New York City Minority Business Enterprise Guaranty Facility
Frequently Asked Questions (FAQ)
April 11, 2024

What is the Minority Business Enterprise Guaranty Facility?

The New York City Minority Business Enterprise Guaranty Facility (the MBE Guaranty Facility or the Facility) is a new initiative to support minority-owned business enterprise (MBE) developers seeking to develop critically needed affordable housing across the five boroughs. A partnership between the New York City Department of Housing Preservation and Development (HPD), the NYC Housing Development Corporation (HDC), the Urban Investment Group at Goldman Sachs, and the Community Preservation Corporation (CPC the MBE Guaranty Facility is a $50 million initiative to provide back-stop guaranties for MBE developers who have difficulty independently providing the guaranties required to secure construction financing to develop affordable housing projects.

What is the total capacity of the facility?

The Facility is made possible with up to $25 million to be provided by HDC on behalf of the City and up to $25 million to be provided by Goldman Sachs. The MBE Guaranty Facility will provide up to $50 million in back-stop guaranties. Each back-stop guaranty will be capped at 10% of the senior loan amount, which is not to exceed $50 million. As a result, the Facility is expected to support approximately 10 affordable housing development projects.

Who is eligible to apply?

To be eligible, developers must be a certified MBE with an established development track record and a demonstrated need for the Facility. Joint ventures are allowed if the partner is a non-controlling, not-for-profit entity, such as a faith-based organization. The MBE Guaranty Facility will prioritize deals in HPD's and/or HDC's pipeline that are ready to close on financing within six months but for the back-stop guaranty. Borrowers need to secure a letter of support from HPD or HDC, as applicable, indicating that the project is ready and expected to close within six months.

What qualifies for MBE certification?

For the purpose of the Facility, "MBE Developer" means an affordable housing developer that has either a current certification as a Minority Business Enterprise from any certifying body. Joint ventures in which the majority owner has a current certification as a Minority Business Enterprise from any certifying body may also qualify so long as the other partner is a non-controlling not-for-profit entity that owns a minority interest in the joint venture.

What kinds of projects are eligible?

Eligible projects include affordable housing development projects within the five boroughs of New York City that involve the new construction or rehabilitation of rental housing and that are either

100% owned by the MBE project sponsor or a joint venture between the MBE project sponsor and a non-controlling not-for-profit entity partner that owns a minority interest in the joint venture. If it is a low income housing tax credit project, the MBE project sponsor must be the managing member or general partner or a joint venture between the project sponsor and a non-controlling not-for-profit entity partner that owns a minority interest in the joint venture.

The Facility will prioritize deals in HPD's and/or HDC's pipeline that the Agencies ("HPD and HDC") have identified as ready to close on financing but for the back-stop guaranty. Project sponsors need to secure a letter of support from HPD or HDC, which will only be granted if the project is ready and expected to close within six months in order to apply to the Facility. The maximum senior loan component of its construction financing should be no greater than $50,000,000, although exceptions will be reviewed on a case-by-case basis.

In addition, eligible projects will need to satisfy the Facility's standard loan to value and debt service coverage ratios (see LTV DSCR and Requirements below) using commercially reasonable financial projections. The Facility is not intended for projects which take on market rate risk or material commercial property risk, or projects seeking solely land acquisition financing or predevelopment financing rather than construction financing.

What is the maximum size of the guaranty?

Each back-stop guaranty will be capped at 10% of the senior loan made to the borrower. Individual guaranties are not to exceed $5 million, although exceptions can be made by the Facility on a case-by-case basis.

What is covered by the Guaranty?

Each back-stop guaranty will apply only to the construction or development completion guaranty, the repayment guaranty (if applicable), and the carry guaranty (if applicable). Nonrecourse carveout guaranties and environmental indemnities are not eligible for liquidity support via the back-stop guaranty.

What is the term of the Guaranty?

Depending on institutional Lender requirements, each back-stop guaranty shall have a term that is coterminous with the term of the applicable construction financing and shall be automatically extended with an extension of that construction financing.

What if my senior loan exceeds $50 million?

Exceptions to the maximum senior loan size of $50,000,000 will be reviewed on a case-by-case basis. However, the back-stop guaranty is capped at $5 million.

How do you apply?

Project sponsors will first need to request a letter of support from HPD or HDC indicating that the project is expected to close within six months. Once a letter is secured, project sponsors should submit an application to CPC through their website. The application should include the following:

- HPD or HDC Program Letter of support indicating that the project is expected to close within six months.
- Pro forma that was submitted to HPD or HDC to secure the support letter.
- Demonstration of need for a Back-Stop Guaranty, which should at minimum state the guaranty requirements of the Construction Lender, the net worth, liquidity and contingent liabilities of the borrower, and the amount the borrower is able to post.
- Proof of MBE certification.
- Project description and financial narrative.
- Org chart for proposed project.
- Narrative description of company; principals' experience, and relevant information regarding all key parties (e.g. architect, general contractor, property manager, social services provider, etc.).
- Construction lender term sheet specifying guarantors and required guarantees.
- Appraisal or other documentation establishing that the project can meet the required loan to value and projected minimum debt service coverage ratio.
- Documentation that establishes the net worth and liquidity of the Project Sponsor.
- Satisfaction of all other term sheet requirements.

How long will it take for an MBE developer to secure approval from the Facility?

Project sponsors should allow a minimum of 6-8 weeks to secure an approval from the time of application submission, and should allow at least 2 weeks to secure a letter of support from HPD or HDC which is a prerequisite for applying. The Facility is intended for deals in HPD's and/or HDC's pipeline that are ready to close on financing but for the back-stop guaranty. Interested sponsors ready to close on an affordable housing development project and interested in applying to the Facility are encouraged to secure a term sheet from a construction lender as early as possible in order to secure a letter of support from either HPD or HDC. They are also encouraged to engage their project managers early in the process that they intend to apply to the Facility and will need a letter of support.

How much development experience is required?

At a minimum, the Facility requires a project sponsor to have the experience of timely and on budget completion of an affordable housing development project that has provided the necessary experience to successfully complete the project for which a back-stop guaranty is being sought. The project sponsor will also need to demonstrate that they have sufficient financial wherewithal to successfully complete the eligible project and convert it to permanent financing. The Facility may also consider the experience and performance of the project sponsor's selected property manager and/or contractor. Exceptions to the experience requirements will be considered on a case-by-case basis.

How do you establish need?

As part of the application, the project sponsor will be asked to provide a demonstration of need, indicating that but for the back-stop guaranty from the Facility, they will not be able to meet the guaranty requirements. This demonstration of need should state at a minimum, the guaranty requirements of the construction lender, as indicated in the submitted term sheet, the borrower's net worth, liquidity and contingent liabilities, also documented as part of the application, and the amount the borrower is able to post with a narrative justification.

What is meant by market rate risk or material commercial property risk?

The Facility will require that the underwriting proforma must show that the project does not present exposure to market rate rents defined as 10% below market comparables and that any commercial rents are less than 15% of the total pro forma revenue for the eligible project.

What are the Facility's LTV and DSCR requirements?

Projects will need to be able to document and meet loan to value and debt service coverage thresholds as follows:

- a maximum loan to value of (80%) based upon the size of the guaranty as determined by an appraisal, noting that value considered in the LTV calculation may include benefits including, but not limited to, tax credits, tax abatements, subsidy and low income housing tax credit equity
- a projected minimum debt service coverage ratio of 1.10x based upon the size of the guaranty.

Does the Facility support acquisition / predevelopment?

No. The Facility is intended to support affordable housing projects in HPD's and/or HDC's pipeline that are ready to close on financing but for the back-stop guaranty. Projects seeking solely land acquisition financing or predevelopment financing are not eligible.

Can an MBE developer bring more than one project to the Facility for a guaranty?

The Facility will prioritize first-time applicants to the Facility for projects that are ready to close, but will consider all eligible borrowers with an eligible project that has been identified by the Agencies as ready to close.

Does a project with HFA/HCR qualify?

The Facility is intended to support affordable housing projects in HPD's and/or HDC's pipeline. However, the Facility will consider all eligible projects that HPD and HDC have determined to be ready to close, including those involving the participation of a state agency.

Can the guaranty stand in for other requirements such as the LOC?

No. Each back-stop guaranty will apply only to the construction or development completion guaranty, the repayment guaranty (if applicable), and the carry guaranty (if applicable).

Can the Facility support a deal where the construction loan has already closed, but the borrower is going through the process of renewing the guaranty?

No. The Facility is intended to support affordable housing development projects in HPD's and/or HDC's pipeline that are ready to close on financing but for the back-stop guaranty.

Once approved, what is the process to secure the guaranty at closing?

Upon approval by the Facility's Credit Committee, a project term sheet will be issued to the project borrower to use in securing a commitment/term sheet from the construction lender until back-stop guaranty documents are signed at the time of the closing of the construction financing, contingent on the satisfactory completion of all required closing conditions.

At the time of construction loan closing, the Facility will deliver to the construction lender signed back-stop guaranty documents that will stipulate:

- Conditions for advances
- Repayment terms
- Confirmation that the back-stop guaranty will be coterminous with the construction financing.

The obligation to repay amounts funded under the back-stop guaranty will be secured by a reimbursement promissory note and mortgage from the project borrower encumbering the project. Repayment of a reimbursement obligation will occur from net cash flow of the project, prior to the payment of any developer fee. The reimbursement note and mortgage will be in priority behind all senior and certain subordinate debt of the project borrower as determined by the Facility and ahead of any sponsor loans to the project.

The Facility has prepared model form documents for the Back-stop Guaranty, Cash Flow Reimbursement Note, Reimbursement Mortgage, Paid Developer Fee Pledge, and Reimbursement Guaranty that must be used to execute the back-stop guaranty.

What are the closing conditions?

No later than 15 business days prior to the scheduled closing of the construction financing, the borrower must submit the plan and cost review to the Facility Manager for final review. In addition, no later than 10 business days prior to closing, the borrower must submit, in one package if possible, to the Facility Manager, CPC, the following as conditions of closing:

- Verification by the borrower that the project meets the necessary loan to value and debt service coverage ratio requirements;
- Confirmation that environmental reports were received and approved by the construction lender, as well as true copies of all environmental diligence items, including, but not limited to, a State Historic Preservation Office Letter regarding historic resources and Type II Architect's Letter, as applicable;
- Confirmation of approval from the construction lender that insurance has been received for the eligible project and construction loan borrower;
- Evidence of satisfaction of "know your customer" compliance for Goldman Sachs, which shall be limited to sanctions screening and background checks, and confirmation of "sponsor review" clearance by HDC and/or HPD, as applicable, provided in the form of written confirmation (which may be via e-mail) from Goldman Sachs and HDC or HPD.

What if the deal doesn't close on the expected timeframe?

The Facility is intended to advance projects in HPD and HDC's pipeline that the Agencies have identified as ready to close within six months and have provided a letter of support to the borrower. That letter of support will include the date that the project is expected to close, plus a 2 month grace period. If a project is unable to close within that timeframe, the Facility will consider a 6 month extension if the borrower is able to secure an updated letter of support from HPD or HDC, as applicable, with a new expected closing date that is within 6 months. If an extension is granted, the Facility will issue an updated term sheet.

What happens if the guaranty is called?

The project sponsor is expected to provide guaranties to the construction lender and if the construction lender makes a demand on the guaranty that is not funded within 60 days of such demand, the construction lender shall have the right to call the back-stop guaranty for such amount.

In the event a back-stop guaranty is called upon, the borrower will be expected to repay the amount funded by the Facility. The reimbursement note will be repayable as follows:

- Repayments will commence upon availability of cash flow for payments
- Repayments will be made from any paid developer fee
- The reimbursement note shall bear interest at a rate of 10% per annum

- The reimbursement note will have a maturity date that is at least coterminous with the project loan with the longest maturity
- No prepayment penalty

What are the net worth and liquidity requirements?

The Facility will require the project sponsor to maintain a minimum net worth and liquidity amount that will be sized as a percentage of the guaranty amount, with a minimum threshold of 20% of the guaranty amount for net worth, and 5% of the guaranty amount for liquidity, which the Credit Committee can adjust or waive at its discretion.

What are the fees associated with the Backstop Guaranty?

There will be an upfront fee of $7,500 plus 0.75% of the amount of the back-stop guaranty, paid at closing of the construction financing out of funds capitalized in the budget for the construction financing.

The ongoing fee will be equal to $5,000 plus 0.875% of the amount of the back-stop guaranty per annum until the back-stop guaranty is released or fully drawn, to be paid quarterly in advance, and will be budgeted in the budget for the construction financing. However, a portion of this fee will be paid in full to the Facility Manager at the construction loan closing. The project budget will also include reimbursement of certain actual construction consultant costs related to the Facility in an amount not to exceed $26,000.

If the budgeted amount is depleted, the project sponsor and borrower will still be obligated to pay the associated fees.

In the event a back-stop guaranty is called upon, the borrower will be expected to repay the amount funded by the Facility. The reimbursement note shall bear interest at a rate of 10% per annum.

What are the ongoing reporting requirements?

The borrower is required to submit financial statements and reports regarding liquidity and net worth covenants pursuant to the reimbursement guaranty. This includes a form compliance certificate for the agreed to liquidity and net worth covenant, if required; unaudited financial statements; copies of the guarantor's filed federal tax return, together with all schedules; and further detailed financial and other information as may be reasonably requested by the Facility.

Will the Facility provide model documents or can a borrower/lender use their own form documents?

For efficiency and ease of administration, the Facility has prepared model form documents for the Back-stop Guaranty, Cash Flow Reimbursement Note, Reimbursement Mortgage, Paid Developer Fee Pledge, and Reimbursement Guaranty that must be used to execute the Back-stop Guaranty.