

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 573**

[Docket No. FR-4108-F-01]

RIN 2506-AB87

Office of the Assistant Secretary for Community Planning and Development; Loan Guarantee Recovery Fund**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.**ACTION:** Final rule.

SUMMARY: The Church Arson Prevention Act of 1996 (the Act) authorizes certain Federal departments to implement procedures to address the destructive consequences of acts of arson and terrorism carried out against places of worship. Section 4 of the Act directs HUD to publish regulations governing the provision of loan guarantees to financial institutions that make loans to certain nonprofit organizations adversely affected by such acts. This final rule implements section 4 of the Act. Specifically, this rule establishes the procedures, terms, and conditions by which HUD will guarantee loans to assist nonprofit organizations in financing activities designed to rebuild and rehabilitate structures, to replace and restore personal property, and to finance other eligible activities as provided for in this final rule. In addition, HUD anticipates forming a cooperative venture and participating with other entities in the pooling of funds so as to better achieve the objectives of the Act and this final rule.

EFFECTIVE DATE: These regulations take effect on October 7, 1996, unless prior to this date HUD publishes a notice in the Federal Register announcing an earlier effective date. Affected parties do not have to comply with the information collection requirements in §§ 573.6, 573.7, 573.8, and 573.11 until HUD publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Tony Johnston, Deputy Director, Financial Management Division, Office of Block Grant Assistance, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone

number (202) 708-1871. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8399. FAX inquiries may be sent to Mr. Johnston at (202) 708-1798. (Other than the "800" number, the telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:**I. Background**

On July 3, 1996, President Clinton signed into law the "Church Arson Prevention Act of 1996" (Pub. L. 104-155) (the Act). In passing this legislation, the Congress made the following findings:

The Congress finds the following:

- (1) The incidence of arson or other destruction of vandalism of places of religious worship, and the incidence of violent interference with an individual's lawful exercise or attempted exercise of the right of religious freedom at a place of religious worship pose a serious national problem.
- (2) The incidence of arson of places of religious worship has recently increased, especially in the context of places of religious worship that serve predominantly African-American congregations.
- (3) Changes in Federal law are necessary to deal properly with this problem.
- (4) Although local jurisdictions have attempted to respond to the challenges posed by such acts of destruction or damage to religious property, the problem is sufficiently serious, widespread, and interstate in scope to warrant Federal intervention to assist State and local jurisdictions.
- (5) Congress has authority, pursuant to the Commerce Clause of the Constitution, to make acts of destruction or damage to religious property a violation of Federal law.
- (6) Congress has authority, pursuant to section 2 of the 13th amendment to the Constitution, to make actions of private citizens motivated by race, color, or ethnicity that interfere with the ability of citizens to hold or use religious property without fear of attack, violations of Federal criminal law.

The Act provides Federal, State and local law-enforcement agencies with the needed additional tools to address violent crimes against places of worship, strengthens the penalties for these crimes, and authorizes Federal assistance for rebuilding efforts. Section 4 of the Act, entitled "Loan Guarantee Recovery Fund," authorizes the Secretary of HUD to guarantee loans made by financial institutions to assist certain nonprofit organizations (organizations described in section 501(c)(3) of the Internal Revenue Code of 1986) that have been damaged as a result of acts of arson or terrorism. The Act provides that loans shall be guaranteed in accordance with procedures that the Secretary shall establish by regulation.

This final rule implements section 4 of the Act by establishing a new 24 CFR part 573. Part 573 describes the procedures, terms, and conditions by which HUD will guarantee loans to assist eligible nonprofit organizations. Under § 573.3 of this final rule, eligible borrowers may use guaranteed loan funds for a wide range of activities, including: (1) the acquisition of real or personal property; (2) the rehabilitation of real property; (3) the construction, reconstruction or replacement of real property improvement; (4) clearance, demolition, and removal of structures, fixtures, and improvements; (5) site preparation; (6) architectural, engineering, and security expenses; and (7) refinancing existing indebtedness. The term of a loan guaranteed by HUD under new 24 CFR part 573 may not exceed 20 years.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment.

The purpose of this rule is to implement the authority provided by the Congress for HUD to guarantee loans made by financial institutions to certain nonprofit organizations that suffer damage to their property as a result of acts of arson or terrorism. The Department of Justice has identified more than 40 eligible organizations that have had property damaged or destroyed through acts of arson or terrorism within the last few months. These organizations are in immediate need of assistance to rebuild and restore their properties. Financial institutions are willing to assist these organizations in their rebuilding efforts, provided a certain level of assurance exists with respect to the repayment of the loans to be made. The loan guarantee recovery fund established by this final rule provides the necessary assurance. Accordingly, HUD believes that it would be contrary to the public interest to delay the effectiveness of the rule to solicit comment.

Before issuance of this rule, HUD held meetings with representatives of 501(c)(3) organizations that have been damaged by arson or terrorism, as well

as with financial institutions, State and local organizations, and other public agencies. This rule incorporates many of the comments and suggestions offered by these organizations and entities. Although this rule is being issued in final form, additional public comments on this regulation are welcome on a continuing basis. These additional comments will be beneficial to any future loan guarantee authority provided to HUD. Interested persons are invited to submit comments regarding the final rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

III. Findings and Certifications.

Paperwork Reduction Act Statement. The information collection requirements contained in §§ 573.6, 573.7, 573.8, and 573.11 have been submitted to the Office of Management and Budget (OMB) for emergency review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). *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 valid control number.* The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Executive Order 12866, Regulatory Planning and Review. This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant under section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington Dc, 20410.

Unfunded Mandates Reform Act. The Secretary has reviewed this rule before publication and by approving it certified, in accordance with the Unfunded Mandates Reform Act of 199 (2 U.S.C. 1532), that this rule does not

impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of this rule is to assist certain nonprofit organizations that experience damage to their real and personal property as a result of acts of arson or terrorism. All qualified financial institution, are eligible to apply for loan guarantees under this rule.

Environmental Impact. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of General Counsel, the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family*, has determined that this rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to the family, will result from promulgation of this final rule.

List of Subjects in 24 CFR Part 573

Loan programs—housing and community development, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

1. A new part 573 is added to read as follows:

PART 573—LOAN GUARANTEE RECOVERY FUND

Sec.

- 573.1 Authority and purpose.
 - 573.2 Definitions.
 - 573.3 Eligible activities.
 - 573.4 Loan term.
 - 573.5 Underwriting standards and availability of loan guarantee assistance.
 - 573.6 Submission requirements.
 - 573.7 Loan guarantee agreement.
 - 573.8 Environmental procedures and standards.
 - 573.9 Other requirements.
 - 573.10 Fees for guaranteed loans.
 - 573.11 Record access and recordkeeping.
- Authority: Pub. L. 104-155, 110 Stat. 1392, 18 U.S.C. 241 note; 42 U.S.C. 3535(d).

§ 573.1 Authority and purpose.

Section 4 of the Church Arson Prevention Act of 1996 (Pub. L. 104-155, approved July 3, 1996) authorizes HUD to guarantee loans made by financial institutions to certain nonprofit organizations to finance activities designed to remedy the damage and destruction to real and personal property caused by acts of arson or terrorism. This part establishes the general procedures and requirements that apply to HUD's guarantee of these loans.

§ 573.2 Definitions.

The following definitions are only applicable to loan guarantees under this part, and are not criminal definitions.

Act means "The Church Arson Prevention Act of 1996" (Pub. L. 104-155, approved July 3, 1996).

Arson means a fire or explosion causing damage to (or destruction of) real or personal property that a Qualified Certification Official determines, or reasonably believes, to be deliberately set.

Borrower means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose property has been damaged or destroyed as a result of an act of arson or terrorism and that incurs a debt obligation to a financial institution for the purpose of carrying out activities eligible under his part.

Financial Institution means a lender which may be a bank, trust company, savings and loan association, credit union, mortgage company, or other issuer regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller

of the Currency. A Financial Institution may also be a Pension Fund.

Guarantee means an obligation of the United States Government guaranteeing payment of the outstanding principal loan amount, in whole or in part, plus interest thereon, on a debt obligation of the Borrower to a Financial Institution upon failure of the Borrower to repay the debt.

Guaranteed Loan Funds means funds received by the borrower from the Financial Institution to finance eligible activities under this part, the repayment of which is guaranteed by HUD.

Loan Guarantee Agreement means an agreement between a Financial Institution and the Secretary detailing the rights, responsibilities, procedures, terms, and conditions under which a loan provided by a Financial Institution to a Borrower may be guaranteed under section 4 of the Act.

Qualified Certification Official (QCO).

(1) *For the purpose of certifying an act of arson.* A State or local official authorized to investigate possible acts of arson. For the purposes of this definition, such an official is authorized to execute an Official Incident Report or its equivalent and may be an official or employee of such agencies as the local fire department, the local police department, or the State Fire Marshall Office or its equivalent. The term "Qualified Certification Official" also includes HUD, which will consult with the Bureau of Alcohol, Tobacco, and Firearms of the Department of the Treasury in making its determinations.

(2) *For the purpose of certifying an act of terrorism.* The Secretary or his designee, in consultation with the Federal Bureau of Investigation, shall determine whether an act of violence is a terrorist act or is reasonably believed to be a terrorist act.

Section 4 Guaranteed Loan means a HUD guaranteed loan made by a Financial Institution to a Borrower for the purpose of carrying out eligible activities to address damage or destruction caused by acts of arson or terrorism.

Terrorism means an act of violence causing damage to (or destruction of) real or personal property that the Secretary or his designee, in consultation with the Federal Bureau of Investigation, determines to be, or reasonably believes to be, a terrorist act, as defined by applicable Federal law or guidelines.

§ 573.3 Eligible activities.

Guaranteed Loan Funds may be used by a Borrower for the following activities when it is certified in accordance with § 573.6(e) that the

activity is necessary to address damage caused by an act or acts of arson or terrorism as certified in accordance with § 573.6(f):

(a) Acquisition of improved or unimproved real property in fee or under long term lease.

(b) Acquisition and installation of personal property.

(c) Rehabilitation of real property owner, acquired, or leased by the Borrower.

(d) Construction, reconstruction, or replacement of real property improvement.

(e) Clearance, demolition, and removal, including movement of structures to other sites, of buildings, fixtures and improvements on real property.

(f) Site preparation, including construction, reconstruction, or installation of site improvements, utilities, or facilities, which is related to the activities described in paragraphs (a), (c), or (d) of this section.

(g) Architectural, engineering, and similar services necessary to develop plans in connection with activities financed under paragraphs (a), (b), (c), or (d) of this section.

(h) Acquisition, installation and restoration of security systems.

(i) Loans for refinancing existing indebtedness secured by a property to be constructed, rehabilitated, or reconstructed, if such financing is determined to be appropriate to achieve the objectives of the Act and this part.

(j) Other necessary project costs such as insurance, bonding, legal fees, appraisals, surveys, relocation, closing costs, etc., paid or incurred by the Borrower in connection with the completion of the above activities.

§ 573.4 Loan term.

The term of the loan to be guaranteed by HUD under this part may not exceed 20 years.

§ 573.5 Underwriting standards and availability of loan guarantee assistance.

(a) HUD may, in its discretion, accept the underwriting standards of the Financial Institution making a loan to a Borrower.

(b) HUD will not make the loan guarantee unless it determines that the guaranteed loan is an acceptable financial risk under HUD's generally applicable loan underwriting standards based on the following:

(1) The Borrower's ability to pay debt service; and

(2) The value of the collateral assigned or pledged as security for the repayment of the loan.

(c) The provision of a loan guarantee to a Financial Institution and the

amount of the guarantee do not depend in any way on the purpose, function, or identity of the organization to which the Financial Institution has made, or 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.

(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 construction 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 24 CFR part 35.

(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.

§ 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 Recordkeeping.

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.

Dated: September 5, 1996.

Howard Glaser,

Acting Assistant Secretary for Community Planning and Development.

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