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B-167637 October 11, 1973

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The Honorable H. John Heinz, III House of Representatives

Dear Mr. Heinz:

Reference is made to your letter of August 21, 1973, in which you ask our opinion as to the legality of action taken by the Secretary of Housing and Urban Development in transferring $63 million from a fund previously used to provide housing for the elderly into a disaster relief fund.

Enclosed with your letter is a copy of the letter dated July 2, 1973, addressed by you to the Secretary concerning such matter and a copy of reply thereto dated August 9, 1973, from Assistant Secretary (Commissioner) Sheldon E. Lubar.

As indicated in your letter and enclosures thereto, the funds involved originally were contained in the direct loan revolving fund established under section 202 of the Housing Act of 1959, approved September 23, 1959, 73 Stat. 667, 12 U.S.C. 1701q. Funds contained in such revolving fund were available for loans for housing and related facilities for elderly and handicapped families.

The Assistant Secretary stated in his reply that operations of the section 202 loan program now are processed under section 236 of the National Housing Act, 12 U.S.C. 1715z-1, and that $63 million of section 202 revolving fund monies had been transferred to the disaster relief fund as authorized by Public Law 92-383, the Department of Housing and Urban Development; Space, Science, Veterans, and Certain Other Independent Agencies Appropriation Act, 1973.

You ask, in effect, whether Public Law 92-383, in fact, provides authority for the above transfer.

Section 406 of Public Law 92-383, 86 Stat. 553, provides as follows:

"Sec. 406. The Secretary of Housing and Urban Development is authorized to establish a fund and to transfer to such fund from appropriations or funds available to the Department of Housing and Urban Development, such amounts a may be necessary to provide disaster assistance for which the Secretary has been requested by the Director of the Office of Emergency Preparedness to make resources available pursuant to the suthority of the Disaster Relief Act of 1970 (84 Stat. 1744)."

Section 203(a) of the Disaster Relief Act of 1970, 42 U.S.C. 4413, referred to in section 406 above, provides, in pertinent part that--

"In any major disaster, Federal agencies are hereby authorized, on direction of the President, to provide assistance by--

"(1) utilizing or lending, with or without compensation therefor, to States and local governments, their equipment, supplies, facilities, personnel, and other resources ***."

The authority given to the President under section 203 formerly exercised by the Director of the Office of Emergency Preparedness pursuant to Executive Order No. 11662, December 31, 1970, 35 F.R. 37, as amended, is now exercised by the Secretary of Housing and Urban Development pursuant to Executive Order No. 11725, June 27, 1973, 38 F.R. 17175.

The purpose of need for the language contained in section 406 of Public Law 92-383 is discussed on pages 1149 and 1150 of the Hearings on the HUD-Space-Science-Veterans Appropriations for 1973 before the House Subcommittee on HUD-Space-Science-Veterans of the Committee on Appropriations, as follows--

"Mr. Shipley. *** We have several language changes and we would like for you to go through this portion of the justifications and explain the significant items.

"Mr. Eiseman. Mr. Chairman, I think the only significant language change is referred to on page H-3 where a new general provision is proposed to enable the Department to establish a fund for disaster assistance activities. Otherwise, they are all of a minor nature.

"Mr. Shipley. How has it been handled in the past, Mr. Eiseman?

"Mr. Eiseman. In the past we have used urban renewal grant funds to meet the emergency disaster assignments that are given to us.

"Mr. Shipley. Why do you used the change now?

"Mr. Eiseman. One of the reasons, Mr. Chairman, is that the budget assumes that urban renewal will go into revenue sharing and that source would therefore not be available.

"Mr. Shipley. I want to thank you very much for your testimony and your cooperation."

In view of the provision of section 203(a) of the Disaster Relief Act of 1970; the specific authority of section 406 of Publich Law 92-383 to establish a fund and to transfer thereto funds to provide disaster relief; and the purpose of section 406 as described in the above Hearings, it is our opinion that the Secretary clearly was authorized to transfer section 202 funds to the fund established under section 406.

Sincerely yours,

R.F.KELLER Deputy Comptroller General of the United States