

from the public entity or State as warranted by such information.

(2) The HUD Office shall review the application for compliance with requirements specified in this subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) HUD may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) HUD determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The likelihood that the public entity or State will continue to receive grant assistance under this part during the proposed repayment period;

(D) The public entity's ability to furnish adequate security pursuant to § 570.705(b), and

(E) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan.

(ii) The requested loan amount exceeds any of the limitations specified under § 570.705(a).

(iii) Funds are not available in the amount requested.

(iv) The performance of the public entity, its designated public agency or State under this part is unacceptable.

(v) Activities to be undertaken with the guaranteed loan funds are not eligible under § 570.703.

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in § 570.208 for compliance with one of the national objectives of the Act.

(4) HUD will notify the public entity in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the public entity shall be informed of the specific reasons for reduction or disapproval. If the

request is approved, HUD shall issue an offer of commitment to guarantee debt obligations of the borrower identified in the application subject to compliance with this part, including the requirements under § 570.705(b), (d), (g) and (h) for securing and issuing debt obligations, the conditions for release of funds described in paragraph (d) of this section, and such other conditions as HUD may specify in the commitment documents in a particular case.

(5) *Amendments.* If the public entity wishes to carry out an activity not previously described in its application or to substantially change the purpose, scope, location, or beneficiaries of an activity, the amendment must be approved by HUD. Amendments by State-assisted public entities must also be approved by the State. The public entity shall follow the citizen participation requirements for amendments in § 570.704(a)(2).

(d) *Environmental review.* The public entity shall comply with HUD environmental review procedures (24 CFR part 58) for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of public entities. All public entities, including nonentitlement public entities, shall submit the request for release of funds and related certification for each project to be assisted with guaranteed loan funds to the appropriate HUD Field Office.

(e) *Displacement, relocation, acquisition, and replacement of housing.* The public entity (or the designated public agency) shall comply with the displacement, relocation, acquisition, and replacement of low/moderate-income housing requirements in § 570.606 in connection with any activity financed in whole or in part with guaranteed loan funds.

[59 FR 66604, Dec. 27, 1994, as amended at 60 FR 1917, Jan. 5, 1995; 61 FR 11481, Mar. 20, 1996]

§ 570.705 Loan requirements.

(a) *Limitations on commitments.* (1) If loan guarantee commitments have been issued in any fiscal year in an aggregate amount equal to 50 percent of

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the amount approved in an appropriation act for that fiscal year, HUD may limit the amount of commitments any one public entity may receive during such fiscal year as follows (except that HUD will not decrease commitments already issued):

(i) The amount any one entitlement public entity may receive may be limited to \$35,000,000.

(ii) The amount any one nonentitlement public entity may receive may be limited to \$7,000,000.

(iii) The amount any one public entity may receive may be limited to such amount as is necessary to allow HUD to give priority to applications containing activities to be carried out in areas designated as empowerment zones/enterprise communities by the Federal Government or by any State.

(2) In addition to the limitations specified in paragraph (a)(1) of this section, the following limitations shall apply.

(i) *Entitlement public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to § 570.304 to the public entity.

(ii) *State-assisted public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity and all other State-assisted public entities in the State would thereby exceed an amount equal to five times the amount of the most recent grant received by such State under subpart I.

(iii) *Nonentitlement public entities eligible under subpart F of this part.* No commitment to guarantee shall be made with respect to a nonentitlement public entity in the State of Hawaii if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public

entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to § 570.429 to the public entity. No commitment to guarantee shall be made with respect to a nonentitlement public entity in the State of New York if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed the greater of five times:

(A) The most recent grant approved for the public entity pursuant to subpart F of this part.

(B) The average of the most recent three grants approved for the public entity pursuant to subpart F of this part, excluding any grant in the same fiscal year as the commitment, or

(C) The average amount of grants made under subpart F of this part to units of general local government in New York State in the previous fiscal year.

(b) *Security requirements.* To assure the repayment of debt obligations and the charges incurred under paragraph (g) of this section and as a condition for receiving loan guarantee assistance, the public entity (and State and designated public agency, as applicable) shall:

(1) Enter into a contract for loan guarantee assistance with HUD, in a form acceptable to HUD, including provisions for repayment of debt obligations guaranteed hereunder;

(2) Pledge all grants made or for which the public entity or State may become eligible under this part; and

(3) Furnish, at the discretion of HUD, such other security as may be deemed appropriate by HUD in making such guarantees. Other security shall be required for all loans with repayment periods of ten years or longer. Such other security shall be specified in the contract entered into pursuant to § 570.705(b)(1). Examples of other security HUD may require are:

(i) Program income as defined in § 570.500(a);

(ii) Liens on real and personal property;

(iii) Debt service reserves; and

(iv) Increments in local tax receipts generated by activities carried out with the guaranteed loan funds.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this part:

(1) Community Development Block Grants allocated pursuant to section 106 of the Act (including program income derived therefrom) may be used for:

(i) Paying principal and interest due (including such issuance, servicing, underwriting, or other costs as may be incurred under paragraph (g) of this section) on the debt obligations guaranteed under this subpart;

(ii) Defeating such debt obligations; and

(iii) Establishing debt service reserves as additional security pursuant to paragraph (b)(3) of this section.

(2) HUD may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the debt obligations, the payment of costs incurred under paragraph (g) of this section, or to the purchase or defeasance of such debt obligations, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Debt obligations guaranteed under this subpart shall be in the form and denominations prescribed by HUD. Such debt obligations may be issued and sold only under such terms and conditions as may be prescribed by HUD. HUD may prescribe the terms and conditions of debt obligations, or of their issuance and sale, by regulation or by contractual arrangements authorized by section 108(r)(4) of the Act and paragraph (h) of this section. Unless specifically provided otherwise in the contract for loan guarantee assistance required under paragraph (b) of this section, debt obligations shall not constitute general obligations of any public entity or State secured by its full faith and credit.

(e) *Taxable obligations.* Interest earned on debt obligations under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act.

(f) *Loan repayment period.* The term of debt obligations under this subpart shall not exceed twenty years.

(g) *Issuance, underwriting, servicing, and other costs.* Each public entity or its designated public agency issuing debt obligations under this subpart must pay the issuance, underwriting, servicing, trust administration and other costs associated with the private sector financing of the debt obligations. Such costs are payable out of the guaranteed loan funds and shall be secured under paragraph (b) of this section.

(h) *Contracting with respect to issuance and sale of debt obligations; effect of other laws.* No State or local law, and no Federal law, shall preclude or limit HUD's exercise of:

(1) The power to contract with respect to public offerings and other sales of debt obligations under this subpart upon such terms and conditions as HUD deems appropriate;

(2) The right to enforce any such contract by any means deemed appropriate by HUD;

(3) Any ownership rights of HUD, as applicable, in debt obligations under this subpart.

§ 570.706 Federal guarantee; subrogation.

Section 108(f) of the Act provides for the incontestability of guarantees by HUD under subpart M of this part in the hands of a holder of such guaranteed obligations. If HUD pays a claim under a guarantee made under section 108 of the Act, HUD shall be fully subrogated for all the rights of the holder of the guaranteed debt obligation with respect to such obligation.

[61 FR 11481, Mar. 20, 1996]

§ 570.707 Applicability of rules and regulations.

(a) *Entitlement public entities.* The provisions of subparts A, C, J, K and O of this part applicable to entitlement grants shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(b) *State-assisted public entities.* The provisions of subpart I of this part, and the requirements the State imposes on units of general local government receiving Community Development Block Grants or program income to the