



March 16, 2023

Regulations Division,
Office of General Counsel,
Department of Housing and Urban Development,
451 7th Street SW, Room 10276,
Washington, DC 20410–0500.

RE: Docket No. FH-5593-P-01 Proposed Rule – Strengthening the Section 184 Indian Home Loan Guarantee Program

To Whom It May Concern:

The Housing Policy Council¹ and our member companies commend your efforts to strengthen and modernize the Section 184 Indian Home Loan Guarantee Program. It is an important program with a critical mission. For that reason, our top recommendation is that HUD modify the proposal to produce a final regulation that accounts for the lessons learned over the last 21 years, when the previous rulemaking occurred.

Of note, numerous details in the proposed rule concern us. We recommend that HUD remove a number of details from the rule. By placing key programmatic terms, such as specific servicing criteria, timelines, and terms into the rule, the program will quickly become misaligned with industry practice and modernization efforts by other government lending programs. As written, the regulation will make it harder and more costly for HUD and its lending partners to adapt to market trends and conditions, policy and operational changes across the government, and evolving consumer needs and practices. Absent such changes, over time it will become difficult for lenders and servicers to work with the Section 184 program. Therefore, we recommend that HUD finalize a rule that provides a legal framework that establishes lender and servicer expectations for working with the program and addresses key program weaknesses identified by the HUD Office of the Inspector General while leaving the detailed requirements to separate administrative guidance.

Our specific feedback is focused on “subpart G” of the proposed rule, which covers the requirements for servicers to manage Section 184 Guaranteed Loans and the steps that must be taken when a Section 184 Guaranteed Loan is in default.² Although subpart G attempts to adopt “industry

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org

² Our feedback is limited to three of the four sections in subpart G. The section dealing with foreclosure and conveyance is not one we are addressing, as we recognize that there are significant practical and policy issues related to the preservation of tribal

standards and best practices,” by placing programmatic elements into federal regulation, it is likely that the Section 184 Program will fail to stay current with best practices adopted by other government agencies. It took 21 years to promulgate this rulemaking, and we are concerned that putting programmatic terms into a regulation will freeze those provisions in place for another generation of tribal borrowers.

In our view, each of the following servicing sections in the proposed rule include the inappropriate use of programmatic terms, timelines, and criteria:

- Loss mitigation application, timelines, and appeals §1005.733.
- Loss mitigation §1005.739.
- Loan modification §1005.749.
- Pre-foreclosure sale §1005.751.
- Deed-in-lieu/lease-in-lieu of foreclosure §1005.753.

Take for example, §1005.749 dealing with loan modifications. The proposed rule, in part (a), provides an appropriate description authorizing specific types of loan modifications. However, parts (b) and (c) lay out a prescriptive set of terms. Part (c) in particular, sets forth eight criteria that borrowers must meet to receive a loan modification. Although our members think these are well-intended conditions for eligibility, many of them reflect outdated industry practices, such as requiring a full borrower response package and tying modification availability to specific borrower income tests. By placing these borrower qualifications into a regulation, future HUD leaders will need to initiate new rulemaking to establish alternative program terms that would offer tribal borrowers access to equivalent options available to similarly situated USDA, VA, and FHA borrowers.

This overly prescriptive section of the proposed rule on modifications stands in contrast to §1005.755 dealing with “incentive payment to borrowers,” which is a model approach to effective rulemaking and illustrative of the type of broad authority that we would like to see in a final rule. It authorizes incentive payments to borrowers, servicers, and Tribes when certain loss mitigation options are completed, but then spells out that HUD will “provide further guidance on the incentives in Section 184 Program Guidance.” This is a model for all servicing provisions in the regulation – to provide HUD with explicit and appropriate authority to run an effective program but sufficient flexibility to change key program terms through program guidance.

HPC members believe that a best practice for the Section 184 Program would be to make changes to the “Section 184 Processing Guidelines” and publish it as a Public and Indian Housing Notice, like the Section 184 servicing and origination guidelines published in PIH-2014-11 & 22. This would provide a transparent and official set of guidelines that demonstrate a HUD view about how to service loans. Then, if the Assistant Secretary for Public and Indian Housing determines that future changes to servicing policy are necessary, he or she could publish a narrow update through another Public and Indian Housing Notice. This process would work like the FHA Mortgagee Letter process, with which servicers are very familiar.

lands that we think are entirely appropriate for inclusion in this rule and are unlikely to be influenced by lessons learned over time or by best practices adopted by other government agencies.

For servicers to continue to participate in the program, one specific piece of guidance that must be addressed is related to certain expenses for loans in default. Based on a letter to lenders from April 2019, the Section 184 Program has made it clear that it will not pay for any reimbursement of interest or expenses beyond the reasonable diligence timeframe, regardless of whether or not the foreclosure process was completed within the established timeframes. This policy regularly creates a gap between when a foreclosure is completed and when a property is conveyed to HUD, where the servicer incurs mandatory expenses to maintain and protect the property and yet are provided no opportunity to recover those expenses through the claim. We believe that requiring servicers to absorb unreimbursed losses to protect properties for HUD is not a reasonable policy, nor is it in line with how FHA, VA, USDA, and the GSES handle similar issues.


Additionally, we would encourage PIH leaders to coordinate with the FHA Commissioner to review changes to FHA servicing policy, to determine whether it is appropriate to update the Section 184 Program to align with FHA policy changes. This iterative and transparent process would enable the Section 184 program to adapt in a timely manner, based on market conditions and lessons learned, while at the same time setting clear and official expectations for servicers.

If for some reason HUD believes that it must retain prescriptive criteria as part of a servicing regulation, we would request the addition of a regulatory provision authorizing the Assistant Secretary of Public and Indian Housing to promulgate policy through a Public and Indian Housing Notice if market conditions, business trends, or customer needs make any of the servicing regulations unworkable. Our view is that the servicing regulations must remain workable over time and through various conditions, and that tribal borrowers must have viable loss mitigation options to retain homeownership.

Conclusion

Should you have any questions or wish to discuss further, please contact Matthew Douglas at (202) 589-1924.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive style with a large initial "E".

Edward J. DeMarco
President
Housing Policy Council