

commodity option, as defined in § 1.3(hh) of this chapter, may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this part as being held in a futures account; *Provided, further*, that, if positions in commodity contracts that would otherwise belong to one account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), are, pursuant to a Commission order, commingled with positions in commodity contracts of the futures account class (and the money, securities, and/or other property margining, guaranteeing, or securing such positions), then the former positions (and the relevant money, securities, and/or other property) shall be treated, for purposes of this part, as being held in an account of the futures account class.

\* \* \* \* \*

(oo) *Cleared OTC derivatives* shall mean positions in commodity contracts that have not been entered into or traded on a contract market (as such term is defined in § 1.3(h) of this chapter) or on a derivatives transaction execution facility (within the meaning of Section 5a of the Act), but which nevertheless are submitted through a commodity broker that is a futures commission merchant (as such term is defined in § 1.3(p) of this chapter) for clearing by a clearing organization (as such term is defined in this section), along with the money, securities, and/or other property margining, guaranteeing, or securing such positions, which are required to be segregated or set aside, in accordance with a rule, regulation, or order issued by the Commission, or which are required to be held in a separate account for cleared OTC derivatives only, in accordance with the rules or bylaws of a clearing organization (as such term is defined in this section).

■ 4. In § 190.07, revise paragraph (b)(2)(viii) to read as follows:

**§ 190.07 Calculation of allowed net equity.**

(b) \* \* \*

(2) \* \* \*

(viii) Subject to paragraph (b)(2)(ix) of this section, the futures accounts, leverage accounts, options accounts, foreign futures accounts, and cleared OTC derivatives accounts of the same person shall not be deemed to be held in separate capacities: *Provided, however*, That such accounts may be

aggregated only in accordance with paragraph (b)(3) of this section.

\* \* \* \* \*

■ 5. Amend “bankruptcy appendix form 4—proof of claim” in Appendix A to Part 190 by revising paragraph a in section III to read as follows:

**Appendix A to Part 190—Bankruptcy Forms**

\* \* \* \* \*

bankruptcy appendix form 4—proof of claim  
\* \* \* \* \*

III. \* \* \*

a. Whether the account is a futures, foreign futures, leverage, option (if an option account, specify whether exchange-traded or dealer), “delivery” account, or, only with respect to a bankruptcy of a commodity broker that is a futures commission merchant, a cleared OTC derivatives account. A “delivery” account is one which contains only documents of title, commodities, cash, or other property identified to the claimant and deposited for the purposes of making or taking delivery on a commodity underlying a commodity contract or for payment of the strike price upon exercise of an option.

Issued in Washington, DC, on March 31, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

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**BILLING CODE P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 570**

[Docket No. 5326-F-02]

**RIN 2506-AC28**

**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:** Final rule.

**SUMMARY:** This final rule follows publication of a July 22, 2009, interim rule that implemented section 222 in Division I of the Omnibus Appropriations Act, 2009. Section 222 authorizes HUD, to the extent of its 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, to States borrowing on behalf of local governments in nonentitlement areas (governments that do not receive annual Community Development Block Grants

(CDBGs) 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 behalf of local governments in nonentitlement areas. HUD received a single public comment on the July 22, 2009, interim rule, which expressed support for the interim regulatory amendments. HUD is adopting the interim rule without change.

**DATES:** *Effective Date:* May 6, 2010.

**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.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 22, 2009, at 74 FR 36384, HUD published an interim rule to implement section 222 in Division I of the Omnibus Appropriations Act, 2009, (Pub. L. 111-8) (2009 Appropriations Act). Section 222 authorizes expanded loan guarantee authority under section 108 of the Housing and Community Development Act of 1974 (HCD Act) for Fiscal Year (FY) 2009.

Section 108 of the HCD Act 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. Historically, section 108 guarantee authority has been limited to units of general local government and their public agencies. States have participated in the section 108 program by supporting loan guarantee applications of local governments in nonentitlement areas (governments that do not receive annual CDBG funds from HUD) and by pledging the State’s CDBG allocations to secure the obligations issued by the local governments. However, States have not been able to participate in the program as issuers of obligations. One of the administrative provisions of the 2009 Appropriations Act, section 222, authorizes HUD, to the extent allowed under FY 2009 loan guarantee authority, to provide section 108 community development loan

guarantees to States borrowing on behalf of local governments in nonentitlement areas.

The July 22, 2009, interim rule implemented the expansion of section 108 loan guarantee authority provided by the 2009 Appropriations Act. HUD's authority to issue loan guarantee commitments under section 222 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 July 22, 2009, interim rule, however, contained language that will continue the applicability of the provisions implementing this new authority, 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 State-supported applications from nonentitlement-area local governments so that they can receive loan guarantee commitments under the HCD Act. Interested readers should refer to the preamble of the July 22, 2009, interim rule for additional background and details regarding the regulatory changes implementing section 222. As provided at 24 CFR 570.711, the additional requirements and alternative application procedures in this rule shall also apply to guarantees of debt obligations under section 108, pursuant to the equivalent authority provided in the 2010 Appropriations Act (Pub. L. 111-117).

## II. This Final Rule

This final rule follows publication of the July 22, 2009, interim rule. The public comment period on the interim rule closed on August 21, 2009. HUD received a single public comment, expressing support for the interim regulatory changes and urging HUD to make the changes permanent. HUD is adopting the interim rule without change.

## III. Findings and Certifications

### *Environmental Review*

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the interim rule stage 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 remains applicable to this final rule and 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 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 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 final rule adopts, without change, an interim rule that implemented new statutory authority to provide an additional, alternative route for States and their nonentitlement-area local governments to obtain financing for eligible community development projects. Specifically, the final 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 regulatory amendments is on the States, which are relatively large jurisdictions. Further, and as detailed in the preamble to the July 22, 2009, interim rule, the regulatory amendments track the language of the authorizing statute to the greatest extent possible. Accordingly, the regulatory text reflects statutorily mandated requirements that HUD does not have 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. Accordingly, undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

### *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, the interim rule amending 24 CFR part 570, which was published at 74 FR 36384 on July 22, 2009, is adopted as a final rule without change.

Dated: March 9, 2010.

**Mercedes Márquez,**

*Assistant Secretary for Community Planning and Development.*

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