

## § 1005.104

*Mortgagee* means the same as “Holder.”

*Principal residence* means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

*Property* means the property constructed, acquired, or rehabilitated with the guaranteed loan, except when the context indicates that the term means other collateral for the loan.

*Section 184* means section 184 (entitled, “Loan Guarantees for Indian Housing”) of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a).

*Trust or restricted land* has the meaning given to “trust land” in section 184(k)(9) of the Housing and Community Development Act of 1992.

[61 FR 9054, Mar. 6, 1996. Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998]

### § 1005.104 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for guarantee under this part. The following lenders are deemed to be eligible under this part:

(a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

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

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(d) Any other lender that is supervised, approved, regulated, or insured by any other agency of the United States; or

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(e) Any other lender approved by the Secretary under this part.

[63 FR 12372, Mar. 12, 1998, as amended at 63 FR 48990, Sept. 11, 1998]

### § 1005.105 What are eligible loans?

(a) *In general.* Only fixed rate, fixed term loans with even monthly payments are eligible under the Section 184 program.

(b) *Eligible borrowers.* A loan guarantee under section 184 may be made to:

(1) An Indian family who will occupy the home as a principal residence and who is otherwise qualified under section 184;

(2) An Indian Housing Authority or Tribally Designated Housing Entity; or

(3) An Indian tribe.

(c) *Appraisal of labor value.* The value of any improvements to the property made through the skilled or unskilled labor of the borrower, which may be used to make a payment on account of the balance of the purchase price, must be appraised in accordance with generally acceptable practices and procedures.

(d) *Construction advances.* The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances may be made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or the mortgagor's creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or the mortgagor's creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Environmental compliance.* (1) Section 1000.20 of this chapter applies to an environmental review in connection

with a loan guarantee under this part. That section permits an Indian tribe to choose to assume environmental review responsibility.

(2) Before HUD issues a commitment to guarantee any loan, or before HUD guarantees a loan if there is no commitment, HUD must:

(i) Comply with environmental review procedures to the extent applicable under part 50 of this title, in accordance with §1000.20(a) and (c); or

(ii) Approve a Request for Release of Funds and certification from an Indian tribe, in accordance with part 58 of this title, if the Indian tribe has assumed environmental review responsibility.

(3) If the loan involves proposed or new construction, HUD will require compliance with procedures comparable to those required by §203.12(b)(2) of this title for FHA mortgage insurance.

(f) *Lack of access to private financial markets.* In order to be eligible for a loan guarantee if the property is not on trust or restricted land, the borrower must certify that the borrower lacks access to private financial markets. Borrower certification is the only certification required by HUD.

[61 FR 9054, Mar. 6, 1996. Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998; 67 FR 19493, Apr. 19, 2002]

#### §1005.106 What is the Direct Guarantee procedure?

(a) *General.* A loan may be processed under a Direct Guarantee procedure approved by the Department, under which the Department does not issue commitments to guarantee or review applications for loan guarantees before mortgages are executed by lenders approved for Direct Guarantee processing. The Department will approve a loan before the loan is guaranteed.

(b) *Mortgagee sanctions.* Depending on the nature and extent of the non-compliance with the requirements applicable to the Direct Guarantee procedure, as determined by the Department, the Department may take such actions as are deemed appropriate and in accordance with published guidelines.

[63 FR 48990, Sept. 11, 1998]

#### § 1005.107 What is eligible collateral?

(a) *In general.* A loan guaranteed under section 184 may be secured by any collateral authorized under and not prohibited by Federal, state, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions against alienation applicable to trust or restricted land;

(2) A first and/or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Leasehold of trust or restricted land as collateral.* If a leasehold interest in trust or restricted land is used as collateral or security for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under Section 184 must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) The mortgagee or HUD shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the Indian tribe, or the Indian housing authority servicing the Indian tribe or the TDHE servicing the Indian tribe. The mortgagee or HUD shall not sell, transfer, or otherwise