

CHAPTER V

SERVICING PERFORMING LOANS; CHANGE IN SERVICER AND HOLDER REPORTING REQUIREMENTS

This Chapter describes requirements related to servicing performing loans, including general servicing, borrower payment and insurance coverage administration, servicing fees and escrow, Annual Loan Guarantee fee and Loan Guarantee Certificate administration, and post-endorsement amendments to the Section 184 Guaranteed Loan. Additionally, this Chapter further describes reporting requirements related to transferring servicing rights and sale of Section 184 Guaranteed Loans.

When Chapter V states an action must or may be taken, the phrase “Holders and Servicers” shall mean either party must or may take the action; both parties must not be taking the action.

When Chapter V states an action is prohibited, the phrase “Holders and Servicers” shall mean neither party is permitted to take the action.

A. General Servicing Requirements

1. Servicing Roles and Responsibilities

a. Definitions

The following terms are defined in 24 CFR 1005.103:

Direct Guarantee Lender
Holder
Property
Section 184 Guaranteed Loan
Servicer

b. Standard

Holders are responsible for ensuring Section 184 Guaranteed Loans are serviced by a Servicer, and sub-Servicer where applicable, in accordance with all applicable Section 184 statutory, regulatory and administrative requirements, Tribal, federal, state and local laws.

Servicers and sub-Servicers must service Section 184 Guaranteed Loans in accordance with all applicable Section 184 requirements, Tribal, federal, state and local laws.

1 **i. Laws Applicable to Servicing**

2
3 Holders and Servicers must comply with all applicable Tribal, federal,
4 state and local requirements. Applicable federal laws include but are
5 not limited to Real Estate Settlement Procedures Act (RESPA) and the
6 Truth in Lending Act (TILA), Electronic Funds Transfer Act, Fair
7 Debt Collection Practices Act, and Internal Revenue Service reporting
8 requirements.

9 **ii. Section 184 Loan Terms; Compliance with More Restrictive and**
10 **Stringent Requirements**

11 Where Section 184 Guaranteed Loan terms required by the
12 Section 184 Program are more stringent or restrictive than those
13 provided for in applicable law, Holders and Servicers must
14 comply with the more stringent or restrictive terms required by
15 the Section 184 Program.

16 **iii. Nondiscrimination Policy**

17 Holders and Servicers must comply with all federal
18 antidiscrimination laws, including but not limited to:

- 19 • the Fair Housing Act, 42 U.S.C. §§ 3601–3619;
- 20 • the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681a–
21 1681x; and
- 22 • the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§
23 1691a–1691f.

24 Where Holders are Direct Guarantee Lenders and they are
25 underwriting the same or new borrower, as in the case of
26 refinance or assumption transaction, Holders must make all
27 determinations with respect to the adequacy of the Borrower’s
28 income in a uniform manner that does not discriminate because
29 of the race, color, religion, sex, age, national origin, familial
30 status, disability, marital status, receipt of public assistance,
31 because an applicant has in good faith exercised any right under
32 the Consumer Credit Protection Act, source of income of
33 Borrower, or location of the Property.

34 Further guidance on underwriting can be found in Chapter II.

35 **c. Responsibility for Servicing Actions; Transfer of Servicing Rights; Sale of**
36 **Section 184 Guaranteed Loans**

37 **i. Holders and Servicers**

38 Holders are responsible for all servicing actions, including the acts of
39 their Servicers and sub-Servicers.

1 Servicers are responsible for their actions in servicing Section 184
2 Guaranteed Loans, including actions taken on behalf or at the direction
3 of Holders. Servicers must maintain accurate, secure, and
4 confidential loan file records.

5 The costs associated with subservicing, if any, may not be
6 imposed on the Borrower or passed along to ONAP.

7 **ii. Responsibility During Transfers of Servicing Rights**

8 **a) Definitions**

9 The Transferor Servicer is the Servicer that transfers servicing
10 responsibilities.

11 The Transferee Servicer is the Servicer to which the servicing
12 responsibilities have been transferred to.

13 The Transfer Date is the date on which the Borrower's
14 Lender Payment is first due to the Transferee Servicing
15 Lender.

16 **b) Standard**

17 The Transferor Servicer remains responsible for the
18 servicing of a Section 184 Guaranteed Loan until the
19 Transfer Date. The Transferor Servicer must verify
20 that the change of legal rights to service has been
21 reported accurately.

22 On the Transfer Date, the Transferee Servicer assumes
23 responsibility for:

- 24 • all servicing actions, including ensuring resolution of
25 any servicing errors that were, and remain, the
26 responsibility of the Transferor Servicer;
- 27 • obtaining the complete Section 184 Guaranteed Loan
28 file, including origination and servicing records; and
- 29 • ensuring that the original Mortgages, mortgage Notes,
30 or deeds of trust are preserved.
- 31 • submitting monthly servicing reports to ONAP.

32 The Transferee Servicer must be a Section 184 approved
33 Servicer.
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1 **c) Required Documentation**

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3 When the transfer is for ten Section 184 Guaranteed Loans or
4 less, within 15 days of the Transfer Date, the Transferor
5 Servicer must execute form HUD-5XXX; Mortgage Record
6 Change, and submit the form to ONAP. The form must be
7 emailed to 184Servicing@hud.gov.

8
9 When the transfer is for eleven or more Section 184
10 Guaranteed Loans, within 30 days of the Transfer date, the
11 Transferor Servicer must provide a transmittal letter, shown as
12 Appendix NNN, and attach an appendix of the loans, shown as
13 Appendix NNN, to ONAP.

14
15 The transmittal letter and appendix must be emailed to
16 184Servicing@hud.gov.

17 **iii. Responsibility When Section 184 Guaranteed Loans are Sold**

18 **a) Definitions**

19 A Mortgage Sale is a transaction in which a Holder sells
20 the Section 184 Guaranteed Loan to another entity.

21 The Selling Holder is the Holder that sells the
22 Section 184 Guaranteed Loan and thereby
23 relinquishes all rights and obligations under the Loan
24 Guarantee Certificate related to the Section 184
25 Guaranteed Loan.

26 The Purchasing Holder is the Holder that purchases the
27 Section 184 Guaranteed Loan and thereby succeeds to
28 all rights and obligations of the Selling Holder.

29 **b) Standard**

30 The Selling Holder relinquishes all rights and
31 obligations under the loan guarantee effective on the
32 date of the sale. The Selling Holder remains responsible
33 for Annual Loan Guarantee fees, if any, until notice of the
34 sale is provided to ONAP.

35 On the effective date of the sale, the Purchasing Holder
36 becomes responsible for any outstanding Section 184
37 loan guarantee fees, unpaid property taxes, penalties,
38 assessments or other fees, regardless of the date of sale.

1 **c) Required Documentation**

2
3 When the Mortgage Sale is for ten Section 184 Guaranteed
4 Loans or less, within 15 days of the sale date, the Selling
5 Holder must execute form HUD-5XXX, Mortgage Record
6 Change, and submit the form to ONAP. The form must be
7 emailed to 184Servicing@hud.gov.

8
9 When the Mortgage Sale is for eleven or more Section 184
10 Guaranteed Loans, within 30 days of the Mortgage Record
11 Change, the Transferor Servicer must provide a transmittal
12 letter, shown as Appendix NNN, and attach an appendix of the
13 loans, shown as Appendix NNN, to ONAP.

14
15 The transmittal letter and appendix must be emailed to
16 184Servicing@hud.gov.

17 **2. Registration with Mortgage Electronic Registration System, Inc.**

18 **a. Definition**

19 The Mortgage Electronic Registration System (MERS) is an
20 electronic tracking system identified as nominee for a Holder.

21 **b. Standard**

22 Holders may voluntarily register Section 184 Guaranteed Loans with MERS.

23 **3. Providing Information to ONAP**

24 Holders and Servicers must respond to ONAP's written requests for Borrower
25 account information, including servicing information and related data. ONAP
26 requests may also include Borrower's complete origination file. All Section
27 184 Guaranteed Loan endorsement and servicing files are subject to audit by
28 ONAP.

29 Within five business days, or other time frame as may be stated in ONAP's
30 written request, Holders and Servicers must provide the Borrower's account
31 information, along with legible documents in the format prescribed (electronic
32 or hard copy) to ONAP.

33 **4. Communication with Borrowers and Authorized Third Parties**

34 **a. Definition**

35 Authorized Third Parties are parties who are not Borrowers on the Section 184
36 Loan but who are authorized to communicate with Holders and Servicers
37 regarding the Borrowers' Section 184 Guaranteed Loan.

1 **b. Standard**

2 Holders and Servicers must provide information and, upon request
3 from Borrowers, arrange for individual consultation with the Borrower
4 and/or the Authorized Third Party.

5
6 Holders and Servicers must comply with all Tribal, federal, state and local
7 laws, rules, and requirements applicable to third-party access to Holders' or
8 Servicers' information related to the Borrower's Section 184 Guaranteed
9 Loan.

10 **c. Required Documentation**

11 If communicating with an Authorized Third Party, the Holders
12 and Servicers must include documentation of the authorization
13 in the servicing binder:

- 14 • a copy of a signed authorization from the Borrower.
- 15
16 • a copy of a Power of Attorney, order of guardianship, or
17 other documentation authorizing that third party to act on
18 behalf of the Borrower; or
- 19
20 • other documentation showing Third Party's legal
21 authorization to access the Borrower's records.
- 22

23 **B. Borrower Payment and Insurance Coverage Administration**

24 **1. Borrower Payment Administration**

25 **a. Receipt of Payments**

26
27 **i. Definition**

28 A Trust Clearing Account refers to a fiduciary account (usually
29 a temporary one) containing Borrower funds that will be
30 transferred by the Holder or Servicer to another account before
31 the end of an accounting period.

32 **ii. Standard**

33 Holders and Servicers must use a Trust Clearing Account or
34 special custodial account to hold all payments on the Section
35 184 Guaranteed Loan.

36 If a Trust Clearing Account is not used, the Holders and
37 Servicers must immediately transfer payments into a special
38 custodial account.

1 **b. Application of Payments**

2 Holders and Servicers using special custodial accounts must withdraw
3 an amount equal to the principal, interest, and service charges within
4 30 Days after deposit and post to the Borrower's records accordingly.

5 Servicer shall comply with 24 CFR §§ 1005.509 and 1005.715 with
6 respect to the application of Borrower payments.

7 **c. Return of Partial Payments for Less than the Amount Due**

8 **i. Definition**

9 A Partial Payment is a payment of any amount less than the full
10 amount due under the Section 184 Guaranteed Loan at the time
11 the payment is tendered, including Late Charges and amounts
12 advanced by the Holder or Servicer on behalf of the Borrower.

13 **ii. Standard**

14 Return of Partial Payments shall be in compliance with 24 CFR
15 § 1005.723.
16

17 **iii. Required Documentation**

18 Holders and Servicers must maintain evidence in its servicing
19 file any Partial Payments received and, if applicable,
20 documentation on the date the payment was returned with a
21 letter of explanation.

22 **d. Application of Partial Prepayments**

23 **i. Definition**

24 A Partial Prepayment is a payment received that is less than the
25 full payment amount and is received prior to the date on which
26 the principal is due.

27 An Advance Full Monthly Payment is the payment of an
28 amount larger than the full monthly payment, equaling an
29 additional full monthly payment.

30 **ii. Standard**

31 Partial Payments shall be applied in accordance with 24 CFR
32 §1005.723.

1 **e. Application of Prepayments**

2 **i. Definitions**

3 A Partial Prepayment is a payment of part of the principal
4 amount received by Holder or Servicer before the date on
5 which the principal is due.

6 A Prepayment in Full, or Payoff, is the payment in whole of the
7 principal amount of the mortgage Note in advance of expiration
8 of the term of the mortgage Note.

9 The Installment Due Date is the first Day of the month, as provided for
10 in the security instrument.

11 **ii. Standard**

12 Holders and Servicers must accept a prepayment of a Section 184
13 Guaranteed Loan, in whole or in part, without penalty to the Borrower.

14 **iii. Prepayment Procedures**

15 The Holders and Servicer must accept a prepayment on a
16 Section 184 Guaranteed Loan, at any time and in any amount.
17 Holders and Servicers must calculate the interest as of the date
18 the prepayment is received, not as of the next Installment Due
19 Date.

20 **a) Payoff Disclosure Requirements**

21 When notified of the Borrower's intent to prepay, the
22 Holder or Servicer must send the Payoff Procedure
23 Disclosure and copy of the payoff statement directly to
24 the Borrower, even when Holders or Servicers are
25 dealing with an Authorized Third Party.

26 The Holders and Servicers shall forfeit any interest
27 collected after the date of prepayment if the disclosure
28 requirements are not met.

29 **b) Trustee's Fee for Satisfactions**

30 If specifically provided for in the security instrument,
31 the Holder and Servicer may charge the Borrower the
32 amount of the trustee's fee, plus any reasonable and
33 customary fee for payment, or for the execution of a
34 satisfaction, release or trustee's deed when the debt is
35 paid in full.

1 **c) Recording Fees for Satisfaction**

2 Holders and Servicers may charge the Borrower a reasonable
3 and customary fee for recording satisfactions in states where
4 recordation is not the responsibility of the Holder or Servicer.
5

6 **2. Insurance Coverage Administration**

7
8 **a. Hazard Insurance**

9 Holders and Servicers must:

- 10 • allow Borrowers to choose their own hazard insurance company;
11
12 • be named as a “Loss Payee” on the hazard insurance policy; and
13
14 • escrow sufficient funds for the payment of renewal premium.

15 **i. Payment of Renewal Premium**

16 Holders and Servicers must escrow for premium payments and
17 pay renewal premiums by:

- 18 • remitting the renewal premium from available escrow funds; or
19
20 • where insufficient escrow funds exist, advancing
21 corporate funds for the payment of the renewal
22 premium.

23 Holders and Servicers must not insist on more coverage than
24 is necessary to protect its investment. Holder and Servicers
25 must escrow renewal premiums for the entire amount if the
26 Borrower chooses to insure the Property for more than the
27 minimum amount.

28 **b. Flood Insurance**

29 **i. Standard**

30 Holders and Servicers must review all Properties annually to
31 determine if the Property is located within a Special Flood
32 Hazard Area (SFHA).

33 For Properties located within an SFHA that are required to carry Flood
34 Insurance, Holders and Servicers must:

- 35 • ensure that Flood Insurance is in force for the life of the Section
36 184 Loan;
37
38

- review annually that the Property carries sufficient Flood Insurance; and
- notify ONAP to any new change to Flood Zone or updated Flood Maps issued. Notification may be sent by email to 184Servicing@hud.gov.

ii. Required Documentation

Holders and Servicers must include updated Flood Insurance information for Properties where Flood Insurance is required in the Servicing and Claims File.

c. Hazard or Flood Insurance Proceeds

i. Insurance Claims

Holders and Servicers must take necessary steps to ensure that hazard or flood insurance claims are filed and settled as expeditiously as possible.

ii. Loss Settlement Amounts for Borrower Expenses and Personal Property

Holders and Servicers must promptly release to the Borrower all insurance settlement proceeds received for coverage of Borrower's Personal Property, temporary housing, and other transition expenses. Holders and Servicers may not withhold Disbursement of such proceeds to cover an existing arrearage without the written consent of the Borrower.

iii. Insurance Proceeds for Home Damage

a) Definition

A Viable Repair Plan is a plan for repairs of a mortgaged Property within the amounts available through insurance proceeds and borrower funds.

b) Standard

Holders and Servicers must expedite the release of insurance proceeds for needed home repairs after approving a Viable Repair Plan.

iv. Application of Insurance Proceeds to Unpaid Principal Balance

Holders and Servicers may only apply insurance proceeds payable for home damages to arrearages and/or reduction of the

unpaid principal balance if:

- a) the amount of the proceeds exceeds the costs to repair the damage to the home; or
- b) The insurance proceeds are insufficient to repair the home damages based on a certified repair estimate, and the Borrower is unable to demonstrate that they have additional funds from other sources to complete the repairs.

v. Optional Policies

a) Personal Property and Personal Liability Insurance

Holders and Servicers may allow the Borrower to add Personal Property and personal liability insurance premiums to their monthly payments.

b) Life or Disability or Optional Coverage Income Policies

Holders and Servicers must clearly separate the collection of unpaid optional coverage premiums from the collection of any unpaid Section 184 Loan payment. If the payment does not include all or a part of an optional coverage premium, Holders and Servicers may not treat the failure to pay as a failure to pay a part of the Section 184 Loan Payment.

C. Servicing Fees and Escrows

1. Servicing Fees and Charges

a. Definition

Allowable Fees and Charges are those costs associated with the servicing by the Servicer that are permitted to be charged to the Borrower.

Prohibited Fees and Charges are those costs associated with the services provided by the Servicer that must not be charged to the Borrower.

b. Standard

ii. Reasonable and Customary Fees and Charges

Holders and Servicers may collect certain fees and charges from the Borrower. All fees must be:

- reasonable and customary for the local jurisdiction;
- based on actual cost of the work performed or actual out-of-pocket expenses and not a percentage of either the origination loan amount or the unpaid principal balance of the Section 184 Guaranteed Loan; and
- up to the amount listed in Appendix NNN.

ii. Prohibited Fees and Charges

Holder and Servicers must not charge the Borrower for the following services:

- costs of telephone calls, personal visits with the Borrower, certified mail, or other activities that are normally considered a part of a prudent Lender's servicing activity;
- preparing and providing evidence of Payoff, Reconveyance, or termination of the Holder or Servicer;
- providing information essential to the Payoff;
- recording the Payoff of the Section 184 Loan in states where recordation is the responsibility of the Holder or Servicer;
- fees for services performed by attorneys or trustees who are salaried members of the Holder or Servicer's staff; or
- Holder or Servicer's use of an independent contractor such as a tax service to furnish tax data and information necessary to pay property taxes or make the payments on behalf of the Holder or Servicer.

c. Required Documentation

Holders and Servicers must include in the servicing file documentation of the amount of any fees and charges paid or payable by the Borrower and documentation supporting the actual cost of any work performed or out-of-pocket expenses.

2. Escrow Account

a. Definition

An Escrow Account is funds from the Borrower, collected by Holders or Servicers, for the payment of taxes, insurance, and other costs

required by the Section 184 Program.

b. Escrowing of Funds

i. Standard

The Holder and Servicer must segregate escrow funds, including those funds escrowed at closing, and deposit the funds in a special custodial account characterized by the following:

- with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration;
- that does not limit the Holder or Servicer's access to funds, require an advance notice of withdrawal, or require the payment of a withdrawal penalty;
- that clearly identifies the type of funds being held in that account; and
- the Lender may maintain a "cushion" that may not be increased beyond what is acceptable under RESPA regulations.

Holders and Servicers utilizing a Trust Clearing Account must withdraw the portion that is to be applied to escrows within 48 hours of the deposit and must transfer the portion to the escrow account for the Borrower's Section 184 Guaranteed Loan.

Holders and Servicers are not prohibited from holding escrow funds for all types of Mortgages in a single bank account; however, Holders and Servicers must not commingle escrow funds, even temporarily, with funds used for the Holders or Servicers' general operating purposes.

ii. Interest in Escrows

ONAP neither forbids nor requires that escrow accounts earn interest.

However, if escrow funds are invested, Holders and Servicers must pass on to the Borrower the net income derived from the investment in accordance with the following:

- Holders and Servicers must make investments and payments in compliance with Tribal, federal, and state requirements governing the handling and payment of interest earned on a

Borrower's escrow account.

- Holders and Servicers may only deduct the actual cost of administering the interest-bearing account before passing on to the Borrower the net earnings from the investment of their funds.
- Holders and Servicers may not charge the Borrower expenses for maintaining the interest-bearing escrow account in an amount exceeding the gross interest earned from investing the funds in that account.

iii. Items to be Escrowed

Holders and Servicers must require that the Borrower's Section 184 Guaranteed Loan payment includes escrow funds. The following charges and escrow payments, when applicable, are required:

- Ground rents, if any, when the Tribe or TDHE does not have an existing withholding or payment policy in place
- Annual Loan Guarantee Fee
- Estimated amount of all taxes
- Special assessments
- Flood insurance
- Fire and other hazard insurance, except master policy premiums payable to a condominium association or a Tribe and paid directly by the Borrower

iv. Escrow Prohibitions

The Borrower shall not be required to escrow nor pay in full premiums for fire or other hazard insurance which protects only the interests of the Holder or Servicer, or for life or disability income insurance, or fees charged for obtaining information necessary for the payment of property taxes.

The foregoing does not apply to charges made or penalties exacted by the taxing authority, except that a penalty assessed, or interest charged, by a taxing authority for failure to timely pay taxes or assessments shall not be charged by the Direct Guarantee Lender to the Borrower if the Direct Guarantee Lender had sufficient funds in escrow for the account of the Borrower to pay such taxes or assessments prior to the date on which penalty or interest charges are imposed.

1 **v. Required Documentation**

2
3 Holders and Servicers must retain documentation of its holding of all
4 escrow funds on deposit.

5 **c. Escrow Analysis**

6
7 Holders and Servicers must perform analysis, at least annually, of the escrow
8 account to provide for adequate collections to pay escrow bills when due
9 without creating excessive surpluses. Holders and Servicers must begin these
10 analyses no later than the end of the second year of the life of the Section 184
11 Guaranteed Loan.

12
13 Holders and Servicers must retain any escrow surplus discovered when
14 performing the annual escrow account analysis for a Delinquent Section 184
15 Loan pursuant to the terms of the mortgage documents and Tribal, federal law
16 and regulation, including RESPA.

17 **d. Processing Payments from Escrow Accounts**

18 **i. Escrow Account Payments**

19 When making payments from escrow accounts, Holders and Servicers
20 must:

- 21 **a)** request a bill from the billing agency or a tax
22 monitoring service indicating the property tax
23 amount owed, if a bill has not been received within
24 a reasonable amount of time before the payment due
25 date;
- 26
27 **b)** contact the Borrower, if necessary, to obtain the bill or
28 the information needed to pay such bills if a bill is not
29 received within a reasonable amount of time before the
30 known payment due date;
- 31
32 **c)** send payment directly to the billing agency or the
33 taxing authority, as bills become payable, or as
34 otherwise directed by state or local law; and
- 35
36 **d)** make timely payments, even if making the payment
37 requires advancing corporate funds when the escrow
38 deposits are inadequate to meet these obligations.

39 Holders and Servicers may contract with a tax service
40 organization to manage the payment of taxes.

1 **ii. Timeliness of Payments from Escrow Accounts**

2 **a) Standard**

3 Holders and Servicers must ensure that all Disbursements
4 are made as bills become payable.

5 If Holders and Servicers fail to timely disburse escrow
6 proceeds, Holders and Servicers are prohibited from
7 passing on to the Borrower any penalties resulting from
8 the late payments unless:

- 9 • the late payment was the result of the Borrower's error
- 10 or omission; and
- 11 • the Holder or Servicer attempted to obtain
- 12 the billing information from the Borrower,
- 13 billing agency, or the taxing authority in
- 14 sufficient time to enable it to timely make
- 15 the Disbursement.

16 **b) Required Documentation**

17 Holders and Servicers must document in their servicing
18 file their efforts to obtain the billing information from
19 the Borrower, billing agency, the taxing authority, or a
20 tax monitoring service indicating the property taxes
21 status.
22

23 **iii. Payment of Insurance Premiums**

24 **a) Long-Term Policies**

25 **(1) Definition**

26 Long-term Policies refer to those insurance
27 policies with terms of greater than one year.
28

29 **(2) Standard**

30 Holders and Servicers may not reject a long-term policy
31 if the carrier and amount are otherwise acceptable to the
32 Holder.
33

34 **(3) Collecting Funds for Renewal Premiums**

35 Holders and Servicers may collect funds for renewal
36 premiums on long-term policies in the following ways:

- 37 • For renewal with the same policy
- 38 term: the Holders and Servicers may
- 39
- 40

1 immediately begin collecting a
2 monthly amount calculated to make
3 funds available 30 Days before the
4 policy expires; or

- 5 • For renewal with a one-year term:
6 Holders and Servicers may defer
7 collection of monthly escrows until 13
8 months before the expiration date of the
9 policy then begin monthly collection of
10 1/12th of the renewal premium for a
11 policy providing similar coverage.
12

13 Holders and Servicers may require a Borrower
14 wishing to renew for a longer term to make a
15 lump sum deposit to escrow for the additional
16 amount required to pay the renewal premium
17 with the Holders or Servicers 30 Days before
18 the expiration date of the present policy. If the
19 additional deposit is not made, the Holders and
20 Servicers may renew the policy for one year and
21 continue to escrow as for a one-year policy.
22

23 **b) Optional Policies**

24 **(1) Standard**

26 Holders and Servicers may advance corporate
27 funds when the escrow deposits are inadequate
28 to meet obligations for payment of premiums
29 for optional insurance coverage, but Holders
30 and Servicers must not charge against the
31 escrow account any funds for these advances.

32 **(i) Personal Property and Personal Liability** 33 **Insurance**

34 Holders and Servicers must only
35 escrow for the payment of Personal
36 Property and personal liability
37 insurance coverage premiums if:

- 38 • the Borrower has obtained
39 Personal Property and personal
40 liability insurance coverage not
41 directly related to the mortgaged
42 Property; and
43
44

- the premiums are combined with Hazard Insurance in one insurance premium payment.

(ii) Life Insurance and Disability Insurance

Holders and Servicers may not deposit premiums for life or disability insurance coverage in the same bank accounts as other escrow payments.

Holders and Servicers must maintain separate records for these life or disability insurance coverage payments.

The Section 184 Program does not require Holders nor Servicers to itemize the Borrower's monthly contribution for life or disability coverage on payment coupons.

(2) Required Documentation

Holders and Servicers must note on the initial and annual escrow statements any Borrower's discretionary payment made as part of a monthly loan Borrower Payment for optional policies.

iv. Insurance Protecting Only the Holder

Holders and Servicers must not charge the Borrower any part of the cost of insurance coverage that does not benefit the Borrower.

e. Use of Escrow Funds

Holders and Servicers must only use escrow funds for the purpose for which they were collected.

Holders and Servicers must never deduct amounts from a Borrower's escrow account to pay the following:

- penalties for late payments not directly resulting from the Borrower's error or omission.
- attorney's fees incurred in foreclosure actions that are not completed.

1 iii. inspection fees.

2
3
4 **D. Annual Loan Guarantee Fee and Loan Guarantee Certificate Administration**

5
6 **1. Annual Loan Guarantee Fee**

7 **a. Definition**

8 The following terms are defined in 24 CFR 1005.103.

9 Amortization Schedule

10 Annual Loan Guarantee (LG) Fee

11 **b. Standard**

12 For all loans that closed prior to July 1, 2023, the Annual LG Fee was
13 0.25 percent. Therefore, sections D.1 and D.2 of this chapter applies.

14 For loans that closed on or after July 1, 2023, the Annual LG Fee is
15 0.00 percent. Therefore, these loans have no Annual LG Fee and
16 sections D.1 and D.2 of this chapter do not apply.

17 Any changes to the Annual LG Fee shall be published in the Federal
18 Register.

19 **c. Collection of Annual Loan Guarantee Fee**

20 Annual LG Fees are amortized monthly and due from the Borrower
21 beginning in the month which the Borrower is required to make the
22 first monthly loan payment.

23 **d. Remittance of Annual Loan Guarantee Fee; Refund on Overpayments**

24 Servicer shall remit the Annual LG Fee to HUD no later than the 15th day of
25 each month, beginning in the month which the Borrower is required to make
26 the first monthly loan payment.

27
28 Holders and Servicers must remit Annual LG Fees in accordance with
29 Annual LG Fees amount listed under the original amortization
30 schedule.

31 Holders and Servicers must remit one-twelfth of the Annual LG Fee
32 each month to ONAP.

33 Servicer must remit Annual LG Fee to ONAP without taking into
34 account Borrower's default, loss mitigation, prepayments, or
35 agreements to recast the loan.

For refinances, Holders and Servicers must remit Annual LG Fees through the month in which that Section 184 Guaranteed Loan is paid in full.

Remittance instructions are provided in Appendix NNN.
The Servicer shall refund any overpayment of Annual Loan Guarantee Fee collected from the Borrower within 30 days of the overpayment.

e. Annual Loan Guarantee Fee Reports

[Reserved.]

2. Annual Loan Guarantee Fee Cancellation

Holders and Servicers must cancel the Annual LG Fee under the conditions set forth below. The Loan-to-Value (LTV) ratio is based on the initial Amortization Schedule at loan closing, excluding the financing of the Upfront Loan Guarantee Fee, if any.

The Loan Guarantee Certificate remains in force for the Section 184 Guaranteed Loan, unless otherwise terminated under Section D.3.
Because the LTV is based on the principal balance as evidenced by the amortization schedule at loan closing, a new appraisal is not required.

a. Conditions of Annual Loan Guarantee Fee Cancellation

i. 78 percent Loan-To-Value; Annual Disclosure

- a)** The cancellation of the Annual LG Fee is based on the initial Amortization Schedule at loan origination. Holders and Servicers must cancel the Annual LG Fee when the LTV ratio reaches 78 percent in accordance with the Amortization Schedule at loan closing.

As part of annual disclosures to Borrowers, Holders and Servicers must notify Borrowers that the Annual Loan Guarantee Fee shall terminate when LTV ratio reaches 78 percent LTV and the date the Annual Loan Guarantee Fee shall terminate.

ii. Section 184 Guaranteed Loan is Paid in Full

On the date the Section 184 Guaranteed Loan is paid in full, Holders and Servicers must cancel the Annual Loan Guarantee Fee effective the following month after the Section 184 Guaranteed Loan is paid in full.

1 **iii. Foreclosure Completes**

2 On the date the title/property interest transferred to Third-Party
3 or Holder due to completion of foreclosure, Servicer must
4 cancel the Annual Loan Guarantee fee effective the following
5 month after the title/property interest transfer to Third-Party or
6 Holder.

7 **iv. Third-Party Transfer; Lease-in-Lieu; Deed-in-Lieu**

8 On the date the executed Lease-in-Lieu/Deed-in-Lieu is
9 received by the Servicer or there is a transfer of the property
10 interest to a Third-Party, Servicer must cancel the Annual Loan
11 Guarantee fee effective the following month after the
12 title/property interest transferred to Holder or Third-Party.

13 **v. Assignment Claim**

14 On the date the Assignment Claim is submitted to ONAP, the
15 Servicer must cancel the Annual Loan Guarantee fee effective
16 the following month after the title/property interest is
17 transferred to Holder or Third-Party.

18 **b. Processing Annual Loan Guarantee Fee Cancellation**

19 Holders and Servicers must factor in the amount of time it needs to
20 process the Annual LG Fee Cancellations so that the Annual LG
21 Fee cancellation occurs in the month it must be cancelled.

22 **c. Failure of Servicer to Cease Collecting Annual Loan**
23 **Guarantee Fee**

24 Within 30 days of overpayment of Annual Loan Guarantee Fee by
25 Borrower, Servicer must refund any overpayments to Borrower.

26 **3. Loan Guarantee Certificate Termination**

27 **a. Definition**

28 Loan Guarantee Certificate (LGC) is defined in 24 CFRF 1005.103.

29 **b. Standard**

30 LGC Termination is the ending of guarantee of the Section 184
31 Guaranteed Loan.

32 Upon presentment of the LGC as part of Holder's or Servicer's claim
33 submission to ONAP, Holders and Servicers shall enjoy rights to the
34 loan guarantee under the Section 184 Program, when ONAP determines
35
36
37

1 the claim, in whole or in part, satisfies all applicable Section 184
2 statutory, regulatory and administrative requirements.

3
4 ONAP shall terminate the LGC when any one of the following occurs:

- 5
6 i. the Section 184 Loan reaches maturity; or
7 ii. the Section 184 Loan is prepaid in full in advance of the maturity date;
8 iii. when Holders, Servicers or a third-party acquires the Property, and Holder
9 or Servicer does not intend on filing any claim to ONAP;
10 iv. when ONAP pays a claim for amounts, in whole or in part, under 24 CFR
11 1005.807.

12 Where a condition under i., ii. or iii. occur, Holders and Servicers must
13 report the event to ONAP within 15 Days of the event.

14 Payment of a Loss Mitigation Advance claim to Holder alone does not
15 extinguish the LGC.

16 **c. Effective Date of Termination**

17 **i. Standard**

18 The Loan Guarantee Certificate termination date occurs when
19 any one of the following takes affect:

- 20 a) the date the Section 184 Guaranteed Loan was prepaid in full;
21 b) the date the Section 184 Guaranteed Loan matured;
22 c) the date the Holder or Servicer notifies ONAP that a
23 claim will not be filed subsequent to completion of
24 foreclosure or acquisition of the Property by Holder,
25 Servicer or any third-party.
26 d) the date ONAP pays a claim for amounts, in whole or
27 in part, under 24 CFR 1005.807(a)-(b).

28 **ii. Required Documentation**

29 Where any of the above actions occur, Holders and Servicers
30 must note in the servicing file the date of those actions, the
31 action that occurred and supporting documentation.

32 **d. Escrow Balance To Be Returned to Borrower**

33 Upon the termination of the LGC due to Section 184 Guaranteed Loan
34 being paid in full, Holders and Servicers must release funds held in
35 escrow, if any, in accordance with Tribal, federal and state
36 requirements.

E. Post-endorsement Amendments to Section 184 Guaranteed Loan

1. Modifying a Performing Section 184 Loan

a. Definition

A Post-endorsement Amendment is a change to the Section 184 Loan instruments, the nature of the obligation, or the security after the loan received a Loan Guarantee Certificate.

b. Modification Requiring ONAP Approval

Holders and Servicers Lender must receive written ONAP approval prior to completing a Post-endorsement Amendment of a performing Section 184 Loan.

c. Request to ONAP

Holders and Servicers must submit a request with supporting documentation to ONAP by emailing 184Servicing@hud.gov.

Holders and Services must submit the request no later than 15 days prior to the date of the proposed Post-endorsement Amendment.

d. Required Documentation

When modifying a performing Section 184 Guaranteed Loan, the Holders and Servicers must retain the following in their servicing files:

- i.** a mortgage modification document, in the form of:
 - a)** an amended original Note, with all changes initialed by all parties; or
 - b)** a modification agreement executed by all parties;
- ii.** documentation evidencing that criteria for modifying the mortgage with or without ONAP approval, as appropriate, were met;
- iii.** documentation showing calculations of the modified principal amount and the new monthly payment amount; and
- iv.** proof that any unpaid escrow added to the new principal amount was credited to the Borrower's escrow account.

2. Partial Releases, Easements, or Modification of Security

a. Definition

Partial Release or Modification of Security is the conveyance, assignment, transfer, pledge, or encumbrance of any part of the mortgaged Property or any interest in the mortgaged Property.

The partial release or modification of security may be a:

- i.** partial release;
- ii.** condemnation;
- iii.** order of taking;
- iv.** subordination or consent to Easement;
- v.** lot line dispute/adjustment/land exchange;
- vi.** subdivision consent;
- vii.** aviation easement; or
- viii.** consent to change in covenants and restrictions.

b. Request Process

Holders and Servicers must obtain ONAP approval for any partial release or modification of security, that is not a result of the Loss Mitigation Program.

Holders and Servicers must send the following to ONAP:

- i.** a request containing the following information:
 - a)** whether or not the Section 184 loan is in good standing;
 - b)** the amount of the outstanding principal balance;
 - c)** the due date of the last unpaid installment;
 - d)** if the loan is Delinquent, the number of Delinquent payments;
 - e)** a list of unpaid special assessments, if any, and the total amount payable;
 - f)** a complete legal description of the Property to be released or modified;
 - g)** the Borrower's reasons for requesting that the Lender make the partial release or modification of security, including how the land to be released or modified will be used;
 - h)** the monetary consideration, if any, to be received by the Borrower;
 - i)** the amount of a prepayment, if any, to the principal;
 - j)** any restrictions to be imposed on the land to be released or modified; and
 - k)** the case number of the Section 184 Loan;

- ii. a survey of the Property showing:
 - a) the dimensions of the portion to be released or modified;
 - b) the location of existing and proposed improvements; and
 - c) the relation of the Property to surrounding properties;
- iii. plans and specifications, including Cost Estimates of any alterations proposed for the remaining Property after the release or modification; and
- iv. a valid appraisal that reflects:
 - a) the value before the partial release or modification of security; and
 - b) the value of the remaining Property after the partial release or modification of security.

c. ONAP Review

ONAP will review the request for the partial release or modification of security and notify the Holders or Servicers of the approval or rejection in writing.

d. Required Documentation

Holders and Servicers must retain a copy of ONAP's approval or rejection in the servicing file.

e. Fees

Holders and Servicers may charge the Borrower reasonable and customary fees, up to the amounts listed in Appendix NNN, involved in processing Partial Releases, Easements, or Modification of Security, that is not a result of the Loss Mitigation Program.

F. Disclosures and Record Retention

1. Disclosures

a. Statement of Escrow Account

At the Borrower's request, the Holders and Servicers must promptly furnish a statement of the escrow account in a clear and understandable form, with sufficient information to permit the Borrower to reconcile the account.

b. Payoff Disclosure

i. Definition

1 A Payoff Disclosure is a disclosure accompanying the payoff
2 statement.

3 Holders and Servicers must include a description of the
4 procedures for prepayment of the Section 184 Loan with
5 the payoff statement.

6 **ii. Standard**

7 When notified of the Borrower's intent to prepay a Section 184
8 Loan Holders and Servicers must send to the Borrower directly
9 the Payoff Disclosure and copy of the payoff statement.

10 **iii. Required Documentation**

11 Holders and Servicers must retain a copy of the Payoff Disclosure in
12 the servicing file.

13 **c. Annual Prepayment Disclosure Statements**

14 **i. Definition**

15 An Annual Prepayment Disclosure Statement is a statement of
16 the amount outstanding on the Section 184 Loan and the
17 requirements that the Borrower must fulfill upon prepayment
18 to prevent accrual of interest after the date of prepayment.

19 **ii. Standard**

20 Holders and Servicers must send the Borrower a written Annual
21 Prepayment Disclosure Statement on an annual basis.

22 **iii. Required Documentation**

23 Holders and Servicers must retain a copy of the Annual
24 Prepayment Disclosure Statement in the servicing file.

25 **d. Statement for Income Tax Purposes**

26 **i. Definition**

27 The Statement for Income Tax Purposes is an Internal
28 Revenue Service (IRS) Form 1098, *Mortgage Interest*
29 *Statement*, or equivalent that provides documentation of taxes
30 and interest paid by the Borrower during the preceding
31 calendar year.

1 **ii. Standard**

2 Holders or Servicers must provide the Borrower with a
3 Statement for Income Tax Purposes by January 30 of each year.

4 **iii. Required Documentation**

5 Holders or Servicers must retain a copy of each annual
6 Statement for Income Tax Purposes in the servicing file.

7 **2. Record Retention**

8
9 **a. Definition**

10
11 The Servicing File is the Holder and Servicer's record of all servicing activity
12 on the Section 184 Loan.

13
14 **b. Standard**

15
16 Holders and Servicers must retain all servicing files for a minimum of three
17 years beyond the date of the satisfaction or maturity date of the loan, whichever
18 is sooner.

19 However, where a claim is filed, Holders and Servicers must retain all
20 servicing documentation for at least five years after the last claim
21 related to the loan is paid or denied.

22
23 Holders and Servicers must maintain accurate records for each Section 184
24 Loan serviced.

25
26 In addition to the specific documentation requirements stated in this Section
27 184 Handbook, these records must include the following information:

- 28
29 **i.** Evidence of Upfront Loan Guarantee Fee payment, including date of
30 payment and amount;
31 **ii.** Evidence of all Annual Loan Guarantee Fee payments, where
32 applicable, including date of payment and amount;
33 **iii.** all servicing actions, including resolution of any servicing errors;
34 **iv.** documentation related to any recovery of hazard insurance proceeds;
35 and
36 **v.** Section 184 Guaranteed Loans in the Holder or Servicer's portfolio and
37 information which Section 184 Guaranteed Loans have been acquired,
38 sold and paid in full.

39 Holders and Servicers must also retain, in electronic and hard copy, the
40 Mortgage, Note, deed of trust, or a lost note affidavit acceptable under
41 state law, with the electronic copy marked "copy."

1 **c. Record Reconciliations**

2 ONAP may request Holders and Servicers to provide information
3 evidencing reconciliation of Holder and Servicer's records with ONAP.
4 This information may include identification, by Holder and Servicer, of
5 the following:

- 6 i. amounts of Annual Loan Guarantee Fee due and paid to ONAP and
7 date and evidence of payment to ONAP;
- 8 ii. date the Loan Guarantee Certificate was terminated, whether due to
9 Section 184 Loan being paid in full or payment of claim by ONAP
- 10 iii. date the Section 184 Loans were sold or acquired; and
- 11 iv. date servicing was transferred or acquired.

12 All Holders and Servicers must ensure that ONAP's records
13 accurately reflect the status of the Section 184 Loans, including
14 the correct Holder and Servicer of record.

15 **d. Electronic Storage**

16 Where retention of a hard copy or original document is not required,
17 Holders and Servicers may use electronic storage methods for all
18 servicing-related documents required in accordance with ONAP
19 regulations, handbooks, and notices.

20 Regardless, Holders and Servicers must be able to make available to
21 ONAP in the format (electronic or hard copy) requested legible
22 documents within five business days of request by ONAP, or any other
23 timeframe as may be stated by ONAP.
24