Presentation to the Hon. G. William Miller
Secretary of the Treasury

by

The City of New York

Municipal Assistance Corporation
For The City of New York

September 10, 1980
INTRODUCTION

In the fall of 1978, the City, MAC, State and Federal governments together with various financial institutions and City and State Pension Funds developed and implemented a plan which:

- provides capital financing assistance to the City during a four year period ending June 30, 1982.
- provided for the City's gradual reentry into the public long term credit markets.
- required the City to undertake various budgetary and management reforms designed to produce GAAP balanced operating budgets by no later than fiscal year 1982.

An important component of the plan is the Federal government's issuance of the "standby" guarantees for City debt in the aggregate amount of $900 million during fiscal years 1981 and 1982.

In authorizing the Secretary of the Treasury to guarantee City debt issued to finance its capital program, the Congress recognized that an orderly program of investment in the City's physical infrastructure was essential to its fiscal and economic recovery and to its ultimate reentry into the long term credit markets.

To date, financings have proceeded according to the plan. MAC has issued $938 million of its bonds pursuant to the
financing agreement implemented in the fall of 1978 and sold publicly $847 million of its bonds. The City has issued $750 million of guaranteed bonds to the City and State pension funds to finance its capital program and publicly marketed its own short term debt to meet most of its seasonal requirements. The balance of the proceeds have been used to fund the last vestiges of the City's operating budget deficit, meet MAC capital reserve fund requirements, fund the Guaranty Fund and continue MAC's refunding program.

During the past two years, the City has completed certain basic management reforms and contained the growth in its operating budget. Between 1976 and 1981, the City's total budgetary outlays have increased only 12%. During the same period, the State's budget has increased 33% and the Federal budget has grown 66%. The City has adopted an operating budget balanced in accordance with GAAP for its 1981 fiscal year. This goal has been attained a year earlier than required by the plan despite an economic slump and retrenchment in Federal programs which provide aid to urban areas.

Under the plan implemented in the fall of 1978, the City has resumed the capital planning and construction program after a significant period of near dormancy. The City anticipates
spending a total of $4.7 billion of City funds during the next five years to rehabilitate its capital plant.

Although there has been considerable progress, it appears unlikely that the City will be able to sell publicly its bonds in the amounts originally anticipated. In part, this reflects a general shift in market conditions which has limited the credit available to even the most seasoned issuers. Further, it is generally believed that the City must attain an investment grade rating before achieving full market access.

Notwithstanding the City's present lack of access to the long term credit markets to finance its capital program, its continuation is vital to the City's future. Further, the capital program is a continuous effort which requires a constant flow of projects coming through the design and approval process. Such a program cannot be quickly stopped and started and requires a degree of certainty as to source and timing of funding. Should the City fail to have adequate assurances of financing for its capital program beyond fiscal year 1982, it would have to begin immediately to curtail contract awards. New capital projects would be limited to emergency reconstruction, mandated programs and projects with substantial matching state and federal funds. Major high
priority programs such as the third water tunnel, bridge reconstruction and essential highway, sewer and water supply projects would be delayed indefinitely.

As part of the continuing process of adjusting the City's financial plans, MAC and the City have proposed an extension to the plan of financing implemented in the fall of 1978. The proposed extension would continue MAC's financing assistance for the City's capital program through December 1984 allowing a longer period for the City's gradual reentry into the public credit markets (see Table 1). The proposed plan anticipates that the City will begin public sales of its bonds during fiscal year 1981 and increase the amount it sells each year thereafter. Specifically the proposed plan:

- anticipates that the City will sell at least $1.7 billion of its bonds in the public markets during fiscal years 1981 to 1985.
- requires MAC to sell approximately $1.9 billion of its bonds publicly during the period ending December 31, 1984.
- projects that the remaining $862 million of MAC's private placements to the financial institutions and pension funds will be completed as scheduled and that the City will complete the issuance of the remaining $900 million of its bonds under the New York City Loan Guarantee Act of 1978.

New York State enacted legislation increasing MAC's issuance authority by $1.2 billion, to $10.0 billion (exclusive of
refunding debt and debt issued for seasonal financing), and extending the period during which MAC may issue debt (other than refunding debt) until December 31, 1984. This legislation enables MAC to fulfill its extended role in the proposed plan. For both economic and marketing reasons, however, the $10.0 billion issuance level is the effective limit to MAC's financing capacity under the First and Second General Resolutions.
TABLE 1
Financing Requirements and Sources
Fiscal Years 1981 to 1985

(In $ Millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>City Capital</td>
<td>712</td>
<td>975</td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
<td>4,687</td>
</tr>
<tr>
<td>MAC - Capital</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Reserve Fund</td>
<td>75</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td></td>
<td>375</td>
</tr>
<tr>
<td>and Guaranty Fund</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Refunding</td>
<td>100</td>
<td>150</td>
<td></td>
<td></td>
<td></td>
<td>250</td>
</tr>
<tr>
<td>Total</td>
<td>887</td>
<td>1,225</td>
<td>1,100</td>
<td>1,100</td>
<td>1,000</td>
<td>5,312</td>
</tr>
</tbody>
</table>

Sources

| City - Guaranteed    |      |      |      |      |      |       |
| - Public*            | 300  | 600  |      |      |      | 900   |
| MAC - Private        |      |      |      |      |      |       |
| - Public             | 537  | 325  |      |      |      | 862   |
| Sub-Total            | 1,337| 1,525| 700  | 750  | 1,000| 5,312 |

Reserve for Future
Capital Requirements (Deposits)/Withdrawals

| (450) (300) 400 350 0 0 |

Total for Current Requirements

| 887 1,225 1,100 1,100 1,000 5,312 |

* To the extent City public issues vary from the indicated schedule, MAC issues may be adjusted accordingly.

** To be issued during first six months of fiscal year 1985.
As discussed below, completion of the issuances under the proposed plan will leave MAC only a narrow margin of financing capacity. As shown in Figure 1 and Table 2, MAC's issuance capacity is insufficient to provide for both shortfalls in City issuances and the absence of guaranteed issuances. Shortfalls which exceed this margin will require a reduction in the City's capital program expenditure levels.
FIGURE 1

AGGREGATE MAC ISSUANCE FOR THE PURPOSE
OF STATUTORY LIMITATION UNDER PROPOSED PLAN
Fiscal Years 1981 to 1985

In Billions


7.646 8.221 8.621 9.246 10.196


7.946 8.916 10.896 9.971 11.899

Proposed Plan
Proposed Plan Without Guarantees
Proposed Plan Without Guarantees and Assuming No City Issuances
Table 2

Aggregate MAC Issuances For Purposes of the Statutory Limitation
Fiscal Years 1981 to 1985
(In $ Millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Plan</td>
<td>7,646</td>
<td>8,221</td>
<td>8,621</td>
<td>8,971</td>
<td>9,271</td>
</tr>
<tr>
<td>Proposed Plan</td>
<td>7,846</td>
<td>8,646</td>
<td>9,246</td>
<td>9,896</td>
<td>10,000*</td>
</tr>
<tr>
<td>Without Guarantees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposed Plan</td>
<td>7,946</td>
<td>8,946</td>
<td>9,846</td>
<td>10,000**</td>
<td>10,000**</td>
</tr>
<tr>
<td>Without Guarantees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>And Assuming No City Issuances</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* To provide for all of the financing requirements in 1985 would require MAC to exceed its statutory issuance limitation by $196 million. If alternative financing sources are unavailable, the City's level of capital expenditures must be reduced by that amount.

** To provide for all of the financing requirements in 1984 and 1985 would require MAC to exceed its statutory issuance limitation by $896 million and $1,896 million, respectively. If alternative financing sources are unavailable, the City's level of capital expenditures must be reduced by the aggregate $2,792 million by 1985.
During the ten years from the onset of the crisis to the completion of the proposed plan, the City's management and budgetary procedures will have undergone as thorough and rigorous an overhaul as ever undertaken by a major governmental unit. The reorganization will have been accomplished without recourse to bankruptcy and without severe disruptions in the local delivery of services. During the period, the State, both directly and through MAC, will have borne the bulk of the financing burden by extending its moral obligation to over $9 billion of debt issued to support the City. Indeed, out of the total $14.4 billion of long-term financing which will have been issued upon completion of the proposed plan, the portion borne locally by the State, MAC and the City will be almost 90% -- compared to about 10% contributed by the Federal government. The proposed plan -- which relies principally upon the State, MAC and the City -- can be implemented without requiring Federal assistance beyond that authorized in 1978.

FINANCING REQUIREMENTS

The City and MAC project financing requirements which total approximately $5.3 billion during fiscal years 1981 through 1985 as follows:
(In $ Millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>City Capital</td>
<td>712</td>
<td>975</td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
<td>4,687</td>
</tr>
<tr>
<td>MAC Capital Reserve Fund</td>
<td>64</td>
<td>75</td>
<td>100</td>
<td>100</td>
<td></td>
<td>339</td>
</tr>
<tr>
<td>Guaranty Fund</td>
<td>11</td>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td>36</td>
</tr>
<tr>
<td>MAC Refunding</td>
<td>100</td>
<td>150</td>
<td></td>
<td></td>
<td></td>
<td>250</td>
</tr>
<tr>
<td></td>
<td>887</td>
<td>1,225</td>
<td>1,100</td>
<td>1,100</td>
<td>1,000</td>
<td>5,312</td>
</tr>
</tbody>
</table>

**City Capital**

During the early 1970's, as capital financing was increasingly utilized for City operating expenditures, the City experienced a sharp decline in expenditures for actual capital construction from the peak of approximately $1.0 billion. At the onset of the City's fiscal crisis in 1975, even the minimal level of new capital construction was halted. The decline in actual capital investment over a number of years has resulted in a significant accumulation of deferred rehabilitation and reconstruction projects.

The financing plan established in the fall of 1978 has enabled the City to undertake capital projects that had been postponed since the early 1970's. In doing so the City made a major
shift in capital priorities from construction of new facilities such as schools, libraries, and police and fire stations, to restoration of its infrastructure. Since little has been invested in such rehabilitation of the City's physical plant, no pipeline of projects existed which could easily be implemented and construction started. The reordering of its priorities and the need to reestablish a capital planning process caused the capital expenditure during fiscal years 1979 and 1980 to fall below projected levels.

During these two years, however, the pipeline of capital projects in design has increased dramatically. The current estimate of the value of such projects is approximately $3.0 billion, of which $1.5 billion must be financed by the City or MAC. In addition, over the next five years, outstanding commitments of approximately $938 million must be financed. As shown in Table 3, the total of $2.4 billion of existing commitments and pipeline projects, together with projected commitments in the next five years, will require almost $4.7 billion of financing through fiscal year 1985.
Table 3
Projected Levels of City Capital Liabilities and Cash Flow
Fiscal Years 1981 to 1985
(In $ Millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing City Liability (6/30/80)</td>
<td>938</td>
<td>1,342</td>
<td>1,330</td>
<td>1,333</td>
<td>1,346</td>
</tr>
<tr>
<td>Plus: Planned Commitments</td>
<td>1,116</td>
<td>963</td>
<td>1,003</td>
<td>1,013</td>
<td>1,000</td>
</tr>
<tr>
<td>Less: Liquidations</td>
<td>(712)*</td>
<td>(975)</td>
<td>(1,000)</td>
<td>(1,000)</td>
<td>(1,000)</td>
</tr>
<tr>
<td>Total City Commitments</td>
<td>1,342</td>
<td>1,330</td>
<td>1,333</td>
<td>1,346</td>
<td>1,346</td>
</tr>
</tbody>
</table>

**Financing Requirements**

| Amount to Be Financed by the City | 712  | 975  | 1,000| 1,000| 1,000|

* Includes approximately $43.0 million of unfinanced prior year expenditures.

It is likely that the City will substantially meet its capital expenditure targets for fiscal years 1981 and 1982. Further, it is probable that the City will not only have reversed the trend of capital underspending but will be required to constrain capital commitments in order to limit future expenditures and financing requirements to the amounts
projected in the plan. The limited financing resources must be rationed among major capital priorities including highways, bridges, sewers, water supply, transit and equipment -- all areas in which necessary reconstruction and replacement substantially exceed the available financing resources.

The City's capital budget is at a critical juncture. By 1982 the City will have largely accomplished the $2.3 billion of capital investments it projected in 1978 for the four year period. Continuing the rehabilitation of the City's basic physical plant will necessitate enormous investments in the foreseeable future. The long term program to arrest the deterioration of the City's infrastructure now depends equally on availability of financing and the City's ability to manage the capital spending process.

**MAC Capital Reserve Funds**

Pursuant to State law and MAC's existing resolutions, MAC is required to maintain capital reserve funds. The moneys on deposit in these funds may be used only to meet debt service requirements on MAC's bonds in the event that MAC's revenues are insufficient. Generally, these funds must be maintained at a level equal to 100% of the succeeding calendar year's debt service payment requirements.
At June 30, 1980, MAC had on deposit in the capital reserve funds approximately $682.0 million, $296.9 million relating to First Resolution bonds and $385.1 million relating to Second Resolution bonds. As MAC issues debt under the proposed plan, additional amounts will be required to be deposited. The exact amount which will be required is related to the amount and structure of the debt to be issued and the interest rates. By January 1, 1985, the amount required to be on deposit in connection with Second Resolution bonds will be approximately $800 million. It is estimated that the $339 million to be added from bond proceeds during the next five years under the proposed plan, together with retained investment earnings, will be sufficient to satisfy the requirements without using MAC's revenue streams.

Guaranty Fund

The New York City Loan Guarantee Act of 1978 requires that a fund be established in connection with the issuance of guaranteed debt by the City. MAC has created the Guaranty Fund, which it has funded to the required level with a portion of the proceeds of certain issues of its bonds. Issuance of the guarantees during 1981 and 1982 under the proposed plan will require approximately $36 million to be deposited in the Guaranty Fund.
Refunding

MAC was established by the State to provide in part, long term financing over a twenty year period for approximately $5 billion of City notes which were due or becoming due. Market conditions during the first three years of MAC's existence, however, precluded the issuance of substantial amounts of twenty year debt. To complete MAC's initial task of providing long term financing for the City notes, as well as provide the level debt service structure upon which future issues can be layered, it is necessary to continue the program of converting previously issued debt which has short maturities or high coupons into longer and, market conditions permitting, lower cost debt. MAC began this process with the restructuring of its debt in the fall of 1977. The proposed plan provides a total of $250 million for refunding during the five year period. To the extent market conditions permit, MAC may continue its program beyond levels indicated in the proposed plan.

PROPOSED FINANCING PLAN

To provide for the financing requirements, MAC and the City have proposed an extension of the financing plan. Under this proposal MAC would continue its public sales of bonds through December 31, 1984. Under the plan, the City would
begin public sales of its bonds during the current fiscal year, increasing the amount issued each year through 1985 until it had reached self sufficiency by fiscal year 1986.

The issuances under this proposal are as follows:

(In $ Millions)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>City - Guaranteed</td>
<td>300</td>
<td>600</td>
<td>300</td>
<td>400</td>
<td>700</td>
</tr>
<tr>
<td>- Public</td>
<td>100</td>
<td>200</td>
<td>400</td>
<td>350</td>
<td>300</td>
</tr>
<tr>
<td>MAC - Private</td>
<td>537</td>
<td>325</td>
<td>400</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Public</td>
<td>400</td>
<td>400</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

MAC's public issues are projected at the present level of approximately $100 million per quarter. MAC's issuances can be increased to some extent to provide funds in the event the City is unable to sell its bonds on reasonable terms. MAC's senior managing underwriter has advised that under normal market conditions no more than $600 million of MAC bonds per year, or $150 million per quarter, could be sold publicly on reasonable terms. They have further advised MAC that its ability to market such debt may be adversely affected by the absence of a financing plan. (See the letter from MAC's senior managing underwriter appended as Exhibit A.)

To remain within the limitations of MAC's market access, the plan provides that a portion of the moneys raised during
fiscal years 1981 and 1982 will be retained by MAC to support the City's capital program during fiscal years 1983 and 1984. It is anticipated that by 1985, the City will be able to sell $700 million of its bonds which, together with $300 million of bonds issued by MAC prior to December 31, 1984, will provide for that year's financing requirements. Thereafter, it is assumed that the City will be able to finance its capital requirements.

This proposal anticipates completion of existing financing arrangements which include the issuance of $862 million of MAC bonds to certain financial institutions and City pension funds, and the issuance of $900 million of guaranteed City bonds to certain City and State pension funds pursuant to the existing agreements which would be amended to give effect to the proposed plan.

The issuance of guarantees is an integral part of the proposed financing plan. The failure to obtain the guarantees would disrupt the City's efforts to reenter the public credit markets by creating significant questions as to the availability of financing.

City Reentry Into the Public Credit Markets

For the City to undertake its capital program and to reenter
the credit markets requires a degree of certainty as to the source and adequacy of financing. The City's capital program is a continuous flow of projects through a pipeline of design, approval, contracting, and construction. Some projects require years to flow through this process. To assure that the City can proceed with developing projects for the future, it is necessary to identify financing for both existing commitments and those projected for the future.

Such certainty of financing is necessary to facilitate the City's reentry into the long term credit markets, for investors -- aware of the nature of the capital process -- will be reluctant to purchase bonds if there is substantial uncertainty regarding the City's future access to adequate financing.

The $300 million of guarantees should be issued on October 2 as an important signal of Federal support to the City's potential underwriters and investors. Any delay in the issuance of guarantees may set back the City's plans for public offerings.

Limitations on MAC Debt Issuances

The recently enacted increase of MAC's debt issuance author-
ization to $10.0 billion represents the effective limit to MAC's issuance capacity under its existing First and Second Resolutions.

- If MAC were to issue up to the $10.0 billion issuance limitation during the next five years, it would have approximately $8.8 billion outstanding. Pursuant to the financing agreements entered into in the fall of 1978, MAC's issuances under its First and Second Resolutions are limited to an outstanding amount of $8.8 billion. Issuances under a third resolution are prohibited by law and notwithstanding the statutory prohibition may be undertaken only if backed by an investment grade City bond.

- The rating agencies have consistently been concerned about the continuing level of MAC's issuances to assist the City. Most recently, Standard & Poor's stated explicitly that

  "in the event that additional future debt authorization should be required by the MAC, we would have to review these ratings."

- Although projected revenues upon the completion of the proposed plan will afford adequate coverage of projected debt service as concluded recently by Standard & Poor's, continued issuances could jeopardize MAC's coverages and market.

To provide some degree of certainty that adequate funds will be available through fiscal year 1985, it is necessary for MAC to preserve its narrow margin of remaining issuance capacity for fiscal years 1983 through 1985. If MAC is required to finance the portion to be financed through issuance of guaranteed City bonds, it would have no capacity
to absorb any shortfall in City issuances as shown previously in Table 2 and Figure 1.

Legal Discussion

The availability of guarantees during fiscal years 1981 and 1982 as a component of the proposed financing plan has been reviewed by the City's Corporation Counsel and MAC's General Counsel. The memoranda prepared by them are included in this submission as Exhibits B and C, respectively. It is their conclusion that under the New York City Loan Guarantee Act of 1978 (the "Act"), the Secretary is authorized in his discretion to issue guarantees during fiscal years 1981 and 1982, and that issuance of the guarantees is consistent with the intent of the Act and is a reasonable exercise of the Secretary's discretion. The Agreement to Guarantee contains limitations not imposed by the Act. Pursuant to Section 7.2 of the Agreement, however, the Secretary is expressly authorized to waive any provision of the Agreement intended for the benefit of the United States and is empowered to amend the Agreement to implement the plan.

In reaching their conclusions, MAC's General Counsel and the City's Corporation Counsel reviewed the legislative history of the Act. Particular attention was paid to the history of the
"credit elsewhere" provision of the Act. Based upon this history it is their conclusion that, in determining whether "the City is effectively unable to obtain credit in the public credit markets or elsewhere in amounts and terms sufficient to meet the City's financing needs", access by MAC to the public credit markets will not preclude the issuance of guarantees if the City's financing requirements cannot be satisfied solely by MAC and the City.

In a memorandum prepared by a staff member of the United States Senate Committee on Banking, Housing and Urban Affairs, a view was expressed which is inconsistent with the language of the Act, its development and prior application. At the time the Act was enacted it was understood that inclusion of MAC's market access within the scope of the "credit elsewhere" test, as had been proposed by the Senate would have prevented the City from meeting its full financing needs during fiscal years 1979 and 1980 by precluding the issuance of all or a portion of the guarantees authorized for those years. For this reason, the House version of the provision was included in the final Act. As a result, guarantees were issued during 1979 and 1980 even though MAC was able to and did publicly market its bonds. As was the case then, the financing proposal anticipates that MAC's access to the public markets will be
required to satisfy a portion of the City's total projected financing requirements. MAC's capacity and access, together with that of the City, are not sufficient to provide the anticipated amounts and meet the portion intended to be met through use of the guarantees. The legislative history of the "credit elsewhere" provision clearly indicates that the final text of the "credit elsewhere" provision was intended to accommodate such situations.
June 2, 1980

Mr. Robert F. Vagt
Executive Director
Municipal Assistance Corporation
for the City of New York
Suite 8901
One World Trade Center
New York, New York 10048

Dear Mr. Vagt:

We have reviewed the financing proposal of the Municipal Assistance Corporation for the City of New York ("MAC"). The proposal is designed to assist the City in financing its capital program through December 1984. The proposal would provide for MAC to sell in the public market approximately (i) an aggregate of $800 million of its bonds during the City's 1981 and 1982 Fiscal Years in eight quarterly installments of approximately $100 million each, in addition to the $862 million of its bonds now scheduled to be sold privately during this period, and (ii) at least an aggregate of $1 billion of its bonds during FY '83 and '84 in quarterly installments of approximately equal amounts. In addition, the proposal calls for the sale to City and State Pension Funds of up to $900 million of federally guaranteed City bonds during FY '81 and '82.

Assuming normal market conditions, in our opinion MAC's bonds could be sold in the public market as described above at reasonable interest rates and terms if no more than approximately $600 million of MAC bonds were sold to the public during any year. We would like to stress, however, that such market access is dependent upon your proposal, or one similar to it, being adopted as the City's Financing Plan. Such a Financing Plan is necessary in order to assure the public market that the City will have access to adequate financing to meet its capital needs in an orderly manner.
Salomon Brothers

Mr. Robert F. Vagt
June 2, 1980
Page Two

If such a Financing Plan is not in place, MAC's access to the public markets could be substantially impaired. Without such a Financing Plan, there can be no assurance that MAC would be able to continue to sell its bonds in the public market in the amounts needed to assist the City in meeting its capital needs.

Very truly yours,

GBH/lab
MEMORANDUM

TO: Edward I. Koch
MAYOR

FROM: Allen G. Schwartz
Corporation Counsel

RE: Federal "Standby Guarantees"

DATE: August 11, 1980

You have asked me to determine whether there is any legal impediment under the New York City Loan Guarantee Act of 1978 (the "Act") or the Agreement to Guarantee dated as of November 15, 1978 among the United States, The City of New York (the "City") and others (the "Agreement to Guarantee") to the issuance by the Secretary of Treasury (the "Secretary") of Standby Guarantees during the City's 1981 and 1982 fiscal years. For the reasons discussed below, I have concluded that (i) no condition exists at this time which precludes the Secretary from issuing such guarantees and (ii) a number of factors suggest the desirability of the Secretary's issuing such guarantees under the loan guarantee program.

As you know, Standby Guarantees are defined in the Agreement to Guarantee as "Guarantees issued or to be issued pursuant to this Agreement during the 1981 Fiscal
Year or the 1982 Fiscal Year.\textsuperscript{2} Pursuant to the Agreement to Guarantee, Standby Guarantees covering up to $900 million of long-term City indebtedness may be issued.\textsuperscript{3}

A. "Credit Elsewhere" Test

Section 103 of the Act lists several conditions of eligibility which must be satisfied prior to the issuance of Standby Guarantees. Among these conditions, the most significant potential obstacle is the "credit elsewhere" test contained in Section 103(2) of the Act, pursuant to which the Secretary may issue Standby Guarantees only if:

"...the Secretary determines that the city is effectively unable to obtain credit in the public credit markets or elsewhere in amounts and terms sufficient to meet the city's financing needs."

Since the Municipal Assistance Corporation For The City of New York ("MAC") can apparently sell an aggregate of $800 million of its bonds in FY 1981 and 1982,\textsuperscript{4} it may be contended that the City has credit elsewhere and is therefore ineligible for Standby Guarantees. Indeed, Senators William Proxmire and Jake Garn of the Senate Committee on Banking, Housing, and Urban Affairs wrote to the Secretary on June 2, 1980 that "it is clear from the statutory language that so long as MAC has the capacity to meet the city's financing needs in 1981 and 1982, no further Federal guarantees can be issued". Although MAC is a State agency established as a financing agent for the City, a careful reading of the legislative history and the Agreement to Guarantee (executed

-2-
pursuant to the Act) reveals that the "credit elsewhere" test applies solely to the ability of the City to obtain credit (which it currently cannot do except in inadequate amounts)\textsuperscript{5} and that MAC's capacity to raise funds need not be considered.

The key reference on this subject may be found in the Conference Report which reconciled the Senate and House versions of the legislation. In the section discussing the "credit elsewhere" test, the following language appears:

\begin{quote}
Credit Availability

"The House bill required, as a condition to the making of guarantees, that the Secretary determine that the city is effectively unable to obtain credit through traditional sources in amounts and terms sufficient to meet its financing needs. The Senate amendment required the determination by the Secretary that credit was not otherwise available to the city or a financing agent on reasonable terms.

The conference report contains the House provision."\textsuperscript{6}
\end{quote}

Since the Conference Report specifically rejected the Senate version of the legislation, which would have included MAC, the City's "financing agent", in applying the "credit elsewhere" test, the Secretary is directed to consider only the City's ability to obtain credit in making the determination required by this provision. Accordingly, the final wording of the "credit elsewhere" test, contained in Section 103(2) of the Act and Section 3.1.2 of the Agreement to Guarantee, refers only to the credit of the City and contains no reference
to MAC whatsoever.

Section 3.3.3 of the Agreement to Guarantee, dealing with Standby Guarantees, supports this interpretation of the "credit elsewhere" test:

'Section 3.3.3 Standby Guarantees. The issuance of the Standby Guarantees shall be subject to compliance by the City, the State and MAC with such other terms and conditions as the Secretary shall reasonably deem appropriate pursuant to the Guarantee Act, including the inability of MAC to sell MAC Indebtedness in the public or private credit markets on reasonable terms and conditions."

Although the Secretary may refuse to issue guarantees based on this provision, it is significant that MAC's market access or lack thereof is merely deemed an additional term or condition for the Secretary to consider in issuing Standby Guarantees, rather than a required component of the "credit elsewhere" test contained in Section 3.1.2 of the Agreement to Guarantee, which provides as follows:

"Section 3.1.2 Credit Elsewhere. The City is effectively unable to obtain credit in the public credit markets or elsewhere in amounts and on terms sufficient to meet the City's financing needs as set forth in the Financial Plan and the Secretary shall have received a certificate of the Financial Advisor and the City to such effect."

Accordingly, the conclusion is inescapable that the omission of MAC in the "credit elsewhere" provision was not an oversight, but rather a deliberate action consistent with the Committee's intentions.

Further, it should be understood that MAC proposes to use its $300 million of public debt issuances during FY 1991-
1982 to fund an escrow that will help meet the City's capital needs during the three fiscal years after the end of the original four year Financing Plan. To enable MAC to finance these needs during FY 1983-1985, the State legislature has increased MAC's borrowing authority by $1.2 billion. This additional borrowing capacity, in combination with the escrow to be funded by MAC during FY 1981-1982, is designed to ensure that the City has a reasonably certain source of capital after the expiration of the Federal guarantee program. The guarantees are essential to this effort, since MAC could not borrow enough to fund $900 million of FY 1981-1982 City capital expenses (which is the role proposed for the guarantees) in addition to the escrow necessary to provide for the post-FY 1982 period.

Of course, under the original four year Financing Plan, it was assumed that MAC financing would be available to the City to meet all capital expenses in FY 1981-1982 on the theory that full market access would be regained for City bonds immediately after completing one City fiscal year with a budget balanced in accordance with generally accepted accounting principles. Two developments have made it unwise to continue to proceed on the basis of this assumption. First, it now appears unlikely that the City's bonds will receive an investment grade rating from both of the major credit rating agencies until a series of balanced budgets
has been reported. Second, the condition of the credit markets has been and may continue to be extraordinarily unfavorable to issuers whose credit is perceived as unproven.

In terms of the "credit elsewhere" test, the role proposed for MAC financing in FY 1981 and 1982 is thus seen to be similar to its role during the past two years: despite the issuance of approximately $847 million of MAC bonds to the public and $938 million in private placements for purposes other than financing the City's immediate capital needs, the "credit elsewhere" test was deemed to be satisfied because these other needs were recognized as valid and essential to the success of the four year plan. Financing the MAC escrow is no less valid and essential since there now appears to be no other method available to ensure that the City's capital needs can be met after FY 1982 through the public credit markets—which is a paramount objective of the Act. To the extent MAC financing is needed to satisfy this objective, it is clearly not available for other purposes and cannot be considered a source of credit to meet the City's current capital needs.

Based on the foregoing, the Secretary clearly has the authority to issue Standby Guarantees notwithstanding MAC's ability to issue bonds during FY 1981 and 1982.
B. Other Applicable Provisions

Before considering the advisability of the Secretary's issuing Standby Guarantees in FY 1981 and FY 1982, a brief discussion of two other provisions of the Act and the Agreement to Guarantee is necessary. First, Section 2.1 of the Agreement to Guarantee provides that the amount of available Standby Guarantees must be reduced by any City or MAC public sales made after June 30, 1980. Once again, however, action by the Secretary in this respect is discretionary, not mandatory. Pursuant to Sections 2.1 and 7.2 of the Agreement to Guarantee, the Secretary has the right to waive this requirement, thereby enabling Standby Guarantees to be issued notwithstanding any City or MAC public bond sales during this period. 8

Second, Section 103(4) of the Act and Section 3.1.4 of the Agreement to Guarantee direct the Secretary to determine as a condition to the issuance of Standby Guarantees that the City will be able to meet all of its long-term and seasonal borrowing needs through the public credit markets after June 30, 1982. At this time, there is doubt as to whether the City alone will be able to achieve this objective by the original target date. As discussed above, however, with assistance from MAC, this goal will be met, and further Federal assistance will not be required provided the remaining guarantees are made available. A review of the legislative history on this point reveals that assistance from MAC is not precluded and will not affect the City's compliance with
this statutory requirement. 9

C. Advisability of Issuing Standby Guarantees

As the preceding discussion demonstrates, each of the potentially troublesome conditions to the issuance of Standby Guarantees can be satisfied. Assuming that all of the remaining conditions set forth in the Act are met, which we are advised is presently projected, the only relevant issue then is whether it is desirable for the Secretary to proceed.

It is clearly within the spirit and objectives of the Act for the Secretary to issue Standby Guarantees under the circumstances now prevailing. The objectives of the Act were (i) to enable the City to effect needed reforms so that it could satisfy all of its financing needs after June 30, 1962 without Federal financing assistance and (ii) to assist the City with its financing needs during the interim period.

Despite the fact that the City has effected all the fiscal reforms envisioned by the Guarantee Act well within the schedule set forth, unforeseen conditions have made it advisable to give MAC the means to finance the bulk of the City's capital needs until three years of truly balanced City budgets have been completed and audited. As discussed above, use of the remaining Federal guarantees will achieve this. If the Federal guarantees are withheld, there will be a substantial risk that MAC and the City will be unable to finance the City's capital needs after the end of the guarantee program, thus inviting the risk that continued Federal
financing assistance will have to be sought for the period after FY 1982. Since the use of the remaining guarantees will provide reasonable assurance that MAC can furnish the City with financing for the necessary period, it would appear to be in the interest of the Federal government to choose this option rather than the risk associated with refusing further guarantees. In this connection, Senators Proxmire and Garn indicated in their recent letter that "it is clearly preferable to return the responsibility for meeting all of New York City's financing needs to the State and local level as soon as possible."

Although Standby Guarantees were considered an alternative under the Financing Plan to be used only if both the City and MAC could not sell long-term bonds to the public in sufficient amounts on reasonable terms and conditions in FY 1981 and 1982, it is clear that the Financing Plan can be modified from time to time with the consent of the Secretary. An adjustment of the Plan, at this time, would be legally permissible and appropriate to complete the recovery program approved by Congress in 1978.
FOOTNOTES


2 Section 1.1 of the Agreement to Guarantee (definition of "Standing Guarantees")

3 Section 2.1 of the Agreement to Guarantee

4 Oral statement by Felix G. Rchatyn, Chairman of the Board of Directors of MAC, at the MAC Board of Directors meeting held on June 3, 1980.

5 The general view is that the City would be able to sell publicly approximately $100 million of its bonds as a speculative investment. Although the City is obligated by Section 103(10) of the Act to offer to sell its long-term bonds to the public in FY 1981 and FY 1982, the Secretary has the authority to waive all such required City bond sales. The City plans to issue $100 million of bonds in the last quarter of the current fiscal year.


7 Testimony of Freda Stern Ackerman, Senior Vice President of Moody's Investors Service, before the Senate Committee on Banking, Housing and Urban Affairs on January 28, 1980, in which she stated the following:

"The general rule in financial analysis is that three years of sound, realistically balanced operations can be defined as a trend. We expect the end of fiscal 1981 or 1982, whichever the City chooses, to mark the beginning of that trend
which, in the case of an issuer so previously unmindful of the principles of sound administration, would require much longer than the generally accepted rules for it to be adequately characterized."

Section 2.1 of the Agreement to Guarantee provides in pertinent part:

"Unless the Secretary shall otherwise agree, the amount of Standby Guarantees which may be used during any Fiscal Year shall be reduced by the amount of Long-Term City Indebtedness and MAC Indebtedness issued after June 30, 1980 other than under the Financing Agreements or to MAC and other than to holders of Long-Term City Indebtedness or MAC Indebtedness to refund such Indebtedness held by such holders."

The Senate report indicates that Congress' intent in this matter was only that the City be able to meet its financing needs in the credit markets without further Federal assistance. S. Rep. No. 95-932, 95th Cong., 2d Sess. 15, reprinted in [1978] U.S. Code Cong. & Ad. News 1227-28.

Section 1.1 of the Agreement to Guarantee-definition of Financing Plan:

"The financing plan for the City providing for the issuance and sale of MAC Indebtedness and City Indebtedness pursuant to the Financing Agreements and in the public credit markets as described on Exhibit A, as such plan may be modified from time to time with the consent of the Secretary."
MEMORANDUM

To: Municipal Assistance Corporation For The City of New York

From: Paul, Weiss, Rifkind, Wharton & Garrison

Subject: Issuance of "Standby Guarantees" by the Secretary of the United States Department of the Treasury

June 3, 1980

You have informed us that the Municipal Assistance Corporation For The City of New York (the "Corporation") and The City of New York (the "City") are currently developing methods of financing the City's capital projects during the fiscal years immediately following expiration of the four-year financing plan of the City adopted in November 1978 (the "Financing Plan"). In connection with this study, you have asked us to determine whether, under the circumstances described below, the Secretary of the United States Department of the Treasury (the "Secretary") may permissibly issue "Standby Guarantees"* pursuant to the New York City Loan Guarantee Act of 1978 (the "Guarantee Act") and the Agreement to Guarantee (the "Agreement to Guarantee"), dated as of November 15, 1978, by and among the United States of America (the "United States"), acting by and through the Secretary, the State of New York (the "State"), the City, the New York

* As used herein the term "Standby Guarantees" refers to Guarantees to be issued by the Secretary pursuant to the Agreement to Guarantee during the City's 1981 and 1982 fiscal years.
State Financial Control Board and the Corporation.

As discussed in detail below, we have concluded that the Secretary is empowered by the Guarantee Act to issue the Standby Guarantees under the circumstances described. In addition, we have concluded that the Secretary has the contractual authority under the Agreement to Guarantee to issue such Standby Guarantees in such circumstances if he were to waive -- as he has the legal right, but not the obligation to do -- the contractual requirement contained in the Agreement to Guarantee that the amount of such Standby Guarantees be reduced in any fiscal year of the City by the amount of bonds of the Corporation issued to the public during such fiscal year. (These conclusions assume, of course, that all other required conditions precedent to the issuance of such Standby Guarantees have been fulfilled.)

Statement of Facts

The Financing Plan was adopted to provide approximately $4.5 billion of long-term financing for the City during its 1979 through 1982 fiscal years. As outlined in Exhibit A to the Agreement to Guarantee, the Financing Plan includes four long-term financing components: (i) the sale of up to $1.8 billion of the Corporation's bonds to various commercial banks, savings banks and insurance companies and
four City employee pension funds (the "City Pension Funds"); (ii) the sale of up to $750 million of federally guaranteed City bonds to the City Pension Funds and two State employee pension funds (the "State Pension Funds"); (iii) sales to the public of up to $1 billion of the Corporation's bonds; and (iv) sales to the public during the City's 1981 and 1982 fiscal years of up to $950 million of City bonds that are not federally guaranteed, or, to the extent neither the City nor the Corporation is able to sell its bonds to the public in sufficient amounts on reasonable terms and conditions to fulfill this element of the Financing Plan, the United States has agreed to guarantee up to $900 million of City bonds and the City and State Pension Funds have agreed to purchase such bonds (see footnote 6 of such Exhibit A).

The major portion of the funds to be generated by the Financing Plan are to be used to finance the City's capital programs during the four years of the Plan. As stated in the report of the United States Senate Banking, Housing and Urban Affairs Committee, the primary objective of the Plan is to enable the City to regain full reentry into the long-term public credit markets, thereby permitting the City to finance its capital needs on its own after the expiration of the Plan. (S. Rep. No. 95-952, 95th Cong. 2d Sess. 8, 14.) To that end, Section 103(10) of the Guarantee Act and Section 6.16 of the Agreement to Guarantee require that the City
attempt to sell through public offerings some amount of long-term bonds during its 1981 and 1982 fiscal years, unless the Secretary "determines that such offer would be inconsistent with the financial interests of the City." (Section 6.16 of the Agreement to Guarantee.) To the extent the City is unable to sell such bonds, the Financing Plan (as outlined in Exhibit A to the Agreement to Guarantee) provides that the City's capital needs would be met during those years, in the first instance, by sales of the Corporation's bonds to the public or, if the Corporation is unable to market publicly such bonds on reasonable terms, by the sale of federally guaranteed City bonds to the City and State Pension Funds.*

You have advised us that despite the successful operation of the Financing Plan to date and the significant budgetary progress the City has made during the past few years, it has become increasingly apparent that the City will be unable to market publicly the amount of bonds required to finance its capital needs during its 1981 and 1982 fiscal years. In addition, it appears unlikely that the City will be able to sell publicly such required amount of bonds during

* It should be noted that a large portion of the City's capital needs during its 1981 and 1982 fiscal years will be met pursuant to the Financing Plan by private placements of the Corporation's bonds to various commercial banks, savings banks and insurance companies (collectively the "Financial Institutions") and the City Pension Funds pursuant to the Bond Purchase Agreement, dated as of November 15, 1978, by and among, such Financial Institutions, City Pension Funds and the Corporation.
its 1983 and 1984 fiscal years. Accordingly, alternative sources of financing will have to be arranged to enable the City to finance its capital needs during those years. You have informed us that the City's bondable capital requirements are expected to range from approximately $700 million to $1.2 billion during each of its 1981 through 1984 fiscal years.

In this regard, the Corporation has stated its intention to ask the State legislature for increased borrowing authority and an extension of its authorization to issue debt through the 1984 calendar year in order to be prepared to help the City meet its financing needs to the extent necessary during the City's 1983 and 1984 fiscal years. The Corporation has recently been advised by its managing underwriters, however, that, assuming no unforeseen dramatic changes in the economy or market conditions for municipal bonds, it is their expectation that the Corporation's ability to market publicly bonds on reasonable terms will be limited to approximately $600 million annually through the City's 1984 fiscal year. Consequently, if the Corporation were to issue such amount of bonds during the 1983 and 1984 fiscal years of the City, the proceeds of such sales, together with the limited amount of bonds that the City is expected to be able to market publicly in those years, would be insufficient to finance all of the City's projected capital needs for such years.
You are therefore considering a proposal (the "Proposed Plan") pursuant to which the Corporation would issue to the public during the City's 1981 and 1982 fiscal years the amount of bonds it is capable of issuing on reasonable terms, and set aside the proceeds of such sales to, in effect, prefund a portion of the City's capital needs for its 1983 and 1984 fiscal years. The funds derived from these sales would be available to the City to the extent required to finance the City's projected capital programs in the City's 1983 and 1984 fiscal years. Thus, the Proposed Plan would permit the City to meet all of its 1983 and 1984 capital requirements without the necessity of Federal assistance in the form of guarantees or otherwise. Thereafter, assuming the City is able to continue the budgetary progress it has made to date, it is expected that the City will regain sufficient access to the public credit markets to finance its capital projects entirely through the public sale of its bonds.

In connection with the Proposed Plan, we have reviewed the New York State Municipal Assistance Corporation Act, as amended by the Municipal Assistance Corporation For The City of New York Act (the "Act"), other laws which we considered relevant and the agreements implementing the Financing Plan and are aware of no prohibitions against the issuance of bonds by the Corporation in one year to
prefund a portion of the City's capital programs for subsequent years.* In addition, we believe such issuance of bonds would be within the Corporation's authorized purposes. We assume, of course, that you will be consulting with Hawkins, Delafield & Wood for their views with respect to any arbitrage problems which may result from the Proposed Plan.

As discussed above, the Financing Plan contemplates that the City's capital projects for its 1981 and 1982 fiscal years will be partially financed by public sales of City bonds during such years, and in the event the City is unable to sell such bonds on reasonable terms, such capital projects would be partially financed, in the first instance, by public sales of the Corporation's bonds during those years, none of which sales are currently scheduled. Because, however, the Proposed Plan contemplates that the proceeds of any public sales of the Corporation's bonds during the City's 1981 and

* As you know, Section 3037 of the Act provides that any amounts paid to the City by the Corporation to finance the City's capital projects are to be evidenced by bonds of the City delivered to the Corporation. Although restrictions may exist with respect to the issuance of bonds by the City in one year to prefund its capital programs for subsequent years, such restrictions should not affect the Proposed Plan, because bonds of the City are to be delivered to the Corporation pursuant to Section 3037 only at the time the Corporation pays moneys to the City, which, as we interpret the Proposed Plan, will not occur until the year in which the moneys are actually required for the City's capital program.
1982 fiscal years would be used to prefund a portion of the City's 1983 and 1984 capital requirements, other funds will be required to finance the City's 1981 and 1982 capital projects. Under the Proposed Plan, such funds would be provided from sales of federally guaranteed City bonds to the City and State Pension Funds provided the Secretary is willing to issue the Standby Guarantees. Thus, you have asked us to determine whether the Secretary may permissibly issue such Standby Guarantees under the factual situation described.

Legal Discussion

The Guarantee Act and the Agreement to Guarantee authorize the Secretary to guarantee the payment of principal of and interest on up to $1.65 billion in aggregate principal amount of outstanding City indebtedness issued to any City or State employee pension fund during the 1979 through 1982 fiscal years of the City. Pursuant to the Guarantee Act and the Agreement to Guarantee, the Secretary has guaranteed the payment of $750 million of City bonds during the City's past two fiscal years, and is authorized pursuant to Section 2.1 of the Agreement to Guarantee to guarantee, on a standby basis, the payment of $900 million of such bonds during the City's 1981 and 1982 fiscal years if certain specified conditions are met. After reviewing the Guarantee Act and the
Agreement to Guarantee, we believe that there are three such conditions which could clearly affect the Secretary's ability to issue the "Standby Guarantees" under the Proposed Plan.

One such condition is contained in Section 103(2) of the Guarantee Act which provides that prior to the issuance of any Guarantee the Secretary must determine that:

"the city is effectively unable to obtain credit in the public credit markets or elsewhere in amounts and terms sufficient to meet the city's financing needs."

Because the Proposed Plan calls for the Corporation to raise money in the public credit markets during the same period the Standby Guarantees are to be issued, two questions may be raised with respect to the "credit elsewhere" test contained in Section 103(2). First, should the test be interpreted to require that both the City and the Corporation be unable to obtain credit in the public credit markets or elsewhere prior to the issuance of any Guarantees? Second, even if the answer to that question is No, if the Corporation has raised money does it become an "elsewhere" where the City might obtain credit?

Section 103(2) of the Guarantee Act was adopted, virtually without change, from the House version of the Guarantee Act. The Senate version of such Act had provided, however, that "the Secretary determine that credit is not otherwise available to the city or a financing agent [the
Corporation] on reasonable terms before he agrees to guarantee... any city indebtedness." (S. Rep. No. 95-952, 95th Cong. 2d Sess. 13). The adoption of the House version of the bill, and the concomitant rejection of the Senate version, we believe, evinces a Congressional intent that only the City's ability to obtain credit in the public credit markets or elsewhere be considered by the Secretary prior to the issuance of any Guarantees.*

As to the second question, although the Corporation is expected to have certain market access during the City's 1981 and 1982 fiscal years, the Corporation intends to use that access under the Proposed Plan not to finance the City's capital needs for those years but for the purpose of raising funds to enable the City to finance its capital needs, without Federal assistance, in the years following the expiration of the Financing Plan. As discussed above, this purpose is consistent with the primary objective of the Financing Plan.

* The House Report, in discussing Section 103(2), states in pertinent part that such Section:

"... requires the Secretary to determine that the city's financing needs cannot be met effectively through borrowings in the private credit market. The use of the word "effectively" is intended to create a test of the practical unavailability of credit, including maturity and rate, through the private market. The Secretary has discretion to determine when that test has been met."

Accordingly, because the Corporation will use its full available market access for this purpose, it will be unable to issue indebtedness in the public markets on reasonable terms to provide funds for the City's capital needs for the City's 1981 and 1982 fiscal years. Similarly, during the City's 1979 and 1980 fiscal years, the Corporation had certain access to the public credit markets but used that access not to finance the City's capital needs for those years but for other purposes consistent with the Financing Plan without causing the City to fail to meet the "credit elsewhere" test.

For the reasons discussed above, therefore, we believe that it would be appropriate and consistent with the Guarantee Act for the Secretary to determine that the requirements of Section 103(2) of the Guarantee Act have been satisfied in connection with the issuance of Standby Guarantees under the Proposed Plan.

Sections 2.1 and 3.3.3 of the Agreement to Guarantee provide in pertinent part that the amount of Standby Guarantees which may be issued in the City's 1981 and 1982 fiscal years shall be reduced by the amount of the Corporation's bonds publicly sold during those years. As discussed above, this requirement is consistent with the Financing Plan (as outlined in Exhibit A to the Agreement to Guarantee) which contemplates that the public sale of the Corporation's bonds act as the
first back-up to the extent the City is unable to market publicly its bonds on reasonable terms during its 1981 and 1982 fiscal years, which event now appears likely. However, since this requirement is contained only in the Agreement to Guarantee and not in the Guarantee Act, it may be waived by the Secretary in accordance with Section 7.2 of the Agreement to Guarantee, which provides in relevant part that "[t]he Secretary may waive any provision of [the] Agreement . . . which is intended for the benefit of the United States and may consent to any modification of any term [t]hereof . . . which is intended for the benefit of the United States as he may deem appropriate." Correspondingly, Section 2.1 of the Agreement to Guarantee specifically provides that the requirement that the amount of the Standby Guarantees in any year be reduced by the amount of the Corporation's bonds publicly sold during such year is subject to the Secretary agreeing otherwise. Consequently, because the Proposed Plan is designed to enable the City to finance its capital needs after the expiration of the Financing Plan without Federal assistance, which, as discussed, is similarly the ultimate objective of the Financing Plan, we believe that the Secretary has the legal power to waive this requirement and that it would be appropriate for the Secretary to grant such a waiver.

The third condition which could affect the Secre-
tary's ability to issue Standby Guarantees is contained in Section 103(4) of the Guarantee Act which provides that prior to the issuance of any Guarantee the Secretary must determine that:

"during the four-year period ending June 30, 1982, the long-term and seasonal borrowing needs of the city . . . will be met through commitments from the State, an agency of the State, private sources, or through the public credit markets, in amounts which will be sufficient to enable the city, when the guarantee authority conferred by this title has terminated, to meet all of its long-term and seasonal borrowing needs through the public credit markets . . . ."

This condition would apparently be satisfied under the Proposed Plan because the primary objective of such Plan is to enable the City to finance its capital needs in the years immediately following the expiration of the Financing Plan through the public sale of the City's and the Corporation's bonds. Although literally read, Section 103(4) could be interpreted to require that the City meet on its own, without assistance from the Corporation, all of its financing needs beginning with its 1983 fiscal year, the legislative history to the Guarantee Act indicates that what is contemplated by Section 103(4) is that the City merely be able to meet its financing "needs in the credit markets without Federal assistance." (S. Rep. No. 95-952, 95th Cong., 2d Sess. 15.) In fact, the report of the Senate Banking, Housing and Urban Affairs Committee states that it is desirable
that the Corporation retain some borrowing authority after the expiration of the Financing Plan in case such authority is required to help the City meet its financing needs once the guarantee authority terminates. (S. Rep. No. 95-952, 95th Cong., 2d Sess. 10.) Thus, we believe that the Secretary would be able to make the determination required by Section 103(4) under the Proposed Plan.

Accordingly, if the Secretary were to waive the requirement contained in Sections 2.1 and 3.3.3 of the Agreement to Guarantee, and assuming all other required conditions precedent to the issuance of the Standby Guarantees are satisfied, we are aware of no legal impediments to the issuance of the Standby Guarantees by the Secretary under the Proposed Plan.

PWRW&G