

# Memo

<b>From</b>	Waarborgfonds Sociale Woningbouw (WSW)
<b>To</b>	Lenders that issue or issued loans guaranteed by WSW to social housing associations
<b>Date</b>	6 July 2021
<b>Subject</b>	Explanation of the amendments to the documentation further to the WSW Strategic Programme
<b>Status</b>	For your information

## Introduction

Over the past two years, WSW has been developing a strategic program that will enable us to make important improvements to the guarantee system. These improvements are necessary to be able to continue to ensure a solid and robust guarantee system in the interest of all parties concerned. The improvements were the result of intensive consultations with the Ministry of the Interior and Kingdom Relations, the Association of Netherlands Municipalities (VNG), the WSW Participants' Council, Aedes (Treasury platform) and several lenders that operate in the sector. Following the statutory approvals from the Minister of the Interior and VNG, WSW has started with the implementation of the strategic programme. This memo explains the modifications in the documents that are relevant to lenders of guaranteed loans.

## Reason for the strategic programme

The direct reason for the strategic programme is the recent experience with the settlement of two claims on guarantees provided by WSW. Restructuring is no longer a given due to changes to the Housing Act (*Woningwet*). Housing associations can become insolvent. This means that guarantees provided by WSW may well be relied on more often in the future. The guarantee system therefore has to be improved.

## Improvements offered by the strategic programme

The strategic programme seeks to make improvements in three areas: (i) more control for housing associations ('participants') over their mutual risk appetite, (ii) strengthening WSW's capital position, and (iii) improving WSW's security position when a guarantee is called on. All changes are explained below. Only the third point directly affects the loan documentation..

### 1. *Participants' control over their mutual risk exposure*

WSW's foundation rests on two cornerstones: (i) the backstop (provided by the State and municipalities) and (ii) the participants' mutual solidarity. Together, they are responsible for the continuity of the guarantee system. The participants are however the first to guarantee the obligations among themselves (before the backstop is invoked). However, up to now, participants did not have a say in the mutual risk appetite of the guarantee system. The Participants' Council provides the participants with an independent position regarding the mutual risk appetite. The support of the backstop remains unchanged in the guarantee system and this is most relevant for lenders.

## *2. Strengthening WSW's capital position*

WSW's capital policy is the basis on which WSW determines and controls adequate capital and liquidity. Some changes have been made to the capital policy to improve the objective methodologies and risk models used for (i) collectible capital and (ii) required capital. The participant's callable capital obligation changes as well. This secures the availability of callable capital in the future and allows the guarantee system to recover from claims by means of an annual (callable capital) levy. All this is laid down in the mutual agreements between WSW and its participants (Participation Regulations) and between WSW and the backstop parties (policy rules).

## *3. WSW's improved security position*

Based on the current standard loan documentation, WSW's claims against a participant only become due if, and to the extent that, WSW makes payments under issued guarantees following a claim. This happens gradually i.e. whenever WSW performs a regular interest and/or repayment obligation. As a result, under the current system, WSW can only enforce security interests in stages, i.e. when a right for recourse arises as a result of claims against guarantees. This position is not sufficiently robust. It is important that, as soon as WSW is called upon under a guarantee, its entire right of recourse against the participant becomes due. The new standard loan documentation facilitates this. An additional agreement, i.e. an addendum, arranges this for current guaranteed loans.

## **Amended documentation**

For lenders, the following three documents are relevant:

### *Addendum*

The addendum is an agreement between a lender, participant *and* WSW in addition to existing loan agreements. The addendum ensures that, as soon as a lender calls upon WSW obligation under the guarantee, the latter's entire right of recourse against the participant becomes due. This claim is then equal to the lender's claim against the participant under the loan agreement. WSW can enforce the security interests provided on the basis of this full right of recourse.

The addendum also provides that if a lender does a call under the guarantee and/or if a borrower has been declared insolvent or been granted a suspension of payments, WSW may take over the full claim from the lender, in accordance with the loan agreement. The intended result is to strengthen WSW's position if a guarantee is called on, without affecting the lender's position. The loan documentation amended by the addendum allows WSW to limit losses for WSW and the sector.

Annex 1 contains a clause-by-clause explanation of the addendum. The full text of the addendum is available on our [website](#).

Over the next couple of months, WSW will draw up an addendum per lender and per participant. We will submit this addendum to lenders and participants for their signature from August 2021.

#### *Loan documentation*

From August 1<sup>st</sup> 2021, WSW will introduce a new standard loan agreement with a standard guarantee agreement. This means that from this date onwards, loans will only be guaranteed using the new loan documentation. This new standard loan documentation includes the text of the addendum as explained above. This documentation can be found on our [website](#).

Annex 2 contains an explanatory note on the relevant amendments to the loan documentation.

Apart from the requirement to use only the new loan documentation from 1 August 2021 onwards, no further action from lenders is required.

#### *Backstop agreements with the State and municipalities*

In the past, WSW concluded backstop agreements with both the Dutch State and municipalities to provide additional security for the fulfillment of WSW's payment obligations towards the lenders. The terms of these agreements are virtually identical. They ensure that both the State and municipalities issue interest-free loans to WSW when its risk capital falls below the guarantee level. The State and municipalities each provide 50% of the backstop of the guarantee.

The current agreements date from 1999 and are being renewed. There are a number of reasons for concluding new backstop agreements. These are, (i) resolving the imbalance in the municipalities' backstop position, (ii) the need for an improved agreement on repayment of interest-free loans to the State and municipalities, (iii) the need for improved arrangements on refinancing possibilities, (iv) developments from WSW's strategic programme, (v) resolving the discrepancy that has arisen between the existing backstop agreements (dating from 1999) and current legislation and practice, e.g. in relation to the activities of social housing associations that are eligible for the WSW guarantee (the so called Services for General Economic Interest), and (vi) more generally, a general necessity to modernise the backstop agreements.

From August 1<sup>st</sup> 2021, we will use new backstop agreements between WSW and the State and between WSW and municipalities. At the same time, we will amend the existing backstop agreements which WSW concluded with municipalities and which apply to loans that were guaranteed before 1 August 2021. We will implement these amendments using amendment agreements, which WSW and the individual municipalities will sign.

Based on the amendment clause in the existing backstop agreements, we must submit the amendment agreement to all lenders that have, in the past, lent money that was guaranteed by WSW. More specifically, we will inform you, as lender, of the proposed amendments, individually and in writing. We intend to submit this amendment agreement to all lenders for review before the end of this year.

Annex 3 contains a clause-by-clause explanation of the relevant amendments to the backstop agreements.

## **Annex 1: Explanatory notes on the addendum**

The relevant provisions of the addendum are explained below clause by clause.

### *Clause 2*

The first paragraph of Clause 2 provides that WSW's right of recourse against the participant is a contractual and pre-existing right. This means that claims that become due and payable after a participant's insolvency can also be covered by security interests after the insolvency. In line with this, an amendment was made to WSW's participation regulations.

Clause 2(2) provides that if a lender calls upon WSW under a guarantee, WSW's entire right of recourse against the participant becomes due. The right of recourse is equal to the total amount that the lender can claim from the participant on the basis of the loan agreement.

This clause allows WSW to enforce the security interests provided for the entire right of recourse rather than enforce them step by step based on the loan servicing that WSW gradually pays under the guarantee. This sub-clause also confirms that WSW is still only obliged to pay the loan servicing to the lender. This does not prevent WSW from repaying the lender earlier (should this be desirable, for example, with a view to reducing losses). In that case, WSW and the lender undertake to discuss and agree in all fairness how to calculate the market value.

### *Clause 3*

With this provision, the lender confirms that it will not submit a claim (or unsecured claim) to the trustee in bankruptcy. This is particularly relevant in cases where the proceeds from enforcing security interests are not sufficient to repay the lender's claim. This is also relevant in the context of s.136 of the Bankruptcy Act (*Faillissementswet*). It prevents a conflict of claims between WSW and the lenders in the insolvency. This clause is reinforced by the provisions on taking over claims in Clause 4 and the power of attorney in Clause 7 (both below).

### *Clause 4*

This clause allows WSW to take over the lender's claim against the participant (by means of an assignment) in cases where (i) there is a claim and/or (ii) the participant has been declared insolvent (iii) the participant has been granted a suspension of payments. WSW takes over the claim on the same conditions that would have applied to the participant had there been no default, i.e. WSW pays the lender, step by step, an amount for the claim that is equal to the loan servicing.

As a result:

- WSW can determine the time at which the loan becomes exigible on the basis of Article 6 of the General Provisions. WSW may want to bring forward the date for taking over the loan in order to be able to take control sooner (e.g. if the participant is in default of payment to the lender of a guaranteed loan). After WSW has taken over the lender's claims against the participant, it can enforce its security interests for this claim;
- after taking over the lender's claims, WSW can enforce the security interests provided to the lender (if any).

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*Clause 7*

Article 7 contains a power of attorney from the lender to WSW, which allows WSW to direct any restructuring and/or settlement of a claim against WSW in the participant's insolvency, if there is more than one other lender. WSW thus acquires a position to make arrangements with the trustee in bankruptcy.

## **Annex 2: Explanatory notes on the improved standard loan documentation**

As stated earlier, we have incorporated the text of the addendum into the standard loan agreement with standard guarantee agreement. Added to that, for reasons of legibility, WSW has capitalised definitions throughout the agreement, made some clarifications and used more common and accessible terms.

### Amendments to the standard loan agreement

#### *Part II*

Clauses 2 to 7 in part II contain the aforementioned provisions of the addendum.

#### *Signature page*

One sentence has been added to the signature page. This sentence confirms that the participant is a party to the guarantee, due to the fact that WSW's right of recovery is a contractual, pre-existing conditional right of recourse.

### General provisions

For reasons of legibility, just as it has done in the standard loan agreement, WSW has capitalised definitions in the general provisions, made some clarifications and used more common and accessible terms.

No material amendments have been made to the general provisions. The full text of the general provisions is available on our [website](#).

### Euribor fallback provision

We have amended the Euribor fallback clause in the standard loan documentation. This clause ensures that the reference rate for floating rate loans can be adjusted. Currently, floating rate loans are based on a Euribor reference rate. This reference rate no longer meets the requirements of the new European benchmark regulation. However, the replacement interest rate has not yet been determined. The amended fallback provision ensures that the reference rate can be adjusted in a predictable and practicable manner.

The provision was closely coordinated with some of the sector's lenders as well as the treasurers of several participants.

### **Annex 3: Explanatory notes on the backstop agreements**

As of 1 August 2021, WSW will conclude new backstop agreements with the State and municipalities. These agreements apply to guaranteed loans that are taken out from 1 August 2021.

The substance of the new backstop agreements remains unchanged from the agreements that have been in place since 1999. Third-party clauses made on behalf of lenders remain an explicit part of these agreements. These third-party clauses assure lenders that there is a watertight backstop in place for the loan agreements they enter into with participants.

However, a number of other matters will change under the new backstop agreement. This agreement ensures (i) preventing a further imbalance in the municipalities' backstop position, (ii) improved agreement on repayment of interest-free loans to the State and municipalities, (iii) improved arrangements on refinancing possibilities, (iv) implementation of the developments of WSW's strategic program, (v) resolving the discrepancy that has arisen between the existing backstop agreements (dating from 1999) and current legislation and practice, e.g. in relation to the activities of social housing associations that are eligible for the WSW guarantee (the so called Services for General Economic Interest), and (vi) in general, modernized backstop agreements.

Issues addressed in the new backstop agreements which we will explain:

1. Services for General Economic Interest.
2. Definition of refinancing.
3. Issue and repayment of interest-free loans.

In addition, we had to update some definitions. They are now in line with current developments. The wording of the entire agreement has also been updated to reflect current language usage where necessary.

#### Content changes

##### **1. Services for General Economic Interest**

In 2007, WSW switched from project financing to balance sheet financing. This meant that there was no longer a link between a specific loan and real estate. The current municipal backstop agreement does, however, still make that link and at various points literally refers to the concept of 'housing units' in relation to the determination of the so called Services for General Economic Interest (activities of social housing associations that are eligible for the WSW guarantee). What participants may use guaranteed loans for follows from the Housing Act (s. 47(1) and (2)) and is also detailed and laid down in WSW's policy rules. The terms of the backstop agreements have been brought into line with those Services for General Economic Interest and their amended wording therefore corresponds to current practice.

##### **2. Refinancing**

The current definition of refinancing needs to be amended. The backstop requires a clear definition of the refinancing obligation and clarity on the finiteness of that obligation. It is, however, important for participants' continuity for them to receive sufficient certainty that obligations they have entered into can be financed in the long term. The following principles have been defined for the definition of refinancing:

- the refinancing obligation of backstop parties ends when they indicate that they no longer want to act as a backstop;
- participants have sufficient certainty that existing guaranteed loans will be refinanced;
- following the termination of the backstop agreement, there will be sufficient time for the parties concerned to make the transition to different financing.

### *3. Issue and repayment of interest-free loans*

The amendments to the agreements on the issue and repayment of interest-free loans are principally based on WSW's object in its articles: *"to promote the ability of approved organisations as defined in the Housing Act to borrow money at the lowest possible cost in order to be able to carry out their housing activities, while taking into account the financial interests of the participants, the State and municipalities"*.

Amendments to agreements are reviewed on the basis of the following principles:

- guaranteeing loans should be inexpensive and available;
- maintaining WSW's AAA rating;
- maintaining an attractive system for participants and lenders;
- the financial interests of the participants and backstop parties must be balanced.

Consequently, the repayment system for interest-free loans must be amended. WSW's minimum risk capacity, the percentage at which WSW starts to repay interest-free loans, will drop from 1% to 0.65% (as a percentage of the total guaranteed remaining debt).

#### Amendment agreement for the existing backstop agreements

All previously concluded backstop agreements remain effective. We will, however, make some amendments to the existing backstop agreements. In the coming period, WSW will prepare the amendment agreement. The amendment agreement will address the topics discussed earlier. Those amendment agreements will be signed after August 1<sup>st</sup> 2021, by WSW and individual municipalities.

As indicated in the main part of this memo, we will notify lenders individually and in writing of the intended amendments and give them the opportunity to review those amendments. Our objective is to submit this amendment agreement to all lenders for review before the end of the year.