

## § 1003.702

taken, establishing a date for corrective actions, and putting the grantee on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the grantee to suspend, discontinue, or not incur costs for the affected activity;

(4) Advise the grantee to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of part 58 and provided that such reprogramming is subjected to the environmental review procedures of part 58 of this title;

(5) Advise the grantee to reimburse the grantee's program account or line of credit in any amount improperly expended;

(6) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(7) Suspend the line of credit until corrective actions are taken.

### § 1003.702 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in §1003.701(b) has been taken and only then if the grantee has not made an appropriate and timely response. Before making such a grant reduction or withdrawal, the grantee also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the Area ONAP determines, on the basis of a review of the grantee's performance, that the objectives set forth in §1003.700(a)(2) or (3) have not been met, the Area ONAP may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

### § 1003.703 Other remedies for non-compliance.

(a) *Secretarial actions.* If the Secretary finds a grantee has failed to comply with any provision of this part even after corrective actions authorized under §1003.701 have been applied, the

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following actions may be taken provided that reasonable notice and opportunity for hearing is made to the grantee. (The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for a hearing):

(1) Terminate the grant to the grantee;

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

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

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

## PART 1004 [RESERVED]

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### 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.

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

*First Legal Action* means the first 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 Na-

tive 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 under-

writing, 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



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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

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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

## § 1005.215

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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:

## § 1005.221

(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:

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(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)(I) 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

### § 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

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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 de-

pendent 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

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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 resale 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

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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 lesser 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 acknowledgment 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

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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.



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(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

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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

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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 re-

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quired 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

### § 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

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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 col-

lect 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**

### **§ 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 es-

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crow 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 non-discrimination 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



## § 1005.525

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 Guar-

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antee 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

## § 1005.609

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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 in-

stallment 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

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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 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



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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 reamortization;

(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

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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

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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

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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 let-

ter 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.

## § 1005.739

### 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

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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 Guarantee Loan no later than the original maturity. The Servicer must retain in the servicing case binder a copy of the written special forbearance-unemployment agreement postponing principal and interest payments.

(3) *Duration.* The repayment period shall not exceed six months.

(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.

(6) 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.

(7) 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 re-

sponse 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.

#### **§ 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

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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.

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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.

(c) 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.

(d) 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 Guidance, the Servicer must either complete First Legal Action or assignment to HUD, within the timeframes prescribed in §§ 1005.763 and 1005.765.

(e) 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



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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,

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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

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accordance with § 1005.849, where applicable, and require the Holder to refund the claim payment of the unpaid principal balance under § 1005.807(a) and expenses under § 1005.807(b). The Holder may resubmit the claim when the deficiencies identified by HUD are cured.

(iv) Pursue administrative offset for any unpaid amounts owed to HUD pursuant to 24 CFR part 17.

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

(vi) Pursue other remedies as determined by HUD.

(c) If a property is reconveyed or the deed of trust or mortgage is reassigned to the Holder, the Holder may not be reimbursed for any expenses incurred after conveyance or reassignment.

(d) If a claim is resubmitted after reconveyance or reassignment and HUD determines a decrease in the value of the property at the time of the resubmission, HUD may reduce the claim payment accordingly.

### § 1005.807 Claim submission categories.

There are three claim submission categories:

(a) Payment of the unpaid principal balance;

(b) Reimbursement of eligible reasonable expenses, 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.

## § 1005.817

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### 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

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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;

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(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 re-assigned 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



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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.

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(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

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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.

**PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM**

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**Subpart A—General**

**§ 1006.1 Applicability.**

The requirements and procedure of this part apply to grants under the Native Hawaiian Housing Block Grant (NHHBG) Program, authorized by the Hawaiian Homelands Homeownership Act of 2000 (HHH Act), which adds Title VIII—Housing Assistance For Native Hawaiians (25 U.S.C. 4221 *et seq.*), to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*).

**§ 1006.10 Definitions.**

The following definitions apply in this part:

*Act* means title VIII of NAHASDA, as amended.

*Adjusted income* means the annual income that remains after excluding the following amounts:

(1) *Youths, students, and persons with disabilities*. \$480 for each member of the family residing in the household (other than the head of the household or the spouse of the head of the household):

(i) Who is under 18 years of age; or

(ii) Who is:

(A) 18 years of age or older; and

(B) A person with disabilities or a full-time student.

(2) *Elderly and disabled families*. \$400 for an elderly or disabled family.

(3) *Medical and attendant expenses*. The amount by which 3 percent of the