

# Section 184 Proposed Rule

January 2023

# Overview

- The Section 184 program increases homeownership opportunities for Native American families by providing a federal guarantee on qualifying loans in the event of default.
- The Section 184 regulations have not been updated since 1996. Since that time, the program has grown from fewer than 100 loans a year to more than 3,600 loans worth over \$860 million in fiscal year 2022.

# Overview

- The proposed rule strengthens and modernizes the Section 184 program by:
  - Codifying current practices, policies and procedures, and adopts relevant industry standards.
  - Incorporating Tribal comments, as appropriate, which may be received during consultation.
  - Setting expectations for Lenders and Servicers and providing an explicit framework within which Lenders and Servicers must operate.

# Overview

- The proposed rule includes approximately 141 regulations, divided into 9 subparts. In contrast, current rule only has 11 regulations.
- On November 30, 2022, HUD published the proposed rule on its website. It can be found at [www.HUD.gov/codetalk](http://www.HUD.gov/codetalk).
- HUD expects that the proposed rule will be published in the Federal Register later this week or next week with a public comment due date of March 6, 2023.

# Overview

- ONAP is holding Tribal consultations on the proposed rule:

December 7, 2022	Las Vegas, Nevada
January 10, 2023	Norman, OK
January 20, 2023	Albuquerque, New Mexico
January 24, 2023	Arlington, Washington
January 31, 2023	National Webinar
February 5, 2023	Arlington, VA
February 8, 2023	Anchorage, Alaska
February 10, 2023	Denver, Colorado

# Regulation Subparts

- **Subpart A:** General Program Requirements
- **Subpart B:** Lender Eligibility & Requirements
- **Subpart C:** Lending on Trust Land
- **Subpart D:** Underwriting
- **Subpart E:** Closing and Endorsement
- **Subpart F:** Section 184 Loan Guarantee Fees
- **Subpart G:** Servicing
- **Subpart H:** Claims
- **Subpart I:** Lender Performance, Reporting, Sanctions and Appeals

# Subpart A – General Program Requirements

- Outlines the purpose of the new Part 1005 – to implement the Section 184 program - and provides definitions for 46 terms used in the regulation.
- Revises definitions in the existing Section 184 Program regulations to better reflect how the terms are currently used by the Section 184 Program.
- Establishes new definitions including one for Trust Land that includes allotted, restricted fee, or assigned trust lands.

# Definitions

- *Date of Default* means the Day after the Borrower's obligation to make a loan payment or perform an obligation under the terms of the loan, Loss Mitigation plan, or any other agreement with the Direct Guarantee Lender was due and the payment has been missed.
- *Default* means when the Borrower has failed to make a loan payment or perform an obligation under the terms of the Section 184 Guaranteed Loan, Loss Mitigation plan, Lease, or any other agreement with the Direct Guarantee Lender.



# Definitions

- *Indian* means a person who is recognized as being an Indian or Alaska Native Federally by a recognized Indian Tribe, a regional or village corporation as defined in the Alaska Native Claims Settlement Act, or a State recognized Tribe eligible to receive assistance under Title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

# Definitions

- *Loss Mitigation* means an alternative to foreclosure offered by the Holder of a Section 184 Guaranteed Loan that is made available through the Servicer to the Borrower.
- *Property* means a one to four-family dwelling that meets the requirements for standard housing under § 1005.419 and located on Trust Land, land located in an Indian or Alaska Native area, or Section 184 Approved Program Area.

# Definitions

- *Tribe* means any Indian Tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self Determination and Education Assistance Act of 1975.

# Definitions

- *Trust Land* means land title which is held by the United States for the benefit of an Indian or Tribe or title which is held by a Tribe subject to a restriction against alienation imposed by the United States or Tribe. This definition shall include but is not limited to allotted, restricted fee, or assigned trust lands.

# Subpart B – Lender Eligibility & Requirements

- Outlines Lender eligibility and participation levels.
- Lenders must select a participation level as a Non-Direct Guarantee Lender or a Direct Guarantee Lender (§ 1005.207(b)-(c)).
- Requires Lenders to certify annually as to their good standing in the program and certain section 184 requirements are met (§ 1005.215).
- Allows HUD to establish a minimum threshold of Trust land lending to participate in the program (§ 1005.219(e)).

# Subpart C – Lending on Trust Land

- Outlines requirements for Tribal participation in the Section 184 program
- Tribes must apply to HUD to participate in the Section 184 program for trust land lending. (§1005.303).
- HUD will provide written approval upon acceptance of Tribe's application. (§ 1005.305)
- Provides more flexibility for the Tribe to reassign the lease to HUD in the event of borrower's default under the loan (§1005.301(b)(5)(H)).

# Subpart C – Lending on Trust Land

- Requires Tribes to submit an annual recertification when there is no change in their legal and administrative framework (§1005.307).
- Requires Tribes to report to HUD any changes in contact information or legal framework within 15 days (§1005.309).
- Requires Tribes to provide HUD notification of a borrower's default on the Tribal lease (§1005.311).
- Creates a placeholder for HUD to request program data from Tribal participants (§1005.313).

# Subpart D – Underwriting

- Outlines requirements for eligible borrowers, eligible properties and loan types for the Section 184 program.
- Allows borrowers with a previous Section 184 default to participate in the program (§ 1005.409).
- Sets the minimum required property standards for properties and explains environmental review requirements (§ 1005.419).
- Minimum property standards include: decent, safe, sanitary and modest in size and design; conform with regional construction standards; heating, plumbing and electrical systems; and minimum square footage requirements.



# Subpart D – Underwriting

- Prohibits Lenders using risk-based pricing, which would rely on borrower's credit score to determine borrower's interest rate (§ 1005.451).
- Updates lending requirements for manufactured homes (§ 1005.429) and water purification systems (§ 1005.431).
- Removes the requirement for a 10-year warranty for new construction (§ 1005.433).

# Subpart E – Closing & Endorsement

- Outlines requirements for closing a Section 184 loan and receiving endorsement approval from HUD.
- Provides borrowers the option for third-party Tribal notification in the case of borrowers' default under the loan (§ 1005.501(j)).
- Borrower's monthly loan payments include escrow payments, which include, as applicable, ground rents, fire and hazard insurance, loan guarantee fee, flood insurance, special assessments and taxes.

# Subpart F –Loan Guarantee Fees

- Outlines requirements for Lender's/Service's calculation, collection and submission of Section 184 loan guarantee fees.
- Clarifies the payment and servicing of the Annual Loan Guarantee Fee (§ 1005.607).
- Establishes late fees and fines when Lenders or Service's do not properly adjust borrower Annual Loan Guarantee Fee payments. (§ 1005.611).
- Prohibits Lenders and Service's from recovering from the Borrower any HUD imposed penalties on the Lender and Service's (§ 1005.611(a)).

# Subpart G – Servicing

- Outlines requirements for Servicers to service the Section 184 loan and the loss mitigation require when the loan is in default.
- Lender must give Notice of Default to Borrower and provide, among other things, loss mitigation options, where appropriate (§ 1005.731).
- Timeline for Servicer to acknowledge loss mitigation, timeline to process loss mitigation and provide notification of loss mitigation application review; Borrower has right to appeal (§ 1005.733).
- Lists potential loss mitigation options: forbearance, assumption, loan modification, pre-foreclosure sale, Deed-in-Lieu and Lease-in-Lieu (§ 1005.739).

# Subpart G – Servicing

- When elected by Borrower, Notice of Default may be provided to the Tribe; Notice of Default provided to BIA (§ 1005.741).
- Authorizes HUD to provide incentive payments to Lender, Borrower and/or Tribes/TDHEs. (§ 1005.731).
- Provides Tribe with option to assume the loan or purchase the property at appraised value or for the value of the outstanding loan amount. (§ 1005.757).
- Requires initiation of foreclosure (fee simple) or assignment (Trust Land) to HUD must occur within 180 days after default, if loss mitigation is unsuccessful (§ 1005.761(a)).

# Subpart H – Claims

- Outlines claim types and requirements to submit claims to HUD.
- Establishes timeframe for eligible costs (§ 1005.841) and interest payments incurred during default and foreclosure (§ 1005.839).
- Establishes criteria and timeframe for Lenders to submit supplemental claims (§§ 1005.807(c) and 1005.809(e)).
- Establishes that payment of a claim is not conclusive evidence of the claim meeting all Section 184 requirements (§ 1005.835).
- Allows HUD to conduct post-claim review of the loan within five years of claim payment, including full review of the loan origination file ( § 1005.835).

# Subpart I: Lender and Servicer Monitoring, Reporting, Sanctions and Appeals

- Outlines HUD's ability to conduct periodic performance reviews, reporting requirements for Lenders and Servicers, and sanctions for noncompliance with regulations.
- Allows for appeals of a determination by HUD to deny a lender's participation in the Section 184 program (§ 1005.909).