

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 58 and 1005

[Docket No. FR-5593-P-01]

RIN 2577-AD01

### Strengthening the Section 184 Indian Home Loan Guarantee Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the regulations governing the Section 184 Indian Home Loan Guarantee Program (“Section 184 Program”) to fiscally strengthen the program by clarifying rules for Lenders, Tribes, and Borrowers. As the program has experienced an increase in demand, it now requires an update to the implementing regulations to minimize potential risk and increase program participation by financial institutions. This proposed rule strives to modernize and enhance the Section 184 Program by adding participation and eligibility requirements for Lenders and other financial institutions. This proposed rule would also clarify the rules governing Tribal participation in the program, establish underwriting requirements, specify rules on the closing and endorsement process, establish stronger and clearer servicing requirements, establish program rules governing claims submitted by Servicers and paid by HUD, and add standards governing monitoring, reporting, sanctions and appeals. This rule would add new definitions and make statutory conforming amendments, including the categorical exclusion of the Section 184 program in HUD’s environmental review regulations. Ultimately, the changes made by this proposed rule would promote program sustainability, increase Borrower protections, and provide clarity for new and existing Lenders who participate in the program.

**DATES:** *Comment Due Date:* March 17, 2023.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule. All submissions and communications must refer to the above docket number and title. To receive consideration as public comments, comments must be submitted through one of two methods, specified below.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of

Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted by the due date will be available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Krisa Johnson, Director, Office of Loan Guarantee, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and

Urban Development, 451 7th Street SW, Room 4108, Washington, DC 20410; telephone number 202-402-4978 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (12 U.S.C. 1715z-13a), as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104-330, approved October 26, 1996), the 2013 Consolidated and Further Continuing Appropriations Act (Pub. L. 113-6, approved March 26, 2013), the 2015 Consolidated and Further Continuing Appropriations Act (Pub. L. 113-235, approved December 16, 2014), and the Consolidated Appropriations Act, 2021 (Pub. L. 116-260, approved December 27, 2020) (Section 184 statute), authorize the Section 184 Program to provide access to sources of private financing to Indian families, Tribes and Tribally Designated Housing Entities (TDHEs) who otherwise could not acquire housing financing because of the unique legal status of Trust Land. The Section 184 Program provides HUD with the authority to provide access to sources of private financing for Indian families, Tribes and TDHEs that otherwise could not obtain private financing because of the unique legal status of Trust Lands by guaranteeing loans to eligible persons and entities. Since its inception, the number of loans guaranteed under the Section 184 Program has significantly increased. At the same time, the program regulations have never been substantially revised to accommodate the exponential growth of the program. Generally, improvements on Trust Land, are alienable, but conditions and restrictions apply. Consequently, financial institutions may struggle with utilizing the land interest as Security in mortgage lending transactions. To address this concern, the Section 184 Program provides a loan guarantee to approved Direct Guarantee lenders in the event of Borrower default. The guarantee is paid from the Section 184 Loan Guarantee Fund (Fund) for up to 100 percent of the unpaid principal balance as well as any reasonable fees

and expenses approved by the Secretary.

Following the enactment of Section 184 on August 18, 1994, HUD published an interim rule (59 FR 42732) codifying regulations for the Section 184 Program at 24 CFR part 955, and on March 6, 1996, HUD published a final rule (61 FR 9052). With the enactment of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), HUD published a final rule on March 12, 1998, implementing NAHASDA amendments to the Section 184 Program as well as re-designating 24 CFR part 995 as 24 CFR part 1005 (63 FR 12334). On September 11, 1998, HUD published an interim final rule (63 FR 48988) establishing a direct guarantee procedure similar to that in the Direct Endorsement Program under the Federal Housing Authority (FHA) single family mortgage insurance program. The interim final rule adopted procedures that permitted HUD to review and guarantee a loan after loan closing and made minimum changes to allow for any necessary administrative actions against approved Direct Guarantee Lenders. The final rule making these changes permanent was issued on April 19, 2002 (67 FR 19491).

The Fund receives annual appropriations to cover some of the program costs and charges and an upfront and annual fee to the borrower to support the remaining program costs. The demand for the program has increased steadily each year. In 1995, the first year of the program, HUD guaranteed less than 20 Section 184 Guaranteed Loans. Over the last 10 years, HUD has consistently guaranteed thousands of loans worth hundreds of millions of dollars annually. To date, the Fund has guaranteed over \$7.5 billion in loans. While the program has grown exponentially, the program regulations have not been substantially revised to reflect this significant growth. As the volume in the program increases, so does the risk to the Fund. The proposed regulations will help to mitigate the risk associated with this increased volume.

The 2013 Consolidated and Further Continuing Appropriations Act (Pub. L. 113–6, approved March 26, 2013) (2013 Appropriations Act) amended section 184(d) of the Housing and Community Development Act of 1992 to authorize HUD to increase the fee for the guarantee of loans up to 3-percent of the principal obligation of the loan and to establish and collect annual premium payments in an amount not exceeding one percent of the remaining guaranteed balance (excluding the portion of the remaining balance attributable to the fee

collected at the time of the issuance of the guarantee). On March 5, 2014, HUD published a **Federal Register** Notice (79 FR 12520) announcing an increase in the one-time Loan Guarantee Fee that Borrowers pay at loan closing from a then-existing 1 percent to 1.5 percent of Guaranteed Loan amount. By **Federal Register** Notice published on October 7, 2014 (79 FR 60492), HUD exercised its new annual premium authority to implement an annual premium to the Borrower in the amount of 0.15 percent of the remaining loan balance until the unpaid principal balance, excluding the Upfront Loan Guarantee Fee, reaches 78 percent of the lower of the initial sales price or appraised value based on the initial Amortization Schedule. By **Federal Register** Notice published on November 1, 2016 (81 FR 75836), HUD once again exercised its new annual premium authority to implement an annual premium to the Borrower in the amount of 0.25 percent of the remaining loan balance. These new fees allowed HUD to meet the current demands of the Section 184 Program.

The Consolidated and Further Continuing Appropriations Act (Pub. L. 113–235) (approved December 16, 2014) (2015 Appropriations Act) amended Section 184(h)(1)(B) of the Housing and Community Development Act of 1992 to require the exhausting of all reasonable possibilities of collection by the Holder of the guarantee, to include a good faith consideration of loan modification, and to meet standards for servicing Section 184 Guaranteed Loans in default, as determined by the Secretary.

The Office of Audit of the HUD Office of Inspector General (OIG) audited the Section 184 Program and issued Audit Report Number: 2015–LA–0002 on July 6, 2015. The report found that HUD did not adequately monitor, track, and evaluate participating Direct Guarantee and Non-Direct Guarantee Lenders to ensure that loans guaranteed by the program were being underwritten in accordance with the Section 184 processing guidelines. The OIG gave many recommendations, including: HUD develop and implement policies and procedures for monitoring, tracking, underwriting, and evaluating the Section 184 Program; standardize monthly delinquency reports; deny payments for claims on loans that have material underwriting deficiencies; take enforcement actions against certain Direct Guarantee and Non-Direct Guarantee Lenders; and ensure that only underwriters that are approved by HUD are underwriting Section 184 Guaranteed Loans. The corrective action plan proposed by OIG and agreed upon by HUD includes the development of

new regulations to provide additional structure to the program and a platform for policies and procedures to manage the program and address these findings.

## II. This Proposed Rule

As the Section 184 Program assists more eligible Borrowers and entities, the Fund faces more program expenses and increased risk. HUD is proposing these regulatory changes to make the program sustainable, protect Borrowers, address weaknesses identified by the OIG, provide clarity for new and existing Direct Guarantee and Non-Direct Guarantee Lenders, and reduce and eliminate inappropriate and unreasonable Claim payment requests from Servicers. This proposed rule is designed to strengthen and modernize the Section 184 Program, as well as protect the Fund. This proposed rule would enhance and fill the gap in the existing regulations by modifying and adopting industry standards and best practices, as well as relevant FHA regulations and guidance.

This proposed rule would reorganize the Section 184 Program's regulations by removing outdated sections and replacing them with the following: definitions, eligibility requirements for Lenders, rules governing participation by Indian Tribes, underwriting requirements, rules on the closing and endorsement process, loan fees, servicing requirements submission of Claims, and standards governing monitoring, reporting, sanctions and appeals.

### *Proposed Organization of New Part 1005*

This rule proposes to divide HUD's regulations in 24 CFR part 1005 in nine subparts: Subpart A would comprise of general program requirements; subpart B would discuss Lender and eligibility requirements; subpart C would cover requirements for Tribal participation; subpart D would contain underwriting requirements for eligible Borrowers, eligible Properties, and loan types; subpart E would include requirements for closing a Section 184 Guaranteed Loan and receiving endorsement approval from HUD; subpart F would provide the requirements for calculation, collection, and submission of the Section 184 Guaranteed Loan fees; subpart G would cover the requirements for Servicers to manage Section 184 Guaranteed Loans and steps to take when a Section 184 Guaranteed Loan is in default; subpart H would contain the requirements to submit Claims on Section 184 Guaranteed Loans; and subpart I would include report requirements and sanctions to for

noncompliance with Section 184 Program regulations. Unless otherwise noted in this proposed rule, HUD is proposing to codify current practices. Where a section is a new requirement, it is noted.

#### A. General Program Requirements (Subpart A)

*Purpose § 1005.101.* Section 1005.101 would address the purpose of the part 1005 regulations and provide that the regulations in part 1005 implement the Section 184 Program.

*Definitions § 1005.103.* The proposed rule includes definitions for the terms found in the existing Section 184 Program regulations, which HUD has revised to better reflect how the terms are currently used by the Section 184 Program or to reflect policy shifts: “default,” “Indian,” “property,” “Section 184,” and “Trust or Restricted Land”. In the proposed regulations, the term “Section 184” is further revised to “Section 184 Guaranteed Loan,” and the term “Trust or Restricted Land” is further revised to “Trust Land”.

The proposed rule does not include the terms “Mortgage” and “Mortgagee”, which were previously used in the existing regulation, because the terms are no longer used in the program and are obsolete. These terms are replaced by the terms “Loan” and “Lender,” respectively, as currently proposed in § 1005.103.

Additionally, HUD has included new terms that are commonly used by the Section 184 Program in practice. This regulation would formalize these definitions for the program. The following terms would provide clarity and ensure consistency in the implementation of the various parts of the Section 184 Program regulations: “Acquisition Cost,” “Amortization,” “Amortization Schedule,” “Annual Loan Guarantee Fee,” “BIA,” “Borrower,” “Claim,” “Conflict of Interest,” “Date of default,” “day,” “Direct Guarantee Lender,” “Eligible Nonprofit Organization,” “Financial Statements” “Firm Commitment,” “First Legal Action,” “Good and Marketable Title,” “Holder,” “Identity of Interest,” “Indian Family,” “Indian Housing Loan Guarantee Fund,” “lease or leasehold interest,” “Lender,” “Loan,” “Loan Guarantee Certificate,” “Loan Guarantee Fee,” “Loss Mitigation,” “month or monthly,” “Non-Direct Guarantee Lender,” “Origination or originate,” “Owner of Record,” “Partial Payment,” “Section 184 Guaranteed Loan,” “Section 184 Approved Program Area,” “Section 184 Program Guidance,” “Security,” “Servicer,” “Sponsor,” “Sponsored

Entity,” “Tax-exempt bond financing,” “Title Status Report,” “Tribe,” “Tribally Designated Housing Entity (TDHE),” “Trust Land,” and “Upfront Loan Guarantee Fee.”

#### B. Lender Eligibility & Requirements (Subpart B)

This subpart includes Lender eligibility and the application process to participate in the Section 184 Program as a Non-Direct Guarantee or Direct Guarantee Lender.

*Lender approval and participation § 1005.201.* This section describes the two types of Lenders approved to participate in the Section 184 Program: Lenders deemed approved by statute and Lenders approved by HUD. This section would require that Lenders submit to HUD an application for participation in accordance with the level of activity a Lender wants to engage in, as prescribed by Section 184 Program Guidance. This proposed section is consistent with current program policy, practice, and/or procedure.

*Lenders deemed approved by statute § 1005.203.* This section is a restatement of what is an eligible Lender under the statute. In response to comments received during Tribal consultation, this section specifically references Community Development Financial Institutions (CDFIs) as being included as a ‘Lender approved by statute.’ This proposed section is consistent with current program policy, practice, and/or procedure.

*Lenders required to obtain Secretarial approval § 1005.205.* This section addresses qualifications for participation in HUD’s Section 184 Program if a Lender is not approved under the statutory approved listed in § 1005.203. A Lender would be required to submit an application, as prescribed by Section 184 Program Guidance, for HUD to determine the capacity of the financial institution to participate in the Section 184 Program. This application would include establishing a Lender’s qualifications based on the following: business formation verification, certifications related to employees and officers, Financial Statements, quality control plan, identification of branch offices, certification of conflict and interest, licensing certification, verification of minimum net worth, and identification of operating area. HUD will review documentation submitted under this section and make a determination if the requesting financial institution is qualified to be a Lender under the Section 184 Program. If a Lender is approved to participate in the Section 184 Program, HUD would send

written notification of approval. If HUD determines that the Lender does not meet the requirements of subpart B, HUD would send written notice of the denial, which may be appealed to HUD in accordance with the appeal procedure set forth in the regulation.

*Lender participation options § 1005.207.* This section describes the two levels of Lender participation in the Section 184 Program, Non-Direct Guarantee Lender and Direct Guarantee Lender, along with the allowed eligible activities for each level of participation. This section proposes to establish a new requirement that eligible Lenders must select their desired participation level by submitting an application to HUD. A participation level must be selected by the Lender and approved by HUD before initiating any Section 184 program activities.

*Direct Guarantee Lender application process § 1005.209.* This section details the application requirements for Lenders to apply to become a Direct Guarantee Lender in the Section 184 Program. These proposed requirements HUD believes are necessary to ensure that Direct Guarantee Lenders meet certain minimum requirements including having a certain level of experience in origination, underwriting, and servicing of mortgage loans. Additionally, Lenders must submit a quality control plan.

*Direct Guarantee Lender approval § 1005.211.* This section addresses what constitutes HUD approval for Lenders applying to participate in the Section 184 Program as a Direct Guarantee Lender under § 1005.209. This section addresses the process HUD would follow to notify Lenders of their approval as Direct Guarantee Lenders under the program. HUD would provide written notification to the Lender, and the Lender would need to certify to being in compliance with all program requirements and agree to ensure that any Sponsored Entities also comply with all program requirements. This section is an addition to HUD’s current practice.

*Non-Direct Guarantee Lender application, approval, and Direct Guarantee Lender sponsorship § 1005.213.* This section describes the sponsorship relationship between a Direct Guarantee Lender and a Non-Direct Guarantee Lender and the general responsibilities of a Direct Guarantee Lender as the Sponsor. Each Sponsor is responsible to HUD for the actions of the Sponsored Entity and must ensure that HUD records remain up to date by informing HUD regarding any changes of the Sponsored Entity. This section

seeks to align with HUD's current practice.

**Annual reporting requirements § 1005.215.** This section would require annual reporting on Section 184 Guaranteed Loan performance data from Direct Guarantee Lenders, their Sponsored Entities. It also provides for HUD to establish additional annual reporting requirements as provided in Section 184 Program Guidance. The section would be a new requirement to track the performance of the program and participating Direct and Non-Direct Guarantee Lenders to ensure the protection of the Fund.

**Quality control plan § 1005.217.** This section proposes to implement the requirement that Lenders participating in the Section 184 Program have a written quality control plan and the contents of that plan. The purpose of the quality control plan is to ensure Lender compliance with Section 184 Program requirements and protect HUD and the Lenders from unacceptable risks. A Lender would be required to adopt and implement a quality control plan that fully complies with Section 184 Program Guidance. This requirement incorporates existing Quality Control Plan policies and adds new requirements, such as paragraphs (c) and (d) in § 1005.217.

**Other requirements § 1005.219.** This section describes proposed additional Direct Guarantee Lender and Non-Direct Guarantee Lender requirements, including compliance with pertinent Tribal, Federal, and State, and laws, dual employment, reporting requirements, records retention, all of which are proposed to place in regulations current program policy, practice, and/or procedure.

This section also includes a proposed new requirement that HUD may set for lenders a minimum level of lending on Trust Land. While this program was designed to bring mortgage capital to Trust Lands, the majority of loans guaranteed by the Program are made on fee simple land. In order to address this concern, this rule proposes to set forth a new requirement for lenders participating in the program to actively market, originate, and underwrite loans on Trust Land. HUD is interested in increasing lending on Trust Land to further the objectives of the Section 184 Program and provide additional homeownership opportunities on Trust Lands. In this section, HUD proposes to set, by **Federal Register**, a minimum lending amount for direct guarantee lenders on Trust Lands. All Lenders would be required to ensure that they comply with these additional requirements to remain as a participant

in the program. While HUD is not proposing a specific minimum level of lending on Trust Land in this proposed rule, HUD is interested in receiving feedback on what this minimum level of lending should be and if such minimum requirement would help with the underlying goal of the provision.

**Business change reporting § 1005.221.** This section would require Lenders participating in the Section 184 Program to notify HUD within a timeframe as prescribed by Section 184 Program Guidance of any changes in a Lender's legal structure or staffing or any new sanctions against the Lender. HUD is proposing to require this notification to reduce risk and monitor the stability of the lender.

**Annual recertification § 1005.223.** This section would implement the mandatory submission of an annual recertification by all Direct Guarantee and Non-Direct Guarantee Lenders, as prescribed by Section 184 Program Guidance. HUD is proposing to require recertification to ensure that Direct Guarantee and Non-Direct Guarantee Lenders continue to meet program eligibility requirements and to reduce the risk to HUD and the Fund. This section also would require the Direct Guarantee Lender and Non-Direct Guarantee Lender to submit Financial Reports and updated contact information. This section is consistent with HUD's current practice.

**Program ineligibility § 1005.225.** This section describes the circumstances under which HUD would determine that a Direct Guarantee Lender or Non-Direct Guarantee Lender is ineligible to participate the Section 184 Program. This section is intended to reduce risk to the Fund as well and align with current industry standards.

#### C. Lending on Trust Land (Subpart C)

This subpart proposes requirements for Tribal participation in the Section 184 Program when Tribes want to make Trust Land or Restricted Fee Land available under the Section 184 Program. This section requires a partnership between HUD, the Tribe, the Direct Guarantee Lender, Servicer and the Borrower. The Tribe is a critical partner in the ability of the program to operate on Tribal Lands. For the program to operate on Trust Lands, certain Tribal ordinances must be in place. Tribes interested in participating in the Program would be required to submit to HUD evidence of the required legal and administrative framework necessary to ensure HUD or the Servicer have the ability to enforce the lien in case of default.

**Tribal legal and administrative framework § 1005.301.** This section outlines the legal and the administrative framework necessary when a Tribe seeks to allow eligible Borrowers place a mortgage lien on Trust Land under the Section 184 Program. The proposed rule would specify requirements governing foreclosure and assignments, property disposition, eviction procedures, lien priority, and leasing, which are an addition to the regulation to codify current policy, practice and/or procedure. These requirements are necessary to protect Borrowers, Tribes, TDHEs, Lenders and the Fund from unnecessary financial risks. This section proposes new language to be included in the Tribal lease that would allow a Tribe to assign the lease to HUD, and HUD would transfer the lease to a successor lessee, as approved by the Tribe. This language has been added because there have been instances when a Borrower is in default, their Section 184 Guaranteed Loan has been assigned to HUD, and the Borrower has vacated the property before foreclosure. The Tribe, THDE or a tribal member is interested in purchasing the property, but the sale cannot happen because the defaulted Borrower remains on the lease. The proposed language gives the Tribe the authority to assign the lease to HUD so the sale of the property can move forward without having to wait until HUD obtains the lease through foreclosure.

**Tribal application § 1005.303.** This section includes the application requirements for Tribes interested in bringing the Section 184 Program to their Trust Lands. The application must include a copy of documents related to the Tribe's legal and administrative framework, including but not limited to a Tribe's foreclosure, eviction, lease, and priority lien ordinances, all cross-referenced ordinances in those sections, and any other documents in accordance with Section 184 Program Guidance. HUD is proposing this section to ensure that Tribes have the necessary legal structure in the event of a default on Trust Land and to ensure that HUD is provided first lien priority.

**Approval of Tribal application § 1005.305.** This section would specify that HUD will provide written notification to Tribes upon the completion of its review of a Tribe's application submitted in accordance with § 1005.303 and would provide the opportunity for Tribes to resubmit missing, incomplete, or deficient applications. This proposed section is consistent with current program policy, practice, and/or procedure.

*Tribal recertification § 1005.307.* This section would implement the mandatory submission of an annual recertification by all Tribes participating in the Section 184 Program and the contents of such recertification, in accordance with Section 184 Program Guidance. HUD proposes to require recertification to ensure that the Tribe continues to meet program eligibility requirements. This section would also require the Tribe to update contact information. This proposed section is intended to keep current on Tribal contacts and to confirm that there have been no changes to relevant ordinances and the Tribal lease.

*Duty to report changes § 1005.309.* This section would require Tribes participating in the Section 184 Program to report to HUD any current changes in the Tribe's contact information, or proposed changes to foreclosure, eviction lease and lien priority ordinances. This section is a new requirement to ensure HUD notification of these changes and to reduce the risk to HUD and the Fund.

*HUD Notification of any lease default § 1005.311.* This section would mandate, when there is any default of the lease by the Borrower, including a nonpayment of leasehold rent, the lessor shall notify HUD within 30 days of default, or as set forth in the lease agreement. This section is proposed to ensure notification of a delinquency to HUD and allow HUD to explore early Loss Mitigation actions and to reduce the risk of potential loss to the Fund.

*Tribal reporting requirements § 1005.313.* This section provides HUD with the ability to require Section 184 program-related reports from Tribes approved under § 1005.305. HUD intends to use this new requirement as a placeholder in the event, at a future date, HUD is in need of Section 184 Program information from approved Tribes that is not anticipated in §§ 1005.307 and 1005.309. If HUD determines additional information the Section 184 Program from Tribes is needed, it would publish these requirements in Section 184 Program Guidance and complete the necessary Paperwork Reduction Act process requesting input on the additional burden associated with the requested reports.

#### D. Underwriting (Subpart D)

This subpart includes the requirements for a loan to be guaranteed by the Section 184 program. The subpart is organized into four sections: eligible Borrowers, eligible Properties, eligible loans, and underwriting.

*Eligible Borrowers § 1005.401.* This section provides that to be eligible to participate in the Section 184 Program, a Borrower must be an Indian Family, Indian Tribe, or TDHE. This section would require an Indian Family to document its status as American Indian or Alaska Native through evidence as prescribed by Section 184 Program Guidance. This section is a revision of the language found in § 1005.105(b) of the current regulations; the existing regulation is proposed to be moved into a new section and aligns with current procedures.

*Principal Residence § 1005.403.* This section sets forth the occupancy requirements for Borrowers in relation to the property interest that secures the Section 184 Guaranteed Loan. HUD also defines the qualifications for a non-occupant Co-Borrower. As the program has evolved, it has allowed for non-occupant co-Borrowers as a way to expand homeownership opportunities for Borrowers who may need assistance with their mortgage and have a family member willing to take on the financial responsibility for the Section 184 Guaranteed Loan. Non-occupant co-Borrowers must be related by blood, or be able to document a family-type, longstanding, and substantial relationship not arising out of the loan transaction. This section is a revision of existing § 1005.105(b)(1).

*Borrower residency status § 1005.405.* This section describes the residence status requirements to be considered an eligible Borrower in the Section 184 Loan Guarantee program. In addition to the requirements set forth in § 1005.401, an eligible Borrower must be a U.S. citizen; lawful permanent resident alien; or a non-permanent resident alien. Documentation to support the lawful residency status must be provided. This proposed section is consistent with current program policy, practice, and/or procedure.

*Relationship of income to loan payments § 1005.407.* This section provides that a Borrower's income must be sufficient to cover the costs of Section 184 Guaranteed Loan payments plus any other long-term obligations. This section also describes the requirement for a minimum qualifying threshold when an eligible Borrower has a co-Borrower that will not occupy the home. Additionally, HUD also would require that the determination of the adequacy of a Borrower's income be free from discrimination. In particular, this section adds new language requiring that the determination of adequacy of Borrower income shall be made without regard to, among other things, Borrower's source of income or location

of the property. HUD believes these two proposed non-discrimination provisions further the statutory purpose of the program to "provide access to sources of private financing to Indian families, Indian housing authorities, and Indian tribes, who otherwise could not acquire housing financing because of the unique status of Indian lands." 12 U.S.C. 1715z–13a(a). With respect to the proposed prohibition of discrimination based on the Borrower's source of income, HUD seeks to address instances where lenders may disapprove of the Borrower's income streams related to Borrower's Tribal status (such as Tribal payments a Borrower may receive from his or her Tribe or from traditional tribal income sources). With respect to the proposed prohibition of discrimination based on property location, HUD seeks to address instances where lenders may decide to only approve loans involving fee simple properties and uniformly reject loan applications solely because Borrower chooses to finance a home on Tribal trust property. Other than the newly added provisions regarding non-discrimination based on property location and sources of income, this section is consistent with current practice, policy, and/or procedure.

*Credit standing § 1005.409.* This section is proposing, consistent with current policy and practice, that no minimum credit score is required to qualify for a Section 184 Guaranteed Loan. However, Direct Guarantee Lenders are required to analyze the Borrower's credit history and payment patterns to determine credit worthiness. This section also revises the existing guidance that if a Borrower previously defaulted on a Section 184 Guaranteed Loan, they are ineligible to apply for another Section 184 Guaranteed Loan. To conform with industry practice, HUD is proposing that these Borrowers may apply for a Section 184 Guaranteed Loan after a waiting period as prescribed by HUD.

*Disclosure and verification of Social Security and Employer Identification Numbers or Tax Identification Number § 1005.411.* This section would require that Borrowers must meet the requirements for the disclosure and verification of social security, employer and tax identification numbers. Disclosure and verification of this information minimizes fraud and adds protections for the Fund and is consistent with HUD's current practice, policy, and/or procedure.

*Acceptable title § 1005.413.* To be considered acceptable title, a Section 184 Guaranteed Loan must be on real estate held in fee simple land or Trust Land. Where title evidences a lease that

is used in conjunction with the Section 184 Guaranteed Loan, the lease must comply with § 1005.301, and must have a remaining term which exceeds the maturity date of the Section 184 Guaranteed Loan by ten years. This proposed section is consistent with current program policy, practice, and/or procedure.

*Sale of property § 1005.415.* This section would require that the property be purchased from the Owner of Record and that the Direct Guarantee Lender provide evidence of ownership. Additionally, this section would establish the requirements for documentation and timing restrictions on property re-sales to prevent flipping of the property for financial gain by the Borrower. This proposed section is consistent with current program policy, practice, and/or procedure.

*Location of property § 1005.417.* This section would establish that a property must be used for residential purposes and be located within an approved Section 184 Approved Program Area to be eligible for a Section 184 Guaranteed Loan. This proposed section is consistent with current program policy, practice, and/or procedure.

*Requirements for standard housing § 1005.419.* This proposed section lists the minimum required property standards for properties under the Section 184 Program. This section also explains environmental review requirements and responsibilities and includes requirements for flood insurance, the Coastal Barrier Resource System and Special Airport Hazards. With respect to minimum required property standards, this proposed section requires the property to be: decent, safe, sanitary and modest in size and design, conform with applicable general construction standards for the region, containing a heating system, contain a plumbing system, contain an electrical system, meet minimum square footage requirements, and conform with energy performance requirements for new construction. This proposed section revises existing § 1005.111(a) consistent with current practices, policies, and/or procedures.

*Certification of appraisal amount § 1005.421.* This section would require the contract for sale to be satisfactory to HUD and where the seller agrees to provide a certification of appraisal establishing the amount of the appraised value of the property. This protects the Borrower and the Fund by ensuring the guaranteed loan is secured by a property where the true value has been established. This proposed section is consistent with current program policy, practice, and/or procedure.

*Legal restrictions on Conveyance § 1005.423.* This section proposes to define and establish permitted legal restrictions that may be placed on a property guaranteed by a Section 184 loan. This section would allow for restrictions on Conveyance only to enrolled Tribal members when the property is located on Trust Land, the acceleration of a mortgage subject to tax exempt bond funding where it no longer meets the Federal requirements, and property with approved restrictions established for occupancy for the elderly. This regulation would provide Tribes with the maximum flexibility available to best serve their Tribal members. This proposed section is consistent with current program policy, practice, and/or procedure.

*Rental properties § 1005.425.* This section proposes the conditions under which a Section 184 Guaranteed Loan may be used to purchase a one- to four-family unit property where one unit will be owner occupied and the additional units may be rented. This section clarifies that one- to four-family unit Properties owned by the Tribe or TDHE will not be subject to the same conditions. This section clarifies the two allowable exceptions to the Principal Residence requirements in § 1005.403 and is consistent with current program policy, practice, and/or procedure.

*Refinancing § 1005.427.* This section proposes to include the criteria to refinance a qualified loan under the Section 184 Program and presents the three types of allowable refinance transactions: Rate and Term, Streamline and Cash Out. This section would require a maximum term for the new loan to be 30 years and a payment history on the existing loan that meets the standards established by HUD. It would also prohibit Lenders from requiring a minimum outstanding principal amount on the existing loan and clarifies the treatment of financed Upfront Loan Guarantee Fees. This proposed section is consistent with current program policy, practice, and/or procedure.

*Eligibility of Loans covering manufactured homes § 1005.429.* This section provides eligibility requirements for the financing of one-family manufactured homes. This section would establish the minimum square footage for a unit, the requirement to meet the National Manufactured Home Construction and Safety Standards and have a certification label, and the requirement of siting on a permanent foundation that meets the applicable installation standards and adheres to the manufacturer's installation instructions.

This regulation is required to ensure the safety of the Borrower and the value of the collateral. This proposed section is consistent with current program policy, practice, and/or procedure and would align with FHA standards.

*Acceptance of individual residential water purification § 1005.431.* This section proposes requirements for properties that do not have access to a continuing supply of safe and potable water, without use of a water purification system. It would require the applicable official's specification of the water purification equipment approval standard, certification by Tribal, State or health authority, and Borrower notices and certification. This section would require a certification by a Tribal, State, or local health authority that it has determined the water supply meets the entity's quality standards for drinking water. Additionally, this section would require written notification to the Borrower when the contract is ratified that the property does not have access to a continuing supply of safe and potable water without a purification system, a water safety report identifying contaminants and associated health hazards, and a good faith estimate of maintenance and replacement costs. The Borrower must sign a certification they have received all of this information prior to underwriter approval. This regulation would provide the Borrower with full disclosure of maintenance and upkeep costs of an individual water purification system and health and safety provisions. This proposed section is consistent with current program policy, practice, and/or procedure and would align with industry standards.

*Builder warranty § 1005.433.* This section proposes that a builder must submit a warranty that the property is constructed in substantial conformity with the plans and specifications for newly constructed Properties guaranteed by the Section 184 Program. This proposed section is consistent with current program policy, practice, and/or procedure and would align with industry standards.

*Eligible collateral § 1005.435.* This section proposes what collateral is acceptable for a Section 184 Guaranteed Loan. The proposed section would require that the collateral be authorized and not prohibited by Tribal, Federal, State, or local law and must be sufficient to cover the amount of the loan as determined by the Direct Guarantee Lender and approved by HUD. This section would revise existing § 1005.107 of the current regulations and be consistent with current practices, policies, and/or procedures.

*Loan provisions § 1005.437.* This proposed section provides the details for loan provisions required for a Section 184 Guaranteed Loan, including loan form, loan multiples, loan payments, loan maturity, property standards, disbursements and prepayment. This section would revise existing § 1005.105(a).

*Loan lien § 1005.439.* This section proposes lien requirements for a Section 184 Guaranteed Loan. After the loan offered for guarantee has been recorded, the property must be free and clear of any other liens, unless prior approval has been granted by HUD for a junior lien. This section proposes conditions for a junior lien, which covers periodic payments, ability to pay considerations, loan to value limitations, prohibition of balloon payments earlier than 10 years, requirement for the junior lien to be due and payable upon sale or refinance of the Section 184 Guaranteed Loan, and the acceptability of prepayments at any time without the requirement for a prepayment penalty. In addition, a junior lien may be provided as a means to reduce that Borrower's monthly payments. This type of junior lien would require pre-approval from HUD, shall not require the payment of any principal or interest until the property securing the junior lien is sold or the Section 184 Guaranteed Loan is refinanced, and shall not require principal and interest payments, so long as the property is owner occupied and, where applicable, shall provide forgiveness of the junior lien at the end of the term. Lastly, if a junior lien is related to tax exempt bond financing or low-income housing tax credits, HUD approval is also required. This proposed section is consistent with current program policy, practice, and/or procedure.

*Section 184 Guaranteed Loan limit § 1005.441.* This section would establish HUD's authority to set the maximum loan limits for Section 184 Approved Program Areas. HUD may revise these maximum limits periodically. This proposed section is consistent with current program policy, practice, and/or procedure.

*Loan amount § 1005.443.* This section proposes the minimum required investment from the Borrower based on the difference between the sales price and the base loan amount. It also would provide the methodology for calculating the base loan amount and would establish the maximum and minimum principal loan amounts. This investment must come from the Borrower's own funds, gifts, or Tribal, State, or local funds awarded to the Borrower. The regulation is required to

balance the risk to the Fund and the unique requirements of Native American Borrowers. This proposed section is consistent with current program policy, practice, and/or procedure.

*Case numbers § 1005.445.* This section explains when and how to obtain a Section 184 case number. Direct Guarantee Lenders must have an active loan application for a Borrower and a specific property. The case number request must include proof of Tribal enrollment or Alaska Native status, verification that the property is located in a Section 184 Approved Program Area, confirmation that the Loan does not exceed the Section 184 Loan Limit, and be submitted in manner prescribed in the Section 184 Program Guidance. Case numbers will be automatically cancelled after a period identified by HUD if a reservation of funds request is not received and processed by HUD. HUD may allow for the extension as prescribed. This proposed section is consistent with current program policy, practice, and/or procedure.

*Maximum age of Loan documents § 1005.447.* This section proposes the maximum age of loan documents at the time of underwriting and loan closing. Documents reviewed at underwriting may not be older than 60 days and all documents may not be more than 120 days old at closing. Certain documents will be exempt from these time frames if they are not affected by the passage of time. This proposed section is consistent with current program policy, practice, and/or procedure.

*Qualified mortgage § 1005.449.* This section explains that Section 184 Guaranteed Loans are afforded safe harbor as qualified mortgages that meet the ability-to-pay requirements. This section is a revision of the existing § 1005.120 and conforms to current practices, policies, and/or procedures.

*Agreed interest rate § 1005.451.* This section would require that a Loan must have an interest rate that is agreed upon by the Direct Guarantee Lender and Borrower and is determined by HUD to be reasonable. This regulation is necessary to ensure Borrowers are not being charged inflated interest rates attributable to risk-based pricing for minimum loan amounts, credit scores, or other risks, when the Direct Guarantee Lender is receiving a 100 percent guarantee against any loss due to default. This risk-based pricing requirement would be a new requirement and is intended to protect the Borrower from inflated interest rates, which may impact loan performance and the Fund.

*Amortization provisions § 1005.453.* This section proposes that a Loan's Amortization provisions be satisfactory to HUD, monthly payments by the Borrower, and that the principal and interest payments each month shall be substantially the same. This section is a revision of existing § 1005.105(a) and is consistent with current practices, policies, and/or procedures.

*Direct guarantee underwriting § 1005.455.* This section outlines proposed requirements for direct guarantee underwriting including underwriter due diligence, evaluation of the Borrower, and assumptions. This section is a revision of the existing § 1005.106(a), outlining the direct guarantee procedure. Direct Guarantee underwriters must exercise the same level of due diligence as if they were entirely dependent on the property as Security to protect their investment. An acceptable quality control plan and compliance with HUD prescribed underwriting guidelines are the minimum standard of due diligence. Direct Guarantee underwriters shall evaluate the Borrower's credit characteristics, adequacy, and stability of income to make payments on all obligations and the available assets. This section also would require all assumptions of an existing Section 184 Guaranteed Loan be underwritten using the same Borrower eligibility and underwriting standards in this subpart. This section is consistent with current program policy, practice, and/or procedure.

*Appraisal § 1005.457.* This section would establish the requirement for the appraisal of a property to be used to obtain a Section 184 Guaranteed Loan, the selection of an appraiser, appraisal standards, validity period for appraisals, possible extensions of the validity period, and possible sanctions when the requirements listed under the section are not met. A property appraisal for the Section 184 Program must be done in accordance with the Uniform Standards of Professional Appraisal Practice and the Fair Housing Act (42 U.S.C. 3601–19); however, HUD may establish alternative requirements in Section 184 Program Guidance. The Direct Guarantee Lender must select an appraiser currently on the FHA Appraiser Roster and the Direct Guarantee Lender must not discriminate in its selection of the appraiser. The appraiser must be knowledgeable in the market where the property is located. The appraisal and related documents must satisfy FHA, Fannie Mae, or Freddie Mac requirements. In addition, the Direct Guarantee Lender may be subject to sanctions permitted under



§ 1005.907 for submitting an appraisal that does not meet the requirements described. This proposed section would codify current program policy, practice, and/or procedure and aligns with industry standards.

*Loan submission to HUD for Direct Guarantee § 1005.459.* This section proposes a 60-day timeframe in which an endorsement case binder must be sent to HUD after closing. This section also outlines the additional documentation required for a late submission greater than 60 days after closing. The Direct Guarantee Lender would be required to submit a late endorsement request with documentation affirming the loan is not currently in default, all escrow accounts are current, all loan guarantee fees are current, and a statement that neither the Direct Guarantee Lender nor its agents have provided funds to bring or keep the loan current or bring about the appearance of a satisfactory payment history. This proposed section is consistent with current practices, policies, and procedures. This section does propose an exception to the proposed current endorsement practice, which provides that with prior approval from HUD, consistent with Section 184 program guidance, the Direct Guarantee Lender or Servicer may provide funds to bring or keep the Section 184 Guaranteed Loan current in the event the Borrower agrees to Loss Mitigation before HUD provides endorsement, as the case with some Borrowers during the COVID-19 National Emergency.

*HUD issuance of Firm Commitment § 1005.461.* This section proposes that HUD may underwrite, consistent with specific underwriting criteria, and issue a Firm Commitment. This proposed section is consistent with HUD's current practice, policy, and/or procedure.

#### *E. Closing and Endorsement (Subpart E)*

This subpart includes requirements for closing a Section 184 Guaranteed Loan and receiving endorsement approval from HUD. The subpart is organized into two sections: closing, and endorsement and post-closing.

*Direct Guarantee Lender closing requirements § 1005.501.* This section would provide the required documentation for closing a loan under the program, including: chain of ownership, title search and Title Status Report, closing in compliance with Direct Guarantee Lender approval, closing in the Lender's name, required forms and language in documents, projected escrow, closing costs and fees, per diem interest and interest credits, Borrower authorization of Tribal notice, signatures, and other requirements. This

documentation is necessary to ensure that the Loan may be eligible for a Loan Guarantee under the program. This proposed section is consistent with current program policy, practice, and/or procedure.

*Contents of endorsement case binder § 1005.503.* This section proposes HUD requirements for the contents of the endorsement case binder. The endorsement case binder is required by HUD and includes certain documentation necessary for HUD to determine program compliance and to issue a Loan Guarantee Certificate to the Lender. The actual contents of the endorsement case binder shall be in a format as prescribed by Section 184 Program Guidance. This proposed section is consistent with current program policy, practice, and/or procedure.

*Payment of Upfront Loan Guarantee Fee § 1005.505.* This section would require the Direct Guarantee Lender to provide evidence of the remittance of the Upfront Loan Guarantee Fee, as required under § 1005.607. This proposed section is consistent with current program policy, practice, and/or procedure.

#### *Borrower's payments to include other charges and escrow payments*

*§ 1005.507.* This section proposes the charges and escrow payments that the Direct Guarantee Lender must include as part of the Section 184 Guaranteed Loan monthly payment. This section also proposes how these payments should be managed by the Lender and disallows the recovery from the Borrowers of payment of additional premiums to protect the interest of the Lender. This proposed section is consistent with current program policy, practice, and/or procedure.

*Application of payments § 1005.509.* This section would require that all monthly payments made by the Borrower to the Servicer shall be aggregated into a single monthly payment, and that the Servicer shall apply the Borrower's funds in accordance with § 1005.715. This proposed section is consistent with current program policy, practice, and/or procedure.

*Late fee § 1005.511.* This section would establish the ability for a Servicer to charge a late charge to the Borrower when a Section 184 Guaranteed Loan payment is 15 or more days in arrears. It also would establish maximum late charge of 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. This section is intended to provide a deterrent for the

Borrower to make payments outside of the applicable payment period and to reduce risk to the Direct Guarantee Lender and the Fund. This proposed section is consistent with current program policy, practice, and/or procedure.

*Borrower's payments when Section 184 Guaranteed Loan is executed § 1005.513.* This section outlines what payments from what parties are required upon execution of the Section 184 Guaranteed Loan, including the one-time Upfront Loan Guarantee Fee or any portion payable pursuant to § 1005.603; and all other applicable monthly charges pursuant to § 1005.507, including the annual Section 184 Guaranteed Loan fee pursuant to § 1005.607, covering the period from the closing date to the due date of the first installment payment under the Section 184 Guaranteed Loan. This proposed section is consistent with current program policy, practice, and/or procedure.

*Charges, fees, or discounts § 1005.515.* This section proposes a list of allowable charges, fees, or discounts a Direct Guarantee Lender may collect from the Borrower at Origination of a Section 184 Guaranteed Loan. These charges/fees include costs to cover origination and closing; recording fees and recording taxes; credit report; survey; title examination; title insurance premium and any appraisal or inspection; such other reasonable and customary charges as may be authorized by HUD; reasonable and customary charges in the nature of discounts; and interest calculations in accordance with § 1005.501. Before the Loan may be guaranteed by the Section 184 Program, the Direct Guarantee Lender must provide HUD a listing of all charges, fees, or discounts collected from the Borrower by the Lender.

For an assumption of an existing Section 184 Guaranteed Loan, processing fees must be based on actual costs and the Direct Guarantee Lender may not charge more than the reasonable and customary allowable cost without HUD approval. Fees for assumptions may include, but are not limited to, credit report, verification of employment and the execution of additional release of liability forms. Additional fees over and above assumption fees cannot be assessed for Section 184 Guaranteed Loans on Trust Lands. HUD may establish limitations on the amount charged for origination, closing, and assumptions. This proposed section is consistent with current program policy, practice, and/or procedure.



*Certificate of nondiscrimination by the Direct Guarantee Lender § 1005.517.* This section would require that Direct Guarantee Lenders, when applicable, certify to HUD specific nondiscrimination practices required of Direct Guarantee Lenders, including: nondiscrimination based on race, color, religion, sex, disability, familial status, or national origin, except as provided by law; and prohibiting any restrictive covenant, other than permissible restrictions on Trust Land, on such property relating to race, color, religion, sex, disability, familial status, or national origin and recognizing such prohibited restrictive covenants as being illegal, void, and disclaimed. A 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. This section is intended to protect the Borrower from discrimination, and is consistent with current program policy, practice, and/or procedure.

*Creation of the contract § 1005.519.* This section describes when a Loan shall be considered guaranteed under the program and that the Direct Guarantee Lender and HUD are bound by the requirements set forth in this regulation as if the two parties were in an executed contract relating to the loan. This proposed section is consistent with current program policy, practice, and/or procedure.

*Lender pre-endorsement review and requirements § 1005.521.* This section would require a pre-endorsement review of the endorsement case binder by the Direct Guarantee Lender prior to the submission of the endorsement case binder to HUD and describes the parameters of this review. This review must be conducted by Direct Guarantee Lender staff not involved in the origination, processing, or underwriting of the loan, and the case binder must include all documentation the Direct Guarantee Lender used to approve the loan. Upon finalizing the pre-endorsement review, the Direct Guarantee Lender must certify that all required documents were submitted and meet the requirements of § 1005.503. This proposed new requirement would provide additional assurances that the Direct Guarantee Lender is making prudent judgements when approving the loans and following HUD program policies, practice, and procedures.

*HUD pre-endorsement review § 1005.523.* This section proposes Lender's submission deadline and HUD's process for a pre-endorsement review. Before endorsement, HUD will review the endorsement case binder

submitted by the Direct Guarantee Lender to ensure that the loan meets all statutory, regulatory, and administrative requirements. Following this review, if the loan is determined to be eligible, HUD will issue a Loan Guarantee Certificate. HUD may reject an endorsement case binder if HUD finds that the certification or documentation is false, misleading, or constitutes fraud or is a misrepresentation on the part of any party, or that the loan fails to meet a statutory or regulatory requirement. HUD will inform the Direct Guarantee Lender in writing the reasons for the determination and any corrective actions that may be taken. The HUD pre-endorsement review is intended to reduce the risk for fraud and program non-compliance that could negatively impact the Fund, and is consistent with current program policy, practice, and/or procedure.

*Loan Guarantee Certificate § 1005.525.* This section proposes the conditions under which HUD will issue a Loan Guarantee Certificate. The Loan Guarantee Certificate is evidence of the HUD guarantee and is issued after HUD completes a review of the Lender's endorsement case binder and determines the case binder is in compliance with all applicable Section 184 requirements. HUD may issue a Loan Guarantee Certificate for a loan on Trust Land before HUD receives all required Trailing Documents, provided that the Direct Guarantee Lender agrees to indemnify HUD. The indemnification agreement between HUD and the Direct Guarantee Lender will terminate once all required documentation is received in a form and manner that is acceptable by HUD. This proposed section is consistent with current program policy, practice, and/or procedure.

*Post-endorsement review § 1005.527.* This section proposes the process for HUD to conduct a post-endorsement review of the endorsement case binder, including, but not limited to a quality control review. Following the issuance of the Loan Guarantee Certificate, HUD may review all documents required by § 1005.503. Based upon this review, if HUD determines that the Loan does not satisfy the requirements of the program, HUD may cancel the Section 184 Loan Guarantee Certificate, may request indemnification from the Direct Guarantee Lender, or sanction the Direct Guarantee Lender pursuant to § 1005.907. This proposed section is consistent with current program policy, practice, and/or procedure.

*Indemnification § 1005.529.* This section proposes that an Originating Direct Guarantee Lender must indemnify HUD when a claim has been

filed or when HUD discovers an underwriting deficiency in a pre- or post-endorsement review. In this instance, the Originating Direct Guarantee Lender shall indemnify HUD or HUD may deny the Claim. Underwriting deficiencies may include, but not limited to, fraud or misrepresentation by the Originating Direct Guarantee Lender. If indemnification is necessary, HUD will request indemnification in writing that the Originating Direct Guarantee Lender will reimburse HUD if a subsequent holder of the loan files a Claim and HUD suffers a financial loss. This proposed section is intended to protect HUD from financial risk from possible underwriting deficiencies and aligns with industry standards.

#### F. Section 184 Guaranteed Loan Fees (Subpart F)

This subpart includes the requirements for calculation, collection, and submission of the Section 184 Loan Guarantee Fee.

*Scope and method of payment § 1005.601.* This section includes the statutory requirements of a one-time, Upfront Loan Guarantee Fee and a recurring Annual Loan Guarantee Fee, for all Section 184 Guaranteed Loans. This section revises existing § 1005.109 of the current regulations and is consistent with current program policy, practice, and/or procedure.

*Upfront Loan Guarantee Fee § 1005.603.* This section mandates that an Upfront Loan Guarantee Fee, not exceeding three percent of the principal obligation of the loan, as determined by HUD, is to be paid at closing. The amount of the Upfront Fee will be prescribed by HUD through a notice in the **Federal Register**. This fee is statutorily required and necessary to credit the Fund to provide for payments under the guarantee, in addition to congressional appropriation.

*Remittance of Upfront Loan Guarantee Fee § 1005.605.* This section would require the Direct Guarantee Lender to submit to HUD the Upfront Loan Guarantee Fee within 15 days of loan closing. Additionally, this section would require the Direct Guarantee Lender to provide an account reconciliation of the Upfront Loan Guarantee Fee in the time and manner as may be prescribed by HUD. This proposed section codifies current program practices, policy, and/or procedure.

*Annual Loan Guarantee Fee § 1005.607.* This section would require an Annual Loan Guarantee Fee to be collected from the Borrower on a monthly basis, as determined by HUD

and published in the **Federal Register**. This section would also authorize the Servicer to collect monthly payments from the Borrower in an amount equal to one-twelfth of the annual loan guarantee premium and the ability for the Borrower to prepay their Section 184 Guaranteed Loan. These payments are included in the Amortization Schedule issued with the Loan approval. The Annual Loan Guarantee Fee is statutorily required and necessary to credit the Fund to provide for payments under the guarantee, in addition to congressional appropriation. This proposed section is consistent with current program policy, practice, and/or procedure.

*Remittance of Annual Loan Guarantee Fee § 1005.609.* This section would require the Servicer to submit to HUD the Annual Loan Guarantee Fees collected from the Borrower no later than the 15th day of each month, beginning in the month in which the Borrower is required to make the first monthly loan payment. If the Servicer is late submitting the monthly installment of the Annual Loan Guarantee Fee, the Servicer must pay a penalty in accordance with § 1005.611. The Annual Loan Guarantee Fee no longer applies when the loan to value ratio equals an amount less than 78 percent, in accordance with § 1005.607. The Servicer must refund to the Borrower any excess Annual Loan Guarantee Fees collected when the loan-to-value ratio is less than 78 percent, within 30 days of the overpayment.

This section also would require that the Servicer continue to collect the Annual Loan Guarantee Fee on a monthly basis without regard to delinquent payments, prepayments, agreements to postpone payments, or agreements to recast the loan. When transferring a Section 184 Guaranteed Loan to another Servicer, this section would require an account reconciliation of the Upfront Guarantee Fee and Annual Loan Guarantee to the new Servicer. When transfer of servicing between Servicers results in a missed monthly payment(s) of the Annual Loan Guarantee Fee to HUD, the acquiring Servicer 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. This section clarifies the circumstances of the on-going payment of the monthly payment of the Annual Loan Guarantee Fee and sets a timeframe for submission of this payment even when the loan is sold between Direct Guarantee Lenders or to a Servicer. This proposed section

is consistent with current program policy, practice, and/or procedure.

*HUD imposed penalties § 1005.611.* This section proposes the circumstances in which HUD may impose civil monetary penalties on Direct Guarantee Lenders and Servicers related to the collection and submission of Loan Guarantee Fees. This section also prohibits seeking recovery of the penalty from the Borrower. Direct Guarantee Lenders may incur penalties for failure to timely remit Upfront Loan Guarantee Fee. Servicers may incur penalties for failure to timely remit the monthly installment of the Annual Loan Guarantee Fee to HUD, failure to adjust the amount of the Annual Loan Guarantee Fee, and failure to cease collection of the Annual Loan Guarantee Fee. A reasonable penalty or fee will be prescribed by HUD in Section 184 Program Guidance. HUD is proposing allowing a monetary penalty for the late or non-submission of the Annual Loan Guarantee Fee to encourage Lenders and Servicers to pay on a timely basis.

#### *G. Servicing (Subpart G)*

This subpart includes the requirements for Servicers to manage Section 184 Guarantee Loans and steps to take when a Borrower defaults on a Section 184 Guaranteed Loan. The subpart is organized into four sections: servicing loans generally, servicing defaulted loans, Loss Mitigation and assignment, foreclosure and Conveyance.

*Section 184 Guaranteed Loan servicing generally § 1005.701.* This proposed section provides an overview of subpart G, HUD servicing expectations and requirements for servicing Section 184 Guaranteed Loans.

*Servicer eligibility and application process § 1005.703.* This section proposes that a Direct Guarantee Lender, Non-Direct Guarantee Lenders or other financial institution must be an approved mortgage Servicer for FHA or another agency of the Federal Government. Direct Guarantee Lenders, and Non-Direct Guarantee Lenders are required to apply to be a Servicer, in accordance with Section 184 Program Guidance. This proposed section is intended to ensure that Servicers have the experience and qualifications and have the processes in place to properly service Section 184 Guaranteed Loans to provide quality customer service to Native American Borrowers.

*Servicer approval § 1005.705.* This section proposes what constitutes HUD approval for a Direct Guarantee Lenders, Non-Direct Guarantee Lenders and other financial institutions applying to be Servicers in the Section 184 Program

under § 1005.703. This section addresses the process HUD will follow to notify interested Non-Director Guarantee Lenders and financial institutions seeking HUD approval to be a Servicer under the program. HUD will provide written notification of its approval and the approved Servicer must agree to comply with all program requirements. This includes the notification by the Servicer to HUD of any acquisition or sale of Section 184 Guaranteed Loans. This proposed section would be complimentary to the new requirement under § 1005.703.

*Responsibility for servicing § 1005.707.* This section proposes a Servicer's responsibilities under the Section 184 Program, which includes, program compliance, using a sub-Servicer, changing Servicers, transferring servicing rights, reporting requirements, program ineligibility, and records retention. This section proposes new requirements for the Servicer in the areas of annual recertification and business change reporting. HUD is proposing these new requirements to reduce risk and monitor the stability of the Servicer.

*Providing information to Borrower and HUD § 1005.709.* This section proposes Servicer requirements for providing information to the Borrower on the Section 184 Guaranteed Loan. Servicers must 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. All Borrowers must be informed annually of the system available for obtaining answers to loan inquiries and the office to which requests may be presented. Within 30 days after the end of each calendar year, the Servicer must 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 must furnish a statement of the escrow account sufficient to enable the Borrower to reconcile the account. Each Servicer must deliver to the Borrower a written notice of any transfer of the servicing rights of the loan. Finally, Servicers must respond to HUD requests for information concerning individual accounts within a timeframe prescribed by Section 184 Program Guidance. HUD is proposing these requirements to ensure that acceptable procedures exist so that Servicers can readily provide loan information to Borrowers and HUD. This proposed section is consistent with current program policy, practice, and/or procedure.

*Assumption and release of personal liability § 1005.711.* This section proposes the requirements and the process for assumption of a Section 184 Guaranteed Loan. Eligible Borrowers may assume a Section 184 Guaranteed Loan. The new Borrower must be determined to be creditworthy under subpart D. For loans securing Properties on Trust Lands, the lease document may require Tribal and Bureau of Indian Affairs (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. Servicers may only collect fees for an assumption in accordance with this section. With respect to release of liability, this section would provide that at closing, the Servicer must release the existing Borrower from any personal liability on a form approved by HUD and the new Borrower assumes personal liability of the loan. Finally, upon completion of an assumption, a Servicer is required to provide copies of the documents to HUD. HUD will issue a revised Loan Guarantee Certificate and additional processing instructions. These changes ensure clear guidelines exist to govern the assumption and associated release of personal liability, such as ensuring that Borrowers that assume loans meet minimum creditworthiness standards. This proposed section is consistent with current program policy, practice, and/or procedure.

*Due-on-sale provision § 1005.713.* This section mandates a due-on-sale clause permitting acceleration for all Section 184 Guaranteed Loans. The Servicer must accelerate the loan, subject to HUD prior approval, so long as the acceleration is permitted by applicable Tribal, Federal, or State law. This proposed section is consistent with current program policy, practice, and/or procedure.

*Application of Borrower payments § 1005.715.* This section would establish the order in which the Servicer applies Borrower payments authorized under § 1005.509 and the proposal is consistent with current program policy, practice, and/or procedure.

*Administering escrow accounts § 1005.717.* This section would establish the requirements for administering escrow accounts and deposits from a Section 184 Guaranteed Loan. The Servicer may not use escrow funds for any purpose other than that for which they were received. It must segregate escrow commitment deposits, work completion deposits, and all periodic payments received on account of

leasehold rents on Trust Land, taxes, assessments, monthly installments of Section 184 annual loan guarantee fees and insurance charges or premiums and must 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. The Servicer must also adhere to the requirements as prescribed by Section 184 Program Guidance for escrow funds related to leasehold rents on Trust Lands. The Servicer is responsible for making escrow disbursements before bills become delinquent and 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 the penalty was the direct result of the Borrower's error or omission. This section also mandates that the Servicer use the procedures set forth in the Consumer Financial Protection Bureau's (CFPB) Real Estate Settlement Procedures Act (RESPA) regulations at 12 CFR 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. The Servicer is prohibited from initiating foreclosure for a default related to escrow payment shortfalls resulting from an adjustment pursuant to this section. Finally, when a Section 184 Guaranteed 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 must be remitted to HUD. When a loan is prepaid in full, amounts held in escrow for taxes, hazard insurance, or rents due under a tribal lease must be promptly released to the Borrower. HUD is proposing this section to ensure clear guidelines on how Servicers must administer escrow accounts. This proposed section is consistent with current practices, policies and/or procedures, aligns with industry standards, and cross references RESPA requirements, as implemented in CFPB regulations.

*Fees and costs after endorsement § 1005.719.* This section sets forth the allowable fees and charges from the Servicer to the Borrower after HUD's endorsement of the Section 184 Guaranteed Loan. Permissible fees and charges include certain late charges, charges for processing or reprocessing a

check returned as uncollectible, fees for processing a change of ownership of the mortgaged property, fees and charges for arranging a substitution of liability in connection with the sale or transfer of the Section 184 property, charges for processing a request for credit approval on behalf of an assumption or substitute Borrower, charges for substitution of a hazard insurance policy, charges for modification of the Section 184 Guaranteed Loan involving a recorded agreement for extension of term or re-Amortization, fees and charges for processing a partial release of the property, certain attorney's and trustee's fees and expenses actually incurred, escrow charges, a trustee's fee, property preservation expenses incurred, fees permitted for providing a beneficiary notice under applicable Tribal or State law, and such other reasonable and customary charges as may be authorized by HUD. This section also would provide that reasonable and customary fees must be based 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. Unless otherwise provided, no fee or charge may be based on a percentage of either the face amount of the loan or the unpaid principal balance due on the Section 184 Guaranteed Loan. This section proposes to clarify the range of fees and charges that can and cannot be charged by Servicers participating in the program proposes change consistent with HUD's current practice, policy, and/or procedure.

*Enforcement of late fees § 1005.721.* This section proposes when and how late charges must be applied by a Servicer. It would provide that Servicers are prohibited from commencing foreclosure when the Borrower's only default is his or her failure to pay a late charge or charges. A late charge attributable to a particular installment payment due may not be deducted from that installment. However, if the Servicer notifies the Borrower of the obligation to pay a late charge, that charge may be deducted from any subsequent payment. This section also would provide that 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. This section prohibits a late charge from being imposed on the Borrower with respect to any payment on the Section

184 Guaranteed Loan during the 60 day period beginning on the effective date of transfer of the servicing rights of a Section 184 Guaranteed Loan. This section would provide that if a payment is received by the old Servicer prior to the due date, no late charges may be assessed by the new Servicer. Finally, this section would provide that a Servicer is prohibited from imposing a late fee for failure to pay a late fee, consistent with CFPB regulations. HUD is proposing this addition to consistent with current program practices, policies, procedures, to conform the regulations to CFPB's Truth in Lending regulations, and to ensure that Servicers comply with fair rules governing late charges and is intended align with industry standards.

*Partial payments § 1005.723.* This proposed section provides that a Servicer must have a written policy available to the public on how it handles Partial Payments and outlines the acceptable actions when a Servicer receives a Partial Payment from a Borrower. It also proposes to provide that 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 accept a Partial Payment and apply it to the Borrower's account, identify it with the Borrower's account number and hold it in a trust account pending disposition, or return the Partial Payment to the Borrower. This proposal is necessary to ensure clear guidelines on how Servicers are to manage Partial Payments and would provide Servicers with various options and is intended to codify current practice, policy, and/or procedure.

*Handling prepayments § 1005.725.* This section would require that a Servicer accept pre-payment at any time and details how the interest on the debt is calculated for prepayments. This proposed section is consistent with codifies current practices, policies, and/or procedures, and ensures that Borrowers who want to make prepayments on their Section 184 Guaranteed Loans have the option to do so.

*Substitute Borrowers § 1005.727.* This section proposes when a Borrower requests the substitution of a co-Borrower on the Section 184 Guaranteed Loan. A remaining original Borrower must still be on the loan. It would provide that where an original Borrower requests the substitution of a co-Borrower on the loan, a Non-Direct Guarantee Servicer must obtain HUD approval for the substitution. A Direct

Guarantee Lender may approve an eligible substitute Borrower who meets program eligibility requirements and need not obtain further specific approval from HUD. This proposed section is meant to provide clear guidelines to Servicers and Borrowers on how to manage the substitution of Borrowers consistent with current practice, policy, and/or procedure.

*Section 184 Guaranteed Loan collection action § 1005.729.* This section would require the Servicer to take prompt action to collect amounts due from Borrowers and to exhaust all reasonable possibilities of collection before initiating foreclosure or assignment. This proposed regulation is necessary to ensure that Servicers meet standards for serving Section 184 Guaranteed in default and provide Borrowers with a good faith consideration of available Loss Mitigation options to avoid default, foreclosure, or both. This section is designed to ensure that risks to the Fund are minimized, and that all available reasonable loan collection and Loss Mitigation options have been considered by the Servicer. This proposed section is consistent with current program policy, practice, and/or procedure.

*Default notice to Borrower § 1005.731.* This section outlines the proposed requirements for contacting a defaulted Borrower, including live contact and written notice. This includes a requirement to contact all Borrowers, whether they live in the same or different locations. Servicers are required to establish or make good faith efforts to establish live contact with a defaulting Borrower no later than the 36th day of the Borrower's default and promptly inform the Borrower about the availability of Loss Mitigation options. This section also would provide that Servicers must give written notice to each Borrower in default no later than the end of the 45th day of a Borrower's default. This section also governs what must be included in the required written notice and would provide that nothing in this section shall require a Servicer to communicate with a Borrower in a manner otherwise prohibited by applicable Tribal, Federal, or State law. This section is necessary to ensure that Servicers present a minimum level of notice of default and consider Loss Mitigation options to prevent foreclosure and other unnecessary losses and risks to the Fund. HUD is proposing this addition consistent with current program practices, policies, and/or procedures and to conform to CFPB regulations and industry standards.

*Loss mitigation application, timelines, and appeals § 1005.733.* This section would provide specific expectations when a Servicer processes a Borrower's Loss Mitigation application. It proposes to provide five days to acknowledge receipt of the application, determine if the application is complete or incomplete, and, if incomplete, notify the Borrower of documentation that is still required and inform the Borrower that submission of the missing documents must occur within fourteen days. Within fourteen days of receipt of a complete application, the Servicer must evaluate the application.

This section also would provide that Servicers are required to provide written notification: (1) of all available Loss Mitigation options; (2) to encourage Borrowers to review all available Loss Mitigation options and to contact the Servicer with any questions; (3) to encourage Borrowers to consider pursuing simultaneous Loss Mitigation options; (4) to inform Borrowers that if no Loss Mitigation option is elected or if they fail, the Servicer may proceed with filing of the First Legal Action at 180 days of default; and (5) to inform Borrowers that at the filing of first legal action or the assignment of the loan to HUD, the Servicer will no longer offer or allow a pre-foreclosure sale as an alternative to foreclosure, and that the only available and remaining alternative to foreclosure will be a lease-in-lieu or deed-in-lieu of foreclosure, subject to applicable Tribal, Federal, or State law. Borrowers may appeal within 14 days of receipt of the Servicer's Loss Mitigation determination, in writing, that the Servicer re-evaluate the Borrower's Loss Mitigation application. The Servicer will be required to re-evaluate the Borrower's Loss Mitigation application within 30 days, but may not use the same staff that made the initial Loss Mitigation determination and must notify the Borrower of its appeal decision. If the Borrower submits a timely written appeal, the 180-day deadline to initiate foreclosure will be suspended during the appeal process. This section is being proposed to provide clear guidelines to both Servicers and Borrowers on the Loss Mitigation application process and associated appeals, to minimize risks and losses to the Fund, and to avoid foreclosure when possible. This proposed section is consistent with current program policy, practice, and/or procedure.

*Occupancy inspection § 1005.735.* This section proposes occupancy inspection as a visual inspection by the Servicer, defines occupancy follow-up as an attempt to communicate with the

Borrower through various means to determine occupancy status, and would provide the requirements for occupancy inspections and occupancy follow-ups while a Borrower is in default. It also governs occupancy inspections conducted during a Borrower's bankruptcy.

HUD is proposing this regulation to ensure that clear guidelines exist for Servicers governing occupancy inspections. Servicers may find the need to conduct occupancy inspections to determine whether a property has become vacant or abandoned, and to confirm the identity of any occupants. HUD is requiring Servicers to conduct occupancy follow-ups and to attempt to conduct continuing inspections, if necessary, every 25–35 days from the last inspection until the occupancy status is determined. This is designed to ensure that Servicers proactively work to determine the status of each property subject to a loan guaranteed under the program, that is in default, and to minimize costs and risks to the Fund. This proposed section is consistent with current program policy, practice, and/or procedure.

*Vacant property procedures § 1005.737.* This section would set forth the requirements when a property has been determined vacant or abandoned based on an occupancy or occupancy follow-up inspection. This provision includes a notice requirement to the Borrowers of determination of vacancy or abandonment, which is sent to the property address and all known addresses of Borrowers. If occupancy is found through the delivery confirmation process, the Servicer must continue pursuing Loss Mitigation efforts until the Servicer can proceed to First Legal Action. On the other hand, if the Servicer verifies through the delivery confirmation process or other method that the property is vacant or abandoned, then the Servicer must secure and maintain the property through appropriate property preservation actions, initiate the First Legal Action or assign a Trust Land loan to HUD within 120 days after date of default, continue to perform vacant property inspections every 25–35 days, and retain documentation in the servicing file.

HUD is proposing this section to ensure that clear guidelines exist for Servicers who manage vacant or abandoned Properties. While not common, a small number of Properties assisted under the Section 184 Program have previously been abandoned. In such cases, it is critical that Servicers remain proactive in verifying the occupancy status of such Properties and

ensuring that they are processed and disposed of in a timely manner. Vacant or abandoned Properties can attract criminal activity and serve as an additional blight to Trust Land. These guidelines will also help preserve collateral and prevent unnecessary losses and risks to the Fund. This proposed section is consistent with current program policy, practice, and/or procedure, and aligns with industry standards.

*Loss mitigation § 1005.739.* This section proposes the Loss Mitigation options and review requirements when a Borrower defaults on a Section 184 Guaranteed Loan. This section would require that Servicers utilize various Loss Mitigation options, if practical, within 180 days of the date of default. Loss mitigation options include: (1) forbearance plan, (2) assumption, (3) trial payment plan agreement for a loan modification, (4) pre-foreclosure sale, or (5) deed-in-lieu or lease-in-lieu of foreclosure. Within 180 days of default, if the Borrower is offered a Loss Mitigation option other than loan modification and fails to meet the Loss Mitigation requirements, the Servicer is required, within 5 days of the Loss Mitigation default, to determine whether the Borrower should continue with the current Loss Mitigation option or reassess the Borrower. If no time or very limited time remains within 180 days of default, the Servicer will not be required to reassess the Borrower for another Loss Mitigation option.

This section also would provide that if a Borrower is performing under a Loss Mitigation option that does not reinstate the loan at 180 days of default but subsequently fails to perform, the Servicer must take First Legal Action within 5 days of the Loss Mitigation option default. Servicers must maintain documentation of all evaluations and Loss Mitigation actions. Finally, Servicers that fail to engage in and comply with required Loss Mitigation may be subject to enforcement action by HUD, including possible sanctions.

HUD is proposing this addition to the regulation to ensure Servicers review Loss Mitigation options to prevent foreclosures, to maintain Native American Borrowers in their homes, to the extent practicable, and to minimize any resulting losses and risks to the Fund. This proposed section is consistent with current program practices, policies, and/or procedures, and conforms to CFPB regulations and industry standards.

*Notice to Tribe and BIA—Borrower default § 1005.741.* This proposed section compliments HUD's current practice and policy to notify the BIA

when a Borrower defaults on a Section 184 Guaranteed Loan, in accordance with applicable requirements under 25 CFR part 162. This section also includes a new requirement for Servicers. When given consent by the Borrower, Servicers must notify the Borrower's Tribe when a Borrower defaults on Section 184 Guaranteed Loan. This proposed section addresses a request made during Tribal consultation in which Tribal representatives expressed a desire to be notified when a member has defaulted on their Section 184 Guaranteed Loan, so that the Tribe may provide financial assistance, if available.

*Relief for Borrower in military service § 1005.743.* This proposed section outlines the options for Borrowers who are in military service, in addition to benefits afforded under other applicable laws, including postponement of principal payments, forbearance, and postponement of foreclosure. This section is being proposed to provide accommodations for Borrowers that are persons in "military service," as such term is defined in the Servicemembers Civil Relief Act (50 U.S.C. 3901, *et seq.*). This proposed section is consistent with current program policy, practice, and/or procedure, and aligns with industry standards.

*Forbearance plans § 1005.745.* This section proposes forbearance options a Servicer may offer to defaulting Borrowers. This section sets out the requirements for informal forbearance, formal forbearance, unemployment forbearance, and servicemember forbearance. Each type has its own agreement requirements, duration period requirements, property condition requirements, and required documents. HUD is proposing this regulation to ensure that several options are available for defaulting Borrowers. This proposed section is consistent with current program policy, practice, and/or procedure, and aligns with industry standards.

*Assumption § 1005.747.* This section would require Servicers to explore loan assumption as a Loss Mitigation option. HUD is proposing this regulation to provide another Loss Mitigation option for a Borrower that has defaulted on their guaranteed loan. This proposed section is consistent with current program policy, practice, and/or procedure, and aligns with industry standards.

*Loan modification § 1005.749.* This section proposes loan modifications as a Loss Mitigation option and sets forth the eligibility and qualifications necessary for a Servicer to approve a Borrower's application and the required property conditions. This section also discusses

the use of trial payment plans, the execution of loan modification documents that conform to all applicable Tribal, Federal, and State laws, and when the Servicer must provide modified loan guarantee documents to HUD. HUD is proposing this regulation to provide another Loss Mitigation option for Borrowers in default. This proposed section is consistent with current program policy, practice, and/or procedure.

*Pre-foreclosure sale § 1005.751.* This section would provide authority for pre-foreclosure sale as a Loss Mitigation option. The requirements specified for this review include: surchargeable calculation of the Borrower's cash reserve contribution, condition of title for both fee simple and Trust Land Properties, verification of discharge of all junior liens, and listing the property at no less than the value determined in the required appraisal. The Servicer would be required to send all required pre-foreclosure documentation to HUD and send an approval to participate agreement and required addendum notice to the Borrower.

This section also would provide Tribal notification of the option to assume the Section 184 Guaranteed Loan or purchase the either the Note or the property. The section sets out the requirements for the Borrower in securing a real estate broker and required clauses in the contract between the Servicer and broker, as well as the time period for the Borrower to market the property in listings. For all pre-foreclosure sale Properties, the Servicer is required to conduct property inspections and maintenance, and the Borrower is required to disclose any damage that has occurred immediately. If damage has occurred, the Servicer is required to work with the Borrower to file hazard insurance claims. The section sets out the responsibilities for the seller in receiving sufficient bids, reviewing the sales contract, as well as closing and post-closing responsibilities. The section details early termination initiated by both the Borrower and the Servicer, and how to proceed in the event the Borrower fails to complete the pre-foreclosure sale. HUD is proposing this regulation to provide an additional option for defaulted Borrowers. This is a new loss mitigation option for the Section 184 Program. HUD is proposing this section to give Native American Borrowers comparable loss mitigation options to Borrowers in other loan guarantee programs.

*Deed-in-lieu/lease-in-lieu of foreclosure § 1005.753.* This section would require the use of deed-in-lieu/

lease-in-lieu of foreclosure as a Loss Mitigation option. This section also sets out the required documents to effectuate the transfer and, upon Conveyance to HUD, the Servicer must file for record the required documents within two days and report to HUD. The Servicer must also comply with all applicable Federal, State, Tribal, and local reporting requirements. HUD is proposing this regulation in order to provide an additional option for Borrowers in default. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Incentive payments to Borrower § 1005.755.* This section proposes that HUD may authorize incentive payments to the Borrower when Borrowers complete certain loss mitigation options and when Borrowers agree to vacate the property after foreclosure to avoid an eviction. This section also proposes that HUD may authorize incentive payments to Lender and Servicer for their completion of certain Loss Mitigation options and incentive payments to Tribes and TDHEs when they assist HUD in the loss mitigation, sale or transfer of the Trust Land property. HUD plans to provide further guidance on the incentives in Section 184 Program Guidance. HUD is proposing this new authority to encourage Borrowers' and Servicers' participation in Loss Mitigation, to avoid the time and expense of foreclosing on the property and evicting the Borrower after foreclosure.

*Property on Trust Land—Tribal first right of refusal; foreclosure or assignment § 1005.757.* This section proposes the timeframe in which a Servicer must contact a Tribe or TDHE and offer an option to assume or purchase the property or the Note under § 1005.757(a) when a defaulted loan pertains to property that is located on Trust Land, as well as the TDHE or Tribe's acceptance of the offer. This section also allows for the Servicer to choose between foreclosure or assignment to HUD for a defaulted Section 184 Guaranteed Loan located on Trust Lands. HUD is proposing this regulation to clarify options available to the Servicer but also to ensure timely action. This proposed section is consistent with current program policy, practice, and/or procedure.

*Fee simple properties—foreclosure or assignment with HUD approval § 1005.759.* This section proposes the requirement for Servicers to initiate foreclosures or request the ability to assign a defaulted property to HUD. HUD may approve assignments under limited circumstances. HUD is

proposing this regulation in order to ensure that Servicers timely initiate foreclosure proceedings and is consistent with current policy, practice and/or procedure.

*First Legal Action deadline and automatic extensions § 1005.761.* This section proposes to provide a timeline for the initiation of foreclosure by the Servicer on defaulted Section 184 Guaranteed Loans. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Assignment of the Section 184 Guaranteed Loan § 1005.763.* This section presents the requirements for assigning a defaulted Section 184 Guaranteed Loan to HUD. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Inspection and preservation of Properties § 1005.765.* This section proposes that the Servicer comply with inspection requirements under § 1005.737 when the Servicer knows or should know the property is vacant or abandoned. The section also proposes to require that the Servicer take action to preserve and protect the property until Conveyance to HUD. HUD is proposing this section in order to ensure the Servicer continues to inspect and preserve the property. This proposed section is consistent with current program policy, practice, and procedure and aligns with industry standards.

*Property condition § 1005.767.* This section would mandate the condition of the property and the Servicer's responsibilities at the time a property is transferred to HUD through Conveyance or assignment. This proposed section is consistent with current program policy, practice, and/or procedure.

*Conveyance of property to HUD at or after foreclosure; time of Conveyance § 1005.769.* This section proposes the methods and timeframe in which a Servicer may convey a property to HUD after foreclosure, including HUD notification of the Conveyance. HUD is proposing this section in order to ensure the Servicer timely conveys the property to HUD. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Acceptance of property by HUD § 1005.771.* This section would establish the date which HUD is deemed to have accepted an assignment of a Section 184 Guaranteed Loan, or title to and possession of a property. HUD is proposing this section to clarify when HUD has accepted title to a conveyed

property. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

#### H. Claims (Subpart H)

This subpart includes the requirements for Servicers to submit claims to HUD. The subpart is organized into five sections: claims application, submission categories, and types; submission of claims; property title transfers and title waivers; condition of the property; and payment of guarantee benefits.

*Purpose § 1005.801.* This section proposes the purpose of this subpart which is to set forth the requirements applicable to a submission of an application for loan guarantee benefits (Claim submission). It explains that Servicers must comply with regulations presented in subpart H and process details included in Section 184 Program Guidance. This subpart also sets forth requirements processing and payment of Claim. This proposed section is consistent with current program policy, practice, and/or procedure.

*Claim case binder; HUD authority to review records § 1005.803.* This section would require Servicers to maintain a Claim case binder for a minimum of five years after the final Claim has been paid and allow HUD access to the case binder. Section 1005.803(b) allows HUD access to the Claim case binder at any time and would provide that Servicer denial of HUD access to any of the files may subject the Servicer to sanctions under §§ 1005.905 and 1005.907. Section 1005.803(c) would provide that the Servicer must make available to HUD any request for Claim files within three business days of the request. This proposed section is consistent with current practices and establishes new timeframes for Servicers to respond to HUD's request for a Claim case binder. These policies are necessary to ensure HUD has appropriate oversight of the program.

*Effect of noncompliance § 1005.805.* This section proposes to establish the actions HUD may take if a Claim case binder does not comply with the requirements of subpart D, including: rejecting the claim, paying the claim but demanding reimbursement from the Originating Direct Guarantee Lender, reconveying the property or reassigning the deed of trust or mortgage in accordance with § 1005.849 and sanctions in accordance with §§ 1005.905 and 1005.907. Further, it would establish actions HUD may take if it finds the Servicer failed to service the Section 184 Guaranteed Loan in accordance with subpart G, committed

fraud, known or should have known of fraud or material misrepresentation in violation of this part. These include holding the claim to remedy the deficiency, rejecting expenses under § 1005.807(b), reconveying the property or reassigning the deed of trust or mortgage in accordance with § 1005.849, administrative offset, sanctions in accordance with §§ 1005.905 and 1005.907, and other remedies as determined by HUD. This section also limits the expenses that can be changed when a reconveying the property or reassigning the deed of trust or mortgage. This proposed section is consistent with current program policy, practice, and/or procedure.

*Claim submission categories § 1005.807.* This section lists the three Claim submission categories. The three Claim categories are: payment of the unpaid principal balance; reimbursement of eligible reasonable expenses up to assignment, Conveyance or transfer of the property; and supplemental claims for eligible expenses incurred that were omitted from the Servicer's prior submission or for a calculation error made by the Servicer or HUD. This proposed section is consistent with current program policy, practice, and/or procedure.

*Claim types § 1005.809.* This section would establish five Claim types, which are submitted based on property disposition, timeframes for Claim submission, and the documentation required for each Claim type. The five Claim types are: Conveyance; assignment of the loan; post-foreclosure claims without Conveyance of title; pre-foreclosure sale; and supplemental claims.

Paragraph (a) would provide for a Claim when the Servicer conveys the property to HUD after foreclosure or execution of a deed-in-lieu or lease-in-lieu. The Servicer has 45 days from date the deed to HUD is executed to submit the Conveyance Claim. For fee simple properties, the section would require final title policy. For Trust Land Properties, a Title Status Report from the Bureau of Indian Affairs evidencing ownership vested to HUD is required. Where Servicer is unable to obtain a Title Status Report from the Bureau of Indian Affairs, the Servicer may submit a Claim on the 45th day in accordance with Claim processing instructions that HUD will provide. Lenders must submit claims related to reimbursable eligible expenses no later than the 60th day of the date the deed is executed to HUD, unless extension of time is given by HUD.

Paragraph (b) describes the assignment of the Section 184

Guaranteed Loan and would require the Servicer to submit a Claim no later than 45 days from the date of the assignment of the Section 184 Guaranteed Loan to HUD is executed. The section would require the Servicer provide a final title policy or, where applicable, a certified Title Status Report evidencing the assignment of the mortgage to HUD. Where the Servicer is unable to comply with the documentation from title policy or Title Status Report, the Servicer may submit a Claim on the 45th day in accordance with processing instructions from HUD. For assignment of a Section 184 Guaranteed Loan, the Servicer must submit a Claim for reimbursable expenses, if any, within 45 days of the date the loan assignment is executed. This section would require the Servicer to certify that the Section 185 Guaranteed Loan is in first lien position and prior to all mechanics' and materialmen's liens filed for record, the amount due and owing under the loan, there are no offsets or counterclaims, the Servicer has good right to assign, and has met the property inspection and property preservation requirements of this part.

Paragraph (c) explains the post-foreclosure claims without Conveyance of title requirements and addresses when a third-party purchases fee simple Properties at foreclosure. The Servicer must submit a Claim to HUD no later than 180 days from the date the deed to the third-party is executed. Paragraph (d) is the pre-foreclosure sale Claim. It authorizes claims when a property is sold prior to foreclosure in accordance with HUD's pre-foreclosure sale requirements at § 1005.751 or § 1005.753. The Servicer must submit a Claim no later than 45 days from the date the deed or assignment of the lease to the third-party is executed.

Paragraph (e) discusses supplemental claims, and limits Servicers to one supplemental Claim for each Claim related to the payment of unpaid principal balance and reimbursement of eligible reasonable expenses. Paragraph (e) limits supplemental claims to reasonable eligible expenses incurred on the date of Conveyance of the property or assignment of the Section 184 Guaranteed Loan, when invoices are received after payment of the Claim or when there is a calculation error made by the Servicer or HUD. Supplemental claims must be submitted within six months of when the Servicer files a Claim for reimbursement of eligible reasonable expenses. Any supplemental claims received after the six-month period will not be reviewed or paid by HUD. This section makes clear any supplemental Claim paid by HUD shall



be considered final satisfaction of the loan guarantee.

Proposed paragraphs (a) through (d) are consistent with HUD's existing policies, practices, and procedures with the exception of paragraph (b)(4), which proposes to implement a new Servicer certification requirement. Proposed paragraph (e) is consistent, in part, with HUD's existing policies, practices, and procedures, but proposes to add a new requirement that supplemental claims are time limited to a 6-month window. These policies are proposed to ensure HUD maintains its fiduciary duty to protect the Fund and reduce its risk against Claim payments that do not meet Section 184 requirements.

*Claims supporting documentation § 1005.811.* This section proposes to require Servicers to submit supporting documentation required for each Claim to the satisfaction of HUD. Such documentation will be provided for in Section 184 Program Guidance. This proposed section is consistent with current program policy, practice, and/or procedure.

*Upfront and Annual Loan Guarantee Fee reconciliation § 1005.813.* This section proposes to require Lenders to submit, as part of a Claim submission under § 1005.807(b), a reconciliation evidencing the payment of the Annual Loan Guarantee Fee to HUD. This section proposes a new process to ensure Lenders can verify they have paid all Loan Guarantee Fees prior to HUD payment of any claims.

*Conditions for withdrawal of claim § 1005.815.* This section provides the conditions under which a Servicer can withdraw a Claim submission after there has been a Conveyance. HUD will permit withdrawal of the application when a Servicer accepts a reconveyance of the property under a deed which warrants against the acts of HUD and all claiming by, through or under HUD, promptly files a reconveyance for record; accepts without continuation the title evidence it furnished to HUD; and reimburses HUD for property expenditures HUD incurred after Conveyance to HUD. This proposed section is consistent with HUD's current practice, policy, and/or procedure.

*Conveyance of Good and Marketable Title § 1005.817.* This section proposes to mandate that a property have Good and Marketable Title when conveyed to HUD from a Lender. This proposed section is consistent with current program, policy and/or practice. Within this section, HUD is proposing a new timeframe in which a Servicer must correct any title defects. HUD is proposing that the Servicer make this correction in 60 days, or the Servicer

must reimburse HUD for the cost of holding the property until any defect is corrected or until HUD reconveys the property to the Servicer. This proposed time frame is intended to help ensure timely action by the Servicer to correct title defects.

*Types of satisfactory title evidence § 1005.819.* This section would provide six types of title evidence that may be submitted with a Claim submission. The permissible types of title evidence include: fee or owner's title policy; Lender's policy of title insurance; abstract and legal opinion; torrens or similar certificate; title standard of U.S., Tribal, or State government; and Title Status Report issued by the Bureau of Indian Affairs. This proposed section is consistent with current program policy, practice, and/or procedure.

*Coverage of title evidence § 1005.821.* This section would establish that evidence of title or Title Status Report shall be executed subsequent to the filing for record of the deed or assignment to HUD. The title evidence must show that, according to public records, there are not, as of the date of the recordation of the deed or assignment to HUD, any outstanding prior liens, including any past due and unpaid ground rents, general taxes, or special assessments, if applicable. This proposed section is consistent with current program policy, practice, and/or procedure.

*Waived title objections for properties on fee simple land § 1005.823.* This section would provide that reasonable title objections for fee simple properties shall be waived by HUD. Reasonable title objections will be prescribed in Section 184 Program Guidance. This proposed section is consistent with current program policy, practice, and/or procedure.

*Waived title objections for properties on Trust Land § 1005.825.* This section proposes that HUD shall not object to title restrictions placed on Trust Land by a Tribe or the Bureau of Indian Affairs, so long as those restrictions do not adversely impact the property or marketability. This proposed section is consistent with current program policy, practice, and/or procedure.

*Damage or neglect § 1005.827.* This section would provide a Lender's responsibilities when a property has suffered damage or neglect and HUD's remedy when a damaged property is conveyed to HUD without prior notice or approval. Section 1005.827(a) would provide that if a property has been damaged by fire, flood, earthquake, tornado, or due to Lender's failure to take action to protect and preserve the property, the Servicer must submit a

Claim to the hazard insurance policy, and the damage must be repaired before Conveyance of the property or assignment of the loan to HUD.

Paragraph (b) would provide that if the property damage is not covered by a hazard insurance policy, the Servicer must notify HUD of the damage. Servicer may not convey until directed to do so by HUD. If HUD requires the Servicer to repair the damage before Conveyance, HUD may reimburse Servicer for reasonable payments not in excess of HUD's estimate of the cost of repair, less any insurance recovery or require the Lender to repair the damage before Conveyance at the Servicer's own expense.

Paragraph (c) would provide that in the event the Servicer conveys property to HUD without repair to the damage or without notice to HUD of the damage, HUD may, after notice, reconvey the property to the Servicer and seek reimbursement for expenses HUD incurred in connection with the Conveyance. This proposed section is consistent with current program policy, practice, and/or procedure.

*Certificate of property condition § 1005.829.* This section would require a Servicer to submit a certification of property condition as part of the Claim submission. This section would provide that, as part of the Claim submission, the Servicer certifies the property was undamaged by fire, flood, earthquake, or tornado, was undamaged due to failure of the Servicer to act, and undamaged while the property was in possession of the Borrower. Alternatively, if the property was damaged, the Servicer includes a copy of the HUD approval to convey the property in damaged condition.

Paragraph (b) would provide that, in the absence of evidence to the contrary, the Servicer'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. This proposed section is consistent with current program policy, practice, and/or procedure, and to ensure Servicers confirm the property is conveyed to HUD undamaged.

*Cancellation of hazard insurance § 1005.831.* This section proposes to provide that Servicers shall cancel any hazard insurance policy as of the date of the filing for record of the deed to HUD, subject to certain conditions. The conditions include: (1) the amount of the return premium, due to the Servicer 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; (2) If the Servicer'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; (3) If the Servicer's calculation of the return premium is more than the actual return, the Servicer 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). This proposed section is consistent with current program policy, practice, and/or procedure.

*Method of payment § 1005.833.* This section would establish that HUD will make payment of guarantee benefits by electronic transfer of funds for all approved claim submissions. This proposed section is consistent with current program policy, practice, and/or procedure.

*Claim payment not conclusive evidence of claim meeting all HUD requirements § 1005.835.* This section proposes to provide that any payment of claim by HUD is not conclusive evidence of a Servicer's compliance with Section 184 Program requirements. HUD reserves the right to conduct post-claim payment review of any claim file within 5 years from the date of last claim payment. This section states when non-compliance with any requirements of this part is identified, HUD may take appropriate post-claim action against the Servicer. This section is a codification of existing policy, practice, and procedure with the exception of the five-year period. The proposed five-year period is necessary to ensure uniformity in the time frame for HUD to conduct post-claim reviews of the loan file.

*Payment of claim: unpaid principal balance § 1005.837.* This section would state that HUD will pay claims for unpaid principal balance submitted under § 1005.807(a), minus any receipts for the sale or transfer of the property. This proposed section is consistent with current program policy, practice, and/or procedure.

*Payment of claim: interest on unpaid principal balance § 1005.839.* This section would establish the payment timeframe for interest payments on the unpaid principal balance. HUD shall pay interest on the unpaid principal balance from the date of default to the earlier of the following: the execution of the deed to the Lender, HUD, or third-party; execution of Conveyance of deed to either Lender, HUD, or third-party; execution of the assignment of the loan to HUD; or expiration of the reasonable

diligence timeframes as prescribed by Section 184 Program Guidance. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Payment of claim: reimbursement of eligible and reasonable costs § 1005.841.* This section proposes to provide that reimbursement of eligible and reasonable costs under § 1005.807(b) shall be paid as part of the guarantee benefits. HUD will prescribe reasonable costs that are eligible for reimbursement in Section 184 Program Guidance. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Reductions to the Claim submission amount § 1005.843.* This section proposes the circumstances under which Lenders should reduce their Claim amount. The Servicer shall reduce its Claim when the following amounts are received by the Lender: amounts received by the Servicer instituting foreclosure or acquisition of the property by direct Conveyance or otherwise after default; amounts received by the Servicer from any source relating to the property on the account of rent or other income after deducting reasonable expenses incurred in handling the property; and all cash retained by the Lender, including amounts held or deposited for the account of the Borrower or to which is entitled under the loan transaction that have not been applied in reduction of the principal loan indebtedness. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Rights and liabilities under the Indian Housing Loan Guarantee Fund § 1005.845.* This section would state that Borrowers and Lenders shall not have any vested right in the Fund nor be subject to any liability arising under such Fund. In addition, that the Indian Housing Loan Guarantee Fund will be credited and debited in accordance with 12 U.S.C. 1715z-13a(i)(2). This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Final payment § 1005.847.* This section would establish the conditions for final payment from HUD to the Lender. Paragraph (a) would provide that payment of the Claim shall be deemed as final payment to the Servicer and that the Servicer would have no further claims against the Borrower or HUD. The provision further states final payment to the Servicer does not

preclude HUD from seeking reimbursement of costs and return of amounts from the Servicer when there is a reconveyance to the Lender.

Paragraph (b) would provide that when there is a reconveyance to the Servicer, and the Servicer reimburses HUD for all expenses and returns all Claim amounts paid, the final payment to the Servicer restriction under § 1005.849(a) will not apply. The section makes clear that in the event the Servicer resubmits a Claim after reconveyance to the Servicer, then the Servicer shall not be reimbursed for any expenses incurred after the date of the HUD Conveyance. This proposed section is consistent with current program policy, practice, and/or procedure.

*Reconveyance and reassignment § 1005.849.* This section proposes actions HUD may take when there is a reconveyance of a property or a reassignment of the deed of trust or mortgage back to the Holder. Paragraph (a) would provide that HUD may reconvey the property to the Holder due to an Originating Direct Guarantee Lender or Servicer's noncompliance with the requirements of this part or if there is a withdrawal of a Claim for benefits in accordance with § 1005.815. Paragraph (b) proposes to provide that HUD may take action against the Holder, including, but not limited to, seeking reimbursement of all Claim costs paid. Paragraph (c) proposes to provide that where HUD has conveyed the property or reassigned the deed of trust or mortgage back to the Holder, and a Claim is subsequently resubmitted, the Holder will not be reimbursed for any expenses incurred after the date of the HUD Conveyance or assignment. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

*Reimbursement of expenses to HUD § 1005.851.* This section would establish a Holder or the Originating Direct Guarantee Lender reimbursement responsibilities when HUD determines it will reconvey of a property previously conveyed to HUD under the claims process. This section proposes that when there is a reconveyance or reassignment by HUD, to the Holder or the Originating Direct Guarantee Lender, or when HUD determines noncompliance, the Holder or the Originating Direct Guarantee Lender shall reimburse HUD for all Claim costs paid, HUD's cost of holding the property, and reimbursement plus interest on the loan guarantee benefits from the date the loan guarantee benefits were paid to the date HUD

receives the refund from the Holder. The interest rate shall be in conformity with the Treasury Fiscal Requirements Manual. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

#### I. Lender Program Performance, Reporting, Sanctions, and Appeals (Subpart I)

**Direct Guarantee Lender, Holder, or Servicer performance reviews § 1005.901.** This section would establish HUD's authority to conduct periodic performance reviews of Direct Guarantee Lenders, Non-Direct Guarantee Lenders, Holders, and Servicers. These reviews will include, but are not limited to, an evaluation of compliance with this regulation. Monitoring reviews ensure that Direct Guarantee Lenders, Non-Direct Guarantee Lenders, Holders, and Servicers are complying with the requirements of the program and reduces risk to the Fund. This proposed section is consistent with current program policy, practice, and procedure and aligns with industry standards.

**Direct Guarantee Lender, Holder, or Servicer reporting and certifications § 1005.903.** This section proposes to mandate Direct Guarantee Lenders, Non-Direct Guarantee Lenders, or Servicers provide timely and accurate reports and certifications to HUD and provides HUD the authority to subject the Lender to sanctions for failure to submit such documents. This proposed section is consistent with current program policy, practice, and/or procedure.

**Direct Guarantee Lender, Holder, or Servicer notice of sanctions § 1005.905.** This section would state that HUD will provide notice to the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer of the specific noncompliance and, where applicable, allow for a reasonable time to return to compliance, prior to any sanctions or civil money penalties. If the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer fails to return to compliance, HUD shall provide written notice of the sanction or civil money penalties to be imposed and the basis for the action. This proposed section is consistent with current program policy, practice, and/or procedure and aligns with industry standards.

**Direct Guarantee Lender, Holder, or Servicer sanctions and civil money penalties § 1005.907.** This section proposes that sanctions and civil money penalties may be imposed by HUD when a Direct Guarantee Lender, Non-

Direct Guarantee Lender, Holder, or Servicer fails to comply with this part. Such compliance may include complying with Section 184 Program Guidance when it specifically provides reasonable times, processes, and procedures for complying with part 1005 requirements. This includes: termination from the program; bar the Direct Guarantee Lender, or Holder from acquiring additional loans guaranteed under this section; require that the Direct Guarantee Lender assume not less than 10 percent of any loss on further loans made by the Direct Guarantee Lender; require that the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer comply with a corrective action plan or amend Direct Guarantee Lender, Non-Direct Guarantee Lender, or Servicer's quality control plan; or impose a civil money penalty on the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer in the manner and amount provided pursuant to Section 184 of the Native American Assistance and Self-Determination Act of 1996 (12 U.S.C. 1715z-13a) and 24 CFR part 30. This proposed section is statutorily authorized and is intended to protect the Fund and Section 184 Program integrity by allowing HUD to sanction poorly performing Direct Guarantee Lenders, Non-Direct Guarantee Lenders, Holders, or Servicers.

**Direct Guarantee Lender, Holder, or Servicer appeals process § 1005.909.** This section would establish an appeal process for Non-Direct Guarantee Lenders, Direct Guarantee Lenders, and Servicers to appeal a denial of participation in the Section 184 Program and to appeal sanctions or civil money penalties imposed pursuant to § 1005.907. This proposed section is intended to provide Lenders the opportunity to appeal a decision to HUD for HUD's reconsideration.

#### HUD's Part 58 Regulations

Currently Tribes may elect to assume environmental responsibility for Section 184 Guaranteed Loans pursuant to 24 CFR part 58, requiring Tribes to ensure applicable environmental requirements are met. HUD proposes to not have Tribes assume environmental responsibility for the Section 184 Program for fee simple Properties that are located outside of a reservation in order to streamline the environmental review process and relieve the burden upon Tribes. It is impractical to have a Tribe assume environmental responsibilities for Section 184 Guaranteed Loans on fee simple Properties outside of a reservation, which may be located far from the

reservation of the Borrower's Tribe. Forgoing Tribal involvement and responsibility for Federal environmental review on such properties will increase the efficiency in providing HUD assistance, as well as relieve the Tribes of a burden. Accordingly, the proposed rule would revise § 58.1(b), which lists the programs that are subject to part 58, to indicate that Indian Housing Loan Guarantees under Section 184 are subject to part 58 for Properties on trust land and on fee land within a reservation. Thus, Properties not on trust land not on fee land within a reservation shall be subject to § 50.19(b)(17).

For loan guarantees that are subject to part 58, part 58 indicates which activities are categorically excluded from environmental assessment under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) (NEPA) and which categorically excluded activities remain subject to related Federal environmental laws and authorities listed in § 58.5. HUD's existing regulation at § 58.35(b) lists a number of programs that are categorically excluded from assessment under NEPA and not subject to such related authorities, and this proposed rule would add to the list HUD's guarantee of loans for one- to four-family dwellings under the Direct Guarantee procedure for the Section 184 Program where there is no review or approval of the application for the loan guarantee by HUD or the responsible entity, or approval of the loan guarantee by HUD, before the execution of the contract for construction or rehabilitation and the loan closing.<sup>1</sup> The proposed rule would update HUD's categorical exclusions and increase efficiency in providing HUD assistance, as well as reducing reduce costs associated with HUD's environmental review process to eliminate unnecessary regulatory burdens that impede affordable housing development.

#### Specific Question for Comment—Environmental Regulations

HUD invites comments on the proposal to shift environmental responsibility from Tribes to HUD for

<sup>1</sup> A comparable categorical exclusion for loan guarantees under the Section 184 Direct Guarantee procedure is already contained in 24 CFR part 50, which applies when a Tribe declines to assume environmental review responsibilities and HUD performs any required environmental review. See 24 CFR 50.19(b)(17). The proposed exclusion under part 58 would adapt the existing exclusion to apply when a Tribe assumes environmental responsibilities, where there is no HUD review or approval of the application for the loan guarantee by HUD or the responsible entity, or approval of the loan guarantee by HUD before the completion of construction or rehabilitation and the loan closing.

fee simple Properties that are located outside of a reservation.

### III. Tribal Consultation

HUD's policy is to consult with Indian Tribes early in the rulemaking process on matters that have Tribal implications. Accordingly, HUD began consulting with Indian Tribes in February 2018. HUD held eleven in-person Tribal consultation sessions before the regulations in this proposed rule were drafted. As draft subparts of the regulation were completed, HUD held three additional in-person consultations to solicit Tribal feedback on each subpart. On April 4, 2019, HUD sent out a copy of the full draft proposed rule to all Tribal leaders and directors of TDHEs for review and comment. The Tribal comment period was originally from April 4, 2019, to June 4, 2019, but it was extended to June 30, 2019, after Tribal leaders requested more time to review the draft proposed rule. During this time, HUD also held two in-person Tribal consultations and two national teleconferences to review the draft proposed rule.

Tribal feedback has been an integral part of the process to develop this proposed rule. Throughout the consultation process, HUD used Tribal feedback to refine and improve this proposed rule. Tribal comments included areas such as Lender relationships and qualifications, loan limits, rate and fees, loan processing, Borrower qualifications, eligible units, Section 184 Approved Program Area, Tribal courts, and Tribal involvement. HUD considered all written comments submitted to HUD, as well as recorded comments received from in-person Tribal consultation sessions, and revised the proposed rule as appropriate.

### IV. Findings and Certifications

#### *Regulatory Review—Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both the costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order 12866 (Regulatory Planning and Review), a

determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This proposed rule, as discussed above, would introduce changes to make the program sustainable, protect Borrowers, address recommendations by the OIG in areas such as Lender underwriting and the claims process, and provide clarity for new and existing Lenders who participate in the Section 184 Program. These changes would allow for Lenders to serve the growing demand for the program and introduce stronger governing regulations to reduce the increased risk to the Fund.

Many current and potential Section 184 Lenders and Servicers participate in the FHA single family mortgage program. Where appropriate, aligning the new Section 184 regulations with the FHA single family mortgage program regulations should also minimize costs to new and existing Lenders. Additionally, clarifying servicing requirements will protect the Borrowers by requiring Servicers to consider Loss Mitigation options for Borrowers. Moreover, the added requirements and protections will help to reduce losses to the Fund and thereby allow the Section 184 Program to provide additional loans and decrease the cost of the loans to eligible Borrowers.

This rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was reviewed by OMB. However, this rule was not deemed to be economically significant. Because program participants have long followed the substantive standards that this rule would establish, HUD anticipates that this rule will have little to no economic effect.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

#### *Paperwork Reduction Act*

Currently, the Section 184 Program has an existing information collection requirement previously approved by the OMB under the Paperwork Reduction

Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0200. The proposed rule would modify some of the documents in this information collection and would create new documents to bring additional efficiency and accountability to the program. In accordance with the Paperwork Reduction Act, 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 OMB control number.

The proposed rule would amend the existing Lender and Direct Guarantee Lender application process. Under § 1005.207, HUD would require all Lenders to select a level of participation in the Section 184 Program on a form prescribed by HUD. This form requests detailed information about the Lender, in addition to the participation level. This proposed revision of the Lender application process would allow HUD to more closely track how many, and the type of, Lenders participating in the program. The proposed rule would request information that would give HUD further assurances that the Lenders participating in the Section 184 Program have the experience, staffing, and financial resources to follow program guidelines.

Currently the Section 184 Program uses FHA forms as part of securing a loan on a manufactured home, assumptions, and pre-foreclosure sale process. This has led to confusion by Lenders over which information to submit, since the Section 184 Program may require the same information collected on the FHA form. As part of the proposed rule, under §§ 1005.429(a)(3)(iv), 1005.711(c), and 1005.751(h)(1), (s)(2), and (t)(1), HUD would develop and gain approval, when required, of forms similar to the FHA documents, but specific to the Section 184 Program, which would reduce the paperwork burden on the Lenders.

The proposed rule would establish new requirements in the areas of annual Lender and Tribal Recertification §§ 1005.223(a) and 1005.307 to provide additional accountability when changes occur that might impact a Lender or Tribe's eligibility for the program. The proposed rule would establish new requirements for Tribal application under § 1005.303 to clarify the information a Tribe needs to submit when seeking HUD approval of eligibility to guarantee loans on a Tribal Land.

Based on comments received during Tribal consultation, the proposed rule at § 1005.501(j), would establish a new loan closing document, signed by the

Borrower, in which the Borrower may elect to authorize the Lender to notify the Borrower's Tribe in the event of default. Tribes requested this notification so they may assist the Borrower with default if such assistance was available.

Under § 1005.769(b), HUD has new requirement for Lenders conveying a property to HUD at or after foreclosure, to submit a notification of Conveyance

advising HUD of the filing of such Conveyance.

The total annual estimated paperwork burden for the proposed rule is 520.41 hours. The overall new paperwork burden for the proposed rule, as compared to the burden under the previous rule, is 303.7 hours. The bulk of this time is related to the new loan closing document required in § 1005.501(j), which would allow the

Borrower to elect Tribal notification in the event of default. This form would be required for each loan guaranteed by the program. The estimated burden for this form is 5 minutes, and the program's total loan volume is 3,750 loans for a total of 187.5 hours of estimated annual burden.

The burden of the information collections in this rule is estimated as follows:

#### REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
1005.207 .....	32	1	0.08	2.56
1005.223(a) .....	150	1	0.25	37.5
1005.303 .....	6	1	0.33	1.98
1005.307 .....	226	1	0.17	38.42
1005.429(a)(3)(iv) .....	350	1	0.03	10.5
1005.501(b) .....	3750	1	0.05	187.5
1005.501(j) .....	3750	1	0.05	187.5
1005.711(c) .....	5	1	0.05	0.25
1005.751(h)(1) .....	25	1	0.15	3.75
1005.751(s)(2) .....	25	1	0.25	6.25
1005.751(t)(1) .....	25	1	0.25	6.25
1005.769(b) .....	115	1	0.33	37.95
Total Paperwork Burden for the New Rule .....				520.41

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5593-P-01) and must be sent to:

HUD Desk Officer: Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6947, and Reports Liaison Officer, Office of Public

and Indian Housing, Department of Housing and Urban Development, Room, 451 7th Street SW, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <https://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <https://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As discussed

above, this rule would provide clarity for new and existing Lenders who participate in the Section 184 Program. Participation in the Section 184 Program is voluntary. HUD does not believe the additional requirements will have a significant impact on small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble.

#### Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

*Environmental Impact*

A Finding of No Significant Impact (FONSI) 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 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection at <https://www.hud.gov/codetalk> and between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) proposes to establish requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or Tribal government, or on the private sector, within the meaning of the UMRA.

**List of Subjects***24 CFR Part 58*

Community development block grants, Environmental impact statements, Grant programs-housing and community development, Reporting and recordkeeping requirements.

*24 CFR Part 1005*

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

For the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 58 and 1005 as follows:

**PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES**

- 1. The authority citation for part 58 continues to read as follows:

**Authority:** 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321–4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub.

L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977, Comp., p. 123.

- 2. In § 58.1, revise paragraph (b)(11) to read as follows:

**§ 58.1 Purpose and applicability.**

\* \* \* \* \*

(b) \* \* \*

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992 on trust land and on fee land within a reservation, in accordance with section 184(k) (12 U.S.C. 1715z–13a(k)); and

\* \* \* \* \*

- 3. In § 58.35, add paragraph (b)(8) to read as follows:

**§ 58.35 Categorical exclusions.**

\* \* \* \* \*

(b) \* \* \*

(8) HUD's guarantee of loans for one-to-four family dwellings on trust land and on fee land within a reservation under the Direct Guarantee procedure for the Section 184 Indian Housing loan guarantee program without any review or approval of the application for the loan guarantee by HUD or the responsible entity or approval of the loan guarantee by HUD before the execution of the contract for construction or rehabilitation and the loan closing.

\* \* \* \* \*

- 4. Revise part 1005 to read as follows:

**PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING**

**Subpart A—General Program Requirements**

Sec.

- 1005.101 Purpose.  
1005.103 Definitions.

**Subpart B—Lender Eligibility & Requirements**

- 1005.201 Lender approval and participation.  
1005.203 Lenders deemed approved by statute.  
1005.205 Lenders required to obtain Secretarial approval.  
1005.207 Lender participation options.  
1005.209 Direct Guarantee Lender application process.  
1005.211 Direct Guarantee Lender approval.  
1005.213 Non-Direct Guarantee Lender application, approval, and Direct Guarantee Lender sponsorship.  
1005.215 Annual reporting requirements.  
1005.217 Quality control plan.  
1005.219 Other requirements.  
1005.221 Business change reporting.  
1005.223 Annual recertification.  
1005.225 Program ineligibility.

**Subpart C—Lending on Trust Land**

- 1005.301 Tribal legal and administrative framework.  
1005.303 Tribal application.

- 1005.305 Approval of Tribal application.  
1005.307 Tribal recertification.  
1005.309 Duty to report changes.  
1005.311 HUD notification of any lease default.  
1005.313 Tribal reporting requirements.

**Subpart D—Underwriting**

**Eligible Borrowers**

- 1005.401 Eligible Borrowers.  
1005.403 Principal Residence.  
1005.405 Borrower residency status.  
1005.407 Relationship of income to loan payments.  
1005.409 Credit standing.  
1005.411 Disclosure and verification of Social Security and Employer Identification Numbers or Tax Identification Number.

**Eligible Properties**

- 1005.413 Acceptable title.  
1005.415 Sale of property.  
1005.417 Location of property.  
1005.419 Requirements for standard housing.  
1005.421 Certification of appraisal amount.  
1005.423 Legal restrictions on Conveyance.  
1005.425 Rental properties.  
1005.427 Refinancing.  
1005.429 Eligibility of Loans covering manufactured homes.  
1005.431 Acceptance of individual residential water purification.  
1005.433 Builder warranty.

**Eligible Loans**

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**Authority:** 12 U.S.C. 1715z–13a; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

**Subpart A—General Program Requirements****§ 1005.101 Purpose.**

This part implements the Section 184 Indian Home Loan Guarantee Program (“Section 184 Program”) authorized under Section 184 of the Housing and Community Development Act of 1992, as amended, codified at 12 U.S.C. 1715z–13a. Section 184 authorizes the U.S. Department of Housing and Urban Development (HUD) to establish a loan guarantee program for American Indian and Alaskan Native families, Tribes and Tribally Designated Housing Entities (TDHE). The loans guaranteed under the Section 184 Program are used to construct, acquire, refinance, or rehabilitate one- to four-family standard housing located on Trust Land, land located in an Indian or Alaska Native area, and Section 184 Approved Program Area. These regulations apply to Lenders, Servicers and Tribes seeking to or currently participating in the Section 184 Program.

**§ 1005.103 Definitions.**

The following definitions apply throughout this part:

*Acquisition Cost* means the sum of the sales price or construction cost for a property and the cost of allowable repairs or improvements for the same property, less any unallowable sales concession(s). For the purposes of this definition, the term “sales concession” means an inducement to purchase a property paid by the seller to consummate a sales transaction.

*Amortization* means the calculated schedule of repayment of a Section 184 Guaranteed Loan in full, through structured, regular payments of principal and interest within a certain time frame.

*Amortization Schedule* means the document generated at the time of loan approval outlining the Borrower’s schedule of payments of principal and interest for the life of the loan and the unpaid principal balance with and without financed Upfront Loan Guarantee Fee, where applicable.

*Annual Loan Guarantee Fee* means a fee calculated on an annual basis and paid in monthly installments by the Borrower, which is collected by the Servicer and remitted to HUD for the purposes of financing the Indian Housing Loan Guarantee Fund.

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



*Borrower* means each and every individual on the mortgage application. For the purposes of servicing the loan, Borrower refers to each and every original Borrower who signed the note and their heirs, executors, administrators, assigns, and approved substitute Borrowers. Borrower includes Tribes and TDHEs.

*Claim* means the Servicer's application to HUD for payment of benefits under the Loan Guarantee Certificate for a Section 184 Guaranteed Loan.

*Conflict of Interest* means any party to the transaction who has a direct or indirect personal business or financial relationship sufficient to appear that it may cause partiality or influence the transaction, or both.

*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 Direct Guarantee Lender was due.

*Day* means calendar day, except where the term "business day" is used.

*Default* means when the Borrower has failed to make a loan payment or perform an obligation under the terms of the Section 184 Guaranteed Loan, Loss Mitigation plan, lease, or any other agreement with the Direct Guarantee Lender.

*Direct Guarantee Lender* means a Lender approved by HUD under § 1005.211 to originate, underwrite, close, service, purchase, hold, or sell Section 184 Guaranteed Loans.

*Eligible Nonprofit Organization* means a nonprofit organization established under Tribal law or organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt from taxation under section 501(a) of the Code, which has:

(1) Two years' experience as a provider of low- or moderate-income housing;

(2) A voluntary board; and

(3) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

*Financial Statements* means audited financial statements or other financial records as required by HUD.

*Firm Commitment* means a commitment by HUD to reserve funds, for a specified period of time, to guarantee a Loan under the Section 184 program, when a Loan for a specific Borrower and property meets standards as set forth in subpart D of this part.

*First Legal Action* means the first public action required by Tribal or State law to foreclose, such as filing a complaint or petition, recording a notice

of default, or publication of a notice of sale.

*Good and Marketable Title* means title that contains exceptions or restrictions, if any, which are permissible under subpart D of this part; and any objections to title that have been waived by HUD or otherwise cleared; and any discrepancies have been resolved to ensure the Section 184 Guaranteed Loan is in first lien position. In the case of Section 184 Guaranteed Loans on Trust Land, Good and Marketable Title includes the ownership rights of the improvements as reported in the Title Status Report issued by the BIA.

*Holder* means an entity that holds title to a Section 184 Guaranteed Loan and has the right to enforce the mortgage agreement.

*Identity of Interest* means a sales transaction between family members, business partners, or other business affiliates.

*Indian* means a person who is recognized as being an Indian or Alaska Native Federally by a recognized Indian Tribe, a regional or village corporation as defined in the Alaska Native Claims Settlement Act, or a State recognized Tribe eligible to receive assistance under Title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

*Indian Family* means one or more persons maintaining a household where at least one Borrower is an Indian.

*Indian Housing Loan Guarantee Fund* or *Fund* means a fund established at the U.S. Department of Treasury for the purpose of providing loan guarantees under the Section 184 Program.

*Lease or leasehold interest* means a written contract between a Borrower and a Tribe, entity, or individual, whereby the Borrower, as lessee, is granted a right of possession of Trust Land for a specific purpose and duration, according to applicable Tribal, Federal, or State law.

*Lender* means a financial institution engaging in mortgage lending that is eligible to participate in the Section 184 Program under § 1005.203 or § 1005.205, but has not yet had a program participation level approved under § 1005.207.

*Loan* means a loan application or mortgage loan that has not received a Loan Guarantee Certificate.

*Loan Guarantee Certificate* means evidence of endorsement by HUD of a Loan for guarantee issued under § 1005.525.

*Loss Mitigation* means an alternative to foreclosure offered by the Holder of a Section 184 Guaranteed Loan that is made available through the Servicer to the Borrower.

*Non-Direct Guarantee Lender* means a Lender approved by HUD under § 1005.207 who has selected a level of program participation limited to originating Section 184 Guaranteed Loans.

*Month* or *monthly* means thirty days in a month, regardless of the actual number of days.

*Origination* or *originate* means the process by which the Lender accepts a new loan application along with all required supporting documentation. Origination does not include underwriting the loan.

*Owner of Record* means, for fee simple properties, the owner of property as shown on the records of the recorder in the county where the property is located. For properties held in trust by the United States, the current lessee or owner of property, as shown on the Title Status Report provided by the BIA.

*Partial Payment* means a Borrower payment of any amount less than the full amount due under the terms of the Section 184 Guaranteed Loan at the time the payment is tendered.

*Property* means a one to four-family dwelling that meets the requirements for standard housing under § 1005.419 and located on Trust Land, land located in an Indian or Alaska Native area, or Section 184 Approved Program Area.

*Section 184 Approved Program Area* means the Indian Housing Block Grant (IHBG) Formula Area as defined in 24 CFR 1000.302 or any other area approved by HUD, in which HUD may guarantee Loans.

*Section 184 Guaranteed Loan* is a Loan that has received a Loan Guarantee Certificate.

*Section 184 Program Guidance* means administrative guidance documents that may be issued by HUD, including but not limited to **Federal Register** Notices, Dear Lender Letters, handbooks, guidebooks, manuals, and user guides.

*Security* means any collateral authorized under existing Tribal, Federal, or State law.

*Servicer* means a Direct Guarantee Lender that chooses to service Section 184 Guaranteed Loans or a Non-Direct Guarantee Lender or a financial institution approved by HUD under § 1005.705 to service Section 184 Guaranteed Loans.

*Sponsor* means an approved Direct Guarantee Lender that enters into a relationship with a Non-Direct Guarantee Lender or another Direct Guarantee Lender (Sponsored Entity), whereby the Sponsor provides underwriting, closing, purchasing, and holding of Section 184 Guaranteed Loans and may provide servicing.

*Sponsored Entity* means a Non-Direct Guarantee or Direct Guarantee Lender operating under an agreement with a Sponsor to originate Section 184 Guaranteed Loans in accordance with § 1005.213.

*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 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.

*Title Status Report* is defined in 25 CFR 150.2, as may be amended.

*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 U.S.C. 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.

*Tribally Designated Housing Entity (TDHE)* means any entity as defined in the Indian Housing Block Grant Program under the Native American Housing Assistance and Self Determination Act at 25 U.S.C. 4103(22).

*Trust Land* means land title which is held by the United States for the benefit of an Indian or Tribe or title which is held by a Tribe subject to a restriction against alienation imposed by the United States or Tribe. This definition shall include but is not limited to allotted, restricted fee, or assigned trust lands.

*Upfront Loan Guarantee Fee* means a fee, paid by the Borrower at closing, collected by the Direct Guarantee Lender and remitted to HUD for the purposes of financing the Indian Housing Loan Guarantee Fund.

## Subpart B—Lender Eligibility & Requirements

### § 1005.201 Lender approval and participation.

(a) *Approval types.* The Section 184 Program has two types of Lender approval:

(1) Lenders deemed approved by statute, as described in § 1005.203; or

(2) Lenders required to obtain secretarial approval under § 1005.205.

(b) *Lender participation.* In accordance with § 1005.207, approved Lenders must select a level of program

participation and submit a completed application package, as prescribed by Section 184 Program Guidance, to participate in the Section 184 program.

### § 1005.203 Lenders deemed approved by statute.

(a) The following Lenders are deemed approved by statute:

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

(2) Any Lender whose housing loans under the U.S. Department of Veterans Affairs, 38 U.S.C. chapter 37, are automatically guaranteed pursuant to 38 U.S.C. 3702(d);

(3) Any Lender approved by the U.S. Department of Agriculture to make Guaranteed Loans for single family housing under the Housing Act of 1949; and

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

(b) [Reserved]

### § 1005.205 Lenders required to obtain Secretarial approval.

(a) *Lender application process.* Lenders not meeting the requirements of § 1005.203 must apply to HUD for approval to participate in the Section 184 Program by submitting to HUD a completed application package, as prescribed by Section 184 Program Guidance. The application must establish that the Lender meets the following qualifications:

(1) *Business form.* The Lender 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 partners.

(B) One general partner must be designated as the managing general partner. The managing general partner shall also comply with the requirements specified in § 1005.205(a)(1)(i)(C) and (D). The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lending institutions or property improvement or manufactured home lending 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 Lender 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 Lender 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 Lender 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) *Identification and certification of employees.* The Lender shall identify personnel and certify that they are trained and competent to perform their assigned responsibilities in mortgage lending, including origination, servicing, collection, and Conveyance activities, and shall maintain adequate staff and facilities to originate or service mortgages, or both, in accordance with applicable Tribal, Federal, or State requirements, to the extent it engages in such activities.

(3) *Identification and certification of officers.* The Lender shall identify officers and certify that all employees who will sign applications for Guaranteed Loans on behalf of the Lender shall be corporate officers or shall otherwise be authorized to bind the Lender in the Origination transaction. The Lender shall certify that only authorized person(s) report on guarantees, purchases, and sales of Guaranteed Loans to HUD for the purpose of obtaining or transferring guarantee coverage.

(4) *Financial statements.* The Lender 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 examination of the portion of its records that relates to its activities under the Section 184 Program.

(5) *Quality control plan.* The Lender shall submit a written quality control plan in accordance with § 1005.217.

(6) *Identification of branch offices.* A Lender may maintain branch offices. A financial institution's branch office must be registered with HUD to originate or submit applications for Guaranteed Loans. The financial institution shall remain responsible to HUD for the actions of its branch offices.

(7) *Certification of conflict of interest policy.* The Lender must certify that the lender shall 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 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 Lender shall not pay a referral fee to any person or organization.

(8) *Licensing certification.* A Lender shall certify that it has not been refused a license and has not been sanctioned by any Tribal, Federal, or State, or authority in which it will originate Section 184 Guaranteed Loans.

(9) *Minimum net worth.* Irrespective of size, a Lender shall have a net worth of not less an amount as established by Section 184 Program Guidance.

(10) *Identification of operating area.* The Lender must submit a list of states in which they wish to participate in the Section 184 Program and evidence of Lender's license to operate in those states, as may be prescribed by Section 184 Program Guidance.

(11) *Other.* Other qualifications by notice for comment.

(b) *HUD approval.* HUD shall review applications under § 1005.203(a) and any other publicly available information related to the Lender, its officers, and employees. If HUD determines the Lender meets the requirements for participation in this subpart, HUD shall provide written notification of the approval to be a Section 184 Lender.

(c) *Limitations on approval.* A Lender may only operate in the Section 184 Approved Program Area where they are licensed.

(d) *Denial of participation.* A Lender may be denied approval to become a

Section 184 Lender if HUD determines the Lender does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and that decision may be appealed in accordance with the procedures set forth in § 1005.909.

#### **§ 1005.207 Lender participation options.**

(a) *Levels of participation.* Lenders must choose one of two levels of program participation, a Non-Direct Guarantee Lender or a Direct Guarantee Lender and submit an application to participate on a form prescribed by Section 184 Program Guidance. A participation level must be selected by the Lender and approved by HUD before initiating any Section 184 Program activities.

(b) *Non-Direct Guarantee Lender.* (1) A Non-Direct Guarantee Lender originates Loans.

(2) A Non-Direct Guarantee Lender must be a Sponsored Entity under § 1005.213.

(3) A Non-Direct Guarantee Lender must submit documentation supporting their eligibility as a Lender under § 1005.203 or approved by HUD under § 1005.205 and other documentation as prescribed by Section 184 Program Guidance to HUD through their Sponsor.

(c) *Direct Guarantee Lender.* (1) A Direct Guarantee Lender may originate, underwrite, close, service, purchase, hold, and sell Section 184 Guaranteed Loans.

(2) A Direct Guarantee Lender may sponsor Non-Direct Guarantee Lenders or other Direct Guarantee Lenders in accordance with § 1005.213.

(3) To become a Direct Guarantee Lender, Lenders must submit additional documentation as provided in § 1005.209 and obtain HUD approval under § 1005.211.

#### **§ 1005.209 Direct Guarantee Lender application process.**

(a) Lenders must apply to HUD for approval to participate in the Section 184 Program as a Direct Guarantee Lender. Lenders must submit a completed application package in accordance with Section 184 Program Guidance.

(b) To be approved as a Direct Guarantee Lender, a Lender must establish in its application that it meets the following qualifications:

(1) Eligibility under § 1005.203 or HUD approval under § 1005.205, as evidenced by approval documents and most recent recertification documents.

(2) Has a principal officer with a minimum of five years' experience in the origination of Loans guaranteed or

insured by an agency of the Federal Government. HUD may 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) Has on its permanent staff an underwriter(s) that meets the following criteria:

(i) Two years' experience underwriting loans guaranteed or insured by an agency of the Federal Government;

(ii) Is an exclusive employee of the Lender;

(iii) Authorized by the Lender to obligate the Lender on matters involving the origination of Loans;

(iv) Is registered with HUD as an underwriter and continues to maintain such registration; and

(v) Other qualifications by notice for comment.

(c) The Lender must submit a list of states or geographic regions in which it is licensed to operate, evidenced by submitting the active approvals for each State or region, and declare its interest in participating in the Section 184 Program.

(d) The Lender must submit the quality control plan as required by its approving agency, modified for the Section 184 Program.

(e) If a Lender wants to service Section 184 Guaranteed Loans as Direct Guarantee Lender, they must meet qualifications and submit an application in accordance with § 1005.703.

#### **§ 1005.211 Direct Guarantee Lender approval.**

HUD shall review all documents submitted by a Lender under § 1005.209 and make a determination of conditional approval or denial.

(a) *Conditional approval.* Conditional approval is signified by written notification from HUD that the Lender is a conditionally approved Direct Guarantee Lender under the Section 184 Program subject to the following conditions:

(1) The Lender signs an agreement to comply with requirements of this part, and any applicable Tribal, Federal, or State law.

(2) If applicable, the Lender submits a list of entities it currently sponsors under another Federal loan program and intends to sponsor in the Section 184 Program. This list shall include the following for each Sponsored Entity:

(i) Contact information, including mailing address, phone number, and email address for corporate officers.

(ii) The Federal tax identification number (TIN) for the Sponsored Entity, and

(iii) Names and Nationwide Multistate Licensing System and Registry numbers for all loan originators and processors.

(3) The Lender certifies it monitors and provides oversight of Sponsored Entities to ensure compliance with this part, and any applicable Tribal, Federal, or State law.

(4) The Lender must, for each underwriter, submit a number, prescribed by Section 184 Program Guidance, of test endorsement case binders, which meet the requirements of subparts D and E of this part.

Unsatisfactory performance by an underwriter during HUD's test case review may constitute grounds for denial of approval to participate as a Direct Guarantee Lender. If participation is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in § 1005.909.

(5) The Lender will operate only in accordance with the Lender's licensing in Section 184 Approved Program Areas.

(b) *Final approval.* Final approval is signified by written notification from HUD that the Lender is an approved Direct Guarantee Lender under the Section 184 Program without further submission of test case endorsement case binders to HUD. HUD retains the right to request additional test cases as determined necessary.

(c) *Limitations on approval.* (1) A Lender may only operate as a Direct Guarantee Lender in accordance with the Lender's Tribal or State licensing and within Section 184 Approved Program Areas.

(2) The Lender must employ and retain an underwriter with the qualifications as provided in § 1005.209(b)(3). Failure to comply with this provision may subject the Lender to sanctions under § 1005.907.

(d) *Denial of participation.* A Lender may be denied approval to become a Direct Guarantee Lender if HUD determines the Lender does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and that decision may be appealed in accordance with the procedures set forth in § 1005.909.

#### **§ 1005.213 Non-Direct Guarantee Lender application, approval, and Direct Guarantee Lender sponsorship.**

(a) *Sponsorship.* A Sponsorship is a contractual relationship between a Sponsor and a Sponsored Entity.

(b) *General responsibility requirements of a Sponsor.* (1) The

Sponsor must determine the eligibility of a Lender and submit to HUD, as prescribed in Section 184 Program Guidance, a recommendation for approval under § 1005.207(b) or evidence of HUD approval under § 1005.205(b) or § 1005.211(b).

(2) Upon HUD approval of eligibility under § 1005.207(b), or HUD acknowledgement of the evidence of HUD approval under § 1005.205(b) or § 1005.211(b), the Sponsor may enter into a Sponsorship with the Sponsored Entity.

(3) The Sponsor must notify HUD of changes in a Sponsorship within 10 days.

(4) The Sponsor must provide HUD-approved training to the Sponsored Entity on the requirements of the Section 184 Program before the Sponsored Entity may originate Section 184 Guaranteed Loans for the Sponsor.

(5) 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 or the Sponsored Entity, HUD shall presume the Sponsor had such knowledge and shall remain liable.

(6) The Sponsor is responsible for conducting quality control reviews of the Sponsored Entity's origination case binders and Loan performance to ensure compliance with this part and any other Tribal, Federal, State, or law requirements.

(7) The Sponsor is responsible for maintaining all records for loans originated by a Sponsored Entity in accordance with this part.

(8) A Sponsor must notify HUD of any changes in a sponsorship within 15 days.

(c) *Responsibilities of the Sponsored Entity.* A Sponsor must ensure that a Sponsored Entity complies with this part and any other Tribal, Federal, State, or law requirements.

#### **§ 1005.215 Annual reporting requirements.**

Direct Guarantee Lenders must submit an annual report on Loan performance, including that of all Sponsored Entities, where applicable, along with any other required reporting under § 1005.903 and other such reports as prescribed by Section 184 Program Guidance.

#### **§ 1005.217 Quality control plan.**

(a) A quality control plan sets forth a Lender's procedures for ensuring the quality of the Lender's Section 184 Guaranteed Loan origination, underwriting, closing, and/or servicing. The purpose of the quality control plan is to ensure Lender's compliance with Section 184 Program requirements and protect HUD and Lender from

unacceptable or unreasonable risks. A Lender must adopt and implement a quality control plan.

(b) A quality control plan must:

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

(2) Cover all policies and procedures, whether performed by the Lender or an agent, to ensure full compliance with all Section 184 Program 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 Guaranteed Loan activity.

(4) Require the 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 the Lender to use employees or agents to perform the quality control functions, so long as they do not directly participate in any loan administration processes as outlined in Section 184 Program Guidance.

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

(7) Require the Lender to train all staff, agents working with the Section 184 Program on Loan administration and quality control processes and provide staff access to all current Section 184 legal authorities and policy guidance. The Lender must retain copies of training documentation for all staff working on the Section 184 Program in accordance with § 1005.219(d)(3). Failure to comply with the training and documentation requirements may subject the Lender to sanctions in accordance with § 1005.907.

(8) Ensure that the Lender's employees, agents, are eligible to participate in the Section 184 Program. Any designated employees, agents, deemed ineligible shall be restricted from participating in the program in the Section 184 Program.

(9) Ensure the Borrower's information maintained related to the Section 184 Guaranteed Loan are used only for the purpose for which they were received and follow all applicable Federal, State, and Tribal requirements.

(10) Require the Lender to refer any suspected fraud or material misrepresentation by any party whatsoever directly to HUD's Office of

Inspector General (OIG) and the Office of Native American Programs.

(11) Require the Lender to report all material deficiencies and submit a corrective action plan to HUD within a timeframe as prescribed by Section 184 Program Guidance.

(12) Require the Lender to conduct appropriate Loan level quality control procedures, in accordance with requirements as prescribed by Section 184 Program Guidance.

(13) Require that the Lender maintain complete and accurate records of the Section 184 Guaranteed Loans which are selected for the quality control sample for a timeframe as prescribed by Section 184 Program Guidance.

(14) Require the Lender to review a random statistical sample of rejected loan applications within 90 days from the end of the month in which the decision was made. The reviews must be conducted no less frequently than monthly and with the goal to ensure that the reasons given for the rejection were valid and each rejection received concurrence of an appropriate staff person with sufficient approval authority. The Lender must submit a report of this review in form and timeframe as prescribed in Section 184 Program Guidance.

(c) Lenders to applying be a Direct Guarantee Lender under § 1005.209, must submit a quality control plan in accordance with paragraph (b) of this section and include the following additional requirements:

(1) Require the Lender to collect and forward all Loan Guarantee Fees in accordance with the Section 184 Program requirements, with sufficient documentation evidencing the timely collection and payment of the fees to HUD.

(2) Require the Lender to verify that the endorsement case binder is submitted to HUD for guarantee within required time frames.

(3) Require the Lender to review a random statistical sample of its endorsement case binders for potential fraud, material misrepresentations, or other findings on a quarterly basis. The Lender must investigate and determine if fraud, material misrepresentation or other findings occurred.

(4) Require the 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.

(5) Where applicable, require the Sponsor to apply paragraphs (b)(7) through (8) of this section to its Sponsored Entities.

(d) All Sponsored Entities shall comply with paragraph (b) of this

section and provide a quality control plan directly to their Sponsor in accordance with their sponsorship agreement.

#### **§ 1005.219 Other requirements.**

(a) *Federal law.* All Direct Guarantee Lenders, Non-Director Guarantee Lenders, and Servicers must comply with all applicable Federal laws which impact mortgage-related activities.

(b) *Dual employment.* All Non-Direct Guarantee Lenders and Direct Guarantee Lenders must require its employees to be exclusive employees, unless the Lender has determined that the employee's other employment, including any self-employment, does not create a Conflict of Interest.

(c) *Reporting requirements.* All Direct Guarantee Lenders must submit reports in accordance with § 1005.903. Unless requested directly by HUD, Non-Direct Guarantee Lenders must submit required reports to their Sponsor, under this part or any requirements as prescribed by Section 184 Program Guidance, or any special request for information within the time frames prescribed in the request.

(d) *Records retention.* Records retention requirements are as follows:

(1) Direct Guarantee Lenders must maintain an endorsement case binder for a period of three years beyond the date of satisfaction or maturity date of the Loan, whichever is sooner. However, where there is a payment of claim, the endorsement case binder must be retained for a period of at least five years after the final claim has been paid. Section 184 Program Guidance shall prescribe additional records retention time depending on the circumstances of the claim.

(2) All Direct Guarantee Lender and Non-Direct Guarantee Lenders must retain personnel files of employees for one year beyond the employee's separation.

(3) All Direct Guarantee Lenders and Non-Direct Guarantee Lenders must follow the applicable records retention requirements imposed by applicable Tribal, Federal, and State laws and regulations.

(4) Direct Guarantee Lenders and Non-Direct Guarantee Lenders must maintain the quality control plan records for a period prescribed in § 1005.217(b)(4).

(e) *Minimum level of lending on Trust Land.* (1) Direct Guarantee Lenders must actively market, originate, underwrite, and close Loans on Trust Land. A Sponsor must ensure its Sponsored Entities actively market and originate loans on Trust Land. HUD may impose a minimum level of lending on Tribal

Trust Land, which may be adjusted periodically, through publication in the **Federal Register**.

(2) Failure to meet the minimum level of lending on Trust Land may result in sanctions in accordance with §§ 1005.905 and 1005.907.

(3) HUD may grant exceptions for Direct Guarantee Lenders and Non-Direct Guarantee Lenders licensed and doing business in a State or States with limited Trust Lands. The process for Lenders to request the exception will be prescribed by Section 184 Program Guidance.

#### **§ 1005.221 Business change reporting.**

(a) Within a timeframe as prescribed by Section 184 Program Guidance, Direct Guarantee Lenders shall provide written notification to HUD, in such a form as prescribed by Section 184 Program Guidance 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; and

(3) Any sanctions by another supervising entity.

(b) Failure to report changes within a reasonable timeframe prescribed in Section 184 Program Guidance may result in sanctions in accordance with §§ 1005.905 and 1005.907.

#### **§ 1005.223 Annual recertification.**

(a) All Direct Guarantee Lenders are subject to annual recertification on a date and form as prescribed by Section 184 Program Guidance.

(b) With each annual recertification, Direct Guarantee Lenders must submit updated contact information, continued eligibility documentation and other pertinent materials as prescribed by Section 184 Program Guidance, including but not limited to:

(1) A certification that it has not been refused a license by any Tribe, State, or Federal entity;

(2) A certification that the Direct Guarantee Lender is in good standing with any Tribe, State, or Federal entity in which it will perform Direct Guarantee Lender activities; and

(3) Renewal documents and certification of continued eligibility from an authorizing entity listed in § 1005.203.

(4) Lenders approved under § 1005.205 must submit documentation supporting continued eligibility as prescribed by Section 184 Program Guidance.

(c) All Sponsored Entities shall comply with this requirement and provide the annual recertification documentation directly to their Sponsor in accordance with their sponsorship agreement.

(d) Direct Guarantee Lenders must also submit the following in accordance with Section 184 Program Guidance:

(1) a certification that the Direct Guarantee Lender continues to meet the direct guarantee program eligibility requirements in accordance with § 1005.209;

(2) A list of all Sponsored Entities with which the Direct Guarantee Lender has a sponsorship relationship, and a certification of their continued eligibility; and

(3) Any reports required in accordance with Section 184 Program Guidance.

(e) Direct Guarantee Lenders must retain documentation related to the continued eligibility of their Sponsored Entities for a period as prescribed by Section 184 Program Guidance.

(f) Direct Guarantee Lenders may request an extension of the recertification deadline, but such request must be presented at least 45 days before the recertification deadline.

(g) HUD will review the annual recertification submission and may request any further information required to determine recertification.

(h) HUD will provide written notification of approval to continue participation in the Section 184 Program or denial. A denial may be appealed pursuant to § 1005.909.

(i) If an annual recertification is not submitted by a reasonable deadline prescribed in Section 184 Program Guidance, HUD may subject the Direct Guarantee Lender to sanctions under § 1005.907.

#### **§ 1005.225 Program ineligibility.**

(a) *Ineligibility.* A Direct Guarantee Lender or Non-Direct Guarantee Lender may be deemed ineligible for Section 184 Program participation when HUD becomes aware that the entity or any officer, partner, director, principal, manager or supervisor, loan processor, loan underwriter, or loan originator of the entity was:

(1) 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) Indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the Direct Guarantee Lender or Non-Direct Guarantee Lender

to participate in the Title I or Title II programs of the National Housing Act, or Section 184 Program;

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

(4) Engaged in business practices that do not conform to generally accepted practices of prudent Lenders or that demonstrate irresponsibility;

(5) 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) 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) In violation of 12 U.S.C. 1715z–13a.

(b) [Reserved]

### **Subpart C—Lending on Trust Land**

#### **§ 1005.301 Tribal legal and administrative framework.**

(a) *Tribal requirements.* (1) A Tribe seeking to allow eligible Borrowers to place a mortgage lien on Trust Land under the Section 184 Program must apply to HUD for approval to participate in the program.

(2) Tribes electing to make Trust Land or restricted fee land available under the Section 184 Program must provide to HUD a legal and administrative framework for leasing, foreclosure and eviction on Trust Land to protect the interests of the Borrower, Tribe, Direct Guarantee Lender, and HUD.

(3) Approved Tribes shall assist in facilitating Loss Mitigation efforts and assist in the disposition of defaulted properties on Trust Land.

(b) *Legal and administrative framework.* 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:

(1) *Foreclosure and assignment.* When a Borrower is in default, and is unwilling or unable to successfully complete Loss Mitigation in accordance with subpart G of this part; and Servicer either initiates First Legal Action against the Borrower, or assigns the Loan to HUD after offering the Tribe the option to assume the Section 184 Guaranteed Loan or purchase the property under § 1005.757(a):

(i) The Tribe must demonstrate that a foreclosure will be processed through the legal systems having jurisdiction over the Section 184 Guaranteed Loan. Jurisdiction must include Federal Court jurisdiction when HUD forecloses on the property.

(ii) 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.

(iii) If the Holder assigns the Loan to HUD without initiating or completing the foreclosure process, or the property becomes vacant during the Loss Mitigation or foreclosure process, the Tribe may assign the lease to HUD to facilitate disposition of the property.

(2) *Property disposition.* Once a lease is vacated or reassigned, the Tribe or the TDHE shall work with HUD to sell the property to an eligible party.

(3) *Eviction.* The Tribe must have a legal and administrative framework implementing eviction procedures, allowing for the expedited removal of the borrower in default, all household residents, and any unauthorized occupants of the property. Eviction procedures must enable the Servicer or the Tribe to secure possession of the property. Eviction may be required upon:

(i) The completion of a foreclosure;

(ii) The involuntary termination of the lease;

(iii) The reassignment of the lease; or

(iv) The sale of the property.

(4) *Lien priority.* Section 184 Guaranteed Loans must be in a first lien position securing the property.

(i) To ensure that each Section 184 Guaranteed Loan holds a first lien position, the Tribe must enact an ordinance that either:

(A) Provides for the satisfaction of the Section 184 Guaranteed Loan before any and all other obligations; or

(B) Follows State law to determine the priority of liens against the property. If a Tribal jurisdiction spans two or more states, the State in which the property is located is the applicable State law.

(ii) For a lien to be considered valid on Trust Land, the lien must be:

(A) Approved by the Tribe and BIA, as applicable; and

(B) Recorded by the BIA.

(5) *Lease provisions for Trust Land.*

The lease provisions for Trust Land must meet the following requirements:

(i) Tribes may use a model lease available from HUD for Section 184 Guaranteed Loan lending on Trust Land. The Tribe may use a rider to make modifications to the model lease, with the approval of HUD and BIA.

(ii) Tribes may draft their own lease in compliance with 25 CFR part 162 and

contain mandatory lease terms and language as prescribed in Section 184 Program Guidance, with approval of HUD and BIA.

(A) Identify lessor.

(B) Identify the lessee (Tribe, TDHE, enrolled member of the Tribe or HUD).

(C) Legal description of the land and property address covered by the lease.

(D) The lease must have a minimum term of 50 years. For refinances the lease must have a remaining term which exceeds the maturity date of the loan by a minimum of ten years.

(E) In the event of lessee default under the lease, the lease shall allow the servicer to accelerate the Section 184 Guaranteed Loan and foreclose or assign the Section 184 Guaranteed Loan to HUD, with HUD approval.

(F) The lease must be executed by all interested parties to be enforceable.

(G) Lender and HUD consent shall be required for any lease termination when the Section 184 Guaranteed Loan is secured by the property.

(H) The Tribal lease must contain the following provision: "If lessee default(s) on a Section 184 Guaranteed Loan, under which the lease and improvements on the leased premises are pledged as security, the lessee or lessor may assign the lease and deliver possession of the leased premises, including any improvements thereon, to HUD. HUD may transfer this lease and the leased premises to a successor lessee; provided, however, that the lease may only be transferred to another member of the Tribe or Tribal entity, as approved by the Tribe."

(I) lease language as prescribed by Section 184 Program Guidance.

(J) 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.

#### **§ 1005.303 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, priority lien ordinances, all cross-referenced ordinances in those sections, and any other documents in accordance with Section 184 Program Guidance.

#### **§ 1005.305 Approval of Tribal application.**

HUD shall review applications under § 1005.303 and where all requirements of § 1005.301 are met, HUD shall provide written notification of the approval of the Tribe to participate in the Section 184 Program. If HUD determines the application is incomplete, or the documents submitted do not comply with the requirements of

this subpart or any process prescribed in Section 184 Program Guidance, HUD will work with the Tribe to cure the deficiencies before there is a denial of the application.

#### **§ 1005.307 Tribal recertification.**

A Tribe shall recertify annually to HUD whether it continues to meet the requirements of this subpart, on a form and by a deadline prescribed by Section 184 Program Guidance. Recertification shall include Tribal certification of no changes to the Tribe's foreclosure, eviction, lease, and lien priority ordinances. The Tribe shall provide any updated contact information and similar information that may be required under Section 184 Program Guidance.

#### **§ 1005.309 Duty to report changes.**

Based on the timeframe as prescribed by Section 184 Program Guidance, the Tribe must notify HUD of any proposed changes in the Tribe's foreclosure, eviction, lease, and lien priority ordinances or contact information. HUD shall require approval of the changes in the foreclosure, eviction, lease, and lien priority ordinances. HUD will provide written notification of the review of the changes and determine whether the updated documents meet the requirements of this subpart.

#### **§ 1005.311 HUD notification of any lease default.**

In cases where the lessee is in default under the lease for any reason, the lessor shall provide written notification to HUD within 30 days of the lease default.

#### **§ 1005.313 Tribal reporting requirements.**

The Tribe shall provide timely and accurate reports and certifications to HUD, as may be prescribed by Section 184 Program Guidance.

### **Subpart D—Underwriting**

#### **Eligible Borrowers**

##### **§ 1005.401 Eligible Borrowers.**

(a) Eligible Borrowers are Indian Families, Tribes, or TDHEs. Indian Family Borrowers are limited to one Section 184 Guaranteed Loan at a time.

(b) Indian Family Borrowers must document their status as American Indian or Alaska Native through evidence as prescribed by Section 184 Program Guidance.

##### **§ 1005.403 Principal Residence.**

(a) *Principal Residence*. Means the dwelling where the Borrower maintains as a permanent place of abode. A Borrower may have only one Principal Residence at any one time.

(b) *Occupancy requirement*.

Borrowers who are an Indian Family must occupy the property as a Principal Residence. Borrowers who are a TDHE or Tribe do not need to occupy the property as a Principal Residence.

(c) *Non-occupant Co-Borrower*. A Co-Borrower who does not occupy the property as a principal resident is permitted. A 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) An eligible Borrower who is an Indian must be:

(1) A U.S. citizen;

(2) A lawful permanent resident alien;

or

(3) A non-permanent resident alien.

(b) Documentation must be provided to the Direct Guarantee Lender to support lawful residency status as defined in the Immigration and Nationality Act, codified at 8 U.S.C. 1101, *et seq.*

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

(a) *Adequacy of Borrower gross income*. (1) All Borrowers must establish, in accordance with Section 184 Program Guidance, that their gross income is and will be adequate to meet:

(i) The periodic payments required by the Loan to be guaranteed by the Section 184 Program; 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, in accordance with Section 184 Program Guidance.

(b) *Non-discrimination*.

Determinations of adequacy of Borrower income under this section shall be made in a uniform manner without regard to race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, disability, marital status, 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. A Direct Guarantee Lender must not use a Borrower's credit score when evaluating the Borrower's credit worthiness. The Direct Guarantee Lender must analyze the Borrower's credit history and payment pattern to determine credit worthiness.

(b) If a Borrower had a previous default on a Section 184 Guaranteed



Loan which resulted in a claim payment by HUD, the Borrower shall be subject to a reasonable waiting period, as may be prescribed by Section 184 Program Guidance.

**§ 1005.411 Disclosure and verification of Social Security and Employer Identification Numbers or Tax Identification Number.**

All Borrowers must meet applicable requirements for the disclosure and verification of Social Security, Employer Identification Numbers, or Tax Identification Numbers.

**Eligible Properties**

**§ 1005.413 Acceptable title.**

To be considered acceptable title, a Section 184 Guaranteed Loan must be secured by an interest in real estate held in fee simple or a leasehold interest on Trust Land. Where title evidences a lease that is used in conjunction with the Section 184 Guaranteed Loan on Trust Land, the lease must comply with relevant provisions of § 1005.301.

**§ 1005.415 Sale of property.**

(a) *Owner of Record requirement.* The property must be or have been purchased from the Owner of Record and the transaction may not involve or had not involved any sale or assignment of the sales contract.

(b) *Supporting documentation.* The Direct Guarantee 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 a Section 184 Guaranteed Loan. This documentation may include, but is not limited to, a property ownership 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) General.* 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 Direct Guarantee 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 Section 184 Guaranteed Loan, 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 Section 184 Guaranteed Loan.

(ii) However, HUD will require that the Direct Guarantee Lender obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include a second appraisal from another a different appraiser. The Direct Guarantee 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) Additional documentation, as may prescribed by notice for comment.

(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 guaranteed by HUD.

(ii) However, HUD may require that the Direct Guarantee 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, a second appraisal from a different 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 § 1005.443. Otherwise, the value supported by the first appraisal will be used to calculate the maximum principal loan amount.

(iv) Additional value documentation may be prescribed by notice for comment.

(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 such agencies;

(3) Sales of properties by Tribes, TDHEs, State, or local governments, or Eligible 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 death, devise, or intestacy;

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

(6) Sales of properties by Tribes, TDHEs, State and local government agencies; and

(7) 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.

(8) HUD may approve other exceptions on a case-by-case basis.

**§ 1005.417 Location of property.**

At the time a loan is guaranteed, the property must be for residential use under Tribal, State, or local law and be located within a Section 184 Approved Program Area.

**§ 1005.419 Requirements for standard housing.**

(a) *General standards.* Every property guaranteed 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 local, State, or national code.

(4) Contains a plumbing system that:

(i) Uses a properly installed system of piping;

(ii) Includes a kitchen sink and 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 appropriate local, State, or national code.

(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 local, State, or national code.

(6) Meets minimum square footage requirements and 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;

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

(iv) Current locally adopted standards for size of dwelling units, documented by the Direct Guarantee Lender.

(v) Upon the written request of a Tribe, or THDE, HUD may waive the minimum square footage requirements under paragraphs (a)(6)(i) through (iv) of this section for properties located on Trust Land.

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

(b) *Additional requirements.* HUD may prescribe any additional requirements to permit the use of various designs and materials in housing acquired under this part.

(c) *Lead-based paint.* 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 24 CFR part 35, subparts A, B, H, J, K, M, and R, shall apply.

(d) *Environmental review procedures.*

(1) The regulations in 24 CFR 1000.20 applies to an environmental review for Trust Land and for fee land within a reservation in connection with a Loan guaranteed under this part. That section permits a 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, the Tribe or HUD must comply with environmental review procedures to the extent applicable

under part 58 or part 50 of this title, as appropriate.

(3) If the Loan involves proposed or new construction, HUD will require the Lender to submit a signed Builder's Certification of Plans, Specifications and Site (Builder's Certification). The Builder's Certification must be in a form prescribed by Section 184 Program Guidance and must cover:

(i) Flood hazards;

(ii) Noise;

(iii) Explosive and flammable materials storage hazards;

(iv) Runway clear zones/clear zones;

(v) Toxic waste hazards; and

(vi) Other foreseeable hazards or adverse conditions (*i.e.*, rock formations, unstable soils or slopes, high ground water levels, inadequate surface drainage, springs, etc.) that may affect the health and safety of the occupants or the structural soundness of the improvements.

(4) The Builder's Certification must be provided to the appraiser for reference before the performance of an appraisal on the property.

(e) *Special Flood Hazard Areas and Coastal Barrier Resource System.* A property is not eligible for a Section 184 loan guarantee if a residential building and related improvements to the property are located within a Special Flood Hazard Area (SFHA) designated by a FEMA Flood Insurance Rate Map and insurance under the National Flood Insurance Program (NFIP) is not available in the community; or the improvements are, or are proposed to be, located within the Coastal Barrier Resources System.

(1) *Eligibility for new construction in SFHAs.* If any portion of the dwelling, related structures, or equipment essential to the value of the property and subject to flood damage is located within an SFHA, the property is not eligible for a Section 184 loan guarantee unless the Direct Guarantee Lender obtains from FEMA a final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removes the property from the SFHA; or obtains a FEMA National Flood Insurance Program Elevation Certificate (FEMA Form 086-0-33) prepared by a licensed engineer or surveyor. The elevation certificate must document that the lowest floor including the basement of the residential building, and all related improvements/equipment essential to the value of the property, is built at or above the 100-year flood elevation in compliance with the NFIP criteria, and flood insurance must be obtained.

(2) *Eligibility for existing construction in SFHAs.* When any portion of the residential improvements is determined

to be located within an SFHA, flood insurance must be obtained and maintained.

(3) *Required flood insurance amount for properties located within an SFHA.* Flood insurance must be maintained for the life of the Section 184 Guaranteed Loan in an amount that at a minimum equals the project cost less the estimated land cost; the outstanding principal balance of the loan; or the maximum amount of NFIP insurance available with respect to the property improvements, whichever is the least.

(4) *Required documentation.* The Direct Guarantee Lender must obtain a Life of Loan Flood Certification for all Properties. If applicable, the Direct Guarantee Lender must also obtain a FEMA Letter of Map Amendment; FEMA Letter of Map Revision; or FEMA National Flood Insurance Program Elevation Certificate (FEMA Form 086-0-33).

(5) *Restrictions on property within Coastal Barrier Resources System.* In accordance with the Coastal Barrier Resources Act, a property is not eligible for a Section 184 loan guarantee if the improvements are or are proposed to be located within the Coastal Barrier Resources System.

(f) *Airport hazards—(1) Existing construction.* If a property is existing construction and is located within a Runway Clear Zone (also known as a Runway Protection Zone) at a civil airport or within a Clear Zone at a military airfield, the Direct Guarantee Lender must obtain a Borrower's acknowledgement of the hazard.

(2) *New construction.* If a new construction property is located within a Runway Clear Zone (also known as a Runway Protection Zone) at a civil airport or within a Clear Zone at a military airfield, the Direct Guarantee Lender must reject the property for loan guarantee. Properties located in Accident Potential Zone 1 (APZ 1) at a military airfield may be eligible for a Section 184 loan guarantee provided that the Direct Guarantee Lender determines that the property complies with Department of Defense guidelines.

#### **§ 1005.421 Certification of appraisal amount.**

A Section 184 Guaranteed Loan must be accompanied by a sales contract satisfactory to HUD, executed by the seller, whereby the seller agrees that before any sale of the property, the seller will deliver to the purchaser of the property a certification of the appraisal, in a form satisfactory to HUD, setting forth the amount of the appraised value of the property.

**§ 1005.423 Legal restrictions on Conveyance.**

(a) 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:

- (1) Be void or voidable by a third party;
- (2) 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;
- (3) Terminate or subject to termination all or a part of the interest held by the Borrower in the property if a Conveyance is attempted;
- (4) Be subject to the consent of a third party;
- (5) Be subject to limits on the amount of sales proceeds retainable by the seller; or
- (6) Be grounds for acceleration of the Guaranteed Loan or increase in the interest rate.

(b) Section 184 Guaranteed Loans shall not be subject to any Legal Restrictions on Conveyance, except for restrictions in this paragraph (b):

(1) A lease or any other legal document that restricts the assignment of interest in properties held in trust or otherwise restricted to an eligible Indian Family.

(2) A mortgage funded through tax-exempt Bond F and includes a due-on-sale provision in a form approved by HUD that permits the Direct Guarantee 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.

(3) A mortgaged property subject to protective covenants which restrict occupancy by, or transfer to, persons of a defined population if:

- (i) The restrictions do not have an undue effect on marketability as determined in the original plan.
- (ii) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other

applicable nondiscrimination laws under Tribal, State, or local law, where applicable.

(4) HUD shall require that the previously approved restrictions automatically terminate if the lease or title to the mortgaged property is transferred by foreclosure, deed-in-lieu/lease-in-lieu of foreclosure, or if the loan is assigned to HUD.

**§ 1005.425 Rental properties.**

(a) *When a Borrower is an Indian Family.* A Section 184 Guaranteed Loan may be used to purchase, construct, rehabilitate, or refinance an up to four-unit property. The Borrower must occupy one unit as a Principal Residence and may rent the additional units.

(b) *When the Borrower is a Tribe or TDHE.* There is no limit to the number of one- to four-unit properties a Tribe or TDHE may purchase or own with a Section 184 Guaranteed Loan(s) on or off Trust Land. However, the Tribe or TDHE must meet all Borrower program requirements.

**§ 1005.427 Refinancing.**

(a) *Refinance eligibility.* HUD may permit a Borrower to refinance any qualified mortgage, including an existing Section 184 Guaranteed Loan, so long as the Borrower and property meet all Section 184 Program requirements.

(b) *Types of refinances.* HUD may guarantee a Rate and Term refinance, a Streamline refinance, or a Cash-Out refinance, consistent with paragraphs (d) through (f) of this section.

(c) *General requirements.* All types of refinances are subject to the following requirements:

(1) The term of the refinancing Loan may not exceed a term of 30 years.

(2) The Borrower must have a payment history on the existing mortgage that is acceptable to HUD.

(3) The Direct Guarantee 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 § 1005.443 may be increased by the amount of the Upfront Loan Guarantee Fee associated with the new refinancing Loan and exceed the applicable Section 184 Guaranteed Loan limit as established by HUD for an area pursuant to § 1005.441.

(d) *Rate and term refinance.* (1) Rate and term refinance is the refinancing of an existing mortgage loan for the

purpose of changing the interest rate or term, or both, 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 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 and allowable fees 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 and meet all other applicable Section 184 Program requirements.

(2) A Streamline Refinance with an appraisal may be in the amount equal to the unpaid principal balance of the existing mortgage plus Loan closing charges and allowable fees approved by HUD. The refinanced Loan must be subject to an appraisal and meet all other applicable Section 184 Program requirements.

(f) *Cash-Out refinance.* (1) A Cash-Out refinance is when a 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 to receive a portion of equity in the form of cash in an amount up to a reasonable maximum allowed amount, as prescribed by Section 184 Program 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.

(5) The Cash-Out refinance must meet all other applicable Section 184 Program requirements.

**§ 1005.429 Eligibility of Loans covering manufactured homes.**

A Loan covering a manufactured home (as defined in 24 CFR part 3280), shall be eligible for a Section 184 Guaranteed Loan when the following requirements have been met:

(a) *For manufactured homes located on a fee simple site.* (1) The manufactured home, as erected on site, must be installed in accordance with 24 CFR part 3286; conform with property standards under § 1005.419; and shall have been constructed in accordance with 24 CFR part 3280, as evidenced by the certification label.

(2) The Loan shall cover the manufactured home and site, shall constitute a Loan on a property classified and taxed as real estate.

(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 the Loan Guarantee Certificate:

(i) The manufactured home shall be erected on a site-built permanent foundation that meets or exceeds applicable requirements of the Minimum Property Standards (MPS) for one- and two-family property, 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 least two feet 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 be braced and stiffened before it leaves the factory to resist racking and potential damage during transportation.

(iv) Section 1005.431 is modified to the extent provided in this paragraph (a). Applications relating to the guarantee of Loans under this paragraph (a) must be accompanied by an agreement in a form satisfactory to HUD executed by the seller or manufacturer or such other person as HUD may require, agreeing that in the event of any sale or Conveyance of the property within a period of one year beginning with the date of initial occupancy, the

seller, manufacturer, 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. This warranty 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 its valuation of the property. The warranty shall also expressly state 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. The warranty must provide that upon the sale or Conveyance of the property 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 Guaranteed 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 24 CFR parts 3280 and 3286 shall meet or exceed HUD requirements. 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 on Trust Land.* Manufactured homes built and installed on Trust Land, shall meet manufactured home installation standards pursuant to Tribal laws, if any. In the absence of Tribal laws, the requirements in paragraph (a) of this section shall apply.

#### **§ 1005.431 Acceptance of individual residential water purification.**

If a property does not have access to a continuing supply of safe and potable water as part of its plumbing system without the use of a water purification system, the requirements of this section apply. The Direct Guarantee Lender must provide appropriate documentation with the submission for a Section 184 Guaranteed Loan 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 Tribal, State, or local health authority.

(b) *Certification by Tribal, State, or local health authority.* A Tribal, State, or local 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 Tribal, State, or local health authority, and has been determined to meet Tribal, State, or local health authority quality standards for drinking water. If neither Tribal, State, nor local health authority 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 notices and certification.* (1) The prospective Borrower must have received written notification, when the Borrower signs a sales contract, that the property does not have access to a continuing supply of safe and potable water without the use of a water purification system to remain safe and acceptable for human consumption.

(2) Prior to final ratification of the sales contract, the Borrower must have received:

(i) A water safety report identifying specific contaminants in the water supply serving the property, and the related health hazard arising from the presence of those contaminants.

(ii) A written good faith estimate of the maintenance and replacement costs of the equipment necessary to assure continuing safe drinking water.

(3) The prospective Borrower must sign a certification, acknowledging the required notices have been received by the Borrower, in the form prescribed by Section 184 Program Guidance, at the time the application for mortgage credit approval is signed by the Direct Guarantee Lender. The required certification must be submitted to HUD

with the request for the Loan Guarantee Certificate.

#### **§ 1005.433 Builder 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 property, 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 property 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 property.

(b) Such agreement must provide that upon the sale or Conveyance of the property and delivery of the warranty, the seller, builder, or such other person will promptly furnish HUD with a confirmed 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.

#### **Eligible Loans**

##### **§ 1005.435 Eligible collateral.**

A Section 184 Loan Guarantee may be secured by any collateral authorized under existing Federal law or applicable State or Tribal law. The collateral must be sufficient to cover the amount of the loan, as determined by the Direct Guarantee Lender and approved by HUD. Improvements on Trust Lands may be considered as eligible collateral. Trust Land cannot be considered as part of the eligible collateral.

##### **§ 1005.437 Loan provisions.**

(a) *Loan form.* (1) The Loan shall be in a form meeting the requirements of HUD. HUD may prescribe loan closing documents. For each case in which HUD does not prescribe loan closing documents, HUD shall require specific language in the Loan which shall be uniform for every Loan. HUD 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.

(2) Each Loan shall also contain any provisions necessary to create a valid and enforceable Security interest under

Tribal law or the laws of the jurisdiction in which the property is located.

(b) *Loan multiples.* A Loan, in whole dollars, shall be in an amount not to exceed the maximum principal loan amount (as calculated under § 1005.443) for the area where the property is located.

(c) *Payments.* The Loan payments shall:

(1) Be due on the first of the month;

(2) Contain complete Amortization provisions in accordance with § 1005.453 and an Amortization period not in excess of the term of the Loan; and

(3) Provide for payments to principal and interest to begin no later than the first day of the month, 60 days after the date the Loan is executed. For closings taking place within the first seven days of the month, interest credit is acceptable.

(d) *Maturity.* The Loan shall have a repayment term of not more than the maximum period as approved by HUD and fully amortizing.

(e) *Property standards.* The Loan must be a first lien upon the property that conforms with the requirements for standard housing under § 1005.419.

(f) *Disbursement.* The entire principal amount of the Loan must have been disbursed to the Borrower or to the Borrower's creditors for the Borrower's account and with the Borrower's consent.

(g) *Disbursement for construction advances.* (1) HUD may guarantee Loans from which advances will be made during construction. HUD will provide guarantees for advances made by the Direct Guarantee Lender during construction when all the following conditions are satisfied:

(i) The Direct Guarantee Lender and Borrower execute a building Loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made.

(ii) The advances may be made only as provided in the building agreement.

(iii) The principal amount of the Loan is held by the Direct Guarantee Lender in an interest-bearing account, trust, or escrow for the benefit of the Borrower, pending advancement to the Borrower or Borrower's creditors as provided in the loan agreement.

(iv) The Loan shall bear interest on the amount advanced to the Borrower or the Borrower's creditors and on the amount held in an account or trust for the benefit of the Borrower.

(2) Notwithstanding the requirements in paragraph (g)(1) of this section, upon request of the Lender, HUD may provide for the approval of advances prior to construction.

(h) *Prepayment privilege.* The Loan must contain a provision permitting the Borrower to prepay the Loan in whole or in part at any time and in any amount. The Loan may not provide for the payment of any fee on account of such prepayment.

##### **§ 1005.439 Loan lien.**

(a) *First lien.* A Borrower must establish that, after the Loan offered for guarantee has been recorded, the 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 property, except obligations that are secured by property or collateral owned by the Borrower independently of the property.

(b) *Junior lien.* With prior approval of HUD, the property may be subject to a junior lien held by a Direct Guarantee Lender or a Tribe or instrumentality, TDHE, Federal, State, local government, or an Eligible Nonprofit Organization. Unless the junior lien is for the purpose described in paragraph (c) of this section, it shall meet the following requirements:

(1) Periodic payments shall be collected monthly and be substantially the same;

(2) The monthly Loan payments for the Section 184 Guaranteed Loan and the junior lien shall not exceed the Borrower's reasonable ability to pay, as determined by HUD;

(3) The sum of the principal amount of the Section 184 Guaranteed Loan and the junior lien shall not exceed the loan-to-value limitation applicable to the Section 184 Program, 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 unless approved by HUD;

(5) The junior lien must become due and payable on sale or refinancing of the secured property covered by the Section 184 Guaranteed Loan, unless otherwise approved by HUD; and

(6) The junior lien shall contain a provision permitting the Borrower to prepay the junior lien in whole or in part at any time and shall not require a prepayment penalty.

(c) *Junior liens to reduce Borrower monthly payments.* With the prior approval of HUD, the property may be subject to a junior lien advanced to reduce the Borrower's monthly payments on the Section 184 Guaranteed Loan following the date it is guaranteed, if the junior lien meets the following requirements:

(1) The junior lien shall not provide for any payment of principal or interest until the property securing the junior lien is sold or the Section 184 Guaranteed Loan is refinanced, at which time the junior lien shall become due and payable.

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

(d) *Junior liens related to tax-exempt bond financing and low-income housing tax credits.* HUD approval shall be required when Borrower seeks to encumber property with a junior lien pursuant to § 1005.423(b).

#### **§ 1005.441 Section 184 Guaranteed Loan limit.**

The Section 184 Guaranteed Loan limit is the level set by HUD for the Section 184 Approved Program Area and is based upon the location of the property. The limit that is in effect on the date the Section 184 case number is issued in accordance with § 1005.445 shall apply, regardless of the closing date. The limit shall be revised periodically by HUD and published in Section 184 Program Guidance.

#### **§ 1005.443 Loan amount.**

(a) *Minimum required investment.* The Borrower is required to make a minimum investment in the property. This investment must come from the Borrower's own funds, gifts, or Tribal, State, or local funds awarded to the Borrower. The minimum investment in the property is the difference between the sales price and the base loan amount.

(b) *Calculating base loan amount.* (1) The base loan amount is determined by calculating:

(i) 97.75 percent of the appraised value of the property or the Acquisition Cost, whichever is less; or

(ii) 98.75 percent of the lessor of the appraised value or sales price when the appraised value or sales price is \$50,000 or less.

(2) The base loan amount cannot exceed the Section 184 Guaranteed Loan limits established under § 1005.441.

(c) *Maximum principal loan amount.* The maximum principal loan amount is the base loan amount and the Upfront Loan Guarantee Fee. The Section 184 Guaranteed Loan limit may only be exceeded by the amount of the Upfront Loan Guarantee Fee.

(d) *Minimum principal loan amount.* A Direct Guarantee Lender may not require a minimum loan amount for a Section 184 Guaranteed Loan.

#### **§ 1005.445 Case numbers.**

(a) Section 184 case numbers may only be obtained by a Direct Guarantee Lender when the Direct Guarantee Lender or its Sponsored Entity has an active loan application from a Borrower(s) and a property is identified.

(b) To obtain a case number, the Direct Guarantee Lender must:

(1) Provide evidence of Tribal enrollment or Alaska Native status;

(2) Verify that the property is located in a Section 184 Approved Program Area;

(3) Confirm that the Loan does not exceed the Section 184 Loan limit; and

(4) Submit Loan specific information as prescribed in Section 184 Program Guidance.

(c) Case numbers are automatically cancelled after a limited period is identified in Section 184 Program Guidance, unless a Firm Commitment is issued, or an extension is granted by HUD in accordance with Section 184 Program Guidance prior to the expiration of the case number.

#### **§ 1005.447 Maximum age of Loan documents.**

Documents reviewed at underwriting may not be older than 60 days and may not be more than 120 days old at the Loan closing 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-day limitations.

#### **§ 1005.449 Qualified mortgage.**

A Section 184 Guaranteed Loan, except for mortgage transactions exempted under 15 U.S.C. 1639c(b)(3)(ii), is afforded safe harbor as a qualified mortgage that meets the ability-to-repay requirements in 15 U.S.C. 1639c(a).

#### **§ 1005.451 Agreed interest rate.**

The Loan shall bear interest at the rate agreed upon by the Direct Guarantee Lender and the Borrower and determined by HUD to be reasonable. The agreed upon interest rate may not exceed the rate generally charged in the area for mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government, or a rate determined by HUD, whichever is lower. The agreed upon interest rate must not take into consideration a Borrower's credit score in accordance with § 1005.409 and must not be based on risk-based pricing.

#### **§ 1005.453 Amortization provisions.**

The Loan must contain complete Amortization provisions satisfactory to

HUD, requiring payments due on the first day of each month by the Borrower. The sum of the principal and interest payments in each month shall be substantially the same.

#### **Underwriting**

#### **§ 1005.455 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 Direct Guarantee Lender would be entirely dependent on the property as Security to protect its investment. Direct Guarantee Lender procedures that evidence such due diligence shall be incorporated as part of the quality control plan required under § 1005.219. Compliance with HUD-prescribed underwriting guidelines shall be the minimum standard of due diligence in underwriting the Loans. Failure to comply with HUD-prescribed underwriting guidelines may result in sanctions in accordance with §§ 1005.905 and 1005.907.

(b) *Evaluating the Borrower(s) qualifications.* The Direct Guarantee 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, the adequacy of the Borrower's available assets to close the transaction, the Borrower's management capacity and grant performance, if applicable, 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.

#### **§ 1005.457 Appraisal.**

(a) A Direct Guarantee Lender shall have the property appraised in accordance with the Uniform Standards of Professional Appraisal Practice and the Fair Housing Act (42 U.S.C. 3601–19). HUD may establish alternative requirements to Uniform Standards of Professional Appraisal Practice and publish such alternative requirements in Section 184 Program Guidance.

(b) A Direct Guarantee Lender must select an appraiser identified on the Federal Housing Administration Appraiser Roster, compiled in accordance with 24 CFR part 200, subpart G. The Direct Guarantee Lender shall not discriminate on the basis of race, color, religion, sex, disability, familial status national origin, or age in the selection of an appraiser.

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

(d) A Direct Guarantee 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 paragraphs (a) through (d) of this section may be subject to sanctions by HUD pursuant to §§ 1005.905 and 1005.907.

(f) The validity period of appraisals is 120 days:

(1) The validity period for an appraisal may be extended for 30 days at the option of the Direct Guarantee Lender if the Direct Guarantee Lender has obtained a Firm Commitment.

(2) If the transaction will not close within 120 days or 150 days with an approved extension, then the Direct Guarantee Lender must update the appraisal. The appraisal must be updated before the 120th-day validity period, or 150th day if extended, 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.

(g) The Direct Guarantee Lender may request an extension of the 120-day validity period for up to two additional 120-day extensions requests. HUD may request an updated appraisal during the extension periods.

#### **§ 1005.459 Loan submission to HUD for Direct Guarantee.**

(a) *Deadline for submission.* Within 60 days after the date of closing the loan, a Direct Guarantee Lender must submit an endorsement case binder to HUD, in accordance with § 1005.503.

(b) *Late submission.* If the endorsement case binder is submitted past 60 days, the Direct Guarantee Lender must include, as part of the case binder, a late endorsement request with supporting documentation, affirming:

- (1) The Loan is not currently in default;
- (2) All escrow accounts for taxes, hazard insurance, and monthly Loan Guarantee Fees are current;
- (3) Neither the Direct Guarantee Lender nor Servicer provided the funds to bring or keep the loan current or to bring about the appearance of acceptable payment history; and
- (4) Notwithstanding paragraph (b)(3) of this section, with prior approval from

HUD, Lender or Servicer may provide funds to bring or keep the loan current.

#### **§ 1005.461 HUD issuance of Firm Commitment.**

HUD may underwrite and issue a Firm Commitment when it is in the interest of HUD.

### **Subpart E—Closing and Endorsement**

#### **Closing**

#### **§ 1005.501 Direct Guarantee Lender closing requirements.**

The Direct Guarantee Lender shall close the Loan in accordance with the following:

(a) *Chain of title/interest.* (1) For fee simple properties, the Direct Guarantee Lender must obtain evidence of all prior ownership within 12 months of the case number assignment date. The Direct Guarantee Lender must review the evidence of prior ownership to determine any undisclosed Identity of Interest transactions.

(i) If an Identity of Interest is discovered, the Direct Guarantee Lender must review for any possible Conflict of Interest.

(ii) As a requirement of closing, all Borrowers must execute a Section 184 Borrower's Certification, addressing any Identity of Interest and Conflict of Interest.

(2) For Trust Land transactions, the requirements for the determination of ownership title interest shall be prescribed by HUD in Section 184 Program Guidance.

(b) *Title/Title Status Report.* The Direct Guarantee 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 Section 184 Guaranteed Loan will be in first Security interest position.

(c) *Closing in compliance with Direct Guarantee Lender approval.* The Direct Guarantee Lender must instruct the settlement agent to close the Section 184 Guaranteed Loan on the same terms or on the same assumptions in which it was underwritten and approved.

(d) *Closing in the Direct Guarantee Lender's name.* A Section 184 Guaranteed Loan must close in the name of the Direct Guarantee Lender issuing the underwriting approval.

(e) *Required HUD documents at closing.* The Direct Guarantee Lender must use the forms and language as may be prescribed in Section 184 Program Guidance.

(f) *Projected escrow.* The Direct Guarantee Lender must establish an escrow account in accordance with § 1005.713 and the Real Estate

Settlement Procedures Act and any other escrow requirements as prescribed under applicable Tribal and Federal laws and regulations.

(g) *Closing costs and fees.* The Direct Guarantee 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 Firm Commitment.

(i) *Per diem interest and interest credits.* The Direct Guarantee Lender may collect per diem interest from the closing date to the date Amortization begins. Alternatively, the Direct Guarantee 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 1/365th of the annual rate.

(j) *Authorization of Tribal notification in the event of default.* At closing, the Borrower must, on a form provided by HUD, elect whether to authorize the Direct Guarantee Lender and HUD to notify the Tribe in the event of a default.

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

(l) *Other requirements.* Direct Guarantee Lender shall close the Loan in accordance with any applicable Tribal, State, or Federal requirements. Direct Guarantee Lenders must execute any other documents as may be required by applicable Tribal, Federal, or State law.

#### **§ 1005.503 Contents of endorsement case binder.**

The Direct Guarantee Lender's endorsement case binder shall be submitted in a format as prescribed by HUD and contain the documents meeting the requirements of § 1005.501 and any other documents supporting the Direct Guarantee Lender's underwriting determination.

#### **§ 1005.505 Payment of Upfront Loan Guarantee Fee.**

The Direct Guarantee Lender, shall provide evidence of the remittance of the Upfront Loan Guarantee Fee, as required under § 1005.607, in accordance with a process provided by HUD in Section 184 Program Guidance.

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

(a) The Direct Guarantee Lender must include in the Section 184 Guaranteed



Loan monthly payment the following charges and escrow payments:

- (1) The ground rents, if any;
- (2) Annual Loan Guarantee Fee, as prescribed in § 1005.607, if any;
- (3) The estimated amount of all taxes;
- (4) Special assessments, if any;
- (5) Flood insurance premiums, if flood insurance is required; and
- (6) Fire and other hazard insurance premiums, except master policy premiums payable to a condominium association or a Tribe and paid directly by the Borrower.

(b) The Section 184 Guaranteed Loan shall further provide that such payments shall be held by the Direct Guarantee 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 Section 184 Guaranteed 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 § 1005.717.

(c) The Borrower shall not be required to pay premiums for fire or other hazard insurance which protects only the interests of the Direct Guarantee 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 Direct Guarantee Lender to the Borrower if the Direct Guarantee 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 Servicer shall be added together, and the aggregate amount shall be paid by the Borrower each month in a single payment by the Borrower, in accordance with the Loan documents. The Servicer shall apply the Borrower's funds in accordance with § 1005.715.

#### **§ 1005.511 Late fee.**

When the monthly Section 184 Guaranteed Loan payment is 15 or more days in arrears, the Servicer may collect from Borrower a late fee, not to exceed four percent of the overdue payment of

principal and interest, or any other limit as established by HUD through public notice with an opportunity for comment. The late fee provision must appear on the note executed at closing.

#### **§ 1005.513 Borrower's payments when Section 184 Guaranteed Loan is executed.**

The Borrower must pay to the Direct Guarantee Lender, upon execution of the Section 184 Guaranteed Loan, where applicable, the:

- (a) One-time Upfront Loan Guarantee Fee or any portion payable pursuant to § 1005.603; and
- (b) All other applicable monthly charges pursuant to § 1005.507, including the Annual Loan Guarantee Fee pursuant to § 1005.607 covering the period from the closing date to the due date of the first installment payment under the Section 184 Guaranteed Loan.

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

(a) The Direct Guarantee Lender must ensure that all fees charged and disclosure requirements at closing to the Borrower comply with all applicable Tribal, Federal, State, and local laws.

(b) The Direct Guarantee Lender may collect from the Borrower the following charges, fees, or discounts at closing:

(1) A charge to compensate the Direct Guarantee Lender for expenses incurred in originating and closing the Loan. HUD may establish limitations on the amount of any such charge in Section 184 Program Guidance.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the Direct Guarantee 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 Direct Guarantee Lender or Borrower;
- (iv) Title examination;
- (v) Title insurance, if any;
- (vi) Fees paid to an appraiser or inspector approved by HUD for the appraisal and inspection, if required, of the property. The Direct Guarantee Lender may collect from the Borrower the reasonable and customary amounts for such appraisals and inspections;
- (vii) Such other reasonable and customary charges as may be authorized by HUD;
- (viii) Reasonable and customary charges in the nature of discounts; and
- (ix) Interest calculations in accordance with § 1005.501(i).

(c) All charges, fees, or discounts are subject to review by HUD after endorsement.

#### **§ 1005.517 Certificate of nondiscrimination by the Direct Guarantee Lender.**

(a) Where applicable, a Direct Guarantee Lender shall certify to HUD as to each of the following:

(1) That neither the Direct Guarantee Lender, nor anyone authorized to act for the Direct Guarantee Lender, will refuse to sell, after the making of a bona fide offer, or refuse to negotiate for the sale otherwise make unavailable or deny the property covered by the Section 184 Guaranteed Loan to any eligible purchaser or discriminate in making a loan or engaging in a residential real estate-related transaction (as defined in 42 U.S.C. 3605) because of race, color, religion, sex, disability, familial status, or national origin, except as provided by law.

(2) That any restrictive covenant, other than permissible restrictions on Trust Land, on such property relating to race, color, religion, sex, disability, familial status, or national origin is hereby illegal, unenforceable, or void.

(b) 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 Creation of the contract.**

The Loan shall be a Section 184 Guaranteed Loan from the date of the issuance of a Loan Guarantee Certificate, from the date of the endorsement of the credit instrument, or from the date of HUD's electronic acknowledgement to the Direct Guarantee Lender that the Loan is guaranteed, as applicable. HUD and the Direct Guarantee Lender are thereafter bound by the regulations in this subpart with the same force and to the same extent as if a separate contract had been executed relating to the Section 184 Guaranteed Loan, including the provisions of the regulations in this subpart and 12 U.S.C. 1715z-13a.

#### **§ 1005.521 Lender pre-endorsement review and requirements.**

Direct Guarantee Lender must complete a pre-endorsement review of the endorsement case binder. This review must be conducted by staff not involved in the originating, processing, or underwriting of the Loan. This review must also confirm that the Loan was underwritten by an approved Direct Guarantee Lender. The endorsement case binder must contain all documentation relied upon by the Direct Guarantee Lender to justify its decision to approve the Loan in accordance with subpart D of this part. Upon finalizing the pre-endorsement review, the Direct Guarantee Lender

must certify that all required documents are submitted and meet the requirements of § 1005.503.

**§ 1005.523 HUD pre-endorsement review.**

(a) Direct Guarantee Lender shall submit to HUD within 60 days after the date of the closing of the Loan, or such additional time as permitted by HUD, the endorsement case binder;

(b) Upon submission by a Direct Guarantee Lender of the endorsement case binder containing those documents required by § 1005.503, HUD will review the documents to ensure that the Loan meets all statutory, regulatory, and administrative requirements, including but not limited to:

(1) There is no fee, late charge, or interest due to HUD;

(2) The Loan was not in default when submitted for the Loan Guarantee Certificate or if submitted for guarantee more than 60 days after the date of closing, the Loan shows an acceptable payment history; and

(3) The Loan was underwritten by an approved Direct Guarantee Lender.

(c) Upon review, if HUD determines the loan to meet program requirements, HUD will issue a Loan Guarantee Certificate. If HUD determines the Loan it be ineligible, HUD will provide the Direct Guarantee Lender a written determination and specify any available corrective actions that may be available. If there is 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, HUD will conduct a complete audit of the endorsement case binder. Repeated submission of deficient endorsement case binders may subject the Direct Guarantee Lender to sanctions or civil money penalties pursuant to §§ 1005.905 and 1005.907.

**§ 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 Direct Guarantee Lender's endorsement case binder and determines the Loan complies with all applicable Section 184 Program requirements in this part.

(b) HUD may issue a Loan Guarantee Certificate for a Loan involving a Security interest in Trust Land before HUD receives the required trailing documents from BIA, if the Direct Guarantee Lender agrees to indemnify HUD. The indemnification agreement between HUD and the Direct Guarantee Lender will terminate only upon receipt of the Trailing Documents in a form and manner acceptable to HUD. Trailing

Documents may include the following documents:

(1) A final certified Title Status Report (TSR) that identifies that the BIA approved and recorded the mortgage instrument and residential lease related to the Section 184 Loan, if applicable;

(2) A certified true copy of the recorded mortgage instrument;

(3) A certified true copy of the recorded lease, if applicable;

(4) A certified true copy of the recorded executed mortgage release documents for all prior mortgages identified on the initial certified TSR, if applicable; and

(5) A certified true copy of any BIA approved and executed subordination agreements.

(c) 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.

(d) This section may not be construed to preclude HUD from conducting a post-endorsement review. With respect to the original Direct Guarantee Lender, HUD may establish defenses against the original Direct Guarantee Lender based on fraud or material misrepresentation. This section may not be construed to bar HUD from establishing partial defenses to the amount payable on the Section 184 Guaranteed Loan.

**§ 1005.527 Post-endorsement review.**

(a) HUD may review an endorsement case binder at any time, including but not limited to a quality control review of all documents in § 1005.503.

(b) Within three business days of a request by HUD, the Direct Guarantee Lender must make available for review, or forward to HUD, copies of the identified endorsement case binder(s).

(c) A Direct Guarantee Lender's failure to provide HUD access to any files may be grounds for sanctions in accordance with §§ 1005.905 and 1005.907.

(d) Based on HUD's review under paragraph (a) of this section, if HUD determines that:

(1) The Loan does not satisfy the requirements of subpart F of this part;

(2) The Direct Guarantee Lender or Sponsored Entity committed fraud or a material misrepresentation; or

(3) The Direct Guarantee Lender or Sponsored Entity had known or should have known of fraud or a material misrepresentation in violation of this part, such that the Loan should not have been approved by the Direct Guarantee Lender.

(e) HUD may request indemnification from the originating Direct Guarantee Lender and impose sanctions on the Direct Guarantee Lender and Sponsored Entity pursuant to §§ 1005.905 and 1005.907.

**§ 1005.529 Indemnification.**

(a) When HUD conducts a pre- or post-endorsement review and HUD determines there is an underwriting deficiency where the Loan should not have been approved, HUD may request the originating Direct Guarantee to indemnify HUD.

(b) Underwriting deficiencies with respect to the Section 184 Guaranteed Loan may include but is not limited to fraud or misrepresentation by the originating Direct Guarantee Lender.

(c) HUD will notify the originating Direct Guarantee Lender in writing when an indemnification is required.

(d) Under an indemnification, the originating Direct Guarantee Lender must reimburse HUD when a subsequent Holder files a claim and HUD suffers a financial loss.

(e) If the originating Direct Guarantee Lender fails to indemnify HUD, HUD may impose sanctions pursuant to §§ 1005.905 and 1005.907.

**Subpart F—Section 184 Guaranteed Loan Fees**

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

HUD shall charge a one-time Section 184 Upfront Loan Guarantee Fee and a recurring Annual Loan Guarantee Fee, which will be collected by a Direct Guarantee Lender or Servicer as required by §§ 1005.603 and 1005.607 and remitted to HUD as required by §§ 1005.605 and 1005.609. The fees collected by the Direct Guarantee Lender or Servicer on behalf of HUD shall be payable to HUD in cash, in the manner prescribed by Section 184 Program Guidance.

**§ 1005.603 Upfront Loan Guarantee Fee.**

At settlement, the Direct Guarantee Lender will collect from the Borrower a one-time Upfront Loan Guarantee Fee in an amount, not exceeding three percent of the principal obligation of the Section 184 Guaranteed Loan. The amount will be set by HUD through a notice in the **Federal Register**.

**§ 1005.605 Remittance of Upfront Loan Guarantee Fee.**

The Direct Guarantee Lender shall remit the Upfront Loan Guarantee Fee to HUD within 15 days after settlement, using the payment system as prescribed by Section 184 Program Guidance. The Direct Guarantee Lender shall provide an account reconciliation of the Upfront

Loan Guarantee Fee in the time and manner as may be prescribed in Section 184 Program Guidance.

**§ 1005.607 Annual Loan Guarantee Fee.**

(a) *Percentage of Annual Loan Guarantee Fee.* Where applicable the Servicer must collect a monthly installment for the Annual Loan Guarantee Fee from the Borrower in an amount, not exceeding one percent of the principal obligation of the loan. The percentage used to calculate the Annual Loan Guarantee Fee amount will be prescribed by notice in the **Federal Register**.

(b) *Payment of Annual Loan Guarantee Fee.* Where applicable, the Section 184 Guaranteed Loan shall require monthly payments by the Borrower to the Servicer in an amount equal to one-twelfth of the Annual Loan Guarantee Fee, payable by the Servicer to HUD in accordance with the Amortization Schedule issued with the Loan approval.

(c) *Amortization Schedule.* The amount of the Borrower's monthly installment will be based on an Amortization Schedule as prescribed in Section 184 Program Guidance.

**§ 1005.609 Remittance of Annual Loan Guarantee Fee.**

(a) Monthly installment of the Annual Loan Guarantee Fee shall be due and payable to HUD no later than the 15th day of each month, beginning in the month in which the Borrower is required to make the first monthly loan payment. Monthly payments of the Annual Loan Guarantee Fee must be submitted using a HUD prescribed payment system, as prescribed by Section 184 Program Guidance.

(b) Subject to the exception in paragraph (d) of this section, the Servicer shall continue to collect from the Borrower and pay HUD the monthly installment of the Annual Loan Guarantee Fee, without taking into account Borrower's default, Loss Mitigation, prepayments, agreements to postpone payments, or agreements to recast the loan.

(c) The Servicer shall adjust the monthly installment of the Annual Loan Guarantee Fee in accordance with the schedule provided in § 1005.607(b). Notwithstanding paragraph (a) of this section, the Servicer shall 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, within 30 days of the overpayment. Failure to refund the Borrower within this timeframe will result in a penalty in accordance with § 1005.611.

(d) The Servicer shall cease collecting the monthly installment of the Annual Loan Guarantee Fee when the amortized loan to value ratio equals an amount less than 78 percent, as established by a schedule provided in § 1005.607(b). Notwithstanding paragraph (a) of this section, the Servicer shall refund to the Borrower any overpayment of Annual Loan Guarantee Fees collected when the loan-to-value ratio is less than 78 percent, within 30 days of the overpayment. Failure to refund the Borrower within this timeframe will result in penalty in accordance with § 1005.611.

(e) Annual Loan Guarantee Fees paid in accordance with the schedule provided in § 1005.607(b) shall not be refundable to the Borrower.

(f) If the Servicer submits the monthly installment of the Annual Loan Guarantee Fee to HUD after the due date, the amount paid must include the required payment of penalties pursuant to § 1005.611(c).

(g)(1) When transfer of servicing occurs in accordance with § 1005.707:

(i) The schedule of monthly installment payments provided in § 1005.607(b) must be provided to the new Servicer; and

(ii) The account reconciliation of the Upfront Guarantee Fee and Annual Loan Guarantee Fee due and remitted to HUD must be provided to the new Servicer.

(2) The new Servicer is responsible for compliance with all requirements of this part, including, but not limited to, any outstanding Annual Loan Guarantee Fee payments and penalties owed to HUD, or any Annual Loan Guarantee Fee adjustments or refunds due to the Borrower.

(3) If a transfer results in missed monthly installment(s) of the Annual Loan Guarantee Fee, the new Servicer shall pay the overdue installment(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.

(h) The Direct Guarantee Lender shall provide an account reconciliation of the Annual Loan Guarantee Fee in the time and manner as may be prescribed in Section 184 Program Guidance.

**§ 1005.611 HUD imposed penalties.**

(a) *Prohibited penalty pass through.* The Direct Guarantee Lender or Servicer shall not recover or attempt to recover from the Borrower any penalties HUD imposes upon the Direct Guarantee Lender or Servicer.

(b) *Failure of Direct Guarantee Lender to timely remit Upfront loan guarantee to HUD.* (1) The Direct Guarantee

Lender shall include a late fee if the Upfront Loan Guarantee Fee to is not remitted to HUD within 15 days of settlement.

(2) Failure to remit the Upfront Loan Guarantee Fee, with a late fee where applicable, may result in HUD rejecting the endorsement or claim case binder.

(c) *Failure of Servicer to timely remit the monthly installment of the Annual Loan Guarantee Fee to HUD.* (1) The Servicer shall include a late fee for each monthly installment of the Annual Loan Guarantee Fee remitted to HUD after the 15th of each month.

(2) Failure to remit monthly installment of the Annual Loan Guarantee Fee to HUD, with late fee, may result in HUD rejecting the claim case binder, where applicable.

(d) *Failure of Servicer to adjust the amount of the Annual Loan Guarantee Fee.* (1) When a Servicer fails to make the annual adjustment to the amount of the monthly installment of the Annual Loan Guarantee Fee in accordance with § 1005.607(b), the Servicer shall, in addition to reimbursing the Borrower as required in § 1005.609(c), pay HUD a penalty for each month the Servicer collects an overpayment of the Annual Loan Guarantee Fee.

(2) The Servicer shall provide annual written notice, in the manner prescribed by Section 184 Program Guidance to the Borrower prior to the scheduled change in the monthly installment of the Annual Loan Guarantee Fee, with such advance notice as required by 12 CFR 1026.9, or other applicable Federal law.

(e) *Failure to cease collection of the Annual Loan Guarantee Fee.* When a Servicer 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 § 1005.609(d), the Servicer shall, in addition to reimbursing the Borrower as required in § 1005.609(d), pay HUD a penalty for each month the Servicer collects an overpayment of the Annual Loan Guarantee Fee.

(f) *Late fee and penalty amounts.* All reasonable late fees and penalty amounts under this section shall be prescribed by HUD.

**Subpart G—Servicing**

**Servicing Section 184 Guaranteed Loans Generally**

**§ 1005.701 Section 184 Guaranteed Loan servicing generally.**

This subpart identifies the servicing requirements for Section 184 Guaranteed Loans. All Section 184 Guaranteed Loans must be serviced by Section 184 approved Servicers, including Section 184 Guaranteed Loans

owned by Holders. Holders are responsible for all servicing actions, including the acts of its Servicers. Servicers are responsible for their actions in servicing Section 184 Guaranteed Loans, including actions taken on behalf of, or at the direction of, the Holder. Failure to comply with this subpart may result in the reduction of the claims amount in accordance with subpart H of this part or may subject Servicer to sanctions pursuant to subpart I of this part. HUD requires Servicers to comply all applicable Tribal, Federal, and State requirements.

**§ 1005.703 Servicer eligibility and application process.**

(a) To be eligible to service Section 184 Guaranteed Loans, a Direct Guarantee Lender, Non-Direct Guarantee Lenders, or other financial institution must be an approved mortgage Servicer for the Federal Housing Authority (FHA) or another agency of the Federal Government.

(b) All eligible Direct Guarantee Lenders, Non-Direct Guarantee Lenders and other financial institutions must apply to become a Servicer in accordance with Section 184 Program Guidance.

(c) As of [EFFECTIVE DATE OF FINAL RULE], Direct Guarantee Lenders servicing Section 184 Guaranteed Loans may request a waiver of § 1005.703(a).

**§ 1005.705 Servicer approval.**

(a) *Final approval.* Approval is signified by:

(1) Written notification from HUD that the Direct Guarantee Lender, Non-Direct Guarantee Lender, or other financial institution is approved as a Servicer under the Section 184 Program; and

(2) Agreement by the Direct Guarantee Lender, Non-Direct Guarantee Lender, or other financial institution to comply with requirements of this part and any applicable Federal, State, or Tribal law requirement.

(b) *Limitations on approval.* The Direct Guarantee Lender, Non-Direct Guarantee Lender or other financial institution may only be approved to service Section 184 Guaranteed Loans in areas where the Direct Guarantee Lender, Non-Direct Guarantee Lender, or financial institution is licensed, as applicable.

(c) *Denial of participation.* A Direct Guarantee Lender, Non-Direct Guarantee Lender, or other financial institution may be denied approval to become a Servicer if HUD determines the Direct Guarantee Lender, Non-Direct Guarantee Lender, or other financial institution does not meet the qualification requirements of

§ 1005.703. HUD will provide written notification of denial and of the right to submit a written appeal in accordance with § 1005.909.

**§ 1005.707 Responsibility for servicing.**

(a) *Program compliance.* (1) The Servicer must participate in HUD training on the Section 184 program and comply with this part and all Tribal, State, and Federal requirements.

(2) A Servicer shall provide written notification to HUD of any changes that affect qualifications under this subpart within a timeframe prescribed by Section 184 Program Guidance.

(b) *Sub-Servicer.* (1) If a Servicer elects to use a sub-Servicer, the sub-Servicer must be an approved Servicer under § 1005.705.

(2) Servicers are responsible for the actions of their sub-Servicers. The Servicer shall remain fully responsible to HUD for Section 184 Guaranteed Loan servicing in accordance with this subpart, and the actions of a sub-Servicer shall be considered the actions of the Servicer.

(c) *Change in Servicer.* (1) When the responsibility of servicing a Section 184 Guaranteed Loan is transferred from one Servicer to another, the acquiring Servicer shall assume responsibility for compliance with this part, this includes addressing any noncompliance by the former Servicer.

(2) The former Servicer must notify HUD of the change in Servicer within a timeframe and format prescribed by Section 184 Program Guidance.

(3) The acquiring Servicer shall provide notice to the Borrower of the transfer of servicing in accordance with 12 CFR 1024.33, or other Federal laws that may require such notice.

(4) HUD will hold the acquiring Servicer responsible for errors, omissions, and unresolved HUD review findings on the part of the losing Servicer (or losing sub-Servicer), discovered after the transfer is reported even when the errors or omissions took place prior to the transfer.

(d) *Transfer of servicing rights.* The Servicer must submit written notification to HUD, in a timeframe prescribed by Section 184 Program Guidance, of the transfer of servicing rights through the of acquisition or sale of any Section 184 Guaranteed Loans.

(e) *Reporting requirements.* (1) On a date and manner established by Section 184 Program Guidance, the Servicer shall report to HUD the status of all Section 184 Guaranteed Loans in its servicing portfolio.

(2) Servicer shall provide an Annual Loan Guarantee Fee reconciliation to the Borrower and HUD, in a manner and

timeframe as prescribed by Section 184 Program Guidance.

(3) Servicer must also comply with any other reporting requirements under § 1005.903.

(4) The Servicer's failure to submit required reports on time may subject the Servicer to sanctions and civil money penalties pursuant to §§ 1005.905 and 1005.907.

(f) *Business change reporting.* Within a timeframe and form as prescribed by Section 184 Program Guidance, the Servicer shall provide written notification to HUD of:

(1) All changes in the Servicer's legal structure, including, but not limited to, mergers, acquisitions, terminations, name, location, control of ownership, and character of business;

(2) Staffing changes related to servicing Section 184 Guaranteed Loans; and

(3) Any sanctions by another supervising entity.

(4) Failure to report changes within the timeframe prescribed in Section 184 Program Guidance may result in sanctions in accordance with §§ 1005.905 and 1005.907.

(g) *Annual recertification.* (1) All Servicers are subject to annual recertification on a date and manner as prescribed by Section 184 Program Guidance. With each annual recertification, Servicers must submit updated contact information, current FHA recertification status, and other pertinent documents as prescribed by Section 184 Program Guidance.

(2) Servicers may request an extension of the recertification deadline in accordance with Section 184 Program Guidance.

(3) HUD will review the annual recertification submission and may request any further information required to determine recertification. HUD will provide written notification of approval to continue participation in the Section 184 Program or denial. A denial may be appealed pursuant to § 1005.909.

(4) If an annual recertification is not submitted by the reasonable deadline as prescribed in Section 184 Program Guidance, HUD may subject the Servicer to sanctions under § 1005.907.

(h) *Program ineligibility.* Servicer may be deemed ineligible for Section 184 Program participation when HUD becomes aware that the entity or any officer, partner, director, principal, manager, or supervisor of the entity was:

(1) 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) Indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the Servicer to participate in the Title I or Title II programs of the National Housing Act, or Section 184 Program;

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

(4) Engaged in business practices that do not conform to generally accepted practices of prudent Servicers or that demonstrate irresponsibility;

(5) 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) 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) In violation of 12 U.S.C. 1715z–13a or any other requirement established by HUD.

(i) *Records retention.* Servicers must maintain the servicing case binder for a period of three years beyond the date of satisfaction or maturity date of the Loan, whichever is sooner. However, where there is a payment of claim, the claim case binder must be retained for a period of at least five years after the final claim has been paid. Section 184 Program Guidance shall prescribe additional records retention time depending on the circumstances of the claim.

#### **§ 1005.709 Providing information to Borrower and HUD.**

(a) Servicers shall provide Section 184 Guaranteed 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. At a minimum, the Servicer must provide contact information to the Borrower in accordance with 12 CFR 1024.36 and 1026.41, including:

(1) A written address a Borrower can use to request and submit information; and

(2) A toll-free telephone number a Borrower can use to verbally ask questions and seek information.

(b) All Borrowers must be informed of the system available for obtaining

answers to loan inquiries, the Servicer's 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.

(d) At the Borrower's request, the Servicer shall furnish a statement of the escrow account sufficient to enable the Borrower to reconcile the account.

(e) Each Servicer of a Section 184 Guaranteed Loan shall deliver to the Borrower a written notice of any transfer of the Servicing of the Section 184 Guaranteed 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 12 CFR 1024.33.

(f) Servicers must respond to HUD's written or electronic requests for information concerning individual accounts within a reasonable timeframe established by Section 184 Program Guidance, or the deadline placed by other applicable law, whichever is sooner.

#### **§ 1005.711 Assumption and release of personal liability.**

(a) *Assumption.* Section 184 Guaranteed Loans may be fully assumed by eligible substitute Borrowers, if such assumption is approved by HUD and other required parties, including but not limited to a Tribe, TDHE, or the BIA. HUD approval will be based on the following:

(1) *Creditworthiness.* At least one person acquiring ownership must be determined to be creditworthy under subpart D of this part. If the Servicer is approved as a Direct Guarantee Lender, the Servicer performs a creditworthiness determination under § 1005.409. If the Servicer is not approved as a Direct Guarantee Lender, then the Servicer shall request a creditworthiness determination in a manner prescribed by Section 184 Program Guidance.

(2) *Trust Lands.* (i) The lease document may require Tribal and BIA approval of the assignment of the lease to the new Borrower. Servicers shall 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.

(ii) The lease may contain other Conveyance restrictions. Servicer must review the lease for Conveyance

restrictions and ensure the lease complies with § 1005.303(b)(2).

(b) *Fees.* The Servicer may collect from the Borrower the following fees and costs:

(1) A charge to compensate the Direct Guarantee Lender for reasonable and necessary expenses incurred as part of the assumption review and processing. HUD may establish limitations on the amount of any such charge.

(2) Reasonable and customary costs, but not more than the amount actually paid by the Direct Guarantee Lender, for any of the following items: credit report, verification of employment and the execution of additional release of liability forms.

(3) Additional fees and costs over and above the assumption fee and reasonable and customary costs cannot be assessed.

(c) *Release of liability.* At closing, the Servicer must release the existing Borrower from any personal liability on a form approved by HUD; the eligible and approved substitute Borrower assumes personal liability of the Section 184 Guaranteed Loan when the release is executed.

(d) *Modification of Loan Guarantee Certificate.* Upon completion of an assumption, the Servicer shall submit copies of the documentation required in this section to HUD, in a manner and form prescribed by HUD. HUD will subsequently issue a revised Loan Guarantee Certificate.

#### **§ 1005.713 Due-on-sale provision.**

A Section 184 Guaranteed Loan shall contain a due-on-sale clause permitting acceleration, in a form prescribed by Section 184 Program Guidance. The Servicer shall promptly advise HUD of any sale or other transfer that occurs without the approval of the Direct Guarantee Lender. If acceleration is permitted by applicable Tribal, Federal, or State law, the Servicer shall certify as to the legal authority and seek HUD's approval, in a form and manner prescribed by Section 184 Program Guidance. Within 30 days of receipt of HUD approval to accelerate, the Servicer shall notify the Borrower of default and acceleration.

#### **§ 1005.715 Application of Borrower payments.**

(a) Servicer shall comply with § 1005.509 with respect to the application of Borrower payments. The Servicer shall apply the payments in the following order:

(1) Escrow items, including monthly payments of the Annual Loan Guarantee Fee, rents, taxes, special assessments, and if required, flood insurance, fire and other hazard insurance premiums;

(2) Interest accrued on the Section 184 Guaranteed Loan;

(3) Principal of the Section 184 Guaranteed Loan; and

(4) Late charges, if permitted under the terms of the Section 184 Guaranteed Loan and subject to such conditions as HUD may prescribe.

(b) Partial Payments shall be applied in accordance with § 1005.723.

**§ 1005.717 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, taxes, assessments, monthly payments of Annual Loan Guarantee Fee, 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. Leasehold rents on Trust Lands may require additional escrow segregation by Servicer's which HUD will prescribe in Section 184 Program Guidance.

(b) It is the Servicer's responsibility to ensure timely escrow disbursements and their proper application. Servicers must establish controls to ensure that accounts payable from the escrow account or the information needed to pay such accounts payable is obtained on a timely basis. Penalties for late payments for accounts payable from the escrow account must not be charged to the Borrower or HUD unless the Servicer can show that the penalty was the direct result of the Borrower's error or omission. The Servicer shall further comply with all requirements set forth in 12 CFR 1024.17, including method of calculations related to escrow, the methods of collection and accounting, and the payment of the accounts payable for which the money has been escrowed.

(c) The Servicer shall not initiate foreclosure for escrow account shortfalls resulting from advances made pursuant to this section.

(d) When a Loan Guarantee Certificate is terminated voluntarily or due to Borrower's prepayment, in total satisfaction of the Section 184 Guaranteed Loan, amounts in the escrow account designated to pay any HUD required program fees shall be remitted to HUD in a form approved by HUD at the time of the required reporting related to the voluntary termination or prepayment. When a Section 184 Guaranteed Loan is prepaid

in full, amounts held in escrow for taxes, hazard insurance, or rents, if applicable, that are not yet due or incurred, shall be released to the Borrower.

**§ 1005.719 Fees and costs after endorsement.**

(a) After endorsement, the Servicer may collect reasonable and customary fees and costs from the Borrower only as provided in paragraphs (a)(1) through (14) of this section. The Servicer may collect these fees or costs from the Borrower only to the extent that the Servicer is not reimbursed for such fees or costs by HUD. Permissible fees and costs include:

(1) Late fee in accordance with § 1005.511;

(2) Costs 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 an insufficient funds charge);

(3) Fees for processing a change of ownership of the property;

(4) Fees and costs for processing an assumption of the Section 184 Guaranteed Loan in connection with the sale or transfer of the property;

(5) Costs for processing a request for credit approval incurred in the course of processing an assumption or substitute Borrower;

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

(7) Costs for modification of the Section 184 Guaranteed Loan requiring recordation of the agreement, including those for extension of term or re-Amortization;

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

(9) Attorney's and trustee's fees and costs actually incurred (including the cost of appraisals and advertising) when a Section 184 Guaranteed Loan has been referred to foreclosure counsel and subsequently the Section 184 Guaranteed Loan is reinstated. No attorney's fee and cost that exceeds the reasonable limits prescribed by Section 184 Program Guidance may be collected from the Borrower, unless approved by HUD;

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

(11) Where permitted by the Security instrument, attorney's fees and costs actually incurred in the defense of any suit or legal proceeding wherein the

Servicer shall be made a party thereto by reason of the Section 184 Guaranteed Loan. No attorney's fee may be charged for the services of the Servicer's staff attorney or other employee;

(12) Property preservation costs incurred, subject to reasonable limits prescribed by Section 184 Program Guidance, or otherwise approved by HUD;

(13) 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

(14) Such other reasonable and customary costs as may be authorized by HUD.

(b) Reasonable and customary fees must be based upon the actual cost of the work performed, including out-of-pocket expenses. HUD may establish maximum fees and costs which are reasonable and customary in different geographic areas. Except as provided in this part, no fee or costs shall be based on a percentage of either the face amount of the Section 184 Guaranteed Loan or the unpaid principal balance due.

**§ 1005.721 Enforcement of late fees.**

(a) A Servicer shall not commence foreclosure when the Borrower's only default is his or her failure to pay a late fee(s).

(b) A late fee that may be assessed under the Section 184 Guaranteed Loan shall not justify return of a payment submission. However, if the Servicer thereafter notifies the Borrower of his obligation to pay a late fee, such a fee 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 Section 184 Guaranteed Loan. Partial Payments shall be treated as provided in § 1005.723.

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

(d) During the 60-day period beginning on the effective date of transfer of the Servicing of a Section 184 Guaranteed Loan, a late fee shall not be assessed. If a payment is received by the prior Servicer on or before the due date (including any applicable grace period allowed by the Section 184 Guaranteed Loan), no late fees shall be assessed by the new Servicer.

(e) A Servicer shall not assess a late fee for failure to pay a late fee, as prohibited under 12 CFR 1026.36.

**§ 1005.723 Partial payments.**

(a) A Servicer must have a written policy on how it handles Partial Payments, in compliance with this section and that policy shall be readily available to the public.

(b) 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:

(1) Accept a Partial Payment and either apply it to the Borrower's account;

(2) Identify it with the Borrower's account number and hold it in a trust account pending disposition; or

(3) Return the Partial Payment(s) to the Borrower.

**§ 1005.725 Handling prepayments.**

Notwithstanding the terms of the Section 184 Guaranteed Loan, the Servicer shall accept a prepayment at any time and in any amount. Monthly interest on the Section 184 Guaranteed Loan must be calculated on the actual unpaid principal balance of the Section 184 Guaranteed Loan as of the date the prepayment is received, and not as of the next payment due date.

**§ 1005.727 Substitute Borrowers.**

Where an original Borrower requests the substitution of an existing Borrower on the Section 184 Guaranteed Loan:

(a) A Servicer who is Non-Direct Guarantee Lender or financial institution must obtain HUD approval for the substitution. A remaining original Borrower must be maintained and continue to be personally liable for the Section 184 Guaranteed Loan, notwithstanding any discharge entered in accordance with applicable Tribal, Federal, or State law.

(b) A Servicer who is a Direct Guarantee Lender may, subject to limitations established by HUD, approve an eligible substitute Borrower that meets the requirements for Section 184 Guaranteed Loans which they own or service, and need not obtain further without specific approval from HUD. A remaining original Borrower must be maintained and continue to be personally liable for the Section 184 Guaranteed Loan, notwithstanding any discharge entered in accordance with applicable Tribal, Federal, or State law.

**Servicing Default Section 184 Guaranteed Loans**

**§ 1005.729 Section 184 Guaranteed Loan collection action.**

A Servicer shall take prompt action to collect amounts due from Borrowers to minimize the number of accounts in default status. The Servicer must exhaust all reasonable possibilities of collection, including assessing the Borrower's financial circumstances for Loss Mitigation options in accordance with § 1005.739.

**§ 1005.731 Default notice to Borrower.**

(a) *Live contact.* (1) The Servicer shall establish or make good faith efforts to establish live contact with a Borrower in default 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 consists of reasonable steps under the circumstances to reach a Borrower, including telephoning a Borrower on more than one occasion and, if unable to establish live contact, sending written or electronic communication encouraging a Borrower to establish live contact with the Servicer.

(b) *Written notice.* The Servicer shall give written notice of default to the Borrower, in a format approved by HUD, no later than the end of the 45th day of a Borrower default. The Servicer must contact the Borrower, whether the Borrower lives in the same or a different location. If an account is reinstated and again enters default, a new default notice shall be sent to the Borrower, 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 give additional or more frequent notices of default, at its discretion.

(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) Servicer contact information, including but not limited to 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 how a Borrower may obtain more information about Loss Mitigation options;

(4) An outline of all critical Servicing deadlines under this subpart, including

but not limited to the Servicer timeframe for evaluating a complete Loss Mitigation application, deadline for Borrower to select a Loss Mitigation option, Tribal notice under § 1005.757(a), if applicable, and the process for filing First Legal Action;

(5) Disclosure to the Borrower that they may be eligible for additional protections under Consumer Financial Protection Bureau regulations in 12 CFR chapter X;

(6) A Loss Mitigation application and submission instructions, including a statement that delays in submission of the Loss Mitigation application or incomplete submissions shall reduce the availability of certain Loss Mitigation options to the Borrower;

(7) The manner in which a Borrower can access the HUD list of homeownership counselors or counseling organizations, including a website(s) or toll-free telephone(s); and

(8) A statement informing the Borrower that the Servicer may make information available to local credit bureaus and prospective creditors.

(d) *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, or State law.

**§ 1005.733 Loss mitigation application, timelines, and appeals.**

(a) *Servicer response to Loss Mitigation application.* Within five days after the Servicer receives the Borrower's Loss Mitigation application, the Servicer must, in writing:

(1) Acknowledge receipt of the application;

(2) Determine if the application is complete or incomplete; and

(3) If incomplete, notify the Borrower which documentation is required and missing, and that submission of the missing documents is required no later than fourteen days from the date of the response to provide missing documents to the Servicer. If Borrower does not timely submit the requested documents, the Servicer must initiate live contact with the Borrower.

(b) *Servicer timeframe for evaluating complete Loss Mitigation application.* Within fourteen days of receipt of a complete application from Borrower, the Servicer must evaluate the application.

(c) *Notification of Servicer determination.* The Servicer shall provide written notification: (1) Informing the Borrower of all available Loss Mitigation options;

(2) Encouraging the Borrower to review all available Loss Mitigation options and to contact the 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 the Borrower that if no Loss Mitigation option is elected or if all elected Loss Mitigation options fail, the Servicer may proceed with Tribal notice under § 1005.757(a) or First Legal Action at 180 days of default in accordance with § 1005.757 or § 1005.761; and

(5) Informing the Borrower that, upon First Legal Action or the assignment of the Section 184 Guaranteed Loan to HUD, the Servicer may no longer offer or authorize a pre-foreclosure sale as an alternative to foreclosure, and that the primary alternative to foreclosure shall be a deed-in-lieu/lease-in-lieu of foreclosure, subject to applicable Tribal, Federal, or State law or contractual requirements.

(d) *Appeal.* (1) If, after the Borrower receives the Servicer's Loss Mitigation options, the Borrower disagrees with Servicer's Loss Mitigation determination, the Borrower may appeal in writing and request that the Servicer re-evaluate the Borrower's Loss Mitigation application. The Borrower must submit its appeal no later than 14 days from the date of notification of the Servicer's Loss Mitigation determination. Upon receipt of the Borrower's appeal of the Servicer's Loss Mitigation determination, the Servicer shall re-evaluate the Borrower's Loss Mitigation application within thirty days but may not use the same staff that made the initial Loss Mitigation determination and shall notify the Borrower of its appeal decision in writing.

(2) If the Borrower submits a timely written appeal, the 180-day deadline for First Legal Action shall be suspended during the appeal process.

#### **§ 1005.735 Occupancy inspection.**

(a) *Occupancy inspection.* An occupancy inspection is a visual inspection of a Section 184 Guaranteed Loan property by the Servicer to determine if the property is vacant or abandoned and to confirm the identity of any occupants.

(b) *Occupancy follow-up.* 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 Section 184 Guaranteed Loan remains in default after the initial occupancy inspection that did not result in determination of the Borrower's occupancy status.

(c) *Initial occupancy inspection.* The Servicer must perform the initial occupancy inspection after 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 Section 184 Guaranteed 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 and a Borrower is a debtor in bankruptcy, the Servicer must contact either the bankruptcy trustee or the Borrower's bankruptcy attorney, if the Borrower is represented, for information concerning the occupancy status of the property or if an occupancy inspection is necessary or requires authorization. If the Servicer cannot determine that the property is vacant or abandoned during the period of the automatic stay, the Servicer must document the servicing case binder with evidence that it timely contacted the attorney or trustee.

(f) *Conflicts with other law.* Nothing in this section shall require a Servicer to conduct an inspection when prohibited by applicable Tribal, Federal, State, or local law.

#### **§ 1005.737 Vacant property procedures.**

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 all 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 occupancy is verified through the delivery confirmation, the Servicer shall continue pursuing collection efforts required by § 1005.729 until the Servicer has the authority to proceed to First Legal Action.

(b) If the Servicer verifies through the delivery confirmation process that 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) For properties on Trust Land, initiate Tribal First Right of Refusal notice under § 1005.757(a) within seven days;

(4) For fee simple properties, initiate First Legal Action within seven days;

(5) 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

(6) Retain documentation in the servicing case binder providing evidence of activities required by HUD in this section or otherwise directed by HUD.

(c) *Conflicts with other law.* Nothing in this section shall require a Servicer to communicate with a Borrower in a manner prohibited by applicable Tribal, Federal, or State law.

#### **Servicing Default Section 184 Guaranteed Loans Under the Loss Mitigation Program**

##### **§ 1005.739 Loss mitigation.**

(a) The purpose of Loss Mitigation is to attempt to cure the Borrower's default and minimize financial loss to HUD. Servicer must also comply with 12 CFR 1024.41 and any applicable Tribal, Federal, and State requirements.

(b) The Servicer must offer a Loss Mitigation option, if applicable to the Borrower and if practical under the circumstances, within 180 days of the date of default.

(c) Loss mitigation options include:

- (1) A forbearance plan;
- (2) Assumption;
- (3) A loan modification;
- (4) Pre-foreclosure sale;
- (5) A deed-in-lieu/lease-in-lieu of foreclosure; or

(6) Other options, as may be prescribed in Section 184 Program Guidance.

(d) A Loss Mitigation review 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.

(e) HUD may prescribe conditions and requirements for the eligibility and appropriate use of Loss Mitigation options.

(f) Within 180 days of default, if the Borrower is offered a Loss Mitigation option, other than loan modification, and subsequently fails to meet the Loss

Mitigation option requirements, the Servicer shall within the time period as may be established by Section 184 Program Guidance of the failure of the Loss Mitigation, determine whether Borrower should continue with the current Loss Mitigation option or reassess the Borrower for an alternate Loss Mitigation option.

(1) Upon competition of the Loss Mitigation assessment, the Servicer must notify the Borrower within two days of the Loss Mitigation option failure and any possible additional Loss Mitigation options.

(2) The Borrower shall respond to the Servicer within seven days and accept any offer of Loss Mitigation, or the Servicer will proceed with foreclosure or Tribal First Right of Refusal notice under § 1005.757(a).

(g) If the Borrower is satisfactorily performing under a Loss Mitigation option, other than a loan modification, at 180 days after default but subsequently fails to perform, the Servicer shall follow 12 CFR part 1024 (Regulation X) and, for Trust Land, initiate Tribal First Right of Refusal notice under § 1005.757(a) within five days of the Loss Mitigation option failure.

(h) Documentation must be maintained for the initial and all subsequent evaluations and resulting Loss Mitigation actions in the servicing case binder in accordance with § 1005.219(d)(2).

(i) A Servicer that is found to have failed to engage in and comply with Loss Mitigation as required under this subpart may be subject to enforcement action by HUD, including but not limited to sanctions under §§ 1005.905 and 1005.907.

#### **§ 1005.741 Notice to Tribe and BIA—Borrower default.**

(a) When two consecutive Section 184 Guaranteed Loan payments are in default or sixty days after other default under the Section 184 Guaranteed Loan, the Servicer shall provide notice of default to:

(1) The BIA, for Section 184 Guaranteed Loan property that is on Trust Land, in accordance with applicable requirements under 25 CFR part 162; and,

(2) The Tribe, for any Section 184 Guaranteed Loan property where a Borrower has provided consent of notification in accordance with § 1005.501(j).

(b) The Servicer shall continue exploring Loss Mitigation options, consistent with the requirements under this subpart, with the Borrower during

the notification process to the Tribe or BIA.

#### **§ 1005.743 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. 3901–4043), 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 the 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 Section 184 Guaranteed Loan within the maturity as provided in the original loan term.

(b) *Forbearance.* Forbearance plans may be available to Borrowers in military service pursuant to § 1005.745(e).

(c) *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 military service shall be excluded in computing the period within which the Servicer shall commence First Legal Action to acquire the property or Tribal notice under § 1005.757(a). 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.

#### **§ 1005.745 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, where permitted under Tribal or State law, between a Servicer and Borrower allowing for reduced or suspended payments and may provide specific terms for repayment.

(1) *Eligibility.* The Servicer may offer an informal forbearance plan to a Borrower with a delinquent Section 184 Guaranteed Loan who is not experiencing a loss of income or an increase in living expenses that can be verified.

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

(c) *Formal forbearance.* Formal forbearance plans are written agreements executed by the 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 is not experiencing 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 reinstate 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.* The Servicer shall execute a written agreement with the Borrower outlining the terms and conditions of the formal forbearance. The Servicer must include in the formal forbearance agreement a provision for the resumption of monthly payments on a date certain, with repayment in amounts which will completely reinstate the Section 184 Guaranteed Loan no later than the original maturity date. The Servicer must retain in the servicing case binder a copy of the written formal forbearance agreement postponing principal and interest payments.

(3) *Duration.* The repayment period shall be equal to or 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 case binder.

(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 condition of the property adversely impacts the Borrower’s use or ability to support the debt as follows:

(i) Financial information provided by the Borrower indicating large expenses for property maintenance;

(ii) The Servicer receives notice from local government or other third parties regarding property condition; or

(iii) The property may be affected by a disaster event.

(iv) If significant maintenance costs contributed to the default or are affecting the Borrower’s ability to make payments under the loan or formal forbearance agreement, the Servicer may provide in the formal forbearance 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 Loss Mitigation option is available when one or more of the Borrowers has become unemployed and the loss of employment has negatively affected the Borrower's ability to continue to make their monthly Section 184 Guaranteed Loan payment.

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

(i) The Section 184 Guaranteed Loan must be at least three months in default.

(ii) The Borrower is experiencing 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 must have a verified unemployment status and no Borrower is currently receiving continuous income; or an analysis of the Borrower's financial information indicates that special forbearance-unemployment is the best or only option available for the Borrower.

(2) *Agreement.* The Servicer shall execute a written special forbearance-unemployment agreement with the Borrower outlining the terms and conditions of the special forbearance-unemployment. The Servicer must include in the special forbearance-unemployment agreement a provision for the resumption of monthly payments on a date certain, with repayment in amounts which will completely reinstate the Section 184 Guarantee Loan no later than the original maturity. The Servicer must retain in the servicing case binder a copy of the written special forbearance-unemployment agreement postponing principal and interest payments.

(3) *Duration.* The repayment period shall not exceed six months. During this repayment period where Borrower is in compliance with the Special Forbearance-Unemployment Agreement, the Servicer shall not proceed to filing of First Legal Action or initiating Tribal First Right of Refusal notice under § 1005.757(a) 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 case binder.

(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 condition of the property adversely impacts the Borrower's use or ability to support the debt as follows:

(i) Financial information provided by the Borrower indicating large expenses for property maintenance;

(ii) The Servicer receives notice from local government or other third parties regarding property condition; or

(iii) The property may be affected by a disaster event.

(iv) If significant maintenance costs contributed to the default or are affecting the Borrower's ability to make payments under the Section 184 Guaranteed Loan or special forbearance-unemployment agreement, the Servicer may provide in the special forbearance-unemployment agreement a period of 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 special forbearance-servicemember agreement with the Borrower, postpone any part of the monthly Section 184 Guaranteed Loan that represents amortization of principal, for the period permitted by HUD under § 1005.743.

(1) *Eligibility.* The servicemember must be in active-duty military service and meet the criteria established in 50 U.S.C. 3911. Dependents of servicemembers are entitled to protections in limited situations per the Servicemembers Civil Relief Act, as amended.

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

(3) *Required documents.* The Borrower shall provide Servicer with a copy of the servicemember's deployment orders.

(4) *Agreement.* (i) The Servicer shall execute a written special forbearance-servicemember agreement with the Borrower outlining the terms and conditions of the special forbearance-servicemember. The Servicer must include in the special forbearance-servicemember agreement a provision for the resumption of monthly payments on a date certain, with repayment in amounts which will completely reinstate the Section 184 Guaranteed Loan no later than the original maturity date. The Servicer must retain in the

servicing case binder a copy of the written special forbearance-servicemember agreement postponing principal and interest payments.

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

(f) *Continued review and re-evaluation.* The Servicer shall monitor the Borrower's compliance with an agreement under § 1005.743 every 30 days, until the end of the agreement.

#### **§ 1005.747 Assumption.**

The Servicer shall explore assumption as a Loss Mitigation option with the Borrower in accordance with § 1005.711.

#### **§ 1005.749 Loan modification.**

(a) *General.* A Section 184 Guaranteed Loan modification may include a change in one or more of the following: interest rate; capitalization of delinquent principal, interest or escrow items; or re-amortization of the balance due. A Section 184 Guaranteed Loan modification may not be used as a means to reinstate the Section 184 Guaranteed Loan prior to sale or assumption.

(b) *Eligibility.* The Servicer must ensure that the Borrower is able to support the monthly loan payment 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 have elapsed since the closing date of the original Section 184 Guaranteed Loan.

(2) The Borrower has not executed a loan modification agreement in the past 24 months. The number of loan modification agreements may be limited as prescribed by Section 184 Program Guidance. The Servicer may approve the first loan modification agreement under the Loan, and HUD must approve any subsequent loan modifications.

(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 term, although not sufficient to sustain the original Section 184 Guaranteed Loan and repay the arrearage.

(5) The Borrower's minimum surplus income and percentage of net income shall be prescribed by HUD.

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

(7) The Borrower's monthly payment, which consists of principal, interest,

taxes, insurance, and other escrow, can be reduced by the greater of 10 percent of the existing monthly Section 184 Guaranteed Loan payment amount or \$100, using an agreed upon interest rate in accordance with § 1005.451 and amortizing for a term up to 30 years or any other period as may be prescribed by HUD.

(8) The Borrower has successfully completed a three-month trial payment plan based on the Section 184 Guaranteed Loan estimated modification monthly payment amount.

(d) *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 indicates large expenses for property maintenance;

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

(3) The property is affected by a disaster event.

(e) *Trial payment plans.* A trial payment plan is a written agreement executed by all parties on the Section 184 Guaranteed Loan, for a minimum period of three months, during which the Borrower must make the agreed-upon consecutive monthly payments prior to execution of the final 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 loan modification must in accordance with § 1005.451.

(ii) The interest rate is established when the trial payment plan is offered to the Borrower.

(iii) The established monthly 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 30 days before the date the first trial payment is due.

(3) *Trial payment plan signatures.* (i) All parties on the Section 184 Guaranteed 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;

(B) A Borrower and a co-Borrower are divorced; or

(C) A Borrower or co-Borrower on the Section 184 Guaranteed 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 Section 184 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 procedures in the Section 184 Program 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, the Servicer must:

(i) Provide notice to the Borrower of the failure to comply with the trial payment plan; and

(ii) Offer the Borrower the opportunity for a deed-in-lieu/lease-in-lieu of foreclosure, 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) 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 to HUD in the manner prescribed in Section 184 Program Guidance.

(f) *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.

(g) *Post-modification review and 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, the Servicer shall provide copies of the loan modification documents to HUD. The Servicer shall comply with additional processing instructions as prescribed by Section 184 Program Guidance.

#### **§ 1005.751 Pre-foreclosure sale.**

(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 any junior lien holders have agreed to release their liens and forgive the deficiency balance on the real estate.

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

(1) The Section 184 Guaranteed Loan was originated at least 12 months prior to default;

(2) Default was due to an adverse and unavoidable financial situation impacting the Borrower;

(3) The property has a current fair market value that equal to or less than the unpaid principal balance;

(4) The Borrower elected the pre-foreclosure sale option within 120 days from default; and

(5) All other requirements of the pre-foreclosure sale Loss Mitigation option under this section are met.

(c) *Surchargeable damages.*

Surchargeable damage is damage to the Section 184 Guaranteed Loan 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 when the property has sustained 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. The Servicer must comply with paragraph (l) of this section where a hazard insurance claim must be filed.

(d) *Cash reserves.* Before executing a pre-foreclosure sale agreement as described in paragraph (h) of this section, 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) 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 Section 184 Guaranteed 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 give written notice to the Borrower designating the amount of the Borrower's cash reserve contribution that is to be applied towards the transaction.

(3) 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 or Title Status Report.* (1) For Section 184 Guaranteed Loans on fee simple lands, a Servicer must ensure the property has Good and Marketable Title. Before approving a pre-foreclosure sale Loss Mitigation option, the Servicer must obtain title evidence or a preliminary report verifying that the title is not impaired by unresolvable title defects or junior liens that cannot be discharged.

(2) For Section 184 Guaranteed Loans on Trust Land, the Servicer shall obtain a certified Title Status Report from the BIA. Before approving a pre-foreclosure sale Loss Mitigation option, the Servicer must verify that the property is not encumbered by unresolvable title defects or junior liens that cannot be discharged.

(f) *Discharge of junior liens.* The Servicer must contact all junior lienholders to verify the Borrower has secured a discharge of the junior liens.

(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 § 1005.457.

(2) *Appraisals.* The Servicer must obtain a standard electronically formatted appraisal performed by an FHA Appraiser Roster 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 HUD. A copy of the

appraisal must be provided to the Borrower or sales agent, upon request;

(iii) The "as-is" fair market value used for a pre-foreclosure sale transaction is valid for 120 days; and

(iv) A Servicer must present HUD with 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. This section is not applicable to property on Trust Land unless there is a viable real estate market;

(v) The Servicer must note on the variance request the specific reason for the request and attach any supporting documents needed for HUD review;

(vi) The Servicer must obtain HUD approval before authorizing the marketing of the property; and

(vii) All pre-foreclosure appraisals must be accompanied by a broker's price opinion or an automated valuation model, unless the property is located on Trust Land.

(h) *Required documents.* After determining that a Borrower and property meet the pre-foreclosure sale eligibility requirements, the Servicer shall send to the Borrower:

(1) *Pre-foreclosure Sale Approval to Participate Agreement.* The agreement, on a form prescribed by Section 184 Program Guidance, shall list the pre-foreclosure sale requirements, including the date by which the Borrower's sales contract must be executed during the pre-foreclosure sale marketing period and applicable cash reserve amount; and

(2) *Pre-foreclosure addendum.* The addendum shall be in the form prescribed by Section 184 Program Guidance. The pre-foreclosure sale addendum must be fully executed at closing.

(i) *Delivery of documents to Borrower.* Documents listed under paragraphs (h)(1) and (2) of this section must be sent to the Borrower via methods providing delivery confirmation with a date and time stamp of delivery. The Servicer must inform the Borrower that the documents must be signed and returned to the Servicer within 10 days of receipt.

(j) *Copies to HUD.* The Servicer must send signed copies of the documents in

paragraphs (h)(1) and (2) of this section to HUD within 15 days of receipt from the Borrower.

(k) *Tribal notification for properties on Trust Land.* At the same time the Servicer sends the approval to participate agreement to the Borrower, in accordance with the requirements as prescribed by Section 184 Program Guidance, the Servicer shall send a notice to the Tribe and the TDHE of the option to assume the Section 184 Guaranteed Loan or purchase the property.

(l) *Use of a real estate broker.* The Borrower is responsible for retaining the services of a HUD-approved real estate broker/agent within seven days of the signed approval to participate agreement. For Trust Land, the Borrower may request, through the Servicer, an exception to this section. If an exception is granted, HUD will work with the Borrower, Servicer and Tribe or TDHE to sell the property or pursue another Loss Mitigation option.

(m) *Required listing disclosure.* The Servicer shall require the listing agreement between the seller and the agent/broker to include 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 HUD or the Holder. The sale completion is subject to approval by the Servicer and HUD." This section is not applicable to property on Trust Land unless a HUD-approved real estate broker/agent is utilized.

(n) *Pre-foreclosure sale marketing, settlement period, failure to complete pre-foreclosure sale.* The Borrower has a timeframe, as prescribed by Section 184 Program Guidance, seven days from the date of the signed approval to participate agreement to market the property in the Multiple Listing Service, or other marketing resource if the property is on Trust Land.

(1) The property must be marketed in the Multiple Listing Service or other marketing resource for a timeframe as prescribed by Section 184 Program Guidance 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 property on Trust Land.

(3) The maximum marketing period for the sale of the property is four months from the execution date of the approval to participate agreement and the date of the 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 electronic or written notice to the Borrower of the Borrower's default under the pre-foreclosure sale agreement and present the agreed upon deed-in-lieu/lease-in-lieu of foreclosure, with title being taken in the name of the Secretary. The Borrower shall have ten days from the date of the notice to respond in writing or by electronic means. If the Servicer receives no response or if the Servicer receives notice of the Borrower's rejection of the alternative to foreclosure, the Servicer must initiate First Legal Action or Tribal First Right of Refusal within five days of the Borrower's deadline to respond or actual rejection response date, whichever is sooner.

(o) *Property inspections and maintenance.* The Servicer shall inspect the property in accordance with § 1005.735 and follow § 1005.739, where applicable.

(p) *Disclosure of damage after pre-foreclosure sale approval.* In the event the property becomes damaged, the Borrower must report damage to the Servicer in accordance with the pre-foreclosure sale agreement. When the Servicer becomes aware that the property has sustained damage after a Borrower has received the approval to participate agreement, 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.

(q) *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 claim by the amount of the insurance settlement (non-surchageable damage) or the Government's repair cost estimate.

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

(1) *Real estate broker/agent to ensure execution of documents.* The real estate broker/agent 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) *Arm's Length Transaction.* The transaction must be an Arm's Length Transaction meaning the transaction must be between two unrelated parties who are each acting in their own best interest.

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

(s) *Contract approval by Servicer—(1) Review of sales contract.* 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 in this part.

(iv) Not approve a Borrower for a pre-foreclosure sale if the Servicer knows or has reason to know of the 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 a Sales Contract Review, on a form prescribed by Section 184 Program Guidance, no later than five business days after 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 sale price, a Servicer may only approve a pre-foreclosure sale contract for sale if the net sale proceeds are at or above minimum allowable thresholds established by HUD. The net sale proceeds must conform to the requirements on the Pre-Foreclosure Sale Approval to Participate Agreement.

(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.

(t) *Closing and post-closing responsibilities.* For the purpose of this section, with respect to Trust Land, the closing agent may be selected by the Tribe or TDHE.

(1) *Closing worksheet.* Prior to closing, the Servicer must provide the closing agent with a Closing Worksheet, on a form prescribed by HUD, listing all amounts payable from net sale proceeds; and a pre-foreclosure sale addendum signed by all parties.

(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) A Closing Worksheet form is included in the claim case binder; and

(v) It reports 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 case binder 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 debt.* Upon receipt of the portion of the net sale proceeds designated for Section 184 Guaranteed Loan satisfaction, the Servicer must apply the funds to the outstanding balance and discharge any remaining debt, release the lien in the appropriate jurisdiction, and may file a claim.

(5) *Discharge of junior liens.* The Servicer must verify the pre-foreclosure sale will result in the discharge of junior liens as follows:

(i) If the Borrower has the financial ability, the Borrower must be required to satisfy or otherwise obtain release of liens.

(ii) If no other sources are available, the Borrower may obligate up to a maximum amount from sale proceeds towards discharging the liens or encumbrances, such maximum amount will be prescribed by HUD.

(u) *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 Section 184 Program Guidance 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 written explanation for terminating their program participation. This letter is to include the "end-of-participation" date for the Borrower.

(4) *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/lease-in-lieu of foreclosure in accordance with § 1005.753. If the Servicer is unable to obtain a deed-in-lieu/lease-in-lieu of

foreclosure, the Servicer must proceed to First Legal Action or assignment in accordance with §§ 1005.761 and 1005.763.

#### **§ 1005.753 Deed-in-lieu/lease-in-lieu of foreclosure.**

(a) *Requirements.* In lieu of instituting or completing a foreclosure, the Servicer or HUD may acquire a property by voluntary Conveyance from the Borrowers. Conveyance of the property by deed-in-lieu/lease-in-lieu of foreclosure is allowed subject to the Servicer's compliance with the following requirements:

(1) The lease-in-lieu of foreclosure for property on Trust Land shall be approved by the Tribe prior to execution and by the BIA at recordation.

(2) The Section 184 Guaranteed Loan is in default at the time of the deed-in-lieu/lease-in-lieu of foreclosure is executed and delivered.

(3) The Section 184 Guaranteed Loan is satisfied of record as a part of the consideration for such Conveyance.

(4) The deed-in-lieu/lease-in-lieu of foreclosure from the Borrower contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under the grantor and conveys Good and Marketable Title, or for leases, assigns without objectionable encumbrances.

(5) With respect to Section 184 Guaranteed Loans on fee simple lands, the Servicer transfers to HUD Good and Marketable Title accompanied by satisfactory title evidence.

(6) With respect to Section 184 Guaranteed Loans on Trust Lands, the Servicer provides to HUD a certified Title Status Report evidencing assignment to HUD without any objectionable encumbrances.

(7) The property must meet the property conditions under § 1005.767. HUD may consent to Conveyance of the property by deed-in-lieu/lease-in-lieu of foreclosure when property does not meet § 1005.767 in accordance with procedures in Section 184 Program Guidance.

(b) *Required documentation.* A written agreement must be executed by the Borrower and Servicer which contains all of the conditions under which the deed-in-lieu/lease-in-lieu of foreclosure will be accepted.

(c) *Conveyance to Servicer.* Upon execution of the deed-in-lieu/lease-in-lieu of foreclosure document(s), the Servicer must file for record no later than two business days from receipt.

(d) *Conveyance to HUD, where applicable.* After evidence of recordation is available, the Servicer

shall immediately convey the property to HUD in accordance with § 1005.769.

(e) *Reporting for credit purposes.* The Servicer must comply with all applicable Tribal, Federal, State, and local reporting requirements, including but not limited to reporting to credit reporting agencies.

#### **§ 1005.755 Incentive payments.**

As an alternative to foreclosure, or eviction where applicable, HUD may authorize an incentive payment to:

(a) Borrowers that complete certain Loss Mitigation options or for their agreement to vacate the property after foreclosure, under the terms established by the Secretary;

(b) Lenders and Servicers for their completion of certain Loss Mitigation options; and (c) Tribes and TDHEs for their assistance in Loss Mitigation, sale, or transfer of the Trust Land property.

#### **Assignment of the Loan to HUD, Foreclosure, and Conveyance**

#### **§ 1005.757 Property on Trust Land—Tribal first right of refusal; foreclosure or assignment.**

(a) For any property on Tribal Land, the Servicer shall provide written notice to the Tribe or TDHE of the option to assume the Section 184 Guaranteed Loan or purchase the property at the earlier of:

(1) Any lease provision addressing Tribal First Right of Refusal;

(2) 120 days after default; or

(3) The exhaustion of all Loss Mitigation options.

(b) The Tribe or TDHE shall have either the time frame provided in the lease or, if not defined in the lease, 60 days to accept or decline the option to assume the Section 184 Guaranteed Loan or purchase the property based on the current appraised value or other purchase price.

(c) Unless a Borrower has completed a pre-foreclosure sale or a lease-in-lieu of foreclosure in accordance with §§ 1005.751 and 1005.753, the Servicer must either initiate First Legal Action or assignment to HUD, within the timeframes prescribed in §§ 1005.761 and 1005.763.

(d) Any costs associated with failure to initiate Tribal First Right of Refusal may be deemed ineligible for claim payment.

#### **§ 1005.759 Fee simple land properties—foreclosure or assignment with HUD approval.**

(a) Unless a Borrower has completed a pre-foreclosure sale or a deed-in-lieu of foreclosure in accordance with §§ 1005.751 and 1005.753, the Servicer must initiate First Legal Action on the



Section 184 Guaranteed Loan pursuant to § 1005.761.

(b) Under limited circumstances, HUD may approve an assignment of a Section 184 Guaranteed Loan to HUD for fee simple land properties.

**§ 1005.761 First Legal Action deadline and automatic extensions.**

(a) *Deadline for First Legal Action.* The Servicer must initiate First Legal Action, as defined in § 1005.103, within 180 days of default, unless a later date is authorized under this part.

(b) *Automatic extensions to the First Legal Action deadline.* The Section 184 Program allows for automatic extension to the First Legal Action deadline for the following reasons and separate HUD approval is not required.

(1) If Federal law or the laws of the Tribe or State, in which the Section 184 Guaranteed Loan property is located, do not permit the commencement of First Legal Action within the deadline designated in paragraph (a) of this section, then the Servicer must accomplish First Legal Action within 30 days after the expiration of the time during which First Legal Action is prohibited; or

(2) If the Borrower is in compliance with an approved Loss Mitigation plan. However, upon Borrower's default or failure under the Loss Mitigation plan and expiration of response period in any required notice or Borrower's request to terminate participation in the Loss Mitigation plan, the Servicer shall refer the Loan to legal counsel within five days. First Legal Action must be initiated within 30 days of the default or Borrower's request to terminate the Loss Mitigation plan.

(3) Other necessary and reasonable automatic extensions may be allowed, as prescribed by Section 184 Program Guidance.

(c) *Compliance with Federal law.* The First Legal Action must be in compliance with all applicable Federal law, including but not limited to regulations imposed by the Consumer Financial Protection Bureau.

(d) *Notice to HUD.* The Servicer must provide notice to HUD, in a form as may be prescribed in Section 184 Program Guidance, within 15 days of accomplishing First Legal Action.

**§ 1005.763 Assignment of the Section 184 Guaranteed Loan.**

(a) *Prerequisites for assignment to HUD.* (1) Prior to assignment to HUD, one of the following conditions must have been met:

(i) 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, and properly notified the Borrower of this decision and, where the Borrower has initiated a timely appeal, the appeal process has been completed or the Borrower's period to appeal has expired.

(ii) 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 is unable to complete an additional Loss Mitigation option within 180 days of default.

(iii) The Servicer has been unable to determine the Borrower's eligibility for any Loss Mitigation option due to the Borrower's failure to respond to the Servicer's efforts to contact the Borrower.

(2) Where applicable, the Servicer has complied with the Right of First Refusal requirements of § 1005.757(a).

(3) Where applicable, the Servicer has complied with all Tribal law requirements.

(4) The Servicer shall conduct an occupancy inspection in accordance with § 1005.735. (i) If the property is vacant or abandoned, secure the property in accordance with § 1005.737(b)(2).

(ii) If the property is occupied, request and obtain approval from HUD to assign the property.

(b) *Timeframes—(1) Fee simple land properties.* The assignment of fee simple land properties requires prior HUD approval. The request for an assignment must be no earlier than 180 days of default, unless the Servicer has determined the property is vacant pursuant to § 1005.737. Upon the Servicer's timely certification of compliance with paragraphs (a)(1) through (4) of this section and HUD's approval of the assignment, the Holder shall have five days to execute and cause the appropriate documents to be filed, to accomplish assignment to HUD and submit to HUD evidence of the filing and a claim in a manner so prescribed by Section 184 Program Guidance.

(2) *Properties on Trust Land.* The assignment must be no earlier than 180 days after the date of default, unless the Servicer has determined the property is vacant pursuant to § 1005.737. Upon the Servicer's timely certification of compliance with paragraphs (a)(1) through (4) of this section, the Holder shall have five days cause the appropriate documents to be filed, to accomplish assignment to HUD. The Servicer shall submit to HUD evidence of the filing and of a claim in a manner

so prescribed by Section 184 Program Guidance.

**§ 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 § 1005.737.

(b) The Servicer shall take appropriate action to protect and preserve the property until its Conveyance to HUD, if such action does not constitute an illegal trespass. Taking "appropriate action" includes the commencement of First Legal Action or assignment within the time required by §§ 1005.761 and 1005.763, as applicable.

**§ 1005.767 Property condition.**

(a) *Condition at time of transfer.* (1) When the property is transferred, or a Section 184 Guaranteed Loan is assigned to HUD in accordance with § 1005.763, the property must be undamaged by fire, earthquake, flood, tornado, and Servicer neglect, except as set forth in this subpart.

(2) A vacant 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 and exterior debris.

(3) A vacant 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, or heirs, successors, or assigns.

(c) *Servicer responsibility.* The Servicer shall be responsible for:

(1) Damage by fire, flood, earthquake, or tornado;

(2) Damage to or destruction of property which is 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 property as required by § 1005.737; and

(3) Any damage, whatsoever, that the property has sustained while in the possession of the Servicer, when the property has been conveyed to HUD without notice or approval by HUD as required by § 1005.763.

**§ 1005.769 Conveyance of Property to HUD at or after foreclosure; time of Conveyance.**

(a) At or after foreclosure, the Servicer shall convey the property to HUD by one of the following:

(1) *Direct Conveyance to HUD.* The Servicer shall cause for the deed to be transferred directly to HUD. The

Servicer shall be responsible for determining that such Conveyance will comply with all provisions of this part, including conveying Good and Marketable Title and producing satisfactory title evidence to HUD.

(2) *Conveyance by the Servicer to HUD.* The Servicer shall acquire Good and Marketable Title and transfer the property to HUD within 30 days of the earlier of:

- (i) Execution of the foreclosure deed;
- (ii) Acquiring possession of the property;
- (iii) Expiration of the redemption period;
- (iv) Such further time as may be necessary to complete the title examination and perfect the title; or
- (v) Such further time as HUD may approve in writing.

(b) On the date the deed 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 the deed no later than two days after execution. The Servicer must document evidence of the submission in the file.

#### **§ 1005.771 Acceptance of property by HUD.**

(a) *Effective date of assignment.* HUD accepts the assignment of a Section 184 Guaranteed Loan when:

- (1) The Servicer has assigned the Section 184 Guaranteed Loan to HUD;
- (2) The Servicer has provided HUD evidence of the recordation; and
- (3) HUD pays a claim for the unpaid principal balance under § 1005.807(a).

(b) *Effective date of Conveyance.* HUD accepts Conveyance of the property when:

- (1) The Servicer has deeded the property to HUD;
- (2) The Servicer has provided HUD evidence of the recordation; and
- (3) HUD pays a claim for the unpaid principal balance under § 1005.807(a).

(c) *Servicer ongoing obligation.* Notwithstanding the assignment of the Section 184 Guarantee Loan or the filing of the deed to the HUD, the Servicer remains responsible for ensuring compliance with this part, including and any loss or damage to the property, and such responsibility is retained by the Servicer until the claim has been paid by HUD.

## **Subpart H—Claims**

### **Claims Application, Submission Categories, and Types**

#### **§ 1005.801 Purpose.**

This subpart sets forth requirements that are applicable to a Servicer's submission of an application for Section 184 Guaranteed Loan benefits to HUD. The Servicer's submission of the claim shall be in compliance with this subpart and process details as set forth by HUD in Section 184 Program Guidance. This subpart also sets forth requirements processing and payment of claim.

#### **§ 1005.803 Claim case binder; HUD authority to review records.**

(a) A Servicer must maintain a claim case binder for each claim submitted for payment in accordance with § 1005.219(d)(2). The claim case binder must contain documentation supporting all information submitted in the claim.

(b) HUD may review a claim case binder and the associated endorsement case binder at any time. A Servicer's denial of HUD access to any files may be grounds for sanctions in accordance with §§ 1005.905 and 1005.907.

(c) Within three business days of a request by HUD, the Servicer must make available for review, or forward to HUD, copies of identified claim case binders.

#### **§ 1005.805 Effect of noncompliance.**

(a) When a claim case binder is submitted to HUD for consideration, HUD may conduct a post-endorsement review in accordance with § 1005.527. If HUD determines that the Section 184 Guaranteed Loan does not satisfy the requirements of subpart D of this part, HUD will take one or more of the following actions:

(1) Reject the claim submission when the Holder is the originating Direct Guarantee Lender.

(2) Pay the claim to the current Holder and demand reimbursement of the claim from the originating Direct Guarantee Lender.

(3) Reconvey the property or reassign the deed of trust or mortgage in accordance with § 1005.849.

(4) Pursue sanctions against the originating Direct Guarantee Lender or Sponsored Entity pursuant to §§ 1005.905 and 1005.907.

(b) When reviewing a claim case binder, if HUD determines one or more of the conditions in paragraph (b)(1) of this section to be true, HUD may take one or more of the actions listed in paragraph (b)(2) of this section:

(1) *Conditions.* (i) The Servicer failed to service the Section 184 Guaranteed Loan in accordance with subpart G of this part;

(ii) The Servicer committed fraud or a material misrepresentation; or

(iii) The Servicer had known or should have known of fraud or a material misrepresentation in violation of this part.

(2) *Actions.* (i) Place a hold on processing the claim for reimbursement of eligible reasonable expenses under § 1005.807(b) and provide the Servicer the opportunity to remedy the deficiency.

(ii) Reject the claim for reimbursement of eligible reasonable expenses under § 1005.807(b) partially or in its entirety.

(iii) Reconvey the property or reassign the deed of trust or mortgage in accordance with § 1005.849, where applicable, and require the Holder to refund the claim payment of the unpaid principal balance under § 1005.807(a) and expenses under § 1005.807(b). The Holder may resubmit the claim when the deficiencies identified by HUD are cured.

(iv) Pursue administrative offset for any unpaid amounts owed to HUD pursuant to 24 CFR part 17.

(v) Pursue sanctions against the Servicer or Holder pursuant to §§ 1005.905 and 1005.907.

(vi) Pursue other remedies as determined by HUD.

(c) If a property is reconveyed or the deed of trust or mortgage is reassigned to the Holder, the Holder may not be reimbursed for any expenses incurred after Conveyance or reassignment.

(d) If a claim is resubmitted after reconveyance or reassignment and HUD determines a decrease in the value of the property at the time of the resubmission, HUD may reduce the claim payment accordingly.

#### **§ 1005.807 Claim submission categories.**

There are three claim submission categories:

(a) Payment of the unpaid principal balance;

(b) Reimbursement of eligible reasonable expenses, as prescribed by Section 184 Program Guidance, up to the execution of the assignment or date of Conveyance of the property of the property to HUD or a third party; and

(c) Supplemental claim for eligible reasonable expenses incurred prior to the assignment, Conveyance, or transfer of the property to a third party, for which the expenses were omitted from the Servicer's prior claim or for a calculation error made by either Servicer or HUD.

#### **§ 1005.809 Claim types.**

HUD recognizes five different claim types. The Servicer must submit a claim

based upon the type of property disposition. The Servicer shall submit claims within timeframes established in this section. The claim types are:

(a) *Conveyance*. When the property is deeded to HUD through or after foreclosure or by deed-in-lieu or lease-in-lieu of foreclosure:

(1) The Servicer must submit a claim under § 1005.807(a) to HUD no later than 45 days from the date the deed to HUD is executed, unless an extension of time is granted by HUD.

(2)(i) *Fee simple land*. The claim must include the final title policy evidencing HUD's ownership through foreclosure or transfer of the ownership of the property through deed-in-lieu to HUD.

(ii) *Trust Land*. The claim must include a certified Title Status Report evidencing HUD's leasehold interest through foreclosure or the transfer of the mortgage and leasehold interest to HUD through lease-in-lieu.

(3) In cases where the Servicer is unable to comply with paragraph (a)(2)(ii) of this section, the Servicer shall submit the claim pending the certified Title Status Report in accordance with the time frame specified in paragraph (a)(1) of this section.

(4) Servicers must submit claims under § 1005.807(b) no later than 60 days after the date the deed to HUD is executed, unless an extension of time is granted by HUD.

(b) *Assignment of the loan*. When the Holder assigns the Section 184 Guaranteed Loan to HUD:

(1) The Servicer must submit a claim under § 1005.807(a) and (b) no later than 45 days from the date of the assignment of the Section 184 Guaranteed Loan to HUD is executed, unless an extension of time is granted by HUD.

(2)(i) *Trust Land*. The claim must include a certified Title Status Report evidencing the assignment of the mortgage to HUD.

(ii) *Fee simple land*. The claim must include the final title policy providing coverage through the transfer of the mortgage to HUD.

(3) In cases where the Servicer is unable to comply with paragraph (b)(2)(i) of this section, the Servicer shall submit the claim pending the certified Title Status Report in accordance with the time frame specified in paragraph (b)(1) of this section.

(4) At the time of assignment of the Section 184 Guaranteed Loan, the Servicer shall certify to HUD that:

(i) *Priority of Section 184 Guaranteed Loan*. The Section 184 Guaranteed Loan has priority over all judgments, mechanics' and materialmen's liens, or

any other liens, regardless of when such liens attached, unless approved by HUD;

(ii) *Amount due*. The amount reported to HUD in accordance with § 1005.707(d) prior to assignment is verified to be due and owing under the Section 184 Guaranteed Loan;

(iii) *Offsets or counterclaims and authority to assign*. There are no offsets or counterclaims thereto and the Holder has the authority to assign; and

(iv) *Assignment*. The assignment of the Section 184 Guaranteed Loan to HUD meets the requirements of § 1005.763.

(c) *Post-foreclosure claims without Conveyance of title*. When a third-party purchases the property at foreclosure, the Servicer must submit a claim under § 1005.807(a) and (b) to HUD no later than 180 days from the date the property is conveyed to the third-party. If the Holder purchases the property at foreclosure and subsequently sells the property, the Servicer may submit a claim under this section.

(d) *Pre-foreclosure sale, deed-in-lieu, or lease-in-lieu*. When a property is sold or conveyed prior to foreclosure in accordance with §§ 1005.751 or 1005.753, the Servicer must submit a claim under § 1005.807(a) and (b) to HUD no later than 45 days from the date the sale or Conveyance is executed.

(e) *Supplemental claim*. The Servicer shall be limited to one supplemental claim for each claim under submission categories in paragraphs (a) and (b) of this section.

(1) The supplemental claim shall be limited to:

(i) Reasonable eligible expenses incurred up to the date of Conveyance of the property or assignment of the Section 184 Guaranteed Loan, when invoices are received after the payment of the claim under § 1005.807(b); or

(ii) Calculation error(s) made by either the Servicer or HUD.

(2) Supplemental claims must be submitted within six months of the claim submission under § 1005.807(b). Supplemental claims received after six months will not be reviewed or paid by HUD.

(3) Any supplemental claim paid by HUD shall be considered final satisfaction of the Loan Guarantee Certificate.

#### Submission of Claim

##### § 1005.811 Claims supporting documentation.

The Servicer shall submit supporting documentation to the satisfaction of HUD for each claim. Such documentation will be provided for in Section 184 Program Guidance.

##### § 1005.813 Upfront and Annual Loan Guarantee Fee reconciliation.

(a) The Servicer must include in the claims case binder a reconciliation evidencing the payment of the Upfront and Annual Loan Guarantee Fees to HUD.

(b) Where the Servicer fails to comply with paragraph (a) of this section or the reconciliation shows unpaid amounts owed to HUD, and the unpaid amounts, along with late fees, have not been satisfied by the Servicer, HUD shall reject the claim.

(c) The Servicer may resubmit the claim after providing the reconciliation required under paragraph (a) of this section or after the Annual Loan Guarantee Fee amounts, along with late fees, owed to HUD are paid by the Servicer.

(d) Allowance to resubmit in accordance with paragraph (c) of this section shall not be construed to extend any deadlines to file claims specified in this subpart.

##### § 1005.815 Conditions for withdrawal of claim.

With HUD's consent, a Holder may withdraw a claim. When HUD consent is granted, the Holder shall agree, where applicable, in writing that it will:

(a) Accept a reconveyance of the property under a Conveyance which warrants against the acts of HUD and all claiming by, through or under HUD;

(b) Promptly file for record the reconveyance from HUD;

(c) Accept without continuation, the title evidence which the Servicer furnished to HUD; and

(d) Reimburse HUD for the expenditures and amounts set forth in § 1005.851.

#### Property Title Transfers and Title Waivers

##### § 1005.817 Conveyance of Good and Marketable Title.

(a) *Definition*. Good and Marketable Title is defined in § 1005.103.

(b) *Satisfactory Conveyance of title and transfer of possession*. The Servicer 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 and Marketable Title to the property, which shall be accompanied by title evidence satisfactory to HUD.

(c) *Conveyance of property without Good and Marketable Title*. (1) If the title to the property conveyed by the Servicer to HUD is not Good and Marketable Title, the Servicer 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 Servicer must reimburse HUD's costs of holding the property. Such holding costs accrue on a daily basis and include interest on the amount of the loan guarantee benefits paid to the Servicer 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 Servicer, as described in paragraph (c)(3) of this section. The daily holding costs to be charged to the Servicer shall also include the costs specified in § 1005.851.

(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 Servicer and the Servicer must reimburse HUD in accordance with §§ 1005.849 and 1005.851.

#### **§ 1005.819 Types of satisfactory title evidence.**

(a) The following types of title evidence shall be satisfactory to HUD:

(1) *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 HUD's name and inure to the benefit of the Department. The policy must be drawn in favor of the Servicer and HUD, and their successors and assigns, as their interests may appear, with the consent of the title company endorsed thereon;

(2) *Policy of title insurance.* A Holder'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 HUD after title is conveyed to HUD. The policy must be drawn in favor of the Servicer and HUD, and their successors and assigns, as their interests may appear, with the consent of the title company endorsed thereon;

(3) *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;

(4) *Torrens or similar certificate.* A Torrens or similar title certificate;

(5) *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

(6) *Title Status Report.* Certified Title Status Report issued by the BIA shall not be more than sixty (60) days from the date of the § 1005.807(a) claim submission. Extensions may be granted under certain reasonable circumstances, as prescribed by Section 184 Program Guidance.

(b) [Reserved]

#### **§ 1005.821 Coverage of title evidence.**

(a) Evidence of title or Title Status Report shall include the recordation of the Conveyance or assignment to HUD. The evidence of title or the Title Status Report shall further show that, according to the public records, there are no outstanding prior liens, including any past-due and unpaid ground rents, general taxes or special assessments, if applicable, on the date of Conveyance or assignment.

(b) If the title evidence and Title Status Report are acceptable generally in the community in which the property is situated, such title evidence and Title Status Report shall be satisfactory to HUD and shall be considered Good and Marketable Title. In cases of disagreement, HUD will make the final determination in its sole discretion.

#### **§ 1005.823 Waived title objections for properties on fee simple land.**

Reasonable title objections for fee simple land properties shall be waived by HUD. Reasonable title objections will be prescribed in Section 184 Program Guidance.

#### **§ 1005.825 Waived title objections for properties on Trust Land.**

HUD shall not object to title restrictions placed on the tract of Trust Land by the Tribe or the BIA so long as those restrictions do not adversely impact the property or marketability.

#### **Condition of the Property**

##### **§ 1005.827 Damage or neglect.**

(a) If the property has been damaged by fire, flood, earthquake, or tornado, or if the property has suffered damage because of the Servicer's failure to take action as required by § 1005.765 or for any other reason, the Servicer 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 Section 184 Guaranteed Loan to HUD.

(b) If the property has been damaged as described in paragraph (a) of this section and the damage is not covered by a hazard insurance policy, the Servicer must provide notice of such damage to HUD. The property may not be conveyed or assigned until directed to do so by HUD. Upon receipt of such notice, HUD will either:

(1) Allow the Holder to convey the damaged property;

(2) Require the Servicer to repair the damage before Conveyance, and HUD will reimburse the Holder for reasonable payments, not in excess of HUD's estimate of the cost of repair, less any hazard insurance recovery; or

(3) Require the Servicer to repair the damage before Conveyance, at the Holder's own expense.

(c) In the event the damaged property is conveyed to HUD without prior notice or approval as provided in paragraph (a) or (b) of this section, HUD may, after notice, reconvey the property and demand reimbursement to HUD for the expenses in accordance with §§ 1005.849 and 1005.851.

#### **§ 1005.829 Certificate of property condition.**

(a) As part of the claim submission, the Servicer shall either:

(1) Certify that as of the date of the deed or assignment of the loan to HUD the property was:

(i) Undamaged by fire, flood, earthquake, or tornado;

(ii) Undamaged due to failure of the Servicer 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 Servicer'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 deed or assignment of the Section 184 Guaranteed Loan.

#### **§ 1005.831 Cancellation of hazard insurance.**

The Holder shall cancel any hazard insurance policy as of the date of the deed to HUD, subject to the following conditions:

(a) The amount of premium refund due to the Servicer resulting from such cancellation must be deducted from the total amount claimed.

(b) If the Servicer's calculation of the premium refund is less than the actual premium refund, the amount of the difference between the actual refund and the calculated refund shall be remitted to HUD, accompanied by the insurance company's or agent's statement.

(c) If the Servicer's calculation of the premium refund is more than the actual refund, the Servicer must include in a supplemental claim submission in accordance with § 1005.809(c), accompanied by the insurance company's or agent's statement, the amount of the difference as an eligible cost in accordance with § 1005.843(a)(3).

#### **Payment of Guarantee Benefits**

##### **§ 1005.833 Method of payment.**

If the claim is acceptable to HUD, payment of the guarantee benefits shall be made by electronic transfer of funds to the Holder or other such allowable payment method.

##### **§ 1005.835 Claim payment not conclusive evidence of claim meeting all HUD requirements.**

Payment of any claim by HUD is not conclusive evidence of compliance with the subpart D or G of this part. HUD reserves the right to conduct post-claim payment review of claims filed within five years from the date of the last claim payment. Where non-compliance with any requirements of this part is identified, HUD will take appropriate action against the Holder, originating Direct Guarantee Lender, and/or Servicer, including but not limited to HUD's remedies under § 1005.805 and sanctions under §§ 1005.905 and 1005.907.

##### **§ 1005.837 Payment of claim: unpaid principal balance.**

HUD will pay a claim under § 1005.807(a) in the amount of the unpaid principal balance less all receipts for the sale or transfer of the property, if applicable, in accordance with the requirements of this subpart.

##### **§ 1005.839 Payment of claim: interest on unpaid principal balance.**

(a) 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 of foreclosure;
- (2) The execution of the Conveyance to either Servicer, HUD, or a third-party;
- (3) The execution of the assignment of the Section 184 Guaranteed Loan to HUD; or
- (4) The expiration of the reasonable diligence timeframe, as prescribed by Section 184 Program Guidance.

(b) [Reserved]

##### **§ 1005.841 Payment of claim: reimbursement of eligible and reasonable costs.**

The claim will be paid in accordance with § 1005.807(b) and will include eligible and reasonable costs, as prescribed by Section 184 Program Guidance.

##### **§ 1005.843 Reductions to the claim submission amount.**

(a) A Servicer shall reduce the claim when the following amounts are received or held by the Servicer:

(1) All amounts received by the Servicer from account of the loan after default.

(2) All amounts received by the Servicer from any source relating to the property on account of rent, reimbursement, or other income after deducting reasonable expenses incurred in handling the property.

(3) All cash retained by the Servicer 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.

(b) [Reserved]

##### **§ 1005.845 Rights and liabilities under Indian Housing Loan Guarantee Fund.**

(a) No Borrower, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer shall have any vested right in the Indian Housing Loan Guarantee Fund.

(b) No Borrower, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer shall be subject to any liability arising under the Indian Housing Loan Guarantee Fund.

(c) The Indian Housing Loan Guarantee Fund will be credited and debited in accordance with 12 U.S.C. 1715z-13a(i)(2).

##### **§ 1005.847 Final payment.**

(a) HUD's payment of a claim(s) shall be deemed as final payment to the Holder, notwithstanding the ability to present additional claim(s) in accordance with § 1005.807 as applicable. The Holder shall have no further rights against the Borrower or HUD when there is a final payment. This paragraph (a) does not preclude HUD from seeking reimbursement of costs and return of amounts from the Holder or originating Direct Guarantee Lender pursuant to §§ 1005.849 and 1005.851.

(b) In cases where HUD reconveys the property to the Holder and HUD is reimbursed for all expenses and returns all amounts pursuant to §§ 1005.849 and 1005.851, provisions under paragraph

(a) of this section shall not apply. However, the resubmission of the claim, if any, shall be subject to § 1005.849(b) and any reasonable processes requirements as may be prescribed by Section 184 Program Guidance.

##### **§ 1005.849 Reconveyance and reassignment.**

(a) HUD may reconvey the property or reassign the deed of trust or mortgage to the Holder due to:

(1) Originating Direct Guarantee Lender or Servicer's noncompliance with this part or any requirements as prescribed by Section 184 Program Guidance; or

(2) An authorized withdrawal of a claim in accordance with § 1005.815.

(b) HUD may take appropriate action against the Holder associated with the reconveyance or reassignment authorized in paragraph (a) of this section, including but not limited to, seeking reimbursement of all claim costs paid by HUD and carrying costs incurred by HUD in accordance with § 1005.851.

(c) Notwithstanding any other provision in this subpart, in cases where HUD has conveyed the property or reassigned the deed of trust or mortgage back to the Holder in accordance with § 1005.851, and where the Servicer resubmits the claim, HUD will not reimburse the Holder any expenses incurred after the date of the HUD Conveyance or assignment.

(d) Additional reasonable and necessary restrictions may be imposed, as prescribed by Section 184 Program Guidance.

##### **§ 1005.851 Reimbursement of expenses to HUD.**

Where reconveyance or reassignment is sought by HUD pursuant to § 1005.849 or when HUD determines noncompliance the Holder or the originating Direct Guarantee Lender shall reimburse HUD for:

(a) All claim costs 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. Adjustments shall be made by HUD for any income received from the property.

(c) The reimbursement shall include interest on the amount of the claim payment returned by the Holder or the originating Direct Guarantee Lender from the date the claim was paid to the date HUD receives the reimbursement from Holder or the originating Direct Guarantee Lender. The interest rate set shall be in conformity with the Treasury Fiscal Requirements Manual.

**Subpart I—Lender Program Performance, Reporting, Sanctions, and Appeals****§ 1005.901 Direct Guarantee Lender, Holder, or Servicer performance reviews.**

HUD may conduct periodic performance reviews of Direct Guarantee Lenders, Non-Direct Guarantee Lenders, Holders, and Servicers. These may include analytical reviews, customer surveys, and on-site or remote monitoring reviews. These reviews may include, but are not limited to, an evaluation of compliance with this part. HUD will provide a written notice of its assessment and any proposed corrective action, if applicable.

**§ 1005.903 Direct Guarantee Lender, Holder, or Servicer reporting and certifications.**

(a) The Direct Guarantee Lender, Non-Direct Guarantee Lender, or Servicer shall provide timely and accurate reports and certifications to HUD, which may include but is not limited to reports in connection with performance reviews under § 1005.901, any special request for information from HUD, and any reasonable reports prescribed by Section 184 Program Guidance, within reasonable time frames prescribed by HUD.

(b) The Direct Guarantee Lender, Non-Direct Guarantee Lender, or Servicer's failure to provide timely and accurate reports and certifications to HUD may subject the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer to sanctions and civil money penalties pursuant to §§ 1005.905 and 1005.907.

**§ 1005.905 Direct Guarantee Lender, Holder, or Servicer notice of sanctions.**

(a) Prior to the notice of sanctions or civil money penalties, HUD shall inform the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer of the specific non-compliance with this part and, where applicable, afford the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer a reasonable time, as prescribed in Section 184 Program Guidance to return to compliance.

(b) If it is determined that the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer fails to return to compliance within the allowed time, HUD shall provide

written notice of the sanction and civil money penalties to be imposed and the basis for the action.

**§ 1005.907 Direct Guarantee Lender, Holder, or Servicer sanctions and civil money penalties.**

(a) Where the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer fails to comply with this part, including failure to maintain adequate accounting records, failure to adequately service loans, or failure to exercise proper credit or underwriting judgment, or becomes ineligible to participate pursuant to § 1005.225, or has engaged in practices otherwise detrimental to the interest of a Borrower or the United States, including but not limited to, failure to provide timely reporting, or failure to follow underwriting requirements set forth in this part, or failure to comply with Section 184 Program Guidance when it specifically provides times, processes, and procedures for complying with the requirements in this part, HUD may take any combination of the following actions:

(1) Either temporarily or permanently terminate a Director Guarantee Lender or Non-Direct Guarantee Lender's status. If such action is taken and the terminated Direct Guarantee Lender wishes to maintain servicing rights to the Section 184 Guaranteed Loans, the terminated Direct Guarantee Lender must seek HUD approval as prescribed in Section 184 Program Guidance.

(2) Bar the Direct Guarantee Lender or Holder from acquiring additional Section 184 Guaranteed Loans.

(3) Require that the Direct Guarantee Lender assume not less than 10 percent of any loss on further Section 184 Guaranteed Loans made by the Direct Guarantee Lender.

(4) Require that the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer comply with a corrective action plan or amend the Direct Guarantee Lender, Non-Direct Guarantee Lender, or Servicer's quality control plan, subject to HUD approval, to remedy the non-compliance with this part and any process prescribed by Section 184 Program Guidance. The plan shall also address methods to prevent the reoccurrence of any practices that are detrimental to the interest of the Borrower or HUD. The corrective action plan or amended

quality control plan shall afford the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer reasonable time to return to compliance.

(5) If HUD determines any Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer has intentionally failed to maintain adequate accounting records, to adequately service loans guaranteed under this section, or to exercise proper credit or underwriting judgment, the Assistant Secretary for Public and Indian Housing (and his/her designee) is authorized pursuant to 12 U.S.C. 1715z–13a(g)(2) to impose civil money penalties upon Direct Guarantee Lenders, Non-Direct Guarantee Lender, Holders, or Servicers, as set forth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed in subpart B of 24 CFR part 30.

(b) [Reserved]

**§ 1005.909 Direct Guarantee Lender, Holder, or Servicer appeals process.**

(a) Lenders denied participation in the Section 184 Program pursuant to subpart B of this part, or a Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder or Servicer subject to sanctions pursuant to § 1005.907, may appeal to HUD's Office of Loan Guarantee within a timeframe prescribed in Section 184 Program Guidance. After consideration of the Lender, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer's appeal, HUD shall advise the Lender, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer in writing whether the denial is rescinded, modified or affirmed. The Lender, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer may then appeal such decision to the Deputy Assistant Secretary for Office of Native American Programs, or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

(b) Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

**Dominique Blom,**

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

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