

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 955**

[Docket No. FR-3614-F-04]

RIN 2577-AB40

**Office of the Assistant Secretary for Public and Indian Housing; Loan Guarantees for Indian Housing****AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth regulations to implement the Indian Loan Guarantee Program authorized by section 184 of the Housing and Community Development Act of 1992. The purpose of the program is to provide loan guarantees that will make private financing available to Native Americans on restricted lands where no source of financing is currently available.

**EFFECTIVE DATE:** April 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Room B-133, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 755-0032 (voice) or (202) 708-0850 (TDD for speech or hearing impaired individuals). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:****I. Paperwork Reduction Act Statement**

The information collection requirements contained in § 955.101 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0200. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

**II. Background**

Section 184 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992) authorized the establishment of the Indian Housing Loan Guarantee Fund (the Fund) to provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing because of the unique legal status of Indian trust land. In general, these lands, held in trust by the United States

for the benefit of an Indian or Indian tribe, are inalienable. Trust lands under this program also include lands to which the title is held by an Indian tribe subject to a restriction against alienation imposed by the United States. Because titles to individual plots do not convey, and liens do not attach, conventional mortgage lending practices do not operate in this forum.

The Fund addresses these obstacles to mortgage financing by guaranteeing loans made to Indian families or Indian housing authorities to construct, acquire, or rehabilitate 1- to 4-family dwellings that are standard housing and are located on trust land or land located in an Indian or Alaska Native area. Loans may be made by any lender approved by the Secretary of Housing and Urban Development, the Secretary of Agriculture, or the Secretary of Veterans' Affairs; or, any lender which is supervised, approved, regulated or insured by any agency of the Federal Government.

The Department implemented the section 184 Loan Guarantees for Indian Housing program at 24 CFR part 955 by an interim rule published on August 18, 1994 (59 FR 42732). Six public comments, which are discussed in section IV. of this preamble, below, were received in response to the interim rule.

**III. Changes Made in the Final Rule**

In keeping with the President's mandate to reinvent and reform regulations, part 955 is substantially streamlined in this rule. One of the methods by which the Department is streamlining and reducing its regulations is to remove rule text that only repeats statutory language. Rules will only contain legally binding requirements that are in addition to those contained in a statute. Besides reducing the sheer bulk of rules, this practice will remove the problems that result when a rule that echoes the language of a statute becomes inconsistent with new statutory amendments. The period before such a rule is amended to conform to new statutory language is often one of confusion and uncertainty as to which law applies: the old provisions in the regulations or the new provisions in the statute. The new part 955 promulgated here does not, therefore, repeat any statutory language, but only implements requirements that are in addition to those in Section 184.

The combined statutory and regulatory requirements that apply with respect to Section 184 loan guarantees have been placed in an appendix to this final rule. The final rule will be codified

in the Code of Federal Regulations; the appendix will not be codified. However, the appendix is available to the public as a single document which provides a unified overview of the general requirements under Section 184.

This final rule also adds a definition of Section 184, referring to the loan guarantee program, that makes citing the program in the rule more convenient.

**IV. Comments on the Interim Rule**

HUD solicited public comments on the interim rule. During the comment period HUD received 6 comments from IHAs, Tribal leaders, and financial institutions. This final rule summarizes below the comments according to their relevant subparts and provides HUD's responses to those comments.

**Section 955.101 Applicability**

Three commentors objected to the interim rule's definition of eligible areas as "restricted Indian lands." These commentors stated that eligible areas should be defined as all lands in Indian country, regardless of title status (including fee lands).

**HUD response:** Section 184 can be used only with respect to properties which are located on trust/restricted lands or which are located within an Indian area. Some tribes are currently expanding their service area by purchasing fee simple land and placing that land into trust status. These areas are eligible for section 184 assistance because they are restricted lands within an Indian area.

**Section 955.103 Definitions**

One commentor noted that the Interim Rule refers to "Native Americans" while the statute refers to "Indian families" and "Indian Housing Authorities." The commentor recommended that references to "Native Americans" be removed from the rule.

**HUD response:** The definition of *Indian* used in the rule 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", which has been added to the regulatory language at the discretion of the Department.

One commentor requested clarification regarding whether Native Hawaiians are eligible borrowers under the section 184 program.

**HUD response:** The statutory purpose of the section 184 program is given at HCDA 1992 section 184(a) as: "To provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not acquire housing financing

because of the unique legal status of Indian trust land \* \* \*. Native Hawaiians, who are not included within the definition of the term "Indian," do not qualify under this statutory purpose.

#### *Section 955.105 Eligible Loans*

Two commentors noted that the restriction on eligible loans should be expanded to include adjustable rate mortgages and balloon payment mortgages.

*HUD response:* The Department has determined that the section 184 program will be operating in a totally new lending environment and the uncertainty of a balloon payment mortgage or an adjustable rate mortgage of any type would create an unnecessary risk to the borrower, the lender and the Department. This rule clarifies, at § 955.105, that only fixed rate, fixed term loans with even monthly payments are eligible.

Two commentors noted that acquisition and rehabilitation is an eligible activity and requested clarification whether a single guaranteed loan can be made to cover both of these activities for one structure.

*HUD response:* Yes, a single guaranteed loan can be made to cover both acquisition and rehabilitation for one structure. A section 184 guaranteed loan may be used to "pay off" a Mutual Help home so that the property may be conveyed to the homeowner. A guaranteed loan could be used to pay off and rehabilitate a Mutual Help home.

#### *Section 955.107 Eligible Housing*

One commenter stated that fee lands within Indian country should be eligible sites. HUD will allow fee simple lands in limited circumstances. Fee simple lands *within a designated Indian area* are eligible sites under section 184.

One commenter recommended that the term "modest in size and design" be defined in specific terms.

*HUD response:* In order to determine "modest" the section 184 program loan may not exceed 150% of the FHA mortgage limits, as adjusted for the area. These mortgage limits are published by the Federal Housing Administration (FHA) by area of the country on a periodic basis. Thus, the mortgage limit in Anchorage may differ greatly from the mortgage limit in Oklahoma City.

One commenter criticized the lack of specificity in the construction standards at § 955.107(2). The commenter recommended that structures be required to conform to the Uniform Building Code (UBC) and other locally adopted Tribal building ordinances.

*HUD response:* The section 184 statute provides requirements relating to

size; heating, plumbing, and electrical requirements; and energy efficiency. However, the Department emphasizes that the standards represent a *minimum level of requirements*. The tribe, individual owner, or IHA may design and construct a property that meets a higher standard.

#### *Section 955.109 Eligible Lenders*

In addressing this section, one commenter stated that the rule should cross reference prohibitions against housing discrimination. The same commenter then stated that lenders should not be able to withhold loans where the fund is fully obligated.

*HUD response:* The commenter appears to be asking HUD to prohibit lenders from refusing to make loans to eligible borrowers as long as there is section 184 guarantee authority available. Notwithstanding any housing discrimination laws, HUD does not have the authority to compel lenders to participate in this program.

#### *Section 955.111 Eligible Collateral*

One commenter suggested that the term "leasehold" be deleted from section § 955.111(b)(3).

*HUD response:* HUD agrees, and has removed the term "leasehold" from section § 955.111(b)(3) of the final rule.

One commenter stated that there is no time period specified for when the Notice of Default (NOD) is filed or for when it ends, or when the 60 day period starts for the eviction action. Another commenter stated that tribal eviction procedures under § 955.111(4) should be standardized and/or reviewed by OGC and ONAP for approval as a precondition for participation in the section 184 program.

*HUD response:* Tribes are required to adopt foreclosure, eviction, and priority of lien procedures to be eligible for participation in the section 184 program. HUD does not approve or review the text of each procedure. This function is left to Tribal discretion. The Department will simply ensure that such procedures do exist. In order to provide maximum flexibility and Tribal discretion in the matter of establishing foreclosure and eviction policies HUD has determined to only recognize the existence of such procedures and not a line by line technical review of each tribe's policies.

One commenter stated that the 60-day time period for appealing decisions under § 955.111(b)(4)(ii) should be reduced to 30 days.

*HUD response:* HUD agrees with the commenter and will change the 60-day time period for appealing decisions under § 955.111(b)(4)(ii) to 30 days.

One commenter stated that Indian nation public policy allows for a wide range of collateral arrangements.

*HUD response:* The rule takes this into account by specifying that collateral may include, but is not limited to, the categories specified.

One commenter objected to the priority of loan obligation provision, asserting that it gives HUD oversight regarding the substantive content of Indian nation law.

*HUD response:* This is a critical step to ensure the financial stability of this new loan program and will provide the tribes and the Department with the assurance of prompt action and protection of the guaranteed loan.

One commenter objected to the requirement that tribes must certify that they have in place and will enforce procedures for eviction. The commenter stated that it is not required by the Statute.

*HUD response:* The Department has attempted to provide the broadest interpretation possible in all instances; however, in a totally new lending environment it is necessary to have in place at least minimal safeguards to the financial integrity of the loan guarantee fund.

One commenter objected to the enforcement requirement under § 955.111(b)(4)(i), stating that it infringes on Indian nation sovereignty.

*HUD response:* Once again the Department has determined that, in this entirely new lending environment, it is critical to have in place minimal standards that will ensure the financial integrity of the loan guarantee fund.

One commenter requested further clarification on the review of HUD decisions to cease issuing guarantees to specific tribes, saying that it is important to ensure due process rights.

*HUD response:* The Department has determined that due process rights of appeal have been developed to ensure maximum protection to both the Department and the tribes with several levels of appeal available and a final option to resubmit the appeal based upon new evidence following the exhaustion of all appeal levels.

#### *Section 955.113 Certificate of Guarantee*

No comments received concerning this section.

#### *Section 955.115 Guarantee Fee*

One commenter requested clarification on what happens to the one percent guarantee fee.

*HUD response:* Funds received as a result of the one percent guarantee fee are returned to the loan guarantee fund

to provide additional resources for additional loans.

*Section 955.117 Liability Under Guarantee*

No comments received concerning this section.

*Section 955.119 Transfer and Assumptions*

One commentator questioned whether HUD will require that all of the loans under the section 184 program be assumable, stating that many lenders are reluctant to underwrite assumable loans.

*HUD response:* There is no requirement that all of the loans under the section 184 program be assumable.

One commentator requested clarification regarding whether sales and assignments to financial institutions will be subject to the law of the Indian nations where the loans are made, in addition to being subject to agency supervision under state regulators.

*HUD response:* Transactions may be subject to tribal laws in addition to agency supervision under state regulations.

*Section 955.121 Disqualification of Lenders and Civil Money Penalties*

No comments received concerning this section.

*Section 955.123 Payment Under Guarantee*

Three commentators recommended that consideration be given to the issue of whether the loan guarantee program will allow nonjudicial remedies such as deeds of trust and escrow agents to be utilized as an alternative to judicial foreclosure, as referred to under § 955.123(a)(1)(i) of the interim rule.

*HUD response:* Any method that promotes collection is encouraged, because the statute requires the holder of the guarantee to exhaust all reasonable possibilities of collection before any payment under a guarantee is made.

*Section 955.125 Expiration of Interim Rule*

No comments received concerning this section.

V. Other Matters

*Impact on Small Entities*

The Department, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. Specifically, the requirements of this interim rule are

directed to individual borrowers, Indian Housing Authorities, Tribal governments and financial institutions.

*Environmental Review*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

*Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under this order. Specifically, the requirements of this rule are directed to individual borrowers and financial institutions.

*Impact on the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has potential for significant impact on family formation, maintenance, and general well-being. The Indian Loan Guarantee Program will make it possible for Native American families to build or acquire homes on their Native lands where homeownership opportunities have been very limited in the past. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

List of Subjects in 24 CFR Part 955

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 955 is revised to read as follows:

**PART 955—LOAN GUARANTEES FOR INDIAN HOUSING**

Sec.

- 955.101 Applicability and scope.
- 955.103 Definitions.
- 955.105 Eligible loans.
- 955.107 Eligible collateral.
- 955.109 Guarantee fee.
- 955.111 Safety and quality standards.

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

**§ 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 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.)

#### § 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).

Dated: February 26, 1996.

Michael B. Janis,

*General Deputy Assistant Secretary for Public and Indian Housing.*

[Note: The following appendix will not be codified in the Code of Federal Regulations.]

## Appendix—Guide to Loan Guarantees for Indian Housing

- Section 1. Purpose, applicability and scope.  
 Section 2. Definitions.  
 Section 3. Eligible loans.  
 Section 4. Eligible housing.  
 Section 5. Eligible lenders.  
 Section 6. Eligible collateral.  
 Section 7. Certificate of Guarantee.  
 Section 8. Guarantee fee.  
 Section 9. Liability under guarantee.  
 Section 10. Transfer and assumptions.  
 Section 11. Disqualification of lenders and civil money penalties.  
 Section 12. Payment under guarantee.

### Section 1. Purpose, Applicability and Scope

The purpose of this guide is to present, in a single document, the statutory and regulatory requirements that apply to the Loan Guarantees for Indian Housing Program under section 184 of the Housing and Community Development Act of 1992 (P.L. 102-550, approved October 28, 1992). Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. The Code of Federal Regulations (CFR), at 24 CFR, is the primary, governing source for regulatory requirements, and section 184 of the Housing and Community Development Act of 1992 is the primary, governing source for statutory requirements.

Under the provisions of Section 184, 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 guide describes the eligibility of borrowers, lenders and property, as well as the benefits of the Indian Loan Guarantee Program.

### Section 2. Definitions

*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.

*Department* means the U. S. Department of Housing and Urban Development (HUD).

*Guarantee Fund* means the Indian Housing Loan Guarantee Fund established under section 184(i) of the Housing and Community Development Act of 1992.

*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".

*Indian area* means the area within which an Indian housing authority is authorized to provide housing.

*Indian Housing Authority (IHA)* means any entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians and that is established either (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

*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.

*Secretary* means the Secretary of Housing and Urban Development.

*Section 184* means section 184 (entitled, "Loan Guarantees for Indian Housing") of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992).

*Standard housing* means a dwelling unit or housing that complies with the requirements established in this part.

*Tribe* means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

*Trust land* means land, title to which is held by the United States for the benefit of an Indian or Indian tribe; or, land, title to which is held by an Indian tribe, subject to a restriction against alienation imposed by the United States.

### Section 3. 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 this part; or

(2) An Indian Housing Authority

(c) *Terms of loan.* The loan shall:

(1) Be made for a term not exceeding 30 years;

(2) Bear interest (exclusive of the guarantee fee and service charges, if any) at a fixed rate agreed upon by the borrower and the lender and determined by the Department to be reasonable, which may not exceed the rate generally charged in the area (as determined by the Department) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government.

(d) *Maximum mortgage amounts.*

(1) A principal obligation may not exceed:

(i) An amount equal to the sum of:

(A) 97 percent of the first \$25,000 of the appraised value of the property, as of the date the loan is accepted for guarantee, and

(B) 95 percent of such value in excess of \$25,000; and

(ii) Amounts approved otherwise by the Department.

(2) The balance of the purchase price must involve a payment on account of the property that may be:

(i) In cash or other property of equivalent value acceptable to the lender and the Department, or

(ii) The value of any improvements to the property made through the skilled or unskilled labor of the borrower, appraised in accordance with generally acceptable practices and procedures.

(e) *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.

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

### Section 4. Eligible Housing

(a) *In general.* A loan guaranteed under Section 184 may be used for the construction, acquisition, or rehabilitation of a 1- to 4-family dwelling unit located on trust land or land located in an Indian area.

(b) *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:

(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;

(4) Contain a plumbing system that:

(i) Uses a properly installed system of piping;

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

(iii) 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;

(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) 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 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; except that the Department, 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 the Department under section 526(a) of the National Housing Act.

#### Section 5. Eligible Lenders

The loan shall be made only by a lender approved by and meeting qualifications established in this part, except that loans otherwise insured or guaranteed by any agency of the Federal Government, 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 approved under this part:

(a) Any mortgagee approved by the Department of Housing and Urban Development 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 agency of the Federal Government.

#### Section 6. 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) 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).

#### Section 7. Certificate of Guarantee

(a) Extent of guarantee. A certificate issued in accordance with Section 184 guarantees 100 percent of the unpaid principal and interest of the underlying loan.

(b) Approval process. Before the Department approves any loan for guarantee under this part, the lender shall submit the application or the loan to the Department for examination. If the Department approves the loan for guarantee, the Department will issue a certificate under Section 184 as evidence of the guarantee.

(c) Standard for approval. The Department may approve a loan for guarantee under Section 184 and issue a certificate only if the Department determines there is a reasonable prospect of repayment of the loan.

(d) Effect. A certificate of guarantee issued under Section 184 by the Department shall be conclusive evidence of the eligibility of the loan for guarantee under the provisions of Section 184 and the amount of such guarantee. Such evidence shall be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by the Department as security for such obligations.

(e) Fraud and misrepresentation. Nothing in Section 184 may preclude the Department from establishing:

(1) Defenses against the original lender based on fraud or material misrepresentation; and

(2) Establishing partial defenses, based upon regulations in effect on the date of issuance or disbursement (whichever is earlier), to the amount payable on the guarantee.

#### Section 8. 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.

#### Section 9. Liability Under Guarantee

The liability under a guarantee provided in accordance with Section 184 shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement.

#### Section 10. Transfer and Assumptions

Notwithstanding any other provision of law, any loan guaranteed under this part, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

#### Section 11. Disqualification of Lenders and Civil Money Penalties

(a) General. If the Department determines that a lender or holder of a guarantee certificate under Section 184 has failed to maintain adequate accounting records, to adequately service loans guaranteed under Section 184, to exercise proper credit or underwriting judgement, or has engaged in practices otherwise detrimental to the interest of a borrower or the United States, the Department may:

(1) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(2) Bar such lender or holder from acquiring additional loans guaranteed under Section 184; and

(3) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under Section 184.

(b) Civil money penalties for intentional violations. If the Department determines that any lender or holder of a guarantee certificate under Section 184 has intentionally failed to maintain adequate accounting records, to adequately service loans guaranteed under Section 184, or to exercise proper credit or underwriting judgement, the Department may impose a civil money penalty on such lender or holder in the manner and amount provided under section 536 of the National Housing Act with respect to mortgagees and lenders under such Act.

(c) Payment of loans made in good faith. Notwithstanding paragraphs (a) and (b), the Department may not refuse to pay pursuant to a valid guarantee on loans of a lender or holder barred under Section 184, if the loans were previously made in good faith.

#### Section 12. Payment Under Guarantee

(a) Lender options.

(1) General. In the event of default by the borrower on a loan guaranteed under this part, the holder of the guarantee certificate shall provide written notice of the default to the Department. Upon providing this notice, the holder of the guarantee certificate will be entitled to payment under the guarantee (subject to the provisions of this part) and may proceed to obtain payment in one of the following manners:

(i) Foreclosure. The holder of the certificate may initiate foreclosure proceedings in a court of competent jurisdiction (after providing written notice of such action to the Department) and upon a final order by the court authorizing foreclosure and submission to the Department of a claim for payment under the guarantee, the Department will pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined in accordance with Section 9 of this guide) plus reasonable fees and expenses as approved by the Department. The Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(ii) No foreclosure. Without seeking a judicial foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (i) of this section continues for a period in excess of 1 year), the holder of the guarantee may submit to the Department a claim for payment under the guarantee and the Department will only pay to such holder for a loss on any single loan an amount equal to 90 percent of the pro rata portion of the amount guaranteed (as determined in accordance with Section 9 of this guide). The

Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(2) Requirements. Before any payment under a guarantee is made under paragraph (1) of this section, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note of judgement evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States.

(b) Assignment by the Department. Notwithstanding paragraph (a) of this section, upon receiving notice of default on a loan guaranteed under Section 184 from the holder of the guarantee, the Department may accept assignment of the loan if the Department determines that the assignment is in the best interests of the United States. Upon assignment the Department will pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined in accordance with Section 9 of this guide). The Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(c) Limitations on liquidation. In the event of default by the borrower on a loan guaranteed under Section 184 involving a security interest in tribal allotted or trust land, the Department will only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the Department subsequently proceeds to liquidate the account, the Department will not sell, transfer, otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

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