



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

August 27, 2018

MEMORANDUM NO:
2018-LA-0801

Memorandum

TO: Heidi J. Frechette
Deputy Assistant Secretary, Office of Native American Programs, PN

//SIGNED//

FROM: Tanya E. Schulze
Regional Inspector General for Audit, Los Angeles Region, 9DGA

SUBJECT: The Office of Native American Programs Section 184 Program Continues To Operate Without Adequate Oversight 3 Years After the Prior OIG Audit

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), conducted a review of the Section 184 Indian Home Loan Guarantee program based on a Senate Appropriations Committee request to review the management and oversight of the program. OIG had previously audited the Section 184 program in 2015 (audit report 2015-LA-0002) and determined that the Office of Loan Guarantee (OLG) did not provide adequate oversight of the program. This resulted in an increased overall risk to the program, including guaranteeing 3,845 loans totaling more than \$705 million that were not underwritten in accordance with program guidelines. The audit report contained 11 recommendations, of which 10 were closed. The objective of this review was to identify and evaluate actions taken by OLG since the issuance of the prior audit report, including a review of \$2.6 million received for administrative contract expenses to carry out the Section 184 program.

HUD Handbook 2000.06, REV-4, provides specific timeframes for management decisions on recommended corrective actions and for recommendations that have been reopened. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the review.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG website. Accordingly, this report will be posted at <http://www.hudoig.gov>.

METHODOLOGY AND SCOPE

Our audit period generally covered the period from July 6, 2015 (date of prior OIG audit report LA 2015-LA-0002 issuance), to May 18, 2018 and includes actions taken by OLG as a result of the 11 audit recommendations in the prior OIG audit report. The final action target dates for the agreed upon management decisions ranged from October 30, 2015, to December 31, 2017. We also reviewed the amounts received and obligated for the Section 184 Indian Housing Loan Guarantee administrative contract expense fund from fiscal year 2009 to 2018.

We conducted the audit fieldwork from OIG's Office of Audit in Phoenix, AZ, between May and July 2018. To accomplish our objective, we

- Reviewed the prior OIG audit report (audit report 2015-LA-0002), including the 11 audit recommendations addressed to the Office of Native American Programs (ONAP).
- Reviewed the 11 management decisions¹ submitted by OLG.
- Determined the status of the revised Section 184 processing guidelines that were submitted by OLG as justification for the closed recommendations.
- Determined the status of the draft regulations for the Section 184 program.
- Reviewed the standardized monthly delinquency reports provided to OLG by servicing lenders.
- Reviewed the letters sent from ONAP to 17 lenders regarding the indemnification of 26 loans that were underwritten by direct guarantee lenders and had material underwriting deficiencies.
- Reviewed the list of approved direct guarantee underwriters² and the information in the Computerized Homes Underwriting Management System (CHUMS), which is the current loan origination system used for the Section 184 program.
- Reviewed the documentation submitted by OLG regarding 23 loan files that were determined to be missing.
- Interviewed appropriate ONAP and OLG management and staff.

We relied on evidence obtained from eCase³ and information provided by ONAP, OLG, and other HUD headquarters officials. We did not rely on computer-generated data as audit evidence

¹ Management decisions are management's responses to recommendations, which includes corrective actions needed to resolve a recommendation.

² A direct guarantee lender is a Section 184 approved lender that may underwrite and close loans before OLG issues a loan guarantee certificate.

³ eCase is the platform used by HUD for its Audit Resolution and Corrective Action Tracking System (ARCATS).

or to support our audit conclusions. We based our conclusions on the source documentation reviewed during the audit and statements of HUD officials.

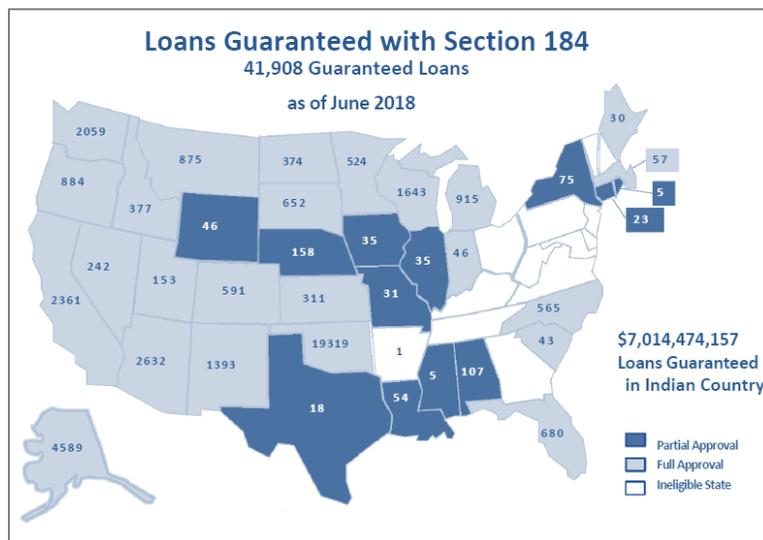
BACKGROUND

Under the provisions of Section 184 of the Housing and Community Development Act of 1992 and as amended by the Native American Housing Assistance and Self-Determination Act of 1996, HUD was authorized to guarantee loans made by private lenders to Native Americans, Indian housing authorities or tribally designated housing entities, and tribes. The Section 184 Indian Home Loan Guarantee program is a home mortgage specifically designed for American Indian and Alaska Native families, Alaska villages, tribes, or tribally designated housing entities. Section 184 loans may be used, both on and off native lands, for new construction, rehabilitation, purchase of an existing home, or refinance.

OLG, within ONAP, guarantees the Section 184 loans. OLG is responsible for oversight, program development, monitoring and quality control, program training, and marketing.

Participating lenders are entitled to a guarantee covering 100 percent of the outstanding principal, interest, and reasonable fees on loans made. The Indian Housing Loan Guarantee Fund was established for the purpose of providing loan guarantees and is funded in part by annual appropriations from Congress and through a fee paid by borrowers. At the time of the previous OIG audit, the program had guaranteed 26,247 loans totaling more than \$4.26 billion between 1995 and 2014. As of June 2018, the Section 184 program had guaranteed 41,908 loans totaling more than \$7.01 billion, an increase of 15,661 loans and \$2.75 billion in less than 4 years. The figure below shows the loans guaranteed by State as of June 2018.

Figure 1 – Section 184 loans guaranteed as of June 2018



The Senate Appropriations Committee report for the fiscal year 2016 appropriations bill (dated June 25, 2015) requested that HUD submit a report to the House and Senate Committees on Appropriations on how HUD has used the funding provided for administrative contract expenses,

including management processes and systems. The Senate Appropriations Committee report for the fiscal year 2017 appropriations bill (dated April 21, 2016) stated that the Committee was concerned that HUD had failed to submit the report as directed. The Committee noted that HUD had also failed to use the administrative contract expense fund to address critical systemic management and oversight shortcomings despite having more than \$2.6 million in unobligated balances for this purpose. Therefore, it requested that OIG review the management and oversight of the Section 184 program, including related information technology (IT) systems. HUD submitted the report to Congress on July 28, 2016.

Based on the congressional request, OIG’s Office of Evaluation conducted a separate review of OLG’s IT systems (2018-OE-0004). The review noted that HUD had not successfully deployed an IT system that enabled effective management and appropriate oversight of all Section 184 program processes. After spending \$4 million on developing the ONAP - Loan Origination System (LOS)⁴, the system did not satisfy all management and oversight objectives. The table below lists the findings from the Office of Evaluation’s review.

Table 1 – IT findings

1	LOS lacked functionality required to process and fully report on all Section 184 program loans.
2	LOS did not have a project plan for needed functionality and capabilities.
3	Only 1 of approximately 38 lenders involved with the Section 184 program used LOS due to an internal HUD system access issue.
4	LOS was dependent on a HUD Office of Housing legacy IT system, CHUMS, to process Section 184 loans.
5	HUD’s Office of the Chief Information Officer (OCIO), in partnership with the Office of Public and Indian Housing (PIH), successfully deployed the initial operating capability of LOS in the HUD Azure cloud environment and was positioned for future development.

RESULTS OF REVIEW

OLG continued to operate without adequate oversight of the Section 184 program. Many of the issues identified in the prior OIG audit report continued to impact the program 3 years later. HUD officials inappropriately closed 6 of the 10 closed recommendations from the prior OIG audit report. The corrective actions for the six agreed upon management decisions were not fully implemented or completed. One recommendation⁵ from the prior audit report remained open 3 years after the audit report was issued and past due by 6 months⁶, and the actions by OLG did not sufficiently address the recommendations. We also determined that OLG was not able to fully account for administrative contract expenses; had a nearly \$2.3 million unobligated

⁴ LOS was developed by a contractor in fiscal year 2017 to replace OLG’s current mortgage origination system.

⁵ Recommendation 1A remained open and included closed recommendation 1C, which was closed with the commitment by OLG to include in the corrective actions for recommendation 1A policies and procedures for claim payment denial due to material underwriting deficiencies.

⁶ The original final action target date for corrective action was October 28, 2015, revised to December 31, 2017.

administrative contract expense fund balance; and would primarily use these funds, in addition to the annual appropriation of up to \$750,000, for two contracts that cost approximately \$111,000 per year. The table below identifies the reasons why the 6 recommendations were inappropriately closed.

Table 2 – Inappropriately closed audit recommendations

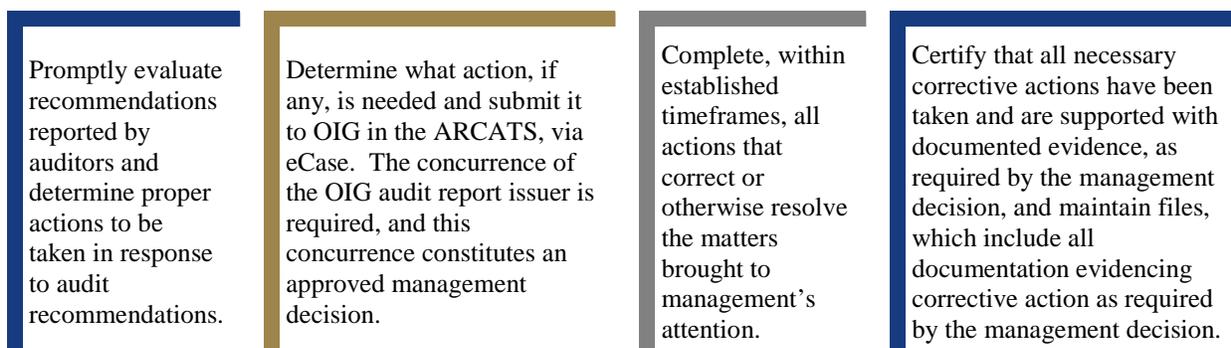
1B 1D 1H 1I	OLG developed revisions to the Section 184 processing guidelines for four of the recommendations that were inappropriately closed. However, the revisions were in draft form, had not been implemented, and were not used by OLG. HUD officials were aware that the revisions would require departmental clearance before the recommendations were inappropriately closed.
1J 1K	For two recommendations that were inappropriately closed, the corrective actions taken by OLG did not address the recommendation and associated management decision.

Since HUD had not taken corrective actions to properly address the audit recommendations in the 3 years since the issues were identified, the program had been allowed to operate without adequate oversight, statutory authority, and written internal procedures, increasing the risk of waste, fraud, and abuse. The lack of internal written policies and procedures would put OLG and HUD at significant risk in the event of employee turnover (a risk magnified by OLG’s level of full time employees, nine, with specific program expertise). Additionally, HUD’s actions of prematurely closing OIG audit recommendations without fully implemented corrective actions threatened the integrity of the audit resolution process.

Audit Resolution Process

HUD Handbook 2000.06 details the operating procedures for the management system HUD uses to monitor the implementation of recommendations in audit reports prepared by OIG, the U.S. Government Accountability Office, or other auditors. The core responsibility for the implementation of the audit resolution process⁷ is vested within HUD and its subordinate headquarters and field program and administrative managers. The figure below describes the audit resolution process after OIG issues an audit report or memorandum with recommendations.

Figure 2 – Audit resolution process



⁷ See appendix B for additional details on the audit resolution process required by HUD Handbook 2000.06.

Final action for an OIG-issued recommendation occurs when all actions identified in the management decision or the revised management decision have been implemented; the action official, recommendation action official, or point of contact certifies to the completion of all actions; and the audit liaison officer accepts the certification and closes the recommendation. Final action should normally occur within 1 year of the original management decision date.

Six Recommendations Inappropriately Closed

HUD officials (former OLG director and audit liaison officer) inappropriately closed 6 of the 10 recommendations from the prior audit report. The corrective actions for the six management decisions were not fully implemented or completed. ONAP and OLG did not have internal procedures to ensure that audit resolution was successfully implemented, reviewed, and completed. For all six of these recommendations, ONAP allowed audit resolution to be largely handled by the former OLG director without adequate management oversight. Additionally, the audit liaison officer did not sufficiently review the documents submitted to close the recommendations. The six recommendations and the related agreed upon management decisions are listed in the table below.

Table 3 – Audit recommendations and management decisions

1B	<i>Recommendation</i> - Develop and implement policies and procedures for a standardized monthly delinquency report format that lenders must follow when submitting information to OLG.
	<i>Management decision</i> – Office of Native American Programs (ONAP) agrees and will request support from Office of General Counsel - Regulatory Counsel to assist with drafting Servicing Regulations that will standardize the data points captured in the monthly Lender Servicing Reports. The objective is to collect servicing data in a form that enables HUD to perform data analytics to track and predict the loan performance. In the event that OLG cannot obtain a regulatory fix, OLG will work with Program Counsel to develop a program notice standardizing a loan servicing format.
1D	<i>Recommendation</i> - Develop and implement policies and procedures to ensure that OLG uses enforcement actions available under 12 United States Code (U.S.C.) 1715z-3a(g) for lenders that do not underwrite loans according to the Section 184 processing guidelines.
	<i>Management decision</i> - HUD agrees with the finding and Public and Indian Housing (PIH) OLG will use the 26 files with deficiencies, identified in the OIG review, as a sample set for an internal file review. OLG will develop and implement internal file review policies and procedures that provide clear direction for Direct Guarantee (DG) lenders. These policies and procedures will outline the enforcement process and remedies available for material deficiencies or patterns of errors and omissions. OLG will work with Program Counsel to refine and implement policies and procedures to ensure transparency.
1H	<i>Recommendation</i> - Ensure that only underwriters that are approved by OLG are underwriting Section 184 loans.
	<i>Management decision</i> - PIH ONAP OLG agrees with the recommendation. The Section 184 maintains an approved DG Underwriter list. The current list of DG Underwriters includes ninety (90) underwriters. OLG will purge the data currently in CHUMS and replace the data with the up to date list of approved DG Underwriters.
1I	<i>Recommendation</i> - Develop and implement procedures for situations in which the borrower for a Section 184 loan is an Indian housing authority, a tribally designated housing entity, or an Indian tribe.

	<i>Management decision</i> - PIH-ONAP OLG concurs with this recommendation. ONAP will develop and implement additional underwriting criteria for reviewing tribal entities. The goal is to align the cash flow review analysis criteria with the procedures and cash flow models used during the underwriting process for Title VI loan guarantee transactions, as well as some of the best practice factors used for Multi-Family loan packages.
1J	<i>Recommendation</i> - Reconcile the total list of guaranteed Section 184 loans to the complete loan file storage list and identify and locate any missing files. <i>Management decision</i> - PIH ONAP OLG agrees with this recommendation and will reconcile all Section 184 loan files currently stored at Iron Mountain with the list of guaranteed Section 184 loans.
1K	<i>Recommendation</i> – Determine whether any of the loan files were missing because of the contracts for loan file storage or data recording, and if so, seek monetary or administrative recourse for any contract nonperformance. <i>Management decision</i> - PIH has conferred with the Office of the Chief Procurement Officer and determined that there was insufficient specificity in the contract to impose monetary damages for failing to follow program office instructions that were not spelled out in the contract. Attached are a copy of the contract and an email communication of this opinion from PIH’s Chief Contract Oversight Officer. PIH ONAP OLG will provide additional correspondence received from the PIH Contract Oversight Officer before closure of this recommendation.

Recommendation 1B

OLG did not draft servicing regulations or develop a program notice that standardized a loan servicing format. In the justification to close the recommendation, OLG did not submit documents that contained policies and procedures for a standardized monthly delinquency report. OLG did revise chapter 8 of the Section 184 processing guidelines, which included the requirements for a new standardized monthly delinquency report, but these revisions were submitted for recommendation 1A and not included as part of the support for closure of recommendation 1B. Additionally, the revisions were submitted as a draft document, were not implemented, and did not go through departmental clearance as required by the HUD directives system⁸.

Although the revisions to the Section 184 processing guidelines were not implemented, OLG created a standardized monthly delinquency report format for servicing lenders to use. The servicing lenders had been submitting the reports, but not all servicing lenders followed the format or submitted all requested information. We also identified issues with the new servicing reports provided to OLG, such as no case numbers, incomplete information, and inconsistent information. Based on the management decision, OLG wanted to collect this information to perform data analytics to track and predict loan performance. However, if the information was not consistent or reviewed for accuracy, it might not be able to use the reports for their intended purpose. OLG was considering adding a servicing component to its new LOS but was not able to provide details for development or a timeline for implementation.

Recommendation 1D

OLG did not develop and implement internal file review policies and procedures, which outlined the enforcement process and remedies available for material deficiencies or patterns of errors and omissions. OLG submitted revisions to chapter 3 of the Section 184 processing guidelines as

⁸ Handbook 000.2 REV-3 provides the definition of a directive and states that all directives must be go through departmental clearance.

justification to close the recommendation, but these revisions⁹ were submitted in draft form, were not implemented, and did not go through departmental clearance as required by the HUD directives system⁸. Additionally, the revisions did not outline the procedures OLG would follow to ensure that it used all enforcement actions available under 12 U.S.C. (United States Code) 1715z-3a(g) for lenders that did not underwrite loans according to the Section 184 processing guidelines.¹⁰ Therefore, OLG did not implement the policies and procedures as stated in the recommendation.

Recommendation 1H

OLG did not submit documentation to support that the data in CHUMS had been updated based on the list of approved direct guarantee underwriters. We determined, and HUD officials confirmed, that CHUMS had not been updated as agreed to in the management decision. During the audit resolution process, OLG communicated to us that it would update LOS with the list of approved direct guarantee underwriters; however, the change had not been made at the time of this review. OLG should develop and implement written policies and procedures to ensure that CHUMS and LOS, when it is fully implemented and operational, are regularly updated.

OLG also submitted revisions to chapter 9 of the Section 184 processing guidelines during the audit resolution process. However, these revisions were submitted in draft form, were not implemented, and did not go through departmental clearance as required by the HUD directives system⁸. Additionally, the revisions addressed only the process to become an approved underwriter, not how OLG would ensure that only underwriters approved by OLG underwrote Section 184 loans.

Recommendation 1I

OLG submitted revisions to chapter 5 of the Section 184 processing guidelines as justification to close the recommendation, but these revisions were submitted in draft form, were not implemented, and did not go through departmental clearance as required by the HUD directives system⁸. Therefore, OLG did not implement the policies and procedures as stated in the recommendation.

Recommendation 1J

OLG did not reconcile all Section 184 loans that were guaranteed with the loan files in storage with the contractor. The documentation submitted by OLG as justification to close the recommendation stated that it reconciled only the 122 loans that OIG requested during the 2015 audit. However, the documentation did not support that this action was completed and that the contractor was not able to locate missing loan files. Of the 122 loans, OLG stated that it was not able to find 23 loan files.

⁹ The revisions were also submitted as support for recommendation 1A.

¹⁰ The enforcement actions available under 12 U.S.C. 1715a-3a(g) include (1) refusing, temporarily or permanently, to guarantee any further loans made by a lender; (2) barring a lender or holder from acquiring additional loans; (3) requiring lenders or holders to assume not less than 10 percent of any loss on further loans made or held; and (4) imposing civil money penalties for intentional violations.

We determined that OLG did not reconcile the 122 loans as stated. It appeared that OLG attempted to locate the 26 loan files that were included as part of recommendation 1E,¹¹ these loan files were not missing and were received by OIG during the previous audit. The contractor responsible for storing the loan files responded to OLG that 10 loan files were not on the inventory log, which raised further concerns and reinforced the need for completing a reconciliation of all loans guaranteed to the inventory log maintained by the contractor to identify missing files.

HUD officials stated that they would change contracts for the storage of documents in fiscal year 2019 and as part of this process, the current contractor and HUD would validate all of the loan files sent by the contractor and received by HUD. With this process, OLG should be able to reconcile this information to the total list of guaranteed Section 184 loans and identify any missing files.

Recommendation 1K

OLG did not submit documentation as justification to close the recommendation to support that the Office of the Chief Procurement Officer determined that there was insufficient specificity in the contract to impose monetary damages for failing to follow program office instructions not spelled out in the contract.

As part of OLG's response to recommendation 1J, it stated that a contractor that performed data analysis received all of the loan files from storage and did not return the loan files in the correct order. This situation resulted in HUD's inability to locate some loan files. The contract for the data review and validation was executed in April 2013 and cost approximately \$258,000. However, a HUD official stated that the information provided by the vendor was not used by OLG. In addition, we noted various issues concerning the inventory log maintained by the contractor for document storage services, which may have contributed to the missing loan files. The Office of Procurement and Contracts Services did not recall determining on either contract (loan file storage and data validation) that there was insufficient specificity in the contracts to impose monetary damages.

Deficiency for One Recommendation Appropriately Closed

Although recommendation 1E was appropriately closed, based on the plain language interpretation of the recommendation and management decision language (see table 4 below), OLG implemented minimal corrective action that did not thoroughly resolve the recommendation. The documentation submitted to close the recommendation indicated that OLG sent indemnification requests to 17 lenders for the 26 loans identified in the audit report that had material underwriting deficiencies. However, the letters did not include indemnification agreements for lenders to sign, which described the indemnification terms. Part of the management decision for recommendation 1D stated that OLG planned to use the process used for the 26 case files for indemnification of loans as a sample set for internal file reviews. There was an incomplete sample of procedures to follow because sending the letters was only part of the indemnification process. OLG did not have indemnification agreements or processes for

¹¹ That OLG request indemnification for the 26 loans that had material underwriting deficiencies

followup and resolution. The recommendation and the related agreed upon management decision is in the table below.

Table 4 – Corrective action taken but deficiencies not resolved

1E	<i>Recommendation</i> - Request indemnification for the 26 loans that were underwritten by direct guarantee lenders and had material underwriting deficiencies. The estimated loss to HUD is \$2,456,818.
	<i>Management decision</i> - PIH agrees with the finding and OLG will send a letter addressed to the respective lender seeking indemnification on each of the 26 loan files.

One Recommendation Open After 3 Years

Recommendation 1A from the prior audit report remained open 3 years after the prior audit report was issued and was past due by 6 months.¹² Recommendation 1A includes recommendation 1C, which was closed by HUD officials with OIG’s concurrence because they stated that it would be included and tracked under recommendation 1A. The two recommendations and the related agreed upon management decisions are listed in the table below.

Table 5 – Open recommendations

1A	<i>Recommendation</i> - Develop and implement written policies and procedures with an emphasis on increased controls toward the monitoring, tracking, underwriting, and evaluating of the Section 184 program. Implementing these controls would reduce the current high level of risk in the program and result in potentially \$76,967,618 in funds to be put to better use.
	<i>Management decision</i> - ONAP agrees, and will conduct a comprehensive review of Section 184 policies and procedures from a “risk management” perspective, updating them as necessary. Each area reviewed will result in an update or new policy that specifically addresses eligibility and selection criteria, monitoring plans, data quality monitoring, performance tracking, risk assessment elements, and ratings.
1C	<i>Recommendation</i> - Develop and implement policies and procedures to deny payments to direct guarantee lenders for claims on loans that have material underwriting deficiencies.
	<i>Management decision</i> - OLG agrees, and intends to identify comprehensive policies and procedures in the Proposed Management Decision for Recommendation 1A. This provision would be included as part of item 2 - Direct Guarantee approval process and monitoring. ONAP requests that this action be tracked under Recommendation 1A.

Just before the current audit, OLG stated that it had completed a comprehensive review of its policies and procedures but was unable to provide documentary support detailing the results of the review. To resolve recommendation 1A during the audit resolution process, OLG initially submitted documents, such as revised chapters of its Section 184 processing guidelines,¹³ for the closure of recommendation 1A. However, OLG determined that the Section 184 regulations did

¹² The prior report was issued on July 6, 2015, and the original final action target date for corrective action was October 28, 2015, revised to December 31, 2017.

¹³ Revisions were submitted as draft documents that were not implemented and did not go through departmental clearance.

not provide sufficient authority.¹⁴ OLG was drafting revised regulations to provide more specific regulatory authority. OLG consulted with the tribes from February to May 2018 and planned to publish a proposed rule in the Federal Register by the end of fiscal year 2018. After the regulations have been completed, OLG planned to revise its Section 184 processing guidelines based on the enhanced regulations.

Additionally, the revised chapters that were submitted during the audit resolution process did not address “eligibility and selection criteria, monitoring plans, data quality monitoring, performance tracking, risk assessment elements, and ratings,” as stated in the agreed-upon management decision. All of the areas that were agreed to in the management decision would not be addressed directly in the revised Section 184 processing guidelines as drafted. There should be “new policy,” as stated in the management decision, for internal use that should address “eligibility and selection criteria, monitoring plans, data quality monitoring, performance tracking, risk assessment elements, and ratings.” Also the revised chapters did not outline procedures OLG would take to deny claim payments to lenders for recommendation 1C.

The prior OIG audit report stated that OLG did not have policies or procedures for selecting and monitoring lenders. Since the prior audit, OLG had not created internal policies and procedures for monitoring and evaluating lenders and had started to create policies only after this audit started. During the audit, a chapter of the Section 184 processing guidelines was provided in response to a request for current internal procedures for the monitoring of lenders. However, this chapter was dated 2011 and related only to the quality control plan requirements for lenders to implement. Further, a HUD official stated that it was not being used because regulations were being developed for the Section 184 program and detailed policy would be created to implement the regulations.

OLG had also not changed the procedures for selecting lenders for review and did not use reports that were available to evaluate the performance of lenders. In selecting lenders, OLG considered only the loan volume, the office location, and whether lenders had been reviewed previously. No other risk factors were used to target lenders that potentially posed a risk to the program, such as the status of loans (for example, defaults and claims). OLG had developed a standardized monthly report for servicing lenders to report delinquent loans (prior audit recommendation 1B); however, it was not merged with the loan origination data to identify the performance of lenders.

The prior OIG audit report also noted that from fiscal years 2012 to 2014, only 9 lenders and 36 loans were reviewed from the 10,977 loans that were guaranteed during that timeframe. From fiscal years 2015 to 2017, we determined that OLG reviewed 10 lenders. Based on the monitoring reviews, there were two lenders that had outstanding findings so OLG indicated that a percentage of loans endorsed for these lenders would be selected for a full technical review. OLG did not take enforcement actions against the lender and did not select a percentage of loans endorsed for a full technical review because two of the three underwriters were no longer with the lenders.

¹⁴ OLG stated that HUD’s Office of General Counsel made this determination but confirmed that it was not supported by a legal opinion or other legal advice document. Instead, OLG stated that the determination was part of a meeting and was made verbally. Therefore, the determination was not available for review during the audit.

For recommendation 1C, the prior OIG audit report stated that OLG denied the claim payment for one loan because it contained material underwriting deficiencies, but there were no specific policies and procedures on how to process denials. OLG had not developed or implemented corrective actions to address this recommendation. The revisions to the Section 184 processing guidelines did not outline procedures OLG would take to deny claim payments to lenders.

Statutory Authority Needed To Indemnify Loans With Material Underwriting Deficiencies

OLG appropriately closed recommendation 1F based on the plain language of the recommendation and its actions to request indemnification authority. However, it had not received the statutory authority to indemnify loans that were not underwritten in accordance with Section 184 processing guidelines. OLG continued to request statutory authority in its budget request, most recently for fiscal year 2019. The recommendation and the related agreed upon management decision is listed in the table below.

Table 6 – Recommendation 1F

1F	<p><i>Recommendation</i> - Request specific statutory authority to indemnify loans that are not underwritten in accordance with the Section 184 processing guidelines.</p>
	<p><i>Management decision</i> - OLG has been working with HUD’s Office of Congressional and Intergovernmental Relations and through the budgetary process for each of the last 3 years to get legislative authority to impose indemnification when loans do not materially comply with Section 184 guidelines. The language is also in the fiscal year 2016 legislative package. The department continues to request indemnification authority annually; However, Congress has not advanced this important legislative action.</p>

Approximately \$2.3 Million Unobligated for Administrative Contract Expenses

As part of the Consolidated Appropriations Act, each year, OLG is allowed to use up to \$750,000 of the appropriated amount for administrative contract expenses, including management processes and systems to carry out the Section 184 program, and these funds are available until spent. In addition to this annual appropriation, OLG has approximately \$2.3 million in its administrative contract expense fund and will use these funds primarily for two contracts that cost approximately \$111,000 per year. OLG did not identify any other contracts or plans to spend unobligated funds. The table below identifies administrative contract expense fund balances for fiscal years 2009, to 2018.

Table 7 – Administrative contract expense balances

Fiscal year	Allotted amount ¹⁵	Obligated amount ¹⁶	Unobligated balance
2009	\$350,000	\$0	\$350,000
2010	350,000	400,000	300,000
2011	348,500	431,630	216,870
2012	350,000	180	566,690
2013	710,770	493,554	783,906
2014	750,000	298,809	1,235,097
2015	750,000	264,903	1,720,194
2016	750,000	242,102	2,228,092
2017	750,000	1,440,702	1,537,390
2018	750,000	0	2,287,390

HUD stated that the funds allotted for administrative contract expenses were used to fund contracts for OLG. Since fiscal year 2015, it appeared that OLG had used the funds for four contracts and an interagency agreement, but we were not provided documentation to verify this information. OLG was also not able to provide specific line item details to support what expenditures were paid from the administrative contract expense fund. OLG was able to provide only an overview of obligations and expenditures. Starting in fiscal year 2019, OLG will use the administrative contract expense fund for only two contracts (credit subsidy rate and subscriptions for database search engines) and a short-term contract for document storage services as it transitions to a new contract that will not be funded by OLG. Below are the four contracts and the interagency agreement for OLG since fiscal year 2015.

- An interagency agreement with the Office of the Chief Information Officer (OCIO) for the development of OLG’s new LOS to replace the current system. OLG transferred \$1 million to OCIO in fiscal year 2017 to help develop the system, and OCIO funded the remaining amount of the contract. OCIO was also funding the operations and maintenance of the contract, costing \$903,000 per year. Since fiscal year 2016, OLG and OCIO had jointly spent \$3.53 million¹⁷ on LOS development and implementation and planned to spend an additional \$351,365 through fiscal year 2018.

The development of LOS began after the 2015 audit.¹⁸ With the new system, lenders would be able to enter loan origination information directly into the system, which would allow OLG to use its resources for other areas of need. With the current system, OLG staff enters loan origination information into the system for lenders because the lenders do not have access. However, the new system had not been fully implemented, did not

¹⁵ The allotted amounts are based on the end of year amounts for each fiscal year. For fiscal year 2018, the allotted amount is as of June 11, 2018.

¹⁶ The obligated amounts are as of April 30, 2018.

¹⁷ OLG and OCIO have spent \$3.53 million to date.

¹⁸ OIG’s Office of Evaluation conducted a separate review of this system. See background section for more details on the Office of Evaluation’s IT review.

have a servicing component, lacked a thorough reporting feature, and was being used by only one lender.

- A contract for underwriting support to review loan files submitted for loan guarantee certificates. The contract was executed in fiscal year 2015 for a 3-year period for a total of \$501,540 (or an average of \$167,180 per year). HUD officials stated that the contract would end at end of fiscal year 2018 and would not be renewed due to the planned implementation of the new origination system. HUD officials expressed concern that if there was a delay in implementing LOS, there could be a backlog of loan endorsements because there would be no support from this contract.
- A contract for document storage services. The contract was executed in fiscal year 2015 for a period of 3 years for a total of \$168,520 (or an average of \$56,173 per year). HUD officials stated that the contract would expire at the end of fiscal year 2018 and they will transition to a new contract with a government agency for document storage services.¹⁹
- A contract for credit subsidy modeling services. The contract has a total cost of \$299,250 over a 3-year period (or \$99,750 per year). HUD officials stated that this contract was an ongoing contract for OLG and was needed every year.
- A contract for subscriptions to database search engines. The contract was executed in fiscal year 2015 for a period of 5 years for a total of \$56,052 (or an average of \$11,210 per year).

Given the oversight and control issues identified in this audit memorandum, the prior OIG audit report, and OIG's Office of Evaluation's IT review, OLG should take steps to ensure that unobligated administrative contract expense funds are more fully used toward enhancing and increasing its capacity to monitor, track, and evaluate the Section 184 program internally and externally.

OLG Staffing Needs and Changes

ONAP indicated its priority to review the Section 184 program and reorganized OLG leadership early in 2018 with a new deputy director and reassignment of the previous director. OLG was staffed by nine HUD employees, made up of one deputy director and eight support staff members (two outstationed in HUD field offices). The OLG director position remained vacant. OLG was similarly staffed at the time of the prior OIG audit; 11 HUD employees made up of 1 director and 10 support staff members. (Two support staff members left the program soon after OIG initiated the prior audit.) During interviews for the current audit, OLG and ONAP leadership and support staff overwhelmingly indicated the need for additional staff. As stated above, OLG had a contract for staffing support that totaled \$501,540 over 3 years. Support staff members worked in cross-functional capacities to fulfill the mission of the Section 184 program. OLG should consider additional leadership and support staff as appropriations permit.

¹⁹ The new contract will not be funded by OLG's administrative contract expense fund.

CONCLUSION

The prior OIG audit report, 2015-LA-0002, determined that OLG did not provide adequate oversight of the Section 184 program. We determined that OLG continued to operate the program without adequate oversight 3 years after the prior report was issued, was not able to fully account for administrative contract expenses, and had a nearly \$2.3 million unobligated administrative expense fund balance. Our review of the actions taken as a result of the recommendations from the prior audit report determined that OLG inappropriately closed 6 of the 10 closed recommendations and 1 recommendation²⁰ remained open and was past due. OLG disregarded our audit recommendations and did not provide adequate oversight, allowing audit resolution to be handled largely by one employee without adequate management oversight. OLG did not have formal procedures or processes for implementing the audit resolution process. Despite statements to the contrary, HUD did not sufficiently review the documents submitted to close the audit recommendations. OLG recognized its policy shortcomings and had determined the need for additional statutory and regulatory authority, which were in the draft stage, to implement revised policies and procedures that would address the prior audit recommendations.

RECOMMENDATIONS

Based on the cited deficiencies, we will reopen the six recommendations from OIG audit 2015-LA-0002 that were inappropriately closed (1B, 1D, 1H, 1I, 1J, and 1K) until corrective action is fully developed and implemented. We will also reopen recommendation 1C, which was closed and moved to recommendation 1A, to ensure that it is properly tracked and addressed.

In addition, we recommend that HUD's Deputy Assistant Secretary for the Office of Native American Programs

- 1A. Develop and implement internal policies and procedures to ensure that approved underwriters are accurately maintained and kept current in the origination systems for the Section 184 program.
- 1B. Develop a comprehensive plan to continue to seek indemnification statutory authority, including consideration to include indemnification authority language in draft regulations currently being considered. Until statutory authority is obtained, develop and implement internal policies and procedures for the voluntary indemnification process, to include a voluntary indemnification agreement, followup procedures, and resolution procedures. Procedures should be revised once statutory authority is obtained.
- 1C. Develop and implement internal ONAP and OLG policies and procedures for the audit resolution process, complementing HUD Handbook 2000.06, to include management oversight and review of documents prepared and submitted to

²⁰ Recommendation 1A remains open and also includes closed recommendation 1C, which was closed with the commitment by OLG to include in the corrective actions for recommendation 1A policies and procedures for claim payment denial due to material underwriting deficiencies.

evidence that corrective actions have been adequately developed and fully implemented.

- 1D. Support line item expenditures for the administrative contract expense fund for fiscal years 2015 to 2018. OLG should repay the U.S. Department of the Treasury for any expenditures that cannot be supported.
- 1E. Develop and implement policies and procedures, coordinating with other program offices as needed, to track and make administrative contract expense fund expenditures readily available for review.
- 1F. Develop and implement a comprehensive plan to use unobligated administrative contract expense funds.
- 1G. Consider adding additional OLG staff, including a full time director to provide additional leadership and management oversight.

Appendix A

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 1

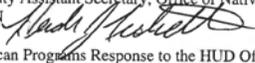
Comment 1

Comment 1


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

August 16, 2018

MEMORANDUM FOR: Tanya E. Schulze, Regional Inspector General for Audit, Los Angeles Region, 9DGA

FROM: Heidi J. Frechette, Deputy Assistant Secretary, Office of Native American Programs, PN 

SUBJECT: Office of Native American Programs Response to the HUD Office of Inspector General draft audit Titled: "The Office of Native American Programs Section 184 Program Continues to Operate Without Adequate Oversight 3 Years After the Prior Audit" (2018-LA-080X)"

Thank you for the opportunity to review the discussion draft memorandum, entitled "The Office of Native American Programs Section 184 Program Continues to Operate Without Adequate Oversight 3 Years After the Prior Audit". After review of the document, our office would like to offer some insight into the steps it has taken to address the Office of Inspector General's (OIG's) concerns in this discussion draft and the OIG's Audit Report 2015-LA-0002. We will address the six re-opened and seven new recommendations in more detail when submitting Proposed Management Decisions within the specified times after issuance of the final report.

Claims Backlog

Since the original audit was completed, the Office of Native American Programs (ONAP), under new leadership, has made a significant investment of staff and time in reducing the backlog of claims and improving the Section 184 Loan Guarantee Program. Given the limited staff resources available to ONAP, it became necessary to pull staff from both the ONAP Area Offices and headquarters and assemble a team to address the ongoing systemic issues within the Office of Loan Guarantee (OLG). The team, which is led by a senior ONAP staff member who became the Deputy Director for OLG and the Senior Advisor to the ONAP Deputy Assistant Secretary, were tasked to focus on OLG improvement. The team implemented new procedures for processing claims, drafted updated Public and Indian Housing (PIH) Notices on the claims and property preservation process, updated and reinstated a claim tracking base, with advice of allotment information, and established new procedures for transferring foreclosed properties to the Federal Housing Administration (FHA) for management and disposition. As a result, OLG resolved over \$5 million in claims. Some of these claims go back as far as 2014.

Regulations

ONAP is in the process of drafting program regulations to address all aspects of the Section 184 Loan Guarantee Program, including eligibility requirements, approval of lender, underwriting, loan servicing, claims processing, and property preservation and marketing. In order to adhere to HUD's tribal consultation policy and the nature of HUD's government-to-government relationship with tribes, extensive consultation with tribal representatives is

www.hud.gov espanol.hud.gov

Ref to OIG Evaluation

Comment 1

necessary. HUD has held seven regional tribal consultations and three national tribal consultations to solicit tribal feedback on possible regulatory changes. To assist with the drafting, an internal HUD working group made up of staff from senior level ONAP, OLG, and the two offices in the Office of General Counsel is currently drafting proposed regulations based on responses from the tribal consultations, findings and recommendations from the prior OIG report, current best-practices, FHA regulations and program counsel recommendations. ONAP anticipates the draft rule going out for further tribal consultation in the fall and onto Office of Management and Budget (OMB) clearance early next year.

Comment 1

Comment 2

Policies and Procedures

OLG has established new internal operating procedures. For example, how to process mail, how to process claims, and the sale of tribal trust properties. Recently, OLG held training with the Bureau of Indian Affairs staff to bring consistency to the title process across the country. OLG staff are currently drafting Standard Operating Procedures for their individual functions. Other attempts by OLG to establish new policies and procedures as recommended by OIG in the initial report have been delayed due to OGC's determination and non-concurrence on certain proposed policies, including proposed PIH Notices relating to claim processing. After a review of the statutory and implementing regulatory authority already in existence, OGC advised that OLG must have new regulations in place to issue new policies and procedures through PIH Notices governing the program. Therefore, ONAP's current efforts and resources are now being concentrated on developing the new regulations described above. After these are established through consultation and rulemaking, ONAP will develop new policies and procedures to align with the new regulations. However, this process must include tribal consultation and be accomplished by a very small number of OLG and ONAP staff as OIG notes in this discussion draft. OLG employees are running the program while they are also working to address long standing systemic issues OIG has noted. Unfortunately, a significant amount of staff time and OLG resources have been diverted over the last several months to respond to more than 11 substantial lists of document requests from OIG with multiple items demanded in each, as well as staff interviews, for this audit and the OIG review of the OLG Information Technology (IT) systems.

Comment 1

Loan Data

A new contractor has been obtained for reviewing and improving the Section 184 credit subsidy model so that OLG can continue to ensure that the Indian Loan Guarantee credit subsidy model accurately reflects the programs. This process will assist in identifying the loan data elements that impact overall loan performance. OLG will use this data, as appropriate, to further direct the monitoring of approved Section 184 lenders.

Comment 1

Records Storage

ONAP continues its effort started nearly a year ago to ensure that OLG records are properly handled and stored. The current storage contract is in the final year, after which it will move all files from the contractor to the National Archives and Records Administration (NARA). During the transition, the contractor will log and re-box all files for transport to HUD. This will address most of the filing errors that occurred under the data validation contract. OLG staff will review the work of contractor, to ensure quality records management and data accuracy before logging and transporting the files to NARA.

**Ref to OIG
Evaluation**

Comment 3

Unobligated Balances

ONAP and OLG have been advised that the unobligated administrative funds balance is high, in part, because beginning in FY 2013, ONAP requested upwards of \$700,000 to procure a license to an off-the-shelf virtual mortgage processing software platform, in addition to maintaining funding for the other ongoing contracts. The progress was delayed numerous times due to changes in both PIH and the Office of the Chief Information Officer's (OCIO's) development and procurement strategies. However, ONAP is now strongly urging the ONAP-LOS project team to continue to pursue (and has already committed \$1 million) to the development of LOS to automate the Section 84 loan process. Since the LOS has several phases of development, it is anticipated that these funds will be utilized to support additional phases of the system.

Comment 1

Loan Origination System

As with all the contracts described above and that involve program administration, OLG and ONAP have limited control over the contracts for LOS development. OLG staff does provide subject matter expertise on the LOS, but no one from OLG or ONAP is the Contracting Officer (CO), Government Technical Monitor (GTM) or Government Technical Representative (GTR) on the LOS contract. As noted in ONAP's response to OIG's report on OLG's IT systems (2018-OE-0004), the decision-making authority on those contracts is vested in the "ONAP-LOS project team" which consists primarily of a Project Manager from the Office of the Assistant Secretary for PIH and a Project Manager from the Project Management Branch of OCIO. ONAP and OLG have little control over the operational or development processes used by the ONAP-LOS project team. Nevertheless, OLG staff meets with a contractor on a weekly basis to discuss the operating and maintenance of the LOS system. ONAP held union negotiations around the implementation of the LOS system and potential impact on OLG staff. OLG staff trained on LOS system and developed a roll-out plan for lender training. Overall implementation of LOS has been delayed due to security issues noted in the OIG's OLG IT Report. While various offices within HUD are resolving this security issue, OCIO is moving forward with adding a Section 184 as the first component of the eICAM system (estimated deliverable date is September 2018).

Comment 4

Staff

ONAP agrees with the OIG recommendation to add additional staff. OLG is currently operating at half the number of staff necessary to operate its programs. The office is actively recruiting a new full-time director and hopes to have the position filled within the near future. ONAP is also actively requesting additional full-time employee positions. Unfortunately, the office is limited by the current Full Time Equivalent ceiling but is advocating HUD leadership to raise the ceiling.

Comment 5

Corrections

ONAP would like to suggest one correction to the draft. On page 12, OIG claims that OLG does not have policies on how to deny claim payments to lenders. This is incorrect. OLG has loan processing guidelines established in 2014 and PIH Notices 2014-11 and 2104-22. In addition, ONAP and OLG vehemently disagree with OIG's characterization that six of the recommendations (1B, 1D, 1H, 1I, 1J and 1K) in Audit Report 2015-LA-0002 were "improperly closed" by "HUD officials." Although the former OLG Director provided documentation and

Comment 6

Ref to OIG Evaluation

Comment 7

explanation, and the Office Public and Indian Housing (PIH) Audit Liaison Officer closed the recommendations in ARCATS, the Administrative Officer of OIG Los Angeles Field Office for Audit and the OIG audit team had access to all documents and explanations submitted and either affirmatively or at least tacitly concurred on each recommendation closure. To hold only ONAP and the PIH Audit Liaison Officer responsible for a closure OIG now deems improper is inappropriate and we request that characterization of the recommendation closure be removed or significantly revised.

ONAP will continue to work with its Audit Liaison Officer and OIG to ensure that the re-opened findings are properly closed. Responses to the seven new recommendations are outlined below.

New Recommendation 1A: Develop and implement internal policies and procedures to ensure that approved underwriters are accurately maintained and kept current in the origination systems for the Section 184 program.

Comment 8

ONAP Response: ONAP and OLG believe this recommendation is duplicative of the re-opened Recommendation 1H of Audit Report 2015-LA-0002 and should be deleted. That recommendation to ONAP is to "[e]nsure that only underwriters that are approved by OLG are underwriting Section 184 loans." If this recommendation is not removed, ONAP and OLG disagree with it because it is duplicative and unnecessary considering OIG's reopening of Recommendation 1H of Audit Report 2015-LA-0002.

New Recommendation 1B: Develop and implement internal policies and procedures for the indemnification process, to include an indemnification agreement, follow-up procedures, and resolution procedures.

Comment 9

ONAP Response: As noted in the draft report, OLG has sought but has been unsuccessful in obtaining "specific statutory authority to [require indemnification for] loans that are not underwritten in accordance with Section 184 processing guidelines." Indeed, OIG acknowledges that each year, OLG unsuccessfully requests this statutory authority in its budget requests, most recently for fiscal year 2019. Although OIG makes this acknowledgement, as well as acknowledges in another recommendation that OLG needs staff, it nevertheless wants OLG to devote its limited staff and limited resources to "developing internal policies and procedures for the indemnification process" that OLG may not have the statutory authority to implement. ONAP and OLG believe this recommendation far exceeds any measure of reasonableness and requires action that to this date can only be seen as futile. It should be removed or at the very least, be conditioned on OLG's success in obtaining the authority, which OLG and ONAP have actively sought each year. If this recommendation is not removed or not conditioned on OLG obtaining statutory authority to require indemnification, ONAP and OLG disagree with it because its resolution will direct limited staff and resources to an act of futility because we do not have the statutory authority at this time.

New Recommendation 1C: Develop and implement internal ONAP and OLG policies and procedures for the audit resolution process, to include management oversight and review of documents prepared and submitted to evidence that corrective actions have been adequately

**Ref to OIG
Evaluation**

Comment 10

developed and fully implemented.

ONAP Response: With the limited staff and resources OIG acknowledges, ONAP and OLG believe it is duplicative and unnecessary to require ONAP and OLG to develop and implement internal policies and procedures for audits when there are policies and procedures already in place. HUD Handbook 2000.06, Rev-4, entitled "Audits Management System (AMS)" is applicable to the processing of all audit reports issued by the OIG. That Handbook asserts that its requirements conform with those of the Inspector General Act of 1978, as amended (5 USC APP.3); OMB Circular A-50, revised and entitled "Audit Follow-up;" and OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations". Accordingly, we request that this recommendation be removed or at least reworded as "*ONAP and OLG will adhere to HUD Handbook 2000.06, Rev-4, entitled Audits Management System (AMS), for the audit resolution process.*" If reworded, ONAP and OLG agree with this recommendation and will address the recommendation when submitting the Proposed Management Decision within 120 days of issuance of the final report. If this recommendation is not revised, ONAP and OLG disagree with it because it is duplicative and an unnecessary burden on a limited staff with limited resources.

New Recommendation 1D: Support line item expenditures for the administrative contract expense fund for fiscal year 2015 to 2018. OLG should repay the U.S. Department of the Treasury for any expenditures that cannot be supported.

ONAP Response: As noted above, staff in ONAP and OLG act solely as subject matter experts on the various administrative and IT contracts used in the Section 184 Loan Guarantee Program. No OLG or ONAP staff are the CO, GTR or GTM on any of these contracts. Accordingly, all support line item expenditures for the administrative contract expense fund are with offices not within ONAP or OLG and therefore we request that this recommendation not be included in the final audit. This function is the responsibility of PIH, OCIO, the Office of Chief Procurement Officer (OCPO) or other offices within HUD. Since the scope of the audit was limited to ONAP and OLG, this recommendation should not be included in this audit or should be directed to the appropriate offices in HUD other than ONAP and OLG. If this recommendation is not removed or revised, ONAP and OLG disagree with it because of our inability to control its resolution.

New Recommendation 1E: Develop and implement procedures to track and make administrative contract expense fund expenditures readily available for review.

ONAP Response: Again, because ONAP and OLG have limited control over the administration of the administrative contract expense fund expenditures, the function of tracking and making administrative contract expense fund expenditures readily available for review belongs to other offices in HUD. Accordingly, since the scope of the audit was limited to ONAP and OLG, we request that this recommendation be removed from this audit or directed to the appropriate offices in HUD other than ONAP and OLG. If this recommendation is not removed or revised, ONAP and OLG disagree with it because of our inability to control its resolution.

Recommendation 1F: Develop and implement a comprehensive plan to use unobligated administrative contract expense funds towards increasing OLG's oversight capacity in the areas

Comment 11

Comment 12

**Ref to OIG
Evaluation**

Comment 13

of monitoring, tracking, and evaluating the Section 184 program.

ONAP Response: We request that this recommendation be reworded as *“ONAP and OLG are encouraged to use unobligated administrative contract expense funds towards increasing OLG’s oversight capacity in the areas of monitoring, tracking, and evaluating the Section 184 program.”* If reworded, ONAP and OLG agree with this recommendation and will address the recommendation when submitting the Proposed Management Decision within 120 days of issuance of the final report. ONAP and OLG believe it is inappropriate for OIG to direct a program office on where that program office is to best allocate its limited funding. As described earlier, these funds will be used to develop a system to automate the process of receiving case numbers and HUD’s guarantee of mortgages. Any additional funding will be directed to areas of the Section 184 Loan Guarantee Program OLG and ONAP determine appropriate. If this recommendation is not revised, ONAP and OLG disagree with it because it exceeds OIG’s oversight authority and supplants the management structure of ONAP and OLG.

Recommendation 1G: Consider adding additional OLG staff, including a full-time director to provide additional leadership and management oversight.

Comment 4

ONAP Response: ONAP and OLG strongly agree with this recommendation. However, as explained above, ONAP and OLG has limited staffing resources to administer several important national programs. Those staffing resources, half of what OLG needs to fully operate its programs, are limited by the current Full Time Equivalent ceiling assigned. ONAP is actively advocating HUD leadership raise that ceiling. Accordingly, ONAP and OLG request that this recommendation be directed above the ONAP Deputy Assistant Secretary level. If this recommendation is not revised, ONAP and OLG is forced to disagree with it because of our inability to control its resolution.

Thank you for your continued partnership. We look forward to working with you to implement the acceptable recommendations. If you have any questions, please do not hesitate to contact Gary A. Nemece, Director of the Office of Grants Evaluation at 202.402.2988.

OIG Evaluation of Auditee Comments

Comment 1 We acknowledge that the Office of Native American Programs (ONAP) will address the six re-opened and seven new recommendations in more detail when submitting the proposed management decisions. We note that ONAP provided comments on the seven new recommendations in its response. Our evaluation can be found in the comments below.

We also acknowledge and appreciate ONAP's efforts with respect to reducing the claims backlog, drafting revised Section 184 regulations, internal policies and procedures, improving loan data, and improving records storage. ONAP should ensure it provides the relevant support for those areas that address the re-opened and new audit recommendations during the audit resolution process.

Comment 2 ONAP stated it was advised by HUD's Office of General Counsel that new regulations must be in place in order to issue new policies and procedures through Public and Indian Housing (PIH) notices; however, the Office of Loan Guarantee (OLG) could have developed new written internal policies and procedures based on the deficiencies noted in prior OIG audit report 2015-LA-0002. For example, for recommendation 1D, OLG could have developed new written internal operating procedures that outlined the procedures it would follow to ensure that is used all of the enforcement actions available under 12 U.S.C. 1715z-3a(g) for lenders that did not underwrite loans according to the Section 184 processing guidelines. Also, for recommendation 1A, which remains open, OLG could have developed new written internal operating procedures for monitoring, tracking, and evaluating lenders. The prior audit report specifically stated that OLG did not have policies and procedures for selecting and monitoring lenders. As this audit report memorandum states, OLG had not created internal policies and procedures for monitoring and evaluating lenders and had started to create policies only after this audit started.

Comment 3 ONAP stated that its administrative funds balance is high, in part, because beginning in fiscal year 2013 it requested upwards of \$700,000 to procure a license to an off-the-shelf virtual mortgage processing software platform. However, we note that OLG has maintained an unobligated balance of approximately \$1.2 million to \$2.3 million from fiscal year 2014 to 2018 and requested \$750,000 in funding for all of those years. The unobligated balance also takes into account the \$1.0 million committed for the Section 184 Loan Origination System (LOS) in fiscal year 2017. As stated in recommendation 1F, we recommended ONAP develop and implement a comprehensive plan to use unobligated administrative contract expense funds. This would include ONAP's statement that it anticipates to use the unobligated administrative funds balance towards supporting additional phases of the LOS.

- Comment 4 ONAP agreed that OLG needs additional staff despite having limited staffing resources. However, they requested that recommendation 1G be addressed to the HUD deputy secretary, citing disagreement if the recommendation is not addressed above the ONAP deputy assistant secretary level. We acknowledge the staffing difficulties cited by ONAP in its response, however, the recommendation states to “consider” adding additional staff, including a full-time director. The recommendation remains unchanged as it is ONAP and OLG’s responsibility to coordinate with senior level HUD management above the ONAP deputy assistant secretary to further explore the potential for adding staff, including a full time director.
- Comment 5 We disagree with ONAP’s assertion that PIH Notices 2014-11 and 2014-22 contain policies on how to deny claim payments to lenders. The audit memorandum states there were no specific policies and procedures on how to process denials for loans that contained material underwriting deficiencies. PIH Notice 2014-11 only states that OLG reserves the right to deny payment on a guarantee request that is not complete. Also, PIH Notice 2014-22 does not address the denial of claim payments. OLG should develop internal written policies and procedures that outline the procedures it will take to deny claim payments to lenders and the situations in which denial of claim payments would occur.
- Comment 6 ONAP disagreed with OIG’s characterization that six of the recommendations from audit report 2015-LA-0002 were improperly closed by HUD officials. The conclusion on the closed audit recommendations was made based on available documentation obtained during the audit that indicated HUD officials improperly closed the questioned recommendations. As stated in HUD Handbook 2000.06, REV-4, it is the responsibility of the action official, the recommendation action official, or the point of contact to certify that all actions have been taken in accordance with the agreed-upon management decision and that all supporting documentation evidencing final action has been obtained. It is also the responsibility of the audit liaison officer that there is sufficient evidence to demonstrate that the corrective actions have actually occurred before closing the audit recommendations. For the reasons stated in this audit memorandum, the prior audit recommendations were closed in a manner that did not adhere to HUD Handbook 2000.06, REV-4.
- Comment 7 We strongly disagree with ONAP’s statement that the administrative officer of the OIG Los Angeles Field Office and the audit team had access to all documents and explanations submitted and either affirmatively or at least tacitly concurred on each recommendation closure. We note that ONAP did not provide support for its statement but we do acknowledge that the documents and explanations submitted by the former OLG director and audit liaison officer were accessible by OIG. However, the documents were only accessible to OIG after the recommendations were closed. The questioned prior audit recommendations were closed by OLG

and the audit liaison officer, not by OIG. OIG neither affirmatively nor tacitly concurred with the closure of the questioned prior audit recommendations.

HUD Handbook 2000.06, REV-4 states that OIG evaluates the effectiveness of the Audits Management System by conducting periodic audits and Corrective Active Verifications on selected recommendations. Although this audit was initiated based on a Senate Appropriations Committee request, it served the same purpose of a Corrective Action Verification since the OIG previously conducted an audit of the Section 184 program in 2015. Corrective Action Verifications are intended to be a quality control process over the Audits Management System. It is through these processes that OIG identified prior audit recommendations that were improperly closed.

- Comment 8 ONAP stated it disagreed with recommendation 1A if it is not removed because they believe it is duplicative of the re-opened recommendation 1H of audit report 2015-LA-0002. We disagree the recommendation is duplicative. Recommendation 1H from audit report 2015-LA-0001 recommended ONAP to ensure that only underwriters that are approved by OLG are underwriting Section 184 loans. Recommendation 1A from this audit memorandum recommends ONAP ensure that approved underwriters are accurately maintained and kept current in the originations systems for the Section 184 program. While the initial management decision for recommendation 1H did state that OLG would replace the data in CHUMS with an up to date list of approved DG underwriters, a new management decision will be required for the re-opened recommendation. Recommendation 1H does not specifically address maintaining an accurate roster of approved underwriters and does not specifically include OLG's recently implemented Section 184 Loan Origination System. Therefore, we added recommendation 1A to ensure the issues pertaining to approved underwriters are fully captured.
- Comment 9 ONAP stated it disagreed, without removal or conditioning, with recommendation 1B because its resolution will direct limited staff and resources to an act of futility because there is no statutory authority at this time for indemnification of loans. We acknowledge that OLG does not currently have specific statutory authority for indemnification of loans and has included indemnification language in its budget requests. However, we disagree developing policies and procedures for indemnification is an act of futility. Indemnification and other enforcement actions are critical components of a successful loan guarantee program. Although OIG has not seen the draft regulations referred to by ONAP, we strongly believe that indemnification authority should be part of any regulation put forward by ONAP and OLG.

As stated in the prior audit report, the current statutes do not prohibit OLG from requesting indemnification agreements from direct guarantee lenders that originated a loan with material underwriting deficiencies. The requirements at 12 U.S.C. 1715z-13a(c)(4) state that HUD may establish defenses against the

originating lender in cases of fraud or misrepresentation and establish regulations creating partial defenses to amounts payable on the loan guarantee. Until it receives specific statutory authority, OLG could use voluntary indemnification agreements as part of a settlement action based on the remedies that are available. OLG agreed to request indemnification for the 26 loans that were identified in the prior audit report that had material underwriting deficiencies; however, the letters that were sent to lenders did not include indemnification agreements for lenders to sign. Such agreements would have described the indemnification terms and allowed for lender agreement (signature). This occurred because OLG did not have indemnification agreements or processes for followup and resolution. Recommendation 1B was revised accordingly.

- Comment 10 ONAP stated it disagreed with recommendation 1C if it is not removed or reworded because they believe it is duplicative (procedures already exist under HUD Handbook 2000.06, REV-4) and is an unnecessary burden with limited staff and limited resources. We acknowledge there are existing established policies and procedures for the audit resolution process under HUD Handbook 2000.06; however, given the significant deficiencies identified in this audit memorandum pertaining to audit recommendation closure, we strongly believe ONAP and OLG need to develop internal policies and procedures, complementary to HUD Handbook 2000.06. Internal policies and procedures would allow for a formalized internal process specific to ONAP and OLG, including management oversight and review to ensure corrective actions for OIG audit recommendations are adequately developed and fully implemented prior to closure. The recommendation remains and was revised only to clarify internal policies and procedures should be complementary to HUD Handbook 2000.06.
- Comment 11 ONAP stated it disagreed with recommendation 1D if it is not removed or revised because support for the line item expenditures for the administrative contract expense fund are the responsibility of Office of Public and Indian Housing, Office of the Chief Information Officer, or the Office of Chief Procurement Officer. While we agree ONAP and OLG works with other program offices in maintaining its funding details, we disagree they have no responsibility. The administrative contract expense funds were appropriated to carry out the loan guarantee program (Section 184 program). As the office overseeing the Section 184 program, they have a significant and distinct responsibility to have full knowledge of the program's funding details. This responsibility includes being able to track, maintain, and easily identify program costs. ONAP and OLG should take the necessary steps to ensure it is able to support how the funds were expended. The recommendation remains and was not revised.
- Comment 12 ONAP stated it disagreed with recommendation 1E if it is not removed or revised because it has little control over the administrative contract expense fund and the function of tracking and making administrative contract expense fund expenditures readily available for review belong to other offices in HUD. As stated in comment 10, ONAP and OLG are the oversight offices of the Section

184 program. As such, they have a responsibility to ensure they are adequately informed of program expenditures. They should have controls in place to track and have the documentation for the expenditures readily available for review. ONAP and OLG should coordinate with other involved program offices to ensure adequate policies and procedures are in place so that administrative contract expense funds are tracked, monitored, and easily identified. The recommendation remains and was only revised to include language that ONAP coordinate with other offices as needed.

Comment 13 We agree with ONAP's request that recommendation 1F be revised to allow for ONAP and OLG to make appropriate obligation decisions. The recommendation was reworded so as to not direct the program office how to specifically allocate its funding.

Appendix B

Criteria

HUD Handbook 2000.06, REV-4, Section 1-6, General Standards for Management Decisions and Final Actions

- A. Timing. The Department has established a goal for achieving a management decision within 120 calendar days so that any impasses can be satisfied prior to the federal requirement that management decisions be in place by 180 days after report issuance. A management decision is required on all recommendations in an audit report within 6 months (180 days) after the report is issued. The Department's goal for completion of final action is 1 year from the management decision date. However, when large amounts of disallowed costs are to be recovered by HUD or the program on an installment basis, the Department's goal is to have all costs recovered within 3 years. Final action could occur simultaneously with the management decision if the management decision can be made and the required corrective actions completed within 120 calendar days after issuance of an audit report.
- B. Documentation. Management decisions and final actions shall be supported in ARCATS [Audit Resolution and Corrective Action Tracking System] and supplemented by appropriate documentation so that the AMS [Audit Management System] status of each audit report and its controlled recommendations can readily be determined. An electronic Final Action Certification (FAC) in ARCATS is required for all final actions that are not closed by the OIG or where the OIG has requested that the ALO [audit liaison officer] close the recommendation. ALOs will not close audit recommendations without the certification from the responsible AO [action official], RAO [recommendation action official], or POC [point of contact] as designated in ARCATS.
- C. Management Decision. A proposed management decision occurs when the AO evaluates the recommendations in the audit report and determines what action, if any, is needed and submits it to the OIG in ARCATS. The concurrence of the OIG audit report issuer is required on OIG-issued recommendations and this concurrence constitutes an approved management decision. Proposed management decisions provided for OIG concurrence must include:
1. A final action target date;
 2. Details on the types of documentation that will be used to evidence that final action is completed;
 3. A Program POC;
 4. Projections of any savings (FPTBU) [funds to be put to better use] or amounts to be repaid (disallowed questioned costs) to HUD or program participants that will result from implementation of corrective actions, as applicable; and
 5. A description of the actions to be taken.

Any changes to the corrective actions necessary, projections of any savings, amounts to be repaid (i.e. amounts disallowed), or the types of documentation to be used to evidence final action are considered revised management decisions. These changes must be submitted to the OIG through ARCATS and concurred on by the OIG report issuer before management can consider the recommendation as having a revised management decision.

- D. Final Action. Final action for an OIG issued recommendation occurs when all actions identified in the management decision (action plan) or the revised management decision have been implemented, the AO, RAO, or POC certifies to the completion of all actions, and the ALO accepts the certification and closes the recommendation. Final action should normally occur within 1 year of the original management decision date.

The AO, RAO, and POC is responsible for monitoring progress, documenting completion of the final action, forwarding the evidence to provide closure, as specified in the management decision, to the ALO within the target date. For an OIG recommendation to be considered as having final action, all actions required by the management decision or revised management decision must be completed. Additionally, the AO, RAO, or POC must certify in ARCATS that all necessary corrective actions have been taken and all necessary documentation has been obtained in accordance with the management decision that was concurred on by the OIG. If a recommendation contains disallowed costs, the amounts shall be recovered, adjusted, or forgiven before the recommendation can be considered to have final action for AMS purposes.

HUD Handbook 2000.06, REV-4, Section 4-3, Duties and Responsibilities

- B. The ALO's responsibilities include the following:
1. Serving as the contact point for all inquiries concerning the status of recommendations during the various stages of the AMS process;
 2. Maintaining and providing technical assistance and training for AMS and ARCATS for their program area;
 3. Entering and updating ALO comments in ARCATS for all open recommendations in their program area that are overdue or need a status update;
 4. Ensuring that the required status reports are provided to the OIG report issuer and AO or HPOH [headquarters primary organization head];
 5. Working with management, and when necessary OIG, to ensure that management decisions are reached timely;
 6. If a management decision is not obtained within the 120-day Departmental goal, negotiating/coordinating with OIG to ensure the recommendations are referred to upper management for resolution;

7. Working with management, and when necessary OIG, to ensure that action plans are implemented within the final action target dates;
8. Coordinating with OIG the need to recode recommendations to under judicial, legislative, and investigative review;
9. Informing senior management of systemic or specific problems preventing timely implementation of action plans;
10. Reviewing final action target date extension requests for action plans that are within 1 year of the original management decision and updating ARCATS to reflect the extension granted including the rationale;
11. Coordinating with staff the necessary documentation needed to address each action plan;
12. Reviewing the supporting documentation to ensure compliance with the agreed upon management decision;
13. Providing a detailed analysis of what corrective action is needed to complete the requirements of the action plan if the submitted documentation does not adequately address it, as contained in the OIG's approved management decision's Evidence to Provide Closure Section.
14. If the submitted documentation adequately addresses the action plan: a) directing the AO, RAO, or POC to submit the FAC in ARCATS; b) receiving the FAC in ARCATS; c) reviewing the certification package; and d) if appropriate, closing the recommendation in ARCATS to reflect that final action has been taken.

HUD Handbook 2000.06, REV-4, Section 5-8, Closing Recommendations

Final action occurs when all corrective actions, including recovery and/or forgiveness of disallowed costs, is completed. The date of the ALO's acceptance of the final action certification and closure of the recommendation in ARCATS is the date of the final action, except when the OIG closes a recommendation at the time the audit was issued.

- A. AO, RAO, and POC Responsibilities. The AO, RAO, or POC should obtain and review supporting documentation to ensure all action has been completed either through the review of documentation submitted, on-site review, or a combination of both. The AO, RAO, or POC shall certify in ARCATS that all actions have been taken in accordance with the management decision concurred on by the OIG and that all documentation evidencing final action has been obtained. The AO, RAO, or POC must forward to the responsible ALO the documentation evidencing final action taken on OIG-issued recommendations for purposes of closing the recommendation in ARCATS.

B. ALO Responsibilities. Before recording the closure of a recommendation in ARCATS, the responsible ALO should take care to assure that all documentation of final action has been provided including the final action certification from the AO, RAO, or POC. The ALO must have sufficient evidence to demonstrate that the corrective actions have actually occurred before closing an audit recommendation (i.e. journal entries, copies of checks, copy of new procedure, etc.). The general rules on final action certification packages are as follows:

1. Keep paper to a minimum (e.g., only get the table of contents, or the section that shows the policy was updated, not the whole manual), and whenever possible provide electronic copies in lieu of paper, ensuring that there is reasonable documentation for third-party review;
2. Statements that the corrective actions have been observed are fine and either written or emailed statements are acceptable; or
3. The ALO will use their judgment to decide what is needed based upon the management decision; however, such documentation should be clear enough that anyone reviewing closure will understand and agree with the decision to close.

HUD Handbook 2000.06, REV-4, Section 5-9, Repeated and Reopened Recommendations

Subsequent audits may contain the same deficiency and recommendation as a prior audit, or the CAV [Corrective Action Verification] may conclude that the recommendation has not been implemented. If it is found that a recommendation had not been implemented, the OIG will reopen the recommendation and it will be tracked using the previous report. Only new recommendations (i.e., those that were not in the prior report) will be tracked using the current report. Once a recommendation has been reopened, the OIG shall enter a new final action target date that is 45 days from the date it is reopened. The AO should propose a revised management decision through ARCATS to the OIG within 30 days and then follow the usual audit follow-up procedures.