

# **SECTION 184 INDIAN HOUSING LOAN**

## **GUARANTEE PROGRAM**

### **Processing Guidelines 2011**

## **Chapter 10: Direct Guarantee**

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### **10.1 OVERVIEW**

The Section 184 Loan Guarantee program provides a second method of processing 184 mortgages. Office of Loan Guarantee (OLG) believes this method, Direct Guarantee (DG), will have clear advantages for many lenders and applicants by reducing delays that can result from limited HUD resources in both pre-loan review and in post-loan issuance of the loan guarantee certificate. The DG procedure for the Section 184 Loan Guarantee Program resembles the Direct Endorsement program for Federal Housing Administration (FHA) single-family mortgage insurance; i.e. the lender will underwrite, approve and close the loan prior to submitting the loan documentation to OLG.

This chapter provides guidance about the DG procedure, the process for lender approval, underwriting procedures, and submission of the loan guarantee package to the OLG for review and the issuance of a loan guarantee certificate.

### **10.2 GENERAL**

Under the DG procedure, OLG does not issue a firm commitment for loan guarantee **before** the loan is closed by the lender. OLG will review the closed loan file for compliance with Section 184 underwriting and closing requirements prior to issuing the loan guarantee certificate. A Section 184 quality control review may be performed on the guaranteed loan at

a later date. The DG lender is expected to underwrite and close the loan in compliance with the Section 184 loan processing procedures.

### 10.3 MORTGAGEE APPROVAL FOR DIRECT GUARANTEE

To participate in DG, a lender must be an approved Section 184 lender as discussed in Chapter 3, *Lender Qualification*, and must submit the documentation listed below to the Office of Loan Guarantee (OLG).

- A. **Approved FHA Direct Endorsement Lender.** If the lender is an approved FHA Direct Endorsement lender, the lender may submit, verification of the Direct Endorsement approval for the lender, the underwriters, appraisers, and inspectors that will participate in the DG procedure.
- B. **Non-FHA Direct Endorsement Lenders.** To apply for DG approval the following must be documented and submitted to OLG:
  - The lender must have an adjusted net worth of not less than \$250,000 and must maintain liquid assets (cash, cash equivalents or readily convertible instruments) of 20% of its net worth up to a maximum amount of \$100,000.
  - The lender, or one of its principal officers, must have 5 years of experience in the origination of single family (1 to 4 units) mortgages.
  - The lender must have on its permanent staff an underwriter with signatory authority or otherwise authorized by the lender to bind the lender on matters involving the origination of Section 184 mortgage loans through the DG program. The underwriter must have a minimum of 3 years of full-time recent experience reviewing both credit applications and property appraisals. Experience related solely to mortgage credit or appraisal reviews counts for one-half of the total requirement. The Mortgage Bankers Association of America (MBA) course "Seminar on Appraisal Techniques" may be substituted for 1 full year of full-time experience reviewing appraisals.
- C. **Training.** Upon receipt of the required documentation, the underwriter(s) and technical staff must complete the Section 184 DG training.
- D. **Test Cases.** The mortgagee must submit 2 Section 184 loan origination packages designated as DG test cases to OLG, for firm commitment processing. If the processing and underwriting of these two loans meets the 184 processing and underwriting requirements, the lender will be approved to issue a firm commitment without the need for additional documentation or resubmission. If the loan package and/or underwriting are not acceptable, OLG will require the lender to submit additional test cases prior to obtaining DG approval.

### 10.4 QUALITY CONTROL REQUIREMENT

All lenders originating and/or servicing Section 184 loans must have in place a formalized, written quality control plan for originating and/or servicing these loans. A mortgagee which seeks DG status must review, and when necessary, modify the existing quality control plan to

ensure that the mortgagee can effectively evaluate and monitor the overall quality of loans submitted for DG. The quality control plan must be amended to indicate DG processing. For DG purposes, the elements of a quality control system should include the following:

- A. **Underwriting Policies.** Each office of the mortgagee that originates Section 184 loans shall maintain copies of all available Section 184 underwriting guidelines. This includes guidebooks, regulations, letters to all participating Section 184 lenders and other instructions relevant to the mortgagee's origination of 184 mortgages, available on-line or by contacting OLG staff.
- B. **System Integrity.** The quality control system will be independent of the mortgage loan production function.
- C. **Desk and Field Reviews.** The system would require a desk review or field review for a random sample of mortgage loans underwritten for DG submission. The desk review of the property appraisal would include the value conclusion, the appraisal data, the validity of comparables, any changes made by the underwriter and the overall quality of the appraisal. 10% of appraisals done by the mortgagee staff appraisers and a sample of appraisals performed by non-staff appraisers must be field reviewed. Field reviews may be performed by the underwriter or by appraisers employed on a contract basis. 5% of compliance inspections done by mortgagee staff inspectors and a sample of compliance inspections done by non-staff inspectors must be field reviewed.
- D. **Submission of Annual Quality Control Review.** The lender must submit a copy of their annual quality control audit to the OLG.
- E. **Corrective Measures.** The system should ensure that effective corrective measures are taken promptly when deficiencies in mortgage loan originations are identified. A copy of implemented corrective measures should be included with the Annual Quality Control Review.

## 10.5 MORTGAGEE SANCTIONS

Noncompliance with the Section 184 Loan Guarantee program may require sanctions against the mortgagee. This would include loans originated under the DG program. OLG may take appropriate actions in accordance with published guidelines. Refer to Chapter 3.3, Disqualification of Lenders and Civil Money Penalties.

- A. **Fraud and Misrepresentation.** Nothing in Section 184 may preclude the Department from establishing:
  - Defenses against the originating lender based on fraud or material misrepresentation;
  - Establishing partial defenses based upon regulations in effect on the date of guarantee or disbursement (whichever is earlier), to the amount payable on the guarantee. Refer to Chapter 3.3 above.
- B. **Probation or Withdrawal of DG Approval.** The authority to apply mortgagee sanctions (probation and withdrawal) rests with the Director, Office of Loan Guarantee. A lender placed in probationary status will not be eligible to submit loans under the DG program.
  1. Probation requirements may include the following:

- Training. The mortgagee's underwriter, or other technical staff, may be required to attend appropriate training sessions.
  - Pre-closing status. The mortgagee may be required to submit additional test cases for OLG review until the mortgagee demonstrates, through satisfactory performance, that the underwriting shortcomings have been corrected, or until the mortgagee's DG approval is withdrawn.
  - Quality control plan. The OLG may require the mortgagee to make changes to its quality control plan.
2. Withdrawal. A withdrawal action would be taken where there is a pattern or practice of actions demonstrating noncompliance with Section 184 requirements or where any pre-closing review status period (whether the initial or imposed under the terms of a probation) has failed to demonstrate that the mortgagee can perform satisfactorily.
  3. Notification. A written notice of probation or withdrawal will be sent to the lender explaining the decision. If the notice places the lender in a probationary status, the notice will explain the probationary element(s) applied.

## 10.6 UNDERWRITING RESPONSIBILITIES

The underwriter's role and responsibility are critical elements of the DG procedure. The lender's DG underwriter is responsible for the coordination of all phases of the underwriting of the mortgage loan and is responsible for ensuring that prudent underwriting procedures are followed.

The underwriter must assume the following responsibilities:

- Compliance with the OLG instructions, the coordination of all phases of underwriting, and the quality of decisions made under the program.
- The review of appraisal reports, compliance inspections and credit analyses performed by staff and non-staff personnel to ensure reasonable conclusions, sound reports and compliance with the OLG requirements.
- The decisions relating to the acceptability of the appraisal, the inspections, the buyer's capacity to repay the mortgage and the overall acceptability of the mortgage loan for the Section 184 guarantee. The underwriter is responsible for ensuring that the Section 184 loans are originated, underwritten, and approved by the lender and adhere to the Section 184 requirements and processing guidelines detailed in this guidebook.
- The monitoring and evaluation of the performance of the personnel used for DG.
- Awareness of the warning signs that may indicate irregularities, and an ability to detect fraud, as well as the responsibility that underwriting decisions are performed with due diligence in a prudent manner.

Lenders must obtain and verify information with at least the same care that would be exercised if originating a mortgage when the lender would be entirely dependent upon the property as security to protect its investment.

The DG underwriter executes and signs the Section 184 Native American Mortgage Credit Analysis Worksheet (MCAW), which enables the OLG to endorse the mortgage loan without a detailed technical underwriting review.

## **10.7 ELIGIBLE ACTIVITIES AND PROPERTIES**

The following types of loans are eligible for DG underwriting on fee simple, tribal, and individual trust land for individual borrowers:

- Purchase transactions by an individual
- Refinance (rate and term and streamline)

The following types of loans are **not** DG eligible and must be submitted to OLG underwriter:

- Loan Requests made by Tribe and/or THA
- All loans with a back end ratio of 45% or greater
- Cash Out Refinances
- Purchase/Refinance of Condominiums

## **10.8 REQUEST FOR A CASE NUMBER**

The DG approved mortgagee will request a case number from the Office of Loan Guarantee on the OLG case number request form. (see Appendix 10.1) The lender will indicate on the form that the case will be processed DG.

## **10.9 REQUESTS FOR CASE NUMBER EXTENSIONS AND CANCELLATIONS**

Case numbers assigned and funds reserved for DG loans are valid for 180 days. If for unforeseen circumstances a lender is unable to close the loan within the allotted time frame, the lender must request an extension. All requests must be in writing to the Office of Loan Guarantee, before the expiration date and must include the following:

- A copy of the Request for a Case Number issued by the OLG with the assigned case number (see Appendix 10.1);
- The reason an extension is required; and
- The expected closing date.

Extensions are not automatic and failure to make a request prior to the expiration date could be cause for cancellation of the case number and the cancellation and release of the guarantee funds reserved for that case. Canceled and released guarantee funds may not be available at a later date. In situations where the case number has been canceled and funds are de-obligated, the lender must request a new Section 184 loan/case number before the loan can be closed. All requests for an extension may be faxed to the Office of Loan Guarantee.

## 10.10 PROCESSING / CLOSING / SUBMITTING LOAN FOR ENDORSEMENT

Under Direct Guarantee program, the lender will originate, process, and underwrite the loan without OLG review. DG lenders should proceed as follows:

- Lender will request a case number from OLG. (see Appendix 10.1) Form should be marked DG.
- A case number will be assigned and returned to the lender via fax or e-mail.
- Lender will underwrite loan. If lender approves the loan, and all conditions have been met, a firm commitment will be typed by the lender in the same format as the OLG firm commitment and emailed to OLG in a word document format (see Appendix 10.2). OLG will assign a cohort number (obligation of funds) and return the firm with the cohort number to the lender.

The DG approved loan is closed in accordance with the Section 184 guidelines. The lender submits the complete origination and closing files to the OLG, within 60 days of closing. All documents contained on the applicable Firm Commitment and Endorsement Checklists should be included in the submission. (see Appendix 10.4 &10.5)

All executed closing documents must be reviewed by the lender. This includes the HUD-1 Settlement Statement and all legal instruments. The lender must certify that the transaction meets all statutory, regulatory and guidebook requirements for the Section 184 Loan Guarantee Program. In addition, they must insure that the loan has been closed in accordance with the terms as specified in the sales contract.

The lender is responsible for assuring that all requirements imposed by the Bureau of Indian Affairs (BIA) on loans involving tribal trust or allotted land are met.

The OLG will review the closed loan file for compliance with Section 184 closing requirements prior to issuing the loan guarantee certificate. OLG's review of the 184 file will include, but is not limited, to the following:

- Compliance with the underwriter's conclusions and/or conditions, including the mortgage amount
- The accuracy and completeness of the closing and legal documents, including when required, the execution of documents by the BIA
- Payment of the loan guarantee fee (including any late charge and interest)

The Director of the Office of Loan Guarantee is the signature authority for all loan guarantee certificates. A Section 184 quality control review may be performed on the guaranteed loan at a later date.

If the OLG is unable to issue a loan guarantee certificate, the lender will be notified with a Guarantee Commitment Rejection letter. Lenders have 30 days from the date of a rejection to submit additional information and request that the Office of Loan Guarantee reconsider the request for a loan guarantee certificate. Procedures for late submissions are the same for all Section 184 loans (see Chapter 6 for further details).

## **10.11 ASSURANCE OF ENDORSEMENT**

The DG procedure has been created to give the mortgagee sufficient certainty of the OLG guarantee to justify the assumption of the responsibilities involved in originating and closing the Section 184 loan without prior OLG review. Mortgagees are responsible for complying with all applicable Section 184 regulations and guidebook instructions. If the mortgage loan meets the pre-endorsement review criteria, OLG will endorse the mortgage for guarantee. The guarantee is incontestable except in cases of fraud or misrepresentation by the mortgagee. If, at the time the case is submitted for endorsement, HUD has evidence that there is fraud or misrepresentation on the part of the originating mortgagee, OLG will not accept the underwriter's signature on the MCAW and will not endorse the mortgage for guarantee.

## **10.12 FIRM UNDERWRITING OPTION**

Lenders approved for DG may still choose to submit a Section 184 application to the OLG for underwriting and the firm commitment to be issued.

## **10.13 LOAN SERVICING**

Loan servicing for Direct Guarantee loans is the same for all loans processed in the Section 184 program.



**General Commitment Conditions**

- 1. Maximum Mortgage Amount and Term:** a) Occupant Mortgagors: Mortgage amount and terms assume satisfactory owner-occupant mortgagor(s) or qualified IHA or Tribe. b) Changes: HUD may, due to a significant negative event affecting the homebuyer's income, liabilities, credit or the collateral, change the mortgage amount and term.
- 2. Property Standards:** All construction, repairs, or alterations proposed in the application or on the construction exhibits returned herewith must equal or exceed applicable codes and HUD requirements.

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**Section 184 Case Number:**

**Firm Commitment:**

INST Reference Number:

Expiration Date:

HUD Commitment Date:

Lender: (Direct Guarantee)

Borrower:

Property:

Type:

**Commitment Terms:**

Estimated Value of Property

Firm Commitment Amount:

Mortgage W/out Loan Guarantee:

Term of Loan (years):

Interest Rate:

Cohort Number: 2010-

Taxes:

Hazard & Flood:

HoA:

Total:

XX Approved by Office of Loan Guarantee, Denver Program Office of Native American Programs, U.S. Department of Housing and Urban Development

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Signature

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Date

**See Page 2 for Commitment Conditions**

## **Commitment Conditions**

HUD's commitment to guarantee a mortgage on this property is dependent on the completion of the condition(s) listed below. HUD does not guarantee the work done to comply with the conditions. Estimated Remaining Economic Life of this property is \_\_years and ( \_\_ is \_\_ is not) eligible for maximum financing (maximum loan-to-value ratio mortgage). Describe commitment condition(s) below:

### **Conditions to be met prior to closing:**

### **Conditions to be met at closing and/or prior to guarantee:**

1. Maximum mortgage based on 97.75% of the \_\_\_\_\_ .
2. Seller contribution not to exceed 6% of the executed sales contract. Document on the HUD 1 settlement statement. Seller cannot pay borrowers down payment and borrower cannot receive cash at closing from seller contribution.
3. All contractual seller contributions must first be applied to the borrower's allowable closing costs and prepaid expenses.
4. Provide final URLA, Addendum a, Good faith estimate and fee simple rider.
5. Provide all standard closing endorsement documents per 184 guidelines.
6. Borrower must sign an owner occupancy agreement.
7. Provide copy of hazard insurance policy with coverage equal to the lesser of:
  - a. 100 percent of the insurable value of the improvements-as established by the property insure; or
  - b. The unpaid balance of the mortgage as long as it at least equals the minimum amount required to compensate for damage or loss on a replacement cost basis at the time the damage or loss occurs

### **Note:**

The Office of Loan Guarantee encourages the borrower to execute an automatic mortgage payment; however, not a condition to guarantee the loan.

Lender is required to obtain a final clear title policy; copy should be forwarded to the Office of Loan Guarantee. Guarantee certificate may be issued prior to receipt of the title policy; however, lender is responsible for meeting all commitment conditions noted on the preliminary title report including recordation of the Section 184 loan.

**184 INDIAN HOUSING LOAN GUARANTEE PROGRAM  
FIRM COMMITMENT SUBMISSION CHECKLIST – IHA/TDHE AND TRIBE BORROWERS**

**BORROWER** \_\_\_\_\_

<b>ITEM</b>	<b>INCLUDED</b>
Lender Submission Contact Sheet	
Case Number Request Form	
Mortgage Credit Analysis Worksheet	
Maximum Mortgage Worksheet ( <b>Single Close Only</b> )	
Good Faith Estimate	
Uniform Residential Loan Application (including Addendum A)	
Land Status and Jurisdiction Form	
CAIVRS	
Appraisal and/or Valuation Condition Sheet	
Audited Financial Statements (Current and Previous 1 Year)	
Demonstration of IHA or Tribal Development skills	
Assets Analysis (proving sufficient debt coverage)	
Demonstration of Sufficient Market	
Marketing Plan (sales project)	
Demonstration of IHA/TDHE or Tribal Property Management Skills (rental projects)	
Project Pro-Forma (rental projects)	
Rental and Maintenance Plan (rental projects)	
Evidence of Authority to Borrow	
Evidence of Ability to Obtain Deficiency Judgment	
Verification of Deposit/Funds to Close and Source of Funds	
Credit Report	
Flood Certificate	
Environmental Assessment *Applications for 5 or more homes must include an assessment under the NEPA and compliance with regulations	
Explanatory Statements	
<b>Construction Documents</b>	
Detailed Plans and Specifications	
Construction Schedule	
Cost Estimate	
Construction Contract	
Site Map and Legal Description	
Breakdown of Costs	
Builder Certification, HUD 92541	
<b>FEE SIMPLE LAND</b>	
Preliminary Title Report	
<b>TRIBAL TRUST LAND</b>	
Title Status Report (with recorded lease(s))	
Leasehold Instrument (with all signatures as required)	

