

(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.* (1) Section 1000.20 of this chapter applies to an environmental review in connection with a loan guarantee under this part. That section permits an Indian tribe to choose to assume environmental review responsibility.

(2) Before HUD issues a commitment to guarantee any loan, or before HUD guarantees a loan if there is no commitment, HUD must:

(i) Comply with environmental review procedures to the extent applicable under part 50 of this title, in accordance with §1000.20(a) and (c); or

(ii) Approve a Request for Release of Funds and certification from an Indian tribe, in accordance with part 58 of this title, if the Indian tribe has assumed environmental review responsibility.

(3) If the loan involves proposed or new construction, HUD will require compliance with procedures comparable to those required by §203.12(b)(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; 67 FR 19493, Apr. 19, 2002]

#### §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 to issue guarantees in accordance with paragraph (b)(5)(i) of this section, HUD will 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 Director, Office of Loan Guarantee (OLG), Office of Native American Programs (ONAP). Within 30 days after notification of an adverse decision by the OLG Director, the tribe may file a written request for review with the Deputy Assistant Secretary for 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 2 CFR part 2424.)

[61 FR 9054, Mar. 6, 1996. Redesignated and amended, respectively, at 63 FR 12349, 12373, Mar. 12, 1998; 63 FR 48991, Sept. 11, 1998; 67 FR 19493, Apr. 19, 2002; 72 FR 73497, Dec. 27, 2007]

**§ 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]

**§ 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