

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 58 and 1005**

[Docket No. FR-5593-F-02]

RIN 2577-AD01

Strengthening the Section 184 Indian Housing Loan Guarantee Program

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

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Section 184 Indian Housing Loan Guarantee Program (“Section 184 Program”) to strengthen the program by clarifying rules for stakeholders. As the program has experienced an increase in demand, it is necessary that HUD update the Section 184 Program implementing regulations to minimize potential risk and increase program participation by financial institutions. This final rule adds participation and eligibility requirements for Lender Applicants, Direct Guarantee Lenders, Non-Direct Guarantee Lenders, Holders and Servicers and other financial institutions. This final rule clarifies the rules governing Tribal participation in the program, establishes underwriting requirements, specifies rules on the closing and endorsement process, establishes stronger and clearer servicing requirements, establishes program rules governing claims submitted by Servicers and paid by HUD, and adds standards governing monitoring, reporting, sanctions, and appeals. This final rule adds new definitions and makes statutory conforming amendments, including the categorical exclusion of the Section 184 Program in HUD’s environmental review regulations. Ultimately, the changes made by this final rule promote program sustainability, increase Borrower protections, and provide clarity for new and existing Lenders who participate in the program. This final rule follows the publication of a proposed rule on December 21, 2022, and takes into consideration the comments received in response to that proposed rule and during the Tribal consultations.

DATES: Effective June 18, 2024.

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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 or 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.

Native American households face a number of housing challenges, including overcrowding and a lack of affordable housing in Tribal areas.¹ These challenges stem in part from barriers to mortgage lending in these communities. There are several unique challenges to mortgage lending in Tribal areas, including their often-remote locations, the specialized situation of observing Tribal courts and laws, and the unique Trust Land status of much of the land in Tribal areas. Trust Land includes, but not is not limited to land where the Federal Government holds legal title for the benefit of a Tribe or individual Tribal member. Before a lien can be placed on a property, it must receive Federal approval through the U.S. Department of the Interior’s Bureau of Indian Affairs. Consequently, financial institutions may struggle with utilizing the land interest as security in mortgage lending transactions. By

mitigating risk to private lenders through the loan guarantee, the Section 184 Program addresses barriers to mortgage lending in Tribal areas, helping to increase housing supply, relieve overcrowding, and expand homeownership in these underserved communities.

A lack of access to mortgage credit also poses challenges to Native American households outside of Tribal areas, where they have historically experienced lower homeownership and higher home loan denial rates than other groups.² Like in other historically underserved markets, prospective borrowers are likely to have limited experience dealing with mainstream financial institutions and to have limited incomes, assets, and credit histories. The Section 184 Program is also available to members of federally recognized Tribes in many areas beyond Tribal areas, where it similarly promotes homeownership opportunities among this underserved community by mitigating risk to lenders.

Since its inception in 1994, the number of loans guaranteed under the Section 184 Program has significantly increased from an average of 105 loans per year the first five Fiscal Years (FYs 1994-1995) the program operated to an average of 2,531 loans per year for the past five fiscal years (FYs 2018-2023). In total, the Section 184 Program has guaranteed over 56,000 loans totaling over \$10 billion. However, the program regulations have not been substantially revised since publication in 1996.

In 2015, the Office of Audit of the HUD Office of Inspector General (OIG) audited the Section 184 Program, Report Number 2015-LA-0002, and recommended that 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.

On December 21, 2022 (87 FR 78324), HUD published a proposed rule to strengthen the Section 184 Program by

¹ *Mortgage Lending on Tribal Land: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*. HUD, Office of Policy Development and Research, January 2017, available at: <https://www.huduser.gov/portal/publications/NAHSC-Lending.html>.

² *Id.*

clarifying rules for program stakeholders. Specifically, the rule proposed revisions to minimize potential risk, increase program participation by financial institutions, and modernize and enhance the Section 184 Program by adding participation and eligibility requirements for Lenders and other financial institutions. The proposed rule also included revisions to the rules governing Tribal participation in the program, established underwriting requirements, specified rules on the closing and endorsement process, established stronger and clearer servicing requirements, established program rules governing claims submitted by Servicers and paid by HUD, and added standards governing monitoring, reporting, sanctions, and appeals. The proposed rule not only addressed the corrective actions proposed by OIG and agreed upon by HUD but set a regulatory foundation for the Section 184 Program to support the continued growth of the program, and more importantly, to ensure that it can positively impact the lives of Native Americans by providing an opportunity for homeownership. Additional details about the Section 184 Program may be found in the background of the December 21, 2022, proposed rule.

II. Changes Made at the Final Rule Stage

In consideration of the public comments, the Tribal consultations, and HUD's experience implementing the Section 184 Program, this section of the preamble lists some of the changes HUD made to the December 21, 2022, proposed rule. In general, the final rule revised the regulation to be more inclusive of Tribal land types, including allotted and other Tribal lands.

1. This final rule incorporates a new severability provision at § 1005.102. As described in § 1005.102, in the event that any portion of this final rule is declared invalid or stayed, it is HUD's intent that the remaining portions of the final rule be severable. If any provision of this regulation is held to be invalid or unenforceable, facially or as applied, the provision shall be severable from the remainder of the regulation, or such application shall be considered severable from any valid or enforceable application of such provision.

2. In § 1005.205(a)(9), HUD revised the minimum net worth Lender Applicants must have to obtain Secretarial approval to participate in the Section 184 Program. Specifically, HUD established a net worth of at least one million dollars, or amount as provided in Section 184 Program Guidance, for Lender Applicants to participate in the

Section 184 Program. HUD made this revision to provide lenders a clear baseline for meeting this condition of approval and to ensure that Lender Applicants participating in the Section 184 Program are solvent.

3. In § 1005.217(a), HUD expanded the types of lenders subject to the Quality Control (QC) requirements to include Direct Guarantee Lenders and Non-Direct Guarantee Lenders because ensuring these lenders comply with the QC requirements is essential to mitigating risk to the Section 184 Program.

4. In § 1005.217(b)(8), HUD revised the requirements for the Lender Applicant's quality control plan. This final rule establishes that a quality control plan must require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to report all material deficiencies and submit a corrective action plan to HUD "within 30 days." Additionally, HUD added § 1005.217(b)(8)(13) to require the Lender Applicant to comply with any other administrative requirement as may be prescribed by Section 184 Program Guidance. These revisions help to ensure that Section 184 Guaranteed Loans comply with the Section 184 Program requirements.

5. In § 1005.205(a)(4)(i), HUD removed the requirement that financial statements be audited as cost prohibitive and inconsistent with generally accepted industry standard financial documents. HUD will outline requirements for the financial statement in program guidance. While financial statements are still required, removing the "audited" requirement should assist lenders in submitting mandatory financial information.

6. In § 1005.301(a), HUD is clarifying in paragraph (a)(3) that Tribes are required to assist, where practical, in facilitating loss mitigation efforts when notified of the Borrower's default in accordance with § 1005.501(j) or when the Tribe receives notice pursuant to § 1005.759. Examples of a Tribe facilitating in loss mitigation efforts, where practical, could include the Tribe providing financial and/or non-financial assistance to Borrower. Non-financial assistance could be default counseling, budget counseling, helping Borrower identify potential purchasers, or encouraging the Borrower to execute a Lease-in-Lieu of foreclosure. HUD also added a new requirement in paragraph (a)(4) that Tribes report any unsecured vacant units to HUD. HUD clarified § 1005.737 to provide that the Servicer may be notified by HUD that the Tribe or TDHE has determined that a unit is vacant or abandoned, triggering the

Servicer's responsibility to notify all Borrowers of the determination that the property is vacant or abandoned.

7. In § 1005.409(b), HUD established a 7-year waiting period for Borrowers who have previously defaulted on a Section 184 Guaranteed Loan which resulted in a Claim payment by HUD. This revision helps to minimize potential risk to the Section 184 Program.

8. In § 1005.419(a)(6)(v), HUD removed "for properties on Trust Land", which restricts minimum square footage waivers to properties on Trust Land. This revision expands the waiver to all types of properties, to account for various situations, including when a Tribe purchases fee simple property.

9. In § 1005.419(c), HUD added new property standard requirements for properties with multiple dwelling units to be consistent with the industry standard on how these units are financed.

10. In § 1005.427(c) "General Requirements," HUD moved paragraphs (2) and (5) from paragraph (f) "Cash-Out Refinance," because these requirements apply to all types of requirements. Further, in § 1005.427(d)(2) HUD added paragraph (iii) to further clarify that construction loans less than a year are considered "rate and term" construction loans.

11. In § 1005.437(g) HUD is clarifying that it is not guaranteeing each individual advance made by the Direct Guarantee Lender during construction and that the entire loan is being guaranteed by HUD once a Loan Guarantee Certificate is issued. In addition, at § 1005.437(h), HUD added a requirement that changes to the loan agreement must be approved and documented by the Direct Guarantee Lender before the construction advance, notwithstanding paragraph (g)(1)(ii) of this section.

12. In § 1005.439, HUD clarified that junior liens do not require the prior approval of HUD, and that the Direct Guarantee Lenders will evaluate a junior lien only when the lien is part of the Section 184 loan package.

13. In § 1005.447, HUD revised the maximum age of loan documents from 60 days to 120 days after closing to provide more flexibility to both the Direct Guarantee Lenders and the Borrowers. To further flexibility, HUD also removed the time limitation regarding the maximum age of documents whose validity for underwriting purposes is not affected by the passage of time.

14. In § 1005.457(b), HUD added a provision that allows HUD to establish guidance regarding the use of alternatives to appraisers identified on

the Federal Housing Administration Appraiser Roster. This change provides flexibility to obtain an appraisal from non-FHA certified appraisers in remote and rural areas, often attributable to Trust Lands.

15. In § 1005.511, HUD clarifies that the Servicer may collect from the Borrower a late fee of up to four percent of principal and interest for payments 15 days or more in arrears.

16. In § 1005.609(b), HUD clarifies that the annual fee stops when the loan to value ratio is less than 78 percent. HUD also clarified that the monthly annual fee charge will remain the same as reflected in the amortization schedule, even with prepayments, until the 78 percent threshold is reached.

17. In § 1005.609(d), HUD removed the 78 percent threshold, and retained the ability to establish the Annual Loan Guarantee Fee termination by notice in the **Federal Register**. This will provide flexibility to quickly respond to unforeseen circumstances.

18. In § 1005.709(f), HUD clarified the period by which servicers must respond to HUD's request for information regarding an individual account. Specifically, HUD revised the paragraph by setting a three-day time period floor in which Servicers must respond to HUD's written or electronic requests for information concerning individual accounts. HUD retains the ability to set other timeframes by Section 184 Program Guidance. This revision will improve the efficiency of the Section 184 Program.

19. In § 1005.729, HUD added that no Servicer shall commence foreclosure, or assignor acquire title to a property until the requirements of this subpart have been completed. The intent of this revision is to prevent the borrower from losing the asset until and unless the lender complies with all servicing requirements.

20. In § 1005.731, HUD significantly revised this section by removing default notice requirements from the rule. HUD took this action to align the Section 184 Program with Federal, State and Tribal laws concerning notice of default.

21. In § 1005.739, HUD added loss mitigation advances as a loss mitigation option. This will provide Borrowers with another option to remain in their homes. HUD also revised this section to provide that the servicer must conduct occupancy inspections in accordance with § 1005.735. If the property is confirmed to be vacant or abandoned, the servicer must conduct property preservation in accordance with § 1005.737.

22. In § 1005.745, HUD added paragraph (g) which provides that HUD

may provide for a temporary special forbearance in response to a disaster or national emergency. This provision will add more flexibility and allow for HUD to respond to unforeseen events, such as national emergencies.

23. In § 1005.747, HUD clarified that assumptions associated with loss mitigation must result in the cure of the default and reinstatement of the Section 184 Guaranteed Loan.

24. In § 1005.749(c), HUD removed the loan modification eligibility requirement that 85 percent of a borrower's surplus income must be insufficient to cure arrears within six months. This allows for more Borrowers to be eligible for loan modification.

25. In § 1005.751, HUD established loss mitigation advance requirements, including borrower eligibility and the terms of the advances. For example, to be eligible for a loss mitigation advance, the Borrower's Section 184 Guaranteed Loan must be 90 days past due, the Property is owner occupied, and the Borrower has the ability to continue making on-time payments. Additionally, loss mitigation advances must include arrearages and cannot exceed 30 percent of the unpaid balance as of the date of default. These revisions help to provide loss mitigation options to Borrowers and ensure that the Section 184 Program is solvent.

26. 1005.753(d) Removed the cash reserve requirement to match FHA standards. FHA no longer imposes this requirement on borrowers participating in the Pre-foreclosure Sale loss mitigation option. HUD has chosen to consistently apply the Pre-foreclosure Sale requirements.

27. In § 1005.753(m), HUD established a 90-day pre-foreclosure sale marketing period for the sale of the property, with a maximum 120-day marketing period. This provides Borrowers with more clarity concerning pre-foreclosure sales.

28. In § 1005.759, HUD provided a definition Tribal First Right of Refusal and established a 60-day period for Tribes to respond to the Tribal First Right of Refusal.

29. In § 1005.809, HUD revised paragraph (a)(1) to match the industry standard of two days to submit a claim and clarified the delivery requirements for claims under § 1005.807(a)(4).

Additionally, HUD revised the timeframes provided in paragraphs (c) and (d) to reflect industry standards. Specifically, a Servicer must submit a post-foreclosure claim to HUD 30 days from the date Property is conveyed to a third party to align with FHA standards. Similarly, when a property is sold or conveyed prior to foreclosure, the Servicer must submit a claim to HUD no

later than 30 days from the date the sale or conveyance is executed.

30. In § 1005.909(a), HUD clarified that Lender Applicants that are denied participation in the Section 184 Program have 15 days to appeal the decision. This revision adds more certainty to the appeals process.

III. Summary of Public Comments

The public comment period for the December 22, 2022, proposed rule closed on March 17, 2023. HUD received 33 distinct comments relating to the proposed rule's request for public comments. The comments were from the lenders, Tribes, Tribally Designated Housing Entities (TDHEs), and housing and banking interest groups and associations. This summary of comments addresses the most significant issues raised by the commenters and HUD's response to those issues.

General Support

Several commenters expressed support for the Section 184 Program and HUD's rulemaking effort to meet increased programmatic and operational demands as utilization of the program increases. These commenters suggested that HUD prioritize program requirements that: facilitate expansion of the program, increase flexibility to accommodate the unique needs of the Native American community, and accommodate operational demands on lenders looking to close or securitize loans insured under the program.

HUD Response: HUD appreciates this positive feedback and the time taken by the commenters to review HUD's proposed rule. HUD does have a priority to expand the program, as shown in its recent Dear Lender Letter 2023-02 on Tribal expansion areas and the Biden Administration's proposal to expand eligibility of the program to the entire United States. HUD will also work to market the program and educate potential new lenders and Tribes on the program, as well as continue to work with the Bureau of Indian Affairs (BIA) and other Federal agencies to expand the program.

General Opposition

Several commenters expressed general opposition to HUD's proposed rule, stating concerns that the proposed rule comes with onerous requirements, sanctions, and penalties that would make it difficult for Tribes and lenders, especially Native CDFIs, to participate in the program, or could even weaken the program. One commenter expressed opposition out of concern for possible unintended negative effects on the

Tribal borrowers participating in the program.

HUD Response: HUD appreciates all the concerns raised by the commenters. HUD does not believe that the proposed rule will deter Tribes and Direct Guarantee and Non-Direct Guarantee Lenders from participating in the program. Most of HUD's proposed rule codified current program practices. New requirements such as §§ 1005.527 and 1005.529 are necessary based on program growth and to address concerns identified internally by the Office of Native American Programs (ONAP) and HUD's Office of Inspector General (OIG). Further, to the extent any entity participating in the Section 184 Program believes a regulatory waiver is needed, these entities have the option to submit a waiver request to HUD. HUD disagrees that this rule will have the effect of weakening the program, in particular the Loan Guarantee Certificate (LGCs). This rule codifies the practice where Direct Guarantee Lenders are fully accountable for any non-compliance with any Section 184 requirement, even after the LGCs are issued. Ensuring Direct Guarantee Lenders are accountable for their non-compliance with Section 184 requirements, even in cases when the non-compliance may not be initially detected by HUD, is fundamental to the program's integrity. The HUD remedy of seeking indemnification from originating Direct Guarantee Lenders when the non-compliance warrants it, serves not only to strengthen the program as a whole, but strengthens the value of the LGC for all Holders.

HUD understands the desire for more Native Community Development Financial Institution (CDFI) participation in lending as a Non-Direct Guarantee Lender. HUD's regulations explicitly list that CDFIs are eligible entities. Further, given that the rule codifies current program eligibility requirements and that several CDFIs already participate, HUD does not believe the regulation will make it impossible for small Native CDFIs to become Direct Guarantee or Non-Direct Guarantee Lenders. As these Native CDFIs grow and build capacity, they will have the ability to become Section 184 Direct Guarantee Lenders.

Negotiated Rulemaking and Tribal Engagement

A commenter stated that HUD's failure to establish a negotiated rulemaking committee to develop the Section 184 Program regulations is a violation of Federal law. Another strongly encouraged HUD to create a Tribal Workgroup for any future

regulatory changes to the Section 184 Program, based on HUD's Tribal Consultation Policy. The commenter noted that a workgroup would allow for more detailed input over a longer period of time and would provide a format for Tribal leaders to work together to create mutually beneficial policy suggestions.

HUD Response: HUD disagrees with the commenter that negotiated rulemaking is required to issue Section 184 Program regulations since the program's authorizing legislation does not require negotiated rulemaking. The requirement for negotiated rulemaking only applies to the Indian Housing Block Grant program as authorized by Native American Housing Assistance and Self Determination Act of 1996, as amended (NAHASDA) (25 U.S.C. 4101). The 184 Program is authorized by Housing Community Development Act of 1992, as amended (42 U.S.C. 1715z-13a), not NAHASDA, therefore negotiated rulemaking is not required. HUD did conduct extensive Tribal consultation before drafting the proposed rule, however, holding over 21 consultation sessions over a period of 6 years and sending out draft versions of the proposed rule for Tribal comment and review prior to and in addition to the 60-day public comment period provided by the proposed rule. Based on these efforts, HUD believes that it has met its Tribal consultation obligations. HUD will continue to solicit feedback from all Section 184 stakeholders regarding the development of program policy, as appropriate.

Guidance Rather Than Regulations

Commenters stressed that HUD should utilize program guidance, including handbooks, to address issues that may need to follow market trends, rather than set requirements in regulations. Commenters explained that the program needs to have the flexibility to accommodate the diversity of the different Tribes and their needs, and the flexibility to quickly adjust guidance as market conditions change and operational constraints emerge. Commenters stated that HUD should preserve the ability to make programmatic changes in a manner where formal notice-and comment rulemaking is not required every time a slight change is needed.

HUD Response: HUD is committed to ensuring that the Section 184 Program has the flexibility to address market changes and other operational contingencies. Based on public comment, HUD has reviewed the rule and strengthened the program's flexibility by incorporating references to program guidance where appropriate,

without losing the enforceability of the key provisions of the program.

Outreach, Training, and Homeownership Counseling

Commenters generally requested increased outreach and training for lenders and Native CDFIs. The commenters explained that they wanted to ensure that Native CDFIs are able to become approved lenders without too many hurdles and capacity restraints. The commenters also stated that loan volume on Tribal Trust and Restricted Lands would increase if CDFIs and Native CDFIs were provided training. Other commenters suggested educating Tribes and TDHEs about their potential role in facilitating homeownership opportunities in their communities to Tribes and offering homeownership counseling to borrowers residing on reservations.

HUD Response: HUD supports increased outreach and training to Direct Guarantee and Non-Direct Guarantee Lenders (including Native CDFIs) and Tribes to encourage participating in the program, as well as providing training to existing Direct Guarantee Lenders and Tribes on how to best navigate the program and comply with the new regulations. HUD has engaged specifically with CDFIs to become more involved in the program and will continue to explore ways to engage Native CDFIs. Once the final rule is published and effective, HUD intends to conduct a series of training and outreach sessions in different formats: virtual trainings, pre-recorded video trainings and in-person trainings.

HUD also supports homeownership counseling for borrowers; however, the Section 184 Program as authorized does not provide for homeownership counseling. Tribes may use their Indian Housing Development Block Grant (IHBG) funding for homeownership counseling. Additionally, HUD's Office of Housing Counseling can provide additional resources and connect Tribes with homeownership counseling partners.

Consumer Protection Law Applicability

One commenter recommended that specific consumer protection laws and regulations apply to mortgage lenders, servicers, and originators under the proposed rule: the Real Estate Settlement Procedures Act (RESPA), See, Title 12, Chapter 27 of the United States Code, 12 U.S.C. 2601-2617, and the Truth in Lending Act (TILA) 15 U.S.C. 1601 *et seq.*, as well as both those acts enabling regulations referred to as Regulation X (12 CFR part 1024) and Regulation Z (12 CFR 1026). (0015)

HUD Response: Based on public comments, HUD has revised the rule to state Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, and Servicers' compliance with all applicable Tribal, Federal, and State laws that impact mortgage-related activities are required. HUD plans to provide further guidance on the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) in Section 184 Program Guidance.

Section 184 Program Data

A commenter suggested that the proposed rule should require lenders and originators to be subject to the Home Mortgage Disclosure Act (or HMDA) (28 U.S.C. 2801 *et seq.*) and its enabling Regulation C, and to require data similar to what is collected under the Community Reinvestment Act (CRA). The commenter stated that this data would assist Tribal Nations better serve the housing needs of their citizen members and to better advocate for banks and lending institutions to invest in Tribal communities. Another commenter suggested that HUD should provide data about loan volume by State and reservation to better understand how the Section 184 Program is working.

HUD Response: HUD appreciates the comments regarding data collection and how data can be used to promote homeownership and investments in Indian Country. HUD does not have rulemaking authority over HMDA or CRA. However, HUD will explore the possibility of providing public data on the program's performance. Until such data is published, Tribes may request program data on as needed basis in support of their housing and homeownership programs.

Alignment With Federal Housing Administration (FHA) Single-Family Framework

Commenters suggested that the Section 184 requirements should closely align with those of the FHA single-family program where it would not result in negative impact to Tribal communities served by the program. Commenters explained that this may increase lender participation in the Section 184 Program, would enable borrowers to take advantage of benefits that FHA borrowers receive, and would allow for consistency within the industry. One commenter explained that for the Section 184 Program to remain a competitive choice for lenders, the program should not be dramatically different in a financially detrimental way to lenders and servicers which

could result in offering more FHA and non-Section 184 loans.

Other commenters were opposed to directly aligning with FHA regulations out of concern that an FHA-type program is not appropriate for Tribes, Tribal nations, and related entities.

HUD Response: HUD appreciates the comments and understands lenders' desire to have uniformity with FHA and Tribes' desire to keep the program unique to address Tribal specific circumstances. HUD notes, however, that FHA's single-family mortgage programs and the Section 184 Program have separate statutory authorities, which means one program may have the authority to operate in a way that the other cannot. In fact, because FHA's Section 248 Mortgage Insurance Programs on Indian Reservations and Other Restricted Lands (12 U.S.C. 1715z-13) was and continues to be unpopular among Tribal borrowers, Congress established the Section 184 Program in 1992 to give HUD greater flexibilities to encourage lending to Native borrowers than what FHA's Section 248 program required and allowed (59 FR 42732 (August 18, 1994)).

As a result, there are areas where the two programs are similar and there are areas where they are deliberately dissimilar. In drafting the proposed rule, HUD took a balanced approach between the program's intent to serve Native American communities and providing consistency for Direct Guarantee and Non-Direct Guarantee Lenders. Specifically, HUD reviewed the FHA single family regulations and, where possible, adopted, or modified regulations as appropriate for the 184 Program, while still keeping the program's unique flexibilities and focus on serving Native American communities.

Automated Underwriting

Commenters suggested that HUD should adopt an automated underwriting system similar to FHA's system to modernize the program, increase consistency with other government programs, attract new lenders and comply with § 1005.451 regarding risk-based pricing.

HUD Response: HUD appreciates the commenters' suggestion to adopt an automated underwriting system similar to that used by FHA. However, manual underwriting is one of the cornerstones of the Section 184 Program to make the program more accessible to Native American borrowers. Manual underwriting allows the program to take into account the borrower's income and credit from non-traditional sources.

HUD will consider future changes to permit automated underwriting when sufficient Section 184 programmatic and systems safeguards can be in place.

Evidence of Title

One commenter expressed concern that the current process does not adequately address the title process involving restricted fee land. The commenter states HUD's demand for New York based Land Title Searches, Land Title Abstracts, and Land Title Insurance is not a requirement to access the Section 184 Program.

HUD Response: HUD appreciates the comment regarding evidence of title for restricted fee land. HUD will provide administrative guidance on the title process involving restricted fee land and other types of trust land.

Evictions Following Foreclosure

One commenter suggested that the lender should be responsible for evicting a borrower after a foreclosure has occurred.

HUD Response: When Holders, Direct Guarantee Lenders or Servicers initiate and complete foreclosure, whether on fee simple or trust land, Holders, Direct Guarantee Lenders or Servicers are responsible for evicting the borrower when the borrower fails to vacate the property.

Default

One commenter recommended the Tribe or TDHE be the borrower if the loan goes into default. HUD would then be able to review the case and discuss with the Tribe or TDHE the loss mitigations options, and if they weren't practical within 90 days of default, then the file will be submitted to HUD. The commenter reasoned that HUD has always indicated that Tribal borrowers would be dealt with Government to Government, and that should be the case here.

HUD Response: HUD appreciates the commenter's input and support of Tribal engagement. However, there are Federal consumer protection laws protecting the borrower when a loan goes into default. These laws are designed to keep the borrower in the home, if possible, and the legal relationship at time of default is between the borrower and the lender. To achieve some of what the commenter proposed, the final rule allows for the Tribes to be notified of borrower default if the borrower chooses this option. Once notified of the borrower's default, the Tribe may choose how to assist the borrower during loss mitigation.

*Specific Recommendations for Changes to the Proposed Rule***§ 58.35 Categorical Exclusions**

A commenter sought clarification on whether the environmental review, under § 58.35(b)(8) would be required; and if it is required, whether it would be completed prior to the loan closing.

HUD Response: HUD appreciates the comment regarding the Categorical Exclusions. An environmental review is required prior to closing. Section 184 Program Guidance will provide information on how this will be implemented.

§ 1005.103 Definitions

Commenters expressed general support for the expansion of the term “Lender.” Commenters noted that it would encourage Tribes to build capacity internally and that HUD should focus on expanding capacity for Native lenders. However, one commenter requested clarification around the term noting its reference to a financial institution that has not yet been approved by HUD. The commenter noted that while the definition of “Lender” distinguishes it from direct and non-direct guarantee lenders, this defined term appears to be used inconsistently, applying to lenders approved under § 1005.207. Another commenter suggested that “Default” and “Date of default” should be capitalized throughout the proposed rule to show that they are being used as defined terms.

Other commenters stated that the definition of “Tribal Land” should be very broad, not limited to lands that are leased. The commenters explained that the 184 Program allows for Tribes, housing authorities, and TDHEs to borrow, but Tribes do not have leasehold ownership in their own lands held in trust by the BIA. Commenters stated that the proposed regulation needs to be inclusive of all Tribal land to allow new concepts to be developed. There are currently Tribes who have Land Use Deeds in lieu of leases that are allowed to use the 184 Program.

The commenters also noted that while allotted lands are included in the definition of “Trust Lands”, they are missing from the specific paragraphs regulating the lending on Tribal lands. The commenters recommended that allotted lands should be included in the regulations everywhere the regulations mention fee simple and leasehold interests. The commenters further noted that allotted lands and other Tribal lands are missing in various parts of the regulation, including how to appraise

allotted lands and the appropriate documents to mortgage.

Another commenter recommended that a clear definition of what Native American lands are eligible under the 184 Program should be included in the rule and that it be expansive enough to capture the congressional intent of the 184 Program. The commenter explained that without providing a clear definition as to what Native American lands are eligible, many Native Americans on reservations are going to continue to experience extreme difficulty with accessing the Section 184 Program which Congress intended to assist them.

One commenter noted that § 1005.203 paragraph (a)(1) uses “mortgagee” which should be replaced with the term “Lender.” The same is true for the term “Mortgage” which has been replaced by the term “Loan.” The commenter stated that the term “mortgage” is used throughout the entirety of the proposed rule; in most cases, this term should be replaced with the term “Loan.”

HUD Response: HUD appreciates commenters’ input but has not edited the final rule to capitalize defined terms. HUD has, however, reviewed the use of the defined term “Lender” and has replaced “Lender” with “Lender Applicant”, “Non-Direct Guarantee Lender”, “Direct Guarantee Lender”, or “Servicer,” as appropriate. HUD also revised the definition of “Trust Land” to be more expansive and inclusive of allotted lands throughout the final rule; HUD removed the term “leasehold interest” and replaced it with “property interest.”

HUD disagrees with the commenter’s suggestion to replace “mortgagee” with “lender” in § 1005.203(a)(1). The language in § 1005.203(a)(1) (paragraph (a) of this final rule) is verbatim from 12 U.S.C. 1715z–13a(b)(4)(A), which also uses the word “mortgagee” in the context of FHA’s single family mortgage insurance program. Additionally, HUD disagrees with the commenter that the term “mortgage” should be replaced with the term “loan” wherever “mortgage” appears in the final rule. While HUD defined “loan” and “Section 184 Guaranteed Loan” in § 1005.103, there are instances where “mortgage” is properly used to reference another Federal program or requirement, or an industry-standard practice. Nevertheless, HUD reviewed the final rule to ensure “loan”, “Section 184 Guaranteed Loan” and “mortgage” were properly used and made corrections where errors in usage appeared.

§ 1005.205 Lender Applicants Required To Obtain Secretarial Approval

Commenters stated that requiring sponsored entities to provide an audited financial statement, rather than the industry standard financial documents, is not prudent, is very cost prohibitive, and would deter lenders from offering Section 184 products. One commenter explained that this requirement would make access to qualified lenders more difficult, which would negatively impact Tribal members and communities.

One commenter suggested that the requirement in § 1005.205(a)(8) that a lender not have a licensed refused or received a government sanction should be limited to the lending practices of the lender.

HUD Response: HUD agrees with commenters that requiring “audited” financial statements may be a burden for some Lender Applicants and Direct Guarantee Lenders. As a result, HUD has revised § 1005.205(a)(4)(i) by removing the term “audited.” HUD has also provided that Section 184 Program Guidance will explain when audited and non-audited financial statements may be needed. HUD also agrees with the comment that the denial of a license or government sanctions of a lender should be limited to the Direct Guarantee Lender’s lending practices. HUD has revised § 1005.205(a)(8) to limit the lender certification to issues related to lender’s lending activity.

§ 1005.213 Non-Direct Guarantee Lender Application, Approval, and Direct Guarantee Lender Sponsorship

Commenters proposed that notification in § 1005.213(b)(3) and (8) be changed to “within 30 days” to conform to industry standard.

HUD Response: HUD appreciates the commenters’ recommendation. However, to ensure HUD has up to date information on who Direct Guarantee Lenders are sponsoring and to protect Section 184 Program integrity, it is critical that lenders notify HUD within 10 days when there are changes to the lenders’ sponsorship. Additionally, HUD deleted in this section paragraph (b)(8) because it is redundant and inconsistent with paragraph (b)(3).

§ 1005.217 Quality Control Plan

One commenter noted that the requirement to complete a monthly review of a sampling of rejected loan applications and a written report of the review would be onerous to lenders and may keep lenders from participating in the Program. Other commenters

objected to the proposed monthly reviews, reporting, and tracking requirements, explaining that these requirements will be burdensome to small Tribes and lenders.

HUD Response: Lender Applicants, Direct Guarantee and Non-Direct Guarantee Lenders must have an effective quality control plan to ensure their Section 184 loans are compliant with Section 184 requirements and to protect HUD and Lender Applicants, Direct Guarantee and Non-Direct Guarantee Lenders from unacceptable or unreasonable risks and the borrower from erroneous negative decisions. As provided for in § 1005.217(b)(8), one method HUD will use to detect issues or anomalies in Lender Applicants, Direct Guarantee and Non-Direct Guarantee Lenders' Section 184 lending is by reviewing a random statistical sampling of the Lender Applicants, Direct Guarantee and Non-Direct Guarantee Lenders' rejected Section 184 loans. Having this data is essential to HUD maintaining Section 184 Program integrity.

§ 1005.219 Other Requirements

Several commenters supported establishing HUD's ability to set a trust land lending requirement for lenders as proposed in this section. One commenter recommended that HUD base this requirement on historic numbers of trust loans closed within each state. Commenters also recommended that the required percentage could be lower than the state average, but some requirement should be in place to prohibit lenders who have no interest in serving Tribal members and communities in a meaningful way. Another commenter stated that if imposed, the requirement should be reasonable and should not be imposed in a way that discourages lenders from participating and making loans under the Program. Another commenter suggested that lenders should be given an opportunity to submit a plan for originating a minimum level of loans on trust lands. Lastly, the commenter suggested that if HUD retains the requirement to originate loans on trust lands, HUD should provide a minimum one-year timeframe that will allow the lender time to market loans on trust lands and create relationships with relevant Tribal departments or staff on Tribal lands.

Some commenters opposed establishing HUD's ability to set trust lending requirements for lender participation. These commenters explained that many of their villages are on trust lands and do not have a local bank resulting in Tribal members having

insufficient access to financial services. As an alternative to this requirement, commenters recommended that HUD work with Federal partner agencies such as the Bureau of Indian Affairs (BIA) to establish processes to make the Section 184 Program practical and accessible on Trust Lands, noting that the Program's focus and intent should be on developing homeownership opportunities to all Alaska Native and Native American families.

One commenter was concerned that there may be unintended consequences if lenders are subject to a required percentage of loans and recommended that HUD exercise caution. The commenter noted that it is an unfortunate reality that making loans on Tribal land is significantly more difficult than it is on fee simple lands. The commenter further explained that the number of lenders participating in the Section 184 Program is already small. If lenders that cannot meet the required percentage of loans on trust land are faced with the possibility of "sanctions and civil money penalties" under §§ 1005.905 and 1005.907 of the proposed Section 184 Program regulations, the commenter was concerned that they may simply stop participating in the Program.

Another commenter suggested, instead of establishing lending requirements, that HUD offer incentives to lenders who opt to take advantage of market opportunities on trust land. For example, the commenter suggested that if the property is located on trust land, this section could increase a lender's portion of the guaranteed fee or offer priority processing.

HUD Response: HUD appreciates the many comments, in support of and in opposition to, this section of the regulation concerning the minimum level of Trust Land lending. HUD acknowledges that Trust Land lending is a complex issue and there may not be a "one size fits all" approach to Trust Land lending. HUD intends on developing a minimum level of Trust Land lending policy that is reasonable, achievable, and serves to promote and not hinder Trust Land homeownership opportunities for Indian families. HUD anticipates seeking Tribal and Direct Guarantee Lender input as HUD researches the issue further prior to implementing the minimum level of trust land lending requirement.

§ 1005.223 Annual Recertification

One commenter proposed that § 1005.223(b)(2) be clarified to include good standing with the ONAP Office of Loan Guarantee rather than for problems outside of past due or default. One

commenter stated the recertification requirements seem unrealistic given HUD's staffing levels. The commenter suggested that HUD should consider requiring recertification every five years.

HUD Response: HUD agrees with the comment that § 1005.223(b)(2) should be clarified and will provide further administrative guidance. However, HUD does not agree that the Direct Guarantee Lender recertification requirements are unrealistic and that the certifications should be every five years. HUD believes annual recertifications from Direct Guarantee Lenders are necessary for the proper administration of the Section 184 Program.

§ 1005.301 Tribal Legal and Administrative Framework

Several commenters suggested that the proposed rule exclude BIA involvement because some Tribes do not use the BIA for mortgageable land assignments. Rather, the commenters suggested that the guidelines should address Tribal Assignments for those Tribes that do have the mortgageable land assignments.

A commenter suggested giving lenders notice of all current HUD approved leases. The commenters noted that currently, there is no way for a lender to know which leases have been approved without submitting this to HUD for review.

Other commenters recommended that the assignment of lease provisions should include the lender in situations where the lender is unable to assign the loan to HUD and must pursue the foreclosure, eviction, and resale of the property to an eligible Tribal member.

HUD Response: HUD appreciates the extensive commenters received on this section. HUD recognizes not all Trust Land involves the BIA. Accordingly, HUD revised the regulations by inserting "where applicable" in provisions which references BIA involvement. With respect to the comment that there is no way for lenders to know which Tribal leases have been approved by HUD, HUD anticipates providing administrative guidance that will assist Direct Guarantee Lenders in verifying which Tribal leases are HUD approved.

With respect to the comments that the lease provision should include addressing situations where the lender is unable to assign the loan to HUD and must pursue foreclosure in Tribal court, HUD disagrees. Whether a Holder or Servicer must assign, could assign, or is unable to assign the loan to HUD is not an issue for the lease to address. When HUD exercises its discretion to accept the assignment, the requirements of

Holder or Servicer assignment of the loan can be found at § 1005.765. HUD notes that paragraph (b)(1) of this section is not intended to provide that all Trust land loans must be assigned to HUD. Under current policy, the Holder and Servicer always retains the option to not assign the mortgage to HUD and pursue foreclosure in Tribal court. HUD further notes that acceptance of loan assignment remains at HUD's discretion. HUD revised § 1005.765(b) to make this point clear. In cases where HUD does not accept assignment and the Holder or Servicer is otherwise unable to assign the loan or prefers not to assign, the Holder or Servicer would proceed with foreclosure in Tribal court.

§ 1005.301(b)(1)(i) Tribal Courts

Commenters recommended that HUD should recognize Tribal courts as the only legitimate court regarding foreclosures on trust land. One commenter stated that HUD lenders and servicers show proper respect and deference to Tribal courts during the foreclosure process, which includes having legal counsel appear in Tribal courts when necessary for foreclosure and eviction and adhering to applicable Tribal laws. Commenters also noted that paragraph § 1005.301(b)(1)(i) requires Tribes to grant Federal Court jurisdiction so that HUD can foreclose on a default of a Section 184 Guaranteed Loan, however, some Tribal leasehold mortgage codes do not allow recognition of Federal jurisdiction and conflict with this requirement.

HUD Response: HUD appreciates the commentor's input. HUD respects the sovereignty of Tribes and the jurisdiction of Tribal Courts as well as the ability to conduct business related to trust land in Tribal court. However, when a Trust Land loan is assigned to HUD, the Federal Government must be able to protect the Section 184 program and its Federal interest in Federal court. Therefore, the rule requires Tribes to allow for foreclosures to occur in Federal Court in cases where HUD must foreclose. Nevertheless, it is HUD's hope that with the expansive loss mitigation options available to defaulted borrowers, including incentive payments to Tribes, Holder or Servicers, and defaulted borrowers as established in § 1005.757, and a stronger partnership between Tribes, Holder and Servicer, and HUD to effectuate loss mitigation, trust land foreclosure referrals to DOJ will become increasingly rare. Accordingly, HUD makes no changes to paragraph (b)(1)(i) of this section.

§ 1005.301(b)(1)(ii) Foreclosure Ordinances

One commenter noted that § 1005.301(b)(1)(ii) requires that foreclosure ordinances allow for the reassignment of leases to HUD or the issuance of new leases to HUD and reassignment of leases to the Tribe. The commenter explained that for some Tribes, a significant amount of their Tribal trust land is allotted to individual Tribal members who may also wish to approve new leaseholders. The commenter asked how the proposed requirements incorporate or contemplate the rights of those who hold shares in allotted Tribal trust land. Another commenter recommended that the word "lease" in § 1005.301(b)(1)(ii) be changed to "leasehold" or "leased property". A third commenter inquired how individual allotted Trust Land would be treated under paragraph (b)(1)(ii) of this section.

HUD Response: Based on these comments, HUD revised § 1005.301(b)(1)(ii) and made a technical correction to state more generally the Tribe's legal ordinances must allow for the borrower's property interest (and not just leasehold interest) to be assigned to HUD or Holder. HUD will provide administrative guidance to address the rights of Tribal members who hold shares in allotted Tribal trust land.

§ 1005.301(b)(1)(iii) Lease Assignment

One commenter stated § 1005.301(b)(1)(iii), which allows a Tribe to assign a lease to HUD without the consent of the borrower and without foreclosure, ignores the contractual rights a borrower may have in the lease, the loan, and through the foreclosure process. The commenter recommended providing for assignment of a lease from a borrower to HUD within the terms of the lease.

HUD Response: HUD appreciates the comment but maintains that the Tribe should have the discretion to assign the lease to HUD when the Section 184 Loan has been assigned to HUD when the Section 184 Loan is in default. While § 1005.301(b)(5)(ii)(G) establishes a mandatory lease provision giving Tribes the ability to assign the lease to HUD, we emphasize Tribes have the discretion to assign the lease to HUD or not when the borrower defaults on the Section 184 Loan. To the extent a Tribe as the lessor of the leasehold interest, wishes to exercise this discretion to assign the lease to HUD, it would be pursuant to the mandatory lease terms. To address the commenter's concern that the proposed regulation enables

Tribes to ignore the contractual rights a borrowers may have in a lease, HUD revised § 1005.301(b)(5)(ii)(G) (and § 1005.301(b)(1)(iii)) to expressly require Tribes provide due process to the lessees in accordance with Tribal laws if a Tribe intends to assign the lease to HUD.

§ 1005.301(b)(4) Lien Priority

A commenter stated that § 1005.301(b)(4)(ii), which requires any second lien on title to trust land be approved by the Tribe and BIA and recorded by BIA, makes sense for a second mortgage through a financial institution, but it is impractical when it is related to a contractor's liens and tribally funded liens. Another commenter stated that a Tribe should not be required under § 1005.301(b)(4) to apply state law to determine a mortgage as the priority lien. The commenter also noted that the requirement that a Section 184 loan be satisfied before all other obligations seems to prohibit full satisfaction on a secondary loan made for purposes of providing down payment assistance, inconsistent with § 1005.439. The commenter further noted that the majority of junior loans are for terms less than thirty years.

Another commenter stated that its code has an exception for allowing a Section 184 Guaranteed Loan to have first lien priority when there is a Tribal leasehold tax lien, which appears to conflict with § 1005.301(b)(4). A separate commenter stated that the purpose of HUD's proposal in paragraph (b)(4) appears to only be ensuring that the Section 184 mortgage becomes the first priority debt to be satisfied before any other debt, such as secondary liens. According to the commenter, on some Reservations the land cannot be pledged for any debts and thus raises questions regarding how the secondary lien holder can take "possession" of the home. Further, acquiring a home mortgage on a Tribal reservation is so rare that there are likely very few first priority loans. A commenter proposed, as an alternative for Tribal Nations that manage and control their own land systems, a certification process that confirms their legal system meets the proposed requirements contained in paragraph § 1005.301(b)(4).

Another commenter stated that if a contractor is not paid for a job completed on trust land, or any other land, it will secure its material and labor costs with a lien on the property. The commenter further stated that contractors will not go through the process of seeking approvals before pursuing their rights under the

contractor lien laws. The commenter stated that if this requirement remains part of the rule, it is inevitable that some contractors unfortunately learn that they do not have the right to an immediate lien on trust land, or perhaps any right to a lien should a Tribe refuse to approve these types of liens. The commenter further noted that once these incidents occur, there will be a threat of contractors' refusal to work on properties on trust land given the additional steps and risks should their bill remain unpaid should the trust land be secured by a Section 184 loan.

HUD Response: HUD appreciates the various comments on § 1005.301(b)(4) of the regulation. HUD agrees with the comment that BIA approval is not always required. HUD has revised paragraph (b)(4)(ii)(B) and elsewhere in the regulations to provide for "BIA, as applicable". HUD does not believe the lien provisions under § 1005.301(b)(4) are inconsistent with § 1005.439. Additionally, HUD intends on providing program guidance on lien priority as it relates to mechanics' liens, tribally funded liens, and Tribal leasehold tax liens.

§1005.301(b)(5) Lease Provisions for Trust Land

Several Commenters stated that § 1005.301(b)(5)(ii) be revised to recognize that other Federal and Tribal leasing regulations may apply, including, but not limited to those under 25 U.S.C. 415. Another commenter noted that this paragraph requires Tribes to draft their own lease in compliance with 25 CFR part 162. The commenter further noted that certain Tribes adopted their own leasing codes to regulate the leasing of Tribal lands in accordance with 25 U.S.C. 415.

Other commenters proposed removing "property address" from § 1005.301(b)(5)(ii)(C) or clarifying that it would only be required if applicable or assigned. The commenter explained that for new construction properties, the property address is not typically available at the time the lease is created and that it is not usually available until construction has started or until construction is fully completed. The commenters proposed moving the lease term in § 1005.301(b)(5)(ii)(D) from the regulation and making it part of the guidelines instead.

These commenters also proposed clarifying that refinances should be 50-year term with at least 10 years remaining after maturity of the loan. The commenters noted that the remaining term should be written to provide as much flexibility as necessary. A separate commenter asked whether

the paragraph should require a "maximum" 50-year term, rather than a "minimum" 50-year term. The commenter explained that if a Tribal Nation member has the financial capabilities to meet a shorter loan term, they should be able to do so. Another commenter proposed the § 1005.301(b)(5)(ii)(E) and (H) should clearly state that a lease cannot be assigned without foreclosure or consent of the lessee.

HUD Response: HUD appreciates the numerous comments regarding the lease provisions under § 1005.301(b)(5). HUD agrees with the comment that Tribal leases must be in compliance with all applicable Federal requirements and not just 25 CFR part 162, where applicable. HUD has revised § 1005.301(b)(5)(ii) and removed the citation to the BIA regulation and in its place inserted "Federal requirements". HUD disagrees with the comment to remove "property address" from paragraph (b)(5)(ii)(C). HUD will provide administrative guidance on this paragraph when a property address is not available in the context of new construction.

HUD also appreciates the comments regarding providing the borrower with 10 additional years beyond the payoff of the mortgage to enjoy the property. This regulation codifies current practice. HUD has this policy as a protection for the borrower for their quiet enjoyment to ensure after loan maturity the borrower has some meaningful years left to remain in the property. HUD will continue this policy for the benefit of the borrower.

Finally, HUD has not removed the lease term in the regulation from § 1005.301(b)(5)(ii)(D). However, HUD agrees that flexibility in the lease term provisions would be beneficial to HUD. HUD revised this paragraph to by inserting the clause "unless another term is approved by the Secretary" so HUD will have the administrative ability to require a different minimum lease term.

§ 1005.303 Tribal Application

One commenter asked if the proposed rule provided an allowance (e.g., grandfathering) for Tribal Nations who already participate in the Section 184 Program and may already have Section 184 loans on their reservations.

HUD Response: HUD does not intend for Tribes currently approved for the Section 184 Program to reapply to participate in the Section 184 Program when the final rule goes into effect. However, Tribes currently approved to participate may still be required to provide copies of the current ordinances and lease under § 1005.301 and show all

requirements in §§ 1005.307 through 313 are being met. HUD will provide guidance on what Tribes may need to do to ensure their transition into the final rule.

§ 1005.307 Tribal Recertification

One commenter stated that the certification requirements for Tribes are burdensome and should be removed because they place a hinderance on Tribes' and members' ability to qualify for the Section 184 Program. Other commenters objected to an annual recertification, stating that an annual recertification can be administratively burdensome and can potentially limit growth among our small Tribes with limited resources. These commenters recommended that Tribes have a 3-year recertification process under this section. Other commenters recommended that the Tribal recertification process should be a simple process of the Tribe certifying no changes to their previously approved legal structures. Commenters also suggested that HUD maintain an Approved Lease Database that lenders and Tribes could reference to make sure the correct format is being used prior to closing.

HUD Response: HUD appreciates the commenters' concern that an annual recertification may be burdensome to Tribes. HUD agrees with the commenters' suggestion that the Tribal recertification be a simple process for Tribes to inform HUD that there have been no changes to the Tribes' legal and administrative framework and contact information. HUD made no changes to this regulation in response to the public comments. HUD appreciates the commenters' suggestion that HUD maintain a database of approved Section 184 Tribal leases. HUD will explore the viability of this suggestion further.

§ 1005.309 Duty To Report Changes

One commenter stated that this section needs to be specific as to which entity this written notification will be provided. Another commenter noted that many Tribes have no one designated to carry out Section 184 duties, and that this proposed rule makes it hard for Tribes to carry out the program.

HUD Response: The purpose of this regulation is to enable HUD to be timely informed of any proposed changes to the Tribe's foreclosure, eviction, lease, and lien priority ordinances and contact information. To provide clarity to the regulation, HUD revised the last sentence of the § 1005.309 to make clear HUD will provide notification to the Tribe regarding whether the proposed

ordinance changes meet Section 184 requirements.

§ 1005.311 HUD Notification of Any Lease Default

Commenters noted that instances where a borrower is current with their loan but delinquent on their land lease has caused situations where the Tribe has attempted to cancel the lease thereby endangering the loan collateral. These commenters recommended that HUD consider requiring that lease payments be handled through a borrower's escrow account with the servicer in the same way that property taxes and hazard insurance are handled.

Other commenters stated that the proposed rule only requires a Tribe to notify HUD of lease default within 30 days of default and proposed that HUD should provide written notification to the lender after receiving the Tribe's notice of lease default. Other than defaults unrelated to the loan, Tribes are not aware of a default on the loan until a lender sends a notice of the right of first refusal. The commenters stated that, in many cases, notice is received at the same time a lender files a foreclosure action, and that a Tribe is not aware of the default until the lender or borrower requests an assignment of the lease. The commenter recommended that HUD be required to notify a Tribe once HUD acts on its guarantee. This will, according to the commenters, allow the Tribe and HUD to work in a coordinated effort on loss mitigation actions.

HUD Response: HUD appreciates the comments regarding this section of the regulation. The comment recommending that lease payments be handled through a borrower's escrow account has already been addressed in § 1005.507. Under that section, borrower's monthly payment must include, among other things, "ground rents", which includes lease payments from the Tribal member to the Tribe.

Regarding the comment that HUD should notify the Tribe of the borrower's default on the loan once HUD pays out a claim to the Holder or Servicer, under § 1005.759 the regulation establishes a timeframe for when the Tribe receives the right of first refusal. However, the Tribe could potentially receive notice of the borrower's default even sooner than the Holder or Servicer's issuance of the Right of First Refusal if the borrower elects to provide consent for the Holder or Servicer to disclose to the Tribe his or her default under § 1005.501(j). HUD intends on providing training to Holder and Servicer and outreach to borrowers to encourage borrowers to consent to Tribal notifications so that Tribal

interventions can occur sooner when Tribal borrowers are in trouble.

§ 1005.313 Tribal Reporting Requirements

Commenters recommended that HUD seek feedback from Tribal entities on the impact of additional review reporting requirements, stating that quarterly or semiannually, may be just as effective and less burdensome. Commenters also recommended that although additional reporting and program data requests will be posted through guidance and will go through the necessary Paperwork Reduction Act process, HUD should receive feedback from Tribal entities on the impact of additional reporting requirements or on what type of data HUD might request from Tribes. Another commenter questioned what the requirements would entail and who within the Tribe would be responsible for these reports.

HUD Response: HUD appreciates the commenters' recommendation that HUD obtain feedback from Tribes before implementing this regulation. The regulation does not specify the frequency of the Tribal reporting requirement. HUD will provide administrative guidance on what information will be collected and how often. Prior to implementing this regulation, HUD intends to seek feedback from Tribes on the Tribal reporting requirement and on whether an equally effective and less burdensome information collection process could be achieved.

§ 1005.401 Eligible Borrowers

A commenter suggested that either § 1005.401(a) or (c) should be amended to clarify that eligible Borrowers with a Section 184 loan on their principal residence may sign as a non-occupant, co-Borrower on a separate Section 184 loan, provided they meet all loan qualifications with the additional loan. The commenter noted that § 1005.401(a) only limits eligible Borrowers to one Section 184 loan at a time, and that paragraph (c) of this section allows a non-occupant co-Borrower on Section 184 loans. The commenter further noted that often, when a non-occupant co-Borrower is included on a mortgage loan, it is a parent of a child making one of their first purchases of real estate.

Commenters also suggested allowing second homes on Tribal trust land, noting that Tribal borrowers would like to have a presence on their Tribal homeland but primarily live on non-Tribal lands for work or other reasons. These commenters also noted situations of a family home where the occupant dies, and the heirs would like to retain

the property. In this situation, commenters explained that under the proposed rule the heirs' only option would be to move into the house, which may not be practicable for their current life situation.

HUD Response: HUD acknowledges there can be a need for a family member to assist another family member as they embark on the path to homeownership and supports the recommendation to allow an individual with an existing Section 184 Guaranteed Loan to be a non-occupying co-borrower in accordance with the Section 184 Program Guidance. This shift will provide wealth building opportunities for more Native families. Accordingly, HUD revised § 1005.401(c) to provide an exception to the rule that an Indian Family is limited to one Section 184 Guaranteed Loan at a time. The exception will provide that an existing Section 184 borrower may be a non-occupant co-borrower on only one other Section 184 loan, so long as the non-occupant co-borrower loan also meets § 1005.403. Relatedly, HUD has made conforming technical changes to § 1005.403 to provide greater clarity on the non-occupant co-borrower requirements.

Lastly, HUD appreciates the commenters' suggestion to allow a borrower to have multiple Section 184 Guaranteed Loans which would include second homes. HUD believes, however, that the mission of the Section 184 Program is to increase homeownership for Native American borrowers. As a result, HUD is not making this change.

§ 1005.405 Borrower Residency Status

A commenter noted that "U.S. Citizen, or lawful permanent resident, or non-permanent resident" does not appear to describe Native Americans consistent with 8 U.S.C. 1359, which provides that: "Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race."

HUD Response: HUD appreciates the commenters suggestion but notes that 8 U.S.C. 1359 governs movement across borders and not permanent residency status. As a result, HUD has not revised § 1005.405 in response to this comment.

§ 1005.407 Relationship of Income to Loan Payments

A commenter recommended that the terms "age" and "sexual orientation" be added to the nondiscrimination provision in § 1005.407(b). Other

commenters expressed support for the addition the nondiscrimination provision in § 1005.407(b). One stated that this provision advances not just the statutory purpose of the Program to provide access to sources of financing to Native American families, housing authorities and Tribes, but it is also consistent with fair lending provisions which seek to root out discrimination in credit markets.

Other commenters recommended that the provisions prohibiting discrimination based on income stream should also include Tribal sources of income. These commenters explained that HUD currently requires two years of receipt and averages the last two years instead of using the current amount. According to the commenters, this is discriminatory towards Tribal governments and members and should be changed.

One commenter noted that without including some type of 'test' with respect to mortgage underwriters automated or electronic underwriting that the rule will fall far short of detecting and stopping such discrimination. The commenter recommended that the proposed rule require lenders and originators to attest that their automated underwriter software meets the requirements needed to originate loans under the Section 184 Program including the prohibition against Native income and loan location discrimination. The commenter further recommended that HUD develop an automated underwriting program to use with the Section 184 Program (e.g., Scorecard or Native Advantage), particularly with the data HUD is about to receive under the Section 184 Program, and to make that available to lenders, originators, and Native Housing Counselors or Agencies located on Tribal reservations who are trying to assist Native American participation in the Section 184 Program.

Other commenters objected to this section's requirement that the occupying borrower meet a minimum qualifying threshold when there is a co-borrower that will not occupy the home. These commenters reasoned this could have a negative impact for protected classes and first-time homebuyers. Finally, one commenter stated that under § 1005.407(a)(2), requiring the occupying borrower to meet a minimum qualifying threshold when a non-occupying borrower is on the loan could result in disparate impact for protected classes and first-time homebuyers.

HUD Response: HUD appreciates the extensive comments received on this section of the regulation. HUD agrees with the comment that "age" should be

added to the non-discrimination provision in paragraph (b) of the section as "age" is a protected class under the Equal Credit Opportunity Act. HUD has inserted "age" into the list of protected categories. With regards to the comment suggesting the non-discrimination provision in § 1005.407(b) expressly reference "Tribal sources of income", HUD believes this is unnecessary. This paragraph states more broadly there can be no discrimination based on the "source of income of the borrower", which would naturally include Tribal sources of income. With regards to the comment that "sexual orientation" should be added, this protected class is already referenced in the regulation, and has been maintained in this final rule in accordance with Executive Order 13988, "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation"³ and HUD's February 2021 implementation memorandum.⁴

With regards to the comments suggesting HUD develop a test to detect discrimination in the lenders' automated underwriting of Section 184 borrowers, HUD disagrees with the comment. The Section 184 Program currently does not allow automated underwriting and, as a result, there would be no test to develop to detect discrimination. HUD will consider future changes to permit automated underwriting when sufficient Section 184 programmatic and systems safeguards can be in place.

With regards to the commenters' recommendation that the occupying borrower meet minimum qualifying threshold when there is a non-occupant co-borrower under paragraph (a)(2) of this section, HUD appreciates the commenters' concerns. However, when an occupying borrower and a non-occupant co-borrower are on the same loan, it is critical that the occupying borrower meet a minimum qualifying threshold to avoid the situation where as soon as the other non-occupant co-borrower no longer can contribute towards the mortgage, the occupying co-borrower faces default. Exempting the occupying borrower from meeting a minimum qualifying threshold will cause undue and unnecessary risks to the Section 184 Program.

§1005.409 Credit Standing

Commenters recommended a default waiting period of 36 months which is consistent with other loan programs. Other commenters stated that this

section codifies a current practice of not having a credit score that impacts the borrower's ability to qualify for a Section 184 Loan. The commenters suggested that this section continue to be a guideline/policy and not set in stone in the regulations. Another commenter stated that prohibiting the use of credit scores to measure a borrower's creditworthiness is contrary to their use by the lending industry. The commenter recommended that a Section 184 lender should have the discretion to use credit scores, along with credit history and payment patterns, to evaluate credit worthiness.

HUD Response: HUD appreciates the commenters recommendations for a 36-month waiting period for borrowers who previously defaulted on a Section 184 loan. As mentioned above, HUD considered the comments and has adopted a seven-year waiting period, or other period as may be prescribed by Section 184 Program Guidance, to minimize risk to the program. The seven-year waiting period only applies when the borrower defaults on the Section 184 Loan and there is claim payment by HUD. HUD has a long-standing prohibition of the use of credit scores for the Section 184 Program. As a result, HUD has not revised this section to provide Direct Guarantee Lenders the discretion to use credit scores. Direct Guarantee Lenders are able to evaluate the credit worthiness of Native borrowers without using credit scores. HUD will continue this time-tested successful practice for the benefit of Native borrowers.

§ 1005.413 Acceptable Title

Commenters expressed concern that this requirement does not provide any risk mitigation to HUD due to the unique status and marketability issues of trust land properties. The commenters explained that this requirement would cause issues for borrowers with trust loans in having to redo leases and eliminating it would benefit borrowers. Commenters requested that HUD consider instead the necessity of having a lease on trust property that exceeds the mortgage term by ten years, which is standard in the industry. One commenter also suggested adding to this section "including but not limited to leasehold, Allotted and Land Use Deed". The commenter explained that this language currently permits land types and would include other land types that evolve over time and need to be permitted.

Another commenter proposed that that Tribal Nations be recognized as being able to provide both Acceptable Title and Property Ownership Report for

³ 86 FR 7023, January 25, 2021.

⁴ Available at https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.

Section 184 Program purposes, thereby reducing delays in the loan approval process.

HUD Response: HUD does not believe that this provision will cause issues for borrowers with Trust Land loans, possibly requiring these borrowers to redo leases. Tribes approved to participate in the Section 184 Program are required to have their Section 184 Tribal leases approved by HUD prior to any mortgage lending on Tribal Trust Land. As a result, it is highly unlikely a Section 184 lease would ever need to be redone solely because of the requirement under § 1005.413.

HUD also appreciates the comment that Tribal Nations be permitted provide acceptable title and property ownership reports for the Section 184 Program. HUD will explore further the feasibility of this proposal and what safeguards, if any, HUD must adopt to ensure there are no increased risks to the program should this proposal be implemented.

§ 1005.415 Sale of Property

One commenter recommended that § 1005.415(c) be revised to provide that all sales occurring within 180 days of acquisition require additional documentation, such as a second appraisal. The commenter further recommended that the additional documentation should be described in these paragraphs because they are vague as written. The commenter noted that restrictions on eligible borrowers' ability to purchase flipped or remodeled homes reduces their opportunities to purchase. The commenter also stated that the use of "property flipping" in the title of paragraph (c)(4) of § 1005.415 is misplaced and unnecessary. Specifically, the commenter noted that § 1005.415(c)(2) and (3) do not include the term "property flipping" and the fact that a home is sold for a higher price within 12 months of purchase does not unequivocally mean it was flipped. The commenter stated that if the goal of this section is to require additional documentation for properties that were flipped, then there must be a definition for the same that involves construction.

HUD Response: HUD appreciates the numerous comments received regarding this section of the regulation. This section is vital to ensure that Holder and Servicers understand the legal requirements regarding sales of a home involving a Section 184 borrower. HUD disagrees with the comment to revise § 1005.415(c). Paragraph (c) relates to time restrictions on resale and is divided into paragraphs (c)(1) through (3). Each of these paragraphs properly lay out an important component of this

section. HUD agrees that the term "property flipping" should not be used in paragraph (c)(4). HUD disagrees that there should be definition for the same that involves construction. This section equally applies to new construction.

§ 1005.419 Requirements for Standard Housing

One commenter stated that § 1005.419(a) provides that heating, plumbing, and electrical systems must conform with any applicable Tribal code, and if there is no applicable Tribal code, an appropriate local, state, or national code. The commenter recommended that conformance with an international code be included alongside the other types of codes to use in place of an applicable Tribal code.

Other commenters recommended that paragraph (a)(6) of this section should allow for a minimum square footage of "not less than 200 square feet in size, if designed for a family of not more than 2 persons." These commenters explained that "tiny homes" provides affordable housing options to Tribes faced with skyrocketing home costs on reservations and have been shown to be successful on reservations. Other commenters proposed moving this paragraph from this final rule and making it part of the guidelines instead.

One commenter proposed removing "for properties on Trust Land" from paragraph (a)(6)(v) as Tribes can have Fee Simple and Restricted Fee on and off the reservations. The commenter explained that removing this would allow Tribes with all land types to be able to request the waiver of the square footage requirement.

Other commenters proposed that the requirements of paragraph (e) of § 1005.419 be rewritten to allow a property to be eligible for a Section 184 loan guarantee if the building located within a Special Flood Hazard Area (SFHA) is insurable by any flood insurance. These commenters stated that Tribes should not be subject to flood insurance under the National Flood Insurance Program (NFIP), as States are exempt from this requirement. The commenter also explained that Letters of Map Amendments (LOMAs), Letters of Map Revision (LOMRs), and NFIP Elevation Certificates are not available to communities, including Tribes, that are not a part of the NFIP. The commenters recommended that the rule be written to allow a property on a SFHA to be eligible so long as the flood risks are mitigated, and flood insurance is obtained. These commenters stated that the majority of Tribes in the U.S. are not participants of the NFIP but are able to mitigate their

flood risks and obtain flood insurance from reputable insurance companies outside the NFIP. Finally, another commenter noted that the environmental review process is often a burden to lenders, with HUD and the BIA having separate requirements. The commenter recommended that a streamlined process and single form should be agreed to for a consolidated environmental review process that is completed by the Tribe or its assignee at the time of the lease.

HUD Response: HUD appreciates the numerous comments regarding this section of the proposed rule. HUD has considered the suggestion to reference international codes in paragraph (a) in this section and has accepted the suggestion to utilize the International Building Code.

HUD also appreciates the comments suggesting a lower minimum square footage requirement for paragraph (a)(6) of § 1005.419. However, this section derives from section 184(j)(6) of the Act and HUD has no ability to on its own waive this statutory provision. However, as discussed above, the Act provides that upon the request of a Tribe or a TDHE, HUD may waive the minimum square footage requirements.

HUD appreciates the comment regarding paragraph (d)(4), but HUD has decided to adopt the same standard as used by the FHA-family forward mortgage program. HUD agrees with the comment regarding private flood insurance and has revised the provision to allow for private flood insurance.

§ 1005.421 Certification of Appraisal Amount

One commenter noted that there are few, if any, qualified Native American restricted land appraisers, and that determining the market comparison is extremely difficult. The commenter stated that the current option of utilizing replacement cost or actual cost for new units in lieu of an appraisal continues to be the most practical method of determining value. The commenter also stated that in most real estate transactions, the buyer and or his bank is responsible for determining (appraisal) value, and not the seller.

Another commenter recommended that HUD provide a fuller definition of the term "appraisal," similar to requirements in other HUD and Fannie Mae contexts where opportunities for alternative appraisal methods are provided. Furthermore, the commenter, citing a Brookings Institution report, noted concerns about discrimination in the home mortgage process for Native Americans, as there is potential bias in home appraisals occurring on Tribal

reservations. The commenter recommended that the requirements should require lenders and originators to attest that appraisals used come from competent appraisers, and who, like the Consumer Financial Protection Bureau (CFPB) requires appraisers to attest that the appraisal conforms with “the Fair Housing Act and Equal Credit Opportunity Act.”

HUD Response: HUD appreciates the comments regarding the challenges of appraising property located on restricted lands and the request for a definition of appraisal. This section requires an appraisal to be completed, which would require the seller to allow an appraiser to access the property, to inspect the subject property, and prepare an appraisal report. HUD has addressed the concerns of the commenters regarding Fair Housing Act and the Equal Credit Opportunity Act in § 1005.457. As a result, HUD is revising this section by referencing the Fair Housing Act and the Equal Credit Opportunity Act, along with revising the language for clarity regarding HUD’s ability to provide for appraisal alternative requirements.

§ 1005.423 Legal Restrictions on Conveyance

One commenter suggested that this section should be updated to allow for leases and sales with third party consent from a governmental entity or agency, master lessee, and planned community authorities. Another commenter suggested that paragraph (b)(4) of this section be revised to clarify that restrictions which do not restrict conveyance are not impacted by this rule, *i.e.*, covenants on a subdivision continue to apply.

HUD Response: HUD appreciates commenters’ input and recognizes the concerns raised regarding third party consent and clarification of restrictions on conveyance. HUD will provide further administrative guidance to address commenters’ concerns.

§ 1005.425 Rental Properties

A commenter recommended that paragraph (b) of § 1005.425, which contains the phrase “one- to four-unit properties”, should be changed to “properties” since that term defines the phrase. Additionally, the commenter stated “Property” or “Properties” should be capitalized throughout the proposed rule since they are being used to describe the dwellings identified under the definition of “Property”.

HUD Response: As discussed previously, HUD defined “property” in § 1005.103 to mean one to four-family dwellings and is consistent with current

policy. HUD has not capitalized the term throughout the regulations. HUD made further changes to § 1005.425 to clarify that there is one Section 184 Guaranteed Loan per “property,” and a “property” may be one to four-family dwellings.

§ 1005.427 Refinancing

One commenter recommended moving this entire section to guidance, with a reference to new construction financing, whether it be refinancing the construction loan, reimbursement of funds spent or a combination.

HUD Response: HUD appreciates the comment but has not moved the entire section to guidance. However, HUD did add paragraph (d) to this section to clarify that construction loans less than one year old are included under rate and term refinance.

§ 1005.429 Eligibility of Loans Covering Manufactured Homes

Several commenters sought clarity concerning the standards for manufactured homes, including a time frame for Tribal Nations to come into compliance with this section, and whether this section applies to existing homes and 184 Program loans located on Tribal reservations.

HUD Response: With respect to manufactured homes located on fee simple properties, HUD is not changing the standards for manufactured homes. These manufactured homes must continue to conform to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (HUD Standards). Under § 1005.429(b), this section applies to manufactured homes on Trust Land, HUD revised this section to clarify in the absence of Tribal laws addressing installation standards, provisions of § 1005.429(a)(1), (3), and (4), and any applicable Section 184 Program Guidance shall apply. HUD will provide an effective date and compliance date for the final rule, allowing Tribes ample time to review and implement the new regulations.

§ 1005.431 Acceptance of Individual Residential Water Purification

One commenter stated that paragraph (c)(1) of § 1005.431 should be revised since it is not within the control of the lender when a borrower receives notice of the need for water purification or when the borrower signs a sales contract, and that this should be stated in the real estate law and stricken from regulations. The commenter also stated that § 1005.431(c)(2)(ii) provides that the lender would be responsible for providing a Good Faith Estimate of the

ongoing maintenance and replacement costs of the equipment and that this would not be within the lender’s scope of knowledge. Another commenter recommended that the proposed rule clarify the type of proof required to show compliance under this section.

HUD Response: HUD appreciates this comment but does not believe that § 1005.431(c)(1) should be revised. While it is true that a Direct Guarantee Lender may not have control of the timing of when a borrower receives the notice under § 1005.431(c)(1), HUD requires the borrower to receive the notice under (c)(1) of this section as one of the conditions of loan eligibility under the Section 184 Program. Therefore, Direct Guarantee Lenders must ensure that the notification occurred before the signing of the contract for the loan to be eligible under the program. HUD agrees that the lender is not responsible for providing the borrower a Good Faith Estimate as required under paragraph (c)(2)(ii) of this section. To clarify, this is a transaction between the seller of the property and the borrower. However, HUD is requiring the lender to obtain a copy of the document from the borrower and submit it with the loan package.

§ 1005.435 Eligible Collateral

One commenter suggested that the proposed rule expand the amount constituting the collateral amount to all costs that have been expended by the borrower, or on behalf of the borrower, including water, sewage, or driveway installation, similar to § 1005.443. Another commenter recommended that the proposed rule clarify whether a leasehold interest on trust land can be considered part of the eligible collateral.

HUD Response: HUD appreciates commenters’ input. As a program and industry practice, all costs paid by the borrower are not factored into the value of the collateral. The value of the collateral is determined by a property appraisal which includes all eligible improvements. Further clarification will be provided in Section 184 Program Guidance. Additionally, this section specifically states that the Trust Land, which is secured by the leasehold interest, is not considered eligible collateral. HUD will provide additional clarity on what constitutes eligible collateral in administrative guidance.

§ 1005.437 Loan Provisions

One commenter proposed that paragraph (g) of this section be revised to reflect the current process for guarantee and construction. The commenters noted that the proposed rule does not mirror the current process

and does not provide lenders with certainty that HUD will guarantee the loan because that determination will be made at closing. The commenter further stated that the proposed rule indicates HUD may guarantee advances as they happen. However, according to the commenter, the loan is fully funded at closing, as the construction funds are deposited into a construction account and the advances are paid out of that account. Currently, the loan is guaranteed just like any other loan with the same documentation and is typically in place prior to the construction being finished. The proposed requirements will cause delays with construction if each advance must wait to be guaranteed, and the current language indicates the advance “may” be guaranteed, indicating that some draws could be denied a guarantee, which will put undue risk or burden on the Tribal borrower, Tribes, TDHEs, and the lenders. The commenter opined that if the guarantee is no longer going to be done after closing when the funds are put into the construction account and done only with each advance it will have a major negative impact on the borrowers and reservations.

HUD Response: HUD appreciates the extensive comments received on the topic of the Single-Close construction program. Based on commenters’ suggestion regarding § 1005.437(g), HUD has revised this paragraph to make clear that HUD is not guaranteeing each individual advance made by the Direct Guarantee Lender during construction. Further, HUD added paragraphs (h) that changes to the building Loan Agreement must be approved and documented by the Direct Guarantee Lender prior to the construction advance and (i), which requires the Direct Guarantee Lender to submit a construction completion package to HUD, as prescribed in Section 184 Program Guidance. HUD revised paragraph (g) by removing paragraph (g)(2) to remove any requirements for HUD to approve construction advances. HUD inserted paragraph (h) to address changes to the Loan Agreement and paragraph (i) to address the documentation HUD shall require upon construction completion. HUD intends on providing administrative guidance and future training on the Single-Close Construction program.

§ 1005.439 Loan Lien

Several commenters noted that the requirement for prior approval by HUD of second mortgage liens will primarily affect tribally sponsored homeownership assistance programs and stated that HUD already has well

defined rules around second liens and there is no need to change them. These commenters explained that this proposal will add to the closing timeframes and negatively impact Native borrowers. Some commenters noted that contractors’ and tribally funded liens must be considered, and if a contractor or Tribe properly or improperly records a junior lien on the property’s title, it should not invalidate the senior lien and should not accelerate the payment for the borrower. Other commenters noted that the proposal to prohibit interest and principal payments and require loan forgiveness conflicts with many of the homeownership assistance programs. Commenters provided a list of Tribes, TDHEs, and Tribal communities that would be negatively affected.

Another commenter sought clarification regarding whether the proposed requirements would limit the Tribal down payment assistance (DPA) as a second mortgage. The commenter explained that many DPA grants are awarded as second forgivable mortgages. The commenter noted concern that if DPA was limited, borrowers might be likely to use other programs. A separate commenter stated that, as written, § 1005.439(b) is contrary to the original intentions of the Section 184 Program, which are to provide more flexibility and opportunities for eligible borrowers. The commenter contended that HUD’s proposals would reduce the options eligible borrowers have because it allows junior liens to only come from Direct Guarantee Lenders. Eligible borrowers can only receive one Section 184 loan on their principal residence, which must come from a Direct Guarantee Lender, and limiting their options for a separate junior lien “is futile.” The commenter also stated that there is nothing in this section or the proposed rule allowing for a junior lien to be placed on the property’s title by a contractor or the member’s Tribe.

HUD Response: HUD appreciates the numerous comments received on the loan lien section. It was not HUD’s intention that Direct Guarantee Lenders seek HUD approval when there will be a junior lien on the property or to change existing HUD policies on junior liens. Rather, it is HUD’s intention that where there will be a junior lien, the junior lien conditions must satisfy the requirements outlined in § 1005.439 (b) through (d), where applicable, and to continue to allow junior liens from Tribes, TDHEs and downpayment assistance programs. HUD revised paragraph (b) of this section to provide greater clarity as to HUD’s intent. HUD will provide administrative guidance on

the commonly acceptable junior liens held by Section 184 borrowers, such as liens by Tribes, TDHEs and contractor’s liens and liens related to downpayment assistance programs.

§ 1005.443 Loan Amount

One commenter noted a technical change stating that “lessor” in paragraph (b)(ii) should be “lesser”.

HUD Response: HUD has corrected this typographical error.

§ 1005.445 Case Numbers

Several commenters stated that case numbers may only be obtained by lender or Sponsored Entity, but paragraph (b) of this section specifically identifies the Direct Guarantee Lender. The commenters recommended that HUD clarify whether a sponsored broker is allowed to order their own case number or if their sponsoring lender is required to request a case number.

HUD Response: HUD appreciates commenters’ input. Under § 1005.445 a sponsored broker is not allowed to order their own case number. HUD has revised the regulation to clarify that only the Direct Guarantee Lender can request a case number.

§ 1005.447 Maximum Age of Loan Documents

Commenters suggested that this section should require review and revision at minimum on an annual basis. One commenter also proposed adding title commitments to adhere to state expirations. The commenter noted that Tribal Resolutions are typically accepted based on number units or maximum dollar and typically expire based on their content, not based on a date. Another commenter noted that administrative difficulties and delays cause borrowers to not meet deadlines related to the maximum age of loan documents. One commenter stated that this section does not consider the impacts of BIA rules and processes.

HUD Response: HUD agrees with the commenters’ that title documents should be included in this section and has revised the language to include title documents reviewed at closing in addition to documents reviewed at underwriting. Additionally, HUD agrees that the section should be more flexible regarding the maximum age of these documents and has revised this section so that the age of the documents will be described by Section 184 Program Guidance.

§ 1005.451 Agreed Interest Rate

Several commenters opposed the prohibition on risk-based pricing. They explained that risk-based pricing is an

accepted practice in the mortgage industry, including the Government Sponsored Entities, and that it benefits some borrowers based upon their personal credit history and loan size and negatively impacts others. The commenters further noted that risk-based pricing reflects the added costs of servicing smaller loans and loans with a higher risk of default; however, in practice, the 100 percent loan guarantee rarely reimburses the servicer for 100 percent of their losses from a default.

HUD Response: HUD disagrees with the comments regarding risk-based pricing. The Section 184 Program offers up to 100 percent reimbursement for the unpaid principal balance and interest, along with reimbursement of Holders and Servicers eligible costs in the case of borrower's default on the Section 184 Loan when Holders and Servicers comply with all applicable Section 184 requirements. Therefore, HUD does not permit risk-based pricing on Section 184 Loans. The major secondary market organizations, such as Freddie Mac and Fannie Mae, have specifically exempted risk-based pricing for Section 184 Loans.

§ 1005.457 Appraisal

A number of commenters stated that the appraisal requirements would eliminate the ability of lenders to select a non-FHA certified appraiser in cases where there is no FHA-certified appraiser available. These commenters explained that many Tribal borrowers and Tribal reservations are in very rural and remote areas where it is difficult and expensive to find an appraiser. According to the commenters, limiting lenders to the FHA Appraiser Roster will prevent some Tribes and Tribal homebuyers from receiving Section 184 loans and will dramatically raise the cost for others. Additionally, the commenters stated that there are not many cost comparison properties on the market and recommended allowing cost-based appraisals for new construction as well.

One commenter recommended broadening the pool of eligible appraisers. The commenter noted that the current proposal states, "The appraiser must be knowledgeable in the market where the property is located". According to the commenter, this requires upfront competency leading into the assignment, which could be rather limited in certain markets. The commenter explained that a broader approach would allow appraisers to gain competency during the assignment, which would maintain consistency with the Uniform Standards of Professional Appraisal Practice (USPAP). The

commenter further explained that this approach would allow appraisers to "acquire the necessary competency to perform the assignment" even after accepting the assignment.

Another commenter recommended, for Native American borrowers purchasing properties in less remote areas, the lenders serving those borrowers should be able to use Automated Valuation Model ("AVM") systems that have a proven track record of being accurate and non-discriminatory. The commenter stated that by embracing this technology HUD can save these Tribal borrowers significant costs while ensuring that they are not subject to discriminatory appraisal practices, among many other benefits.

Separate commenters sought clarification on whether the age of the appraisals should be 120 or 180 days to align with recent Mortgagee Letter 2022–11. Further, the commenter proposed additional language to allow for cost-basis appraisal and allowing Tribes and TDHEs to utilize master appraisals for the same floor plan on a similar site or for leaseholds where there is no land value included. Finally, a commenter proposed amending § 1005.457(a), which reads "HUD may establish alternative requirements," to read instead, "HUD has established alternative requirements," which would reflect current policy. The commenter stated that without such guidance Native American borrowers located on-reservation will continue to experience delay, if not outright discrimination, guised as a requirement if the language is not amended.

HUD Response: HUD recognizes the challenge remote locations can present when appraising real estate. To address this, the regulation provides HUD with discretion to establish alternative requirements when necessitated by the location of the property and availability of appraisers in the area. HUD agrees with the comment regarding the validity period for an appraisal and has revised the regulation to provide for a validity period to 180 days or any other period as may be prescribed by Section 184 Program Guidance.

§ 1005.501 Direct Guarantee Lender Closing Requirements

One commenter asked why "Trust Land" in paragraph (a)(2) of this section receives its own special guidance in a document outside the proposed rule. The commenter stated there is no language in the statute limiting the Section 184 Program to just Trust lands, and in fact the statute provides for eligibility for Native Americans living

on "otherwise restricted land;" the commenter cited 12 U.S.C. 1715z–13 and 1715z–13a. The commenter explained that without addressing or providing additional guidance for Native American borrowers who reside on "otherwise restricted land" over which their Nation has "governmental jurisdiction", and such lands are not held in trust, they will continue to experience significant barriers in trying to obtain on-reservation home financing.

Several commenters recommended this section better align with current guidance, noting that that § 1005.501(d), requiring the Direct Guarantee Lender to close the loan will cause major issues with correspondent lenders who do not have underwriting staff. The commenters further stated that this will lead those lenders to use another program, such as FHA, instead of the Section 184 Program. Other commenters stated that closing in the Direct Guarantee Lender's name may deter new lenders from the Section 184 Program. These commenters also noted that the requirement to have a Section-184 certified underwriter on staff may deter many lenders from entering the Program.

Another commenter referencing § 1005.501(e) and (f) stated that this program was created with an understanding that Congress through HUD might have some ongoing subsidy requirements to make the Program viable. The commenter further stated that it would be appropriate for HUD to confer with Tribes and Congress to identify how that appropriation would be decreasing over the years as Tribes learn how to encourage lending through expedited leasing (Hearth Act), Tribal court training, and focused Tribal code.

One commenter identified an incorrect cross-reference to § 1005.713 in paragraph (f), which provides for establishment of an escrow account and repair completion escrow account in accordance with § 1005.713—but that section pertains to a Due-on-Sale provision that must be contained in a Section 184 Guaranteed Loan. Another commenter recommended that § 1005.501(j) be revised so that Tribes can receive notice of a member's default so they can assist with loss mitigation, as it does under the current rules. The commenter explained that allowing Tribes the opportunity to assist with loss mitigation will further satisfy the purpose of the rule because it will add protections against the loss of the underlying security for loan servicers and encourage more servicers to participate in the Section 184 Program.

Another commenter expressed concerns with § 1005.501(j), which

provides that Tribes are the beneficiary owners of Tribal trust lands. The commenter noted that for all practical purposes, Tribes own the land being leased to the Tribal member and are entitled to notice upon default.

According to the commenter, many Tribal mortgage laws require the lender to send a notice of the right of first refusal at some time after default. Requiring a borrower's consent prior to providing notice of default to a Tribe is contrary to many Tribal mortgage laws, and is contrary to proposed § 1005.311, which requires a Tribe to notify HUD of lease violations regardless of a borrower's consent. The commenter recommended that the requirements clearly state that a Section 184 lender will notify the borrower that a Tribe may be notified of default regardless of whether a borrower consents.

Other commenters recommended that the release form provided by HUD to the borrower at closing allow the lender and HUD "to notify the Tribe [or another entity as designated by the borrower] in the event of default." The commenter noted that this would allow the borrower to designate the entity that assisted them to qualify for the mortgage, such as a nonprofit, Native CDFI, or TDHE, and would help ensure that early intervention and foreclosure prevention education occur early enough to avoid foreclosure. The commenter suggested that, at closing, the Tribe and homebuyers should be able to choose if a HUD Housing Counseling Agency should be contacted for assistance.)

Other commenters stated that paragraph (a)(3) of the section does not conform with the flexibility provided to borrowers in § 1005.501(j). The commenter explained that if a borrower elects not to give notice to its Tribe pursuant to § 1005.501(j), then a Tribe will not receive notice under § 1005.741(a)(2) and will not be able to fulfill its requirements under paragraph § 1005.501(a)(3). Another commenter asked how HUD planned to implement the requirement that Tribes assist in facilitating loss mitigation efforts and in the disposition of defaulted properties. The commenter noted that many Tribes have decided to stay out of the default process and let lenders perform their jobs.

HUD Response: HUD appreciates the extensive comments on this section of the regulation. With regards to the comment asking HUD why Trust Land has its own provisions under § 1005.501(a)(2), it is because Trust Land encompasses more than one land status type, and each land status type may have its own distinct requirements

and challenges. HUD considered the many comments received suggesting HUD incorporate as much flexibility as possible in this section so that the many nuances of Trust Land lending can be addressed. HUD believes that the flexibility provided by this regulation allows it to address the nuances of Trust Land lending. HUD appreciates the comment regarding "otherwise restricted fee" language that commenter quoted from the Housing Act of 1992, as amended, and incorporated the term "restricted fee" into the definition of "Trust Land" in this regulation.

Regarding the comments received concerning paragraph (d) of this section, which requires Direct Guarantee Lenders to close the loan in the Direct Guarantee Lender's name, HUD disagrees that this provision will negatively impact the program. Because HUD will only be working directly with Direct Guarantee Lenders in all aspects related to loan origination, underwriting, and closing, naturally then the loan must close in the Direct Guarantee Lender's name. HUD has corrected the incorrect cross-reference in paragraph (f) of this section to properly cite to § 1005.717.

With respect to the comment regarding § 1005.501(j), HUD does not agree that Tribes should automatically receive notice of borrower's default. It is important that borrowers have the option whether to disclose the default to the Tribe or not early in the process. Borrowers may have privacy concerns regarding sharing default information with the Tribe. Through outreach or marketing of Tribal assistance programs, Tribes should encourage Tribal borrowers to elect disclosure so that help can be provided to defaulted borrowers as early as possible in the process. HUD also does not agree that paragraph (j) be revised to allow the borrower to elect to disclose to another third-party, which may include the TDHE, nonprofit, or housing counseling agencies, as examples. However, the borrower can reach out to a third party directly if the borrower chooses to.

HUD does not agree with the comment that paragraph § 1005.501(a)(3) does not conform with the flexibility provided to borrowers in § 1005.501(j). While a borrower may elect to not provide notice to his or her Tribe pursuant to § 1005.501(j), it does not mean the Tribe would not receive the notice of borrower's default, thereby making it impossible for a Tribe to comply with paragraph (a)(3). When a borrower elects not to notify the Tribe under § 1005.501(j), a Tribe will still receive a first right of refusal under § 1005.759. Nevertheless, HUD revised

paragraph (a)(3) to make it clear that when Tribes receive notice of borrower's default under §§ 1005.501(j) or 1005.759, Tribes shall assist in facilitating loss mitigation efforts and in the disposition of Trust Land properties.

HUD believes that Tribes are a vital partner in the Section 184 Program, especially in cases involving defaulted borrowers on Trust Land. It is critical that Tribes engage the borrower and Holder and/or Servicer and assist in loss mitigation and disposition wherever possible. HUD will provide further guidance on what "assist, where practical, in facilitating loss mitigation and disposition" (§ 1005.501(a)(3)) of the property means for Tribes in administrative guidance.

§ 1005.507 Borrower's Payments To Include Other Charges and Escrow Payments

Commenters recommended that the proposed rule clarify whether there is reimbursement for force placed insurance when a Borrower lets their policy lapse. The commenters also recommended adding an option to escrow for annual lease payments on Tribal leaseholds to avoid default and complications associated with the notice to HUD and lender.

HUD Response: HUD will provide administrative guidance pursuant to § 1005.507(a)(7) regarding Holder or Servicer's purchase of force placed insurance when borrowers let their policy lapse. Regarding the comment on annual lease payments, under this section borrower's monthly payment must include, among other things, "ground rents", which includes lease payments from the Tribal member to the Tribe. HUD had provided additional language at § 1005.507(a)(1) and will provide administrative guidance on the collection of Tribal leasehold payments for escrow under this regulation.

§ 1005.517 Certificate of Nondiscrimination by the Direct Guarantee Lender

One commenter stated that § 1005.517(a)(1) and (2) list several items regarding nondiscrimination including race, sex, and handicap. The commenter recommended that the terms "age" and "sexual orientation" be added to these lists.

HUD Response: HUD agrees in part with the commenter. HUD has included "gender identity" and "sexual orientation" in both paragraphs (a)(1) and (2), in accordance with Executive Order 13988, "Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation" and HUD's February 2021

implementing memorandum and included “age” in paragraph (a)(1). The Equal Credit Opportunity Act provides for the prohibition based on “age” in the context of making a loan, but there is no Federal statute providing for “age” as a protected class with regards to restrictive covenants.

§ 1005.527 Post-Endorsement review

Commenters stated that if a loan guarantee certificate can be revoked after endorsement, then it is not a guarantee but instead insured like FHA. The commenters strongly stated that this weakens the guarantee and may cause lenders to lose faith in the benefits of this 100 percent guarantee loan.

HUD Response: Commenters misunderstand this regulation. This regulation is not stating the Loan Guarantee Certificate can be revoked after endorsement. Rather, HUD may request indemnification from the originating Direct Guarantee Lender and impose sanctions on the Direct Guarantee Lender and Sponsored Entity in the event of noncompliance, pursuant to §§ 1005.905 and 1005.907.

§ 1005.529 Indemnification

A commenter recommended that indemnification should only be required when it is proven that the originating Direct Guarantee Lenders had a deficiency in underwriting or due to fraud or misrepresentation.

HUD Response: HUD appreciates the commenter’s input; however, HUD has determined that this regulation may require that the originating Direct Guarantee Lender indemnify any Section 184 Guaranteed Loan where it finds an underwriting deficiency and the Section 184 Guaranteed Loan should not have been approved.

§ 1005.603 Upfront Loan Guarantee Fee

Commenters objected to the maximum 3 percent Upfront Loan Guarantee Fee. Commenters stated that the market has stabilized since the 2008 foreclosure crisis, HUD has not provided sufficient justification for the high fees, and that the high fees negatively impact affordability for Tribal borrowers. Another commenter recommended a 1 percent upfront fee model as an alternative (and 0 percent for the monthly premium, see § 1005.607 in this summary). Another commenter noted that many Tribes and TDHEs were unaware of the Upfront Loan Guarantee Fee.

Commenters recommended that Section 184 refinance borrowers should get a credit against their new Guarantee

Fee. Commenters explained that a Tribe or native borrower that chooses to refinance a Section 184 loan is charged a loan guarantee fee of up to 3 percent of the loan balance of the new loan even though they previously paid HUD to guarantee the virtually identical loan. In addition, commenters stated that new loan represents a lower risk to HUD due to a lower loan-to-value and interest rate in most cases.

Another commenter stated that these fees would counteract the reduced rates by adding as much as 4 percent of the principal obligation each year. The commenter further stated that the fees would eliminate the competitive nature of Section 184 loans, and that the fees serve only the financial institutions, not Tribal members and communities. The commenter also recommended that the existing loan guarantee fee should not be increased from its current maximum.

HUD Response: Under 12 U.S.C. 1715z-13a(d), the Section 184 Program is authorized to charge “an amount not exceeding 3 percent of the principal obligation of the loan.” This section codifies that authority and restates that any “Up-front Loan Guarantee Fee” set by HUD will first be published in the **Federal Register**. Pursuant to 12 U.S.C. 1715z-13a(i), the Up-front Loan Guarantee Fee funds, in part, the Indian Housing Loan Guarantee Fund (Fund). The Fund pays for, among other things, claim payments to Holders and expenses incurred by HUD in the disposition of HUD foreclosed properties. The Fund may not be used for crediting borrowers as doing so would violate the statutory requirements of the Section 184 Program.

In 2022, HUD conducted an analysis of the program’s portfolio, including default rate and credit subsidy data, and determined the program could support a reduction in the loan guarantee fees charged on new loans. Subsequently on May 4, 2023, HUD published a **Federal Register** Notice (88 FR 28598), informing the public it would be exercising its legal authority to decrease the “Upfront Loan Guarantee Fee” from 1.50 to 1.00 percent and the “Annual Loan Guarantee Fee” from 0.25 to 0.00 percent for all new or updated Section 184 firm commitments after July 1, 2023.

§ 1005.605 Remittance of Upfront Loan Guarantee Fee

Several commenters objected to the 15-day timeline for lenders to remit the “Upfront Loan Guarantee Fee” stating that it would be administratively burdensome to small Tribes and lenders.

HUD Response: HUD appreciates the comments and understands the commenters’ concerns. Small Tribes and Direct Guarantee Lenders will not be impacted by this timeline. This section codifies current program practice and applies only to Direct Guarantee Lenders closing Section 184 guaranteed loans.

§ 1005.607 Annual Loan Guarantee Fee

Commenters objected to the “Annual Loan Guarantee Fee’s” maximum of 1 percent of the principal obligation of the loan. Commenters stated that the market has long since stabilized since the 2008 foreclosure crisis and HUD has not justified the need for these high fees which negatively impact affordability for Tribal borrowers. One commenter recommended a 0 percent monthly premium model (and 1 percent upfront, see § 1005.603 in this summary).

HUD Response: HUD appreciates the commenter’s input. Similar to the response for § 1005.603, the program is authorized by statute to charge up to a one percent “Annual Loan Guarantee Fee.” This section codifies that authority and restates that any “Annual Loan Guarantee Fee” set by HUD will first be published in the **Federal Register**. When collected, the purpose of this fee is to pay for certain programmatic expenses, such as claim payments to Holders and to fund expenses HUD incurs in the disposition of HUD foreclosed properties. Additionally, as previously stated in § 1005.603, effective July 1, 2023, HUD has eliminated this fee by reducing it to 0.00 percent.

§ 1005.609 Remittance of Annual Loan Guarantee Fee

One commenter recommended that HUD cease collecting the monthly installment of the Annual Loan Guarantee Fee when the amortized loan-to-value ratio equals an amount less than 80 percent, instead of the 78 percent published in the proposed rule. The commenter stated that this small increase in percentage will bring the Section 184 Program in line with the standard found in the Homeowners Protection Act of 1998 for Private Mortgage Insurance and would equate to approximately a year’s worth of annual fee payments, providing a small benefit to Tribal borrowers.

HUD Response: In consideration of this comment, HUD removed the specific requirement of 78 percent loan to value ratio and provided HUD the ability to establish the Annual Loan Guarantee Fee termination threshold by notice in the **Federal Register**. This will

provide flexibility to quickly respond to unforeseen economic conditions.

§ 1005.611 HUD Imposed Penalties

One commenter proposed removing the monetary penalties on lenders and servicers related to the collection and submission of loan guarantee fees, stating that sanctioning lenders for not meeting HUD timelines would discourage lenders from participating in the Section 184 Program.

HUD Response: HUD disagrees with the commenter's statement. This regulation codifies current program practice, and the program has not observed any negative impacts from this practice which has been in place for over a decade.

§ 1005.703 Servicer Eligibility and Application Process

One commenter stated that requiring servicers to submit an application for participation and recertify annually would discourage servicers from participating in Section 184 Program.

HUD Response: HUD is requiring servicers to submit applications for participation to make sure servicers have the experience and qualifications necessary to best serve Native American borrowers and successfully service Section 184 Guaranteed Loans. Annual recertification is not intended to be a cumbersome process and is necessary to make sure the servicers retain their capability to service Section 184 Guaranteed Loans and to notify HUD of any staffing or contact changes.

One commenter suggested that in light of the "unique legal status of Indian lands . . ." (see 12 U.S.C. 1715z-13a) no servicer should be permitted to waive into becoming a servicer under the Section 184 Program. The commenter further stated that all entities wishing to become servicers under the Section 184 Program should be required to undergo mandatory training for not only the Section 184 Program, but also be knowledgeable regarding the legal systems of the Tribal Nations of the on-reservation Section 184 Programs loans they will be servicing.

HUD Response: To clarify, HUD's intention under § 1005.703(c) is to allow qualified servicers that are currently participating in the program but are not a Federally approved mortgage servicers to submit a request to be considered a servicer without other Federal agency approval. HUD will provide guidance regarding the exception in the Section 184 Program Guidance. HUD anticipates training servicers once the final rule is published and intends to include a section on Tribal Nation legal systems

as part of that training. HUD made minor technical corrections to § 1005.703(c) for greater clarity.

§ 1005.711 Assumption and Release of Personal Liability

A commenter stated that if the assuming borrower has been assigned the leasehold and, in the end, does not move forward with the assumption, then the existing borrower no longer has rights to the subject property. The same commenter noted that under paragraph (a) of this section, requiring approval from HUD and other parties would likely cause extreme delays in the process and reduce the effectiveness of the ability to assume a loan.

HUD Response: HUD agrees with the commenter and clarifies that the assignment of leasehold interest or property interest occurs at closing. Further, HUD agrees that requiring HUD approval of assumptions could reduce the effectiveness of the process and has removed this requirement from the section, except in cases where the Holder or Servicer is not a Direct Guarantee Lender and would not be able to underwrite the assuming borrower.

§ 1005.713 Due-on-Sale Provision

One commenter stated that it is unclear why a servicer would be required to seek HUD approval to accelerate a loan. Another commenter stated that under § 1005.713(a), requiring the servicer to advise HUD of any sale or other transfer that occurs without the approval of the lender, and to seek HUD's approval to enforce the Due on Sale provision, can create delays which prevent timely resolution of the issue.

HUD Response: HUD appreciates the comments on the due-on-sale provision. HUD has revised the language to clarify the HUD approval to accelerate is required when "any prohibited sale or transfer occurs."

§ 1005.729 Section 184 Guaranteed Loan Collection Action

One commenter suggested adding the following to the end of the paragraph: "It is the intent of the Department that no mortgagee shall commence foreclosure or acquire title to a property until the requirements of this subpart have been followed." The commenter explained that servicers should not proceed with foreclosure unless they have complied with the servicing framework that the regulations create and have fully evaluated borrowers for alternatives to foreclosure. The commenter further explained that to ensure compliance, HUD should incorporate language from FHA's

default servicing regulation, 24 CFR 203.500. The commenter noted that its proposed language has been in force for FHA-insured servicers since 1997 and has provided important clarity on servicer obligations.)

HUD Response: HUD agrees with the commenter and has revised this section to provide that a servicer cannot commence foreclosure or acquire title to a property until the requirements of the subpart have been followed.

§ 1005.733 Loss Mitigation Application, Timelines, and Appeals

Commenters expressed concerns with the proposed timelines in § 1005.733(a) and (b). These commenters explained that promulgating requirements that overlap or conflict with CFPB requirements including RESPA and FHA loan processes, will make it more challenging for HUD to adapt to changes in RESPA and could create inconsistencies with other agencies. One commenter recommended that HUD delete paragraphs (a) and (b) and noted that HUD should not include these requirements in a regulation as the requirements may soon become outdated if RESPA changes. Another commenter stated that paragraph (a) of this section should rely on RESPA regulations to cover incomplete applications. Another commenter suggested a "more reasonable" timeline for a customer to return documents for an incomplete application.

Another commenter recommended deleting the following language from paragraph § 1005.733(c)(5), "and that the primary alternative to foreclosure shall be a deed in lieu/lease-in-lieu of foreclosure," and replacing it with "but the servicer may still offer alternative loss mitigation options, subject to applicable Tribal, Federal, or State law or contractual requirements." According to the commenter, this would clarify that loss mitigation is not cut off after the first legal action. The commenter also proposed that HUD revise the language in § 1005.733(d) from "14 days from the date of notification of the servicer's loss mitigation determination" to "30 days from the date of notification," since borrowers need more than 14 days from the date of notification to appeal loss mitigation decisions.

HUD Response: HUD agrees with the general concept that Holders, Direct Guarantee Lenders and Servicers must follow all applicable Federal requirements, including RESPA and any other regulations promulgated by CFPB. In response to the comment, HUD added language in § 1005.701, which covers general requirements for Section 184

guaranteed loan servicing. The new language requires that “Holders and Servicers must follow all current loss mitigation processes based on applicable Tribal, Federal, or State law.” Similarly, § 1005.731 provided requirements that were duplicative with CFPB. Therefore, HUD removed these requirements and added new language that Servicers must provide notice of default to borrowers based on applicable Tribal, Federal, or State law.

HUD believes the timelines in § 1005.733(a) and (b) are necessary for the successful administration of the loss mitigation options under the Section 184 Program and declines to revise these sections accordingly.

HUD did not substantively revise the language in § 1005.733(c) as recommended by the commenter. CFPB does not regulate what loss mitigation options may be available to borrowers when the servicer completes filing of first legal action. HUD is free to limit loss mitigation options available to borrower upon the servicer’s filing of first legal action. Based however on prior public comments requesting HUD incorporate as much flexibility in the regulations as possible, HUD revised § 1005.733(c)(5) to add that “HUD may permit other loss mitigation on a case-by-case basis if requested by the Servicer.” Finally, HUD did not revise the deadline in § 1005.733(d) for borrower to appeal to 30 days as recommended by the commenter. HUD believes 14 days is sufficient time for borrower to file an appeal.

§ 1005.735 Occupancy Inspection

A commenter recommended that the servicer provide advance notice to a designated Tribal entity prior to any occupancy inspection, and that a designated Tribal representative be required to be present at the property during the inspection. In addition, the commenter suggested that the Tribal entity should be a member of a Tribal housing department or law enforcement officer. According to the commenter, this would provide respect for a Tribe’s sovereign lands and add a level of safety to the inspection requirement.

HUD Response: HUD agrees with the commenter and has included language that requires servicers to contact the Tribe in advance of an occupancy inspection. HUD revised the regulation to allow Tribes and the servicers to develop agreeable methods of communication and protocols when conducting an occupancy inspection.

§ 1005.737 Vacant Property Procedures

One commenter suggested that the Tribe should be a part of the servicing

process to determine if a house has been abandoned or is vacant. The commenter further stated the Tribe must be empowered to secure the house by an independent determination of a Tribal official that the house is abandoned and therefore, remedial, rehabilitation, and security services can be implemented by the Tribe. Another commenter recommended that the section title of the section be revised to “Vacant and abandoned property procedures,” as it applies to abandoned properties as well. Lastly, some commenters proposed that this section should clarify if seven days are meant to be calendar days or business days.

HUD Response: HUD made several revisions to this section based on commenters’ suggestions. The section now allows for the Tribe to determine if a property is vacant or abandoned and requires servicers to notify the Tribe if it determines a property is vacant or abandoned. Further, HUD has added “abandoned” to the title of the section and has expanded the timeframe for Tribal First Right of Refusal and the completion of First Legal Action.

§ 1005.739 Loss Mitigation

One commenter recommended deleting the requirement in § 1005.739 (a) to comply with “12 CFR 1024.41” and replace it with “1024.41, as it might be amended from time to time, or any additional or successor regulation that governs the same subject matter.” The commenter explained that given the CFPB’s recent Request for Information (RFI) on loss mitigation, the CFPB may make changes to servicer obligations under a RESPA rulemaking, and therefore HUD should expand its coverage beyond this regulation and incorporate changes, deletions, or expansions.

Another commenter stated that the 180-day grace period in paragraph (b) of this section is too long because seasonal fluctuations within that period causes damage to the property. The commenter recommended that the proposed requirements should include provisions for interim protective actions by the Tribe to weatherize and winterize the house. Another commenter noted that its understanding of HUD’s proposed language is that if a customer applies beyond 180 days of delinquency, the servicer cannot evaluate that application. Other commenters recommended including partial claim/loss mitigation advance option as a loss mitigation option, which have been the most popular options to resolve COVID and other borrower-related delinquencies. The commenters noted that this would be consistent with FHA

requirements and would increase the usage of the Section 184 Program.

Another commenter recommended establishing assumptions as a standalone process outside of the loss mitigation process, similar to the FHA. The commenter explained this would help a confirmed successor in interest complete assumptions without manually reinstating the account. One commenter recommended deleting § 1005.739(d) requirement for a full financial assessment of the borrower at time of default. The commenter explained that in response to the pandemic, streamlined modifications did not rely on a full financial assessment of the borrower. Instead, the loss mitigation modification options target reducing the borrower’s monthly payment without considering the borrower’s income or debt. The commenter further noted that requiring a full financial assessment may hamper HUD’s ability to provide streamlined payment relief modifications. The commenter recommended developing modification criteria through agency guidance instead of through a regulation.

Commenters also recommended placing § 1005.739(f) in guidance or extending the timeframes to align with FHA, due to the complex nature of servicing and to make the process more customer friendly.

HUD Response: HUD has revised this section by removing the reference to 12 CFR 1024.41 since § 1005.701 now provides that servicers must follow all Tribal, State and Federal requirements on loss mitigation, so citing the CFPB regulation is redundant. HUD also included the option of a loss mitigation advance under § 1005.739(c)(4) and added a new section, § 1005.751, on loss mitigation advances. HUD inadvertently omitted the reference to loss mitigation advance in § 1005.739(c)(4) and added a new regulation for loss mitigation advances at § 1005.751 and renumbered all subsequent regulations accordingly. HUD clarified § 1005.739(f) to provide that, when a borrower fails a loss mitigation option within 180 days of default, the servicer has 45 days from the failure date to initiate another loss mitigation option. Further, HUD clarified that the servicer shall complete First Legal Action in accordance with § 1005.763 or Tribal First Right of Refusal in accordance with § 1005.759 if a borrower does not accept, is not eligible for, or fails loss mitigation.

Additionally, HUD revised this section to provide that the servicer must conduct occupancy inspections in accordance with § 1005.735 and, if the unit is confirmed to be vacant or

abandoned, the servicer must conduct property preservation in accordance with § 1005.737. With respect to §§ 1005.735 and 1005.737, HUD added language to ensure that it can, by Section 184 Program Guidance, extend these deadlines to address national emergency or disaster situations. With respect to § 1005.739, HUD added language that provides HUD the flexibility to enhance loss mitigation options to borrowers when there is a national emergency or disaster and publish such alternative timeframes in Section 184 Program Guidance.

§ 1005.741 Notice to Tribe and BIA—Borrower Default

Commenters suggested including “TDHE” where appropriate in this section, similar to § 1005.757. The commenters stated that the intent of this recommendation is to connect a borrower with resources, and, in Alaska, 196 Tribes have their housing programs and services through Regional Housing Authorities.

Related to § 1005.741(a), one commenter stated that a Section 184 lender should not be required to obtain borrower consent to give notice to the Tribe. The commenter further stated that BIA is no longer responsible for leases approved by a HEARTH Tribe. Another commenter recommended that notifications of borrower default or of Tribal rights of first refusal should clearly outline deadlines and steps for a Tribe to take when they elect to exercise their ROFR or if they will assist a borrower in redeeming the loan. One commenter proposed that § 1005.741(a)(2) should be stricken.

One commenter suggested that HUD should add in § 1005.741(b), “and foreclosure process” after “notification process,” which would clarify that HUD follows the industry standard and seeks to allow borrowers to pursue loss mitigation options, including home retention options, even after the foreclosure process has been initiated.

HUD Response: HUD declines the commenter’s suggestion to include the TDHE in part of the notification process. For purposes of the Section 184 Program, HUD’s relationship is with the Tribe as the entity with the authority to issue ordinances that support the program. A Tribe may choose a TDHE to be its point of contact for the program. Based on previous Tribal comments, the regulation includes the option for a borrower to select Tribal notification if they go into default, so that if the Tribe has resources to assist the borrower, they may do so earlier in the loss mitigation process rather than at the end of the process. This section

deals specifically with when, during the loss mitigation process, a Tribe and/or the BIA is notified. Section 1005.741 states that loss mitigation should have happened concurrent with Tribal/BIA notification.

§ 1005.743 Relief for Borrower in Military Service

A commenter agreed with suspending the foreclosure process and delaying the first legal action in this situation but stated that their experience indicates that HUD does not take these valid delays into account when reimbursing a servicer for its expenses. To retain lenders’ and servicers’ interest in the Section 184 Program, the commenters requested that HUD be more considerate of delays that are valid and out of the servicers’ control.

HUD Response: HUD appreciates the input by the commenter. HUD has built in additional timeframes within the loss mitigation process to account for delays. Further, Holders and Servicers experiencing delays out of their control can request an extension for the filing of first legal, as is the current policy and will be further described in administrative guidance.

§ 1005.745 Forbearance Plans

One commenter proposed deleting § 1005.745(b) through (f) and moving these provisions to a PIH notice. The commenter stated that while HUD should establish forbearance as a loss mitigation option, it should follow FHA’s lead in 24 CFR 203.614 and save eligibility criteria for PIH notices and handbooks. The commenter stated that including eligibility requirements in regulations unnecessarily hampers agency efforts at creating an effective loss mitigation system. Both the formal forbearance and special forbearance provisions of the section require borrowers to submit supporting documentation to obtain forbearance. However, the response to the pandemic by institutions such as the Urban Institute, which credited forbearance access during the pandemic, demonstrated that it may be valuable to streamline access to forbearance in particular situations and not require documents. The commenter concluded that HUD should allow streamlined forbearance when necessary.

Another commenter recommended that HUD remove the requirement from § 1005.745(c)(1)(ii) and simplify the formal forbearance process by mirroring the FHA formal forbearance process. Similarly, for paragraph (c)(2) of this section, the commenter suggested mirroring the FHA process to make it more customer- and servicer-friendly.

HUD Response: HUD agrees with the comment to streamline access to forbearance process and has added additional language that allows HUD to establish a special forbearance in response to a national emergency or disaster. HUD will also provide additional guidance on the process in the Section 184 Program Guidance.

§ 1005.747 Assumption

A commenter sought clarification on whether the person assuming the loan is responsible for making the loan current and suggested that HUD address this in guidance.

HUD Response: In response to the commenter, HUD added additional language to clarify that with an assumption associated with loss mitigation, the person assuming the loan must cure the default and reinstate the Section 184 Guaranteed Loan.

§ 1005.749 Loan Modification

One commenter stated that HUD’s proposed text includes detailed eligibility rules for loan modifications and many of those rules are borrowed from outdated FHA Handbook provisions, which HUD should not codify in its regulations. For example, the commenter stated that FHA no longer requires an assessment of “surplus income,” signatures on trial payment plans, and a twelve-month loan seasoning period prior to modification. According to the commenter, FHA has removed these requirements to minimize barriers to modifications, yet HUD’s proposed rule would make these rules difficult to amend even after, in FHA’s experience, they have weakened loss mitigation. This commenter proposed removing all § 1005.749(b) through (e) and moving this to a PIH notice instead.

One commenter suggested replacing § 1005.749(b) with language stating, “The servicer must offer the borrower any modification that the borrower is eligible to receive under relevant HUD guidance.” The commenter stated that while HUD should establish forbearance as a loss mitigation option, it should follow FHA’s lead in 24 CFR 203.616 and save eligibility criteria for loan modifications for PIH notices and handbooks.

Another commenter stated that requiring the servicer to “seek HUD’s approval” under paragraph (c)(2) of this section for any subsequent loan modifications after the first one is likely to cause delays, frustration, and anxiety for the borrower if a response is not provided timely by HUD. Another commenter recommended that the proposed 30 days proposed by

paragraph (e)(2) of this section be reduced to 14 days at minimum. The commenter explained that this will help the servicer to start trials and complete modifications early, and that there is no such timeline for FHA customers.

HUD Response: HUD appreciates commenter's input and has revised the regulation mirror the current FHA loan modification requirements, as appropriate. HUD has removed the requirement for surplus income. HUD declines to accept the commenter's proposal to remove the HUD approval for subsequent loan modifications (beyond the Borrower's very first loan modification). HUD has found in the past that multiple loan modifications have not resolved the Borrower's delinquency. To provide for additional flexibility in the future, HUD added language that allows modification of the Borrower's eligibility criteria in the event of a national emergency or disaster.

§ 1005.753 Pre-Foreclosure Sale

One commenter expressed concern about the cost to the lenders of servicing loans that default. The commenter stated that the requirements of this section recognize a short sale opportunity but again refer several times to appraisal which may be further compounded by lack of market data and the availability of licensed contractors that can make repairs on defaulted units. Another commenter urged HUD to remove § 1005.753(b) through (u) and move the requirements from guidance to PIH notices. The commenter noted that the proposed text for this section provides far too many details about the pre-foreclosure sale program and will significantly limit HUD's ability to make any changes.

Another commenter stated that the term "Government" in paragraph (q) this section is not a defined term and therefore lacks specificity as to which it applies. The commenter also noted that the definition for "Arm's Length Transaction" in § 1005.749(r)(2) should be moved to the definitions section in § 1005.103.

HUD Response: HUD appreciates commenters' input. As discussed in § 1005.457, HUD has revised the appraisal standards based on public comment to allow HUD to establish alternative requirements depending on the area and availability of an appraiser. HUD removed paragraph (d) of this section because FHA no longer requires defaulted borrowers to provide a cash contribution in its pre-foreclosure sale program. In paragraph (g) of this section, HUD has increased the market value timeframe from 120 days to 180 days to

match FHA standards based on public comment. Further, HUD has clarified § 1005.749(q) to provide that it is the HUD's repair cost estimate. HUD kept the definition for "Arm's Length Transaction" in paragraph § 1005.749(r)(2) since it is a definition only used within Subpart G and is not used throughout the rule.

§ 1005.755 Deed-in-Lieu/Lease-in-Lieu of Foreclosure (Formerly 1005.753)

One commenter suggested that in § 1005.755(a)(1), the words "if applicable" should be added after the words "the BIA".

HUD Response: HUD does not accept the commenter's suggestion. While some Tribes have the authority to issue their own leases without BIA approval, BIA is responsible for the recordation of all leases.

§ 1005.757 Incentive Payments (Formerly § 1005.755)

A commenter sought clarification on when and how much incentive is expected to be authorized under this section. The commenter noted that "may" can also mean "may not" and this would be a significant difference from FHA loans, resulting in lower participation in the Section 184 Program.

HUD Response: This section establishes HUD's ability to offer incentive payments to the borrower, Tribe, TDHE, Holder or servicer, which will be a new feature to the program. HUD prefers to maintain discretion and flexibility in establishing incentives as a new component of the program.

§ 1005.759 Property on Trust Land— Tribal First Right of Refusal; Foreclosure or Assignment (Formerly § 1005.757)

A commenter proposed clarifying the timeframe for the right of first refusal for the Tribes. The commenter noted that typically a Tribe has at least 60 days or potentially longer to accept if they choose to do so. Another commenter noted that the term "Tribal Land" used in § 1005.779(a) is an undefined term and recommended that the term be replaced with "Trust Land."

A commenter supported the authorization of the first right of refusal of foreclosed property meeting certain conditions and updated valuations, in § 1005.759(a). Some commenters also suggested that HUD should adopt the U.S. Department of Agriculture's (USDA) practice of using a net recovery value to determine the purchase price when a Tribe chooses to exercise its first right of refusal. Finally, another commenter stated that no assignment of the lease under § 1005.759(c) should

occur without consent of the Borrower or without foreclosure.

HUD Response: HUD appreciates commenters' input. Based on these comments, HUD has provided a definition of Tribal First Right of Refusal and has clarified the timeframe and circumstances for when it should occur. The servicer must provide Tribal First Right of Refusal to the Tribe within 14 days of specified actions and the Tribe has 60 days to respond to the Tribal First Right of Refusal. HUD also made the technical change of "Tribal Land" to "Trust Land".

§ 1005.763 First Legal Action Deadline and Automatic Extensions (Formerly § 1005.761)

Several commenters stated that 180 days under § 1005.763(a) does not provide lenders with sufficient time, as it takes that amount of time to implement loss mitigation efforts. These commenters sought clarification under § 1005.763(a) if "must initiate" is the same as "file" for First Legal Action. And one commenter suggested removing the cross reference in paragraph (a) to the definition of "First Legal Action" in § 1005.103, as this is extraneous and not necessary.

In paragraph (b) of this section, a commenter sought clarification regarding whether HUD uses a 30-day auto-extension to extend the First Legal Action deadlines instead of the industry standard of a 90-day auto-extension. Another commenter recommended that HUD clarify paragraph § 1005.763(b)(2) regarding what is required to be completed within 30 days of the borrower's failure of loss mitigation. The existing guidelines state "complete First Legal Filing" or "initiate foreclosure action".

Finally, a commenter sought clarification regarding delays caused by bankruptcy filing or federally declared disaster declarations under § 1005.763(c). The commenter noted that both are valid external influences extending the first legal filing period and out of the servicer's control. Therefore, the commenter requested that the extension process be outlined in guidelines instead of the regulations.

HUD Response: HUD appreciates the commenters' input. HUD has revised the definition of filing for first legal action in § 1005.103 to provide "the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process." HUD added clarifying language to this section that the filing of first legal action must be complete within the given timeframe. Additionally, HUD has added clarifying language to § 1005.763(b) which

outlines the timeframes and circumstances for automatic extensions to the filing for first legal action. As previously stated, Holders and Servicers experiencing delays out of their control can request an extension for the filing of first legal action, as is the current policy and will be further described in the Section 184 Guidebook.

§ 1005.765 Assignment of the Section 184 Guaranteed Loan (Formerly § 1005.763)

A commenter stated that the required documents (recorded assignment from the county, updated Title Status Report from the BIA) typically take longer than 5 days and proposed extending the timeframe in guidance rather than regulations.

Other commenters stated that under § 1005.763(a)(4)(ii), most of the properties assigned to HUD are occupied because there has been no notice to the borrowers about vacating the property. The commenters stated that vacancy is not a requirement for an assignment and requiring approval for this common situation will cause delays in completing the assignment. The commenters also noted that completing the assignment has a strict timeframe defined by HUD, which, if not met, results in curtailments of the advance amounts reimbursed by HUD, and requiring HUD approval will increase losses that are outside the servicer's control. (0008, 0018)

HUD Response: HUD appreciates the commenter's input. HUD has revised § 1005.765 to clarify that that the servicer must submit the executed assignment for recordation to the appropriate jurisdiction or BIA within five days of either receiving HUD approval for assignment for fee simple Properties or completing Tribal First Right of Refusal in accordance with § 1005.759. HUD does not expect that the recordation process will be complete in five days. HUD further clarifies that the servicer has 45 days to submit evidence of this assignment and request for recordation in accordance with § 1005.809(b). Further HUD deleted the language formerly at paragraph § 1005.763(a)(4)(ii). It is not HUD's intention to remove an occupying borrower, or for the servicer to receive prior HUD approval to complete the assignment. Further, HUD has removed the former § 1005.763(a)(i) through (iii) since they are redundant based on changes made to § 1005.729.

§ 1005.767 Inspection and Preservation of Properties (Formerly § 1005.765)

One commenter suggested that paragraph (a) of this section should include a provision providing that a direct letter from the Tribe informing the property is abandoned or vacant is sufficient to trigger the servicer's obligation to secure the property. The commenter further recommended that the provision permit the Tribe to secure the property in the absence of a response from the servicer. The commenter also recommended that the proposed rule should contain a procedure to determine disputed questions of fact, and evidentiary standards for the fact finder to opine on the disputed questions of facts. The commenter explained that the Tribe should be able to take self-help measures to secure and rehabilitate the vacant or abandoned house, and offset the costs against the Service Provider, if the disputed facts are proven by the Tribe.

HUD Response: HUD agrees with commenter that a Tribe's notice to HUD that the property is vacant or abandoned is sufficient to trigger the servicer's obligation to secure the property. Therefore, HUD revised § 1005.737 that the servicer may be notified by HUD when the Tribe determines a unit is vacant or abandoned and that the Tribe should be notified by the servicer that the unit is vacant or abandoned.

§ 1005.769 Property Condition (Formerly § 1005.767)

A commenter stated that the term "Damage to Property by Waste" in paragraph (b) of this section is unclear and that revising the paragraph by adding "damage, deterioration or neglect" committed by borrower would provide clarity.

HUD Response: HUD agrees with this comment and has revised § 1005.769(b) to provide "waste, deterioration or neglect". Further, HUD revised the title of the paragraph to convey the requirements of the paragraph more broadly. Additionally, HUD provided additional clarity by inserting "documented" before the word "damage" to make clear servicer must document the damage.

§ 1005.773 Acceptance of Property by HUD (Formerly § 1005.771)

Commenters stated that Part A claims are usually not paid for many months after the claim is filed, and that § 1005.773(c) would unreasonably result in the servicer incurring costs during HUD's decision period to pay the claim.

The commenter recommended that HUD reimburse the lender to maintain the property for this length of time. Similarly, the commenters stated that § 1005.773(a)(1) through (3), (b)(1) through (3), and (c) significantly depart from the current Section 184 Program and place additional burden on the servicer. The commenters recommended that § 1005.807 be expanded to clarify that the servicer will be reimbursed until HUD accepts the property.

HUD Response: HUD appreciates the commenters' concerns and has worked to provide claim payments in a timely manner, once the claim payment is submitted in a format requested by HUD and includes all documents necessary to file a claim. In accordance with § 1005.839, the claim is paid based on the earlier of the execution of deed-in-lieu/lease-in-lieu of foreclosure; the execution of the conveyance to either servicer, HUD or a third-party; the execution of the assignment of the Section 184 Guaranteed Loan to HUD; the expiration of the reasonable diligence timeframe; or other event as prescribed by Section 184 Program Guidance. As a result, HUD is revising § 1005.807(b) to address the reimbursement of reasonable expenses and provide that HUD will establish reasonable exceptions in Section 184 Program Guidance.

Several commenters stated the servicers needed guidance on expenses related to loans in default. The commenter stated that current program practice leaves a gap in expenses between when a foreclosure is completed and when a property is conveyed to HUD. As a result, the servicer incurs expenses to maintain and protect the property and cannot recover these expenses through a claim. The commenters believe that requiring servicers to absorb unreimbursed losses to protect properties for HUD is not a reasonable policy, nor is it in line with how FHA, VA, USDA, and the GSEs handle similar issues.

HUD Response: HUD thanks the commenters for the comments. HUD incorporated the interest on unpaid principal balance and reimbursement for reasonable costs policies from HUD's April 30, 2019, letter to lenders into §§ 1005.839 and 1005.841. With respect to reimbursement of reasonable expenses, HUD has revised § 1005.807(b) to provide HUD with the flexibility to provide exceptions regarding the reimbursement of reasonable expenses. HUD will provide administrative guidance on reimbursement of reasonable expenses.

§ 1005.807 Claim Submission Categories

A commenter sought clarification in § 1005.807(a), (b), and (c) of the term “Conveyance” and when it is completed. Under paragraph (b), commenters also sought clarification of the provision “execution of assignment,” and proposed to include the reimbursement of the final title work, as this is required under § 1005.819(a)(1). The commenter also proposed the addition of a claim for loss mitigation incentives and loss mitigation advance.

HUD Response: HUD appreciates the request for clarification. Under this final rule, HUD will use the same earlier of deadlines for payment of reimbursable claim expenses as is outlined in § 1005.839(a) through (e) for reimbursement of interest payments. HUD has clarified § 1005.807 to specifically set the deadline for reimbursement and will provide exceptions by Section 184 Program Guidance.

§ 1005.809 Claim Types

One commenter asked HUD to confirm, under § 1005.809(a)(1), whether the initial conveyance claim to HUD would need to be submitted to HUD within 45 days from the executed deed instead of the industry standard of two days when submitted electronically. This commenter also asked HUD to confirm, under § 1005.809(a)(2) and (3), whether HUD provides title approval, similar to current industry standard. The commenter further sought clarification as to whether servicers will be able to submit a B Claim after the 60 days for claim payment under paragraph (a)(4) of the section. In § 1005.809(c), the commenter asked HUD to confirm whether the Conveyance Without Title Claims (CWCOT) are submitted to HUD within 180 days from when a property is conveyed to HUD, which is different from the industry standard to submit CWCOT within 30 days from receipt of third-party proceeds.

The commenter asked HUD to confirm in § 1005.809(d) whether the pre-foreclosure claims (PFS) are to be submitted to HUD within 45 days of sale date, while the industry standard is 30 days from the closing date (settlement date on HUD-1). The commenter also asked HUD to confirm whether under paragraph (d) of the section, a Deed-in-Lieu (DIL) is to be submitted to HUD within 45 days of executed conveyance deed to HUD, while industry standard is 30 days from executed conveyance deed.

Finally, the commenter also asked whether under § 1005.809(e) servicers are only allowed to submit supplemental claims to HUD for only conveyance and assignment claims, because based on the industry standards, servicers can file supplemental claims for conveyance, assignment, PFS, DIL, and CWCOT. (0023) Lastly, the commenter asked HUD to confirm if supplemental claims under paragraph (e)(2) are to be submitted to HUD within 6 months from final claim (Part B) submitted date, because the industry standard is supplemental claims are filed within six months from final claim payment date (advice of payment settlement date or wire date). (0023)

HUD Response: HUD agrees with many of the comments on this section. Accordingly, HUD has revised paragraph (a)(1) to match the industry standard of two days and to clarify the delivery requirement for claims under § 1005.807(a)(4). Section 184 Program Guidance will provide instructions on the submission of final title. HUD has also revised paragraphs (c) and (d) of the section to reflect industry standards. Section § 1005.809(e) has also been revised to clarify Supplemental Claims may be submitted for all claim types found in §§ 1005.809(a) through (d).

§ 1005.817 Conveyance of Good and Marketable Title

One commenter found the current paragraph (a) unnecessary as its sole purpose is to cite to § 1005.103 as the location of the “Good and Marketable Title” definition.

HUD Response: HUD agrees with the commenter and deleted paragraph (a) since it is unnecessary to restate a term that is defined in section § 1005.103.

§ 1005.821 Coverage of Title Evidence

One commenter stated that a Title Status Report (TSR) does not always show certain information such as outstanding prior liens, including any past-due and unpaid ground rents, general taxes, or special assessments. The commenter further stated that while this information may be included in title commitments, title commitments sometimes are not available for trust land. As a result, the commenter recommended that paragraph (a) of the section be revised to remove, “The evidence of title or TSR further show that, according to the public records, there are no outstanding prior liens, including any past-due and ground rents, general taxes or special assessments, if applicable, on the date of Conveyance or assignment” to ensure the borrowers’ ability to comply:

HUD Response: HUD appreciates commenters’ input. HUD has revised paragraph (a) of this section to expand the eligible sources of information acceptable to verify all liens have been released and there are no outstanding rents, taxes, or special assessments. Additionally, the initial TSR provided by the BIA will disclose all existing encumbrances. If these encumbrances no longer appear on the Final TSR, they have been released by the BIA.

§ 1005.835 Claim Payment Not Conclusive Evidence of Claim Meeting All HUD Requirements

One commenter disfavored HUD’s ability to review a loan file up to five years after claim payment. The commenter believed this has the effect of weakening the loan guarantee.

HUD Response: HUD appreciates the commenters’ input but does not agree permitting HUD to review a loan after claim payment has the effect of weakening the loan guarantee. Lenders and servicers are always required to comply with all applicable Section 184 regulations. The final rule does not change this current policy to be consistent with FHA, which has no official limitation on the timeframe it has to review a loan post-endorsement or post-claim. Accordingly, HUD removed the five-year reference in the regulation. HUD will provide information regarding monitoring and quality control reviews of Direct Guarantee Lenders in the Section 184 Program Guidance.

IV. 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.

In addition to the Tribal consultation sessions held before and during the drafting of the proposed rule, HUD conducted ten additional consultations during the public comment period. HUD held six regional consultation sessions and four national consultation sessions between December 2022 and March 2023. During these consultation sessions, HUD mainly answered questions participants had about the proposed rule. HUD did receive comments about setting a minimum threshold of Trust land lending (§ 1005.219(e)) and possible data collection from Tribal participants (§ 1005.313). HUD considered these comments during the drafting of the final rule and will continue to consider these comments during the drafting of any subsequent **Federal Register** Notice or other Section 184 Program Guidance related to these two sections.

Tribal feedback has been an integral part of the process to develop the rule. Throughout the consultation process, HUD used Tribal feedback to refine and improve this 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.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant, and therefore, subject to review by OMB in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order

12866 (Regulatory Planning and Review), among other things.

Under Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by OMB in accordance with the requirements of the order. This final rule, as discussed above, introduces changes to make the program sustainable, protect Borrowers, address recommendations by the OIG in areas such as underwriting and the claims process, and provide clarity for new and existing Direct and Non-Direct Guarantee Lenders, Holders and Servicers who participate in the Section 184 Program. These changes allow for Holders, Servicers, Direct Guarantee Lenders and Non-Direct Guarantee 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 Direct Guarantee and Non-Direct Guarantee 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 final rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 (Regulatory Planning and Review) as amended by Executive Order 14094 (Modernizing Regulatory Review), and therefore was reviewed by OMB. However, this final rule was not deemed to be significant under Section 3(f)(1). Because program participants have long followed the substantive standards that this final rule would establish, HUD anticipates that this final 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). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or 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>.

Paperwork Reduction Act

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 control number. The information collection requirements contained in this proposed rule have been approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0200.

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 final 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 has determined that this rule would not have a significant economic impact on a substantial number of small entities.

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 final rule does not have federalism implications and does 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 both <https://www.regulations.gov> and <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). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or 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>.

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 final 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 amends 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, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by

E.O. 11991, 3 CFR, 1977, Comp., p. 123; E.O. 13807, 3 CFR, 2017, Comp.; p. 369)

■ 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 an Indian reservation, and on fee land owned by the Indian Tribe outside of the Tribe’s Indian reservation boundaries, 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 an Indian reservation and on fee land owned by the Indian Tribe outside the Tribe’s Indian Reservation boundaries, 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.
- 1005.102 Severability.
- 1005.103 Definitions.

Subpart B—Lender Eligibility and Requirements

- 1005.201 Lender Applicant approval and participation.
- 1005.203 Lender Applicants deemed approved by statute.
- 1005.205 Lender Applicants required to obtain Secretarial approval.
- 1005.207 Lender Applicants 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 Direct Guarantee Lender annual reporting requirements.
- 1005.217 Quality control plan.

- 1005.219 Other requirements.
- 1005.221 Business change reporting.
- 1005.223 Direct Guarantee Lender Annual recertification requirements.
- 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 annual recertification.
- 1005.309 Tribal duty to report proposed changes and actual 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

- 1005.435 Eligible collateral.
- 1005.437 Loan provisions.
- 1005.439 Loan lien.
- 1005.441 Section 184 Guaranteed Loan limit.
- 1005.443 Loan amount.
- 1005.445 Case numbers.
- 1005.447 Maximum age of Loan documents.
- 1005.449 Qualified mortgage.
- 1005.451 Agreed interest rate.
- 1005.453 Amortization provisions.

Underwriting

- 1005.455 Direct guarantee underwriting.
- 1005.457 Appraisal.
- 1005.459 Loan submission to HUD for endorsement.
- 1005.461 HUD issuance of Firm Commitment.

Subpart E—Closing and Endorsement

Closing

- 1005.501 Direct Guarantee Lender closing requirements.
- 1005.503 Contents of endorsement case binder.
- 1005.505 Payment of Upfront Loan Guarantee Fee.

- 1005.507 Borrower's payments to include other charges and escrow payments.
 1005.509 Application of payments.
 1005.511 Late fee.
 1005.513 Borrower's payments when Section 184 Guaranteed Loan is executed.
 1005.515 Charges, fees, or discounts.
 1005.517 Certificate of nondiscrimination by the Direct Guarantee Lender.

Endorsement and Post-Closing

- 1005.519 Creation of the contract.
 1005.521 Pre-endorsement review and requirements.
 1005.523 HUD pre-endorsement review.
 1005.525 Loan Guarantee Certificate.
 1005.527 Post-endorsement review.
 1005.529 Indemnification.

Subpart F—Section 184 Guaranteed Loan Fees

- 1005.601 Scope and method of payment.
 1005.603 Up-Front Loan Guarantee Fee.
 1005.605 Remittance of Up-Front Loan Guarantee Fee.
 1005.607 Annual Loan Guarantee Fee.
 1005.609 Remittance of Annual Loan Guarantee Fee.
 1005.611 HUD imposed penalties.

Subpart G—Servicing

Servicing Section 184 Guaranteed Loans Generally

- 1005.701 Section 184 Guaranteed Loan servicing generally.
 1005.703 Servicer eligibility and application process.
 1005.705 Servicer approval.
 1005.707 Responsibility for servicing.
 1005.709 Providing information to Borrower and HUD.
 1005.711 Assumption and release of personal liability.
 1005.713 Due-on-sale provision.
 1005.715 Application of Borrower payments.
 1005.717 Administering escrow accounts.
 1005.719 Fees and costs after endorsement.
 1005.721 Enforcement of late fees.
 1005.723 Partial Payments.
 1005.725 Handling prepayments.
 1005.727 Substitute Borrowers.

Servicing Default Section 184 Guaranteed Loans

- 1005.729 Section 184 Guaranteed Loan collection action.
 1005.731 Default notice to Borrower.
 1005.733 Loss mitigation application, timelines, and appeals.
 1005.735 Occupancy inspection.
 1005.737 Vacant or abandoned property procedures.

Servicing Default Section 184 Guaranteed Loans Under the Loss Mitigation Program

- 1005.739 Loss mitigation.
 1005.741 Notice to Tribe and BIA—Borrower default.
 1005.743 Relief for Borrower in military service.
 1005.745 Forbearance plans.
 1005.747 Assumption.
 1005.749 Loan modification.
 1005.751 Loss mitigation advance

- 1005.753 Pre-foreclosure sale.
 1005.755 Deed-in-lieu/lease-in-lieu of foreclosure.
 1005.757 Incentive payments.

Assignment of the Loan to HUD; Foreclosure and Conveyance

- 1005.759 Property on Trust Land—Tribal First Right of Refusal; foreclosure or assignment
 1005.761 Fee simple land properties—foreclosure or assignment with HUD approval.
 1005.763 First Legal Action deadline and automatic extensions.
 1005.765 Assignment of the Section 184 Guaranteed Loan.
 1005.767 Inspection and preservation of properties.
 1005.769 Property condition.
 1005.771 Conveyance of property to HUD at or after foreclosure; time of conveyance.
 1005.773 HUD acceptance of assignment or conveyance.

Subpart H—Claims

Claims Application, Submission Categories and Types

- 1005.801 Purpose.
 1005.803 Claim case binder; HUD authority to review records.
 1005.805 Effect of noncompliance.
 1005.807 Claim submission categories.
 1005.809 Claim types.

Submission of Claims

- 1005.811 Claims supporting documentation.
 1005.813 Up-front and Annual Loan Guarantee Fee reconciliation.
 1005.815 Conditions for withdrawal of claim.

Property Title Transfers and Title Waivers

- 1005.817 Conveyance of Good and Marketable Title.
 1005.819 Types of satisfactory title evidence.
 1005.821 Coverage of title evidence.
 1005.823 Waived title objections for properties on fee simple land.
 1005.825 Waived title objections for properties on Trust Land.

Condition of the Property

- 1005.827 Damage or neglect.
 1005.829 Certificate of property condition.
 1005.831 Cancellation of hazard insurance.

Payment of Guarantee Benefits

- 1005.833 Method of payment.
 1005.835 Claim payment not conclusive evidence of claim meeting all HUD requirements.
 1005.837 Payment of claim: unpaid principal balance.
 1005.839 Payment of claim: interest on unpaid principal balance.
 1005.841 Payment of claim: reimbursement of eligible and reasonable costs.
 1005.843 Reductions to the claim submission amount.
 1005.845 Rights and liabilities under the Indian Housing Loan Guarantee Fund.
 1005.847 Final payment.
 1005.849 Reconveyance and reassignment

- 1005.851 Reimbursement of expenses to HUD.

Subpart I—Performance Reviews, Reporting, Sanctions, and Appeals

- 1005.901 Performance reviews.
 1005.903 Reporting and certifications.
 1005.905 Notice of sanctions.
 1005.907 Sanctions and civil money penalties.
 1005.909 Appeals process.

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 Housing 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 Lender Applicants, Holders, Direct and Non-Direct Guarantee Lenders, Servicers and Tribes seeking to or currently participating in the Section 184 Program.

§ 1005.102 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any action should be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this part and shall not affect the remainder thereof.

§ 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 the 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 every individual on the mortgage application. For the purposes of servicing the loan, Borrower refers to every original Borrower who signed the note and their heirs, executors, administrators, assigns, and approved substitute Borrowers. Borrowers include 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.

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.

Direct Guarantee Lender means a Lender approved by HUD under § 1005.21 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.

First 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 notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

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 by HUD; 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, evidence of Good and Marketable Title must be reported in the Title Status Report issued by the BIA, or other HUD approved document issued by the Tribe, as prescribed by Section 184 Program Guidance and the document evidences the property interest rights.

Holder means an entity that is named on the Promissory Note and any successor or assigns for the Section 184 Guaranteed Loan and has the right and responsibilities to enforce the Section 184 requirements and the Holder's interests arising under the mortgage or deed of trust.

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 by a federally 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 Applicant means:

(1) A financial institution engaging in mortgage lending that is eligible to participate in the Section 184 Program under § 1005.203 or § 1005.205;

(2) The financial institution has applied or will apply to HUD for approval to participate in the Section 184 Program; and

(3) Has not received approval from HUD.

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 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, originate, or originating 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 the property as shown on the records of the recorder in the county where the property is located. For Trust Land Properties, the current lessee or owner of property, as shown on the Title Status Report provided by the BIA or other HUD approved document issued by the Tribe, as prescribed by Section 184 Program Guidance and the document evidences the property interest rights.

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 one to four-family dwellings that meet 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 Guaranteed Loan is a Loan that has received a Loan Guarantee Certificate.

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 Program Guidance means administrative guidance documents that may be issued by HUD, including but not limited to **Federal Register** documents, 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, or any successor section, 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 the Tribe. This definition shall include but is not limited to Tribal, individual, assigned trust, or restricted fee 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 and Requirements

§ 1005.201 Lender Applicant approval and participation.

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

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

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

(b) *Lender Applicant participation.* In accordance with § 1005.207, Lender Applicants 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 Lender Applicants deemed approved by statute.

The following Lender Applicants are deemed approved by statute:

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

(b) Any Lender Applicant whose housing loan under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to 38 U.S.C. 3702(d);

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

(d) Any other Lender Applicant 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.

§ 1005.205 Lender Applicants required to obtain Secretarial approval.

(a) *Lender Applicant application process.* Lender Applicants 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 Applicant 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 paragraphs (a)(1)(i)(C) and (D) of this section. 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 Applicant 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 Applicant 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 Applicant 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 Applicant shall identify officers and certify that all employees who will sign applications for Guaranteed Loans on behalf of the Lender Applicant shall be corporate officers or shall otherwise be authorized to bind the Lender in the Origination transaction. The Lender Applicant 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 Applicant shall:

(i) Furnish to HUD a copy of its most current annual financial statements, as prescribed by Section 184 Program Guidance.

(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 Applicant shall submit a written quality control plan in accordance with § 1005.217.

(6) *Identification of branch offices.* A Lender Applicant 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 Applicant 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 Applicant shall not pay a referral fee to any person or organization.

(8) *Licensing certification.* A Lender Applicant shall certify that it has not been refused a license or has not been sanctioned by any Tribal, Federal, State, or other authority related to any lending activity.

(9) *Minimum net worth.* Irrespective of size, a Lender Applicant shall have a net worth of not less than \$1 million, or amount as provided in Section 184 Program Guidance.

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

(11) *Other qualifications.* 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 Applicant, its officers, and employees. If HUD determines the Lender Applicant meets the requirements for participation in this subpart, HUD shall provide written notification of the approval to be a Non-Direct Guarantee Lender.

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

(d) *Denial of participation.* A Lender Applicant may be denied approval to become a Section 184 Lender if HUD determines the Lender Applicant 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 Applicant participation options.

(a) *Levels of participation.* Lender Applicants 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 Applicant 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, Lender Applicants must submit additional documentation as provided in § 1005.209 and obtain HUD approval under § 1005.211.

§ 1005.209 Direct Guarantee Lender application process.

(a) For purposes of this section, Lender Applicants shall include Non-Direct Guarantee Lenders, Lender Applicants and financial institutions approved by HUD to only service under § 1005.705. Lender Applicants may apply to HUD for approval to participate in the Section 184 Program as a Direct Guarantee Lender. Lenders Applicants must submit a completed application package in accordance with Section 184 Program Guidance.

(b) To be approved as a Direct Guarantee Lender, a Lender Applicant 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 applicant 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 Applicant;

(iii) Authorized by the Lender Applicant to obligate the Lender Applicant 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 as may be prescribed by Section 184 Program Guidance.

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

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

§ 1005.211 Direct Guarantee Lender approval.

HUD shall review all documents submitted by a Lender Applicant 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 Applicant is a conditionally approved Direct Guarantee Lender under the Section 184 Program subject to the following conditions:

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

(2) If applicable, the Lender Applicant 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 Applicant 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 Applicant must, for each underwriter, submit ten test endorsement case binders, or a number prescribed by Section 184 Program Guidance, which meet the requirements of subparts D and E. 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; and

(5) The Lender Applicant 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 Applicant 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 Applicant 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 Applicant 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 Applicant to sanctions under § 1005.907.

(d) *Denial of participation.* A Lender Applicant may be denied approval to become a Direct Guarantee Lender if HUD determines the Lender Applicant 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 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.

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

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

§ 1005.215 Direct Guarantee Lender annual reporting requirements.

Direct Guarantee Lenders must submit an annual report on Loan performance, including reporting on all its 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 Applicant, Direct Guarantee Lender, or Non-Direct Guarantee Lender's procedures for ensuring the quality of the Direct Guarantee or Non-Direct Guarantee Lender's Section 184 Guaranteed Loan Origination, underwriting, closing, and/or servicing, as applicable. The purpose of the quality control plan is to ensure the Lender Applicant, Direct Guarantee and non-Direct Guarantee Lender's compliance with Section 184 Program requirements and protect HUD and the entities from unacceptable or unreasonable risks. A Lender Applicant, Direct Guarantee Lender, and Non-Direct Guarantee 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 Applicant, Direct Guarantee or Non-Direct Guarantee 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 Applicant, Direct Guarantee or Non-Direct Guarantee 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 Applicant, Direct Guarantee or Non-Direct Guarantee Lender assumes full responsibility for any agent's conduct of quality control reviews.

(7) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee 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, Direct Guarantee or Non-Direct Guarantee 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 Direct Guarantee Lender and Non-Direct Guarantee Lender to sanctions in accordance with § 1005.907.

(8) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee 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 of ensuring 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 Applicant, Direct Guarantee or Non-Direct Guarantee Lender must submit a report of this review in form and timeframe as prescribed in Section 184 Program Guidance.

(9) Ensure that the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender's employees and agents are eligible to participate in the

Section 184 Program. Any employees or agents deemed ineligible shall be restricted from participating in the Section 184 Program.

(10) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee 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 Applicant, Direct Guarantee or Non-Direct Guarantee Lender to report all material deficiencies and submit a corrective action plan to HUD within 30 days, or a timeframe as prescribed by Section 184 Program Guidance.

(12) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to conduct appropriate Loan level quality control procedures, in accordance with Section 184 Program Guidance.

(13) Require the Lender Applicant to comply with any other administrative requirement as may be prescribed by Section 184 Program Guidance.

(c) Lender Applicants applying to 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 Applicant 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 Applicant to verify that the endorsement case binder is submitted to HUD for guarantee within required time frames.

(3) Require the Lender Applicant 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 Applicant must investigate and determine if fraud, material misrepresentation or other findings occurred.

(4) Require the Lender Applicant 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 paragraph (b) 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) *Tribal, Federal, and State law.* All Holders, Direct Guarantee Lenders, Non-Direct Guarantee Lenders and Servicers must comply with all applicable Tribal, Federal, and State 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 Non-Direct Guarantee and Direct Guarantee 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. Non-Direct Guarantee Lenders must submit required reports to their Sponsor, under this part or any requirements as prescribed by Section 184 Program Guidance.

(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 Lenders 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.

(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 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 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 Direct Guarantee Lender Annual recertification requirements.

(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 or sanctioned by any Tribe, State, or Federal entity or other governmental authority related to any lending activity;

(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) All reports.

(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 a request must be presented to HUD at least 30 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.

(1) 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.

(2) [Reserved]

§ 1005.225 Program ineligibility.

A Lender Applicant, 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:

(a) 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;

(b) Indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the Lender, 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;

(c) Found to have unresolved findings as a result of HUD or other

governmental audit, investigation, or review;

(d) Engaged in business practices that do not conform to generally accepted practices of prudent Lender Applicants, Direct or Non-Direct Guarantee Lenders or that demonstrate irresponsibility;

(e) 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;

(f) 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

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

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 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) When Tribes are notified of the Borrower's default in accordance with § 1005.501(j) or when the Tribe receives notice of Tribal right of first refusal pursuant to § 1005.759, Tribes must assist, where practical, in facilitating loss mitigation and disposition, such as assisting with identifying potential purchasers or identifying Tribal members who may wish to assume the loan, encouraging Borrower to execute Lease-in-Lieu, and providing other general assistance to the Borrower.

(4) Tribes must notify HUD in writing when the Tribe determines a property is vacant or abandoned and the property is not secured by the Servicer or HUD.

(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 completes First Legal Action against the Borrower, or assigns the loan to HUD after completing Tribal first right of refusal in accordance with § 1005.759:

(i) The Tribe must demonstrate that a foreclosure will be processed through the legal systems having jurisdiction over the Section 184 Guaranteed Loan. A foreclosure must be held in a court of competent jurisdiction, which includes Federal courts, when HUD forecloses on the property.

(ii) Foreclosure ordinances must allow for the legal systems with jurisdiction to assign Borrower's property interest to HUD or Holder.

(iii) Where applicable, if the Holder assigns the Section 184 Guaranteed Loan to HUD without initiating or completing the foreclosure process, or the property becomes vacant and abandoned during the loss mitigation or foreclosure process, the Tribe may assign the lease to HUD to facilitate disposition of the property, so long as the Tribe provides due process to the lessee in compliance with Tribal law.

(2) *Property disposition.* Once a lease is vacated or reassigned, or the property interest has otherwise been conveyed to HUD or the Holder, the Tribe or the TDHE shall work with HUD or the Holder 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 conveyance of the property interest to HUD or the Holder; 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 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 Tribe and/or BIA, as applicable.

(5) *Lease provisions for Trust Land.* Where applicable, the lease provisions for Trust Land must meet the following requirements:

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

(ii) Tribes may draft their own lease in compliance with Federal requirements and contain mandatory lease terms and language as prescribed in Section 184 Program Guidance, with approval of HUD and, as applicable, BIA. At a minimum the lease must:

(A) Identify lessor;

(B) Identify the lessee;

(C) Provide a legal description of the land and identify the property address covered by the lease;

(D) The lease must have a minimum term of 50 years unless an extended term is approved by the Secretary. For refinances or lease transfers the lease must have a remaining term which exceeds the maturity date of the Loan by a minimum of ten years, or other period as prescribed by Section 184 Program Guidance.

(E) The lease must be executed by all interested parties to be enforceable;

(F) The Tribe shall require HUD consent for any lease termination or assignment of the lease when the Section 184 Guaranteed Loan is secured by the property.

(G)(1) The lease must contain the following provision: "In the case of a default on a Section 184 Guaranteed Loan:

(i) The lessee may assign the lease and deliver possession of the leased premises, including any improvements thereon, to HUD; or

(ii) The lessor may assign the lease and deliver possession of the leased premises, including any improvements thereon, to HUD when the Tribe has provided due process to lessee in compliance with Tribal law.

(2) HUD may transfer this lease and the leased premises to a successor lessee if the successor lessee is another member of the Tribe or Tribal entity, as approved by the Tribe."

(H) Lease language as prescribed by Section 184 Program Guidance.

(I) 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 annual 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 Tribal duty to report proposed changes and actual 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. Tribes shall obtain HUD approval of the changes in the foreclosure, eviction, lease, and lien priority ordinances. HUD will provide written notification to the Tribe of HUD's review of the proposed ordinance changes and advise the Tribe 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 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.* Eligible Borrowers are Indian Families, Tribes, or TDHEs.

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

(c) *Limitation on the number of loans.* An Indian Family Borrower is limited to one Section 184 Guaranteed Loan, for primary residence, at a time unless the Indian Family Borrower is a non-occupant co-Borrower on one other Section 184 Guaranteed Loan. An Indian Family Borrower and/or non-occupant co-Borrower must meet all other applicable requirements of this subpart and any guidance provided in Section 184 Program Guidance.

§ 1005.403 Principal Residence.

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

(b) *Occupancy requirement.* An Indian Family Borrower must occupy the property as a Principal Residence. Borrowers who are a TDHE or a Tribe do not need to occupy the property as a Principal Residence and are not subject to the occupancy requirement.

(c) *Non-occupant co-Borrower.* A co-Borrower who does not occupy the property as a principal resident is permitted and is not subject to paragraphs (a) and (b) of this section. A non-occupant co-Borrower must be related by blood, or an unrelated individual who can document evidence of a family-type, longstanding, and substantial relationship not arising out of the loan transaction. A non-occupant co-Borrower must meet all other applicable requirements of this subpart and any requirements as may be established in Section 184 Program Guidance.

§ 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 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 age, race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, disability, marital status, source of income of the Borrower, 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 7-year waiting period or other 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 other property interest on Trust Land. Where the 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 and submit to HUD documentation verifying that the seller is the Owner of Record as part of the application for a loan guarantee under the Section 184 Program. Documentation must conform with the requirements set out in Section 184 Program Guidance. This documentation may include, but is not limited to, a property ownership history report from the State or local government, a copy of the recorded deed or other HUD approved document issued by the Tribe, as provided by Section 184 Program Guidance and the document evidences the property interest rights, as permitted by this subpart 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 the 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 under the Section 184 Program.

(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 under the Section 184 Program.

(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 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 may be required, as prescribed by Section 184 Program Guidance.

(4) *Authority to address property re-sales occurring between 181 days and 12 months following acquisition.* (i) If the re-sale date is more than 181 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 under the Section 184 Program.

(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 Section 184 Program Guidance.

(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 under the Section 184 Program.

(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 federally declared 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.* Each dwelling unit located on a property guaranteed under the Section 184 Program must:

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

(2) Conform with International Building Code, applicable general construction standards for the region, or other code as prescribed by Section 184 Program Guidance;

(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 International Building Code, or other code as prescribed by Section 184 Program Guidance.

(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 building code or, if there is no applicable Tribal code, the minimum building standards

established by the appropriate local or State code, or the International Building Code, or other code as prescribed by Section 184 Program Guidance;

(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 International Building Code, or other code as prescribed by Section 184 Program Guidance;

(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 TDHE, HUD may waive the minimum square footage requirements under paragraphs (a)(6)(i) through (iv) of this section.

(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) *One to four dwelling unit properties.* Properties containing one to four dwelling units:

(1) Must meet local zoning requirements;

(2) For 2-4 dwelling unit properties, units may be attached or detached; and

(3) Must have all dwelling unit(s) located on the property and included in the parcel legal description recorded under the loan.

(d) *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.

(e) *Environmental review procedures.*

(1) The regulations in 24 CFR 1000.20 apply to an environmental review for Trust Land and for fee land within an Indian reservation, and on fee land owned by the Indian Tribe outside of the Tribe's Indian reservation

boundaries, 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 24 CFR part 58 or 50, as appropriate.

(3) If the Loan involves proposed or new construction, HUD will require the Direct Guarantee 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;
(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.

(f) *Flood insurance*—(1) *Special Flood Hazard Areas*. 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 unless insurance under the National Flood Insurance Program (NFIP), or notwithstanding 24 CFR 58.6(a), private flood insurance in lieu of NFIP insurance is secured for the property.

(2) *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 Guaranteed Loan 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., notwithstanding 24 CFR 58.6(a),

(3) *Required flood insurance amount*. Where flood insurance is required under paragraph (f)(1) of this section, flood insurance, whether NFIP insurance or private flood insurance in lieu of NFIP, must be maintained for the life of the Section 184 Guaranteed Loan in an amount that is not less than the lessor of:

(i) The project cost less the estimated land cost;
(ii) The outstanding principal balance of the loan; or,
(iii) For NFIP insurance only, the maximum amount available with respect to the property improvements;

(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 provide all eligibility documentation obtained under paragraph (e)(2) of this section.

(g) *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.

(h) *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 paragraphs (b)(1) through (4) of this section:

(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 financing 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, Federal, 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 a property, which may contain up to four dwelling units. The Borrower must occupy one unit on the property 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 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 applicable Section 184 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 (c) through (f) of this section.

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

(1) The term of the refinancing 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 Up-Front Loan Guarantee Fee was financed as part of the existing Section 184 Guaranteed Loan, 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 Up-Front 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.

(5) The new loan must meet all other applicable Section 184 requirements, including maximum loan to value ratios, as prescribed by Section 184 Program Guidance.

(d) *Rate and Term Refinance Transaction.* (1) Rate and term refinance is the refinancing of an existing mortgage 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 Transaction must meet the following requirements:

(i) The new 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 new 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.

(iii) The new Loan is not subject to paragraphs (d)(2)(i) and (ii) of this section for an existing mortgage used to construct the property and where the property has been completed for less than one year. The new loan must be in an amount not to exceed the unpaid principal balance plus loan closing charges and allowable fees approved by HUD, plus, at Borrower's option, additional construction costs paid in cash by the Borrower, that were not included in the original construction contract.

(e) *Streamline Refinance Transaction.* Streamline Refinance Transaction refers to the refinance of an existing Section 184 Guaranteed Loan requiring limited Borrower credit documentation and underwriting.

(1) The new loan must be in an amount that does not exceed the unpaid principal balance of the existing Section 184 Guaranteed Loan.

(2) The new loan 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 new loan must be subject to an appraisal.

(f) *Cash-out refinance transaction.* (1) A Cash-out refinance transaction is when the new Loan is made for an amount larger than the existing mortgage's 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 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 property.* (1) A manufactured home, as erected on the property, 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(s) and site, shall constitute a loan on a property, and classified and taxed as real estate, as applicable.

(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) A manufactured home shall be erected on a site-built permanent foundation and shall be permanently attached thereto by anchoring devices adequate for all loads in accordance with 24 CFR part 3286. 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 property not addressed by the Manufactured Home Construction and Safety Standards shall

meet or exceed applicable requirements of the Minimum Property Standards (MPS).

(ii) The space beneath a 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) A manufactured home shall be braced and stiffened before it leaves the factory to resist racking and potential damage during transportation.

(iv) Section 1005.433 is modified to the extent provided in this paragraph. 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) A 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 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 on Trust Land shall meet manufactured home installation standards pursuant to Tribal laws, if any. In the absence of Tribal laws, the requirements in paragraphs (a)(1), (3), and (4) of this section shall apply and other such requirements as established by Section 184 Program Guidance.

§ 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 Guaranteed Loan 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 amortized.

(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.* HUD may guarantee loans

from which advances will be made during construction when all applicable Section 184 Program requirements are met and all the following conditions are satisfied:

(1) The Direct Guarantee Lender and Borrower execute a building Loan agreement, in the form prescribed by Section 184 Program Guidance, setting forth the terms and conditions under which advances will be made.

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

(3) The principal amount of the 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 building loan agreement;

(4) 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.

(h) *Changes to the Loan Agreement.* Notwithstanding paragraph (g)(2) of this section, changes to the building loan Agreement must be approved and documented by the Direct Guarantee Lender prior to the construction advance.

(i) *Documentation.* Direct Guarantee Lender must submit a construction completion package to HUD, as prescribed in Section 184 Program guidance.

(j) *Prepayment privilege.* The Loan must contain a provision permitting the Borrower to prepay the Loan in whole or in part at any time. The Loan may not provide for the payment of any fee or penalty 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.* The property may be subject to a junior lien held by a Tribe, Direct Guarantee Lender, TDHE, Federal, State, local government, or an Eligible Nonprofit Organization. Where applicable, a junior lien when intended to be utilized in conjunction with a Section 184 loan, must be evaluated in the Section 184 underwriting process by the Direct Guarantee underwriter in accordance with Section 184 Program

Guidance. In cases where a junior lien is recorded after the Section 184 Loan Guarantee Certificate is issued, the junior lien must comply with this section.

(1) Periodic payments, if any, 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 prior HUD acceptance, 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 Program 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 lesser 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 Up-Front Loan Guarantee Fee. The Section 184 Guaranteed Loan limit may only be exceeded by the amount of the Up-Front 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.

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

- (1) Have an active loan application from a Borrower(s) with an identified property;
- (2) Provide evidence of borrower eligibility, as prescribed in § 1005.401(a);
- (3) Verify that the property is located in a Section 184 Approved Program Area;
- (4) Confirm that the Loan does not exceed the Section 184 Loan limit; and
- (5) Submit Loan specific information as prescribed in Section 184 Program Guidance.

(c) Case numbers are automatically cancelled after a period as 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 and at loan closing may not be older than the 120 days, or another time period prescribed by Section 184 Program Guidance. 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 time 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, the adequacy and stability of the Borrower's 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 all applicable Federal requirements, including but not limited to the Uniform Standards of Professional Appraisal Practice, Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), and the Fair Housing Act (42 U.S.C. 3601–19). HUD may establish alternative requirements to Uniform Standards of Professional Appraisal Practice, when necessitated by location and availability of an appraiser, 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 (including gender identity and sexual orientation), disability, familial status, national origin, or age in the selection of an appraiser. HUD may establish guidance regarding the alternatives to the use of an appraiser identified on the Federal Housing Administration Appraiser Roster, when necessitated by a rural or remote location and the availability of an appraiser.

(c) 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.

(d) 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.

(e) The validity period of appraisals is 180 days or as provided by Section 184 Program Guidance.

(f) Where the initial appraisal report will be more than 180 days at closing, an appraisal update may be performed to extend the appraisal validity period prior to closing, in accordance with Section 184 Program Guidance. The updated appraisal is valid for one year after the effective date of the initial appraisal report; and

(g) The appraisal shall meet other guidance as prescribed in Section 184 Program Guidance.

§ 1005.459 Loan submission to HUD for endorsement.

(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, Direct Guarantee 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 prescribed in Section 184 Program Guidance.

(f) *Projected escrow.* The Direct Guarantee Lender must establish an escrow account in accordance with § 1005.717 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 and on a form provided by HUD, the Borrower must elect whether to authorize the Direct Guarantee Lender or Servicer to notify the Tribe in the event of a default, as prescribed in the Section 184 Program Guidance.

(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, when the Tribe or TDHE does not have an existing withholding or payment policy in place;

(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;

(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;

(7) Other charges as allowed in Section 184 Program Guidance.

(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 of up to 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 Up-Front 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;

(vii) Reasonable and customary charges in the nature of discounts; and

(viii) Interest calculations in accordance with § 1005.501(i).

(ix) Such other reasonable and customary charges as may be authorized by HUD.

(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 age, race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin, source of income of the Borrower, location of the property, or

because the Borrower exercised any right under the Consumer Credit Protection Act, 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 (including gender identity and sexual orientation), 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. The Direct Guarantee Lender is 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 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, unless otherwise approved by HUD, 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 is ineligible, HUD will provide the Direct Guarantee Lender with 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. HUD's issuance of the Loan Guarantee Certificate does not preclude HUD from conducting post-endorsement reviews under § 1005.527, seeking indemnification under § 1005.529, or imposing sanctions from originating Direct Guarantee Lender, Holder and/or Servicer under §§ 1005.905 and 1005.907.

(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, where applicable, 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 TSR that identifies that the BIA or Tribe approved and recorded the mortgage instrument and residential lease related to the Section 184 Loan, as 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 Section 184 Guaranteed Loan should not have been approved, HUD may request the originating Direct Guarantee Lender 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 Up-Front Loan Guarantee Fee, and a recurring Annual Loan Guarantee Fee where applicable, 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 Up-Front Loan Guarantee Fee.

At settlement, the Direct Guarantee Lender will collect from the Borrower a one-time Up-Front 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 Up-Front Loan Guarantee Fee.

The Direct Guarantee Lender shall remit the Up-Front 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 Up-Front 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) Where applicable, 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) Where applicable, subject to the exception in paragraph (d) of this section, the Servicer shall continue to collect from the Borrower, as established by a schedule provided in § 1005.607(b) 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. Any changes to the Annual Loan Guarantee Fee will be published in the **Federal Register**.

(c) Where applicable, the Servicer shall adjust the monthly installment of the Annual Loan Guarantee Fee in accordance 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) Where applicable, 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 the Annual Loan Guarantee Fee termination threshold loan-to-value ratio as established by the Secretary in the **Federal Register** and 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 falls below the threshold established by the Secretary in the **Federal Register**, 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, if any, in accordance with the schedule provided in § 1005.607(b) shall not be refundable to the Borrower.

(f) Where applicable, 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 Holder, Direct Guarantee Lender or Servicer shall not recover or attempt to recover from the Borrower any penalties HUD imposes upon the Holder, Direct Guarantee Lender or Servicer.

(b) *Failure of Direct Guarantee Lender to timely remit Up-Front loan guarantee to HUD.* (1) The Direct Guarantee Lender shall include a late fee if the Up-Front Loan Guarantee Fee is not remitted to HUD within 15 days of settlement.

(2) Failure to remit the Up-Front 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 Holder 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 Holder 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.* Late fees and penalty amounts under this section shall be prescribed by HUD in Section 184 Program Guidance.

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 Holder and/or Servicer to sanctions pursuant to subpart I. Holders and Servicers must comply with all applicable Tribal, Federal, and State requirements related to mortgage servicing.

§ 1005.703 Servicer eligibility and application process.

(a) To be eligible to service Section 184 Guaranteed Loans, a Direct Guarantee Lender, Non-Direct Guarantee Lender or other financial institution must be an approved mortgage Servicer for 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) Direct Guarantee Lenders servicing Section 184 Guaranteed Loans prior to June 18, 2024 may request an exemption from paragraph (a) of this section.

§ 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.

(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 Holder and 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 15 days of the transfer, or timeframe as prescribed by Section 184 Program Guidance.

(3) The acquiring Servicer shall provide notice to the Borrower of the transfer of servicing in accordance with applicable Tribal, Federal and/or State 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 former Servicer (or former 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, within 15 days of transfer, or other time period as

prescribed by Section 184 Program Guidance, of the transfer of servicing rights through the 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) Where applicable, 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 comply with any other reporting requirements under § 1005.903.

(4) The Servicer's failure to submit required reports on time may subject the Holder and/or Servicer to sanctions and civil money penalties pursuant to §§ 1005.905 and 1005.907.

(f) *Business change reporting.* Within a timeframe and on a 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 or another Federal agency 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 during the 7-year period preceding the date of the application for licensing and registration, or at any time preceding such date of the application, if such indictment or conviction 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.

(ii) [Reserved]

§ 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 applicable Tribal, Federal and/or State laws, 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 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 applicable Tribal, Federal and/or State laws. Servicers must respond to Borrower inquiries pertaining to the transfer of Servicing in accordance with applicable Tribal, Federal and/or State laws.

(f) Servicers must respond to HUD's written or electronic requests for information concerning individual accounts within three business days, or other 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 an eligible substitute Borrower(s), 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 or Holder 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) As applicable, a lease approved by HUD, the Tribe or the BIA in the new Borrower's name is required. Servicers shall not proceed to closing on the assumption until and unless the Tribe has consented to assign the property interest to the new Borrower at closing. Where applicable, a final certified Title Status Report documenting the assignment of the lease or recordation of a new lease is required.

(ii) Where applicable, 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).

(iii) Other requirements prescribed in Section 184 Program Guidance.

(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 review the assumption for compliance prior to issuing 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, as prescribed by Section 184 Program Guidance. The Servicer shall promptly advise HUD of any prohibited sale or other transfer of the property or leasehold interest that occurs. The Servicer must request

approval from HUD to accelerate the Loan when any prohibited sale or transfer occurs. If acceleration is permitted by applicable Tribal, Federal, or State law, the Servicer shall certify as to the legal authority as part of the request for 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 Servicers, as may be prescribed 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 applicable Tribal, Federal, or State laws, 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 below. 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, Federal and/or State law, if such a fee is not otherwise prohibited by the applicable law(s); 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 but unpaid by the Borrower shall not justify Servicer's return of Borrower's payment. 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 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, without specific approval from HUD. The 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. No Servicer shall commence foreclosure, assign the loan to HUD, or acquire title to a property until the requirements of this subpart have been completed.

§ 1005.731 Default notice to Borrower.

The Servicer shall provide notice to the Borrower as prescribed 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;

(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 the 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. HUD may permit other loss mitigation on a case-by-case basis if requested by the Servicer.

(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, or any other deadline as may be prescribed by Section 184 Program Guidance. 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 in the servicing case binder with evidence that it timely contacted the attorney or trustee.

(f) *Occupancy inspections on Trust Land.* Servicers must make an initial contact with the Tribe in advance of any occupancy inspection on Trust Land to review the Tribe's protocol for conducting occupancy inspections. After the initial contact, Servicers must contact the Tribe in advance of an occupancy inspection on Trust Land in accordance with the Tribe's protocol.

(g) *Alternative deadlines.* HUD may prescribe alternative extended deadlines to the requirements in paragraphs (c) and (d) of this section through Section 184 Program Guidance.

(h) *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 or abandoned property procedures.

If the Servicer determines through an occupancy inspection or occupancy follow-up that the property is vacant or abandoned, or if the Servicer is notified by HUD that the Tribe or the TDHE determined 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 and loss mitigation as required by §§ 1005.729 and 1005.739 until the Servicer has the authority to proceed to First Legal Action in accordance with § 1005.763 or Tribal First Right of Refusal in accordance with § 1005.759.

(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:

(i) Notify the Tribe that the property is vacant or abandoned; and

(ii) Complete Tribal First Right of Refusal under § 1005.759;

(4) For fee simple Properties, complete First Legal Action within 30 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 provided in Section 184 Program Guidance.

(c) *Alternative deadlines.* HUD may prescribe alternative extended deadlines to the time requirements of this section in Section 184 Program Guidance.

(d) *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.

(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, or any extended timeframe prescribed by Section 184 Program Guidance.

(c) Loss mitigation options include:

(1) A forbearance plan;

(2) Assumption;

(3) A loan modification;

(4) Loss mitigation advance;

(5) Pre-foreclosure sale;

(6) A deed-in-lieu/lease-in-lieu of foreclosure; or

(7) 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 in Section 184 Program Guidance for the eligibility and appropriate use of loss mitigation options.

(f) Within 180 days of default, or any extended timeframe prescribed by Section 184 Guidance, if the Borrower fails to meet their loss mitigation option requirements, the Servicer shall have up to 45 days from the date of the failure of the loss mitigation to determine whether the Borrower should continue with the current loss mitigation option or have Borrower enter into an alternate loss mitigation option.

(g) If a Borrower does not accept, is not eligible for, or fails loss mitigation, the Servicer shall complete First Legal Action in accordance with § 1005.763 or Tribal First Right of Refusal in accordance with § 1005.759.

(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.

(j) HUD may provide alternative requirements to this section when there

is a national emergency or disaster and publish such alternative requirements in Section 184 Program Guidance.

§ 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, where applicable, for Section 184 Guaranteed Loan property that is on Trust Land, in accordance with applicable BIA requirements; and,

(2) The Tribe, where applicable, 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 and/or BIA, as applicable.

§ 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 a 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 complete First Legal Action to acquire the property or Tribal notice under § 1005.759(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 and/or suspended payments and specific terms for the repayment plan. During the Forbearance period, where Borrower is in compliance with the Forbearance plan, the Servicer shall not proceed to First Legal Action or complete Tribal First Right of Refusal notice under § 1005.759 until expiration or default of the Agreement.

(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; or

(ii) 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. It is a formal forbearance plan with a written agreement executed by the Servicer and Borrower, allowing for reduced or suspended payments and such plan may include specific terms for repayment.

(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 Guaranteed 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.

(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 the 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 agreement. 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.

(g) *Other special forbearances.* HUD may provide for a special forbearance in response to a disaster or other national emergency or other circumstances approved by the Secretary.

§ 1005.747 Assumption.

The Servicer shall explore assumption as a loss mitigation option with the Borrower in accordance with § 1005.711. Assumptions associated with loss mitigation must result in the cure of the default and reinstatement of the Section 184 Guaranteed Loan.

§ 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 receive 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 percentage of net income shall be prescribed by HUD.

(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 but no less than \$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) *Trial payment plan failure.* 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 Loss mitigation advance.

(a) *General.* A loss mitigation advance is a reimbursement by HUD to the Holder for the advancement of funds on behalf of the Borrower in the amount necessary to assist in the reinstatement of the Borrower's Section 184 Guaranteed Loan. The loss mitigation advance is a subordinate lien in favor of HUD. More than one loss mitigation advance may be made to an eligible Borrower.

(b) *Borrower eligibility.* To be eligible for a loss mitigation advance:

(1) The Borrower's Section 184 Guaranteed Loan is 90 or more days past due;

(2) The Borrower has the ability to resume making on-time monthly loan payments and the property is owner occupied.

(3) [Reserved]

(c) *Terms.* The loss mitigation advance shall:

(1) Include all arrearages, which refers to any amounts needed to bring the Borrower's Section 184 Guaranteed Loan current;

(2) Provide that all prior loss mitigation advances, if any, in total must not exceed 30 percent of the unpaid principal balance as of the date of default;

(3) Include any other terms and conditions, as may be prescribed by Section 184 Program Guidance; and

(4) Along with another loss mitigation, where applicable, fully reinstate the Section 184 Guaranteed Loan upon the Borrower's acceptance of the loss mitigation advance.

§ 1005.753 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) The default was due to an adverse and unavoidable financial situation impacting the Borrower;

(3) The property has a current fair market value that is equal to or less than the unpaid principal balance;

(4) The Borrower elected the pre-foreclosure sale option within 120 days, or any other date as prescribed by Section 184 Program Guidance, 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, and these amounts are not reimbursable by HUD. 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 (p) of this regulation where a hazard insurance claim must be filed.

(d) *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.

(e) *Discharge of junior liens.* The Servicer must contact all junior lienholders to verify the Borrower has secured a discharge of the junior liens.

(f) *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 have the property appraised in accordance with § 1005.457 and 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) 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.

(iv) Paragraph (f)(2)(iii) of this section is not applicable to property on Trust Land unless there is a viable real estate market;

(v) Under paragraph (f)(2)(iii) of this section, 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.

(g) *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

(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.

(h) *Delivery of documents to Borrower.* Documents listed under paragraphs (g)(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.

(i) *Copies to HUD.* The Servicer must send signed copies of the documents in paragraphs (g)(1) and (2) of this section to HUD within 15 days of receipt from the Borrower.

(j) *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.

(k) *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.

(l) *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.

(m) *Pre-foreclosure sale marketing, settlement period, failure to complete pre-foreclosure sale.* The Borrower has seven days, or other timeframe as prescribed by Section 184 Program Guidance 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 period of 90 days, or other 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 120 days 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 120 Days, the marketing period may be extended up to 60 days 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 complete First Legal Action within 30 days or Tribal First Right of Refusal within 14 days of the Borrower’s deadline to respond or actual rejection response date, whichever is sooner.

(n) *Property inspections and maintenance.* The Servicer shall inspect the property in accordance with

§ 1005.735 and follow § 1005.739, where applicable.

(o) *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.

(p) *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-Surchargeable Damage) or the Secretary's repair cost estimate.

(q) *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, and

(2) *Arm's length transaction.* 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 as backup offer until a determination has been made on the previously submitted offer.

(r) *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.

(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;

(v) Third-party fees incurred by the Servicer or Borrower to negotiate a pre-foreclosure sale; and

(vi) Any other costs as may be prohibited in Section 184 Program Guidance.

(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.

(s) *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.

(t) *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 § 1005.755. 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 §§ 1005.763 and 1005.765.

(5) *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 § 1005.755. 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 §§ 1005.763 and 1005.765.

§ 1005.755 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 a 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, or other HUD approved document issued by the Tribe, as prescribed by Section 184 Program Guidance evidencing assignment to HUD without any objectionable encumbrances.

(7) The property must meet the property conditions under § 1005.769. HUD may consent to conveyance of the property by deed-in-lieu/lease-in-lieu of foreclosure when property does not meet § 1005.769 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 convey the property to HUD in accordance with § 1005.771.

(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.

§ 1005.757 Incentive payments.

As an alternative to foreclosure, or eviction where applicable, as prescribed by Section 184 Program Guidance, 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) Holders or Servicers for their completion of certain loss mitigation options; and

(c) Tribes or TDHEs for their assistance in loss mitigation, sale, or transfer of the Trust Land property.

Assignment of the Loan to HUD; Foreclosure and Conveyance

§ 1005.759 Property on Trust Land—Tribal First Right of Refusal; foreclosure or assignment.

(a) Tribal First Right of Refusal is written notice to the Tribe of the options to assume the Section 184 Guaranteed Loan or purchase the Note based on the current unpaid principal balance or appraised value for any property on Trust Land or other reasonable options as prescribed by Section 184 Program Guidance.

(b) The Servicer shall provide Tribal First Right of Refusal no later than 14 days, or any extended timeframe prescribed by Section 184 Program Guidance, after the earlier of:

(1) Any lease provision addressing Tribal First Right of Refusal;

(2) 120 days after default, unless the Borrower is in active loss mitigation;

(3) Failure of loss mitigation after 180 days from default;

(4) The failure of loss mitigation after an extension of the loss mitigation period under § 1005.739(f).

(5) The date the property was determined vacant or abandoned in accordance § 1005.737 or the earliest date the Servicer should have known the property was vacant or abandoned.

(b) The Tribe shall have either the time frame provided in the lease or, if not defined in the lease, 60 days, or any extended timeframe prescribed by Section 184 Program Guidance, to accept or decline the offer of Tribal First Right of Refusal.

(c) If the Tribe declines or does not respond to the Tribal First Right of Refusal within 60 days, or any extended timeframe prescribed by Section 184 Program Guidance, the Servicer must either complete First Legal Action or assignment to HUD, within the timeframes prescribed in §§ 1005.763 and 1005.765.

(d) Any costs associated with failure to initiate Tribal First Right of Refusal may be deemed ineligible for claim payment.

§ 1005.761 Fee simple 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 §§ 1005.753 and 1005.755, the Servicer must complete First Legal Action on the Section 184 Guaranteed Loan pursuant to § 1005.763.

(b) Under limited circumstances, HUD may approve an assignment of a Section 184 Guaranteed Loan to HUD for fee simple land properties.

§ 1005.763 First Legal Action deadline and automatic extensions.

(a) *Deadline for First Legal Action.* The Servicer must complete First Legal Action, within 180 days of default, unless a later date is authorized under this part.

(b) *Automatic extensions to the First Legal Action deadline.* HUD permits automatic extensions to the First Legal Action deadline for the following reasons and 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 First Legal Action within the deadline designated above, then the Servicer must complete 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 at 180 days of default and the Borrower subsequently fails loss mitigation, First Legal Action must be completed within 30 days of the loss mitigation failure or the Borrower's request to terminate the loss mitigation plan, whichever is sooner.

(3) If the Borrower does not continue with their current loss mitigation option or enter into an alternative loss mitigation option during the 45-day period under § 1005.739(f), the First Legal Action must be completed within 30 days or

(4) If a Tribal First Right of Refusal was offered under § 1005.759, and the Servicer decides to pursue foreclosure in Tribal court, instead of assigning the Loan to HUD, First Legal Action must be completed within 30 days of completing the Tribal First Right of Refusal.

(c) *Other extensions.* Other necessary and reasonable extensions may be allowed, as prescribed by Section 184 Program Guidance.

(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 completing First Legal Action.

(e) *Submission of claim.* The Servicer must submit a claim to HUD within 45 days from the date the foreclosure was complete in accordance with § 1005.809(a) or (c).

§ 1005.765 Assignment of the Section 184 Guaranteed Loan.

(a) *Fee simple land properties.* (1) The assignment of Section 184 Guaranteed Loans involving fee simple land properties requires prior HUD approval. The Servicer must submit a request for an assignment within 135 days of default, or any extended timeframe

prescribed by Section 184 Program Guidance, unless the Servicer has determined the property is vacant pursuant to § 1005.737.

(2) The Servicer shall have five business days from HUD approval, or any extended timeframe prescribed by Section 184 Program Guidance, to submit the executed assignment for recordation with the appropriate jurisdiction.

(b) *Properties on Trust Land.* HUD may accept assignment of the Section 184 Guaranteed Loan if HUD determines that the assignment is in the best interest of the United States. In cases where HUD accepts the assignment, upon completing the Tribal First Right of Refusal in accordance with § 1005.759, the Servicer shall have five business days, or any extended timeframe prescribed by Section 184 Program Guidance, to submit the executed assignment for recordation with the BIA, as applicable, or other HUD approved document, as prescribed by Section 184 Program Guidance, that evidences the assignment.

(c) *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 submitting the assignment for recordation.

(d) *Submission of Claim.* The Servicer shall have 45 days to submit the assignment and evidence of recordation as part of a Claim in accordance with 1005.809(b). The Servicer shall submit to HUD evidence of the filing and of a Claim in a manner so prescribed by Section 184 Program Guidance.

(e) *Acceptance by HUD.* HUD will accept assignment of the Section 184 Guaranteed Loan in accordance with 1005.773.

§ 1005.767 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 or is not otherwise prohibited by Tribal, State, or Federal law. Taking "appropriate action" includes First Legal Action or assignment within the time required by §§ 1005.763 and 1005.765, as applicable.

§ 1005.769 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 § 1005.765, 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.* The Servicer shall not be liable for documented damage to the property by waste, deterioration, or neglect 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 § 1005.765.

§ 1005.771 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 Holder to HUD.* The Holder shall acquire Good and Marketable Title and transfer the property to HUD within 30 days of the later 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 business days after execution. The Servicer must document evidence of the submission in the file.

§ 1005.773 HUD acceptance of assignment or conveyance.

(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 or other legal instrument conveying the property interest to the HUD, the Servicer remains responsible for ensuring compliance with this part, including 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 a Claim for a Section 184 Guaranteed Loan benefits to HUD. The Servicer's submission of the Claim shall be in compliance with this subpart and must follow the process details as set forth in Section 184 Program Guidance. This subpart also sets forth requirements for processing and payment of the 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, 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:

(1) The Servicer failed to service the Section 184 Guaranteed Loan in accordance with subpart G of this part;

(2) The Servicer committed fraud or a material misrepresentation; or

(3) The Servicer had known or should have known of fraud or a material misrepresentation in violation of this part.

(4) HUD may take one or more of the following 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.

(vi) Pursue sanctions against the Servicer or Holder pursuant to §§ 1005.905 and 1005.907.

(vii) 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, including interest, from the Date of Default to the earlier of the deadlines provided in § 1005.839(a) through (e). Allowable reasonable exceptions will be provided by Section 184 Program Guidance; and

(c) Supplemental claim for eligible reasonable expenses incurred prior to the earlier of the deadlines provided in § 1005.839(a)(1) through (5), for expenses 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 below or any extended timeframe prescribed by Section 184 Program Guidance. The Claim types are:

(a) *Conveyance.* When the property is deeded to HUD through foreclosure:

(1) The Servicer must submit a claim under § 1005.807(a) to HUD no later than 2 business days from the date the deed to HUD is executed.

(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, in accordance with § 1005.817.

(ii) *Trust Land.* The claim must include a certified Title Status Report evidencing HUD's property interest through foreclosure.

(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 15 days following the submission of a claim under § 1005.807(a).

(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.

(2)(i) *Trust Land.* The claim must include the recorded assignment and 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) The assignment of the Section 184 Guaranteed Loan to HUD meets the requirements of § 1005.765.

(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 30 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 § 1005.753 or § 1005.755, the Servicer must submit a claim under § 1005.807(a) and (b) to HUD no later than 30 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) through (d) 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 of the claim submission 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 Claims

§ 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 Up-front and Annual Loan Guarantee Fee reconciliation.

(a) The Servicer must include in the claims case binder a reconciliation evidencing the payment of the Up-front 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) *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.

(b) *Conveyance of property without Good and Marketable Title.* (1) If the title to the property conveyed by the Holder to HUD does not have Good and Marketable Title, the Holder 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 Holder 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 Holder 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 Holder, as described in paragraph (b)(3) of this section. The daily holding costs to be charged to the Holder 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 Holder and the Holder must reimburse HUD in accordance with §§ 1005.849 and 1005.851.

§ 1005.819 Types of satisfactory title evidence.

The following types of title evidence shall be satisfactory to HUD:

(a) *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 Holder and HUD, "and their successors and assigns, as their interests may appear", with the consent of the title company endorsed thereon.

(b) *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 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;

(c) *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;

(d) *Torrens or similar certificate.* A Torrens or similar title certificate;

(e) *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

(f) *Title Status Report.* Certified Title Status Report issued by the BIA or other comparable document approved by HUD in accordance with Section 184 Program Guidance, 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.

§ 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, the Title Status Report or direct verification from the Tribe or TDHE, shall further show that, according to the public or Tribal 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 § 1005.767 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 Holder 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 Holder 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 § 1005.767; 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 Holder'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 Holder'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(c).

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 subparts D or G of this part. HUD reserves the right to conduct post-claim payment review of claims. 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.

HUD shall pay interest on the unpaid principal balance from the date of default to the earlier of the following:

- (a) The execution of deed-in-lieu/lease-in-lieu of foreclosure;
- (b) The execution of the conveyance to either Holder, HUD or a third-party;
- (c) The execution of the assignment of the Section 184 Guaranteed Loan to HUD;
- (d) The expiration of the reasonable diligence timeframe; or
- (e) Other event as prescribed by Section 184 Program Guidance.

§ 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 Holder shall reduce the claim when the following amounts are received or held by the Holder:

- (a) All amounts received by the Holder to the account of the borrower after default.
- (b) All amounts received by the Holder from any source relating to the property on account of rent, reimbursement or other payments.
- (c) All cash retained by the Holder including amounts held or deposited in 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.

§ 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 Holder's 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 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 Holder 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 additional processes as 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) 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—Program Performance, Reporting, Sanctions, and Appeals**§ 1005.901 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 written notice of its assessment and any proposed corrective action, if applicable.

§ 1005.903 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 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 sanctions and civil money penalties to be imposed and the basis for the action.

§ 1005.907 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 of 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 Holder'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, or Holder reasonable time to return to compliance.

(b) HUD 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, or Holders 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.

§ 1005.909 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 15 days, or other timeframe as 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.

Adrienne Todman,

Deputy Secretary.

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