STATEMENT BY SEN. JACOB K. JAVITS
ON FEDERAL LOAN GUARANTEE PROGRAMS

Ladies and Gentlemen:

I've asked you to this news conference to release a report the Congressional Research Service has done at my request on federal loan guarantee programs and their extensive use throughout this country.

My purpose is to point out that what is being proposed for New York City in the way of loan guarantees is a continuation of a long-standing practice that has seen the Federal government stand behind purchasers of homes, small businessmen, college students, farmers, large corporations, foreign governments and new communities.

Federal Loan guarantees have been used to build a sports arena - RFK Stadium in the District of Columbia - and to establish communities in 10 states - Minnesota, Texas, New York, South Carolina, Arkansas, Ohio, Illinois, Maryland, Georgia and North Carolina. Six of these communities have defaulted on their obligations costing the federal government millions. Here alone, New York City's track record is far superior. Not only has the city not defaulted on its seasonal loan program, but it has paid interest and made the Treasury some $30 million of profit.

Federal Loan guarantees have been used to buttress the power authority in the Pacific Commonwealth of Guam, because the island was unable to sell any of its long-term debt; and federal loan guarantees are being used to build a transportation system for the District of Columbia, Maryland and Virginia suburbs, because without this federal help bonds to finance construction of the Metro Rail system could not be sold.

In these cases, and the thousands of others in which federal loan guarantees are a vital element, there has been no hue and cry raised in Congress of "bailout".

The figures on federal loan guarantees are significant. The Congressional Research Service estimates that in fiscal year 1978, some $81 billion in loan guarantees will be made by a variety of federal agencies, and that the gross amount of such guarantees outstanding will reach $324 billion in fiscal 1978 and $368 billion in fiscal year 1979. To deny New York City such help in a critical financial emergency is indeed approving a "double standard".

Indeed, the proposed $2 billion in loan guarantees to New York City - while the single largest item in the federal loan guarantee program - would amount to slightly more than two percent of the $81 billion in Federal loan guarantees expected for fiscal year 1978, and a miniscule six-tenths of one percent of the gross amount of Federal guarantees expected to be outstanding during fiscal year 1978.

In aiding New York City, the federal government is not establishing precedent. In aiding New York City, the federal government is continuing a long-standing practice. If detractors of the New York City program have complaints about federal loan guarantees in general, then that is the argument that should be made. New York City should not be singled out when federal loan guarantees are being utilized in every state of the Union. And, especially when New York City has shown itself willing to sacrifice to restore financial integrity to its affairs and has proved a good "financial risk" for the federal government by repaying in full, with interest, its seasonal loan obligations to the Treasury.
The CRS report discusses federal loan guarantees in general, and then nine specific programs. Of these it says: "The nine programs discussed are inclusive enough to show that the concept of large-scale federal loan guarantees to governmental entities and private corporations is not unique. The guarantee proposals to assist New York or to produce energy, for example, are part of the expanding use of loan guarantees for a wide variety of purposes."

Here are some highlights from the report:

-- The Trade Adjustment Assistance Guaranteed Loans for Communities was passed as part of the Trade Act of 1974. The purpose of the program was to assist communities whose economies have been hurt by imports. It is not being used. CRS says "One provision of the legislation which may inhibit its use is the requirement that under certain conditions the community must pledge a portion of its next revenue sharing entitlement as loan security." New York City has been asked to do the same, and you can see how this one public law has gone unused, possibly, according to CRS, because of this single provision.

-- D.C. Stadium Bonds, used to construct RFK stadium and guaranteed by the federal government. If Washington finds it imperative to help build a sports arena, certainly aiding its largest city in an hour of need is all that more overriding.

-- New Communities. A total of 13 projects in the states already mentioned above, have received guarantees. Seven are undergoing financial reorganization, six because they have defaulted, requiring the federal government to honor its guarantee and to provide additional operating funds.

-- National Capital Transportation Act, by which the federal government guaranteed bonds of the Washington Metropolitan Transit Authority to finance the new metro rail system. CRS says this program has cost the Treasury money for federal interest subsidy and debt service assistance, to the tune of $31.6 million in fiscal 1977. Luckily New York City's seasonal loan program made almost that much for the Treasury.

-- Virgin Islands and Guam Power Authority. The Interior Department guarantees loans of $61 million to the Virgin Islands and $36 million in Power Authority Bonds. In the event of default the department would receive appropriations to cover the costs of default. A much better deal than New York City has been offered.

New York City, to save itself, is asking for no more, and no less than other entities of government or private business.

Copies of the report are attached.
LARGE LOAN GUARANTEE PROGRAMS WHICH ASSIST
GOVERNMENTAL ENTITIES AND PRIVATE CORPORATIONS

John Mitrisin
Specialist in Public Finance
Economics Division

February 24, 1978
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LARGE LOAN GUARANTEE PROGRAMS WHICH ASSIST
GOVERNMENTAL ENTITIES AND PRIVATE CORPORATIONS

Overview

This report identifies and discusses nine programs which provide guarantees or have guaranteed large loans for governmental entities and private corporations. Loan guarantees as a general class of Federal credit assistance are available and used by almost all sectors of the economy. Loan guarantees are available to purchasers of homes, small businessmen, college students, farmers, large corporations and foreign governments. It is estimated that in fiscal year 1978, $81 billion in loan guarantees will be made by a variety of Federal agencies, and that the gross amount of loan guarantees outstanding will reach $324 billion in fiscal year 1978, and $368 billion in fiscal year 1979. ¹/

The emphasis of this report is on those programs which guarantee loans which are relatively large in size and few in number. These programs represent only a small fraction of the number and dollar value of all loan guarantee programs. Attention is focused on loan guarantees of this type because of proposals to use a financing mechanism of this kind to encourage energy production and research, and to assist hard pressed urban areas, either a particular place, like New York City, or for more wide ranging assistance, such as the proposed urban development bank.

¹/ U.S. President, Special Analyses, Budget of the United States, Special Analysis F, p. 140.
The use of loan guarantees to finance energy development has been a subject of discussion for a number of years. Past interest has manifested itself in proposals such as the Energy Independence Authority, found in the 1978 budget. The authority would have been a $100 billion off-budget corporation. It would have provided loans, loan guarantees, and other financial assistance to private borrowers. The bulk of the corporation's financing activities would have been in the area of loans and loan guarantees. Current interest in the use of guarantees centers on expanding the guarantee provisions of already authorized programs, such as guarantees for the development of geothermal energy. In fiscal year 1977, nine million dollars in such guarantees were made, an estimated $75 million will be made in fiscal year 1978, and an estimated $12.5 million in fiscal year 1979.

Concern about New York City financing is generated by the expiration in June 1978 of the New York City Seasonal Financing Act of 1975. Advocates of continued assistance to the city have proposed the use of loan guarantees, as well as direct loans. One such proposal was submitted by Mayor Koch on January 20, 1978, to the Secretary of the Treasury. It calls for the use of guarantees to finance the long-term needs of the city. The proposal contemplates the purchase by city and State employee pension funds of $2.25 billion in city long-term bonds. These bonds would be guaranteed by the Federal Government for 90 percent of their principal and the other 10 percent would be guaranteed by the State of New York.
Current interest in an urbahn to assist distressed cities is found in draft proposals of the Administration's Urban and Regional Policy Group. While the exact nature of the Administration's urbahn proposal is unclear at this time, it seems probable that loan guarantees will be an important component. In addition, many of the urban or regional development bank proposals which have been submitted in the 95th Congress would utilize a loan guarantee mechanism.

President Carter in the 1979 budget touched on the present concern about Federal credit activities. He stated that:

...there is no systematic mechanism in the Government for regularly reviewing total Federal credit activity. Consequently, there is no systematic way to consider the resource allocation implied by those plans or whether the share of credit transactions being made or guaranteed by the Federal Government is reasonable. In order for the Government to influence efficiently the allocation of economic resources and the behavior of financial markets and the economy as a whole, it must exercise control over guaranteed loans as well as over direct loans and other outlays and the ways in which these programs are financed.

Enactment or expansion of new loan guarantee programs would increase Federal loan activities. This increase in turn could heighten Presidential and Congressional concern over the growth of Federal involvement in this area.

The listing in this report is not intended to be a complete tabulation of large guarantee programs which assist government entities or private corporations. A number of programs oriented to the private as well as the public sector have not been discussed and are covered in an earlier related report on the subject. For further information on loan guarantee programs of all types, the reader is referred to two publications, Catalog of Federal Loan Guarantee Programs, a committee print of the Economic Stabilization Subcommittee of the House Banking, Finance and Urban Affairs Committee, 95th Congress, and The Catalog of Federal Domestic Assistance, published annually by the U.S. Community Service Administration.

The nine programs discussed are inclusive enough to show that the concept of large scale Federal loan guarantees to governmental entities and private corporations is not unique. The guarantee proposals to assist New York or to produce energy, for example, are part of the expanding use of loan guarantees for a wide variety of purposes.

This study does not touch on other forms of Federal financial assistance such as grants-in-aid, special tax law provisions, and direct loans, which have been used or proposed to assist governmental entities and private corporations.

D.C. Stadium Bonds

The District of Columbia Stadium Act of 1957, as amended, authorized the District of Columbia Armory Board to issue bonds to construct the Robert F. Kennedy stadium. Treasury data for September 30, 1977, indicate that $832,000 in such bonds, with a life of up to 40 years, were still outstanding.

The bonds are guaranteed as to both principal and interest by the United States. The bonds are payable from funds obtained from the operation of the stadium. The legislation as amended by P.L. 85-561, authorizes the Armory Board to certify to the District of Columbia when there are insufficient funds to pay interest and principal. The funds needed to pay these amounts will then be included in the District of Columbia budget. If the needed appropriation is not received in time, the District of Columbia is authorized to borrow the needed funds from the Secretary of the Treasury. The funds which are advanced by the Treasury are temporary in nature, and are used by the Armory Board to meet its short-term cash requirements. The 1979 U.S. Budget Appendix shows an advance of $832 million in fiscal year 1977, 1978, and 1979.
New Communities Loan Guarantees

The Housing and Urban Development Act of 1968, as amended, and Title VII of the Housing and Urban Development Act of 1970, as amended, authorizes a Federal guarantee of the bonds, debentures, notes, and other obligations issued by new community developers. The maximum amount of guaranteed obligations cannot exceed $50 million per new community.

A total of 13 projects have received guarantees. The recipients of the guarantees have been scattered throughout the United States, and include projects in Minnesota(2), Texas(2), New York, South Carolina, Arkansas, Ohio, Illinois, New York, Maryland, Georgia and North Carolina.

The 1979 Budget Appendix indicates that seven of the projects are undergoing financial reorganization, 6 because they have defaulted on their obligations. This reorganization has required the Federal government to honor its guarantee, as well as to provide additional funds for operating expenses when a project's cash resources are depleted.

Treasury data show that as of September 30, 1977, $299,000,000 in loan guarantees were outstanding. The 1979 Budget Appendix shows that in order to cover defaults and other financial problems faced by the 13 new communities, HUD, in fiscal year 1979, will have an
estimated $299,000,000 in borrowings outstanding from the Treasury. At the present time, HUD is not asking for any appropriations to repay this Treasury borrowing. At some future time though, it will be necessary for HUD to request an appropriation to repay the Treasury. The amount needed will depend on HUD's ability to recover funds from the borrowers who are in financial difficulty.
Indian Tribes and Tribal Corporation Insured Loans

P.L. 91-229, an Act to provide loans to Indian Tribes and Tribal Corporations, authorizes insured Farmers Home Administration loans to buy additional land within Indian reservations or in the Alaskan Indian Community. These loans, while called insured, are in reality direct loans made out of the Agricultural Credit Insurance Revolving Fund. Treasury data show that as of September 30, 1977, $34.4 million in such insured loans were outstanding. The 1979 Budget Appendix indicates that an estimated eight loans will be made in fiscal year 1978, with a value of $10 million. An estimated eight loans will also be made in fiscal year 1979 with a value of $1 million.

Information from the Farmers Home Administration for fiscal years 1975, 1976 and 1977 shows a total of 29 insured loans made during the three year period, with a total value of $31.2 million. The insured loans have been concentrated in the western portion of the Nation. During the period insured loans were made in the following States: Wyoming (1), Washington (3), North Dakota (4), Idaho (5), Nebraska (1), Arizona (2), South Dakota (5), Montana (5), Oklahoma (2) and Wisconsin (1).

The legislation removed obstacles preventing Indian tribes and tribal corporations from purchasing land through then existing Farmers Home Administration programs. The principal obstacle was the inability
of tribes and tribal corporations to mortgage tribal lands as loan security. Other obstacles included the problem of possible law suits and the possible levying of local taxes on Indian land.

The justification of the legislation was the argument that Indian tribes had inadequate credit resources to purchase land without some kind of Federal assistance. The legislation alleviated this problem by permitting Indian tribes and corporations to:

(1) Borrow money to purchase trust lands in multiple ownership by Indians who own undivided fractional interests in the land.

(2) Purchase lands owned by individual Indians when the lands are offered for sale and are in danger of passing out of Indian ownership.

(3) Purchase non-Indian owned lands that are needed to add to Indian use areas.
Emergency Loan Guarantee Board

P.L. 92-70, the Emergency Loan Guarantee Act, authorized loan guarantees to major business enterprises. Guaranteed loans were provided to only one firm, the Lockheed Aircraft Corporation. No additional guarantees can be made. The Emergency Loan Guarantee Board, headed by the Secretary of the Treasury, was created to implement the legislation. Guaranteed loans could be for five years, with a possible extension of another three years. The limit on the amount outstanding was $250 million. As of December 15, 1977, all loans guaranteed under the program had been repaid and the program was terminated. The program provided the Federal government with a "profit" of $30.5 million, which was transferred to the general fund when the program was terminated.

Under the legislation the Federal government guaranteed the principal and interest on loans. To be eligible, firms had to meet three qualifications: (1) the loan was required to permit the firm to furnish goods or services, and the failure to do this would seriously affect the economy or employment; (2) credit could not be obtained without a guarantee; and (3) the firm could with reasonable assurance be expected to repay the loan.

Before its powers expired the Emergency Loan Guarantee Board approved a loan guarantee for only the Lockheed Corporation. Pro-
providing a loan guarantee to Lockheed was the intent of the legislation. The program was not meant to be a source of funds for other corporations.

Lockheed was in need of the loan guarantee in order to stave off bankruptcy. Lockheed's financial difficulties were due to losses on defense related projects, particularly the C-5A transport plane which had heavy cost overruns, and the bankruptcy of Rolls-Royce which was building engines for Lockheed's Tristar airliner. It was argued that it was essential not to let Lockheed fail since $1.4 billion had been invested in developing the Tristar, and closing Lockheed down would cause severe unemployment in the aerospace industry, which was already hard hit by cutbacks in defense procurement and reduced airline orders.
National Capital Transportation Act Revenue Bond Guarantees

P.L. 92-349, the National Capital Transportation Act of 1972, amended the National Capital Transportation Act of 1969 to provide for Federal guarantees of obligations issued by the Washington Metropolitan Transit Authority to finance part of the cost of construction of the Metro rail system. A limitation of $1.2 billion was set in the legislation, with the bonds having a maximum 40 year term.

The legislation was justified on the grounds that it would be impossible to successfully issue transit authority revenue bonds without either the Federal guarantee or a complicated tax back-up plan which would have had to be approved by the several local taxing jurisdictions.

Treasury data show that as of September 30, 1977, $997,000 in bonds were outstanding. A portion of the funds, $177 million, was obtained by the sale of bonds to the Federal Financing Bank, an arm of the Treasury. The other $820 million were raised through the sale of bonds to the public. The 1979 Budget Appendix shows that Federal interest subsidy and debt service assistance for the program cost $31.6 million in fiscal year 1997, and will be an estimated $48.7 million in fiscal year 1978, and an estimated $19.3 million in fiscal year 1979.
Guarantee of Virgin Island Loans

P.L. 94-392 provides for the guaranteeing by the Interior Department of loans to the Virgin Islands, up to a limit of $61,000,000. This authority to guarantee loans expires on October 1, 1979. The purpose of the legislation is to enable the government of the Virgin Islands to raise funds for both government operations and for capital improvements. The arguments advanced for the legislation were that the Islands were suffering a severe economic crisis caused by the sharp downturn in tourism. This downturn was caused by the worldwide recession and local disturbances. The Islands' financial situation was aggravated by the effect of the Tax Reduction Act of 1975 which caused an estimated $22 million revenue loss for the islands.

According to Treasury data, $22 million in guarantees have been issued. These funds were obtained from the Federal Financing Bank, an arm of the Treasury. The Federal Financing Bank loans the money to the Virgin Islands on the basis of the Interior Department guarantee. In the event of default, the Interior Department would then receive appropriations to cover the costs of the default.
Guam Power Authority Guarantees

Under P.L. 94-395, the Department of the Interior is authorized to guarantee up to 100 percent of the value of the bonds issued by the Guam Power Authority, to a maximum of $36,000,000. The funds are used to finance the operations of the authority.

According to Treasury data, the authority had the maximum amount of guaranteed bonds outstanding as of September 30, 1977, viz. $36,000,000. The funds to finance the bonds are obtained from the Federal Financing Bank, an arm of the Treasury. The Federal Financing Bank loans the money to Guam on the basis of the Interior Department guarantee. In the event of default the Interior Department would pay the FFB to cover the loss. Interior would then either receive an appropriation to cover the cost of paying off the default, or would use Guam tax revenues to repay the debt.

The argument for the guarantee was that the Guam Power Authority, which provides the Island's entire supply of electricity, was unable to sell any of its long-term debt because of short-term problems. In 1972, the authority had attempted to sell long-term bonds, but was unsuccessful. Short-term notes were sold instead. At the time the legislation was passed, it was felt that if the Guam Power Authority attempted to enter the bond market on its own, it would still be unsuccessful in attracting the necessary capital to repay the short-term notes which were due on June 1, 1976.
The problems affecting the authority included local usury laws which prevented interest payments in excess of seven percent. This was below the then current market rate. The ceiling was subsequently raised to nine percent. Another factor was the rise in oil prices. Within a three month period prices rose from $2.77 to $12.95 per barrel. As a result, the Guam Power Authority suffered temporary net revenue losses. Guam's bond rating slipped from AA to BB, which is a non-investment grade. In addition, Typhoon Pamela caused an estimated $8 million in damages to the facilities of the authority, worsening its financial condition.
Non-Operating Programs

In addition to the above operating programs, there are others which have been authorized to provide guaranteed loans which have never been implemented. One such program is Trade Adjustment Assistance Guaranteed Loans for communities authorized under P.L. 93-618, the Trade Act of 1974. The purpose of the program is to assist communities whose economies have been hurt by imports. There is no dollar limit on the loan guarantees a community may receive. One provision of the legislation which may inhibit its use is the requirement that under certain conditions the community must pledge a portion of its next revenue sharing entitlement as loan security.

Another program, the coastal zone energy impact loan guarantee program, authorized by P.L. 94-370, the Coastal Zone Management Act Amendments of 1976, could be used by State and local governments to ameliorate the impacts of energy facility development within the coastal zone. Discussions with the National Oceanic and Atmospheric Administration indicate that only the direct loan provisions of the legislation will be used, and that no activity is expected under the loan guarantee program.
January 16, 1978

Linda Seale, Esq.
Deputy Counsel
The Municipal Assistance Corporation
for the City of New York
Room 4540
2 World Trade Center
New York, New York

Dear Ms. Seale:

In accordance with our telephone conversation this afternoon, I enclose a copy of a list of Federal acts which either contain Federal guaranty provisions or otherwise seem relevant to your situation. This list is not exhaustive and has not been updated since June 1977. Since then, it is quite possible that Congress has enacted statutes which better reflect the latest Congressional feelings regarding the form and scope of Federal guaranties. (For example, the Federal Water Pollution Control Act has been quite recently amended. Perhaps Congress has also revised the guaranty provisions of that act as well.)

In the interests of time, I have lined out Federal acts not relevant to your situation and added some Federal acts in longhand. Please feel free to call me or Allen Thomas if you have any additional questions.

Sincerely,

Phillip H. Waldoks

PHW:kcw
Enclosure

cc: Allen L. Thomas, Esq.

BY HAND
Appendix

Federal Precedents

The Federal precedents reviewed in preparation of this memorandum were the following:

A bill to authorize emergency loan guarantees to units of government [not adopted] S. 1833, 94th Cong., 1st Sess. ("S.1833");

Coastal Zone Management Act Amendments of 1976, 16 U.S.C.A. §§ 1451 et seq. ("Coastal");

Communications Satellite Act of 1962, 47 U.S.C.A. § 701 et seq. ("COMSAT");

Consolidated Farm and Rural Development Act, 7 U.S.C.A. §§ 1921 et seq. ("Farm");


Energy Conservation and Production Act, 42 U.S.C.A. §§ 6801 et seq. ("Conservation");


Federal Water Pollution Prevention and Control Act, 33 U.S.C.A. §§ 1251 et seq. ("Pollution");

Foreign Military Sales Act, 22 U.S.C.A. §§ 2751 et seq. ("Military Sales");


Government Corporation Control Act, as amended, 31 U.S.C.A. §§ 841 et seq. ("Control");


Hospital and Medical Facilities Amendments of 1964, 42 U.S.C.A. §§ 291 et seq. ("Hospital");


Internal Revenue Code of 1954, 26 U.S.C.A. §§ 1 et seq.;

National Bank Act, 12 U.S.C.A. §§ 1 et seq.;


Rural Electrification Act of 1936, 7 U.S.C.A. §§ 901 et seq. ("Electrification");


Transportation Act of 1958, 49 U.S.C.A. §§ 1231 et seq. ("Transportation");

Urban Growth and New Community Development Act of 1970, 42 U.S.C.A. §§ 4501 et seq. ("New Town"); and


State Precedents

The State precedents reviewed in preparation of this memorandum were the following:

Champlain Basin Compact, N.Y. Environmental Conservation Law (McKinney's) §§ 21-1101 et seq;

Delaware River Basin Compact, Del. Code of 1953, Tit. 7, §§ 6501 et seq. ("DRBC");

Great Lakes Basin Compact, N.Y. Environmental Conservation Law (McKinney's) §§ 21-0901 et seq. ("GLBC");

Municipal Assistance Corporation Act, N.Y. Public Authorities Law (McKinney's) §§ 3001 et seq. ("MAC");

New England Development Authority Compact [not adopted] ("NEDAC");

New Jersey Department of Environmental Protection Act, N.J.S.A. 13:1D-1 et seq. ("DEP");

New York Business Corporation Law, N.Y. Business Corporation Law (McKinney's) §§ 1 et seq. ("BCL");

New York State Urban Development Corporation Act, McK. Unconsol. Laws §§ 6251 et seq. ("UDC");

Port of New York Authority Compact, McK. Unconsol. Laws §§ 6401 et seq. ("Port");

Resolution Establishing Forty-Third Series of Consolidated Bonds of the Port of New York Authority, Due 2011 (adopted September 29, 1976) ("Resolution"); and

Rhode Island Economic Development Authority Act [not adopted] ("RIEDA").
CHAPTER 45.—EMERGENCY LOAN GUARANTEES TO BUSINESS ENTERPRISES

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§ 1841. Emergency Loan Guarantee Board; establishment; membership; voting

There is created an Emergency Loan Guarantee Board (referred to in this chapter as the "Board") composed of the Secretary of the Treasury, as Chairman, the Federal Reserve System, and the Exchange Commission, with a majority vote.

Pub.L. 92-70, § 2, Aug. 3, 1972

Short Title. Section 1 of this Act may be cited as the "Emergency Loan Guarantee Act."

§ 1842. Same; authority for loan guarantees; terms and conditions.

The Board, on such condition, may guarantee, or may permit the loss of principal or interest under this chapter.

Pub.L. 92-70, § 3, Aug. 3, 1972

Legislative History. For legislative history and purpose of Pub.L. 92-70, see 39 Stat. 727.

§ 1843. Limitations and conditions of loan guarantees.

(a) A guarantee of
   (1) the Board, borrower to comply with any need of the borrower, or the borrower, or his employment, is not otherwise satisfied, or conditions, and the borrower, together with such guarantee.
Treasury, as Chairman, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Securities and Exchange Commission. Decisions of the Board shall be made by majority vote.


**Historical Note**

**Short Title.** Section 1 of Pub.L. 92–70  
**Legislative History.** For legislative history—provided that: “This Act [this chapter] may be cited as the ‘Emergency Loan 1971 U.S.Code Cong. and Admin.News, p. 1270.”

**Code of Federal Regulations**

Availability of information, see 13 CFR 402.1 et seq.  
Organization, see 13 CFR 400.1 et seq.  
Rules of practice and procedure, see 13 CFR 401.1 et seq.

§ 1842. Same; authority for loan guarantees; terms and conditions

The Board, on such terms and conditions as it deems appropriate, may guarantee, or make commitments to guarantee, lenders against loss of principal or interest on loans that meet the requirements of this chapter.


**Historical Note**


§ 1843. Limitations and conditions of loan guarantees—Necessary findings

(a) A guarantee of a loan may be made under this chapter only if—

(1) the Board finds that (A) the loan is needed to enable the borrower to continue to furnish goods or services and failure to meet this need would adversely and seriously affect the economy of or employment in the Nation or any region thereof, (B) credit is not otherwise available to the borrower under reasonable terms or conditions, and (C) the prospective earning power of the borrower, together with the character and value of the security pledged, furnish reasonable assurance that it will be able to repay the loan within the time fixed, and afford reasonable protection to the United States; and

(2) the lender certifies that it would not make the loan without such guarantee.
§ 1843  EMERGENCY LOAN GUARANTEES  Ch. 45

Term of loans; renewal
(b) Loans guaranteed under this chapter shall be payable in not more than five years, but may be renewable for not more than an additional three years.

Interest rates, determination; guarantee fee
(c)(1) Loans guaranteed under this chapter shall bear interest payable to the lending institutions at rates determined by the Board taking into account the reduction in risk afforded by the loan guarantee and rates charged by lending institutions on otherwise comparable loans.

(2) The Board shall prescribe and collect a guarantee fee in connection with each loan guaranteed under this chapter. Such fee shall reflect the Government's administrative expense in making the guarantee and the risk assumed by the Government and shall not be less than an amount which, when added to the amount of interest payable to the lender of such loan, produces a total charge appropriate for loan agreements of comparable risk and maturity if supplied by the normal capital markets.


Historical Note

§ 1844.  Security for loan guarantees
In negotiating a loan guarantee under this chapter, the Board shall make every effort to arrange that the payment of the principal of and interest on any plan guaranteed shall be secured by sufficient property of the enterprise to collateralize fully the amount of the loan guarantee.


Historical Note

§ 1845.  Requirements applicable to loan guarantees—Stock dividends or other payments, prohibition; waiver
(a) A guarantee agreement made under this chapter with respect to an enterprise shall require that while there is any principal or interest remaining unpaid on a guaranteed loan to that enterprise the enterprise may not—

(1) declare a dividend on its common stock; or

(b) make any payment to the board of directors, or members thereof, who are officers of the enterprise, any part of whose loan has been guaranteed under this chapter. The Board may waive subsection (a) in the case of a loan to any particular enterprise to the extent that it is not inconsistent with the public interest and the public financial security of the United States under the circumstances.

(b) If the Board determines that an enterprise shall require before guarantee make such necessary to give the enterprise

Financial
(c) A guarantee of a loan under this chapter unless—

(1) the board of directors of the enterprise;

(2) the enterprise's books and other public financial data

(d) No payment shall be made under this chapter which may have

Prior to making a guarantee under this chapter the guarantee is sought for payment and other proceeds in loan agreements of terms between the lender and may be

(2) On each occasion a loan agreement, the guarantees are enforce as to the funds and

(A) the lender writing of its interest to the loan agreement;

(B) the lender fails to notify the Board that, as of the date

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(2) make any payment on its other indebtedness to a lender whose loan has been guaranteed under this chapter.

The Board may waive either or both of the requirements set forth in this subsection, as specified in the guarantee agreement covering a loan to any particular enterprise, if it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee.

Managerial changes

(b) If the Board determines that the inability of an enterprise to obtain credit without a guarantee under this chapter is the result of a failure on the part of management to exercise reasonable business prudence in the conduct of the affairs of the enterprise, the Board shall require before guaranteeing any loan to the enterprise that the enterprise make such management changes as the Board deems necessary to give the enterprise a sound managerial base.

Financial statement; access to documents

(c) A guarantee of a loan to any enterprise shall not be made under this chapter unless—

(1) the Board has received an audited financial statement of the enterprise; and

(2) the enterprise permits the Board to have the same access to its books and other documents as the Board would have under section 1846 of this title in the event the loan is guaranteed.

Exhaustion of remedies

(d) No payment shall be made or become due under a guarantee entered into under this chapter unless the lender has exhausted any remedies which it may have under the guarantee agreement.

Protective provisions; advances

(e) (1) Prior to making any guarantee under this chapter, the Board shall satisfy itself that the underlying loan agreement on which the guarantee is sought contains all the affirmative and negative covenants and other protective provisions which are usual and customary in loan agreements of a similar kind, including previous loan agreements between the lender and the borrower, and that it cannot be amended, or any provisions waived, without the Board's prior consent.

(2) On each occasion when the borrower seeks an advance under the loan agreement, the guarantee authorized by this chapter shall be in force as to the funds advanced only if—

(A) the lender gives the Board at least ten days' notice in writing of its intent to provide the borrower with funds pursuant to the loan agreement;

(B) the lender certifies to the Board before an advance is made that, as of the date of the notice provided for in subparagraph
15 § 1845 EMERGENCY LOAN GUARANTEES Ch. 45

(A), the borrower is not in default under the loan agreement: Provided, That if a default has occurred the lender shall report the facts and circumstances relating thereto to the Board and the Board may expressly and in writing waive such default in any case where it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee; and

(C) the borrower provides the Board with a plan setting forth the expenditures for which the advance will be used and the period during which the expenditures will be made, and, upon the expiration of such periods, reports to the Board any instances in which amounts advanced have not been expended in accordance with the plan.

(f) (1) A guarantee agreement made under this chapter shall contain a requirement that as between the Board and the lender, the Board shall have a priority with respect to, and to the extent of, the lender's interest in any collateral securing the loan and any earlier outstanding loans. The Board shall take all steps necessary to assure such priority against any other persons.

(2) As used in paragraph (1) of this subsection, the term "collateral" includes all assets pledged under loan agreements and, if appropriate in the opinion of the Board, all sums of the borrower on deposit with the lender and subject to offset under section 108 of Title 11.


Historical Note


§ 1846. Powers and duties—Board; inspection of documents; disapproval of certain transactions

(a) The Board is authorized to inspect and copy all accounts, books, records, memoranda, correspondence, and other documents of any enterprise which has received financial assistance under this chapter concerning any matter which may bear upon (1) the ability of such enterprise to repay the loan within the time fixed therefor; (2) the interests of the United States in the property of such enterprise; and (3) the assurance that there is reasonable protection to the United States. The Board is authorized to disapprove any transaction of such enterprise involving the disposition of its assets which may affect the repayment of a loan that has been guaranteed pursuant to the provisions of this chapter.

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loans agreement: the lender shall report to the Board and the United States un-
default in any way inconsistent with a plan setting forth the period, the extent, and the manner in which any instances in default in accordance with the terms of the loan agreement are to be remedied.

The memorandum and, if appropriate, the loan agreement, shall contain a description of the collateral and other security, if any, provided for the loan. The Board may prescribe such additional requirements as may be necessary to assure the Board of the adequacy of the collateral and other security to cover the amount of the loan.

§ 1847. Maximum obligation

The maximum obligation of the Board under all outstanding loans guaranteed by it shall not exceed at any time $250,000,000.

§ 1848. Emergency loan guarantee fund—Establishment; use; investment

(a) There is established in the Treasury an emergency loan guarantee fund to be administered by the Board. The fund shall be used for the payment of the expenses of the Board and for the purpose of fulfilling the Board's obligations under this chapter. Moneys in the fund not needed for current operations may be invested in direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof.

(b) The Board shall prescribe and collect a guarantee fee in connection with each loan guaranteed by it under this chapter. Sums realized from such fees shall be deposited in the emergency loan guarantee fund.

Payments; issuance of notes or other obligations when fund moneys insufficient; terms and denominations, maturities, terms and conditions, interest rate; public debt transaction

(c) Payments required to be made as a consequence of any guarantee by the Board shall be made from the emergency loan guarantee fund. In the event that moneys in the fund are insufficient to make such payments, in order to discharge its responsibilities, the Board is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the
§ 1848 Emergency Loan Guarantees

Board with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations.


Historical Note

References in Text. The Second Liberty Bond Act, as amended, referred to in subsec. (c), is Act Sept. 21, 1917, c. 504, 40 Stat. 298, as amended, which is classified to section 745, former section 747, sections 732, 732a, 733, 734, 734a, 736b, 737, 737a, and 737b, former section 737c-1, sections 737c-2, 737c-3, 737c-4, 737c-5, 737c-6, 737c-7, and 737c-8, former section 755, and sections 760, 761, 762, 763, 764, and 801 of Title 31, Money and Finance.

§ 1849. Federal Reserve banks as fiscal agents

Any Federal Reserve bank which is requested to do so shall act as fiscal agent for the Board. Each such fiscal agent shall be reimbursed by the Board for all expenses and losses incurred by it in acting as agent on behalf of the Board.


Historical Note


§ 1850. Protection of Government's interest—Attorney General, enforcement authority; payments into emergency loan guarantee fund

(a) The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States or any officer or agency thereof as a result of the issuance of guarantees under this chapter. Any sums recovered pursuant to this section shall be paid into the emergency loan guarantee fund.

§ 1851. Report

The Board shall submit to Congress an annual report on the operations under this chapter. The report shall include a full review of recommendations with respect to the funding program beyond the term of this title. If the Board continues beyond such term, such report shall be submitted to Congress with respect to such future operations with respect to such program. If the Board shall continue beyond section 1861, such report shall be submitted to Congress with respect to such future operations with respect to such program.


§ 1852. Termination

The authority of the Board shall terminate December 31, 1973. Such authority shall include any contract, guarantee, or other obligation executed pursuant to this chapter. Any sums advanced pursuant to this chapter shall be recovered by the Board.


Recovery rights; subrogation

(b) The Board shall be entitled to recover from the borrower, or any other person liable therefor, the amount of any payments made pursuant to any guarantee agreement entered into under this chapter, and upon making any such payment, the Board shall be subrogated to all the rights of the recipient thereof.


§ 1851. Reports to Congress; recommendations

The Board shall submit to the Congress annually a full report of its operations under this chapter. In addition, the Board shall submit to the Congress a special report not later than June 30, 1973, which shall include a full report of the Board's operations together with its recommendations with respect to the need to continue the guarantee program beyond the termination date specified in section 1852 of this title. If the Board recommends that the program should be continued beyond such termination date, it shall state its recommendations with respect to the appropriate board, agency, or corporation which should administer the program.


§ 1852. Termination date

The authority of the Board to enter into any guarantee or to make any commitment to guarantee under this chapter terminates on December 31, 1973. Such termination does not affect the carrying out of any contract, guarantee, commitment, or other obligation entered into pursuant to this chapter prior to that date, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this chapter.

January 26, 1978

Marilyn Friedman, Esq.
Municipal Assistance Corporation
For The City of New York
Two World Trade Center
New York, New York 10048

Re: MAC - Federal Guaranty

Dear Marilyn:

Confirming our telephone conversation of today, I forward to you an office memorandum regarding regulations proposed a year ago by the Environmental Protection Agency together with our formal letter commenting on the regulations that had been proposed to that date.

I am looking for the regulations as finally promulgated by the EPA and will forward them when I find them.

Please bear in mind that this matter was prepared in connection with and at the concurrence of our client Buffalo Sewer Authority and I forward this for your use only. Please let me know if there is anything further that you would like me to do on this matter.

With all best wishes, I remain

Yours sincerely,

Richard L. Sigal

RLS/jmc
Encls.

HAND DELIVERY
MEMORANDUM

RE: ENVIRONMENTAL PROTECTION AGENCY,
GUARANTEED LOAN PROGRAM, PUBLIC LAW 94-588

PROPOSED REGULATIONS FOR GUARANTEED LOAN PROGRAM

The following memorandum analyzes the proposed regulations for the Environmental Protection Agency's ("EPA") Guaranteed Loan Program with respect to legal problems raised by conditions set forth for the receipt of guarantees by public bodies.

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   Regulations
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I. SUMMARY OF PROPOSED REGULATIONS

The proposed regulations for the EPA's Guaranteed Loan Program, dated January 1, 1977 (herein referred to as the "Regulations"), contain specific requirements for the granting of a loan guarantee pursuant to Public Law 94-588. See Exhibit A for text of Public Law 94-588 and Proposed Regulations.

Section 39.110 sets forth application requirements for loan guarantees. Section 39.110(c) sets forth necessary documents for such applications including:

3) Legal Authority of Applicant. The application shall be accompanied by a legal opinion establishing that the applicant has legal authority to obligate itself for payment of the local share, to construct the project(s), to comply with the loan conditions, and to issue the obligations and that the obligations will be legal and binding obligations;

Regulations §39.110(c)(3); and

4) Assurances. The application shall be accompanied by assurances set forth in an ordinance or other evidence of authority acceptable to the Regional Administrator that it can and will comply with all of the loan conditions set forth in §39.115;

Regulations §39.110(c)(4). Section 39.115 requires a public body to assure that, among other things, it will:

7) At the direction of the Regional Administrator revise its rates, rate structure, or user charge system and plans with the approval of the Regional Administrator
or his successor whenever such revisions are required
to assure that annual revenues will be sufficient to
meet projected operation and maintenance costs and the
required payments of principal and interest on the loan.
Regulations §39.115(b)(7).

In addition, Section 39.115(c) requires certain covenants
to be made a part of the loan agreement or loan guarantee. Such
covenants include:

Increase in Taxes or User Charges. The public body
covenants that if the public body has not received or
had allotted, within a reasonable period, amounts
adequate for the payment of its loan and interest
thereon when due and payable, it will promptly levy
additional taxes or user charges as authorized by the
Act, on every user of waste treatment services within
its jurisdiction (as determined by the Administrator)
and will promptly enforce and collect such additional
user charges for the purpose of paying principal and
interest to the extent required to make such payments.
There is no statutory requirement for user charges to
be implemented to pay, in whole or in part, interest
and principal on bonded indebtedness or guaranteed
loans, but the public body hereby assures the guarantor
that such user charges may be levied and charged and
enforced lawfully and hereby agrees to enact ordinances
sufficient to assess such additional charges should the
additional revenues be necessary or the public body be
in default on the loan.

Regulations §39.115(c)(1).

Section 39.150 defines "Event of Default" on loan agree-
ments and provides certain remedies. Among such remedies are:

(1) enforce by mandamus or other suit ... the rights
to require the public body to enforce, collect and receive
user charges ... .

Regulations §39.150(b)(1).
II. **Discussion**

A. **Introduction.** The proposed regulations appear to require several unique conditions for the receipt of loan guarantees by public bodies not otherwise found in present federal regulations for grants, loans, guarantees and insurance. While it is common practice for the federal government to require public bodies to meet conditions for the receipt of aid or assistance, the proposed regulations compel public bodies to undertake certain acts after the receipt of a loan guarantee.

Specifically, the proposed regulations require a public body to provide a legal opinion and assure the EPA that it has legal authority to "revise its rates, rate structure or user charges" at the direction of the EPA. See Regulations §§39.110(c)(3), 39.110(c)(4). Further, the proposed regulations require that the loan agreement contain a covenant, to run to the federal government, that the public body "will promptly levy additional taxes or user charges" to pay principal and interest on the loan. Regulations §39.115(c)(1).

Certain questions may arise from the above provision. One of the questions, discussed at a length below, is whether a public body can legally agree to the conditions for the receipt of a guarantee? Stated otherwise, the question is whether these conditions require the delegation away of the governmental power of a public body in contravention to state law?
While the discussion below is not a comprehensive study of state law in all jurisdictions, there are indications that public bodies in many jurisdictions could not legally agree to the conditions for receipt of the guaranty. Further, it also appears that this problem would exist in New York with respect to the agreement to such conditions by the Buffalo Sewer Authority.

B. Compliance with Conditions for Receipt of Guarantee.
Under the proposed regulations, a public body must provide assurance that it can comply with conditions for receiving a guarantee. Regulations §39.110(c)(3). A public body must assure that it will at the direction of the Regional Administrator of the EPA revise its rates or charges so as to provide sufficient revenues to meet costs of operation and maintenance and debt service on the loan. Regulations Section 39.115(b)(7).

While it is beyond the scope of this memorandum to consider the Federal government's imposition of conditions for the receipt of aid by public bodies generally, the question whether a public body can contract to revise rates or raise taxes at the direction of another has been the subject of substantial litigation.

During the 1930's, pursuant to the National Industrial Recovery Act, 48 Stat. 195, (the "NIRA"), the Public Works Administration operated a funding program to aid in the financing of various municipal public improvements. Grants for funding such improvements were required to meet certain conditions, including:

"The grant will not be allowed unless the public body ... (a) has power to sell to the United States its bonds in sufficient amount to reimburse the United States for its outlay (less the grant if allowed) in connection with the project and enters into a contract so to do and to complete the project."
Federal Emergency Administration of Public Works, Circular No. 1, Article II, Section 8 (July 31, 1933); See Exhibit C. Under the NIRA, bonds of a public body would be purchased by the United States pursuant to a bond purchase contract.

When the applicant [public body] shall have furnished information and evidence sufficient to assure the fulfillment of the legal, financial, engineering, and social requirements of the Act, and the project has been approved as to eligibility and terms, a contract will be drawn embodying such approved terms and if agreed to, will be executed by the administrator and the applicant. The contract will state all terms, including the wage and labor conditions, and will provide for supervision by the Administrator to a degree sufficient to insure compliance with the construction and other terms thereof.

Federal Emergency Administration of Public Works, Circular No. 1, Article III, Section 11 (July 31, 1933). Such contracts entered into between public bodies and the Administrator of the Public Works Administration were subject to challenges that conditions agreed to in bond purchase contracts violated state law.

In Illinois Power and Light Corporation v. City of Centralia, 11 F. Supp. 874 (E.D. Ill. 1935), revised on other grounds, 89 F. 2d 985, the city entered into a contract with the Administrator of the Public Works Administration (hereinafter the "Administrator" and "P.W.A.", respectively) for the financing of an electric utility. The contract provided, among other things, that:

a) determination by the Administrator of cost of labor and materials shall be conclusive;

b) requisition for the project must be satisfactory in form and substance to the Administrator;

c) upon approval of the requisition, the [Federal] government will take up and pay for bonds in such amount as in the judgment of the Administrator will provide sufficient funds for construction;
d) expenditures can only be for purposes approved by the Administrator;

e) work shall be accomplished in accordance with plans and contracts satisfactory to the Administrator subject to supervision and inspection;

f) the project must be completed in a manner satisfactory to the Administrator;

g) the ordinance, and legal matters and proceedings, must be satisfactory to the Administrator;

h) the city shall set aside funds to electrify water pumps;

i) the city shall deposit $5,000 in a separate account for operation and maintenance; and

j) construction work including details of labor, wages and hours, are to be set by the Administrator.

11 F. Supp at 885-86.

The court held that the contract violated Illinois law in that the city by the contract had delegated away its discretionary powers of government. The Court reasoned that:

Under the laws of Illinois, cities have, as we have seen, certain delegated legislative power, which they receive from the Legislature and which they exercise as creatures of the Legislature. Their authority is limited by the terms of the delegation. Such legislative power, when delegated to a city, can in no way be redelegated by it to third persons. The city alone may exercise the delegated legislative discretion and if it sees fit not so to do, it may not give it to others. Nor, for the same reason, may the Legislature delegate its functions to other than its own arms. Its authority over municipalities was reserved with manifold others to the state, under the Constitution of the United States. All such reserved sovereign power, lodged in the people of the state, not granted in the Federal Constitution, remains where lodged, and no statute or resolution of the state legislative body, no declaration of the executive officers of the state can effect a valid grant of that sovereign power to a third person even though he be a national officer."
ll F. Supp. at 886.

It is worth noting that the court held that such "delegation" to the Administrator was void despite the enactment by the Illinois legislature of a "Federal Aid" law authorizing municipalities to do all things necessary to procure federal loans for public works.

The court's holding in Centralia rested upon two grounds. The first ground was a "federal delegation" problem in that the court found no Constitutional authority for a state to grant power to the federal government beyond the grants contained in the Constitution. Second, the court found a similar prohibition on the delegation away by a municipality of municipal powers granted by a state. Both grounds rested upon the principle that while sovereign powers may be expressly granted, once specifically granted they could not be given away. Contra Duke Power Co. v. Greenwood County, 10 F. Supp. 854 (W.D.S.C. 1935) (no Federal delegation problem); see also Tennessee Electric and Power Co. v. Tennessee Valley Authority, 306 U.S. 118 (1935) (federal instrumentality can be granted discretionary control of supervisory matters by state).

In Arkansas-Missouri Power Co. v. City of Trenton, 78 F. 2d 911 (8th Cir. 1935) the Federal court of appeals of the eighth circuit also held a similar contract void relating to the financing of an electric utility. In holding the contract void under state law, the court reasoned that since the state legislature had expressly granted power to municipal corporations to purchase, acquire, erect, maintain and operate electric works by statute, the delegation of the judgment and discretion of the municipality with respect
there to the federal government was not permitted by Missouri law. 78 F. 2d at 918-22 (citing Missouri cases prohibiting delegation of discretion). For the full text of contract in Kennett, see Exhibit D.

The holdings in Centralia and Kennett, that public bodies cannot delegate discretionary powers of government in connection with federal financing of public works projects, has found express approval in at least two other jurisdictions.

City of Middlesboro v. Kentucky Utilities Co., 284 Ky. 833, 146 S.W. 2d 48 (1940) involved a challenge to the issue of revenue bonds for the construction of an electric distribution system and a contract between the city and the Tennessee Valley Authority ("TVA") for the supply of electricity for twenty years. Pursuant to Kentucky statutes enacted prior to the contract, a city utility commission was granted

absolute and exclusive control of said ... plants and its operation and fiscal management, [and] regulations of rates...

284 Ky. at 838.

The statute directed the city council of a municipality to adopt "an ordinance fixing and determining the amount of revenue" necessary for a sinking fund and expenses of operation and maintenance, and, that rates "shall be fixed and revised from time to time so as to produce these amounts." Id.

The contract, on the other hand, provided that rates to be charged would be according to a schedule attached to the contract and that changes in rates were subject to the approval of the TVA. The contract provided that the plant would be operated in accordance
with the rules attached to the contract and that the TVA would have final approval with respect to equipment in the plant. 284 Ky. at 839-40. The contract also stated that "[t]he several provisions of this contract and of the schedule of rates and charges are of the essence of this contract." 284 Ky. at 840.

The city argued that in entering the contract and agreeing to the provisions thereof, it had properly exercised its discretion. The court, however, held otherwise.

Though a municipal corporation in maintaining a plant for the distribution of electricity to its inhabitants for domestic use acts in a quasi-private and not a governmental capacity, and in that relationship the officials are regarded as administrative agents rather than public officers, nevertheless they are entrusted with responsibilities and duties that cannot be surrendered or delegated in whole or in part except as may be expressly or impliedly authorized by the law governing the performance of those duties. Municipal corporations as instrumentalities of the state have only such powers as have been granted by the legislature, expressly or necessarily implied. The grant itself carries the prohibition of exercising any authority in excess thereof or in a manner different from that permitted ... we [have] held ineffective a contract which provided for the joint control and operation of a hospital by the city, the county and a private association. We found it competent under the Statutes for the city and county to unite in the service, but held that a private concern could not be taken into partnership in conducting a public enterprise. "Doing so ... is to surrender official responsibility and to delegate the public function to persons who are not responsible to the people.

284 Ky. at 841-42 (citations omitted)

In Middlesboro the court raised the distinction between acts performed in a governmental or in a proprietary capacity. However, the court did not find the distinction relevant since, even in its proprietary capacity, a public body cannot delegate away "discretionary" power. Generally, delegation problems are resolved by whether
a delegation involves "discretionary" or "ministerial" power. See
McQuillen on Municipal Corporations §10.39 et seq (F. Ellard, ed.
1966). However, it should be noted that acts in a governmental
capacity, such as for example taxation, contracting, zoning, are
always discretionary in nature, that is, governmental acts involve
the judgment of the governing body. Thus, the court further stated
that:

[While the statute authorizing certain delegations with
respect to the operation of hospitals is] not as restric-
tive as the statute authorizing the operation of an
electric light and power system by such a city under the
revenue-payment plan, which is that its utility commission,
subject to the duties specially vested in the city council,
"shall have absolute and exclusive control of said electric
light, heat and power plants and its operation and fiscal
management, regulation of rates and in every other respect."
When the contract and the statute are placed in juxtaposition,
it is manifest, we think, that there is a surrender of that
control to the TVA. Any and everything that the city may
wish to do in relation to the management is subordinated to
the will of the federal agency. True, it has agreed in res-
pect of modifying or changing the resale rates for current--
but in that respect only-- that it will not exercise its veto
power unreasonably or arbitrarily. But the promise is
abortive, for the Authority would be the sole and final
judge of the reasonableness of its action.

The court reasoned that governmental discretion cannot be
delegated nor surrendered and the contract had to be void since:

It cannot be assumed that the right given in the con-
tract to withhold approval of what the municipal govern-
ment might desire to do will not be exercised, or that
the power so reserved as a consideration for entering
into the contract will not be used when there arises a
difference of opinion between the officers of the Ten-
nessee Valley Authority and the officers of the City of
Middlesboro as to the need or desirability of changing
the system or its operation, including the rates to be
charged for the service.

284 Ky. at 844-45.
However, the court in Middlesboro indicated that legislative sanction, as to the delegation, may have been all that would have been necessary to uphold the validity of the contract. 284 Ky. at 845 (citing Memphis Power and Light Co. v. Memphis, discussed infra). This statement is in direct contradiction to the position taken in Centralia and indicates that peculiarities of each state's law may determine whether delegations of governmental powers are permissible pursuant to state statutes.

A similar result, invalidating a contract whereby a city agreed by contract with the Federal Power Commission to limit the manner of operating its federally financed distributing plant to sources established, was reached in McGuinn v. City of High Point, 217 N.C. 449, 3 S.E. 2d 462 (1940). In that case the court held that agreeing to conditions set by the Federal Power Commission was an ultra vires act.

The above cases clearly indicate that the provision in an agreement in accordance with the proposed regulations with respect to increases in rates to be at the direction of the EPA, would be a delegation of governmental discretion, thus, such an agreement may be held void in at least Illinois, Kentucky and North Carolina.

Other decisions from other jurisdictions with respect to PWA contracts have applied a more liberal rule. The limitations to contracting resulting from the "delegations" problem found in Centralia, Kennett and Middlesboro, has been specifically rejected in numerous jurisdictions. In School District No. 37 v. Isackson,
92 F.2d 768 (9th Cir. 1937), the court explicitly declined to follow the doctrine announced in Centralia and Kennett. 92 F.2d at 772. The court held that a contract for the construction of a federally financed school building was valid even though the contract permitted the Administrator to approve minimum wages, countersign construction contracts, and specify materials to be used in construction; (the school district did retain the power to approve bids for construction). The court stated that the provisions of the contract "delegate no powers or duties, but are simply conditions in the contract which... [the district] agreed to fulfill." 92 F.2d at 772. However, the court did not state that it was applying Washington law, thus the holding may be subject to doubt in light of Terrace Heights Sewer Dist. v. Young, 3 Wash. App. 206, 473 P.2d 414 (1970) ("a municipal corporation, expressly delegated the right to establish rates for public utilities, cannot surrender the power to exercise this right in the future by contract with a patron of its service"); see also Johnson v. State, 107 Ga. App. 16, 128 S.E.2d 651 (1962).

In addition, the following cases specifically approved contracts with the Administrator of the P.W.A.: Department of Water and Power v. Vroman, 218 Cal. 206, 42 P.2d 472 (1933); The Kansas Utilities Co. v. City of Burlington, 141 Kan. 926, 44 P.2d 223 (1935); Lower Colorado River Authority v. McCraw, 125 Tex. 268, 83 S.W. 2d 629 (1935); Interstate Power Co. v. City of Cushing, 12 F. Supp. 806 (W.D. Okla. 1935); Memphis Power and Light Co. v. City of Memphis, 172 Tenn. 346, 112 S.W. 346 (1937).
In *Lower Colorado River Authority*, 125 Tex. 268, 83 S.W.2d 629 (1935), the Texas Supreme Court upheld the constitutionality of an act establishing the Lower Colorado River Authority. The court rejected the argument that the act was invalid since it authorized the Authority to delegate powers to the Federal government with respect to payment of its bonds and establishing rates and charges. The court held that "[I]t is well established in this State [Texas] that the legislature may, be express words, authorize municipal corporations to enter into contracts, prescribing the rates that may be charged..." 125 Tex. at 283.

The reasons underlying the decisions permitting contracts with respect to "outside" control of rates or other matters is best stated in *Memphis Power and Light Co. v. City of Memphis*, 172 Tenn. 346, 112 S.W. 346 (1937).

In Memphis, the city proposed to issue bonds for an electric distribution plant to distribute power purchased from the TVA. The state legislature subsequently created a city light and water commission for the purpose of purchasing power from the TVA and with the power to "make any and all contracts necessary and incident to carry out this purpose." 172 Tenn. at 351. Further, the legislation provided:
"That the Light and Water Commissioners shall have the right to make any and all contracts necessary or convenient for the full exercise of the powers herein granted, including, but not limited to, (a) contracts with any person, federal agency, or municipality for the purchase or sale of energy, and (b) contracts with any person, federal agency, or municipality for the acquisition of all or any part of any system or systems; and in connection with any such contract, notwithstanding any provision of this or any other Act, the Light and Water Commissioners shall have power to stipulate and agree to such covenants, terms and conditions as the Board may deem appropriate, including, but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices, and the manner of disposing of the revenues of the system or systems conducted and operated by the Commission."

172 Tenn. at 352. Pursuant to such legislation the city entered into a contract with the TVA for the purchase of power. The contract provided that resale rates would be fixed according to TVA schedules. The contract also provided that if rates were insufficient to operate and maintain the plant or a self-supporting basis, they could be raised with TVA approval. Id.

The court, upholding the validity of the contract, reasoned that the contract was made in the city's proprietary capacity and not its "public, legislative, political or governmental" capacity. 172 Tenn. at 355. Since the city was not acting in its governmental capacity, as sovereign, but rather in a "private, quasi-private, proprietary" capacity, it was not acting as "an agency of the state." Id. However, the court's reasoning as to the contract's permissibility may be limited by the court's observation that "[T]here is no
provision in the contract authorizing the TVA to increase or reduce the rates agreed upon." 172 Tenn. at 360. Thus, the TVA was merely granted a "supervisory privilege." Id.

An additional issue in the case was whether another contract with the Administrator of the P.W.A. was invalid. This contract provided limitations and restrictions with respect to hours, wages, and employment. The court upheld the contract since:

"The Legislature conferred upon the city a very wide discretion in agreeing to such terms and conditions as it deemed advisable in order to obtain a loan from PWA with which to construct its plant. Pursuant to such authority the city can contract with respect to wages, hours of labor, etc., without violating any of the laws of this state. Such conditions, being agreed upon in advance, become fixed, and are not subject to the whim and caprice of PWA. This is not a case where the lender reserves the right to control wages, hours of labor, etc., as the work progresses. The power of the state and the municipalities to enter into such contracts seems to be well sustained by the authorities."

172 Tenn. at 364 (citations omitted).

The holding in Memphis indicates that a two-fold analysis may be necessary in each state in order to determine whether the assurance, required by the proposed regulations, with respect to increasing rates at the direction of the EPA, would be legally permissible. Initially, however, it must be noted that, unless clearly stated to the contrary, the power to fix rates or taxes is inherently governmental. Nevertheless, is is possible that a state may distinguish between the power to raise rates and the power to operate a treatment facility. Thus, the first step is to determine whether a public body operates a "treatment works" in its government
or proprietary capacity. However, with respect to sewage treatment facilities, research has not disclosed any state which holds that operation of such facilities is in a proprietary capacity.

Thus, conceding that all projects will probably be held to involve a public body's governmental capacity, the next step is to determine how liberal the jurisdiction is with respect to what constitutes "supervisory" or "ministerial" control. If under state law an agreement permitting rates to be raised at the direction of another is merely "supervisory", then the agreement would be valid. The validity of the agreement would rest on the conclusion that the assurance is merely a condition to receipt of the guarantee. This conclusion is reached despite the fact that the P.W.A. is no longer in existence. Thus, the prohibition against delegation of governmental power to the federal government unless specifically authorized by state law is still valid law. American Airlines v. Louisville and Jefferson County Air Board, 269 F. 2d 811 (6th Cir. 1959) (propriety of delegation of power to fix rates to arbitration process specifically determined by state law).

A similar analysis can be found in Greenwood County v. Duke Power Co., 81 F.2d 986 (4th Cir. 1936), where the court upheld the validity of a P.W.A. contract.

And we think that there is no merit in the contention that the administrator has assumed control over a local matter reserved to the jurisdiction of the states, because of the provisions of the contract as to wages, hours of labor, etc. These are stipulated by contract in advance, not left to the control of the administrator during the progress of the work. Had this been done, there is no reason to think that it would be violative of any provision of the laws of South Carolina. But, as it was not done, we see no ground of complaint on any score. Certainly where the federal government is making a loan to aid in the relief of unemployment, it may stipulate that the loan shall be used in such way as will best accomplish that purpose.

81 F.2d at 997 (citations omitted).
While it could be argued that both Lower Colorado River Authority and Memphis are narrow in their approval of the contracts, implying that the contracts did not give away "decisional authority" to a federal instrumentality, Iowa Electric Co. v. Town of Cascade, 227 Iowa 480, 288 N.W. 633 (1939) casts further light on the permissibility of conditions for the receipt of aid.

Iowa Electric Co. involved a contract with the P.W.A. for the financing of an electric utility plant which provided for the establishment of minimum wages and the manner of letting of contracts for construction. The contract was challenged as invalid since it "delegated" municipal power with respect to minimum wages and contract bidding. The court reasoned that:

Section 10188 of the Code authorizes municipal corporations to accept gifts and provides that "conditions attached to such gifts or bequests become binding upon the corporation...upon acceptance thereof." This court has expressly recognized, that Section 10188 of the Code authorizes municipal corporations to accept the very kind of grant which was here offered to the Town of Cascade. We are of the opinion that this section of the Code not only authorized the city to accept the grant, but also, under the record herein, authorized it to comply with the requirements in regard to minimum wage rates as a condition precedent to the securing of the grant. Since the grant was over twice the amount of the total labor cost on the project, the provision in the specifications for the payment of a minimum wage scale could not possibly be considered as having increased the cost to the users of electricity. The reason for the application of the rule, for which appellant contends, is absent. The court was warranted in refusing to apply the rule herein, and in holding that the town could comply with the condition that was attached to the grant.

288 N.W. at 636. (citations omitted).

Therefore, as the above analysis indicates public bodies in many states would not be able to provide assurances required as conditions for receiving guarantees.
C. Environmental Protection Agency as Guarantor. A secondary problem should be given consideration, if at any time in the future, bonds of a public body held originally by the Federal Financing Bank are resold to non-governmental holders. Under this assumption, the possibility exists that a holder of a bond sues the public body to compel an increase in rates since current rates are insufficient to pay debt service. The possibility exists that both the public body and the EPA may refuse to increase rates, or alternative, the EPA's directed increase is still insufficient. The problem then arises whether the EPA can be a party to a suit by a bondholder in a state court. This problem was addressed in Middlesboro where the court stated that:

The contract seems to build an obstacle to the right of bondholders to enforce their lien on the plant by compelling the collection of sufficient rates, as provided in Section 3480d-7 of the Statutes, or by having the property operated by a receiver appointed by the court. This is so because by its joint control the Tennessee Valley Authority would be a necessary party to the suit, and as an agency of the federal government it is not subject to the jurisdiction of the state courts. It is free from the state's regulation or control. Thus the contract might be invoked to tie the arm of the state judiciary. Moreover, it would hamstring the legislature, for it could not change the statute in any way that would impair the obligation of the contract.

284 Ky. at 841 (citations omitted).

While it is beyond the scope of this memorandum to consider the problem in detail, it only remains a problem if the proposed regulations cause a "control" problem in the delegation of governmental discretion as discussed above.
III. SURVEY OF REGULATIONS OF CERTAIN FEDERAL GUARANTEE AND LOAN AND INSURANCE PROGRAMS

Four other types of federal guarantee programs were examined in order to compare existing regulations to the proposed regulations with respect to conditions of receiving and enforcement of guarantee. These programs include Environmental Finance Authority, Farmers Home Administration, Economic Development Administration and Government National Mortgage Association. The salient features of each program are briefly summarized below.

Environmental Financing Authority

A set of regulations similar to the proposed regulations existed for the Environmental Financing Authority Act of 1972, Public Law 92-500, 33 U.S.C. Section 1281n, at 40 C.F.R. Section 39.100 et seq. (expired July 2, 1975). For the text of the Environmental Financing Authority Act and regulations promulgated thereunder, see Appendix C. Pursuant to these regulations, conditions were established for the purchase of obligations of public bodies by the Authority and receipt of a guarantee that:

(f) the application shall be accompanied by a legal opinion establishing that the applicant has legal authority to obligate itself for payment of the Non-Federal share to construct the project(s) and to issue obligations, and that the obligations will be legal and binding obligations.

40 C.F.R. Section 39.110(f). Further, each applicant was required to certify that it would:
(6) Revise its rate or rate structure with the approval of the Regional Administrator... whenever such revisions are required to assure that annual revenues will be sufficient to meet projected operating costs and required payments of principal and interest.

40 C.F.R. Section 39.120(b)(6). Each applicant was required to agree to:

(7) The enforcement of the foregoing conditions by the Regional Administrator... in a court of competent jurisdiction.

40 C.F.R. Section 39.120(b)(7).

Farmers Home Administration

The Farmers Home Administration has regulations with respect to financing of community facilities by public bodies pursuant to the purchase of bonds by the Administration, 7 C.F.R. Section 1823.1 et seq; see Appendix C. No provisions require increase in rates or taxes, although the Administration's loan is required to be secured by

1) the full faith and credit of the public body as evidenced by general obligation bonds;

2) pledge of taxes or assessments;

3) pledges of facility revenue; and

4) liens on real and personal property where such liens are permitted by State law.

7 C.F.R. Section 1823.6(b).

Economic Development Administration

The Economic Development Administration has regulations with respect to loans and guarantees for the financing of
certain public works. 13 C.F.R. Section 305.21 et seq.; see Appendix C. While the regulations do not include specific requirements as to security, it appears that the EDA is permitted to obtain liquidation of a claim based upon such loans or guarantees against a public body. See 13 C.F.R. Section 305.100.

Government National Mortgage Association

The GNMA has regulations relating to its guaranty of mortgage-backed securities. 24 C.F.R. Section 390.1 et seq., see Appendix C. It should be noted that this guaranty is not applicable to non-tax exempt securities of a public body. In certain instances, a trust agreement may be required between the public body, a trustee and GNMA with specific requirements relating to security protection.

None of the regulations for the above programs appear to raise the delegation problem found in the proposed regulations. For example, the regulations for the Environmental Financing Authority require that rates be raised with approval of the Authority, not at its direction.
IV. REVISIONS IN PROPOSED REGULATIONS

1. § 39.110(c)(1) Application

Delete: "(ii) a certificate acceptable to the Administrator either from a municipal bond underwriter(s), which submitted or might normally have submitted a bid for the obligations, or in the case of obligations not in excess of $250,000 certification from two or more local or regional banks"

Add: "(ii) a certification acceptable to the Administrator from the public body stating that bids for obligations were not obtained or could not be reasonably obtained"

2. § 39.110(c)(2)

Change to the following:

(2) Ability to repay. The application for a loan guarantee shall be accompanied by an official statement, report of essential facts or such other documentation intended to provide EPA with the information needed to reach an informed judgment as to whether there is reasonable assurance of repayment. Such documentation must conform to the guidelines for such statements which are available to applicants from the EPA regional office upon request.

3. § 39.110(c)(4)

Delete: "assurances set forth in an ordinance or other evidence of authority"

Add: "a certificate of the applicant"

Add: [after the words "Regional Administrator"]

"stating"

4. § 39.115(a)(1)

Delete: "local resources available"

Add: "revenues, rents and charges permitted to be used in accordance with applicable law"

5. § 39.115(b)

Delete: [subsections (2) to (7)]

Add: "(2) provide for the operation and maintenance of the facilities and payment of the loan from revenues, rents
and charges pledged therefor in a manner satisfactory
to the Regional Administrator and in accordance with
applicable law."

6. § 39.115(c)
Delete: [Subsection (c)]
Add: "(c) Other Covenants. Each public body applying for
a loan for the local share of Step 1, Step 2 or Step 3
costs must assure that it will authorize covenants
with respect to its obligations satisfactory to the
Regional Administrator and in accordance with applicable
law."

7. § 39.150(a)(3)
Delete: "contained in the loan agreement, or loan guarantee,
or grant"
Add: "authorized by the public body"

8. § 39.150(b)
Delete: "the loan agreement and guarantee shall provide that"
Delete: "such of the following remedies"
Add: "such remedies as authorized by the public body and
applicable law and"
Delete: [subsections (b)(1) to (b)(5)]
Compliance with Conditions by Buffalo Sewer Authority

Two problems arise with respect to compliance with the conditions for receipt of a guarantee by the Buffalo Sewer Authority, first, New York law prohibits the delegations as required by the proposed regulations. Second, the Buffalo Sewer Authority's existing revenue bond resolution provides holders of its bonds with certain covenants which would be breached if the Authority agreed to the conditions required by the proposed regulations.

While the previous analysis indicates the problems of delegation of legislative or governmental power by contract in connection with the financing of public works, as previously stated, the prohibition against delegation of governmental power applies to governmental powers generally.

Thus, in New York, "[i]t is a well-settled principle that public powers or trusts devolved by law or charter upon the council or governing body [of a municipal corporation] to be exercised by it when and in such manner as it shall judge best cannot be delegated to others. Birdsall v. Clark, 73 N.Y. 73, 76 (1878). In Birdsall, the court held that an ordinance of a city was void because it delegated to the superintendent of streets the power to approve contracts with respect to sidewalks. See also Luongo v. Flanagan, 230 App. Div. 71, 243 N.Y.S. 385 (1930) (ordinance delegating contract power to alderman held void).

In City of Glenn Falls v. Standard Oil Company, 127 Misc. 104, 215 N.Y.S. 354 (1926), the court held an ordinance void which delegated zoning approvals to affected property owners. The court stated:
'Potestas delegata non est delegat; 'is a general maxim, applicable with particular force to any form of sovereign power, and operates to prevent the governing body of a municipal corporation...from delegating its high functions to any other body or officer; the trust is official and personal, and may be discharged only by those to whom the State commits it.

215 N.Y.S. at 361 (citation omitted).

Further, New York also follows the principle that a public body cannot by contract surrender or limit its governmental power. In Atlantic Beach Property Owners Association v. Town of Hempstead, 3 N.Y.2d 434, 144 N.E. 2d 409 (1957), a town adopted a restrictive covenant in a property deed whereby it agreed not to extend the boundaries of a park district to include the property. The Court of Appeals held that "[a]greements by which the public powers of a municipality are surrendered without express permission of the Legislature are beyond the powers of a municipality and void." 144 N.E.2d at 411. The court reasoned that the town could not divest itself of the power to "adopt park districts to the need of growing communities." Id. See also Belden v. City of Niagara Falls, 230 App. Div. 601, 245 N.Y.S. 510 (1930) (covenant not to change street names held void); Bartholomew v. Village of Endicott, __ Misc. __, 59 N.Y.S. 2d 84 (1945) (contract to limit extension of municipal electric distribution system held void).

However, New York also recognizes certain delegations as proper since they are merely non-legislative or supervisory in nature. In Bergerman v. Lindsay, 25 N.Y.2d 405, 255 N.E. 2d 142 (1969), the Court of Appeals rejected a challenge to the delegation of budget making to a non-elected board of estimate since "budget or making is not legislative." Similarly, a delegation to a real estate industry association to supervise certain applications of a rent stabilization law was held not to be an improper delegation. 8200 Realty Corp. v. Lindsay, 27 N.Y. 2d 124, 261 N.E.2d 647 (1970).
The Buffalo Sewer Authority was established pursuant to article 5 of title 8 of the New York Public Authorities Law ("PAL"). The Authority is a "body corporate and politic constituting a public benefit corporation". PAL §1177. The Authority has the power

[t]o fix and collect rents, rentals and other charges for services rendered by the authority, subject to and in accordance with such agreements with holders of bonds as may be made as hereinafter provided.

PAL §1178(11). PAL §1187(3)(c) provides that any resolution authorizing bonds may contain provisions as part of the contract with the holders of bonds as to

the rates, rentals and other charges to be imposed and the amounts to be raised in each year...

Thus, superficially it appears that the Buffalo Sewer Authority could sell bonds to the Federal government and provide in a bond resolution provisions permitting the EPA to direct rates. However, in accordance with New York law as stated above, it is reasonable to conclude that the provisions in such resolution could only delegate a "supervisory" or "ministerial" role to EPA and not the legislative power to set rates. Similarly, it is reasonable to conclude that a resolution containing a set schedule of rates also would be permissible. Again, the governmental discretion would be exercised by the public body and not the EPA.

As stated before, the Public Authorities law permits the Authority to provide in a resolution provisions as to "rates, rentals and other charges". PAL §1187(3)(b). The Authority has already
adopted such provisions in its Sewer System Revenue Bond Resolution adopted August 25, 1975 (the "Resolution"). Section 711 of the Resolution provides that as a covenant with the holders of bonds issued under the Resolution "the Authority shall fix notes for each class of service rendered by the Sewer System."

Further, by Section 711 the Authority has also covenanted to maintain rates at levels required by the Resolution. Therefore, with respect to the proposed regulations, the Authority cannot assure the EPA that it will raise rates at the direction of the Regional Administrator since compliance with the assurance would breach its covenant with its bondholders.

Further, an additional problem is created by §39.115(c) of the proposed regulations with respect to compliance with assuring "other covenants". Section 39.115(c)(4) would require the Authority to assure EPA that it

will not create nor suffer to be created any lien or charge...prior to, or on a parity with the lien upon the revenues, taxes, reimbursement grants or user chargers created to secure the loan...

Section 708 of the Resolution covenants with Authority bondholders that it will not issue bonds except in the manner provided in the Resolution. The bonds issued under the Resolution have a prior lien to any future obligation of the Authority unless such future obligation is issued under the Resolution. In that instance, the future obligation would be required to be on a parity with the prior issue. Thus, the Authority cannot provide assurance to EPA that it will not suffer a lien on revenues on a parity to the revenues pledged to pay the loan agreement.
Letter with annexed Comments

of

HAWKINS, DELAFIELD & WOOD

67 Wall Street
New York, N.Y.

RE: PROPOSED REGULATIONS FOR IMPLEMENTING PUBLIC LAW 94-558 (40 CFR Part 39) TO ESTABLISH A GUARANTEED LOAN PROGRAM OF THE ENVIRONMENTAL PROTECTION AGENCY

Submitted to the Director, Grants Administration Division (PM-216)
Environmental Protection Agency
Washington, D.C. 20460

February 14, 1977
February 14, 1977

Director
Administration Division
(PM-216)
Environmental Protection Agency
Washington, D.C. 20460

Re: Proposed Regulations for Implementing
Public Law 94-558 (40 CFR Part 39) to
Establish a Guaranteed Loan Program for
the Environmental Protection Agency

Dear Sir:

Pursuant to your request for comments on the proposed
regulations referred to above, we are submitting herewith
Comments on the proposed regulations.

We submit our comments in our capacity as Bond Counsel
to the Buffalo Sewer Authority and as Bond Counsel to many
public bodies in several states. The proposed regulations
if promulgated in present form would prevent the Buffalo
Sewer Authority from applying for a loan guarantee. In addi-
tion, several provisions of the proposed regulations would
be inconsistent with state laws applicable to the issuance
of public securities.

The following facts are particularly relevant to the
Buffalo Sewer Authority:

1. The Buffalo Sewer Authority has approximately
$10 million to $20 million of expenditures for which it
does not presently anticipate reimbursement through
federal or state grants and for which it anticipates
needing to issue its own bonds therefor. Such expend-
ditures include payment for costs certified as eligible
by the EPA but in addition include expenditures for
certain costs for which there is no reimbursement for-
mula. For example, the interest on note financings arranged with private banks in anticipation of federal grants may be bonded by the Authority pursuant to its statute but such costs are not subject to reimbursement by any federal grant. The amortization of such costs over a period of years may be preferable than the payment in one year out of the operating revenues of the Authority.

2. The Authority has outstanding $35 million Sewer System Revenue Bonds, First Series, delivered on September 9, 1975. Such bonds were originally offered for sale on July 29, 1975 at competitive public bidding pursuant to advertisement in the July Bond Buyer. No bids were received on such date and thereafter the Authority negotiated with Halsey Stuart & Co., Inc. (affiliate of Bache & Co.) at a net interest rate of over 10%. The Authority had prior to such time arranged local bank financing in the amount of $25 million but were informed by the local banks that no further note financing or extension of current financing was possible. Accordingly, the Authority had no choice but to accept this rate which was considered extraordinarily high. Primarily as a result of such rate, the Authority had to increase its rates of user charges by over 75% on July 1, 1976.

3. The Authority is actively considering methods by which it can refund such bonds to achieve a net interest cost savings and to eliminate certain of the restrictive covenants imposed on them at the time of such sale. Any reduction of such high interest costs and the resultant interest savings would put the Authority on a more financially sound basis for repayment of its debt as well as for the issuance of additional obligations required to fund additional expenditures.

4. The $35 million Sewer System Revenue Bonds, First Series, were issued pursuant to an indenture which contains several covenants of the Authority with its bondholders including a rate covenant, a test for the issuance of additional bonds, an insurance covenant and includes provisions relating to remedies of bondholders upon default by the Authority. Such indenture is administered by a trustee appointed to serve on behalf of the holders of outstanding bonds and any additional bonds issued
pursuant to the indenture. Any issue of bonds by the Authority without the refunding of the outstanding bonds and defeasance of the indenture would by law need to be pursuant to such indenture. Accordingly, any regulations of the administrator with respect to a guaranty of the Authority bonds should be broad enough in scope to accommodate the existing indenture.

5. The Authority has covenanted in its indenture that it will not issue additional bonds which have a lien on revenues of the Authority prior to or superior than the existing bondholders' lien. Accordingly, the administrator should be in a position to accept a position of parity with holders of outstanding bonds.

6. The foregoing facts are of particular concern in the event that the Authority is not able to refund its existing issue of $35 million at a reasonable interest rate. In addition, with respect to any refunding, the provisions of the Internal Revenue Code are such that refundings are extremely complicated and there is the possibility that the Authority's outstanding issue of $35 million of revenue bonds cannot be refunded at this time. Accordingly, the administrator should be in a position to guarantee refunding bonds at a later time in the event that the market and the provisions of the Internal Revenue Code permit such refunding.

It is urgent that the proposed regulations be redrafted so as to give due regard to the restrictions upon the issuance of public securities by public bodies, including the Buffalo Sewer Authority, in each of the several states. As presently drafted, the proposed regulations prevent many public bodies in need of guaranteed loans from obtaining such loans.

While the Comments attached hereto discuss some of these problems in more detail, it should be noted that these Comments only summarize the extensive underlying analysis of
these problems which we are willing to provide to you at a future date.

Respectfully submitted,

Hawkins, Delafield & Wood

By Richard L. Sigal
Partner
COMMENTS ON PROPOSED REGULATIONS
FOR IMPLEMENTING PUBLIC LAW 94-558
TO ESTABLISH A GUARANTEED LOAN
PROGRAM OF THE ENVIRONMENTAL
PROTECTION AGENCY

I

The proposed regulations requiring the assurance
that a public body raise rates and user charges at
the direction of the Regional Administrator violates,
in many cases, applicable state law.

It is fundamental to the law of public bodies that public
bodies cannot delegate or surrender their legislative power. "The
principal is a plain one, that the powers or trusts devolved by law
or charter upon the council or governing body, to be exercised by it
when and in such manner as it shall judge best, cannot be delegated
to others." Dillon, Commentaries on the Law of Municipal Corpora-
tions §224 (1911 edition) (emphasis in original). This principal
applies to discretionary judgments of public bodies to raise taxes,
charge rates, establish user charges and many other things.(1)

(1) Tucson v. Stewart, 45 Ariz. 36, 40 P.2d 72 (1935); Morrison
v. Snyder, 217 Ark. 528, 231 S.W.2d 95 (1950); Whitmore v. Eureka,
29 Cal. App. 3d 28, 105 Cal. Rptr. 185 (1972); Big Sandy School
Dist. No. 100-J v. Carroll, 164 Colo. 173, 433 P.2d 325 (1967);
Keating v. Patterson, 132 Conn. 210, 43 A.2d 659 (1945); Evanston v.
Wazau, 364 Ill. 199, 4 N.E.2d 78 (1936); Board of Park Commissioners
of Ashland v. Shenklin, 304 Ky. 43, 199 S.W.2d 721 (1947); Biddeford
v. Yates, 104 Me. 506, 72 A. 335 (1908); Thomas v. Housing Redevelop-
ment Authority of Duluth, 234 Minn. 221, 48 N.W.2d 175 (1951); Pearson
v. Washington, 439 S.W.2d 756 (1969); Holmes v. Polsen, 123 Mont.
469, 215 P.2d 950 (1950); Friedman v. Maines, 110 N.J.L. 454, 166 A.
148 (1933); 8200 Realty Corp. v. Lindsay, 34 A.D.2d 79, 309 N.Y.S.2d
443 (1971); State v. Woodworth, 33 Ohio App. 406, 169 N.E. 713 (1929);
M.A. Steen, Inc. v. Cavanaugh, 430 Pa. 19, 241 A.2d 771 (1968); Rock-
(1929); Texas Consolidated Theatres v. Pittilo, 204 S.W. 2d 396, (Tex.
1947); Town of Falls Church v. Arlington County Board, 166 V. 192, 184
S.E. 459 (1936); Brackman's Inc. v. Huntington, 126 W. Va. 21, 27
S.E.2d 71 (1943); Roehl v. Public Utility Dist. No. 1 of Chelan County,
43 Wash.2d 214, 261 P.2d 92 (1957).
Subsection (b)(7) of Section 39.115 requires that a public body assure the EPA that it will

At the direction of the Regional Administrator revise its rates, rate structure, or user charge system and plans with the approval of the Regional Administrator or his successor whenever such revisions are required to assure that annual revenues will be sufficient to meet projected operation and maintenance costs and the required payments of principal and interest on the loan.

This provision can be read to mean that a public body must assure the EPA that it can delegate its power to revise rates and charges to the EPA.

In many states such assurance cannot be given, and further, if given, it would be invalid.

In New York, for example, courts have held that a public body cannot even surrender the legislative power to name streets\(^2\), restrict the extension of a municipal utility system\(^3\) or approve construction contracts for sidewalks\(^4\). Thus, public bodies in New York, including the Buffalo Sewer Authority, could not assure the EPA that they would increase rates or charges at the direction of the EPA.

The issues presented in the proposed regulations are not dissimilar to issues which were subject to litigation during the Great Depression concerning the Public Works Administration’s efforts to aid in the financing of municipal projects. Under its program, the PWA required public bodies to grant its administrator the right to direct and

\(^3\) Bartholomew v. Village of Endicott, 59 N.Y.S. 2d 84 (Misc. 1945).
\(^4\) Birdsall v. Clark, 73 N.Y 73 (1878).
approve contracts, wages, use of materials and rates to be charged.  

In several cases, the delegations by contract of such powers to the PWA administrator were held void.  

Similar contracts were upheld only when state courts interpreted the provisions of these contracts to be either conditions to a gift or a delegation of a non-legislative function.

While it is generally accepted that public bodies can agree to certain conditions for the receipt of a gift or grant, care should be taken so as not to confuse the ability to agree to conditions as permitting the delegation of legislative power. Each state may differ as to what constitutes an improper delegation of legislative power. It is therefore suggested that section 39.115(b) (7) be changed to read as follows:

Covenant, as permitted by law, to revise its rates, rate structure, or user charge system and plans whenever such revisions are required to assure that annual revenues will be sufficient to meet projected operated operation and maintenance costs and the required payments of principal and interest on the loan.

---

(6) See, e.g., Illinois Power and Light Corp. v. City of Contralia, 11 F. Supp. 874 (E.D. Ill. 1935), reversed on other grounds, 89 F. 2d 985 (7th Cir. 1935); Arkansas-Missouri Power Co. v. City of Trenton, 78 F. 2d 911 (8th Cir. 1935); City of Middlesboro v. Kentucky Utilities Co., 284 Ky. 833, 146 S.W. 2d 48 (1940).
(7) See, e.g., School District No. 37 v. Isakcson, 92 F. 2d 768 (9th Cir. 1937); Memphis Power & Light Co. v. City of Memphis, 172 Tenn. 346, 112 S.W. 346 (1937); Iowa Electric Co. v. Town of Cascade, 227 Iowa 480, 228 N.W. 633 (1939).
II

The proposed regulations requiring assurance that public bodies agree to enforcement of remedies do not adequately distinguish between the different types of public bodies, and, in many cases, such remedies are not available under applicable state law.

Generally, there are two basic kinds of obligations of public bodies issued to finance sewer projects. The first kind, the general obligation, issued by many cities, towns, villages and counties, contains a pledge of the public body's faith and credit to pay the obligations without identification as to the particular sewer project's contribution of monies to pay the obligation. In New York, for example, such obligations are to be paid by monies from any source and, ultimately, by the levy of ad valorem real property taxes, without distinction whether the obligation was issued to fund sewer projects, road improvements, equipment acquisition or water mains. The second kind of obligation, the revenue bond, contains a specific pledge of monies or revenues derived from the operation of the specific project to pay the obligation.\(^8\)

Public bodies are not permitted to issue whatever type of obligations they wish to. The authority to issue general obligations or revenue obligations derives expressly from state constitutions and statutes. In New York, for example, under the Constitution of the State, counties, cities, towns and villages are not permitted to issue revenue obligations and can only issue obligations which pledge their faith and credit.

\(^8\) In some states, sewer projects can be financed by obligations paid by special assessments of benefitted property; such obligations, while sharing some of the characteristics of both general and revenue obligations, are subject to the particular statutes permitting such obligations.
One of the key differences between general obligations and revenue obligations is in the particular remedies afforded to holders of such obligations upon default. Such remedies are of course provided by state law, but generally holders of general obligations have no resort to the remedies provided to holders of revenue obligations.

Subsection (d) of section 39.115 requires that each loan agreement is subject to the condition that

The public body agrees to the enforcement of the foregoing conditions by the Administrator in a court of appropriate jurisdiction pursuant to any of the remedies provided for under §39.150, Defaults and Remedies, in order to avert an Event of Default.

Subsection (b) of section 39.150 provides that "upon the happening and continuance of an event [of default] ... the Administrator may proceed, in behalf of the Environmental Protection Agency and the United States to protect and enforce its rights and the rights of the Federal Financing Bank by such of the following remedies as the Administrator being advised by Counsel, shall deem most effectual." Such remedies are provided in subsection (b) and include:

1. enforce by mandamus or other suit, action or proceedings at law or in equity all rights of the Administrator including the rights to require the public body to enforce, collect and receive user charges adequate to carry out the covenant or payment of principal and interest when due, and to require the public body to carry out any other covenant or agreement with the Administrator to perform its duties under the Act, these regulations and the loan agreement and loan guarantee;
(2) bring suit upon the loan;

(3) require the public body by action or suit to account as it it were the trustee of an express trust for the holders of the evidence of indebtedness of the loan;

(4) enjoin by action or suit any acts or things which may be unlawful or in violation of the rights of the Administrator or the Federal Financing Bank;

(5) declare all remaining payments of principal and interest on the loan due and payable, and, if all default shall be made good, then, to annul such declaration and its consequences; and

(6) in the event that all the remaining principal and interest on the loan be declared due and payable, application to a court having jurisdiction of litigation involving the revenues, taxes or user charges or operation of or administration of the public body's treatment works involving a default in payment of principal and interest for the appointment of a Receiver to take control of the subject treatment works and manage and operate the same and assess such additional charges as may be necessary, thereby enforcing all conditions of the loan agreement and loan guarantee to the fullest legal extent in the name of the public body for the use and benefit of the United States and the users served by the treatment works.

The above remedies are the kinds of remedies associated with revenue obligations. Such remedies are usually given to holders of revenue bonds pursuant to constitutional and statutory authority and by agreements between the public body and a trustee who will act on behalf of bondholders. For example, the Buffalo Sewer Authority, has a trustee who, among other things, is required upon default to enforce obligations of the Authority by resorting to remedies similar to the above remedies. However, other public bodies in New York, particularly the issuers of general obligations, are without authority to provide such remedies.
Further, additional issues are raised by the above remedies, particularly the acceleration of debt and appointment of a receiver to manage and operate the subject treatment works. First, in the case of general obligation issuers, public bodies are prohibited from providing such remedies, since the operation of treatment works is an essential governmental function for which the public body is solely responsible. A public body cannot permit governmental functions and services to be operated or managed by outside parties.

Second, even in the case of revenue obligation issuers who have the authority to provide such remedies, care must be taken with respect to remedies already provided to bondholders of outstanding bonds. A public body which has already covenanted to provide a list of remedies, may be prohibited, or restricted by its covenants to add further covenants which solely benefit the EPA. Thus, for example, in the case of the Buffalo Sewer Authority, an indenture already exists providing certain remedies to bondholders. The Authority is not permitted to change or modify the remedies previously agreed to.

Therefore it is urged that the regulations should be re-drafted to give the EPA the flexibility, in the case of general obligation issuers, to require such particular remedies as permitted by the constitution and statutes of each state, and, in the case of revenue obligation issuers, to accept such remedies previously granted to bondholders.
III

The proposed regulations requiring a public body covenant that it will not create any lien or charge prior to or on a parity with the lien upon revenues, taxes or other monies of the guaranteed loan, in many cases, violates state law.

Subsection (c)(4) of section 39.115 requires each public body covenant as to other encumbrances, as follows:

The public body will not create nor suffer to be created any lien or charge which would constitute a lien prior to, or on a parity with the lien upon the revenues, taxes, reimbursement grants or user charges created to secure the loan nor any lien or charge junior to such lien except as security for indebtedness the terms of which permit its retirement at maturity or by call or purchase for cancellation only after prior retirement in full of all outstanding loan guaranteed by the Administrator. Any bonded indebtedness or liens created by the public body contemporaneously with the execution of the loan agreement or loan guarantee whether executed prior to or after acceptance of the loan and loan guarantee, associated with the treatment works being constructed with Federal grant assistance shall be junior to the lien of the loan agreement and loan guarantee pursuant to this provision.

This provision can be read to mean that the lien securing the guaranteed loan must be superior to any other lien of obligations issued by a public body. This covenant cannot be given by public bodies issuing general obligation bonds.

As stated above, the nature of a general obligation is such that it pledges the faith and credit of the public body, without identification as to sources of payment. In such cases, all general obligations are on a parity with each other. The law in many states does not permit the distinction or preference between
the general obligations of a public body secured by its faith and credit. Thus, for example, many public bodies in New York are not constitutionally permitted to give preference or distincion to some of their general obligations. All public bodies with outstanding faith and credit bonds could not provide the required covenant. In such states, the federal loan is required to enjoy the same preference as bonds issued for school buildings, fire trucks or parks.

Further, in those cases where public bodies, such as authorities, are permitted to issue revenue bonds, a problem arises with respect to previously or subsequently issued obligations. In the first instance, public bodies with outstanding revenue obligations have already contracted with bondholders to pledge and give a lien on revenues derived from a sewer project. They cannot, upon applying for a loan guarantee, abrogate the rights of the holders of previously issued bonds by covenanting to give the subsequent federal loan a priority over such bonds.

In the second instance, even if a public body made the required covenant (such as in the case of a totally new sewer project), the covenant would preclude any additional construction to or expansion of the sewer project. Additional construction or expansion would be precluded by the inability to subsequently market junior lien obligations. While the proposed regulations are designed to help certain public bodies with problems in market- ing their obligations, the required covenant is contrary to the
spirit of a guaranteed loan program since it severely limits future issuance of obligations. In addition, the ability to issue future obligations should not be limited and the regulations should provide flexibility if a public body's credit improved so as to enable it to sell its obligations to the public.

Finally, it should be noted that in many cases, including the Buffalo Sewer Authority, further construction of a sewer system is accomplished by the issuance of parity obligations as provided for by existing indentures. Therefore, it is urged that the regulations permit the federal government's guaranteed loan be on a parity with previously or subsequently issued obligations.
The present provision of the proposed regulations permitting refinancing in cases where a public body was unable to solicit public bids for its bonds or privately negotiated the sale of its bonds at unreasonable rates, serves a vital purpose.

Subsection (b) of section 39.110 currently permits refinancing as follows:

(b) Refinancing. Applications for loan guarantees for refinancing shall be limited to those projects which received grants under either section 201 or 206 of the Act and which were initially unable to obtain necessary financing after conducting a public solicitation for bids, as a result of which the grantee was required to negotiate such financing, and which negotiation resulted in a rate so excessive that it adversely affects the viability of the project, as determined by the Administrator.

This provision provides remedy for public bodies who were recently forced to issue obligations at unreasonable rates.

In 1975 the financial problems of public bodies in New York had a devastating effect on the municipal bond market for bonds of public bodies within and without the State of New York. In the case of the Buffalo Sewer Authority, which issued its bonds in 1975, it was forced to accept an unreasonable interest rate in double figures. In the latter portion of 1976, with the return of some confidence on the part of investors, interest rates for municipal obligations have receded from their record high levels of 1975 and the first half of 1976.

Thus, it is clear that the purpose of loan guarantees to assure the viability of sewer projects is best served by permit-
ting the refinancing of obligations issued at extremely unreasonable rates during the recent period of municipal financial difficulty. To eliminate the availability of loan guarantees for refinancing of obligations issued prior to the date of the regulations at unreasonable interest rates would leave those public bodies without recourse to the benefits of Public Law 94-558 and would jeopardize their ability to carry out their programs of environmental protection.

It is urged that the present provision of section 39.110 permitting refinancing be retained. It is reasonably expected that there are not a vast number of public bodies who were required during the past two years to sell long-term obligations with unreasonable interest rates and who therefore need a federally guaranteed loan.
V

The present provision of the proposed regulations defining "local share" is proper and consistent with Public Law 94-558

Subsection (c) of section 39.105 currently defines "local share" as

the amount of the total project Costs which a public body is obligated to pay, and which are directly and exclusively related to the project.

This provision is consistent with the scope and purpose of Public Law 94-558. Section 213(a) of Public Law 94-558 provides:

(a) Subject to the conditions of this section and to such terms and conditions as the Administrator determines to be necessary to carry out the purposes of this title, the Administrator is authorized to guarantee, and to make commitments to guarantee, the principal and interest (including interest accruing between the date of default and the date of the payment in full of the guarantee) of any loan, obligation, or participation therein of any State, municipality or inter-municipal or interstate agency issued directly and exclusively to the Federal Financing Bank to finance that part of the cost of any grant-eligible project for the construction of publicly owned treatment works not paid for with Federal financing assistance under this title (other than this section), which project the Administrator has determined to be eligible for such financial assistance under this title, including, but not limited to, projects eligible for reimbursement under section 206 of this title.

(emphasis supplied). This section of the law clearly provides for the financing of costs of sewer projects not paid by federal assistance.

Congress has given the EPA wide latitude and flexibility in aiding the financing of project costs which would not otherwise receive federal grants.
An alternative definition of "local share" is also being considered. This definition defines "local share" as

The amount of the total project costs which are considered eligible and allowable for grant assistance and which a public body is obligated to pay.

This alternative provision severely reduces the EPA's program to only those costs for which a federal grant could already be received. In the case of most public bodies issuing obligations, certain costs, not eligible for federal grants, are capitalized and included in determining the amount of obligations to be issued. If the amount that can be financed by a federal guaranteed loan is limited to eligible grant amounts and not the necessary costs of the grant eligible project, amounts necessary for the construction or completion of the project will go unfunded.

Thus, the proposed limitation does not take full advantage of the authority granted in Public Law 94-559 permitting the financing of costs not eligible for federal grants under existing programs. It is urged that the present proposed definition be retained in order to allow flexibility in managing any loan guarantee program so that the EPA can evaluate each guaranteed loan application with a full range of options as to what amounts should be financed.
CONCLUSION

Public Law 94-558 is a Congressional response to recent conditions in the municipal bond market which resulted in unreasonable interest rates in public borrowing for the financing of waste treatment facilities. Regulations under Public Law 94-558 should be promulgated as soon as possible subject to the foregoing conditions.
January 18, 1978

Linda Seale, Esq.
Deputy Counsel
The Municipal Assistance Corporation
for the City of New York
Room 4540
2 World Trade Center
New York, New York

Dear Ms. Seale:

In accordance with our telephone conversation of yesterday afternoon, I enclose copies of S.1833 and S.2372 which were listed on the list I sent you Monday, January 16th. In addition, I enclose copies of the following Senate Bills that were never adopted but may be relevant to your situation:

1. S.1862
2. S.2523
3. S.742
4. S.580
5. S.2058
6. S.1699

Please feel free to call me or Allen Thomas if you have any additional questions or requests.

Sincerely,

Phillip H. Waldocks

PHW:kcw
Enclosures

cc: Allen L. Thomas, Esq.
S. 742

IN THE SENATE OF THE UNITED STATES

February 10 (legislative day, January 20), 1971

Mr. Pearson (for himself, Mr. Allott, Mr. Bayh, Mr. Bentsen, Mr. Bumpstead, Mr. Church, Mr. Cooper, Mr. Dole, Mr. Hart, Mr. Hollings, Mr. Hruska, Mr. McGovern, Mr. McIntyre, Mr. Mansfield, Mr. Montoya, Mr. Nelson, Mr. Packwood, Mr. Percy, Mr. Pronitz, Mr. Steers, Mr. Symington, Mr. Thurmond, and Mr. Young) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs.

A BILL

To create a rural community development bank to assist in rural community development by making financial, technical, and other assistance available for the establishment or expansion of commercial, industrial, and related private and public facilities and services, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 That this Act may be cited as the “Rural Community Development Bank Act of 1971”.
FINDINGS AND PURPOSE

SEC. 2. The Congress finds that there is an urgent need for the development and redevelopment of many rural communities of the Nation, that the development of the economy of such communities is essential to maintenance of a stable and consistent economic level of the Nation, that such development would aid in reducing the necessity of migration to metropolitan areas and in achieving a broader geographical distribution of the Nation’s growing population, that such development can be aided by the establishment or expansion of commercial or industrial enterprises, and public and related private services and facilities, that the financing of such undertakings, in addition to financing presently available, is needed for such community development, and that the capital needs for investment in rural development are too great in total and too large in individual amounts to be met in full by existing institutions.

It is the purpose of this Act to accelerate rural development in the Nation by—

(1) assisting in the economic development of rural communities which can provide additional economic opportunities and aid in the reduction of outmigration, by providing financial assistance for the establishment and improvement of commercial and industrial facilities, supporting public and private development facilities in or
accessible to such communities, and housing necessarily
related to the undertakings financed under this Act;
(3) stimulating private investment in such facilities;
(3) seeking to bring together investment opportuni-
ties, public and private capital, and capable manage-
ment;
(4) providing technical and other supportive assist-
ance to aid in such economic development; and
(5) seeking to achieve these purposes primarily by
the application of the financial, management, and tech-
nical assistance resources of the private sector.

DEFINITIONS

SEC. 101. As used in this Act—
(1) The term "commercial and industrial facility"
means a fixed place of business, in or from which a manu-
facturing, processing, assembling, sales, distribution, storage,
service, or construction business is carried on, including but
not limited to—
(A) an office building or place of management,
(B) a factory, plant, laboratory, service center, or
other workshop,
(C) a store of sales outlet,
(D) a storage, transportation, or shipping facility,
(E) any combination thereof.

(2) The term "supporting private and public development facility" means an element of infrastructure, including recreational and cultural facilities, typically developed and owned by a public agency or private utility, or other service or facility made available to the public which is necessary to support economic development activities under this Act.

(3) The term "housing necessarily related" means housing of all types in or near a community which will provide living quarters for the personnel of any new or expanded industry when the governing body of the political subdivision in which development assisted under this Act will be under taken, certifies that there exists a need for additional housing in or near the development.

(4) The term "rural communities" means any community, whether or not incorporated, in the United States and the Commonwealth of Puerto Rico (including such areas in Indian reservations and native communities as are approved by the bank after consultation with the Secretary of the Interior) which is in a county in which at least 15 per centum of the population had an estimated annual per family income below the poverty level as determined by the bank after consultation with the Director of the Office of Economic Opportunity, but shall not include (i) any area within the boundaries of any standard metropolitan statistical area, as
defined from time to time, (ii) any area included in a metropolitan planning district or metropolitan development district, or (iii) any other area including towns and cities in an otherwise rural county which the bank determines, in accordance with criteria developed by the Board, including growth pattern and economic potential, should be developed as a part of a metropolitan complex, or is a city which has available adequate resources and available financial support and other assistance for its development or redevelopment without assistance under this Act.

CREATION OF RURAL COMMUNITY DEVELOPMENT BANK

Sec. 201. There is hereby created a corporation to be known as the “Rural Community Development Bank” (hereinafter referred to as the “bank”) which shall be an instrumentality of the United States Government. The bank shall be subject to the provisions of this Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.

DIRECTORS AND OFFICERS

Sec. 202. (a) The bank shall have a Board of Directors consisting of thirteen individuals who are citizens of the United States of whom one shall be elected annually by the Board to serve as chairman. Members of the Board shall be selected as follows:
(1) The President of the United States shall appoint seven members of the Board who shall be officials or employees of government, including Federal, State, and local government. The terms of directors so appointed shall be for four years, except that (A) the terms of such directors first taking office shall expire as designated by the President at the time of appointment, three at the end of two years, and three at the end of four years after such date; and (B) any director so appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. At the discretion of the President, any individual who ceases to be an official or employee of government during his term as director may, notwithstanding that fact, complete his term.

(2) The President of the United States shall appoint the remaining six members of the Board from among representatives of the private sector. Of the six persons so appointed, three shall be from among representatives of business and finance, one from among representatives of organized labor, one from among representatives of community development organizations and one from among representatives of the general public. The terms of directors so appointed shall be for four years, except that (A) the terms of such directors first taking office shall expire as
designated by the President at the time of appointment, one-half of the members at the end of two years, and one-half at the end of four years after such date; and (B) any director so appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term and shall be chosen from among representatives of the same category as his predecessor.

(b) The President, by and with the advice and consent of the Senate, shall appoint a president of the bank. The president of the bank shall be the chief administrative officer of the bank and shall perform all functions and duties of the bank, in accordance with the general policies established by, and subject to the general supervision of, the Board, and shall engage such other officers and employees as the bank deems necessary to carry out its functions. The appointment of the president and not more than two assistant presidents may be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and they may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. The president of the bank shall be an ex officio member of the Board of Directors and may participate in meetings of the Board, except that he shall
have no vote except in case of an equal division. No individual other than a citizen of the United States may be an officer of the bank. No officer or employee of the bank other than members of the Board and Advisory Committee shall receive any salary, other than a pension, from any source other than the bank during the period of his employment by the bank.

(c) Members of the Board and of the Advisory Committee may receive the sum of $100 for each day or part thereof spent in the performance of their official duties, which compensation, however, shall not be paid for more than seventy-five days (or parts of days) in any calendar year and shall not be paid to any Board member if he is a full-time officer or employee of the United States, or such payment is otherwise prohibited by law. In addition, such members shall be reimbursed for necessary travel, subsistence, and other expenses incurred in the discharge of their official duties without regard to the laws with respect to allowances which may be made on account of travel and subsistence expenses of officers and employed personnel of the United States.

ADVISORY COMMITTEE

Sec. 203. (a) There shall be an advisory committee of not more than twenty persons, selected by the Board of Directors on the recommendation of the president of the
bank, which shall be broadly representative of industry, commerce, finance, labor, community development and anti-poverty organizations, the Congress, and government at all levels. The committee shall meet annually and at such other occasions at the call of the president of the bank, and shall advise the bank on general policy and on such other matters as the bank may direct. Members of the committee shall serve for such terms as the Board of Directors may from time to time determine and they shall be paid their reasonable expenses incurred on behalf of the bank.

(b) Any official or employee of the United States Government may accept appointment and serve on advisory committees established pursuant to this section, any other provision of law notwithstanding.

CAPITALIZATION OF BANK

SEC. 204. (a) Subject to the provisions of this section, the bank is authorized to issue from time to time and to have outstanding class A capital stock of an aggregate purchase price not to exceed $1,000,000,000. Shares of such stock shall be nonvoting and without par value.

(b) The Secretary of the Treasury is authorized to and shall subscribe for and acquire on behalf of the United States, upon request of the Board of Directors, the full amount of the stock of the bank of an aggregate purchase price of $1,000,-

9. 742—9
The subscription of the United States shall be paid as follows:

(1) Not more than 20 per centum shall be paid at the time the bank is organized, as authorized by appropriation Act, and shall be available as needed by the bank for its operations.

(2) The remaining 80 per centum shall be paid on call by the bank only when required to carry out the provisions of this Act, except that not more than 20 per centum of such amount may be called in fiscal year, as authorized by appropriation Act.

The Secretary of the Treasury is authorized and directed to pay the subscription of the United States to stock of the bank from time to time when payments are required to be made to the bank. For the purpose of making these payments, the Secretary of the Treasury is authorized to use as a public-debt transaction $1,000,000,000 of the proceeds of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include such purpose. Payment under this paragraph of the subscription of the United States to the bank and repayments thereof shall be treated as public-debt transactions of the United States.
11

(b) Stock and other securities issued by the bank pursuant to this section and section 206(b) shall be exempt securities under section 3 of the Securities Act of 1933 (15 U.S.C. 77c).

(c) As an addition to the capital and surplus structure of the bank, there shall be issued to each contributor to the guaranty fund hereinafter provided for, a certificate identifying his or its interest therein, such certificates may as determined by the Board be redeemable in class B stock of the bank when the issuance of such class B stock is authorized by the Congress.

OPERATIONS AND POWERS OF THE BANK

Sec. 205. (a) In order to carry out the purposes of this Act, the bank is authorized to—

(1) make, participate in, or guarantee loans or provide other financing for real or personal property or for working capital to any public agency or private organization or individual for the establishment, expansion, or preservation of any industrial or commercial facility or a supporting public or private development facility which is to be established or is located in a rural community, and housing related thereto;

(2) make, participate in, or guarantee loans or provide other interim financing for the construction or
improvement of such facilities to building contractors, subcontractors, or other persons engaged in such work;

(3) provide or assist in the provision of insurance to protect any agency, organization, or individual receiving financing for a commercial or industrial facility or a supporting public or private development facility under paragraphs (1) and (2) against damage or casualty loss in connection with such facility;

(4) provide technical assistance to State and local governments in the preparation and implementation of comprehensive rural community development projects and programs, including the evaluation of priorities and the formulation of specific project proposals. The bank may charge appropriate fees for its services under this subsection;

(5) undertake research and information gathering, and to facilitate the exchange of advanced concepts and techniques relating to rural community growth and development among State and local governments;

(6) develop criteria to assure that projects assisted by it are not inconsistent with comprehensive planning for the development of the community in which the projects to be assisted will be located or disruptive of Federal programs which authorize Federal assistance for the development of like or similar categories of projects.
(7) seek to bring together investment opportunities in such facilities, capital, and capable management;

(8) carry on such other activities as would further the purposes of this Act; and

(9) provide for the establishment of a guaranty fund to which the bank may require each borrower to contribute such a percentage of the amount of loan, guarantee, participation, or other financial assistance extended by the bank under this Act as the Board may from time to time determine.

(b) To obtain indirect participation by private and other public financial sources the bank is authorized to—

(1) issue bonds, debentures, and such other certificates of indebtedness as it may determine and may issue such securities on a competitive or negotiated basis at the discretion of the Board of Directors;

(2) invest funds not needed in its financing operations in such property and obligations as it may determine;

(3) buy and sell securities it has issued or guaranteed or in which it has invested; and

(4) guarantee securities in which it has invested for the purpose of facilitating their sale.

(c) Whenever necessary to meet contractual payments of interest, amortization of principal, or other charges on the
bank's own borrowing, or to meet the bank's liabilities with
respect to similar payments on loans guaranteed by it, the
bank may call an appropriate amount of the unpaid subscrip-
tion of the United States in accordance with section 204 (b)
(2). Moreover, if it believes that a default on financing pro-
vided by it may be of long duration, the bank may call an
additional amount of such unpaid subscriptions for the fol-
lowing purposes—

(1) to redeem prior to maturity, or otherwise dis-
charge its liability on, all or part of the outstanding
principal of any loan guaranteed by it with respect to
which the debtor is in default; and

(2) to repurchase, or otherwise discharge its lia-
ability on, all or part of its own outstanding borrowings.

(d) The bank is authorized to establish a principal office
and branch offices in such locations as it may determine. It
may establish regional offices and determine the location of,
and the areas to be covered by, each regional office. It may
make arrangements with public or private organizations at
the regional, State, and local levels, including banking or-
ganizations and other financing institutions, to act as agents
or otherwise to assist the bank in the conduct of its business.

(e) To carry out the foregoing purposes, the bank shall
have such additional powers as are necessary or appropriate
in carrying out this Act.
OPERATING PRINCIPLES

Sec. 206. The operations of the bank shall be conducted in accordance with the following principles:

1. The bank shall undertake its financing, technical assistance, and other operations on such terms and conditions and for such fees as it considers appropriate, taking into account the requirements of the enterprise, the risks being undertaken by the bank, the benefits to the rural community or to the residents of such communities, and the conditions under which similar financing might be available from private investors.

2. The bank shall maintain such liaison or consultation with other departments, agencies, or instrumentalities of the Government as may be necessary to ensure that its operations are carried out in a manner which will supplement and not duplicate the operations and functions of any other department, agency, or instrumentality of the Government.

3. The bank shall consult with and shall seek to encourage local banking and other financial institutions to participate in its financing and other activities.

4. The bank shall, to the extent feasible, give emphasis in its activities to providing financing and other assistance to facilities owned in whole or in part by residents of rural communities or to facilities in which such ownership is made available to such persons.
(5) The bank shall seek to revolve its funds by selling its loans, guarantees, and other investments to private investors whenever it can appropriately do so on satisfactory terms.

(6) The bank shall be subject to the Government Corporation Control Act (31 U.S.C. 841 et seq.) in the same manner and to the same extent as if it were included in the definition of "wholly owned Government corporation" as set forth in section 101 of said Act (31 U.S.C. 846).

(7) The bank shall pay a return out of net income, after providing for reserves and operating expenses, at the rate of 2 percentum per annum on the amounts of class A stock subscription actually paid into the bank. Such return shall be cumulative and shall be payable annually into miscellaneous receipts of the Treasury.

(8) The bank shall not engage in political activities nor provide financing for or assist in any manner any project or facility involving political parties or used or to be used for sectarian instruction or as a place for religious worship nor shall the directors, officers, or employees of the bank in any way use their connection with the bank for the purpose of influencing the outcome of any election.

(9) The bank shall adopt such bylaws as may be necessary for the conduct of its business and the management of its affairs and may adopt such additional rules and regula-
tions as are necessary and appropriate for carrying out the
provisions of this Act.

LIMITATIONS ON FINANCING

SEC. 207. (a) The bank shall not provide financing
for any business or commercial facility or public develop-
ment facility, nor shall it plan, initiate, own, or manage
such a facility, unless it determines that—

(1) other public or private financing could not be
obtained on reasonable terms and condition;

(2) adequate arrangements have been made to
insure that the proceeds of any loan or other financing
are used only for the purpose for which the financing
was provided, with due attention to considerations of
economy and efficiency;

(3) the borrower or other recipient of financing
has adequate equity or other financial interest in or
income from the facility to insure his or its careful
and businesslike management of the project;

(4) the governing body of the city or, as appro-
priate, the governing body of the county, parish, or
other political subdivision in which the facility is lo-
cated or is to be established, or an agency or other
instrumentality of such political subdivision desig-
nated by such body, has certified to the bank its
approval of (A) the establishment of the facility at
the particular location, (B) the proposed standards of
construction and design, and (C) provisions for the
relocation of any residents or businesses to be displaced;
(5) the establishment, expansion, or preservation
of the facility in the particular location will contribute
to the level of economic opportunity for residents of the
community and contribute to the general development
of the community.

(b) The bank shall not provide financing for any busi-
ness or commercial facility which has been relocated from
one area to another; except that this requirement may be
waived by the Board of Directors if it determines (1) that
the establishment of such facility in the new location will
not result in an increase of unemployment in the area of
original location or in any other area where the enterprise
conducts business operations, or (2) that such facility is not
being established in the new location with any intention
of closing down the operations of the enterprise in the area
of original location or in any other area where the enter-
prise conducts its operations.

EXEMPTION FROM TAXES

Sec. 208. For the purpose of the Internal Revenue Code
of 1954, the bank shall be considered to be an instrument-
ality of the United States and exempt from Federal income
taxes. Except as specifically provided in this Act, the bank,
including its capital and reserves or surplus and income
derived therefrom, shall be exempt from Federal, State,
municipal, and local taxation, except taxes upon real estate
held, purchased, or taken by the bank under the provisions
of this Act. The security instruments executed to the bank
and the bonds, obligations, debentures, issued under the pro-
visions of this Act shall be deemed and held to be instrument-
talities of the Government of the United States, and as such
they and the income derived therefrom shall be exempt from
Federal, State, municipal, and local taxation.

ANNUAL REPORT

Sec. 209. Not later than one hundred and twenty days
after the close of each fiscal year the bank shall prepare and
submit to the President and to the Congress a full report
of its activities during such year.

AMENDMENTS RELATING TO FINANCIAL INSTITUTIONS

Sec. 210. (a) The sixth sentence of paragraph Seventh
of section 5136 of the Revised Statutes, as amended (12
U.S.C. 24), is amended by inserting before the comma
after the words “or obligations, participations, or other in-
struments of or issued by the Federal National Mortgage
Association or the Government National Mortgage Associa-
tion” the following; “, or debentures or other obligations
of the Rural Community Development Bank”.
S. 580

IN THE SENATE OF THE UNITED STATES

February 4 (legislative day, January 26), 1971
Mr. Sparkman introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To establish a National Development Bank to provide loans to finance urgently needed public facilities for State and local governments, to help achieve a full employment economy both in urban and rural America by providing loans for the establishment of new businesses and industries and the expansion and improvement of existing businesses and industries, for the construction of low and moderate income housing projects, and to provide job training for unskilled and semiskilled unemployed and underemployed workers.

1 Be it enacted by the Senate and House of Representa-tives of the United States of America in Congress assembled,
2 That this Act may be cited as the “National Development Act of 1971”.

II
FINDINGS AND DECLARATION OF PURPOSE

SECTION 1. (1) Tax and other financial sources currently available to State and local governments are strained beyond their capacity to achieve sound and orderly development of the Nation's communities to accommodate our growing population. Adequate fundings at reasonable cost must be provided as soon as possible for a wide variety of public works and facilities, such as streets, water, sewers, schools, hospitals, airports, recreation facilities, together with facilities to reduce and eliminate air and water pollution in order that required social services and safeguards for the health and welfare of the population be made available.

(2) It is imperative that effective action be taken to combat alarming nationwide unemployment, particularly in those depressed rural and urban areas where the loss of industry and business has produced an unemployment crisis. This can best be done by helping to provide adequate loan funds at reasonable interest rates to finance public works and facilities, to establish new businesses and industries, and to provide existing businesses and industries with loans necessary to expand or otherwise remain competitive and prosperous, so that employment opportunities providing adequate wages can be created and sustained.

(3) Every effort must be made to eliminate the Nation's housing crisis and achieve the National Housing Goal estab-
lished by Congress, particularly as that goal applies to low-
and moderate-income families who are most in need. Meet-
ing this goal will constitute a major achievement, not only
in terms of providing housing but in providing employment
opportunities for a large segment of the population.

ESTABLISHMENT OF THE BANK

SEC. 2. There is hereby created a body corporate to be
known as the National Development Bank (referred to in
this Act as the "Bank") which shall be an instrumentality
of the United States Government and shall have succession
until dissolved by Act of Congress, and which will make and
guarantee long-term loans at reasonable interest rates to
State and local governments for public works and facilities;
to individuals and corporations to establish new businesses
and industries and to expand or otherwise improve existing
businesses and industries; to public agencies and private
nonprofit and limited dividend corporations for the construc-
tion of low- and moderate-income housing; in order that
vital public services may be provided, the health and welfare
of our people will be safeguarded and a full employment
economy will be achieved.

DEFINITIONS AND RULES OF CONSTRUCTION

SEC. 3. (1) The definitions and rules of construction
set forth in this section apply for the purposes of this Act.
The term "public facility" means the structures and equipment owned and operated by State and local governments to provide medical, social, educational, transportation, pollution control, and recreation services.

(3) The term "low- and moderate-income family housing" shall be identical to definitions made by the Secretary of Housing and Urban Development in establishing criteria by which families qualify for occupancy of dwellings supplied under the low- and moderate-income rental and homeownership programs of the National Housing Act.

(4) The term "depressed urban and rural areas" means those areas which may be designated without regard to political boundaries by the Secretary of Labor, the Secretary of Commerce, and the Director of the Office of Economic Opportunity on the basis of the most recent appropriate annual statistics for the most recent available calendar year, as having a rate of unemployment of at least 6 per centum for the preceding calendar year, or a high rate of underemployed persons whose income does not exceed the level of poverty as that level has been established by the Department of Health, Education, and Welfare, or where pending loss of business or industry is expected to produce such conditions, or those areas characterized by substantial out-migration resulting from the lack of job opportunities, or those areas suffering from other conditions, which in the
1 judgment of the Board of Directors of the Bank qualify them
2 for assistance under the provisions of this Act.
3 (5) The term "adequate wage" means a wage which
4 shall not be lower than whichever is highest: (a) the mini-
5 mum wage under the Fair Labor Standards Act of 1938;
6 (b) the minimum wage set by State and local governments,
7 (c) the prevailing rate of wages in the area for comparable
8 work.

BOARD OF DIRECTORS

Sec. 4. The management of the Bank shall be vested
in a Board of Directors consisting of the Secretary of the
Treasury, the Secretary of Commerce, the Secretary of
Housing and Urban Development, the Secretary of Agri-
culture, the Secretary of Labor, and ten other persons who
shall be appointed by the President with the advice and
consent of the Senate. Persons so appointed shall include
representatives of State or local governments, private enter-
prise, organized labor, and rural organizations dealing with
economic and social problems of depressed areas. In making
such appointments the President shall (1) seek to achieve
a balanced representation of the interests of urban and rural
areas, and (2) select persons who, among other relevant
considerations, are knowledgeable in the social and economic
problems of low-income persons. The terms of directors
appointed by the President shall be two years, commencing
with the date of enactment of this Act. Any director appointed to fill a vacancy shall be appointed only for the unexpired portion of the term. Any director may continue to serve as such after the expiration of the term for which he was appointed until his successor has been appointed and has qualified.

**APPOINTMENT OF OFFICERS AND EMPLOYEES**

Sec. 5. The Board of Directors of the Bank shall appoint a President of the Bank and such other officers and employees as it deems necessary to carry out the functions of the Bank. Such appointments may be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and persons so appointed may be paid without regard to the provisions of chapter 51 or subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. The President of the Bank shall be an ex officio member of the Board of Directors and may participate in meetings of the board except that he shall have no vote except in case of an equal division. No individual other than a citizen of the United States may be an officer of the Bank. No officer of the Bank shall receive any salary or other remuneration of any source other than the Bank during the period of his employment by the Bank.
CONFLICT OF INTEREST

SEC. 6. (1) No director, officer, attorney, agent, or employee of the Bank shall in any manner, directly or indirectly, participate in the deliberations upon or the determination of any question affecting his personal interests, or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

(2) The Bank shall not engage in political activities nor provide financing for or assist in any manner any project or facility involving political parties, nor shall the directors, officers, employees, or agents of the Bank in any way use their connection with the Bank for the purpose of influencing the outcome of any election.

GENERAL CORPORATE POWERS

SEC. 7. Except to the extent inconsistent with the provisions of this Act, the Bank shall have the general corporate powers of a corporation organized and existing under the laws of the District of Columbia.

PRINCIPAL OFFICE; BRANCHES

SEC. 8. The principal office of the Bank shall be located in the District of Columbia, and it may establish agencies or branch offices in any city of the United States.

CAPITAL STOCK

SEC. 9. (1) The Bank shall have capital stock of $1,000,000,000 subscribed by the United States, payment for
which shall be subject to call in whole or in part by the
Board of Directors.

(2) The Secretary of the Treasury is authorized to, and
upon request of the Board of Directors shall, purchase stock
in amounts designated by the Board of Directors up to a
total of $1,000,000,000.

BORROWING AUTHORITY

SEC. 10. (1) The Bank may issue notes, debentures,
bonds, and other evidences of indebtedness in such amounts
and on such terms and conditions as the corporation may
determine subject to the limitations prescribed in this Act.

(2) The aggregate outstanding indebtedness of the Bank
under this section at any time may not exceed twenty times
the paid-in capital stock of the Bank at that time.

(3) The obligations of the Bank under this section
shall be fully and unconditionally guaranteed both as to
interest and principal by the United States and such guar-
antee shall be expressed on the face thereof.

(4) In the event that the Bank is unable to pay upon
demand, when due, any obligation under this section, the
Secretary of the Treasury shall pay the amount thereof and
thereupon to the extent of the amount so paid by the Secre-
tary of the Treasury shall succeed to all the rights of the
holder of the obligations.
PURCHASE OF ASSETS BY TREASURY

SEC. 11. The Secretary of the Treasury is authorized to purchase from the Bank any asset of the Bank at such price as may be agreed upon between the Secretary and the Bank.

DISCOUNT BY FEDERAL RESERVE BANKS

SEC. 12. (1) The several Federal Reserve banks are authorized to purchase or discount any note, debenture, bond, or other obligation, secured or unsecured, held by the Bank.

(2) Obligations of the Bank are eligible for purchase by the Federal Reserve Open Market Committee.

(3) Obligations of the Bank are eligible for purchase by any federally chartered or regulated commercial bank, savings and loan association, or mutual savings bank.

INVESTMENT STATUS OF OBLIGATIONS OF THE BANK

SEC. 13. All obligations issued by the Bank shall be lawful investments for, and may be accepted as security for, all fiduciary, trust, and public funds the investment or deposit of which is under the authority or control of the United States or of any officer or officers thereof.

LOANS TO COMMERCE AND INDUSTRY

SEC. 14. The Bank may make or guarantee loans or purchase obligations to provide funds for the purchase of real and personal property and for working capital necessary for the location of new business and industry or the improve-
ment of existing business and industry in depressed urban 
and rural areas as defined by section 3(4) of the Act: Pro-
vided, That—

(1) borrowers agree to fill a specified number of 
job openings to be determined by the Bank with people 
who, prior to such employment, were unemployed and 
underemployed; or

(2) borrowers agree to conduct training courses 
for a specified number of unemployed and underem-
ployed persons to be determined by the Bank with the 
result that those persons will, within a period of time 
to be determined by the Bank, be employed full time 
by the borrower and receive adequate wages; or

(3) borrowers agree to other requirements laid 
down by the Bank to carry out the purposes of this Act.

LOANS FOR COMMUNITY DEVELOPMENT

Sec. 15. The Bank may make or guarantee loans or 
purchase obligations or guarantee the payment of principal 
and interest on obligations to finance capital expenditures for 
public works and community facilities, including facilities for 
education, health, social welfare, recreation, sewer and water 
systems, land for housing development, public transportation, 
and utilities, providing that such facilities and projects extend 
direct and substantial benefits to urban slum and depressed 
rural areas, or provide other benefits specified by the Bank 
to carry out the purposes of this Act.
LOANS FOR LOW- AND MODERATE-INCOME HOUSING PROJECTS

Sec. 16. The Bank may make or guarantee loans to appropriate public agencies, nonprofit cooperatives and corporations, limited dividend corporations, developers, contractors, subcontractors, and other persons to provide construction loans for housing projects designed to provide dwellings under the insured and guaranteed low- and moderate-income housing loan programs of the Department of Housing and Urban Development, the Veterans' Administration, and the Farmers Home Administration of the Department of Agriculture.

TECHNICAL AND OTHER ASSISTANCE

Sec. 17. (1) The Bank may provide to borrowers whatever assistance, technical or otherwise, it considers necessary to protect its investment and to carry out the purposes of this Act.

(2) To assure fulfilling the purposes of this Act, the Bank shall direct an adequate number of staff members to seek out and confer with representatives of State and local governments, public agencies, nonprofit private organizations, companies, corporations, partnerships, and individuals, in order to provide information about the services furnished by the Bank and to provide whatever assistance is necessary for utilization of such services.

(3) To meet other requirements laid down by the Bank to carry out the purposes of this Act.
SECURITY REQUIRED

SEC. 18. The Board of Directors of the Bank shall make whatever arrangement it considers adequate to secure loans made by the Bank.

MATURITY OF LOANS

SEC. 19. Loans made by the Bank to any State and local government, private corporation, company, or individual shall be for periods determined by the Board of Directors of the Bank, bearing in mind that the maturity of such loans should, whenever possible, coincide with the projected useful life of the facilities financed with such loans. However, the outstanding balance due on Bank loans shall be refinanced through another lender whenever, in the judgment of the Board of Directors of the Bank, such refinancing is feasible on terms and conditions which the Board of Directors of the Bank considers to be reasonable for the borrowers.

GUARANTEED LOANS

SEC. 20. The Bank may fully guarantee the entire interest and principal of any loan made by any bank, savings bank, trust company, building and loan or savings and loan association, insurance company, mortgage loan company, or credit union, provided that such loans are made to carry out the purposes of this Act and the effective interest rate for such loans is not more than 1½ per centum above the Federal Reserve discount rate.
DIRECT LOANS

SEC. 21. To carry out the purposes of this Act, the Bank may make direct loans to State and local governments, public agencies, nonprofit private organizations, corporations, companies, partnerships, and individuals, providing that the effective interest rate does not exceed 6 per centum per annum or the Federal Reserve discount rate, whichever is lowest, or a lesser rate established by the Board of Directors of the Bank, provided that borrowers have presented evidence they are unable to obtain funds on reasonable terms from any other source to carry out the purposes of this Act.

TAXABLE STATUS

SEC. 22. The Bank, its property, its franchise, capital, reserves, surplus, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (1) any real property and any tangible personal property of the Bank shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (2) any and all obligations issued by the Bank shall be subject both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.
AUDIT BY GENERAL ACCOUNTING OFFICE

Sec. 23. The General Accounting Office shall audit the financial transactions of the Bank, and for this purpose shall have access to all its books, records, and accounts.

Authorization of Appropriations

Sec. 24. (1) There is authorized to be appropriated, without fiscal year limitation, the sum of $1,000,000,000 to the Secretary of the Treasury to finance the purchase of Bank stock.

(2) There are authorized to be appropriated, without fiscal year limitation, such sums as may be necessary to pay the differences, if any, between the interest paid by the Bank on its obligations and interest received by the Bank on its loans, and to reimburse the capital of the Bank to the extent of any defaults, and such additional sums as may be necessary to establish and operate the Bank and otherwise carry out the purposes of this Act.
S. 2058

IN THE SENATE OF THE UNITED STATES

JUNE 14, 1971

Mr. Hughes (for himself and Mr. Humphrey) introduced the following bill:
which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To assist in community development, with particular reference to small communities.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 That this Act may be cited as the "Small Community Devel-
4 opment Act of 1971".

5 FINDINGS AND DECLARATIONS OF PURPOSE

6 The Congress hereby finds that many of the problems of
7 the Nation's large metropolitan centers have their roots in,
8 and are directly related to, the lack of full development op-
9 portunity in the small communities of the Nation which have
10 development potential.

11 The Congress further finds that the critical lack of comm-
munity facilities and services as well as the absence of potential revenue sources to provide for such facilities and services in small communities and regional units contributes to the lack of full opportunity for the citizens of such communities.

The Congress further finds that there is an urgent need for the exterior rehabilitation, restoration, and beautification of business districts in small communities to facilitate the overall development of small communities which have development potential.

The Congress further declares that this is a matter of serious national concern, and that there exists in the public and private sectors of the economy the resources and capabilities necessary to meet the community development needs of all the Nation's communities.

It is the purpose of this Act to provide, with a minimum of administrative burden on small communities, for the sound and orderly development of small communities by more effectively assisting small communities in meeting their needs for essential community facilities and services, and an attractive business district, in order to create an atmosphere which makes a community a pleasant and stimulating place to live and work in.

TITLE I—MULTIPURPOSE COMMUNITY FACILITIES

Sec. 101. It is the purpose of this title to assist small
communities, and regional units created for the purpose of consolidating their services, in construction or rehabilitation of multipurpose community facilities which serve a variety of essential public service functions, including health, recreation, library, public safety, and local government.

Sec. 102. The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to provide assistance as specified in section 104 to any small community or regional arrangement in the United States to aid it in the construction or rehabilitation of a multipurpose community facility.

Sec. 103. As used in this title—

(1) The term "small community" means any community, municipality, town, or village which has a population of less than fifteen thousand according to the most recent decennial census, and is not part of a metropolitan area.

(2) The term "regional unit" means any grouping of counties, communities, municipalities, towns, or villages for the purpose of consolidating their public service functions.

(3) The term "metropolitan area" means a standard metropolitan statistical area, as established by the Office of Management and Budget, subject, however, to such modifications or extensions as the Secretary deems to be appropriate for the purpose of this title.

(4) The term "community facility", with respect to any
small community or regional arrangement, means a structure or related group of structures which is designed to provide and includes accommodations and facilities for all or substantially all of the officers, employees, and agencies, or the government, and which may also include either or both of the following:

(A) Accommodations for a central police station or fire station, or both.

(B) Accommodations for health, recreational, or library uses, or any combination thereof.

SEC. 104. (a) In providing assistance to any small community or regional arrangement to aid in the construction or rehabilitation of a multipurpose community facility as described in section 103 of this title, the Secretary (subject to subsection (b)) shall—

(1) guarantee the repayment in full by such small community or regional arrangement of any sum borrowed from any source to finance the cost of such construction; and

(2) make an annual grant to such small community or regional arrangement (under a contract entered into at the time of the guaranty) in the full amount of the interest due each year on the sums so borrowed.

(b) If the multipurpose community center to be con-
1 structed or rehabilitated by any small community or regional
2 arrangement with assistance under this title includes accom-
3 modations described in paragraph (4) (B) of section 103,
4 the Secretary shall—
5 (1) determine the excess of—
6 (A) the cost of the facility as so constructed or
7 rehabilitated, over
8 (B) the estimated cost of the facility as it would
9 be constructed without such accommodations;
10 (2) make a grant to such small community or re-
11 gional arrangement in an amount equal to two-thirds of
12 such excess; and
13 (3) guarantee the repayment in full by such small
14 community or regional arrangement of any sums bor-
15 rowed from any source to finance the remainder of the
16 cost of construction with annual grants in the full amount
17 of the interest due each year on the sums so borrowed
18 as provided in subsection (a) (2).
19 SEC. 105. (a) Guarantees under this title, and any pay-
20 ments pursuant thereto, shall be made upon such terms and
21 conditions, in such manner and form, and in accordance with
22 such procedures as the Secretary may determine to be reason-
23 able and prescribe in regulations. No fee or other charge shall
24 be imposed for any guarantee under this title.
(b) The Secretary may set such further terms and conditions for assistance under this title as he determines to be desirable.

SEC. 106. In the performance of, and with respect to, the functions, powers, and duties vested in him by this title, the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 402 (except subsections (a) and (c) (2) ) of the Housing Act of 1950.

TITLE II—BUSINESS DISTRICT RENEWAL

SEC. 201. It is the purpose of this title to assist local nonprofit development companies in the exterior rehabilitation, restoration, and beautification of small community business districts in order to encourage community development.

SEC. 202. The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to provide assistance as specified in section 204 to any local nonprofit development company in any small community in the United States to aid in the exterior rehabilitation, restoration, and beautification of small community business districts.

SEC. 203. As used in this title—

(1) The term "small community" means any community, municipality, town, or village, which has a population of less than fifteen thousand according to the most
recent decennial census, and is not part of a metropolitan area.

(2) The term "metropolitan area" means a standard metropolitan statistical area, as established by the Office of Management and Budget, subject however, to such modifications or extensions as the Secretary deems to be appropriate for the purpose of this title.

(3) The term "appropriate governmental unit" means the governmental unit which the Secretary determines to have continuous exercise of primary authority over the performance of public functions for the community, municipality, town, or village.

(4) The term "business district" means any area offering a diversity of commercial facilities not under single ownership.

Sec. 204. (a) In providing assistance to any local nonprofit development company to aid in the exterior rehabilitation, restoration, and beautification of a community business district, the Secretary is authorized to make planning grants to local nonprofit development companies to help finance the planning and design of the exterior rehabilitation, restoration, and beautification of the community business district.

(b) A planning grant under subsection (a) of this section shall not exceed two-thirds of the estimated cost of the planning work for which the grant is made.
Sec. 205. In providing assistance to any local non-profit development company to aid in carrying out the plan for exterior rehabilitation, restoration, and beautification of the business district, the Secretary shall—

(1) loan to such local nonprofit development company an amount equal to two-thirds of the cost of rehabilitating, restoring, and beautifying the facade of the business district; and

(2) make grants to such local nonprofit development company in an amount equal to two-thirds the cost of rehabilitating, restoring, and beautifying the public areas of the district if the plan has been approved by the appropriate governmental unit.

Sec. 206. (a) Loans under this title, and any payments therefor, shall be made upon such terms and conditions, in such manner and form, and in accordance with such procedures as the Secretary may determine to be reasonable and prescribe in regulations.

(b) The Secretary may set such further terms and conditions for assistance under this title as he determines to be desirable.

Sec. 207. The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work assisted under this title shall be paid
wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary shall not approve any such assistance without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, and section 276c of title 40.
IN THE SENATE OF THE UNITED STATES

APRIL 20, 1971

Mr. Magnuson (for himself, Mr. Anderson, Mr. Bayh, Mr. Brooke, Mr. Cannon, Mr. Chiles, Mr. Cranston, Mr. Fannin, Mr. Gravel, Mr. Gurney, Mr. Harris, Mr. Hartke, Mr. Holland, Mr. Hughes, Mr. Humphrey, Mr. Jordan of North Carolina, Mr. Inouye, Mr. Kennedy, Mr. McGovern, Mr. McIntyre, Mr. Mansfield, Mr. Mondale, Mr. Morse, Mr. Nelson, Mr. Pearson, Mr. Percy, Mr. Randolph, Mr. Stevens, and Mr. Tunney) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To establish a National Environmental Bank, to authorize the issuance of United States Environmental Savings Bonds, and to establish an Environmental Trust Fund.

1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2. SECTION 1. This Act may be cited as the "National Environmental Financing Act of 1970".

3. FINDINGS AND PURPOSE

4. SEC. 2. (a) The Congress makes the following findings:

II
(1) There is an increasing need for funds to finance State, regional, and local programs designed to insure a livable environment for the present and for the future.

(2) Inflation, tight money, high interest rates, and strained tax bases make it increasingly difficult for State and local governments to financially meet critical environmental needs.

(3) The inability of the States and the localities to finance needed environmental programs jeopardizes the environment and thereby constitutes a clear and present danger to the public health and welfare.

(4) It is necessary and in the national interest for the Federal Government to assist State and local governments in financing needed environmental programs.

(5) It is necessary to encourage and stimulate greater citizen participation in the environmental future of our country.

(6) It is essential to increase the investment in our Nation's ecological future so that man and nature can live in mutually productive harmony.

(7) An ongoing, guaranteed source of funding for environmental programs is in the national interest.

(b) It is the purpose of this Act to establish a National Environmental Bank to make and guarantee long-term loans to State and local governments and other agencies author-
ized by law to finance environmental programs to control
or abate pollution. It is the further purpose of this Act to
authorize the issuance of Environmental Savings Bonds to
increase citizen investment and participation in environ-
mental programs. It is the further purpose of this Act to
establish an Environmental Trust Fund to provide a per-
petual and guaranteed source of funds for environmental
programs of the present and the future.

DEFINITIONS

SEC. 3. As used in this Act—

1. The term "bank" means the National Environmental
Bank established by section 4.

2. The term "bond" means the Environmental Savings
Bond established by section 19.

3. The term "trust fund" means the Environmental
Trust Fund as established in section 20.

4. The term "environmental program" means the con-
struction of waste treatment plants, the establishment and
enforcement of air pollution standards, the creation and
maintenance of solid waste disposal programs, the establish-
ment and enforcement of noise pollution standards, and other
programs and services which will preserve, protect, or en-
hance the environment as designated by the board of the
directors of the National Environmental Bank.

6. The term "local public body" means any State,
county, municipality, or other governmental entity or public body, or two or more such entities or bodies, authorized to undertake the environmental programs for which assistance under this Act is sought.

6. The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

ESTABLISHMENT OF BANK

SEC. 4. There is hereby created a body corporate to be known as the National Environmental Bank.

MANAGEMENT OF THE BANK

SEC. 5. (a) The management of the bank shall be vested in a Board of Directors (hereinafter referred to as the “Board”) consisting of the Secretary of the Interior, Secretary of the Treasury, the Secretary of Commerce, the Secretary of Health, Education, and Welfare, the Secretary of Agriculture (or the designees of the respective Secretaries), the Director of the Environmental Protection Agency, the Chairman of the President’s Council on Environmental Quality, the Director of the National Oceanic and Atmospheric Agency, and six other persons who shall be appointed by the President with the advice and consent of the Senate. Persons so appointed shall include representatives of State and local governments, private enterprise, and members of the general public. In making such appoint-
ments the President shall select persons who, among other
relevant considerations, are knowledgeable in the field of
environmental needs and problems.

(b) The terms of the directors appointed by the Pres-
ident shall be four years, commencing with the date of
enactment of this Act. Any director appointed to fill a
vacancy shall be appointed only for the unexpired portion
of the term.

(c) Members of the Board who are otherwise compen-
sated by the United States for full-time service shall serve
without compensation in addition to that received for their
full-time service. Other members of the Board shall receive
compensation at the rate of $125 per day for each day en-
gaged in the performance of their duties as directors. All
directors shall be allowed travel expenses, including per
diem in lieu of subsistence as authorized by law.

APPOINTMENT OF OFFICERS AND EMPLOYEES

Sec. 6. The Board shall appoint a president of the bank
and such other officers and employees as it deems necessary
to carry out the functions of the bank. Such appointments
may be made without regard to the provisions of title 5,
United States Code, governing appointments in the competi-
tive service, and persons so appointed may be paid without
regard to the provisions of chapter 51 of subchapter III of
chapter 53 of such title relating to classification and General
Sec. 1899—9
1 Schedule pay rates. The president of the bank shall be an ex
2 officio member of the Board and may participate in meetings
3 of the Board except that he shall have no vote except in case
4 of an equal division. No individual other than a citizen of the
5 United States may be an officer of the bank. No officer of the
6 bank shall receive any salary or other remuneration from any
7 source other than the bank during the period of his employ-
8 ment by the bank.

CONFLICT OF INTEREST

Sec. 7. (a) No director, officer, attorney, agent, or em-
ployee of the bank shall in any manner, directly or indirectly,
participate in the deliberations upon or the determination of
any question affecting his personal interests, or the interests
of any corporation, partnership, or association in which he
is directly or indirectly personally interested.

(b) The bank shall not engage in political activities nor
provide financing for or assist in any manner any project or
facility involving political parties, nor shall the directors,
officers, employees, or agents of the bank in any way use
their connection with the bank for the purpose of influencing
the outcome of any election.

GENERAL CORPORATE POWERS

Sec. 8. Except to the extent inconsistent with the pro-
visions of this Act, the bank shall have the general corporate
powers of a corporation organized and existing under the
laws of the District of Columbia.
PRINCIPAL OFFICES: BRANCHES

SEC. 9. The principal office of the bank shall be located in the District of Columbia, and it may establish agencies or branch offices in any city of the United States.

CAPITAL STOCK

SEC. 10. (a) The bank shall have capital stock of $500,000,000 subscribed by the United States, payment for which shall be subject to call in whole or in part by the Board.

(b) The Secretary of the Treasury is authorized to, and upon request of the Board, shall purchase stock in amounts designated by the Board up to a total of $500,000,000.

BORROWING AUTHORITY

SEC. 11. (a) The bank may issue notes, debentures, bonds, and other evidences of indebtedness in such amounts and on such terms and conditions as the Board may determine subject to the limitations prescribed in this Act.

(b) The aggregate outstanding indebtedness of the bank at any time, including contingent liabilities on outstanding guarantees, may not exceed twenty times the paid in capital stock of the bank at that time.

(c) The obligations of the bank under this section shall be fully and unconditionally guaranteed both as to interest and principal by the United States and such guarantee shall be expressly on face thereof.
(d) In the event that the bank is unable to pay upon demand, when due, any of its lawful obligations, the Secretary of the Treasury shall pay the amount thereof and thereupon to the extent of the amount so paid by the Secretary of the Treasury shall succeed to all the rights of the holder of the obligations.

LOANS TO CARRY OUT ENVIRONMENTAL PROGRAMS

SEC. 12. (a) The bank may make or guarantee loans (including the purchase of obligations) to local public bodies to finance environmental programs. Financial assistance under this section shall be provided in accordance with standards and criteria established by the Board to insure a priority of assistance with respect to those programs where the need is most critical or which involve new and improved methods of waste disposal or pollution, or which directly abate the pollution of the environment.

(b) The effective interest rate for financial assistance extended under this section shall not exceed (1) 3 per centum per annum.

(c) Loans made or guaranteed by the bank shall have maturities not exceeding twenty-five years; except that the bank may in its discretion extend the period of payment on any loan.

(d) Loans made or guaranteed by the bank shall be of such sound value or so secured as reasonably to assure repayment.
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TECHNICAL AND OTHER ASSISTANCE

SEC. 13. (a) The bank may provide to borrowers whatever assistance, technical or otherwise, it considers necessary to protect its investment and to carry out the purposes of this Act.

(b) To assure fulfilling the purposes of this Act, the bank shall direct an adequate number of staff members to seek out and confer with the representatives of local public bodies to provide information about the services furnished by the bank and to provide whatever assistance is necessary for the utilization of such services.

TAXABLE STATUS

SEC. 14. The bank, its property, its franchise, capital, reserves, surpluses, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (1) any real property and any tangible personal property of the bank shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (2) any and all obligations issued by the bank shall be subject both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.
INVESTMENT STATUS OF OBLIGATIONS OF BANK

Sec. 15. All obligations issued by the bank shall be lawful investments for, and may be accepted as security for, all fiduciary, trust, and public funds the investment or deposit of which is under the authority or control of the United States or of any officer thereof.

PURCHASE OF ASSETS BY TREASURY

Sec. 16. The Secretary of the Treasury is authorized to purchase from the bank any asset of the bank at such price as may be agreed upon between the Secretary and the bank.

AUDIT BY GENERAL ACCOUNTING OFFICE

Sec. 17. The General Accounting Office shall audit the financial transactions of the bank and for this purpose shall have access to all its books, records, and accounts.

ANNUAL REPORT

Sec. 18. The bank shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress an annual report of its operations and activities.

ENVIRONMENTAL SAVINGS BONDS

Sec. 19. The Second Liberty Bond Act is amended by inserting after section 22B a new section as follows:

Sec. 22B.-(a) In addition to the United States savings bonds, and retirement and savings bonds authorized under sections 22 and 22A, respectively, the Secretary of the Treasury is authorized to issue from time to time United
A BILL

To establish a National Environmental Bank, to authorize the issuance of United States Environmental Savings Bonds, and to establish an Environmental Trust Fund.

By Mr. Magnuson, Mr. Anderson, Mr. Bathy, Mr. Brooke, Mr. Cannon, Mr. Chesler, Mr. Cranston, Mr. Fannin, Mr. Gravel, Mr. Gurney, Mr. Harris, Mr. Hartke, Mr. Hollings, Mr. Hughes, Mr. Humphrey, Mr. Jordan of North Carolina, Mr. Inouye, Mr. Kennedy, Mr. McGee, Mr. McGovern, Mr. McIntire, Mr. Mansfield, Mr. Mondale, Mr. Moss, Mr. Nelson, Mr. Pearson, Mr. Percy, Mr. Randolph, Mr. Stevens, and Mr. Tunney

April 29, 1973

Passed and referred to the Committee on Banking, Housing and Urban Affairs