



**U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-5000

April 4, 2019

Dear Tribal Leader:

The U.S. Department of Housing and Urban Development (HUD) is currently revising the regulations for the Section 184 Indian Home Loan Guarantee (Section 184) program. Since these regulations have substantial direct effects on federally recognized tribal governments, HUD is conducting tribal consultation in accordance with HUD's Tribal Consultation Policy.

Since February of 2018, HUD's Office of Native American Programs (ONAP) has held fourteen tribal consultation sessions: 11 consultation sessions prior to drafting the proposed rule and 3 consultation sessions to review and discuss drafted subparts of the rule. HUD recorded tribal comments during these sessions and considered these comments as it developed the proposed rule. During this time, HUD also accepted comments through an email address dedicated to tribal consultation.

HUD has now completed the draft proposed rule and is making the rule available for Tribes to review and provide comment. A copy of this draft is attached and will be posted to the [Consultation on Section 184 Regulations webpage](#). Tribes will have 60 days from the date of this letter to submit comments on the proposed rule. Please send your comments on the proposed rule to: [184consultation@hud.gov](mailto:184consultation@hud.gov). Alternatively, Tribes may submit comments by postal mail to: Krisa Johnson, Director, Office of Loan Grantee, HUD – Office of Native American Programs, 451 Seventh Street SW, Room 4108, Washington, D.C. 20410.

Additionally, HUD will be holding a tribal consultation session to have a discussion with Tribes about the draft proposed rule. This consultation session will be held on Wednesday, May 8, 2019 from 1:45 pm to 3:15 pm. at the Denver Convention Center. The consultation will be held in conjunction with the National American Indian Housing Council (NAIHC) annual meeting; however, one does not have to register for the NAIHC annual meeting to attend the consultation session. I hope you will be able to participate in this session and the discussion on the draft proposed rule.

Once the tribal comment period is over, all comments received will be considered. HUD will then place the draft proposed rule into Departmental clearance to be reviewed by HUD offices and the Office of Management and Budget, in advance of publishing the proposed rule in the *Federal Register* for public comment.

Input from tribal leaders is essential to developing the best possible regulations for the Section 184 program. Thank you for your continued partnership and collaboration in the effective delivery of HUD's programs.

Sincerely,

A handwritten signature in black ink that reads "Heidi J. Frechette".

Heidi J. Frechette  
Deputy Assistant Secretary  
for Native American Programs

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## **Subpart A - General Program Requirements**

### **§ 1005.1 Purpose.**

This part implements the Section 184 Indian Home Loan Guarantee Program authorized under Section 184 of the Housing and Community Development of 1992, as amended. Section 184 authorizes the U.S. Department of Housing and Urban Development to establish a loan guarantee program for American Indian and Alaskan Native families, Indian housing authorities and Indian tribes. The loans guaranteed under the program are used to construct, acquire, refinance or rehabilitate one- to four-family housing located on or off native lands and approved Indian operating areas. These regulations apply to borrowers seeking and approved for Section 184 guaranteed loans, and Indian tribes, Indian housing authorities, lenders and servicers participating in the Section 184 Indian Home Loan Guarantee Program.

### **§ 1005.3 Definitions.**

The following definitions apply throughout this Part:

(a) *Administrative guidance* means any supplemental instructions issued by HUD as it relates to loans insured under the Section 184 program. The instructions may be in the form of notices, lender letters, handbooks and any other written documents.

(b) *Arms-length transaction* means a transaction between two unrelated parties who are each acting in their own best interest.

(c) *BIA* means the United States Department of Interior, Bureau of Indian Affairs.

(d) *Default* means when the borrower has failed to make a loan payment or perform an obligation under the terms of the loan, loss mitigation plan, or any other agreement with the lender.

(e) *Date of default* means the day after the borrower's obligation to make a loan payment or perform an obligation under the terms of the loan, loss mitigation plan, or any other agreement with the lender was due.

(f) *Day* means calendar day, except where the term *business day* is used.

(g) *First legal action* means when the foreclosure procedure under applicable tribal or state law requires commencement of a court action or proceeding, a document is considered the first legal action if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g. complaint, petition, order to docket, notice of hearing). When the foreclosure under applicable tribal or state law does not require a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process. When the tribal or state law does not require initiating a court action or legal proceeding or recording or publishing of any document, a document is considered "first legal action" if it is the first document that establishes, sets or schedules the foreclosure sale date.

(h) *Good and marketable title means* title that contains exceptions or restrictions, if any, which are permissible under subpart D of this part or otherwise waived by HUD; and any objections to title have been cleared and any discrepancies have been resolved to ensure the Section 184 insured loan is in first lien position. In the case of Section 184 loans on tribal lands, good and marketable title includes the ownership rights of the improvements as reported in the Title Status Report issued by the Bureau of Indian Affairs.



(i) *HUD* means the United States Department of Housing and Urban Development.

(j) *Identity-of-interest* means any relationship (generally based on family ties or financial interests) between the seller and purchaser (prospective owner) and the owner and the lender.

(k) *Indian* means any person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term “Native American”.

(l) *Lender* means a financial institution that is recognized or approved by HUD to participate in the Section 184 Indian Home Loan Guarantee Program.

(m) *Month* means 30 days in a month, regardless of the actual days.

(n) *Origination* means the process of creating a loan, starting with the taking of the initial application, continuing with the processing and underwriting, and ending with the lender receiving a loan guarantee.

(o) *Part A* means the form designated by HUD for the Section 184 application for guaranteed benefits whereby the lender provides, among other things, information related to the Section 184 loan’s unpaid principal balance.

(p) *Part B* means the form designated by HUD for the Section 184 application for guaranteed benefits where by the lender requests reimbursement of reasonable eligible expenses and reports other fiscal data.

(q) *Property* means one to four family dwellings that are standard housing and are located on trust land, land located in an Indian or Alaska Native area, or approved Indian operating area as established by HUD.

(r) *Section 184 guaranteed loan or guaranteed loan* means a loan guaranteed under this part and whereby HUD has issued a loan guarantee certificate.

(s) *Section 184 Indian Area*. means the area in which Section 184 loans may be guaranteed in accordance with administrative guidance.

(t) *Security* means any collateral authorized under existing tribal, Federal or state law.

(u) *Servicer* means a financial institution approved by HUD to service loans guaranteed by this Part.

(v) *Sponsor*. (See 24 CFR § 1005.213(a)).

(w) *Title status report*. (See 25 CFR § 150.2 or any successor regulation).

(x) *Tribe or Indian Tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 USCS §§ 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self Determination and Education Assistance Act of 1975.

(y) *Tribally designated housing authority (TDHE)* means any entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians; or housing subject to the provisions of this part; and is established by exercise of the power of self-government of an Indian tribe independent of State law; or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska. The term includes tribally designated housing entities under the Native American Housing Assistance and Self-Determination Act of 1996.

(z) *Trust land or Tribal trust land* means land title to which is held by the United States for the benefit of an Indian or Indian tribe or title to which is held by an Indian tribe subject to a restriction against alienation imposed by the United States.

## **Subpart B - Financial Institution Eligibility & Requirements**

### **§ 1005.201 Statutorily eligible lenders.**

(a) To meet the minimum threshold to participate in the Section 184 program, a financial institution must meet one of the following:

(1) Any financial institution approved by HUD for participation in the single-family mortgage insurance program under Title II of the National Housing Act;

(2) Any financial institution whose housing loans under the U.S. Department of Veterans Affairs, chapter 37 of title 38, United States Code are automatically guaranteed pursuant to 38 U.S.C. § 3702(d);

(3) Any financial institution approved by the U.S. Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(4) Any other financial institution that is supervised, approved, regulated, or insured by any other agency of the United States, including but not limited to Community Development Financial Institutions; or

(b) Financial institutions meeting paragraph (a) above must submit an intent to participate on form as prescribed by HUD.

### **§ 1005.203 Other eligible financial institutions.**

(a) *Other eligible financial institutions application process.* Financial institutions not meeting the minimum statutory threshold requirements under § 1005.201 may apply for approval by HUD. To apply, a financial institution must submit a completed application package to HUD for approval, on a form prescribed by HUD.

(b) *Requirements.* The application must establish that the financial institution meets the following qualifications:

(1) *Business Form.* The financial institution shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership, organized under tribal or state law.

(i) *Partnership Requirements.* A partnership must meet the following requirements:

(A) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(B) One general partner must be designated as the managing general partner. The managing general partner shall also comply with the requirements specified in §§ 1005.203(a)(1)(i)(C) and 1005.203(a)(1)(i)(D). The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage financial institutions or property improvement or manufactured home financial institutions and must have exclusive authority to deal directly with HUD on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and HUD must be notified in writing within 15 days of the substitution.

(C) The partnership agreement shall specify that the partnership shall exist for a minimum term of ten years as required by HUD. All Section 184 guaranteed loans held by the partnership shall be transferred to a financial institution approved under this part prior to the termination of the partnership. The partnership shall be specifically authorized to continue its existence if a partner withdraws.

(D) HUD must be notified in writing within 15 days of any amendments to the partnership agreement that would affect the partnership's actions under the Section 184 program.

(ii) *Use of business name.* The financial institution must use its HUD-registered business name in all advertisements and promotional materials related to the guaranteed loan. HUD-registered business names include any alias or “doing business as” (DBA) on file with HUD. The financial institution must keep copies of all print and electronic advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used to advertise.

(2) *Employees.* The financial institution shall employ competent personnel trained to perform their assigned responsibilities in mortgage lending, including origination, servicing, and collection activities, and shall maintain adequate staff and facilities to originate and service mortgages, in accordance with applicable tribal, federal or state requirements, to the extent the financial institution engages in such activities.

(3) *Officers.* All employees who will sign applications for guaranteed loans on behalf of the financial institution shall be corporate officers or shall otherwise be authorized to bind the financial institution in the origination transaction. The financial institution shall ensure that an authorized person reports all guarantees, purchases and sales of guaranteed loans to HUD for the purpose of obtaining or transferring guarantee coverage.

(4) *Annual audited financial statements.* The financial institution shall: (i) Furnish to HUD a copy of its most current annual audited financial statement.

(ii) Furnish such other information as HUD may request; and

(iii) Submit to an examination of that portion of its records that relates to its activities under the loan guarantee program.

(5) *Quality control plan.* The financial institution shall submit a written quality control plan in accordance with § 1005.221.

(6) *Branch offices.* A financial institution may maintain branch offices. A financial institution's branch office must be registered with HUD in order to originate or submit applications for guaranteed loans. The financial institution shall remain responsible to HUD for the actions of its branch offices.

(7) *Conflict of interest and responsibility.* A financial institution may not pay anything of value, directly or indirectly, in connection with any guaranteed loan to any person or entity if such person or entity has received any other consideration from the borrower, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the property, except that consideration, approved by HUD, may be paid for services actually performed. The financial institution shall not pay a referral fee to any person or organization.

(8) *Licensing certification.* A financial institution shall certify that it has not been refused a license and has not been sanctioned by any state or tribe in which it will originate or guarantee loans.

(9) *Net worth.* Irrespective of size, a financial institution shall have a net worth of not less than \$250,000. No less than 20 percent of the financial institution's required net worth must be liquid assets.

(10) *Operating area.* The financial institution must submit a list of states or geographic regions in which it wants to participate in the Section 184 program and include the active approvals for each state/region.

**§ 1005.205 Other financial institution approval.**

(a) *Final approval.* Approval is signified by: (1) Written notification from HUD that the lender is approved as eligible under the Section 184 program; and

(2) Agreement by the lender to comply with requirements of this Part, as applicable.

(b) *Limitations on approval.* A lender may be approved to operate within Section 184 program areas in accordance with the lender's state licensing.

(c) *Denial of participation.* A financial institution may be denied approval to become an eligible lender if HUD determines the financial institution does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and of the right to submit a written appeal. If participation is denied, it may be appealed in accordance with the procedures set forth in § 1005.813.

**§ 1005.207 Lender participation options.**

HUD recognizes two main levels of participation categories: direct guarantee lender and non-direct guarantee lender.

(a) *Non-direct guarantee lender.* All lenders meeting the minimum threshold requirements under § 1005.201 or approved under § 1005.205 are categorized non-direct guarantee lenders.

(1) A lender choosing to remain a non-direct guarantee lender must notify HUD of its intent to participate as an entity sponsored by a direct guarantee lender ("sponsored entity"). A sponsored entity must be approved to originate Section 184 by a direct guarantee lender and have a broker agreement with that lender. A sponsored entity is prohibited from underwriting, closing, servicing, purchasing, holding, selling Section 184 guaranteed loans.

(2) A lender choosing only service Section 184 guaranteed loans must apply to HUD to participate as a non-direct guarantee servicer. A non-direct guarantee servicer may only service, purchase, hold or sell Section 184 guaranteed loans.

(3) A lender may choose to be both a sponsored entity and a non-direct guarantee servicer.

(b) *Direct-guarantee lender.* (1) All lenders meeting the minimum threshold requirements under § 1005.201 or approved under § 1005.205 may request to become a direct guarantee lender to underwrite, close, service, purchase, hold, and sell Section 184 guaranteed loans and/or sponsor non-direct guarantee lenders.

(2) Interested lenders must apply by submitting an application under § 1005.209 and may obtain HUD approval under § 1005.211.

**§ 1005.209 Direct guarantee application process.**

(a) *Direct Guarantee Application Process.* A lender may submit an application for participation as a direct guarantee lender on a form prescribed by HUD.

(b) *Special requirements.* The lender must establish that it meets the following qualifications.

(1) Eligibility under § 1005.201 or have HUD approval under § 1005.205 as evidenced by approval documents and most recent recertification documents.

(2) The lender has five years of experience in the origination of loans guaranteed or insured by an agency of the Federal Government. HUD will approve a lender with less than five years of experience if a principal officer has had a minimum of five years of managerial



experience in the origination of loans guaranteed or insured by an agency of the Federal Government.

(3) The lender has on its permanent staff an underwriter that is authorized by the lender to bind the lender on matters involving the origination of loans as a direct guarantee lender and that is registered with HUD and such registration is maintained with HUD. The lender shall use appraisers permitted by § 1005.463.

(4) The lender must submit initially ten loans processed in accordance with subpart D. The documents required by subpart D will be reviewed by HUD and, if acceptable, commitments will be issued prior to the loan guarantee. If the underwriting and processing of these 10 loans is in accordance with subpart D, then the lender shall be an approved direct guarantee lender and may be approved to close subsequent loans and submit them directly for a guarantee in accordance with subpart D. Unsatisfactory performance by the lender at this stage constitutes grounds for denial of participation in the program, or for continued review of a lender's submissions. If participation is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in § 1005.813.

(5) The lender must submit a list of current sponsored entities which has an active sponsorship agreement. The following information regarding the mortgage broker included:

(i) Contact information to include address, phone number and email address for corporate officers.

(ii) The Federal tax identification number (TIN) for the mortgage broker.

(iii) Names and license numbers for all loan originators and processors.

(6) The lender shall provide written notification to HUD of any changes that affect qualifications under this section within 15 days of the change.

(7) If not already provided to HUD, the lender must submit a list of states or geographic regions in which it wants to participate in the Section 184 program and include the active approvals for each state/region.

**§ 1005.211 Direct guarantee approval.**

(a) *Final approval.* Approval is signified by: (1) Written notification from HUD that that the lender is an approved direct guarantee lender under the Section 184 program;

(2) Agreement by the direct guarantee lender to comply with requirements of this Part, any administrative guidance, and any applicable federal, state or tribal law requirement imposed on the direct guarantee lender;

(3) Agreement by the direct guarantee lender to ensure sponsored entity's compliance with this Part, any administrative guidance and any applicable federal, state or tribal law requirement imposed on the sponsored entity; and

(4) HUD's issuance of a loan guarantee constitutes an agreement between HUD and the direct guarantee lender specific to the endorsed loan and subjects the lender to all the requirements of the Section 184 program.

(b) *Limitations on approval.* A lender may be approved to operate within Section 184 program areas in accordance the lender's state licensing.

(c) *Denial of participation.* A lender may be denied approval to become a direct guarantee if HUD determines the lender does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and of the right to submit a written appeal. If participation is denied, it may be appealed in accordance with the procedures set forth in § 1005.813.

**§ 1005.213 Sponsorship.**

(a) *Sponsor.* A sponsor is an approved direct guarantee lender that enters into a relationship with a non-direct guarantee lender or another direct guarantee lender, whereby the sponsor provides underwriting, closing, and servicing of Section 184 guaranteed loans.

(b) *General responsibility requirements of a sponsor.* (1) Each sponsor shall be responsible to HUD for the actions of its sponsored entity in originating loans. If tribal or state law requires specific knowledge by the sponsor HUD shall presume sponsor had knowledge and shall remain liable.

(2) The sponsor is responsible for approving each sponsored entity, and for monitoring and ensuring compliance with this Part, any HUD administrative guidance, and any other state or tribal law requirements.

(3) The sponsor must notify HUD of the sponsorship relationship after approving a sponsored entity.

(4) A sponsor must notify HUD of any changes in a sponsorship relationship within 15 days.

(c) *Responsibilities of the sponsored entity.* A sponsored entity must comply with this Part, any HUD administrative guidance, and any other federal, state or tribal law requirements.

**§ 1005.215 Annual reporting requirements.**

Direct guarantee lenders and non-direct guarantee servicers must submit an annual report on loan performance, including that of all sponsored entities, where applicable, along with any other required reporting as prescribed by HUD in administrative notice.

**§ 1005.217 Non-direct guarantee servicer.**

(a) *Non-direct guarantee servicer application process.* A lender may submit an application for participation as a non-direct guarantee servicer on a form prescribed by HUD.

(b) *Requirements.* The lender must establish that it meets the following qualifications:

(1) Eligibility under § 1005.201 or have HUD approval under § 1005.205 as evidenced by approval documents and most recent recertification documents.

(2) The lender has three of experience in servicing loans guaranteed or insured by an agency of the Federal Government.

(3) The lender shall provide written notification to HUD of any changes that affect qualifications under this section within 15 days of the change.

(4) The lender must submit a list of states or geographic regions in which it wants to service Section 184 guaranteed loan and include active approvals for each state/region.

(5) Lender must: (i) submit a notification to HUD of the acquisition or sale of any Section 184 guaranteed loans for servicing;

(ii) comply with this Part, any administrative guidance, all tribal, state and federal requirements; and

(3) must undergo training on the Section 184 program, as provided by HUD.

**§ 1005.219 Non-direct guarantees servicer approval.**

(a) *Final approval.* Approval is signified by: (1) Written notification from HUD that the lender is approved as a non-direct guarantee servicer under the Section 184 program.

(2) Agreement by the direct guarantee lender to comply with requirements of this Part, any HUD administrative guidance, and any applicable federal, state or tribal law requirement.

(b) *Limitations on approval.* The non-direct guarantee servicer may only be approved to service Section 184 guaranteed loans in areas pursuant to the lender's state licensing.

(c) *Denial of participation.* A lender may be denied approval to become a non-direct guarantee servicer if HUD determines the lender does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and of the right to submit a written appeal. If participation is denied, it may be appealed in accordance with the procedures set forth in § 1005.813.

**§ 1005.221 Quality control plan.**

(a) A quality control plan sets forth a lender's procedures for ensuring the quality of the lender's Section 184 loan origination, underwriting, closing, endorsement and servicing. The purpose of the quality control plan is to ensure lender compliance with Section 184 requirements and protect HUD and lender from unacceptable risks. A lender must adopt and implement a quality control plan that fully complies with Section 184 requirements.

(b) The quality control plan must:

(1) Be maintained and updated, as needed, to comply with all applicable Section 184 requirements.

(2) Cover all policies and procedures, whether performed by the lender or outsourced to a contractor, to ensure full compliance with all Section 184 requirements.

(3) Provide the lender with information sufficient to adequately monitor and oversee the lender's compliance and measure performance as it relates to the lender's Section 184 loan activity.

(4) Require lender to retain all quality control plan related documentation, including

selection criteria, review documentation, findings and actions to mitigate findings, for a period of three years from initial quality control review, or from the last action taken to mitigate findings, whichever is later.

(5) Allow lender to use employees or contractors to perform the quality control functions so long as they do not directly participate in any loan administration processes.

(6) Ensure the lender assumes full responsibility for any contractor's conduct of quality control reviews.

(7) Require the direct guarantee lender to train all staff, contractors or sponsored entities working with the Section 184 program on the program's loan administration and quality control processes and provide staff access to all current Section 184 legal authorities and policy guidance. The direct guarantee lender must retain copies of training documentation for all staff working on the Section 184 program. Staff training records must be retained in accordance with § 1005.223(d). Failure to comply with the training and documentation requirements may subject the direct guarantee lender to sanctions in accordance with §1005.807.

(8) Ensure that lender's employees, contractors, and/or sponsored entities are eligible to participate in the Section 184 program. Any designated employees, contractors or sponsored entities found ineligible shall be restricted from participating in the program.

(9) Require lender to perform quality control review of its sponsored entities in the same manner and under the same conditions as required for the lender's own operation.

(10) Require lender to review a random statistical sample of rejected applications within 90 days from the end of the month in which the decision was made. The reviews must be conducted on a monthly basis to ensure that the reasons given for the rejection were valid and each rejection has the concurrence of the appropriate staff person with sufficient approval

authority.

(11) Ensure the borrower's financial accounts related the Section 184 loan are used only for the purpose for which they were received and are following all Consumer Financial Protection Bureau and any other applicable federal, state and tribal requirements.

(12) Require the Section 184 lender to collect and forward any and all loan guarantee fees in accordance with the Section 184 requirements, with sufficient documentation evidencing the timely collection and payment of the fees to HUD.

(13) Require Section 184 lender to verify that the loans are submitted to HUD for guarantee within required time frames.

(14) Provide for the monitoring of all Section 184 loans for potential fraud, material misrepresentations, or other findings. The lender's quality control staff must investigate and determine if fraud, material misrepresentation or other findings occurred.

(15) Require the lender to report all material deficiencies to HUD within 15 days of discovery and, within 30 days, report to HUD, the lenders corrective action plan.

(16) Require the lender to refer any suspected fraud or material misrepresentation by HUD employees or contractors be directly reported to HUD's Office of Inspector General through the HUD OIG website.

(17) Require that the lender conduct appropriate loan level quality control procedures, in accordance with HUD administrative guidance.

(18) Require that the lender maintain complete and accurate information from each borrower for all aspects of the Section 184 loan for which the quality control sample is selected.

(c) *Submission of quality control plan.* (1) Direct guarantee lenders and non-direct guarantee servicers must submit a quality control plan as required by its approving agency,

modified for the Section 184 program. If the approving agency does not require the submission of a quality control plan, or if a lender is approved by § 1005.205, then the lender must submit to HUD, a quality control plan in accordance with § 1005.221.

(2) All sponsored entities shall comply with this requirement and provide a quality control plan directly to their sponsoring lender in accordance with their sponsorship agreement.

**§ 1005.223 Other requirements.**

(a) *SAFE act compliance.* All lenders must ensure that it and its employees comply with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C § 1501 et seq.), including the licensing and registration of its employees in the Nationwide Multistate Licensing System.

(b) *Dual employment.* All lenders must require its employees to be its employees exclusively, unless the lender has determined that the employee's other outside employment, including any self-employment, does not create a conflict of interest.

(c) All lenders shall submit any reporting requirements to HUD, or to its sponsoring direct guarantee lender, under this Part or any HUD administrative guidance, or any special request for information within the time frames prescribed in the request.

(d) *Records retention.* (1) Direct guarantee lenders must maintain origination case binders either in hard copy or electronic form for a period three years beyond the life of the loan.

(2) Direct guarantee lenders and non-direct servicing lenders must maintain the servicing case binder for a period of three years beyond the life of the loan and any additional time required due to payment of claim. The claim file must be retained for a period of at least three years after a claim has been paid.



(3) All lenders must retain personnel files of employees for one year beyond the employee's separation from the lender. Additionally, lenders must follow the applicable records retention requirements imposed by applicable tribal, federal and state laws and regulations.

(e) Direct guarantee lenders must actively market, originate, underwrite, close and service loans on trust land. Sponsored non-direct guarantee lenders must actively market and originate loans on trust land. HUD may impose a minimum level of activity for tribal trust land, adjusted periodically based on HUD public notice and comment. Failure to do so may result in sanctions in accordance with § 1005.807.

**§ 1005.225 Business change reporting.**

(a) *Business changes.* Within 15 days of a change, direct guarantee lenders shall provide written notification to HUD, in such form as prescribed by HUD, of:

(1) All changes in the direct guarantee lender or sponsored entity's legal structure, including, but not limited to, mergers, acquisitions, terminations, name, location, control of ownership, and character of business.

(2) Staffing changes with senior leadership and loan underwriters for direct guarantee lenders and sponsored entities.

(3) Sanctions by another supervising entity imposed against any officer, principal, manager, supervisor, loan processor, loan underwriter, loan originator, of the lender or sponsored entity, or the lender or sponsored entity itself.

**§ 1005.227 Annual recertification.**

(a) *Annual recertification submission.* (1) All direct guarantee lenders and non-direct guarantee servicers are subject to annual recertification on April 30 on form as prescribed by HUD. With each annual recertification, the lender must submit:

- (i) A certification that it has not been refused a license by any tribe, state or federal entity;
- (ii) A certification that it has not been sanctioned by any tribe, state or federal entity in which it will guarantee loans; and
- (iii) A renewal certification of continued eligibility from an authorizing entity listed in § 1005.201 or approved under § 1005.205.

(2) All sponsored entities shall comply with this requirement and provide the certification directly to their sponsoring lender in accordance with their sponsorship agreement.

(b) *Financial statements.* (1) All direct guarantee lenders and non-direct guarantee servicers must submit audited financial statements, and, if applicable, updates to the lender's quality control plan, branch offices and operating area.

(2) All sponsored entities shall comply with this requirement and provide the certification directly to their sponsoring lender in accordance with their sponsorship agreement.

(c) Direct guarantee lenders must also submit the following:

(1) A certification that the lender continues to meet the direct guarantee program eligibility requirements in accordance with § 1005.209.

(2) An updated list all sponsored entities with which the direct guarantee lender has a sponsorship relationship, and a certification of their continued eligibility.

(3) Any reports required under this Part and any other HUD administrative guidance.

(d) *Recertification extension request.* Direct guarantee lenders and non-direct guarantee servicers may request an extension of the recertification deadline at least 45 days before the deadline.

(e) HUD will review the annual recertification submission and request any further information needed to determine recertification. HUD will provide written notification of approval or denial. In the event of denial with the right to submit a written appeal pursuant to § 1005.813.

(f) If an annual recertification is not submitted by the deadline HUD will subject the lender to sanctions under § 1005.807.

#### **§ 1005.229 Program Ineligibility**

(a) *Ineligibility.* For a lender to be eligible for or to maintain Section 184 approval under annual recertification, the entity or any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the entity shall not:

(1) Be suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424, or under similar procedures of any other Federal agency;

(2) Be indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the lender to participate in the Title I or Title II programs of the National Housing Act, or Section 184 program;

(3) Be subject to unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility;

(5) Be convicted of, or have pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage loan industry during the 7-year period preceding the date of the application for licensing and registration, or at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(6) Be in violation of provisions of the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any applicable provision of tribal or state law; or

(7) Be in violation of any other requirement established by HUD, in accordance with public notice and comment.

### **Subpart C - Tribal Participation**

#### **§ 1005.301 Tribal eligibility.**

Tribal trust lands can be considered eligible property under the Section 184 program through an application process. A tribe seeking to include their tribal trust lands in the Section 184 program must apply to HUD for approval. Approved tribes must comply with the requirements of this subpart. With respect to Section 184 loans, participating tribes must demonstrate that a legal and administrative framework exists, to the satisfaction of HUD, to protect the interests of the borrower, the lender, and HUD.

**§ 1005.303 Tribal legal and administrative framework.**

Before a tribe can be approved to participate in the Section 184 loan guarantee program, the tribe must have a legal and administrative framework in place to address a default by the borrower of the requirements of the Section 184 guaranteed loan. A tribe may enact legal procedures through tribal council resolution or any other recognized legislative action. These procedures must be legally enforceable and include the following requirements:

(a) *Foreclosure and Assignment.* When a borrower is in default and is unwilling or unable to successfully complete loss mitigation in accordance with §§1005.737 - 1005.751 and lender initiates first legal action against the borrower or assigns the loan to HUD:

(1) The tribe must demonstrate that a foreclosure will be processed through the legal systems having jurisdiction over the Section 184 loans.

(2) Foreclosure ordinances must allow for the legal systems with jurisdiction to reassign the lease to HUD or provide for a new lease to be issued to HUD in the event the lease is vacated.

(3) If the lender assigns the loan to HUD, the tribe shall retain the option to reassign the lease to the tribe, TDHE or HUD in lieu of completing the foreclosure process or if a property becomes vacant during the foreclosure process.

(4) Once a lease is reassigned or a new lease is issued, the tribe, TDHE or HUD shall work together to reassign the lease to another eligible tribal member.

(b) *Eviction.* Eviction procedures must enable the lender, TDHE or HUD to take possession of the property in the event of reassignment of the lease from the borrower to TDHE or HUD or if the lease is vacated and a new lease is issue to HUD. All eviction procedures must allow for expedited removal of the delinquent household residents from occupancy.

(c) *Lien procedures.* Section 184 guaranteed loans must have a first lien position on the property. (1) To ensure that each Section 184 loan holds a first lien position, the tribe must enact an ordinance that either: (i) provides for the satisfaction of the Section 184 loan before any and all other obligations; or

(ii) state law shall determine the priority of liens against the property.

(2) If a tribal jurisdiction spans two or more states, the state in which the property is located is the applicable state law.

(3) For a lien to be considered valid on tribal trust land, the lien must be approved and recorded by BIA.

(d) *Lease provisions for tribal trust land.* (1) Tribes may use a model lease available from HUD for Section 184 loan guarantee lending on tribal trust land. The tribe may use a rider to make modifications to the model lease, with the approval of HUD and BIA.

(2) Alternatively, the tribe may draft their own lease in compliance with 25 CFR part 162 and contain the following mandatory HUD lease terms or language: (i) Identify lessor (tribe or TDHE);

(ii) Identify the lessee (tribe, TDHE, enrolled member of the tribe or HUD);

(iii) Legal description of the land covered by the lease;

(iv) Lease term of at least 50 years;

(v) In the event of lessee default under the lease, the lease shall not obstruct the right of:

(A) The lender to foreclose or assign the loan to HUD; and

(B) The lender, HUD, or the lessor to evict the lessee upon completion of the foreclosure process or reassignment of the lease;

(vi) The lease must be executed by the lessor, lessee and BIA to be enforceable;

(vii) The lease may not be terminated by either or both parties during its term when the lease and/or any improvements on the premises, or any interest therein, is mortgaged or otherwise pledged as security for Section 184 guaranteed loan in accordance with the provisions hereof. If such a lease is terminated, HUD must be a consenting party to the termination.

(viii) To address cases where the borrower defaults on a HUD Section 184 guarantee loan and the loan is assigned to HUD from the lender, the tribal lease must contain the following provision: “If lessee default(s) on the Section 184 loan under which the lease and/or improvements on the leased premises are pledged as security, the lessee may reassign the lease and deliver possession of the leased premises, including any improvements thereon, to the tribe, TDHE, or HUD. Subsequent to the assignment, the tribe, TDHE or HUD may transfer this lease and the leased premises to a successor lessee purchasing the property; provided, however, that the lease may only be transferred to another member of the tribe or tribal entity.”

(x) The lease must also provide that in the event of foreclosure the lease will not be subject to any forfeiture or reversion and will not be otherwise subject to termination.

**§ 1005.305 Tribal application.**

A tribe shall submit an application on a form prescribed by HUD. The application must include a copy of the tribe’s foreclosure, eviction, lease and priority lien ordinances. To obtain HUD approval for the tribe’s submission, at a minimum it must provide evidence that the tribe:

(a) will ensure HUD and lenders have access to the tribal lands for the purpose of servicing and evaluating properties guaranteed under the Section 184 program;

(b) has enacted foreclosure procedures;

(c) has enacted eviction procedures;

(d) agrees that if eviction and foreclosure procedures are not enforced HUD may cease guaranteeing new Section 184 loans within their area of jurisdiction; and

(e) has adopted procedures giving HUD first lien priority (where applicable) or otherwise ensuring that the Section 184 loan will be satisfied before all other property debts; or has adopted legislation stating that it will abide by applicable state or local laws with respect to lien priority in accordance with § 1005.303.

**§ 1005.307 Tribal notification process.**

HUD shall provide written notification to the tribe upon completion of HUD 's review of an application submitted for participation in the Section 184 loan guarantee program. If HUD determines the application is incomplete or the tribal ordinances and/or leases do not comply with the requirements of this subpart HUD will provide the tribe an opportunity to resubmit the application.

**§ 1005.309 Tribal recertification.**

On a form prescribed by HUD, the tribe shall recertify annually to HUD whether it continues meet the requirements of the subpart and validate or update tribal contact information.

**§ 1005.311 Duty to report changes.**

Within 15 days of any changes to the tribe's contact information, foreclosure, eviction, lease and lien priority ordinances, the tribe shall provide copies of the updated ordinances to HUD. HUD will provide written notification of the review of any updated ordinances and/or lease provisions and the determination on whether the updated documents meet the requirements of this subpart.



**§ 1005.313 Notification to HUD of leasehold rent default.**

In cases where the lessee is required to pay leasehold rent, and is delinquent in payment to the lessor, the lessor shall provide written notification to the HUD within 30 days of the default.

**Subpart D - Underwriting**

**ELIGIBLE BORROWERS**

**§ 1005.401 Eligible borrowers.**

(a) Eligible borrowers include Indian family, or Indian tribe, tribally designated housing authority.

(b) In cases of an Indian family, at least one member of the Indian family must be: (1) the borrower and;

(2) a member of a federally recognized tribe, a regional or village corporations as defined in the Alaska Native Claims Settlement Act, or one of the following five state tribes: Coharie Tribe (North Carolina); Haliwa-Saponi Tribe (North Carolina); Lumbee Tribe (North Carolina); Waccamaw Siouan Tribe (North Carolina); MOWA band of Choctaw (Alabama).

**§ 1005.403 Principal residence.**

(a) Borrowers who are an Indian family must occupy the dwelling as a principal residence. Borrowers who are an Indian housing authority or Indian tribe do not need to occupy the dwelling as a principal residence.

(b) *Non-occupant co-borrower.* A co-borrower who is not to occupy the dwelling as a principal resident is permitted. Non-occupant co-borrower must be related by blood (e.g., parent-

child, siblings, aunts-uncles/nieces-nephews), or an unrelated individual who can document evidence of a family-type, longstanding and substantial relationship not arising out of the loan transaction.

**§ 1005.405 Borrower residency status.**

- (a) Eligible borrowers must be: (1) a U.S. citizen; a lawful permanent resident alien; or (2) a non-permanent resident alien.
- (b) Documentation must be provided to lender to support lawful residency status.
- (c) Non-U.S. citizens without lawful residency in the U.S. are not eligible for the Section 184 program.

**§ 1005.407 Relationship of income to loan payments.**

(a) *Adequacy of borrower's gross income.* (1) All occupying borrowers must establish, to the satisfaction of HUD, that his or her gross income is and will be adequate to meet: (i) the periodic payments required by the loan submitted for guarantee; and

(ii) other long-term obligations.

(2) In cases where there is a non-occupant co-borrower, the occupying borrower must meet a minimum qualifying threshold, established by HUD.

(b) Determinations of adequacy of borrower income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, actual or perceived sexual orientation, gender identity, source of income of the borrower, or location of the property.

**§ 1005.409 Credit standing.**

(a) A borrower must have a general credit standing satisfactory to HUD. There is no minimum credit score required to qualify for a Section 184 guaranteed loan. The lender must analyze the borrower's credit history and payment pattern to determine credit worthiness.

(b) A borrower is not immediately eligible for a Section 184 guaranteed loan if the borrower had a previous default on a Section 184 guaranteed loan which resulted in a claim being paid by HUD.

(c) HUD will impose a waiting period of: (1) seven years after the date of a foreclosure before a new case number can be issued.

(2) Three years after the date of a finalized deed-in-lieu of foreclosure, lease-in-lieu of foreclosure or pre-foreclosure sale, before a new case number can be issued.

(3) The borrower must meet all other underwriting credit standards.

(d) The waiting period begins on the date the ownership to the property is transferred to the foreclosing entity/designee, purchaser of the property, or the date the deed-in-lieu of or lease-in-lieu of is executed.

**§ 1005. 411 Disclosure and verification of Social Security and Employer Identification**

**Numbers or Tax Identification Number.**

A borrower, including co-borrowers, if any, must meet the requirements for the disclosure and verification of Social Security, Employer Identification Numbers or Tax Identification Numbers.

## ELIGIBLE PROPERTIES

### **§ 1005.413 Nature of title to realty.**

A loan, to be eligible for guarantee, must be on real estate held in fee simple or tribal trust land under a tribal lease. The tribal lease shall be in accordance with §1005.303 and must have a remaining term which exceeds the maturity date of the loan by ten years.

### **§ 1005.415 Sale of property.**

(a) *Owner of record requirement.* To be eligible for a loan guaranteed by HUD, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract.

(b) *Supporting documentation.* The lender shall obtain documentation verifying that the seller is the owner of record and must submit this documentation to HUD as part of the application for loan guarantee. This documentation may include, but is not limited to, a property sales history report from the tribe, state or local government, a copy of the recorded deed from the seller, or other documentation (such as a copy of a property tax bill, title commitment, or binder) demonstrating the seller's ownership.

(c) *Time restrictions on re-sales.* (1) The eligibility of a property for a loan guaranteed by HUD is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the HUD guarantee (the re-sale date). The lender shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this

documentation to HUD as part of the application for loan guarantee, in accordance with §1005.501.

(2) *Re-sales occurring 90 days or less following acquisition.* If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for a loan to be guaranteed by HUD.

(3) *Re-sales occurring between 91 days and 180 days following acquisition.* (i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible for a loan guaranteed by HUD.

(ii) However, HUD will require that the lender obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include an appraisal from another appraiser. The lender may also document its loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) HUD may revise the level at which additional documentation is required by administrative guidance.

(4) *Authority to address property flipping for re-sales occurring between 91 days and 12 months following acquisition.* (i) If the re-sale date is more than 90 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible for a loan to be insured by FHA.

(ii) However, HUD may require that the lender provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At HUD's discretion, such documentation must include, but is not limited to, an appraisal from

another appraiser. HUD may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum principal loan amount under § 1005.447. Otherwise, the value supported by the first appraisal will be used to calculate the maximum principal loan amount.

(iv) HUD will announce its determination to require additional value documentation through administrative guidance.

(5) *Re-sales occurring more than 12 months following acquisition.* If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a loan guaranteed by HUD.

(d) *Exceptions to the time restrictions on sales.* The time restrictions on sales described in paragraph (b) of this section do not apply to:

(1) Sales by HUD of real estate-owned (REO) properties under 24 CFR part 291 and of single-family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710);

(2) Sales by an agency of the United States government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by tribes, tribally designated housing entities, regional Indian Housing Authorities, local and state government agencies; and

(8) Only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

(e) *Sanctions and indemnification.* Failure of a lender to comply with the requirements of this section may result in HUD requesting indemnification of the loan or seeking sanctions under §1005.905.

**§ 1005.417 Location of dwelling.**

At the time a loan is guaranteed, the property must be designed principally for residential use for not more than four families or have a construction plan evidencing this requirement; and be located within an approved Section 184 Indian Area.

**§ 1005.419 Certification of appraisal.**

An application with respect to the Section 184 loan guarantee must be accompanied by an agreement satisfactory to HUD, executed by the seller, builder or such other person as may be required by HUD, whereby the person agrees that before any sale of the dwelling, the person will deliver to the purchaser of the property a written statement, in a form satisfactory to HUD, setting forth the amount of the appraised value of the property as determined by HUD.

**§ 1005.421 Legal restrictions.**

(a) *Definitions.* (1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may approve a higher percentage up to 140 percent.

(2) *Eligible governmental or nonprofit program* means a program operated pursuant to a program established by federal law, operated by a state, local or tribal government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low-or moderate-income housing including rental housing.

(3) *Legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the borrower or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the borrower to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the borrower for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to borrower efforts to convey;

(iii) Terminate or subject to termination all or a part of the interest held by the borrower in the property if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the guaranteed loan or increase in the interest rate.



(4) *Tax-exempt bond financing* means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing by qualified veterans' mortgage bonds as defined in section 143(b) of the Code.

(5) *Eligible nonprofit organization* means an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt under section 501(a) of the Code, which has:

- (i) Two years' experience as a provider of low- or moderate-income housing;
- (ii) A voluntary board; and
- (iii) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

(b) *Policy of permissible restrictions.* A loan shall be eligible for a Section 184 loan guarantee if the property is subject to legal restrictions on conveyance when:

(1) The property is located on tribal trust land, a loan may have lease restrictions that only allow for enrolled tribal members.

(2) The restrictions are imposed by an eligible tribal, governmental or nonprofit program and may automatically terminate if title or lease to the mortgaged property is transferred by foreclosure or deed-in-lieu or lease-in-lieu of foreclosure, or if the loan is assigned to HUD.

(3) A mortgage is funded through tax-exempt bond financing and includes a due-on-sale provision in a form approved by HUD which permits the lender to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to HUD. A mortgage funded through tax-exempt bond financing shall comply with all form

requirements prescribed under this subpart and shall contain no other provisions designed to enforce compliance with Federal or State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(4) A mortgaged property subject to protective covenants which restrict occupancy by, or transfer to, persons who are elderly if:

(i) The restrictions do not have an undue effect on marketability; and

(ii) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

**§ 1005.423 Rental properties.**

(a) Rental units are limited to a loan covering a one- to four-family unit, where one unit is occupied by the borrower as a principal residence.

(b) If the borrower is a tribal government or entity, there is no limit on the number of one to four-family unit dwellings they can own covered by a Section 184 guaranteed loan, within the tribal government or entity's financial capacity.

**§ 1005.425 Refinancing.**

(a) HUD may guarantee under this part, without regard to any limitation upon eligibility contained in the other provisions of this subpart, any qualified mortgage given to refinance including an existing loan guaranteed by the Section 184 program.

(b) HUD may guarantee a rate and term refinance, a streamline refinance or a cash out refinance.

(c) All types of refinances are subject to the following requirements: (1) The term of the refinancing loan may not exceed 30 years.

(2) Refinancing must be made by a borrower whose record of payment on the existing mortgage meets standards established by HUD.

(3) The lender may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

(4) If an upfront loan guarantee fee was financed as part of the existing mortgage, no refund will be given. However, the maximum amount of the refinancing loan computed in accordance with §1005.447 may be increased by the amount of the upfront loan guarantee fee associated with the new refinancing loan and exceed the applicable Section 184 loan limit as outlined in § 1005.441.

(d) *Rate and Term Refinance.* (1) Rate and term refinance is the refinancing of an existing Section 184 loan or non-Section 184 loan for the purpose of changing the interest and/or term of a loan without advancing new funds on the loan, with the exception of allowable closing costs.

(2) A rate and term refinance loan must meet the following special requirements:

(i) The loan must be in an amount that does not exceed the lesser of the original principal amount of the existing mortgage; or the sum of the unpaid principal balance of the existing mortgage, plus loan closing charges approved by HUD.

(ii) The loan must result in a reduction in regular monthly payments by the borrower, except when refinancing a mortgage for a shorter term will result in an increase in the borrower's regular monthly payments.

(e) *Streamline refinance.* Streamline refinance refers to the refinance of an existing Section 184 guaranteed loan requiring limited borrower credit documentation and underwriting.

(1) A streamline refinance loan must be in an amount that does not exceed the unpaid principal balance of the existing Section 184 guaranteed loan.

(f) *Cash-out refinance.* (1) A cash-out refinance is when a new Section 184 guaranteed loan is made for a loan amount larger than the existing unpaid principal balance, utilizing the property's equity.

(2) A cash-out refinance loan amount cannot exceed a maximum loan to value ratio, as established by HUD.

(3) A borrower may elect up to a maximum amount cash back to borrower, in the amount established by HUD by administrative guidance.

(4) All cash advances, except cash amounts to the borrower, must be used for approved purposes in accordance with HUD and BIA requirements, and must be supported by verified documentation.

**§ 1005.427 Eligibility of loans covering manufactured homes.**

A loan covering a one-family manufactured home (as defined in 24 CFR 3280.2(a)(16)) that meets the requirements of this subpart, except as modified by this section, shall be eligible for a Section 184 loan guarantee pursuant to this subpart.

(a) For manufactured homes located in fee simple properties: (1) The manufactured home, when erected on site, shall have floor space area of not less than four hundred square feet and shall have been constructed in conformance with the National Manufactured Home Construction and Safety Standards as evidenced by a certification label affixed thereto in accordance with 24 CFR 3280.8.

(2) The loan shall cover the manufactured home and site, shall constitute a loan on a property classified and taxed as real estate, and shall have a term of not more than 30 years from the date of the beginning of amortization. §1005.437(e) shall not be applicable.

(3) In the case of a manufactured home which has not been permanently erected on a site for more than one year prior to the date of the application for loan guarantee:

(i) The manufactured home shall be erected on a site-built permanent foundation that meets or exceeds applicable requirements of the Minimum Property Standards for One- and Two-Family Dwellings (MPS), in accordance with 24 CFR 200.929(b)(1) and shall be permanently attached thereto by anchoring devices adequate for all loads identified in the MPS. The towing hitch or running gear, which includes axles, brakes, wheels and other parts of the chassis that operate only during transportation, shall have been removed. The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation. The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards shall meet or exceed applicable requirements of the MPS.

(ii) The space beneath the manufactured home shall be enclosed by continuous foundation-type construction designed to resist all forces to which it is subject without transmitting forces to the building superstructure. The enclosure shall be adequately secured to the perimeter of the manufactured home and be constructed of materials that conform to MPS requirements for foundations.

(iii) The manufactured home shall have an overall coefficient of heat transmission ("U<sub>o</sub>" value) calculated in accordance with the procedures of NFPA 501 BM-1976 ("Mobile Home Heating, Cooling Load Calculations") that does not exceed the following for all locations within the following climatic zones:

(A) Zone I -- .145

(B) Zone II -- .099

(C) Zone III -- .087

(iv) The manufactured home shall be braced and stiffened before it leaves the factory to resist racking and potential damage during transportation.

(v) The maximum principal loan amount under § 1005.447 shall apply.

(vi) Section § 1005.431 of this subpart is modified to the extent provided in this paragraph. Applications relating to the guarantee of loans under this paragraph (c) must be accompanied by an agreement in form satisfactory to HUD executed by the seller or builder or such other person as HUD may require agreeing that in the event of any sale or conveyance of the dwelling within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property the manufacturer's warranty on a form prescribed by HUD, which shall provide that the manufacturer's warranty is in addition to and not in derogation of all other rights and remedies the purchaser or owner may have, and a warranty in form satisfactory to HUD warranting that the manufactured home, the foundation, positioning and anchoring of the manufactured home to its permanent foundation, and all site improvements are constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by HUD) on which HUD has based his valuation of the dwelling. The warranty shall also include provisions that the manufactured home sustained no hidden damage during transportation, and if the manufactured home is a double-wide, that the sections were properly joined and sealed. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish HUD with a conformed copy of the warranty

establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

(4) In the case of a manufactured home which has been permanently erected on a site for more than one year prior to the date of the application for the Section 184 loan: (i) The manufactured home shall be permanently anchored to and supported by permanent footings and shall have permanently installed utilities that are protected from freezing. The space beneath the manufactured home shall be a properly enclosed crawl space.

(ii) The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards shall meet or exceed applicable requirements of the Requirements for Existing Housing--One to Four Family Living Units (HUD Single Family Handbook 4000.1). The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation.

(b) *For manufactured homes located in trust land.* In cases where the manufactured home is not yet delivered and installed on the tribal trust land, the manufactured home shall meet the requirements of 24 CFR 3280. The manufactured home shall meet the manufactured home installation standards pursuant to tribal laws, if any. In the absence of tribal law installation standards, the manufactured home shall be installed in accordance with the manufacturer's installation instructions.

**§ 1005.429 Acceptance of individual residential water purification equipment.**

If a property does not have access to a continuing supply of safe and potable water without the use of a water purification system, the requirements of this section must be complied with as a condition to acceptance of the loan for guarantee. The lender must provide appropriate

documentation with the submission for guarantee endorsement to address each of the requirements of this section.

(a) *Equipment.* Water purification equipment must be approved by a nationally recognized testing laboratory acceptable to the local (or state) or tribal health authority.

(b) *Certification by local (or state) or tribal health authority.* A local (or state) or tribal health authority certification must be submitted to HUD which certifies that a point-of entry or point-of-use water purification system is used for the water supply, the treatment equipment, meets the requirements of the local (or state) or tribal health authority, and has been determined to meet local (or state) tribal quality standards for drinking water. If neither state nor local or tribal standards are applicable, then quality shall be determined in accordance with standards set by the Environmental Protection Agency (EPA) pursuant to the Safe Drinking Water Act. (EPA standards are prescribed in the National Primary Drinking Water requirements, 40 CFR parts 141 and 142.)

(c) *Borrower notice and certification.* (1) The prospective borrower must have received written notification, when the borrower signs a sales contract, that the property has a hazardous water supply that requires treatment in order to remain safe and acceptable for human consumption. The notification to the borrower must identify specific contaminants in the water supply serving the property, and the related health hazard arising from the presence of those contaminants.

(2) The borrower must have received, with the notification described in paragraph (c)(1) of this section, a written good faith estimate of the maintenance and replacement costs of the equipment necessary to assure continuing safe drinking water.



(3) A copy of the notification statement (including cost estimates), dated the date of the sales contract, and signed by the prospective borrower to acknowledge its receipt, must accompany the submission for loan guarantee endorsement.

(4) The prospective borrower must sign a certification, substantially in the form set out in this paragraph (c)(4), at the time the application for mortgage credit approval is signed. The required certification must be submitted to HUD.

**§ 1005.431 Builders' warranty.**

(a) Applications relating to proposed construction must be accompanied by an agreement in a form satisfactory to HUD, executed by the seller or builder or such other person as HUD may require, and agreeing that in the event of any sale or conveyance of the dwelling, within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property a warranty in a form satisfactory to HUD warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by HUD) on which HUD has based on the valuation of the dwelling.

(b) Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish HUD with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

**§ 1005.433 Property standards.**

- (a) Every property insured under the Section 184 program must: (1) be decent, safe, sanitary and modest in size and design;
- (2) conform with applicable general construction standards for the region;
- (3) contain a heating system that: (i) has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;
- (ii) is safe to operate and maintain;
- (iii) delivers a uniform distribution of heat; and
- (iv) conforms to any applicable tribal heating code, or if there is no applicable tribal code, an appropriate county, state or national code for trust lands; and conforms to any applicable heating code in jurisdiction where the property is located.
- (4) Contains a plumbing system that: (i) uses a properly installed system of piping;
- (ii) includes a kitchen sink and partitional bathroom with lavatory, toilet and bath or shower; and
- (iii) uses water supply, plumbing, and sewage disposal system that conform to any applicable tribal code or, if there is no applicable tribal code, the minimum standards established by the applicable county or State; and conforms to any minimum standard standards in the jurisdiction where the property is located.
- (5) contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable tribal code or, if there is no applicable tribal code, an appropriate county, State, or National Code;

(6) *Minimum Square footage.* Be not less than: (i) 570 square feet in size, if designed for a family of not more than 4 persons;

(ii) 850 square feet in size, if designed for a family of not less than 5 and not more than 7 persons; and

(iii) 1020 square feet in size, if designed for a family of not less than 8 persons, or

(iv) the size provided under the applicable locally adopted standards for size of dwelling units;

(v) except that HUD, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and

(7) conform with the energy performance requirements for new construction established by HUD under section 526(a) of the National Housing Act [12 USCS § 1735f-4(a)].

(b) HUD may prescribe any additional requirements to permit the use of various designs and materials in housing acquired with loans guaranteed under the Section 184 program.

## **ELIGIBLE LOANS**

### **§ 1005.435 Eligible collateral**

A loan guaranteed under the Section 184 program may be secured by any collateral authorized under, and not prohibited by, federal, state or tribal law. The collateral must be sufficient to cover the amount of the loan as determined by the lender and approved by HUD. Improvements on tribal trust lands may be considered as eligible collateral; however, tribal trust land cannot be considered as part of the eligible collateral.

**§1005.437 Loan provisions.**

(a) *Loan form.* (1) The term loan as used in this part means a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under tribal law or the laws of the jurisdiction where the property is located, and may refer both to a security instrument creating a lien, whether called a loan, deed of trust, security deed or another term used in tribal land or a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

(2)(i) The loan shall be in a form meeting the requirements of HUD. HUD may prescribe complete loan instruments. For each case in which HUD does not prescribe complete loan instruments, HUD shall require specific language in the loan which shall be uniform for every loan and may also prescribe the language or substance of additional provisions for all loans as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs.

(ii) Each loan shall also contain any provisions necessary to create a valid and enforceable secured debt under tribal law or the laws of the jurisdiction in which the property is located.

(b) *Loan multiples.* A loan, in whole dollars, shall involve an amount not to exceed the maximum principal loan amount (as calculated under §1005.447) for the approved area where the property is located.

(c) *Payments.* The loan shall: (1) Come due on the first of the month.

(2) Contain complete amortization provisions satisfactory to HUD and an amortization period not in excess of the term of the loan.

(3) Provide for payments to principal and interest to begin no later than the first day of the month following 60 days from the date the loan is executed.

(d) *Maturity*. The loan shall have a term of not more than 30 years from the date of the beginning of amortization.

(e) *Property Standards*. The loan must be a first lien upon the property that conforms with property standards under §1005.433.

(f) *Disbursement*. The entire principal amount of the loan must have been disbursed to the borrower or to his or her creditors for his or her account and with his or her consent.

**§ 1005.439 Loan lien.**

(a) Except as otherwise provided in this section, a borrower must establish that, after the loan offered for guarantee has been recorded, the mortgaged property will be free and clear of all liens other than such loan, and that there will not be outstanding any other unpaid obligations contracted in connection with the loan transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the borrower independently of the mortgaged property.

(b) With prior approval of HUD, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, local or tribal government or instrumentality, tribally designated housing entity or an eligible nonprofit organization as defined in 24 CFR § 203.41(a)(5), provided that the required monthly payments under the Section 184 loan and the secondary mortgage or lien shall not exceed the borrower's reasonable ability to pay as determined by HUD.

(c) With the prior approval of HUD, the mortgaged property may be subject to a second mortgage held by a lender not described in paragraph (b) of this section. Unless the mortgage is

for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the borrower's reasonable ability to pay, as determined by HUD;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The sum of the principal amount of the guaranteed mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the guaranteed mortgage, and shall not exceed the loan limit for the area, except as otherwise permitted by HUD;

(4) The repayment terms shall not provide for a balloon payment before ten years, or for such other term as HUD may approve, except that the mortgage may become due and payable on sale or refinancing of the secured property covered by the insured mortgage; and

(5) The mortgage shall contain a provision permitting the borrower to prepay the mortgage in whole or in part at any time and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of HUD, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments on the Section 184 guaranteed loan following the date it is guaranteed, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment of principal or interest until the property securing the junior mortgage is sold or the Section 184 loan is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The junior mortgage shall not provide for any payment of principal or interest so long as the occupancy requirements are met; and shall provide for forgiveness of the junior mortgage amount at the end of the term of the junior mortgage.

(2) The sum of the principal amount of the guaranteed loan, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may not exceed, at the time of the second mortgage origination, the loan-to-value limitation and the maximum Section 184 loan limit for the area where the property is located.

**§1005.441 Section 184 loan limit.**

The Section 184 loan limit is the level set by HUD for the approved area where the property is located. The level shall be revised periodically by HUD. The Section 184 loan limit may be exceeded when calculating the base mortgage amount under §1005.445 and when calculating the maximum principal loan amount, under §1005.447.

**§ 1005.443 Minimum required investment.**

The borrower is required to make a minimum investment in the mortgage. This investment must come from the borrower's own funds, gifts or tribal, state or local funds awarded to the borrower. Gift funds are not acceptable from any interested party. The minimum investment in the mortgage is difference between the sales price and the base loan amount as calculated in §1005.445.

**§ 1005.445 Calculating base loan amount.**

(a) The base loan, in whole numbers, cannot exceed the Section 184 loan limits established under §1005.441. The base loan amount is determined by calculating: (1) 97.75 percent of the appraised value of the property or the acquisition cost, whichever is less.

(2) 98.75 percent of the lesser of the appraised value or sales price when the appraised value or sales prices is less than \$49,999; and

(3) The Section 184 loan limit in effect on the date the Section 184 case number is issued.

(4) The base loan limit is the lesser of (1) or (2), and add, if applicable:

(5) A solar energy system is defined as any addition, alteration, or improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources and which is in conformity with such criteria and standards as shall be prescribed by HUD in consultation with HUD of Energy. The amount that may be exceeded and any other requirements shall be prescribed by HUD.

**§ 1005.447 Maximum principal loan amount.**

The maximum principal loan amount, in whole numbers, is the base mortgage amount and the upfront loan guarantee fee, if any. This total may exceed the Section 184 loan limit for the approved area where the property is located.



**§ 1005.449 Minimum principal loan amount.**

A lender may not require, as a condition of providing a loan secured by a mortgage guaranteed under this part, that the principal amount of the mortgage exceed a minimum amount established by the lender.

**§ 1005.451 Case numbers.**

(a) Section 184 case numbers may only be obtained when a lender has an active mortgage application for the borrower and property.

(b) To obtain a case number, lender must provide verification of tribal enrollment or Alaska native status and loan specific information to HUD electronically or on a form as prescribed by HUD.

(c) Case numbers are automatically cancelled after 60 days from date of issuance, unless a Section 184 loan guarantee reservation of funds is issued. Lender may request an extension of up to 60 days in writing before the expiration of the 60 days.

**§ 1005.453 Maximum age of mortgage documents.**

Documents reviewed at underwriting may not be older than 60 days and may not be more than 120 days old at the loan disbursement date. Documents whose validity for underwriting purposes is not affected by the passage of time, such as divorce decrees or tax returns, are not subject to the 60- and 120-days limitations.

**§ 1005.455 Qualified mortgage.**

A loan guaranteed under the Section 184 program is a safe harbor qualified mortgage that meets the ability-to-repay requirements in 15 U.S.C. § 1639c(a).

**§ 1005.457 Agreed interest rate.**

The mortgage shall bear interest at the rate agreed upon by the lender and the borrower. Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

**§ 1005.459 Amortization provisions.**

The mortgage must contain complete amortization provisions satisfactory to HUD, requiring monthly payments by the borrower not in excess of his or her reasonable ability to pay as determined by HUD. The sum of the principal and interest payments in each month shall be substantially the same.

**UNDERWRITING PROCESSING**

**§ 1005.461 Direct guarantee underwriting.**

(a) *Underwriter due diligence.* A direct guarantee lender shall exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the lender would be entirely dependent on the property as security to protect its investment. Lender procedures that evidence such due diligence shall be incorporated as part of the quality control

plan required under § 1005.221. HUD shall publish underwriting procedures in an administrative guidance. Compliance with the guidelines shall be the minimum standard of due diligence in underwriting the loans.

(b) *Borrower's income.* The lender shall evaluate the borrower's credit characteristics, adequacy and stability of income to meet the periodic payments under the loan and all other obligations, and the adequacy of the borrower's available assets to close the transaction and render an underwriting decision in accordance with applicable regulations, policies and procedures.

(c) *Assumption.* Applications for the assumption of an existing Section 184 guaranteed loan shall be underwritten using the same borrower eligibility and underwriting standards in accordance with this subpart.

**§ 1005.463 Appraisal.**

(a) A lender shall have the property appraised in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(b) A lender must select an appraiser whose name is on the Federal Housing Administration Appraiser Roster, in accordance with 24 CFR part 200, subpart G. The lender shall not discriminate on the basis of race, color, religion, national origin, sex, age, or disability in the selection of an appraiser.

(c) The appraiser must be knowledgeable in the market where the property is located.

(d) A lender and an appraiser must ensure that an appraisal and related documentation satisfy Federal Housing Administration, Fannie Mae or Freddie Mac appraisal requirements, and both bear responsibility for the quality of the appraisal in satisfying such requirements.

(e) A direct guarantee lender that submits, or causes to be submitted, an appraisal or related documentation that does not satisfy requirements under (a) - (d) above is subject to administrative sanctions by HUD pursuant to § 1005.905.

**§ 1005.465 Age of appraisal.**

(a) *Appraisals on fee land.* (1) The validity period of appraisals is 120 days.

(2) The validity period for an appraisal may be extended for 30 days at the option of the lender if: (i) the lender has issued the borrower underwriting approval; or

(ii) the borrower signed a valid sales contract prior to the expiration of the appraisal.

(3) If the transaction will not close within the time frames stated under (1) or (2) above then the lender must update the appraisal. The appraisal must be updated before the 120-day validity period has expired. The updated appraisal is valid for an additional 120 days after the effective date of the initial appraisal report that is being updated.

(b) *Appraisals on trust lands.* (1) Sections § 1005.465(a)(1)-(2) shall apply.

(2) Lenders may request an extension of the validity period under for up to an additional 240 days. Depending on the particular timeline of the loan, HUD may request an updated appraisal.

**§ 1005.467 Loan submission to HUD for direct guarantee.**

To receive an endorsement from HUD, within 45 days after the date of closing the loan, a direct guarantee lender must submit an endorsement file to HUD, in accordance §1005.503.

(a) *Late submission.* If the endorsement file is submitted past 60 days, the lender must include as part of the file, a late endorsement request, with supporting documentation, affirming:

(1) the loan is not currently in default and has not gone into default from the date of closing.

(2) all escrow accounts for taxes, hazard insurance and monthly guarantee fees are current; and

(3) neither the lender or its agents provided the funds to bring and or keep the mortgage current or to bring about the appearance of acceptable payment history.

**§ 1005.469 HUD issuance of Section 184 loan guarantee reservation of funds.**

HUD may underwrite and issue a Section 184 loan guarantee reservation of funds when it is in the interest of the HUD.

**Subpart E - Closing and Endorsement**

**CLOSING**

**§ 1005.501 Lender closing requirements. (4000.1 II.A.6, page 339)**

Lender shall close the loan in accordance with the following.

(a) *Chain of ownership.* For fee simple properties the lender must obtain evidence of all prior ownership within 12 months of the case number assignment date. The lender must review the evidence of prior ownership to determine any undisclosed identity-of-interest transactions. For trust properties HUD will shall provide additional administrative guidance relating to chain of ownership.

(b) *Title/title status report.* The lender must ensure that all objections to title binder/initial certified title status report have been cleared and any discrepancies have been resolved to ensure that the guaranteed loan will be in first lien position.

(c) *Closing in compliance with lender approval.* The lender must instruct the settlement agent to close the guaranteed loan in the same manner in which it was underwritten and approved.

(d) *Closing in lender's name.* All Section 184 loans must close in the name of the direct guarantee lender issuing the underwriting approval.

(e) *Required HUD certifications at closing.* The lender must use the forms and/or language as may be prescribed by HUD, in the legal documents used for closing the guaranteed loan.

(f) *Projected escrow.* The lender must establish an escrow account in accordance with §1005.713 and the Real Estate Settlement Procedures Act and any other escrows that may be required under administrative guidance.

(g) *Closing costs and fees.* The lender may charge the borrower reasonable and customary fees in accordance with §1005.515.

(h) *Closing date.* The closing date must occur before the expiration of the Section 184 loan guarantee reservation of funds.

(i) *Per diem interest and interest credits.* The lender may collect per diem interest from the closing date to the date amortization begins. Alternatively, the lender may begin amortization up to 7 days prior to the closing date and provide a per diem interest credit. Any per diem interest credit may not be used to meet borrower's minimum required investment. Per diem interest must be computed using a factor of  $1/365^{\text{th}}$  of the annual rate.

(j) *Borrower consent for disclosure.* Lender must ensure the borrower executes a third-party tribal notification form at closing.

(k) *Signatures.* Lender must ensure that the note, security instrument and all closing documents are signed by the required parties.

(l) Lender close the loan in accordance with any applicable tribal, state, federal requirements.

(m) Lender must execute any other documents as may be required HUD, tribal or state law.

**§ 1005.503 Contents of endorsement file.**

Lender's endorsement file shall contain the documents meeting the requirements of § 1005.501 and any other documents supporting lender's underwriting determination, as further described in administrative guidance.

**§ 1005.505 Payment of guarantee premiums; prepayment privilege.**

(a) *Payment of annual guarantee premiums.* The loan may require monthly payments by the borrower to the lender in an amount equal to one-twelfth of the annual loan guarantee premium payable by the lender to HUD in accordance with the amortization schedule issued with the loan approval.

(b) *Prepayment privilege.* The loan shall contain a provision permitting the borrower to prepay the loan in whole or in part at any time and in any amount. The loan shall not provide for the payment of any fee on account of such prepayment.

**§ 1005.507 Borrower's payments to include other charges.**

(a) The loan shall provide for such equal monthly payments by the borrower to the lender as will amortize: (1) The ground rents, if any;

(2) Section 184 annual loan guarantee fees;

(3) The estimated amount of all taxes;

(4) Special assessments, if any;

(5) Flood insurance premiums, if flood insurance is required by HUD; and

(6) Fire and other hazard insurance premiums; these premiums should not be collected when these fees are paid by the borrower to the condominium association under a master policy.

(b) The loan shall further provide that such payments shall be held by the lender in a manner satisfactory to HUD for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent, for the benefit and account of the borrower. The loan must also make provisions for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the borrower. Such payments shall be held in an escrow subject to § 1005.713.

(c) The borrower shall not be required to pay premiums for fire or other hazard insurance which protects only the interests of the lender, or for life or disability income insurance, or fees charged for obtaining information necessary for the payment of property taxes. The foregoing does not apply to charges made or penalties exacted by the taxing authority, except that a penalty assessed or interest charged by a taxing authority for failure to timely pay taxes or assessments shall not be charged by the lender to the borrower if the lender had sufficient funds in escrow for the account of the borrower to pay such taxes or assessments prior to the date on which penalty or interest charges are imposed.



**§ 1005.509 Application of payments.**

All monthly payments to be made by the borrower to the lender shall be added together, and the aggregate amount thereof shall be paid by the borrower each month in a single payment. The lender shall apply the same to the following items in the order set forth:

(a) Annual loan guarantee premium charges, including charges for ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

(b) Interest on the loan;

(c) Amortization of the principal of the loan; and

(d) Late charges, if permitted under the terms of the loan and subject to such conditions as HUD may prescribe.

**§ 1005.511 Late charge.**

When the monthly loan payment is 15 or more days in arrears, the lender may collect from borrower a late charge, not to exceed four percent of the overdue payment of principal and interest, or any other amount as established by HUD through public notice with an opportunity for comment. The late charge provision must appear on the note executed at closing.

**§ 1005.513 Borrower's payments when loan is executed.**

The borrower must pay to the lender, upon execution of the loan, a sum that will be sufficient to pay the ground rents, if any, the estimated taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums for the period beginning on the last date on which each such charge would have been paid under the normal lending practices of the

lender and local custom (if each such date constitutes prudent lending practice), and ending on the due date of the first full installment payment under the loan, plus an amount sufficient to pay the installment(s) of the annual loan guarantee fee from the date of closing the loan to the date of the first monthly payment under the loan and, where applicable, the one-time upfront loan guarantee fee or any portion payable pursuant to §1005.603.

**§ 1005.515 Charges, fees or discounts.**

(a) The lender must ensure that all fees charged to the borrower comply and disclosure requirements comply with all applicable tribal, federal, state, and local laws.

The lender may collect from the borrower the following charges, fees or discounts:

(1) A charge to compensate the lender for expenses incurred in originating and closing the loan. HUD may establish limitations on the amount of any such charge.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the lender, for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit report;

(iii) Survey, if required by lender or borrower;

(iv) Title examination; title insurance, if any;

(v) Fees paid to an appraiser or inspector approved by HUD for the appraisal and inspection, if required, of the property. Notwithstanding any limitations in this paragraph, if the lender is permitted by applicable regulations to use the services of staff appraisers and inspectors for processing loans, and does so, the lender may collect from the borrower the reasonable and customary amounts for such appraisals and inspections.

(vi) Such other reasonable and customary charges as may be authorized by HUD.

(vii) Reasonable and customary charges in the nature of discounts.

(viii) Interest calculations in accordance with § 1005.501(i).

(b) Before the guarantee of any loan can be issued, the lender shall furnish to HUD a signed statement in a form satisfactory to HUD listing any charge, fee or discount collected by the lender from the borrower. All charges, fees or discounts are subject to review by HUD both before and after endorsement.

(c) *Assumption fees.* (1) Processing fees for assumptions must be based on actual costs. The lender may not charge more than the reasonable and customary allowable cost as determined by HUD. A lender may charge more than the reasonable and customary rate with HUD approval.

(2) Fees for assumptions include but are not limited to: credit report; verification of employment; and the execution of additional release of liability forms.

(d) Additional fees cannot be assessed for loans on properties on trust lands.

**§ 1005.517 Certificate of nondiscrimination by the lender.**

The lender shall certify to HUD as to each of the following:

(a) That neither the lender, nor anyone authorized to act for the lender, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the loan to any person because of race, color, religion, national origin, familial status (except as provided by law), or disability.

(b) That any restrictive covenant, other than permissible restrictions on trust land, on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

## **ENDORSEMENT AND POST-CLOSING**

### **§ 1005.519 Lender pre-endorsement review and requirements.**

Lender must complete a pre-endorsement review of the endorsement file. This review must be conducted by staff not involved in the originating, processing, or underwriting of the loan. The case file must contain all documentation relied upon by the lender to justify its decision to approve the loan. Upon finalizing the pre-endorsement review, the lender must certify that all required documents are submitted and meet the requirements of § 1005.503.

### **§ 1005.521 HUD pre-endorsement review.**

(a) *Pre-endorsement review.* (1) Upon submission by a direct guarantee lender of the documents required by § 1005.503, HUD will review the documents to ensure that the loan meet all Section 184 statutory, regulatory and administrative requirements, including but not limited to:(i) there is no fee, late charge or interest due to HUD; and

(ii) the loan was not in default when submitted for the guarantee or if submitted for guarantee more than 60 days after the date of closing the loan shows an acceptable payment history.

(2) HUD is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the loan fails to meet a statutory or regulatory requirement. If, following this review, the loan is determined to be eligible, HUD will issue a loan guarantee certificate. If the loan is determined to be ineligible, HUD will inform the lender in writing the reasons for the determination and any corrective actions that may be taken.

**§ 1005.523 Post-endorsement review.**

Following the issuance of the loan guarantee certificate, HUD may review all documents required by § 1005.503. If, following this review, HUD determines that the loan does not satisfy the requirements of the program, HUD may cancel the loan guarantee certificate; demand indemnification from the originating lender and/or direct guarantee lender, and/or sanction the originating lender and/or direct guarantee lender pursuant to §1005.905.

**§ 1005.521 Indemnification.**

(a) When HUD conducts a pre- or post-endorsement review or when a claim has been filed, and HUD determines there is an underwriting deficiency where the loan should not have been eligible for approval, the originating lender shall indemnify HUD or HUD may deny the claim. Underwriting deficiencies may include but not limited to fraud and misrepresentation by the originating lender or direct guarantee lender with respect to the Section 184 guaranteed loan.

(b) *Demand for indemnification.* The demand for indemnification will be made by HUD. Under the demand for indemnification, the originating lender or direct guarantee lender will reimburse HUD if a subsequent holder of the loan files a claim and HUD suffers a financial loss.

**§ 1005.525 Loan guarantee certificate.**

(a) HUD shall issue a loan guarantee certificate as evidence of the guarantee when HUD completes a review of the lender's pre-endorsement case file and determines the file is in compliance with all applicable Section 184 requirements.

(b) The loan guarantee certificate is conclusive evidence of the eligibility of the loan for guarantee under this part. Such evidence will be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of amounts agreed to be paid by HUD as security for such obligations.

(c) This subsection may not be construed to preclude from HUD from establishing defenses against the original lender based on fraud or material misrepresentation or to bar HUD from establishing partial defenses to the amount payable on the guarantee.

**Subpart F - Section 184 Loan Guarantee Fees**

**§ 1005.601 Scope and method of payment.**

HUD shall charge to the borrower a one-time Section 184 up-front loan guarantee fee and annual loan guarantee fee, as applicable. The fees collected by the lender on behalf of HUD under this subpart shall be payable to HUD in cash.

**§ 1005.603 Up-front loan guarantee fee.**

At settlement, the lender will collect from the borrower a one-time up-front loan guarantee fee in an amount determined by HUD as a percentage of the base loan amount.

**§ 1005.605 Remittance of up-front loan guarantee fee.**

Lender shall remit the up-front loan guarantee fee to HUD within 15 days of settlement, using the payment system as described in an administrative notice.

**§ 1005.607 Amount of annual loan guarantee fee.**

The annual loan guarantee fee amount is determined using the note amount and the rate of the annual loan guarantee fee in effect at the time of case number issuance. The amount the lender must remit to HUD monthly is specified on the amortization schedule incorporated in the mortgage credit analysis worksheet (a form prescribed by HUD), executed by the direct guarantee underwriter at loan approval. The monthly amount due will change annually in accordance with the amortization schedule.

**§ 1005.609 Lender payment of annual loan guarantee fee.**

(a) The lender shall collect from the borrower the annual loan guarantee fee owed by the borrower in monthly installments in accordance with §1005.607. The monthly installment of the annual loan guarantee fee collected from the borrower shall be due and payable to HUD no later than the tenth day of each month, beginning in the month in which the borrower is required to make the first monthly loan payment.

(b) Subject to the exception in (d) below, the lender shall continue to collect from the borrower and pay HUD the monthly installment of the annual loan guarantee fee in accordance with §1005.607, without taking into account delinquent payments, prepayments, agreements to postpone payments, or agreements to recast the loan.

(c) The lender shall adjust the monthly installment of the annual loan guarantee fee in accordance with §1005.607. The lender shall promptly refund to the borrower any overpayment

of annual loan guarantee fees collected from the borrower due to a delayed adjustment of the loan guarantee fee.

(d) The lender shall cease collecting the monthly installment of the annual loan guarantee fee when the loan to value ratio equals an amount less than 78 percent, in accordance with §1005.607. The lender must refund to the borrower any annual loan guarantee fees collected from the borrower when the loan to value ratio is less than 78 percent within 30 days of the overpayment.

(e) Annual loan guarantee fees paid when the loan to value ratio is greater than 78 percent shall not be refundable to the borrower.

(f) *Missed lender payment.* (1) If a borrower has not paid the lender its monthly loan payment and annual guarantee fee, the lender is responsible for paying to HUD the monthly installment of the annual loan guarantee fee. The lender may be reimbursed the cost of the guarantee fee under the claims process as a reasonable cost in accordance with §1005.843(13).

(2) If the lender submits the monthly installment of the annual loan guarantee fee to HUD beyond the due date, the amount paid must include the required payment of penalties pursuant to §1005.611(c).

(3) When transfer of servicing between lenders results in a missed monthly payment(s) of the annual loan guarantee fee, the acquiring lender shall pay the overdue payment(s) in a lump sum to HUD within 30 days of acquisition of the loan and include any applicable penalties in accordance with §1005.611.



**§ 1005.611 HUD imposed lender penalties.**

(a) No penalties imposed by HUD to the lender shall be passed to the borrower.

(b) *Failure to timely remit up-front loan guarantee.* (1) When lender fails to remit the up-front loan guarantee fee to HUD within 15 days of settlement, the lender shall include a late fee of four percent of the overdue amount.

(2) Failure to remit the up-front guarantee, with late fee where applicable, shall result in HUD rejecting the endorsement package. An incomplete endorsement package will cause the loan to be not eligible for guarantee

(c) *Failure of lender to timely submit the monthly installment of the annual loan guarantee fee.* Lender shall include a late fee for all monthly installments of the annual loan guarantee fees received by HUD after the 20th of each month.

(d) *Failure of lender to adjust the amount of the annual loan guarantee fee.* When a lender fails to adjust the amount of the monthly installment of the annual loan guarantee fee in accordance with §1005.607, the lender shall, in addition to reimbursing the borrower as required in §1005.609(c), pay HUD a penalty for each month the lender collects an overpayment of the annual loan guarantee fee.

(e) *Failure to cease collection of the annual loan guarantee fee.* When a lender fails to cease collection of the monthly installment of the annual loan guarantee fee after the loan to value ratio reaches the threshold described in §1005.607(d), the lender shall, in addition to reimbursing the borrower as required in §1005.609(d), pay HUD a penalty for each month the lender collects an overpayment of the annual loan guarantee fee.

(f) All late fees and penalty amounts will be determined by HUD by administrative guidance.

## **Subpart G - Servicing**

### **§ 1005.701 Loan servicing generally.**

This subpart identifies practices of servicers that HUD requires for loans guaranteed under the Section 184 program. Failure to comply with this subpart shall not be a basis for denial of all benefits, but failure to comply shall result in a reduction or denial of certain benefits and may subject servicer to sanctions pursuant to subpart I. HUD requires servicers to comply with the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq*) and the Truth in Lending Act (15 U.S.C. 1601 *et seq*) at 12 CFR 1024 and 12 CFR 1026, along with all applicable tribal, federal and state requirements.

### **§ 1005.703 Responsibility for servicing.**

(a) Servicing of guaranteed loans must be performed by a direct guarantee lender or a non direct guarantee servicer approved under Subpart B. The servicer shall remain fully responsible to HUD for proper servicing, and the actions of a sub-servicer shall be considered to be the actions of the servicer.

(b) Whenever servicing of any loan is transferred from a servicer to another, notice of the transfer of service shall be completed in accordance with 12 CFR § 1024.33. Such notice must include the partial payment requirements of the transferee servicer, as described in § 1005.719 of this part.

(c) A copy of the notice of transfer shall be delivered to HUD within 15 days of the date of the transfer, in a format prescribed by the HUD.

(d) *Reporting requirements.* Servicer must comply with reporting requirements under §1005.905.

**§ 1005.705 Providing information to borrower and HUD.**

(a) Servicers shall provide loan information to borrowers and arrange for individual loan consultation on request. The servicer must establish written procedures and controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(1) An office staffed with personnel capable of providing timely responses to requests for information. Complete records need not be maintained in such an office if the staff is able to secure needed information and pass it on to the borrower.

(2) Toll-free telephone service at an office capable of providing needed information.

(b) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which needed information may be obtained, and reminded of the system at least annually.

(c) Within 30 days after the end of each calendar year, the servicer shall furnish to the borrower a statement of the interest paid, and of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the servicer shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) Each servicer of a loan shall deliver to the borrower a written notice of any assignment, sale, or transfer of the servicing of the loan. The notice must be sent in accordance with 12 CFR § 1024.33(b)(3) and shall contain the information required by 12 CFR §

1024.33(b)(4). Servicers must respond to borrower inquiries pertaining to the transfer of servicing in accordance with 24 CFR § 1024.33.

(e) Within 7 days servicers must respond to HUD requests for information concerning individual accounts.

**§ 1005.707 Assumption and release of personal liability.**

(a) *Assumption.* The guaranteed loans are fully assumable by an eligible borrower.

(b) The new borrower must be determined to be creditworthy under Subpart D. If the servicer is approved as a direct guarantee lender, the servicer performs a creditworthiness determination under § 1005.409. If the servicer is not an approved as a direct guarantee lender, then the servicer shall request a creditworthiness determination from HUD.

(c) *Tribal trust lands.* (1) The lease document may require tribal and BIA approval of the assignment of the lease to the new borrower. Servicers should not proceed to closing on the assumption until and unless the tribe has assigned the leasehold to the new borrower, and it has been approved by the BIA.

(2) The lease may contain other conveyance restrictions. Servicer must review for conveyance restrictions and ensure lease complies with § 1005.303(d).

(d) *Fees.* Fees charged by servicer, if any, shall be in accordance with § 1005.515(c).

(e) At closing, the servicer must release the existing borrower from any personal liability; the new borrower assumes personal liability of the loan; and the servicer provides the original borrower with a release of personal liability on a form approved by HUD.

(f) *Modification of loan guarantee certificate.* Upon completion of an assumption, servicer shall provide copies of the documents to HUD. HUD will issue a revised loan guarantee certificate and provide additional processing instructions in administrative guidance.

**§ 1005.709 Free assumability; exceptions.**

(a) *Policy of free assumability with no restrictions on conveyance.* A servicer shall not impose, agree to or enforce legal restrictions on conveyance, as defined in 24 CFR § 203.41(a)(3), or restrictions on assumption of the guaranteed loan, unless specifically permitted by this part.

(b) *Credit review.* If assumption approval is required by the loan, the servicer shall not approve the sale or other transfer of all or part of the loan and property, or the sale or transfer of a beneficial interest in a trust owning all or part of the property, whether or not any person acquires personal liability under the loan in connection with the sale or other transfer, unless:

- (1) At least one of the persons acquiring ownership is determined to be creditworthy under applicable standards prescribed by HUD;
- (2) The selling borrower retains an ownership interest in the property; or
- (3) The transfer is by devise or descent.

(c) *Due-on-sale clause.* Each loan shall contain a due-on-sale clause permitting acceleration, in a form prescribed by HUD. If a sale or other transfer occurs without servicer approval and a prohibition in paragraph (b) of this section applies, a servicer shall enforce this section by requesting approval from HUD to accelerate the loan, provided that acceleration is permitted by applicable tribal, federal or state law. The servicer shall accelerate if approval is granted.

**§ 1005.711 Application of borrower payments.**

Servicer shall comply with § 1005.509 with respect to application of borrower payments to the loan.

**§ 1005.713 Administering escrow accounts.**

(a) The servicer shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received on account of leasehold rents on tribal trust land, taxes, assessments, monthly installments of annual loan guarantee fees and insurance charges or premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. HUD shall provide additional instructions with respect to escrow funds related to leasehold rents on tribal trust lands in administrative guidance.

(b) It is the servicer's responsibility to make escrow disbursements before bills become delinquent. Servicers must establish controls to ensure that bills payable from the escrow fund or the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for items payable from the escrow account must not be charged to the borrower unless it can be shown that the penalty was the direct result of the borrower's error or omission. The servicer shall use the procedures set forth in 12 CR § 1024.17 to compute the amount of the escrow, the methods of collection and accounting, and the payment of the bills for which the money has been escrowed.

(c) The servicer shall not institute foreclosure when the only default of the borrower is an inability to pay a substantial escrow shortage, resulting from an adjustment pursuant to this section, in a lump sum.

(d) When the Section 184 loan is terminated voluntarily or because of borrower's prepayment in full of the unpaid principal balance, amounts in the escrow account designated to pay any HUD required program fees shall be remitted to HUD with a form approved by HUD for reporting the voluntary termination of prepayment. When the Section 184 loan is prepaid in full amounts held in escrow for taxes, hazard insurance, or rents due under a tribal lease, if applicable, shall be promptly released to the borrower.

**§ 1005.715 Fees and charges after endorsement.**

(a) The servicer may collect reasonable and customary fees and charges from the borrower after endorsement only as provided below. The servicer may collect these fees or charges from the borrower only to the extent that the servicer is not reimbursed for such fees by HUD. Permissible charges include:

- (1) Late charges in accordance with § 1005.511.
- (2) Charges for processing or reprocessing a check returned as uncollectible; (where bank policy permits, the servicer must deposit a check for collection a second time before assessing a bad check charge);
- (3) Fees for processing a change of ownership of the mortgaged property;
- (4) Fees and charges for arranging a substitution of liability under the loan in connection with the sale or transfer of the property;

(5) Charges for processing a request for credit approval of an assumption or substitute borrower;

(6) Charges for substitution of a hazard insurance policy at other than the expiration of term of the existing hazard insurance policy;

(7) Charges for modification of the loan involving a recorded agreement for extension of term or re-amortization;

(8) Fees and charges for processing a partial release of the mortgaged property;

(9) Attorney's and trustee's fees and expenses actually incurred (including the cost of appraisals pursuant and cost of advertising) when a case has been referred for foreclosure in accordance with the provisions of this part after a firm decision to foreclose if foreclosure is not completed because of a reinstatement of the account. No attorney's fee may be charged for the services of the servicer's or servicer's staff attorney or for the services of a collection attorney other than the attorney handling the foreclosure;

(10) Escrow charges;

(11) A trustee's fee if the security instrument in deed-of-trust states provides for payment of such a fee for execution of a satisfactory, release, or trustee's deed when the deed of trust is paid in full;

(12) Where permitted by the security instrument, attorney's fees and expenses actually incurred in the defense of any suit or legal proceeding wherein the servicer shall be made a party thereto by reason of the loan. No attorney's fee may be charged for the services of the servicer's staff attorney;

(13) Property preservation expenses incurred;



(14) Fees permitted for providing a beneficiary notice under applicable tribal or state law, if such a fee is not otherwise prohibited by applicable law, under 12 CFR § 1024.36; and

(15) Such other reasonable and customary charges as may be authorized by HUD.

(b) Reasonable and customary fees must be predicated upon the actual cost of the work performed including out-of-pocket expenses. HUD may establish maximum fees and charges which are reasonable and customary in different areas. Except as provided in this part, no fee or charge shall be based on a percentage of either the face amount of the loan or the unpaid principal balance due on the loan.

**§ 1005.717 Enforcement of late charges.**

(a) A servicer shall not commence foreclosure when the borrower's only default is his or her failure to pay a late charge or charges.

(b) A late charge attributable to a particular installment payment due under the loan shall not be deducted from that installment. However, if the servicer thereafter notifies the borrower of his obligation to pay a late charge, such a charge may be deducted from any subsequent payment or payments submitted by the borrower or on his behalf if this is not inconsistent with the terms of the loan. Partial payments shall be treated as provided in § 1005.719.

(c) A payment may be returned because of failure to include a late charge only if the servicer notifies the borrower before imposition of the charge of the amount of the monthly payment, the date when the late charge will be imposed and either the amount of the late charge or the total amount due when the late charge is included.

(d) During the 60-day period beginning on the effective date of transfer of the servicing of a loan, a late charge shall not be imposed on the borrower with respect to any payment on the

loan. No payment shall be treated as late for any other purpose if the payment is received by the transferor servicer, rather than the transferee servicer that should receive the payment, before the due date (including any applicable grace period allowed under the loan documents) applicable to such payment.

(e) A servicer shall not impose a late fee or delinquency payment for failure to pay a late fee, as prohibited under 12 CFR § 1026.36.

**§ 1005.719 Partial payments.**

(a) For the purpose of this section, a partial payment is a payment of any amount less than the full amount due under the terms of the loan at the time the payment is tendered.

(b) A servicer must have a written policy available to the public on how it handles partial payments.

(c) Upon receipt of a partial payment, a servicer must provide to the borrower a copy of the servicer's written partial payment policy and a letter explaining how it will handle the received partial payment. The servicer may either:

(1) Accept a partial payment and either apply it to the borrower's account or identify it with the borrower's account and hold it in a trust account pending disposition. When partial payments held for disposition aggregate a full monthly installment they shall be applied to the borrower's account, thus advancing the date of the oldest unpaid installment but not the date on which the account first became delinquent; or

(2) Return a partial payment to the borrower.

**§ 1005.721 Handling prepayments.**

Notwithstanding the terms of the loan, the servicer shall accept a prepayment at any time and in any amount. Monthly interest on the debt must be calculated on the actual unpaid principal balance of the loan as of the date the prepayment is received, and not as of the next installment due date.

**§ 1005.723 Substitute borrowers.**

(a) *Substitute borrower.* Where an original borrower requests the substitution of a co-borrower on the guaranteed loan HUD may approve a substitute new co-borrower only if the substitute new co-borrower is eligible under this part. A remaining original borrower must still be on the loan.

(b) *Direct guarantee.* Servicers approved for participation as a direct guarantee lender may, subject to limitations established by HUD, approve an appropriate substitute borrower that meets the requirements for the Section 184 loans which they own or service, and need not obtain further specific approval from HUD.

**SERVICING DEFAULT LOANS**

**§ 1005.725 Definition of default, date of default, and requirement of notice of default to**

**HUD.**

(a) *Default.* See § 1005.3.

(b) *Date of default.* See § 1005.3.

(c) *Reporting of default.* The report of default loans shall be made in a manner prescribed by administrative guidance.

**§ 1005.727 Loan collection action.**

Subject to the requirements of this subpart, servicers shall take prompt action to collect amounts due from borrowers to minimize the number of accounts in default status. Servicer must exhaust all reasonable possibilities of collection, including assessing borrower for loss mitigation and offering loss mitigation, where applicable, before seeking payment from HUD of a loan guaranteed under this part. Such collection techniques shall, to the greatest extent possible, be based on a full financial assessment of the borrower at time of default and the collection technique(s) must take into account the circumstances particular to each borrower.

**§ 1005.729 Default notice to borrower.**

(a) *Live contact.* (1) The servicer shall establish or make good faith efforts to establish live contact with a defaulting borrower not later than the 36th day of the borrower's default and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options.

(2) A good faith effort to establish live contact consist of reasonable steps under the circumstances to reach a borrower and include telephoning a borrower on more than one occasion or sending written or electronic communication encouraging a borrower to establish live contact with the servicer.

(b) *Written notice.* The servicer shall give notice to each borrower in default, on a form approved by HUD no later than the end of the 45th day of a borrower's default. If an account is

reinstated and again goes into default, the default notice shall be sent to the borrower again, except that the servicer is not required to send a second default notice to the same borrower more often than once during any 180-day period. The servicer may issue additional or more frequent notices of default at its option.

(c) *Content of the written notice.* The notice required by paragraph (b) of this section shall include:

(1) A statement encouraging the borrower to contact the servicer;

(2) The telephone number to access servicer personnel and the servicer's mailing address;

(3) A statement providing a brief description of examples of loss mitigation options that may be available from the servicer and a statement on how to obtain more information about loss mitigation options;

(4) Servicer shall outline all critical servicing deadlines under this subpart, including but not limited to the deadline for servicer to respond to a completed loss mitigation application and deadline for borrower to select a loss mitigation option under the Section 184 program and the process for filing for first legal action. Servicer shall inform borrower s/he may be eligible for additional protections under Consumer Financial Protection Bureau regulations;

(5) A loss mitigation application and submission instructions. The loss mitigation application shall advise borrower that delays in submission, including incomplete submissions, shall reduce the availability of certain loss mitigation options to the borrower;

(6) The website to access the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations;

(7) A statement informing the borrower that HUD will make information regarding the status and payment history of the borrower's loan available to local credit bureaus and prospective creditors; and

(e) *Conflicts with other law.* Nothing in this section shall require a servicer to communicate with a borrower in a manner otherwise prohibited by applicable tribal, federal, state law.

**§ 1005.731 Loss mitigation application, timelines and appeals.**

(a) *Servicer response to loss mitigation application.* Within five days receipt of borrower's loss mitigation application to servicer, servicer must in writing:

- (1) acknowledge receipt of the application;
- (2) determine if application is complete or incomplete;
- (3) if incomplete, notify the borrower which documentation is required and missing and to inform the borrower that s/he has fourteen days to provide missing documents to the servicer.

(b) *Servicer timeframe for evaluating complete loss mitigation application.* Within fourteen days of receipt of a completed application from borrower, the servicer must evaluate the application.

(c) *Notification of servicer determination.* Servicer shall provide written notification:

- (1) of all available loss mitigation options.
- (2) encouraging borrower to review all available loss mitigation options and to contact servicer with any questions.
- (3) encouraging borrowers, when feasible, to consider pursuing simultaneous loss mitigation options, to the extent it is offered by the servicer.

(4) informing borrower that if no loss mitigation option is elected or if all elected loss mitigation options fail, the servicer may proceed with filing of first legal at 180 days of default in accordance with §1005.757.

(5) informing borrower that at the filing of first legal or the assignment of the Section 184 loan to HUD the servicer shall no longer offer or allow a pre-foreclosure sale as an alternative to foreclosure; and that only available and remaining alternative to foreclosure shall be a lease-in-lieu or deed-in-lieu.

(d) *Appeal.* If after receipt of servicer's loss mitigation options to borrower, borrower disagrees with servicer's determination borrower may appeal in writing to the servicer to re-evaluate the borrower's loss mitigation application. Borrower must submit appeal within seven days of receipt of the servicer's loss mitigation determination. Within seven days servicer shall re-evaluate the borrower's loss mitigation application but may not use the same staff that made the initial loss mitigation application determination and notify borrower of its appeal decision.

**§ 1005.733 Occupancy inspection.**

(a) An occupancy inspection is a visual inspection of a mortgaged property by the servicer to determine if the mortgaged property has become vacant or abandoned and to confirm the identity of any occupants.

(b) An occupancy follow-up is an attempt to communicate with the borrower via letter, telephone, or other method of communication, other than on-site inspection, to determine occupancy when the loan remains in default after the initial inspection and the servicer has not determined the borrower's occupancy status.

(c) *Initial occupancy inspection.* The servicer must perform the initial occupancy inspection by the 45th day of default but no later than the 60th day of the default when: (1) a payment has not been received within 45 days of the due date or for any other defaults under the loan; and

(2) efforts to reach the borrower or occupant have been unsuccessful.

(d) *Occupancy follow-ups and continued inspections.* If the servicer is unable to determine the borrower's occupancy status through the initial occupancy inspection, the servicer must perform occupancy follow-ups and, if necessary, occupancy inspections every 25-35 days from the last inspection until the occupancy status is determined.

(e) *Occupancy inspections during bankruptcy.* When payments are not submitted as scheduled by a borrower in bankruptcy, the servicer must contact either the bankruptcy trustee or the borrower's bankruptcy attorney for information concerning the status of the borrower, to determine if an occupancy inspection is needed. If the Servicer determines that the property is vacant or abandoned during the period in which the servicer is prohibited from contacting the borrower, the servicer must note: the date it made its determination in the servicing file and that contact with the attorney or trustee has been made.

**§ 1005.735 Vacant property procedures.**

*Determination that the property is vacant or abandoned.* If the servicer determines through an occupancy inspection or occupancy follow-up that the property is vacant or abandoned, the servicer must send a letter, via certified mail or other method providing delivery confirmation, to borrowers at the property address, or other known address of borrower, informing them of the



servicer's determination that the property is vacant or abandoned. This letter must include the servicer's contact information.

(a) If the occupancy is verified through the delivery confirmation the servicer shall continue pursuing loss mitigation efforts until servicer can proceed to first legal.

(b) If the servicer determines through the delivery confirmation process the property is vacant or abandoned; then the servicer shall:

(1) commence first-time vacant property inspection;

(2) take appropriate property preservation and protection actions to secure and maintain the property;

(3) initiate first legal action by 120 days after date of default; and.

(4) continue to perform vacant property inspections every 25-35 days until the default is cured, the property is disposed of, or the bankruptcy court has granted approval for the servicer to contact the borrower or to take any required property preservation actions; and

(5) retain documentation in the servicing file identifying information as required by HUD.

#### **SERVICING DEFAULT LOANS UNDER THE LOSS MITIGATION PROGRAM**

##### **§ 1005.737 Loss mitigation.**

(a) The purpose of loss mitigation is to attempt to cure the borrower's default and minimize any financial loss to HUD. Servicer must also comply with 12 CFR Part 1024 and any applicable tribal, federal and state requirements related to servicing default loans.

(b) The servicer must utilize a loss mitigation option or concurrent loss mitigation options, if available to the borrower and practical under the circumstances, within 180 days of the date of default.

(c) Loss mitigation options include:

- (1) forbearance plan;
- (2) assumption;
- (3) trial payment plan agreement for a loan modification;
- (4) pre-foreclosure sale approval to participate; or
- (5) deed-in-lieu agreement or lease-in-lieu.

(d) HUD may prescribe additional conditions and requirements for the appropriate use of these loss mitigation actions, concerning such matters as owner-occupancy, extent of previous defaults, prior use of loss mitigation, and evaluation of the borrower's income, credit and property through administrative guidance.

(e) Within 180 days of default, if the borrower fails to meet the loss mitigation requirements the servicer shall, within 5 days of the loss mitigation default, determine whether borrower should continue with the current loss mitigation option or reassess the borrower for another loss mitigation option for the time period remaining. If no time period remains the servicer shall not reassess the borrower for another loss mitigation option.

(f) If the borrower is satisfactorily performing under a loss mitigation option at 180 days of default but subsequently fails servicer shall take first legal action within 5 days of the loss mitigation option default.

(g) *Documentation.* Documentation must be maintained for the initial and all subsequent evaluations and resulting loss mitigation actions. Should a claim for benefits later be filed, the servicer shall maintain this documentation for HUD review.

(h) *Servicer failure to comply with loss mitigation requirements.* A servicer that is found to have failed to engage in and comply with loss mitigation as required this subpart will be subject to appropriate action by HUD, including, but not limited to, sanctions in accordance with §1005.905.

**§ 1005.739 Notice to Tribe and BIA – borrower default.**

(a) When two consecutive loan payments have been missed or two months have passed for other financial defaults under the guaranteed loan, the servicer shall provide notice of default to: (1) the BIA, for trust land transactions in accordance with applicable requirements under 25 CFR Part 162; and

(2) the tribe, for fee simple and trust land transactions, in a form prescribed by HUD, when borrower has provided consent of notification.

(b) Servicer shall continue exploring loss mitigation options, consistent with the requirements under this subpart, with the borrower during the notification process to the tribe and/or BIA.

**§ 1005.741 Relief for borrower in military service.**

(a) *Postponement of principal payments.* If the borrower is a person in “military service,” as such term is defined in the Servicemembers Civil Relief Act (50 U.S.C. App. §§501-597b), the servicer may, by written agreement with the borrower, postpone for the period of military service and three months thereafter any part of the monthly payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts which will completely amortize the loan debt within the maturity as provided in the original loan.

(b) *Postponement of foreclosure.* If at any time during default the borrower is a person in “military service,” as such term is defined in the Servicemembers Civil Relief Act, the period during which the borrower is in such service shall be excluded in computing the period within which the servicer shall commence foreclosure or acquire the property. No postponement or delay in the prosecution of foreclosure proceedings during the period the borrower is in such military service shall be construed as failure on the part of the servicer to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

**§ 1005.743 Forbearance plans.**

(a) *General.* Forbearance plans are arrangements between a servicer and borrower that may allow for a period of reduced or suspended payments and specific terms for the repayment plan.

(b) *Informal forbearance.* Informal forbearance plans are oral agreements between a servicer and borrower allowing for reduced or suspended payments and may provide specific terms for repayment.

(1) *Eligibility.* The servicer may offer plans to a borrower with a delinquent loan who does not have losses of income or increases in living expenses that can be verified.

(2) *Duration.* The period may be three months or less.

(c) *Formal forbearance.* Formal forbearance plans are written agreements executed by servicer and borrower, allowing for reduced or suspended payments and such plans may include specific terms for repayment.

(1) *Eligibility.* The servicer may offer a formal forbearance plan when:

(i) the borrower does not have a loss of income or increase in living expenses that can be verified;

(ii) the servicer determines that 85 percent of the borrower's surplus income is sufficient to bring the loan current within six months; or

(iii) if the servicer determines that the borrower is otherwise ineligible for other loss mitigation options but has sufficient surplus income or other assets that could repay the indebtedness.

(2) *Agreement.* Servicer shall execute a written agreement with borrower outlining the terms and conditions of the forbearance. The servicer must include in the agreement a provision for the resumption of monthly payments after such period, in amounts which will completely amortize the loan debt within the maturity, as provided in the original loan. The servicer must retain in the servicing file a copy of the written agreement postponing principal payments.

(3) *Duration.* The period shall be greater than three months but not to exceed six months, unless authorized by HUD.

(4) *Required documents.* The servicer must obtain from the borrower any necessary supporting documentation and retain this documentation in the servicing file.

(5) *Property condition.* The servicer must conduct any review it deems necessary, including a property inspection, when the servicer has reason to believe that the physical conditions of the property adversely impacts the borrower's use or ability to support the debt as follows:

(A) financial information provided by the borrower shows large expenses for property maintenance;

(B) the servicer receives notice from local government or other third parties regarding property condition; or

(C) the property may be affected by a disaster event in the area.

(vi) If significant maintenance costs contributed to the default or are affecting the borrower's ability to make payments under the loan or special forbearance-unemployment Agreement, the servicer may provide in the special forbearance-unemployment agreement a period of loan forbearance during which repairs specified in the agreement will be completed at the borrower's expense.

(d) *Special forbearance-unemployment.* The special forbearance-unemployment is when one or more of the borrowers has become unemployed and this loss of employment has negatively affected the borrower's ability to continue to make their monthly loan payment.

(1) *Eligibility.* The servicer must ensure that the borrower meets all the following eligibility requirements:

(i) The loan must be at least three months past day (91 days of default).

(ii) The borrower has recently experienced a verified loss of income or increase in living expenses due to loss of employment.

(iii) The borrower must continue to occupy the property as a principal residence.

(iv) The borrower has a verified unemployment status and no borrower is currently receiving continuous income; or an analysis of borrower financial information indicates that special forbearance-unemployment is the best or only option available for the borrower.

(2) *Agreement.* Servicer shall execute a written agreement with borrower outlining the terms and conditions of the Special Forbearance -Unemployment. The servicer must include in the agreement a provision for the resumption of monthly payments after such period, in amounts which will completely amortize the loan debt within the maturity, as provided in the original loan. The servicer must retain in the servicing file a copy of the written agreement postponing principal payments.

(3) *Duration.* The period shall not exceed six months. During this period where borrower is in compliance with the Special Forbearance Unemployment Agreement the servicer shall not proceed to filing of first legal until expiration or default of the Agreement.

(4) *Required documents.* The servicer must obtain from the borrower such supporting third party documentation including receipts of unemployment benefits; or an affidavit signed by the borrower, stating the date that the borrower became unemployed and stating that the borrower is actively seeking, and is available, for employment. The servicer must retain this documentation in the servicing file.

(5) *Property condition.* The servicer must conduct any review it deems necessary, including a property inspection, when the servicer has reason to believe that the physical conditions of the property adversely impacts the borrower's use or ability to support the debt as follows:

(A) financial information provided by the borrower shows large expenses for property maintenance;

(B) the servicer receives notice from local government or other third parties regarding property condition; or

(C) the property may be affected by a disaster event in the area.

(vi) If significant maintenance costs contributed to the default or are affecting the borrower's ability to make payments under the loan or special forbearance-unemployment Agreement, the servicer may provide in the special forbearance-unemployment agreement a period of loan forbearance during which repairs specified in the agreement will be completed at the borrower's expense.

(e) *Special forbearance-servicemember.* The servicer may, by written agreement with the borrower, postpone any part of the monthly loan that represents amortization of principal, for the period permitted by HUD under this section.

(1) *Eligibility.* Servicemember must be in active duty military service and meet the criteria established in 50 U.S.C. App. § 511. Dependents of servicemembers are entitled to protections in limited situations per the Servicemembers Civil Relief Act, as amended.

(2) *Duration.* The period shall be for the period of military service and three months thereafter.

(3) *Required documents.* Borrower shall provide servicer with a copy of their deployment orders.

(4) *Agreement.* (i) Servicer shall execute a written agreement with borrower outlining the terms and conditions of the special forbearance. The servicer must include in the agreement a provision for the resumption of monthly payments after such period, in amounts which will completely amortize the loan debt within the maturity, as provided in the original loan. The



servicer must retain in the servicing file a copy of the written agreement postponing principal payments.

(ii) Servicer shall comply with all applicable requirements under the Servicemembers Civil Relief Act.

(f) *Continue review and re-evaluation.* Servicer shall monitor the borrower for compliance for all agreements under § 1005.743 every 30 days, until the end of the agreement.

**§ 1005.745 Assumption.**

The servicer shall explore assumption as a loss mitigation option with the borrower in accordance with §§ 1005.709 and 1005.737.

**§ 1005.747 Loan modification.**

(a) *General.* A loan modification is a permanent change in one or more terms of a borrower's loan. A loan modification may include a change in one or more of the following: interest rate; capitalization of delinquent principal, interest or escrow items, extension of time available to repay the loan; and/or re-amortization of the balance due. A loan modification may not be used as a means to reinstate a loan prior to sale or assumption.

(b) *Eligibility.* The servicer must ensure that the borrower is able to support the monthly loan debt after the loan is modified.

(c) *Borrower qualifications.* The servicer must ensure that the borrower meets the following eligibility criteria:

(1) At least 12 months elapsed since the closing date of the original loan.

(2) The borrower has not executed a permanent loan modification agreement in the past 24 months.

(3) The borrower's default is due to a verified loss of income or increase in living expenses.

(4) One or more borrowers receives continuous income sufficient to support the monthly payment under the modified rate and/or term, although not sufficient to sustain the original loan and repay the arrearage.

(5) The borrower's surplus income is at least \$300 and is at least 15 percent of the borrower's net income.

(6) Eighty-five percent of the borrower's surplus income is insufficient to cure arrears within six months.

(7) The borrower's monthly principal, interest, taxes and insurance payment can be reduced by the greater of 10 percent of the existing monthly loan payment amount and \$100, using the market rate and amortizing the new loan over 30 years.

(8) The borrower has successfully completed a three-month trial payment plan based on the loan modification monthly loan payment amount.

*(c) Property conditions.* The servicer must conduct any review it deems necessary, including a property inspection, when the servicer has reason to believe that the physical conditions of the property adversely impact the borrower's use or ability to support the debt as follows:

(1) financial information provided by the borrower shows large expenses for property maintenance;

(2) the servicer receives notice from local government or other third parties regarding property condition; or

(3) the property may be affected by a disaster event in the area.

(d) *Trial payment plans.* A trial payment plan is a written agreement executed by all parties on the original note and the guaranteed loan, for a minimum period of three months, during which the borrower must make the agreed-upon consecutive monthly payments prior to final execution of the loan modification.

(1) *Trial payment plan terms.* The servicer must ensure that the following apply to interest rates and monthly payment amounts under trial payment plan:

(i) The interest rate for the trial payment plan and the permanent loan modification must not be greater than market rate.

(ii) The permanent market rate is established when the trial payment plan is offered to the borrower.

(iii) The established monthly permanent loan modification payment must be the same or less than the established monthly trial payment.

(2) *Start of trial payments.* The servicer must send the proposed trial payment plan agreement to the borrower at least 15 days before the date the first trial payment is due.

(3) *Trial payment plan signatures.* (i) All parties on the original note and loan and all parties that will be subject to the modified loan must execute the trial payment plan agreement unless:

(A) a borrower or co-borrower is deceased; or

(B) a borrower and a co-borrower are divorced; or

(C) a borrower or co-borrower on the original note and loan has been released from liability as the result of an approved substitute borrower.

(ii) When a borrower uses a non-borrower household member's income to qualify for a loan modification, the non-borrower household member must be on the modified note and guaranteed loan and sign the trial payment plan agreement.

(4) *Application of trial payments.* The servicer must treat payments made under the trial payment plan as partial payments, held in a suspense account and applied in accordance with HUD's partial payments guidance and applicable federal regulations.

(5) *End of trial payment plan period.* The servicer must offer the borrower a permanent loan modification after the borrower's successful completion of a trial payment plan.

(6) *Trial payment plan failure.* The borrower fails a trial payment plan when one of the following occurs:

(i) the borrower does not return the executed trial payment plan agreement within the month the first trial payment is due;

(ii) the borrower vacates or abandons the property; or

(iii) the borrower does not make a scheduled trial payment plan payment by the last day of the month it was due.

(7) *Alternatives to foreclosure after trial payment plan failure.* If a borrower fails to successfully complete a trial payment plan under a loan modification, the servicer must:

(i) provide notice of the failure of borrower to comply with the trial payment plan;

(ii) offer borrower the deed-in-lieu or lease-in-lieu as an alternative to foreclosure

(iii) provide borrower with seven days to respond to the offer.

(8) *Funds remaining at the end of trial payment period.* (i) At the end of a successful trial payment plan, any remaining funds that do not equal a full payment must be applied to any escrow shortage or be used to reduce the amount that would be capitalized onto the principal balance.

(ii) *Trial payment plan failure.* If the borrower does not complete the trial payment plan, the servicer must apply all funds held in suspense to the borrower's account in the established order of priority.

(9) *Reporting of trial payment plans.* The servicer must report the trial payment plans in accordance with administrative guidance.

(e) *Loan modification documents.* HUD does not require a specific format for the loan modification documents; however, the servicer must use documents that conform to all applicable tribal, federal and state laws.

(f) *Modification of loan guarantee certificate.* Upon completion of a successful trial payment plan and within 30 days of the execution of the loan modification documents, servicer shall provide copies of the loan modification documents to HUD. HUD shall provide additional processing instructions in administrative guidance. HUD will issue an updated loan guarantee certificate.

**§ 1005.749 Pre-foreclosure sales; tribal right of first refusal.**

(a) *General.* A pre-foreclosure sale, also known as a short sale, refers to the sale of real estate that generates proceeds that are less than the amount owed on the property and the junior lien holders agree to release their liens and forgive the deficiency balance on the real estate.

(b) *Eligibility.* To be eligible for a pre-foreclosure sale, a borrower must:

(1) Have a Section 184 loan where at least 12 months elapsed since the closing date of the original loan;

(2) Be in default, where the cause of the default was due to an adverse and unavoidable financial situation impacting the borrower.

(3) Have a Section 184 mortgaged property with a current fair market value that is less than the unpaid principal balance.

(4) Elect the pre-foreclosure sale option no later than 120 days from default.

(5) Meet all other requirements of the pre-foreclosure sale loss mitigation option under this section.

(c) *Surchargeable damages.* Surchargeable damage is damage to the property caused by fire, flood, earthquake, tornado, boiler explosion (for condominiums only) or servicer neglect. The servicer is responsible for the cost of surchargeable damage. The servicer must request HUD approval before approving the use of the pre-foreclosure sale loss mitigation option for property with surchargeable damage. If the damage is not surchargeable damage the servicer is not required to obtain HUD approval prior to approving the Approval to Participate Agreement with borrower. Servicer must comply with subsection (l) of this regulation where a hazard insurance claim must be filed.

(d) *Cash reserves.* Before executing a pre-foreclosure sale agreement in paragraph (h), servicer must calculate the borrower's cash reserve contribution.

(1) The cash reserve contribution shall come from non-retirement liquid assets, which may be available for withdrawal or liquidation from borrower's financial institutions. Servicer shall calculate the total cash reserves using the highest ending balance of each cash reserve asset;

(2) *Cash reserves greater than the threshold.* The servicer must require the borrower with cash reserves greater than the contribution threshold to contribute 20 percent of the total amount exceeding the contribution threshold towards the loan debt. The servicer must not require the borrower to contribute more than the difference between the unpaid principal balance and the appraised value of the property. The servicer must disclose to the borrower the amount of the borrower's cash reserve contribution to be applied towards the transaction.

(3) *Cash reserves at or below the threshold amount.* If the cash reserve calculation returns an amount at or below the contribution threshold amount, or a negative amount, the servicer is not required to obtain a contribution from the borrower in connection with the transaction.

(e) *Condition of title.* The servicer must ensure the Section 184 mortgaged property have good and marketable title. Before approving a borrower for participation for the pre-foreclosure sale loss mitigation option, the servicer must obtain a title search or preliminary report verifying that the title is not impaired by unresolvable title problems or junior liens that cannot be discharged.

(f) *Discharge of junior liens.* The servicer must notify all junior liens of the potential pre-foreclosure sale of the Section 184 mortgaged property and must ensure the borrower has requested a discharge of the junior liens in the event a sales contract is approved by HUD or the servicer. The discharge of junior liens shall be in accordance with paragraph (o)(5).

(g) *Property list price and valuation.* (1) *List Price.* The servicer must ensure that the borrower lists the property for sale at no less than the "As Is" value as determined by an appraisal completed in accordance with the requirements in §1005.465.

(2) *Appraisals*. The servicer must obtain a standard electronically-formatted appraisal performed by an FHA Roster Appraiser pursuant to the following requirements:

(i) The appraisal must contain an “As-Is” fair market value for the subject property.

(ii) A copy of the appraisal must be provided to the borrower, sales agent, or HUD, upon request.

(iii) *Appraisal validity period*. The as-is appraisal used for a pre-foreclosure sale transaction is valid for 120 days.

(iv) *Conditions for property valuation variance*. A servicer must submit a request for a variance to approve a pre-foreclosure sale transaction if one of the following conditions exists:

(A) The current appraised value of the property is less than the unpaid principal balance by an amount of \$75,000 or greater;

(B) the appraised value is less than 50 percent of the unpaid principal balance; or

(C) the appraisal is deemed unacceptable because the as-is value cannot be affirmed using a Broker’s Price Opinion or Automated Valuation Model within 10 percent of the value.

(v) *Variance request*. The servicer must note on the variance request the specific reason for the request and attach any supporting documents needed for HUD review. The servicer must obtain HUD approval before authorizing the marketing of the property.

(vi) *Broker’s price opinions and automated valuation models*. All pre-foreclosure appraisals must be accompanied by a broker’s price opinion or an automated valuation model.

(h) After determining that a borrower and property meet the pre-foreclosure sale eligibility requirements, the servicer shall send to the borrower:



(1) *Approval to Participate Agreement (form HUD-90045)*. The agreement shall list the pre-foreclosure sale requirements, including the date by which the borrower's sales contract must be executed under pre-foreclosure sale marketing period, applicable cash reserve amount; and

(2) *Pre-foreclosure addendum*. The addendum shall be in the form prescribed by HUD. The pre-foreclosure sale addendum must be fully executed at closing.

(3) Documents listed under paragraphs (h)(1)-(2) must be sent to the borrower via methods providing delivery confirmation with a date and time stamp of delivery. The servicer must inform borrower that the documents must be signed and returned to the servicer within 10 days of receipt.

(4) The servicer must send signed copies of the documents in paragraphs (g)(1)-(2) to HUD within 15 days of receipt from the borrower.

(i) *Right of first refusal*. At the same time the servicer sends the Approval to Participate the Agreement to borrower, in accordance with administrative guidance servicer shall send a right of first refusal notice to the tribe and the TDHE.

(j) *Use of a real estate broker*. The borrower is responsible for retaining the services of a real estate broker/agent within seven days of the signed Approval to Participate.

(k) *Required listing disclosure*. The servicer shall require the Listing Agreement between the seller and the agent/broker includes the following cancellation clause: "Seller may cancel this Agreement prior to the ending date of the listing period without advance notice to the Broker, and without payment of a commission or any other consideration if the property is conveyed to the loan guarantor or the loan holder. The sale completion is subject to approval by the servicer and/or HUD."

(1) *Pre-foreclosure sale marketing, settlement period, failure to complete pre-foreclosure sale.* The borrower has seven days from the date of the signed Approval to Participate to market the property in the Multiple Listing Service or other marketing resource, if the property is on tribal trust land.

(1) The property must be marketed in the Multiple Listing Service or other marketing resource for a period of 15 days before borrower may consider any offers.

(2) During the marketing period, servicers must conduct a monthly review of the property's marketing status with the real estate broker/agent or the tribe or TDHE, for a tribal trust property.

(3) The maximum marketing period for the sale of the property is four months from the execution date of the Approval to Participate to property settlement. If there is a signed contract of sale, but property settlement has not occurred by the end of the fourth month, the marketing period may be extended up to two-months to allow for closing to occur.

(4) Within 30 days of the end the marketing period, or no earlier than 120 days of default, whichever is later, if no settlement has occurred, servicer shall provide notice to borrower of borrower's default under the pre-foreclosure sale agreement. Lender shall obtain from borrower the agreed upon deed in lieu or lease-in-lieu as an alternative to foreclosure, with title being taken in the name of the HUD. Borrower shall have 5 days to respond. If servicer receives no response or if servicer receives notice of borrower's rejection of the alternative to foreclosure servicer must initiate first legal within 5 days of the borrower's deadline to respond or actual response date, whichever is sooner.

(m) *Property inspections and maintenance.* Servicer shall inspect the property in accordance with §§1005.733 and 1005.735, where applicable.

(n) *Disclosure of damage after pre-foreclosure sale approval.* In the event the property becomes damaged borrower must report damage to servicer within 24 hours. When servicer becomes aware that the property has sustained damage after a borrower has received the Approval to Participate, the servicer must evaluate the property to determine if it continues to qualify for the pre-foreclosure sale program or terminate participation if the extent of the damage changes the property's fair market value.

(o) *Hazard insurance claim.* Where applicable, the servicer must work with the borrower to file a hazard insurance claim and either: use the proceeds to repair the property; or adjust the Section 184 loan guarantee claim by the amount of the insurance settlement (Non-Surchargeable Damage) or the Government's repair cost estimate.

(p) *Evaluation of offers.* The servicer must receive from the listing real estate agent/broker an offer that yields the highest net return to HUD and meets HUD's requirements for bids.

(1) The listing agent/broker must ensure that the accepted offer and the pre-foreclosure sale addendum are signed by all applicable parties before submitting to the servicer for approval.

(2) *Back-up offers.* Once an offer has been submitted to the servicer for approval, the listing agent/broker must retain any offer that the seller elects to hold for "back-up" until a determination has been made on the previously submitted offer.

(3) *Arm's length transaction.* 24 CFR § 1005.103.

(q) *Contract approval by servicer.* (1) In reviewing the contract of sale, the servicer must: (i) Ensure that the pre-foreclosure sale is an outright sale of the property and not a sale by assumption.

(ii) Review the sales documentation to determine that there are no hidden terms or special agreements existing between any of the parties involved in the pre-foreclosure sale transaction; and no contingencies that might delay or jeopardize a timely settlement.

(iii) Determine that the property was marketed pursuant to HUD requirements.

(iv) Not approve a borrower for a pre-foreclosure sale if the servicer knows or has reason to know of a borrower's fraud or misrepresentation of information.

(2) *Sales contract review period.* After receiving an executed contract of sale and pre-foreclosure sale addendum from the borrower, the servicer must send to the borrower form HUD-90051, Sales Contract Review, no later than five business days from the servicer's receipt of an executed contract for sale.

(3) *Net sale proceeds.* (i) Net sale proceeds are the proceeds of a pre-foreclosure sale, calculated by subtracting reasonable and customary closing and settlement costs from the property sales price.

(ii) Regardless of the property's sale price, a servicer may only approve a pre-foreclosure sale contract for sale if the net sale proceeds are at or above HUD's minimum allowable thresholds, as established by HUD. The net sale proceeds must conform to the requirements in form HUD-90045.

(iii) The servicer is liable for any claim overpayment on a pre-foreclosure sale transaction that closes with less than the required net sale proceeds, unless a variance has been granted by HUD.

(4) *Unacceptable settlement costs.* The servicer must not include the following costs in the Net Sale Proceeds calculation:

(i) repair reimbursements or allowances;

- (ii) home warranty fees;
- (iii) discount points or loan fees;
- (iv) servicer's title insurance fee; and
- (v) third-party fees incurred by the servicer or borrower to negotiate a pre-foreclosure sale.

(5) *Other third-party fees.* (i) With the exception of reasonable and customary real estate commissions, the servicer must ensure that third-party fees incurred by the servicer or borrower to negotiate a pre-foreclosure sale are not included on the Closing Disclosure or similar legal documents unless explicitly permitted by tribal or state law.

(ii) The servicer, its agents, or any outsourcing firm it employs must not charge any fee to the borrower for participation in the pre-foreclosure sale.

(o) *Closing and post-closing responsibilities.* (1) Prior to closing, the servicer must provide the Closing Agent with form HUD-90052, Closing Worksheet, listing all amounts payable from net sale proceeds; and a pre-foreclosure sale addendum signed by all parties.

The servicer will receive from the Closing Agent a calculation of the actual net sale proceeds and a copy of the Closing Disclosure or similar legal document.

(2) *Servicer review of final terms of pre-foreclosure sale transaction.* The servicer will receive from the Closing Agent a calculation of the actual net sale proceeds and a copy of the Closing Disclosure or similar legal document. The servicer must ensure that:

(i) the final terms of the pre-foreclosure sale transaction are consistent with the purchase contract;

(ii) only allowable settlement costs have been deducted from the seller's proceeds;

(iii) the net sale proceeds will be equal to or greater than the allowable thresholds;

(iv) form HUD-90052 is included in the Claim Review File; and

(v) they report the pre-foreclosure sale to consumer reporting agencies.

(3) *Closing agent responsibilities after final approval.* Once the servicer gives final approval for the pre-foreclosure sale and the settlement occurs, the Closing Agent must:

(i) pay the expenses out of the Net Sale Proceeds and forward the Net Sale Proceeds to the servicer;

(ii) forward a copy of the Closing Disclosure or similar legal document to the servicer to be included in the Claim Review File no later than three business days after the pre-foreclosure sale transaction closes; and

(iii) sign the pre-foreclosure sale Addendum on or before the date the pre-foreclosure sale transaction closes, unless explicitly prohibited by tribal or state statute.

(4) *Satisfaction of loan debt.* Upon receipt of the portion of the net sale proceeds designated for loan satisfaction, the servicer must satisfy the loan debt, release the lien in the appropriate jurisdiction, and may file a claim for Section 184 loan guarantee benefits.

(5) *Discharge of junior liens.* The servicer must provide for the discharge of junior liens as follows: (i) If the borrower has the financial ability, the borrower must be required to satisfy or obtain release of liens.

(ii) If no other sources are available, the borrower may obligate up to a maximum amount as may be provided in administrative guidance from sale proceeds towards discharging the liens or encumbrances.

(f) *Early termination of pre-foreclosure participation.* (1) *Borrower-initiated termination.* The servicer must permit a borrower to voluntarily terminate participation in the pre-foreclosure sale loss mitigation option at any time.

(2) *Servicer-initiated termination.* The servicer shall terminate a borrower's pre-foreclosure sale program participation for any of the following reasons:

- (i) discovery of unresolvable title problems;
- (ii) determination that the borrower is not acting in good faith to market the property;
- (iii) significant change in property condition or value;
- (iv) re-evaluation based on new financial information provided by the borrower that indicates that the case does not qualify for the pre-foreclosure sale option; or
- (v) borrower has failed to complete a pre-foreclosure sale within the time limits prescribed by HUD and no extensions of time have been granted by HUD.

(3) *Notification of pre-foreclosure sale Program Participation Termination.* The servicer must forward to the borrower a date-stamped written explanation for terminating their program participation. This letter is to include the "end-of-participation" date for the borrower.

(q) *Failure to complete a pre-foreclosure sale.* Should the borrower be unable to complete a pre-foreclosure sale transaction, the servicer must proceed with a deed-in-lieu or lease-in-lieu in accordance with § 1005.751. If servicer is unable to obtain a deed-in-lieu or lease-in-lieu servicer must proceed to foreclosure or assignment in accordance with §§1005.755 and 1005.761.

**§ 1005.751 Deed in lieu/lease in lieu of foreclosure.**

(a) In lieu of instituting or completing a foreclosure, the servicer may acquire property by voluntary conveyance from the borrower. Conveyance of the property by deed in lieu/lease in lieu of foreclosure is approved subject to the following requirements:

(1) The lease-in-lieu shall be approved by the tribe prior to execution and the BIA at recordation.

(2) The loan is in default at the time the deed or lease is executed and delivered;

(3) The credit instrument is cancelled and surrendered to the borrower;

(4) The loan is satisfied of record as a part of the consideration for such conveyance;

(5) The deed or lease from the borrower contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under him and conveys good marketable title;

(6) The servicer transfers to HUD good marketable title accompanied by satisfactory title evidence.

(7) The property must meet the property conditions under § 1005.769.

(b) *Required documentation.* A written agreement must be executed by the borrower and servicer which contains all of the conditions under which the deed will be accepted, including but not limited to:

(1) Specific transfer date;

(2) Notification that there may be income tax consequences as a result of the deed or lease in lieu;

(3) A statement describing the general physical condition in which the property will be conveyed;

(4) Agreement that the borrower will convey the property vacant and free of personal property unless an occupied conveyance has been approved by HUD;

(5) Itemization of the keys, built-in fixtures and equipment to be delivered to the servicer on or before the transfer date; and



(6) Borrower's agreement to provide evidence that certain utilities, assessments and homeowner's association dues are paid in full prior to the transfer date.

(7) Servicer is responsible for ensuring that the agreement is in compliance with all applicable laws and regulations.

(c) *Conveyance*. The property must be conveyed in the property condition as prescribed in § 1005.769. The original credit instrument must be canceled and surrendered to the borrower, indicating that the loan has been satisfied. Upon execution of the deed or the assignment of the lease, servicer must file for record no later than two days.

(d) Servicer must comply with all applicable tribal, federal, state, local reporting requirements, including but not limited to reporting to credit reporting agencies.

**§ 1005.753 Incentive payments to borrower.**

HUD may authorize servicer to advance incentive payments to the borrower for the completion of certain loss mitigation options, in accordance with the amounts and conditions as may be prescribed by HUD in administrative guidance.

**FORECLOSURE OR ASSIGNMENT OF THE MORTGAGE TO HUD**

**§ 1005.755 Fee simple properties – foreclosure.**

(a) Unless borrower has completed a pre-foreclosure sale or a deed-in-lieu in accordance with §§ 1005.749 and 1005.751, servicer must initiate foreclosure on fee simple properties insured under the Section 184 program.

(b) As prescribed by administrative guidance, HUD approval is required for servicer to assign Section 184 guaranteed loan involving fee simple properties to HUD.

**§ 1005.757 Initiation of foreclosure and automatic extensions.**

(a) Servicer must initiate first legal action, as defined in § 1005.103, by 180 days of default, unless an earlier date is authorized under this part.

(b) *Automatic extensions to the initiation of foreclosure.* The Section 184 program allows for automatic extensions to the initiation of foreclosure for reasons under this paragraph. Automatic extensions do not require HUD approval. (1) Automatic extensions are provided if the laws of the tribe or state in which the mortgaged property is located, or Federal bankruptcy law or Consumer Financial Protection Bureau regulations:

(i) Do not permit the commencement of foreclosure within the time limits described in §1005.759(a) the servicer must initiate foreclosure within 30 days after the expiration of the time during which foreclosure is prohibited; or

(ii) Require the prosecution of a foreclosure to be discontinued, the servicer must recommence the foreclosure within 30 days after the expiration of the time during which foreclosure is prohibited.

(2) If the borrower is in compliance with an approved loss mitigation plan at 180 days of default, there shall be automatic extensions to initiating of first legal, so long borrower is in compliance with the loss mitigation plan. However, upon borrower's default under the loss mitigation plan or borrower's request to terminate participation in the loss mitigation plan servicer shall initiate first legal within five days of the aforementioned action.

(3) HUD, at its discretion, may allow for other automatic extensions as may be prescribed by administrative guidance.

(c) *Notice to HUD.* The servicer must give notice to HUD within 15 days after the institution of foreclosure proceedings in the format prescribed by the Secretary.

**§ 1005.759 Tribal right of first refusal – option to assume loan or purchase property.**

(a) For fee simple properties at 180 days after default, the servicer must submit written notice to the tribe and tribally designated housing authority of the option to assume the loan or purchase the property.

(b) For tribal trust land, at 120 days after default and prior to the initiation of assignment of the loan or initiation of the foreclosure process the servicer shall provide written notice to the tribe and tribally designated housing authority of the option to assume the loan or purchase the property.

(c) The tribe or tribally designated housing authority shall have 60 days to accept or decline the option to assume the loan or purchase the property based on the current appraised value or other purchase price, as prescribed in HUD administrative notice.

**§ 1005.761 Tribal trust properties – assignment or foreclosure.**

For tribal trust land, servicer may elect to initiate foreclosure or assign the loan to HUD, within the timeframes prescribed in §§ 1005.757 and 1005.763.

**§ 1005.763 Assignment of the mortgage.**

(a) *When to initiate assignment.* No sooner than 120 days of default but no later than 180 days after the day of default, a servicer must initiate assignment to HUD when one of the following conditions are met:

(1) The servicer has completed its review of the borrower's loss mitigation request, determined that the borrower does not qualify for a loss mitigation option, properly notified the borrower of this decision, and rejected any available appeal by the borrower.

(2) The borrower has failed to perform under an agreement on a loss mitigation option, and the servicer has determined that the borrower is ineligible for other loss mitigation options or unlikely to complete an additional loss mitigation option within 180 days of default.

(3) The servicer has been unable determine the borrower's eligibility for any loss mitigation option due to the borrower not responding to the servicer's efforts to contact the borrower.

(b) *Timeframes.* (1) The assignment of the mortgage must be executed, within 5 days of notification by the tribe of their decision of first right of refusal, but no later than 180 days of default.

(2) The servicer must file for record or mail to the recording authority the assignment of the mortgage no later than two days of execution. Lender must document evidence of the submission in the file.

(c) *Property preservation before assignment.* Before assignment the lender shall: (1) conduct an occupancy inspection in accordance with §1005.733.

(2) If the property is vacant or abandoned, secure the property in accordance with § 1005.735.

**§ 1005.765 Inspection and preservation of properties.**

(a) If at any time the servicer knows or should have known the property is vacant or abandoned, the servicer shall comply with the inspection requirements under §1005.735.

(b) The servicer shall take appropriate action to protect and preserve such security property until its conveyance to HUD, if such action does not constitute an illegal trespass. "appropriate action" includes the commencement of foreclosure or assignment within the time required by §§ 1005.757 and 1005.763, as applicable.

**§ 1005.767 Occupancy of property.**

The servicer shall certify that the property is vacant as of the date of filing for record of the deed to HUD or that HUD has consented to accept the property occupied.

**§ 1005.769 Property condition.**

(a) *Condition at time of transfer.* (1) When the property is transferred, or a loan is assigned to HUD, the property must be undamaged by fire, earthquake, flood, tornado and servicer neglect, except as set forth in this subpart.

(2) The property must be in broom-swept condition, meaning the property is, at a minimum, reasonably free of dust and dirt, and free of hazardous materials or conditions, personal belongings, and interior debris.

(3) The property is secured and, if applicable, winterized.

(b) *Damage to property by waste.* The servicer shall not be liable for damage to the property by waste committed by the borrower, its heirs, successors or assigns in connection with loan guarantee claims.

(c) *Servicer responsibility.* The servicer shall be responsible for:

(1) Damage by fire, flood, earthquake, or tornado;

(2) Damage to or destruction of security properties on which the loans are in default and which properties are vacant or abandoned, when such damage or destruction is due to the servicer's failure to take reasonable action to inspect, protect and preserve such properties as required by §1005.735; and

(3) Any damage of whatsoever nature that the property has sustained while in the possession of the servicer, when the property is conveyed to HUD without notice to and approval by HUD as required by § 1005.773.

**§ 1005.771 Conveyance of property to HUD at or after foreclosure; time of conveyance.**

(a) At or after foreclosure the servicer shall convey property to HUD by one of the following:

(1) *Direct conveyance to HUD.* The servicer shall arrange for the deed or tribal lease to be made directly to HUD. The servicer shall be responsible for determining that such conveyance will comply with all of the provisions of this part, including conveying good marketable title and satisfactory title evidence to HUD.

(2) *Conveyance by the servicer to HUD.* The servicer shall acquire good marketable title and transfer the property to HUD within 30 days of the later of:

(i) Filing for record the foreclosure deed or the assignment of the lease;

(ii) Acquiring possession of the property;

(iii) Expiration of the redemption period; or

(iv) Within such further time as may be necessary to complete the title examination and perfect the title.

(v) Such further time as HUD may approve in writing.

(b) On the date the deed or assignment of the tribal lease is filed for record, the servicer shall notify HUD on a form prescribed by HUD advising HUD of the filing of such conveyance and shall assign all rights without recourse or warranty any or all claims which the servicer has acquired in connection with the loan transaction, and as a result of the foreclosure proceedings or other means by which the servicer acquired or conveyed such property, except such claims as may have been released with the approval of HUD. The servicer must file for record or mail to the recording authority the deed no later than two days of execution. Lender must document evidence of the submission in the file.

**§ 1005.773 Acceptance of property by HUD.**

Upon receipt of notice of property transfer HUD shall accept title to and possession of the property as of the date of the filing for record of the deed or the assignment of the tribal lease to HUD, subject to compliance with the regulations in this part. Acceptance of property by HUD does not mean all servicing and property transfer requirements have been met by servicer.

## **Subpart H – Claims**

### **CLAIMS APPLICATION, SUBMISSION CATEGORIES AND TYPES**

#### **§ 1005.801 Purpose.**

This subpart sets forth requirements that are applicable to a lender's submission of an application for loan guarantee benefits (claim submission) to HUD. The lender's submission of the loan guarantee claim shall be in compliance with all applicable Consumer Financial Protection Bureau and Section 184 program requirements. Any loan guarantee claim submission not in compliance with the Section 184 requirements must be documented by the lender, with justification for the non-compliance, and, where applicable, include evidence of any HUD granted extensions of time.

#### **§1005.803 Claim file to be maintained by lender.**

(a) Lenders must maintain a claim file for each claim submitted for payment in accordance with §1005.223(d)(2). The claim file must contain documentation supporting all information submitted for a claim payment.

(b) HUD may review a lender's claim file at any time. Denial of access to any files may be grounds for withdrawal of the lender's approved status, immediate suspension of all claim payments and any other sanctions pursuant to § 1005.905.

(c) Within three business days of a request by HUD, the lender must make available for review, or forward to HUD, copies of identified claim files.



**§ 1005.805 Effect of noncompliance with regulations Section 184 program requirements.**

(a) If HUD determines the originating lender and/or direct guarantee lender committed fraud with respect to the Section 184 loan and/or known or should have known of a serious and material violation of the Section 184 origination requirements, such that the Section 184 loan should not have been approved, HUD shall take one or more of the following actions:

(1) deny the claim in its entirety;

(2) demand the return of all claim amounts paid by HUD, reimbursement of all expenses HUD incurred pursuant to § 1005.853, and reconvey the property pursuant to § 1005.851, where applicable. If the Section 184 guaranteed loan was sold to another financial institution, HUD would first pay the claim and then seek reimbursement from the originating direct guarantee lender.

(3) cancel the loan guarantee certificate;

(5) pursue sanctions against originating lender direct guarantee lender pursuant to §1005.905.

(b) The originating lender direct guarantee lender shall be prohibited from resubmitting the same claim to HUD at any future time.

(c) If the lender fails to comply with the regulations in subparts G and H, HUD may:

(1) Hold processing of the claims submission in abeyance for a reasonable time, as may be determined by HUD, in order to permit the lender to comply.

(2) Reject the claim submission and provide lender with the reasons for the claim submission rejection.

(3) Reconvey title to the property or re-assign the loan to the lender, in which event the claim submission shall be considered as cancelled and the lender shall refund the guarantee benefits to HUD as well as other funds required by §§ 1005.851 and 1005.853 of this part.

(d) The lender may resubmit the claim submission at a subsequent date; provided, however, that the lender may not be reimbursed for any expenses incurred in connection with the property after it was reconveyed or re-assigned by HUD, or after the date conveyance or assignment was required by §§ 1005.763 and 1005.771 of this part, whichever is earlier, and there will be deducted from the claim any reduction in the HUD's estimate of the value of the property occurring from the time of reconveyance or re-assignment to the time of resubmission.

**§ 1005.807 Claim submission category.**

The Section 184 program recognizes three submission categories:

- (a) Reimbursement of the unpaid principal balance.
- (b) Reimbursement of eligible reasonable expenses up to the assignment, conveyance or sale.
- (c) Supplemental claims for eligible reasonable expenses incurred prior to the assignment, conveyance or sale omitted from lender's Part B submission or for a calculation error made by either the lender or HUD.

**§ 1005.809 Claim types.**

The Section 184 program recognizes five claim types. Lenders must submit claim types based upon property disposition. Lender shall submit claims within timeframes established below. In addition to the documentation required under the claim types described below, HUD shall

prescribe administrative guidance for an acceptable complete claim submission, which may include additional supporting documentation and certifications. The claim types are:

(a) *Conveyance*. When the lender deeds the property to HUD through foreclosure or by deed-in-lieu/lease-in-lieu. (1) The lender must submit a Part A claim to HUD no later than 45 days from the date the deed or assignment of the tribal lease to HUD is executed.

(2) (i) *Fee simple*. The claim must include the final title policy evidencing ownership vested to HUD.

(ii) *Trust land*. The claim must include evidence of filing with the Bureau of Indian Affairs.

(3) In cases where lender is unable to comply with (a)(2)(i) or (ii) lender may submit the claim for reimbursement without the final title policy or final certified title status report on the 45<sup>th</sup> day in accordance with the claim processing instructions, as may be prescribed in the administrative guidance.

(4) Lenders must submit a Part B claim no later than 45 days of the date the deed or assignment of the lease to HUD is executed.

(b) *Assignment of the loan*. The lender may assign the loan obligation to HUD after the failure of all available loss mitigation options. Fee simple properties may only be assigned with HUD approval. (1) The lender must submit a Part A claim no later than 45 days from the date of the assignment of the loan to HUD is executed.

(2) (i) *Fee simple*. The claim must include the final title policy evidencing ownership vested to HUD.

(ii) *Trust land*. The claim must include evidence of filing with the Bureau of Indian Affairs.

(3) In cases where lender is unable to comply with (b)(2)(i) or (ii) lender may submit the claim for reimbursement without the final title policy or final certified title status report on the 45<sup>th</sup> day in accordance with the claim processing instructions, as may be prescribed in the administrative guidance.

(4) Lenders must submit a Part B claim no later than 45 days of the date assignment of loan is executed.

(5) *Lender certification.* At the time of assignment of the loan, the lender shall certify to HUD that: (i) *Priority of loan to liens.* The loan is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by HUD;

(ii) *Amount due.* The amount stated in the instrument of assignment is actually due and owing under the loan;

(iii) *Offsets or counterclaims.* There are no offsets or counterclaims thereto and the lender has a good right to assign; and

(iv) The assignment meets the requirements of 1005.763.

(c) *Post-foreclosure claims without conveyance of title.* For fee simple properties, when a lender or third-party purchases the property at foreclosure. (1) The lender must submit a Part A claim to HUD no later than 45 days from the date the deed to the lender or the third-party is executed.

(2) Lenders must submit a Part B claim to HUD no later than 45 days of the date the deed to the lender or the third-party is executed.

(d) *Pre-foreclosure sale.* When a property is sold prior to foreclosure in accordance with §1005.749. (1) The lender must submit a Part A claim to HUD no later than 45 days from the date the deed or assignment of the lease to the third-party is executed.

(2) Lenders must submit a Part B claim to HUD no later than 45 days of the date the deed or assignment of the lease to the third-party is executed.

(e) *Supplemental claim.* Lender shall be limited to one supplemental claim for each Part B claim submission. (1) The supplemental claim shall be limited to: (i) reasonable eligible expenses incurred up to the date of transfer deed or assignment of the loan or tribal lease, when invoices are received after the payment of the original Part B claim; or

(ii) calculation error(s) made by either the lender or HUD.

(2) Supplemental claims must be submitted within 60 days of the Part B submission. Supplemental claims received after 60 days are not eligible for payment.

(3) Any supplemental claim paid by HUD shall be considered final payment.

#### **SUBMISSION OF CLAIM**

#### **§ 1005.811 Claims submission.**

(a) *Part A claim.* The lender shall submit a Part A claim for the unpaid principal balance in accordance with the requirements of this subpart and any HUD administrative guidance.

(b) *Part B claim.* The lender shall submit a Part B claim for the interest on the unpaid principal balance and other reasonable eligible costs, in accordance with the requirements of this subpart and any HUD administrative guidance.

(c) *Final Payment.* The lender may not file for any additional payments of its guarantee claim after sixty days from payment of the Part B claim in accordance with §1005.809(e).

(d) The lender shall submit supporting documentation required for each claim type, as may be prescribed in administrative guidance.

**§ 1005.813 Annual loan guarantee fee reconciliation.**

(a) The lender must submit with their Part B claim a reconciliation evidencing the payment of the annual loan guarantee fee to HUD.

(b) Where lender fails to comply with paragraph (a) or the reconciliation shows unpaid amounts owed to HUD and the unpaid amounts, along with late fees, have not been satisfied by the lender HUD shall reject the Part B claim.

(c) The lender may resubmit the part B claim after amounts owed to HUD are paid by the lender.

**§ 1005.815 Conditions for withdrawal of application for guarantee benefits.**

With HUD consent, a lender may withdraw an application for guarantee benefits if the lender agrees that it will: (a) Accept a reconveyance of the property under a deed which warrants against the acts of HUD and all claiming by, through, or under HUD;

(b) Promptly file a reconveyance for record;

(c) Accept without continuation, the title evidence which it furnished to HUD; and

(d) Reimburse HUD for property expenditures and amounts as set forth in § 1005.853

## PROPERTY TITLE TRANSFERS AND TITLE WAIVERS

### **§ 1005.817 Conveyance of good and marketable title.**

(a) *Definition.* Good and marketable title as defined in §1005.3.

(b) *Satisfactory conveyance of title and transfer of possession.* The lender shall tender to HUD a satisfactory conveyance of title and transfer of possession of the property. The deed or other instrument of conveyance shall convey good marketable title to the property, which shall be accompanied by title evidence satisfactory to HUD.

(c) *Conveyance of property without good marketable title.* (1) If the title to the property conveyed by the lender to HUD is not good and marketable, the lender must correct any title defect within 60 days after receiving notice from HUD, or within such further time as HUD may approve in writing.

(2) If the defect is not corrected within 60 days, or such further time as HUD approves in writing, the lender must reimburse HUD's costs of holding the property, accruing on a daily basis, and interest on the amount of the loan guarantee benefits paid to the lender at an interest rate set in conformity with the Treasury Fiscal Requirements Manual from the date of such notice to the date the defect is corrected or until HUD reconveys the property to the lender, as described in paragraph (c)(3) of this section. The daily holding costs to be charged a lender shall include the costs specified in § 1005.853 of this part.

(3) If the title defect is not corrected within a reasonable time, as determined by HUD, HUD will, after notice, reconvey the property to the lender and the lender must reimburse HUD in accordance with §§ 1005.851 and 1005.853 of this part.

**§ 1005.819 Types of satisfactory title evidence.**

The following types of title evidence shall be satisfactory to HUD:

(a) *Fee or owner's title policy.* A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such instruments. If an owner's policy of title insurance is furnished, it shall show title in the Secretary and inure to the benefit of his successors in office.

(b) *Lender's policy of title insurance.* A lender's policy of title insurance supplemented by an Abstract and an Attorney's Certificate of Title covering the period subsequent to the date of the loan, the terms of the policy shall be such that the liability of the title company will continue in favor of the Secretary after title is conveyed to him. The policy may be drawn in favor of the lender and the Secretary, "as their interests may appear", with the consent of the title company endorsed thereon;

(c) *Abstract and legal opinion.* An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such title signed by an attorney at law experienced in examination of titles. If title evidence consists of an Abstract and an Attorney's Certificate of Title, the search shall extend for at least forty years prior to the date of the Certificate to a well-recognized source of good title;

(d) *Torrens or similar certificate.* A Torrens or similar title certificate;

(e) *Title standard of U.S., Tribal or State government.* Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any Tribe, State or Territory thereof; or



(f) Certified title status report issued by the Bureau of Indian Affairs shall not be more than sixty days from the date of Part A claim submission. HUD may grant extensions when appropriate through administrative guidance.

**§ 1005.821 Coverage of title evidence.**

Evidence of title or title status report shall be executed subsequent to the recordation of the deed or assignment to HUD. The evidence of title or the title status report shall show that according to the public records, there are not, at such date, any outstanding prior liens, including any past-due and unpaid ground rents, general taxes or special assessments, if applicable.

**§ 1005.823 Acceptability of customary title evidence.**

If the title, title evidence and title status report are such as to be acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated, such title, title evidence and title status report shall be satisfactory to HUD and shall be considered as good and marketable. In cases of disagreement, HUD will make the final decision.

**§ 1005.825 Waived title objections for fee simple properties.**

HUD shall not object to title by reason of the following matters: (a) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(b) Aviation easements, which were approved by HUD at the time of the origination of the loan,

(c) Easements for public utilities along one or more of the property lines and extending not more than 10 feet therefrom and for drainage or irrigation ditches along the rear 10 feet of the property, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(d) Easements for underground conduits which are in place and do not extend under any buildings on the subject property;

(e) Mutual easements for joint driveways constructed partly on the subject property and partly on adjoining property, provided the agreements creating such easements are of record;

(f) Any other customary easements for public utilities, party walls, driveways, and other purposes.

(g) Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed 1 foot, provided such encroachments do not touch any buildings or interfere with the use of any improvements on the subject property;

(h) Encroachments on adjoining property by eaves and overhanging projections attached to improvements on subject property where such encroachments do not exceed 1 foot.

(i) Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property;

(j) Encroachments on adjoining property by driveways belonging to subject property where such encroachments do not exceed 1 foot, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment;

(k) Variations between the length of the subject property lines as shown on the application for insurance and as shown by the record or possession lines, provided such

variations do not interfere with the use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line;

(l) Encroachments by garages or improvements other than those which are attached to or a portion of the main dwelling structure over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith;

(m) Violations of cost or set back restrictions which do not provide a penalty of reversion or forfeiture of title, or a lien for liquidated damages which may be superior to the lien of the guaranteed loan. Violations of such restrictions which do provide for such penalties, provided such penalty rights have been duly released or subordinated to the lien of the guaranteed loan, or provided a policy of title insurance is furnished expressly insuring HUD against loss by reason of such penalties.

(n) Customary building and use restrictions which:

(1) Are coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to HUD; or

(2) Are not coupled with a reversionary clause and have not been violated to a material extent.

(o) Outstanding oil, water or mineral rights (or damage caused by the exercise of such rights) which are customarily waived by prudent leading institutions and leading attorneys in the community.

(p) The voluntary or involuntary conveyance of a part of the subject property pursuant to condemnation proceedings or in lieu of condemnation proceedings, if:

- (1) The part conveyed does not exceed 10 percent by area of the property;
  - (2) No damage to existing structures, improvements, or unrepaired damage to sewage, water, or paving has been suffered;
  - (3) All of the payment received as compensation for the taking by condemnation or conveyance in lieu of condemnation has been applied to reduction of the mortgage indebtedness;
  - (4) The conveyance occurred subsequent to guarantee of the loan; and
  - (5) There is included with the documents and information furnished HUD with the application for guarantee benefits, a statement by the lender that the requirements of this paragraph have been met.
- (q) Federal tax liens and rights of redemption arising therefrom if the following conditions are observed. If the lender acquires the property by foreclosure the lender shall give notice to the Internal Revenue Service (IRS) of the foreclosure action. HUD will not object to an outstanding right of redemption in IRS if:
- (1) The Federal tax lien was perfected subsequent to the date of the loan lien, and
  - (2) The lender has bid an amount sufficient to make the lender whole if the property is in fact redeemed by the IRS.

**§ 1005.827 Waived title objections for tribal trust properties.**

HUD shall not object to title restrictions placed on the tract of tribal trust land by the tribe or the Bureau of Indian Affairs.

## CONDITION OF THE PROPERTY

### **§ 1005.829 Damage or neglect.**

(a) If the property has been damaged by fire, flood, earthquake, or tornado, or, the property has suffered damage because of the lender's failure to take action as required by § 1005.765 or for any other reason, the lender must submit a claim to the hazard insurance policy, as applicable and the damage must be repaired before conveyance of the property or assignment of the loan to HUD.

(b) If the property has been subject to damaged described in § 1005.829 (a) and the damage is not covered by a hazard insurance policy, the lender must provide notice of such damage to HUD and may not convey until directed to do so by HUD. Upon receipt of such notice, HUD will:

(1) Allow the lender to convey the property damaged;

(2) Require the lender to repair the damage before conveyance, and HUD will reimburse the lender for reasonable payments not in excess of HUD's estimate of the cost of repair, less any insurance recovery; or

(3) Require lender to repair the damage before conveyance at lender's own expense.

(c) In the event the damaged property is conveyed to HUD without prior notice or approval as provided in paragraphs (a) or (b) of this section, HUD may, after notice, reconvey the property and demand reimbursement to HUD for the expenses in accordance with §§ 1005.851 and 1005.853.

**§ 1005.831 Certificate of property condition.**

(a) As part of the claim submission, the lender shall either:

(1) Certify that as of the date of the filing of deed for record, or assignment of the loan to HUD the property was:

(i) Undamaged by fire, flood, earthquake, or tornado; and

(ii) Undamaged due to failure of the lender to act as required by § 1005.765; and

(iii) Undamaged while the property was in the possession of the borrower; or

(2) Include a copy of HUD's authorization to convey the property in damaged condition.

(b) In the absence of evidence to the contrary, the lender's certificate or description of the damage shall be accepted by HUD as establishing the condition of the property, as of the date of the filing of the deed or assignment of the loan.

**§ 1005.833 Cancellation of hazard insurance.**

The lender shall cancel any hazard insurance policy as of the date of the filing for record of the deed to HUD subject to the following conditions:

(a) The amount of the return premium due to the lender because of such cancellation may be calculated on a "short-rate" basis and reported on fiscal data, and the amount shall be deducted from the total amount claimed.

(b) If the lender's calculation of the return premium is less than the actual return, the amount of the difference between the actual refund and the calculated amount shall be remitted to HUD, accompanied by the carrier's or agent's statement.

(c) If the lender's calculation of the return premium is more than the actual return, the lender may include in its claim submission, the statement of the amount of the refund from the

insurance carrier or agent and include the amount of the difference as an eligible cost in accordance with §1005.843(a)(3).

## **PAYMENT OF GUARANTEE BENEFITS**

### **§ 1005.835 Method of payment.**

If the claim submission is acceptable to HUD, payment of the guarantee benefits shall be made by electronic transfer of funds to the lender.

### **§ 1005.837 Claim payment not conclusive evidence of claim meeting all HUD requirements.**

Payment of any claim by HUD is not conclusive evidence of lender's compliance with Section 184 origination and servicing requirements. HUD reserves the right to conduct post-claim payment review of claim file within 5 years from the date of the last claim payment. Where non-compliance with any requirements of this part are identified HUD take appropriate action against lender, including but not limited to HUD's remedies under § 1005.805 and sanctions under §1005.905.

### **§ 1005.839 Part A claim: unpaid principal balance.**

HUD will pay a Part A claim in the amount of the unpaid principal balance less all receipts for the sale or transfer of the property, in accordance with the requirements of this subpart.

**§ 1005.841 Part B claim: interest on unpaid principal balance.**

HUD shall pay interest on the unpaid principal balance from the date of default to the earlier of the following:

- (1) The execution of deed-in-lieu/lease-in-lieu;
- (2) The execution of the conveyance deed to either lender, HUD or third-party;
- (3) The execution of the assignment of the loan to HUD; or
- (4) The expiration of the reasonable diligence timeframe provided in administrative guidance and calculated in the following manner: the date of default through the date lender was required to initiate first legal pursuant to §1005.757 plus the reasonable diligence timeframe as provided in administrative guidance.

**§ 1005.843 Part B claim: eligible and ineligible reasonable costs.**

(a) *Eligible items.* The guarantee benefits paid in accordance with § 1005.809 may include the following items, where applicable:

- (1) Taxes, ground rents, water rates, and utility charges that are liens prior to transfer of the property to the lender, HUD or third-party.
- (2) Special assessments, which are noted at the time of closing, which become due or are liens after the guarantee of the loan;
- (3) Hazard insurance premiums on the mortgaged property not in excess of a reasonable costs;
- (4) Taxes imposed upon any deeds or other instruments by which said property was: (i) acquired by the lender and conveyed to HUD or third-party; or (ii) transferred to third-party as a result of a pre-foreclosure sale.



(5) Foreclosure costs, including any reasonable costs related to the conveyance of the property to lender, HUD or third-party. HUD will allow costs related to evidencing title to the property to HUD, but not including any costs borne by the lender to correct title defects;

(6) Reasonable costs of inspecting, protecting, operating, or preserving the property, or removing debris from the property prior to the time of conveyance to HUD or third-party.

(7) Charges for any homeowner association or condominium fees required on a community-owned property covenant.

(8) Reasonable costs of an appraisal;

(9) Incentive payments, if any, approved by HUD in accordance with § 1005.753

(10) Reasonable costs incurred in evicting occupants and in removing personal property from acquired properties;

(11) Reasonable costs of the title search ordered by the lender,

(12) Reasonable costs related to the evaluation of the borrower for loss mitigation options.

(13) Lender payment of the annual loan guarantee fee in accordance with § 1005.609(f) .

(14) Any other eligible items as may be prescribed in administrative guidance.

(b) HUD will provide in administrative guidance a schedule of reasonable costs for eligible claim items.

(c) *Ineligible items.* The following items are not eligible for reimbursement:

(1) Notwithstanding (a)(1)-(14) where lender fails to initiate foreclosure or assignment in accordance with §§1005.757 and 1005.763, any expenses the lender incurs after the date of which the reasonable diligence timeframe would have expired would not be an eligible expense for reimbursement.

(2) Notwithstanding any other provision in this section, in cases where HUD has reconveyed the property back to lender in accordance with § 1005.851, and where lender resubmits the claim, the lender will not be reimbursed for any expenses incurred after the date of the HUD reconveyance.

(3) The cost to repair any damage resulting from the lender's failure to preserve and protect the property

(4) When there is damage or neglect to a property covered by a hazard insurance policy the lender must submit the claim to the insurance company. This same cost will not be reimbursed by HUD.

**§ 1005.845 Reductions to the Part A claim submission amount.**

Lender shall reduce their Part A claim when the following amounts are received or held by the lender:

(a) All amounts received by the lender on account of the loan after the institution of foreclosure proceedings or the acquisition of the property by direct conveyance or otherwise after default.

(b) All amounts received by the lender from any source relating to the property on account of rent or other income after deducting reasonable expenses incurred in handling the property.

(c) All cash retained by the lender including amounts held or deposited for the account of the borrower or to which it is entitled under the loan transaction that have not been applied in reduction of the principal loan indebtedness.

**§ 1005.847 Right and liability under loan guarantee fund.**

No borrower or lender shall have any vested right in the loan guarantee fund. No borrower or lender shall be subject to any liability arising under the loan guarantee fund.

**§ 1005.849 Final payment to lender.**

(a) HUD's payment of the Part A and B claim, and supplemental claim, if any, shall be deemed as final payment to the servicer. The lender shall have no further claims against the borrower or HUD when there is a final payment. This paragraph does not preclude HUD from seeking reimbursement of costs and return of amounts from the lender pursuant to §§ 1005.851 and 1005.853.

(b) In cases where HUD reconveys the property to lender and the lender reimburses HUD for all expenses and return of amounts pursuant to §§ 1005.851 and 1005.853 provisions under paragraph (a) shall not apply. However, the lender's resubmission of the claim, if any, shall be subject to the 1005.851(b) and any other restrictions as may be imposed by administrative guidance.

**§ 1005.851 Reconveyance to lender.**

(a) Where HUD acquires a property and thereafter it becomes necessary for HUD to reconvey the property to the servicer due to the servicer's noncompliance with this part or any administrative guidance or servicer withdraws the claim for guaranteed benefits with the consent of HUD, HUD may take appropriate action against servicer, including but not limited to seeking reimbursement of all claim costs paid by HUD and carrying costs incurred by HUD in accordance with § 1005.853

(b) Notwithstanding any other provision in this subpart, in cases where HUD has conveyed the property back to lender in accordance with § 1005.853, and where lender resubmits

the claim, the lender will not be reimbursed for any expenses incurred after the date of the HUD conveyance.

(c) HUD may impose additional restrictions as appropriate in administrative guidance.

### **§ 1005.853 Servicer reimbursement of expenses to HUD**

Where reconveyance is pursued by HUD pursuant to § 1005.851 servicer shall reimburse HUD for: (a) all Part A and B claim costs, and supplemental claims, if applicable, paid by HUD.

(b) HUD's cost of holding the property, including but not limited to expenses based on the estimated taxes, maintenance and operating expenses of the property, and administrative expenses. Appropriate adjustments shall be made by HUD for any income received from the property.

(c) The reimbursement shall include interest on the amount of the loan guarantee benefits refunded by the lender from the date the loan guarantee benefits were paid to the date HUD receives the refund from the lender. The interest rate set shall be in conformity with the Treasury Fiscal Requirements Manual.

## **Subpart I - Lender Monitoring, Reporting, Sanctions and Appeals**

### **§ 1005.901 Lender monitoring reviews.**

HUD will conduct periodic on-site and remote lender monitoring reviews. These reviews will include but are not limited to an evaluation of the lender's compliance with this Part, administrative notices and other directives. At the conclusion of the monitoring review, HUD will provide a written notice of its assessment and any proposed corrective action, if applicable.

**§ 1005.903 Lender reporting and certifications.**

(a) The lender shall provide timely and accurate reports and certifications to HUD, as may be prescribed in this Part and administrative notices. The lender may be subject to additional and/or higher frequency of reporting if HUD identifies originating and servicing deficiencies with the lender.

(b) The lender's failure to provide timely and accurate reports and/or certifications to HUD may subject lender to sanctions and/or civil money penalties pursuant to §§1005.905 and 1005.907.

**§ 1005.905 Lender sanctions.**

If HUD determines that any lender has failed to maintain adequate accounting records, to adequately service loans, to exercise proper credit or underwriting judgment, or is ineligible to participate pursuant to § 1005.229, or has engaged in practices otherwise detrimental to the interest of a borrower or the United States, HUD may take any combination of the following:

(a) Refuse, either temporarily or permanently, to guarantee or service any further loans made by such lender. If such action is taken and lender wishes to maintain servicing rights to the Section 184 loans, lender must seek HUD approval under § 1005.217 and receive HUD approval under §1005.219.

(b) Bar such lender from acquiring additional loans.

(c) Require that such lender assume not less than 10 percent of any loss on further loans made by the lender.

(d) Require that such lender provide and comply with a corrective action plan and/or amend lender's quality control plan, subject to HUD approval, to remedy the non-compliance with this Part, and administrative guidance and/or prevent the reoccurrence of any practices detrimental to the interest of the borrower of the United States. The corrective action plan and/or amended quality control plan shall afford lender reasonable time to return to compliance.

**§ 1005.907 Civil money penalties.**

If HUD determines that any lender has intentionally failed to maintain adequate accounting records, to adequately service loans, or to exercise proper credit or underwriting judgment, HUD may impose a civil money penalty on such lender in the manner and amount provided under section 536 of the National Housing Act (12 USC 1735f-4).

**§ 1005.909 Lender notice of sanctions and/or civil money penalties.**

(a) HUD shall provide written notice to lender of the sanction and/or civil money penalties to be imposed and the basis for the action.

(b) Prior to the notice of sanctions and/or civil money penalties and at the earliest possible opportunity, HUD shall inform the lender the specific non-compliance with the Section 184 regulatory and/or administrative requirements and afford lender a reasonable time to return to compliance.

**§ 1005.911 Lender appeal.**

(a) Lenders denied to participate in the Section 184 program pursuant to subpart B or in cases where the lender is subject to sanctions pursuant to § 1005.905 may appeal to the Director, Office of Loan Guarantee. After consideration of appeal presented by the lender, the Director shall advise the lender in writing whether the denial is rescinded, modified or affirmed. The lender may then appeal such decision to the Deputy Assistant Secretary for Public and Indian Housing, or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

(b) Lenders who are sanctioned with civil money penalties pursuant to 24 CFR § 30.40 may appeal to the HUD's Departmental Enforcement Center.