

which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the com-

plete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

PART 955—LOAN GUARANTEES FOR INDIAN HOUSING

Sec.

955.101 Applicability and scope.

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955.107 Eligible collateral.

955.109 Guarantee fee.

955.111 Safety and quality standards.

AUTHORITY: 42 U.S.C. 1715z-13a and 3535(d).

SOURCE: 61 FR 9054, Mar. 6, 1996, unless otherwise noted.

§ 955.101 Applicability and scope.

Under the provisions of section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a), the Department of Housing and Urban Development (the Department) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes to be

owned by Native Americans on restricted Indian lands. This part provides requirements that are in addition to those in section 184.

(Approved by the Office of Management and Budget under control number 2577-0200)

§ 955.103 Definitions.

In addition to the definitions that appear in Section 184 of the Housing and Community Development Act of 1992, the following definitions are applicable to loan guarantees under Section 184—

Default means the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, and such failure continues for a period of more than 30 days.

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”.

Mortgage 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 the laws of the jurisdiction where the property is located and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction, as well as the credit instrument, or note, secured thereby.

Principal residence means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

Section 184 means section 184 (entitled, “Loan Guarantees for Indian Housing”) of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a).

§ 955.105 Eligible loans.

(a) *In general.* Only fixed rate, fixed term loans with even monthly payments are eligible under the Section 184 program.

(b) *Eligible borrowers.* A loan guaranteed under Section 184 may be made to a borrower that is:

(1) An Indian who will occupy it as a principal residence and who is otherwise qualified under Section 184; or

(2) An Indian Housing Authority.

(c) *Appraisal of labor value.* The value of any improvements to the property made through the skilled or unskilled labor of the borrower, which may be used to make a payment on account of the balance of the purchase price, must be appraised in accordance with generally acceptable practices and procedures.

(d) *Construction advances.* The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the commitment;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Environmental compliance.* Prior to the guarantee of any loan, there must be compliance with the environmental rules as stated in 24 CFR part 50.

§ 955.107 Eligible collateral.

(a) *In general.* A loan guaranteed under Section 184 may be secured by any collateral authorized under Federal, State, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject

to the restrictions of trust lands against alienation;

(2) A first or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Trust land as collateral.* If trust land is used as collateral for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under Section 184 must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) *Assumption or sale of leasehold.* If a leasehold is used as security for the loan, the loan form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) *Priority of loan obligation.* Any tribal government whose courts have jurisdiction to hear foreclosures must enact a law providing for the satisfaction of a loan guaranteed or held by the Department before other obligations (other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied.

(4) *Eviction procedures.* Before HUD will guarantee a loan secured by trust land, the tribe having jurisdiction over such property must notify the Department that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If the Department determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans for tribal members ex-

cept pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) *Review.* If the Department ceases issuing guarantees in accordance with the first sentence of paragraph (c)(1) of this section, HUD shall notify the tribe of the reasons for such action and that the tribe may, within 30 days after notification of HUD's action, file a written appeal with the Field Office of Native American Programs (FONAP) Administrator. Within 30 days after notification of an adverse decision of the appeal by the FONAP Administrator, the tribe may file a written request for review with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the Deputy Assistant Secretary, the tribe has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the tribe may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR part 24.)

§955.109 Guarantee fee.

The lender shall pay to the Department, at the time of issuance of the guarantee, a fee for the guarantee of loans under Section 184, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

§955.111 Safety and quality standards.

Loans guaranteed under Section 184 shall be made only on dwelling units which meet safety and quality standards set forth herein. Each unit must:

(a) Be decent, safe, sanitary, and modest in size and design;

(b) Conform with applicable general construction standards for the region;

(c) Contain a heating system that:

(1) Has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;

(2) Is safe to operate and maintain;

(3) Delivers a uniform distribution of heat; and

(4) Conforms to any applicable tribal heating code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(d) Contain a plumbing system that:

(1) Uses a properly installed system of piping;

(2) Includes a kitchen sink and a partitioned bathroom with lavatory, toilet, and bath or shower; and

(3) Uses water supply, plumbing and sewage disposal systems 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;

(e) 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;

(f) Be not less than:

(1) 570 square feet in size, if designed for a family of not more than 4 persons;

(2) 850 square feet in size, if designed for a family of not less than 5 and more than 7 persons; and

(3) 1020 square feet in size, if designed for a family of not less than 8 persons; or

(4) The size provided under the applicable locally adopted standards for size of dwelling units; except that the Department, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and

(g) Conform with the energy performance requirements for new construction established by the Department under section 526(a) of the National Housing Act (12 U.S.C. 1735f-4).

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

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960.511 Applicability of the annual contributions contract; effect on the Performance Funding System.

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

SOURCE: 40 FR 33446, Aug. 8, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.