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MEMORANDUM

May 15, 2018

To: Tribal Housing Clients

From: Hobbs, Straus, Dean & Walker, LLP

Subject: ***HUD Inspector General Audit Finding HUD Lacked Adequate Controls to Ensure Accurate Tribal Enrollment Numbers for Housing Block Grant***

On May 7, 2018, the U.S. Department of Housing and Urban Development (HUD) Office of Inspector General's (OIG) published a report containing the results of its audit of HUD's Office of Native American Programs (ONAP) Indian Housing Block Grant (IHBG) program, conducted by OIG between October 2017 and January 2018. The OIG conducted the audit with the goal of determining "whether HUD ensured the accuracy of tribal enrollment numbers submitted by registered Native American tribes or their tribally designated housing entities."

Although the HUD OIG reviewed data from only 12 randomly-selected grantees, the OIG report found that HUD "did not ensure that grantees submitted accurate tribal enrollment numbers to support their allocated portion of program funding for fiscal years 2015, 2016, and 2017," resulting in a risk "that more than \$1.9 billion in program funding awarded to 377 grantees may not have been properly allocated." The OIG recommended that HUD revise its policies to ensure better controls are in place to ensure accurate reporting of tribal enrollment.

1. Why did the HUD OIG conduct this audit?

In 2017, OIG conducted an audit of the Chukchansi Indian Housing Authority's IHBG program and determined that the Authority had reported inaccurate tribal enrollment numbers used to determine its 2015 and 2016 program funding, prompting the new audit and report. OIG determined that Chukchansi received \$248,222 in excess program funds, and recommended that HUD reclaim the excess funds for reallocation among other program grantees.

2. How does tribal enrollment affect Indian Housing Block Grant awards?

The IHBG is a "formula grant," and the HUD Formula Service Center administers the formula and calculates how much awardee is entitled to receive. The IHBG funding formula

consists of four components: (a) “Formula Current Assisted Stock” (the amount of housing under management of the applicant tribe), (b) “Need” (based on the number of AI/AN households in the Tribe’s formula area with cost burdens, among other factors), (c) the “1996 Minimum” (an adjustment when a grantee is allocated more or less funding under the IHBG formula than it received in FY 1996) and (d) “Undisbursed IHBG funds” (an adjustment for grantees with undisbursed funds from previous years). Enrollment numbers provided by tribes are one of the factors HUD uses to calculate the “Need” factor.

The IHBG formula relies on census data to determine the population within a tribal grantee’s service area that is eligible for IHBG funds. HUD also requests that tribes submit enrollment data to verify the census data. When the population per the census data is more than twice the reported tribal enrollment, the formula population is capped at twice the tribal enrollment, rather than the census population. Otherwise, the census data is used.

3. How did the HUD OIG conduct this audit?

Between October 2017 and January 2018, OIG reviewed records from 12 grantees selected at random from the 377 Indian Housing Block Grant program grantees. The sample included three “population-capped” grantees. Funding for the sampled grantees totaled \$142,845,705, representing 7 percent of the total program funding to all grantees for fiscal years 2015 through 2017.

4. What did the HUD OIG find in its audit?

The HUD OIG determined that “HUD did not ensure that grantees submitted accurate tribal enrollment numbers to support their allocated portion of program funding for fiscal years 2015, 2016, and 2017” resulting in “an increased risk that \$270,053,924 awarded to 79 population cap grantees may not have been properly allocated.”

The OIG based this determination on several findings:

➤ Sampled Grantees Did Not Always Report Corrections in Tribal Enrollment Numbers

Of the 12 grantees selected at random, OIG found that six grantees, including two population-capped grantees, reported accurate tribal enrollment numbers. The other six had not reported any changes in enrollment over the three year period. Of these, one grantee was nonresponsive to OIG’s requests for verification information, four grantees (including one population capped grantee) “did not provide [OIG] information to verify the accuracy of the tribal enrollment numbers,” and one grantee provided information that did not match HUD’s records. This grantee was not a population-capped grantee, so its tribal enrollment reporting is not relevant to its IHBG funding level.

➤ **Neither HUD or the Formula Center Routinely Challenged Grantees to Verify Tribal Enrollment Numbers**

HUD reported to OIG that neither HUD nor the Formula Center challenged tribally-reported enrollment numbers, and OIG determined that HUD's policies did not require HUD or the Formula Center to challenge tribally reported enrollment numbers.

➤ **The Formula Center Lacked Written Policies and Procedures for Challenging Tribal Enrollment Numbers**

OIG found that HUD's Handbook required HUD to maintain management controls to ensure that "programs and activities are effectively and efficiently managed and to protect against fraud, waste, abuse, and mismanagement." OIG found, however, that HUD and the Formula Center relied only on Form HUD-4117, which notified grantees of their funding and requested updated enrollment numbers, and Form HUD-4119, which provides information on how grantees may challenge census numbers used in their funding allocation. As a result, OIG found that "HUD lacked written policies and procedures related to challenging the grantees' submitted tribal enrollment numbers."

➤ **Reporting Requirements for Tribal Enrollment Numbers Were Inadequate**

OIG determined that Form HUD-4117 was the only request to grantees to provide updated enrollment numbers, and that "the form does not include language requiring grantees to submit the form and report tribal enrollment numbers annually, regardless of whether there was a change."

➤ **Grantee Received Excess Program Funds Due to Inaccurate Reporting**

This finding is fairly misleading, because the audit that forms the basis of this report did not show that any of the 12 IHBG grantees reviewed at random received excess funds on the basis of inaccurately reported tribal enrollment numbers. Only three of those grantees selected at random were population capped, so only those three grantees would have had their funding determined, in part, by reference to tribally-reported enrollment. Of those, two were found to have reported accurate numbers, and the third did not provide enough information for OIG to determine that it had received any excess funds.

Instead, OIG substantiated this finding entirely by reciting the results of its earlier investigation into the Chukchansi Indian Housing authority's enrollment reporting, rather than the data reviewed from the 12 randomly-selected grantees.

5. **What did the HUD OIG recommend?**

The OIG made several recommendations to ONAP to improve the accuracy of reported tribal enrollment, including (1) updating the program reporting forms to better ensure that grantees report tribal enrollment annually, (2) revising reporting forms to include a certification and hold grantees legally responsible for the accuracy of reported tribal

enrollment, (3) creating procedures allowing ONAP to challenge grantees' enrollment reports, and (4) issuing guidance to grantees on accurate reporting of tribal enrollment numbers.

6. What was HUD's response to the OIG's audit?

HUD Deputy Assistant Secretary for Native American Programs Heidi Frechette responded to the OIG audit requesting several points of clarification. Frechette stated that ONAP was willing to consider recommendations to ensure accurate tribal enrollment numbers, and noted that ONAP already notifies awardees each year that they should update their enrollment numbers.

Assistant Secretary Frechette, pushing back against the OIG's conclusions, noted that the audit appeared to overstate the impact that tribal enrollment data has on funding, because tribal enrollment data is only used as a check on the census data that ONAP uses to calculate the eligible population in the formula area. The IHBG formula uses census data to calculate need, but when the census shows a population of more than twice the reported tribal enrollment, the population data is capped at two times the tribal enrollment. Accordingly, "it is only for the 90 tribes subject to the cap that tribal enrollment becomes a salient data point that impacts funding." Frechette suggested that OIG's recommendations should only apply to population-capped grantees.

OIG rejected Frechette's suggestions that OIG's recommendations be limited to population-capped grantees, and responded that "[w]e agree that the 91 grantees with population caps would be directly affected by incorrect tribal enrollment data. However, the funding provided to any of these [population capped] grantees would indirectly affect the overall program funding available for the remaining program grantees who were not population capped."

7. What do IHBG awardees need to do?

There is no action required by IHBG grantees at this time, but ONAG may issue proposed policy changes or potentially revisions to HUD regulations based on OIG's recommendations. We will keep you informed about how any policy changes may affect IHBG participants and ensure that you are given an opportunity to comment on any proposed changes.

8. Conclusion

Please let us know if you have any questions about this memorandum. Do not hesitate to contact Ed Goodman at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.