

RESOLUTION OF THE  
NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE  
24<sup>th</sup> NAVAJO NATION COUNCIL -- First Year, 2019

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT AND THE NAABIK'ÍYATI'  
COMMITTEE; OPPOSING THE IMPOSITION OF INCOME RESTRICTIONS BY THE  
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ON THE  
SECTION 184 INDIAN HOME LOAN GUARANTEE PROGRAM AS IT APPLIES TO  
NATIVE AMERICANS ON AND OFF RESERVATIONS

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee of the Navajo Nation Council exercise oversight authority over housing on the Navajo Nation. 2 N.N.C. §500(C).
- B. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council. Among other duties and responsibilities, the Committee is charged with coordinating all testimony before Congressional committees. 2 N.N.C. §701(A)(8).

SECTION TWO. FINDINGS

- A. The United States Department of Housing and Urban Development (HUD) is currently revising the regulations for the Section 184 Indian Home Loan Guarantee Program.
- B. These revisions would in part impose an income restriction on the Indian Home Loan Guarantee Program, Section 184. See Exhibit A.
- C. The Indian Home Loan Guarantee Program, Section 184 is the one loan program available to Native Americans on and off Reservations.
- D. Imposition of income restrictions on this program would be a step backwards for all tribal members hoping to achieve homeownership.

- E. The proposed rule change imposing income restrictions on tribal applicants is available for comment for sixty days (60) from April 4, 2019 at 184consultation@hud.gov or to Kris Johnson, Director, Office of Loan Guarantee, HUD-Office of Native American Programs, 451 Seventh Street SW, Room 4108, Washington, D.C. 20410.
- F. The Resources and Development Committee and the Naabik'iyáti' Committee of the Navajo Nation Council find it to be in the best interest of the Navajo People to oppose this rule change as proposed and authorize the President of the Navajo Nation, the Speaker of the Navajo Nation Council and their designees to communicate the Navajo Nations objections to this rule change.

### SECTION THREE. RESOLVED

The Naabik'iyáti' Committee of the Navajo Nation Council hereby opposes the proposed imposition of income restrictions by the Department of Housing and Urban Development on applicants for the Indian Home Loan Guarantee Program, Section 184, and authorizes the President of the Navajo Nation, the Speaker of the Navajo Nation Council and their designees to communicate the Navajo Nation's objections to this proposed rule change.

### CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 24<sup>th</sup> Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 15 in Favor, and 00 Opposed, on this 5<sup>th</sup> day of September 2019.



Honorable Seth Damon, Chairman  
Naabik'iyáti' Committee

Motion: Honorable Raymond Smith, Jr.  
Second: Honorable Thomas Walker, Jr.

Chairman Seth Damon not voting





Dwight Witherspoon &lt;dwight.witherspoon@gmail.com&gt;

**Income Restriction Changes to Section 184 Loan**

1 message

Maria Cohen &lt;maria@azmaria.com&gt;

Thu, Apr 11, 2019 at 6:58 PM

To: Seth Damon Damon <sdamon@navajo-nsn.gov>, Mark Freeland <m.freeland@navajo-nsn.gov>, Dwight  
<dwight.witherspoon@gmail.com>

Good afternoon Speaker Damon, Mr. Freeland and Mr. Witherspoon,

I hope this email finds you all well. I am reaching out to you, because there is a proposed change HUD is making to the Section 184 Loan that I feel is extremely important to share with leaders as HUD means to include an income restriction. Historically there haven't been income restrictions to the one loan program that is available to Native Americans on and off Reservations. To impose an income restriction to the existing housing crisis on the Reservations would be a huge step backwards for all tribal members hoping to achieve homeownership and to tribes hoping to provide housing opportunities that require a loan for families to become homeowners on Reservations. I am attaching the proposed HUD draft that is open for comment at this point along with the letter from Heidi Frechette the Deputy Assistant Secretary for Native American Programs. The Section referencing the change is 1005.421(a)(1)

**§ 1005.421 Legal restrictions.**

(a) *Definitions.* (1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may approve a higher percentage up to 140 percent.

I would very much like to have a conference call or meeting to further discuss this change. Please let me know if you might be available.

Kind Regards,

Maria R. Cohen  
Designated Broker/Owner

**MC Dream Builders Realty, LLC**

1540 E. University #300

Mesa, AZ 85203  
(928) 970-2057 cell  
(480) 422-0506 fax  
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**2 attachments**

 **Section 184 HUD- DRAFT184Regulations2019-04-04.pdf**  
1145K

 **DTLL\_Section184\_Draft\_Regulations\_2019-04-04.pdf**  
107K





U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT  
WASHINGTON, DC 20410-5000

April 4, 2019

Dear Tribal Leader:

The U.S. Department of Housing and Urban Development (HUD) is currently revising the regulations for the Section 184 Indian Home Loan Guarantee (Section 184) program. Since these regulations have substantial direct effects on federally recognized tribal governments, HUD is conducting tribal consultation in accordance with HUD's Tribal Consultation Policy.

Since February of 2018, HUD's Office of Native American Programs (ONAP) has held fourteen tribal consultation sessions: 11 consultation sessions prior to drafting the proposed rule and 3 consultation sessions to review and discuss drafted subparts of the rule. HUD recorded tribal comments during these sessions and considered these comments as it developed the proposed rule. During this time, HUD also accepted comments through an email address dedicated to tribal consultation.

HUD has now completed the draft proposed rule and is making the rule available for Tribes to review and provide comment. A copy of this draft is attached and will be posted to the [Consultation on Section 184 Regulations webpage](#). Tribes will have 60 days from the date of this letter to submit comments on the proposed rule. Please send your comments on the proposed rule to: [184consultation@hud.gov](mailto:184consultation@hud.gov). Alternatively, Tribes may submit comments by postal mail to: Krisa Johnson, Director, Office of Loan Grantee, HUD – Office of Native American Programs, 451 Seventh Street SW, Room 4108, Washington, D.C. 20410.

Additionally, HUD will be holding a tribal consultation session to have a discussion with Tribes about the draft proposed rule. This consultation session will be held on Wednesday, May 8, 2019 from 1:45 pm to 3:15 pm. at the Denver Convention Center. The consultation will be held in conjunction with the National American Indian Housing Council (NAIHC) annual meeting; however, one does not have to register for the NAIHC annual meeting to attend the consultation session. I hope you will be able to participate in this session and the discussion on the draft proposed rule.

Once the tribal comment period is over, all comments received will be considered. HUD will then place the draft proposed rule into Departmental clearance to be reviewed by HUD offices and the Office of Management and Budget, in advance of publishing the proposed rule in the *Federal Register* for public comment.

Input from tribal leaders is essential to developing the best possible regulations for the Section 184 program. Thank you for your continued partnership and collaboration in the effective delivery of HUD's programs.

Sincerely,

A handwritten signature in cursive script, reading "Heidi J. Frechette", is positioned above the typed name.

Heidi J. Frechette  
Deputy Assistant Secretary  
for Native American Programs

## PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

Sec.

- 1005.101 What is the applicability and scope of these regulations?
- 1005.103 What definitions are applicable to this program?
- 1005.104 What lenders are eligible for participation?
- 1005.105 What are eligible loans?
- 1005.106 What is the Direct Guarantee procedure?
- 1005.107 What is eligible collateral?
- 1005.109 What is a guarantee fee?
- 1005.111 What safety and quality standards apply?
- 1005.112 How do eligible lenders and eligible borrowers demonstrate compliance with applicable tribal laws?
- 1005.113 How does HUD enforce lender compliance with applicable tribal laws?

AUTHORITY: 42 U.S.C. 1715z-13a and 3535(d).

SOURCE: 61 FR 9054, Mar. 6, 1996, unless otherwise noted. Redesignated at 63 FR 12349, Mar. 12, 1998.

### § 1005.101 What is the applicability and scope of these regulations?

Under the provisions of section 184 of the Housing and Community Development Act of 1992, as amended by Native American Housing Assistance and Self-Determination Act of 1996 (12 U.S.C. 1715z-13a), the Department of Housing and Urban Development (the Department or HUD) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes that are standard housing located on trust or restricted land or land located in an Indian or Alaska Native area, and for which an Indian Housing Plan has been submitted and approved under 24 CFR part 1000. This part provides requirements that are in addition to those in section 184.

[63 FR 48990, Sept. 11, 1998]

### § 1005.103 What definitions are applicable to this program?

In addition to the definitions that appear in Section 184 of the Housing and Community Development Act of 1992, the following definitions are applicable to loan guarantees under Section 184—

*Default* means the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, and such failure con-

tinues for a period of more than 30 days.

*Holder* means the holder of the guarantee certificate and in this program is variously referred to as the lender holder, the holder of the certificate, the holder of the guarantee, and the mortgagee.

*Indian* means any person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term "Native American".

*Mortgage* means:

(1)(i) A first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located and may refer to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction; or

(ii) A loan secured by collateral as required by 24 CFR 1005.107; and

(2) The credit instrument, or note, secured thereby.

*Mortgagee* means the same as "Holder."

*Principal residence* means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

*Property* means the property constructed, acquired, or rehabilitated with the guaranteed loan, except when the context indicates that the term means other collateral for the loan.

*Section 184* means section 184 (entitled, "Loan Guarantees for Indian Housing") of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a).

*Trust or restricted land* has the meaning given to "trust land" in section 184(k)(9) of the Housing and Community Development Act of 1992.

[61 FR 9054, Mar. 6, 1996. Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998]

### § 1005.104 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that



loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for guarantee under this part. The following lenders are deemed to be eligible under this part:

(a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to section 1802(d) of such title;

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(d) Any other lender that is supervised, approved, regulated, or insured by any other agency of the United States; or

(e) Any other lender approved by the Secretary under this part.

[63 FR 12372, Mar. 12, 1998, as amended at 63 FR 48990, Sept. 11, 1998]

#### § 1005.105 What are eligible loans?

(a) *In general.* Only fixed rate, fixed term loans with even monthly payments are eligible under the Section 184 program.

(b) *Eligible borrowers.* A loan guaranteed under section 184 may be made to:

(1) An Indian family who will occupy the home as a principal residence and who is otherwise qualified under section 184;

(2) An Indian Housing Authority or Tribally Designated Housing Entity; or

(3) An Indian tribe.

(c) *Appraisal of labor value.* The value of any improvements to the property made through the skilled or unskilled labor of the borrower, which may be used to make a payment on account of the balance of the purchase price, must be appraised in accordance with generally acceptable practices and procedures.

(d) *Construction advances.* The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the

mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances may be made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or the mortgagor's creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or the mortgagor's creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Environmental compliance.* Prior to the Department's issuance of a commitment to guarantee any loan or (if no commitment is issued) prior to guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, the Department will require compliance with procedures similar to those required by § 203.12(c)(2) of this title for FHA mortgage insurance.

(f) *Lack of access to private financial markets.* In order to be eligible for a loan guarantee if the property is not on trust or restricted land, the borrower must certify that the borrower lacks access to private financial markets. Borrower certification is the only certification required by HUD.

[61 FR 9054, Mar. 6, 1996, Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998]

#### § 1005.106 What is the Direct Guarantee procedure?

(a) *General.* A loan may be processed under a Direct Guarantee procedure approved by the Department, under which the Department does not issue commitments to guarantee or review applications for loan guarantees before mortgages are executed by lenders approved for Direct Guarantee processing. The Department will approve a loan before the loan is guaranteed.

(b) *Mortgagee sanctions.* Depending on the nature and extent of the non-compliance with the requirements applicable to the Direct Guarantee procedure, as determined by the Department, the Department may take such actions as are deemed appropriate and in accordance with published guidelines.

[63 FR 48990, Sept. 11, 1998]

**§ 1005.107 What is eligible collateral?**

(a) *In general.* A loan guaranteed under section 184 may be secured by any collateral authorized under and not prohibited by Federal, state, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions against alienation applicable to trust or restricted land;

(2) A first and/or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Leasehold of trust or restricted land as collateral.* If a leasehold interest in trust or restricted land is used as collateral or security for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under Section 184 must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated

by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) The mortgagee or HUD shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the Indian tribe, or the Indian housing authority servicing the Indian tribe or the TDHE servicing the Indian tribe. The mortgagee or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to one of these three entities.

(4) *Priority of loan obligation.* Any tribal government whose courts have jurisdiction to hear foreclosures must enact a law providing for the satisfaction of a loan guaranteed or held by the Department before other obligations (other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied.

(5) *Eviction procedures.* Before HUD will guarantee a loan secured by trust land, the tribe having jurisdiction over such property must notify the Department that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If the Department determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans for tribal members except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) *Review.* If the Department ceases issuing guarantees in accordance with the first sentence of paragraph (c)(1) of this section, HUD shall notify the tribe of the reasons for such action and that the tribe may, within 30 days after notification of HUD's action, file a written appeal with the Field Office of Native American Programs (FONAP) Administrator. Within 30 days after notification of an adverse decision of the appeal by the FONAP Administrator, the tribe may file a written request for review with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an



§ 1005.109

adverse decision by the Deputy Assistant Secretary, the tribe has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the tribe may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR part 24.)

[61 FR 9054, Mar. 6, 1996. Redesignated and amended, respectively, at 63 FR 12349, 12373, Mar. 12, 1998; 63 FR 48991, Sept. 11, 1998]

**§ 1005.109 What is a guarantee fee?**

The lender shall pay to the Department, at the time of issuance of the guarantee, a fee for the guarantee of loans under Section 184, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

**§ 1005.111 What safety and quality standards apply?**

Loans guaranteed under section 184 must be for dwelling units which meet

24 CFR Ch. IX (4-1-99 Edition)

the safety and quality standards set forth in section 184(j).

[63 FR 48991, Sept. 11, 1998]

**§ 1005.112 How do eligible lenders and eligible borrowers demonstrate compliance with applicable tribal laws?**

The lender and the borrower will each certify that they acknowledge and agree to comply with all applicable tribal laws. An Indian tribe with jurisdiction over the dwelling unit does not have to be notified of individual section 184 loans unless required by applicable tribal law.

[63 FR 12373 Mar. 12, 1998, as amended at 63 FR 48991, Sept. 11, 1998]

**§ 1005.113 How does HUD enforce lender compliance with applicable tribal laws?**

Failure of the lender to comply with applicable tribal law is considered to be a practice detrimental to the interest of the borrower and may be subject to enforcement action(s) under section 184(g) of the statute.

[63 FR 12373 Mar. 12, 1998]

**PARTS 1006-1699 [RESERVED]**

May 1, 2019

RE: Section 184 Indian Home Loan Guarantee (Section 184) program

Dear Ms. Frechette and Ms. Johnson:

This letter is in response to the notification letter Ms. Frechette wrote on April 4, 2019 regarding the proposed revisions to the regulations for the Section 184 Indian Home Loan Guarantee (Section 184) program. After review of the proposed draft there is a major point of concern that must be clearly explained to all tribes.

Under the proposed change is section § 1005.421 **Legal restrictions.**

- (a) *Definitions.* (1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may approve a higher percentage up to 140 percent.

Historically the Section 184 loan program has been a loan program that has enabled many Native Americans to fulfill the dream of homeownership without income restrictions. It has served all income levels both on and off the Reservations since 1992 making it at this point the only loan program to assist families in purchasing or building a home on Trust Land with a Leasehold Mortgage. A change to the guidelines that Congress has not passed would be devastating to individuals and families who have a moderate paying job that would want to live on the Reservation.

The funding source for this program is not NAHASDA therefore it has not been subject to the Low-Income restrictions that riddle Indian Country. The budget for Section 184 loan guarantee program for Indian Housing is approved by Congress every year separately from other housing program budgets.

As Section 184 guidelines become more and more stringent without HUD providing any foreclosure data to support these changes it could become so stringent that private lenders may not be able to utilize such rigorous guidelines. The original purpose of Section 184 is becoming obscure based on these proposed income restrictions that are being imposed without any supporting data.

It is advised for HUD to assemble a team of practitioners in the field such as lenders, real estate agent/brokers, attorneys, and HUD personnel to review and revise the proposed guidelines. These new guidelines need to be created with the individuals that carry out the purpose, as well as, with those that are attempting to write guidelines without reason.



# NAVAJO NATION

281

Naa'bik'iyati Committee Meeting

9/5/2019

10:56:25 AM

Amd# to Amd#

Legislation 0112-19: Opposing

PASSED

MOT Smith

the Imposition of Income

SEC Walker, T

Restrictions by the United

States Department of Housing...

**Yea : 15**

**Nay : 0**

**Excused : 2**

**Not Voting : 5**

## Yea : 15

Begay, K

Daniels

Nez, R

Tso, O

Begay, P

Freeland, M

Smith

Walker, T

Brown

Halona, P

Tso, C

Yellowhair

Charles-Newton

James, V

Tso, E

## Nay : 0

## Excused : 2

Stewart, W

Tso, D

## Not Voting : 5

Begay, E

Henio, J

Wauneka, E

Yazzie

Crotty

**Presiding Chair: Damon**