

April 29, 2018

Heidi J. Frechette  
Deputy Assistant Secretary for Native American Programs  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street SW  
Washington, D.C. 20410

Dear Ms. Frechette:

I am responding to HUD's Office of Native American Programs' (ONAP) request for feedback on its Section 184 Indian Housing Loan Guarantee Program. The comments expressed below are representative of the [National Native Homeownership Coalition](#) (NNHC), and not of the Federal Reserve Bank of Minneapolis. As a preliminary observation, we are encouraged by HUD's outreach to stakeholders to provide input early in its process drafting new regulations. Our feedback focuses on increasing participation from tribes and lenders in the HUD 184 Loan Program to provide more lending on trust lands.

The Center for Indian Country Development of Federal Reserve Bank of Minneapolis (CICD) supports self-governing Native communities in attaining their economic development goals. One of our high priority issues is homeownership, a critical factor in developing safe and healthy communities and thriving economies. Stable housing is correlated with improved health and educational outcomes for youth. Housing options also are important to retaining and attracting a professional tribal workforce, all of which result in other positive externalities, i.e. business development and job growth.

In 2016, the CICD formed the National Native Homeownership Coalition (NNHC) to assess mortgage lending practices and data in Indian Country with the goals of streamlining the lending process, making capital more accessible, and creating more housing options on trust land. With over 200 members and representing tribes, lenders, federal agencies, and other Indian Country-serving organizations, the NNHC shares these recommendations and supports HUD's efforts to improve the 184 Program's effectiveness on trust lands.

This renewed commitment is timely and welcome, as the existing 184 program does not effectively serve trust lands. Research shows a dire need for more housing options in Indian Country, due to both a severe housing shortage as well as a growing desire for homeownership. According to the [HUD and Urban Institute Housing Needs and Mortgage Lending Reports](#) (2017), Indian Country needs nearly 70,000 more housing units to meet its basic needs. In addition, 75% of tribal housing renters report a strong desire to become homeowners. Twenty years ago, Congress established the HUD 184 Loan Guarantee Program to address this

longstanding need. However, recent data shows that 93% of HUD 184 mortgages are on fee lands, bypassing 70 million acres of trust land and a significant portion of the Native population.

## **General comments**

Commit to consultation. HUD's read ahead letter indicates that the new regulations are going to be fast-tracked. While we are encouraged by HUD's commitment to improving the process, we want to stress the importance of regular and meaningful consultation so tribes can be involved in developing regulations that encompass the entire mortgaging process. Tribes like the Confederated Tribes of Salish and Kootenai (CTSK) lead the way in Indian Country for trust land lending under HUD 184 and are enthusiastic to help structure the new regulations and want continued face-to-face opportunities for collaboration with HUD.

Improve communications. Overall, tribes and lenders are looking for HUD to develop better systems for communication and regular interaction between all three parties. Improved communication will increase lending volume and save mortgages headed for default. As an example, the Montana Board of Housing added a Uniform Mortgage Rider to all mortgages executed under HUD (and USDA Rural Development, Veterans Affairs, and Federal Housing Authority), which includes a waiver to contact another entity for early foreclosure intervention. This type of best practice should be included in HUD's new regulations. At present, little notice is required in the regulations for tribes to be contacted prior to a foreclosure, which is costly for all of the parties involved. Our members recommend that tribes and/or TDHEs receive timely notice of a loan's initial approval and any delinquent payments.

Expand training. There is a strong desire for HUD to increase outreach and training for both participating and prospective tribes and lenders. Many tribal housing, land, and realty professionals still are not familiar with the program. Potential lenders, including banks and Native Community Development Institutions (Native CDFIs), require similar informational and training sessions in order for HUD 184 lending to serve prospective borrowers on trust lands. We understand that increased outreach is part of HUD's initiative and encourage you to engage with our members on guidance for how to reduce the informational barrier to entry for many tribes and lenders.

Streamline the lending process. Developing more efficient and streamlined processes should be a top priority for increasing HUD 184 lending on trust lands. We often hear that lenders drop out of the 184 Program due to lengthy underwriting and loan approval periods and frustrations with the process. These increase the cost of doing business and discourages their participation in the program. In tandem with increasing its participating lenders, HUD also needs to develop better processes to retain current lenders.

Improve inter-agency coordination on Title Status Reports. Certified Title Status Reports (TSR) are required for every loan on trust land. The Bureau of Indian Affairs (BIA) is the federal agency with responsibility to issue TSRs. In some parts of Indian Country, it can take years to secure a certified TSR, which adversely affects the lender's ability to generate revenue and leaves the homebuyer without a home for years. We recognize that there are significant regional differences in the timeliness and accuracy of TSRs, and that the BIA's Land Title Records and Realty Offices are developing better tracking and escalation procedures for TSRs. However, by taking a more proactive role with the TSR process, HUD ONAP will demonstrate its commitment to improving the overall federal process and to ensuring that these programs serve Indian Country.

## **Recommendations**

- **Define training on the entire mortgaging process—origination, loan processing, closing, and foreclosure.**
  - Share requirements for HUD underwriting and loan approvals with lenders to reduce processing time.
  
- **Develop better interagency coordination, especially with the BIA around obtaining timely certified TSRs.**
  - Demonstrate with examples the number of HUD loan files that are in limbo due to delayed processing of certified TSRs.
  - Advocate for uniformity across federal agencies for trust land mortgages. For example, each federal agency (HUD, USDA, and VA) have different approaches to lending and foreclosure. The One-Stop Mortgage Initiative of 2000 was intended to harmonize lending processes, but agencies have implemented it inconsistently.
  - Reexamine the requirements and process for environmental reviews. Lenders have reported increasing burdens in complying with these regulations and there is general frustration with constant updates and changes. These changes have resulted in increased loan fees, ultimately assumed by the borrower in an already tight lending situation.
  
- **Address foreclosure, with tribal courts as an option for adjudication.** HUD currently does not have a clearly defined process for foreclosure actions. While the number of foreclosures on trust land is relatively low, the real and perceived uncertainties regarding foreclosure proceedings deters prospective lenders. We encourage HUD to develop a clear foreclosure process, recognizing tribal courts as a jurisdiction, and share it with participating tribes and lenders.

- **Create incentives for lenders to play a role in foreclosure prevention.** In the present system, HUD simply pays off the lender after the loan becomes 120 days past due.
  - **Develop a mitigation agreement between lenders and tribes.** These types of agreements can help address lenders' concerns about liquidation risk, opens homeownership to more prospective Native borrowers, and supports tribal housing authorities' use of funding.
  - **Allow the tribe/TDHE to manage the mitigation** on HUD's behalf to achieve a quicker resolution of a mortgage in delinquency, default, or foreclosure. Local entities like tribes/TDHEs often are better positioned to help the borrower remain in their mortgage, identify another eligible borrower, or to purchase the property.
  - **Evaluate the option of right of first refusal for tribes.** Only 26 transactions have exercised the right of first refusal and we do not fully understand the reasons why this option is rarely used. We encourage HUD to explore and support this option for tribes.
  - **Include tribal courts in HUD legislation as a court of competent jurisdiction.**
- **Include TDHEs and Native CDFIs as HUD Intermediaries.** Include TDHEs and Native CDFIs in the new regulations as designated HUD intermediary counseling agencies. Currently, only entities designated as private or public non-profits, units of local country or state governments are eligible. TDHEs and Native CDFIs are uniquely situated to deliver culturally appropriate homebuyer education, as well as address delinquency and foreclosure risks. A growing number of Native CDFIs are also servicing mortgage loans. With their inclusion in the new regulations, Indian Country will see increased access to mortgage capital to Native borrowers.
  - **Encourage homeownership on trust lands.**

On behalf of the members of the NNHC, we appreciate the opportunity to submit recommendations on how to improve upon HUD's important lending programs to Indian Country. We look forward to continued collaboration with HUD in this process.

Sincerely,

*Nikki Pieratos*

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