

the act (as amended by sec. 214 of the Housing and Urban Development Act of 1965) creates this general insurance fund and specifically excludes from transfer to the general insurance fund the assets and liabilities relating to mortgages and loans referred to in section 519(c) of the act. Section 519(e) designates section 203 loans and "mortgages the insurance for which is the obligation of the cooperative management housing insurance fund" as those to be excluded in transferring assets and liabilities to the general insurance fund. Pending the consent of the mortgagees to the transfer of section 213 mortgages and commitments as provided in subsection (m), it will be necessary to hold or earmark the assets and liabilities pertaining to the mortgages and commitments eligible for transfer in such manner as to protect and reserve them for application to mortgages eventually to be transferred to the cooperative management housing insurance fund. Subsection (m) contemplates that the Commissioner will establish a time period within which mortgagees must act upon the request for transfer. When the time period fixed by the Commissioner has elapsed, these mortgages and commitments which have not been transferred to the cooperative management housing insurance fund will be transferred to the general insurance fund.

AUGUST 31, 1965.

To: Mr. Frederick W. Mowatt, Deputy Associate General Counsel.
 From: Harry E. Johnson, Director, Cooperative Housing Division.
 Subject: Cooperative management housing insurance fund.

Section 213 of the National Housing Act was, as you know, amended in the present session of Congress to provide for the creation of a new insurance fund for section 213 cooperatives. All future cooperative accounts will be automatically included in the new fund. Cooperatives insured in the past will be included if transfer of the insurance to the new fund is consented to by the applicable mortgagee. The mortgagees are presently being circulated by the Comptroller to ascertain their decision in this regard. Should all of the mortgagees give their consent, the face amount of the insurance transferred to the new fund would be in the neighborhood of \$650 million.

I, of course, assume that when it has been ascertained which of the existing insurance accounts are to be so transferred that the FHA will analyze the situation and determine the dollar amount to be transferred from the old fund (formerly the housing insurance fund, now the general insurance fund) and credit the management fund with this figure. This will be a permanent transfer and not a "loan."

While the statute requires, as a condition to any distribution to the mortgagees that any funds transferred from the general insurance fund to the management fund be repaid in full, it is my view that this requirement does not relate to the funds properly attributable to the new fund arising out of the transfer of the insured cases. This view is expressed in Commissioner Brownstein's memorandum to Dr. Weaver dated April 29, 1965, as follows:

"Also, no distributable share can be paid until any amount which may be transferred to the general surplus account from the general insurance fund (*after initial establishment of the cooperative management housing insurance fund*) has been repaid." [Emphasis supplied.]

Any contrary result which would entail the transfer of perhaps hundreds of millions of dollars of contingent liability to the new fund without any transfer of assets seems to me would be ridiculous and contrary to the understanding of all concerned. It does not seem to me that Congress could have intended such a result.

An expression from you concerning the foregoing would be very much appreciated.

Mr. REICH: It can be noted from this correspondence that the FHA understands this to be the case, and their General Counsel has interpreted the law to this effect. However, to avoid any possible future difficulties it would be helpful if section 2 of Congressman Halpern's bill, H.R. 12766, were enacted to make this intention absolutely clear as statutory law.

Section 1 of H.R. 12766 provides that the FHA Commissioner will transfer to the new management fund, an amount equal to the pre-