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MEMORANDUM

April 20, 2018

To: Tribal Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Subject: ***HUD Consultation on Revisions to Section 184 Program Regulations***

On April 17, 2019, HUD held a consultation session on revisions to the Section 184 program regulations in conjunction with a Northwest Indian Housing Association meeting in Worley, Idaho.

The consultation was led by Krisa Johnson, Acting Director in the Office of Loan Guarantee at ONAP. Ms. Johnson began the consultation by touting the Section 184 program. She noted the following: that HUD's Section 184 program has been active for more than 20 years and over that period it has assisted more than 40,000 Native families by guaranteeing over \$6.7 billion for home mortgages in Indian Country. She noted that the program grew quickly, and that in order to modernize and accommodate its expansion, HUD is now seeking to add more structure and safeguards to the Section 184 program through amendments to the regulations. Ms. Johnson said that borrowers, lenders, HUD, and tribal leaders all need a clear and navigable process to use this program and support increased homeownership for Native families.

HUD is analyzing the program's current regulations and processes, and will draft new regulations through a proposed rule later this year. On March 12, 2018, the Deputy Assistant Secretary for ONAP notified tribal leaders of HUD's intent to revise its regulations for the Section 184 program.

During the April 17 consultation, a number of participants asked questions or provided comments to Ms. Johnson. Ms. Johnson noted at the beginning of the consultation that she was appearing in a "listening capacity" and that she had note takers recording all questions and comments for the record. Here are the topics discussed, along with Ms. Johnson's responses:

Availability of approved lenders/lender hesitation to lend on trust land

A representative from Lummi Tribe noted that there are only two lending companies in Bellingham, WA, and both do not lend on trust land. First American Title is no longer lending on trust land. Lenders are also imposing unnecessary underwriting guidelines, and overlays to guidelines.

Participants agreed that lenders should receive some kind of incentive for lending on trust land. It remains difficult to get loans on trust land, because banks don't want to lend where they cannot make a profit. A representative from the Confederated Tribes of the Umatilla Indian Reservation noted the Tribes' issues with allotted land, stating that when members pass away there is difficulty dealing with the fractionated land. Ms. Johnson acknowledged the problem, and said that HUD is taking note of the problems during the consultation process.

Improve education about Section 184 for BIA, and for lenders underwriting and servicing loans

A representative from the Nez Perce Tribe noted that under Section 184, tribal members are able to sell their homes to other tribal members, which is a great opportunity. However, the BIA often lacks education on the process and importance of properly recording these and other Section 184 transactions.

In addition, the representative from Nez Perce Tribe stated that lenders also need additional education. The lenders allow homeowners in default to become too far delinquent before working with them, and before notifying the tribe. Additionally, the lenders fumble through the negotiation process. As an example, the HUD loan guarantee office asked Nez Perce to work with a homeowner to get them back on track with payments, but when the homebuyer contacted the HUD-approved lender, the lender had the loan marked as non-negotiable.

Ms. Johnson asked for specific feedback on an appropriate time frame to notify tribes or TDHEs in the event of a missed payment (e.g. 30 days, 60 days, 1-2 years, etc.). HUD would also need permission from the homeowner. The answers from participants all varied. Several participants noted that tribal members may use the Section 184 program to avoid monitoring by tribal housing, and tribal housing should not therefore become immediately involved in default issues for homebuyers. A longer notice period would allow tribes and tribal housing to remain unobtrusive. Other participants felt that a quick notice period (such as 30 days) would allow the homebuyer to negotiate a solution or receive temporary assistance if needed, before the debt became unmanageable.

A representative from Muckleshoot Indian Tribe said that lenders should also pursue options like short sales rather than moving straight to foreclosure. The short sale

process should be simple on trust land because there is already a third party who wants to buy the home.

Require homebuyer education

Ms. Johnson asked the group whether they would like to see a homebuyer education requirement in the regulations. All participants agreed that there should be a mandatory homebuyer education requirement prior to buying a home. Some participants would like to see additional required education if a missed payment occurs. Several participants recommended that the Section 184 program employ housing counselors to work with homebuyers to avoid foreclosure. Ms. Johnson took note of the responses, but made no substantive response herself.

Tribal court jurisdiction over foreclosures on trust land

Many participants stated the tribes must have jurisdiction over foreclosures on trust land, and that the regulations must ensure that tribal court jurisdiction is specifically provided for. Many participants also noted that tribes need to be able exercise their sovereignty over their own lands. No participant voiced any opposition to this request. Ms. Johnson responded that HUD heard these comments and that tribes should make sure they include this request in any additional written consultation submission, but she did not otherwise address the issue.

Right of first refusal on fee simple properties

Several participants stated that tribes should always have the right of first refusal to step in and take over the HUD-guaranteed loan, which tribes would be free to decline. Ms. Johnson said that HUD took note of the request.

Conclusion

The proposed rule will be drafted following HUD's final consultation session on May 3, 2018 in Chicago, IL. Ms. Johnson said the process would not be subject to negotiated rule-making. **You may submit comments to HUD now, as well as on the proposed revisions to the regulations to 184consultation@hud.gov.**

Once HUD has prepared draft regulations, HUD will send a copy out to tribal leaders and TDHEs for comment via a "Dear Tribal Leader letter." There will be a 60 day comment period, during which written comments on the proposed regulations may be submitted to 184consultation@hud.gov. During this comment period, HUD also plans to hold regional calls with Tribal leaders and their designees. These calls will be an opportunity to ask questions about the draft regulations and to verbally submit comments. Once this tribal comment period is over and any comments received are considered, HUD will publish the proposed rule in the Federal Register for public comment.

Please let us know if you have any questions about this memorandum. We are available to assist with submission of comments to HUD regarding the process and regarding the proposed revisions to the Section 184 regulations once they are released. Please do not hesitate to contact me at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.