

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 570**

[Docket No. 5326-I-01]

Section 108 Community Development Loan Guarantee Program: Participation of States as Borrowers Pursuant to Section 222 of the Omnibus Appropriations Act, 2009

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

ACTION: Interim rule.

SUMMARY: This interim rule implements section 222 in Division I of the Omnibus Appropriations Act, 2009, Public Law 111-8 (2009 Appropriations Act). Section 222 authorizes HUD, to the extent of Fiscal Year (FY) 2009 loan guarantee authority, to provide community development loan guarantees, under section 108 of the Housing and Community Development Act of 1974 (HCD Act), to states borrowing on behalf of local governments in nonentitlement areas (governments that do not receive annual Community Development Block Grants (CDBG) from HUD). Section 108 authorizes HUD to guarantee notes issued by such nonentitlement local governments or their designated public agencies supported by the respective state's pledge of its CDBG funds. Prior to the enactment of section 222, HUD lacked authority to guarantee notes issued by states on their behalf. State officials interested in applying for a loan guarantee commitment pursuant to this new authority should take note that HUD's authority to issue such commitments will expire on September 30, 2010 (and could be fully utilized by other borrowers before that date), unless the provision continues to be included in future appropriations acts. The interim rule, however, contains language that will make the provisions implementing this new authority continue to apply, in the event that provisions equivalent to section 222 are included in future appropriations acts. Because the provisions of section 222 expand, rather than replace, existing Section 108 authority, HUD will also continue to accept nonentitlement local government issuers' state-supported applications for loan guarantee commitments.

DATES: Effective Date: August 21, 2009.

Comment Due Date: September 21, 2009.

ADDRESSES: Interested persons are invited to submit comments to be

considered in formulating the final rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0001.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of

Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7186, Washington, DC 20410; telephone number 202-708-1871 (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 Information Relay Service at 800-877-8339. FAX inquiries (but not comments on this interim rule) may be sent to Mr. Webster at 202-708-1798 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:**I. Background**

The Section 108 Community Development Loan Guarantee program provides local governments with access to long-term (up to 20-year) fixed-rate loans at relatively low interest rates to finance certain categories of eligible CDBG projects. Under section 108(a) of the HCD Act (section 108(a)), HUD enters into commitments to guarantee, and subsequently guarantees, promissory notes issued by units of general local government (or their designated public agencies). Under section 108(r) of the HCD Act, HUD, acting on behalf of these borrowers, arranges for the issuance of a series of trust certificates based on a large pool of such notes and engages underwriters (investment banking firms) to market and sell interests in the trust certificates to investors in a periodic, generally annual, public offering.

HUD guarantees the timely payment of the principal of and interest on the trust certificates and, under the provisions of section 108, the full faith and credit of the United States is pledged to honor the guarantee. Because of the federal guarantee, interest payable on the trust certificates and the underlying notes can be set at relatively low fixed rates; investors are willing to purchase interests in the certificates at such interest rates because of the security provided by the guarantee. Proceeds of the sale, minus certain underwriting and trust administration fees and costs, are advanced to the local government borrowers, who pay interest on a given year's principal installment at the fixed interest rate borne by the trust certificate of corresponding maturity.

To accommodate local government borrowers that need financing for projects in the months between the periodic public offering of fixed-rate trust certificates, HUD also guarantees promissory notes under section 108(a) that initially bear interest at rates that adjust monthly in relation to a reference short-term interest rate. Such local

governments then typically opt to have their notes pooled with other issuers' notes in the next public offering of fixed-rate trust certificates, at which time, under the terms of the notes, the interest rates on principal installments of particular maturities convert to the fixed rates borne by the trust certificates of corresponding maturities.

Contemporaneous with HUD's guarantee, local government borrowers enter into contracts with HUD in which they agree to use funds for eligible activities, to make the payments required under their notes, and to reimburse HUD for any payments made on their behalf. These obligations are secured by pledges of annual CDBG allocations—the local government's own allocation in the case of CDBG entitlement communities and, in the case of local governments in nonentitlement areas, the state's allocation. HUD is also authorized to require (and as a matter of policy does require) other security, such as interests in real property and pledges of local revenues, in addition to pledged CDBG funds. While HUD's guarantees to investors are backed by the full faith and credit of the United States, the local government borrower's obligations to HUD are payable only from pledged CDBG funds and any additional security furnished, and are not general obligations of the borrower secured by its full faith and credit (except to the extent that the borrower chooses to furnish such a pledge as additional security).

Historically, section 108(a) guarantee authority has been limited to the guarantee of notes or other obligations issued by eligible public entities, defined in section 108(o) of the HCD Act as "any unit of general local government, including units of general local government in nonentitlement areas," or by public agencies designated by such eligible public entities. States have participated in the program by supporting nonentitlement local governments' applications to HUD for loan guarantee assistance and by pledging the State's CDBG allocations to secure the local government issuers' obligations. However, states have not been able to participate in the program as issuers (borrowers). This stands in contrast with the states' CDBG program under section 106 of the HCD Act (subpart I of part 570), under which HUD makes annual formula grants to the states, which in turn distribute funds to local governments in nonentitlement areas to carry out eligible activities.

II. The 2009 Appropriations Act and Section 222

Pursuant to section 108 of the HCD Act and the Federal Credit Reform Act of 1990, as amended, in order to authorize HUD to make commitments to guarantee, and guarantee pursuant to those commitments, subject to the loan limitation for section 108 during a given period of time, Congress appropriates funds, which are referred to as "credit subsidy," to HUD for section 108 loan guarantees in an amount sufficient to cover the estimated long-term cost to the federal government, excluding administrative costs.

The 2009 Appropriations Act appropriates credit subsidy funds of \$6 million to HUD for the section 108 loan guarantee program. These funds are available for obligation for loan guarantee commitments until September 30, 2010, subject to a loan limitation of \$275 million (or such lower amount as may be required by the section 108 credit subsidy rate). If the entire FY 2009 section 108 credit subsidy appropriation is obligated in FY 2009, the principal amount of commitments issued cannot exceed \$265,487,000.

One of the administrative provisions of the 2009 Appropriations Act, section 222(a), provides that these credit subsidy funds "may be used to guarantee, or make commitments to guarantee, notes, or other obligations issued by any state on behalf of non entitlement communities in the state in accordance with the requirements of section 108 of the Housing and Community Development Act of 1974: *Provided*, That, any State receiving such a guarantee or commitment shall distribute all funds subject to such guarantee to the units of general local government in nonentitlement areas that received the commitment."

III. This Interim Rule

HUD interprets section 222, in conjunction with section 108(a), as authorizing HUD to make a commitment to guarantee, and to subsequently guarantee, a note or other obligation issued by a state to the same extent (subject to the special provisions of section 222, discussed below) as a note or other obligation issued by an eligible public entity, if the commitment and guarantee are made pursuant to the loan guarantee authority provided in the 2009 Appropriations Act.

Certain provisions in section 108 of the HCD Act refer to guarantees made, or obligations guaranteed or eligible for guarantee, "under" or "pursuant to" section 108. HUD also interprets these statutory provisions, when read in

conjunction with section 222, as extending to guarantees that are made, and obligations that are guaranteed or eligible for guarantee, pursuant to the additional authority provided in section 222. These include, but are not limited to, the following key statutory provisions:

1. Section 108(f), which provides that the full faith and credit of the United States is pledged to the payment of "all guarantees made under this section" and provides, "Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations."

2. Section 108(r), which (as more particularly described in this preamble) authorizes HUD to guarantee the principal of and interest on trust certificates based on and backed by a trust or pool composed of "notes or other obligations guaranteed or eligible for guarantee * * * under this section."

This interim rule makes certain necessary revisions to HUD's section 108 regulations in 24 CFR part 570, subpart M, to: (1) Reflect HUD's interpretations of section 222 and section 108; (2) to implement several other statutory provisions that by their terms apply to guarantees "under" or "pursuant to" section 108; and (3) extend, generally, to the guarantees authorized by section 222 all of the statutory requirements of section 108, as required by section 222. One of the principal revisions to the regulations in 24 CFR part 570, subpart M, is to the definition of "debt obligation."

Existing § 570.702 defines the term "debt obligation" to mean: (1) A promissory note or other obligation issued by an eligible public entity (local government) or its designated public agency and guaranteed by HUD under subpart M, or (2) a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of subpart M by HUD, which is guaranteed by HUD under subpart M and is based on and backed by a trust or pool composed of notes or other obligations issued by public entities or their designated public agencies and guaranteed or eligible for guarantee by HUD under subpart M. Existing subpart M does not restate the note guarantee authority and trust certificate guarantee authority provided in section 108(a) and section 108(r); therefore, there is no specific provision of the current regulation that limits the scope of HUD's statutory guarantee authority to "debt obligations" as so defined.

However, there are other statutory provisions that are restated in the regulations, using the defined term “debt obligation.” So that these provisions do not exclude the guarantees authorized by section 222, the interim rule amends the definition of the term “debt obligation.”

Specifically, the interim rule amends the definition of “debt obligation” to make clear that, in addition to the obligations that the term currently covers, debt obligation also encompasses a promissory note or other obligation issued by a state and guaranteed by HUD under subpart M. Additionally, “debt obligation” encompasses a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of subpart M by HUD, and which is guaranteed by HUD under subpart M and based on and backed by a trust or pool composed of notes or other obligations issued by states and guaranteed or eligible for guarantee by HUD under subpart M (either alone, or in combination with notes or other obligations issued by eligible public entities or their designated public agencies and guaranteed or eligible for guarantee by HUD under subpart M).

In addition to this revision of the definition of “debt obligation,” the interim rule adds a reference to “state” to several provisions of subpart M in which reference is currently made only to “public entity” (local government), where this is necessary to ensure that statutorily based provisions of the regulations cover the guarantees authorized by section 222. (See revisions to §§ 570.704, 570.705, 570.709, and 570.711.)

IV. Specific Provisions of This Interim Rule

This section highlights some of the more noteworthy provisions of the interim rule. As described in section V of this preamble, HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment. The Department, however, recognizes the value and importance of public input in the rulemaking process and is providing a 60-day public comment period. HUD welcomes comment on all aspects of the interim rule, but specifically solicits views on whether the regulatory changes will likely increase the participation by states in the section 108 program, given their new authority to participate in the program as issuers of obligations. All comments received on the interim rule will be considered in the development of the final rule.

Eligible Issuers

HUD interprets “state” in Section 222 to mean any state, as defined in the HCD Act that has elected to administer the CDBG program for its nonentitlement areas. The definition includes all of the states, or any instrumentality of a state approved by its Governor, except for the state of Hawaii. The state of Hawaii is excluded from the definition because it has elected not to receive an annual grant from HUD to administer a CDBG program for its nonentitlement areas, and, therefore, is unable to make the pledge of CDBG funds required under section 108. (The units of general local government in Hawaii’s nonentitlement areas, which currently are Hawaii, Kauai, and Maui counties, receive annual CDBG grants directly from HUD and are eligible to apply for section 108 loan guarantee assistance on their own behalf.) The definition also includes the Commonwealth of Puerto Rico. (See existing § 570.3 and the language in new § 570.711(a) limiting eligible applicants to states that administer the CDBG program.)

Distribution to Local Governments

Section 222 provides authority to guarantee and make commitments to guarantee notes or other obligations issued by a state “on behalf of non-entitlement communities in the State,” and it requires that “any State receiving such a guarantee or commitment shall distribute all funds subject to such guarantee to the units of general local government in nonentitlement areas that received the commitment.” HUD is implementing these provisions of section 222 by means of two interrelated requirements that are added to the section 108 regulations in a new § 570.711.

First, a state applying for a loan guarantee commitment will be required to identify, in its application, the local governments that will be eligible to be assisted by the state with proceeds of loans guaranteed pursuant to the commitment. Should HUD approve the application and issue a commitment to the state, the local governments so identified will be deemed to be the local governments that “received the commitment” (and obligations guaranteed pursuant to the commitment will be deemed to be issued “on behalf of” those local governments) for purposes of section 222. States may elect to identify these local governments in either one of two ways: by naming one or more specific nonentitlement local governments eligible to be assisted (which may be desired when a state is applying for a loan guarantee to fund a

particular, known local project or projects) or by indicating that all or a specified subset of the nonentitlement public entities in the state are eligible to be assisted and describing how applications will be selected for assistance. (See § 570.711(a)(1).)

Second, the state will be permitted to use guaranteed loan funds only to make grants and loans to the local governments identified in its application for activities eligible under § 570.703 of the existing section 108 regulations. Proceeds may be used directly by the state for payment of interest on the guaranteed obligation as described in § 570.703(c); for payment of issuance, underwriting, servicing, trust administration, and other costs as described in § 570.703(g); and for debt service reserves as described in § 570.703(k), because these uses are for the purpose of financing the local governments’ activities. (See § 570.711(b).) These limitations on permissible uses of funds will be incorporated as a condition of the state’s loan guarantee commitment pursuant to § 570.704(c)(4) of the existing regulations, and as a term of the loan guarantee assistance contract entered into pursuant to § 570.705(b).

Application Process

As noted above, the interim rule requires a state to identify the local governments eligible to be assisted through its loan guarantee application, either by naming particular eligible local governments or by indicating that all or a specified subset of the state’s nonentitlement local governments are eligible and describing the state’s application selection process. The interim rule requires states to make this required identification of eligible local governments by the exclusive means of including this information as a part of the CDBG method of distribution described in the action plan submitted by the state pursuant to 24 CFR part 91. In its action plan, the state will also be required to note the approximate amount of outstanding section 108 guaranteed obligations issued by the state and by its nonentitlement local governments, to identify the maximum amount of guaranteed loan funds for which the state will apply during the period covered by the action plan, and to describe the required pledge of the state’s CDBG funds. If the state’s CDBG action plan, as most recently submitted or amended when the state initially applies for a commitment, does not include this information, the state will be required to amend its action plan in accordance with 24 CFR part 91 to include such information prior to

applying for the commitment. (See § 570.711(a)(1).)

Other required elements of the State's application submission will not be required to be included in the state's CDBG action plan; namely, a proposed schedule for repayment of the loan that identifies the sources of repayment and a description of the activities to be funded and how such activities are eligible and meet national objective criteria. The rule gives states the option of either including a detailed description of activities for HUD review and approval at the time of its application for a commitment (which may be desired when a state is applying for a loan guarantee to fund a particular, known local project or projects), or instead submitting a description of the type or types of local government projects for which awards of grants or loans will be made, indicating how these types of projects will be eligible and how they are intended to meet national objective criteria. In the latter case, the state will be required to obtain HUD review and approval of a detailed activity-description before disbursing guaranteed loan funds to a local government for the proposed activity. This will accommodate states that may wish to apply for and receive a loan guarantee commitment (and, if desired and if permitted by HUD, receive a guarantee and escrow guaranteed loan funds) prior to selecting particular local governments' projects for assistance, while enabling the Department to carry out its responsibility to ensure that activities funded under section 108 are eligible and meet national objective criteria. (See § 570.711(a)(2)–(3).)

Consistent with part 58 environmental review procedures applicable to State-assisted units of general local government under the current regulations, units of general local government will be required to submit requests for release of funds and related certifications to the appropriate HUD Field Office (rather than to the state), as described in § 570.704(d) of the existing regulations. (See § 570.711(e).) HUD recognizes that some states may wish to require that units of general local government submit such requests and certifications to the state for initial review prior to submission to the appropriate HUD Field Office. The regulations in 24 CFR part 58 and 24 CFR part 570 do not prohibit states from imposing such a requirement.

Apart from these provisions regarding HUD review of activity eligibility and national objective and environmental review procedures, local governments to be assisted by a state will be subject to the requirements of the state CDBG

program (see 24 CFR subpart I), including the citizen participation requirements in § 570.486(a) for local governments' applications to the state for assistance, and the requirements in § 570.606 related to displacement, relocation, acquisition, and replacement of low- and moderate-income housing. (See §§ 570.707(b), 570.710, and 570.711(d) and (e).)

Certification With Respect to Other Financing Efforts and Need for Guarantee

Section 108(a) provides, in relevant part, that "A guarantee under this section [Section 108] may be used to assist a grantee in obtaining financing only if the grantee has made efforts to obtain such financing without the use of such guarantee and cannot complete such financing consistent with the timely execution of the program plans without such guarantee." Consistent with this provision, HUD currently assures that this requirement is satisfied by requiring each local government to submit an appropriate certification when it applies for a commitment of loan guarantee assistance, as provided in § 570.704(b)(4) of the existing regulations. Because the intent of this provision of section 108 is to assure that assistance is genuinely needed in order to be able to carry out the eligible activity, and because the local government that is planning the eligible activity is in the best position to seek other financing for the activity and assess whether such financing can timely be obtained, for section 222 guarantees HUD is interpreting "grantee" in this provision to mean the assisted local government, not the state issuer. This interpretation is consistent with current practice: nonentitlement local governments will only be required to make the same certification that they are currently required to make when they apply to HUD for loan guarantee assistance. This interim rule does not introduce an additional certification by the state. Because states will have the option of issuing guaranteed obligations and escrowing proceeds before local governments and projects are selected for assistance, the interim rule gives states the option of obtaining the required certification from each assisted local government after HUD's guarantee, but before approving the local government's application for assistance. (See § 570.711(c).)

70/30 Allocation Provisions

Section 108(a) also provides, in relevant part, "Of the amount approved in any appropriation Act for guarantees under this section [Section 108] in any

fiscal year, the Secretary shall allocate 70 percent for guarantees for metropolitan cities, [and] urban counties * * * and 30 percent for guarantees for units of general local government in nonentitlement areas. The Secretary may waive the percentage requirements of the preceding sentence in any fiscal year only to the extent that there is an absence of qualified applicants or proposed activities from metropolitan cities, [and] urban counties * * * or units of general local government in nonentitlement areas." It is HUD's view that states' applications for guarantees and guarantees made pursuant to section 222, because they finance activities carried out by the States' nonentitlement communities, constitute applications "from," and guarantees "for," "units of general local government in nonentitlement areas" within the meaning of these provisions. Accordingly, states applying for loan guarantees on behalf of their nonentitlement communities will share the 30 percent allocation (to the extent it is not waived in a given year) with nonentitlement communities applying directly to HUD for loan guarantee assistance. (See revisions to § 570.709.)

Continuation of Authority in Future Legislation

The interim rule contains language that would continue the applicability of the requirements and procedures described above in the event that provisions equivalent to section 222 are included in future appropriations acts. (See the introductory sentence of § 570.711.)

V. Justification for Interim Rulemaking

HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest." The Department finds that a delay in the effectiveness of this interim rule, in order to solicit prior public comment, would be contrary to the public interest and statutory direction.

Section 222 of the 2009 Appropriations Act directed HUD to promulgate regulations implementing the administration of funds, as specified in section 222 within 60 days of enactment of that 2009 Appropriations Act (May 11, 2009). Accordingly, it was

the intent and direction of Congress that the section 108 guarantees or commitments authorized by the 2009 Appropriations Act be promptly made available to states. Although HUD was unable to meet the statutory deadline, it has strived to issue the regulations as close as possible to May 11, 2009. To delay the effectiveness of this rule would delay the benefits that Congress sought be immediately available to states, and consequently to the public they serve.

The interim rule does not make significant changes to the section 108 program regulations. The interim rule primarily makes technical changes to the regulations to implement the authority, provided to HUD by section 222 of the 2009 Appropriations Act, to guarantee obligations issued by states on behalf of their nonentitlement communities. To the greatest extent possible, the interim rule maintains the long-standing requirements for section 108 loan guarantees, which are familiar to states and localities.

Given the limited scope, and technical nature, of the interim regulatory amendments, a delay for the prior solicitation of comments might unnecessarily delay the benefits of the new financing mechanism authorized by the 2009 Appropriations Act. HUD also notes that its authority to make loan guarantee commitments to states will expire on September 30, 2010, and it is therefore important to implement this new financing expeditiously, as directed by Congress in an effort to assure that FY 2009 section 108 loan guarantee authority will be fully committed before HUD's authority expires on September 30, 2010.

Although HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment, the Department recognizes the value and importance of public input in the rulemaking process. Accordingly, HUD is issuing these regulatory amendments on an interim basis and providing for a 60-day public comment period. All comments will be considered in the development of the final rule.

VI. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned control numbers 2506–0161, 2506–0117, and 2506–0085. In accordance with the Paperwork

Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory

flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would implement new statutory authority to provide an additional, alternative route for states and their nonentitlement local governments to obtain financing for eligible community development projects. Specifically, the interim rule authorizes HUD to provide community development loan guarantees to states borrowing on behalf of local governments in nonentitlement areas. Therefore, the primary focus of the interim regulatory amendments is on the states, which are relatively large jurisdictions. Further, and as detailed in the preamble above, the interim rule, to the greatest extent possible, tracks the language of the authorizing statute. Accordingly, the interim regulatory text reflects statutorily mandated requirements that HUD does not have the discretion to modify. Where HUD has been granted the discretion to elaborate on the statutory requirements, it has built upon the existing requirements for section 108 loan guarantees, which are familiar to States and localities. Moreover, these amendments are technical, and procedural, relating to the distribution of funds to local governments and the procedures to be followed by states in applying for the loan guarantees authorized by the provision. Therefore, it is HUD's determination that these revisions impose no significant economic impact on a substantial number of small entities. The undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number for the state CDBG program is 14.228, and the CDFA program number for the section 108 loan guarantee program is 14.248.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community Development Block Grants, Grant programs—education, Grant programs—housing and community

development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

- Accordingly, for the reasons described in the preamble, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

- 1. The authority citation for 24 part 570 continues to read as follows:

Authority: 42 U.S.C. 5300–5320.

- 2. In § 570.481, revise paragraph (a)(2) to read as follows:

§ 570.481 Definitions.

(a) * * *

(2) *CDBG funds* means Community Development Block Grant funds, in the form of grants under this subpart and program income, and loans guaranteed under section 108 of the Act.

- 3. In § 570.701, revise the definitions of “borrower”, “debt obligation”, “guaranteed loan funds”, and “state-assisted public entity” to read as follows:

§ 570.701 Definitions.

Borrower means the public entity or its designated public agency or the State that issues debt obligations under this subpart.

Debt obligation means a promissory note or other obligation issued by a public entity or its designated public agency or by a State and guaranteed by HUD under this subpart, or a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of this subpart by HUD, which is guaranteed by HUD under this subpart and is based on and backed by a trust or pool composed of notes or other obligations issued by public entities or their designated public agencies or by States and guaranteed or eligible for guarantee by HUD under this subpart.

* * * * *

Guaranteed loan funds means the proceeds payable to the borrower from the issuance of debt obligations under this subpart and includes funds received by a nonentitlement public entity from a State under § 570.711.

* * * * *

State-assisted public entity means a unit of general local government in a nonentitlement area which is assisted by a State as required in § 570.704(b)(9)

and § 570.705(b)(2) or pursuant to § 570.711.

- 4. In § 570.704, revise paragraph (c)(3)(i)(D), the first sentence of paragraph (c)(4), and the first sentence of paragraph (c)(5) to read as follows:

§ 570.704 Application requirements.

* * * * *

(c) * * *
(3) * * *
(i) * * *

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

* * * * *

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

(5) *Amendments.* If the public entity or State wishes to carry out or assist in 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.

* * *

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- 5. In § 570.705, revise paragraphs (a)(2)(ii) and (g) to read as follows:

§ 570.705 Loan requirements.

(a) * * *
(2) * * *

(ii) *States and 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 State and all 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.

* * * * *

(g) *Issuance, underwriting, servicing, and other costs.* Each public entity or its designated public agency and each State 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.

* * * * *

- 6. Revise § 570.709 to read as follows:

§ 570.709 Allocation of loan guarantee assistance.

Of the amount approved in any appropriation act for guarantees under this subpart in any fiscal year, 70 percent shall be allocated for entitlement public entities and 30 percent shall be allocated for States and nonentitlement public entities. HUD need not comply with these percentage requirements in any fiscal year to the extent that there is an absence of applications approvable under this subpart from entitlement public entities or from States and nonentitlement public entities.

- 7. In § 570.710, revise the third sentence to read as follows:

§ 570.710 State responsibilities.

* * * Upon approval by HUD of an application from a State or a State-assisted public entity, the State will be principally responsible, subject to HUD oversight under subpart I of this part, for ensuring compliance with all applicable requirements governing the use of the guaranteed loan funds. * * *

- 8. Add a new § 570.711 to read as follows:

§ 570.711 State borrowers; additional requirements and application procedures.

This section contains additional requirements and alternative application procedures for guarantees of debt obligations under section 108 of the Act pursuant to the additional authority provided in paragraph (a) of section 222 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009, Public Law 111–8; 123 Stat. 524 at 976 (Division I of the Omnibus Appropriations Act, 2009) (“section 222” and the “2009 Appropriations Act”). If any other federal law or laws are enacted after March 11, 2009, the effect of which with respect to loan guarantee authority provided in an appropriations act is equivalent to the effect of section 222 with respect to the loan guarantee authority provided in the 2009 Appropriations Act, the additional requirements and alternative application procedures in this section shall also apply to guarantees of debt obligations under section 108 of the act, pursuant to the additional authority provided in such other federal law or laws.

(a) Applications by States.

Notwithstanding § 570.702 and § 570.704, states that administer the CDBG program (under subpart I of this part) may apply for loan guarantee assistance under this subpart, and such application shall consist of the following:

(1) A copy of the State's CDBG method of distribution in the action plan most recently submitted or amended pursuant to 24 CFR part 91. In addition to the requirements of 24 CFR part 91, such method of distribution must note the approximate amount of section 108 guaranteed obligations issued by the State and all nonentitlement public entities that are outstanding at the time of such submission or amendment, identify the maximum amount of guaranteed loan funds for which the State will apply during the period covered by the action plan, describe the pledge of grants required under § 570.705(b)(2), and identify the nonentitlement public entities in the State that may be assisted with such guaranteed loan funds (to satisfy this requirement, the method of distribution may identify one or more specific nonentitlement public entities that may be assisted, or may indicate that all or a specified subset of the nonentitlement public entities in the State may be assisted and describe how applications will be selected for assistance).

(2) Either:

(i) A description of each activity to be carried out with the guaranteed loan

funds, including the specific provision of § 570.703 under which the activity is eligible and how the activity meets one of the criteria in § 570.208; or

(ii) An indication of the type or types of activities to be assisted, the provisions of § 570.703 under which such activities are eligible, and the criteria in § 570.208 intended to be met, in which case HUD shall require that the description referred to in paragraph (a)(2)(i) of this section be submitted to and approved by HUD before the State disburses guaranteed loan funds to a public entity for the activity.

(3) A schedule for repayment of the loan which identifies the sources of repayment.

(b) *Distribution to Local Governments.* Proceeds payable to a State from the issuance of debt obligations under this subpart may be used only for:

(1) Loans and grants to the nonentitlement public entities identified in the State's approved application for activities eligible under § 570.703; and

(2) The uses specified in paragraphs (c), (g), and (k) of § 570.703.

(c) *Certification of need.* Prior to approving a nonentitlement public entity's application for assistance, the

State shall obtain a certification from such public entity conforming to § 570.704(b)(4).

(d) *Local government citizen participation requirements.* The presubmission and citizen participation requirements in § 570.704(a) and the third sentence of § 570.704(c)(5) shall not apply with respect to nonentitlement public entities' applications to a State for assistance under this section. Nonentitlement public entities shall comply with the provisions of § 570.486(a) with respect to such applications and such assistance.

(e) *Environmental review; displacement, relocation, acquisition, and replacement of housing.*

Nonentitlement public entities assisted by a State under this section shall comply with § 570.704(d) and (e).

Dated: June 23, 2009.

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General Deputy Assistant Secretary for Community Planning and Development.

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