

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 50 and 1005**

[Docket No. FR-4241-I-01]

RIN 2577-AB78

Loan Guarantees for Indian Housing; Direct Guarantee Processing

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes for the section 184 Indian Housing loan guarantee program a new "direct guarantee" procedure modelled in part on the FHA single family mortgage insurance "direct endorsement" procedure, under which HUD staff are not involved in the processing or approval of individual loans before closing.

DATES: Effective date: October 13, 1998.

Comment Due Date: November 10, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Karen Garner-Wing, Director, Office of Loan Guarantees, Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202. Telephone: (303) 675-1600. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Background**

HUD implemented its section 184 loan guarantee program for Indian Housing through an interim rule published at 59 FR 42732 (August 18, 1994) to add a new 24 CFR part 955. The interim rule anticipated that HUD would be involved in loan underwriting decisions. Although the rule did not clearly say when HUD's involvement would occur—before loan closing or simply before the certificate of guarantee was issued—HUD anticipated

that a HUD Field Office would review the application and make its underwriting judgment before the loan closing rather than through a post-closing loan review procedure. Based on its pre-closing review, HUD would issue a commitment to guarantee and the lender would close the loan in accordance with this commitment. The commitment procedure was mentioned in interim § 955.105(d)(2), which restricts advances on construction loans to advances made as provided in the commitment.

HUD issued a final version of part 955 on March 6, 1996 (61 FR 9052). In addition to responding to public comments on the interim rule, HUD used the final rule as an opportunity for including part 955 in HUD's efforts to streamline its rules by eliminating repetition of statutory requirements or provisions that could appropriately be handled in a non-regulatory manner through administrative issuances. However, a fuller "Guide to Loan Guarantees for Indian Housing" including the interim rule material removed in the final rule was published as an Appendix to the final rule. HUD did not indicate in the final rule any intention to change its approach to processing loans for guarantees. The final rule also retained the reference to "commitment" in § 955.105(d)(1).

For these reasons the Department considers it appropriate to offer an opportunity for public comment prior to final adoption of a "Direct Guarantee" alternative procedure which would dispense with commitments and pre-loan closing underwriting review by HUD, with HUD review occurring after loan closing but before guarantee of the loan. As explained below, however, there would be no public benefit in delaying the availability of the procedure to those mortgagees and mortgagors who could benefit from it immediately upon publication of this interim rule.

This interim rule reflects changes made and discussed as part of the recent final rule entitled "Implementation of the Native American Housing Assistance and Self-Determination Act," published on March 12, 1998 at 63 FR 12334. In particular, part 955 has been redesignated as part 1005.

Content of Rule

The proposed Direct Guarantee procedure for the Indian Housing Loan Guarantee program resembles the Direct Endorsement (DE) program for FHA single family mortgage insurance. The Department has determined that it is not necessary for most of the processing details of this similar Direct Guarantee

program to be published in regulatory form. The key feature of the new procedure, as described in § 1005.106(a), is that the Department's approval of the loan will occur after the loan is closed but before the loan is guaranteed. Instead of adding extensive new material this interim rule makes only those changes needed to avoid conflict between part 1005 and the intended manner of implementation, and to provide a sound legal basis for any necessary administrative actions against lenders approved for the Direct Guarantee procedure. As an Appendix to this rule, the Department is updating the "Guide to Loan Guarantees for Indian Housing" that was published with the final version of part 955 (now part 1005), to reflect recent legislation and the availability of the new alternative Direct Guarantee procedure and to make other minor improvements. The updated Appendix will not be included in the Code of Federal Regulations.

One streamlining change is made: § 1005.111 is shortened substantially by removing language that repeated verbatim the provisions of section 184(j) regarding housing safety and quality standards.

The following other technical changes or corrections to part 1005 are made:

1. In § 1005.103, the definition of "mortgage" is clarified to include a loan with collateral other than the home. A new definition of "trust or restricted land" is added with the same meaning as "trust land" in section 184(k)(9) of the statute. The rule currently uses the terms "trust land", "trust and restricted land" and "trust land or restricted Indian land" to describe the same property. By adopting a single defined term and making conforming changes in §§ 1005.101, 1005.105(f) and 1005.107(b), the Department intends to clarify that the same rule provisions apply to land held in trust by the United States and other land not held in trust but subject to a restriction against alienation imposed by the United States.

2. Sections 1005.104(d) and (e) are amended to clarify that they do not include lenders approved by the Secretary under other authorities, such as Title I lenders approved under 24 CFR part 202.

3. Section 1005.105(d)(2) is amended to provide that loan advances are to be made as provided in the building loan agreement instead of the commitment, and the term "building loan agreement" is substituted for "loan agreement" in § 1005.105(d)(3).

4. Section 1005.105(d)(3) is corrected to restore a reference to advancement to the mortgagor that was inadvertently

omitted, and a conforming change is made to § 1005.105(d)(4).

5. The introductory language of § 1005.107(b) is amended to indicate that a leasehold of trust land rather than the land itself can be collateral, and a reference in § 1005.107(b)(2) to the "loan form" is corrected to refer to the "lease form".

6. The rule makes a non-substantive revision to § 1005.112 to improve clarity.

This interim rule also amends HUD's environmental rules at 24 CFR 50.19(b)(17) (as amended by 62 FR 15802, April 2, 1997) to apply to the Direct Guarantee procedure the same categorical exclusion from environmental review under the National Environmental Policy Act of 1969 (NEPA) and other Federal environmental laws and authorities that currently applies to the FHA DE program and the recently announced FHA Lender Insurance program for single family mortgages. As with those programs, under the Direct Guarantee procedure HUD will have no involvement in the processing of an individual loan before it has closed, so that HUD cannot prevent a loan closing on the basis of an assessment of environment factors presented by a particular property. As with DE and Lender Insurance mortgages, Direct Guarantee loans will be subject to requirements for the purchase of flood insurance on structures located in special flood hazard areas mapped by the Federal Emergency Management Agency, a prohibition of loan guarantees on properties in the Coastal Barriers Resources System, and a requirement for notice to purchasers of properties located in airport clear zones.

The rule also restores language that was deleted in a 1996 streamlining of 24 CFR part 50 to make clear that the categorical exclusion of § 50.19(b)(17) applies only when HUD does not review or approve a loan before the completion of construction or rehabilitation and the loan closing. In accordance with this limitation, the categorical exclusion would not apply in those Direct Guarantee cases where HUD guarantees a loan for which advances will be made during construction; accordingly, before approving loans in those cases HUD will be required to comply, where applicable, with the related Federal laws and authorities listed in § 50.4. A separate categorical exclusion from the NEPA requirements of 24 CFR part 50 will apply (§ 50.20(a)(3)).

In a related change, the current § 1005.105(e) is revised to reflect the new Direct Guarantee procedure and a new sentence is added to provide that

procedures similar to the FHA builder certification procedures in 24 CFR 203.12(c)(2) will be required for proposed or new construction. Under those procedures, a builder reviews the area for environmental problems and hazards.

Findings and Certifications

Justification for Interim Rule

It is the general practice of the Department to provide a 60-day public comment period on all rules in accordance with 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD considers that this standard has been met.

The interim rule does not require any lender currently participating in the Indian Housing Loan Guarantee program, or that may desire to participate in the future, to use the Direct Guaranty procedure. Commitments to guarantee will continue to be available from HUD in advance of loan closing for eligible loans upon application by the lender. The interim rule simply makes available a second method of processing, which HUD believes will have clear advantages for many lenders and borrowers, by reducing delays that can result from limited HUD resources in both pre-loan review and in post-loan issuance of the guaranty. Delaying the availability of this new procedure for those mortgagees who regard it as advantageous would not be in the public interest.

In the interest of obtaining the fullest participation possible in determining the proper means of administering the Indian Housing Loan Guarantee program, the Department invites public comment on the interim rule. The comments received within the 60-day comment period will be considered during development of a final rule that ultimately will supersede this interim rule.

Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant under section (3)(f)(1) of the Order). Any changes made to the interim rule subsequent to its submission to OMB are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules

Docket Clerk, Room 10276, 451 Seventh Street SW, Washington DC, 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This interim rule merely authorizes an alternative procedure for obtaining HUD guarantee for an Indian Housing loan. The rule has no adverse or disproportionate economic impact on small businesses. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this interim rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410-0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes would result from this interim rule that affect the relationship between the Federal Government and State and local governments.

Unfunded Mandates Reform Act

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

sector, within the meaning of the UMRA.

Catalog

The Catalog of Federal Domestic Assistance number for the Loan Guarantees for Indian Housing program is 14.865.

List of Subjects

24 CFR Part 50

Compliance record, Environmental impact statement, Environmental protection.

24 CFR Part 1005

Indians, Reporting and recordkeeping requirements.

Accordingly, parts 50 and 1005 of title 24 of the Code of Federal Regulations are amended as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

2. Section 50.19(b)(17) is revised to read as follows:

§ 50.19 Categorical exclusions not subject to the Federal laws and authorities cited in § 50.4.

* * * * *

(b) * * *

(17) HUD's insurance of one-to-four family mortgages under the Direct Endorsement program, the insurance of one-to-four family mortgages under the Lender Insurance program, and HUD's guarantee of loans for one-to-four family dwellings under the Direct Guarantee procedure for the Indian Housing loan guarantee program, without any HUD review or approval before the completion of construction or rehabilitation and the loan closing; and HUD's acceptance for insurance of loans insured under Title I of the National Housing Act; however, compliance with §§ 50.4(b)(1) and (c)(1) and 24 CFR 51.303(a)(3) is required.

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PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

3. The authority citation for part 1005 continues to read as follows:

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

4. Section 1005.101 is revised to read as follows:

§ 1005.101 What is the applicability and scope of these regulations?

Under the provisions of section 184 of the Housing and Community Development Act of 1992, as amended by Native American Housing Assistance and Self-Determination Act of 1996 (12 U.S.C. 1715z-13a), the Department of Housing and Urban Development (the Department or HUD) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes that are standard housing located on trust or restricted land or land located in an Indian or Alaska Native area, and for which an Indian Housing Plan has been submitted and approved under 24 CFR part 1000. This part provides requirements that are in addition to those in section 184.

5. Section 1005.103 is amended by revising the definition of "mortgage" and adding definitions of "property" and "trust and restricted land" to read as follows:

§ 1005.103 What definitions are applicable to this program?

* * * * *

Mortgage means:

(1)(i) A first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located and may refer to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction; or

(ii) A loan secured by collateral as required by 24 CFR 1005.107; and

(2) The credit instrument, or note, secured thereby.

* * * * *

Property means the property constructed, acquired, or rehabilitated with the guaranteed loan, except when the context indicates that the term means other collateral for the loan.

* * * * *

Trust or restricted land has the meaning given to "trust land" in section 184(k)(9) of the Housing and Community Development Act of 1992.

6. Section 1005.104 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1005.104 What lenders are eligible for participation?

* * * * *

(d) Any other lender that is supervised, approved, regulated, or insured by any other agency of the United States; or

(e) Any other lender approved by the Secretary under this part.

7. Section 1005.105 is amended by revising paragraphs (d)(2), (d)(3), (d)(4), (e), and (f) to read as follows:

§ 1005.105 What are eligible loans?

* * * * *

(d) * * *

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

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or the mortgagor's creditors as provided in the loan agreement; and

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

(e) *Environmental compliance.* Prior to the Department's issuance of a commitment to guarantee any loan or (if no commitment is issued) prior to guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, the Department will require compliance with procedures similar to those required by § 203.12(c)(2) of this title for FHA mortgage insurance.

(f) *Lack of access to private financial markets.* In order to be eligible for a loan guarantee if the property is not on trust or restricted land, the borrower must certify that the borrower lacks access to private financial markets. Borrower certification is the only certification required by HUD.

8. A new § 1005.106 is added to read as follows:

§ 1005.106 What is the Direct Guarantee procedure?

(a) *General.* A loan may be processed under a Direct Guarantee procedure approved by the Department, under which the Department does not issue commitments to guarantee or review applications for loan guarantees before mortgages are executed by lenders approved for Direct Guarantee processing. The Department will approve a loan before the loan is guaranteed.

(b) *Mortgagee sanctions.* Depending on the nature and extent of the noncompliance with the requirements applicable to the Direct Guarantee procedure, as determined by the Department, the Department may take such actions as are deemed appropriate and in accordance with published guidelines.

9. Section 1005.107 is amended by adding a heading for paragraph (a) and

by revising paragraph (a)(1), the introductory text of paragraph (b), and the first sentence of paragraph (b)(2) to read as follows:

§ 1005.107 What is eligible collateral?

(a) In general. * * *

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions against alienation applicable to trust or restricted land;

* * * * *

(b) *Leasehold of trust or restricted land as collateral.* If a leasehold interest in trust or restricted land is used as collateral or security for the loan, the following additional provisions apply:

(1) * * *

(2) *Assumption or sale of leasehold.*

The lease form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. * * *

* * * * *

10. Section 1005.111 is revised to read as follows:

§ 1005.111 What safety and quality standards apply?

Loans guaranteed under section 184 must be for dwelling units which meet the safety and quality standards set forth in section 184(j).

11. The first sentence of § 1005.112 is revised to read as follows:

§ 1005.112 How do eligible lenders and eligible borrowers demonstrate compliance with applicable tribal laws?

The lender and the borrower will each certify that they acknowledge and agree to comply with all applicable tribal laws. * * *

Dated: August 4, 1998.

Andrew Cuomo,
Secretary.

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

Appendix—Guide To Loan Guarantees For Indian Housing

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

Section 12. Payment under guarantee.
Section 13. Certification of compliance with tribal laws, and enforcement.

Section 1. Purpose, Applicability and Scope

The purpose of this guide is to present, in a single document, the statutory and regulatory requirements, and certain other important administrative requirements, that apply to the Loan Guarantees for Indian Housing Program under section 184 of the Housing and Community Development Act of 1992 (P.L. 102-550, approved October 28, 1992, as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (P.L. 104-330)). Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. Title 24 of the Code of Federal Regulations is the primary, governing source for regulatory requirements, and section 184 is the primary, governing source for statutory requirements.

Under section 184, the Department of Housing and Urban Development (the Department) has the authority to guarantee loans for the construction, acquisition, rehabilitation, or acquisition and rehabilitation, of 1- to 4-family homes on trust and restricted lands for Indians (including Alaska Natives) and certain other lands under the jurisdiction of an Indian tribe. This guide describes the eligibility of borrowers, lenders and property, as well as the benefits of the Indian Loan Guarantee Program.

Section 2. Definitions

Default means the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, if such failure continues for a period of more than 30 days.

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

Direct guarantee means the underwriting procedure which qualified and approved mortgagees may use as described in 24 CFR 1005.104. The Secretary will publish guidelines for Direct guaranty underwriting procedures and underwriter qualifications in a Guidebook. Compliance with these guidelines is the minimum standard of due diligence.

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

Holder means the holder of the guarantee certificate and in this program is variously referred to as the lender, the holder of the certificate, the holder of the guarantee, and the mortgagee.

Indian means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term "Native American".

Indian or Alaska Native area means the area within which an Indian housing authority or tribally designated housing entity (THDE), as defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996, is authorized to provide housing.

Indian Housing Authority (IHA) means any entity that is authorized to engage in or assist in the development or operation of low-income housing for Indians or housing subject to the provisions of section 184 and that is established either (1) by exercise of the power of self-government of an Indian tribe independent of State law, or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska. The term includes tribally designated housing entities under the Native American Housing Assistance and Self-Determination Act of 1996.

Mortgage means:

(a)(i) A first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located and may refer to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction; or

(ii) A loan secured by collateral as required by 24 CFR 1005.107; and

(b) The credit instrument, or note, secured thereby.

Mortgagee or *lender* means the same as *holder*.

Mortgagor or *borrower* means the party receiving the loan, and authorized successors or assigns.

Principal residence means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

Secretary means the Secretary of Housing and Urban Development.

Section 184 means section 184 of the Housing and Community Development Act of 1992.

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

Tribe or *Indian tribe* means any 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, 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.

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

Underwriting is the evaluation of documentation to determine risk.

Section 3. Eligible Loans

(a) In general. Only fixed rate, fixed term loans with even monthly payments are eligible under the Section 184 program.

(b) Eligible borrowers. A loan guaranteed under Section 184 may be made to a borrower that is:

(1) An Indian who will occupy it as a principal residence and who is otherwise qualified under this part;

(2) An Indian Housing Authority; or

(3) An Indian tribe.

(c) Terms of loan. The loan shall:

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

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

(d) Maximum loan amounts.

(1) A principal obligation may not exceed the lesser of:

(i) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is \$50,000 or less); and

(ii) Amounts approved otherwise by the Department.

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

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

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

(e) Construction advances. The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor to the mortgagor's creditors as provided in the building loan agreement; and

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

(f) Environmental compliance. Prior to the Department's issuance of a commitment to guarantee any loan or (if no commitment is issued) prior to guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under 24 CFR part 50. If the loan involves proposed or new construction, the Department will require compliance with procedures similar to those required by 24 CFR 203.12(c)(2) for FHA mortgage insurance.

Section 4. Eligible Housing

(a) In general. A loan guaranteed under Section 184 may be used for the construction, acquisition, rehabilitation, or acquisition and rehabilitation, of a 1- to 4-family dwelling located on trust or restricted land, or land located in an Indian area that is under the jurisdiction of an Indian tribe for which an Indian housing plan has been submitted and approved pursuant to Sections 102 and 103 of the Native American Housing Assistance and Self-Determination Act of 1996 that provides for the use of loan guarantees under Section 184 to provide affordable homeownership housing in such areas.

(b) Safety and quality standards. Loans guaranteed under Section 184 shall be made only on dwelling units which meet safety and quality standards set forth herein. Each unit must:

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

(2) Conform with applicable general construction standards for the region;

(3) Contain a heating system that:

(i) Has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;

(ii) Is safe to operate and maintain;

(iii) Delivers a uniform distribution of heat; and

(iv) Conforms to any applicable tribal heating code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(4) Contain a plumbing system that:

(i) Uses a properly installed system of piping;

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

(iii) Uses water supply, plumbing and sewage disposal systems that conform to any applicable tribal code or, if there is no applicable tribal code, the minimum standards established by the applicable county or State;

(5) Contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable tribal code or, if there is no applicable tribal code, an appropriate county, State, or National code;

(6) Be not less than:

(i) 570 square feet in size, if designed for a family of not more than 4 persons;

(ii) 850 square feet in size, if designed for a family of not less than 5 and more than 7 persons; and

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

(iv) The size provided under the applicable locally adopted standards for size of dwelling units; except that the Department, upon the request of a tribe or Indian Housing Authority, may waive the size requirements under this paragraph; and

(7) Conform with the energy performance requirements for new construction established by the Department under section 526(a) of the National Housing Act.

Section 5. Eligible Lenders

(a) Required approval. The loan shall be made only by a lender meeting qualifications

established in this part, except that loans otherwise insured or guaranteed by any agency of the Federal Government, or made by an organization of Indians from amounts borrowed from the United States shall not be eligible for guarantee under this part. The following lenders are approved under this part:

(1) Any mortgagee approved by the Department of Housing and Urban Development for participation in the single family mortgage insurance program under title II of the National Housing Act.

(2) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to section 1802(d) of such title.

(3) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949.

(4) Any other lender that is supervised, approved, regulated, or insured by any other agency of the Federal Government.

(5) Any other lender approved by the Secretary under this part.

(b) Direct guarantee approval. To be approved for the Direct guarantee program, a lender must be an approved mortgagee under 24 CFR 202.6, 202.7 or 203.10, or must meet the requirements of section (a)(4) or (a)(5) above. In addition, the lender must establish that it meets the following qualifications:

(1) The lender, or one of its principal officers, has 5 years of experience in the origination of single family mortgages.

(2) The lender has on its permanent staff an underwriter meeting the standards of the Secretary and authorized by the lender to bind the lender on matters involving the origination of section 184 mortgage loans through the direct guarantee procedure.

(3) The lender must assure that its underwriter and technical staff have been trained and are knowledgeable in the section 184 underwriting requirements.

(4) The mortgagee must submit initially two section 184 mortgage loans, processed in accordance with the process set forth in section 7(b) of this guide. The documents required by section 7(b) will be reviewed by the Secretary and, if acceptable, a firm commitment will be issued prior to loan closing. If the underwriting and processing of these two loans is satisfactory, then the lender may be approved to close subsequent loans without a prior commitment and submit them directly for guarantee in accordance with the process set forth in section 7(b). Unsatisfactory performance by the lender at this stage constitutes grounds for denial of approval for the direct guarantee procedure or for continued pre-closing review of a lender's submissions.

(c) Mortgagee sanctions. Depending on the nature and extent of the noncompliance with the requirements applicable to the Direct Guarantee procedure, as determined by the Department, the Department may take such actions as are deemed appropriate and in accordance with published guidelines.

Section 6. Eligible Collateral

(a) In general. A loan guaranteed under Section 184 may be secured by any collateral authorized under Federal, State, or tribal law

and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions of trust lands against alienation;

(2) A first and/or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) Leasehold on trust or restricted land as collateral. If a leasehold interest in trust or restricted land is used as collateral for the loan, the following additional provisions apply:

(1) Approved Lease. Any land lease for a unit financed under Section 184 must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) Assumption or sale of leasehold. If a leasehold is used as security for the loan, the lease form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) Eviction procedures. Before HUD will guarantee a loan secured by trust or restricted land, the tribe having jurisdiction over such property must notify the Department that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) Enforcement. If the Department determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans for tribal members except pursuant to existing commitments by the Department or loan approvals by the lender under the Direct Guarantee procedure. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) Review. If the Department ceases issuing guarantees in accordance with the first sentence of paragraph (c)(1) of this section, HUD shall notify the tribe of the reasons for such action and that the tribe may, within 30 days after notification of HUD's action, file a written appeal with the Field Office of Native American Programs (FONAP) Administrator. Within 30 days after notification of an adverse decision on the appeal by the FONAP Administrator, the tribe may file a written request for review with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the

Deputy Assistant Secretary, the tribe has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the tribe may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment or limited denial of participation procedures contained in 24 CFR part 24).

Section 7. Procedures.

(a) Firm commitment procedure. Lenders that do not meet the approval requirements of section 5(b), or lenders approved for the direct guarantee procedure that do not process a particular loan using that procedure, must submit an application for section 184 loan guarantee in a form prescribed by the Secretary, prior to making the loan. If:

(1) A loan for a specified property has been approved for a guarantee, and

(2) A specified borrower and all other proposed terms and conditions of the loan meet the eligibility requirements for guarantee as determined by the Secretary, the Secretary will approve the application for guarantee by issuing a commitment setting forth the terms and conditions of guarantee.

(b) Direct guarantee procedure. (1) In general. Under the Direct Guarantee procedure, the Secretary does not review or approve applications for loan guarantee before the loan is executed or issue a firm commitment except as determined by the Secretary. Under this program, the lender determines that the proposed loan is eligible for guarantee under the section 184 program requirements, and submits to the Secretary processing and closing documents that the Secretary will identify for lenders in administrative issuances. The Secretary then reviews the documents as needed (and, in cases involving the guarantee of a loan from which advances will be made during construction, completes an environmental review to the extent required by 24 CFR 50.4) before approving and guaranteeing the loan.

(2) Use of procedure. A lender's use of the direct guarantee procedure is voluntary. Lender who are approved for that procedure may choose which section 184 loans are underwritten using that procedure or the firm commitment procedure.

Section 8 Guarantee

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

(b) Approval process. If the Department approves a loan for guarantee and receives the required guarantee fee, the Department will issue a certificate under Section 184 as evidence of the guarantee. The loan is considered guaranteed when the certificate is issued.

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

prospect of repayment of the loan. For loans under the firm commitment procedure, this determination will be made before a firm commitment is issued and the Secretary will issue a certificate if the loan complies with the firm commitment. For loans under the direct guarantee procedure, the lender must submit to the Secretary within 60 days of loan closing properly completed documentation and certifications as required by the Secretary, and the Department may make the required determination after loan closing on the basis of a review of the documents and certifications submitted by the lender.

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

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

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

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

Section 9. Guarantee Fee

The lender shall pay to the Department, at or before the time of issuance of the guarantee, a fee for the guarantee of loans under Section 184, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

Section 10. Liability Under Guarantee

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

Section 11. Transfer and Assumptions

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

Section 12. Disqualification of Lenders and Civil Money Penalties

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

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

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

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

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

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

Section 13. Payment Under Guarantee

(a) Lender options.

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

may proceed to obtain payment in one of the following manners:

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

(ii) No foreclosure. Without seeking a judicial foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (i) of this section continues for a period in excess of 1 year), the holder of the certificate may submit to the Department a request to assign the obligation and security interest to the Secretary in return for payment of the claim under the guarantee. The Department may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Upon assignment, the Department will pay to such holder for a loss on any single loan an amount equal to the pro rata portion of the amount guaranteed (as determined in accordance with Section 9 of this guide). The Department will be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Department.

(2) Requirements. Before any payment under a guarantee is made under paragraph

(1) of this section, the holder of the certificate shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note of judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States.

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

Section 14. Certification of Compliance With Tribal Laws, and Enforcement

(a) Certification. Each lender and borrower must certify to acknowledge and agree to comply with all applicable tribal laws. An Indian tribe with jurisdiction over the dwelling unit does not have to be notified of individual section 184 loans unless required by applicable tribal law.

(b) Enforcement. Failure of the lender to comply with applicable tribal law is considered to be a practice detrimental to the interest of the borrower and may be subject to enforcement action(s) under section 184(g) of the statute.

[FR Doc. 98-24415 Filed 9-10-98; 8:45 am]

BILLING CODE 4210-32-P