

intends to make, a Section 4 Guaranteed Loan.

(d) HUD may disapprove a request for loan guarantee assistance based on the availability of funding.

(e) HUD may decline any Financial Institution's participation if its underwriting criteria are insufficient to make the guarantee an acceptable financial risk, or if the proposed interest rates or fees are unacceptable. HUD expects the proposed interest rates to take into account the value of the Federal guarantee.

(f) HUD may limit the availability of Guaranteed Loan Funds to geographic areas having the greatest need, as determined by a needs analysis of the most current available data conducted by HUD.

(g) Other requirements associated with the underwriting standards and guidelines shall be contained in the Loan Guarantee Agreement.

§ 573.6 Submission requirements.

A Financial Institution seeking a Section 4 Guaranteed Loan must submit to HUD the following documentation:

(a) A statement that the institution is a Financial Institution as defined at § 573.2.

(b) A statement that the Borrower is eligible as defined at § 573.2.

(c) A description of each eligible activity for which the loan is requested.

(d) A statement of other available funds to be used to finance the eligible activities (e.g., insurance proceeds).

(e) A certification by the Borrower that the activities to be assisted resulted from an act of arson or terrorism which is the subject of the certification described in paragraph (f) of this section.

(f) A certification by a QCO that the damage or destruction to be remedied by the use of the Guaranteed Loan Funds resulted from an act of arson or terrorism.

(g) The environmental documentation required by § 573.8.

(h) A narrative of the institution's underwriting standards used in reviewing the Borrower's loan request.

(i) The interest rate on the loan and fees the lender intends to use in connection with the loan; and

(j) The percentage of the loan for which a guarantee is requested.

§ 573.7 Loan guarantee agreement.

(a) The rights and responsibilities with respect to the guaranteed loan shall be substantially described in an agreement entered into between the Financial Institution, as the lender, and the Secretary, as the guarantor, which agreement shall provide that:

(1) The lender has submitted or will submit a request for loan guarantee assistance that is accompanied by the Borrower's request for a loan to carry out eligible activities described in § 573.3;

(2) The lender will require the Borrower to execute a promissory note promising to repay the guaranteed loan in accordance with the terms thereof;

(3) The lender will require the Borrower to provide collateral security, to an extent and in a form, acceptable to HUD;

(4) HUD reserves the right to limit loan guarantees to loans financing the replacement of damaged property with comparable new property;

(5) The lender will follow certain claim procedures to be specified by HUD in connection with any defaults, including appropriate notification of default as required by HUD;

(6) The lender will follow procedures for payment under the guarantee whereby the lender will be paid (up to the amount of guarantee) the amount owed to the lender less any amount recovered from the underlying collateral security for the loan; and

(7) The lender will act as the fiscal agent for the loan, servicing the guaranteed loan, maintaining loan documents, and receiving the Borrower's payments of principal and interest. The Borrower and the lender may be required to execute a fiscal agency agreement.

(b) In addition, the agreement shall contain other requirements, terms, and conditions required or approved by HUD.

§ 573.8 Environmental procedures and standards.

The environmental review requirements at 24 CFR part 50 are applicable to this part.

§ 573.8

24 CFR Ch. V (4-1-09 Edition)

(a) *Environmental procedures.* Before any lender's submission requesting a loan guarantee for the acquisition, rehabilitation, or construction of real property can be selected for a loan guarantee, HUD shall determine whether any environmental thresholds are exceeded in accordance with 24 CFR part 50, which implements the National Environmental Policy Act (NEPA) and the related Federal environmental laws and authorities listed under 24 CFR 50.4. To assist in complying with environmental requirements, Borrowers are encouraged to select sites that are free of environmental hazards and are to provide HUD with environmental data needed to make a determination of compliance. For successful Borrowers, the costs for preparing the environmental data are eligible as project costs.

(1) If HUD determines that one or more of the thresholds are exceeded, HUD shall conduct a compliance review of the issue and, if appropriate, establish mitigating measures that the applicant shall carry out for the property.

(2) The lender's submissions under § 573.6 shall provide HUD with:

(i) Documentation for environmental threshold review; and

(ii) Any previously issued environmental reviews prepared by local, State, or other Federal agencies for the proposed property.

(3) In providing the above information, the Borrower is encouraged to contact the local community development agency to obtain any previously issued environmental reviews for the proposed property as well as for other relevant information that can be used in the applicant documentation for the environmental threshold review.

(4) HUD reserves the right to disqualify any request where one or more environmental thresholds are exceeded if HUD determines that the compliance review cannot be satisfactorily completed.

(5) If Guaranteed Loan Funds are requested for acquisition, rehabilitation, or construction, Borrowers and Financial Institutions are prohibited from committing or expending State, local, or other funds to undertake property acquisition, rehabilitation or construc-

tion under this part until HUD issues a letter of commitment notifying the lender of HUD approval of the loan guarantee.

(b) *Environmental thresholds.* HUD shall determine whether a NEPA environmental assessment is required. Also, HUD shall determine whether the proposed property triggers thresholds for the applicable Federal environmental laws and authorities listed under 24 CFR 50.4 as follows:

(1) For minor rehabilitation of a building and acquisition of any property, Federal environmental laws and authorities may apply when the property is:

(i) Located within designated coastal barrier resources;

(ii) Contaminated by toxic chemicals or radioactive materials;

(iii) Located within a floodplain;

(iv) A building for which flood insurance protection is required;

(v) Located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; or

(vi) Listed on, or eligible for listing on, the National Register of Historic Places; located within, or adjacent to, an historic district, or is a property whose area of potential effects includes a historic district or property.

(2) For major rehabilitation of a building or for new construction or rebuilding, and environmental assessment under NEPA is required and, in addition to paragraph (b)(1)(i) through (vi) of this section, other Federal environmental laws and authorities may apply when the property:

(i) Affects coastal zone management;

(ii) Is located near hazardous industrial operations handling fuels or chemicals of an explosive or flammable nature;

(iii) Affects a sole source aquifer;

(iv) Affects endangered species;

(v) Is located within a designated wetland; or

(vi) Is located in a high noise area.

(c) *Qualified data sources.* The environmental threshold information provided by applicants must be from qualified data sources. A qualified data source means any Federal, State, or local agency with expertise or experience in environmental protection (e.g.,

the local community development agency; the local planning agency; the State environmental protection agency; or the State Historic Preservation Officer) or any other source qualified to provide reliable information on the particular property.

(d) *Definition.* Minor rehabilitation means proposed fixing and repairs:

(1) Whose estimated cost is less than 75 percent of the estimated cost of replacement after completion;

(2) That does not involve changes in land use from residential to nonresidential, or from nonresidential to residential; and

(3) In the case of residential properties, that does not increase density more than 20 percent.

(e) *Project consultants.* In achieving compliance with these procedures, Borrower's architectural and engineering consultants shall consider these environmental factors and provide information in their plan narratives as to how their construction plans conform with the above environmental factors. To facilitate HUD's compliance with part 50, the Borrower is required to submit the consultant's information and plan narrative discussing the pertinent environmental factors under this section.

§ 573.9 Other requirements.

(a) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements described in 24 CFR part 5, subpart A apply to this part.

(b) *24 CFR part 84.* The provisions of 24 CFR part 84 apply to guaranteed loans under this part.

(c) *Lead-based paint.* Housing assisted under this part is subject to the lead-based paint requirements described in part 35, subparts A, B, E, G, and R of this title.

(d) *Labor standards—(1) Davis-Bacon.* All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with Guaranteed Loan Funds under this part shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). This

paragraph shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(2) *Volunteers.* The provisions of paragraph (d)(1) of this section shall not apply to volunteers under the conditions set forth in 24 CFR part 70. In applying part 70, loan guarantees under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(3) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (d)(1) of this section shall comply with all labor standards and provisions of 29 CFR parts 1, 3 and 5 that would be applicable to a loan guarantee program to which Davis-Bacon wage rates are made applicable by statute.

[61 FR 47405, Sept. 6, 1996, as amended at 64 FR 50226, Sept. 15, 1999]

§ 573.10 Fees for guaranteed loans.

(a) No fees will be assessed by HUD for its guaranty of a loan under this part.

(b) The lender may assess the Borrower loan origination fees or other charges provided that such fees and charges are those charged by the lender to its other customers for similar transactions, and are no higher than those charged by the lender for similar transactions.

§ 573.11 Record access and record-keeping.

Records pertaining to the loans made by the Financial Institution shall be held for the life of the loan. A lender with a Section 4 Guaranteed Loan shall allow HUD, the Comptroller General of the United States, and their authorized representatives access from time to time to any documents, papers or files which are pertinent to the guaranteed loan, and to inspect and make copies of such records which relate to any Section 4 Loan. Any inspection will be made during the lender's regular business hours or any other mutually convenient time.