

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 50 and 1005

[Docket No. FR-4241-F-02]

RIN 2577-AB78

### Loan Guarantees for Indian Housing; Direct Guarantee Processing

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule for the Loan Guarantees for Indian Housing Program makes permanent a new direct guarantee procedure that is modeled on the FHA single family mortgage insurance direct endorsement procedure. Under this procedure, HUD staff are not involved in the processing or approval of individual loans before closing. The rule also reflects statutory changes to the program concerning environmental review requirements and the geographical area in which loan guarantees may be made.

**EFFECTIVE DATE:** May 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Paul Jurkowski, Director, Office of Loan Guarantee, 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:

#### Interim Rule and Public Comments

HUD issued an interim rule on September 11, 1998 (63 FR 48987) amending the rule for its Section 184 Loan Guarantees for Indian Housing Program (24 CFR part 1005) to include a "Direct Guarantee" procedure as an alternative to regular HUD loan processing. The Direct Guarantee procedure dispenses with commitments and pre-loan closing underwriting review by HUD, with HUD review occurring after loan closing but before guarantee of the loan. A few other technical changes or corrections to part 1005 were made through the interim rule. As an Appendix to the interim rule, the Department also updated its "Guide to Loan Guarantees for Indian Housing" that was published with the final version of 24 CFR part 955 (now 24 CFR 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

was not intended to be included in the Code of Federal Regulations.

The interim rule also amended HUD's environmental rules at 24 CFR 50.19(b)(17) 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 Direct Endorsement and Lender Insurance programs for single family mortgages. In a related change, existing § 1005.105(e) ("Environmental compliance") was revised to reflect the new Direct Guarantee procedure and to state 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.

HUD received one public comment on the interim rule. The commenter supported the rule but urged that a borrower be informed at the time of loan processing of any negative conditions that would exist at the time of foreclosure for a Direct Guarantee that do not exist under current loan processing procedures. The Department is not aware of any negative effects of the Direct Guarantee alternative. Accordingly, no changes have been made to the interim rule on the basis of public comments.

#### Intervening Statutory Changes and Conforming Changes in Final Rule

After the interim rule was published, section 595(e)(13) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, added a new section 184(k) to the Housing and Community Development Act of 1992. New subsection (k) provides that for purposes of environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (NEPA) and any other law that furthers the purposes of that Act, a Section 184 loan guarantee shall be (1) treated as a grant under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), and (2) subject to regulations issued to carry out section 105 of NAHASDA. Section 105 permits the Secretary "in lieu of the environmental protection procedures otherwise applicable" to provide by regulation for the release of grant amounts for particular projects to tribes which assume all of the responsibilities for environmental

review, decisionmaking, and action under NEPA and related laws that would apply if the Secretary were to undertake such projects as federal projects. The implementing regulations for section 105 appear at 24 CFR 1000.18 through 1008.24 and 24 CFR part 58. Section 1000.20 makes it clear that a tribe may choose whether to assume environmental review responsibilities or to have HUD perform them in accordance with 24 CFR part 50.

Section 1005.105(e) of the interim rule only anticipated environmental review under part 50. It is amended in this final rule to recognize the tribal right to choose to assume environmental responsibilities in accordance with 24 CFR part 58. In a separate rulemaking procedure, HUD is developing changes to 24 CFR part 58 to clarify that part's applicability when a tribe assumes environmental review responsibilities for NAHASDA assistance or the Indian Housing Loan Guarantee program. A tribe may assume environmental review responsibilities for NAHASDA without doing so for Section 184 loan guarantees, and vice-versa.

When the home involves proposed or new construction, this final rule requires a Builder's Certification procedure comparable to the FHA Builder's Certification procedure under 24 CFR 203.12(b)(2) (designated prior to November 15, 1999 as § 203.12(c)(2)). The term "comparable" is used instead of the less clear "similar" that was used in the interim rule.

Section 595(e)(11) of Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, also removed from Section 184 the language that restricted Section 184 assistance to an area covered by an Indian Housing Plan under NAHASDA. The corresponding language in § 1005.101 and in the Appendix to part 1005 is therefore removed by this final rule.

This final rule also corrects a cross-referencing error in the first sentence of § 1005.107(b)(5)(ii), and amends that provision to reflect current HUD procedures regarding appeal of any HUD decision to cease issuing guarantees due to tribal failure to enforce eviction procedures. Finally, section 4(c) of the Appendix is changed to conform to HUD's rule on lead-based paint that was published on September 15, 1999 (64 FR 50140) and amended the safety and quality standards in § 1005.111 to reference new lead-based paint requirements.

For clarity, HUD is publishing the entire updated Appendix to part 1005 that sets forth the statutory and

regulatory requirements and additional guidance. The Appendix is not included in the Code of Federal Regulations.

### Findings and Certifications

#### *Executive Order 12866*

This final 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 final 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 final rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule merely authorizes an alternative procedure for obtaining HUD guarantee for an Indian Housing loan. The rule has no disproportionate economic impact on small businesses.

#### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment (FONSI) was made for the interim rule 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. That FONSI has been updated to reflect a statutory change that permits tribal assumption of environmental review responsibilities for the Section 184 program. The original FONSI and update are 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, SW., Washington, DC 20410-0500.

#### *Executive Order 13132, Federalism*

This final rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### *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 assessment, Environmental impact statement, Environmental protection, Environmental quality, Environmental review policy and procedures.

#### *24 CFR Part 1005*

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

Accordingly, the interim rule amending 24 CFR parts 50 and 1005 which was published on September 11, 1998, is adopted as a final rule with the following changes:

### PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

1. The authority citation for part 1005 is revised to read as follows:

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

2. 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 the 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. This part provides requirements that are in addition to those in section 184.

3. Section 1005.105 is amended by revising paragraph (e) to read as follows:

#### **§ 1005.105 What are eligible loans?**

\* \* \* \* \*

(e) *Environmental compliance.* (1) Section 1000.20 of this chapter applies

to an environmental review in connection with a loan guarantee under this part. That section permits an Indian 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, HUD must:

(i) Comply with environmental review procedures to the extent applicable under part 50 of this title, in accordance with § 1000.20(a) and (c); or

(ii) Approve a Request for Release of Funds and certification from an Indian tribe, in accordance with part 58 of this title, if the Indian tribe has assumed environmental review responsibility.

(3) If the loan involves proposed or new construction, HUD will require compliance with procedures comparable to those required by § 203.12(b)(2) of this title for FHA mortgage insurance.

\* \* \* \* \*

4. Section 1005.107 is amended by revising the first two sentences of paragraph (b)(5)(ii) to read as follows:

#### **§ 1005.107 What is eligible collateral?**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) *Review.* If the Department ceases issuing guarantees in accordance with paragraph (b)(5)(i) of this section, HUD will 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 Director, Office of Loan Guarantee (OLG), Office of Native American Programs (ONAP). Within 30 days after notification of an adverse decision by the OLG Director, the tribe may file a written request for review with the Deputy Assistant Secretary for ONAP.

\* \* \*

Dated: April 10, 2002.

**Mel Martinez,**  
*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 assignment

Section 12. Disqualification of lenders and civil money penalties  
 Section 13. Payment under guarantee  
 Section 14. 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 (Pub. L. 102-550, approved October 28, 1992, as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (Pub. 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 guarantee 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 (TDHE), 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:*

(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.

*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 part 1005;

(2) An Indian Housing Authority; or

(3) An Indian tribe.

(c) Terms of loan. The loan must:

(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 or the mortgagor's creditors as provided in the building loan agreement; and

(4) The mortgage must 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. Section 1000.20 of the regulations under the Native American Housing Assistance and Self-Determination Act of 1996 (24 CFR 1000.20), which permits a Tribe to choose to assume Federal environmental review responsibility, applies to an environmental review in connection with a loan guarantee under the Section 184 program. Before HUD issues a

loan guarantee under the program, and before it issues any commitment, HUD must:

(1) Comply with environmental review procedures to the extent applicable under 24 CFR part 50, in accordance with § 1000.20(a) and (c); or

(2) Approve a Request for Release of Funds and certification from the tribe in accordance with 24 CFR part 58, when the tribe has assumed environmental responsibility.

(3) If the loan involves proposed or new construction, HUD will require a Builder Certification under procedures comparable to those required by 24 CFR 203.12(b)(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 or Alaska Native area.

(b) Safety and quality standards. Loans guaranteed under Section 184 may 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.

(c) Lead-based paint. The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856) and implementing regulations at 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to the Section 184 program.

#### Section 5. Eligible Lenders

(a) Required approval. The loan may be made only by a lender meeting qualifications established in this guide, 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 are not eligible for guarantees under part 1005. The following lenders are approved under this guide:

(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) of this guide. 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.

(5) To process single close construction loans using the Direct Guarantee procedure, one of the lender's test cases must be a single close construction loan. If a lender is approved for Direct Guarantee processing without submitting an acceptable single close construction test case, the lender must submit a single close construction test case in full compliance with Section 184 program requirements and receive a Section 184 firm commitment for the test case, before the lender will be approved for single close construction processing using the Direct Guarantee procedure.

(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. Collateral 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 preceding sentence, HUD will 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 Director, Office of Loan Guarantee (OLG), Office of Native American Programs (ONAP). Within 30 days after notification of an adverse decision on the appeal by the OLG Director, the tribe may file a written request for review with the Deputy Assistant Secretary for 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 will 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) of this guide, 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. In cases involving the guarantee of a loan from which advances will be made during construction, before guaranteeing a loan HUD must either complete an environmental review to the extent required by 24 CFR part 50, or approve a Request for Release of Funds and certification submitted in accordance with 24 CFR part 58 by a tribe that has assumed the Federal environmental review responsibility for the loan guarantee in accordance with 24 CFR 1000.20.

(2) Use of procedure. A lender's use of the direct guarantee procedure is voluntary. Lenders 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 is conclusive evidence of the eligibility of the loan for guarantee under the provisions of Section 184 and the amount of such guarantee. Such evidence is 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 must 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 or on behalf of the borrower at closing.

#### Section 10. Liability Under Guarantee

The liability under a guarantee provided in accordance with Section 184 will 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 Assignment

Notwithstanding any other provision of law, any loan guaranteed under part 1005, 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 judgment, 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 part 1005, the holder of the guarantee certificate must 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 part 1005) 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 must 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 must 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 must exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt must be assigned to the United States and the holder will 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. 02-9511 Filed 4-18-02; 8:45 am]

**BILLING CODE 4210-33-P**