RESOLUTION OF THE MUNICIPAL ASSISTANCE CORPORATION
FOR THE CITY OF NEW YORK

Pursuant to the provisions of Section 1001 of each of the General Bond Resolutions of the Municipal Assistance Corporation For The City of New York, adopted July 2, 1975 and November 25, 1975, respectively, each as amended and supplemented to the date hereof (the “Resolutions”), Section 103 of each of the Resolutions is amended and supplemented by the addition thereto of the following paragraph:

“The Corporation covenants that it will issue no obligations pursuant to the Resolution the payment of which is guaranteed pursuant to the New York City Loan Guarantee Act of 1978, P.L. 95-339 (the “Guarantee Act”). The Corporation further covenants that it will issue no obligations pursuant to any other resolution the payment of which is guaranteed pursuant to the Guarantee Act unless, prior to the issuance of such guaranteed obligations, the Secretary of the Treasury of the United States has waived as to all obligations of the Corporation pursuant to Section 105(e) of the Guarantee Act any priority granted to the United States of America to payment on any debt owed to it by Section 3466 of the Revised Statutes of the United States of America.”

This resolution shall take effect immediately upon the filing of a certified copy with the Trustee as identified in each of the Resolutions.
December 22, 1981

Your Reference No. D-205170

Dear Mr. Hunter:

Secretary Regan has asked me to reply to your letter of November 20, 1981 requesting information needed for your response to a letter that your office received from the Chairman of the Subcommittee on Economic Stabilization of the House Committee on Banking, Finance and Urban Affairs concerning the New York City Loan Guarantee Act of 1978.

In order to facilitate your reply to the Chairman's letter, my staff has already made available to you copies of:


2. Public Law 95-497, 92 Stat. 1665, October 1978 (the "Pension Fund Act");

3. the Agreement to Guarantee, dated November 15, 1978 (the "Agreement to Guarantee"), by and among the United States of America (acting by and through the Secretary of the Treasury), the State of New York, The City of New York, the New York State Financial Control Board, and the Municipal Assistance Corporation for The City of New York;

4. the Guaranteed Bond Purchase Agreement, dated November 15, 1978, by and among the City, the City pension funds named therein, the New York State pension funds named therein, and the United States of America, acting by and through the Secretary of the Treasury.

In addition, I am enclosing the following documents, per your subsequent requests. HSN: K KATZMAR: adj: 12/18/81
1. A Loan Agreement, dated November 15, 1978, between the City of New York, banks named therein, and certain New York City pension funds named therein. While this agreement expired at the end of the City's fiscal year 1979 (June 30, 1979) and the City entered into subsequent agreements in fiscal years 1980, 1981, and 1982, the later agreements did not include any pension funds as they were only made with banks.

2. A copy of the documentation that we received from the City pension funds and the City, together with documents prepared by us (and delivered to the pension funds) in connection with the sale of $116.125 million of MAC bonds to the pension funds on October 23, 1981, pursuant to the MAC Bond Purchase Agreement.

The General Counsel of MAC, John Bove, has informed us that he will be mailing you a copy of the MAC Bond Purchase Agreement, dated November 15, 1978, among MAC, banks named therein, and New York City pension funds named therein. Attached thereto, as Exhibit A, you will also find an Adherence Agreement, dated November 15, 1978, executed by the City of New York, which was not a party to the MAC Bond Purchase Agreement.

These documents, taken together, should provide you with the statutory and contractual background information necessary to prepare your reply to the Chairman's request.

Since the execution of these agreements, the City pension funds have, pursuant to the agreements, purchased:

1. Federally guaranteed New York City bonds issued pursuant to the Guaranteed Bond Purchase Agreement and the Agreement to Guarantee totaling $675 million—$150 million in FY 1979, $225 million in FY 1980, $150 million in FY 1981 and $150 million to date in FY 1982. While the State pension funds have also purchased $675 million of Federally guaranteed bonds, they have chosen not to be covered by the provisions of the Pension Fund Act because (i) their total holdings of the City debt are less than 5 percent of their total portfolios; and (ii) they consider these bonds to be Federal, and not New York City, obligations.

Under the terms of the Guarantee Act and the Agreement to Guarantee, the City and State pension funds could each be called upon to purchase an additional $150 million in Federally guaranteed City bonds during the current fiscal year. While we understand that the City anticipates requesting the issuance of the remaining standby guarantees in February 1982, our decisions on the findings required for such an issuance will not be made until a request has been received and evaluated in accordance with Treasury's statutory obligations.
2. All private placements of MAC bonds, issued pursuant to the MAC Bond Purchase Agreement, totaling $625 million have been completed; the final takedown occurred on October 23, 1981. The City pension funds purchased $60,375 million in fiscal 1979, $224.225 million in FY 1980, $224.275 in fiscal 1981, and the final $116.125 million on October 23.

3. Pursuant to the Loan Agreement of November 15, 1978, City Revenue Anticipation Notes totaling $182.5 million were sold (and repaid) in City FY 1979. Since then, the City's seasonal financing requirements have been met by local, out-of-town, and foreign banks and in the public credit market, without further reliance on its employee pension funds.

You also asked about the legal obligations of the pension funds under the Guarantee Act and related agreements. The Guarantee Act and the Pension Fund Act impose no legal obligations on the City and State pension funds to purchase guaranteed City securities. The pension funds, however, have entered into an agreement with the City and the United States to purchase such securities (the Guaranteed Bond Purchase Agreement), which may be enforced by the United States under Section 105 of the Guarantee Act and otherwise.

I hope this information is useful in preparing your response to the Chairman's request. Please let me know if I can be of further assistance.

Sincerely,

[Signature]

Robert W. Rafuse, Jr.
Deputy Assistant Secretary
(State and Local Finance)

Mr. Robert H. Hunter
Assistant General Counsel
United States General Accounting Office
441 G Street, N.W.
Washington, D.C. 20540

Enclosures

cc: Roger Mohle
Paul A. Schott
Lawrence Kieves
Marilyn

The starred items are the ones which should probably be discussed at the Board.

Steve

P.S. City bond exchange is not listed — it may be better to hold off any detailed discussion of this until it’s further along.

Gene Klein
Allen Thomas
FEDERAL GUARANTEE AGREEMENT
- OPEN POINTS -

Recitals

1. Reference to seasonal deal.

Definitions

"City Pension Fund" - deletion of Fire Pension Fund.
"Financial Plan" - delete reference to the Covered Organizations.
"Financing Plan" - format; modification process.
"MAC Guarantee Reserve Fund" - revise to refer to exhibit.
"MAC Guarantee Reserve Fund Resolution" - attach as exhibit.
"Standby Guarantees" - incorporate carry-over provision.
"Agency of the State" - definition to come.

Article 2 - The Guarantee

§2.1 The Guarantee

a) conform with GBPA

b) Lynch to speak to Altman re conditions on Treasury's commitments to issue standby guarantees after 1980.

c) conform to BPA as to 90/94 test.

§2.2 Guaranteed City Indebtedness; Closings

a) Call protection - need for state legislation

b) Delete condition concerning "shortest available period of probable usefulness"
§2.3 Interest
   a) conform to GBPA or, preferably, cross-refer to that agreement.
   b) revised definition of "Federal Security" to come.

§2.4 "Prepayments"
   a) include notice provision
   b) include MAC debt in test of whether prepayment program will overburden market for City or MAC debt.

§2.5 Use of Proceeds
   a) Refunding of BANs to be checked with Herships.

Article 3 - Conditions to Issuance of Guarantees

§3.1.4 Financing Agreements
   a) Certificates to come.

§3.1.5 Budgetary Practices
   a) Treasury to submit revised certificate form.

§3.1.6 Authority of Board
   a) Treasury to give explicit statement of what will satisfy condition.

§3.2.1 Guarantee Request
   a) Attach form of request as Exhibit.
   b) Reason for Governor's signature to be clearly stated.
§§3.2.2 - 3.2.5 Opinions
a) to come.

§3.2.10 Official Statement
a) Treasury considering cost of requirement and the alternative of specifying the info required at a closing.

§3.2.12 Closings Under Financing Agreements
a) Relate to BPA.
b) Treasury to consider potential impact of section on City.
c) Relate to Dillon Read opinion.

§3.3.2 State Assistance
a) Is this to be defined in any detail in the agreement?

Article 4 - Reimbursement of United States
a) Treasury considering A.G.'s language on priorities, advance notice, non-waiver of State's rights, and State subrogation.
b) Substantial problem for State Comptroller.

Article 5 - Representation and Warranties
City:
§5.1.2 Re Validity of FEA, not appropriate for City
§5.1.4 Litigation - conform to BPA
§5.1.5 delete reference to courts of competent jurisdiction. (Rogers & Wells).
State

§5.2.1, 5.2.2 Since these are matters dealt with in A.G. opinion, why should they be reps and warranties?; why should language be different than in opinion?
§5.2.3 Check with A.G.
§5.2.4 Litigation - conform to BPA.

MAC

§5.3.6 MAC wants "and the performance of the provisions thereof" deleted.

Board

§5.4.1 - §5.4.5 FCB position: delete and rely on AG's opinion.

Article 6 - Covenants with the U.S.

§6.2 Payment of Guaranteed City Indebtedness

a) Rogers & Wells has problem with covenant to collect taxes.

§6.5 Restrictions on Liens and Borrowings

a) Lynch concerned about Board's power to vary rate of retention of real property taxes.

§6.7 Reports

§6.7.1 Monthly Certificate

a) FCB would approve City certificate concerning no material modification and, based on Corp Counsel's statement, no material adverse change in litigation.

§6.7.2 Monthly Financial Plan Summary

a) FCB willing to continue current practice of approving for transmittal without any reps and warranties as to content.
§6.7.3 Quarterly Financial Plan Summary
   a) delete approval for transmittal

§6.7.4 Board Reports
   a) Revise lead-in lang.

   b) 1st report in March 1979.

§6.7.5 Annual Audits
   a) Treasury has gotten "compliance letter" concept from AA; City to check with PMM to determine whether they can do this.

   b) Change reference to §3038 of the PAL.

   c) City wants to delete "evaluation" requirement from Agreement; potential problem for private members.

   d) Delete approval for transmission.

§6.7.9 Borrowing and Payment Schedules
   a) Treasury considering changes in format requested by City.

§6.7.10 Covered Organizations
   a) Treasury considering enforcement problem City would face.

   b) Delete approval for transmission.
§6.7.11 Plan Variances
   a) Treasury to make clear that Financial Plan referred to is the initial Financial Plan for a fiscal year.

6.9 Additional Information
   a) Relate requests to City's finances.

6.10 Further Assurances
   a) Seek further detail from Treasury.

§6.11 Signatures and Certifications
   a) State Comptroller's objections; appropriate state officials satisfactory to Secretary.

§6.14 Productivity Council
   a) Board to transmit its own report to Secretary.

§6.16 Refunding Program
   a) Call protection.

§6.17 State Covenants
   a) Track legislation; see Adherence Agreement.

§6.18 MAC Covenants
   a) Resolution of BAN problem by agreement or issuance of City bonds or both.

§6.19 Amendments and Waivers to Financing Agreements
   a) Narrow definition of state agency or delete.

§6.21 Prepayments
   a) Call protection.
   b) Revise language re: MAC prepayment
Article 7 Defaults and Demand for Payment

§7.1.3 Re: bankruptcy
   a) Lynch giving further thought to proceedings brought by third parties.

§7.1.4 Re: failure to pay City or MAC indebtedness
   a) Lynch to clean up language

§7.1.5 Re: litigation brought by state agencies.
   a) Suggestion that clause be moved to litigation section under consideration.

§7.1.6 Same comment as §7.1.5

§7.1.7 a) Same comment as §7.1.5
   b) S. Siegel wants "State action" defined in terms of State legislative action.

§7.1.8 Catch-all default clause
   a) City wants materiality standard.

Article 10 - Miscellaneous

§10.5 Non-liability for Guaranteed City Indebtedness
   a) This point to be made explicit.
Comments on Preliminary Term Sheet for the Federal Agreement to Guarantee (Sheet Annexed to Treasury Memorandum Dated August 9, 1978)

As a general comment, it appears that the Treasury's position as reflected in the preliminary term sheet is considerably more stringent than is necessarily the case based upon the legislation. The following comments are referenced to page numbers of the preliminary draft.

Page 1; Term. The Federal Guaranty Act permits the guarantee to be effective for up to fifteen years after the date of issuance. It is unduly narrow to limit the guarantee for bonds issued in fiscal 1980 to fourteen years—as though the fifteen year period were measured from the time of enactment. Limiting the standby guarantee to seven years appears wholly out of keeping with the intent, especially so when a senate provision which would have limited the guarantee on amounts above $1 billion to only ten years was replaced with a flat maximum of a fifteen year guarantee.

Page 2, Guarantee Fee. Treasury's rights and flexibility would be adequately preserved by specifying, in the language of the Act, that "The Secretary may periodically escalate the guarantee fee to induce the obligator to enter the public credit market." It seems premature and unnecessarily rigid to establish a formal structure of escalation at this time.
Page 2, Reduction in Guarantee. Clarify to make reduction applicable only with respect to that Pension Fund which failed to meet its commitment. If, e.g., the one fund does not purchase but another is willing to take up the slack, the guarantee should be made available to the substituting fund.

Page 4, Condition 1. With respect to a "Financial Advisor", it may be undesirable to introduce such an entity without some better definition of the role it might play. Has Treasury provided any insight as to the content of a "satisfactory opinion"? Could any such opinion be rendered by Mack as financing agent for the City? "Compliance with budgetary requirements" should be modified to reflect the consent of "substantiality."

Page 4, Condition 3. (i) If "all" terms of the Financing Agreement must have been complied with, we may be stymied if even only one participant fails to make a purchase when due. This condition appears to be "item 31" on the list of open items with respect to the financing agreement; (ii) The banks had proposed a resale restriction of 30 days after public offering, or perhaps a shorter period depending on circumstances.

Condition 4. Referring to Table 3, Condition 5 with respect to home rule may no longer be necessary.
Pages 6 and 7, Conditions 6, 7, and 8. Strike "as to such other matters as the Secretary shall request."
It is assumed that those who will be asked to render the opinions noted will comment on the desired content.

Page 7, Condition 10. Omit. This may not be true by the time the first purchases are to be made.

Page 8, Condition 13. With respect to standby guarantees, the "inability" of MAC or the City to sell bonds goes beyond the conditions of eligibilities specified in the Act. The principal relevant criteria is whether the City is effectively unable to obtain credit in the public credit markets or elsewhere in amounts and terms sufficient to meet the City's financing needs.

Page 10, Item 5B. Are the timetables for these reports realistic?

Page 12, Item 7. Is IFMS operational?

Page 12, Item 11. The refunding program is subject to waiver by the Secretary. Under the Act, practicability is the standard rather than "earliest possible repayment".

Page 12, Item 12. The Secretary may waive the requirement to sell such securities. The legislation is silent on increasing the amount or, for that matter, specifying it in the Guaranty Agreement.
Page 15, Item 1. MAC's "best efforts" should be conditioned to the extent MAC is empowered and authorized to so act. On some matters of enforcement, it is possible that MAC would lack standing to enforce a particular provision of an agreement or legislation against the City.

Page 15, Item 3. The fund must be "satisfactory to the Secretary". A trustee is not called for nor is there a limitation regarding investment under the Act. The language should parallel the language of § 103(8)(B).

Page 16, Item 5. If MAC must also comply with a covenant similar to City Covenant 8, 8 should be modified to limit the Treasury's request to "reasonable" requests. Covenant 9 with respect to "further assurances" may be too open-ended.

Page 19, Representations and Warranties. Representations and Warranties as to enforceability of the Guaranty Agreement may prove difficult since they may involve issues similar to the enforceability of the Adhesion Agreement and the State covenant. The accuracy of the Official Statement should be phrased in terms parallel to those of § 10b-5. Strike "matters as appropriate".

Page 19, Item 4. This is so broadly worded that a dispute over, e.g., the price of supplies purchased by the City or MAC could lead to a court default in payment, and acceleration. Conditions regarding "amounts contested in
good faith" and/or setting minimum dollar limits should be considered.

Pages 19, 20, Item 7. At the top of page 20, after the word "invalidity", insert "or to provide a satisfactory substitute".

Pages 13 (item 15), 15 (item 2) and 16 (item 6).

Were these conditions understood to be part of the deal? MAC and the City should at least retain flexibility to effect advance refundings without offending this provision. The City may also wish greater flexibility to engage in transactions such as the recent BAN swap.
MEMORANDUM TO:  Mr. Luke Lynch  
U.S. Treasury Department  

FROM:  Frank Grady  
Chief Investment Officer  
N.Y. State Common Retirement Fund  

SUBJECT:  August 9 Preliminary Draft of terms for  
Federal guarantees of N.Y. City bonds  

DATE:  August 14, 1978  

These comments will confirm my telephone call on behalf of  
Arthur Levitt as trustee of the Common Retirement Fund (CRF) which  
invests the assets of two of the three State-operated pension funds.  

Our main concern with your "term sheet" is that it omits the  
item of greatest concern to Mr. Levitt as a prospective buyer of the  
guaranteed City bonds: the terms of the guarantees which will be issued  
if the conditions for issuance are met.  

This omission could be cured by a revision of your paragraph I.F.  
To reiterate what we have previously stated in that respect, what we need  
is clear-cut assurance the CRF will not suffer any loss whatsoever by  
virtue of its investment. Thus we would expect any guarantee to provide  
explicitly for prompt payment in Federal funds in the event of any failure  
by the City to make any payment of interest or principal when due. We  
are not convinced of the need for more than a 1-day delay in payment.  
That is, the guarantee could provide for payment by the United States 1 day  
after a City default provided the holder had tendered the defaulted coupons  
and/or bonds. A somewhat similar provision was included in the Federal  
guarantee of Penn Central trustees' certificates. Any Federal delay in  
payment should provide for interest.
We do not understand what you have in mind, also in paragraph I.F., in barring action by a holder against the City during "the" thirty-day period. Once a holder tenders its defaulted coupons and/or bonds, it would have neither motive nor standing to sue the City.

In addition, two other provisions in paragraph I.F. might more logically be placed elsewhere. The State Comptroller's obligation to notify the Secretary, thirty days in advance of a payment date, that the City's debt service account is inadequate could better be included with other State covenants. The provision for the United States being subrogated to the holders' rights when it honors its guarantee already appears again under City covenants in paragraph III. 1 and might better be grouped with other remedies.

The heading for paragraph I.F., we suggest, should then be revised to read "Payment Under Guarantee" rather than "Conditions to Demand Payment Under Guarantee".

Turning to your paragraph I.G., we could not accept the last sentence -- that the CRF could under some circumstances be obligated to buy unguaranteed City bonds.

We believe your paragraph I.H. should be deleted. It seems to reflect a Federal interest in profiting from extinguishment of its contingent liability in case interest rates fall. If you have a rationale for this paragraph, we would be interested in hearing it.

In your paragraph I.I. we believe it important for the guarantee to provide Federal consent to be sued by the Pension Funds in the event of non-payment under the guarantees.

While it does not directly affect the CRF, your Section VIII, Events of Default and Remedies, perplexes us. It seems to assume the United States is loaning money to the City. Having adopted the guarantee approach, it would seem to be in the Federal interest not to provide for a City default except on non-payment and not to provide for any acceleration.
Memorandum to
Mr. Luke Lynch
August 14, 1978
Page 3

As you know, we are also very much concerned with an adequate interest rate. In paragraph 1, C, your term sheet says "Formula to come". I hope you will send it to us without delay.

In addition, we believe it would be appropriate as well as legally necessary for the Financing Agreement to provide for the City to pay the Pension Funds a commitment fee for the promised purchases of City bonds.

We assume, but mention out of an abundance of caution, that upon each takedown of guaranteed City bonds the Attorney General would provide an unqualified opinion that the accompanying guarantee was valid and enforceable.

Your early clarification of these matters would be appreciated.
August 4, 1978

Mr. John Bender
Emergency Financial Control Board
for the City of New York
270 Broadway
New York, New York

Ms. Linda Seale
Municipal Assistance Corporation
for the City of New York
Two World Trade Center
New York, New York 10007

Dear John and Linda:

This will confirm our conversation of Thursday and give you our initial reaction to the material submitted to us. I trust you will be able to furnish us with copies of the draft legislation and possibly a draft of the Guarantee Agreement available before our next meeting, now scheduled for August 9. In that latter respect, I would remind you that we would certainly like to see a draft of the Agreement before final commitments are made on its contents, and particularly that, under the State Constitution, the State could not agree to permit the Federal government to recoup guarantee payments from federal aid payable to the State of New York and that the State Supreme Court may not be granted jurisdiction over actions for money damages against the State. This latter comment applies also to the proposed legislation.

I would also repeat here that no commitment can be made, particularly to the Treasury Department, as to the contents of the Attorney General's opinion; although I can state that it will not opine on the validity of actions by MAC or EFCB, as opposed to the validity of statutory authorizations. You will note that our recent MAC opinions state only what MAC is authorized to do by statute.
Until we have more concrete proposals available, the above general reaction is all we can give.

Sincerely,

(Mrs.) JEAN M. COON
Assistant Solicitor General