

Chapter 11: Refinances

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11.1 Overview

The Section 184 loan can be used to refinance a single family one- to- four unit dwellings located on trust land or land located in a defined Indian or Alaska Native operating areas.

The 184 refinance authority includes: (1) Streamline; (2) Cash-out; and (3) No Cash-out Refinances.

The borrower is required to pay a guarantee fee in the amount of 1% of the loan amount. The Section 184 guarantee fee may be financed or paid in cash at closing. There is no refund of the guarantee fee for an existing Section 184 mortgage that is being refinanced.

11.2 Trust Land Documentation

Mortgages made on Trust land require additional documentation. The following items are required in addition to all other standard Section 184 documentation, and should be submitted with the underwriting package.

Land Lease. Borrowers must have an executed residential mortgage lease. The lease must be approved and executed by the Tribe, the Bureau of Indian Affairs (BIA) and OLG. The lease will be recorded on the certified TSR (if an existing lease) and/or will be recorded with the Section 184 Mortgage. The term of the lease must be equal to or greater than the term of the Section 184 Mortgage.

Certified Title Status Report. The lender must obtain and submit with the underwriting file a Certified Title Status Report (TSR) no older than 1 year for tribal trust and no older than 6 months for allotted individual trust. The certified TSR should include the recorded mortgage (to be paid in full) and the recorded existing lease (if applicable).

BIA Approval to Mortgage. Mortgages on allotted/individual trust without a lease must be submitted to the BIA for underwriting and approval to mortgage. BIA approval is required prior to loan closing.

Trust Land Appraisal. If an appraisal is required, the appraisal must be performed in accordance with the requirements of HUD Handbook 4150.2, Valuation Analysis for Home Mortgage Insurance for Single Family One-to Four-Unit Dwellings, Appendix A-2, and Appraisal of Single Family Homes on Native American Lands. Appraisers may use market or cost approach for appraisals on trust land.

11.3 Types of Refinances

No Cash-Out Refinance

Maximum Loan Amount. The maximum mortgage amount for a no cash out refinance is the *lesser of*:

1. The appraised value (multiplied by the appropriate loan-to-value ratio of 98.75% or 97.75%);
2. The sum of the existing mortgage payoff (limited to maximum of 30 days interest), seasoned subordinate liens, closing costs, prepaid expenses, reasonable discount points, required repairs, and other acceptable fees;
3. If owned less than one year, the sum of the original sales price and documented repairs (multiplied by the appropriate loan-to-value ratio of 98.75% or 97.75%)
4. The maximum FHA loan limit for the county as of March 3, 2008.

Refer to the no cash out worksheet to determine the maximum mortgage amount.

Appraisal. The appraisal must be performed in accordance with the requirements of HUD Handbook 4150.2, Valuation Analysis for Home Mortgage Insurance for Single Family One-to Four-Unit Dwellings, Appendix A-2, and Appraisal of Single Family Homes on Native American Lands. The appraiser may use market or cost approach for appraisals on trust land.

Existing Mortgage. Payoff may include interest, a statement fee, recording fee, release fee, and/or a prepayment penalty charged by the servicing lender. A maximum of 30 days interest may be included in the maximum loan amount calculation. Any interest amount due in excess of 30 days must be paid at closing by the borrower. Late charges, escrow shortages or other miscellaneous fees may not be financed in the new mortgage.

Subordinate Liens. For a no cash out refinance mortgage, subordinate liens must be seasoned for a minimum of 12 months to be paid off. If the junior liens were used for repairs or rehabilitation of the property, it may be eligible for inclusion with detailed documentation of the repairs or rehabilitation.

Closing Cost Assistance Liens. Lenders must provide copy of the original HUD-1 for the existing mortgage to verify if closing cost/down payment assistance was provided. Tribal approval to refinance must be obtained when tribal or NAHASDA funds were provided for the loan that is being paid off with the refinance.

Prepaid Expenses. Prepaid expenses may include the per diem interest on the new loan to the end of the month, the hazard insurance premium, and real estate taxes needed to establish the new escrow account.

Credit Requirements. Borrowers must meet the following credit requirements:

1. No late payments in the past 12 months
2. No **mortgage** late payments in the past 12 months
3. No bankruptcy, judgment, or liens in the past 24 months (except for documented extenuating circumstances beyond the control of the applicant)
4. No accounts converted to collection in the past 12 months

No Cash Back. Borrowers are not permitted to receive cash back at closing. The maximum tolerance for minor adjustments at closing is \$250.

Removal of Mortgagor. A no cash out refinance may be used to buy out the equity of a co-owner or spouse. The specified equity to be paid is considered property-related indebtedness and is eligible for inclusion in calculating the new mortgage. A divorce decree, settlement agreement, or other bona fide equity agreement must be provided to document the equity to be paid to the ex-spouse or co-owner.

Cash-Out Refinances

Maximum Mortgage Amount. The maximum mortgage amount for cash out refinance is 85% of the appraised value if the property has been owned for at least one year. If owned for less than one year, the maximum mortgage amount is 85% of the original sales price as shown on the HUD 1.

Repeated cash out refinances require evidence of the net benefit to the borrower.

Refer to the Cash Out refinance worksheet to determine the maximum mortgage amount.

Tribe/TDHE Borrowers. Qualified tribes or tribally designated housing entities (TDHEs)/Indian Housing Authorities (IHAs) may apply for a cash-out refinance loan when the loan proceeds are to carryout additional affordable housing activities.

Mutual Help Purchases. Borrowers purchasing their Mutual Help home (payments made for 1 year or more) may apply to pay off their existing debt and obtain cash-out depending on the appraised value of the property.

Credit Requirements. Cash out refinances historically have a higher risk; therefore the borrower's credit history must meet the following:

1. No late payments in the past 24 months
2. No mortgage late payments in the past 36 months
3. No bankruptcy, judgment, in the past 48 months (except for documented extenuating circumstances beyond the control to the applicant)
4. No accounts converting to collection in the past 24 months

Payments to Creditors. All payments to third party creditors must be paid at closing and documented on the HUD-1 settlement statement.

Maximum Cash to Borrower. Refinances that include a *cash distribution* directly to the borrower are currently limited to \$25,000.

Cash-Out Letter. The credit package must include a detailed statement from the borrower describing how the funds are to be utilized.

Subordinate Liens. All subordinate liens must be paid in full with cash proceeds or otherwise satisfied and released. The subordinate liens carried by a non profit or tribe with favorable terms and conditions may remain in place with OLG prior approval.

Repairs to the subject property. Repairs that are included in the value, the lender must establish a single close construction escrow. Upon completion, remaining funds may be disbursed to the borrower. If the repairs are not included in the value, the applicant may not receive more than \$25,000 cash in hand to complete the repairs.

Closing Cost Assistance Liens. Lenders must provide copy of the original HUD-1 for the existing mortgage to verify if closing cost/down payment assistance was provided. Tribal approval to refinance must be obtained when tribal or NAHASDA funds were provided for the loan that is being paid off with the refinance.

Properties Owned Free & Clear. If a property is owned free and clear it may be refinanced as cash out refinance.

No Direct Guarantee Underwriting. All cash out refinance mortgages will be reviewed and underwritten by OLG underwriters.

Streamline Refinances

Streamline refinances are limited to an existing guaranteed Section 184 mortgage. A streamline refinance will typically lower the applicant's monthly payment or reduce the term of the mortgage.

Evidence of Existing Section 184 Mortgage. The lender must indicate on the case number request form that the refinance is a streamline. The OLG will verify that the existing mortgage is a guaranteed 184 mortgage.

Delinquent Mortgages. Delinquent mortgages are not eligible for a streamline refinance. The lender must verify and document the payment history on the existing mortgage.

1. The existing mortgage must be current, and must be seasoned for at least six months at the time of loan application.
2. For mortgages with less than 12 month payment history, all mortgage payments must have been made within the month due.
3. For mortgages with more than a 12 month payment history, there must not be more than one mortgage payment 30 or more days late in the preceding 12 months and all mortgage payments must have been made in the month due for a minimum of 3 months prior to loan application.

Maximum Loan Amount. The maximum mortgage amount for a streamline refinance is the *lesser* of:

1. The original principal balance (documented by a signed copy of the original HUD-1 Settlement Statement, a copy of the original signed Note or a copy of the Guarantee certificate)
2. The sum of the existing mortgage payoff amount, closing costs, prepaid expenses, and reasonable discount points.

No Cash Back. Borrowers are not permitted to receive cash back at closing. The maximum tolerance for minor adjustments at closing is \$250.

Subordinate Liens. Subordinate liens may remain against the property (with or without an appraisal). The borrower is not required to pay off any lien that will be subordinated.

Net Tangible Benefit. The lender must determine that there is a net tangible benefit as a result of the streamline refinance transaction (with or without an appraisal). Net tangible benefit is defined as:

- reduction in the total mortgage payment (principal, interest, taxes and insurances, homeowners' association fees, ground rents, special assessments and all subordinate liens),

OR

- reducing the term of the mortgage

Reduction in Total Mortgage Payment: The new mortgage payment is 5 percent *lower* than the mortgage payment for the mortgage being refinanced. Example: Mortgage payment on the existing 184 mortgage is \$895.00; the mortgage payment for the new 184 mortgage must be \$850.00 or less.

Reduction in Term: For transactions that include a reduction in the mortgage term, that loan must be underwritten and closed as a rate and term (no cash-out) refinance transaction.

Verification of Employment. The lender must include a signed and dated cover letter on their letterhead certifying that the borrower is employed and has income at the time of loan application.

Uniform Residential Loan Application (URLA). Lenders may no longer use an abbreviated version of the URLA. Due to various disclosure requirements and our long-standing belief that borrowers are best served when certifications they must make are divulged as early as possible in the loan application process, the application for mortgage insurance must be signed and dated by the borrower(s) before the loan is underwritten. Lenders are permitted to process the loan after the borrowers and interviewer complete the initial URLA and initial form HUD-92900A, HUD/VA Addendum to Uniform Residential Loan Application.

Repairs. Cost of repairs may not be financed with a streamline refinance. The OLG does not require repairs on a streamline refinance, unless they are for lead based paint repairs. Lender required repairs may not be financed.

Appraisal and Credit Report Fees. If the lender is required by law, banking regulations or its investors to obtain an appraisal or credit report on a mortgage that can be processed without appraisal or credit report, the fees may be paid by the applicant out-of-pocket but not financed.

No-Cost Refinances and Premium Pricing. The lender may charge a premium interest rate to defray a borrower's closing or prepaid costs. The lender may also offer an interest-free advance of amounts equal to the present escrow balances on the existing mortgage to establish a new escrow account.

Cash-to-Close. Applicants are not required to provide evidence of minimal cash-to-close amounts. OLG may, at its discretion, request this documentation.

Social Security Numbers. Social security numbers must be verified on all borrowers.

The Use of an Appraisal. When the proposed mortgage amount (payoff, closing costs and prepaids) exceeds the original loan amount, a borrower may use an appraisal to justify a final loan amount higher than the streamline limit. This can be done only when the mortgage is over 12 months old. The appraised value will be used to substantiate the higher loan amount. If the appraised value is such that it is not beneficial to the applicant, the underwriter may choose to proceed as if no appraisal were done. The appraisal may be voided and the file documented in the “remarks” section of MCAW. The maximum loan amount will remain the original loan amount and the borrower will pay all additional amounts at closing.

Credit Qualifying Streamline Refinances. A credit-qualifying streamline refinance can be processed with or without an appraisal, as appropriate, and it may be used when:

1. A Reduction in Mortgage Term will result in an increase (over 15%) in the applicant’s payment to principal and interest.
2. Adding or Deleting Borrower. The borrower that is being added must meet 184 Program eligibility (i.e., enrolled member of a federally recognized tribe). In addition, the deletion or addition of a borrower on a leasehold mortgage must comply with all related federal and tribal leasing requirements.
3. Following an Assumption of a Mortgage, that did not trigger a due-on-sale clause such as a divorce or descent and the assumption occurred less than 6 months previously

Credit Documents. The lender must provide verification of income (adequacy and stability), credit report, CAIVRS, and computation of the total debt-to-income ratio on the MCAW.

Acceptable Credit History. The lender must provide evidence that the existing borrower has an acceptable credit history and ability to make the monthly mortgage payments.

Non-Credit Qualifying Streamline Refinances. Non-credit qualifying streamline refinances may be processed without an appraisal.

Uniform Residential Loan Application (URLA). Lenders may no longer use an abbreviated version of the URLA. Due to various disclosure requirements and our long-standing belief that borrowers are best served when certifications they must make are divulged as early as possible in the loan application process, the application for mortgage insurance must be signed and dated by the borrower(s) before the loan is underwritten. Lenders are permitted to process the loan after the borrowers and interviewer complete the initial URLA and initial form HUD-92900A, HUD/VA Addendum to Uniform Residential Loan Application.

MCAW. The Mortgage Credit Analysis Worksheet (MCAW) must be submitted, however the sections related to income, assets, debts, and other obligations need not be completed.

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