



March 17, 2023

Krisa Johnson  
Director, Office of Loan Guarantee  
Office of Native American Programs  
Office of Public and Indian Housing  
Department of Housing and Urban Development  
451 7th Street SW, Room 4108  
Washington, DC 20410

**RE: Strengthening the Section 184 Indian Home Loan Guarantee Program [25 CFR 58 and 1005, Docket No. FR-5593-P-01]**

Dear Ms. Johnson:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) entitled “Strengthening the Section 184 Indian Home Loan Guarantee Program,” which was published in the Federal Register on December 21, 2022 by the Department of Housing and Urban Development. The Section 184 Program is a critical tool to bring capital and access to mortgage credit to Native Homebuyers and to Tribal Communities. NeighborWorks America greatly appreciates the Department’s efforts to update the regulations for the 184 Program in order to better serve Native people and communities.

Please note that these comments have not been submitted to or approved by NeighborWorks America’s board and do not necessarily represent the views of its board members, either collectively or as individuals. These comments have been formed based on the ongoing work of NeighborWorks America with our network of nearly 250 NeighborWorks-chartered local and regional nonprofits. Our network includes several Native-led organizations and Native Community Development Financial Institutions, as well as many others specifically serving Native communities. In addition, we engage actively in multiple coalitions of organizations focused on serving the unique needs of Native communities. NeighborWorks also provides thought leadership and facilitation for the Federal Reserve Bank of Minneapolis’ Center for Indian Country Development Lending Systems Focus Group, an industry-wide effort to enhance the availability of mortgage loans on Tribal Trust Land.

For nearly 45 years, the Neighborhood Reinvestment Corp. (doing business as NeighborWorks America), a Congressionally-chartered, national, nonpartisan nonprofit, has created opportunities for people to improve their lives and strengthen their communities by providing access to homeownership and safe, affordable rental housing, increasing financial capability, and promoting community and economic development. We have been working consistently in promoting mortgage-based homeownership on Tribal Trust and Restricted Lands, particularly on the Navajo Nation, for over 25 years. Building on this work, in 2019, NeighborWorks began

a holistic process to develop and define intentional strategies for serving the unique needs of Native communities, a process informed by Native stakeholders at the national and local level.

The 184 Loan Guarantee Program is a key pathway for facilitating homeownership for Native Americans, Alaska Natives, and Native Hawaiians. The program brings needed capital into Indian Country and beyond, addresses many of the challenges of lending on Tribal Trust and Restricted Lands, and compliments the Indian Housing Block Grant program in offering housing finance options to those Tribal members with more moderate to higher incomes. Since inception, the HUD 184 Loan Guarantee has proven its value, guaranteeing over \$7.5 billion in loans to Native Americans, Alaska Natives, and Native Hawaiians.

### **General Comments**

At this juncture, with over 25 years of program experience, it is an appropriate moment to evaluate the regulations and meaningfully evaluate elements of the program design that have worked as intended, as well as those that could be improved. To this exercise, NeighborWorks America brings both historical and contemporary experience with the program. In 1995, the Navajo Nation Division of Economic Development asked NeighborWorks America to assist in creating a Nonprofit organization that could encourage mortgage lending on the Navajo Nation, as—up to that point—almost all housing opportunities were aimed at low- and very low-income individuals. The One-Stop Mortgage Center Initiative originated from a conversation with then Comptroller of the Currency Eugene Ludwig (who also served as Board President of NeighborWorks America) and NeighborWorks staff about a project that he could take to the White House National Council on Economic Affairs. NeighborWorks Staff suggested the NeighborWorks Homeownership Center (HOC) model, a one-stop center for people seeking homeownership. Building from the HOC model, Comptroller Ludwig launched a Presidential Initiative with HUD and Treasury as lead partners. The One-Stop Mortgage Report included many recommendations, but also set forth the legal infrastructure which has become the framework for mortgage lending on tribal trust and restricted lands.

Since 2016, NeighborWorks America has collaborated with the Center for Indian Country Development of the Minneapolis Federal Reserve Bank on the Lending Systems Focus Group, which includes several federal agencies, the GSEs, regulatory institutions, financial institutions, state Native homeownership coalitions, Native CDFIs, national and regional Intermediaries, tribal attorneys, and other representatives of the housing industry with a goal of doing “More, Better, Faster.” The partnership seeks to facilitate more loans through better collaboration, accountability, and transparency, and faster processing times akin to industry standards for loans on fee simple lands. These same themes run throughout these comments.

The ability to originate more loans on tribal trust and restricted lands is, of course, dependent on many factors, including the population of mortgage-ready buyers, availability of housing stock, and development of streamlined processes for title and mortgage package approvals. NeighborWorks supports the proposed rule’s provision requiring all lenders participating in the program to outreach, market, and originate on Tribal Lands is a good start,

notwithstanding the likelihood that the program may lose lenders as a result. The remaining participating lenders will be committed to the mission of the program. Given the scale and cost of manufacturing a loan on Tribal Lands, NeighborWorks recommends inclusion of a financial incentive for participation. One possibility for consideration is rebating a portion of the upfront guarantee fee to the lender to offset the additional costs of trust land transactions.

There are several ways to improve collaboration, accountability, and transparency. For example, the Office of Loan Guarantee, despite its small staff size, could multiply its impact and bring significantly more capital to Indian Country by including USDA RD, VA, and the Government Sponsored Entities in an update of the One-Stop Mortgage Lease. By evolving it into an “Interagency and Government Sponsored Enterprise Residential Lease,” HUD could facilitate bringing a variety of capital into tribal communities to address the various income strata and unique situations. Secondly, the Office of Loan Guarantee could significantly aid in the understanding of mortgage lending in tribal communities through data transparency. There are a number of institutions trying to understand the dynamics of mortgage lending successes and challenges, and more granular data from federal agencies guaranteeing, insuring, originating, purchasing and insuring these loans could be very useful in stimulating additional investment by financial institutions currently sitting on the sidelines.

Finally, there is the issue of transaction processing time. Although some of the current delays are due to issues on the tribal side or with the BIA, further automating loan processing through Native Advantage and evaluating duplication where it exists—such as with environmental reviews—is critical to streamlining the home loan lending process and changing the narrative that lending on Tribal Lands is not cost effective.

Increasingly, lenders perceive the HUD 184 Loan Guarantee Program like an insurance program. Some lenders have even commented that it is harder to get a HUD 184 Loan Guarantee than to get an FHA insured loan. In light of this feedback, NeighborWorks recommends that many of the proposed regulations that add rigidity in the program be moved to guidance/handbook rather than articulated in regulations. So doing would allow the Department to be nimbler and make adjustments as warranted.

One thing that is clear is that the number of affordable housing units on Tribal Trust Lands needs to be increased. According to the NAHASDA FY 2021 Report to Congress, only 346 affordable housing units were built or acquired, less than one unit per Federally Recognized Tribe. The HUD 184 Loan Guarantee Program and partner agencies need to be modified to become more of a production vehicle to stimulate growth in housing units as well as contribute to a diversified economic base in Tribal Communities.

## **Specific Comments**

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

*Outlines lender eligibility and participation*

- Though both the current and proposed regulations specifically reference CDFIs as lenders approved by Statute, CDFIs and Native CDFIs (with only few exceptions) have been an extremely underutilized classification of lenders in the HUD 184 Loan Guarantee Program to date. CDFIs, Native CDFIs, along with Tribal Housing Programs, offer perhaps the greatest opportunity to increase HUD 184 Guarantee Loans on Tribal Trust and Restricted Lands. If the Office of Loan Guarantee offered training aimed specifically at CDFIs/Native CDFIs whether as sponsored entities or direct guarantee lenders, loan volume on Tribal Trust and Restricted Lands would increase. Further, through sponsored entity opportunities, CDFIs and Native CDFIs could assist Direct Guarantee Lenders in meeting Trust Land outreach, marketing and origination requirements.

*Allows HUD to establish a minimum threshold of Trust land lending to participate in the program (§ 1005.219(e))*

- NeighborWorks supports the proposal to require lenders to outreach, market, and originate loans on Tribal Trust Land. Some lenders should be granted waivers if domiciled in regions such as Alaska and Oklahoma where there is not close proximity to Trust Lands; however, this rule is important because the loan volume between fee simple and Trust Land is out of balance with the original intent of the program. The proposed requirement could bring greater balance and provide tribal members living on or near trust land greater ability to shop for a lender with the best service and value rather than settle for the only or no lender. At the same time, it is important to acknowledge that systems are not currently streamlined on Trust and Restricted Lands and that it costs a lender significantly more to close a loan on Tribal Lands than on fee simple lands. An adjustment should be made to rebate a portion of the upfront loan guarantee fee to participating lenders until such time as there is either greater balance between the volume of fee simple transactions and Tribal Trust transactions or the timing from loan application to guarantee endorsement is 60 days or less for an existing home. NeighborWorks supports the proposed requirements for outreach, marketing, and origination and recommends incrementally increasing the required number of loans on Tribal Trust Lands over a 3-year phase in period, starting with at least 5% of HUD 184 loan production in year 1.

### **Subpart C. Tribal Eligibility and Requirements**

*Requires Tribes to submit an annual recertification even when there is no change in their legal and administrative framework (§1005.307)*

- The HUD 184 Loan Guarantee Program is included in NAHASDA; however, currently the HUD 184 Loan Guarantee Program and Tribal Housing Authority/TDHE staff are estranged in many tribal settings. It is commonplace for the Tribal Housing Authority/TDHE staff to view the HUD 184 Loan Guarantee Program as an arrangement between the lender, HUD, and the tribal member and as such have little engagement post occupancy. By tying annual recertification to the NAHASDA Annual Housing Plan, the HUD 184 Loan Guarantee becomes more embedded in the

framework of Tribal Housing Programs, engendering some ownership for the HUD 184 Program within the IHA Framework. Although NeighborWorks has some concerns about the burden associated with annual recertifications, embedding the required certification within the IHP may serve to create a schedule/deadline and context that is achievable.

*Provides more flexibility for the Tribe to reassign the lease to HUD in the event of borrower's default under the loan (§1004.301(b)(5)(H))*

- NeighborWorks supports the intent of this provision to avoid situations where properties sit vacant on Tribal Lands for extended periods of time. We do support the inclusion of the lender in situations where the lender is unable to assign the loan to HUD and must pursue the foreclosure, eviction, and resale of the property to an eligible tribal member.
- As mentioned in our introductory paragraphs, this is an opportunity for the Department to exercise its leadership to expand access to home loans through the creation of an "Interagency and Government Sponsored Enterprise Model Lease." This would provide Tribes a streamlined approach to having access to the complement of loan products (for which they qualify) available to any US Citizen living on fee simple lands.

*Acceptable Title §1004.413*

- NeighborWorks views the proposed requirement that a lease on trust property must exceed the mortgage term by 10 years as excessive. Such a requirement would cause issues for borrowers with trust loans in having to redo leases.

#### **Subpart D. Underwriting**

*Sets the minimum required property standards for properties and explains environmental review requirements (§ 1005.419)*

- The environmental review process is often a burden to lenders, with HUD and the BIA having separate requirements. A streamlined process and single form should be agreed to for a consolidated environmental review process that is completed by the Tribe or its assignee at the time of the lease.

*Automated Underwriting to Modernize Program*

- ONAP should adopt the FHA Automated Underwriting findings, a time-tested risk management tool for HUD and FHA, as part of a strategy to attract new lenders to the program. All the other government and conforming programs use automated underwriting, and lenders are accustomed to the systems. ONAP should adopt FHA loan limits as well.

*Loan Lien §1005.439*

*Junior Lien shall not require the payment of any principal or interest until the property securing the junior lien is sold or the Section 184 Loan Guaranteed Loan is refinanced and shall not require principal and interest payments so long as the Property is owner occupied.*

- The requirement for prior approval by ONAP of second mortgage liens will primarily affect tribally sponsored homeownership assistance programs. ONAP already has well-defined rules around second liens and NeighborWorks sees no need to change them. This proposal will add to the closing timeframes and negatively impact Native borrowers. Additionally, the proposal to ban interest and principal payments and require loan forgiveness is in conflict with many programs including Native CDFI loan programs.

#### *FHA Roster Appraiser Requirement § 1005.457*

- NeighborWorks is concerned that this provision would eliminate the ability of a lender to select a non-FHA certified appraiser in cases where there is no FHA certified appraiser available. Many Native Borrowers and Tribal Reservations are located in very rural and remote areas that make it extraordinarily difficult and expensive to find any appraiser. Limiting lenders to the FHA Appraiser Roster will prevent some tribes and Native homebuyers from receiving Section 184 loans and will dramatically raise the cost for others.

#### **Subpart E. Closing and Endorsement**

- At closing, homebuyers should be able to choose, in addition to the Tribe, if a HUD Housing Counseling Agency should be contacted for assistance.

#### *Construction loans and Construction Loan Timeframes*

- NeighborWorks urges the Department to investigate why so few lenders are willing to participate in the one close feature of the program. Construction financing is difficult to obtain, particularly without some sort of credit enhancement. Currently, ONAP allows four months for manufactured homes and six months for “stick built” and remodels. The timeframe for “stick built” is clearly too short for most rural areas and should be increased to 12 months. Four months should be sufficient for a manufactured housing unit, but most organizations completing housing projects in rural areas are running into longer timeframes and would recommend a change to 12 months for stick built units.

#### **Subpart F: Section 184 Loan Guarantee Fees**

- NeighborWorks encourages the Department to embrace transparency regarding the health of the program and uses of the Loan Guarantee Fee.
- With fewer than 10 Tribal defaults per year, there should be room to rebate a portion of the Guarantee fee to incentivize lending on Tribal Trust Lands.

#### **Subpart G: Servicing**

*Lists potential loss mitigation options: forbearance, assumption, loan modification, pre-foreclosure sale, Deed-in-Lieu and Lease-in-Lieu (§ 1005.739).*

- To reduce foreclosures and avert potential homelessness, NeighborWorks supports relocation assistance in a cash-for-lease/keys foreclosure prevention strategy for households that are not in a position to continue in homeownership.
- In an effort to encourage Tribes to exercise first right of refusal should a property fall into serious default, NeighborWorks encourages the Office of Loan Guarantee to utilize the USDA Rural Development formula for sales price using the USDA net recovery value formula.

### **Conclusion**

The Department of Housing and Urban Development plays a critical role in expanding Native peoples' access to secure and affordable homeownership. We thank you for your attention to these issues, and would welcome the opportunity to further engage on our shared goal of expanding opportunity on Tribal lands, both through the formal rulemaking process as well as through other channels.

Sincerely,



Kirsten T. Johnson-Obey  
Senior Vice President, Public Policy and Legislative Affairs