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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1005

[Docket No. FR-5772-F-01]

RIN 2577-AC91

**Conforming Amendment to the Section 184 Indian
Housing Loan Guarantee Program Regulations**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing the Section 184 Indian Housing Loan Guarantee program (Section 184 program) to conform to a recent statutory change. The 2013 Consolidated and Further Continuing Appropriations Act amends section 184(d) of the Housing and Community Development Act of 1992 by authorizing HUD to increase the fee for the guarantee of Section 184 loans up to 3 percent of the principal obligation of the loan and to establish the amount of the fee by publishing a notice in the Federal Register. This final rule amends the Section 184 Indian Housing Loan Guarantee Program regulations to reflect this new authority. By notice published elsewhere in today's Federal Register, HUD is exercising this authority to increase the loan guarantee fee to 1.5 percent of the principal obligation from the current rate of 1 percent.

DATES: Effective Date: **[Insert date 30 days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing,

Department of Housing and Urban Development, 451 7th Street SW, Room 4126, Washington, DC 20410; telephone number 202-401-7914 (this is not a toll-free number).

Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 184 of the Housing and Community Development Act of 1992 (Public Law 102-550, approved October 28, 1992), as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (Public Law 104-330, approved October 26, 1996), established the Section 184 program to provide access to sources of private financing to Indian families, Indian housing authorities, and Indian tribes that otherwise could not acquire housing financing because of the unique legal status of Indian land. Because title to trust or restricted land is inalienable, title cannot be conveyed to eligible Section 184 program borrowers. As a consequence, financial institutions are unable to utilize the land as security in mortgage lending transactions. The Section 184 program addresses obstacles to mortgage financing on trust land and in other Indian and Alaska Native areas by giving HUD the authority to guarantee loans to eligible persons and entities to construct, acquire, refinance, or rehabilitate one-to-four family dwellings in these areas.

The Section 184 program charges borrowers a guarantee fee to participate in the program and the fee, along with other funds and appropriations, is used to fulfill obligations of the Secretary with respect to the loans guaranteed under this section. Section 184(d) of the Housing and Community Development Act of 1992 limited the

guarantee fee to a maximum of 1 percent of the principal obligation, and HUD set the guarantee fee at 1 percent by regulation. (See 24 CFR 1005.109.) The 2013 Consolidated Appropriations Act (Public Law 113-6, approved March 26, 2013) (2013 Appropriations Act) amends section 184(d) of the Housing and Community Development Act of 1992 by authorizing the Secretary to increase the fee for the guarantee of loans up to 3 percent of the principal obligation of the loan and to establish the amount of the fee by publishing a notice in the Federal Register.

II. This Final Rule

This final rule codifies in regulation HUD's new authority by revising the guarantee fee language in § 1005.109 to conform to the new 2013 Consolidated Appropriations Act language. Specifically, HUD replaces the language preventing the guarantee fee from exceeding 1 percent of the of the loan amount with the language authorizing HUD to increase the fee for the guarantee of loans up to 3 percent of the principal obligation of the loan, or any increase established by statute, and to establish the amount of the fees and premiums through notice published in the Federal Register. Elsewhere in today's Federal Register, and consistent with the statutory authority of the 2013 Appropriations Act, HUD has published a notice that increases the loan guarantee fee to 1.5 percent of the principal obligation from the current rate of 1 percent.

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is

satisfied when the prior public procedure is “impracticable, unnecessary or contrary to the public interest.”

HUD finds that good cause exists to publish this rule for effect without soliciting public comment in that prior public procedure is unnecessary. This final rule codifies, in its Section 184 regulations, without change, HUD’s new statutory authority to increase the Section 184 guarantee fee up to 3 percent of the principal obligation.

IV. Findings and Certifications

Regulatory Review – Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. As discussed above in this preamble, this final rule updates the regulation to reflect HUD’s new statutory authority only. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

List of Subjects in 24 CFR Part 1005

Indians, Loan programs-Indians, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR part 1005 to read as follows:

PART 1005-LOAN GUARANTEES FOR INDIAN HOUSING

1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 1715z-13a, 15 U.S.C. 1639c, 42 U.S.C. 3535(d).

2. Revise § 1005.109 to read as follows:

§ 1005.109 Guarantee Fees.

HUD shall establish and collect, at the time of issuance of the guarantee, a fee for the guarantee of loans under this section, in an amount not exceeding 3 percent of the principal obligation of the loan, or any increase established by statute. HUD shall establish the amount of the fee by publishing a notice in the Federal Register, and shall deposit any fees collected under this section in the Indian Housing Loan Guarantee Fund.

Dated: February 21, 2014.

Sandra B. Henriquez,
Assistant Secretary for Public
and Indian Housing

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