



215 SW Washington Street, Suite 200  
Portland, OR 97204


T 503.242.1745  
F 503.242.1072

HOBBSSTRAUS.COM

## MEMORANDUM

May 24, 2024

TO: TRIBAL HOUSING CLIENTS

FROM:  Edmund C. Goodman & Cari L. Baermann  
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***HUD Section 184 Final Rule Handbook***

---

On March 20, 2024, the U.S. Department of Housing and Urban Development (HUD) published the final rule (“Final Rule”) on the Section 184 Indian Housing Loan Guarantee (“Section 184”) program. On May 3, 2024, HUD Office of Loan Guarantee (OLG) of the Office of Native American Programs (ONAP) released two proposed [draft sections](#) (“Draft Sections”) of the Section 184 Policy Handbook (“Handbook”) to implement the Final Rule. Tribes may review the Draft Sections and submit comments by **May 31, 2024**.

We have reviewed the two proposed Draft Sections of the Handbook that HUD released. Below, we describe a number of concerns with those Draft Sections. Please let us know if you would like us to assist you in drafting comments to submit to HUD. We note that HUD has stated that only tribes, Alaska Native Villages, and Regional or Village Corporations may submit comments on the Handbook to ONAP at this time.

The comments must be submitted using the [Section 184 Policy Handbook Tribal Feedback Sheet](#) and must be emailed to [Section184Comments@hud.gov](mailto:Section184Comments@hud.gov).

### **A. Overview of Section 184 Final Rule**

The Final Rule on the Section 184 program is available [here](#). Section 184 provides a loan guarantee to borrowers in the event of borrower default, which is paid from the Section 184 Loan Guarantee Fund (“Fund”). The Section 184 allows Native American borrowers to purchase a home with a low down-payment and flexible underwriting. The Final Rule expands and revises the Section 184 program regulations with the stated intent to increase transparency and accountability, and to strengthen the program to better serve tribal communities. The Final Rule strengthens and modernizes the Section 184 program by:

- Codifying current practices, policies, and procedures, and adopting relevant industry standards;
- Incorporating Tribal comments on the Section 184 program;

- Setting expectations for lenders and servicers and providing an explicit framework within which lenders and servicers must operate;
- Enhancing safeguards for Native American borrowers and increasing partnership opportunities with Tribes; and
- Addressing program weaknesses identified by the United States Office of the Inspector General.

## **B. Section 184 Policy Handbook—Draft Sections**

The two Draft Sections of the Handbook discuss the Section 184 approval process and continued participation requirements for Tribes, Alaska Native Villages, and Regional or Village Corporations. Subsection A of the Draft Section (“Subsection A”) discusses provisions of the Handbook applicable to Tribes, while Subsection B of the Draft Section (“Subsection B”) discusses sections guidance relevant to Alaska Native Villages or Corporations.

Below, we discuss some of the main concerns with Subsection A. However, we note that HUD handbooks are not statutes or regulations. Instead, HUD handbooks are merely guidance, and as such, are not mandates that HUD can enforce on tribes.

### *1. General Concerns*

One of the general concerns with the Draft Sections is that they reference other chapters, appendices, and definitions of the Handbook that HUD has not released. Those unreleased chapters include topics on direct guarantee and non-direct guarantee lenders, servicers, a tribe’s first right of refusal, and appraisers and down payment assistance providers. The Draft Sections also reference unreleased forms that Tribes must use, such as an annual recertification form. *See* Subsection A § 4.e. Those chapters and forms may contain provisions that will seek to place unreasonable burdens on tribes. However, tribes will not have the chance to review and or comment on those substantive chapters or forms before HUD publishes the final version of the Handbook.

### *2. Requires HUD Approval of Homeownership Program*

One of the overarching concerns with Subsection A is that it implies that HUD could regulate and control aspects of a tribe’s housing programs beyond what is authorized by Native American Housing Assistance and Self-Determination Act (“NAHASDA”) (25 U.S.C. 4101 et seq.) or other federal laws. Subsection A requires tribes to submit numerous documents and procedures to HUD for approval. For example, Subsection A states that “[w]here the loan transaction involves a master lease and a sublease, the master lease and sublease must be approved by HUD[,]” in addition to being approved by the U.S. Bureau of Indian Affairs (BIA). Subsection A § 1.c.iv. A tribe may use a master lease in a situation in which the tribe leases land to a tribally designated housing entity (TDHE), which then subleases that land to a borrower under the Section 184 program. Because any sublease will be controlled by a master lease, it is reasonable for HUD to review the master lease. However, the Subsection A requirement goes beyond the authority

granted to HUD in the Final Rule and allows HUD too much discretion to mandate which provisions are included in a master lease. *See* 24 CFR § 1005.301(b)(5).

An additional concern is that Subsection A states that “[t]o utilize a homeownership program in conjunction with the Section 184 Program, Tribes must submit to HUD the following documentation:

- a) Description of the homeownership program;
- b) Homeownership program promotional information, such as Tribal website, brochures, etc.; and
- c) Program guidelines related to the homeownership program and any applicable ordinances.”

Subsection A § 1.c.vi. This requirement is not in the Final Rule. Subsection A then states that “HUD will review the documentation to determine the compatibility of the homeownership program with Section 184.” Such a requirement would allow HUD to micromanage a tribe’s homeownership program, including aspects of the program unrelated to the Section 184 program. For example, if a tribe has only one homeownership program that covers both Section 184 loans and non-HUD homeownership programs, Subsection A implies that HUD would be able to reject a tribe’s Section 184 program application based on how tribes run their non-HUD programs. Additionally, requiring tribes to submit their homeownership plans to HUD will increase the delays in the mortgage process.

Additionally, Subsection A states that Tribes must submit any changes to homeownership programs to HUD for approval. The Final Rule does require tribes to submit to HUD changes to the tribe’s foreclosure, eviction, lease, and lien priority ordinances or its contact information. 24 CFR § 1005.309. However, the Final Rule does not require tribes to notify HUD of changes to homeownership programs. This Subsection A requirement therefore imposes additional burdens on tribes that are not required by the Final Rule. Requiring tribes to submit all changes to HUD for approval will significantly increase the time and costs of running a Section 184 program.

Overall, the Subsection A requirements are a significant overreach on the part of HUD and directly contradict the goals of the NAHASDA to support tribal self-determination and self-governance. Subsection A also directly contravenes the express intent of [Executive Order 14112](#), “Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self Determination.” Executive Order 14112 specially states that the Biden-Harris Administration intends “to design and administer Federal funding and support programs for Tribal Nations . . . in a manner that better recognizes and supports Tribal sovereignty and self-determination.” The Executive Order 14112 states that the federal government should reduce administrative burdens and administer funding “in a manner that provides Tribal Nations with the greatest possible autonomy to address the specific needs of their people.” Executive Order 14112 § 1. Subsection A as drafted would instead reduce tribal autonomy.

Further, the OLG is understaffed and does not have experience with tribal evictions or homeownership programs. Requiring tribes to submit their homeownership plans to an office that has no experience with tribal housing programs could allow the OLG to impose unreasonable restrictions on tribes, inconsistent with tribes' laws and traditions.

***Conclusion***

If you have any questions, please contact Ed Clay Goodman ([egoodman@hobbsstrauss.com](mailto:egoodman@hobbsstrauss.com)) or Cari L. Baermann ([cbaermann@hobbsstrauss.com](mailto:cbaermann@hobbsstrauss.com)); both may be reached at (503) 242-1745.