADMINISTRATION, WHO SHALL BE APPOINTED, WITH THE APPROVAL OF THE PRESIDENT, BY THE SECRETARY UNDER THE CLASSIFIED CIVIL SERVICE, WHO SHALL PERFORM SUCH FUNCTIONS, POWERS, AND DUTIES AS THE SECRETARY SHALL PRESCRIBE FROM TIME TO TIME, AND WHOSE ANNUAL RATE OF COMPENSATION SHALL BE THE SAME AS THAT NOW OR HEREAFTER PROVIDED BY OR PURSUANT TO LAW FOR ASSISTANT SECRETARIES FOR ADMINISTRATION OF EXECUTIVE DEPARTMENTS.

(C) THERE SHALL BE IN THE DEPARTMENT A DIRECTOR OF URBAN PROGRAM COORDINATION, WHO SHALL BE DESIGNATED BY THE SECRETARY. HE SHALL ASSIST THE SECRETARY IN CARRYING OUT HIS RESPONSIBILITIES TO THE PRESIDENT WITH RESPECT TO ACHIEVING MAXIMUM COORDINATION OF THE PROGRAMS OF THE VARIOUS DEPARTMENTS AND AGENCIES OF THE GOVERNMENT WHICH HAVE A MAJOR IMPACT ON COMMUNITY DEVELOPMENT. IN PROVIDING SUCH ASSISTANCE, THE DIRECTOR SHALL MAKE SUCH STUDIES OF URBAN AND COMMUNITY PROBLEMS AS THE SECRETARY SHALL REQUEST, AND SHALL DEVELOP RECOMMENDATIONS RELATING TO THE ADMINISTRATION OF FEDERAL PROGRAMS AFFECTING SUCH PROBLEMS, PARTICULARLY WITH RESPECT TO ACHIEVING EFFECTIVE COOPERATION AMONG THE FEDERAL, STATE, AND LOCAL AGENCIES CONCERNED.7S SUBJECT TO THE DIRECTION OF THE SECRETARY, THE DIRECTOR SHALL IN CARRYING OUT HIS RESPONSIBILITIES, (1) ESTABLISH AND MAINTAIN CLOSE LIAISON WITH THE FEDERAL DEPARTMENTS AND AGENCIES CONCERNED, AND (2) CONSULT WITH STATE, LOCAL, AND REGIONAL OFFICIALS, AND CONSIDER THEIR RECOMMENDATIONS WITH RESPECT TO SUCH PROGRAMS.

TRANSFERS TO DEPARTMENT

SEC. 5. (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION, THERE ARE HEREBY TRANSFERRED TO AND VESTED IN THE SECRETARY ALL OF THE FUNCTIONS, POWERS, AND DUTIES OF THE HOUSING AND HOME FINANCE AGENCY, OF THE FEDERAL HOUSING ADMINISTRATION AND THE PUBLIC HOUSING ADMINISTRATION IN THAT AGENCY, AND OF THE HEADS AND OTHER OFFICERS AND OFFICES OF SAID AGENCIES.

(B) THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, TOGETHER WITH ITS FUNCTIONS, POWERS, AND DUTIES, IS HEREBY TRANSFERRED TO THE DEPARTMENT. THE NEXT TO THE LAST SENTENCE OF SECTION 308 OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT AND THE ITEM NUMBERED (94) OF SECTION 303(E) OF THE FEDERAL EXECUTIVE SALARY ACT OF 1964 ARE HEREBY REPEALED, AND THE POSITION OF THE PRESIDENT OF SAID ASSOCIATION IS HEREBY ALLOCATED AMONG THE POSITIONS REFERRED TO IN SECTION 7(C) HEREOF.

68 STAT. 620.  
12 USC 1723.  
78 STAT. 421.  
5 USC 2211.

REPORT TO  
CONGRESS.

(C) THE PRESIDENT SHALL UNDERTAKE STUDIES OF THE ORGANIZATION OF HOUSING AND URBAN DEVELOPMENT FUNCTIONS AND PROGRAMS WITHIN THE FEDERAL GOVERN-

REPEALS.  
68 STAT. 620.  
12 USC 1723.  
78 STAT. 421.  
5 USC 2211.

THE LAST SENTENCE OF SECTION 308 OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT AND THE ITEM NUMBERED (94) OF SECTION 303(E) OF THE FEDERAL EXECUTIVE SALARY ACT OF 1964 ARE HEREBY REPEALED, AND THE POSITION OF THE PRESIDENT OF SAID ASSOCIATION IS HEREBY ALLOCATED AMONG THE POSITIONS REFERRED TO IN SECTION 7(C) HEREOF.

REPORT TO  
CONGRESS.

(C) THE PRESIDENT SHALL UNDERTAKE STUDIES OF THE ORGANIZATION OF HOUSING AND URBAN DEVELOPMENT FUNCTIONS AND PROGRAMS WITHIN THE FEDERAL GOVERNMENT, AND HE SHALL PROVIDE THE CONGRESS WITH THE FINDINGS AND CONCLUSIONS OF SUCH STUDIES, TOGETHER WITH HIS RECOMMENDATIONS REGARDING THE TRANSFER OF SUCH FUNCTIONS AND PROGRAMS TO OR FROM THE DEPARTMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, NONE OF THE FUNCTIONS OF THE SECRETARY OF THE INTERIOR AUTHORIZED UNDER THE LAND AND WATER CONSERVATION FUND ACT OF 1965 (78 STAT. 897) OR OTHER FUNCTIONS CARRIED OUT BY THE BUREAU OF OUTDOOR RECREATION SHALL BE TRANSFERRED FROM THE DEPARTMENT OF THE INTERIOR OR IN ANY WAY BE LIMITED GEOGRAPHICALLY UNLESS SPECIFICALLY PROVIDED FOR BY REORGANIZATION PLAN PURSUANT TO PROVISIONS OF THE REORGANIZATION ACT OF 1949 (63 STAT. 203), AS AMENDED, OR BY STATUTE.

16 USC 4601-4

NOTE

5 USC 133Z NOTE.

62 STAT. 677.

SEC. 6 (A) SECTION 19(D) (1) OF TITLE 3 OF THE UNITED STATES CODE IS HEREBY AMENDED BY STRIKING OUT THE PERIOD AT THE END THEREOF AND INSERTING A COMMA AND THE FOLLOWING: "SECRETARY OF HEALTH, EDUCATION, AND WELFARE, SECRETARY OF HOUSING AND URBAN DEVELOPMENT."

(B) SECTION 158 OF THE REVISED STATUTES (5 U.S.C. 1) IS AMENDED BY ADDING AT THE END THEREOF: "ELEVENTH. THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT."

(C) THE AMENDMENT MADE BY SUBSECTION (B) OF THIS SECTION SHALL NOT BE CONSTRUED TO MAKE APPLICABLE TO THE DEPARTMENT ANY PROVISION OF LAW INCONSISTENT WITH THIS ACT.

ADMINISTRATIVE PROVISIONS

TRANSFER OF PERSONNEL, ASSETS, ETC.

SEC. 7. (A) THE PERSONNEL EMPLOYED IN CONNECTION WITH, AND THE ASSETS, LIABILITIES, CONTRACTS, PROPERTY, RECORDS, AND UNEXPENDED BALANCES OF APPROPRIATIONS, AUTHORIZATIONS, ALLOCATIONS, OR OTHER FUNDS HELD, USED, ARISING FROM, OR AVAILABLE OR TO BE MADE AVAILABLE IN CONNECTION WITH, THE FUNCTIONS, POWERS, AND DUTIES TRANSFERRED BY SECTION 5 OF THIS ACT ARE HEREBY TRANSFERRED WITH SUCH FUNCTIONS, POWERS, AND DUTIES, RESPECTIVELY.

RESTRICTION.

(B) NO TRANSFER OF FUNCTIONS, POWERS, AND DUTIES SHALL AT ANY TIME BE MADE WITHIN THE DEPARTMENT IN CONNECTION WITH THE SECONDARY MARKET OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION UNLESS THE SECRETARY FINDS THAT THE RIGHTS AND INTERESTS OF OWNERS OF OUTSTANDING COMMON STOCK ISSUED UNDER THE FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT WILL NOT BE ADVERSELY AFFECTED THEREBY.

68 STAT. 622.  
12 USC 1716 NOTE.

COMPENSATION OF PERSONNEL.

(C) THE SECRETARY IS AUTHORIZED, SUBJECT TO THE CIVIL SERVICE AND CLASSIFICATION LAWS, TO SELECT, APPOINT, EMPLOY, AND FIX THE COMPENSATION OF SUCH OFFICERS AND EMPLOYEES, INCLUDING ATTORNEYS, AS SHALL BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ACT AND TO PRESCRIBE THEIR AUTHORITY AND DUTIES: /PROVIDED/, THAT ANY OTHER PROVISION OF LAW TO THE CONTRARY NOTWITHSTANDING, THE SECRETARY MAY FIX THE COMPENSATION FOR NOT MORE THAN SIX POSITIONS IN THE DEPARTMENT AT THE ANNUAL RATE APPLICABLE TO POSITIONS IN LEVEL V OF THE FEDERAL EXECUTIVE SALARY SCHEDULE PROVIDED BY THE FEDERAL EXECUTIVE SALARY ACT OF 1964.

78 STAT. 419.  
5 USC 2211.

DELEGATION OF AUTHORITY.

(D) THE SECRETARY MAY DELEGATE ANY OF HIS FUNCTIONS, POWERS, AND DUTIES TO SUCH OFFICERS AND EMPLOYEES OF THE DEPARTMENT AS HE MAY DESIGNATE, MAY AUTHORIZE SUCH SUCCESSIVE REDELEGATIONS OF SUCH FUNCTIONS, POWERS, AND DUTIES AS HE MAY DEEM DESIRABLE, AND MAY MAKE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT HIS FUNCTIONS, POWERS, AND DUTIES. THE SECOND PROVISOR OF SECTION 101(C) OF THE HOUSING ACT OF 1949 IS HEREBY REPEALED.

REPEAL  
68 STAT. 623.  
42 USC 1451.

60 STAT. 810.  
5 USC 55A.  
WORKING CAPITAL FUND.

(E) THE SECRETARY MAY OBTAIN SERVICES AS AUTHORIZED BY SECTION 15 OF THE ACT OF AUGUST 2, 1946, AT RATES NOT TO EXCEED \$100 PER DIEM FOR INDIVIDUALS.

(F) THE SECRETARY IS AUTHORIZED TO ESTABLISH A WORKING CAPITAL FUND, TO BE AVAILABLE WITHOUT FISCAL YEAR LIMITATION, FOR EXPENSES NECESSARY FOR THE MAINTENANCE AND OPERATION OF SUCH COMMON ADMINISTRATIVE SERVICES AS HE SHALL FIND TO BE DESIRABLE IN THE INTEREST OF ECONOMY AND EFFICIENCY IN THE DEPARTMENT, INCLUDING SUCH SERVICES AS A CENTRAL SUPPLY SERVICE FOR STATIONERY AND OTHER SUPPLIES AND EQUIPMENT FOR WHICH ADEQUATE STOCKS MAY BE MAINTAINED TO MEET IN WHOLE OR IN PART THE REQUIREMENTS OF THE DEPARTMENT AND ITS AGENCIES; CENTRAL MESSENGER, MAIL, TELEPHONE, AND OTHER COMMUNICATIONS SERVICES; OFFICE SPACE; CENTRAL SERVICES FOR DOCUMENT REPRODUCTION AND FOR GRAPHICS AND VISUAL AIDS; AND A CENTRAL LIBRARY SERVICE. IN ADDITION TO AMOUNTS

WORKING CAPITAL FUND, TO BE AVAILABLE WITHOUT FISCAL YEAR LIMITATION, FOR EXPENSES NECESSARY FOR THE MAINTENANCE AND OPERATION OF SUCH COMMON ADMINISTRATIVE SERVICES AS HE SHALL FIND TO BE DESIRABLE IN THE INTEREST OF ECONOMY AND EFFICIENCY IN THE DEPARTMENT, INCLUDING SUCH SERVICES AS A CENTRAL SUPPLY SERVICE FOR STATIONERY AND OTHER SUPPLIES AND EQUIPMENT FOR WHICH ADEQUATE STOCKS MAY BE MAINTAINED TO MEET IN WHOLE OR IN PART THE REQUIREMENTS OF THE DEPARTMENT AND ITS AGENCIES; CENTRAL MESSENGER, MAIL, TELEPHONE, AND OTHER COMMUNICATIONS SERVICES; OFFICE SPACE; CENTRAL SERVICES FOR DOCUMENT REPRODUCTION AND FOR GRAPHICS AND VISUAL AIDS; AND A CENTRAL LIBRARY SERVICE. IN ADDITION TO AMOUNTS APPROPRIATED TO PROVIDE CAPITAL FOR SAID FUND, WHICH APPROPRIATIONS ARE HEREBY AUTHORIZED, THE FUND SHALL BE CAPITALIZED BY TRANSFER TO IT OF SUCH STOCKS OF SUPPLIES AND EQUIPMENT ON HAND OR ON ORDER AS THE SECRETARY SHALL DIRECT. SUCH FUND SHALL BE REIMBURSED FROM AVAILABLE FUNDS OF AGENCIES AND OFFICES IN THE DEPARTMENT FOR WHICH SERVICES ARE PERFORMED AT RATES WHICH WILL RETURN IN FULL ALL EXPENSES OF OPERATION, INCLUDING RESERVES FOR ACCRUED ANNUAL LEAVE AND FOR DEPRECIATION OF EQUIPMENT.

SEAL.

(G) THE SECRETARY SHALL CAUSE A SEAL OF OFFICE TO BE MADE FOR THE DEPARTMENT OF SUCH DEVICE AS HE SHALL APPROVE, AND JUDICIAL NOTICE SHALL BE TAKEN OF SUCH SEAL.

#### ANNUAL REPORT

SEC. 8. THE SECRETARY SHALL, AS SOON AS PRACTICABLE AFTER THE END OF EACH CALENDAR YEAR, MAKE A REPORT TO THE PRESIDENT FOR SUBMISSION TO THE CONGRESS ON THE ACTIVITIES OF THE DEPARTMENT DURING THE PRECEDING CALENDAR YEAR.

#### SAVINGS PROVISIONS

SEC. 9. (A) NO CAUSE OF ACTION BY OR AGAINST ANY AGENCY WHOSE FUNCTIONS ARE TRANSFERRED BY THIS ACT, OR BY OR AGAINST ANY OFFICER OF ANY AGENCY IN HIS OFFICIAL CAPACITY, SHALL ABATE BY REASON OF THIS ENACTMENT. SUCH CAUSES OF ACTION MAY BE ASSERTED BY OR AGAINST THE UNITED STATES OR SUCH OFFICIAL OF THE DEPARTMENT AS MAY BE APPROPRIATE.

(B) NO SUIT, ACTION, OF OTHER PROCEEDING COMMENCED BY OR AGAINST ANY AGENCY WHOSE FUNCTIONS ARE TRANSFERRED BY THIS ACT, OR BY OR AGAINST ANY OFFICER OF ANY SUCH AGENCY IN HIS OFFICIAL CAPACITY, SHALL ABATE BY REASON OF THE ENACTMENT OF THIS ACT. A COURT MAY AT ANY TIME DURING THE PENDENCY OF THE LITIGATION, ON ITS OWN MOTION OR THAT OF ANY PARTY, ORDER THAT THE SAME MAY BE MAINTAINED BY OR AGAINST THE UNITED STATES OR SUCH OFFICIAL OF THE DEPARTMENT AS MAY BE APPROPRIATE.

(C) EXCEPT AS MAY BE OTHERWISE EXPRESSLY PROVIDED IN THIS ACT, ALL POWERS AND AUTHORITIES CONFERRED BY THIS ACT SHALL BE CUMULATIVE AND ADDITIONAL TO AND NOT IN DEROGATION OF ANY POWERS AND AUTHORITIES OTHERWISE EXISTING. ALL RULES, REGULATIONS, ORDERS, AUTHORIZATIONS, DELEGATIONS, OR OTHER ACTIONS DULY ISSUED, MADE, OR TAKEN BY OR PURSUANT TO APPLICABLE LAW, PRIOR TO THE EFFECTIVE DATE OF THIS ACT, BY ANY AGENCY, OFFICER, OR OFFICE PERTAINING TO ANY FUNCTIONS, POWERS, AND DUTIES TRANSFERRED BY THIS ACT SHALL CONTINUE IN FULL FORCE AND EFFECT AFTER THE EFFECTIVE DATE OF THIS ACT UNTIL MODIFIED OR RESCINDED BY THE SECRETARY OR SUCH OTHER OFFICER OR OFFICE OF THE DEPARTMENT AS, IN ACCORDANCE WITH APPLICABLE LAW, MAY BE APPROPRIATE. WITH RESPECT TO ANY FUNCTION, POWER, OR DUTY TRANSFERRED BY OR UNDER THIS ACT AND EXERCISED HEREAFTER, REFERENCE IN ANOTHER FEDERAL LAW TO THE HOUSING AND HOME FINANCE AGENCY OR TO ANY OFFICER, OFFICE, OR AGENCY THEREIN, EXCEPT THE FEDERAL NATIONAL MORTGAGE ASSOCIATION AND ITS OFFICERS, SHALL BE DEEMED TO MEAN THE SECRETARY. THE POSITIONS AND AGENCIES HERETOFORE ESTABLISHED BY LAW IN CONNECTION WITH THE FUNCTIONS, POWERS, AND DUTIES TRANSFERRED UNDER SECTION 5(A) OF THIS ACT SHALL LAPSE.

#### SEPARABILITY

SEC. 10. NOTWITHSTANDING ANY OTHER EVIDENCE OF THE INTENT OF CONGRESS, IT IS HEREBY DECLARED TO BE THE INTENT OF CONGRESS THAT IF ANY PROVISION OF THIS ACT, OR THE APPLICATION THEREOF TO ANY PERSONS OR CIRCUMSTANCES, SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, SUCH JUDGEMENT SHALL NOT AFFECT, IMPAIR, OR INVALIDATE THE REMAINDER OF THIS ACT OR ITS APPLICATION TO OTHER PERSONS AND CIRCUMSTANCES, BUT SHALL BE CONFINED IN ITS OPERATION TO THE PROVISION OF THIS ACT, OR THE APPLICATION THEREOF TO THE PERSONS AND CIRCUMSTANCE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGEMENT SHALL HAVE BEEN RENDERED.

EFFECTIVE DATE AND  
INTERIM APPOINTMENTS

SEC. 11. (A) THE PROVISIONS OF THIS ACT SHALL TAKE EFFECT UPON THE EXPIRATION OF THE FIRST PERIOD OF SIXTY CALENDAR DAYS FOLLOWING THE DATE ON WHICH THIS ACT IS APPROVED BY THE PRESIDENT, OR ON SUCH EARLIER DATE AS THE PRESIDENT SHALL SPECIFY BY EXECUTIVE ORDER PUBLISHED IN THE FEDERAL REGISTER, EXCEPT THAT ANY OF THE OFFICERS PROVIDED FOR IN SECTIONS 3(A), 4(A), AND 4(B) OF THIS ACT MAY BE NOMINATED AND APPOINTED, AS PROVIDED IN SUCH SECTIONS, AT ANY TIME AFTER THE DATE THIS ACT IS APPROVED BY THE PRESIDENT.

(B) IN THE EVENT THAT ONE OR MORE OFFICERS REQUIRED BY THIS ACT TO BE APPOINTED, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL NOT ENTERED UPON OFFICE ON THE EFFECTIVE DATE OF THIS ACT, THE PRESIDENT MAY DESIGNATE ANY PERSON WHO WAS AN OFFICER OF THE HOUSING AND HOME FINANCE AGENCY IMMEDIATELY PRIOR TO SAID EFFECTIVE DATE TO ACT IN SUCH OFFICE UNTIL THE OFFICE IS FILLED AS PROVIDED IN THIS ACT OR UNTIL THE EXPIRATION OF THE FIRST PERIOD OF SIXTY DAYS FOLLOWING SAID EFFECTIVE DATE, WHICHEVER SHALL FIRST OCCUR. WHILE SO ACTING SUCH PERSONS SHALL RECEIVE COMPENSATION AT THE RATES PROVIDED BY THIS ACT FOR THE RESPECTIVE OFFICES IN WHICH THEY ACT."

APPROVED SEPTEMBER 9, 1965.

LEGISLATIVE HISTORY

HOUSE REPORTS: NO. 337 (COMM. ON GOVERNMENT OPERATIONS) AND NO. 884 (COMM. OF CONFERENCE).

SENATE REPORT NO. 536 ACCOMPANYING S. 1599 (COMM. ON GOVERNMENT OPERATIONS).

CONGRESSIONAL RECORD, VOL. 111 (1965):

JUNE 15: CONSIDERED IN HOUSE.

JUNE 16: CONSIDERED AND PASSED HOUSE.

AUG. 10: CONSIDERED IN SENATE.

AUG. 11: CONSIDERED AND PASSED SENATE, AMENDED, IN LIEU OF S. 1599.

AUG. 30: SENATE AGREED TO CONFERENCE REPORT.

AUG. 31: HOUSE AGREED TO CONFERENCE REPORT.

CG: 312142Z OCTOBER 1965

October 31, 1965

TO: THE PRESIDENT

FROM: Joe Califano

For your information, there follows the full text of the  
Act to Establish a Department of Housing and Urban Development:



Public Law 89-174  
89th Congress, H. R. 6927  
September 9, 1965

*Carlan*

**An Act**

79 STAT. 667

To establish a Department of Housing and Urban Development, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Housing and Urban Development Act".*

Department of  
Housing and  
Urban Develop-  
ment Act.

DECLARATION OF PURPOSE

Sec. 2. The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of our people require, as a matter of national purpose, sound development of the Nation's communities and metropolitan areas in which the vast majority of its people live and work.

To carry out such purpose, and in recognition of the increasing importance of housing and urban development in our national life, the Congress finds that establishment of an executive department is desirable to achieve the best administration of the principal programs of the Federal Government which provide assistance for housing and for the development of the Nation's communities; to assist the President in achieving maximum coordination of the various Federal activities which have a major effect upon urban community, suburban, or metropolitan development; to encourage the solution of problems of housing, urban development, and mass transportation through State, county, town, village, or other local and private action, including promotion of interstate, regional, and metropolitan cooperation; to encourage the maximum contributions that may be made by vigorous private homebuilding and mortgage lending industries to housing, urban development, and the national economy; and to provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation's communities and of the people who live and work in them.

ESTABLISHMENT OF DEPARTMENT

Sec. 3. (a) There is hereby established at the seat of government an executive department to be known as the Department of Housing and Urban Development (hereinafter referred to as the "Department"). There shall be at the head of the Department a Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary. The Secretary shall receive compensation at the rate now or hereafter prescribed by law for the heads of executive departments.

Appointment of  
Secretary.

(b) The Secretary shall, among his responsibilities, advise the President with respect to Federal programs and activities relating to housing and urban development; develop and recommend to the President policies for fostering the orderly growth and development of the Nation's urban areas; exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development; provide technical assistance and information, including a clearinghouse service to aid State, county, town, village, or other local governments in developing solutions to community and metropolitan development problems; consult and cooperate with State Governors and State agencies, including, when appropriate, holding informal public hearings, with respect to Federal and State programs

Duties.

for assisting communities in developing solutions to community and metropolitan development problems and for encouraging effective regional cooperation in the planning and conduct of community and metropolitan development programs and projects; encourage comprehensive planning by the State and local governments with a view to coordinating Federal, State, and local urban and community development activities; encourage private enterprise to serve as large a part of the Nation's total housing and urban development needs as it can and develop the fullest cooperation with private enterprise in achieving the objectives of the Department; and conduct continuing comprehensive studies, and make available findings, with respect to the problems of housing and urban development.

(c) Nothing in this Act shall be construed to deny or limit the benefits of any program, function, or activity assigned to the Department by this or any other Act to any community on the basis of its population or corporate status, except as may be expressly provided by law.

UNDER SECRETARY AND OTHER OFFICERS AND OFFICES

SEC. 4. (a) There shall be in the Department an Under Secretary, four Assistant Secretaries, and a General Counsel, who shall be appointed by the President by and with the advice and consent of the Senate, who shall receive compensation at the rate now or hereafter provided by law for under secretaries, assistant secretaries, and general counsels, respectively, of executive departments, and who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time. There shall be in the Department a Federal Housing Commissioner, who shall be one of the Assistant Secretaries, who shall head a Federal Housing Administration within the Department, who shall have such duties and powers as may be prescribed by the Secretary, and who shall administer, under the supervision and direction of the Secretary, departmental programs relating to the private mortgage market.

(b) There shall be in the Department an Assistant Secretary for Administration, who shall be appointed, with the approval of the President, by the Secretary under the classified civil service, who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time, and whose annual rate of compensation shall be the same as that now or hereafter provided by or pursuant to law for assistant secretaries for administration of executive departments.

(c) There shall be in the Department a Director of Urban Program Coordination, who shall be designated by the Secretary. He shall assist the Secretary in carrying out his responsibilities to the President with respect to achieving maximum coordination of the programs of the various departments and agencies of the Government which have a major impact on community development. In providing such assistance, the Director shall make such studies of urban and community problems as the Secretary shall request, and shall develop recommendations relating to the administration of Federal programs affecting such problems, particularly with respect to achieving effective cooperation among the Federal, State, and local agencies concerned. Subject to the direction of the Secretary, the Director shall, in carrying out his responsibilities, (1) establish and maintain close liaison with the Federal departments and agencies concerned, and (2) consult

Under Secretary, Assistant Secretaries, Appointment.

Federal Housing Commissioner.

Assistant Secretary for Administration.

Director of Urban Program Coordination.

TRANSFERS TO DEPARTMENT

SEC. 5. (a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to and vested in the Secretary all of the functions, powers, and duties of the Housing and Home Finance Agency, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of said agencies.

(b) The Federal National Mortgage Association, together with its functions, powers, and duties, is hereby transferred to the Department. The next to the last sentence of section 308 of the Federal National Mortgage Association Charter Act and the item numbered (94) of section 303(e) of the Federal Executive Salary Act of 1964 are hereby repealed, and the position of the President of said Association is hereby allocated among the positions referred to in section 7(c) hereof.

(c) The President shall undertake studies of the organization of housing and urban development functions and programs within the Federal Government, and he shall provide the Congress with the findings and conclusions of such studies, together with his recommendations regarding the transfer of such functions and programs to or from the Department. Notwithstanding any other provision of this Act, none of the functions of the Secretary of the Interior authorized under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) or other functions carried out by the Bureau of Outdoor Recreation shall be transferred from the Department of the Interior or in any way be limited geographically unless specifically provided for by reorganization plan pursuant to provisions of the Reorganization Act of 1949 (63 Stat. 203), as amended, or by statute.

Repeals. 68 Stat. 620, 12 USC 1723, 78 Stat. 421, 5 USC 2211.

Report to Congress.

16 USC 4601-4 note.

5 USC 133z note.

CONFORMING AMENDMENTS

SEC. 6. (a) Section 19(d)(1) of title 3 of the United States Code is hereby amended by striking out the period at the end thereof and inserting a comma and the following: "Secretary of Health, Education, and Welfare, Secretary of Housing and Urban Development."

62 Stat. 677.

(b) Section 158 of the Revised Statutes (5 U.S.C. 1) is amended by adding at the end thereof:

"Eleventh. The Department of Housing and Urban Development."

(c) The amendment made by subsection (b) of this section shall not be construed to make applicable to the Department any provision of law inconsistent with this Act.

ADMINISTRATIVE PROVISIONS

SEC. 7. (a) The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, or other funds held, used, arising from, or available or to be made available in connection with, the functions, powers, and duties transferred by section 5 of this Act are hereby transferred with such functions, powers, and duties, respectively.

Transfer of personnel, assets, etc.

(b) No transfer of functions, powers, and duties shall at any time be made within the Department in connection with the secondary market operations of the Federal National Mortgage Association under the Federal National Mortgage Act of 1938, so long as the rights and interests of owners of such mortgages shall not be adversely affected thereby.

Restriction.

68 Stat. 622, 12 USC 1716 note.

Compensation of  
personnel.

(c) The Secretary is authorized, subject to the civil service and classification laws, to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, as shall be necessary to carry out the provisions of this Act and to prescribe their authority and duties: *Provided*, That any other provision of law to the contrary notwithstanding, the Secretary may fix the compensation for not more than six positions in the Department at the annual rate applicable to positions in level V of the Federal Executive Salary Schedule provided by the Federal Executive Salary Act of 1964.

78 Stat. 419.  
5 USC 2211.  
Delegation of  
authority.

(d) The Secretary may delegate any of his functions, powers, and duties to such officers and employees of the Department as he may designate, may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties. The second proviso of section 101(c) of the Housing Act of 1949 is hereby repealed.

Repeal.  
68 Stat. 623.  
42 USC 1451.  
60 Stat. 810.  
5 USC 55a.

(e) The Secretary may obtain services as authorized by section 15 of the Act of August 2, 1946, at rates not to exceed \$100 per diem for individuals.

Working capital  
fund.

(f) The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interest of economy and efficiency in the Department, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space; central services for document reproduction and for graphics and visual aids; and a central library service. In addition to amounts appropriated to provide capital for said fund, which appropriations are hereby authorized, the fund shall be capitalized by transfer to it of such stocks of supplies and equipment on hand or on order as the Secretary shall direct. Such fund shall be reimbursed from available funds of agencies and offices in the Department for which services are performed at rates which will return in full all expenses of operation, including reserves for accrued annual leave and for depreciation of equipment.

Seal.

(g) The Secretary shall cause a seal of office to be made for the Department of such device as he shall approve, and judicial notice shall be taken of such seal.

#### ANNUAL REPORT

SEC. 8. The Secretary shall, as soon as practicable after the end of each calendar year, make a report to the President for submission to the Congress on the activities of the Department during the preceding calendar year.

#### SAVING PROVISIONS

SEC. 9. (a) No cause of action by or against any agency whose functions are transferred by this Act, or by or against any officer of any agency in his official capacity, shall abate by reason of this enactment. Such causes of action may be asserted by or against the United States

(b) No suit, action, or other proceeding commenced by or against any agency whose functions are transferred by this Act, or by or against any officer of any such agency in his official capacity, shall abate by reason of the enactment of this Act. A court may at any time during the pendency of the litigation, on its own motion or that of any party, order that the same may be maintained by or against the United States or such official of the Department as may be appropriate.

(c) Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. All rules, regulations, orders, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to applicable law, prior to the effective date of this Act, by any agency, officer, or office pertaining to any functions, powers, and duties transferred by this Act shall continue in full force and effect after the effective date of this Act until modified or rescinded by the Secretary or such other officer or office of the Department as, in accordance with applicable law, may be appropriate. With respect to any function, power, or duty transferred by or under this Act and exercised hereafter, reference in another Federal law to the Housing and Home Finance Agency or to any officer, office, or agency therein, except the Federal National Mortgage Association and its officers, shall be deemed to mean the Secretary. The positions and agencies heretofore established by law in connection with the functions, powers, and duties transferred under section 3(a) of this Act shall lapse.

#### SEPARABILITY

SEC. 10. Notwithstanding any other evidence of the intent of Congress, it is hereby declared to be the intent of Congress that if any provision of this Act, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provision of this Act, or the application thereof to the persons and circumstances, directly involved in the controversy in which such judgment shall have been rendered.

#### EFFECTIVE DATE AND INTERIM APPOINTMENTS

SEC. 11. (a) The provisions of this Act shall take effect upon the expiration of the first period of sixty calendar days following the date on which this Act is approved by the President, or on such earlier date as the President shall specify by Executive order published in the Federal Register, except that any of the officers provided for in sections 3(a), 4(a), and 4(b) of this Act may be nominated and appointed, as provided in such sections, at any time after the date this Act is approved by the President.

(b) In the event that one or more officers required by this Act to be appointed, by and with the advice and consent of the Senate, shall not have entered upon office on the effective date of this Act, the President may designate by proclamation, who was in the service of the Housing and Home Finance Agency on the effective date of this Act, to act in such

office until the office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

Approved September 9, 1965.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 337 (Comm. on Government Operations) and No. 884 (Comm. of Conference).

SENATE REPORT No. 536 accompanying S. 1599 (Comm. on Government Operations).

CONGRESSIONAL RECORD, Vol. 111 (1965):

June 15: Considered in House.

June 16: Considered and passed House.

Aug. 10: Considered in Senate.

Aug. 11: Considered and passed Senate, amended, in lieu of S. 1599.

Aug. 30: Senate agreed to conference report.

Aug. 31: House agreed to conference report.

RECEIVED

7:06 P.M. SUNDAY 31 OCTOBER 1965

EX-104748  
FG 170  
FG 135 (1)

EEA001  
PP WIE10  
DE WIE 143

FROM: JOE CALIFANO  
TO : THE PRESIDENT  
CITE: WH50359

UNLCAS

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON  
OCTOBER 31, 1965

FOR THE PRESIDENT  
FROM JOE CALIFANO

THERE FOLLOWS THE TEXT OF A MEMORANDUM FROM THE ATTORNEY GENERAL DATED OCTOBER 31, 1965, ON THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

QUOTE. UNDER THE PROVISIONS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT, THE NEW DEPARTMENT COMES INTO EXISTENCE ON NOVEMBER 9 UNLESS YOU CHOOSE TO ACCELERATE THAT DATE BY EXECUTIVE ORDER. THERE IS NO PROVISION WHICH GIVES YOU POWER TO POSTPONE THAT DATE.

THE ACT DOES PROVIDE THAT YOU MAY NAME THE NEW SECRETARY AT ANY TIME AFTER SIGNATURE BEFORE NOVEMBER 9 OR FOR 60 DAYS AFTER NOVEMBER 9. IN ANTICIPATION THAT YOU MIGHT NOT WISH TO ACT ON OR BEFORE THE NEW DEPARTMENT CAME INTO BEING ON NOVEMBER 9, CONGRESS FURTHER PROVIDED THAT YOU "MAY" DESIGNATE ANY OFFICER OF HHFA "TO ACT IN SUCH OFFICE (I.E., SECRETARY) UNTIL SUCH OFFICE IS FILLED AS PROVIDED IN THIS ACT OR UNTIL THE EXPIRATION OF THE FIRST PERIOD OF SIXTY DAYS FOLLOWING SAID EFFECTIVE DATE, WHICHEVER SHALL FIRST OCCUR."

WHILE CONGRESS PROVIDED THESE ALTERNATIVES I THINK IT DID NOT CONTEMPLATE OR PROVIDE FOR THE ALTERNATIVE THAT YOU MIGHT WISH TO TAKE NEITHER COURSE OF ACTION. THERE IS, THEREFORE, NO PROVISION TO COVER THIS CONTINGENCY AND NO THOUGHT SEEMS TO HAVE BEEN GIVEN TO THE CONSEQUENCES OF NO PRESIDENTIAL ACTION ON OR BEFORE NOVEMBER 9.

(1) ALL OF THE FUNCTIONS, POWERS, AND DUTIES OF THE HHFA, OF THE FEDERAL HOUSING ADMINISTRATION AND THE PUBLIC HOUSING ADMINISTRATION IN THAT AGENCY, AND OF THE HEADS AND OTHER OFFICERS AND OFFICES OF THOSE AGENCIES, WILL BE TRANSFERRED TO THE SECRETARY OF THE NEW DEPARTMENT BY OPERATION OF LAW. IF NO ONE IS DESIGNATED BY YOU TO ACT AS SECRETARY, THERE IS A SERIOUS QUESTION AS TO WHETHER ALL THESE FUNCTIONS, POWERS AND DUTIES CAN BE EXERCISED BY ANYONE; THAT IS, THEY MAY LAPSE.

(2) ALL OF THE OLD AGENCIES, AND THE JOBS NOW BEING FILLED BY DR. WEAVER AND HIS PRINCIPAL DEPUTIES AND ASSISTANTS, WILL CEASE TO EXIST. THIS RESULT IS ACCOMPLISHED BY THE LAST SENTENCE OF SECTION 9 OF THE ACT, WHICH PROVIDES: "THE POSITIONS AND AGENCIES HERETOFORE ESTABLISHED BY LAW IN CONNECTION WITH THE FUNCTIONS, POWERS AND DUTIES TRANSFERRED UNDER SECTION 5(A) SHALL LAPSE." THIS LANGUAGE WAS UNQUESTIONABLY INTENDED TO REFER TO THE JOBS OF THE ADMINISTRATOR, THE DEPUTY ADMINISTRATOR, AND THE COMMISSIONERS OF THE FEDERAL HOUSING ADMINISTRATION AND PUBLIC HOUSING ADMINISTRATION, ALL OF WHOM ARE PRESIDENTIAL APPOINTEES. IT PROBABLY ALSO COVERS THE JOBS OF THE GENERAL COUNSEL AND OF THE COMMISSIONERS OF THE COMMUNITY FACILITIES ADMINISTRATION AND THE URBAN RENEWAL ADMINISTRATION.

(3) UNDER SECTION 7 OF THE ACT, THE PERSONNEL OF HHFA AND ITS CONSTITUENT AGENCIES, OTHER THAN THE OFFICIALS REFERRED TO IN PARAGRAPH (2) ABOVE, WOULD AUTOMATICALLY BE TRANSFERRED TO THE NEW DEPARTMENT.

(4) UNDER SECTION 9(C) OF THE ACT, ALL RULES, REGULATIONS ORDERS, AUTHORIZATIONS, DELEGATIONS, OR OTHER ACTIONS IN EFFECT ON THE EFFECTIVE DATE OF THE ACT WOULD CONTINUE IN FULL FORCE AND EFFECT OF THE NEW DEPARTMENT. THIS PROVISION MAKES IT POSSIBLE TO PAY THE PERSONNEL OF, AND TO CARRY ON ROUTINE BUSINESS IN, THE NEW DEPARTMENT.

THE RESULT OF INACTION THUS WOULD BE THAT THE NEW DEPARTMENT, WHILE ESTABLISHED AND IN BUSINESS, WOULD BE HEADLESS. THE JOBS OF THE PRINCIPAL OFFICERS OF THE OLD AGENCIES, AND THE OLD AGENCIES THEMSELVES, WOULD BE ABOLISHED.

OBVIOUSLY, CONGRESS DID NOT INTEND SUCH RESULTS. WHILE IT COULD NOT COMPEL YOU TO ACT -- AND DID NOT SEEK TO DO SO -- I BELIEVE IT THOUGHT THAT THE LAW PROVIDED YOU SUFFICIENT FLEXIBILITY SO THAT BY YOUR ACTION THESE CONSEQUENCES WOULD BE AVOIDED.

THE MAJOR DIFFICULTY LIES IN SECTION 11(A) WHICH SAYS THAT "THE PROVISIONS OF THIS ACT SHALL TAKE EFFECT UPON THE EXPIRATION OF THE FIRST PERIOD OF SIXTY CALENDAR DAYS FOLLOWING THE DATE ON WHICH THIS ACT IS APPROVED BY THE PRESIDENT..." (EMPHASIS ADDED). THIS PROVISION TRIGGERS SECTION 9(C) (ABOLISHING POSITIONS AND AGENCIES HERETOFORE ESTABLISHED BY LAW) AND 5(A) (VESTING THOSE FUNCTIONS IN THE NEW SECRETARY) AND 7(A) (TRANSFERRING PERSONNEL, ETC. TO THE NEW DEPARTMENT). THE PROBLEMS CAUSED BY THUS AUTOMATICALLY BRINGING THE NEW DEPARTMENT INTO BEING NO LATER THAN NOVEMBER 9 COULD ONLY BE RESOLVED BY AN ARGUMENT WHICH WOULD POSTPONE THE "EFFECTIVE DATE" OF THE ACT DESPITE THE SEEMINGLY CLEAR LANGUAGE OF SECTION 11(A).

THE BEST ARGUMENT TO THIS EFFECT WOULD BE THAT, ALTHOUGH THE ACT EXPRESSLY ESTABLISHES AN EFFECTIVE DATE, THESE PROVISIONS ARE ALSO IMPLIEDLY CONDITIONED ON THE APPOINTMENT OR DESIGNATION OF SOMEONE TO PERFORM THE DUTIES OF SECRETARY. THUS THE ARGUMENT WOULD ASSERT THAT SINCE THE ACT TRANSFERS ALL THE OLD AGENCIES' FUNCTIONS TO THE NEW SECRETARY, IT CANNOT BE GIVEN LEGAL EFFECT UNTIL THERE IS SOMEONE APPOINTED OR DESIGNATED FOR THAT POSITION. YOUR INACTION, UNDER THIS ARGUMENT, WOULD HAVE THE RESULT OF POSTPONING THE EXPRESS EFFECTIVE DATE OF THE LEGISLATION AND RETAINING THE STATUS QUO.

THE DIFFICULTIES WITH THIS ARGUMENT ARE OBVIOUS. IT RUNS COUNTER TO THE EXPRESS LANGUAGE OF SECTION 11(A) AND, THEREFORE, WOULD FOCUS CONSIDERABLE ATTENTION ON YOUR INACTION. THERE IS NOTHING IN THE LEGISLATIVE HISTORY TO SUPPORT THIS INTERPRETATION. FURTHERMORE, THERE IS NO GUARANTY THAT IT WOULD BE PRESUASIVE TO THE ACTING COMPTROLLER GENERAL WHO WOULD HAVE TO APPROVE IF DR. WEAVER AND HIS COLLEAGES WERE TO BE PAID. AND, FINALLY, SINCE THE CONSTITUENT AGENCIES OF THE NEW DEPARTMENT DEAL WITH BANKS, INVESTMENT HOUSES, MUNICIPALITIES, PRIVATE CONTRACTORS, ETC., THE VALIDITY OF ALL SUCH ACTION WOULD HAVE TO BE APPRAISED BY PRIVATE COUNSEL.

THE EXPRESS LANGUAGE OF SECTION 11(A), THE REFERENCES TO THE ACT'S "EFFECTIVE DATE" AND THE FLEXIBILITY GIVEN BY PERMITTING THE DATE TO BE ACCELERATED AND BY PERMITTING INTERIM APPOINTMENTS UNDER SECTION 11(B) FOR A FURTHER SPECIFIC 60 DAY PERIOD ALL MILITATE AGAINST AN INTERPRETATION WHICH WOULD, IN EFFECT, LEAVE THE "EFFECTIVE DATE" COMPLETELY IN YOUR DISCRETION.

FROM A LEGAL POINT OF VIEW A DESIGNATION PURSUANT TO SECTION 11(B) OF THE ACT IS CLEARLY PREFERABLE. I THINK THIS COULD BE PHRASED IN SUCH A WAY AS TO MAKE IT APPEAR NOT ONLY ROUTINE BUT REALLY THE DECISION OF CONGRESS RATHER THAN ANY AFFIRMATIVE ACTION ON YOUR PART. BUT IT DOES NOT AVOID THE MAJOR PROBLEM THAT THE HEAD OF THE DEPARTMENT WOULD BE "ACTING SECRETARY".

I AM ATTACHING A DRAFT PRESS RELEASE.

RESPECTFULLY,

NICHOLAS DEB. KATZENBACH  
THE ATTORNEY GENERAL

THE WHITE HOUSE ANNOUNCED TODAY THAT PRESIDENT JOHNSON HAS DECIDED TO DEFER THE APPOINTMENT OF THE SECRETARY AND OTHER OFFICIALS OF THE NEW DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT UNTIL JANUARY WHEN THE SENATE WILL BE IN A POSITION TO CONSIDER PROMPTLY HIS NOMINATIONS. UNDER THE LAW ENACTED AT THE LAST SESSION AND APPROVED BY THE PRESIDENT SEPTEMBER 9, 1965 THE PRESIDENT HAS THE OPTION OF MAKING RECESS APPOINTMENTS OR PERMITTING THE AFFAIRS OF THE NEW DEPARTMENT TO BE CARRIED ON BY OFFICIALS OF THE HOUSING AND HOME FINANCE AGENCY, WHO WILL CONTINUE TO PERFORM ESSENTIALLY THE SAME DUTIES AS IN THE PAST. FORMAL CONFIRMATION OF THIS DECISION WILL BE PUBLISHED IN THE FEDERAL REGISTER ON OR BEFORE NOVEMBER 9, 1965, THE EFFECTIVE DATE OF THE ACT.

(NOTE: THE FORMAL DESIGNATION COULD BE IN TERMS OF THE OFFICES RATHER THAN PERSONS; FOR EXAMPLE, "THE DIRECTOR OF THE HOUSING AND HOME FINANCE AGENCY WILL PERFORM THE DUTIES AND FUNCTIONS OF THE OFFICE OF SECRETARY." IT COULD BE SIGNED "BY ORDER OF THE PRESIDENT" BY A MEMBER OF THE WHITE HOUSE STAFF. RESPONSES TO QUESTIONS OF THE PRESS COULD BE IN TERMS OF THE LAW, RATHER THAN YOUR ACTION; FOR EXAMPLE, "IS THE PRESIDENT DESIGNATING DR. WEAVER, ACTING SECRETARY?" ANSWER: THAT IS WHAT THE LAW PROVIDES; OR THE ACT PROVIDES THAT OFFICIALS OF HHFA WILL PERFORM THESE FUNCTIONS.) UNQUOTE

THE POSITIONS AND PERSONNEL INVOLVED IN THE TOP JOBS AFFECTED BY THE ACT ARE:

ADMINISTRATOR, ROBERT WEAVER, \$30,000  
 DEPUTY ADMINISTRATOR AND GENERAL COUNSEL, MILTON SEMER, \$28,500  
 FEDERAL HOUSING COMMISSIONER, PHIL BROWNSTEIN, \$27,000  
 PUBLIC HOUSING COMMISSIONER, MARIE MAGUIRE, \$27,000  
 URBAN RENEWAL COMMISSIONER, BILL SLAYTON, \$27,000  
 COMMUNITY FACILITIES COMMISSIONER, VACANT, \$27,000

MAKING THEM GS 13,5 RATHER THAN MAKING THEM ACTING PRESIDENTIAL APPOINTEES WOULD IN EVERY CASE RESULT IN A REDUCTION IN PAY.

IF, DESPITE THE FOREGOING MEMORANDUM, YOU ARE STILL OF THE OPINION THAT YOU SHOULD NOT MAKE ANY "ACTING" DESIGNATIONS, I BELIEVE THE FOLLOWING ACTIONS SHOULD BE TAKEN:

1. THERE SHOULD BE AN OPINION OF THE ATTORNEY GENERAL TO SUPPORT THE STATUS QUO (WHICH, AS INDICATED IN KATZENBACH'S EARLIER MEMO, WOULD HAVE TO OVERRULE A PRIOR OPINION AND WHICH WOULD PROBABLY BE CONSIDERED QUESTIONABLE).
2. WE WOULD HAVE TO GET THE COMPTROLLER GENERAL TO GO ALONG WITH SUCH AN OPINION AND PAY THESE OFFICIALS AT THEIR EXISTING SALARIES (WE WOULD REALLY HAVE A TEMPEST IF YOU DID NOTHING, THE ATTORNEY GENERAL SUPPORTED YOU AND THE COMPTROLLER GENERAL REFUSED TO PAY WEAVER AND THE OTHER TOP OFFICIALS).
3. WE SHOULD GET MANSFIELD, MCCORMACK, DIRKSEN, ET AL AND THE COMMITTEE CHAIRMEN, IN EFFECT, TO CONCUR IN YOUR ACTION AS CONSISTENT WITH THE INTENT OF CONGRESS.

WHETHER YOU DECIDE TO DESIGNATE WEAVER "ACTING" OR NOT DO ANYTHING, THE SOONER THAT DECISION IS MADE KNOWN TO THE PUBLIC THE BETTER OFF WE WILL BE BECAUSE AS THE EFFECTIVE DATE OF THE ACT COMES CLOSER, TENSION AND EXCITEMENT BUILDS IN WASHINGTON. FURTHER IN EITHER CASE, WE SHOULD DECIDE WHETHER YOU WISH TO TALK TO WEAVER PERSONALLY OR WHETHER YOU WANT ME OR SOME OTHER MEMBER OF THE STAFF TO TALK TO HIM AND THE OTHER OFFICIALS

October 31, 1965

FOR THE PRESIDENT  
FROM Joe Califano

There follows the text of a memorandum from the Attorney General dated October 31, 1965, on the Department of Housing and Urban Development:

Quote Under the provisions of the Department of Housing and Urban Development Act, the new Department comes into existence on November 9 unless you choose to accelerate that date by Executive Order. There is no provision which gives you power to postpone that date.

The Act does provide that you may name the new Secretary at any time after signature before November 9 or for 60 days after November 9. In anticipation that you might not wish to act on or before the new Department came into being on November 9, Congress further provided that you "may" designate any officer of HHFA "to act in such office (i. e., Secretary) until such office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur."

While Congress provided these alternatives I think it did not contemplate or provide for the alternative that you might wish to take neither course of action. There is, therefore, no provision to cover this contingency and no thought seems to have been given to the consequences of no Presidential action on or before November 9.

The following results would seem required by the plain terms of the Act:

(1) All of the functions, powers, and duties of the HHFA, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of those agencies, will be transferred to the Secretary of the new Department by operation of law. If no one is designated by you to act as Secretary, there is a serious question as to whether all these functions, powers and duties can be exercised by anyone; that is, they may lapse.

(2) All of the old agencies, and the jobs now being filled by Dr. Weaver and his principal deputies and assistants, will cease to exist. This result is accomplished by the last sentence of Section 9 of the Act, which provides: "The positions and agencies heretofore established by law in connection with the functions, powers and duties transferred under Section 5(a) shall lapse." This language was unquestionably intended to refer to the jobs of

the Administrator, the Deputy Administrator, and the Commissioners of the Federal Housing Administration and Public Housing Administration, all of whom are Presidential appointees. It probably also covers the jobs of the General Counsel and of the Commissioners of the Community Facilities Administration and the Urban Renewal Administration.

(3) Under Section 7 of the Act, the personnel of HHFA and its constituent agencies, other than the officials referred to in paragraph (2) above, would automatically be transferred to the new Department.

(4) Under Section 9(c) of the Act, all rules, regulations, orders, authorizations, delegations, or other actions in effect on the effective date of the Act would continue in full force and effect until modified by the Secretary or other appropriate officer of the new Department. This provision makes it possible to pay the personnel of, and to carry on routine business in, the new Department.

The result of inaction thus would be that the new Department, while established and in business, would be headless. The jobs of the principal officers of the old agencies, and the old agencies themselves, would be abolished.

Obviously, Congress did not intend such results. While it could not compel you to act -- and did not seek to do so -- I believe it thought that the law provided you sufficient flexibility so that by your action these consequences would be avoided.

The major difficulty lies in Section 11(a) which says that "the provisions of this Act shall take effect upon the expiration of the first period of sixty calendar days following the date on which this Act is approved by the President..." (emphasis added). This provision triggers section 9(c) (abolishing positions and agencies heretofore established by law) and 5(a) (vesting those functions in the new Secretary) and 7(a) (transferring personnel, etc. to the new Department). The problems caused by thus automatically bringing the new Department into being no later than November 9 could only be resolved by an argument which would postpone the "effective date" of the Act despite the seemingly clear language of Section 11(a).

The best argument to this effect would be that, although the Act expressly establishes an effective date, these provisions are also impliedly condi-

tioned on the appointment or designation of someone to perform the duties of Secretary. Thus the argument would assert that since the Act transfers all the old agencies' functions to the new Secretary, it cannot be given legal effect until there is someone appointed or designated for that position. Your inaction, under this argument, would have the result of postponing the express effective date of the legislation and retaining the status quo.

The difficulties with this argument are obvious. It runs counter to the express language of Section 11(a) and, therefore, would focus considerable attention on your inaction. There is nothing in the legislative history to support this interpretation. Furthermore, there is no guaranty that it would be persuasive to the acting Comptroller General who would have to approve if Dr. Weaver and his colleagues were to be paid. And, finally, since the constituent agencies of the new Department deal with banks, investment houses, municipalities, private contractors, etc., the validity of all such action would have to be appraised by private counsel.

The express language of Section 11 (a), the references to the Act's "effective date" and the flexibility given by permitting the date to be accelerated and by permitting interim appointments under Section 11(b) for a further specific 60 day period all militate against an interpretation which would, in effect, leave the "effective date" completely in your discretion.

From a legal point of view a designation pursuant to Section 11(b) of the Act is clearly preferable. I think this could be phrased in such a way as to make it appear not only routine but really the decision of Congress rather than any affirmative action on your part. But it does not avoid the major problem that the head of the Department would be "Acting Secretary".

I am attaching a draft press release.

Respectfully,

Nicholas deB. Katzenbach  
The Attorney General

**DRAFT PRESS RELEASE**

The White House announced today that President Johnson has decided to defer the appointment of the Secretary and other officials of the new Department of Housing and Urban <sup>Development</sup> until January when the Senate will be in a position to consider promptly his nominations. Under the law enacted at the last session and approved by the President Septemb

-1-

9, 1965 the President has the option of making recess appointments or permitting the affairs of the new Department to be carried by officials of the Housing and Home Finance Agency, who will continue to perform essentially the same duties as in the past. Formal confirmation of this decision will be published in the Federal Register on or before November 9, 1965, the effective date of the Act.

(Note: The formal designation could be in terms of the offices rather than persons; for example, "The Director of the Housing and Home Finance Agency will perform the duties and functions of the office of Secretary." It could be signed "By order of the President" by a member of the White House staff. Responses to questions of the press could be in terms of the law, rather than your action; for example, "Is the President designating Dr. Weaver, Acting Secretary?" Answer: That is what the law provides; or the Act provides that officials of HHFA will perform these functions.) UNQUOTE

The positions and personnel involved in the top jobs affected by the Act are:

Administrator, Robert Weaver, \$30,000  
Deputy Administrator and General Counsel, Milton Semer, \$28,500  
Federal Housing Commissioner, Phil Brownstein, \$27,000  
Public Housing Commissioner, Marie Maguire, \$27,000  
Urban Renewal Commissioner, Bill Slayton, \$27,000  
Community Facilities Commissioner, Vacant, \$27,000

Making them GS 18's rather than making them acting Presidential appointees would in every case result in a reduction in pay.

If, despite the foregoing memorandum, you are still of the opinion that you should not make any "Acting" designations, I believe the following actions should be taken:

1. There should be an opinion of the Attorney General to support the status quo (which, as indicated in Katzenbach's earlier memo, would have to overrule a prior opinion and which would probably be considered questionable).

2. We would have to get the Comptroller General to go along with such an opinion and pay these officials at their existing salaries (we would really have a tempest if you did nothing, the Attorney General supported you and the Comptroller General refused to pay Weaver and the other top officials).

*on 10/15/65*  
3. We should get Mansfield, McCormack, Dirksen, et al and the Committee Chairmen in effect, to concur in your action as consistent *Wagner*

5

with the intent of Congress.

Whether you decide to designate Weaver "Acting " or not do anything, the sooner that decision is made known to the public the better off we will be because as the effective date of the Act comes closer, tension and excitement builds in Washington. Further in either case, we should decide whether you wish to talk to Weaver personally or whether you want me or some other member of the Staff to talk to him and the other officials.

10/30/65

FROM ED SHERMAN

Jobs in Housing agency above super grade level going to be eliminated by the new Housing and Urban Development Department:

Administrator	30,000	Robert Weaver
Deputy Administrator	28,500	Milt Semer
Fedrl Housing Comsr.	27,000	Phil Brownstein
Public Housing Comsr.	27,000	Marie Maguire
Urban Renewal Comsr.	27,000	Bill Slayton
Community Facilities Coms.	27,000	Vacant

Milt Semer in addition to being Deputy Admin. is also General Counsel and this post will be transferred into the new agency -- nobody quite knows why because there is a post established in the new agency with the same title.

MEMORANDUM FOR THE PRESIDENT

Re: Consequences of non-designation of officers of the Department of Housing and Urban Development.

This is in response to your request for a memorandum on the consequences of your taking no action prior to November 9, 1965, either to appoint officials of the new Department or to designate former HIFA officials to act temporarily as such officials pursuant to Section 11(b) of the Department of Housing and Urban Development Act.

It is quite obvious that the possibility of your taking no action at all prior to the effective date of the Act never entered the mind of any of the concerned members of the Congress.

The Congress devoted considerable time and attention to attempting to insure that you would have available plenty of alternative courses of action and would not be unduly limited by the terms of the Act. Thus, the Congress anticipated that it would no longer be in session on the effective date of the Act. It was concerned that the provision for a delayed effective date should not operate to limit your freedom of action.

Accordingly, there was included in the Act a provision designed to avoid any restriction on your power to seek confirmation of your nominees for these posts in advance of the effective date of the Act. Section 11(a) provides not only that you may accelerate the effective date but also adds expressly that "any of the officers provided for in Sections 3(a), 4(a), and 4(b) of this Act may be nominated and appointed, as provided in such sections [i.e., with the advice and consent of the Senate], at any time after the date this Act is approved by the President."

The Congress also knew, of course, that you had the power to make recess appointments as provided in Article II, Section 2, clause 3 of the Constitution. Again, however, the Congress was concerned that your freedom of action not be unduly limited by the provision in the Act establishing an effective date. It anticipated that you might not be ready to make appointments by that date. It therefore included in the Act a provision giving you a third alternative, in addition to the two that you would otherwise have. Section 11(b) provides that if the officials

of the new Department have not "entered upon office" on the effective date of the Act, you "may designate any person who was an officer of the Housing and Home Finance Agency immediately prior to said effective date to act in such office until the office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur."

This provision is not, of course, in any way compulsory; it uses the word "may." Congress was not trying to restrict your ability either to seek confirmation of your appointees during the last session of Congress or to make recess appointments. It was concerned, rather, with enlarging your freedom of action by providing an additional alternative.

Having provided courses of action by which you could, in effect, accelerate or postpone the effective date of the Act by 60 days either way, Congress apparently gave no thought to the possibility that you might want to let the effective date come and go without taking any of the alternative courses authorized by the Act. That this is true is obvious from the

fact that if you take no action the provisions of the Act seem to require results that range from the chaotic to the whimsical.

I am confident that Congress had no thought whatever of forcing your hand. Certainly there is nothing in the Act that purports to direct you to act now or at any other time. However, because of its failure to consider the possibility that you would not wish to act, Congress made no sensible provision for that eventuality and to that extent inadvertently limited your freedom of action.

If you take no action prior to November 9, 1965, the following consequences seem required by the plain terms of the Act:

(1) All of the functions, powers, and duties of the HHFA, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of those agencies, will be transferred to the Secretary of the new Department by operation of law.

(2) All of the old agencies, and the jobs now being filled by Dr. Weaver and his principal deputies and assistants, will cease to exist. This result is accomplished by the last sentence of Section 9 of the Act, which provides: "The positions and agencies heretofore established by law in connection with the functions, powers and duties transferred under Section 5(a) shall lapse." This language was unquestionably intended to refer to the jobs of the Administrator, the Deputy Administrator, and the Commissioners of the Federal Housing Administration and Public Housing Administration, all of whom are Presidential appointees. It probably also covers the jobs of the General Counsel and of the Commissioners of the Community Facilities Administration and the Urban Renewal Administration.

(3) Under Section 7 of the Act, the personnel of HHFA and its constituent agencies, other than the officials referred to in paragraph (2) above, would automatically be transferred to the new Department.

(4) Under Section 9(c) of the Act, all rules, regulations, orders, authorizations, delegations, or other actions in effect on the effective date of the Act would continue in full force and effect until modified by the Secretary or other appropriate officer of the new Department. Because of this provision it would probably be possible to issue orders that would make it possible to pay the personnel of, and to carry on routine business in, the new Department.

The result of inaction thus would be that the new Department, while established and in business, would be headless. The jobs of the principal officers of the old agencies, and the old agencies themselves, would be abolished.

If you took no action prior to November 9, 1965, we might try to maintain either (1) that none of the transfers of functions or personnel contemplated by the Act had yet taken place, or (2) that, while all of the transfers of lower-level personnel were effective, the provision abolishing the former agencies and the offices of Weaver and his colleagues was not yet effective. Both of these contentions would put heavy

reliance on the proposition that Congress did not foresee that you would fail to act in any of the ways provided for in the statute, and that, therefore, its provisions must be given a loose construction in order to avoid chaotic results that Congress obviously did not want to happen.

Proposition (1) above would require us to contend that, although the Act expressly establishes an effective date, the effectiveness of its provisions was also impliedly conditioned on the appointment or designation of someone to perform the duties of the Secretary. Thus, the argument would assert, since the Act transfers all of the old agencies' functions to the new Secretary, it cannot be given legal effect until there is a Secretary. This contention seems to me not only erroneous as a matter of law but implausible even from a layman's point of view since it would give no effect whatever to the effective date established by the Act.

Proposition (2) would involve the contention that, while the new Department would come into existence on the effective

date, the last sentence of Section 9(c) (abolishing Weaver's job as head of HHFA) would go into effect only upon the appointment of the new Secretary. The language of Section 9 does not support this conclusion, but the terms there used ("shall lapse") are at least different from the terms used elsewhere in the Act ("are hereby transferred," "there is hereby established," etc.). Under this contention, the business of FHA, for example, would be done in the name of the new Department, but Weaver would continue to be the Administrator of HHFA and be paid as such. Although he could not issue any orders as head of the new agency, he presumably would be able to supervise its personnel as a practical matter because it would be apparent that he had your support in so doing. Since his position as head of an agency with no employees would be anomalous, to say the least, it would be likely to get considerable attention and unfavorable comment.

The decision as to the validity of these two arguments cannot be confined entirely within the Executive Branch or even within the government. The General Accounting Office,

now under an Acting Comptroller-General, as you know, would have to accept those arguments if Dr. Weaver and his principal colleagues are to be paid. Also, since the constituent agencies of the new Department deal with banks, municipalities, investment bankers, etc., the validity of what the Department does will have to be appraised by their counsel. I believe that conservative counsel would advise against entering into any contractual or financial relationships with the new Department until it has a head duly appointed or designated in accordance with the Act. It is possible also that the validity of acts of the Department during this period would be tested in the courts.

I believe that the arguments under which Dr. Weaver could be kept on without being designated as acting head of the new agency are legally unsound. I also believe that their unsoundness will be widely apparent. Although they can be asserted, I would urge you to consider whether the feebleness of our basis for inaction might not make a failure to act

seem much more decisive and controversial than a routine, interim designation pursuant to Section 11(b) of the Act.

At Joe Califano's suggestion, I am appending a draft press release illustrating what might be issued sometime during the coming week if you were to decide to make a designation pursuant to Section 11(b). The "designation" itself would be a simple document, naming all the acting officials, which would be published in the Federal Register on or before November 9.

Respectfully,

Attorney General

Attachment

DRAFT PRESS RELEASE

The White House announced today that President Johnson has decided to exercise the authority afforded by Section 11(b) of the Housing and Urban Development Act to defer the appointment of the Secretary and other officials of the new Department of Housing and Urban Development until the Senate has reconvened and is in a position to consider his nominations. During the interim, the affairs of the new Department will be carried on by the Administrator and other officials of the Housing and Home Finance Agency, who will continue to perform essentially the same duties as in the past. The designation of such officials pursuant to Section 11(b) will be published in the Federal Register on or before November 9, 1965, the effective date of the Act.

~~MEMORANDUM FOR~~ THE PRESIDENT

A problem in addition to who will act as Secretary of the new Department of Housing and Urban Development is the handling of the other offices including Under Secretary, four Assistant Secretaries and a Presidentially appointed General Counsel.

The Act creating the Department provides that these positions can also be filled on an acting basis from among the officers of the Housing Agency for a 60-day period. There are currently in the Housing Agency the following Presidential appointees:

<u>Office</u>	<u>Name</u>
Deputy Administrator and General Counsel	Milton Semer
FHA Commissioner	Philip N. Brownstein
Urban Renewal Administration	William L. Slayton
Public Housing Commissioner	Marie C. McGuire
Commissioner of Community Facilities	Clarence H. Osthagen
President, Federal National Mortgage Association	J. Stanley Baughman

Any of these officials who are not given either a recess or acting appointment prior to November 9, leave the government payroll as of that date, and their functions, which will be taken over by the new Department on November 9, will presumably go to the Assistant Commissioners and non Presidential appointees who will have been transferred into the new Department.

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31 OCT.  
EXECUTIVE  
FBI 70

FROM: JOE CALIFANO  
TO: THE PRESIDENT  
CITE: WH3336

UNCLAS

THE WHITE HOUSE  
WASHINGTON

OCTOBER 31, 1965

TO: THE PRESIDENT  
FROM: JOE CALIFANO

FOR YOUR INFORMATION, THERE FOLLOWS THE FULL TEXT OF THE  
ACT TO ESTABLISH A DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

PUBLIC LAW 89-174  
89TH CONGRESS, H. R. 6927  
SEPTEMBER 9, 1965

AN ACT

79 STAT. 667

TO ESTABLISH A DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND  
FOR OTHER PURPOSES.

DEPARTMENT OF  
HOUSING AND  
URBAN DEVELOPMENT  
ACT.

"BE IT ENACTED BY THE SENATE AND  
HOUSE OF REPRESENTATIVES OF THE  
UNITED STATES OF AMERICAN IN  
CONGRESS ASSEMBLED, THAT THIS ACT MAY  
BE CITED AS THE "DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT ACT".

DECLARATION OF PURPOSE

SEC. 2. THE CONGRESS HEREBY DECLARES  
THAT THE GENERAL WELFARE AND SECURITY OF  
THE NATION AND THE HEALTH AND LIVING  
STANDARDS OF OUR PEOPLE REQUIRE, AS A  
MATTER OF NATIONAL PURPOSE, SOUND DEVELOP-  
MENT OF THE NATION'S COMMUNITIES AND  
METROPOLITAN AREAS IN WHICH THE VAST  
MAJORITY OF ITS PEOPLE LIVE AND WORK.

TO CARRY OUT SUCH PURPOSE, AND IN RECOGNITION  
OF THE INCREASING IMPORTANCE OF HOUSING AND  
URBAN DEVELOPMENT IN OUR NATIONAL LIFE, THE  
CONGRESS FINDS THAT ESTABLISHMENT OF AN EXECUTIVE  
DEPARTMENT IS DESIRABLE TO ACHIEVE THE BEST  
ADMINISTRATION OF THE PRINCIPAL PROGRAMS  
OF THE FEDERAL GOVERNMENT WHICH PROVIDE ASSISTANCE  
FOR HOUSING AND FOR THE DEVELOPMENT OF THE  
NATION'S COMMUNITIES; TO ASSIST THE PRESI-  
DENT IN ACHIEVING MAXIMUM COORDINATION OF  
THE VARIOUS FEDERAL ACTIVITIES WHICH HAVE A  
MAJOR EFFECT UPON URBAN COMMUNITY, SUBURBAN,  
OR METROPOLITAN DEVELOPMENT; TO ENCOURAGE THE  
SOLUTION OF PROBLEMS OF HOUSING, URBAN DEVELOP-  
MENT, AND MASS TRANSPORTATION THROUGH STATE,  
COUNTY, TOWN, VILLAGE, OR OTHER LOCAL AND PRI-  
VATE ACTION, INCLUDING PROMOTION OF INTERSTATE,  
REGIONAL, AND METROPOLITAN COOPERATION; TO  
ENCOURAGE THE MAXIMUM CONTRIBUTIONS THAT MAY  
BE MADE BY VIGOROUS PRIVATE HOMEBUILDING AND  
MORTGAGE LENDING INDUSTRIES TO HOUSING, URBAN  
DEVELOPMENT, AND THE NATIONAL ECONOMY; AND TO  
PROVIDE FOR FULL AND APPROPRIATE CONSIDERATION,  
AT THE NATIONAL LEVEL, OF THE NEEDS AND INTERESTS  
OF THE NATION'S COMMUNITIES AND OF THE PEOPLE  
WHO LIVE AND WORK IN THEM.

RECEIVED BY  
Date & Time Received

ESTABLISHMENT OF DEPARTMENT

APPOINTMENT OF  
SECRETARY.

SEC. 3. (A) THERE IS HEREBY ESTABLISHED AT THE SEAT OF GOVERNMENT AN EXECUTIVE DEPARTMENT TO BE KNOWN AS THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HEREINAFTER REFERRED TO AS THE "DEPARTMENT"). THERE SHALL BE AT THE HEAD OF THE DEPARTMENT A SECRETARY OF HOUSING AND URBAN DEVELOPMENT (HEREINAFTER REFERRED TO AS THE "SECRETARY"), WHO SHALL BE APPOINTED BY THE PRESIDENT BY AND WITH THE ADVICE AND CONSENT OF THE SENATE. THE DEPARTMENT SHALL BE ADMINISTERED UNDER THE SUPERVISION AND DIRECTION OF THE SECRETARY. THE SECRETARY SHALL RECEIVE COMPENSATION AT THE RATE NOW OR HEREAFTER PRESCRIBED BY LAW FOR THE HEADS OF EXECUTIVE DEPARTMENTS.

DUTIES.

(B) THE SECRETARY SHALL, AMONG HIS RESPONSIBILITIES, ADVISE THE PRESIDENT WITH RESPECT TO FEDERAL PROGRAMS AND ACTIVITIES RELATING TO HOUSING AND URBAN DEVELOPMENT; DEVELOP AND RECOMMEND TO THE PRESIDENT POLICIES FOR FOSTERING THE ORDERLY GROWTH AND DEVELOPMENT OF THE NATION'S URBAN AREAS; EXERCISE LEADERSHIP AT THE DIRECTION OF THE PRESIDENT IN COORDINATING FEDERAL ACTIVITIES AFFECTING HOUSING AND URBAN DEVELOPMENT; PROVIDE TECHNICAL ASSISTANCE AND INFORMATION, INCLUDING A CLEARINGHOUSE SERVICE TO AID STATE, COUNTY, TOWN, VILLAGE, OR OTHER LOCAL GOVERNMENTS IN DEVELOPING SOLUTIONS TO COMMUNITY AND METROPOLITAN DEVELOPMENT PROBLEMS; CONSULT AND COOPERATE WITH STATE GOVERNORS AND STATE AGENCIES, INCLUDING, WHEN APPROPRIATE, HOLDING INFORMAL PUBLIC HEARINGS, WITH RESPECT TO FEDERAL AND STATE PROGRAMS FOR ASSISTING COMMUNITIES IN DEVELOPING SOLUTIONS TO COMMUNITY AND METROPOLITAN DEVELOPMENT PROBLEMS AND FOR ENCOURAGING EFFECTIVE REGIONAL COOPERATION IN THE PLANNING AND CONDUCT OF COMMUNITY AND METROPOLITAN DEVELOPMENT PROGRAMS AND PROJECTS; ENCOURAGE COMPREHENSIVE PLANNING BY THE STATE AND LOCAL GOVERNMENTS WITH A VIEW TO COORDINATING FEDERAL, STATE, AND LOCAL URBAN AND COMMUNITY DEVELOPMENT ACTIVITIES; ENCOURAGE PRIVATE ENTERPRISE TO SERVE AS LARGE A PART OF THE NATION'S TOTAL HOUSING AND URBAN DEVELOPMENT NEEDS AS IT CAN AND DEVELOP THE FULLEST COOPERATION WITH PRIVATE ENTERPRISE IN ACHIEVING THE OBJECTIVES OF THE DEPARTMENT; AND CONDUCT CONTINUING COMPREHENSIVE STUDIES, AND MAKE AVAILABLE FINDINGS, WITH RESPECT TO THE PROBLEMS OF HOUSING AND URBAN DEVELOPMENT.

(C) NOTHING IN THIS ACT SHALL BE CONSTRUED TO DENY OR LIMIT THE BENEFITS OF ANY PROGRAM, FUNCTION, OR ACTIVITY ASSIGNED TO THE DEPARTMENT BY THIS OR ANY OTHER ACT TO ANY COMMUNITY ON THE BASIS OF ITS POPULATION OR CORPORATE STATUS, EXCEPT AS MAY BE EXPRESSLY PROVIDED BY LAW.

UNDER SECRETARY AND OTHER  
OFFICERS AND OFFICES

UNDER SECRETARY,  
ASSISTANT SECRETARIES.  
APPOINTMENT.

SEC. 4. (A) THERE SHALL BE IN THE DEPARTMENT AN UNDER SECRETARY, FOUR ASSISTANT SECRETARIES, AND A GENERAL COUNSEL, WHO SHALL BE APPOINTED BY THE PRESIDENT BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, WHO SHALL RECEIVE COMPENSATION AT THE RATE NOW OR HEREAFTER PROVIDED BY LAW FOR UNDER SECRETARIES, ASSISTANT SECRETARIES, AND GENERAL COUNSELS, RESPECTIVELY, OF EXECUTIVE DEPARTMENTS, AND WHO SHALL PERFORM SUCH FUNCTIONS, POWERS, AND DUTIES AS THE SECRETARY SHALL PRESCRIBE FROM TIME TO TIME. THERE SHALL BE IN THE DEPARTMENT A FEDERAL HOUSING COMMISSIONER, WHO SHALL BE ONE OF THE ASSISTANT SECRETARIES, WHO SHALL HEAD A FEDERAL HOUSING ADMINISTRATION WITHIN THE DEPARTMENT, WHO SHALL HAVE SUCH DUTIES AND POWERS AS MAY BE PRESCRIBED BY THE SECRETARY, AND WHO SHALL ADMINISTER, UNDER THE SUPERVISION AND DIRECTION OF THE SECRETARY, DEPARTMENTAL PROGRAMS RELATING TO THE PRIVATE

FEDERAL HOUSING  
COMMISSIONER.

ASSISTANT SECRETARY FOR ADMINISTRATION.

DIRECTOR OF URBAN PROGRAM COORDINATION.

(C) THERE SHALL BE IN THE DEPARTMENT AN ASSISTANT SECRETARY FOR ADMINISTRATION, WHO SHALL BE APPOINTED, WITH THE APPROVAL OF THE PRESIDENT, BY THE SECRETARY UNDER THE CLASSIFIED CIVIL SERVICE, WHO SHALL PERFORM SUCH FUNCTIONS, POWERS, AND DUTIES AS THE SECRETARY SHALL DIRECT FROM TIME TO TIME, AND WHERE A SALARY OF COMPENSATION SHALL BE THE SAME AS THAT FOR OR FURNISHED PROVIDED BY OR PURSUANT TO LAW FOR ASSISTANT SECRETARIES FOR ADMINISTRATION OF EXECUTIVE DEPARTMENTS.

(D) THERE SHALL BE IN THE DEPARTMENT A DIRECTOR OF URBAN PROGRAM COORDINATION, WHO SHALL BE DESIGNATED BY THE SECRETARY. HE SHALL ASSIST THE SECRETARY IN CARRYING OUT HIS RESPONSIBILITIES TO THE PRESIDENT WITH RESPECT TO ACHIEVING MAXIMUM COORDINATION OF THE PROGRAMS OF THE VARIOUS DEPARTMENTS AND AGENCIES OF THE GOVERNMENT WHICH HAVE A MAJOR IMPACT ON COMMUNITY DEVELOPMENT. IN PROVIDING SUCH ASSISTANCE, THE DIRECTOR SHALL MAKE SUCH STUDIES OF URBAN AND COMMUNITY PROBLEMS AS THE SECRETARY SHALL REQUEST, AND SHALL DEVELOP RECOMMENDATIONS RELATING TO THE ADMINISTRATION OF FEDERAL PROGRAMS AFFECTING SUCH PROBLEMS, PARTICULARLY WITH RESPECT TO ACHIEVING EFFECTIVE COOPERATION AMONG THE FEDERAL, STATE, AND LOCAL AGENCIES CONCERNED.75 SUBJECT TO THE DIRECTION OF THE SECRETARY, THE DIRECTOR SHALL IN CARRYING OUT HIS RESPONSIBILITIES, (1) ESTABLISH AND MAINTAIN CLOSE LIAISON WITH THE FEDERAL DEPARTMENTS AND AGENCIES CONCERNED, AND (2) CONSULT WITH STATE, LOCAL, AND REGIONAL OFFICIALS, AND CONSIDER THEIR RECOMMENDATIONS WITH RESPECT TO SUCH PROGRAMS.

TRANSFERS TO DEPARTMENT

SEC. 5. (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION, THERE ARE HEREBY TRANSFERRED TO AND VESTED IN THE SECRETARY ALL OF THE FUNCTIONS, POWERS, AND DUTIES OF THE HOUSING AND HOME FINANCE AGENCY, OF THE FEDERAL HOUSING ADMINISTRATION AND THE PUBLIC HOUSING ADMINISTRATION IN THAT AGENCY, AND OF THE ROADS AND OTHER OFFICERS AND OFFICES OF SAID AGENCIES:

(B) THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, TOGETHER WITH ITS FUNCTIONS, POWERS, AND DUTIES, IS HEREBY TRANSFERRED TO THE DEPARTMENT. THE NEXT TO THE LAST SENTENCE OF SECTION 508 OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT AND THE ITEM NUMBERED (94) OF SECTION 333(C) OF THE FEDERAL EXECUTIVE SALARY ACT OF 1964 ARE HEREBY REPEALED, AND THE POSITION OF THE PRESIDENT OF SAID ASSOCIATION IS HEREBY ALLOCATED AMONG THE POSITIONS REFERRED TO IN SECTION 7(C) HEREOF.

(C) THE PRESIDENT SHALL UNDERTAKE STUDIES OF THE ORGANIZATION OF HOUSING AND URBAN DEVELOPMENT FUNCTIONS AND PROGRAMS WITHIN THE FEDERAL GOVERNMENT, AND HE SHALL PROVIDE THE CONGRESS WITH THE FINDINGS AND CONCLUSIONS OF SUCH STUDIES, TOGETHER WITH HIS RECOMMENDATIONS REGARDING THE TRANSFER OF SUCH FUNCTIONS AND PROGRAMS TO OR FROM THE DEPARTMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, NONE OF THE FUNCTIONS OF THE SECRETARY OF THE INTERIOR AUTHORIZED UNDER THE LAND AND WATER CONSERVATION FUND ACT OF 1965 (76 STAT. 597) OR OTHER FUNC-

TIONS CARRIED OUT BY THE BUREAU OF OUTDOOR RECREATION SHALL BE TRANSFERRED FROM THE DEPARTMENT OF THE INTERIOR OR IN ANY WAY BE LIMITED GEOGRAPHICALLY UNLESS SPECIFICALLY PROVIDED FOR BY REORGANIZATION PLAN PURSUANT TO PROVISIONS OF THE REORGANIZATION ACT OF 1949 (63 STAT. 243), AS AMENDED, OR BY STATUTE.

CONFORMING AMENDMENTS

SEC. 6 (A) SECTION 1900 (1) OF TITLE 3 OF THE UNITED STATES CODE IS HEREBY AMENDED BY STRIKING OUT THE PERIOD AT THE END THEREOF AND INSERTING A

REVOCABLE.  
63 STAT. 523.  
10 USC 1725.  
76 STAT. 421.  
5 USC 2211.

REPORT TO CONGRESS.

10 USC 4621-4

NOTE.

5 USC 1352 NOTE.

62 STAT. 577.

(D) THE AGREEMENT MADE BY CONSTRUCTION (S) OF THIS SECTION SHALL BE APPLICABLE TO MAKE APPLICABLE TO THE EXTENT OF ANY PROVISION OF LAW INCONSISTENT WITH THIS ACT.

ADMINISTRATIVE PROVISIONS

SEC. 7. (A) THE PERSONNEL EMPLOYED IN CONNECTION WITH, AND THE ASSETS, LIABILITIES, CONTRACTS, PROPERTY, RECORDS, AND UNRECORDED BALANCES OF APPROPRIATIONS, AUTHORIZATIONS, ALLOCATIONS, OR OTHER FUNDS HELD, USED, ARISING FROM, OR AVAILABLE OR TO BE MADE AVAILABLE IN CONNECTION WITH, THE FUNCTIONS, POWERS, AND DUTIES TRANSFERRED BY SECTION 5 OF THIS ACT ARE HEREBY TRANSFERRED WITH SUCH FUNCTIONS, POWERS, AND DUTIES, RESPECTIVELY.

(B) NO TRANSFER OF FUNCTIONS, POWERS, AND DUTIES SHALL AT ANY TIME BE MADE WITHIN THE DEPARTMENT IN CONNECTION WITH THE SECONDARY MARKET OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION UNLESS THE SECRETARY FINDS THAT THE RISKS AND INTERESTS OF OWNERS OF OUTSTANDING COMMON STOCK ISSUED UNDER THE FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT WILL NOT BE ADVERSELY AFFECTED THEREBY.

(C) THE SECRETARY IS AUTHORIZED, SUBJECT TO THE CIVIL SERVICE AND CLASSIFICATION LAWS, TO SELECT, APPOINT, EMPLOY, AND FIX THE COMPENSATION OF SUCH OFFICERS AND EMPLOYEES, INCLUDING ATTORNEYS, AS SHALL BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ACT AND TO PRESERVE FULL AUTHORITY AND DUTIES: PROVIDED, THAT ANY OTHER PROVISION OF LAW TO THE CONTRARY notwithstanding, THE SECRETARY MAY FIX THE COMPENSATION FOR NOT MORE THAN SIX POSITIONS IN THE DEPARTMENT AT THE ANNUAL RATE APPLICABLE TO POSITIONS IN LEVEL V OF THE FEDERAL EXECUTIVE SALARY SCHEDULE PROVIDED BY THE FEDERAL EXECUTIVE SALARY ACT OF 1954.

(D) THE SECRETARY MAY DELEGATE ANY OF HIS FUNCTIONS, POWERS, AND DUTIES TO SUCH OFFICERS AND EMPLOYEES OF THE DEPARTMENT AS HE MAY DESIGNATE, MAY AUTHORIZE SUCH SUCCESSIVE REDELEGATIONS OF SUCH FUNCTIONS, POWERS, AND DUTIES AS HE MAY DEEM DESIRABLE, AND MAY MAKE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT HIS FUNCTIONS, POWERS, AND DUTIES. THE SECOND PROVISION OF SECTION 101(C) OF THE HOUSING ACT OF 1949 IS HEREBY REPEALED.

(E) THE SECRETARY MAY OBTAIN SERVICES AS AUTHORIZED BY SECTION 15 OF THE ACT OF AUGUST 2, 1946, AT RATES NOT TO EXCEED \$100 PER DIEM FOR INDIVIDUALS.

(F) THE SECRETARY IS AUTHORIZED TO ESTABLISH A WORKING CAPITAL FUND, TO BE AVAILABLE WITHOUT FISCAL YEAR LIMITATION, FOR EXPENSES NECESSARY FOR THE MAINTENANCE AND OPERATION OF SUCH COMMON ADMINISTRATIVE SERVICES AS HE SHALL FIND TO BE DESIRABLE IN THE INTEREST OF ECONOMY AND EFFICIENCY IN THE DEPARTMENT, INCLUDING SUCH SERVICES AS A CENTRAL SUPPLY SERVICE FOR STATIONERY AND OTHER SUPPLIES AND EQUIPMENT FOR WHICH ADEQUATE STOCKS MAY BE MAINTAINED TO MEET IN WHOLE OR IN PART THE REQUIREMENTS OF THE DEPARTMENT AND ITS AGENCIES; CENTRAL MESSENGER, MAIL, TELEPHONE, AND OTHER COMMUNICATIONS SERVICES; OFFICE SPACE; CENTRAL SERVICES FOR DOCUMENT REPRODUCTION AND FOR GRAPHICS AND VISUAL AIDS; AND A CENTRAL LIBRARY SERVICE. IN ADDITION TO AMOUNTS APPROPRIATED TO PROVIDE CAPITAL FOR SAID FUND, WHICH APPROPRIATIONS ARE HEREBY AUTHORIZED, THE FUND SHALL BE CAPITALIZED BY TRANSFER TO IT OF SUCH STOCKS OF SUPPLIES AND EQUIPMENT ON HAND OR ON ORDER AS THE SECRETARY SHALL DIRECT. SUCH FUND SHALL BE REIMBURSED

FROM AVAILABLE FUNDS OF AGENCIES AND OFFICES IN THE DEPARTMENT FOR WHICH SERVICES ARE PERFORMED AT RATES

TRANSFER OF PERSONNEL, ASSETS, ETC.

RESTRICTION.

65 STAT. 628. 12 USC 1715 NOTE.

COMPENSATION OF PERSONNEL.

75 STAT. 419. 5 USC 5311.

DELEGATION OF AUTHORITY.

REPEAL 68 STAT. 523. 42 USC 1451.

67 STAT. 313. 5 USC 55A.

WORKING CAPITAL FUND.

(8) THE SECRETARY SHALL CAUSE A SEAL OR OFFICE TO BE MADE FOR THE DEPARTMENT OF SUCH DEVICE AS HE SHALL APPROVE, AND JUDICIAL NOTICE SHALL BE TAKEN OF SUCH SEAL.

#### ANNUAL REPORT

SEC. 8. THE SECRETARY SHALL, AS SOON AS PRACTICABLE AFTER THE END OF EACH CALENDAR YEAR, MAKE A REPORT TO THE PRESIDENT FOR SUBMISSION TO THE CONGRESS ON THE ACTIVITIES OF THE DEPARTMENT DURING THE PRECEDING CALENDAR YEAR.

#### LITIGIOUS PROVISIONS

SEC. 9. (A) NO CAUSE OF ACTION BY OR AGAINST ANY AGENCY WHOSE FUNCTIONS ARE TRANSFERRED BY THIS ACT, OR BY OR AGAINST ANY OFFICER OF ANY AGENCY IN HIS OFFICIAL CAPACITY, SHALL ARISE BY REASON OF THIS ENACTMENT. SUCH CAUSES OF ACTION MAY BE ASSERTED BY OR AGAINST THE UNITED STATES OR SUCH OFFICIAL OF THE DEPARTMENT AS MAY BE APPROPRIATE.

(B) NO SUIT, ACTION, OR OTHER PROCEEDING COMMENCED BY OR AGAINST ANY AGENCY WHOSE FUNCTIONS ARE TRANSFERRED BY THIS ACT, OR BY OR AGAINST ANY OFFICER OF ANY SUCH AGENCY IN HIS OFFICIAL CAPACITY, SHALL ARISE BY REASON OF THE ENACTMENT OF THIS ACT. A COURT MAY AT ANY TIME DURING THE PENDENCY OF THE LITIGATION, ON ITS OWN MOTION OR THAT OF ANY PARTY, ORDER THAT THE SAME MAY BE MAINTAINED BY OR AGAINST THE UNITED STATES OR SUCH OFFICIAL OF THE DEPARTMENT AS MAY BE APPROPRIATE.

(C) EXCEPT AS MAY BE OTHERWISE EXPRESSLY PROVIDED IN THIS ACT, ALL POWERS AND AUTHORITIES CONFERRED BY THIS ACT SHALL BE CUMULATIVE AND ADDITIONAL TO AND NOT IN DEROGATION OF ANY POWERS AND AUTHORITIES OTHERWISE EXISTING. ALL RULES, REGULATIONS, ORDERS, AUTHORIZATIONS, DELEGATIONS, OR OTHER ACTIONS DULY ISSUED, MADE, OR TAKEN BY OR PURSUANT TO APPLICABLE LAW, PRIOR TO THE EFFECTIVE DATE OF THIS ACT, BY ANY AGENCY, OFFICER, OR OFFICE PERTAINING TO ANY FUNCTIONS, POWERS, AND DUTIES TRANSFERRED BY THIS ACT SHALL CONTINUE IN FULL FORCE AND EFFECT AFTER THE EFFECTIVE DATE OF THIS ACT UNTIL MODIFIED OR RESCINDED BY THE SECRETARY OR SUCH OTHER OFFICER OR OFFICE OF THE DEPARTMENT AS, IN ACCORDANCE WITH APPLICABLE LAW, MAY BE APPROPRIATE. WITH RESPECT TO ANY FUNCTION, POWER, OR DUTY TRANSFERRED BY OR UNDER THIS ACT AND EXERCISED HERE-AFTER, REFERENCE IN ANOTHER FEDERAL LAW TO THE HOUSING AND HOME FINANCE AGENCY OR TO ANY OFFICER, OFFICE, OR AGENCY THEREIN, EXCEPT THE FEDERAL NATIONAL

AL MORTGAGE ASSOCIATION AND ITS OFFICERS, SHALL BE DEEMED TO MEAN THE SECRETARY. THE POSITIONS AND AGENCIES ESTABLISHED BY LAW IN CONNECTION WITH THE FUNCTIONS, POWERS, AND DUTIES TRANSFERRED UNDER SECTION 5(A) OF THIS ACT SHALL LAPSE.

#### SEPARABILITY

SEC. 15. NOTWITHSTANDING ANY OTHER EVIDENCE OF THE INTENT OF CONGRESS, IT IS HEREBY DECLARED TO BE THE INTENT OF CONGRESS THAT IF ANY PROVISION OF THIS ACT, OR THE APPLICATION THEREOF TO ANY PERSONS OR CIRCUMSTANCES, SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID, SUCH JUDGMENT SHALL NOT AFFECT, IMPAIR, OR INVALIDATE THE REMAINDER OF THIS ACT OR ITS APPLICATION TO OTHER PERSONS AND CIRCUMSTANCES, BUT SHALL BE CONFINED IN ITS OPERATION TO THE PROVISION OF THIS ACT, OR THE APPLICATION THEREOF TO THE PERSONS AND CIRCUMSTANCES

WHICH ARE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED.

EFFECTIVE DATE AND  
INITIAL APPOINTMENTS

SEC. 11. (A) THE PROVISIONS OF THIS ACT SHALL TAKE EFFECT UPON THE EXPIRATION OF THE FIRST PERIOD OF SIXTY CALENDAR DAYS FOLLOWING THE DATE ON WHICH THIS ACT IS APPROVED BY THE PRESIDENT, OR ON SUCH EARLIER DATE AS THE PRESIDENT SHALL SPECIFY BY WRITING ORDER PUBLISHED IN THE FEDERAL REGISTER, EXCEPT THAT ANY OF THE OFFICERS PROVIDED FOR IN SECTIONS 3(A), 4(A), AND 4(B) OF THIS ACT MAY BE NOMINATED AND APPOINTED, AS PROVIDED IN SUCH SECTIONS, AT ANY TIME AFTER THE DATE THIS ACT IS APPROVED BY THE PRESIDENT.

(B) IN THE EVENT THAT ONE OR MORE OFFICERS REQUIRED BY THIS ACT TO BE APPOINTED, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL NOT ENTERED UPON OFFICE ON THE EFFECTIVE DATE OF THIS ACT, THE PRESIDENT MAY DESIGNATE ANY PERSON WHO WAS AN OFFICER OF THE HOUSING AND HOME FINANCE AGENCY IMMEDIATELY PRIOR TO SAID EFFECTIVE DATE TO ACT IN SUCH OFFICE UNTIL THE OFFICE IS FILLED AS PROVIDED IN THIS ACT OR UNTIL THE EXPIRATION OF THE FIRST PERIOD OF SIXTY DAYS FOLLOWING SAID EFFECTIVE DATE, WHICHEVER SHALL FIRST OCCUR. WHILE SO ACTING SUCH PERSONS SHALL RECEIVE COMPENSATION AT THE RATES PROVIDED BY THIS ACT FOR THE RESPECTIVE OFFICES IN WHICH THEY ACT."

APPROVED SEPTEMBER 9, 1965.

#### LEGISLATIVE HISTORY

HOUSE REPORTS: NO. 337 (COMM. ON GOVERNMENT OPERATIONS) AND NO. 334 (COMM. OF CONFERENCE).

SENATE REPORT NO. 536 ACCOMPANYING S. 1599 (COMM. ON GOVERNMENT OPERATIONS).

CONGRESSIONAL RECORD, VOL. 111 (1965):

JUNE 15: CONSIDERED IN HOUSE.

JUNE 16: CONSIDERED AND PASSED HOUSE.

AUG. 13: CONSIDERED IN SENATE.

AUG. 11: CONSIDERED AND PASSED SENATE, AMENDED, IN LIEU OF S. 1599.

AUG. 30: SENATE AGREED TO CONFERENCE REPORT.

AUG. 31: HOUSE AGREED TO CONFERENCE REPORT.

DTG: 312142Z OCTOBER 1965

GP 3992

COMM CENTER USE)

# THE WHITE HOUSE

OUTGOING MESSAGE



WHASA

PRIORITY  
PRECEDENCE

UNCLASSIFIED  
CLASSIFICATION

31 OCT 65  
DATE

RM

~~FROM:~~ JOE CALIFANO

TO: THE PRESIDENT

INFO:

CITE: WH50359

NOV 1 02 54

SENT  
WHCA

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

October 31, 1965

TO: THE PRESIDENT

FROM: Joe Califano

For your information, there follows the full text of the  
Act to Establish a Department of Housing and Urban Development:



Public Law 89-174  
89th Congress, H. R. 6927  
September 9, 1965

**An Act**

79 STAT. 667

To establish a Department of Housing and Urban Development, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Housing and Urban Development Act".

Department of  
Housing and  
Urban Develop-  
ment Act.

**DECLARATION OF PURPOSE**

SEC. 2. The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of our people require, as a matter of national purpose, sound development of the Nation's communities and metropolitan areas in which the vast majority of its people live and work.

To carry out such purpose, and in recognition of the increasing importance of housing and urban development in our national life, the Congress finds that establishment of an executive department is desirable to achieve the best administration of the principal programs of the Federal Government which provide assistance for housing and for the development of the Nation's communities; to assist the President in achieving maximum coordination of the various Federal activities which have a major effect upon urban community, suburban, or metropolitan development; to encourage the solution of problems of housing, urban development, and mass transportation through State, county, town, village, or other local and private action, including promotion of interstate, regional, and metropolitan cooperation; to encourage the maximum contributions that may be made by vigorous private homebuilding and mortgage lending industries to housing, urban development, and the national economy; and to provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation's communities and of the people who live and work in them.

**ESTABLISHMENT OF DEPARTMENT**

SEC. 3. (a) There is hereby established at the seat of government an executive department to be known as the Department of Housing and Urban Development (hereinafter referred to as the "Department"). There shall be at the head of the Department a Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary. The Secretary shall receive compensation at the rate now or hereafter prescribed by law for the heads of executive departments.

Appointment of  
Secretary.

(b) The Secretary shall, among his responsibilities, advise the President with respect to Federal programs and activities relating to housing and urban development; develop and recommend to the President policies for fostering the orderly growth and development of the Nation's urban areas; exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development; provide technical assistance and information, including a clearinghouse service to aid State, county, town, village, or other local governments in developing solutions to community and metropolitan development problems; consult and cooperate with State Governors and State agencies, including, when appropriate, holding informal public hearings, with respect to Federal and State programs

Duties.

for assisting communities in developing solutions to community and metropolitan development problems and for encouraging effective regional cooperation in the planning and conduct of community and metropolitan development programs and projects; encourage comprehensive planning by the State and local governments with a view to coordinating Federal, State, and local urban and community development activities; encourage private enterprise to serve as large a part of the Nation's total housing and urban development needs as it can and develop the fullest cooperation with private enterprise in achieving the objectives of the Department; and conduct continuing comprehensive studies, and make available findings, with respect to the problems of housing and urban development.

(c) Nothing in this Act shall be construed to deny or limit the benefits of any program, function, or activity assigned to the Department by this or any other Act to any community on the basis of its population or corporate status, except as may be expressly provided by law.

UNDER SECRETARY AND OTHER OFFICERS AND OFFICES

Under Secretary, Assistant Secretaries, Appointment.

SEC. 4. (a) There shall be in the Department an Under Secretary, four Assistant Secretaries, and a General Counsel, who shall be appointed by the President by and with the advice and consent of the Senate, who shall receive compensation at the rate now or hereafter provided by law for under secretaries, assistant secretaries, and general counsels, respectively, of executive departments, and who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time. There shall be in the Department a Federal Housing Commissioner, who shall be one of the Assistant Secretaries, who shall head a Federal Housing Administration within the Department, who shall have such duties and powers as may be prescribed by the Secretary, and who shall administer, under the supervision and direction of the Secretary, departmental programs relating to the private mortgage market.

Federal Housing Commissioner.

(b) There shall be in the Department an Assistant Secretary for Administration, who shall be appointed, with the approval of the President, by the Secretary under the classified civil service, who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time, and whose annual rate of compensation shall be the same as that now or hereafter provided by or pursuant to law for assistant secretaries for administration of executive departments.

Assistant Secretary for Administration.

(c) There shall be in the Department a Director of Urban Program Coordination, who shall be designated by the Secretary. He shall assist the Secretary in carrying out his responsibilities to the President with respect to achieving maximum coordination of the programs of the various departments and agencies of the Government which have a major impact on community development. In providing such assistance, the Director shall make such studies of urban and community problems as the Secretary shall request, and shall develop recommendations relating to the administration of Federal programs affecting such problems, particularly with respect to achieving effective cooperation among the Federal, State, and local agencies concerned. Subject to the direction of the Secretary, the Director shall, in carrying out his responsibilities, (1) establish and maintain close liaison with the Federal departments and agencies concerned, and (2) consult with State, local, and regional officials, and consider their recommendations with respect to such programs.

Director of Urban Program Coordination.

TRANSFERS TO DEPARTMENT

SEC. 5. (a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to and vested in the Secretary all of the functions, powers, and duties of the Housing and Home Finance Agency, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of said agencies.

(b) The Federal National Mortgage Association, together with its functions, powers, and duties, is hereby transferred to the Department. The next to the last sentence of section 308 of the Federal National Mortgage Association Charter Act and the item numbered (94) of section 303(a) of the Federal Executive Salary Act of 1964 are hereby repealed, and the position of the President of said Association is hereby allocated among the positions referred to in section 7(c) hereof.

Repeals.  
68 Stat. 620.  
12 USC 1723.  
78 Stat. 421.  
5 USC 2211.

(c) The President shall undertake studies of the organization of housing and urban development functions and programs within the Federal Government, and he shall provide the Congress with the findings and conclusions of such studies, together with his recommendations regarding the transfer of such functions and programs to or from the Department. Notwithstanding any other provision of this Act, none of the functions of the Secretary of the Interior authorized under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) or other functions carried out by the Bureau of Outdoor Recreation shall be transferred from the Department of the Interior or in any way be limited geographically unless specifically provided for by reorganization plan pursuant to provisions of the Reorganization Act of 1949 (63 Stat. 203), as amended, or by statute.

Report to Congress.

16 USC 4601-4 note.

5 USC 133z note.

CONFORMING AMENDMENTS

SEC. 6. (a) Section 19(d)(1) of title 3 of the United States Code is hereby amended by striking out the period at the end thereof and inserting a comma and the following: "Secretary of Health, Education, and Welfare, Secretary of Housing and Urban Development."

62 Stat. 677.

(b) Section 158 of the Revised Statutes (5 U.S.C. 1) is amended by adding at the end thereof:

"Eleventh. The Department of Housing and Urban Development."  
(c) The amendment made by subsection (b) of this section shall not be construed to make applicable to the Department any provision of law inconsistent with this Act.

ADMINISTRATIVE PROVISIONS

SEC. 7. (a) The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, or other funds held, used, arising from, or available or to be made available in connection with, the functions, powers, and duties transferred by section 5 of this Act are hereby transferred with such functions, powers, and duties, respectively.

Transfer of personnel, assets, etc.

(b) No transfer of functions, powers, and duties shall at any time be made within the Department in connection with the secondary market operations of the Federal National Mortgage Association unless the Secretary finds that the rights and interests of owners of outstanding common stock issued under the Federal National Mortgage Association Charter Act will not be adversely affected thereby.

Restriction.

68 Stat. 622.  
12 USC 1716 note.

Compensation of personnel.

(c) The Secretary is authorized, subject to the civil service and classification laws, to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, as shall be necessary to carry out the provisions of this Act and to prescribe their authority and duties: *Provided*, That any other provision of law to the contrary notwithstanding, the Secretary may fix the compensation for not more than six positions in the Department at the annual rate applicable to positions in level V of the Federal Executive Salary Schedule provided by the Federal Executive Salary Act of 1964.

78 Stat. 419.

5 USC 2211.

Delegation of authority.

(d) The Secretary may delegate any of his functions, powers, and duties to such officers and employees of the Department as he may designate, may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties. The second proviso of section 101(c) of the Housing Act of 1949 is hereby repealed.

Repeal.

68 Stat. 623.

42 USC 1451.

60 Stat. 810.

5 USC 55a.

(e) The Secretary may obtain services as authorized by section 15 of the Act of August 2, 1946, at rates not to exceed \$100 per diem for individuals.

Working capital fund.

(f) The Secretary is authorized to establish a working capital fund to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interest of economy and efficiency in the Department, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space; central services for document reproduction and for graphics and visual aids; and a central library service. In addition to amounts appropriated to provide capital for said fund, which appropriations are hereby authorized, the fund shall be capitalized by transfer to it of such stocks of supplies and equipment on hand or on order as the Secretary shall direct. Such fund shall be reimbursed from available funds of agencies and offices in the Department for which services are performed at rates which will return in full all expenses of operation, including reserves for accrued annual leave and for depreciation of equipment.

Seal.

(g) The Secretary shall cause a seal of office to be made for the Department of such device as he shall approve, and judicial notice shall be taken of such seal.

ANNUAL REPORT

SEC. 8. The Secretary shall, as soon as practicable after the end of each calendar year, make a report to the President for submission to the Congress on the activities of the Department during the preceding calendar year.

SAVINGS PROVISIONS

SEC. 9. (a) No cause of action by or against any agency whose functions are transferred by this Act, or by or against any officer of any agency in his official capacity, shall abate by reason of this enactment. Such causes of action may be asserted by or against the United States or such official of the Department as may be appropriate.

(b) No suit, action, or other proceeding commenced by or against any agency whose functions are transferred by this Act, or by or against any officer of any such agency in his official capacity, shall abate by reason of the enactment of this Act. A court may at any time during the pendency of the litigation, on its own motion or that of any party, order that the same may be maintained by or against the United States or such official of the Department as may be appropriate.

(c) Except as may be otherwise expressly provided in this Act, all powers and authorities conferred by this Act shall be cumulative and additional to and not in derogation of any powers and authorities otherwise existing. All rules, regulations, orders, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to applicable law, prior to the effective date of this Act, by any agency, officer, or office pertaining to any functions, powers, and duties transferred by this Act shall continue in full force and effect after the effective date of this Act until modified or rescinded by the Secretary or such other officer or office of the Department as, in accordance with applicable law, may be appropriate. With respect to any function, power, or duty transferred by or under this Act and exercised hereafter, reference in another Federal law to the Housing and Home Finance Agency or to any officer, office, or agency therein, except the Federal National Mortgage Association and its officers, shall be deemed to mean the Secretary. The positions and agencies heretofore established by law in connection with the functions, powers, and duties transferred under section 5(a) of this Act shall lapse.

SEPARABILITY

SEC. 10. Notwithstanding any other evidence of the intent of Congress, it is hereby declared to be the intent of Congress that if any provision of this Act, or the application thereof to any persons or circumstances, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act or its application to other persons and circumstances, but shall be confined in its operation to the provision of this Act, or the application thereof to the persons and circumstances, directly involved in the controversy in which such judgment shall have been rendered.

EFFECTIVE DATE AND INTERIM APPOINTMENTS

SEC. 11. (a) The provisions of this Act shall take effect upon the expiration of the first period of sixty calendar days following the date on which this Act is approved by the President, or on such earlier date as the President shall specify by Executive order published in the Federal Register, except that any of the officers provided for in sections 3(a), 4(a), and 4(b) of this Act may be nominated and appointed, as provided in such sections, at any time after the date this Act is approved by the President.

(b) In the event that one or more officers required by this Act to be appointed, by and with the advice and consent of the Senate, shall not have entered upon office on the effective date of this Act, the President may designate any person who was an officer of the Housing and Home Finance Agency immediately prior to said effective date to act in such

office until the office is filled as provided in this Act or until the expiration of the first period of sixty days following said effective date, whichever shall first occur. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act. *L.H. Quaker*

Approved September 9, 1965.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 337 (Comm. on Government Operations) and No. 884 (Comm. of Conference).

SENATE REPORT No. 536 accompanying S. 1599 (Comm. on Government Operations).

CONGRESSIONAL RECORD, Vol. 111 (1965):

June 15: Considered in House.

June 16: Considered and passed House.

Aug. 10: Considered in Senate.

Aug. 11: Considered and passed Senate, amended, in lieu of S. 1599.

Aug. 30: Senate agreed to conference report.

Aug. 31: House agreed to conference report.



Office of the Attorney General  
Washington, D. C.

EXECUTIVE

76170

76135

MEMORANDUM

Re: Effect of the Department of Housing and Urban  
Development Act on and after November 9, 1965.

The President might decide to defer the appointment or designation of a Secretary or Acting Secretary of the new Department of Housing and Urban Development until after the Senate reconvenes and is in a position to consider and approve nominations to the newly-created posts in the Department. The purpose of this memorandum is to explain how the Act establishing the new Department would operate during this interim period, and how the business of the new Department would be conducted in the event of such a decision.

The Act provides that it shall take effect upon the expiration of the first period of sixty calendar days following the date on which the Act is approved by the President. Since the President signed the Act on September 9, 1965, the effective date is November 9, 1965.

On that date, under section 3 of the Act, the new Department of Housing and Urban Development will come into existence. Under section 5 of the Act all of the functions, powers, and duties of the Housing and Home Finance Agency, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of those agencies, will automatically be transferred to the new Department.

Section 7 of the Act provides that the personnel employed in connection with the functions, powers, and duties transferred by the Act are also transferred automatically to the new Department. The same is true of the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, or other funds, connected with the transferred functions. The Act expressly declares that all of the powers and authorities existing under prior law shall continue and shall not be deemed to be limited or abrogated by the new Act. Section 9 of the Act expressly continues in full force and effect all rules, regulations, orders,

authorizations, delegations, or other actions taken or established under the law existing prior to the effective date of the Act.

The over-all result of these provisions is that the existing agencies and personnel, including the Administrator and other officers of the Housing and Home Finance Agency, will continue to function exactly as they have in the past except that they will on and after November 9, 1965, be legally a part of the new Department of Housing and Urban Development. The agencies transferred to the new Department will continue to function in this way until the new Secretary is confirmed and has had an opportunity to issue appropriate orders establishing the new departmental structure contemplated by the Act.

A question may be raised as to the effect of section 9(c), which provides that "[t]he positions and agencies heretofore established by law in connection with the functions, powers, and duties transferred under section 5(a) of this Act shall lapse." This provision must be construed in the light of the other provisions in the Act

which automatically transfer personnel and preserve the continuity of existing law and orders until altered by the new Secretary upon his appointment. These provisions taken together show a strong intent on the part of Congress that the transition should be orderly and that there should be continuity in the performance of all functions affected by the Act. Construed in the light of these provisions, the provision in section 9(c) means that the "positions and agencies" involved shall lapse upon the implementing of the Act by the new Secretary. In this connection, it is to be noted that the language used in this provision ("shall lapse") is different from the language used in those provisions which automatically come into effect on the effective date of the Act (i.e., "is hereby established," "are hereby transferred"). The term "lapse" is commonly used to connote a gradual process (e.g., Webster's New Int'l Dict. (2d ed.) "to pass ... gradually"; Bouvier's Law Dict. (3d rev.) "to pass slowly ... or by degrees").

The foregoing construction of the Act has the approval of this Department and of the General Accounting Office.

  
Attorney General

Q. Is Dr. Weaver the Acting Secretary of the new Department?

A. No. He continues as the Administrator of the Housing and Home Finance Agency, which on November 9 will become a part of the Department of Housing and Urban Development. (As a practical matter, until the President makes his nomination of the new Secretary, Dr. Weaver will be the highest-ranking officer in the new Department.)

Q. Doesn't the Act abolish Dr. Weaver's job and the Housing and Home Finance Agency as of the effective date of the Act?

A. No. The Act provides that Dr. Weaver's position, and certain other jobs and agencies, "shall lapse." However, that provision, according to the Attorney General and the Comptroller General, is intended to take effect only after the Secretary is appointed and has had an opportunity to issue the orders required to establish a new departmental structure. Until that occurs, all of the jobs and agencies continue as they were except that they are now part of and situated within the Department of Housing and Urban Development.

Q. How will Dr. Weaver sign his name?

A. He will sign as Administrator, Housing and Home Finance Agency, Department of Housing and Urban Development. Other officials, such as the Commissioner of the Federal Housing Administration, will sign in a similar way.

Q. What salaries will be paid to Dr. Weaver and the other principal officers of the Housing and Home Finance Agency after the new Department comes into existence?

A. The same as they now receive. In Dr. Weaver's case \$30,000 a year.



HOUSING AND HOME FINANCE AGENCY  
OFFICE OF THE ADMINISTRATOR • WASHINGTON, D.C. 20410

EXECUTIVE

76 170


76 245

Federal Housing Administration  
Public Housing Administration  
Federal National Mortgage Association  
Community Facilities Administration  
Urban Renewal Administration

November 3, 1965

MEMORANDUM FOR: Lee White  
Special Counsel  
to the President  
The White House

Here is some further information on matters requiring action by November 9th to effect the legal continuation of our activities and transition to Departmental status.

  
Milton P. Semer  
Deputy Administrator and  
General Counsel

EFFECT OF DEPARTMENTAL STATUS ON EXISTING TOP LEVEL POSITIONS IN HHFA

Positions Which Lapse on the Effective Date

<u>Title</u>	<u>Incumbent</u>	<u>Level &amp; Salary</u>
Administrator	Robert C. Weaver	II \$30,000
Deputy Administrator	Milton P. Semer	III 28,500
Federal Housing Commissioner	Philip N. Brownstein	IV 27,000
Public Housing Commissioner	Marie McGuire	IV 27,000
Urban Renewal Commissioner	William L. Slayton	IV 27,000

The position of Community Facilities Commissioner, now vacant, is not a statutory position and therefore does not lapse under the terms of the Act.

The position of President, FNMA, is allocated by the Act to one of the six Level V positions authorized for use by the Secretary, and the present authority to pay the President of FNMA at Level V under the Pay Act is cancelled.

The present Deputy Administrator serves also as HHFA General Counsel, and the present Level V General Counsel position in the Pay Act is vacant. If an Acting or permanent Department General Counsel is not named by the President by the effective date, two principal alternatives are available: (1) use the vacant HHFA General Counsel position until the Department position is filled, or (2) use one of the new Level V positions temporarily for this purpose. An operating title of Director, Office of General Counsel could be used during this period.

The position of Federal Housing Commissioner must, under the Act, be one of the Assistant Secretaries for appointment by the President. The position will, by the effective date, therefore, have to be filled by the President on an Acting or permanent basis by the effective date if FHA is to have an effective operating head.

The position of President, FNMA can be filled on the effective date either on a temporary or permanent basis, depending on whether Schedule C authority is available in time and on the nature of appointing action desired.

The positions of Public Housing Commissioner and Urban Renewal Commissioner would under the terms of an Interim Order, be reestablished on the effective date along with the organization units they headed, pending permanent organization of the Department. Two of the six Level V positions provided in the Act could be used for these commissioner jobs.

The Level V positions available under the Act are in the competitive service and when used for Commissioner jobs would ordinarily be placed in Schedule C. If timing permits, this could be arranged with the Civil Service Commission; if not, the positions could be established and filled under a 30-day emergency authority to be followed up by Commission action to place them in Schedule C.

The Level V positions can be used temporarily for the kinds of purposes identified above, and then vacated and reestablished with new titles if future organization needs so dictate.

Positions Requiring Action by the Secretary

An Assistant Secretary for Administration is provided in the Act. The present Assistant Administrator (Administration), Lewis E. Williams, could continue with an appropriate title change in the present supergrade career position he now occupies until a designation is made.

Other positions in the top structure of the Agency for which present titles will be inconsistent on the effective date are listed on the attachment with recommended temporary new titles.

From

To

Special Assistant to the Administrator (2)

Special Assistant to the Secretary (2)

Secretary to the Administrator

Private Secretary (Immediate Office of the Secretary)

Secretary to the Special Assistant to the Administrator

Private Secretary to Special Assistant to the Secretary

Special Assistant (Administrator's Office)

Special Assistant

Assistant to the Administrator for Consumer and Community Group Relations

Assistant to the Secretary for Consumer and Community Group Relations

Assistant to the Administrator for Intergroup Relations

Assistant to the Secretary for Intergroup Relations

Special Assistant to Deputy Administrator

Special Assistant to the Under Secretary

Special Counsel and Assistant to the Deputy Administrator

Special Counsel and Assistant to the Under Secretary

Assistant Administrator (Program Policy)

Director, Office of Program Policy

Deputy Assistant Administrator (Program Policy)

Deputy Director, Office of Program Policy

Secretary to the Assistant Administrator (Program Policy)

Private Secretary to the Director Office of Program Policy

Assistant Administrator for Public Affairs

Director, Office of Public Affairs

Secretary and Confidential Assistant to the Assistant Administrator for Public Affairs

Private Secretary to the Director, Office of Public Affairs

Assistant Administrator (Transportation)

Director, Office of Transportation

Deputy Assistant Administrator (Transportation)

Deputy Director, Office of Transportation

Private Secretary to Assistant Administrator (Transportation)

Private Secretary to the Director, Office of Transportation

Assistant Administrator (Community Programs)

Director, Office of Community Programs

Deputy Assistant Administrator (Community Programs)

Deputy Director, Office of Community Programs

Private Secretary to Assistant Administrator (Community Programs)

Private Secretary to Director, Office of Community Programs

Assistant Administrator (Metropolitan Development)

Secretary and Confidential Assistant to the Assistant Administrator (Metropolitan Development)

Assistant Administrator (Housing for Senior Citizens)

Deputy Assistant Administrator (Housing for Senior Citizens)

Assistant Administrator (International Housing)

Special Assistant to the Assistant Administrator (International Housing)

Assistant Administrator (Administration)

Special Assistant to the Assistant Administrator (Administration)

General Services Director and HHFA Building Coordinator

Director, Office of Metropolitan Development

Private Secretary to the Director, Office of Metropolitan Development

Director, Housing for Senior Citizens

Deputy Director, Housing for Senior Citizens

Director, Office of International Housing

Special Assistant to the Director, Office of International Housing

Director, Office of Administration

Special Assistant to the Director Office of Administration

General Services Director and Building Coordinator

get

EXECUTIVE

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THE WHITE HOUSE  
WASHINGTON

November 3, 1965

For Joe Califano:

HHFA slipped up on one set of regulations and did not send it through the White House. On October 30 it appeared (in 30 FR 15826) and it sets forth procedures for FHA: the term "Commissioner," where used in connection with the conveyance of real or personal property, means the Secretary of HUD; otherwise it means the FHA Administrator, acting on behalf of the Secretary.

In the present state of negotiations I don't know what this means, but in any event it is probably not serious.



Harry McPherson

8 Nov 65

Joe:

This is already at the  
Federal Register, but  
publication is being held up  
until we clear it here.

Lee and I went over it with  
Rob and Semer, and I  
think it is clear; I also  
think it is necessary from  
a public point of view.

Joe

**TRANSMITTAL SLIP**

ROUTE TO:	NAME	ROOM	BUILDING
1.	<i>Mr Harry McPherson</i>		
2.			
3.			
4.			
5.			
6.			

- Action       As requested       Surname  
 Approval       Signature       Your information  
 Prepare reply for signature of \_\_\_\_\_

REMARKS:

FROM (Name)

*Milton P. Lerner*

DATE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Interim Order I

(Effective November 9, 1965)

1. Purpose.

Pending the appointment of a Secretary of Housing and Urban Development, this Interim Order I is issued to provide, until changed by appropriate authority, for continuity of functions.

2. Nomenclature changes.

Reference to the "Housing and Home Finance Administrator" or "Administrator" appearing in a rule, regulation, order, authorization, delegation, or other action continued in effect under section 9(c) of Public Law 89-174 shall hereafter be deemed to refer to the Administrator in the Department of Housing and Urban Development pending the appointment of the Secretary.

3. Certain offices or positions and organizational units; delegation of authority.

The offices or positions and organizational units in the Department shall include:

<u>Office or Position</u>	<u>Respective Organizational Unit</u>
Federal Housing Commissioner	Federal Housing Administration
Public Housing Commissioner	Public Housing Administration
Community Facilities Commissioner	Community Facilities Administration
Urban Renewal Commissioner	Urban Renewal Administration
The Board of Directors and the President of the Federal National Mortgage Association	Federal National Mortgage Association.

Each officer or employee appointed to, or designated to act in, the office or position listed immediately above and each organizational unit so listed is hereby authorized to exercise the functions, powers, and duties vested in, or delegated or assigned to, the office or position or officer or employee or organizational unit having the same title immediately prior to the effective date of the Act, and to redelegate and authorize successive redelegations of such authority to the extent empowered under authority vested, delegated, or assigned immediately prior to the effective date of the Act.

4. Applicability of rules, regulations, orders, authorizations, delegations, or other actions continued in effect.

Subject to paragraph 2, a reference in a rule, regulation, order, authorization, delegation, or other action continued in effect under section 9(c) of the Act to an office or position, officer or employee, or organizational unit (including board or committee) shall be deemed to refer to the office or position, officer or employee, or organizational unit having the same title in the Department.

5. Conclusive evidence of authority.

Any instrument or document, including an instrument purporting to transfer any right, title, or interest in or to real or personal property, executed by an officer or employee of the Department under the authority of this Order shall be conclusive evidence of the authority of such officer or employee to execute such instrument or document.

6. Custody of and accountability for assets and liabilities.

The assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations or allotments, or other funds referred to in section 7(a) of Public Law 89-174 shall be in the custody and subject to the accountability of the office or position, officer or employee, or organizational unit, responsible for such custody and accountability immediately prior to the effective date of the Act.

Effective as of the 9th day of November 1965.

HOUSING AND HOME FINANCE ADMINISTRATOR,  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

November 8, 1965

## Johnson Takes Time Picking Urban Chief

**He's Not Expected  
To Fill New Post  
Until First of Year**

By HUGH E. FLAHERTY  
Of The Bulletin Staff

Austin, Texas, Nov. 5—President Johnson is having difficulty selecting the man he wants to head the new Department of Housing and Urban Affairs.

A reliable White House source last night said the President isn't expected to select a secretary for the new position until the first of the year, even though the law establishing the cabinet office goes into effect Monday.

It had been the original intention to appoint the new secretary when the law went into effect, the source said.

### Wants Right Man

The source said the President is concerned that he puts the right man in the job to handle the problems of the nation's cities. He has been weighing his decision since he arrived at the LBJ Ranch to recuperate from his gall bladder operation.

Several times in the past three years the President has publicly indicated he is deeply involved in this decision.

It is the first cabinet status office to be approved by Congress since the Health, Education and Welfare Department was established in 1953.

Instead of making the appointment now, the President got an opinion from Attorney General Nicholas Katzenbach that the department could come into existence Monday without a secretary.

This leaves the President free to continue his search for the right man, the source said.

### Task Force Assigned

As a result of this decision, the source said, the President assigned a task force of urban leaders to come up with ideas about the new department and what its function should be.

File  
Urban Affairs

NOV 2 1965

MEMORANDUM

Re: Effect of the Department of Housing and Urban Development Act on and after November 9, 1965.

The President might decide to defer the appointment or designation of a Secretary or Acting Secretary of the new Department of Housing and Urban Development until after the Senate reconvenes and is in a position to consider and approve nominations to the newly-created posts in the Department. The purpose of this memorandum is to explain how the Act establishing the new Department would operate during this interim period, and how the business of the new Department would be conducted in the event of such a decision.

The Act provides that it shall take effect upon the expiration of the first period of sixty calendar days following the date on which the Act is approved by the President. Since the President signed the Act on September 9, 1965, the effective date is November 9, 1965.

On that date, under section 3 of the Act, the new Department of Housing and Urban Development will come into existence. Under section 5 of the Act all of the functions, powers, and duties of the Housing and Home Finance Agency, of the Federal Housing Administration and the Public Housing Administration in that Agency, and of the heads and other officers and offices of those agencies, will automatically be transferred to the new Department.

Section 7 of the Act provides that the personnel employed in connection with the functions, powers, and duties transferred by the Act are also transferred automatically to the new Department. The same is true of the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, or other funds, connected with the transferred functions. The Act expressly declares that all of the powers and authorities existing under prior law shall continue and shall not be deemed to be limited or abrogated by the new Act. Section 9 of the Act expressly continues in full force and effect all rules, regulations, orders,

authorizations, delegations, or other actions taken or established under the law existing prior to the effective date of the Act.

The over-all result of these provisions is that the existing agencies and personnel, including the Administrator and other officers of the Housing and Home Finance Agency, will continue to function exactly as they have in the past except that they will on and after November 9, 1965, be legally a part of the new Department of Housing and Urban Development. The agencies transferred to the new Department will continue to function in this way until the new Secretary is confirmed and has had an opportunity to issue appropriate orders establishing the new departmental structure contemplated by the Act.

~~Question may be raised as to the effect of~~ Section 9(c), <sup>of the Act</sup> ~~which~~ provides that "[t]he positions and agencies heretofore established by law in connection with the functions, powers, and duties transferred under section 5(a) of this Act shall lapse." This provision must be construed in the light of the other provisions in the Act

which automatically transfer personnel and preserve the continuity of existing law and orders until altered by the new Secretary upon his appointment. These provisions taken together show a strong intent on the part of Congress that the transition should be orderly and that there should be continuity in the performance of all functions affected by the Act. Construed in the light of these provisions, the provision in section 9(c) means that the "positions and agencies" involved shall lapse upon the implementing of the Act by the new Secretary. [In this connection, it is to be noted that the language used in this provision ("shall lapse") is different from the language used in those provisions which automatically come into effect on the effective date of the Act (i.e., "is hereby established," "are hereby transferred"). The term "lapse" is commonly used to connote a gradual process (e.g., Webster's New Int'l Dict. (2d ed.) "to pass ... gradually"; Bouvier's Law Dict. (3d rev.) "to pass slowly ... or by degrees")]

The foregoing construction of the Act has the approval of this Department and of the General Accounting Office.

Attorney General

Q. Is Dr. Weaver the Acting Secretary of the new Department?

A. No. He continues as the Administrator of the Housing and Home Finance Agency, which on November 9 will become a part of the Department of Housing and Urban Development. (As a practical matter, until the President makes his nomination of the new Secretary, Dr. Weaver will be the highest-ranking officer in the new Department.)

Q. Doesn't the Act abolish Dr. Weaver's job and the Housing and Home Finance Agency as of the effective date of the Act?

A. No. The Act provides that Dr. Weaver's position, and certain other jobs and agencies, "shall lapse." However, that provision, according to the Attorney General and the Comptroller General, is intended to take effect only after the Secretary is appointed and has had an opportunity to issue the orders required to establish a new departmental structure. Until that occurs, all of the jobs and agencies continue as they were except that they are now part of and situated within the Department of Housing and Urban Development.

Q. How will Dr. Weaver sign his name?

A. He will sign as Administrator, Housing and Home Finance Agency, Department of Housing and Urban Development. Other officials, such as the Commissioner of the Federal Housing Administration, will sign in a similar way.

Q. What salaries will be paid to Dr. Weaver and the other principal officers of the Housing and Home Finance Agency after the new Department comes into existence?

A. The same as they now receive. In Dr. Weaver's case \$30,000 a year.