

Subpart E – Closing and Endorsement

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CLOSING

§ 1005.501 Lender closing requirements.

(a) *Chain of Ownership.* The lender must obtain evidence of all prior ownership within 12 months of the case number assignment date. The lender must review the evidence of prior ownership to determine any undisclosed identity-of-interest transactions.

(b) *Title/title Status Report.* The lender must ensure that all objections to title/title status report have been cleared and any discrepancies have been resolved to ensure that the guaranteed loan is in first lien position.

(c) *Closing in compliance with lender approval.* The lender must instruct the settlement agent to close the guaranteed loan in the same manner in which it was underwritten and approved.

(d) *Closing in lender's name.* All Section 184 loans must close in the name of the direct guarantee lender issuing the underwriting approval.

(e) *Required HUD certifications at closing.* The lender must use the forms and/or language as prescribed by HUD in the legal documents used for closing the guaranteed loan.

(f) *Projected escrow.* The lender must establish an escrow account (and repair completion escrow account, where applicable) in accordance with 1005.713 and the Real Estate Settlement Procedures Act.

(g) *Closing costs and fees.* The lender may charge the borrower reasonable and customary fees in accordance with §1005. 513.

(h) *Closing date.* The closing date must occur before the expiration of the firm commitment.

(i) *Per diem interest and interest credits.* The lender may collect per diem interest from the closing date to the date amortization begins. Alternatively, the lender may begin amortization up to 7 days prior to the closing date and provide a per diem interest credit. Any per diem interest credit may not be used to meet borrower's minimum required investment. Per diem interest must be computed using a factor of 1/365th of the annual rate.

(j) *Borrower consent for disclosure.* Lender must ensure the borrower executes a third-party tribal notification form at closing.

(k) *Signatures.* Lender must ensure that the loan, note, and all closing documents are signed by the required parties.

§ 1005.503 Payment of guarantee premiums; prepayment privilege.

(a) *Payment of annual guarantee premiums.* The loan may provide for monthly payments by the borrower to the lender of an amount equal to one-twelfth of the annual loan guarantee premium payable by the lender to HUD.

(b) *Prepayment privilege.* The loan shall contain a provision permitting the borrower to prepay the loan in whole or in part at any time and in any amount. The loan shall not provide for the payment of any charge on account of such prepayment.

§ 1005.505 Borrower's payments to include other charges.

(a) The loan shall provide for such equal monthly payments by the borrower to the lender as will amortize:

- (1) The ground rents, if any;
- (2) Section 184 annual loan guarantee fees;

(3) The estimated amount of all taxes;

(4) Special assessments, if any;

(5) Flood insurance premiums, if flood insurance is required by HUD; and

(6) Fire and other hazard insurance premiums, if any. The loan shall further provide that such payments shall be held by the lender in a manner satisfactory to HUD for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent, for the benefit and account of the borrower. The loan must also make provisions for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the borrower. Such payments shall be held in an escrow subject to § 1005.713.

(b) The borrower shall not be required to pay premiums for fire or other hazard insurance which protects only the interests of the lender, or for life or disability income insurance, or fees charged for obtaining information necessary for the payment of property taxes. The foregoing does not apply to charges made or penalties exacted by the taxing authority, except that a penalty assessed or interest charged by a taxing authority for failure to timely pay taxes or assessments shall not be charged by the lender to the borrower if the lender had sufficient funds in escrow for the account of the borrower to pay such taxes or assessments prior to the date on which penalty or interest charges are imposed.

§ 1005.507 Application of payments.

(a) All monthly payments to be made by the borrower to the lender shall be added together, and the aggregate amount thereof shall be paid by the borrower each month in a single payment. The lender shall apply the same to the following items in the order set forth:

(1) Annual loan guarantee premium charges, including charges for ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

(2) Interest on the loan;

(3) Amortization of the principal of the loan; and

(4) Late charges, if permitted under the terms of the loan and subject to such conditions as HUD may prescribe.

(b) Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the borrower prior to, or on, the due date of the next such payment, constitute an event of default under the loan.

§ 1005.509 Late charge. (xref 203.25)

When the monthly loan payment is 15 or more days in arrears, the lender may collect from borrower a late charge, not to exceed four percent of the overdue payment of principal and interest, or any other amount as established by HUD through public notice with an opportunity for comment.

§ 1005.511 Borrower's payments when loan is executed.

(a) The borrower must pay to the lender, upon execution of the loan, a sum that will be sufficient to pay the ground rents, if any, the estimated taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums for the period beginning on the last date on which each such charge would have been paid under the normal lending practices of the lender and local custom (if each such date constitutes prudent lending

practice), and ending on the due date of the first full installment payment under the loan, plus an amount sufficient to pay the installment(s) of the annual loan guarantee fee from the date of closing the loan to the date of the first monthly payment under the loan and, where applicable, the one-time upfront loan guarantee fee or any portion payable pursuant to §1005.xxx.

(b) The lender may also collect from the borrower a sum not exceeding one-sixth of the estimated total amount of such taxes, special assessments, insurance premiums and other charges to be paid during the ensuing 12-month period.

§ 1005.513 Charges, fees or discounts.

(a) The lender must ensure that all fees charged to the borrower comply with all applicable tribal, federal, state, and local laws and disclosure requirements.

The lender may collect from the borrower the following charges, fees or discounts:

(1) A charge to compensate the lender for expenses incurred in originating and closing the loan, provided that HUD may establish limitations on the amount of any such charge.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the lender, for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit Report;

(iii) Survey, if required by lender or borrower;

(iv) Title examination; title insurance, if any;

(v) Fees paid to an appraiser or inspector approved by HUD for the appraisal and inspection, if required, of the property. Notwithstanding any limitations in this paragraph, if the lender is permitted by applicable regulations to use the services of staff appraisers and inspectors for processing loans, and does so, the lender may collect from the borrower the reasonable and customary amounts for such appraisals and inspections.

(vi) Such other reasonable and customary charges as may be authorized by HUD.

(3) Reasonable and customary charges in the nature of discounts.

(4) Interest from the date of closing or the date on which the lender disburses the loan proceeds to the account of the borrower or the borrower's creditors, whichever is later, to the date of the beginning of amortization.

(b) Before the guarantee of any loan, the lender shall furnish to HUD a signed statement in a form satisfactory to HUD listing any charge, fee or discount collected by the lender from the borrower. All charges, fees or discounts are subject to review by HUD both before and after endorsement under § 1005.389.

(c) *Assumption fees.* (1) Processing fees for assumptions must be based on actual costs. The lender may not charge more than the generally accepted allowable cost as determined by HUD. A lender may charge more than the generally acceptable rate with HUD approval.

(2) Fees for assumptions include, but are not limited to: credit report; verification of employment; and the execution of additional release of liability forms.

(d) Additional fees cannot be assessed for loans on properties on trust lands.

§ 1005.515 Certificate of nondiscrimination by the lender.

The lender shall certify to HUD as to each of the following:

(a) That neither the lender, nor anyone authorized to act for the lender, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the loan to any person because of race, color, religion, national origin, familial status (except as provided by law), or disability.

(b) That any restrictive covenant, other than permissible restrictions on trust land, on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

POST-CLOSING AND ENDORSEMENT

§ 1005.517 HUD Pre-endorsement review.

(a) *Pre-endorsement review.*

(1) Upon submission by a direct guarantee lender of the documents required by § 1005.387, HUD will review the documents to ensure that:

(i) The loan is executed on forms which meets the requirements of HUD;

(ii) The loan maturity does not exceed thirty years;

(iii) The loan amount does not exceed the maximum loan limits under the Section 184

program, unless otherwise permitted by this part;

(iv) All documents required by HUD are submitted;

(v) All necessary certifications are made in accordance with § 1005.XXX;

(vi) There is no fee, late charge or interest due to HUD; and

(vii) The loan was not in default when submitted for the guarantee or if submitted for guarantee more than 60 days after the date of closing the loan shows an acceptable payment history.

(2) HUD is authorized to determine if there is any information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the loan fails to meet a statutory or regulatory requirement. If, following this review, the loan is determined to be eligible, HUD will issue a commitment for a loan guarantee. If the loan is determined to be ineligible, HUD will inform the lender in writing the reasons for the determination and any corrective actions that may be taken.

(3) *Submission by direct guarantee lender when there is a sponsored entity.* When a sponsored entity assigns a loan to direct guarantee lender the direct guarantee lender may submit the required documents for pre-endorsement review in the name of the originating sponsored entity. All certifications must be executed by the originating sponsored entity or the direct guarantee lender, as appropriate.

1005.519 Post-endorsement review for direct guarantee.

Following the issuance of the loan guarantee, HUD may review all documents required by § 1005.XXX If, following this review, HUD determines that the loan does not satisfy the requirements of the program, HUD may demand indemnification from the originating lender and

may sanction the originating lender pursuant to § 1005.XXX.

§ 1005.521 Indemnification.

(a) *Indemnification*—

(1) *Definition of origination.* For purposes of indemnification under this paragraph, the term “origination” means the process of creating a loan, starting with the taking of the initial application, continuing with the processing and underwriting, and ending with the lender receiving a loan guarantee.

(2) *Fraud or misrepresentation.* The originating lender shall indemnify HUD for a claim if the lender knew or should have known that fraud or misrepresentation was involved in connection with the origination of the loan, regardless of whether the fraud or misrepresentation caused the Loan default and regardless of when a claim is filed.

(3) *Underwriting deficiency.* When HUD conducts a pre or post-endorsement review or a claim has been filed and HUD determines there is an underwriting deficiency where the loan should not have been eligible for approval, the originating lender shall indemnify HUD.

(4) *Demand for indemnification.* The demand for indemnification will be made by HUD. Under the demand for indemnification, the originating lender agrees to either abstain from filing a claim or reimburse HUD if a subsequent holder of the loan files a claim and HUD suffers a financial loss.

1005.523 Lender Pre-endorsement review and requirements.

(a) Lender must complete a pre-endorsement review of the case file to ensure all applicable documents as described in HUD's administrative guidance are in the case file. The lender must exercise due diligence in performing its pre-endorsement responsibilities.

(b) This review must be conducted by staff not involved in the originating, processing, or underwriting of the loan. The case file must contain all documentation relied upon by the lender to justify its decision to approve the loan.

(c) Upon finalizing the pre-endorsement review, the lender must certify that all required documents are submitted and meet the requirements of administrative guidance.

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