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<AGENCY TYPE='S'>DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

<CFR>24 CFR Part 570

<DEPDOC>[Docket No. FR-5767-P-01]

<RIN>RIN 2506-AC35

<SUBJECT>Section 108 Loan Guarantee Program:  
Payment of Fees to Cover Credit Subsidy Costs

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend HUD's Section 108 Loan Guarantee Program (Section 108 Program) regulations to permit HUD, in accordance with statutory authority, to collect fees from Section 108 borrowers to offset the costs of Section 108 loan guarantees. HUD is proposing this rule to ensure that it can begin to make Section 108 loan guarantee commitments without appropriated subsidy. The Department of Housing and Urban Development Appropriations Act, 2014, authorizes HUD to collect fees from borrowers for this program. In anticipation of further appropriations acts authorizing the collection of fees for Section 108 loan guarantees, HUD proposes to add a new section to its current regulations to reflect that when appropriations for credit subsidy costs as authorized by Congress are either not available or insufficient and HUD has statutory authority to collect fees, HUD will impose a fee on Section 108 Program borrowers and explain the basis for the fee imposed. The proposed new regulatory section would provide for HUD to set the fee by notice.

Elsewhere in today's Federal Register, HUD is publishing the notice that would propose the fee to be established for the fiscal year 2015, subject to statutory authorization.

**DATES:** Comment Due Date: **March 9, 2015.**

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed 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 20410-0500.

**2. *Electronic Submission of Comments.*** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) website 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><HED>Note:<P> 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.</NOTE>

***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 appointment to review the public comments must be scheduled in advance 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 Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Room 7180, 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 Relay Service at 800-877-8339. FAX inquiries (but not comments) may be sent to Mr. Webster at 202-708-1798 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**<HD1>I. Background**

The Section 108 Program is the loan guarantee component of the Community Development Block Grant (CDBG) program and is authorized by section 108 (42 U.S.C. 5308) of the Housing and Community Development Act of 1974, as amended (HCD Act). HUD's regulations implementing the Section 108 Program are codified at 24 CFR part 570, subpart M (entitled "Loan Guarantees"). The Section 108 Program provides States and 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 activities. Under section 108(a) of the HCD Act and authorizing language in HUD's annual appropriations, HUD enters into commitments to guarantee, and subsequently guarantees, promissory notes issued by units of general local

government (or their designated public agencies) or States. Under section 108(r) of the HCD Act, HUD, acting on behalf of these borrowers, periodically 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 private investors in a public offering.

HUD guarantees the timely payment of the principal of and interest on the trust certificates and, under the provisions of the section 108 statute, 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 and investors are willing to purchase interests in the certificates because of the security provided by such guarantee. Proceeds of the sale, less certain underwriting and trust administration fees and costs, are advanced to the 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 borrowers that require financing for projects in the months between the periodic public offering of fixed-rate trust certificates, interim financing is made available pursuant to an agreement between HUD and an interim lender. HUD guarantees promissory notes that initially are issued to the interim lender and bear interest at rates that adjust monthly. Such notes are typically 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 convert to the fixed rates borne by the trust certificates.

Contemporaneously with HUD's guarantee, 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 from sources pledged as security in the contract for any payments

made on their behalf. Section 108 notes are secured by pledges of annual CDBG allocations, which are the local government's own allocations in the case of CDBG entitlement communities and the State's allocations in the case of local governments in non-entitlement areas or States that borrow on behalf of these areas. HUD is also authorized to require borrowers to furnish other security, such as interests in real property and pledges of local revenues, in addition to pledged CDBG funds.

Historically, Congress has annually appropriated funds to cover the credit subsidy costs of the Section 108 Program. These appropriations, consistent with the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*), reflect the net present value of future costs to the Federal Government of operating the Section 108 Program. These costs, referred to here as credit subsidy costs, are the estimated long-term cost to the federal government of the loan guarantee, excluding administrative costs and any incidental effects on governmental receipts or outlays. More specifically, the cost is the net present value of expected cash outflows by HUD (e.g., due to default) and the expected cash inflows to HUD (e.g., from recovery on collateral), discounted to the point of disbursement of the guaranteed loan. In recent years, the budgeted Section 108 credit subsidy rates (i.e., credit subsidy cost expressed as a percentage of loan disbursements) have ranged from 2.48% in FY 2012 to 2.56% in FY 2014.

The President's FY 2014 Budget Request<sup>1</sup> did not request an appropriation for the credit subsidy costs of new Section 108 guaranteed loans but instead called for statutory authorization to allow HUD to collect fees to offset such costs, making the Section 108 Program a zero credit subsidy program. To assist with the conversion to a fee-based financing mechanism, HUD's FY 2014 Congressional Justification for the Section 108 Program proposed to allow Section 108

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<sup>1</sup> The President's Budget for FY 2014 can be found at:  
<http://www.gpo.gov/fdsys/browse/collectionGPO.action?collectionCode=BUDGET>

borrowers to include the fee in the guaranteed loan amount.<sup>2</sup> Borrowers would also have the option to utilize existing statutory authority that permits the fee to be paid with CDBG funds.

Both the Senate Report (S. Rep. No. 113-45) accompanying the Senate's FY 2014 Transportation, Housing and Urban Development and Related Agencies Appropriation bill and the House Report (H.R. Rep. No. 113-136) accompanying the House's FY 2014 Transportation, Housing and Urban Development and Related Agencies Appropriation bill accepted HUD's request to convert the Section 108 Program into a fee-based program. The Senate bill adopted the President's proposal to eliminate the credit subsidy entirely in FY 2014. Accordingly, the Senate Report states that the Senate Committee on Appropriations expects HUD to implement a fee based program upon enactment of the fee authority to ensure that there is no delay for grantees that wish to utilize the program under a new fee-based structure.

The Department of Housing and Urban Development Appropriations Act, 2014<sup>3</sup> (2014 HUD Appropriations Act) authorized HUD to collect such fees. The 2014 HUD Appropriations Act included a credit subsidy appropriation designed to enable HUD to continue making loan guarantee commitments during the rulemaking process and prevent a gap in the availability of the program.

This proposed rule is consistent with the expectations expressed in the joint explanatory statement (160 Cong. Rec. H1193-94 (daily ed., January 15, 2014) (joint explanatory statement submitted by Congressman Rogers)), which explains that "HUD is not expected to be ready to implement a new fee-based section 108 loan program upon enactment of this Act. Instead, prior

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<sup>2</sup> <http://portal.hud.gov/hudportal/documents/huddoc?id=COMDEVLOANGUAR.pdf> at page R-2.

<sup>3</sup> See Title II of Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76, 128 Stat. 5, approved January 17, 2014; see 128 Stat. 604) (2014 HUD Appropriations Act).

to the collection of fees, HUD is directed to establish regulations articulating how a fee-based, zero-subsidy program shall be implemented.”

Further, the 2014 HUD Appropriations Act authorizes HUD to impose a fee to eliminate the need for credit subsidy appropriations. Such authority is necessary because, in 1988, Congress amended the statute authorizing the Section 108 Program, section 108 of the HCD Act (42 U.S.C. 5308), to add subsection (m), which limits HUD’s ability to impose a fee or charge with respect to a Section 108 guaranteed loan. The 2014 HUD Appropriations Act provides HUD the discretion to collect a fee from Section 108 borrowers “notwithstanding subsection (m) of such section 108.”<sup>4</sup>

## **<HD1>II. This Proposed Rule**

### **<HD2>A. New § 570.712 (Collection of Fees; procedure to determine amount of fee).**

This rule proposes to amend the Section 108 regulations at 24 CFR part 570, subpart M, to establish a new section, § 570.712, entitled “Collection of fees; procedure to determine amount of the fee,” that would provide for the collection of fees for the Section 108 Loan Guarantee Program. New § 570.712 would provide that where HUD has been authorized to collect a fee for the Section 108 Program and Congress has not appropriated a subsidy for the Section 108 Program or the appropriated subsidy is insufficient to offset the costs of the Section 108 loan guarantees, HUD will collect a fee for the program. When such conditions occur, HUD will announce its intent to impose a fee through notice published in the Federal Register and explain the basis for the fee imposed.

HUD will provide for announcement of the fee through notice in the Federal Register rather than codifying the fee in § 570.712, as the fee may change from year to year. The

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<sup>4</sup> 2014 HUD Appropriations Act at 128 Stat. 614.

imposition of the fee is dependent upon the authority provided for in annual appropriations acts. HUD will solicit comment on the initial proposed fee through this initial proposed rule and Notice, and may solicit comment on future Notices that impose the fee if changes to the assumptions underlying the fee calculation or the fee structure itself raise new considerations for borrowers.

The fee to be imposed will not be expressed as a dollar amount but rather as percentages of the principal amount of the guaranteed loan. The fee will be based on a determination that such fees, when collected, will reduce the credit subsidy cost to a level that eliminates the need for appropriated subsidy budget authority. The required fees may include both an up-front and a periodic component, depending on market conditions and the credit risk to the Section 108 program. New § 570.712 would provide that each public entity or its designated public agency and each State issuing debt obligations would be responsible for the payment of all fees charged under this section.

#### **<HD2>B. Related Amendments to Existing Regulations**

In addition to establishing new § 570.712, this proposed rule would make related amendments to other sections of part 570, subpart M.

##### **<HD3>1. Definition of “Credit Subsidy Cost”**

The proposed rule would amend § 570.701 (Definitions) to add a definition of “credit subsidy cost.” Specifically, “credit subsidy cost” would be defined as the estimated long-term cost to the Federal Government of a Section 108 loan guarantee or a modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays. This definition is the definition of “cost” in the Federal

Credit Reform Act of 1990<sup>5</sup> (2 U.S.C. § 661-661f at § 661a), modified to exclude direct loans, which are not authorized under the Section 108 program.

<HD3>2.     Requirements for Payment of Fees and Payment Options

Paragraph (g) of § 570.705 (Loan requirements) would be amended to add, as a loan requirement, that each public entity or its designated public agency and each State issuing debt obligations must pay any and all fees charged by HUD for the purpose of paying the credit subsidy costs of the loan guarantee. In addition to including this requirement, the rule proposes to remove redundant language in § 570.705(g) addressing a borrower's ability to pay issuance, underwriting, servicing, and other costs with guaranteed loan funds. This language duplicates authority granted in § 570.703.

As permitted by § 570.705(c)(1)(i), borrowers will be able to pay the fee using CDBG funds. To further facilitate the payment of these charges, HUD also proposes to permit the payment of these fees from guaranteed loan proceeds. As such, § 570.703 (Eligible activities) would be amended to provide that guaranteed loan funds may be used for the payment of fees charged by HUD, when such fees are paid from the disbursement of guaranteed loan funds. Additionally, to notify the public of plans to use grant funds or loan proceeds to pay the fee, HUD proposes changes to § 570.704 (Application requirements) to require applicants to include the estimated amount of the fee to be paid in the application for loan guarantee assistance. Use of grant funds for fees or payments of principal and interest must also be included in each applicant's consolidated plan.

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<sup>5</sup> The 2014 HUD Appropriations Act references section 502 of the Congressional Budget Act of 1974. Section 502 was added to the Congressional Budget Act of 1974 by the Federal Credit Reform Act of 1990, Public Law 101-508, title XIII, subtitle B, § 13201(a), 104 Stat. 1388-610.

*Specific solicitation of comment:* HUD acknowledges that financing the fees could also result in net higher costs to borrowers because the fee needed to achieve zero subsidy would have to account for risk of default and the borrower would have to pay interest on the financed fee. HUD specifically seeks comment on whether to require borrowers to pay fee amounts from other sources or allow borrowers to add upfront fees to the face value of the guaranteed loan by paying fees from guaranteed loan funds at the time of loan disbursement.

<HD3>3. Exemption from Statutory Primary Objective

HUD proposes to amend paragraph (a)(3)(iii) of § 570.200 of HUD's CDBG regulations to clarify that when the fee is paid from the proceeds of a guaranteed loan, grant funds used to repay that loan are not subject to the requirement that not less than 70 percent of a grantee's aggregate CDBG expenditures over a specified one-, two-, or three-year period shall be for activities benefitting low- and moderate-income persons.<sup>6</sup> This exclusion from the overall benefit calculation would be added to make clear that payment of fees is covered by the existing exclusion of grant funds used for repayment of Section 108 guaranteed loans at § 570.200(a)(3)(iii). Expenditures of guaranteed loan funds for payment of the fee are treated as part of the cost of carrying out the activity financed with the guaranteed loan. Section 108 activities that benefit low- and moderate-income persons are already included in the calculation, and such activities should only be considered once when calculating overall benefit.

<HD1>III. **Proposed 2015 Fee: 2.42% of the Principal Obligation of the Loan**

As noted in the Summary to this proposed rule, elsewhere in today's Federal Register, HUD proposes the initial fee to be imposed for the Section 108 Program.

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<sup>6</sup> See Housing and Community Development Act of 1974, as amended (Pub. L. 93-383, § 101(c) (1974); 42 U.S.C. § 5301).

In determining the appropriate level of fee, HUD will consider the amount required to fully offset the cost to the Federal Government associated with making a loan guarantee. Credit subsidy cost calculations incorporate assumptions based on: (i) data on default frequency for municipal debt where such debt is comparable to loans in the Section 108 portfolio; (ii) data on recovery rates on collateral security for comparable municipal debt; (iii) the expected composition of the Section 108 cohort by end users of the guaranteed loan funds (e.g., third party borrowers and public entities); and (iv) other relevant information (e.g., statutory changes) that would affect the applicability of the default and recovery data on comparable municipal debt.

Paragraph (b) of § 570.712 would provide that HUD will publish a notice in the Federal Register with the fee structure and levels, taking into consideration total available commitment authority and what level of fees may be needed to operate the program for the covered period. Such notice will set forth the fee financing structure to be applied, the effective date, and any other necessary information regarding payment of the fee. HUD anticipates issuing such notices prior to the beginning of the fiscal year, with an effective date of the beginning of the fiscal year, and may provide updated notices as necessary. Additionally, HUD will periodically publish the estimated subsidy cost and fee as part of the President's Budget.

#### **<HD1>IV. Justification for Abbreviated Public Comment Period**

It is the general practice of HUD to provide a 60-day public comment period on all proposed rules. However, HUD is shortening its usual 60-day public comment period to 30 days for this proposed rule. As stated in this preamble, HUD anticipates that in the coming fiscal years appropriated funds will no longer be available for the credit subsidy costs of the Section 108 program or available in amounts sufficient to maintain the program. Imposition of a fee, as statutorily authorized, will maintain the continued availability of Section 108 guaranteed loan

financing. Through HUD's Congressional Justifications for FY 2014 and 2015, HUD has provided public notice of its proposal to make the Section 108 program a fee-based program.

Section 108 is a valuable financing source for community and economic development projects. As stated in HUD's Congressional Justifications for FY 2015 and FY 2014, States and local governments face daunting challenges in addressing their community and economic development needs, and the Section 108 Loan Guarantee Program enables CDBG grantees to borrow up to 5 times their current CDBG allocation to finance economic development, public facilities and housing activities consistent with CDBG program requirements.

For these reasons and those already presented in this preamble, it is important to implement a Section 108 fee-based program as soon as possible to ensure the continued availability of the Section 108 program, and therefore HUD has determined that a 30-day public comment period is appropriate.

#### **<HD1>V. Findings and Certifications**

##### <HD2>Regulatory Review—Executive Order 12866

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant, and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This rule was determined to constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866. The fee proposed to be imposed under this rule would only be at such level to cover the costs of administration of the program that would have otherwise been covered by appropriations.

Consistent with Executive Order 12866, HUD prepared a regulatory impact analysis (RIA) for the rule. Based on recent annual program activity, HUD determined that the amount to

cover the costs of the program is generally not more than \$5 million in a fiscal year. Transfers resulting from the proposed fee to be imposed are likely to range from \$4 million to \$6 million. The clear economic benefit of the imposition of the proposed fee would be to continue to provide for the guarantee of loans that are underprovided by the private sector. HUD's RIA, which describes in detail the costs and benefits and impact of the proposed rule is available at [www.regulations.gov](http://www.regulations.gov) under the docket number for this rule.

The docket file 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 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

#### <HD2>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 proposes to implement the statutorily authorized power for HUD to collect fees from borrowers to cover the credit subsidy costs of operating the program. As discussed in this preamble, HUD proposes to assist Section 108 borrowers' transition to a fee-based financing mechanism by allowing borrowers to include the fee in the guaranteed loan amount. This rule also proposes to permit borrowers to pay the fee with pledged CDBG funds. The amount of the

fee would be determined by the amount required to fully offset the credit subsidy cost of the program.

The 2014 HUD Appropriations Act authorized HUD to charge a fee for the Section 108 Program. Charging a fee will become a practical necessity at such time when current appropriations for the program's credit subsidy costs are exhausted.

This proposed rule reflects statutorily authorized actions which HUD determined that it must take to ensure uninterrupted operation of the Section 108 Loan Guarantee Program. By allowing borrowers to include the fee in the guaranteed loan amount or pay the fee with pledged CDBG funds, HUD has strived to minimize the impact that imposing a fee may otherwise have on the program. Accordingly, it is HUD's determination that this proposed rule would not have a significant economic 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.

#### <HD2>Environmental Review

In accordance with 24 CFR 50.19(c)(6), this proposed rule involves establishment of a rate or cost determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### <HD2>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.

<HD2>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.

<HD2>Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number for the Section 108 Loan Guarantee program is 14.248.

**<LSTSUB><HED>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.</LSTSUB>

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 570 as follows:

**<PART><HED>PART 570-- COMMUNITY DEVELOPMENT BLOCK GRANTS**

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

**<AUTH><HED>Authority:** <P> 42 U.S.C. 3535(d) and 5301-5320.

2. In § 570.200, revise paragraph (a)(3)(iii) to read as follows:

**§ 570.200 General Policies.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(iii) Funds expended for the repayment of loans guaranteed under the provisions of subpart M (including repayment of the portion of a loan used to pay any issuance, servicing, underwriting, or other costs as may be incurred under § 570.705(g)) shall also be excluded;

\* \* \* \* \*

3. In § 570.701, add in alphabetical order the definition of “Credit Subsidy Cost” to read as follows:

**§ 570.701 Definitions.**

\* \* \* \* \*

*Credit subsidy cost* means the estimated long-term cost to the Government of a Section 108 loan guarantee or a modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

\* \* \* \* \*

4. In § 570.703, add paragraph (n) to read as follows:

**§ 570.703 Eligible activities.**

\* \* \* \* \*

(n) Payment of fees charged by HUD pursuant to § 570.712.

5. Amend § 570.704, by revising paragraphs (a)(1)(i)(D) and (a)(1)(v) and removing and reserving paragraph (c)(2)

**§ 570.704 Application requirements.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) A description of any CDBG funds, including guaranteed loan funds and grant funds, that will be used to pay fees required under § 570.705(g). The description must include an estimate of the amount of CDBG funds that will be used for this purpose. If the applicant will use grant funds to pay required fees, it must include this planned use of grant funds in its consolidated plan.

\* \* \* \* \*

(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), and

the use of grant funds to pay for any fees required under § 570.705(g). 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.

(c) \* \* \*

(2) [Reserved]

\* \* \* \* \*

6. Amend § 570.705, by revising the heading of paragraph (c) and paragraph (g) to read as follows:

**§ 570.705 Loan requirements.**

\* \* \* \* \*

(c) Use of grants for loan repayment, issuance, underwriting, servicing, and other costs.

\* \* \* \* \*

(g) Issuance, underwriting, servicing, and other costs. (1) 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.

(2) Each public entity or its designated public agency and each State issuing debt obligations under this subpart must pay any and all fees charged by HUD pursuant to § 570.712.

\* \* \* \* \*

7. Add § 570.712 to read as follows:

**§ 570.712 Collection of fees; procedure to determine amount of the fee.**

This section contains additional procedures for guarantees of debt obligations under section 108 when HUD is required or authorized to collect fees to pay the credit subsidy costs of the loan guarantee program.

(a) Collection of fees. HUD may collect fees from borrowers for the purpose of paying the credit subsidy cost of the loan guarantee. Each public entity or its designated public agency and each State issuing debt obligations under this subpart is responsible for the payment of any and all fees charged pursuant to this section. Such fees are payable from grants allocated to the issuer pursuant to the Act or from other sources, but are only payable from guaranteed loan funds if the fee is deducted from a disbursement of guaranteed loan funds.

(b) Amount of fee. (1) HUD shall calculate the level of the fee as a percentage of the principal amount of the guaranteed loan as provided by this section based on a determination that such fees when collected will reduce the credit subsidy cost to the level established by applicable appropriation acts. The amount of the fee payable by the public entity or State shall be determined by applying separately the percentages announced by Federal Register notice to guaranteed loan disbursements as they occur or periodically to outstanding principal balances, or both.

(2) HUD shall publish the proposed fees required under paragraph (a) of this section in the Federal Register and provide a 30-day public comment period for the purpose of inviting comment on the proposed fee prior to adoption of the fee if changes to the assumptions underlying the fee calculation or the fee structure itself raise new considerations for Borrowers. After consideration of public comments, HUD will publish a second Federal Register notice announcing the fee to be applied, the effective date of the fee, and any other necessary information regarding payment of the fee.

<SIG><DATED>**Dated:** December 17, 2014.

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<NAME>Clifford Taffet,  
<TITLE> General Deputy Assistant  
Secretary for Community Planning and  
Development.</SIG>

<FRDOC> [FR Doc. 2015-02262 Filed 2-4-15; 8:45 am]

<BILCOD>BILLING CODE 4210-67-P

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