

Subpart C Underwriting, Closing and Endorsement

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ELIGIBLE BORROWERS

§ 1005.301 Eligible Borrowers

(a) Eligible borrowers include Indian family, or Indian tribe, tribally designated housing authority.

(b) In cases of an Indian family, at least one member of the Indian family must be:

(1) the borrower and;

(2) a member of a federally recognized tribe, a regional or village corporations as defined in the Alaska Native Claims Settlement Act, or one of the following five state tribes: Coharie Tribe (North Carolina); Haliwa-Saponi Tribe (North Carolina); Lumbee Tribe (North Carolina); Waccamaw Siouan Tribe (North Carolina); MOWA band of Choctaw (Alabama).

§ 1005.303 Principal residence.

(a) Borrowers who are an Indian family must occupy the dwelling as a principal residence. Borrowers who are an Indian housing authority or Indian tribe do not need to occupy the dwelling as a principal residence.

(b) *Non-occupant co-borrower.* A co-borrower who is not to occupy the dwelling as a principal resident is permitted.

1005.303 Borrower residency status.

(a) Eligible borrowers must be:

(1) a U.S. citizen;

(2) a lawful permanent resident alien; or.

(3) a non-permanent resident alien.

- (b) Documentation must be provided to lender to support lawful residency status.
- (c) Non-U.S. citizens without lawful residency in the U.S. are not eligible for the Section 184 program.

§ 1005.307 Relationship of income to mortgage payments.

(a) Adequacy of borrower's gross income. A borrower must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet (1) the periodic payments required by the mortgage submitted for insurance and (2) other long-term obligations.

(b) Determinations of adequacy of borrower income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, actual or perceived sexual orientation, gender identity, source of income of the borrower, or location of the property.

§ 1005.309 Credit standing.

A borrower must have a general credit standing satisfactory to HUD. There is no minimum credit score required to qualify for a Section 184 guaranteed loan. The lender must analyze the borrower's credit history and payment pattern to determine credit worthiness.

§ 1005.311 Disclosure and verification of Social Security and Employer Identification Numbers or Tax Identification Number.

A borrower, including co-borrowers, if any, must meet the requirements for the disclosure and verification of Social Security, Employer Identification Numbers or Tax Identification Numbers.

ELIGIBLE PROPERTIES

§ 1005.313 Nature of title to realty

A mortgage, to be eligible for guarantee, must be on real estate held in fee simple, or tribal trust, individual allotted trust or restricted fee simple under a lease acceptable to tribe, if applicable. An acceptable lease will have a term of not less than 50 years or other term with renewal provisions acceptable to HUD. An acceptable lease must have a remaining term which exceeds the term of the mortgage. Real estate held in tribal trust, individual allotted trust or restricted fee simple under a lease acceptable to tribe must meet the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) requirements, including BIA approvals if any.

§ 1005.315 Sale of property

- (a) Sale by owner of record.
 - (1) Owner of record requirement. To be eligible for a mortgage guaranteed by HUD, the property must be purchased from the owner of record and the transaction may not involve any sale or assignment of the sales contract.
 - (2) Supporting documentation. The lender shall obtain documentation verifying that the seller is the owner of record and must submit this documentation to HUD as part of the application for mortgage guarantee. This documentation may include, but is not limited to, a property sales history report, a copy of the recorded deed from the seller, or other documentation (such as a copy of a property tax bill, title commitment, or binder) demonstrating the seller's ownership.
- (b) Time restrictions on re-sales.

(1) *General.* The eligibility of a property for a mortgage guaranteed by HUD is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the HUD guarantee (the re-sale date). The lender shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this documentation to HUD as part of the application for mortgage guarantee, in accordance with § 203.255(b).

(2) Re-sales occurring 90 days or less following acquisition. If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible for a mortgage to be guaranteed by HUD.

(3) Re-sales occurring between 91 days and 180 days following acquisition.

(i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible for a mortgage guaranteed by HUD.

(ii) However, HUD will require that the lender obtain additional documentation if the re-sale price is 100 percent over the purchase price. Such documentation must include an appraisal from another appraiser. The lender may also document its loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) HUD may revise the level at which additional documentation is required under § 203.37a(b)(3).

(4) Authority to address property flipping for re-sales occurring between 91 days and 12 months following acquisition.

(i) If the re-sale date is more than 90 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible for a mortgage to be insured by FHA.

(ii) However, HUD may require that the lender provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At HUD's discretion, such documentation must include, but is not limited to, an appraisal from another appraiser. HUD may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum mortgage amount under § 203.18. Otherwise, the value supported by the first appraisal will be used to calculate the maximum mortgage amount.

(iv) HUD will announce its determination to require additional value documentation through 203.37a(a)(4)(iv).

(v) The level at which additional documentation is required under § 203.37a(b)(4) shall supersede that under § 203.37a(b)(3).

(5) Re-sales occurring more than 12 months following acquisition. If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible for a mortgage guaranteed by HUD.

(c) Exceptions to the time restrictions on sales. The time restrictions on sales described in paragraph (b) of this section do not apply to:

(1) Sales by HUD of Real Estate-Owned (REO) properties under 24 CFR part 291 and of single-family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710);

(2) Sales by another agency of the United States Government of REO single family properties pursuant to programs operated by these agencies;

(3) Sales of properties by nonprofit organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by inheritance;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by state- and federally-chartered financial institutions and government-sponsored enterprises (GSEs);

(7) Sales of properties by tribes, tribally designated housing entities, regional Indian Housing Authorities, local and state government agencies; and

(8) Only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federal disaster areas. The notice will specify how long the exception will be in effect.

(d) Sanctions and indemnification. Failure of a lender to comply with the requirements of this section may result in HUD requesting indemnification of the mortgage loan or seeking other appropriate remedies under 24 CFR part 25.

§ 1005.317 Location of dwelling

At the time a mortgage is guaranteed, the mortgaged property must be designed principally for residential use for not more than four families or have a construction plan evidencing this requirement. The dwelling must be on trust land or land located in an Indian or Alaska Native area, or any other areas approved by the Section 184 program.

§ 1005.319 Certification of appraisal

An application with respect to the Section 184 loan guarantee must be accompanied by an agreement satisfactory to HUD, executed by the seller, builder or such other person as may be required by HUD, whereby the person agrees that before any sale of the dwelling, the person will deliver to the purchaser of the property a written statement, in a form satisfactory to HUD, setting forth the amount of the appraised value of the property as determined by HUD.

§ 1005.321 Legal restrictions.

(a) Definitions. As used in this section:

(1) Low- or moderate-income housing means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) Eligible governmental or nonprofit program means a program operated pursuant to a program established by Federal law, operated by a State, local or tribal government, or operated by

an eligible nonprofit organization, if the program is designed to assist the purchase of low-or moderate-income housing including rental housing.

(3) Legal restrictions on conveyance means any provision in any legal instrument, law or regulation applicable to the borrower or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the borrower to:

- (i) Be void or voidable by a third party;
- (ii) Be the basis of contractual liability of the borrower for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to borrower efforts to convey;
- (iii) Terminate or subject to termination all or a part of the interest held by the borrower in the mortgaged property if a conveyance is attempted;
- (iv) Be subject to the consent of a third party;
- (v) Be subject to limits on the amount of sales proceeds retainable by the seller; or
- (vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(4) Tax-exempt bond financing means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing by qualified veterans' mortgage bonds as defined in section 143(b) of the Code.

(5) Eligible nonprofit organization means an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt under section 501(a) of the Code, which has:

- (i) Two years' experience as a provider of low- or moderate-income housing;
- (ii) A voluntary board; and
- (iii) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

(b) *Policy of permissible restrictions.* A loan shall not be eligible for a Section 184 loan guarantee if the property is subject to legal restrictions on conveyance, except as permitted by this part.

(c) Exception for tribal trust, allotted trust or restricted fee lands. For properties on tribal trust, allotted trust or restricted fee lands, a mortgage may have lease restrictions that only allow for an enrolled member of a federally recognized tribe or enrolled tribal members.

(d) Exception for eligible tribal, governmental, or non-profit programs. Legal restrictions on conveyance are acceptable if:

(1) The restrictions are part of an eligible tribal, governmental or nonprofit program and are permitted by paragraph (d) of this section; and

(2) The restrictions will automatically terminate if title or lease to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

(e) Exception for tax-exempt bond financing. mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the lender to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 1005.301(a) of this part and shall contain no other provisions designed to enforce compliance with Federal or State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) Exception for protective covenants for the elderly. Mortgaged property may be subject to protective covenants which restrict occupancy by, or transfer to, persons who are elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

§ 1005.323 Rental properties. (xref 203.42)

(a) Rental units are limited to a mortgage covering a one- to four-family unit dwelling occupied by the borrower as a principal residence.

(b) If the borrower is a tribal government or entity, there is no limit on the number of one – to four-family unit dwellings they can own covered by a Section 184 guaranteed mortgage, within the tribal government or entity’s financial capacity.

§ 1005.325 Refinancing. (xref 203.43)

(a) HUD may insure under this part, without regard to any limitation upon eligibility contained in the other provisions of this subpart, any mortgage given to refinance an existing mortgage guaranteed. The refinancing mortgage must meet the following special requirements:

(1) Refinancing amount. (i) The refinancing mortgage must be in an amount that does not exceed the least of (A) the original principal amount of the existing mortgage; or (B) the sum of the outstanding principal balance of the existing mortgage, plus loan closing charges approved by HUD.

(ii) If an upfront loan guarantee fee was financed as part of the existing mortgage, no refund will be given. However, the maximum amount of the refinancing mortgage computed in accordance with this paragraph (c)(1) may be increased by the amount of the upfront loan guarantee fee associated with the refinancing mortgage and exceed the applicable loan limit as outlined in

(2) The term of the refinancing mortgage may not exceed 30 years;

(3) The mortgage must result in a reduction in regular monthly payments by the borrower, except: when refinancing a mortgage for a shorter term will result in an increase in the borrower's regular monthly payments of no more than \$ 50.

(4) It must be made by a borrower whose record of payment on the existing mortgage meets standards established by HUD; and

(5) The lender may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

§ 1005.327 Eligibility of mortgages covering manufactured homes. (xref 203.43f)

A mortgage covering a one-family manufactured home (as defined in 24 CFR 3280.2(a)(16)) that meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance pursuant to this subpart.

(a) For manufactured homes located in fee simple properties:

(1) The manufactured home, when erected on site, shall have floor space area of not less than four hundred square feet and shall have been constructed in conformance with the National Manufactured Home Construction and Safety Standards as evidenced by a certification label affixed thereto in accordance with 24 CFR 3280.8.

(2) The mortgage shall cover the manufactured home and site, shall constitute a mortgage on a property classified and taxed as real estate, and shall have a term of not more than 30 years from the date of the beginning of amortization. Section 203.17(e) of this subpart shall not be applicable.

(3) In the case of a manufactured home which has not been permanently erected on a site for more than one year prior to the date of the application for mortgage insurance:

(i) The manufactured home shall be erected on a site-built permanent foundation that meets or exceeds applicable requirements of the Minimum Property Standards for One- and Two-Family Dwellings, 4900.1 (see 24 CFR 200.929(b)(1)) (MPS) and shall be permanently attached thereto by anchoring devices adequate for all loads identified in the MPS. The towing hitch or running gear, which includes axles, brakes, wheels and other parts of the chassis that operate only during transportation, shall have been removed. The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation. The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards shall meet or exceed applicable requirements of the MPS.

(ii) The space beneath the manufactured home shall be enclosed by continuous foundation-type construction designed to resist all forces to which it is subject without transmitting forces to the building superstructure. The enclosure shall be adequately secured to the perimeter of the manufactured home and be constructed of materials that conform to MPS requirements for foundations.

Zone I -- .145

Zone II -- .099

Zone III n1 -- .087

NFPA 501 BM-1976 is incorporated by reference and is issued by and available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(iv) The manufactured home shall be braced and stiffened before it leaves the factory to resist racking and potential damage during transportation.

(v) The conditions of § 203.18(a)(2) (i) and (ii) of this subpart shall not apply to construction of the manufactured home but shall be applicable to improvement of the site, including construction of the site-built foundation.

(vi) Section 203.14 of this subpart is modified to the extent provided in this paragraph. Applications relating to insurance of mortgages under this paragraph (c) must be accompanied by an agreement in form satisfactory to HUD executed by the seller or builder or such other person as HUD may require agreeing that in the event of any sale or conveyance of the dwelling within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property the manufacturer's warranty on a form prescribed by HUD, which shall provide that the manufacturer's warranty is in addition to and not in derogation of all other rights and remedies the purchaser or

owner may have, and a warranty in form satisfactory to HUD warranting that the manufactured home, the foundation, positioning and anchoring of the manufactured home to its permanent foundation, and all site improvements are constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by HUD) on which HUD has based his valuation of the dwelling. The warranty shall also include provisions that the manufactured home sustained no hidden damage during transportation, and if the manufactured home is a double-wide, that the sections were properly joined and sealed. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish HUD with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

(4) In the case of a manufactured home which has been permanently erected on a site for more than one year prior to the date of the application for mortgage insurance:

(i) The manufactured home shall be permanently anchored to and supported by permanent footings and shall have permanently installed utilities that are protected from freezing. The space beneath the manufactured home shall be a properly enclosed crawl space.

(ii) The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards shall meet or exceed applicable requirements of the Requirements for Existing Housing--One to Four Family Living Units (Handbook 4905.1). The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation.

(b) For manufactured homes located in tribal trust land. In cases where the manufactured home is not yet delivered and installed on the tribal trust land, the manufactured home shall meet

the requirements of 24 CFR 3280. The manufactured home shall meet the manufactured home installation standards pursuant to tribal laws, if any. In the absence of tribal law installation standards, the manufactured home shall be installed in accordance with the manufacturer's installation instructions.

§ 1005.329 Acceptance of individual residential water purification equipment (xref § 203.52).

If a property otherwise eligible for insurance under this part does not have access to a continuing supply of safe and potable water without the use of a water purification system, the requirements of this section must be complied with as a condition to acceptance of the mortgage for insurance. The lender must provide appropriate documentation with the submission for insurance endorsement to address each of the requirements of this section.

(a) Equipment. Water purification equipment must be approved by a nationally recognized testing laboratory acceptable to the local (or state) or tribal health authority.

(b) Certification by local (or state) or tribal health authority. A local (or state) health authority certification must be submitted to HUD which certifies that a point-of entry or point-of-use water purification system is used for the water supply, the treatment equipment, meets the requirements of the local (or state) or tribal health authority, and has been determined to meet local (or state) tribal quality standards for drinking water. If neither state nor local or tribal standards are applicable, then quality shall be determined in accordance with standards set by the Environmental Protection Agency (EPA) pursuant to the Safe Drinking Water Act. (EPA standards are prescribed in the National Primary Drinking Water requirements, 40 CFR parts 141 and 142.)

(c) Borrower notice and certification.

(1) The prospective borrower must have received written notification, when the borrower signs a sales contract, that the property has a hazardous water supply that requires treatment in order to remain safe and acceptable for human consumption. The notification to the borrower must identify specific contaminants in the water supply serving the property, and the related health hazard arising from the presence of those contaminants.

(2) The borrower must have received, with the notification described in paragraph (c)(1) of this section, a written good faith estimate of the maintenance and replacement costs of the equipment necessary to assure continuing safe drinking water.

(3) A copy of the notification statement (including cost estimates), dated the date of the sales contract, and signed by the prospective borrower to acknowledge its receipt, must accompany the submission for loan guarantee endorsement.

(4) The prospective borrower must sign a certification, substantially in the form set out in this paragraph (c)(4), at the time the application for mortgage credit approval is signed. This certification must be submitted to HUD:

Borrower's Certificate. I hereby acknowledge and understand that the home I am purchasing has a water purification system which I am responsible for maintaining. I understand that the individual water supply is unsafe for consumption unless the system is operating properly. I am aware that if I do not properly maintain the system, the water supply will not be purified or treated properly, thereby rendering the water supply unsafe for consumption. I also understand that the Department of Housing and Urban Development does not warrant the condition of the property, will not give me any money for repairs to the water purification system, and has relied upon the local (or

state) or tribal health authority to assure that the water supply, when processed by properly maintained equipment, is acceptable for human use and consumption.

[Borrower's signature and date]

§ 1005.331 Builders' warranty. (xref 203.14)

(a) Applications relating to proposed construction must be accompanied by an agreement in a form satisfactory to the Secretary, executed by the seller or builder or such other person as the Secretary may require, and agreeing that in the event of any sale or conveyance of the dwelling, within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property a warranty in a form satisfactory to the Secretary warranting that the dwelling is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by the Secretary) on which the Secretary has based on the valuation of the dwelling.

(b) Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Secretary with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

§ 1005.333 Property standards

(a) Every property insured under the Section 184 program 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 for tribal trust lands; and conforms to any applicable heating code in jurisdiction where the property is located.
 - (i) Contains a plumbing system that:
 - (ii) Uses a properly installed system of piping;
 - (iii) Includes a kitchen sink and partitional bathroom with lavatory, toilet and bath or shower; and
 - (iv) Uses water supply, plumbing, and sewage disposal system 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; and conforms to any minimum standard standards in the jurisdiction where the property is located.
- (4) 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;
- (5) be not less than:
 - (i) 570 square feet in size, if designed for a family of not more than 4 persons;

- (ii) 850 square feet in size, if designed for a family of not less than 5 and not more than 7 persons; and
- (iii) 1020 square feet in size, if designed for a family of not less than 8 persons, or
- (v) the size provided under the applicable locally adopted standards for size of dwelling units;
- (i) except that the Secretary, upon the request of a tribe or Indian housing authority, may waive the size requirements under this paragraph; and
- (6) conform with the energy performance requirements for new construction established by the Secretary under section 526(a) of the National Housing Act [12 USCS § 1735f-4(a)].
- (b) The Secretary may prescribe any additional requirements to permit the use of various designs and materials in housing acquired with loans guaranteed under the Section 184 program.

ELIGIBLE MORTGAGES

§1005.335 Mortgage provisions. (xref 203.17)

- (a) *Mortgage form.*
 - (1) The term mortgage as used in this part means a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under tribal law or the laws of the jurisdiction where the property is located, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed or another term used in tribal land or a particular jurisdiction, as well as the credit instrument, or note, secured thereby.
 - (2)(i) The mortgage shall be in a form meeting the requirements of HUD. HUD may prescribe complete mortgage instruments. For each case in which HUD does not prescribe complete

mortgage instruments, HUD shall require specific language in the mortgage which shall be uniform for every mortgage, and may also prescribe the language or substance of additional provisions for all mortgages as well as the language or substance of additional provisions for use only in particular jurisdictions or for particular programs.

(ii) Each mortgage shall also contain any provisions necessary to create a valid and enforceable secured debt under tribal law or the laws of the jurisdiction in which the property is located.

(b) *Mortgage multiples.* A mortgage shall involve an amount not to exceed the maximum principal loan amount (as calculated under 24 CFR 1005.309) for the approved area where the property is located, including dollars and cents.

(c) *Payments.* The mortgage shall:

(1) Come due on the first of the month.

(2) Contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the term of the mortgage.

(3) Provide for payments to principal and interest to begin no later than the first day of the month following 60 days from the date the mortgage is executed.

(d) *Maturity.* The mortgage shall have a term of not more than 30 years from the date of the beginning of amortization.

(e) *Property Standards.* The mortgage must be a first lien upon the property that conforms with property standards under 24 CFR 1005.361.

(f) *Disbursement.* The entire principal amount of the mortgage must have been disbursed to the borrower or to his or her creditors for his or her account and with his or her consent.

§ 1005.337 Mortgage lien. (xref 203.32)

(a) Except as otherwise provided in this section, a borrower must establish that, after the mortgage offered for guarantee has been recorded, the mortgaged property will be free and clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the borrower independently of the mortgaged property.

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, local or tribal government or instrumentality, tribally designated housing entity or an eligible nonprofit organization as defined in 24 CFR § 203.41(a)(5), provided that the required monthly payments under the Section 184 mortgage and the secondary mortgage or lien shall not exceed the borrower's reasonable ability to pay as determined by the Secretary.

(c) With the prior approval of the Secretary, the mortgaged property may be subject to a second mortgage held by a lender not described in paragraph (b) of this section. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the borrower's reasonable ability to pay, as determined by HUD;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The sum of the principal amount of the guaranteed mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the guaranteed mortgage, and shall not exceed the loan limit for the area, except as otherwise permitted by the Secretary;

(4) The repayment terms shall not provide for a balloon payment before ten years, or for such other term as HUD may approve, except that the mortgage may become due and payable on sale or refinancing of the secured property covered by the insured mortgage; and

(5) The mortgage shall contain a provision permitting the borrower to prepay the mortgage in whole or in part at any time and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Secretary, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments on the Section 184 mortgage following the date it is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment of principal or interest until the property securing the junior mortgage is sold or the Section 184 mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The junior mortgage shall not provide for any payment of principal or interest so long as the occupancy requirements are met, and shall provide for forgiveness of the junior mortgage amount at the end of the term of the junior mortgage.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may not

exceed, at the time of the second mortgage origination: the loan-to-value limitation and the maximum Section 184 loan limit for the area where the property is located.

§1005.339 Section 184 loan limit.

The Section 184 loan limit is the level set by the Secretary for the approved area where the property is located. The level shall be revised periodically by the Secretary. The Section 184 loan limit may be exceeded when calculating the base mortgage amount under 24 CFR 1005.307 and when calculating the maximum principal loan amount, under 24 CFR 1005.309.

1005.341 Minimum required investment.

The borrower is required to make a minimum investment in the mortgage. This investment must come from the borrower's own funds, gifts or tribal, state or local funds awarded to the borrower. Gift funds are not acceptable from any interested party. The minimum investment in the mortgage is difference between the sales price and the base loan amount as calculated in 1005.307.

§ 1005.343 Calculating base loan amount. (xref 203.18)

- (a) The base loan cannot exceed the Section 184 loan limits. The base loan amount is determined by calculating:
 - (1) 97.75 percent of the appraised value of the property or the sales price, whichever is less; or, 98.75 percent, when appraised value or sales price is less than \$49,999; and
 - (2) the Section 184 loan limit in effect on the date the Section 184 case number is issued.
 - (3) The base loan limit is the lessor of (1) or (2), and add, if applicable:
 - (4) A Solar energy system is defined as any addition, alteration, or improvement to an

existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy. The amount that may be exceeded and any other requirements shall be prescribed by the Secretary.

§ 1005.345 Maximum principal loan amount.

The maximum principal loan amount is the base mortgage amount and the upfront loan guarantee fee, if any. This total may exceed the Section 184 loan limit for the approved area where the property is located.

§ 1005.347 Minimum principal loan amount. (xref203.18d)

A lender may not require, as a condition of providing a loan secured by a mortgage guaranteed under this part, that the principal amount of the mortgage exceed a minimum amount established by the lender.

1005.349 Case numbers.

- (a) Section 184 case numbers may only be obtained when a lender has an active mortgage application for the borrower and property.
- (b) To obtain a case number, lender must provide verification of tribal enrollment or

Alaska native status and loan specific information to HUD electronically or on a form as prescribed by HUD.

(c) Case numbers are automatically cancelled after 60 days from date of issuance, unless a firm commitment is issued. Lender may request an extension of up to 60 days in writing before the expiration of the 60 days.

1005.351 Maximum age of mortgage documents.

Documents reviewed at underwriting may not be older than 60 days and may not be more than 120 days old at the loan disbursement date. Documents whose validity for underwriting purposes is not affected by the passage of time, such as divorce decrees or tax returns, are not subject to the 60 and 120 days limitations.

§ 1005.353 Qualified mortgage.

A loan guaranteed under the Section 184 program is a safe harbor qualified mortgage that meets the ability-to-repay requirements in 15 U.S.C. § 1639c(a).

§ 1005.355 Agreed interest rate. (xref 203.20)

- (a) The mortgage shall bear interest at the rate agreed upon by the lender and the borrower.
- (b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

§ 1005.357 Amortization provisions. (xref 203.21)

The mortgage must contain complete amortization provisions satisfactory to HUD, requiring monthly payments by the borrower not in excess of his or her reasonable ability to pay as determined by HUD. The sum of the principal and interest payments in each month shall be substantially the same.

UNDERWRITING PROCESSING

§ 1005.359 Direct Guarantee Underwriting

(a) *Underwriter due diligence.* A direct guarantee lender shall exercise the same level of care which it would exercise in obtaining and verifying information for a loan in which the lender would be entirely dependent on the property as security to protect its investment. Lender procedures that evidence such due diligence shall be incorporated as part of the quality control plan required under § 1005.209. The Secretary shall publish underwriting procedures in an administrative guidance. Compliance with the guidelines shall be the minimum standard of due diligence in underwriting the loans.

(b) *Borrower's income.* The lender shall evaluate the borrower's credit characteristics, adequacy and stability of income to meet the periodic payments under the loan and all other obligations, and the adequacy of the borrower's available assets to close the transaction, and render an underwriting decision in accordance with applicable regulations, policies and procedures.

1005.361 Appraisal

(a) A lender shall have the property appraised in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

(b) A lender must select an appraiser whose name is on the Federal Housing Administration Appraiser Roster, in accordance with 24 CFR part 200, subpart G. The lender shall not discriminate on the basis of race, color, religion, national origin, sex, age, or disability in the selection of an appraiser.

(c) The appraiser must be knowledgeable in the market where the property is located.

(d) A lender and an appraiser must ensure that an appraisal and related documentation satisfy Federal Housing Administration, Fannie Mae or Freddie Mac appraisal requirements, and both bear responsibility for the quality of the appraisal in satisfying such requirements. (e) A direct guarantee lender that submits, or causes to be submitted, an appraisal or related documentation that does not satisfy requirements under (1) - (4) is subject to administrative sanctions by the Secretary pursuant to § 1005.XXX.

1005.363 Age of Appraisal

(a) Appraisals on fee land.

(1) The validity period of appraisals is 120 days.

(2) The validity period for an appraisal may be extended for 30 days at the option of the lender if:

(i) the lender has issued the borrower underwriting approval; or

(ii) the borrower signed a valid sales contract prior to the expiration of the appraisal.

(iii) If the transaction will not close within the time frames stated under (1) or (2) then the lender must update the appraisal. The appraisal must be updated before the 120-day validity period has expired. The updated appraisal is valid for an additional 120 days after the effective date of the initial appraisal report that is being updated.

(b) Appraisals on tribal trust lands.

(1) Sections 1005.XXX(a)(i)-(ii) shall apply.

(2) Lenders may request an extension of the validity period under for up to an additional 240 days. Depending on the particular time line of the loan, HUD may request an updated appraisal.

§ 1005.365 Loan submission to HUD for direct guarantee.

(a) To receive an endorsement from HUD, within 45 days after the date of closing the loan, a direct guarantee lender must submit an endorsement file to HUD. The endorsement file must contain the Secretary the following documents, as required in 1005.XXX:

(1) Property appraisal upon a form meeting the requirements of the Secretary or a HUD conditional commitment (for proposed construction only), or a U.S. Department of Veterans Affairs certificate of reasonable value, and all accompanying documents required by the Secretary;

(2) An application for the loan guarantee in a form prescribed by the Secretary;

(3) A certified copy of the mortgage and note executed upon forms which meet the requirements of the Secretary;

(4) A warranty of completion, on a form prescribed by the Secretary, for proposed construction cases;

(5) An underwriter certification, on a form prescribed by the Secretary, stating that the underwriter has personally reviewed the appraisal report and credit application (including the analysis performed on the worksheets) and that the proposed loan complies with HUD underwriting requirements, and incorporates each of the underwriter certification items that apply to the loan submitted for a guarantee, as set forth in the applicable HUD handbook or similar publication;

(6) A loan certification on a form prescribed by the Secretary, stating that the authorized representative of the lender who is making the certification has personally reviewed the loan documents and the application for the loan guarantee, and certifying that the loan complies with the requirements of § 1005.XXX. The certification shall incorporate each of the lender certification items that apply to the loan submitted for a guarantee, as set forth in the applicable handbook or similar publication;

(7) Documentation providing that: (i) The seller is the owner of record; and

(ii) That more than 90 days elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the loan guarantee.

(8) Such other documents as the Secretary may require, in the manner as prescribed by the Secretary.

(b) *Late submission.* If the endorsement file is submitted past 60 days, the lender must include as part of the file, a late endorsement request, with supporting documentation, affirming:

(1) no mortgage payment is currently unpaid;

(2) all escrow accounts for taxes, hazard insurance and monthly guarantee fees are current;

and

(3) neither the lender or its agents provided the funds to bring and or keep the mortgage current or to bring about the appearance of acceptable payment history.

§ 1005.367 HUD issuance of guarantee for non-direct guarantee loans.

(a) *HUD issuance of guarantee.* The Secretary may issue a firm commitment for a loan guarantee not eligible under the Direct guarantee program.

CLOSING

§ 1005.369 Lender closing requirements (4000.1 II.A.6, page 339)

(a) *Chain of Ownership.* The lender must obtain evidence of all prior ownership within 12 months of the case number assignment date. The lender must review the evidence of prior ownership to determine any undisclosed identity-of-interest transactions.

(b) *Title/TSR.* The lender must ensure that all objections to title/TSR have been cleared and any discrepancies have been resolved to ensure that the Section 184 mortgage is in first lien position.

(c) *Closing in compliance with lender approval.* The lender must instruct the settlement agent to close the Section 184 mortgage in the same manner in which it was underwritten and approved.

(d) *Closing in lender's name.* All Section 184 loans must close in the name of the Direct Guarantee lender issuing the underwriting approval.

(e) *Required HUD certifications at closing.* The lender must use the forms and/or language prescribed by HUD in the legal documents used for closing the Section 184 mortgage.

(f) *Projected escrow.* The lender must establish an escrow account (and repair completion escrow account, where applicable) in accordance with 1005.XXX and the Real Estate Settlement Procedures Act.

(g) *Closing costs and fees.* The lender may charge the borrower reasonable and customary fees in accordance with 1005.381.

(h) *Closing date.* The closing date must occur before the expiration of the firm commitment.

(i) *Per diem interest and interest credits.* The lender may collect per diem interest from the closing date to the date amortization begins. Alternatively, the lender may begin amortization up to 7 days prior to the closing date and provide a per diem interest credit. Any per diem interest credit may not be used to meet borrower's minimum required investment. Per diem interest must be computed using a factor of $1/365^{\text{th}}$ of the annual rate.

(j) *Signatures.* Lender must ensure that the mortgage, note, and all closing documents are signed by the required parties.

§ 1005.371 Payment of guarantee premiums; prepayment privilege. (xref 203.22)

(a) *Payment of annual guarantee premiums.* The mortgage may provide for monthly payments by the borrower to the lender of an amount equal to one-twelfth of the annual mortgage guarantee premium payable by the lender to HUD.

(b) Prepayment privilege. The mortgage shall contain a provision permitting the borrower to prepay the mortgage in whole or in part at any time and in any amount. The mortgage shall not provide for the payment of any charge on account of such prepayment.

§ 1005.373 Borrower's payments to include other charges. (xref 203.23)

(a) The mortgage shall provide for such equal monthly payments by the borrower to the lender as will amortize:

- (1) The ground rents, if any;
- (2) Section 184 annual loan guarantee fees;
- (3) The estimated amount of all taxes;
- (4) Special assessments, if any;
- (5) Flood insurance premiums, if flood insurance is required by HUD; and
- (6) Fire and other hazard insurance premiums, if any. The mortgage shall further provide that such payments shall be held by the lender in a manner satisfactory to HUD for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent, for the benefit and account of the borrower. The mortgage must also make provisions for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the borrower. Such payments shall be held in an escrow subject to § 1005.XXX.

(b) The borrower shall not be required to pay premiums for fire or other hazard insurance which protects only the interests of the lender, or for life or disability income insurance, or fees charged for obtaining information necessary for the payment of property taxes. The foregoing does not apply to charges made or penalties exacted by the taxing authority, except that a penalty assessed or interest charged by a taxing authority for failure to timely pay taxes or assessments shall not be charged by the lender to the borrower if the lender had sufficient funds in escrow for the account of the borrower to pay such taxes or assessments prior to the date on which penalty or interest charges are imposed.

§ 1005.375 Application of payments. (xref 203.24)

(a) All monthly payments to be made by the borrower to the lender shall be added together, and the aggregate amount thereof shall be paid by the borrower each month in a single payment. The lender shall apply the same to the following items in the order set forth:

- (1) Annual loan guarantee premium charges, including charges for ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;
- (2) Interest on the mortgage;
- (3) Amortization of the principal of the mortgage; and
- (4) Late charges, if permitted under the terms of the mortgage and subject to such conditions as HUD may prescribe.

(b) Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the borrower prior to, or on, the due date of the next such payment, constitute an event of default under the mortgage.

§ 1005.377 Late charge. (xref 203.25)

When the monthly mortgage payment is 15 or more days in arrears, the lender may collect from borrower a late charge, not to exceed four percent of the overdue payment of principal and interest, or any other amount as established by the Secretary through public notice with an opportunity for comment.

§ 1005.379 Borrower's payments when mortgage is executed. (xref 203.26)

(a) The borrower must pay to the lender, upon execution of the mortgage, a sum that will be sufficient to pay the ground rents, if any, the estimated taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums for the period beginning on the last date on which each such charge would have been paid under the normal lending practices of the lender and local custom (if each such date constitutes prudent lending practice), and ending on the due date of the first full installment payment under the mortgage, plus an amount sufficient to pay the installment(s) of the annual loan guarantee fee from the date of closing the loan to the date of the first monthly payment under the mortgage and, where applicable, the one-time upfront loan guarantee fee or any portion payable pursuant to §1005.xxx.

(b) The lender may also collect from the borrower a sum not exceeding one-sixth of the estimated total amount of such taxes, special assessments, insurance premiums and other charges to be paid during the ensuing 12-month period.

§ 1005.381 Charges, fees or discounts. (xref 203.27)

(a) The lender must ensure that all fees charged to the borrower comply with all applicable tribal, federal, state, and local laws and disclosure requirements.

The lender may collect from the borrower the following charges, fees or discounts:

(1) A charge to compensate the lender for expenses incurred in originating and closing the loan, provided that HUD may establish limitations on the amount of any such charge.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the lender, for any of the following items:

- (i) Recording fees and recording taxes or other charges incident to recordation;
- (ii) Credit Report;
- (iii) Survey, if required by lender or borrower;
- (iv) Title examination; title insurance, if any;
- (v) Fees paid to an appraiser or inspector approved by HUD for the appraisal and inspection, if required, of the property. Notwithstanding any limitations in this paragraph, if the lender is permitted by applicable regulations to use the services of staff appraisers and inspectors for processing mortgages, and does so, the lender may collect from the borrower the reasonable and customary amounts for such appraisals and inspections.

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

(4) Reasonable and customary charges in the nature of discounts.

(5) Interest from the date of closing or the date on which the lender disburses the mortgage proceeds to the account of the borrower or the borrower's creditors, whichever is later, to the date of the beginning of amortization.

(b) Before the guarantee of any mortgage, the lender shall furnish to the Secretary a signed statement in a form satisfactory to the Secretary listing any charge, fee or discount collected by the lender from the borrower. All charges, fees or discounts are subject to review by the Secretary both before and after endorsement under § 1005.389.

(c) Additional fees cannot be assessed for mortgages on properties on tribal lands.

§ 1005.383 Certificate of nondiscrimination by the lender (xref203.30)

The lender shall certify to HUD as to each of the following:

(a) That neither the lender, nor anyone authorized to act for the lender, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, national origin, familial status (except as provided by law), or disability.

(b) That any restrictive covenant, other than permissible restrictions on tribal trust land, on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

POST-CLOSING AND ENDORSEMENT

§ 1005.385 HUD Pre-endorsement review.

(a) *Pre-endorsement review.*

(1) Upon submission by a direct guarantee lender of the documents required by § 1005.387, the Secretary will review the documents to ensure that:

- (i) The loan is executed on forms which meets the requirements of the Secretary;
- (ii) The loan maturity does not exceed thirty years;
- (iii) The loan amount does not exceed the maximum loan limits under the Section 184 program, unless otherwise permitted by this part;
- (iv) All documents required by the Secretary are submitted;
- (v) All necessary certifications are made in accordance with § 1005.XXX;
- (vi) There is no fee, late charge or interest due to the Secretary; and
- (vii) The loan was not in default when submitted for the guarantee or if submitted for guarantee more than 60 days after the date of closing the loan shows an acceptable payment history.

(2) The Secretary is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the loan fails to meet a statutory or regulatory requirement. If, following this review, the loan is determined to be eligible, the Secretary will issue a commitment for a loan guarantee. If the loan is determined to be ineligible, the Secretary will inform the lender in writing the reasons for the determination and any corrective actions that may be taken.

(3) *Submission by direct guarantee lender when there is a sponsored entity.* When a sponsored entity assigns a loan to direct guarantee lender the direct guarantee lender may submit the required documents for pre-endorsement review in the name of the originating sponsored entity. All

certifications must be executed by the originating sponsored entity or the direct guarantee lender, as appropriate.

1005.387 Post-guarantee review for direct guarantee.

Following the issuance of the Section 184 loan guarantee, the Secretary may review all documents required by § 1005.XXX. If, following this review, the Secretary determines that the loan does not satisfy the requirements of the program, the Secretary may sanction the lender pursuant to § 1005.XXX.

§ 1005.389 Indemnification.

(a) *Indemnification*—

(1) *Definition of origination.* For purposes of indemnification under this paragraph, the term “origination” means the process of creating a loan, starting with the taking of the initial application, continuing with the processing and underwriting, and ending with the lender receiving a loan guarantee.

(2) *Fraud or misrepresentation.* The lender shall indemnify HUD for a claim if the lender knew or should have known that fraud or misrepresentation was involved in connection with the origination of the loan, regardless of whether the fraud or misrepresentation caused the Loan default and regardless of when a claim is filed.

(3) *Demand for indemnification.* The demand for indemnification will be made by the Secretary. Under the demand for indemnification, the lender agrees to either abstain from filing a claim or reimburse HUD if a subsequent holder of the loan files a claim and HUD suffers a financial loss.

1005.391 Lender Pre-endorsement review and requirements.

(a) Lender must complete a pre-endorsement review of the case file to ensure all applicable documents as described in HUD's administrative guidance are in the case file. The lender must exercise due diligence in performing its pre-endorsement responsibilities.

(b) This review must be conducted by staff not involved in the originating, processing, or underwriting of the mortgage. The case file must contain all documentation relied upon by the lender to justify its decision to approve the loan.

(c) Upon finalizing the pre-endorsement review, the lender must certify that all required documents are submitted and meet the requirements of administrative guidance.