

transaction would require no additional source of funding; the DHHL could offer a loan at the minimum rate necessary to cover its repayment of the Section 184A loan; and any payments made by the leaseholder would be a direct offset of the cost of developing the home. HUD would not have to guarantee or insure these loans. Because the infrastructure was paid for by grant funds, the leaseholder/borrower is not paying back these costs, only the loan guarantee costs of the home. Even if there were a number of successive defaults on a home, the home could be offered at a discounted price or shorter term to each successive leaseholder, since the DHHL is seeking only to recover its costs and repay its loans, not to make a profit. Any gap in cash flow while a defaulting leaseholder is evicted and a new leaseholder takes over would be limited to the monthly payments as they come due and not to the entire cost of the home.

The use of Section 184A loan guarantees as described above may proceed under the rule at 24 CFR part 1007 as currently written. HUD is planning in a separate rule to propose minimum financial viability and development capacity and experience requirements to determine what nonprofits are eligible for guarantees, but this should not prevent planning of Section 184A development projects from proceeding. HUD welcomes the opportunity to work with the eligible institutional borrowers to develop viable projects on a case-by-case basis. The result of using the Section 184A program for this larger-scale development is anticipated to be an increase in the production of affordable housing units on a more financially sound basis, while avoiding many of the difficulties pointed out in the public comments, which focus on issues related to individual borrowers. To the extent Section 184A loan guarantees are sought for individual borrowers, the existing FHA Section 247 program model will be followed.

Section 1007.20 Eligible Housing

Comment: The FHA Section 247 program accepts the building codes of the various counties, and the Section 184A program should accept the same requirements.

HUD response: A new paragraph (d) is being added to § 1007.20 to provide that housing that meets the minimum property standards for Section 247 mortgage insurance is deemed to meet the required housing safety and quality standards.

Section 1007.30 Security for Loan

Comment: Under § 1007.30(a), only the dwelling for which the loan is used is collateral for the loan.

HUD response: Where the borrower is an individual, Native Hawaiian holder of a homestead lease, the lessee's interest must always be included as collateral for the loan. This is consistent with Section 208(6) of the HHCA, and with the FHA Section 247 mortgage insurance program. Where the borrower is an entity other than an eligible Native Hawaiian family, "any collateral authorized under and not prohibited by federal or state law," as provided by § 1007.30(a), may be used.

Comment: Under § 1007.30(b), which addresses Hawaiian Home Lands property interest as collateral, all homestead leases are inalienable.

HUD response: As noted earlier, HUD is aware of the restrictions preventing alienation of the fee title to the lands set aside as Hawaiian Home Lands and recognizes the limitations on disposition of a homestead lease that has been mortgaged pursuant to section 208(6) of the HHCA. However, HUD also notes the specific authority to "mortgage or pledge the lessee's interest in the tract or improvements thereon."

Comment: Under § 1007.30(b)(1), which addresses approved leases, leases have evolved over the years, and DHHL would not want to be required to amend older leases.

HUD response: HUD is uncertain of the circumstances under which an older lease would be at issue in a Section 184A loan guarantee transaction, since refinancing is not an eligible activity. The statute for the Section 184 loan guarantee program was amended to specifically authorize refinancing, and such specific authorization is not present in Section 184A. Nevertheless, should a request for a Section 184A loan guarantee present itself in the context of an older lease, HUD must reserve the right to approve the lease in order to protect its, and the public's, financial interest, as it is obliged to do in all of its programs.

Comment: Under § 1007.30(b)(2), which addresses assumption or sale of leasehold, title can only be transferred to another native Hawaiian; neither HUD nor the mortgagee can hold title.

HUD response: HUD agrees with this comment, and plans to amend this section in a separate proposed rule. As a practical matter, the provisions of this paragraph with respect to obtaining title to the leasehold interest cannot be executed, although the provisions requiring the DHHL's consent before any assumption of a lease, and HUD's

approval before the lessor may terminate the lease while the mortgage is guaranteed or held by HUD, remain valid.

Comment: Under § 1007.30(b)(3), which addresses liquidation, only DHHL can cancel or award a lease.

HUD response: The HUD response to the comment under § 1007.30(b)(2) addresses this issue.

Comment: Under § 1007.30(b)(4), which addresses eviction procedures, the DHHL's Administrative Rules and Hawaii Revised Statutes provide procedures for "contested case hearings" to allow lessees due process before a lease can be cancelled, which lengthens the process time. A more realistic time requirement than 60 days is 180 days to a year.

HUD response: HUD does not intend to impose unrealistic requirements. In response to this comment, the last sentence of § 1007.30(b)(4), which contains this requirement, is removed.

Comment: Under § 1007.30(b)(4)(i), which addresses enforcement, reconsideration of lease cancellations, and court stays prolong the process.

HUD response: The HUD response to the comment under § 1007.30(b)(4) addresses this issue.

Section 1007.35 Loan Terms

Comment: Because DHHL provides land at no cost to native Hawaiians, only the cost of the dwelling is assumed by the lessee; therefore, loan limits should mirror the FHA Section 247 program. Setting a high loan maximum will limit DHHL's ability to reaward existing homes, which have high values, to waiting low-income families.

HUD response: HUD agrees with the comment. As noted earlier in this preamble, HUD intends to administer both the Section 184A and Section 247 programs in a consistent manner, with respect to individual, Native Hawaiian borrowers holding homestead leases.

Section 1007.40 Environmental Requirements

Comment: A Finding of No Significant Impact (FONSI) should not be required to be published for each new construction loan made by individual lessees to construct a house on their homestead lot. The lessee should not be burdened with the cost to publish a FONSI.

HUD response: FONSI's result from environmental assessments under the National Environmental Policy Act (NEPA). Under the environmental reviews conducted by HUD under 24 CFR part 50, referenced in § 1007.40, activities under the Section 184A program may or may not require