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MEMORANDUM

March 20, 2020

To: Tribal Housing Clients
Fr: HOBBS, STRAUS, DEAN & WALKER, LLP
Re: **COVID-19 Update**

In the continuing efforts to address the COVID-19 crisis, there are ongoing federal and inter-tribal efforts targeting Indian Housing issues. This memo provides you with an update on some of the matters that are moving forward.

NCAI TRIBAL GOVERNANCE AND HOUSING WORKGROUP

As we have previously mentioned, the National Congress of American Indians (“NCAI”) has set up several workgroups to track COVID-19 developments and to prepare advocacy plans for tribes. One of the workgroups addresses Tribal Governance and Housing, and is being chaired by Tyler Scribner, NCAI Policy Analyst on Government Relations. The workgroup had its second call this morning.

Mr. Scribner began the call by discussing the Workgroup’s primary goal of compiling information and drafting language on the immediate needs of tribal communities relating to housing needs in the wake of COVID-19. This information will be used for three separate avenues: (1) sending the information directly to congressional members today, (2) preparing information for tribal leaders to use in their own advocacy efforts with congressional members, and (3) providing basic education to tribes and tribal partners on Tribal Governance issues and steps to address those issues. Mr. Scribner and the Workgroup prepared a draft letter on housing that will identify priority issues into buckets, with specific asks for Congress. The Workgroup plans on sending the letter to Congress by close of business on March 20, 2020.

Kitcki Carroll noted that the Workgroup, as well as workgroups addressing the two other focus areas of Healthcare & Human Services and Tribal Economic Development and Employment, are working diligently to ensure that the overall strategy for advocacy is efficient. Jennifer Weddle and Mr. Scribner emphasized the importance of including language asking for federal plus ups and interagency transfer authority in the letter sent to Congress. Tony Walters, Executive Director of the National American Indian Housing Council, commented that the topics of federal plus ups and funding set asides to cover federal personnel who are implementing tribal funding have been addressed in past competitive housing grants through the U.S. Department of Housing and Urban

Development (“HUD”). The language from these grants will serve as a foundation for drafting language for the letter to send to Congress.

The Workgroup also discussed the most efficient way to quickly send money to tribes. Mr. Carroll noted that the Tribal Department of Interior Budget Council, as well as other agencies responsible for sending allocated funds to tribes, are severely under-resourced and under-staffed. Mr. Scribner noted that because COVID-19 will likely disrupt society for months, it is critical to begin the discussion around and process for hiring new federal personnel now. He noted that in addition to addressing immediate funding needs, the Workgroup should focus on advocating for longer term increases in personnel to handle sending funds to tribes. Mr. Carroll raised the issue of whether federal agencies have contingency plans in place for reassigning personnel FTEs based on emergencies. Mr. Scribner responded that there are some processes in place for reassigning personnel to areas most in need. The letter will emphasize the importance of creating agency hiring authority.

I raised the issue of designating certain HUD personnel as essential to make sure that those positions continue to telework throughout this crisis. The key personnel are those who distribute funds to tribes and oversee the funding process. The letter to be sent to Congress today should emphasize the importance of designating HUD staff as providing essential services so that they can keep working. I also pointed out the necessity of requesting a separate appropriation for HUD, because it is a separate agency from the Indian Health Services (“IHS”) and the Bureau of Indian Affairs (“BIA”).

Mr. Carroll also mentioned that the first wave of funding from the Centers for Disease Control and Prevention (“CDC”) is in the process of being sent to tribes. However, IHS has blocked this effort because they do not have authority to send funds through Indian Self-Determination and Education Assistance Act (“ISDEAA”) contracts and compacts. However, Mr. Walters noted that interagency transfers are less important for HUD, as it is possible to send money through existing programs. He also emphasized that sending money through HUD’s traditional grant programs may cause significant delays, as tribes would need to apply for new grants. Instead, asking for an increase in money to be channeled through existing HUD contracts will be a more efficient funding mechanism than creating new grant programs and contracts.

Mr. Scribner also noted that NCAI intends to craft a letter to send to legislators and have tribal partners sign on to the letter. NCAI will then send the letter to tribal partners to use in their own advocacy efforts.

HUD CALL ON COVID-19 INFORMATION FOR TRIBALLY DESIGNATED HOUSING ENTITIES

HUD hosted a call today addressing housing concerns arising because of COVID-19. HUD Assistant Secretary Hunter Kurtz and Deputy Assistant Secretary Heidi Frechette each gave brief opening remarks. Jad Atallah, Performance and Planning Director of HUD Office of Native American Programs, noted that HUD has posted FAQs on a website devoted to the COVID-19

response: [Hud.gov/coronavirus](https://www.hud.gov/coronavirus). He encouraged all tribal partners and tribally designated housing entities (“TDHE”) to visit the website, as HUD will update the FAQs as the situation progresses.

Mr. Atallah also emphasized the importance of TDHEs erring on the side of caution. He noted that complying with HUD standards is not as important as tribal staff and resident safety. If the choice is between compliance and public health and safety, you should err on the side of public health and safety. HUD will be granting regulation waiver requests, and Mr. Atallah encouraged TDHEs to send such requests in via email.

HUD funds can be reprogrammed to address different tribal activities. The priority is to not cause anyone to become homeless because of COVID-19. Any efforts tribes and TDHEs take to support this and provide relief to tribal members and other American Indians and Alaska Natives will likely fall under acceptable uses of HUD funding. Mr. Atallah advised TDHEs to not evict any resident unable to pay rent due to the COVID-19 crisis. The current HUD programs are flexible enough to allow tribes to grant relief to anyone unable to pay. HUD will not make a finding against tribes who do this during the current crisis.

Mr. Atallah also noted that regarding foreclosures, the FHA recently released a letter addressing moratoriums and suspensions of FHA loans. HUD will be releasing a similar letter addressing moratoriums for 184 and 184a loans in the coming weeks.

HUD then opened the call up to questions from participants. Mr. Atallah responded to most of the questions, with Secretary Kurtz and Secretary Frechette emphasizing certain points. Below are the questions and Mr. Atallah’s response.

- Should tribes send staff to do housing inspections or do maintenance on housing?
 - The priority is safety. Only absolutely essential maintenance work needed for issues that create health and safety concerns should be done. The general answer is to protect housing staff and residents and limit social interactions.

- Can tribal housing continue to pay staff with IHBG funds if they are not working because of COVID-19?
 - TDHEs can pay staff through IHBG funding if they are home and not working due to the protections being put in place due to COVID-19. The federal procurement regulations, along with the new OMB guidance issued earlier today, allow tribes and TDHEs to pay staff who are on emergency/pandemic leave and HUD will not penalize tribes/TDHEs for doing this. You may want to review your personnel policies regarding administrative leave, and authorize such leave under those provisions.
 - There was a follow-up question as to whether there was any time limit on how long tribes/TDHEs could continue to make such payments. The answer was that there is no timeline. We do not know how long the emergency conditions will last.
 - **Note:** *If you do not have a provision in your personnel policies for administrative leave in the event of an emergency or a pandemic (which many do not), I would*

advise having your Board or Council adopt a resolution that incorporates such leave into your Personnel Policy. It is not urgent to do this. It can be done when it is practical to hold a meeting. The resolution can be retroactive to the date when leave began related to COVID-19.

- Will HUD provide regulatory relief for APR deadlines and extensions?
 - HUD will grant APR deadline extensions for 30 days at a time. Tribes/TDHEs can continue to request these if needed. TDHEs should submit all requests via email, as HUD staff are all teleworking and will not receive mailed requests. The best way would be to email the TDHE's regional HUD officers, who have been given wide latitude to extend APRs.

- What about deadlines for audits under the Single Audits Act?
 - Additionally, under the Single Audit Acts Guidance, if a Tribe/TDHE's fiscal year ends between now and June 2020, they will automatically receive a six (6) month extension on filing audits. HUD will be sending out more information on this as it receives it.

- Are funds available to assist with an influx of requests for housing issues?
 - Congress is currently drafting bills to increase funding available to tribes, and HUD is working with Congress on this effort.

- Is it acceptable for tribes to use vacant formula current assistance stock ("FCAS") units as quarantine locations?
 - Yes, it is okay for tribes to use FCAS units for this. HUD recommended not allowing any grant requirements to affect quarantine decisions. Public health and safety are the priority at present.

- How soon after COVID-19 passes should tenants be allowed to not pay rent?
 - Tribes have discretion under block grants to provide maximum relief to tribal members and other Americans Indians and Alaska Natives. HUD will produce guidelines on recommendations regarding rent relief. However, TDHEs have discretion to suspend or forgive any rent payments. NAHASDA does not require tenants to pay rent; that is a call made by the Tribe/TDHE. Tribes/TDHEs are encouraged to provide all flexibility and relief possible to keep tenants from being evicted because of the COVID-19.

- Will there be any extensions on low income housing tax credit deadlines for investors?
 - HUD does not administer the LIHTC program so they do not know the answer. TDHEs should direct all questions to either the IRS or state housing finance agencies.

- Is the HUD requirement for tenants to have a maximum income of 80% of the area medium income still in place?
 - This requirement is still in place, but HUD will consider a proposal to change this if there is a public health need. Individuals are encouraged to submit any such proposals to HUD via email.
- Can IHBG funds be used for assisted or non-assisted units to provide food, water, and other emergency supplies to tenants?
 - Yes, TDHEs are encouraged and able to use any additional funding sources to provide assistance that will enable people to shelter-in-place or self-quarantine. Doing so is an affordable housing activity. The limitation is that the assistance must be provided to an eligible household.
- Will there be an extension at the formula center for tribes to make changes?
 - Extension grants will depend on what it is that is being asked, but HUD will consider any extension requests.
- Can tribes pay hazard pay for those required to work during the crisis?
 - HUD will review regulations and will provide a written response.
- Will TDHEs be reimbursed for technological equipment purchases during the pandemic (the question was focused on I.T. equipment that would enable staff to work from home)?
 - It depends on the purpose and tasks for which the equipment is being used. If the equipment is being used to carry out affordable activities during the crisis, then the purchases will be reimbursed.
- What is the recommendation for handling eviction processes that started prior to the crisis and are unrelated to COVID-19?
 - The priority is to keep people in their homes. HUD recommends staying all proceedings unless there is a health and safety concern, such as domestic violence. HUD recommends that TDHEs submit requests providing specific details of the issues if they have concerns. But the decisions regarding evictions are within the discretion of the Tribe/TDHE.
- Should quarantine signs be posted on units for tenants?
 - TDHEs should follow local state or tribal health departments, as they are the experts. TDHEs should direct any questions to them. If the state has issued orders suggesting or requiring people to stay at home, then a quarantine is likely a good idea for the tribes as well.
- What are the recommendations about providing repairs on homes that are quarantined?

- If the individuals in the units are quarantined, TDHEs should do the absolute minimum required on the unit. TDHEs should not let HUD requirements on maintaining homes to get in the way of safety. TDHEs should defer to health experts on quarantine procedures.
- If maintenance workers are working on units, does HUD have masks to provide to tribes?
 - HUD does not have any equipment, but TDHEs can use Block Grant funds to purchase equipment and provide it to their staff.
- Are there other sources of federal relief funds that tribes can use to provide food to tenants and community members?
 - Tribes can use IHBG funds for services such as providing food. HUD is talking to Congress about accessing additional funding, potentially through other agencies. HUD will continue to provide updates as information becomes available.
 - HUD is also authorized to approve “model activities” for housing, which then become eligible under NAHASDA. Tribes and TDHEs are encouraged to share model activity proposals with HUD, who will expedite these proposals so that tribes can use the funds for those activities. HUD is “all ears” on any kind of proposals.
- Do tribes or TDHEs need a board resolution to suspend rent?
 - HUD does not have any requirements on this; TDHEs should look to their own tribal laws and requirements. However, HUD encourages TDHEs to expedite the process as much as possible.
- Will IHP deadlines be extended?
 - HUD has discretion to extend for up to 90 days based on requests, but they may not be able to grant a blanket extension for everyone. Anyone seeking such an extension, particularly if a deadline is approaching, is encouraged to submit requests to HUD via email. Mailed letters will not be received, as HUD staff are all working remotely.

Individuals, tribes, or TDHEs who have further questions should submit the questions to codetalk@hud.gov. HUD will post the answers as FAQs on the website Hud.gov/coronavirus.

If you have any questions regarding this memorandum, please contact Ed Clay Goodman at egoodman@hobbsstrauss.com or by phone at (503) 242-1745.