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## MEMORANDUM

November 5, 2018

To: Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Subject: HUD Releases FY 2018 ICDBG NOFA; Draft Section 184 Regulations Circulated for Tribal Comments

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### 1. HUD ONAP Releases FY 2018 ICDBG NOFA

In the FY 2018 T-HUD appropriations, Congress allocated \$65 million to the Indian Community Development Block Grant (ICDBG) program. HUD ONAP has been working on the Notice of Funding Availability (NOFA) for several months, and finally released it this past week. The NOFA is attached to this memo. The due date for applications is January 7, 2019.

The FY 2018 ICDBG NOFA notes several important changes from last year's ICDBG NOFA:

- Added Subfactor 2.3: Project Connection to Tribal Youth to promote projects and activities geared towards addressing the needs of tribal youth.
- Adjusted grant award ceilings for the Alaska, Eastern Woodlands, Northern Plains and the Southwest Area ONAP Regions.
- SWONAP's grant ceilings were reduced by 20% from the FY17 grant ceiling amounts.
- Standardized Housing Rehabilitation Cost Limits to up to \$65,000 for all Area Offices except Alaska.
- Modified the Rating Factor point structures to make more meaningful distinctions between existing and new applicants.
- Modified Subfactor 1.2: Past Performance to change the "rating period" from 12 months to 3 years to provide a broader assessment of grantee performance.
- Added, deleted or clarified sections related to indirect cost rates, financial management systems, disclosure of lobbying activities, etc. to align to HUD-wide grant policies.
- Added new Audits Findings to Subfactor 1.1.c.

The total area allocations and the grant ceilings for each ONAP area are as follows:

Area	Allocation for Area	Grant Ceilings by Area
Alaska	\$7,854,246	\$600,000
Eastern Woodlands	\$4,953,847	\$700,000
Northern Plains	\$9,508,963	\$800,000
Northwest	\$3,348,939	\$500,000
Southern Plains	\$15,007,318	\$800,000
Southwest	\$21,752,409	See below

For the SWONAP region, HUD determines the ceiling for applications based on the AIAN population that resides on a reservation or Rancheria.

AIAN Population	Grant Ceiling
50,001+	\$4,000,000
10,501-50,000	\$2,000,000
7,501-10,500	\$1,600,000
7,500 and below	\$800,000

Based on prior discussions from HUD ONAP, the NOFA for the \$100 million in FY 2018 competitive IHBG funds will be next up (but no timeline has yet been provided).

## 2. HUD ONAP Releases Draft Section 184 Loan Guarantee Regulations for Tribal Comment

Congress established the Section 184 Program in 1992 to facilitate homeownership and increase access to capital in Native American communities. Over the past year, HUD ONAP has been soliciting input from tribes and TDHEs in order to develop a set of comprehensive regulations to govern the Section 184 program.

On October 24, 2018, HUD ONAP held a consultation session on the Section 184 Indian Housing Loan Guarantee Program (Section 184 Program) during the National Congress of American Indians Annual Conference. During this consultation session, Deputy Assistant Secretary for Native American Programs Heidi Frechette, ONAP Office of Loan Guarantee Krisa Johnson, and ONAP Senior Advisor Deana O'Hara presented HUD's draft regulations for Subpart B (Lender Eligibility and Requirements) and Subpart C (Underwriting, Closing and Endorsement) and fielded questions and comments from Tribal Leaders and representatives.

The HUD representatives explained that drafting of these regulations is a priority for HUD and the Office of Management and Budget, and that HUD wants to hear from tribes now on the drafts provided. HUD will share the other draft sections as HUD completes them. Further, HUD said that it has not shared Subparts B and C with lenders

yet because it is conducting Tribal consultation and lenders will have an opportunity to provide input during the public comment period. Tribes' comments should be sent to: [184consultation@hud.gov](mailto:184consultation@hud.gov).

The HUD ONAP officials walked through the draft regulations, highlighting certain provisions for the tribal representatives. They explained that they listened to comments in previous tribal consultation sessions and incorporated language in the draft regulations to address tribes' concerns and suggestions.

### ***Subpart B - Lender Eligibility and Requirements***

This subpart focuses on the lender. The Subpart covers, among other things, eligible lenders, the application process for other lenders, lender and direct guarantee approvals, lender participation levels, and ineligible lenders and mortgage brokers.

The ONAP representatives pointed out that Section 1005.201(4) specifically includes CDFIs as an eligible lender and Section 1004.201(5) states that any other lender may apply for approval by the Secretary to be an eligible lender. HUD emphasized the notice requirement in Section 1005.203(b)(4), which requires a lender to provide written notification to the Secretary of any business changes, including changes in the lender's legal structure and officers subject to sanctions.

The ONAP representatives discussed Section 1005.207, explaining that the draft includes two categories of lenders (non-direct guarantee lenders and direct guarantee lenders) and details about what each can do. HUD explained that to underwrite and guarantee loans, the lender must be a direct guarantee lender. HUD then pointed to Section 1005.209 (setting forth the process for a lender to become a direct guarantee lender) and Section 1005.211 (stating that a direct guarantee lender must agree to comply with 25 C.F.R Part 1005 requirements as well as any administrative requirement and applicable federal, state and tribal law imposed on the direct guaranteed lender). HUD said that if the lender is not a direct guarantee lender than it needs a direct guaranteed lender to sponsor it. HUD emphasized Section 1005.213, which states the responsibilities of a sponsor, including the responsibility to notify the Secretary of any changes in a sponsorship relationship.

Section 1005.215(e), a new lender requirement, became a central discussion point in the session. HUD said that it added subsection (e) to address tribal feedback in previous consultation sessions. Section 1005.215(e) states:

HUD may impose a minimum level of activity for tribal trust land, adjusted periodically based on HUD public notice and comment. Failure to do so may result in sanctions in accordance with Section 1005.XXX.

The ONAP representatives explained that the intent behind this provision is to achieve more lending on trust land after hearing that tribes want more lending activity on

tribal trust land. ONAP is trying to figure out how to do that via a quota or percentage minimum. The ONAP representatives explained that they want to attract more lenders, but also keep the lenders it currently has while motivating them to do more lending on trust lands. One attendee raised the issue that there is not much trust land in Alaska and Alaska tribes' situations must be taken into account. The ONAP representatives said they are considering setting the minimum level to be five percent (5%) of the direct guarantee lenders' overall 184 loans and are considering a two-year ramp up time-period for lenders to reach this level. ONAP is particularly interested in tribes' comments on this provision.

During the session, tribal comments on Section 1005.215(e) included asking that individual trust land also be included in the minimum level of activity provision; asking whether HUD has worked with BIA to address the barriers tribes face at the BIA with respect to TSRs and other issues; asking HUD to put time limits on BIA action; and making sure that HUD's regulations incentivize lending activities on trust land and not place a chilling effect on lenders.

The ONAP representatives also emphasized Section 1005.217, which sets forth new provisions on annual recertification and Section 1005.219 which states the conditions that makes a lender ineligible, explaining that it is trying to hold lenders accountable with these regulations.

### ***Subpart C- Underwriting, Closing and Endorsement***

The ONAP representatives explained that with the Subpart C regulations, HUD is not changing its process; rather, it is simply codifying how it currently does business. Subpart C covers eligible borrowers, eligible properties, eligible mortgages, underwriting processing, and post-closing and endorsement.

The ONAP representatives said with respect to Section 1005.307 (Relationship of income to mortgage payments) that HUD intends to keep these provisions broad and that it plans to incorporate the details for addressing the tribal comments HUD received in a guidance and/ or handbook.

The ONAP representatives emphasized Section 1005.321 (Legal restrictions), pointing out subparagraph (b) in particular, which states that "a loan shall not be eligible for a Section 184 loan guarantee if the property is subject to legal restrictions on conveyance, except as permitted in this part." One tribal representative said that throughout the draft regulations HUD should defer to the tribe's definition of a term and only use HUD's definition if the tribe does not have one. Another tribal representative urged HUD to take into account high cost of living areas (such as in Kodiak, Alaska) when setting forth income guidelines.

Section 1005.333(Property Standards) are by statute except for the subparagraph that states that the Secretary may waive the property size requirements upon a tribe's request. Per ONAP, this language is to account for development of tiny homes. The

ONAP representatives highlighted a provision that provides incentives for using solar and geothermal energy in Section 1005.343 (Calculating Base Loan Amount). The ONAP representatives stated that Section 1005.349 codifies HUD's practice with the LOCCS System.

The ONAP representatives also highlighted Section 1005.365 (Loan Submission to HUD for Direct Guarantee) to point out that the direct guarantee lender must submit an endorsement file to HUD to receive a HUD endorsement. They pointed out Section 1005.369, which states that all Section 184 loans must close in the name of a Direct Guarantee lender issuing the underwriting approval. The ONAP representatives also highlighted Section 1005.377 (Late Charge), which sets the late charge at four percent (4%), but includes that the Secretary may change this rate through the notice and comment process. They also emphasized Section 1005.389 (Indemnification), explaining that if fraud or misrepresentation is involved then HUD will ask for indemnification from the lender. Finally, they pointed to Section 1005.391 (Lender Pre-endorsement review and requirements) which requires the lender to certify that its documents are in good order.

### ***Conclusion***

HUD is seeking tribes' feedback on these draft Subparts. Additionally, HUD ONAP will release drafts of other Subparts when they are drafted. Please let us know if you would like us to prepare comments for Subparts B and C for your review and submission.