

## § 1007.40

### § 1007.40 Environmental requirements.

Before HUD issues a commitment to guarantee any loan or (if no commitment is issued) before guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, HUD will require compliance with procedures similar to those required by § 203.12(b)(2) of this title for FHA mortgage insurance.

### § 1007.45 Applicability of civil rights statutes.

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) or of the Fair Housing Act (42 U.S.C.A. 3601 *et seq.*) apply to a guarantee provided under this part, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

### § 1007.50 Certificate of guarantee.

(a) *Approval process.* (1) *In general.* Before HUD approves any loan for guarantee under this section, the lender shall submit the application for the loan to HUD for examination.

(2) *Approval.* If HUD approves the application submitted under paragraph (a)(1) of this section, HUD will issue a certificate as evidence of the loan guarantee approved.

(b) *Standard for approval.* HUD may approve a loan for guarantee under this part and issue a certificate under this section only if HUD determines that there is a reasonable prospect of repayment of the loan.

(c) *Effect.* (1) *As evidence.* A certificate of guarantee issued under this part by HUD shall be conclusive and incontestable evidence in the hands of the bearer of the eligibility of the loan for guarantee under this part and the amount of that guarantee.

(2) *Full faith and credit.* The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by HUD as security for the obligations made by HUD under this section.

## 24 CFR Ch. IX (4-1-05 Edition)

(d) *Fraud and misrepresentation.* This section may not be construed:

(1) To preclude HUD from establishing defenses against the original lender based on fraud or material misrepresentation; or

(2) To bar HUD from establishing regulations that are (on the date of issuance or disbursement, whichever is earlier) partial defenses to the amount payable on the guarantee.

### § 1007.55 Guarantee fee.

The lender shall pay to HUD, at the time of issuance of the guarantee, a fee for the guarantee of loans under this part, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

### § 1007.60 Liability under guarantee.

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

### § 1007.65 Transfer and assumption.

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

### § 1007.70 Disqualification of lenders and civil money penalties.

(a) *In general.* (1) *Grounds for action.* HUD may take action under paragraph (a)(2) of this section if HUD determines that any lender or holder of a guarantee certificate:

(i) Has failed:

(A) To maintain adequate accounting records;

(B) To service adequately loans guaranteed under this section; or

(C) To exercise proper credit or underwriting judgment; or

(ii) Has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(2) *Actions.* Upon a determination by HUD that any of the grounds for action in paragraph (a)(1)(i), of this section apply to the holder of a guarantee certificate, HUD may:

(i) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(ii) Bar such lender or holder from acquiring additional loans guaranteed under this part; and

(iii) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this part.

(b) *Civil money penalties for intentional violations.* (1) *In general.* HUD may impose a civil monetary penalty on a lender or holder of a guarantee certificate if HUD determines that the holder or lender has intentionally failed:

(i) To maintain adequate accounting records;

(ii) To adequately service loans guaranteed under this section; or

(iii) To exercise proper credit or underwriting judgment.

(2) *Penalties.* A civil monetary penalty imposed under this section shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act (12 U.S.C.A. 1735f-1) with respect to mortgagees and lenders under that Act.

(c) *Payment on loans made in good faith.* Notwithstanding paragraphs (a) and (b) of this section, if a loan was made in good faith, HUD may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this section.

#### § 1007.75 Payment under guarantee.

(a) *Lender options.* (1) *Notification.* If a borrower on a loan guaranteed under this part defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to HUD.

(2) *Payment.* Upon providing the notice required under paragraph (a)(1), of this section, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject

to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) *Foreclosure.* The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to HUD). Upon a final order by the court authorizing foreclosure and submission to HUD of a claim for payment under the guarantee, HUD will pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined under § 1007.60) plus reasonable fees and expenses as approved by HUD. HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(ii) *No foreclosure.* Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (a)(2)(i) of this section continues for a period in excess of 1 year), the holder of the guarantee may submit to HUD a request to assign the obligation and security interest to HUD in return for payment of the claim under the guarantee. HUD may accept assignment of the loan if HUD determines that the assignment is in the best interest of the United States. Upon assignment, HUD will pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under § 1007.60). HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(b) *Requirements.* Before any payment under a guarantee is made under paragraph (a) of this section, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. HUD will then take such action to collect as HUD determines to be appropriate.

**PARTS 1008–1699 [RESERVED]**