

Subpart C – Tribal Participation

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1005.301 Tribal eligibility.

Tribal trust lands can be considered eligible property under the Section 184 program through an application process. A tribe seeking to include their tribal trust lands in the Section 184 program must apply to HUD for approval. Approved tribes must comply with the requirements of this subpart. With respect to Section 184 loans, participating tribes must demonstrate that a legal and administrative framework exists, to the satisfaction of HUD, to protect the interests of the borrower, the lender, and HUD.

1005.303 Tribal legal and administrative framework.

To demonstrate the tribe's legal and administrative framework, a tribe must address: foreclosures, evictions, priority of lien, and leasing for tribal trust land.

(a) *Foreclosure and eviction procedures.* (1) The tribe must demonstrate that foreclosures and evictions will be processed through the legal system having jurisdiction over the Section 184 loans. This may include federal, state, local or tribal courts. The tribe may enact foreclosure and eviction procedures via tribal council resolution or any other recognized legislative action. To be considered valid these procedures must be legally enforceable.

(2) The eviction and foreclosure procedures must enable the lender or HUD to take possession of the property in the event of borrower's default under the loan.

(3) All eviction procedures must allow for expedited removal of the delinquent household residents from occupancy.

(b) Lien procedures. (1) Section 184 loans must have a first lien position on the property. To ensure that each Section 184 loan holds a first lien position, the tribe must enact a law that either:

(2) provides for the satisfaction of the Section 184 loan before other obligations (except tribal leasehold taxes assessed); or

(3) state law shall determine the priority of liens against the property. If a reservation spans two or more states, the state in which the property is located is the applicable state law.

(4) For a lien to be considered valid on tribal trust or federally restricted land, the lien must be approved and recorded by BIA.

(c) Lease provisions for tribal trust land. (1) HUD provides a model lease for use on tribal trust land. The tribe may use a rider if it wishes to make modifications to the model lease. Alternatively, the tribe may draft their own lease containing the mandatory HUD lease terms.

(2) No lease modification may obstruct the right of HUD or lender to evict the borrower or foreclose on or dispose of the property in the event of default.

(3) The lease must be executed by the tribe and borrower to be enforceable.

(4) The lease amount is negotiable between the tribe and borrower, subject to the approval of the BIA.

(5) The lease must provide for the lender's notification of lease rental payment and/or taxes. If applicable, the lender may require that the lease payment be made through the lender. If the tribe wishes, tribal tax liens resulting from that portion of the unpaid leasehold payments applicable to tribal taxes may be recorded in the state recording system. The tribe may also intervene in any foreclosure proceeding to ask that taxes be paid.

(6) The tribe must approve all transfers or assignments of leasehold interest, except at foreclosure.

(7) The lease must provide that lender may assume title to the leasehold interest without tribal approval of such transfer. However, anyone who subsequently purchases or rents the leasehold property must be approved by the tribe, except as otherwise provided in the lease.

(8) The lease may not be terminated while the Section 184 loan is in effect, unless there is approval from HUD and BIA. The lease must also provide that in the event of foreclosure the lease will not be subject to any forfeiture or reversion and will not be otherwise subject to termination.

(9) The lease must be approved by HUD and BIA.

1005.305 Tribal application.

A tribe shall submit an application on a form prescribed by HUD. The application must include a copy of the tribe's foreclosure, eviction, lease and priority lien ordinances. To obtain HUD approval for the tribe's submission, at a minimum it must provide evidence that the tribe:

(a) will ensure HUD and lenders have access to the tribal lands for the purpose of servicing and evaluating properties insured under the Section 184 program;

(b) has enacted foreclosure procedures;

(c) has enacted eviction procedures;

(d) agrees that if eviction and foreclosure procedures are not enforced HUD may cease insuring new Section 184 loans within their area of jurisdiction; and

(e) has adopted procedures giving HUD first lien priority (where applicable) or otherwise ensuring that the Section 184 loan will be satisfied before all other property debts (excepting tribal taxes); or has adopted legislation stating that it will abide by applicable state or local laws with respect to lien priority.

1005.307 Tribal notification process.

Upon receipt of a completed application from a tribe HUD shall provide written notification of the tribe of its eligibility to participate. If HUD determines the

application is incomplete or the tribal ordinances and/or leases do not comply with the requirements of this subpart HUD will provide the tribe an opportunity to resubmit the application.

1005.309 Tribal recertification.

On a form prescribed by HUD, the tribe shall recertify annually to HUD whether it meets the requirements of the subpart.

1005.311 Duty to report changes.

Within 15 days of any changes to the tribe's contact information, foreclosure, eviction, lease and lien priority ordinances, the tribe shall provide copies of the updated ordinances to HUD and shall certify on a form prescribed by HUD whether the updated ordinances and/or lease to meet the requirements of this subpart.