

address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. The promulgation of this final rule may impact a small percentage of small retail food stores and the SNAP customers who usually shop at those stores, however the mitigation strategies outlined in the CRIA provide consideration to SNAP recipients' ability to access and purchase an adequate variety of food items at other SNAP-authorized retail food stores in an area when making administrative decisions. Further, FNS will monitor incoming complaints from retailers and SNAP recipients to determine any civil rights impact on protected groups due to the final rule.

#### Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FNS holds regularly scheduled consultations with Tribal Organizations to discuss regulations. On August 15, 2018, February 14, 2019, and October 24, 2019, FNS consulted with Tribal communities regarding the rule. These sessions provided Tribal communities the opportunity to address any concerns related to the rule. Tribal communities identified no issues regarding the rule. FNS is unaware of any current Tribal laws that could conflict with the final rule.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

#### E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and

other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### List of Subjects

##### 7 CFR Part 278

Participation of Retail Food Stores, Wholesale Food Concerns and Insured Financial Institutions.

##### 7 CFR Part 279

Administrative and Judicial Review—Food Retailers and Food Wholesalers.

Accordingly, 7 CFR parts 278 and 279 are amended as follows:

#### PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

- 1. The authority citation for part 278 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

- 2. In § 278.6, add paragraph (p) to read as follows:

##### § 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(p) *Freedom of Information Act (FOIA) requests and appeals.* A FOIA request or appeal for records shall not delay or prohibit FNS from making a determination regarding disqualification or penalty against a firm under paragraphs (c) and (d) of this section, or delay the effective date of a disqualification or penalty listed in paragraph (e) of this section.

#### PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

- 3. The authority citation for part 279 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

- 4. In § 279.4, amend paragraph (c) by:
  - a. Adding a new second sentence; and
  - b. Removing the words “However, no” in the last sentence and adding in its place the word “No”.

The addition reads as follows:

##### § 279.4 Action upon receipt of a request for review.

(c) \* \* \* Additionally, FNS may not grant extensions of time or hold the administrative review process in abeyance solely on the basis of a pending FOIA request or appeal. \* \* \*

- 5. In § 279.6, amend paragraph (b) by:

- a. Adding a new second sentence; and
- b. Removing the words “However, no” in the last sentence and adding in its place the word “No”.

The addition reads as follows:

##### § 279.6 Legal advice and extensions of time.

\* \* \* \* \*

(b) \* \* \* Additionally, the designated reviewer may not grant extensions of time or hold the administrative review process in abeyance solely on the basis of a pending FOIA request or appeal.

\* \* \*

**Stephen L. Censky,**

*Deputy Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 2020–18701 Filed 8–25–20; 8:45 am]

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#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

##### 24 CFR Part 570

[Docket No. FR–6208–N–01]

#### Section 108 Loan Guarantee Program: Announcement of Fee To Cover Credit Subsidy Costs for FY 2021

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Announcement of fee.

**SUMMARY:** This document announces the fee that HUD will collect from borrowers of loans guaranteed under HUD's Section 108 Loan Guarantee Program (Section 108 Program) to offset the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in Fiscal Year 2021.

**DATES:** *Applicability date:* October 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410; telephone number 202–402–4563 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. FAX inquiries (but not comments) may be sent to Mr. Webster at 202–708–1798 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015 (division K of Pub. L. 113–235, approved December 16, 2014) (2015 Appropriations Act) provided that “the Secretary shall collect fees from borrowers . . . to result in a credit subsidy cost of zero for guaranteeing” Section 108 loans. Identical language was continued or included in the Department’s continuing resolutions and appropriations acts authorizing HUD to issue Section 108 loan guarantees during Fiscal Years (FYs) 2016, 2017, 2018, 2019, and 2020. The Fiscal Year (FY) 2021 HUD appropriations bill under consideration<sup>1</sup> also has identical language regarding the fees and credit subsidy cost for the Section 108 Program.

On November 3, 2015, HUD published a final rule (80 FR 67626) that amended the Section 108 Program regulations at 24 CFR part 570 to establish additional procedures, including procedures for announcing the amount of the fee each fiscal year when HUD is required to offset the credit subsidy costs to the Federal Government to guarantee Section 108 loans. For FYs 2016, 2017, 2018, 2019, and 2020 HUD published notifications to set the fees.<sup>2</sup>

## II. FY 2021 Fee: 2.15 Percent of the Principal Amount of the Loan

This document sets the fee for Section 108 loan disbursements under loan guarantee commitments awarded for FY 2021 at 2.15 percent of the principal amount of the loan. HUD will collect this fee from borrowers of loans guaranteed under the Section 108 Program to offset the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in FY 2021. For this fee announcement, HUD is not changing the underlying assumptions or creating new considerations for borrowers. The calculation of the FY 2021 fee uses a similar calculation model as the FY 2016, FY 2017, FY 2018, FY 2019, and FY 2020 fee notifications, but incorporates updated information regarding the composition of the Section 108 portfolio and the timing of the estimated future cash flows for defaults and recoveries. The calculation of the fee is also affected by

the discount rates required to be used by HUD when calculating the present value of the future cash flows as part of the Federal budget process.

As described in 24 CFR 570.712(b), HUD’s credit subsidy calculation is based on the amount required to reduce the credit subsidy cost to the Federal Government associated with making a Section 108 loan guarantee to the amount established by applicable appropriation acts. As a result, HUD’s credit subsidy cost calculations incorporated assumptions based on: (1) Data on default frequency for municipal debt where such debt is comparable to loans in the Section 108 loan portfolio; (2) data on recovery rates on collateral security for comparable municipal debt; (3) the expected composition of the Section 108 portfolio by end users of the guaranteed loan funds (e.g., third-party borrowers and public entities); and (4) other factors that HUD determined were relevant to this calculation (e.g., assumptions as to loan disbursement and repayment patterns).

Taking these factors into consideration, HUD determined that the fee for disbursements made under loan guarantee commitments awarded in FY 2021 will be 2.15 percent, which will be applied only at the time of loan disbursements. Note that future notifications may provide for a combination of upfront and periodic fees for loan guarantee commitments awarded in future fiscal years but, if so, will provide the public an opportunity to comment if appropriate under 24 CFR 570.712(b)(2).

The expected cost of a Section 108 loan guarantee is difficult to estimate using historical program data because there have been no defaults in the history of the program that required HUD to invoke its full faith and credit guarantee or use the credit subsidy reserved each year for future losses.<sup>3</sup> This is due to a variety of factors, including the availability of Community Development Block Grant (CDBG) funds as security for HUD’s guarantee as provided in 24 CFR 570.705(b). As authorized by Section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308), borrowers may make payments on Section 108 loans using CDBG grant funds. Borrowers may also make Section 108 loan payments from other anticipated sources but continue to have CDBG funds available should they

encounter shortfalls in the anticipated repayment source. Despite the program’s history of no defaults, Federal credit budgeting principles require that the availability of CDBG funds to repay the guaranteed loans cannot be assumed in the development of the credit subsidy cost estimate (see 80 FR 67629, November 3, 2015). Thus, the estimate must incorporate the risk that alternative sources are used to repay the guaranteed loan in lieu of CDBG funds, and that those sources may be insufficient. Based on the rate that CDBG funds are used annually for repayment of loan guarantees, HUD’s calculation of the credit subsidy cost must acknowledge the possibility of future defaults if those CDBG funds were not available. The fee of 2.15 percent of the principal amount of the loan will offset the expected cost to the Federal Government due to default, financing costs, and other relevant factors. To arrive at this measure, HUD analyzed data on comparable municipal debt over an extended period. The estimated rate is based on the default and recovery rates for general purpose municipal debt and industrial development bonds. The cumulative default rates on industrial development bonds were higher than the default rates on general purpose municipal debt during the period from which the data were taken. These two subsectors of municipal debt were chosen because their purposes and loan terms most closely resemble those of Section 108 guaranteed loans.

In this regard, Section 108 guaranteed loans can be broken down into two categories: (1) Loans that finance public infrastructure and activities to support subsidized housing (other than financing new construction) and (2) other development projects (e.g., retail, commercial, industrial). The 2.15 percent fee was derived by weighting the default and recovery data for general purpose municipal debt and the data for industrial development bonds according to the expected composition of the Section 108 portfolio by corresponding project type. Based on the dollar amount of Section 108 loan guarantee commitments awarded from FY 2015 through FY 2019, HUD expects that 44 percent of the Section 108 portfolio will be similar to general purpose municipal debt and 56 percent of the portfolio will be similar to industrial development bonds. In setting the fee at 2.15 percent of the principal amount of the guaranteed loan, HUD expects that the amount generated will fully offset the cost to the Federal Government associated with making guarantee

<sup>1</sup> Title II of H.R. 7616, 116th Cong., under the heading “Community Development Loan Guarantees Program Account.”

<sup>2</sup> 80 FR 67634 (November 3, 2015), 81 FR 68297 (October 4, 2016), 82 FR 44518 (September 25, 2017), 83 FR 50257 (October 5, 2018), and 84 FR 35299 (July 23, 2019) respectively.

<sup>3</sup> U.S. Department of Housing and Urban Development, *Study of HUD’s Section 108 Loan Guarantee Program*, (prepared by Econometrica, Inc. and The Urban Institute), September 2012, at pages 73–74. This fact has not changed since the issuance of this report.

commitments awarded in FY 2021. Note that the FY 2021 fee represents a 0.15 percent increase from the FY 2020 fee of 2.00 percent.

This document establishes a rate that does not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: August 18, 2020.

**John Gibbs,**

*Acting Assistant Secretary for Community Planning and Development.*

[FR Doc. 2020–18392 Filed 8–25–20; 8:45 am]

**BILLING CODE P**

## **PENSION BENEFIT GUARANTY CORPORATION**

### **29 CFR Part 4908**

**RIN 1212–AB49**

#### **Procedures for PBGC Guidance Documents**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the Pension Benefit Guaranty Corporation's (PBGC) procedures for issuing PBGC guidance documents as required by an Executive order entitled "Promoting the Rule of Law Through Improved Agency Guidance Documents."

**DATES:** *Effective date:* This final rule is effective on August 26, 2020.

**FOR FURTHER INFORMATION CONTACT:** Hilary Duke ([duke.hilary@pbgc.gov](mailto:duke.hilary@pbgc.gov)), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005–4026, 202–229–3839; or Karen B. Levin ([levin.karen@pbgc.gov](mailto:levin.karen@pbgc.gov)), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202–229–3559. TTY users may call the Federal Relay service toll-free at 800–877–8339 and ask to be connected to 202–229–3559.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

##### *Purpose and Authority*

This final rule adds to the Code of Federal Regulations a new 29 CFR part 4908, which implements the requirements of Executive Order (E.O.)

13891, "Promoting the Rule of Law Through Improved Agency Guidance Documents."<sup>1</sup> E.O. 13891 requires agencies to set forth processes and procedures for issuing guidance documents.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and from E.O. 13891.

##### *Major Provisions*

The final rule provides the following procedures:

- Guidance documents will include specified information, including a statement that a guidance document does not bind the public, and will be posted at [www.pbgc.gov/guidance](http://www.pbgc.gov/guidance).
- Significant guidance documents will have a 30-day public notice and comment period, be reviewed by the Office of Management and Budget (OMB), and meet other requirements.
- Members of the public may request withdrawal or modification of a guidance document.

##### *Background*

On October 9, 2019, the President issued Executive Order (E.O.) 13891, "Promoting the Rule of Law Through Improved Agency Guidance Documents." Central principles of E.O. 13891 are that the American public should only be subject to binding rules imposed through duly enacted statutes or through regulations that are lawfully promulgated, and that Americans should have fair notice of any such obligations. Section 4 of the order directs that, "[w]ithin 300 days of the date on which [the Office of Management and Budget] issues an implementing memorandum under section 6 of this order, each agency shall, consistent with applicable law, finalize regulations, or amend existing regulations as necessary, to set forth processes and procedures for issuing guidance documents." On October 31, 2019, OMB issued OMB Memorandum M–20–02,<sup>2</sup> which provides agencies with instructions for complying with the requirements of E.O. 13891 ("OMB Memo M–20–02").

In accordance with OMB's direction, PBGC is amending title 29, chapter 40, subchapter L of the Code of Federal

Regulations by adding a new part 4908, "Procedures for PBGC Guidance Documents." These new regulations codify the requirements set forth in section 4 of E.O. 13891.

##### *Compliance With Rulemaking Guidelines*

This is a rule of "agency organization, procedure or practice" and is limited to "agency organization, management, or personnel matters." The final rule provides PBGC's procedures for issuing guidance documents. Accordingly, this rule is exempt from notice and public comment requirements under 5 U.S.C. 553(b) and the requirements of Executive Order 12866 and Executive Order 13771.<sup>3</sup> Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, 605.

PBGC finds good cause exists for making the additions set forth in this final rule effective less than 30 days after publication because the additions support PBGC's procedures for issuing guidance documents in compliance with the deadlines in E.O. 13891 and OMB Memo M–20–02.

##### **List of Subjects in 29 CFR Part 4908**

Administrative practice and procedure, Employee benefit plans, Organization and functions (Government agencies), Pension insurance.

For the reasons given above, PBGC amends title 29, chapter 40, subchapter L of the Code of Federal Regulations by adding part 4908 to read as follows:

#### **PART 4908—PROCEDURES FOR PBGC GUIDANCE DOCUMENTS**

##### *Sec.*

- 4908.1 Purpose and scope.
- 4908.2 Definitions.
- 4908.3 Procedures for issuing guidance documents.
- 4908.4 Procedures for issuing significant guidance documents.
- 4908.5 Public access to guidance documents.
- 4908.6 Procedures for requests from the public to withdraw or modify a guidance document.

**Authority:** 29 U.S.C. 1302(b)(3), E.O. 13891, 84 FR 55235, 3 CFR, 2019 Comp., p. 371.

##### **§ 4908.1 Purpose and scope.**

This part provides general procedures that apply to PBGC guidance documents.

<sup>3</sup> See section 3(d)(3) of Executive Order 12866 and section 4(b) of Executive Order 13771.

<sup>1</sup> 84 FR 55235 (October 9, 2019).

<sup>2</sup> M–20–02, Guidance Implementing Executive Order 13891, Titled "Promoting the Rule of Law Through Improved Agency Guidance Documents" (October 31, 2019) available at <https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf>.