

## CHAPTER IV – HOME LOANS

### IV-A. PURPOSE

The purpose of the Stockbridge-Munsee Community home loan program is to remediate historical barriers to home ownership by tribal members through a governmental program that provides home loans to members on favorable terms. These home loans are not intended to be below market rate loans that would cause borrowers to have taxable income by the Internal Revenue Service.

The Mohican Loan Program is a revolving loan fund, not guaranteed funding by the Stockbridge-Munsee Community (“Tribe”). This means the Tribe has a limited percentage of the loan fund capital that is considered to be cash available for home loan lending. The cash available for lending each fiscal year is 25% of the balance in the revolving loan fund as of October 1<sup>st</sup> of that same fiscal year. The balance in the revolving loan fund excludes outstanding funded loans as well as loans that have been committed or approved, but have not yet been funded.

### IV-B. DEFINITIONS

“Applicable Federal Rate” means the rate used by the U.S. Internal Revenue Service (“IRS”) pursuant to IRC § 1274(d) to determine below market rate loans for the purpose of taxable income, as stated in Revenue Rulings published monthly by the IRS and available over the Internet.

“Appraised Value” means the estimated fair market value as determined by a Wisconsin state-licensed appraiser.

“Arrears” means any outstanding amount.

“Borrower” means a Member who applies for, or receives, a loan under this chapter. The term Borrower is also referred to as Applicant in this policy prior to the loan closing.

“Close Family Member” means a spouse, domestic partner, parent or step-parent, grandparent, child or step-child, sibling, niece, nephew, uncle or aunt.

“Consolidation” means combining home loan and home improvement loan principal due for the purposes of refinancing Mohican Loan Department debt. Consolidation is not intended to allow Borrower to consolidate non-tribal debt as part of the tribal home loan.

“Debt Ratio” means the ratio of a Borrower’s recurring monthly debt payments to gross monthly income.

“Department” means the Mohican Loan Department.

“Tribal Fair Market Value” is the bid amount accepted by the Tribal Council as the sales price when the Tribe is selling a tribally-owed house (where the land is to be held subject to a land assignment) through a bid process open to all members.

“Fee Land” means land that is owned either by the Tribe or by an individual Tribal member in fee simple.

“Land Assignment Security Agreement” means the Tribe’s security interest in the improvements financed with Program proceeds with respect to homes financed on Tribal Land. This document is used in lieu of a mortgage when a Borrower has a Land Assignment.

“Land Assignment” means a Borrower’s right to occupy Tribal Land pursuant to a written grant of assignment from the Tribe under the Land Ordinance (Chapter PRP.01 of Stockbridge-Munsee Tribal Code).

“Loan Documents” include the Promissory Note, Escrow Agreement, Mortgage, Land Assignment Security Agreement, as well as amendments thereto and other documents executed in relation to a loan under the Program.

“Member” means an enrolled member of the Stockbridge-Munsee Community.

“Marital Property Statement” means a form identifying whether or not a debt was incurred in the interest of the family.

“Per Capita Payment” means the distributions made by the Tribe from tribal enterprise revenue to tribal members, on a per capita basis, pursuant to the Tribe’s Revenue Allocation Plan Ordinance (Chapter GMG.02 of Stockbridge-Munsee Tribal Code) or similar law or ordinance.

“Principal Residence” means the home that a person occupies and maintains as his or her permanent place of residence. A person may have only one principal residence at a time. A person’s principal residence will not be affected by the member’s temporary absence from the home because of military service, education, temporary relocation for employment or health reasons, incarceration or other similar reasons, but will not include residences used primarily as a second home, vacation home, or rental property.

“Program” means the Mohican Home Loan Program described in this chapter.

“Promissory Note” means the Borrower’s written promise to repay the loan in accordance with the terms set forth therein.

“Refinance” means Borrower’s current home loan with an alternative provider is paid in full, or Borrower’s current home loan with the Mohican Loan department is reamortized using a different interest rate or different amortization table. Borrower must be current on payments for their home loan with the alternate provider as well as any other tribal loans in order to be eligible for refinancing.

“Tribal Council” means the governing body of the Tribe described in Article IV of the Tribal Constitution.

“Tribal Land” means Trust Land and Fee Land owned by the Tribe.

“Tribe” means the Stockbridge-Munsee Community, a federally recognized Indian tribe.

“Trust Land” means land that is held by the United States in trust for the Tribe or individual Tribal members.

## **IV-C. ELIGIBILITY CRITERIA**

### **1. ELIGIBLE LOAN PURPOSES.**

- A. Loan proceeds may be used only for the purchase, construction, improvement or refinancing of a home that the Borrower owns and will occupy as a Principal Residence and is located in one of the following counties: Shawano, Langlade, or Waupaca.
- B. In the event that the loan proceeds are used to refinance an existing home loan, the loan proceeds must be sufficient to permit the payoff of the note being refinanced so that the Tribe may secure a first mortgage lien interest in said property.
- C. Under no circumstances may the loan amount, together with any other loans secured with the same property, exceed the appraised value of the property.

### **2. ELIGIBLE APPLICANTS.**

- A. Applicant must be an enrolled member of the Stockbridge-Munsee Community who is at least 18 years of age.
- B. Applicant must be employed for a minimum of one (1) year or have other countable income for a minimum of one (1) year or a combination of the employment/other allowable income for a minimum of one (1) year. Verification of income will require the following information, as applicable:
  - (1) Written verification from employer.
  - (2) Copies of Borrower’s tax returns (including all forms and schedules). If Borrower is married and Borrower’s spouse files separately, Borrower shall submit tax returns for both Borrower and spouse if the Borrower intends for the Spouse’s income to be considered for eligibility purposes.
  - (3) Copies of Borrower’s current pension and/or Social Security benefit statements.
  - (4) Any other documentation deemed necessary to verify income.
- C. Applicant must have a Debt Ratio of forty percent (40%) or less.
  - (1) The following types of income are countable when calculating Debt Ratio, provided that such income is reasonably expected to continue during the loan term: wages and tips; pension benefits; Social Security benefits; Supplemental Security Income (SSI) benefits; unemployment benefits for seasonal workers; child support and alimony payments.
    - a. Pre-tax amounts will be used when determining gross monthly income.
    - b. For married applicants, income from both spouses is considered when calculating debt ratio unless legally separated.

- (2) The following types of income are not countable when calculating Debt Ratio: unemployment benefits; income not reported on taxes; per capita payments; and any other temporary income.
  - (3) For the purposes of calculating Debt Ratio, debt includes the new loan payment, other mortgage payments if applying for a tribal home improvement loan, cost associated with required homeowner's insurance, all open loan payments, credit and credit card payments, alimony/child support and maintenance obligations, payments on other Tribal loans, and payments to any other lenders. If monthly payments on a debt have been deferred until after the final payment on the loan being applied for under this program, such deferred payments will not be considered.
  - (4) All debt incurred during a Borrower's marriage is presumed to be marital debt and all marital debt is included for the purposes of calculating debt ratio, unless a marital property agreement assigning such debt to one spouse is delivered to the Department.
  - (5) If a Borrower is obtaining the loan in relation to a home that is located on Fee Land owned by an individual, then the cost of property taxes will also be considered when calculating the Debt Ratio.
- D. Applicant's mortgage payment amount cannot exceed twenty-five percent (25%) of verified income.
- (1) Applicant must demonstrate the ability to repay the loan. Notwithstanding any other provision of these policies, the Tribe will not approve a loan unless it has made a determination that the Borrower will repay the loan.
  - (2) Applicant will not have an existing account in arrears with the Tribe.
- E. Applicants must have an acceptable payment history concerning any previously processed loans. Applicants that show a history of 60 days past due more than 4 times in 12 consecutive months do not qualify for a home loan under the Program.
- F. Bankruptcy will affect a Borrower's eligibility as follows.
- (1) A Borrower, who previously received a discharge in bankruptcy of a debt owed to the Tribe, is not eligible for a loan unless the Borrower reaffirms, and pays off, the Tribal debt.
  - (2) A Borrower who had non-tribal debts discharged through Chapter 7 bankruptcy, will not be eligible for a loan from the Tribe for a period of five (5) years following the date of discharge.
  - (3) A Borrower, who has filed for Chapter 11, Chapter 12, or Chapter 13 bankruptcy on non-tribal debts and is currently under a repayment plan, will not be eligible for a loan until the Borrower has fully complied with the repayment plan for at least five (5) years.
  - (4) If a Chapter 11, Chapter 12, or Chapter 13 bankruptcy repayment plan for non-tribal is not completed or is converted to a Chapter 7 bankruptcy, the Borrower is not eligible until five (5) years have passed from the date of discharge of the bankruptcy proceeding.
3. CREDIT BUREAU REPORT. Credit bureau reports on the applicant and the applicant's spouse will be obtained for all personal loans. Applicants must have a FICO credit score of 620 or greater to qualify for a loan. The Tribe may require credit counseling as a condition for

making a loan to any Borrower under the Program and the Tribe will require credit counseling for any Borrower whose FICO credit score is lower than 640.

4. LOAN TO VALUE. , The total loan amount may not exceed 100% percent of the lesser of the total acquisition costs or appraised value obtained from a state licensed appraiser. For a sale of a tribally-owned home, the total loan amount shall not exceed the Tribal Fair Market Value of the home.

#### **IV-D. LOAN PROCESS**

##### **1. APPLICATION.**

A. Applicants will submit the following information in order to be considered for a home loan.

- (1) Completed loan application, with application fee.
- (2) If Borrower is married, the loan application “Co-Borrower” section must be completed by the Borrower’s spouse.
- (3) Copies of two (2) most recent pay stubs indicating year to date earnings.
- (4) If self-employed, a copy of the previous year’s tax records, including all forms and schedules.
- (5) When Social Security, SSI or pension benefits are used to document income, a copy of the benefits statement, including the name, address, and phone number of the payor and verification of benefit dates, as applicable.
- (6) Evidence of land ownership.
  - a. If home is on tribal Trust Land, the Borrower must provide proof of valid Land Assignment or lease.
  - b. If home is on individual Trust Land, the Borrower must provide proof that trust deed is in their name.
  - c. If the loan is intended for the purchase of home, Borrower must show evidence that the Borrower will own the land or hold the Land Assignment upon the loan closing.
  - d. If Borrower holds or will hold individual Fee Land with a spouse or another person(s), Borrower must provide evidence the other person agrees to the loan and the person(s) will co-sign the resulting mortgage.
  - e. This requirement shall be waived for loans where the Borrower is purchasing a home directly from the Tribe for the Tribal Fair Market Value and is in the process of obtaining the Land Assignment from the Tribe.
- (7) If the loan is for improvements on individual Fee Land owned by the Borrower, then the Borrower must have a current satisfactory title report from a title insurance company.
- (8) Evidence of homeowner’s insurance or evidence of proposed homeowner’s insurance.
- (9) If Borrower has other loans that are secured by the home, then the Borrower will provide evidence of the payoff balances for all such loans.

- (10) If the loan proceeds will be used to purchase the property, then the Borrower must provide evidence of the executed offer to purchase on the standard WB-11 form or its equivalent. This requirement shall be waived for loans where the Borrower is purchasing a home directly from the Tribe for the Tribal Fair Market Value where the Tribal Council directive accepting the Borrower's bid shall provide evidence of intent to purchase.
  - (11) Additional relevant information that the Loan Review Panel may deem necessary.
- B. Once the Department has received all required application materials and completed verification, the application will be forwarded to the Loan Review Panel for consideration.
  - C. All required information must be submitted by the Borrower within 30 days or a new loan application must be completed. A new application must be submitted each time a person wants to be considered for a loan. New applications will not be reviewed without the Application Fee.
  - D. The Department will obtain a credit report relating to the Borrower and the Borrower's spouse.

## 2. APPLICATION ASSISTANCE.

- A. The Department staff will explain the loan process and requirements to the prospective Borrower, assist the Borrower with completing the loan application, and process the loan application for review by the Loan Review Panel.
- B. The Department may issue a letter of pre-qualification to an applicant once the Department has received all required application materials and completed a verification of the Borrower's information. The Department must include a disclaimer in any pre-qualification letter that the letter is not to be construed as an approval of the Borrower's request for a loan.

## 3. PRIORITY. Applications will not be considered until all required information has been submitted. Applications, once fully submitted, will be processed in the order that they are received.

## 4. DECISIONS ON LOAN APPLICATIONS

### A. Loan Review Panel.

- (1) The Tribe will have a Loan Review Panel review home loan applications and assure the integrity of the loan process.
- (2) The Panel will consist of at least three persons from the following representation: the Executive Director, Tribal Treasurer, the Chief Financial Officer of the Tribe, the Accounting Manager, or member(s) of the Investment Committee.
- (3) The Loan Review Panel will meet as needed for review of loan applications.
- (4) No member of the Panel may participate in the evaluation of a loan application in cases in which the panelist's impartiality could reasonably be doubted, including, but not limited to, applications involving a Close Family Member or a spouse's Close Family Member.

B. The Loan Review Panel will:

- (1) Review all documents pertaining to the application.
- (2) Obtain an Appraisal of property by State Certified Appraiser. This requirement for an appraisal shall be waived for loans where the Borrower is purchasing a home directly from the Tribe for the Tribal Fair Market Value.
- (3) Confirm that the application contains the materials and information required by Section IV-D. However, the Loan Review Panel may make a determination despite the absence of documents if the Loan Review Panel explains, in writing, the reason it considers the missing information inessential.
- (4) Consult such other sources of information as may be necessary to assess the application.
- (5) Within fifteen days after receiving the complete loan packet, either approve, deny or conditionally approve the application. No rights accrue to the Borrower in the event that the Loan Review Panel's decision is tardy.
- (6) The Loan Review Committee must maintain confidentiality in accordance with Tribal Policy.
- (7) The Loan Review Committee may not waive any of the requirements of Section IV-C.

C. The Department is not authorized to grant immediate approval of any applications to meet a Borrower's emergency needs.

5. NOTIFICATION OF APPROVAL DECISION. Applicants will be notified of the Loan Review Panel's decision in writing within five (5) working days after the decision is rendered. If there are any conditions that the Borrower needs to satisfy in order to receive the loan, the Borrower will be notified of the conditions in the approval letter. If the loan is denied, the Borrower will be notified of the reasons for the denial.

6. LOAN CLOSING.

A. Upon approval, the Loan Department will set a date by which the loan must be closed.

- (1) If both parties agree, the deadline for closing may be extended. If the loan closing does not occur by this date and the parties have not agreed to an extension, the loan approval will be withdrawn and the Borrower will be required to submit a new loan application.
- (2) For loans used to purchase a home located on a Land Assignment, the Borrower must obtain all approvals needed for transferring the Land Assignment into the Borrower's name (approvals contingent on the loan closing are permissible) prior to the loan closing.
- (3) For loans used to purchase fee simple land, loan closing will be scheduled concurrently with the Borrower's closing on the land purchase.
- (4) For loans used to purchase individual trust land, the Bureau of Indian Affairs must review and approve the loan, including all applicable documents, prior to closing. Once approved, the loan closing and conveyance of the land will be scheduled to occur concurrently.

- B. The Loan Department will have a home inspection, by an inspector certified by the State of Wisconsin, completed for the home prior to complete distribution of funds for construction loans. Distribution of funds is dependent upon an inspection indicating no material defects.
- C. If loan is for Borrower to purchase a home on individual Fee Land, then the Borrower must obtain and provide Department with a satisfactory title insurance commitment for the conveyance of the land.
  - (1) Borrower is required to work with a title company, realtor, attorney, or another entity acceptable to the Tribe to ensure the proper conveyance of the land.
  - (2) Borrower must provide evidence that identified encumbrances will be removed as necessary.
  - (3) Borrower is also required to provide Department with copies of the proposed warranty deed and Borrower's closing statement for the conveyance of the land.
- D. The Department will work with the Tribe's Legal Department or other appropriate parties to prepare and/or obtain the required Loan Documents, which may, as appropriate, include the following at the Borrower's expense:
  - (1) Promissory Note;
  - (2) Closing Disclosure that includes information on the amount paid over the life of the loan;
  - (3) Real Estate Mortgage, if the financed home is on individual Fee Land or individual Trust Land;
  - (4) Land Assignment Security Agreement if the financed home is on tribal Fee Land or on Trust Land;
  - (5) Escrow Agreement;
    - a. All Borrowers will be required to enter into an escrow agreement to set aside funds on a monthly basis that can be used annually/semi-annually to pay homeowner insurance premiums; and
    - b. For Borrowers with individual Fee Land, the escrow agreement will also require them to set aside funds on a monthly basis that can be used annually/semi-annually to pay real estate property taxes.
    - c. If the Borrower has completed at least 18 months of timely payments on the loan, the Borrower may request to opt-out of mandatory escrow agreement so long as the Borrower has more than 20% equity value in the home in relation to the loan or the escrow payment is less than 10% of the combined annual mortgage payments for the preceding year.
    - d. The opt-out request is subject to approval by the Loan Committee.
    - e. If Borrower fails to make timely payments on the insurance and/or real estate taxes, the Borrower will be required to reestablish the Escrow Account.
  - (6) Land Assignment, if the financed home is on tribal Fee Land or tribal Trust Land;
  - (7) Proof of land being held as individual Trust Land or Bureau of Indian Affairs approval for conveyance and loan, as applicable;

- (8) Bill of Sale, if a tribally-owned home is sold by the Tribe when the Tribe retains ownership of the underlying land;
  - (9) Marital Property Statement, if required;
  - (10) Security Agreement, if applicable;
  - (11) UCC-1 Financing statements for security interests in improvements, if applicable;
  - (12) Payroll Deduction Agreement, if applicable;
  - (13) Closing Statement indicating the amount of the loan, amounts to be disbursed for costs as part of the loan process and the amount, as well as parties, to whom remaining proceeds are paid or to be held in reserve for future disbursement;
  - (14) Certificate or proof of insurance with loss-payable clause in favor of the Tribe;
  - (15) Appropriate payoff letters, if applicable;
  - (16) If the Borrower is in military service, a notice of rights that Borrower has under federal law when on active duty or active service; and
  - (17) Such other documents as the Department may reasonably require.
- E. The Department staff and the Borrower(s) will jointly review the Loan Documents.
- F. The parties will execute the Loan Documents; the Borrower will receive copies of the Loan Documents that he or she has executed.
- G. Following closing, the Department will perfect the Tribe's security interests as follows:
- (1) for individual Fee Land, by filing the mortgage with the appropriate register of deeds office;
  - (2) for individual Trust Land, by filing the mortgage with Bureau of Indian Affairs and with the Tribal Registry, in accordance with Chapter ADM.03 of Stockbridge-Munsee Tribal Code;
  - (3) in improvements on Tribal land, by filing a Land Assignment Security Agreement with the Tribal Registry in accordance with Chapter ADM.03 of Stockbridge-Munsee Tribal Code.
- H. The Department will file such periodic renewals of security interests as may be required by law.
- I. If a title insurance commitment is obtained, the Department will work with the title insurance company to obtain the title insurance policy following closing.
7. **DISBURSEMENT OF LOAN PROCEEDS.** Loan funds will be disbursed to the Borrower following the loan closing, as follows:
- A. For purchase of an existing home on individual Fee Land, through the title company or other entity coordinating the land closing.
  - B. For purchase of an existing home on tribal Fee Land or on Trust Land, through the Department.
  - C. For refinancing a home loan with an alternate provider, the Department disburses loan proceeds to the alternate provider in order to pay off the refinanced home loan.
  - D. For new construction or home improvements, the Borrower shall enter into written agreement(s) with contractor(s) for the work to be completed and provide a copy of such agreement(s) to the Department. Disbursements of loan funds will be made directly to contractor(s) pursuant to inspections approved by the inspector, as follows:

- (1) ten percent (10%) upon approval of contract;
  - (2) twenty percent (20%) upon commencement of construction;
  - (3) twenty percent (20%) to be disbursed upon completion of approximately fifty percent 50% of construction;
  - (4) forty percent (40%) upon substantial completion of construction; and
  - (5) ten percent (10%) upon final approvals and acceptance of completed construction by Loan Department and Borrower.
  - (6) 5% Holdback is required on all Construction Contracts until 120 days after occupancy by the Borrower.
- E. The Department requires lien waivers from ALL general contractors and subcontractors upon each draw request. Draw requests shall be submitted to the Department for approval prior to each disbursement.
- F. The Tribe, through its authorized representative, will review construction progress for the purposes of ensuring that remaining undisbursed home loan funds are sufficient to complete the project as scheduled, including the payment of all material, labor and subcontractors. This requirement is not intended to and does not make the Tribe responsible to the Borrower for administration of the construction contract nor does it create any liability for the Tribe in relation to the quality or appropriateness of the construction.

#### 8. REPORTING.

- A. The Borrower must inform the Department in writing of any change in personal information (e.g., name, address, or telephone number) or other information that would affect the loan or the Borrower's repayment of the loan within 30 days after the change occurred.
- B. Report of Identity Theft.
- (1) If the Department receives notice of identity theft regarding a tribal loan, the Department will work with the borrower to investigate and resolve the issue.
  - (2) As appropriate, the Department can recommend that the borrower contact the credit bureau to place a fraud alert and consider placing a credit freeze on their credit report.
  - (3) Borrowers can go to the Federal Trade Commission's <https://www.identitytheft.gov> website for additional information about addressing identity theft.

9. LOAN ACCOUNT. The Department shall establish an account for each Borrower in the Program. The Department shall track disbursements and payments under the Loan Documents in that account. The funds paid and disbursed under the Escrow Agreement shall be tracked separately as part of that account. Such accounts may be established and tracked through a third party, instead of directly through the Tribe.

10. LOAN SATISFACTION. Within thirty (30) days of receiving a Borrower's final payment on a loan, the Department will send the Borrower a notice confirming that the loan has been paid in full and will file a satisfaction of mortgage and/or such additional documents as may be required.

## 11. RECORDS AND FILES.

- A. The following records will be maintained in a secure, confidential file for each Borrower:
- (1) Completed loan application, credit reports, and other supporting loan information submitted. Documentation of all fees paid by Borrower as part of the application process will also be maintained.
  - (2) Recommended actions on the loan application and a copy of the Loan Review Panel's decision, including any documented reasons in support of the decision.
  - (3) A copy of the Loan Documents, including copies of recorded documents if applicable, and the amortization schedule.
  - (4) Evidence of disbursements, including parties who received the disbursement and amount.
  - (5) If the loan is used for construction, a copy of agreement(s), lien waivers, draw requests and inspection reports.
  - (6) Annual evidence of homeowner insurance.
  - (7) If Borrower has individual Fee Land, evidence of payment of real estate taxes.
  - (8) A copy of the quarterly interest statement and payment history provided to the Borrower.
  - (9) Annual statement(s) of how much interest was paid on the home loan the preceding year to be issued on or before January 30<sup>th</sup>.
  - (10) Copies of any amendments to the Loan Documents.
  - (11) Copies of any payment agreements or documentation for any forbearance that may be granted.
  - (12) Copies of documents submitted in relation to disbursements under the Escrow Agreement.
  - (13) All written communications between the Department and the Borrower.
- B. The Department will retain its files for the life of the loan and for a period of three (3) years after the final payment is received. At the end of this retention period, the Department may have the files destroyed in a manner that protects any confidential information and complies with applicable law.

## IV-E. LOAN TERMS AND CONDITIONS

### 1. LOAN AMOUNT.

- A. The maximum amount for Home Improvement Loans is \$50,000.
- B. The maximum amount for Home Loans is \$225,000 if the home is located within the boundaries of the 1856 reservation (the townships of Bartelme and Red Springs).
- C. The maximum amount for Home Loans is \$150,000 if the home is located outside of the boundaries of the 1856 reservation.
- D. The Tribe has implemented this 2-tier approach toward home loan lending in order to benefit tribal members while minimizing risk to the Tribe as a whole in the event of defaults on home loans.
- E. Home purchases must abide by all applicable Tribal ordinances and loan policies.

## 2. PAYMENT TERM AND INTEREST RATE.

- A. The payment term will be based on the amount of the loan and is in accordance with the following schedule. All loans will have a payment term of three hundred sixty (360) months unless a shorter term is requested by borrower.
- B. The loan will accrue interest at the fixed rate of 10 basis points (0.10%) above the current monthly Applicable Federal Rate (AFR) for long-term investments (under the annual period for compounding), which can be found at <https://www.irs.gov/applicable-federal-rates> .
- C. The principal and interest will be fully amortized over the term of the loan.
- D. The Tribal Council may periodically adjust interest rates as may be required by market conditions; however, in no instance will the rate be increased on loans closed prior to the motion authorizing an adjustment in rates.
- E. Interest will begin to accrue on all disbursed funds the day the loan check(s) are disbursed and, thereafter, will be calculated and added daily thereafter on the unpaid balance.

## 3. RIGHT OF SETOFF. In the event of default and in accordance with the Loan Documents, the Tribe will have a right to setoff against the Borrower's unpaid obligations any amounts held by the Tribe to which the Borrower may be entitled, including, the escrow account. Setoff rights do not apply Per Capita Payments and wages from tribal employment.

## 4. PAYMENTS.

- A. Borrowers will make monthly payments in accordance with the Loan Documents.
- B. The Department shall not assess penalties for early payments.
- C. Advances on tribal per capita payments will not be utilized as a form of payment.
- D. The Department appropriately reports borrower's payment history to TransUnion and/or one of the other major credit reporting agencies.
  - (1) Borrowers are provided notice that negative information such as collections and account delinquencies may be furnished to a credit agency as part of reporting payment history.
  - (2) Disputes.
    - a. If borrowers believe there is an error on their credit report regarding their loan payment history, they can contact the credit agency and/or the Department to dispute the error.
    - b. If contacting the Department, then a letter identifying all disputed information that the borrower wants fixed as well as copies of documents that support their request must be provided.
    - c. The Department will investigate the identified dispute. If the information is found to be inaccurate or incomplete, then the Department will inform the credit agency to update or delete the information. If the disputed information is accurate, it will be reverified.
    - d. A letter documenting the Department's determination and any follow-up actions will be provided to the borrower.

## 5. FORBEARANCE.

- A. When a Borrower is unable to make the scheduled payments, the Department may allow the Borrower to reduce the amount of the payments or to stop making payments for a limited period of time. This action is called forbearance. The Tribe is not required to grant forbearance. Forbearance can be granted once in a twelve-month time span. The maximum number of times a person can be granted during the term of the loan is three.
- B. The Borrower must submit a written request for forbearance to the Department Manager. The request must include the Borrower's name, address, reason for request, and the term of the requested forbearance, which will be between one (1) and six (6) months.
- C. Upon receipt of the request, the Loan Review Panel will verify that the Borrower's request is true, accurate and make the determination of approval/denial. If approved, the Borrower will be required to sign an agreement containing the terms of the forbearance. The forbearance agreement will identify whether the forbearance will have the effect of extending the final payment date by the time covered by the forbearance or whether the monthly payments will be increased when the forbearance period ends so that the final payment date is unchanged.
- D. Forbearance may be granted only if the Borrower meets one or more of the following criteria:
  - (1) Borrower is hospitalized followed by a period of therapy/rehabilitation.
  - (2) Borrower is on an approved family/medical leave of absence from work.
  - (3) Borrower is involuntarily laid off or terminated from employment. This does not include seasonal employment.
  - (4) Borrower has encountered a natural disaster to his or her real property that affects his or her ability to repay the debt.
  - (5) Borrower divorces during the repayment period.
  - (6) Borrower is an "active duty" or "active service" "Servicemember", or "dependent" of a servicemember as those terms are defined in the Servicemembers Civil Relief Act (50 U.S.C. 3901 et seq).
- E. The term of a forbearance agreement will not exceed six (6) months.
- F. During the period of forbearance, interest continues to accrue and the Borrower is permitted to delay or temporarily reduce the monthly payment.
- G. During the forbearance, late fees will be waived.

## 6. DEATH.

- A. In the event of the death of the Borrower, the Department will work with the Legal Department to close out the home loan or have it assumed by a new eligible borrower.
- B. If necessary, the Tribe may be required to bring a foreclosure action to secure its interest in the property.

## 7. DEFAULT.

- A. A Borrower defaults on his or her loan when the Borrower violates any term of the Loan Documents or these policies.

- B. A Borrower is in default on his or her payments when the Borrower has failed to make a payment in full within forty (40) days of its scheduled or deferred due date **or** when the Borrower has outstanding an amount exceeding two (2) full payments which has remained unpaid for more than ten (10) days after the scheduled or deferred due date.
- C. In the event of a default, the Department will send the Borrower written notice identifying the default and requiring that the Borrower cure the default within fifteen (15) days.
  - (1) The notice will be sent by US Mail to the last address reported to the Department by the Borrower.
  - (2) The notice will contain the name, address and telephone number for the Department, a brief identification of the loan and the default, a clear statement of the total payment (including an itemization of any delinquency charges) or other performance necessary to cure the default, and the exact date by which the amount must be paid.
- D. If the Department knows or suspects that a Borrower is a military servicemember on active duty or active service, or a dependent of such servicemember, then the Department shall provide the Borrower with notice that he or she may have certain legal protections under federal law and provide an opportunity to submit a written request to the Department for such relief.
- E. If the Borrower does not cure the default prior to the expiration of the cure period, the Tribe may accelerate the loan and declare the entire amount due and pursue its remedies. The Tribe may set-off other funds in order to satisfy the outstanding arrears amount owed to the Tribe, in accordance with the Loan Documents and applicable law.
- F. In addition, if the Borrower fails to cure within fifteen (15) days of the notice, the Department may contact the Legal Department initiate a foreclosure action.
- G. Upon entry of a foreclosure order, the court may order remedies authorized under law, including:
  - (1) enter a judgment in the Tribe's favor for the entire amount due, including accrued interest, late charges and other costs associated with the default, and damages;
  - (2) order deductions from wages due the Borrower or from the Borrower's future Per Capita Payments
  - (3) if the financed home is on Tribal Land, revoke the Borrower's land assignment and issue an order of eviction; and
  - (4) such further remedies as may be appropriate.
- H. During any period of default, the Borrower will be barred from obtaining any loans from the Tribe until the account arrears have been satisfied.
- I. In the event of a default under this Program, Borrower will be ineligible to obtain anyother loan from the Tribe during the period of any default and for a period of five (5) years from the date the defaulted loan has been paid in full.

#### **IV-F. COSTS AND FEES**

- 1. **APPLICATION FEE.** Applicants for home loans are required to pay a \$25.00 application fee. Applications are not complete until this fee is paid.

2. **DISBURSEMENT FEES.** A fee of \$3.00 per check will be assessed for the disbursement of checks by the Tribe to satisfy outstanding debts paid with the loan.
3. **REFINANCING FEE.** A \$500 refinancing fee is charged for all loans being used to refinance existing loans. This refinancing fee can be added to the loan balance. Home Loan refinancing does not provide an opportunity for borrowers to engage in non-tribal debt consolidation or utilize equity.
4. **ADMINISTRATIVE FEES.** Reasonable administrative fees may be collected to cover costs incurred processing the application, such as for credit reports and certified mail. Such fees will be equal to the costs incurred by the Tribe. These costs may be considered part of the loan, so long as they do not increase the loan amount beyond the approved amount.
5. **TRANSACTIONAL COSTS.** Borrower will be responsible for costs related to the loan such as costs associated with appraisals, recording documents, and title insurance.
6. **COLLECTION COSTS AND FEES.**
  - A. If the Department has not received the full amount of any monthly payment by the end of ten (10) calendar days after the date it is due, the Borrower must pay a late fee of \$25. If the 10<sup>th</sup> day falls on a weekend or holiday, the receipt date is the next business day and a late fee will be assessed.
  - B. The Department will collect a worthless check fee, equal to the charges incurred when the check is rejected for payment, if Borrower issues a check for payment that is not honored by the financial institution for any reason.
  - C. The Department will collect reasonable collection fees and costs, which include court costs and attorney fees, if a loan account is processed for collection.