

SECTION 184 INDIAN HOUSING LOAN

GUARANTEE PROGRAM

Processing Guidelines 2011

Chapter 3: Lender Participation

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3.1 LENDER ELIGIBILITY

This chapter describes the Secretary's approval requirements and minimum standards for lenders and mortgagees to participate in the Section 184 program.

Eligible lenders are those approved and meeting the qualifications established by 24 CFR Part 1005.104. However, loans that are otherwise insured or guaranteed by an agency of the United States, or are made by an organization of Indians from amounts borrowed from the United States, are not eligible for a guarantee.

The following lenders are deemed to be eligible:

- Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;
- Any lender whose housing loans under chapter 37 of title 38, of the United States Code are automatically guaranteed pursuant to section 1802(d) of such title;
- Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;
- Any other lender that is supervised, approved, regulated, or insured by any other agency of the United States; or
- Any other lender approved by the Secretary under this part.

3.2 LENDER APPROVAL PROCESS

To begin processing transactions lenders must both complete a training conducted by Section 184 Program staff, and get the required lender package approved.

Note that any lender approved under this section shall comply with all requirements of the Real Estate Settlement Procedures Act (RESPA) at 24 CFR Part 3500.

Only the lenders meeting the qualifications under section 3.1 of this chapter may originate and service section 184 guaranteed mortgages.

- A. **Training.** Training will be offered by Section 184 Program staff on a regular basis. Participants must request registration forms from the Office of Loan Guarantee (OLG). Attendees will be confirmed for training via e-mail after receipt of a fully completed registration form.

OLG will require each lender to annually certify that each of their participating staff members have completed the required Section 184 training.

- B. **Submitting Required Documents.** The required documentation must be submitted to OLG either electronically or by mail. All copies of original documents must be clear, readable, and legible.

The submission package should contain a statement requesting approval as a Section 184 Lender. The statement should include the name and address of the applicant and the geographic area in which the applicant intends to originate loans. The package must also include:

1. Evidence of federal approval, supervision, regulation or insurance. For example, all HUD/Federal Housing Administration (FHA) approved lenders must submit the HUD/FHA lender identification number for each approved branch office that will originate Section 184 loans. In addition, all lenders must provide copies of their state licenses for the areas in which the lender plans to offer the Section 184 mortgage program.
2. Address, telephone number, and name of the branch manager for each branch office that will originate Section 184 loans. HUD/FHA approved lenders must provide the FHA lending area for each branch office.
3. List of employees who will be submitting documentation to HUD, their Social Security Numbers, and positions.
4. A copy of the FHA, U.S Department of Veterans Affairs (VA), or U.S. Department of Agriculture approval form.
5. A list of the officers and directors who will be responsible for the actions of the applicant (and persons holding more than 10% of stock in the entity, if applicable), including their Social Security Numbers and home addresses.
6. Resume(s) of at least one corporate (if applicable) officer/director with experience in mortgage lending;
7. Residential Mortgage Credit Reports on all officers/directors and a business credit report on the entity requesting approval. The applicant will order and pay for the credit reports;

8. Annual Certified Audit Reports. With the request for approval, the entity must submit its most recent (but not older than 15 months) annual certified audit report. Note that an entity approved as a Section 184 lender under 24 CFR Part 1005.104(e) will be required to submit its certified audit report annually within 90 days of the close of its fiscal year;
 9. A copy of the applicant's quality control plan (due diligence reviews) for the origination of 184 loans.
- C. **Application Fee.** In addition to the required documentation, in order to be considered for participation in the Section 184 Loan Program, a lender must submit a nonrefundable application fee of \$500 for their home office and \$50 for each branch that will be participating in the program. OLG will use this application fee to help recoup administrative expenses. ***application fees are not required until further notice***.
- D. **Issuing Lender Agreement and Code of Conduct.** Upon completion of the approval requirements and the return of the Lender Agreement and Code of Conduct to OLG within 30 days of completing the training, OLG will issue letters of approval to approved lenders, completion certificates to all staff completing the training, and update the website with Lender information. All new staff are required to register with the Office of Native American Programs (ONAP) staff to complete the training prior to participation. ***signed lender agreement and code of conduct not required until further notice***.

3.3 GENERAL APPROVAL STANDARDS

To be approved for participation in the section 184 program, and to maintain approval, a lender or mortgagee shall meet and continue to meet the following general requirements (except tribal lenders) and the requirements for one of the eligible classes of lenders or mortgagees in section 3.6 through 3.10 of this chapter.

- A. **Business Form.** The lender or mortgagee shall be a corporation or other chartered institution, a permanent organization having succession or a partnership. A partnership must meet the following requirements:
1. Each general partner must be a corporation or other chartered institution consisting of two or more persons.
 2. One general partner must be designated as the managing general partner. The managing general partner shall comply with the requirements of paragraphs (b), (c) and (f) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lenders or property improvement or manufactured home lenders, and must have exclusive authority to deal directly with the Secretary on behalf of each partnership.

Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and the Secretary shall be immediately notified of the substitution.

3. The partnership agreement shall specify that the partnership shall exist for the minimum term of years required by the Secretary. All section 184 guaranteed mortgages held by the partnership shall be transferred to a lender or mortgagee approved under this part prior to the termination of the partnership. The partnership shall be specifically authorized to continue its existence if a partner withdraws.
 4. The Secretary must be notified immediately of any amendments to the partnership agreement which would affect the partnership's actions under the section 184 loan guarantee program.
- B. **Employees.** The lender or mortgagee shall employ competent personnel trained to perform their assigned responsibilities in consumer or mortgage lending, including origination, servicing and collection activities. The lender also shall maintain adequate staff and facilities to originate and service mortgages, in accordance with applicable regulations, to the extent the mortgagee or lender engages in such activities. Permanent members of the lenders staff must be employees of the company. No independent contractors are allowed.
- C. **Officers.** All employees who will sign applications for a mortgage guarantee on behalf of the mortgagee or report loans for a guarantee shall be corporate officers or shall otherwise be authorized to bind the lender or mortgagee in the origination transaction. The lender or mortgagee shall ensure that an authorized person reports all originations, purchases, and sales of Title I loans or Title II mortgages to the Secretary for the purpose of obtaining or transferring guarantee coverage.
- D. **Escrows.** The lender or mortgagee shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under loans or guaranteed mortgages on account of ground rents, taxes, assessments, and insurance charges or premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Administration, except as otherwise provided in writing by the Secretary.
- E. **Servicing.** A lender shall service or arrange for servicing of the loan in accordance with the Section 184 program requirements, and all the other additional conditions and requirements as the Secretary may impose.
- F. **Business Changes.** The lender or mortgagee shall provide prompt notification to the Secretary of all changes in its legal structure, including, but not limited to, mergers, terminations, name, location, control of ownership, and character of business.
- G. **Financial Statements.** The lender or mortgagee shall, upon request by the Secretary, furnish a copy of its latest financial statement, furnish such other information as the Secretary may request, and submit to an examination of that portion of its records which relates to section 184 program activities.
- H. **Quality Control Plan.** The lender or mortgagee shall implement a written quality control plan, acceptable to the Secretary that assures compliance with the regulations and other issuances of the Secretary regarding loan or mortgage origination and servicing.

- I. **Ineligibility.** Neither, the lender or mortgagee, nor any officer, partner, director, principal, or employee of the lender or mortgagee shall:
 - 1. Be suspended, debarred, or restricted under any federal agency procedures;
 - 2. Be indicted for, or have been convicted of, an offense which reflects upon the responsibility, integrity or ability of the lender or mortgagee to participate in section 184 program;
 - 3. Be subject to unresolved findings as a result of HUD or other governmental audits or investigations; or
 - 4. Be engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility.
- J. **Branch offices.** A lender may, upon approval by the Secretary, maintain branch offices for the origination of section 184 loans. A branch office of a mortgagee must be registered with the Department, approved and licensed by the state, in order to originate section 184 mortgages or submit applications for mortgage guarantee. The lender or mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.
- K. **Conflict of interest.** A mortgagee may not pay or be paid anything of value, directly or indirectly, in connection with any guaranteed mortgage transaction or transactions to any person or entity if such person or entity has received any other consideration from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that consideration approved by the Secretary may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization unless otherwise approved by RESPA.
- L. **Reports.** Each lender and mortgagee must submit a yearly verification report on a form prescribed by the Secretary. Upon request for approval and with each annual recertification, each lender and mortgagee must submit a certification that it has not been refused a license and has not been sanctioned by any State or States in which it will originate section 184 mortgages. In addition, each mortgagee shall file the following:
 - 1. **An Audited or Unaudited Financial Statement**, within 30 days of the end of each fiscal quarter in which the mortgagee experiences an operating loss of 20% of its net worth, and until the mortgagee demonstrates an operating profit for two consecutive quarters or until the next recertification, whichever is the longer period; and
 - 2. **A Statement of Net Worth**, within 30 days of the commencement of voluntary or involuntary bankruptcy, conservatorship, receivership or any transfer of control to a Federal or State supervisory agency.
- M. **Net Worth.** Each approved supervised or non-supervised lender or mortgagee shall have a net worth of not less than \$250,000 in assets acceptable to the Secretary. Each supervised or non-supervised mortgagee shall have additional net worth in excess of \$250,000 of not less than one percent of the mortgage volume exceeding \$25,000,000 in value, but total net worth is not required to

exceed \$1,000,000. Mortgage volume is calculated as of the end of the fiscal year being audited and equals the sum of:

1. The aggregate original amount of guaranteed mortgages that the mortgagee originated and that were guaranteed during the fiscal year, or that the mortgagee purchased as a sponsor from its loan correspondent(s) during the fiscal year; and
2. The aggregate principal amount, as of the end of the fiscal year, of all mortgages that are serviced by the mortgagee at the end of the fiscal year but were not counted as mortgages originated by the mortgagee or purchased from its loan correspondent(s).

Net worth requirements for loan correspondent lenders or mortgagees approved under section 3.8 are discussed below.

3.4 APPROVAL STATUS

A. **Initial Approval.** A lender or mortgagee may be approved for participation in the section 184 program, upon filing a request for approval on a form prescribed by the Secretary and signed by the applicant. The approval Form shall be accompanied by such documentation as may be prescribed by the Secretary.

1. Approval Is Signified By

- a. The Secretary's agreement that the lender or mortgagee is considered approved under section 184 program, except as otherwise ordered by an officer or subdivision of the Department, or the lender or mortgagee voluntarily relinquishes its approval;
- b. Consent by the lender or mortgagee to comply at all times with the general approval requirements in section 3.3, and with additional requirements governing the particular class of lender or mortgagee for which it was approved as described in section 3.6(b); 3.7(b); 3.8(b), and 3.9(b) of this chapter; and
- c. Under the section 184 program, the issuance of a Lender Agreement or approval as a loan correspondent lender which constitutes an agreement between the Secretary and the lender and which governs participation in the section 184 program.

2. Approval Limitations

- In addition to the requirements for approval as a section 184 mortgagee, the Secretary may from time to time issue eligibility requirements for participation in specific program.
- A lender or mortgagee may be approved to operate either on a nationwide basis or on a geographically restricted basis, in only those areas designated by the Secretary.
- A lender or mortgagee may originate loans or purchase advances of credit only within a geographic lending area approved by the Secretary. Expansion of this lending area shall be subject to a determination by the Secretary that the lender is able to originate loans in compliance within such expanded area.

3. Authorized Agents

- A mortgagee approved under sections 3.6, 3.7 or 3.10 of this chapter, as a non-supervised mortgagee, supervised mortgagee, or governmental or similar institution may, with the approval of the Secretary, designate a non-supervised or supervised mortgagee as an authorized agent for the purpose of submitting applications for mortgage guarantee in its name and on its behalf.

B. **Recertification.** On each anniversary of the approval of a lender or mortgagee, the Secretary will determine whether recertification, i.e., continued approval, is appropriate. In order to make this determination the Secretary will review the yearly verification report required by section 3.3 of this chapter, and other pertinent documents, ascertain that all applicable fees have been paid, and request any further information needed to decide upon recertification.

- In addition, to continue to be involved with the Section 184 Program, lenders must submit an annual renewal fee to the Office of Loan Guarantee. The renewal fee for lenders is \$250 for the home office and \$50 for each registered branch. OLG will use this fee to help recoup administrative expenses. ***renewal fees are not required until further notice**.*

C. **Conflict of Interest.** A lender or mortgagee may not have a conflict of interest with borrowers under the Section 184 Program. In general, conflict of interest is defined as a relationship between the lender and borrower that is:

1. **Familial:** In general, lenders may not loan to borrowers who have a familial relationship with lender board members or staff in decision making capacities, including staff involved in loan underwriting and approval. Lenders may make loans to such borrowers only if the staff member and borrower disclose this information in the firm commitment submission to HUD and the staff member agrees to abstain from all involvement in loan processing.
2. **Business:** In general, lenders may not loan to borrowers who have a business relationship with lender board members or staff in decision-making capacities. For example, the lender's chief underwriter may not be co-owner of the applicant's business. Lenders may loan to such borrowers only if the related lender staff discloses this relationship in the firm commitment submission to the Department and agrees to abstain from involvement in the loan processing. This policy does not prohibit the lender from providing the borrower other financial services such as car loans, student loans, etc.

D. **Termination:**

1. Contract Termination

- **Notice.** A Lender Agreement may be terminated in accordance with its terms by the Secretary or by the Secretary's designee upon giving the lender at least 5 days prior written notice.

- **Informal Meeting.** If requested, and before expiration of the 5-day notice period, a lender shall be entitled to an informal meeting with the Department official taking action to terminate the Lender Agreement.
- **Effect of Termination.** Termination of a Lender Agreement shall not effect:
 - The Department's obligation to provide guarantee coverage with respect to eligible loans originated before the termination, unless there was fraud or misrepresentation;
 - A lender's obligation to continue to meet all the obligations, including servicing, associated with eligible loans originated before termination; or
 - A lender's right to apply for and be granted a new Lender Agreement, provided that the requirements for approval under this part are met.

Note: A lender or mortgagee will be removed from the lender approval list if any of the following occurs:

- The lender has no staff that has completed the Section 184 training.
- There has been no 184 program activity for six consecutive months. (i.e., no case number requested)
- The Lender is found to be in non-compliance with the program and its mission.

2. Credit Watch Termination

- **Scope and Frequency of Review.** The Secretary will review, on an ongoing basis, the number of defaults and claims on mortgages originated, underwritten, or both, by each mortgagee in the geographic area served by the Office of Native American Program (ONAP). HUD will make this rate information available to mortgagees and the public through electronic means and will issue instructions for accessing this information through a Section 184 Update Letter.

For this purpose, and for all purposes under paragraph 3.4(c), a mortgage is considered to be originated in the same federal fiscal year in which the firm commitment is issued. The Secretary may also review the guaranteed mortgage performance of a mortgagee's branch offices individually and may terminate the authority of a particular branch or the authority of the mortgagee's overall operation.

- **Credit Watch Status.** Mortgagees are responsible for monitoring their default and claim rate performance. A mortgagee is considered to be on Credit Watch Status if, at any time, the mortgagee has a rate of defaults and claims on guaranteed

mortgages originated, underwritten, or both, in an area which exceeds 150% of the national average and its origination approval agreement has not been terminated. If a lender only does business in one state, the lender can choose to be compared to the state average rather than the national average.

- **Notice of Termination**

- Notice of termination of origination approval agreement. The Secretary may notify a mortgagee that its origination approval agreement will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on guaranteed mortgages originated in an area which exceeded 200% of the national average and exceeded the national default and claim rate for guaranteed mortgages. If a lender only does business in one state, the lender can choose to be compared to the state average rather than the national average.
- Notice of termination of direct guarantee approval. The Secretary may notify a mortgagee that its direct guarantee approval will terminate 60 days after notice is given, if the mortgagee had a rate of defaults and claims on guaranteed mortgages underwritten in an area which exceeded 200% of the national average and exceeded the national default and claim rate for guaranteed mortgages. If a lender only does business in one state, the lender can choose to be compared to the state average rather than the national average. (Lenders that focus their energy on Trust Land transactions tend to have higher delinquency and foreclosure rates. These lenders should be monitored closely to avoid the perception of targeting lenders that are making loans in underserved communities.)
- No need for prior action by an officer or subdivision of the Department. The termination notices described in this section may be given without prior action by an officer or subdivision of the Department.
- Underserved areas. Before the Secretary sends the termination notice, the Secretary shall review the Census tract concentrations of the defaults and claims. If the Secretary determines that the excessive rate is the result of mortgage lending in underserved areas, the Secretary may make the determination not to terminate the mortgagee's origination approval agreement and/or direct guarantee approval.

- **Request for Informal Conference.** Prior to termination the mortgagee may submit a written request for an informal conference with the Deputy Assistant Secretary for Public and Indian Housing or that official's designee. HUD must receive the written request no later than 30 calendar days after the date of the proposed termination notice. Unless HUD grants an extension, the

informal conference must be held no later than 60 calendar days after the date of the proposed termination notice. After considering relevant reasons and factors beyond the mortgagee's control that contributed to the excessive default and claim rates, the Deputy Assistant Secretary for Public and Indian Housing or designee may withdraw the termination notice.

- **Limitation on the Establishment of New Branches.** Upon receipt of a proposed termination notice of its origination approval agreement, the mortgagee shall not establish new branches for the origination of HUD-guaranteed mortgages in the area or areas that are covered by the proposed termination notice. A mortgagee that is in receipt of a notice of proposed termination may not establish any new branch in the location or locations cited in the proposed termination notice until either: (1) The proposed termination notice is withdrawn; or (2) The Secretary reinstates the mortgagee's origination approval agreement, in accordance with the reinstatement requirements described in this chapter.
- **Effects of termination:** (1) Termination of origination approval agreement. If a mortgagee's origination approval agreement is terminated, it may not originate single family guaranteed mortgages unless the origination approval agreement is reinstated by the Secretary in accordance with paragraph (f) of this section, notwithstanding any other provision of this chapter except the 1st paragraph of the following subsection; (2) Termination of direct guarantee approval. If a mortgagee's direct guarantee approval is terminated, it may not underwrite section 184 loans for the area(s) identified in the termination notice, unless the direct guarantee approval is reinstated by the Secretary.
- **Rights and Obligations in the Event of Termination.** Termination of the origination approval agreement and/or direct guarantee approval shall not affect:
 - The eligibility of the mortgage for guarantee, absent fraud or misrepresentation, if the mortgagor and all terms and conditions of the mortgage had been approved before the termination by the Direct Guarantee mortgagee or were covered by a firm commitment issued by the Secretary; however, no other mortgages originated or underwritten after the date of termination by the mortgagee shall be guaranteed unless the mortgagee's origination approval agreement and/or direct guarantee approval is reinstated by the Secretary;
 - The right of a mortgagee whose direct guarantee approval has been terminated to transfer cases to another mortgagee for the area covered by the termination;
 - A mortgagee's obligation to continue to meet all the obligations including servicing associated with guaranteed mortgages;

- A mortgagee's right to apply for reinstatement of the origination approval agreement and/or direct guarantee approval in accordance with paragraph (f) of this section; or
- A mortgagee's right to purchase guaranteed mortgages or to service its own portfolio or the portfolios of other mortgagees with which it has a servicing contract.

E. **Withdrawal and Suspension of Approval.** Lender or mortgagee approval may be suspended or withdrawn by an authorized officer or subdivision of the Department.

F. **Reinstatement.** A mortgagee whose origination approval agreement and/or direct guarantee approval has been terminated under paragraph (c) of this section may apply for reinstatement if:

- The origination approval agreement and/or direct guarantee approval for the affected branch or branches has been terminated for at least six months; and
- The mortgagee continues to be an approved mortgagee meeting the general standards of section 3.3 and the specific requirements of section 3.6, 3.7, 3.8 or 3.10.

1. **Request for Reinstatement.** The mortgagee's request for reinstatement must:

- Be in writing and signed by the mortgagee;
- Be accompanied by an independent analysis of the terminated office's operations and identifying the underlying cause of the mortgagee's unacceptable default and claim rate. The independent analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under the government auditing standards issued by the General Accounting Office; and
- Be accompanied by a corrective action plan addressing each of the issues identified in the independent analysis described in the above paragraph, along with evidence demonstrating that the mortgagee has implemented the corrective action plan.

2. **HUD Action on Reinstatement Request.** The Secretary will grant the mortgagee's request for reinstatement if the mortgagee's submitted information is complete and the Secretary determines that the underlying causes for the termination have been satisfactorily remedied.

3.5 REQUEST FOR DETERMINATION OF COMPLIANCE

Pursuant to a proposed amendment to the Housing and Community Development Act of 1992, any person may file a request that the Secretary determine whether a lender or

mortgagee is in compliance with provisions of this chapter. The request for determination shall be made to the following address: HUD, Office of Native American Programs, Attention: Director of the Office of Loan Guarantee, 451 7th Street SW., Room 5143, Washington, DC 20410. The Secretary shall inform the requestor of the disposition of the request. The Secretary shall publish in the Federal Register the disposition of any case referred by the Secretary.

3.6 SUPERVISED LENDERS AND MORTGAGEES

- A. **Definition.** A supervised lender or mortgagee is a financial institution which is a member of the Federal Reserve System or an institution whose accounts are guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A supervised mortgagee may submit applications for a mortgage guarantee. A supervised lender or mortgagee may originate, purchase, hold, service or sell loans or guaranteed mortgages, respectively.
- B. **Additional Requirements.** In addition to the general approval requirements in section 3.3, a supervised lender or mortgagee shall meet the following requirements:
- **Net Worth.** The net worth requirements that appear in section 3.3(n).
 - **Liquid Assets.** A lender or mortgagee shall have liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20% of its net worth, up to a maximum liquidity requirement of \$100,000.
 - **Notification.** A lender or mortgagee shall promptly notify the Secretary in the event of termination of its supervision by its supervising agency.
 - **Fidelity Bond.** A lender or mortgagee shall have fidelity bond coverage of \$300,000. In addition, all mortgagees are required to maintain \$300,000 in errors and omission insurance. These requirements are in place to assure the faithful performance of the responsibility of the mortgagee.

3.7 NONSUPERVISED LENDERS AND MORTGAGEES

- A. **Definition.** A non-supervised lender or mortgagee is a lending institution which has as its principal activity the lending or investing of funds in real estate mortgages, consumer installment notes, or similar advances of credit, or the purchase of consumer installment contracts, and which is not approved under any other section of this part. A non-supervised mortgagee may submit applications for a mortgage guarantee. A non-supervised lender or mortgagee may originate, purchase, hold, service, or sell guaranteed loans or mortgages, respectively.
- B. **Additional Requirements.** In addition to the general approval requirements in section 3.3, a non-supervised lender or mortgagee shall meet the following requirements:
- **Net Worth.** The net worth requirements appear in section 3.3(n).

- **Liquid Assets.** The mortgagee shall have liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20% of its net worth, up to a maximum liquidity requirement of \$100,000.
- **Credit Source.** A lender or mortgagee shall have a warehouse line of credit or other mortgage funding program acceptable to the Secretary which is adequate to fund the mortgagee's average 60 day origination operations, but in no event shall the warehouse line of credit or funding program be less than \$1,000,000.
- **Audit Report.** Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:
 - A financial statement in a form acceptable to the Secretary, including a balance sheet, a statement of operations and retained earnings, a statement of cash flows, an analysis of the mortgagee's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and
 - Such other financial information as the Secretary may require in determining the accuracy and validity of the audit report.
 - A mortgagee must submit a report on compliance tests prescribed by the Secretary.
- **Fidelity Bond.** A lender or mortgagee shall have fidelity bond coverage of \$300,000. In addition, all mortgagees are required to maintain \$300,000 in errors and omission insurance. These requirements are in place to assure the faithful performance of the responsibility of the mortgagee.

3.8 LOAN CORRESPONDENT LENDERS AND MORTGAGEES

- A. **Definition.** A loan correspondent mortgagee is a mortgagee that has as its principal activity the origination of mortgages for sale or transfer to its sponsor or sponsors or that meets the definition of a supervised mortgagee in section 3.6(a) but applies for approval as a loan correspondent mortgagee. A loan correspondent mortgagee may originate mortgages and submit applications for a mortgage guarantee but it may not hold, purchase, or service guaranteed mortgages, except that a loan correspondent mortgagee meeting the definition of a supervised mortgagee in section 3.6(a) may service guaranteed mortgages in its own portfolio.

A sponsor is a mortgagee that holds a valid origination approval agreement, is approved to participate in the section 184 loan guarantee program, and meets the net worth requirement.

- B. **Additional Requirements.** In addition to the general approval requirements in 3.3, a loan correspondent lender or mortgagee shall meet the following requirements:

- **Net Worth.** A loan correspondent lender or mortgagee shall have a net worth of not less than \$63,000 in assets acceptable to the Secretary, plus an additional \$25,000 for each branch office authorized by the Secretary, up to a maximum requirement of \$250,000.
- **Notification.** A loan correspondent lender or mortgagee and each of its sponsors shall provide prompt notification to the Secretary if their loan correspondent agreement is terminated.
- **Audit Report.** A loan correspondent lender or mortgagee must comply with the financial reporting requirements, except that a loan correspondent mortgagee meeting the definition of a supervised lender or mortgagee in section 3.6 need not file annual audit reports. Audit reports shall be based on audits performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:
 - A financial statement in a form acceptable to the Secretary, including a balance sheet, statement of operations and retained earnings, a statement of cash flows, an analysis of the net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and
 - Such other financial information as the Secretary may require to determining the accuracy and validity of the audit report.
- **Liquid Assets.** A loan correspondent mortgagee shall maintain liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20% of its net worth, up to a maximum liquidity requirement of \$100,000.
- **Transfer or Sell Mortgages.** A loan correspondent lender or mortgagee may sell or transfer loans or mortgages only to its sponsors, although a loan correspondent mortgagee may sell to a mortgagee that is not a sponsor with the Secretary's approval. There is no limitation on the number of sponsors that a loan correspondent lender or mortgagee may have and no limitation on the number of loan correspondents that a lender or mortgagee may sponsor.
- **Secretary Approval.** Each sponsor must obtain approval of its loan correspondent lenders or mortgagees from the Secretary.
- **Sponsor Responsibility.** Each sponsor shall be responsible to the Secretary for the actions of its loan correspondent lenders or mortgagees in originating loans or mortgages, unless applicable law or regulation requires specific knowledge on the part of the party to be held responsible. If specific knowledge is required, the Secretary will presume that a sponsor has knowledge of the actions of its loan correspondent lenders or mortgagees in originating loans or mortgages and the sponsor is responsible for those actions unless it can rebut the presumption with affirmative evidence.
- **Warehouse Line of Credit.** A loan correspondent mortgagee shall comply with the warehouse line of credit requirements of section 3.7,

unless there is a written agreement by its sponsor to fund all mortgages originated by the loan correspondent mortgagee.

- **Direct Guarantee Sponsors.** For mortgages processed through Direct Guarantee lenders or sponsors, underwriting shall be the responsibility of the Direct Guarantee lender or sponsor (respectively), and the mortgage shall be closed in the loan correspondent's own name or the name of the sponsor that will purchase the loan. For mortgages not processed through Direct Guarantee lenders or sponsors, the loan correspondent must close the loan in its own name prior to transfer or sale of the loan to its sponsor.

3.9 INVESTING LENDERS AND MORTGAGEES

- A. **Definition.** An investing lender or mortgagee may purchase, hold or sell mortgages, respectively, but may not originate the mortgages in its own name or submit applications for the mortgage guarantee. An investing lender or mortgagee may not service section 184 mortgages without prior approval of the Secretary. An investing lender or mortgagee is not required to meet a net worth requirement.
- B. **Additional Requirements.** In addition to the general approval requirements in section 3.3, an investing lender or mortgagee shall meet the following requirements:
- **Funding Arrangements.** An investing lender or mortgagee shall have, or have made arrangements for, funds sufficient to support a projected investment of at least \$1,000,000 in property improvement, manufactured home loans, or real estate mortgages.
 - **Officers and Staff.** In lieu of the staffing and facilities requirements in 3.3(b), an investing lender or mortgagee shall have officers or employees who are capable of managing its activities in purchasing, holding, and selling real estate mortgages.
 - **Fidelity Bond.** An investing mortgagee shall have fidelity bond coverage of \$300,000. In addition, an investing mortgagee is required to maintain \$300,000 in errors and omission insurance. These requirements are in place to assure the faithful performance of the responsibility of the mortgagee.

3.10 GOVERNMENT INSTITUTIONS, TRIBAL, NONTRADITIONAL LENDERS

- A. **Definition.** A Federal, State, or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Freddie Mac, a Treasury Departments "certified" Community Development Financial Institution or the Fannie Mae may be an approved lender or mortgagee. A mortgagee approved under this section may submit applications for the section 184 loan guarantee program. A lender or mortgagee approved under this section may originate, purchase, service, or sell HUD-guaranteed mortgages, respectively.

A mortgagee or lender approved under this section is not required to meet a net worth requirement; however mortgagee must document adequate liquidity to carry-out basic lending function. A mortgagee shall maintain fidelity bond

coverage and errors and omissions guarantee acceptable to the Secretary and in an amount required by the Secretary, or alternative guarantee coverage approved by the Secretary, that assures the faithful performance of the responsibilities of the mortgagee. There are no additional requirements beyond the general approval requirements in section 3.3 or as provided under paragraph (b) of this subsection.

- B. **Tribal Lenders.** Tribal banks or credit unions are eligible lenders if they are supervised, approved, regulated, or insured by the federal government or may apply for approval under the section 184 loan guarantee program. However, the statute does not permit a tribe, Indian Housing Authority (IHA)/Tribally Designed Housing Entity (TDHE), or other organization of Indians to loan amounts borrowed from the U.S. government.
- C. **Compliance with Applicable Tribal Laws.** Regulations (24 CFR 1005.112) require that the lender and the borrower certify that they acknowledge and agree to comply with all applicable tribal laws. An Indian tribe with jurisdiction over the dwelling unit does not have to be notified of individual section 184 loans unless required by applicable tribal law. By 24 CFR 1005.113 failure of the lender to comply with applicable tribal law is considered to be a practice detrimental to the interest of the borrower and may be subject to enforcement action(s) under section 184(g) of the statute.