

Subpart B – Lender Eligibility & Requirements

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§ 1005.201 Eligible lenders.

(a) The following lenders are approved to participate in the program.

(1) Any lender approved by HUD for participation in the single-family mortgage insurance program under Title II of the National Housing Act;

(2) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to 38 U.S.C. § 3702(d);

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

(4) Any other lender that is supervised, approved, regulated, or insured by any other agency of the United States, including but not limited to Community Development Financial Institutions; or

(5) Any other lender may apply for approval by HUD in accordance with § 1005.203.

(b) Lenders approved in accordance with § 1005.201(a) must submit an intent to participate on form as prescribed by HUD 30 days before first action.

§ 1005.203 Other lender application process.

(a) *Other Lender Application Process.* To apply for eligibility as a lender under § 1005.201(a)(5), a lender must submit a completed application package to HUD for approval, on a form prescribed by HUD.

(b) *Special requirements.* The lender must establish that it meets the following qualifications:

(1) *Business Form.* The lender shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership, organized under tribal or state law.

(i) *Partnership Requirements.* A partnership must meet the following requirements:

(A) Each general partner must be a corporation or other chartered institution consisting of two or more persons.

(B) One general partner must be designated as the managing general partner. The managing general partner shall also comply with the requirements specified in paragraphs (a)(1)(i)(C) and (D) 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 HUD 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 HUD must be notified in writing within 15 days of the substitution.

(C) The partnership agreement shall specify that the partnership shall exist for a minimum term of ten years as required by HUD. All Section 184 guaranteed loans held by the partnership shall be transferred to a lender 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.

(D) HUD must be notified in writing within 15 days of any amendments to the partnership agreement that would affect the partnership's actions under the Section 184 program.

(ii) *Use of business name.* The lender must use its HUD-registered business name in all advertisements and promotional materials related to the guaranteed loan. HUD-registered business names include any alias or “doing business as” (DBA) on file with HUD. The lender must keep copies of all print and electronic advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used to advertise.

(2) *Employees.* The lender shall employ competent personnel trained to perform their assigned responsibilities in mortgage lending, including origination, servicing, and collection activities, and shall maintain adequate staff and facilities to originate and service mortgages, in accordance with applicable tribal, federal or state requirements, to the extent the lender engages in such activities.

(3) *Officers.* All employees who will sign applications for guaranteed loans on behalf of the lender shall be corporate officers or shall otherwise be authorized to bind the lender in the origination transaction. The lender shall ensure that an authorized person reports all guarantees, purchases and sales of guaranteed loans to HUD for the purpose of obtaining or transferring guarantee coverage.

(4) *Business changes.* Within 15 days of a change, the lender shall provide written notification to HUD, in such form as prescribed by HUD, of:

(i) All changes in its legal structure, including, but not limited to, mergers, acquisitions, terminations, name, location, control of ownership, and character of business; and

(ii) Any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, loan originator, of the lender, or the lender itself, that is subject to one or more of the sanctions in § 1005.XXX.

(5) *Annual audited financial statements.* The lender shall: (i) Furnish to HUD a copy of its most current annual audited financial statement.

(ii) Furnish such other information as HUD may request; and

(iii) Submit to an examination of that portion of its records that relates to its activities under the loan guarantee program.

(6) *Quality control plan.* The lender shall submit a written quality control plan in accordance with § 1005.215.

(7) *Branch offices.* A lender may maintain branch offices. A lender's branch office must be registered with HUD in order to originate or submit applications for guaranteed loans. The lender shall remain responsible to HUD for the actions of its branch offices.

(8) *Conflict of interest and responsibility.* A lender may not pay anything of value, directly or indirectly, in connection with any guaranteed loan to any person or entity if such person or entity has received any other consideration from the borrower, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the property, except that consideration, approved by HUD, may be paid for services actually performed. The lender shall not pay a referral fee to any person or organization.

(9) *Licensing certification.* A lender shall certify that it has not been refused a license and has not been sanctioned by any state or tribe in which it will originate or guarantee loans.

(10) *Net worth.* Irrespective of size, a lender shall have a net worth of not less than \$250,000. No less than 20 percent of the lender's required net worth must be liquid assets.

(11) *Operating Area.* The lender must submit a list of states or geographic regions in which it wants to participate in the Section 184 program and include the active approvals for each state/region.

§ 1005.205 Other lender approval.

(a) *Final approval.* Approval is signified by: (1) Written notification from HUD that the lender is approved as eligible under the Section 184 program; and

(2) Agreement by the lender to comply with requirements of 24 CFR part 1005, as applicable;

(b) *Limitations on approval.* A lender may be approved to operate within Section 184 program areas in accordance with the lender's state licensing.

(c) *Denial of participation.* A lender may be denied approval to become an eligible lender under § 1005.201(a)(5) if HUD determines the lender does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and of the right to submit a written appeal. If participation is denied, it may be appealed in accordance with the procedures set forth in § 1005.XXX.

§ 1005.207 Lender participation level.

(a) Lenders with approval under § 1005.201(a)(1)-(5) shall be classified as non-direct guarantee lenders and such lenders may: (1) service Section 184 guaranteed loans, but are not permitted to underwrite or close Section 184 guaranteed loans;

(2) originate, purchase, hold, and/or sell Section 184 guaranteed loans, if sponsored by a direct guarantee lender under § 1005.213; and

(3) submit a direct guarantee lender application under § 1005.209.

(b) Lenders with approval under §§ 1005.201(a)(1)-(5) and 1005.211 shall be classified as a direct guarantee lender. Direct guarantee lenders may underwrite, close, and service Section 184 guaranteed loans.

§ 1005.209 Direct guarantee application process.

(a) *Direct guarantee application process.* A lender may submit an application for participation as a direct guarantee lender on a form prescribed by HUD.

(b) *Special requirements.* The lender must establish that it meets the following qualifications.

(1) Eligibility under §§ 1005.201 (a)(1)-(4) or have HUD approval under § 1005.205 as evidenced by approval documents and most recent recertification documents.

(2) The lender has five years of experience in the origination of loans guaranteed or insured by an agency of the Federal Government. HUD will approve a lender with less than five years of experience if a principal officer has had a minimum of five years of managerial experience in the origination of loans guaranteed or insured by an agency of the Federal Government.

(3) The lender has on its permanent staff an underwriter that is authorized by the lender to bind the lender on matters involving the origination of loans as a direct guarantee lender and that is registered with HUD and such registration is maintained with HUD. The lender shall use appraisers permitted by § 1005.461.

(4) The lender must submit initially ten loans processed in accordance with subpart D. The documents required by subpart D will be reviewed by HUD and, if acceptable, commitments will be issued prior to the loan guarantee. If the underwriting and processing of these 10 loans is

in accordance with subpart D, then the lender shall be an approved direct guarantee lender and may be approved to close subsequent loans and submit them directly for a guarantee in accordance with subpart D. Unsatisfactory performance by the lender at this stage constitutes grounds for denial of participation in the program, or for continued review of a lender's submissions. If participation is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in § 1005.XXX.

(5) The lender must submit a list of current mortgage brokers which the lender sponsors, if any. The following information regarding the mortgage broker included:

(i) Contact information to include address, phone number and email address for corporate officers.

(ii) The Federal tax identification number (TIN) for the mortgage broker.

(iii) Names and license numbers for all loan originators and processors.

(6) The lender shall provide written notification to HUD of any changes that affect qualifications under this section within 15 days of the change.

(7) If not already provided to HUD, the lender must submit a list of states or geographic regions in which it wants to participate in the Section 184 program and include the active approvals for each state/region.

§ 1005.211 Direct guarantee approval.

(a) *Final approval.* Approval is signified by: (1) Written notification from HUD that that the lender is an approved direct guarantee lender under the Section 184 program;

(2) Agreement by the direct guarantee lender to comply with requirements of 24 CFR part 1005, as applicable, any administrative requirements issued by the Section 184 program, and any applicable Federal, state or tribal law requirement imposed on the direct guarantee lender;

(3) Agreement by the direct guarantee lender to ensure sponsored entity's compliance with 24 CFR part 1005, as applicable; any administrative requirements issued by the Section 184 program, as applicable; and any applicable Federal, state or tribal law requirement imposed on the sponsored entity and

(4) HUD's issuance of a loan guarantee constitutes an agreement between HUD and the direct guarantee lender specific to the endorsed loan and subjects the lender to all the requirements of the Section 184 program.

(b) *Limitations on approval.* A lender may be approved to operate within Section 184 program areas in accordance the lender's state licensing.

(c) *Denial of participation.* A lender may be denied approval to become a direct guarantee if HUD determines the lender does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and of the right to submit a written appeal. If participation is denied, it may be appealed in accordance with the procedures set forth in § 1005.XXX.

§ 1005.213 Sponsorship.

(a) *Sponsor Relationships.* A sponsor is an approved direct guarantee lender that enters into a relationship with a:

(i) non-direct guarantee lender or another direct guarantee lender, whereby the sponsor provides underwriting, closing, and servicing, if applicable, of Section 184 loans; or

(ii) mortgage broker, whereby the sponsor provides underwriting, closing and servicing of Section 184 loans.

(b) *General Responsibility requirements of a sponsor.* (i) Each sponsor shall be responsible to HUD for the actions of its sponsored entity in originating loans. If tribal or state law requires specific knowledge by the sponsor HUD shall presume sponsor had knowledge and shall remain liable.

(ii) The sponsor is responsible for selecting and approving each sponsored entity, monitoring and ensuring compliance with 24 CFR part 1005, as applicable, and any other state or tribal law requirements.

(iii) A sponsor must notify HUD of any changes in a sponsorship relationship within 15 days.

(c) *Responsibilities of the sponsored entity.* A sponsored entity must comply with 24 CFR part 1005, as applicable and any other HUD administrative requirements, and any other federal, state or tribal law requirements.

§ 1005.215 Quality control plan.

(a) A quality control plan sets forth a lender's procedures for ensuring the quality of the lender's Section 184 loan origination, underwriting, closing, endorsement and servicing. The purpose of the quality control plan is to ensure lender compliance with Section 184 requirements and protect HUD and lender from unacceptable risks. A lender must adopt and implement a quality control plan that fully complies with Section 184 requirements.

(b) The quality control plan must:

(1) Be maintained and updated, as needed, to comply with all applicable Section 184

requirements.

(2) Cover all policies and procedures, whether performed by the lender or outsourced to a contractor, to ensure full compliance with all Section 184 requirements.

(3) Provide the lender with information sufficient to adequately monitor and oversee the lender's compliance and measure performance as it relates to the lender's Section 184 loan activity.

(4) Require lender to retain all quality control plan related documentation, including selection criteria, review documentation, findings and actions to mitigate findings, for a period of two years from initial quality control review, or from the last action taken to mitigate findings, whichever is later.

(5) Allow lender to use employees or contractors to perform the quality control functions so long as they do not directly participate in any loan administration processes.

(6) Ensure the lender assumes full responsibility for any contractor's conduct of quality control reviews.

(7) Require the lender train all staff and contractors working with the Section 184 program on the program's loan administration and quality control processes, and provide staff access to all current Section 184 legal authorities and policy guidance.

(8) Ensure that lender's employees, contractors, and/or sponsored entities are eligible to participate in the Section 184 program. Any designated employees, contractors or sponsored entities found ineligible shall be restricted from participating in the program.

(9) Require lender to perform quality control review of its sponsored entities in the same manner and under the same conditions as required for the lender's own operation.

(10) Require lender to review a random statistical sample of rejected applications within

90 days from the end of the month in which the decision was made. The reviews must be conducted on a monthly basis to ensure that the reasons given for the rejection were valid and each rejection has the concurrence of the appropriate staff person with sufficient approval authority.

(11) Ensure the borrower's financial accounts related the Section 184 loan are used only for the purpose for which they were received and are following all Consumer Financial Protection Bureau and any other applicable federal, state and tribal requirements.

(12) Require the Section 184 lender to collect and forward any and all loan guarantee fees in accordance with the Section 184 requirements, with sufficient documentation evidencing the timely collection and payment of the fees to HUD.

(13) Require Section 184 lender to verify that the loans are submitted to HUD for guarantee within required time frames.

(14) Provide for the monitoring of all Section 184 loans for potential fraud, material misrepresentations, or other findings. The lender's quality control staff must investigate and determine if fraud, material misrepresentation or other findings occurred.

(15) Require that the lender refer any suspected fraud or material misrepresentation by HUD employees or contractors be directly reported to HUD's Office of Inspector General through the HUD OIG website.

(16) Require that the lender conduct appropriate loan level quality control procedures, in accordance with Section 184 administrative requirements.

(17) Require that the lender maintain complete and accurate information from each borrower for all aspects of the Section 184 loan for which the quality control sample is selected.

§ 1005.217 Other Requirements.

(a) *SAFE act compliance.* Each direct guarantee lender, non-direct guarantee lender or mortgage broker engaged in Section 184 activities must ensure that it and its employees comply with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) (12 U.S.C § 1501 et seq.), including the licensing and registration of its employees in the Nationwide Multistate Licensing System.

(b) *Dual employment.* The direct guarantee lender non-direct guarantee lender or mortgage broker must require its employees to be its employees exclusively, unless the direct guarantee lender non-direct guarantee lender or mortgage broker has determined that the employee's other outside employment, including any self-employment, does not create a conflict of interest.

(c) *Quality control plan.* Lenders eligible under § 1005.201(1)-(4) must submit a quality control plan as required by its approving agency, modified for the Section 184 program. If the approving agency does not require the submission of a quality control plan, or if a lender is approved by § 1005.205, then the lender must submit to HUD, a quality control plan in accordance with § 1005.XXX.

(d) Direct guarantee lender shall submit reporting requirements to HUD, as prescribed in § 1005.XXX or any HUD request for information or documentation within the time frames prescribed in the request.

(e) Direct guarantee lenders must actively market, originate, underwrite, close and service loans on trust land. Non-direct guarantee lenders and mortgage brokers must actively market and originate loans on trust land. HUD may impose a minimum level of activity for tribal trust land,

adjusted periodically based on HUD public notice and comment. Failure to do so may result in sanctions in accordance with § 1005.XXX.

§ 1005.219 Annual recertification.

(a) *Annual recertification submission.* All lenders are subject to annual recertification on April 30 on form as prescribed by HUD.

(1) With each annual recertification, the lender must submit:

(i) A certification that it has not been refused a license by any tribe, state or federal entity;

(ii) A certification that it has not been sanctioned by any tribe, state or federal entity in which it will guarantee loans; and

(iii) A renewal certification of continued eligibility from an authorizing entity listed in § 1005.201(a)(1)-(4) or approved under § 1005.205.

(b) Lenders approved under § 1005.205 must also submit updated documents required in § 1005.203(b)(5)-(7) and (11).

(c) Direct guarantee lenders must also submit the following:

(1) A certification that the lender continues to meet the direct guarantee program eligibility requirements in accordance with § 1005.209.

(2) An updated list of other mortgage broker with which the direct guarantee lender has a sponsorship relationship, and a certification of their continued eligibility.

(3) Any reports required under § 1005.XXX.

(d) *Rectification extension request.* The lender may request an extension of the recertification deadline at least 45 days before the deadline.

(e) HUD will review the annual recertification and other pertinent documents and request any further information needed to decide upon recertification. HUD will provide written notification in the event of denial with the right to submit a written appeal.

(f) If an annual recertification is not submitted by the deadline HUD will subject the lender to sanctions under § 1005.XXX

§ 1005.221 Program ineligibility.

(a) *Ineligibility.* For a non-direct guarantee lender, direct guarantee lender and mortgage broker to be eligible for and maintain Section 184 approval or sponsorship, the entity or any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the entity shall not:

(1) Be suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424, or under similar procedures of any other Federal agency;

(2) Be indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the lender to participate in the Title I or Title II programs of the National Housing Act, or Section 184 program;

(3) Be subject to unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility;

(5) Be convicted of, or have pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage loan industry during the 7-year period preceding the date of the application for licensing and registration, or at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(6) Be in violation of provisions of the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any applicable provision of tribal or state law; or

(7) Be in violation of any other requirement established by HUD, in accordance with public notice and comment.

(b) Non-direct guarantee lenders, direct guarantee lenders or mortgage brokers deemed ineligible must cease originating or underwriting Section 184 guaranteed loans. These ineligible lenders may continue servicing existing loans pursuant part 1005, subpart G.

§ 1005.223 Non-lending Servicers.

(a) A non-lending servicer is an entity that only services loans, or a lender that does originate or underwrite Section 184 loans and has acquired a Section 184 loan from an approved Section 184 lender.

(b) A non-lending servicer must be approved by HUD to participate in the Section 184 program. To apply for HUD approval, a non-lending service must: (1) submit a letter with documentation supporting a minimum of three years of servicing experience in accordance with CFPB requirements;

- (2) undergo training on the Section 184 program, as provided by HUD; and
- (3) comply with subpart G and all tribal, state and federal requirements.

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