

Public Law 95-339
95th Congress

An Act

Aug. 8, 1978
[H.R. 12426]

To authorize the Secretary of the Treasury to provide financial assistance for the city of New York.

New York City
Loan Guarantee
Act of 1978.

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

SHORT TITLE

31 USC 1521
note.

SECTION 1. This Act may be cited as the "New York City Loan Guarantee Act of 1978".

TITLE I—LOAN GUARANTEES

DEFINITIONS

31 USC 1521.

SEC. 101. For the purpose of this title, the term—

- (1) "city" means the city of New York;
- (2) "State" means the State of New York;
- (3) "Secretary" means the Secretary of the Treasury;
- (4) "independent fiscal monitor" means an agency, board, or other entity authorized by the law of the State which has the authority to control the fiscal affairs of the city during the entire period for which assistance under this title will be outstanding and which authority the State has covenanted will not be substantially impaired during such period;
- (5) "financing agent" means any agency or instrumentality of the State duly authorized by the law of the State to act on behalf of or in the interest of the city, and no other subdivision of the State, with respect to the city's financial affairs;
- (6) "city indebtedness" means indebtedness for borrowed money of (A) a financing agent, but only if the proceeds thereof are advanced to or applied for the benefit of the city, or (B) the city; and
- (7) "fiscal year" means a fiscal year of the city, except in section 111.

GUARANTEE AUTHORITY

31 USC 1522.

SEC. 102. (a) Upon the written request of the city and the Governor of the State, the Secretary may guarantee the payment, in whole or in part, of interest, principal, or both, of city indebtedness in accordance with this title, but any such guarantee shall cease to be effective not later than fifteen years after the date of the issuance of the city indebtedness involved.

(b) A guarantee under this title is effective only with respect to city indebtedness which is issued or is to be issued to employee pension funds of the city or of the State, or of any agency of the city or of the State, and shall terminate whenever such indebtedness is sold or otherwise disposed of by such a fund (other than to a successor in interest not involving a change in beneficial ownership).

(c) Whenever the payment of principal and interest on city indebtedness is guaranteed under this title, the Secretary shall assess

and collect from the issuer, no less frequently than annually, a guarantee fee computed daily at a rate of no less than one-half of 1 per centum per annum on the outstanding principal amount of city indebtedness guaranteed hereunder. All funds received by the Secretary in payment of such fees shall be paid into the general fund of the Treasury. The Secretary may periodically escalate the guarantee fee to induce the obligor to enter the public credit markets.

CONDITIONS OF ELIGIBILITY

SEC. 103. The Secretary may make guarantees under this title only if— 31 USC 1523.

(1) there is a reasonable prospect of repayment of the city indebtedness to be guaranteed in accordance with its terms and conditions;

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

(3) the interest rate on such city indebtedness is reasonable, taking into consideration current average market yields for other obligations guaranteed by the United States;

(4) during the four-year period ending June 30, 1982, the long-term and seasonal borrowing needs of the city (other than borrowing assisted or to be assisted under this title) will be met through commitments from the State, an agency of the State, private sources, or through public credit markets, in amounts which will be sufficient to enable the city, when the guarantee authority conferred by this title has terminated, to meet all of its long-term and seasonal borrowing needs through the public credit markets, and for the purpose of making such determination, the Secretary may assume that all other conditions under this section are and will be fulfilled;

(5) (A) the independent fiscal monitor is requiring the city to adopt and adhere to budgets covering all expenditures other than capital items, the results of which would not, for fiscal years of the city beginning after June 30, 1981, show a deficit when reported in accordance with generally accepted accounting principles and, for fiscal years of the city beginning on or prior thereto but after June 30, 1978, to make substantial progress toward that goal, and, for each fiscal year of the city beginning prior to June 30, 1981, but after June 30, 1978, is requiring the city to adopt and adhere to budgets covering all expenditures other than capital items, the results of which would not show a deficit when reported in accordance with accounting principles established under State law;

(B) the city has submitted to the Secretary, with the approval of the independent fiscal monitor, in such detail and in accordance with such accounting principles as the Secretary may prescribe, a plan for bringing all of its expenditures other than capital items into balance with its revenues for each of the first three full fiscal years of the city beginning after June 30, 1978, and the city agrees to publish, after the completion of each fiscal year covered by the plan, an analysis reconciling its actual revenues and expenditures with projected revenues and expenditures, and to publish periodic projections which reflect the impact of the plan on tax rates; and

(C) the city submits, with the approval of the independent fiscal monitor, in such detail as the Secretary may prescribe and in accordance with generally accepted accounting principles, a plan for bringing all of its expenditures other than capital items into balance with its revenues no later than the final fiscal year of the four year period which begins with the fiscal year beginning July 1, 1978, and the city is required, on or before the first day of each fiscal year thereafter during which city indebtedness guaranteed under this title is outstanding, to have prepared and submit a plan covering the four year period beginning with such fiscal year which will result in budgets which would not show a deficit when reported in accordance with accounting principles set forth in subparagraph (A);

(6) the independent fiscal monitor demonstrates to the satisfaction of the Secretary that it has the authority to control the fiscal affairs of the city for the entire period during which assistance under this title will be outstanding;

(7) the city has agreed—

(A) to obtain and submit to the Secretary, as soon as practicable after the close of each fiscal year of the city during which the Secretary may make guarantees under this title or during which any city indebtedness guaranteed hereunder is outstanding, an opinion of independent public accountants setting forth the results of an audit by such accountants of the financial statements of the city for such fiscal year, which opinion shall describe any deviation in the preparation of such financial statements from generally accepted accounting principles applicable to governmental bodies and shall state that the audit of such financial statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary under the circumstances; and

(B) to establish an audit committee which shall assist in the determination of areas of inquiry for, review the progress of, and evaluate the results of, audits to be conducted by such independent public accountants, and which shall consist of the mayor of the city, the comptroller of the city, the president of the city council, two individuals with expertise in municipal finance, and two officers or employees of two different firms of independent public accountants which are not engaged either by the city or by the comptroller of the city, such individuals and such officers or employees of such firms to be selected by the independent fiscal monitor;

(8) (A) in the case of guarantees issued after June 30, 1979, the State has furnished to the Secretary satisfactory assurances that the amount of financial assistance to be provided by the State to the city during the fiscal year in which such guarantee is to be issued will not be less than the amount of such assistance which was provided during the fiscal year ending June 30, 1979, except during any fiscal year for which the city has presented a budget which the Secretary has determined is balanced in accordance with generally accepted accounting principles; and

(B) the State or an agency of the State, subject to and in accordance with applicable State law, when any guarantee hereunder is made by the Secretary, shall deposit in a fund approved by the Secretary, an amount which, together with all amounts

Independent
public
accountants,
opinions.

Audit committee.
Establishment.

previously so deposited in such fund, shall equal not less than 5 per centum of the principal of and of one year's interest on the then outstanding city indebtedness then guaranteed under this title, and which shall, under the direction of the Secretary, be used to pay, or to reimburse the Treasury for paying, principal and interest which the city fails to pay, the payment of which is guaranteed under this title, but in no case will the fund be used to pay or reimburse an amount in excess of 5 per centum of the principal amount of and of one year's interest on all guaranteed city indebtedness outstanding on the date of the failure;

(9) the city has agreed, in addition to other efforts undertaken by the city to increase employee productivity, to establish a productivity council (A) which shall consist of representatives of the city government and of city employee unions, (B) which shall develop and seek to implement methods for enhancing the productivity of the city's labor force, and (C) which shall have a representative of the independent fiscal monitor as an observer, and the independent fiscal monitor shall review and report, not less than annually, on the development and implementation of such methods, such report to be published and made available to the public, and transmitted to the Secretary;

Information,
availability to the
public.

(10) the city has agreed to offer to sell for distribution to the public its short-term notes in fiscal years 1980, 1981, and 1982 and its long-term bonds in fiscal years 1981 and 1982, unless the Secretary determines that any such offer would be inconsistent with the financial interests of the city;

(11) the city has agreed that—

(A) following the fiscal year ending June 30, 1982, and during any fiscal year thereafter in which a guarantee under this title is outstanding, the city will pay or provide for the payment of city indebtedness then guaranteed hereunder, giving priority to city indebtedness having the longest maturity or maturities, in a principal amount not less than 15 per centum of the net proceeds of city indebtedness issued in public credit markets during such year, except that the Secretary may modify or waive such 15 per centum requirement to the extent he determines that its application (i) would substantially impair the city's ability to meet its essential capital needs, or (ii) would substantially overburden the market for long-term city indebtedness; and

(B) as soon as practicable after the Secretary determines that the city has demonstrated its ability to meet its long-term credit needs through public credit markets, the city will implement a program satisfactory to the Secretary of refunding any outstanding city indebtedness guaranteed under this title for the purpose of achieving complete repayment of such indebtedness at the earliest practicable date, taking into consideration such factors as the Secretary deems appropriate, including the effect of such refunding on the city's need to maintain the city's continued access to public credit markets for its long-term credit needs; and

(12) the city and the State are meeting their respective obligations under this section.

Any determination by the Secretary that the conditions set forth in this section have been met shall be conclusive, such determination to be evidenced by the making of such guarantee, and the validity of any guarantee so made shall be incontestable in the hands of the holder of

such city indebtedness, except for fraud or material misrepresentation on the part of such holder. The Secretary is authorized to determine the manner in which such guarantees will be issued and, in addition to the terms and conditions required by this section, to require from, or agree to with, the city, a financing agent, the holders of the city indebtedness guaranteed, and any other party in interest such other terms and conditions as he may deem appropriate, including provision of security for the repayment of amounts paid pursuant to any guarantee under this title. Any such other term or condition may be modified, amended, or waived in the discretion of the Secretary.

LIMITATIONS ON GUARANTEE AUTHORITY

31 USC 1524.

SEC. 104. (a) (1) The authority of the Secretary to extend guarantees under this title shall not at any time exceed \$1,650,000,000 in the aggregate principal amount outstanding.

(2) During the fiscal year beginning on July 1, 1978, not to exceed \$750,000,000 shall be available for the guarantee of city indebtedness—

(A) of which not to exceed \$500,000,000 shall be available for the guarantee of city indebtedness maturing more than one year after its date of issuance, and

(B) of which not to exceed \$325,000,000 shall be available for the guarantee of city indebtedness maturing in one year or less after its date of issuance, but only to the extent authorized by the provisions of subsection (b).

(3) During the fiscal year beginning on July 1, 1979, not to exceed the sum of—

(A) \$250,000,000, and

(B) \$750,000,000 reduced by the principal amount of city indebtedness guaranteed prior to July 1, 1979, and outstanding on the date on which the guarantees are made under this paragraph,

shall be available for the guarantee of city indebtedness maturing more than one year after its date of issuance, except that no guarantees may be made under this paragraph if prior to July 1, 1979, either the Senate or the House of Representatives agrees to a resolution stating in substance that it disapproves such guarantees.

(4) During the fiscal year beginning on July 1, 1980, not to exceed the sum of—

(A) \$325,000,000, and

(B) \$1,000,000,000 reduced by the sum of (i) the principal amount of city indebtedness guaranteed under paragraphs (2) (A) and (3) and outstanding on the date on which the guarantees are made under this paragraph, and (ii) the amount, if any, covered by a resolution agreed to by the Senate or the House of Representatives pursuant to paragraph (3),

shall be available for the guarantee of city indebtedness maturing more than one year after its date of issuance, except that no guarantees may be made under this paragraph if prior to July 1, 1980, either the Senate or the House of Representatives agrees to a resolution stating in substance that it disapproves such guarantees.

(5) During the fiscal year beginning on July 1, 1981, not to exceed the sum of—

(A) \$325,000,000, if the Secretary determines, in accordance with generally accepted accounting principles, that the city has presented a balanced budget, and

(B) \$1,325,000,000 reduced by the sum of (i) the principal amount of city indebtedness guaranteed under paragraphs (2) (A), (3), and (4) and outstanding on the date on which the guarantees are made under this paragraph, and (ii) the sum of the amounts, if any, covered by resolutions agreed to by the Senate or the House of Representatives pursuant to paragraphs (3) and (4),

shall be available for the guarantee of city indebtedness maturing more than one year after its date of issuance.

(b) The Secretary may guarantee the payment of principal or interest, or both, on city indebtedness issued prior to January 1, 1979, and maturing prior to July 1, 1979, but only to the extent that the Secretary determines, after taking into account any commitments the employee pension funds of the city have made with respect to the purchase of city indebtedness maturing more than one year from its issuance, that the employee pension funds of the city are not able to provide sufficient amounts of seasonal financing as required under section 103(4) of this title without being considered to have failed to meet the requirements of section 401(a) of the Internal Revenue Code of 1954 (as such requirements apply to such pension funds) or being considered to have engaged in a prohibited transaction described in section 503(b) of the Internal Revenue Code of 1954.

26 USC 401.

26 USC 503.

REMEDIES

SEC. 105. (a) The Secretary 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 title. Any sums recovered pursuant to this section shall be paid into the general fund of the Treasury.

31 USC 1525.

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

(c) Notwithstanding any other provision of law, the Secretary shall provide for the withholding of any payment from the United States to the city or State which may be or may become due pursuant to any law and offset the amount of such withheld payment against any claim the Secretary may have against the city or State pursuant to this title.

(d) The remedies prescribed in this title shall be cumulative and not in limitation of or substitution for any other remedies available to the Secretary or the United States.

(e) With respect to any debt of the United States arising under this title, for the purposes of section 3466 of the Revised Statutes (31 U.S.C. 191), the term "person" includes the city and any financing agent. Notwithstanding the provisions of such section, the Secretary is authorized to waive, wholly or partially, the priority for the United States established thereunder with respect to any indebtedness of the city or the financing agent issued after the effective date of this title (other than any indebtedness the proceeds of which are applied to the repayment prior to the stated maturity thereof of indebtedness outstanding on or before the effective date of this title owed to the lender of such proceeds) if, in his judgment such waiver is necessary to facilitate the ability of the city to meet its financing needs. No waiver under the preceding sentence shall by its terms subordinate the claims of the

"Person."

Waiver.

United States to those of any creditor of the city or any financing agent.

Civil action.
Jurisdiction.

(f) The Secretary may bring a civil action in any United States district court or any other appropriate court to enforce compliance with the provisions of this title, any agreement related thereto, or any provision of State law related thereto, by the city, the State, the financing agent, the independent fiscal monitor, or any official of any of the foregoing, or any other party to any such agreement, and such court shall have jurisdiction to enforce such compliance and enter such orders as may be appropriate.

INSPECTION OF DOCUMENTS

31 USC 1526.

SEC. 106. At any time a request for a guarantee is pending or indebtedness guaranteed under this title is outstanding, the Secretary is authorized to inspect and copy all accounts, books, records, memorandums, correspondence, and other documents of the city or any financing agent relating to the city's financial affairs.

GENERAL ACCOUNTING OFFICE AUDITS

31 USC 1527.

SEC. 107. The General Accounting Office is authorized to make such audits as may be deemed appropriate by the Comptroller General of all accounts, books, records, and transactions of the city and any financing agent. No guarantee may be made under this title unless and until the city and any financing agent agree, in writing, to allow the General Accounting Office to make such audits. The General Accounting Office shall report the results of any such audit to the Congress.

Report to
Congress.

REPORTS TO CONGRESS

31 USC 1528.

SEC. 108. Within three months after the date of enactment of this title, and at six-month intervals until June 30, 1982, and thereafter at twelve-month intervals, the Secretary shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report containing a detailed statement of his activities under this title.

SEVERABILITY

31 USC 1529.

SEC. 109. If any provision of this title is held to be invalid, or the application of such provision to any person or circumstance, is held to be invalid by a court of competent jurisdiction, the remainder of this title, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

TERMINATION

31 USC 1530.

SEC. 110. The authority of the Secretary to make guarantees under this title terminates on June 30, 1982. Such termination does not affect the carrying out of any contract, guarantee, or other obligation entered into pursuant to this title, or the taking of any action necessary to preserve or protect the interests of the United States arising hereunder, except that no commitment to guarantee the payment of principal or interest on city indebtedness under this title shall be effective after such date.

AUTHORIZATION

SEC. 111. (a) There are authorized to be appropriated beginning October 1, 1978, and to remain available without fiscal year limitation, such sums as may be necessary to carry out this title. 31 USC 1531.

(b) Any other provision of this title to the contrary notwithstanding, the authority of the Secretary to make any guarantee under this title shall be limited to such extent or amounts as are provided in advance in appropriation Acts.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE
CODE OF 1954

SEC. 201. TAXABILITY OF CERTAIN FEDERALLY GUARANTEED OBLIGATIONS.

(a) CERTAIN FEDERALLY GUARANTEED OBLIGATIONS.—Section 103 of the Internal Revenue Code of 1954 (relating to interest on certain governmental obligations) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection: 26 USC 103.

“(f) CERTAIN FEDERALLY GUARANTEED OBLIGATIONS.—Any obligation the payment of interest or principal (or both) of which is guaranteed in whole or in part under title I of the New York City Loan Guarantee Act of 1978 shall, with respect to interest accrued during the period for which such guarantee is in effect, be treated as an obligation not described in subsection (a).”.

(b) OBLIGATIONS MAY NOT BE ACQUIRED BY FEDERAL FINANCING BANK.—Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire any obligation the payment of interest or principal of which has at any time been guaranteed in whole or in part under title I of the New York City Loan Guarantee Act of 1978. 12 USC 2285a.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act. 26 USC 103 note.

Approved August 8, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-1129, Pt. 1 (Comm. on Banking, Finance and Urban Affairs), and Pt. 2 (Comm. on Ways and Means); and No. 95-1369 (Comm. of Conference).

SENATE REPORT No. 95-952 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

June 6-8, considered and passed House.

June 29, considered and passed Senate, amended.

July 25, House agreed to conference report.

July 27, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 14, No. 32:

Aug. 8, Presidential statement.