



**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

Special Attention of:

Notice PIH-2014-11

All Section 184 Approved Mortgagees,  
Indian Housing Authorities,  
Tribally Designated Housing Entities,  
and Tribes

Issued: May 9, 2014

Expires: This Notice remains effective until  
until amended, superseded, or rescinded

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**SUBJECT:** Section 184 Indian Loan Guarantee Program Processing Guidelines.

**PURPOSE:** The purpose of this Notice is to provide information to lenders that service loans under the Section 184 Program about HUD's guidelines and procedures that must be followed in order to receive payment under the guarantee provided by HUD.

**BACKGROUND:** The Indian Housing Loan Guarantee program is authorized by Section 184 of the Housing and Community Development Act of 1992, P.L. 102-550, enacted October 28, 1992, as amended. Regulations are at 24 CFR part 1005. The Section 184 program addresses the special needs of American Indians and Alaska Natives by making it possible to achieve homeownership with market-rate financing. Historically, American Indians and Alaska Natives have had limited retail banking opportunities and limited access to private mortgage capital, primarily because much of the land in Indian Country is held in trust by the federal government. Land held in trust for a tribe cannot be encumbered or alienated, and land held in trust for an individual Indian must receive federal approval through the Bureau of Indian Affairs before a lien is placed on the property.

This loan guarantee program maximizes a relatively minimal federal investment by insuring approximately 4,000 loans each year, and by expanding markets for lenders. The program provides an incentive for private lenders to market loans to this traditionally underserved population by guaranteeing 100 percent repayment of the unpaid principal and interest due in the event of default. Lenders get the guarantee by making mortgage loans to American Indian and Alaska Native families, Indian tribes, and tribally designated housing entities to purchase, construct, refinance, and/or rehabilitate single family homes on trust or restricted land, and in tribal areas of operation. There is no income limit or minimum required to participate, but borrowers must qualify for the loans.

This Notice explains how the Section 184 program advises lenders to service Section 184 loans. The Office of Loan Guarantee, which operates the Section 184 program, reserves the right to deny payment on a guarantee request that is not complete.

**GUIDELINES:**

**1. Overview**

In order to service Section 184 loans, lenders must first be approved to service Section 184 loans. These guidelines are meant to provide procedural standards and guidance that are to be followed when servicing a Section 184/HUD-guaranteed mortgage regardless of the entity holding and/or

servicing the mortgage.

The mortgagee's servicing operations may be monitored and, where necessary, corrective action will be required. Refusal to take the corrective action or continued noncompliance with HUD requirements will result in the Department taking appropriate action (including, but not necessarily limited to, an administrative and/or monetary sanction against that mortgagee).

**Objectives-** All servicing policies are directed toward achieving the following basic objectives:

- Implementing the national housing goal of strengthening communities;
- Protecting HUD's interest in the guaranteed loan by decreasing the probability of the mortgage terminating in default and foreclosure, and by minimizing HUD's loss when claims cannot be avoided;
- Encouraging private investment in HUD guaranteed home mortgages at the lowest effective cost to mortgagors; and
- Assuring an adequate standard of fair dealing among all participants in a HUD guaranteed mortgage transaction.

**Mortgagee Responsibility-** This guidance identifies servicing practices that HUD considers acceptable for mortgages guaranteed by HUD under the Section 184 program. Failure to comply with these guidelines will be cause for imposition of a civil money penalty or withdrawal of HUD's approval of a mortgagee.

Mortgagees must consider the comparative effects of their elective servicing actions, and must take those appropriate actions which can reasonably be expected to generate the smallest financial loss to the Department. Such actions include, but are not limited to, deeds in lieu of foreclosure, pre-foreclosure sales, partial claims, assumptions, special forbearance, and recasting of mortgages. HUD may prescribe conditions and requirements for the appropriate use of these loss mitigation actions, concerning such matters as owner-occupancy, extent of previous defaults, prior use of loss mitigation, and evaluation of the mortgagor's income, credit and property.

## **2. Reporting Requirement To HUD**

**Reporting Requirements-** Servicers are required to submit monthly reports that reflect all Section 184 loan activity. Data should be submitted in an electronic format (Microsoft Excel formatting is preferred) to the Office of Loan Guarantee. Monthly and quarterly reports must include the:

- Section 184 Case Number;
- Loan Identification Number;
- Name of Borrower(s);
- Address of Property;
- Parcel ID;
- Next Payment Due Date;
- Remaining Principal Balance; and
- Name of Investor (if loan has been sold)

Reports are due within 5 business days of the end of the reporting period. In addition to the basic information above, servicers must highlight each delinquent loan and provide the borrower's contact information and tribal affiliation.

**File Retention by Servicing Mortgagee-** All servicing files, including loan origination documents, must be retained for the life of the mortgage plus 3 years. Upon verbal or written request, the mortgagee shall make hard copies of servicing information available to HUD staff within 3 business days. Records that must be kept in their original form include the following documents:

- Mortgage note;
- Mortgage instrument and riders (if any);
- Loan Guarantee Certificate; and
- Title Policy (if applicable).

All documents must be maintained in a manner that is capable of being reproduced into a legible hard copy.

**Selling a mortgage-** When a mortgagee sells a mortgage, the purchasing mortgagee succeeds to all rights and becomes bound by all of the obligations of the seller under the contract for mortgage insurance, effective when notice is received by HUD. The selling mortgagee remains obligated to HUD in all ways until the change is reported. HUD is to be notified of the sale within 15 days of its occurrence.

Notice to Purchasing Mortgagees- HUD will hold purchasing mortgagees financially responsible for errors, omissions, and unresolved HUD review findings on the part of the selling mortgagee (or its agents), discovered after the transfer is reported even though the errors or omissions took place before HUD received the report of the sale.

**Change of Servicer-** When only servicing is transferred. The selling mortgagee notifies HUD within 15 days of the transfer on a Form HUD-92080.

If notification is not timely received by the mortgagor, neither the losing servicer nor the gaining servicer may hold the mortgagor responsible if the mortgagor's payments are not received in a timely manner. Mortgagors who have not been properly notified must not be assessed late charges and must not be reported to credit bureaus for non-payment.

The notice must reach the mortgagor at least 10 days prior to the due date of the first payment to the new servicer.

### **3 Escrow Accounts and Fees**

Mortgagees must establish escrow accounts to ensure that funds will be available to pay property taxes (if applicable), special assessments, and insurance premiums as they become due. Escrow funds shall be used only for the purpose for which they are collected. The establishment and maintenance of escrow accounts must meet the requirements of the Real Estate Settlement Procedures Act.

It is the mortgagee's responsibility to make disbursements as bills become due, even if it requires advancing corporate funds when escrow deposits are inadequate to meet the borrower's obligations. Late penalties shall not be charged to the mortgagor unless it can be shown that the late payment was the result of the mortgagor's error or omission.

**Surplus Escrow Application to Delinquency-** Should a delinquency exist (due to unpaid late

charges and/or monthly payments) and an escrow surplus is discovered when performing an analysis of the escrow account, this escrow surplus may be applied to offset all or a portion of the delinquency. Application of surplus escrow funds in this manner shall be considered as a cash refund to the mortgagor. However, this is a method of last resort.

A letter shall be sent to the mortgagor explaining the application of the surplus escrow funds if all the surplus is used toward the delinquency. If only a portion of the escrow surplus is needed to cure the delinquency, the letter shall give the mortgagor the opportunity to select the method for adjusting the remaining portion of the escrow surplus.

**Fees after Endorsement-** After the Section 184 loan is endorsed, lenders may find that they have certain operating or administrative expenses. Some of these expenses are permitted to be charged to the borrower. All fees charged after endorsement must be reasonable and customary for the area and based on the actual cost of work performed.

**Late Charges-** Assessment of a late charge is intended only to reimburse the mortgagee for the added expense of collection activities and to serve as motivation to the mortgagor to make timely payments. Lenders may charge late fees when the mortgagor remits payment more than 15 days past the due date. Late charges **may not** exceed 4 percent of the full monthly payment (principal, interest, taxes and insurance "PITI") due from the borrower in the month of computation. Previously uncollected late charges may not be added to the monthly payment due when computing the present late charge. Multiple delinquent payments are considered separately, with a late charge computed on each individual monthly payment.

**Processing and Reprocessing of Checks-** Lenders may charge fees for checks that have been returned as uncollectible.

**Unallowable Fees-** Prepayment is permitted without penalty. The security instrument and any applicable riders utilized by the lender must reflect this policy.

#### **4. Periodic Statement**

Statement Timing- Servicers must deliver or mail the periodic statement within a "reasonably prompt" time after the payment due date or the end of any courtesy period provided for the previous billing cycle. "Reasonably prompt" generally means delivering, emailing, or placing the periodic statement in the mail within 4 days of the close of the courtesy period of the previous billing cycle. The "courtesy period" is the period in which servicers do not impose a late fee.

Servicers no longer have to send periodic statements when servicers transfer the loan to another servicer, the loan is fully paid or paid off through a refinance or sale of the house, or the loan is discharged in a foreclosure sale. However, servicers must continue to send periodic statements even when borrowers are delinquent or in bankruptcy.

The periodic statements should include:

- a) Payment due date;
- b) Amount of late fee; if payment is late;
- c) Amount due;
- d) Total of fees imposed;
- e) Past amount due;

- f) Monthly payment amount and breakdown of how that will be applied to principal, interest, and escrow;
- g) Total of all payments since the last statement and application to principal, interest, escrow, fees, and suspense account;
- h) Total of all payments since the beginning of the calendar year and application to principal, interest, escrow, and fees as well as total amount in the suspense account;
- i) List of all the transaction activity since the last statement;
- j) A toll-free number and email address (if applicable) where borrowers may obtain information about their account;
- k) Outstanding principal balance;
- l) Current interest rate;
- m) Date when that interest rate may change;
- n) Housing counselor Information

**Periodic Payment-** A periodic payment is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle. A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments servicers advanced on a borrower's behalf. Servicers must credit a periodic payment to the borrower's account as of the day of receipt, except when a delay in crediting does not result in any charge to the borrower, or in the reporting of negative information to a borrower reporting agency.

In cases where servicers specified in advance and in writing requirements for the borrower to follow when making payments and then accept a payment that does not conform to servicer requirements, servicers may wait up to 5 days after receipt to credit the payment. Any requirements servicers set must be reasonable.

**Partial Payment-** A partial payment is any payment that is less than a periodic payment. If servicers receive a partial payment from a borrower, to the extent that servicers are not prohibited by applicable law or the legal obligation between the parties, servicers may credit the partial payment upon receipt, return the partial payment to the borrower, or hold the payment in a suspense or unapplied funds account.

If servicers opt to retain a partial payment in a suspense or unapplied funds account, servicers must:

- Disclose on the borrower's periodic statement the total amount of funds servicers are holding in the suspense or unapplied funds account – if servicers are required to send the borrower a periodic statement.
- Once servicers have accumulated sufficient funds to cover a periodic payment, servicers must apply them as they would apply a periodic payment

**Non-Conforming Payment-** A non-conforming payment is a payment that a borrower sends without following any reasonable requirements that servicers set in advance in writing for making payments. In cases where servicer specify in writing requirements for the borrower to follow when making payments and then servicers accept a payment that does not conform to servicers requirements, servicers have up to 5 days after receipt to credit the payment. If servicers do not set specific payment requirements, then servicers must allow borrowers to make payments by cash, money order, draft, or other similar instrument in properly negotiable form during regular business hours at any location where servicers conduct business, or by electronic fund transfer, if servicers have agreed to accept electronic payments from the borrower. Under the general rule, such payments must be credited as of the day of receipt.

The partial payments servicers hold in a suspense or unapplied funds account, would not be considered to have been “accepted,” so they are not required to be applied within 5 days.

**Prompt Payment Crediting-** Periodic payments must be promptly credited as of the day of receipt. A periodic payment consists of the amount necessary to cover principal, interest, and escrow (if applicable). If servicers receive a payment that is less than the amount due for a periodic payment, servicers may place the payment in a suspense account. When the amount in the suspense account covers a periodic payment, servicers must treat the accumulated amount as a periodic payment and promptly credit it to the borrower’s account. In addition, creditors, assignees, and servicers must provide an accurate payoff balance to a borrower no later than 7 business days after receipt of a written request from the borrower for that information.

**Delinquency Information-** If the borrower is 45 days or more delinquent the periodic statement should include the following additional information:

- The date on which the borrower became delinquent
- A notification of possible risks and expenses (for example, foreclosure or legal fees) that the borrowers could face if the delinquency is not cured.
- An account history showing the previous 6 months or the period since the last time the account was current, whichever is shorter. Show the amount remaining past due from each billing cycle. If the borrower made a full payment, show the date servicers credited the account for the full payment.
- A notice showing any loss mitigation program the borrower has agreed to, if applicable
- A notice that servicers have made the first notice or filing required to start a foreclosure, if applicable
- The total payment the borrower would have to make to bring the account current
- A reference to the homeownership counselor information

If the borrower gives the servicer affirmative consent, the periodic statement may be sent electronically.

**Payoff statements-** If a borrower (or any person acting on behalf of the borrower) makes a written request for a payoff statement, a creditor, assignee, or servicer must provide the statement within 7 business days. When a creditor, assignee, or servicer, as applicable, is not able to provide the statement within 7 business days because the loan is in bankruptcy or foreclosure, or because of natural disasters or other similar circumstances, the payoff statement must be provided within a reasonable time.

**Death of Borrower-** When a servicer is notified of a borrower’s death, the servicer is responsible for promptly identifying and facilitating communication with the successor in interest of the deceased with respect to the property secured by the deceased borrower’s mortgage loan.

## **5. Force-Place Insurance**

Force-placed insurance is a hazard insurance policy that the servicer obtains on behalf of the owner or assignee. Force-placed insurance that a servicer obtains for a borrower will only be reimbursed by HUD (as part of the loan guarantee) if the following requirements are met.

Before a servicer charges a borrower for force placed insurance the servicer must have a reasonable basis to believe that a borrower has failed to maintain required hazard insurance. As part of having a reasonable basis, servicers must send 2 notices to the borrower. As part of these notices it is reasonable to ask the borrower to supply a copy of: the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, or the borrower's insurance policy or similar forms of written confirmation of Insurance.

The first notice must be sent at least 45 days before servicers charge the borrower for force-placed insurance. If servicers do not receive evidence that the borrower has had hazard insurance that complies with the loan contract's requirements continuously in place, servicers must deliver or place in the mail to the borrower a written reminder notice at least 30 days after servicers sent the first notice. If servicers do not receive evidence that the borrower has had in place required hazard insurance continuously after the second notice, servicers may assess a force-placed insurance fee 15 days or more after sending the second notice.

Servicers may reject evidence of hazard insurance coverage submitted by the borrower if neither the borrower's insurance provider nor insurance agent provides confirmation of the information the borrower submitted. Servicers may also charge for forced place insurance if the terms and conditions of the borrower's hazard insurance policy do not comply with the requirements of the borrower's loan contract. However, servicers must not obtain a force-place insurance policy, if they have received evidence that the borrower had in place, continuously, required hazard insurance.

Servicers may charge a borrower for insurance coverage that was in place before the notices were sent if servicers do not receive evidence that the borrower had in place, continuously, required hazard insurance during these periods, but servicers may not impose that charge until after the notices have been sent and the notice periods specified in the rule have elapsed.

Before each anniversary of servicer's purchase of force-placed insurance, servicers must deliver or place in the mail to the borrower a written notice explaining the renewal and requesting the borrower to provide evidence of having purchased hazard insurance on the property. Servicers only have to provide this written renewal notice once a year. In response to this notice, servicers must not have received evidence that the borrower purchased required hazard insurance. The written renewal notice generally must be delivered or mailed at least 45 days before assessing on a borrower a charge or fee related to the renewal.

If servicers renewed or replaced an existing force-placed insurance policy and servicers receive evidence that the borrower lacked insurance coverage after the existing force-placed insurance expired (including during the 45-day notice period), servicers may immediately after receiving such evidence assess a premium charge or fee related to renewing or replacing the existing force-placed insurance for that period without coverage – as long as not prohibited by state or other applicable laws.

If the borrower sends evidence of having hazard insurance coverage in place that complies with the loan contract's requirements, within 15 days servicers must: cancel any force-placed insurance servicers purchased for the borrower; refund to the borrower all force-placed insurance premium charges and related fees for any period of overlapping insurance coverage; and remove from the borrower's account all force-placed insurance charges and related fees for the overlapping period.

If the borrower does not respond or does not provide evidence of having hazard insurance, and servicers do not otherwise have such evidence, servicers may charge the borrower for force-

placed insurance 15 days after sending the second notice.

**Limitations on charges-** All charges related to force-placed insurance assessed by or through the servicer must be “bona fide and reasonable.” A “bona fide and reasonable” charge is a charge for a service servicers actually perform that bears a reasonable relationship to servicers cost to provide the service, and is not otherwise prohibited by applicable law.

**Borrowers with Escrow Accounts-** Loans guaranteed under the Section 184 program are expected to have established escrow accounts. When a borrower has an escrow account for payment of hazard insurance, servicers may not obtain force-placed insurance unless they are unable to maintain the borrower’s existing hazard insurance coverage. Servicers are not considered unable to maintain the borrower’s hazard insurance just because a borrower’s mortgage loan obligation is overdue or the escrow account has insufficient funds. Therefore, generally, servicers will have to advance funds through escrow to maintain coverage. Servicers can add this cost to the escrow balance or otherwise seek reimbursement from the borrower for the funds servicers advance.

Servicers are considered unable to maintain the borrower’s hazard insurance, and may therefore obtain force-placed insurance rather than advance funds through escrow, if servicers have a reasonable basis to believe that the hazard insurance provider has canceled the policy for reasons other than non-payment or that the property is vacant.

**Notes-** Neither flood insurance nor hazard insurance constitute force place insurance under this section.

## **6. Delinquencies**

The purpose of all collection efforts is to bring a delinquent mortgage current in as short a time as possible, to avoid foreclosures to the extent possible, and to minimize losses. HUD does not expect to see a delinquent mortgage foreclosed if there is a reasonable chance of bringing the mortgage current. Servicers will determine the most effective form of contact with specific mortgagors during the various stages of delinquency. A successful servicing strategy treats each delinquent mortgagor individually; and, based on the circumstances involved, custom tailors a foreclosure prevention workout plan that will be successful in curing the delinquency and preventing a foreclosure.

It is particularly important to address a "one-payment" delinquency immediately to prevent it from becoming more serious. An early determination of the reason for the delinquency gives the servicer and the mortgagor time to arrange an acceptable method for curing it. Prompt action is required at all stages after a delinquency has occurred.

Mortgagee staff should also review each loan in default to determine which available foreclosure avoidance (loss mitigation/loss management) strategy is appropriate. An extended temporary forbearance is often enough to cure a default; however, at other times, permanent solutions such as a loan modification, deed-in-lieu of foreclosure, refinance, or sale of the mortgage are appropriate.



**Minimum Requirements-** At a minimum the servicer must establish or make good faith efforts to establish live contact with borrowers by the 36th day of their delinquency and, if appropriate to their situation, promptly inform them of loss mitigation options that may be available, as described below. In addition, servicers must, at a minimum, provide the borrowers with written information about any available loss mitigation options by the 45th day of delinquency, as described below.

To calculate the 36 days, start with the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if servicers give the borrower a grace period after the payment is due before servicers assess a late fee.

For example, if a payment due date is January 1 and the amount due is not fully paid during the 36-day period after January 1, servicers must establish or make good faith efforts to establish live contact not later than 36 days after January 1 – meaning by February 6.

Borrowers who are performing as agreed under a loss mitigation option designed to bring them current on a previously missed payment are not delinquent for the purposes of this section. Thus, for such borrowers servicers are not required to engage in the early intervention actions.

If the borrower makes a full payment before the end of the 36-day period, servicers need not establish live contact with them. For example, if the borrower misses a January 1 due date but makes that payment on February 1, servicers do not have to contact them by February 6.

**Live contact-** Live contact with a borrower includes telephoning or conducting an in-person meeting with the borrower, but not leaving a recorded phone message. Servicers may, but need not, rely on live contact established at the borrower's initiative to satisfy the live contact requirement of this rule. Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending the borrower a written or electronic communication encouraging the borrower to establish live contact with servicers.

**Written Notice-** By the 45th day of delinquency, servicers must provide delinquent borrowers with a written notice about loss mitigation. Servicers must provide the written notice even if servicers provided information about loss mitigation and foreclosure previously during an oral communication with the borrower, as discussed above.

Delinquency, as discussed above, begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if servicers offer the borrower a period of time after the due date has passed to pay before servicers assess a late fee. For example, if a payment is due January 1 and unpaid during the 45-day period after January 1, servicers must provide the written notice within 45 days after January 1—i.e., by February 15. However, if the borrower satisfies the late payment in full on February 1, servicers would not need to provide the written notice.

Servicers are not required to provide the written notice more than once during any 180-day period. For example, a borrower has a payment due on March 1. The amount due is not fully paid during the 45 days after March 1, so servicers provide the written notice on April 15. The borrower fails to make the April 1 payment and does not pay the amount due during the 45 days after April 1. Servicers do not need to provide the written notice again during the 180-day period beginning on April 15.

The written notice must include:

- A statement encouraging the borrower to contact servicer;
- the telephone number for the personnel assigned to the borrower;

- servicer's mailing address;
- if applicable, a statement providing a brief description of examples of loss mitigation options that may be available;
- if applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from servicer;
- the website to access the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations

**Non Home Retention Options-** Servicers may offer the borrower a non-home retention option conditioned upon receipt of further information not in the borrower's possession and necessary to establish the parameters of servicer's offer. For example, servicers can comply with the requirement for evaluating the borrower for a short sale option if servicers offer the borrower the opportunity to enter into a listing or marketing period agreement, but indicate that the specifics are subject to an appraisal or title search.

## **7. Loss Mitigation Procedures**

Loss mitigation generally defined is the process of trying to prevent a foreclosure and keeping the homeowner in their home.

When servicers receive a timely loss mitigation application, servicers must acknowledge receipt of the application and inform the borrower whether the application is complete or incomplete; evaluate a complete loss mitigation application; and notify the borrower about the result of servicers evaluation, including servicers determination of the particular loss mitigation options available to the borrower or specifics about why an application for a loan modification option was denied and information about any applicable appeal process.

However, the Section 184 program does not require servicers or the owner of a mortgage loan to offer any specific loss mitigation option. But for the guidance specifically provided in this section, HUD does not require servicers to use any particular criteria to evaluate borrowers for loss mitigation.

**Owner Occupancy-** The borrower must occupy the property as a principal residence to be eligible for any of the reinstatement options. Principle residence means the dwelling where the mortgagor maintains or will maintain his permanent place of abode and typically spends or will spend the majority of the calendar year. Vacated, abandoned, investment properties, and second homes are not eligible.

**Property Condition-** Through the use of property inspections a lender is to verify that the subject property has no physical conditions which adversely impact the borrower's continued use or ability to support the debt. The reason for this is that a borrower may not be able to support payments under a loss mitigation program if the property is in such a deteriorated condition that repairs drain the borrower's monthly resources. An analysis of the borrower's surplus income should consider anticipated property maintenance expenses. If the mortgagee's inspection identifies a property in extremely poor physical condition, a modification may not be an appropriate resolution to the default.

**Financial Analysis-** In order to properly assess what, if any, loss mitigation program is appropriate to the situation, the servicer is required to assess the borrower's financial condition.

HUD expects servicers to analyze the borrower's surplus monthly income and to use reasonable business judgment to determine if the borrower has the capacity to repay the arrearage through a repayment or special forbearance plan, before considering modification. If the financial analysis determines that the borrower does not have the ability to support the modified monthly payment, the modification option may not be used. The lender is required to have the borrower complete a Debt Resolution Program form to determine the borrower's ability to repay the delinquent mortgage payments.

Financial analysis entails independently verifying the information obtained from borrower via a credit report and any other forms of verification the lender deems appropriate. Assets and surplus income must be analyzed as follows:

- Subtract expenses from income to determine the amount of surplus income available each month; and
- Divide surplus income by total monthly expenses to determine the surplus income percentage.

**Monthly Evaluation Requirement-** As long as the borrowers account remains delinquent, the lender must reevaluate the status of the loan monthly, and is required to maintain documentation of the evaluations. This evaluation may be as simple as noting that the mortgagor is making payments as scheduled.

**When Servicers Receive a Loss Mitigation Application-** If servicers do receive a loss mitigation application 45 days or more before a foreclosure sale, servicers must determine if the application is complete, meaning servicers have received all the information servicers need from the borrower to evaluate the borrower for all loss mitigations available from the owner or investor of the mortgage loan.

If servicers determine that the application is incomplete, servicers must provide a notice within 5 business days to the borrower acknowledging receipt of the application and stating:

- That servicers have determined the application is incomplete
- The additional documents and information the borrower must submit to make the loss mitigation application complete
- The date most beneficial to the borrower to submit the missing information based on the earlier of, the date by which any document or information submitted by the borrower will be considered stale or invalid or the proximity of a foreclosure sale
- A statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options

Additionally, servicers must exercise reasonable diligence to make an incomplete application complete. Although providing a notice to the borrower about the information or documents that are missing from the application is a required step for applications submitted 45 days or more before a foreclosure sale, servicers may be required to take additional steps to comply with the reasonable diligence standard. Examples of reasonable diligence include:

- Servicers need additional information from the borrower, such as an address or a telephone number to verify employment, and servicers promptly contact the borrower to obtain the information after receiving a loss mitigation application.
- Servicing for a mortgage loan is transferred to a new servicing company. The borrower made an incomplete loss mitigation application to the transferor servicer after the transfer.

Servicers review documents provided by the transferor servicer and, if necessary, request from the borrower additional documents needed to complete the application. If Servicers determine the application is complete, servicers must provide a notice to the borrower within 5 business days stating that servicers have determined the application is complete and that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options. Servicers must then proceed with evaluating that application for all loss mitigation options available to the borrower within 30 days, as discussed further below.

In general, if servicers receive a complete loss mitigation application more than 37 days before a foreclosure sale, servicers must evaluate it within 30 days for all available loss mitigation options and provide the borrower a notice in writing stating servicer's determination of which loss mitigation options, if any, servicers will offer to the borrower.

**Incomplete Loss Mitigation Applications-** If servicers receive an incomplete application, servicers may not evade the requirement to evaluate complete loss mitigation applications for all available loss mitigation options by evaluating the incomplete application. Instead, servicers must seek the information needed to complete the application, as discussed earlier. But if servicers have exercised reasonable diligence to complete the application and the application nevertheless remains incomplete for a "significant period of time" under the circumstances without the borrower taking action to complete it, servicers may in servicers discretion, evaluate the incomplete application and offer the borrower a loss mitigation option for which the borrower qualifies.

A "significant period of time" depends on the circumstances, including consideration of the timing of the foreclosure process. For example, if a borrower has less than 50 days before a foreclosure sale, an application remaining incomplete for 15 days may be a more significant period of time under the circumstances than if the borrower is still less than 120 days delinquent on a mortgage loan obligation.

**Servicers Denial of Loan Modification Options-** If servicers deny a borrower's complete loss mitigation application received more than 37 days before a foreclosure sale for any trial or permanent loan modification option, servicers must send the borrower a notice that states the specific reasons for each trial or permanent loan modification option denied.

If servicers base a denial decision on a net present value calculation, servicers must include in the notice the specific inputs that were used in the net present value calculation. If the borrower may appeal the denial decision, the notice must include the requirements for the appeal process, including the deadline for requesting that appeal.

Note that any decision not to offer a loan modification option is a denial. If servicers have 4 loan modification options and choose to offer the borrower only one option, servicers have denied the borrower for the other 3 options and must provide the required contents of the notice for those denials.

**Giving Borrower Time to Respond to Loss Mitigation Offers-** How much time servicers must give a borrower to respond to loss mitigation offers depends on the proximity of a foreclosure sale. When a borrower submits a loss mitigation application 90 days or more before a foreclosure sale, servicers must give the borrower 14 days to accept or reject a loss mitigation offer. When a borrower submits a loss mitigation application less than 90 days but more than 37 days before a foreclosure sale, servicers must give the borrower 7 days or more to accept or reject a loss mitigation offer.

If the borrower doesn't respond within the 7-day or 14-day deadline, servicers can deem that as a rejection of the loss mitigation offer except if the borrower does not satisfy the servicers requirements for accepting a trial loan modification plan, but does submit the payments the trial plan calls for within the deadline, then the servicer must give the borrower a reasonable period to fulfill any remaining requirements.

Additionally, in cases when an appeal is available, if a borrower timely appeals a denial decision, the servicer must extend the deadline for accepting any loss mitigation option offered until 14 days after the servicer notifies the borrower of the result(s) of the appeal.

**Appeals of Loan Modification Decisions-** Servicers must allow borrowers to appeal a decision regarding loan modifications when servicers receive a complete loss mitigation application 90 days or more before a foreclosure sale. The appeal process is limited to denial of loan modification programs, and is not required for other loss mitigation programs. A loss mitigation application received during the pre-foreclosure review period (or before a servicer has made the first notice or filing to begin the foreclosure process) is considered to be received 90 days or more before a foreclosure sale. The appeal must include an independent evaluation. That means servicers cannot use the same personnel who evaluated the application to review the appeal. Supervisors can review appeals so long as they were not directly involved in the initial evaluation of the borrower's complete loss mitigation application.

Within 30 days of a borrower making an appeal, servicers must notify the borrower of any decision to offer or reject the loan modification option that is the subject of the appeal. Servicers must give the borrower at least 14 days to accept or reject an offer of a loss mitigation option resulting from the appeal, after the servicer provides this notice to the borrower. The rules do not require that servicers provide any additional appeal.

## **8. HUD Approved Relief Procedures**

Mortgagees are expected to make a concerted effort to avoid the foreclosure or assignment of HUD-guaranteed mortgages. Mortgagees are also expected to utilize acceptable methods of forbearance relief, wherever feasible and when it is reasonable for the mortgagee to believe that the mortgagor can and will resume the mortgage payments; and that compliance with the terms of the forbearance plan will bring the mortgage completely current and paid in full. The decision to grant forbearance is at the discretion of the mortgagee.

**Combining Options-** Loss mitigation tools may be utilized in combination. For example, if a borrower requires time to resolve the default but will eventually be able to support the debt at the modified rate, a repayment plan or special forbearance may culminate in a loan modification. An existing repayment plan or special forbearance may also be converted to modification if the borrower's circumstances change.

Loan modification may not be used in conjunction with a partial claim. If modification is appropriate, it should be used as the primary tool to bring the account current.

**Types of Forbearance-** Forbearance agreements are generally classified as informal, formal or special. Any delinquent mortgagor may be offered forbearance. Mortgagees have greater flexibility in the use of informal or formal forbearance agreements than for special forbearance agreements. Repayment plans and forbearance agreements must always be realistic and based upon the mortgagor's ability to pay.

Informal (Verbal) Forbearance- A verbal agreement is considered an informal forbearance agreement. This type of forbearance agreement may be used when the arrearage is small and/or the duration of the agreement will be three months or less.

Formal Forbearance Agreement- If the agreement is in writing, it is considered a formal forbearance agreement. This is usually a short term (less than 18 months) repayment plan.

NOTE: Under either an informal or formal forbearance agreement, mortgagees may enter into a repayment agreement by increasing mortgage payments before the maturity date without prior HUD approval.

**Special Forbearance-** This is a specific type of a formal forbearance agreement that is designed to give the mortgagor more relief than is possible with just a regular repayment plan. Special forbearance plans must lead to reinstatement of the loan, either by gradually increasing monthly payments in an amount sufficient to repay the arrearage over time, or through resumption of normal payments for a period of time followed by a loan modification or a partial claim. While special forbearance plans have no maximum duration, at no time may the maximum arrearage due under a special forbearance plan exceed the equivalent of 12 months of principal, interest, taxes and insurance (“PITI”).

*Borrower qualifications:* It is critical to note that in no case shall a special forbearance be appropriate if the default was not due to circumstances beyond the mortgagor's control. Additionally, the loan cannot have been referred for foreclosure when the special forbearance agreement is executed.

*Agreements Requiring Prior HUD Approval-* Mortgagees must request, in writing, authorization for special forbearance in the following instances: the suspension or reduction of payments is for a period of more than 12 months; and the forbearance agreement shall require increased payments before the original maturity date of the mortgage.

*Agreement not requiring HUD Approval-*The mortgagee may grant special forbearance relief without HUD approval provided that:

- the agreement must provide the mortgagor some additional relief; and
- the special forbearance agreement will not require increased payments before the original maturity date of the mortgage.

Examples of the types of provisions which may be included in a special forbearance agreement include a repayment term of 4 or more months, suspension or reduction of payments for one or more months, and resumption of making full monthly payments while delaying repayment of the arrearage.

In order for the Office of Loan Guarantee to make a decision, the request for an approval of a special forbearance agreement must be accompanied by sufficient supporting documentation. Some examples of the type of supporting documentation normally needed for HUD to make its decision are as follows:

1. copy of the proposed forbearance agreement;
2. copy of the payment history;
3. copy of the collection history;
4. copies of the HUD assignment letters, if applicable;
5. copies of any relevant financial documentation provided by the mortgagor;

6. copy of the management review checklist establishing mortgagor's eligibility; and
7. any other documentation which will assist in establishing mortgagor's eligibility.

*Payment of Special Forbearance Claims-* When the mortgagee extends special forbearance pursuant to this guidance it will receive, as part of its insurance settlement on special forbearance agreements, unpaid mortgage interest, including all amounts accrued prior to the execution of the forbearance, computed to the earliest of the applicable dates described below:

1. the date of assignment of the mortgage to the Secretary;
2. the date of institution of foreclosure proceedings;
3. the date of the deed in lieu of foreclosure;
4. a date 90 days following the date the mortgagor fails to meet the requirements of the forbearance agreement, or
5. such other date as the Director of the Office of Loan Guarantee may approve, in writing, prior to the expiration of the 90-day period.

When circumstances beyond the mortgagee's control require an additional period of time, an extension of time may be requested from the Director of the Office of Loan Guarantee as long as the request is submitted prior to the expiration of any previously approved extension.

*Failure of a Special Forbearance Agreement-* A special forbearance agreement is considered a failure when any of the following occur:

- The borrower abandons the property;
- The borrower advises the servicer that they will not follow through and fulfill the terms of the special forbearance agreement; or
- The borrower allows 2 installments (60 consecutive days) to become due and unpaid without any advisement to the servicer of any problems that rendered them unable to stay current under the terms of the agreement

NOTE: If a claim for insurance benefits is filed as a result of the mortgagor's default under the agreement, a copy of the forbearance agreement must accompany the claim.

**Forbearance Relief Provision for Military Personnel-** Along with the traditional forbearance provisions above, there are a few special relief measures available to person(s) in the military, as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940(hereafter SSCRA or "the Act").

HUD has always taken the view that it is not in a position to interpret all the various provisions of the Act as they may affect rights between mortgagees and mortgagors. Such interpretations should be obtained from the Department of Defense, the mortgagee's attorney, or are a matter for determination by the courts.

It is critical to note that HUD-approved extensions of forbearance are not required to use the provisions of this statute. For example, servicers may, by written agreement with the mortgagor, postpone for the period of military service and for 3 months thereafter any part of the monthly mortgage payment which represents amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such period in amounts which will completely amortize the mortgage debt within the maturity as provided in the original mortgage.

If at any time during default the mortgagor is a person in military service, the period during

which he is in such service shall be excluded in computing the 180 day period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in this guidance.

HUD permits the mortgagee which commences foreclosure proceedings during the period of military service to voluntarily postpone completing them while the mortgagor is on active duty, regardless of whether application has been made to a court for a stay of foreclosure. Mortgagees may voluntarily withhold foreclosure with or without applying partial payments which advance the date of default.

Assignment Program Requirements for Mortgages Affected by the Act- Whenever an affected mortgage is in default and the court's permission is needed to either initiate or complete foreclosure, the mortgagee must obtain such permission prior to sending letters to the borrower informing them that their mortgage will be assigned to HUD (this is to assure the ability to foreclose). If the court permits the initiation and completion of foreclosure, foreclosure must be suspended until the assignment notices are sent. If the mortgagor requests assignment, the suspension must continue until the Office of Loan Guarantee issues a final decision.

**Partial Claim-** A partial claim is a loss mitigation tool whereby funds are advanced by HUD on behalf of the mortgagor in an amount necessary to reinstate the loan. The loan cannot be more than six months delinquent and cannot be in foreclosure at the time the partial claim note is executed. A lender may remove a loan from foreclosure if the borrower's financial situation has improved sufficiently to justify a partial claim. Partial claims may not be used to reinstate a loan prior to a sale or assumption and should only be utilized when mortgage modification is not appropriate. A lender may consider a mortgagor who has filed a petition in Bankruptcy Court under Chapter 13 for a partial claim, only after obtaining the approval of the Bankruptcy Court. If the mortgagor has filed a bankruptcy petition under Chapter 7, the lender must obtain Bankruptcy Court approval, and the mortgagor must reaffirm the debt.

Qualifications- Partial claims may be offered to borrowers who have overcome the cause of the default; have sufficient income to resume monthly mortgage payments; and do not have sufficient surplus income to repay the arrearage through a repayment plan; and

Terms of Partial Claim- The following provisions apply to all partial claim notes:

- The partial claim must fully reinstate the loan;
- The partial claim advance may only include the principal, interest and escrow advances necessary to reinstate the loan;
- In no event may the total arrearage exceed the equivalent of 6 months PITI;
- The lender may not include late fees, legal fees or other administrative expenses in the partial claim note;
- Lenders may collect legal and administrative fees resulting from a canceled foreclosure action directly from the borrower to the extent not reimbursed by HUD; and
- The lender must record the subordinate mortgage in all jurisdictions except Texas, where only a promissory note is required.

There is no lien priority requirement for partial claim notes; however, the lender must ensure that recordation of the subordinate mortgage does not jeopardize the first lien status of the Section 184 mortgage. Partial claims must be submitted on HUD form 27011.

Forbearance Relief through Reapplication of Prepayments- A mortgagor who has made partial prepayments to principal may, at some future time, require forbearance relief. In these situations,



the mortgagee may permit a reapplication of the prepaid sums to monthly payments to prevent a delinquency. The mortgagee should ensure that, when regular monthly payments are resumed, the remaining outstanding principal balance is one which will be completely amortized over the remaining life of the mortgage.

**Loan Modifications-** A loan modification is an agreement that permanently changes one or more of the original terms of the loan or the amount of the unpaid principal balance. Loan modifications are acceptable under the Section 184 program so long as the modifications result in a fully amortized fixed rate loan. Loan modifications allow the loan to be reinstated and results in a payment the borrower can afford. Modification is most often used to reduce a borrower's payment when the cause of the default is permanent or long term. However, if a borrower has recovered from a short term financial problem and has strong income, a modification may be used to increase the monthly payment slightly, allowing the borrower to repay the arrearage gradually over the life of the loan.

The loan modification decision is to be made solely by the servicer. However, the Section 184 program has found that the loan characteristics which best support loan modification include loans with above market interest rates and lower loan-to-value ratios. The modification tool is valuable when the arrearage can be capitalized into the loan balance, the term extended, and the interest rate adjusted to current market rate, so that the resulting monthly payment is at a level the borrower can afford. It is worth noting that loans that are not delinquent but in danger of imminent default can also be modified at the discretion of the lender.

If a servicer determines that they want to modify the loan, the Section 184 program requires that the loan result in a fully amortized, fixed rate loan. Additionally, the modification must fully reinstate the loan. Other Section 184 requirements for an acceptable loan modification are:

- Note interest rates may be reduced below market if necessary to resolve the default, but discount fees associated with rate reductions are not reimbursable;
- Foreclosure costs, late fees and other administrative expenses may not be capitalized;
- The modified principal balance may exceed the principal balance at the origination;
- The modified principal balance may exceed 100% loan-to-value;
- The total unpaid amount due may be re-amortized over the remaining term of the mortgage;
- The term may not be extended more than 10 years beyond the original maturity date. or 360 months from the due date of the first installment required under the modified mortgage, whichever is less;
- The lender must ensure first-lien status over any lien not perfected at the time of such recording;
- A minimum of twelve months must have elapsed since the loan origination date

A three month trial repayment plan is required before a loan modification can be made.

*Damaged Properties-* Costs to complete needed repairs may not be capitalized as part of a modification agreement, nor may a borrower receive any cash back from a modification. Borrowers who have sufficient equity and income to receive cash back should be considered for a delinquent refinance.

**Short Sale-** For borrowers who do not have the ability or desire to reinstate but have sufficient equity to sell their property and use the sale of proceeds to repay the mortgage, lenders should consider a repayment agreement that provides for a short-term reduction or suspension of payments pending the close of a sale or qualified loan assumption. Prior HUD approval is

necessary whenever an offer to purchase a Section 184 loan guarantee property drops below 85% of unpaid principal balance at the time of foreclosure.

## **9. Foreclosure**

Review before Foreclosure Decision- Mortgagees must assure that servicing files fully document that all servicing requirements have been followed and steps have been taken to save a mortgage prior to making a decision to foreclose. All actions taken with respect to collection, forbearance, or other alternative to foreclosure must be fully documented.

Mortgagees must develop a form or checklist to document that they have reviewed the loan to assure that appropriate management and loss mitigation (loss management) decisions were made with respect to the mortgage. The decision to foreclose must be signed by a supervisor higher than the person submitting the mortgage for foreclosure.

The servicing mortgagee must obtain the mortgage holder's approval of its decision to foreclose (a written blanket approval is acceptable to HUD).

Notification of Other Parties to the Mortgage- HUD requires that all co-mortgagors be advised of a default in an attempt to avoid foreclosure. Although state law prevails with respect to notifying co-signers, HUD considers it prudent servicing that a notification of default be sent to co-signers so they may have the opportunity to salvage the mortgage.

**Foreclosure Process-** Servicers cannot make the first notice or filing for any judicial or non-judicial foreclosure process until the borrower is more than 120 days delinquent.

However, the servicer must commence foreclosure proceedings within six months from the date of default, or within any additional time approved by the Secretary. If the laws of the state in which the mortgaged property is located or federal bankruptcy law do not permit the commencement of foreclosure within the time limits described above, the mortgagee must commence foreclosure within 30 days after the date of the expiration of the time during which foreclosure was prohibited. If the prosecution of a foreclosure is required to be discontinued by such laws, the mortgagee must recommence the foreclosure within 30 days after the date of the expiration of the time during which foreclosure was prohibited.

If a borrower has submitted a complete loss mitigation application before servicer has begun the foreclosure process, or after servicer has made the first notice or filing for the foreclosure process by more than 37 days before a foreclosure sale, servicers may not begin the foreclosure process or move for foreclosure judgment or order of sale, or conduct a foreclosure sale until one of the following occurs:

- Servicer's send the borrower a notice that the borrower is not eligible for any loss mitigation option, and the borrower has exhausted the appeal process. This can happen when the appeal process is not applicable, the borrower has not requested an appeal within the applicable time period, or servicers have denied the borrower's appeal.
- The borrower rejects all loss mitigation options servicers offer.
- The borrower fails to perform under an agreement on a loss mitigation option.

Beginning the foreclosure process means making the first notice or filing required by applicable law, including filing documents with a court or in the land records, or sending notice to the borrower as a requirement for proceeding with a judicial or non-judicial foreclosure process.

In power of sale states, judicial foreclosure should be avoided where possible, but it may be necessary to pursue a judicial foreclosure where a deficiency judgment is to be sought. The mortgagee is responsible for complying with local laws governing foreclosure and for conveying good marketable title to HUD.

*Dispositive Motion-* The prohibition on moving for judgment or order of sale includes making a dispositive motion for foreclosure judgment such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. If servicers have made a dispositive motion (meaning they have asked the court to rule in their favor without further trial proceedings) and then receive a complete and timely loss mitigation application, servicers should take reasonable steps to avoid a ruling on the dispositive motion until the servicers complete the loss mitigation evaluation process, such as requesting that the court delay consideration of servicers dispositive motion.

*Proceeding with the foreclosure process-* The prohibition on moving for judgment or order of sale does not prevent servicers from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements, in cases where servicers receive a complete and timely loss mitigation application after servicers file the first notice or file for a foreclosure proceeding--so long as the steps servicers take in the foreclosure process do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of the loss mitigation provisions of the servicing rule.

*Interaction with Foreclosure Counsel-* It is servicers responsibility to promptly instruct their foreclosure counsel not to proceed with filing for foreclosure judgment or order of sale or to conduct a foreclosure sale when they are in receipt of a complete loss mitigation application within the appropriate deadlines. This may include instructing counsel to move for a continuance of the deadline for filing dispositive motions. If a borrower submits their loss mitigation application 37 days or less before a foreclosure sale, servicers are no longer required to follow the above requirements.

*Foreclosure on Tribal Land-* On tribal trust or allotted trust lands, before a servicer proceeds with the foreclosure process, they first must offer to transfer the account to an eligible tribal member, the Indian tribe, or the appropriate Indian housing authority. HUD believes that this requirement can be satisfied by notifying the borrower's tribe that they along with any of their members have an option to purchase the property, through a first right of refusal letter.

For servicers who prefer not to pursue forecloses of properties located on tribal trust or allotted trust lands, the Department allows for the assignment of obligations and security interests to the Department without first seeking foreclosure. Assignment requests should include all of the documents required on fee simple land, along with a recorded Title Status Report (generally issued by the Bureau of Indian Affairs) showing the assignment of the loan to HUD.

Additionally, any assignment request to HUD must have evidence that the borrower's tribe was given a first right of refusal letter alerting them to the fact that they have an option to purchase the property.

## **10. Loan Assumptions**

The security instrument must note that the Section 184 loan may be assumed by a qualified borrower. Borrowers who wish to assume a guaranteed loan must qualify under the Section 184 loan processing guidelines. At the time of application for such a transaction, the lender must submit all of the information listed in the Section 184 loan processing and underwriting

guidelines for review. Lenders may not approve assumptions of Section 184 loans without prior HUD authorization.

**Release of Liability-** All Section 184 loan assumptions include a release of financial liability for the seller. A release of liability must be completed and signed at closing. When the closing documents and release of liability are received, HUD will issue a revised guarantee certificate that reflects the new borrower of record.

**Trust land-** When a loan is on trust land, the leasehold documents must be revised. To facilitate the revision, the lender must provide a copy of the release of liability and a deed of transfer to the BIA. The BIA will then record the changes in accordance with current policies and practices, and provide a copy of the approved assignment of the lease to the lender. A copy of the closing documents must be submitted to the Office of Loan Guarantee within 30 days after closing. The release is contained in the Release of Seller Form.

The lease document may require tribal approval of the assignment of the lease to the new borrower. Lenders should not proceed to closing on the assumption until and unless the tribe has assigned the leasehold to the new borrower, and it has been approved by the BIA.

**Down payment-** A down payment is not required on an assumption if the owner is willing to sell the property for the outstanding indebtedness. If the seller is charging a higher price, the buyer must make up the difference between the purchase price and the outstanding Section 184 debt. Any secondary financing used to make up this gap must be in a second lien position and will be included in the assessment of the borrower's ability to afford the home.

**Fees-** Processing fees for assumptions must be based on actual costs. The generally accepted allowable cost for an assumption is no more than \$500. If a lender wants to charge more than this generally accepted rate, they will need to document the reason for the upward departure. Fees for assumptions include, but are not limited to: the actual cost of the required credit report; the actual cost of the verification of employment; and the execution of additional release of liability forms (maximum of \$45).

## **11. Deed In Lieu Of Foreclosure**

A deed in lieu of foreclosure is a deed in which the mortgagor voluntarily conveys all interest to the mortgagee to satisfy a loan that is in default and avoid foreclosure proceedings. When the mortgage is in default, the mortgagee must consider accepting voluntary conveyance to avoid foreclosure. This is especially true where the foreclosure process is time-consuming, expensive, or where there is an extensive redemption period. HUD expects mortgagees to take a deed-in-lieu where appropriate in order to minimize HUD's losses. Deeds may not be accepted from mortgagors judged able to make the mortgage payments. HUD approval is required to accept a deed-in-lieu of foreclosure.

**Condition of Title-** Good and marketable title must be conveyed to the Secretary. The existence of secondary liens upon the property may bar acceptance of a deed. Sometimes these liens can be negotiated so that clear title can be granted. Mortgagees are expected to contact secondary lienholders in an effort to clear title to the property. It is frequently in HUD's interest for the lender to aid in the discharge or discounted payoff of secondary liens. With the borrower's consent, the consideration payable to the borrower may be applied toward discharge of liens if this will result in clear title.

**Required Documentation-** A written agreement must be executed by the borrower and lender which contains all of the conditions under which the deed will be accepted, including but not

limited to:

- Certification that the borrower does not own any other property subject to a mortgage insured by or held by HUD;
- Specific transfer date;
- Notification that there may be income tax consequences as a result of the deed in lieu;
- A statement describing the general physical condition in which the property will be conveyed;
- Agreement that the borrower will convey the property vacant and free of personal property unless an occupied conveyance has been approved by HUD;
- Itemization of the keys, built-in fixtures and equipment to be delivered to the lender on or before the transfer date; and
- Borrower's agreement to provide evidence that certain utilities, assessments and homeowner's association dues are paid in full prior to the transfer date.

The lender is responsible for ensuring that the agreement is in compliance with all applicable laws and regulations.

To assist in encouraging deeds-in-lieu, the mortgagee may pay the mortgagor a consideration for conveying title by deed. Up to \$1000 of such compensation may be included as a cost of acquisition. Mortgagees will receive full reimbursement for the amount paid to the mortgagor in the claim for mortgage insurance benefits.

Conveyance- The property must be conveyed in a manner that is consistent with applicable law. The original credit instrument must be canceled and surrendered to the borrower, indicating that the mortgage has been satisfied. As with all conveyance claims, the lender must record the deed and deliver the original recorded deed to the Office of Loan Guarantee within 45 days of the date that good and marketable title was conveyed to the Secretary.

Timing- A deed in lieu must be completed within 6 months of the date of default unless the lender qualified for an extension by first trying another loss mitigation option. If the deed in lieu follows a failed special forbearance agreement, the deed in lieu must be completed or foreclosure initiated within 90 days of the failure.

Lender Reporting Requirements- The deed in lieu must be transmitted to credit reporting bureaus. The lender is also responsible for filing Form 1099-A, Acquisition or Abandonment of Secured Property, with the Internal Revenue Service.

A deed-in-lieu of foreclosure shall not be considered by a mortgagee in cases where a decision has been made by HUD to pursue a deficiency judgment.

## **12. Claim Without Conveyance Of Title**

The Section 184 program allows payments of claims for insurance benefits without conveying title of the foreclosed properties to the Department. Where HUD has directed or authorized a mortgagee to use the claims without conveyance of title (CWCOT) procedure, the mortgagee must: estimate the foreclosure sale date; and prepare the Form HUD-91022, Mortgagee Notice of Foreclosure Sale, Part A, no later than 45 days prior to the estimated foreclosure sale date.

Confirm the actual date of the foreclosure sale by furnishing a copy of the legal Notice of Sale or

other notification of the actual foreclosure sale date to the Office of Loan Guarantee on or before the date of publication, posting, or other standard legal notice, inserting at the top of the notice the following data: Deficiency Judgment Case, the Section 184 Case Number, and the Mortgagor's Name.

**Request an Appraisal-** To complete the HUD-91022, the mortgagee must:  
Perform an appraisal in order to calculate the adjusted fair market value (AFMV). Submit these documents at least thirty (30) days prior to the actual foreclosure date.

**Contact the Appraiser-** When the HUD-91022 is submitted, the mortgagee shall forward a completed application for Property Appraisal and Commitment, Form 92800 package including a Uniform Residential Appraisal Report to the appraiser or to the Office of Loan Guarantee.

Fee appraisers will follow outstanding instructions in completing the appraisal within five (5) working days of receipt of the request.

HUD is aware that entry into tenant-occupied properties may not be possible. Fee appraisers shall provide the best estimate of value possible based upon an exterior review, tax records, a comparison of comparable properties and other available information and so indicate in the report.

**Advise Office of Loan Guarantee of Actual Foreclosure Sale Date-** If the actual foreclosure sale date occurs sooner than estimated, the mortgagee must send the HUD-91022 and the legal Notice of Sale notification to the Office of Loan Guarantee.

**Adjusted Fair Market Value-** The AFMV is the estimate of the fair market value of the mortgaged property, less adjustments, which may include without limitation, HUD's estimate of holding and resale costs that would be incurred if title to the mortgaged property is conveyed to HUD.

The Office of Loan Guarantee will not forward the AFMV to the mortgagee until the actual foreclosure sale date notification has been received. The AFMV will be provided at least five (5) working days prior to the actual foreclosure sale date. If the AFMV has not been received by the mortgagee at least five (5) days prior to the foreclosure sale, the mortgagee is requested to contact the Office of Loan Guarantee.

*Foreclosure Sale Bidding-* When the AFMV is provided the mortgagee must bid the AFMV amount if it wishes to reserve the option to retain or convey title to HUD and file a claim for the insurance benefits. If the minimum bid amount required under State law is less than the AFMV amount, the mortgagee must bid the AFMV amount to reserve the option to retain or convey the property to HUD. If the mortgagee bids an amount in excess of the AFMV, without justifiable cause, it is deemed to have made an election not to file a mortgage insurance claim with conveyance of title to the Department and HUD may refuse to reimburse the mortgagee for the deficiency judgment-related expenses.

**Waiver Provisions for Bids Required by State Law-** There may be special circumstances, such as when the mortgagee may be required under state law to bid in excess of the AFMV, which will justify a mortgagee not bidding the AFMV. Under such circumstances, the mortgagee shall not be deprived of its ability to convey title to the property to HUD.

If the state bid is in excess of the AFMV, the mortgagee must call the Office of Loan Guarantee immediately after, but no later than five (5) days after the foreclosure sale, to obtain approval to convey title to the property to HUD. The mortgagee must:

- indicate that it received Office of Loan Guarantee approval by providing the date of the approval letter in the "Mortgagee's Comments Section" on the Claim for Insurance Benefits, Form HUD-27011 and,
- maintain a copy of the HUD Office approval letter in the mortgagee's Audit File for review purposes.

NOTE: In some jurisdictions that have extraordinarily high transfer taxes, some mortgagees customarily commence the bidding at nominal amounts. Where mortgagees intend to convey title of the property to HUD, mortgagees may continue this practice. However, in the face of competing bids, mortgagees must, if necessary, bid up to the AFMV or risk not being able to file a claim. Mortgagees are cautioned that if the property is not to be conveyed to HUD so that a CWCOT is filed, i. e., title is retained by the mortgagee, purchased by a third party bidder or redeemed, the mortgagee must bid, as a minimum, the AFMV.

Inadvertent Bidding Errors- The mortgagee must bid the AFMV as instructed, in writing, by the Office of Loan Guarantee. The Office of Loan Guarantee shall not permit the mortgagee to convey title to HUD unless the mortgagee has good cause for a bidding error. For example, if the mortgagee's explanation for its bidding error relates to difficulties within its own internal operations, approval to convey shall be denied. The mortgagee must have an established procedure under its Quality Control Plan to prevent such occurrence.

The general rule is that only in "very unusual circumstances, which were beyond the mortgagee's control" shall the Office of Loan Guarantee approve conveyance of title to HUD.

Reschedule the Foreclosure Sale- The mortgagee may be requested to reschedule the foreclosure sale if there is a delay in the completion of the appraisal and calculation of the AFMV in time for the sale date. The use of the CWCOT procedure is required where the decision has been made to pursue a defaulting mortgagor for a deficiency judgment, and, the deficiency amount is based on the difference between the CWCOT-required appraisal of the property and the outstanding mortgage debt.

Postponement of the foreclosure sale should be avoided, but if it becomes necessary, the Office of Loan Guarantee will contact the mortgagee immediately to explain the reason(s) for the delay and shall request the mortgagee to reschedule the foreclosure sale. HUD shall provide a letter to the mortgagee regarding such request for the mortgagee's audit file.

Inspection of Vacant Property- The mortgagee is responsible to inspect the property, if the property is vacant. If, during the period prior to the foreclosure sale the property is found to be damaged, the mortgagee must notify the HUD Office of Loan Guarantee. The mortgagee shall request a second appraisal (if the four (4) months effective period has expired on the first appraisal) when a new foreclosure sale date has been established.

Acquisition of Title at Foreclosure Sale- At the foreclosure sale, either the mortgagee or a third party will be the successful bidder. Also, the mortgagor or a third party may redeem the property.

If the mortgagee is the successful bidder- Where the mortgagee is the successful bidder for an amount equal to the AFMV, the mortgagee may elect to either retain title to the property, or convey title to the property to HUD.

When the mortgagee retains title, it must file its claim within 30 days after acquiring good, marketable title to the mortgaged property.

When the mortgagee conveys title to the property to HUD, the mortgagee must transfer the property to HUD within 30 days after acquiring good marketable title to and possession of the mortgaged property, or within such further time as may be approved by the local Field Office.

Where the mortgagee is the successful bidder for an amount in excess of the AFMV, the mortgagee is deemed to have elected to retain title to the property, and cannot convey title to the property to HUD. The mortgagee is limited to filing a claim for the insurance benefits, which will be calculated on the basis of the bid amount.

However, if the Office of Loan Guarantee approved the mortgagee's justification for having bid an amount in excess of the AFMV, HUD would waive this provision and allow the mortgagee to convey title to HUD if it so chooses.

Whether the mortgagee retains the property or receives approval to convey the property, the mortgagee has 30 days after acquisition of good marketable title to submit its claim for insurance benefits to HUD (if any) on Form HUD-27011. If the mortgagee receives approval to convey the property, "possession of" the property, as well as good marketable title, shall apply.

NOTE: If the mortgagee bids an amount in excess of the AFMV, and is subsequently penalized for such action, this does not excuse the mortgagee from its duty to assign to HUD any deficiency judgment if the mortgagee intends to file for any reimbursement permitted under the insurance claims procedures.

Where the mortgagee is the successful bidder for an amount which is less than the AFMV, the mortgagee can only obtain the insurance benefits by conveying title to the property to HUD. If the mortgagee retains title to the property, the mortgagee would not be able to file a claim. If the mortgagee elects to convey title to HUD, the mortgagee must transfer the property to HUD within 30 days after acquiring good marketable title to and possession of the mortgaged property.

If the mortgagee retains title to the property, HUD will not pay for any of the following costs incurred by the mortgagee: costs to maintain the property after the foreclosure sale; eviction costs, or costs to sell the property.

If a third party is the successful bidder- Where a third party is the successful bidder at the foreclosure sale for an amount equal to or greater than the AFMV, the mortgagee must submit its claim for insurance benefits (if any) on Form HUD-27011, within 30 days after the date the third party acquires good marketable title to the property. When the claim is calculated, the proceeds of the sale shall be deducted from the principal balance of the mortgage which was unpaid on the date of the foreclosure proceedings. Where a third party is the successful bidder at the foreclosure sale for an amount which is less than the AFMV, the mortgagee will not be able to file a claim.

If the mortgagor or a third party redeems the property- Where the mortgagor exercises the right of redemption and redeems the property or a third party redeems the property, pursuant to the mortgagee or a third party bidding and acquiring title to the mortgaged property for an amount not less than the AFMV, the mortgagee must submit its claim (if any) within 30 days after the property is redeemed. The redemption amount will be deducted from the principal balance of the mortgage when the claim is calculated.

If a third party sale falls through, state laws govern disposition, e. g., re-advertising the property, reverting to next highest bidder, etc. Since the deed would not have been filed for record, acquisition of good marketable title would not have been obtained. The mortgagee would still have 30 days from the date when such title is obtained to file the claim.



In the event of a third party purchase, HUD will not reimburse the mortgagee for eviction costs.

Also, HUD will not reimburse the mortgagee for expenses incurred to preserve and protect the property after the foreclosure sale.

### **13. Deficiency Judgment**

Deficiency judgments are to be pursued by mortgagee's except where state law makes them impossible or highly impracticable. The reason for this is to both deter future abuse of HUD programs and to collect revenues that can offset losses to HUD.

A mortgagee can initiate the deficiency judgment process by notifying the Office of Loan Guarantee that it has information indicating that a mortgagor meets the criteria for pursuit of a deficiency judgment. Mortgagees initiating the deficiency judgment process must use the CWCOT procedure.

Assignment of Judgments- Deficiency judgments successfully pursued by mortgagees must be assigned to HUD if the mortgagee files a claim for mortgage insurance benefits. Assigned judgments must be transmitted to the Office of Loan Guarantee within 30 days of being obtained. The mortgagee must not engage in judgment collection activities, unless the mortgagee will not file a claim for Section 184 insurance benefits in that case.

**Collection and Post-collection Activities-** HUD will utilize various methods to collect once the judgments have been assigned. Even before a judgment is formally obtained, a mortgagor or his legal representative can approach the Office of Loan Guarantee to discuss a settlement of the potential deficiency judgment. A mortgagor can benefit from settlement of a potential deficiency judgment by compromising the amount paid to HUD, and also by keeping the actual judgment from becoming a part of the mortgagor's credit record. If deficiency amounts are determined to be uncollectible (in whole or in part), HUD will then file Information Returns (Form 1099-G) with the IRS.

### **14. Preservation and Protection of Property**

The lender is responsible for taking reasonable actions to protect and preserve the value of the security until title can be conveyed to HUD.

*Inspections-* The servicer shall do an initial inspection of the subject property as well as possibly doing follow up inspections to determine whether the property is occupied or vacant. The occupancy inspection is necessary to determine when foreclosure action must be initiated and when protection and preservation action must be taken if the mortgagee cannot determine the occupancy status by telephone, letter or other means. All inspections must be performed in accordance with HUD's requirements and will be reimbursable when performed as provided in the following paragraphs.

Initial property inspection- When the mortgage is in default and a payment is not received within 45 days of the due date and efforts to reach the mortgagor or occupant at least by telephone have been unsuccessful, the mortgagee must perform a visual inspection of the mortgaged property to determine if it has become vacant or abandoned.

During the course of any continuing delinquency, reimbursement will be made for only one

"initial inspection". If the mortgagor reinstates and later becomes delinquent, an "initial inspection" may again become necessary and therefore may be also reimbursable as such. The need to perform a visual inspection is immediate and must not be delayed. The prompt identification of mortgaged properties that are vacant or abandoned is of mutual benefit to both mortgagees and HUD. This requirement is met when the inspection is performed, not when "ordered". Prudent servicing dictates that the mortgagee take into consideration the servicing history and prior payment habits of the mortgagor when determining when this inspection should be performed.

Mortgagees may continue to attempt to contact the mortgagor by telephone until the 45th day (while waiting to see if the mortgagor remits his payment) before performing a visual inspection. HUD will consider a visual inspection performed no later than the 60th day of delinquency to meet this requirement. However, where there is a greater risk of vacancy or abandonment, such as for first or second payment defaults, this inspection should not be delayed and optimally should be performed within 45 days from the payment due date. Mortgagees must accomplish the ordering and scheduling of inspections in a manner which ensures the inspection will be accomplished according to HUD requirements.

If the mortgagee failed to make an inspection of the property as required, and the property is later found to be vacant and vandalized, the Department will take the position that the damage resulted from the mortgagee's failure to preserve and protect and the claim will be subject to surcharge unless the mortgagee can produce evidence that the damage occurred prior to the date the property became vacant.

Occupancy Inspection- A servicing tool available to a mortgagee that assists in establishing if a property subject to a mortgage in default has become vacant or abandoned. If the mortgage remains in default after the initial inspection and the mortgagee is unable to determine the occupancy status by telephone or written correspondence an adequate follow-up must be made within 30 days of the last inspection or follow-up. When the conditions necessitating the occupancy inspection continue; within the previous 30 days there have been no payments, no contact with the defaulting mortgagor and increased probability of potential abandonment, the mortgagee should consider having a visual inspection performed within thirty days from the date of the last visual inspection. In performing the occupancy inspection, the servicing mortgagee should require the inspector to establish if the mortgaged property remains occupied and should also require the inspector to attempt to confirm the identity of any occupants.

Prior to having an occupancy inspection performed, the mortgagee must perform at least one valid follow-up to determine whether the property remains occupied. This follow-up must be documented whether it was by letter, telephone, or means other than an on-site inspection.

During bankruptcy actions, an inspection should not be necessary if the mortgagor is making his payments in accordance with the bankruptcy plan. Usually bankruptcy plans separate pre-petition and post-petition payments, requiring the mortgagor to submit his regular payment directly to the mortgagee and pass part of his payment (for payment to his current arrearage) through the bankruptcy court. As long as his regular payment continues to be remitted, an inspection should not be required of a mortgagor in bankruptcy. When payments are not being made as scheduled, either the bankruptcy trustee or the filing attorney should be contacted for information concerning the status of the mortgagor.

Inspections are not the only mechanism by which a mortgagee may establish occupancy of a delinquent mortgagor. During the duration of any continuing delinquency, mortgagees must continue to prudently service the mortgage including regular attempts to contact the delinquent

mortgagor by telephone and by written correspondence. No delinquency should be allowed to continue indefinitely without some type of contact with the mortgagor.

The cost of inspections on occupied properties may be reimbursed only if the mortgagee has documented the attempted written or telephone contacts. There must be adequate documentation to demonstrate that the mortgagor or occupant could not be contacted by any other means.

Vacant Properties- Where the mortgage is in default and the mortgagee has established that the mortgaged property is vacant, mortgagees shall inspect the mortgaged property every 25 to 35 days. This inspection should not be earlier than 25 days from the last inspection or later than 35 days after the last inspection. A distinction must be made between those items which are required and those which are merely recommended. Only when an Office of Loan Guarantee official has identified a need to inspect more frequently, and has made this a requirement, will a mortgagee be reimbursed for these additional inspections.

If the delinquency is cured, the cost of the inspections may be collected from the mortgagor if; the inspection was required, performed and properly documented. The loan must have been reinstated or paid in full. No inspection costs may be recovered from a mortgagor if the delinquency is continuing. The cost of each inspection must be reasonable and within the cost limitation established by the appropriate Office of Loan Guarantee official. Under no circumstances may the mortgagee charge the mortgagor's escrow account for inspection costs.

If there is evidence that the mortgagee knew the mortgagor was still in occupancy, such as documented communication with the mortgagor, counseling agency, the mortgagor's attorney or the Office of Loan Guarantee, such charges are inappropriate and must not be charged to the mortgagor or included on a claim for insurance benefits.

For all inspections, mortgagees shall be required to document the general condition of the property as well as any actions which would be required to adequately protect and preserve the property. Most of the inspection forms currently used by the industry (i. e., FNMA's inspection form) meet or exceed our requirements. At this time, HUD will not require mortgagees to use a specific form.

However, at a minimum, the following items must be documented on each inspection report:

- Date of the inspection.
- Identity of the inspector.
- Is the property occupied?
- Is the house locked?
- Is the grass mowed and/or shrubs trimmed?
- Is there any apparent damage?
- Is any exterior glass broken?
- Are there any apparent roof leaks?
- Does the house contain personal property and/or debris?
- Are any doors or windows boarded?
- Is the house winterized?
- Are there any repairs necessary to adequately preserve and protect the property?

Proper documentation must be maintained by the mortgagee on the performance of inspections and follow-up activities. HUD defines proper documentation, for the purposes of reimbursement, as copies of all completed inspection forms and accompanying follow-up documentation for occupancy inspections, which shall be available for verification and shall be maintained in each

claim review file for which reimbursement is being sought.

Preservation And Protection Actions- Once the mortgagee has determined that the property is vacant or has been abandoned the mortgagee must take all reasonable action short of illegal trespass, to secure the property and protect it from damage from the elements and from vandalism. HUD may refuse to accept title or the mortgagee's claim will be surcharged for costs associated with damage caused by the mortgagee's failure to meet this responsibility.

The mortgagee is expected to comply with all requirements set forth by the Office of Loan Guarantee for the preservation and protection of insured properties. Key requirements for preservation and protection are as follows:

- Secure windows and doors according to Regional guidelines to prevent unauthorized entry. Boarding up of properties must not be done without prior HUD approval.
- Protect plumbing and other operating systems against damage by freezing.
- Unless specifically exempted by the Office of Loan Guarantee, mortgagees shall remove debris (interior and exterior).
- Mow lawns, maintain shrubs and perform snow removal.

In determining cost limits, the Section 184 program will use the regional guidelines established by the FHA Single Family Housing program. Prior written approval must be obtained from the Office of Loan Guarantee to exceed the limit established for the local jurisdiction. If the servicer believes that the circumstances surrounding the property are such that maintenance should be performed more frequently than is identified in the regional guidelines, mortgagees must obtain prior written approval from the Office of Loan Guarantee.

When a servicer wants to exceed the local cost limits by more than \$1500 they must receive prior approval from the Office of Loan Guarantee. The cost of required inspections and utilities (for only those areas where HUD has required they be left on) are not included in this maximum. However, all expenses must be supported by receipts, and only amounts which fall within allowable local cost limits (or which prior written approval has been obtained) may be claimed for reimbursement. If a mortgagee elects as a matter of convenience to obtain services at a cost higher than the allowable limits, the excess costs will not be reimbursed by HUD. HUD has the discretion to request additional bids for cost that are deemed to be higher than the typical area cost to offset repairs.

The mortgagee must maintain receipts for all costs incurred for preservation and protection of insured properties. HUD reserves the right to require reimbursement of any costs included on an insurance claim that are not adequately supported.

The mortgagee is required to protect and preserve the property until its conveyance to the Secretary of HUD. No claim for reimbursement shall be made to the Secretary for protection and preservation services performed after conveyance unless it has been approved by the Office of Loan Guarantee.

*Note on Swimming Pools-* Swimming pools may create both liability on the part of the mortgagee and maintenance expenses. HUD will not reimburse mortgagees for the cost of insurance against potential liability arising from swimming pools. Whether to purchase such insurance is the mortgagee's decision. HUD will only reimburse the mortgagee for the expense of maintaining a swimming pool if prior HUD approval is obtained. In order to get HUD approval it will need to be demonstrated that the pool was installed and functioning when the mortgage was insured; the facility with all of its appurtenances will be conveyed to the Secretary unencumbered; the

preservation and protection activities of the mortgagee are required to comply with health and safety requirements imposed by law; and HUD determines that the amenities have a potential to add sufficiently to the recovery to warrant reimbursement.

### **15. Condition of Property**

Unless prior approval has been given to accept the property in a damaged condition, the mortgagee must certify that, as of the date of filing the deed for record, the property is:

- undamaged by fire, flood, earthquake, hurricane or tornado;
- the property is undamaged due to failure of the mortgagee to take reasonable action to protect, preserve and inspect the property; and
- was undamaged while the property was in the possession of the mortgagee.

Conveyance of Damaged Properties- The Office of Loan Guarantee may agree to accept damaged properties, at the mortgagee's request. For this to occur the mortgagee must submit a written request to HUD explaining a full description of the circumstances; the reason the mortgagee does not wish to make repairs; an estimate by the mortgagee of the cost of repairs; and the amount of the insurance recovery, if any.

Conveyance of Fire Damaged Properties- If the property has been damaged by fire and the property was not covered by fire insurance at the time of the damage, or the amount of the insurance coverage is inadequate to repair fully the damage HUD will accept conveyance without prior approval provided that the mortgagee has satisfactorily met all regulatory requirements. The mortgagee must so certify that the following requirements have been met when the claim for insurance benefits is filed:

- At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of 100% of the insurable value of the improvements or the principal loan balance of the mortgage;
- The insurer later canceled this coverage or refused to renew it for reasons other than nonpayment of premium; and
- The mortgagee made diligent though unsuccessful efforts within 30 days of any cancellation or non-renewal of hazard insurance, and at least annually thereafter, to secure other coverage or coverage under a FAIR Plan, in an amount at least equal to the lesser of 100% of the insurable value of the improvements or the principal loan balance of the mortgage, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and
- The mortgagee took all required actions to preserve and protect the property.

Any insurance benefits received must be applied to reduce the claim. Under these special circumstances, the reduction to the claim will be limited to the amount of insurance recovery.

**Other Damage-** If a property is damaged by other than fire, flood, earthquake, tornado, or boiler explosion, and the mortgagee does not believe that the damage resulted from a failure to take required actions to inspect, protect and preserve the property, the mortgagee must:

- Identify such damage in the mortgagee's comment section of Form HUD-27011 Part A; and
- Provide the Office of Loan Guarantee copies of all documentation necessary to verify that the mortgagee met its requirement to take reasonable action to inspect, protect and

preserve the property. All documents must identify the specific case by Section 184 case numbers.

- In the event a property is conveyed damaged, but is not identified as such on the claim form, no further reimbursement will be made until the Office of Loan Guarantee has made an evaluation of mortgagee responsibility.

**Hazard Insurance Recovery-** In many circumstances, hazard insurance proceeds remain unclaimed because the mortgagee failed to timely file his claim with the insurance carrier. The mortgagee is expected to take all appropriate action to recoup all available hazard insurance proceeds. Where completion of an action jeopardizes the mortgagee's ability to receive hazard insurance proceeds (such as conveyance of title to HUD), the mortgagee shall request an extension of time from the Office of Loan Guarantee with a specific reason the extension is warranted.

If there is evidence of vandalism or theft resulting in damage or missing built-in appliances, air conditioning units, furnaces, water heaters, plumbing fixtures, etc., the mortgagee should file a claim with the mortgagor's insurance carrier and obtain all available insurance proceeds for damages to the property. Mortgagees are not required to have mortgagors obtain insurance for this type of coverage, however, if the existing policy covers loss or damage to these items (and many do), a claim must be filed to cover the loss. Mortgagees should have documentation to indicate their attempt to recover the hazard insurance proceeds.

Mortgagees will be held accountable for these types of losses, if the loss was due to their failure to properly inspect, protect and preserve the property.

**HUD Acceptance of Responsibility-** On the date the deed to the Secretary is filed for record, HUD assumes full responsibility for all expenditures for repairs, winterization, property clean-up and other miscellaneous expenses. The mortgagee or his agent must forward all keys to the property to the Office of Loan Guarantee with the copy of the Claim for Insurance Benefits, Form HUD-27011, Part A.

Damage discovered during HUD's first inspection of the property after conveyance may be presumed to have occurred while the mortgagee had possession unless the mortgagee is able to provide evidence to the contrary.

The mortgagee must not incur expenses for protection and preservation of the property, or for eviction of occupants, on or after the date the deed is filed for record and the claim for mortgage insurance benefits is filed without the express written approval of the Office of Loan Guarantee. Expenses for work done before the deed is filed for record may be paid after that date.

**Property Damage and Restoration-** The condition of a property at conveyance is the responsibility of the mortgagee. HUD will not normally inspect damages or repairs until a claim and conveyance are imminent. An exception to this general rule is when the mortgagee has requested permission to convey title without repairing the damage. After repairs have been completed and the mortgagee is satisfied that they are adequate, the mortgagee may (at its option) ask for assurance that the repairs are acceptable to HUD so that a later claim for mortgage insurance benefits will not be surcharged because of the damage. The following procedure applies to such requests:

- Contact the Office of Loan Guarantee when the repairs have been completed to the mortgagee's satisfaction.
- The mortgagee assumes full responsibility for payment of the inspection fee, which may not be passed on to the mortgagor or included in a later claim for insurance benefits.

- Send the inspector's completed report (on Form HUD-92051), to the Office of Loan Guarantee

NOTE: If the report documents that the repairs are satisfactory, it represents HUD's assurance that the claim will not be surcharged for the damage.

**OCCUPANCY-** On the date the deed is filed for record, the mortgagee must certify that the property is vacant and free of personal property unless HUD has agreed to accept title with the property occupied. This guidance applies whether title is acquired by foreclosure or by deed-in-lieu of foreclosure. Title may not be conveyed until the following actions have been completed:

Notify Mortgagor and Occupants- At least 30 days, but not more than 60 days before the mortgagee reasonably expects to acquire title (or within 10 days after learning that title will be acquired by deed-in-lieu of foreclosure), the mortgagee must notify the mortgagor and each head of household who is actually occupying a unit of the property of its pending acquisition by HUD. This notice must be sent whether the property is occupied or vacant. The 30-60 days requirement must be timed to expire with the redemption period. The notification must be sent by regular mail, although an additional copy may be sent by other means. On the same date a copy must be sent to the Office of Loan Guarantee. On that copy the mortgagee must include its HUD Mortgagee Approval Identification Number, the approximate date of the foreclosure sale or of the anticipated acquisition by deed-in-lieu of foreclosure and the date of expiration of any redemption period.

If an occupant contacts HUD within 20 days of the date of the mortgagee's notice, requesting to remain in the property, HUD will notify the mortgagee. If the mortgagee has not received such notification within 15 days after sending the notices discussed above, the mortgagee shall convey the property vacant, unless otherwise directed by the Office of Loan Guarantee.

If HUD approves occupied conveyance, the mortgagee must note the date of HUD's approval letter in Item 23 of Form HUD-27011. If the mortgagee is notified that HUD is considering a request for occupied conveyance, but 60 days have elapsed since the notices discussed above were sent and there has been no final decision from HUD, the mortgagee may convey title with the property occupied. The mortgagee must advise HUD by separate letter of the occupied conveyance and must enter in Item 23 of Form HUD-27011 the date of the 60th calendar day after the date of the mortgagee's notification letter to the occupant.

Occupied conveyance may be permitted where a tenant is making regular monthly payments to the mortgagor and state or local law prohibits eviction for this or other similar reasons beyond the control of the mortgagee. Occupied conveyance may also be permitted where state or local law requires the payment of excessive eviction or relocation expenses as part of the eviction process. In any of these situations, mortgagees must notify the Office of Loan Guarantee for additional guidance.

#### **16. Claim For Insurance Benefits-With Conveyance Of Title**

Mortgagees must properly and completely fill out the claim for insurance benefits (Form HUD-27011).

*Cancellation of Hazard Insurance-* The mortgagee must request the hazard insurance be canceled as of the date the deed is filed for record.

*Taxes--Prior to Conveyance-* The mortgagee must obtain and pay all available tax bills prior to

conveyance. This applies regardless of whether the taxes are due before or after conveyance. Attach copies of the last tax bills paid (to all appropriate taxing authorities) to the HUD-27011 servicers send to the Office of Loan Guarantee. A copy of the tax bill, a copy of the disbursement document, or other types of information, as long as it indicates that the tax payment was paid or sent for payment, is acceptable.

*Taxes--After Conveyance-* Forward to the Office of Loan Guarantee for payment any tax bills received after servicers convey the property to HUD.

*Tax Penalties-* Tax penalties incurred by HUD as a result of the failure of the mortgagee to pay taxes prior to conveyance must be reimbursed by the mortgagee.

*Title Requirements-* Title conveyed to the Secretary must be good and marketable. In some cases, title exceptions may be waived even if they impact on marketability if the mortgagee is willing to accept a reduced claim for mortgage insurance benefits.

*Secondary Liens-* Generally, no junior liens may remain when title is conveyed, either by deed-in-lieu of foreclosure or as the result of foreclosure.

*Other Liens-* HUD will not object to title where there is a lien in favor of the Internal Revenue Service (IRS), regardless of its position, if the following conditions are met:

1. IRS has been notified of the foreclosure;
2. the IRS lien was established after the date of the mortgage lien; and
3. the mortgagee bid at least the full amount of the indebtedness plus the cost of foreclosure (this precludes the mortgagee's option to convey title using any variation of the CWCOT procedure if there is an IRS lien).

*Reconveyance of a Property to the Mortgagee-* If a mortgagee fails to comply with HUD's conveyance policies, HUD may reconvey title to the mortgagee. Under these conditions, HUD will cancel the claim for insurance benefits. HUD will require reimbursement for expenses incurred regarding acquisition, holding and reconveyance. The time covered will be from the date the deed to HUD was filed for record to the date of reconveyance.

### **17. Request For Payment of Claim**

The Department will pay the lender 100% of the remaining portion of unpaid obligation under the loan agreement, in addition to reasonable fees and expenses incurred in the foreclosure.

In addition, the Department will pay the interest expenses that a mortgagee is owed while a mortgage is in default. However, the interest owed to a mortgagee will be curtailed upon the filing of any judicial or non-judicial foreclosure process (which must begin within six months from the date of default).

Claims must be submitted with all supporting documents. As 100% of eligible expenses will be paid, however it is important to note that debenture interest is not applicable on these items. The forms and items listed below must be submitted to the Office of Native American Programs, Office of Loan Guarantee, 451 Seventh Street SW, Washington, DC 20003, Attention: Section 184 Office of Loan Guarantee. To expedite processing, all claims should include:

- The original loan guarantee certificate;



- The original owner's title insurance policy to Secretary of Housing and Urban Development;
- The original note/mortgage or deed;
- Completed HUD-27011 form;
- Copies of leasehold documents (if applicable);
- Expense receipts;
- Documentation of existing indebtedness on the property;
- Loss mitigation documentation; and
- Servicing history

**FOR FURTHER INFORMATION:** Contact Matthew Douglas at (202)-402-6434. Persons with hearing or speech impairments may access their Area Office of Native American Programs via TTY by calling the Federal Information Relay Service at (800) 877-8339.

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Sandra B. Henriquez, Assistant Secretary  
for Public and Indian Housing