



U.S. Department Housing and Urban Development
Office of Public and Indian Housing

Special Attention of
Administrators,
Offices of Native American Programs;
Tribal Government Leaders;
Tribally Designated Housing Entities

Notice PIH 2004-19 (HA)

Issued: September 29, 2004

Expired: September 29, 2005

SUBJECT: Notice on Designating an Indian Area for the Section 184 Indian Housing Loan Guarantee (Section 184) Program.

PURPOSE: This notice outlines the procedures that an Indian tribe should follow to designate its Indian area under the Section 184 program.

BACKGROUND: The Section 184 program, authorized by the Housing and Community Development (HCD) Act of 1992, as amended, provides loan guarantees to Indian tribes, tribally designated housing entities (TDHE) as that term is defined in the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA), and individual Indian families. Section 184(a), "Authority," provides that assistance is available to Indian tribes, Indian housing authorities, TDHEs and individual Indian families on "Indian lands." Section 184(b)(2), "Eligible Housing," refers to housing located "on trust land or land located in an Indian or Alaska Native area." Section 184(l)(4), "Definitions," defines the term "Indian area" to mean "the area within which an Indian housing authority or Indian tribe is authorized to provide housing." The latter is a cross-reference to the term "Indian area" as defined in NAHASDA and its predecessor, the United States Housing Act of 1937, as amended. The term "Indian lands" is not further defined in either the HCD or the Section 184 program regulations.

HUD's Government-to-Government Tribal Consultation Policy, which was signed by former Secretary Mel Martinez on June 28, 2001, has as one of its primary objectives, increasing flexibility for Indian tribal waivers of statutory and regulatory requirements. This Administration is committed to taking steps to streamline those processes.

Many affordable housing activities that are eligible under the IHBG program are integrally related to other programs, especially the Section 184 program. For example, an Indian tribe or TDHE is an eligible Section 184 program borrower, and down payment assistance or interest buy-downs are an eligible affordable housing activity under NAHASDA, so long as the family is otherwise qualified to participate in the IHBG program and can ultimately qualify for a home mortgage under the Section 184 guidelines.

Therefore, it is logical to have consistency of definitions between the two programs whenever possible. One such area is the use of consistent definitions to quantify the Indian areas where tribes and their TDHEs wish to use the Section 184 program to serve Native American families.

Distribution: W-3-1, R-3-1, (PIH), R-6, R-7, 138-2

PROCEDURE: For purposes of the Section 184 program, Indian tribes that are IHBG grant recipients may use their IHBG Formula Area, as defined in 24 CFR 1000.302, as their Indian area without additional justification. Any area that meets the requirements for “reservation,” “near reservation,” or “service area,” as those terms are defined by the Bureau of Indian Affairs (BIA) in 25 CFR Part 20, may declare those areas as their Indian area, for purposes of the Section 184 program, by furnishing HUD with evidence of such a determination made by the BIA.

Any area that meet the definition of “Indian Country,” as that term is defined in 18 U.S.C. 1151, may be declared by a tribe as its Indian area, for purposes of the Section 184 program, by furnishing HUD with evidence of such a determination made by an agency or agencies of the Federal government responsible for making those determinations in order to qualify such areas as eligible areas for services to Indians.

If a tribe wishes to designate an Indian area, for purposes of the Section 184 program, that is not included in the above categories, the tribe must make a claim that it has authority to act in such area by doing the following:

- Provide a description of such area(s), along with any historical documentation, data or other information or evidence that they deem necessary to justify why they wish to provide tribal members or other Indians that reside in the area claimed with access to the Section 184 program;
- Provide a tribal ordinance, resolution, certification or other documentation memorializing official tribal action, signed by the appropriate tribal government official, declaring that the tribe wishes to provide Native Americans residing in the area(s) claimed with access to the Section 184 program (note that a certification would be in addition to any certification provided in an IHP); and
- Otherwise comply with all requirements for participation in the Section 184 program.

Indian tribes that are former IHBG recipients, but no longer participate in that program, and Indian tribes that are eligible for the IHBG program but choose not to participate in the IHBG program, shall use the IHBG Formula Area that was or would have been assigned to them, and they would be required to comply with the other criteria and use the methodologies described above to assert their Indian area.

APPROVAL: Requests should be submitted to the Director, Office of Loan Guarantee, in the Office of Native American Programs. HUD will review each tribal request on a case-by-case basis, and make a determination as to whether or not the tribe’s request to include an Indian area is approved, approvable with additional documentation, or not approvable. HUD will make its determination within 30 days of submission.

/s/

Michael Liu, Assistant Secretary
for Public and Indian Housing