

Section 184 of the Housing and Community Development Act of 1992, . P.L. 102-550, enacted October 28, 1992

SEC. 184. LOAN GUARANTEES FOR INDIAN HOUSING.

(a) AUTHORITY- To provide access to sources of private financing to Indian families and Indian housing authorities who otherwise could not

acquire housing financing because of the unique legal status of Indian

trust land, the Secretary may guarantee not to exceed 100 percent of the

unpaid principal and interest due on any loan eligible under subsection

(b) made to an Indian family or Indian housing authority.

(b) ELIGIBLE LOANS- Loans guaranteed pursuant to this section shall meet

the following requirements:

(1) ELIGIBLE BORROWERS- The loans shall be made only to borrowers who are

Indian families or Indian housing authorities.

(2) ELIGIBLE HOUSING- The loan shall be used to construct, acquire, or

rehabilitate 1- to 4-family dwellings that are standard housing and are

located on trust land or land located in an Indian or Alaska Native area.

(3) SECURITY- The loan may be secured by any collateral authorized under

existing Federal law or applicable State or tribal law.

(4) LENDERS- The loan shall be made only by a lender approved by and meeting

qualifications established by the Secretary, except that loans otherwise

insured or guaranteed by an agency of the Federal Government or made by

an organization of Indians from amounts borrowed from the United States

shall not be eligible for guarantee under this section. The following

lenders are deemed to be approved under this paragraph:

(A) Any mortgagee approved by the Secretary of Housing and Urban Development

for participation in the single family mortgage insurance program under

title II of the National Housing Act.

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

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

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

(5) TERMS- The loan shall--

(A) be made for a term not exceeding 30 years;

(B) bear interest (exclusive of the guarantee fee under section 404 and service charges, if any) at a rate agreed upon by the borrower and

the lender and determined by the Secretary to be reasonable, which may

not exceed the rate generally charged in the area (as determined by the

Secretary) for home mortgage loans not guaranteed or insured by any agency

or instrumentality of the Federal Government;

(C) involve a principal obligation not exceeding--

(i) an amount equal to the sum of (I) 97 percent of \$25,000 of the appraised

value of the property, as of the date the loan is accepted for guarantee,

and (II) 95 percent of such value in excess of \$25,000; and

(ii) the amount approved by the Secretary under this section; and

(D) involve a payment on account of the property (i) in cash or its

equivalent, or (ii) through the value of any improvements to the property

made through the skilled or unskilled labor of the borrower, as the

Secretary shall provide.

(c) CERTIFICATE OF GUARANTEE-

(1) APPROVAL PROCESS- Before the Secretary approves any loan for guarantee

under this section, the lender shall submit the application for the loan

to the Secretary for examination. If the Secretary approves the loan for

guarantee, the Secretary shall issue a certificate under this paragraph

as evidence of the guarantee.

(2) STANDARD FOR APPROVAL- The Secretary may approve a loan for guarantee

under this section and issue a certificate under this paragraph only if the

Secretary determines there is a reasonable prospect of repayment of the loan.

(3) EFFECT- A certificate of guarantee issued under this paragraph by

the Secretary shall be conclusive evidence of the eligibility of the

loan for guarantee under the provisions of this section and the amount of

such guarantee. Such evidence shall be incontestable in the hands of the

bearer and the full faith and credit of the United States is pledged to

the payment of all amounts agreed to be paid by the Secretary as security

for such obligations.

(4) FRAUD AND MISREPRESENTATION- This subsection may not be construed to

preclude the Secretary from establishing defenses against the original

lender based on fraud or material misrepresentation or to bar the Secretary

from establishing by regulations in effect on the date of issuance or

disbursement, whichever is earlier, partial defenses to the amount payable

on the guarantee.

(d) GUARANTEE FEE- The Secretary shall fix and collect a guarantee fee

for the guarantee of loans under this section, which may not exceed the

amount equal to 1 percent of the principal obligation of the loan. The fee

shall be paid by the lender at time of issuance of the guarantee and shall

be adequate, in the determination of the Secretary, to cover expenses and

probable losses. The Secretary shall deposit any fees collected under this

subsection in the Indian Housing Loan Guarantee Fund established under

subsection (i).

(e) LIABILITY UNDER GUARANTEE- The liability under a guarantee provided

under this section shall decrease or increase on a pro rata basis according

to any decrease or increase in the amount of the unpaid obligation under

the provisions of the loan agreement.

(f) TRANSFER AND ASSUMPTION- Notwithstanding any other provision of law,

any loan guaranteed under this section, including the security given

for the loan, may be sold or assigned by the lender to any financial

institution subject to examination and supervision by an agency of the

Federal Government or of any State or the District of Columbia.

(g) DISQUALIFICATION OF LENDERS AND CIVIL MONEY PENALTIES-

(1) IN GENERAL- If the Secretary determines that any lender or holder

of a guarantee certificate under subsection (c) has failed to maintain

adequate accounting records, to adequately service loans guaranteed under

this section, to exercise proper credit or underwriting judgment, or has

engaged in practices otherwise detrimental to the interest of a borrower

or the United States, the Secretary may--

(A) refuse, either temporarily or permanently, to guarantee any further

loans made by such lender or holder;

(B) bar such lender or holder from acquiring additional loans guaranteed

under this section; and

(C) require that such lender or holder assume not less than 10 percent of

any loss on further loans made or held by the lender or holder that are

guaranteed under this section.

(2) CIVIL MONEY PENALTIES FOR INTENTIONAL VIOLATIONS- If the Secretary

determines that any lender or holder of a guarantee certificate under

subsection (c) has intentionally failed to maintain adequate accounting

records, to adequately service loans guaranteed under this section, or to exercise proper credit or underwriting judgment, the Secretary may impose a civil money penalty on such lender or holder in the manner and amount provided under section 536 of the National Housing Act with respect to mortgagees and lenders under such Act.

(3) PAYMENT ON LOANS MADE IN GOOD FAITH- Notwithstanding paragraphs (1) and (2), the Secretary may not refuse to pay pursuant to a valid guarantee on loans of a lender or holder barred under this subsection if the loans were previously made in good faith.

(h) PAYMENT UNDER GUARANTEE-

(1) LENDER OPTIONS-

(A) IN GENERAL- In the event of default by the borrower on a loan guaranteed under this section, the holder of the guarantee certificate shall provide written notice of the default to the Secretary. Upon providing such notice, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) FORECLOSURE- The holder of the certificate may initiate foreclosure proceedings in a court of competent jurisdiction (after providing written notice of such action to the Secretary) and upon a final order by the court authorizing foreclosure and submission to the Secretary of a claim for payment under the guarantee, the Secretary shall pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined pursuant to subsection (e)) plus reasonable fees and expenses as approved by the Secretary. The Secretary shall be subrogated to the rights of the holder of the guarantee and the lender holder shall assign the obligation

and security to the Secretary.

(ii) NO FORECLOSURE- Without seeking a judicial foreclosure (or in any case in which a foreclosure proceeding initiated under clause (i) continues for a period in excess of 1 year), the holder of the guarantee may submit to the Secretary a claim for payment under the guarantee and the Secretary shall only pay to such holder for a loss on any single loan an amount equal to 90 percent of the pro rata portion of the amount guaranteed (as determined under subsection (e)). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation and security to the Secretary.

(B) REQUIREMENTS- Before any payment under a guarantee is made under subparagraph (A), the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. The Secretary shall then take such action to collect as the Secretary determines appropriate.

(2) ASSIGNMENT BY SECRETARY- Notwithstanding paragraph (1), upon receiving notice of default on a loan guaranteed under this section from the holder of the guarantee, the Secretary may accept assignment of the loan if the Secretary determines that the assignment is in the best interests of the United States. Upon assignment the Secretary shall pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under subsection (e)). The Secretary shall be subrogated to the rights of the holder of the guarantee and the holder shall assign the obligation

and security to the Secretary.

(3) LIMITATIONS ON LIQUIDATION- In the event of a default by the borrower on a loan guaranteed under this section involving a security interest in tribal allotted or trust land, the Secretary shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe or tribes. If the Secretary subsequently proceeds to liquidate the account, the Secretary shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

(i) INDIAN HOUSING LOAN GUARANTEE FUND-

(1) ESTABLISHMENT- There is established in the Treasury of the United States the Indian Housing Loan Guarantee Fund for the purpose of providing loan guarantees under this section.

(2) CREDITS- The Guarantee Fund shall be credited with--

(A) any amounts, claims, notes, mortgages, contracts, and property

acquired by the Secretary under this section, and any collections and proceeds therefrom;

(B) any amounts appropriated under paragraph (7);

(C) any guarantee fees collected under subsection (d); and

(D) any interest or earnings on amounts invested under paragraph (4).

(3) USE- Amounts in the Guarantee Fund shall be available, to the extent

provided in appropriation Acts, for--

(A) fulfilling any obligations of the Secretary with respect to loans

guaranteed under this section, including the costs (as such term is defined

in section 502 of the Congressional Budget Act of 1974) of such loans;

(B) paying taxes, insurance, prior liens, expenses necessary to make

fiscal adjustment in connection with the application and transmittal of

collections, and other expenses and advances to protect the Secretary for

loans which are guaranteed under this section or held by the Secretary;

(C) acquiring such security property at foreclosure sales or otherwise;

(D) paying administrative expenses in connection with this section; and

(E) reasonable and necessary costs of rehabilitation and repair to properties

that the Secretary holds or owns pursuant to this section.

(4) INVESTMENT- Any amounts in the Guarantee Fund determined by the

Secretary to be in excess of amounts currently required to carry out this

section may be invested in obligations of the United States.

(5) LIMITATION ON COMMITMENTS TO GUARANTEE LOANS AND MORTGAGES-

(A) REQUIREMENT OF APPROPRIATIONS- The authority of the Secretary to enter

into commitments to guarantee loans under this section shall be effective

for any fiscal year only to the extent or in such amounts as are or have

been provided in appropriations Acts for such fiscal year.

(B) LIMITATIONS ON COSTS OF GUARANTEES- The authority of the Secretary

to enter into commitments to guarantee loans under this section shall

be effective for any fiscal year only to the extent that amounts in the

Guarantee Fund are or have been made available in appropriation Acts to

cover the costs (as such term is defined in section 502 of the Congressional

Budget Act of 1974) of such loan guarantees for such fiscal year.

(C) LIMITATION ON OUTSTANDING AGGREGATE PRINCIPAL AMOUNT- Subject to the

limitations in subparagraphs (A) and (B), the Secretary may enter into

commitments to guarantee loans under this section in each of fiscal years

1993 and 1994 with an aggregate outstanding principal amount not exceeding

such amount as may be provided in appropriation Acts for each such year.

(6) LIABILITIES- All liabilities and obligations of the assets credited

to the Guarantee Fund under paragraph (2) (A) shall be liabilities and

obligations of the Guarantee Fund.

(7) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated

to the Guarantee Fund to carry out this section such sums as may be

necessary for fiscal year 1993 and \$50,000,000 for fiscal year 1994.

(j) REQUIREMENTS FOR STANDARD HOUSING- The Secretary shall, by regulation,

establish housing safety and quality standards for use under this

section. Such standards shall provide sufficient flexibility to permit

the use of various designs and materials in housing acquired with loans

guaranteed under this section. The standards shall require each dwelling

unit in any housing so acquired to--

(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--

(A) has the capacity to maintain a minimum temperature in the dwelling of

65 degrees Fahrenheit during the coldest weather in the area;

(B) is safe to operate and maintain;

(C) delivers a uniform distribution of heat; and

(D) conforms to any applicable tribal heating code or, if there is no

applicable tribal code, an appropriate county, State, or National code;

(4) contain a plumbing system that--

(A) uses a properly installed system of piping;

(B) includes a kitchen sink and a partitioned bathroom with lavatory,

toilet, and bath or shower; and

(C) uses water supply, plumbing, and sewage disposal systems that conform

to any applicable tribal code or, if there is no applicable tribal code,

the minimum standards established by the applicable county or State;

(5) contain an electrical system using wiring and equipment properly

installed to safely supply electrical energy for adequate lighting and

for operation of appliances that conforms to any applicable tribal code

or, if there is no applicable tribal code, an appropriate county, State,

or National code;

(6) be not less than--

(A) (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

(B) the size provided under the applicable locally adopted standards for

size of dwelling units;

except that the Secretary, upon the request of a tribe or Indian housing

authority, may waive the size requirements under this paragraph; and

(7) conform with the energy performance requirements for new construction

established by the Secretary under section 526(a) of the National Housing

Act.

(k) DEFINITIONS- For purposes of this section:

(1) The term `family' means 1 or more persons maintaining a household,

as the Secretary shall by regulation provide.

(2) The term `Guarantee Fund' means the Indian Housing Loan Guarantee Fund

established under subsection (i).

(3) The term `Indian' means person recognized as being Indian or Alaska

Native by an Indian tribe, the Federal Government, or any State.

(4) The term `Indian area' means the area within which an Indian housing

authority is authorized to provide housing.

(5) The term `Indian housing authority' means any entity that-

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(A) is authorized to engage in or assist in the development or operation

of low-income housing for Indians; and

(B) is established--

(i) by exercise of the power of self-government of an Indian tribe

independent of State law; or

(ii) by operation of State law providing specifically for housing authorities

for Indians, including regional housing authorities in the State of Alaska.

(6) The term `Secretary' means the Secretary of Housing and Urban

Development.

(7) The term `standard housing' means a dwelling unit or housing that

complies with the requirements established under subsection (j).

(8) The term `tribe' means any tribe, band, pueblo, group, community,

or nation of Indians or Alaska Natives.

(9) The term `trust land' means land title to which is held by the United

States for the benefit of an Indian or Indian tribe or title to which

is held by an Indian tribe subject to a restriction against alienation

imposed by the United States.