

preservation, or installation of public facilities (except for buildings for the general conduct of government) to the extent eligible under § 570.201(c), including public streets, sidewalks, other site improvements and public utilities, and remediation of known or suspected environmental contamination in conjunction with these activities. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

(m) In the case of applications by public entities which are, or which contain, "colonias" as defined in section 916 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), as amended by section 810 of the Housing and Community Development Act of 1992, acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements which serve the colonia.

[59 FR 66604, Dec. 27, 1994, as amended at 61 FR 11481, Mar. 20, 1996; 71 FR 30036, May 24, 2006]

§ 570.704 Application requirements.

(a) *Presubmission and citizen participation requirements.* (1) Before submission of an application for loan guarantee assistance to HUD, the public entity must:

(i) Develop a proposed application that includes the following items:

(A) The community development objectives the public entity proposes to pursue with the guaranteed loan funds.

(B) The activities the public entity proposes to carry out with the guaranteed loan funds. Each activity must be described in sufficient detail, including the specific provision of § 570.703 under which it is eligible and the national objective to be met, amount of guaranteed loan funds expected to be used, and location, to allow citizens to determine the degree to which they will be affected. The proposed application must indicate which activities are expected to generate program income. The application must also describe where citizens may obtain additional information about proposed activities.

(C) A description of the pledge of grants required under § 570.705(b)(2). In the case of applications by State-assisted public entities, the description

shall note that pledges of grants will be made by the State and by the public entity.

(ii) Fulfill the applicable requirements in its citizen participation plan developed in accordance with § 570.704(a)(2).

(iii) Publish community-wide its proposed application so as to afford affected citizens an opportunity to examine the application's contents and to provide comments on the proposed application.

(iv) Prepare its final application. Once the public entity has held the public hearing and published the proposed application as required by paragraphs (a)(1)(ii) and (iii) of this section, respectively, the public entity must consider any such comments and views received and, if the public entity deems appropriate, modify the proposed application. Upon completion, the public entity must make the final application available to the public. The final application must describe each activity in sufficient detail to permit a clear understanding of the nature of each activity, as well as identify the specific provision of § 570.703 under which it is eligible, the national objective to be met, and the amount of guaranteed loan funds to be used. The final application must also indicate which activities are expected to generate program income.

(v) If an application for loan guarantee assistance is to be submitted by an entitlement or nonentitlement public entity simultaneously with the public entity's submission for its grant, the public entity shall include and identify in its proposed and final consolidated plan the activities to be undertaken with the guaranteed loan funds, the national objective to be met by each of these activities, the amount of any program income expected to be received during the program year, and the amount of guaranteed loan funds to be used. The public entity shall also include in the consolidated plan a description of the pledge of grants, as required under § 570.705(b)(2). In such cases the proposed and final application requirements of paragraphs (a)(1)(i), (iii), and (iv) of this section will be deemed to have been met.

(2) *Citizen participation plan.* The public entity must develop and follow a detailed citizen participation plan and make the plan public. The plan must be completed and available before the application is submitted to HUD. The plan may be the citizen plan required for the consolidated plan, modified to include guaranteed loan funds. The public entity is not required to hold a separate public hearing for its consolidated plan and for the guaranteed loan funds to obtain citizens' views on community development and housing needs. The plan must set forth the public entity's policies and procedures for:

(i) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the public entity's proposed and actual use of guaranteed loan funds, including, but not limited to:

(A) The amount of guaranteed loan funds expected to be made available for the coming year, including program income anticipated to be generated by the activities carried out with guaranteed loan funds;

(B) The range of activities that may be undertaken with guaranteed loan funds;

(C) The estimated amount of guaranteed loan funds (including program income derived therefrom) proposed to be used for activities that will benefit low and moderate income persons;

(D) The proposed activities likely to result in displacement and the public entity's plans, consistent with the policies developed under § 570.606 for minimizing displacement of persons as a result of its proposed activities.

(ii) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the public entity. Such assistance need not include the provision of funds to such groups.

(iii) Holding a minimum of two public hearings, each at a different stage of the public entity's program, for the purpose of obtaining the views of citizens and formulating or responding to proposals and questions. Together the hearings must address community de-

velopment and housing needs, development of proposed activities and review of program performance. At least one of these hearings must be held before submission of the application to obtain the views of citizens on community development and housing needs. Reasonable notice of the hearing must be provided and the hearing must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The public entity must specify in its plan how it will meet the requirement for a hearing at times and locations convenient to potential or actual beneficiaries.

(iv) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate.

(v) Providing affected citizens with reasonable advance notice of, and opportunity to comment on, proposed activities not previously included in an application and activities which are proposed to be deleted or substantially changed in terms of purpose, scope, location, or beneficiaries. The criteria the public entity will use to determine what constitutes a substantial change for this purpose must be described in the citizen participation plan.

(vi) Responding to citizens' complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The public entity's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable.

(vii) Encouraging citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and other areas in which guaranteed loan funds are proposed to be used.

(b) *Submission requirements.* An application for loan guarantee assistance may be submitted at any time. The application (or consolidated plan) shall be submitted to the appropriate HUD Office and shall be accompanied by the following:

(1) A description of how each of the activities to be carried out with the

guaranteed loan funds meets one of the criteria in § 570.208.

(2) A schedule for repayment of the loan which identifies the sources of repayment, together with a statement identifying the entity that will act as borrower and issue the debt obligations.

(3) A certification providing assurance that the public entity possesses the legal authority to make the pledge of grants required under § 570.705(b)(2).

(4) A certification providing assurance that the public entity has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the public entity will maintain documentation of such efforts for the term of the loan guarantee, and the public entity cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(5)-(6) [Reserved]

(7) The anti-lobbying statement required under 24 CFR part 87 (appendix A).

(8) Certifications by the public entity that:

(i) It possesses the legal authority to submit the application for assistance under this subpart and to use the guaranteed loan funds in accordance with the requirements of this subpart.

(ii) Its governing body has duly adopted or passed as an official act a resolution, motion or similar official action:

(A) Authorizing the person identified as the official representative of the public entity to submit the application and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public entity to act in connection with the application to provide such additional information as may be required; and

(B) Authorizing such official representative to execute such documents as may be required in order to implement the application and issue debt obligations pursuant thereto (provided that the authorization required by this paragraph (B) may be given by the local governing body after submission of the application but prior to execu-

tion of the contract required by § 570.705(b);

(iii) Before submission of its application to HUD, the public entity has:

(A) Furnished citizens with information required by § 570.704(a)(2)(i);

(B) Held at least one public hearing to obtain the views of citizens on community development and housing needs; and

(C) Prepared its application in accordance with § 570.704(a)(1)(iv) and made the application available to the public.

(iv) It is following a detailed citizen participation plan which meets the requirements described in § 570.704(a)(2).

(v) The public entity will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); and

(B) The Fair Housing Act (42 U.S.C. 3601-3619).

(vi)(A) (For entitlement public entities only.) In the aggregate, at least 70 percent of all CDBG funds, as defined at § 570.3, to be expended during the one, two, or three consecutive years specified by the public entity for its CDBG program will be for activities which benefit low and moderate income persons, as described in criteria at § 570.208(a).

(B) (For nonentitlement public entities eligible under subpart F of this part only.) It will comply with primary and national objectives requirements, as applicable under subpart F of this part.

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in § 570.606.

(viii) It will comply with the requirements of § 570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with guaranteed loan funds.

(ix) (Where applicable, the public entity may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of § 570.200(c)(2), and it must therefore assess properties owned and

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occupied by moderate income persons, to recover the guaranteed loan funded portion of the capital cost without paying such assessments in their behalf from guaranteed loan funds.

(x) It will comply with the other provisions of the Act and with other applicable laws.

(9) In the case of an application submitted by a State-assisted public entity, certifications by the State that:

(i) It agrees to make the pledge of grants required under § 570.705(b)(2).

(ii) It possesses the legal authority to make such pledge.

(iii) At least 70 percent of the aggregate use of CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons.

(iv) It agrees to assume the responsibilities described in § 570.710.

(c) *HUD review and approval of applications.* (1) HUD will normally accept the certifications submitted with the application. HUD may, however, consider relevant information which challenges the certifications and require additional information or assurances 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 or State'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 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. 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 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. 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; 69 FR 32781, June 10, 2004; 72 FR 73496, Dec. 27, 2008; 74 FR 36389, July 22, 2009]

§ 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 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) *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.

(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 an insular area or 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 or § 570.440 (as applicable) to the public entity.

(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