

(2) Reduce the grant to the grantee by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the grantee's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a grantee has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

PART 1004 [RESERVED]

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

Sec.

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

SOURCE: 61 FR 9054, Mar. 6, 1996, unless otherwise noted. Redesignated at 63 FR 12349, Mar. 12, 1998.

§ 1005.101 What is the applicability and scope of these regulations?

Under the provisions of section 184 of the Housing and Community Development Act of 1992, as amended by Native American Housing Assistance and Self-Determination Act of 1996 (12 U.S.C. 1715z-13a), the Department of Housing and Urban Development (the Department or HUD) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes that are standard housing located on trust or restricted land or land located in an Indian or Alaska Native area, and for which an Indian Housing Plan has been submitted and approved under 24 CFR part 1000. This part provides requirements that are in addition to those in section 184.

[63 FR 48990, Sept. 11, 1998]

§ 1005.103 What definitions are applicable to this program?

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.

Holder means the holder of the guarantee certificate and in this program is variously referred to as the lender holder, the holder of the certificate, the holder of the guarantee, and the mortgagee.

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 means:

(1)(i) 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 to a security instrument creating a lien, whether called a mortgage, deed

of trust, security deed, or another term used in a particular jurisdiction; or

(ii) A loan secured by collateral as required by 24 CFR 1005.107; and

(2) The credit instrument, or note, secured thereby.

Mortgagee means the same as "Holder."

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.

Property means the property constructed, acquired, or rehabilitated with the guaranteed loan, except when the context indicates that the term means other collateral for the loan.

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).

Trust or restricted land has the meaning given to "trust land" in section 184(k)(9) of the Housing and Community Development Act of 1992.

[61 FR 9054, Mar. 6, 1996. Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998]

§ 1005.104 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for guarantee under this part. The following lenders are deemed to be eligible under this part:

(a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to section 1802(d) of such title;

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(d) Any other lender that is supervised, approved, regulated, or insured by any other agency of the United States; or

(e) Any other lender approved by the Secretary under this part.

[63 FR 12372, Mar. 12, 1998, as amended at 63 FR 48990, Sept. 11, 1998]

§ 1005.105 What are 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 guarantee under section 184 may be made to:

(1) An Indian family who will occupy the home as a principal residence and who is otherwise qualified under section 184;

(2) An Indian Housing Authority or Tribally Designated Housing Entity; or

(3) An Indian tribe.

(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 may be made only as provided in the building loan agreement;

(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 the mortgagor's creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or the mortgagor's creditors and

on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Environmental compliance.* Prior to the Department's issuance of a commitment to guarantee any loan or (if no commitment is issued) prior to guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, the Department will require compliance with procedures similar to those required by § 203.12(c)(2) of this title for FHA mortgage insurance.

(f) *Lack of access to private financial markets.* In order to be eligible for a loan guarantee if the property is not on trust or restricted land, the borrower must certify that the borrower lacks access to private financial markets. Borrower certification is the only certification required by HUD.

[61 FR 9054, Mar. 6, 1996. Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998]

§ 1005.106 What is the Direct Guarantee procedure?

(a) *General.* A loan may be processed under a Direct Guarantee procedure approved by the Department, under which the Department does not issue commitments to guarantee or review applications for loan guarantees before mortgages are executed by lenders approved for Direct Guarantee processing. The Department will approve a loan before the loan is guaranteed.

(b) *Mortgagee sanctions.* Depending on the nature and extent of the non-compliance with the requirements applicable to the Direct Guarantee procedure, as determined by the Department, the Department may take such actions as are deemed appropriate and in accordance with published guidelines.

[63 FR 48990, Sept. 11, 1998]

§ 1005.107 What is eligible collateral?

(a) *In general.* A loan guaranteed under section 184 may be secured by any collateral authorized under and not prohibited by 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 against alienation applicable to trust or restricted land;

(2) A first and/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) *Leasehold of trust or restricted land as collateral.* If a leasehold interest in trust or restricted land is used as collateral or security 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.* The lease 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 or a deed in lieu of foreclosure. 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) The mortgagee or HUD shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the Indian tribe, or the Indian housing authority servicing the Indian tribe or the TDHE servicing the Indian tribe. The mortgagee or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to one of these three entities.

(4) *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.

(5) *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 except 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.)

[61 FR 9054, Mar. 6, 1996. Redesignated and amended, respectively, at 63 FR 12349, 12373, Mar. 12, 1998; 63 FR 48991, Sept. 11, 1998]

§ 1005.109 What is a 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.

§ 1005.111 What safety and quality standards apply?

(a) Loans guaranteed under section 184 must be for dwelling units which meet the safety and quality standards set forth in section 184(j).

(b) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this title apply to this part.

[63 FR 48991, Sept. 11, 1998, as amended at 64 FR 50230, Sept. 15, 1999]

EFFECTIVE DATE NOTE: At 64 FR 50230, Sept. 15, 1999, §1005.111 was amended by redesignating the existing text as paragraph (a) and adding paragraph (b), effective Sept. 15, 2000.

§ 1005.112 How do eligible lenders and eligible borrowers demonstrate compliance with applicable tribal laws?

The lender and the borrower will each certify that they acknowledge and agree to comply with all applicable tribal laws. An Indian tribe with jurisdiction over the dwelling unit does not have to be notified of individual section 184 loans unless required by applicable tribal law.

[63 FR 12373 Mar. 12, 1998, as amended at 63 FR 48991, Sept. 11, 1998]

§ 1005.113 How does HUD enforce lender compliance with applicable tribal laws?

Failure of the lender to comply with applicable tribal law is considered to be a practice detrimental to the interest of the borrower and may be subject to enforcement action(s) under section 184(g) of the statute.

[63 FR 12373 Mar. 12, 1998]

PARTS 1006-1699 [RESERVED]