

1 **SECTION 184 INDIAN HOUSING LOAN GUARANTEE PROGRAM POLICY**
2 **HANDBOOK**

3 **Chapter I – Doing Business with the Office of Loan Guarantee**

4 **Subsection A. – TRIBES**

5

6 **I. WORKING WITH THE OFFICE OF LOAN GUARANTEE**

7 This Chapter describes the Section 184 Indian Housing Loan Guarantee Program (“Section 184
8 Program”) approval process and continued participation requirements for the following parties:

- 9
- 10 • Subsection A: Tribes
 - 11 • Subsection B: Alaska Native Village or Regional or Village Corporations
 - 12 • Subsection C: Direct Guarantee and Non-Direct Guarantee Lenders
 - 13 • Subsection D: Servicers
 - 14 • Subsection E: Appraisers and Down Payment Assistance Providers

15 HUD encourages a careful review of this Chapter’s requirements to facilitate the process for
16 participants in providing homeownership opportunities in Indian Country under the Section 184
17 Program.

18 If any exceptions or program-specific requirements differ from those outlined in this Handbook,
19 they will be expressly stated in the appropriate Section 184 Program Guidance. Defined terms
20 and acronyms are used throughout this Handbook. The first instance a defined term is used in
21 each chapter will be hyperlinked to Appendix XXX, Glossary and Acronyms, for the
22 convenience of the reader. We strongly encourage reviewing the defined terms to understand
23 how the terms are used.

23

1 **A. TRIBES**

2 Due to the unique status of Trust Lands, Indian Country’s access to capital remains underserved.
3 Thus, the Section 184 Program is a critical tool for Tribes to facilitate homeownership
4 opportunities in their Trust Land communities. Where a federally recognized Tribe¹ wishes to
5 permit lending on Trust Land, the Tribe must be approved by HUD to participate in the Section
6 184 Program. Section A of this chapter focuses on how Tribes² apply to HUD for approval to
7 participate, Tribal participation requirements and the process Tribes to request an expansion of
8 an approved Section 184 Program Area.

9 Tribes electing to make their Trust Land available under the Section 184 Program must provide
10 evidence of a legal and administrative framework for lien priority, foreclosure, eviction and
11 leasing, if available, on Trust Land to protect the interests of the Borrower, Tribe, Direct
12 Guarantee Lender, and HUD.

13 The Tribal application process and general participation requirements are the following:

- 14 • Submission of documentation evidencing Tribal legal and administrative framework and
15 other supporting documents
- 16 • Submission of Tribal application
- 17 • HUD review of the Tribal application
- 18 • Tribal partnership with HUD related to loss mitigation and property disposition
- 19 • Tribal Annual Recertifications
- 20 • Tribal duty to report changes
- 21 • Tribal notification to HUD when Borrower defaults on the lease

22 **1. Tribal Legal and Administrative Framework**

23 **a. General Information**

- 24
- 25 **i.** For the federally recognized Tribe to participate in the Section 184
26 Program, the Tribe must demonstrate that a legal and administrative
27 framework exists sufficient to protect the interests of the Tribe,
28 Borrower, the Approved Section 184 Lender (Lender), Holder and
29 HUD when Section 184 Guaranteed Loans are made. To demonstrate
30 there is a legal and administrative framework, the Tribe must adopt
31 lien priority, foreclosure and eviction procedures and leasing
32 procedures, if available, that will apply to Section 184 Guaranteed

¹ The Department of the Interior, Bureau of Indian Affairs annually publishes in the Federal Register a notice typically titled “Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs.” Information about federally recognized Tribes is available at the [Bureau of Indian Affairs website](#).

² Although the regulatory definition of “Tribe” at 24 CFR 1005.103 includes the Alaska Native villages and corporations, for purposes of this Chapter we have provided a separate section for Indian Tribes and Alaska Native villages and corporations. The application and participation requirements related to Alaskan Native villages or regional or village corporations are separately addressed in section B of this Chapter.

1 Loans. A Tribe may enact the framework through Tribal council
2 resolution or any other recognized Tribal legislative action. This
3 framework must be legally enforceable and include the provisions
4 noted in this chapter.

- 5
6 **ii.** HUD can provide technical assistance related to the legal and
7 administrative framework to Tribes. For technical assistance Tribes
8 may email Tribalrequests@hud.gov.

9
10 **b. Legal Framework**

11
12 **i. Lien Priority**

- 13
14 a) Tribes must enact an ordinance that provides that all loans in
15 first position have priority and are satisfied first. The Section
16 184 Guaranteed Loan secured by the property interest must be
17 in first lien position.
18
19 b) For a lien to be considered valid on Trust Land, it must be
20 approved by the Tribe, and/or BIA as applicable; and recorded
21 by the Tribe and/or BIA, and/or the state, as appropriate.
22
23
24 c) Liens involving land held in trust by the United States must be
25 submitted to the BIA for recordation. Tribes approved by BIA
26 under the Helping Expedite and Advance Responsible Tribal
27 Homeownership (HEARTH) Act must follow the same
28 process.

29
30 For liens involving land not held in trust by the United States
31 and held in restricted fee status by Tribe, such as Treaty land,
32 the Tribe must have a recording system for recording liens.
33

34 **ii. Foreclosure and Assignment**

35
36 When a Borrower defaults on a Section 184 Guaranteed Loan and the
37 Lender, Holder, or HUD initiates foreclosure against the Borrower
38 following the Tribe's First Right of Refusal:
39

- 40 a) The Tribal ordinance must include evidence that a foreclosure
41 shall be held in a court of competent jurisdiction, which
42 includes Tribal court, and Federal courts when HUD forecloses
43 on the property.

- 1
2 b) The Tribal ordinances must allow the court of competent
3 jurisdiction to transfer the Borrower’s property interest to
4 Lender, Holder, or HUD.
5

6 *Pro Tip: You can find out more about the First Right of Refusal in the*
7 *Chapter XXX, Servicing.*
8

9 **iii. Eviction**

10 The Tribe must have a legal and administrative framework for
11 implementing eviction procedures, allowing for the expedited removal
12 of the Borrower, all household residents, and any unauthorized
13 occupants of the property when there is a default of the lease and/or
14 mortgage and foreclosure has completed. The eviction procedures
15 must enable the Tribe, Servicer, Holder, or HUD to secure possession
16 of the property. Eviction may be required upon:

- 17 a) The completion of a foreclosure.
18
19 b) The reassignment of the lease or conveyance of the property
20 interest to HUD, Holder, or Third-Party.
21

22 **iv. Lender, Holder, and HUD Access to Property**

23 The Tribe must have a legal framework granting Lender, Holder, HUD
24 access to a Property located on Trust Land for the purpose of servicing
25 a Section 184 Guaranteed Loan in default.
26

27 **c. Administrative Framework**

28
29 **i. Trust Land Leasing**

30 On most types of Trust Land, the lease is the collateral for the Section
31 184 Guaranteed Loan. The lease must contain specific provisions to
32 protect the interests of the Holder and HUD.
33

- 34 a) For Trust Land or Restricted Fee lease, the Lessor is the Tribe,
35 or in the case of a Master Lease/Sub-Lease, the Sub-Lessor
36 may be a TDHE. HUD may review requests for other types of
37 transactions involving Master Lease/Sub-Lease.
38
39 b) For an individual Trust Land lease, the Lessor is the individual
40 owner(s) and the Lessee is the Section 184 Borrower.
41

- 1 c) Tribes may work with HUD and BIA to establish their lease
2 template for Trust Land loans. Tribes approved under
3 The HEARTH Act may use their HUD-approved HEARTH
4 Act lease for Section 184 Program lending.
5
- 6 d) Tribes may draft their lease for Section 184 program approval,
7 and BIA approval as applicable.
8
- 9 e) The lease must contain mandatory lease terms and language as
10 prescribed below. At a minimum, the lease must:
- 11 • Identify the lessor;
 - 12 • Identify the lessee;
 - 13 • Provide a legal description of the land and identify the
14 property address covered by the lease;
 - 15 • Have a minimum term of 50 years or other term approved
16 by the Secretary;
 - 17 • Have a remaining term that exceeds the loan's maturity
18 date by a minimum of ten years when the transaction is a
19 loan refinancing. The Borrower and the Tribe may request
20 an exception to the minimum remaining years by
21 submitting a written request to the Director of the Office of
22 Loan Guarantee. The request made be sent to
23 Tribalrequest@hud.gov;
 - 24 • Be executed by all interested parties to be enforceable;
 - 25 • Require HUD's consent for any lease termination or
26 assignment of the lease when the property is secured by the
27 Section 184 Guaranteed Loan;
 - 28 • Contain the following provision: "In the case of a default
29 on a Section 184 Guaranteed Loan: (1) the lessee may
30 assign the lease and deliver possession of the leased
31 premises, including any improvements thereon, to HUD; or
32 (2) The lessor may assign the lease and deliver possession
33 of the leased premises, including any improvements
34 thereon, to HUD when the Tribe has provided due process
35 to lessee in compliance with Tribal law. HUD may transfer
36 this lease and the leased premises to a successor lessee if
37 the successor lessee is another member of the Tribe or
38 Tribal entity, as approved by the Tribe.";
 - 39 • State the amount of the ground rent and method of
40 payment, if applicable; and
 - 41 • Provide that in the event of foreclosure, the lease will not
42 be subject to any forfeiture or reversion and the lease may
43 be assigned to Holder or HUD.

1
2 **ii. Land held in Trust and Lease Recordation.** Leases on land held in
3 trust by the United States must be submitted to the BIA for
4 recordation. Tribes approved under the HEARTH Act must follow the
5 same process.
6

7 **iii. Land not held in Trust and Lease Recordation.** For leases on land
8 not held in trust by the United States and held in restricted fee status
9 by Tribe, such as Treaty land, the Tribe must have a recording system
10 for recording leases encumbered by a lien.
11

12 **iv. Trust Land Lending involving a Master Lease and Sublease.**
13 Where the loan transaction involves a master lease and a sublease, the
14 master lease and sublease must be approved by HUD.
15

16 **v. Land Assignments**

17 **Definition of Land Assignment.** A land assignment is a form of land
18 use right that the Tribe grants to a Tribal member. The land under the
19 land assignment is generally not held in trust. Title to the land is
20 generally held by the Tribe and is subject to a restriction against
21 alienation imposed by the Tribe.
22

23 a) **Section 184 Loan involving a Land Assignment.** For the
24 Tribe to participate in the Section 184 Program involving land
25 assignments, the Tribe must establish land assignment
26 ordinances.
27

28 b) **Recordation Process.** The Tribe must establish a system of
29 maintaining a permanent record of each transaction affecting
30 land assignments.
31

32 **vi. Tribal Homeownership Programs**

33
34 HUD supports Tribal initiatives to create and implement Tribal
35 homeownership programs. To utilize a homeownership program in
36 conjunction with the Section 184 Program, Tribes must submit to
37 HUD the following documentation:
38

- 39 a) Description of the homeownership program;
40 b) Homeownership program promotional information, such as
41 Tribal website, brochures, etc.; and
42 c) Program guidelines related to the homeownership program and
43 any applicable ordinances.
44

1 HUD will review the documentation to determine the compatibility of
2 the homeownership program with Section 184. When HUD approves
3 the Tribal homeownership program HUD will provide written notice
4 to the Tribe.
5

6 **2. Tribal Application**

7

8 **a. Standard.** HUD's Office of Loan Guarantee must approve a Tribe to
9 participate in the Section 184 Program for utilization on the Tribe's Trust
10 Land.
11

12 **b. Documentation.** The Tribes must gather the documentation listed below:
13

14 i. The Section 184 Program Tribal Application (Form HUD-XXXX)
15 must be completed and signed by a Tribal official.
16

17 ii. Supporting documentation listed on the Tribal Application XXXX
18 must be included.
19

20 iii. When the BIA has approved a Tribe under the HEARTH Act, the
21 Tribe must inform HUD of this approval in its application to
22 participate.
23

24 **c. Submission.** The completed Tribal Application and supporting
25 documentation may be emailed to TribalRequests@hud.gov.
26

27 **d. HUD Review of Tribal Application.** Upon receipt of the Tribe's application
28 and supporting documentation, HUD will review the application. If any
29 concerns are noted HUD will work with the Tribe to resolve the concerns.
30

31 When the Tribe's application is acceptable, HUD will issue a written
32 notification to the Tribe of the approval to participate in the Section 184
33 Program. HUD will offer the Tribe general training on the Section 184
34 Program.

35 As part of the approval, HUD will place a unique identification number on the
36 Tribe's proposed Section 184 lease template. The approval number on the
37 lease serves to inform the Borrower and lender that HUD has approved the
38 lease.

39 **3. Post-Approval Updates/Modifications.** When a Section 184 approved Tribe seeks
40 to:

- 1 □ Amend a HUD-approved lease, the Tribe must submit a copy of
2 the entire lease with the proposed changes in red line to HUD for
3 review and approval.
- 4
- 5 □ Update any foreclosure, eviction, lease or lien priority ordinances,
6 the Tribe must submit the proposed changes to the ordinances to
7 HUD for review and approval prior to the ordinances taking effect.
- 8
- 9 □ Amend any Tribal homeownership program that may be used with
10 the Section 184 Program, the Tribe must submit the proposed
11 changes to the Tribal homeownership program to HUD for review
12 and approval prior to the changes taking effect.
- 13
- 14 □ Update any Tribal contact information related to the Section 184
15 Program, the Tribe must submit updated Tribal contact information
16 to HUD as soon as the changes occur.
- 17

18 *PRO TIP: Tribes should submit any proposed changes to HUD with ample*
19 *time for HUD to review the documents.*

20

21 The Tribe must submit the proposed changes to TribalRequests@hud.gov.

22

23 **4. Requirements for Tribe’s Continued Participation**

24

25 **a. Loss Mitigation and Disposition Involving Defaulted Section 184**

26 **Borrowers**

27 The Tribe’s partnership with HUD is essential. Beyond Tribal leasing to its
28 Tribal members, the Tribe’s engagement with the Borrower, Lender, and
29 HUD is especially critical when a Borrower defaults on his or her Section 184
30 Guaranteed Loan.

31 At loan closing, the Borrower is given the option whether to authorize the
32 Lender to disclose to the Tribe if the Borrower defaults on the mortgage. If
33 the Borrower has elected to disclose to the Tribe, the Lender notifies the Tribe
34 of the Borrower’s default so the Tribe may provide assistance, if any is
35 available, to the Borrower. Assistance to the Borrower may be through
36 financial aid to cure the default, referrals to housing counseling or consumer
37 credit/foreclosure prevention programs, or support to the Borrower and
38 encouraging him or her to contact the Lender to further address the default.

39 In cases where the Lender assigns the Section 184 Guaranteed Loan to HUD,
40 this signals that the Borrower’s default was not cured, and the Borrower faces
41 foreclosure. The Tribe can work with HUD on exploring alternatives to

1 foreclosure, such as pursuing a Note Sale or Lease-in-Lieu of foreclosure with
2 the Borrower. The Lease-in-Lieu of foreclosure is an opportunity for the
3 Borrower to assign the lease to HUD in exchange for HUD's release of the
4 Borrower's obligation on the mortgage. A Lease-in-Lieu of foreclosure
5 prevents the derogatory reporting and damaging effects the foreclosure would
6 have on the Borrower's credit report/history.

7 **b. Property Preservation**

8 In support of the ongoing partnership between HUD and the Tribe, HUD may
9 request assistance from the Tribe in performing an occupancy inspection of
10 the property when the Lender assigns the mortgage to HUD and following
11 foreclosure completion.

12 The Tribe must notify HUD when they determine a property is vacant,
13 abandoned, or the property is not secured. The notifications may be sent via
14 email to TribalRequests@hud.gov.

15 **c. First Right of Refusal and Property Disposition**

16 Under the First Right of Refusal process involving Trust Land, the Tribe
17 would be notified by the Lender when the Borrower defaults on the mortgage
18 and loss mitigation has not been successful. The First Right of Refusal
19 generally occurs before the initiation of foreclosure. Chapter X, Section xx
20 further explains the First Right of Refusal process.

21 In cases where the Lender assigns the Section 184 Guaranteed Loan to HUD,
22 HUD will work with the Tribe on options for disposition of the property prior
23 to foreclosure.

24 In cases where the Trust Land lease is reassigned to HUD through a Lease-in-
25 Lieu of Foreclosure or the property interest has otherwise been conveyed to
26 HUD by the completion of foreclosure, HUD will partner with the Tribe to
27 sell the property to an eligible Tribal member.

28 **d. Duty to Report Changes**

29 If there is a change in the Tribe's Section 184 Program point of contact, the
30 Tribe must notify HUD within 30 Days of making the staffing change.

31 Additionally, the Tribe must notify HUD of any proposed changes to the
32 HUD-approved template lease or ordinances. The Tribe shall obtain HUD
33 approval of the proposed changes to the lease utilizing the process in XXX of
34 this Chapter and any proposed ordinance changes. Tribes are strongly
35 encouraged to submit the proposed lease or ordinance changes to HUD early
36 in the process to allow for HUD review before the lease or ordinance changes
37 take effect.

1 When the proposed lease or ordinance changes are acceptable, HUD will
2 provide the Tribe with a written approval letter. A revised or new unique
3 identifier for the updated lease will be provided for lease revisions.
4

5 Lastly, if there are any other changes that may impact the Section 184
6 Program, such as changes in the Tribe's homeownership program, these
7 changes must also be reported to HUD prior to the changes taking effect.
8

9 Changes may be reported to HUD at TribalRequests@hud.gov
10

11 **e. Tribal Annual Recertification**

12 Tribes approved for the Section 184 Program must complete an annual
13 recertification - Form XXXX (insert name, number, link). The recertification
14 process serves two primary purposes: (1) provides HUD with the Tribe's point
15 of contact for matters related to Section 184 Program lending on the Tribe's
16 Trust Land, and (2) confirms with HUD there have been no changes to the
17 Tribe's Section 184 Program lease since obtaining HUD approval or changes
18 to any other information previously reviewed by HUD.

19 Additional annual recertification guidance:

- 20 i. The Tribe's annual recertification deadline is December 31 of each
21 calendar year. Tribes may complete their recertification as early as 90
22 Days before the December 31 deadline.
- 23
24 ii. Tribes newly approved by HUD, after July 1 of the current year are
25 exempt from the December 31 recertification deadline for that same
26 year but must complete the annual recertification by December 31 for
27 each subsequent calendar year.
- 28
29 iii. If the Tribe faces extenuating circumstances and is unable to complete
30 the recertification by December 31st, they must contact
31 TribalRequests@hud.gov prior to the deadline to request an extension
32 and provide the reason for the request. HUD may grant the Tribe an
33 extension on a case-by-case basis.
- 34
35 iv. If the Tribe fails to complete an annual recertification, HUD will
36 notify the Tribe at the following intervals:
 - 37 • 30 Days late, First Notice
 - 38 • 60 Days late, Second Notice
 - 39 • 90 Days late, Third and Final Notice
 - 40 • 120 Days late, Temporary Suspension for all new Section 184
41 Program transactions on Trust Land. This suspension will not

1 allow Lenders to close any loans utilizing the Section 184
2 Program on the Tribe's Trust Land until HUD lifts the
3 suspension.
4

5 **f. Notification of Borrower's Default under the Lease**
6

7 In cases where the Borrower defaults on the lease, the Tribe shall provide
8 written notification to HUD within 30 Days of the lease default. The
9 notification to HUD must include any default notices the Tribe may have
10 provided to the Borrower. The Tribe may submit the written notification to
11 TribalRequests@hud.gov. This requirement only applies when a Section 184
12 Guaranteed Loan encumbers the Borrower's leasehold interest.
13

14 **5. Tribal Request for Expansion of a Section 184 Approved Program Area**

15 **a. Definition**
16

17 Section 184 Approved Program Area means the Indian Housing Block Grant
18 Formula Area as defined in 24 CFR 1000.302 or any other area approved by
19 HUD in which HUD may loans may be guaranteed by the Section 184
20 Program.
21

22 **b. Standard**
23

24 At the time a loan is guaranteed by the Section 184 Program, the Property
25 must be for residential use under Tribal, State, or local law and be located
26 within a Section 184 Approved Program Area.
27

28 For the current list of approved counties by state please visit CodeTalk -
29 [Borrowers Section 184 Loan Resources page](#).
30

31 **c. Tribal Request for Expansion**

32 Tribes approved to participate in the Section 184 Program may request an
33 expansion of the Section 184 Approved Program Area on a county-by-county
34 basis.

35 **d. Documentation**
36

37 To request HUD's approval for an expansion, Tribes must submit:

- 38 i. A statement providing the reason for the request.
- 39 ii. The name of the county or the list of counties the Tribe would like to
40 include in their Section 184 Approved Program Area.

1 iii. A certification as to the presence of enrolled Tribal members in the
2 county or counties. The certification must include a statement that the
3 Tribe has enrolled Tribal members residing in the county or counties
4 listed. The certification must be signed and dated by an authorized
5 Tribal official.
6

7 **e. Submission**
8

9 The Tribe’s expansion request must be submitted to the Director of the Office
10 of Loan Guarantee via email Tribalrequests@hud.gov
11

12 **f. HUD Review**
13

14 When the Tribal expansion request meets the above requirements and is
15 approvable, HUD will provide a written notice of approval to the Tribe and
16 update the Section 184 Approved Counties by State list.

DRAFTING TABLE - DRAFT DOCUMENT