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MEMORANDUM

April 13, 2020

To: Tribal Housing Clients
Fr: HOBBS, STRAUS, DEAN & WALKER, LLP
Re: **HUD Issues Guidance Regarding COVID-19 Waivers**

On Friday afternoon, HUD released PIH Notice 2020-05, entitled “COVID-19 Statutory and Regulatory Waivers for the Public Housing, Housing Choice Voucher, Indian Housing Block Grant and Indian Community Development Block Grant programs, Suspension of Public Housing Assessment System and Section Eight Management Assessment Program.” The Notice is attached. The Notice covers all HUD programs, and its initial paragraphs make some general points applicable to PHAs as well as to TDHEs/Tribal housing programs:

- These waivers provide administrative flexibilities and relief to public housing agencies (PHAs), Indian tribes, and tribally designated housing entities (TDHEs) in response to the COVID-19 national emergency.
- The waivers implemented through this notice provide administrative relief and allow for alternative approaches to various aspects of PHA, Tribal, and TDHE operations.
- With this flexibility, HUD strongly encourages PHAs, Indian tribes, and TDHEs to continue using available funding to house families, keep families in their homes, and conduct critical operations that can be done remotely and safely.
- HUD encourages PHAs, Indian tribes, and TDHEs to apply the waivers authorized in this notice based on local circumstances and needs. HUD also encourages PHAs, Indian tribes, and TDHEs to document and expeditiously implement plans for alternative procedures in order to provide stable housing for some of our country’s most vulnerable families.
- Alternative processes may include electronic transmission of information to families, conducting briefings online, conducting conference calls, or using self-service features on the PHA’s, Indian tribe’s, or TDHE’s website if available, and providing business-reply envelopes or secure drop-box apparatuses for document or rent submission for assisted families that do not have access to the Internet.

The Indian housing specific sections begin at page 31 of the Notice. This section of the Notice begins by emphasizing that: “The following waivers and alternative requirements apply only to new IHBG funding provided under the CARES Act (IHBG-CARES grants), and FY2020 IHBG formula funds under the Further Consolidated Appropriations Act, 2020. IHBG recipients are reminded that these waivers and alternative requirements do not apply to IHBG funds appropriated in any other prior year.” It goes on to state that when applying these waivers and alternative requirements, to be sure you are doing so “only with respect to IHBG-CARES grants

and their FY 2020 IHBG grant.” The Notice also provides that the relief provided by the waivers and alternative requirements “will apply retroactively to the date that the respective IHBG recipient began preparing for COVID-19,” and that related costs previously incurred that are eligible and allowable IHBG CARES funding costs may be covered with the IHBG CARES funding, even if you used prior IHBG funds to cover those costs originally. HUD urges recipients “to maintain documentation demonstrating when the recipient began preparing for COVID-19.” Such documentation should be maintained to ensure that both HUD and the recipient can clearly identify the date when waivers and alternative requirements issued by HUD began to apply, and to support costs incurred by the recipient that it covers or reimburses with IHBG-CARES grant funding.

The specific waivers or alternative requirements are the following (but please consult the attached notice for complete details):

IHBG CARES Funds Waivers

- The period of availability of each IHBG waiver and alternative requirement below ends when funds subject to the waiver and alternative requirement are expended, unless otherwise specified under each waiver and alternative requirement (e.g., IHP/APR deadline extensions).
- HUD will shortly be circulating an “abbreviated” IHP that must be submitted to obtain the IHBG CARES funding in order to receive an IHBG-CARES grant. An Abbreviated IHP is a more streamlined version of the regular IHP.
 - HUD is going to publish the abbreviated IHP with guidance “in the very near future.”
 - The abbreviated IHPs must specify how the IHBG recipient will carry out activities or projects that meet the requirements of the CARES Act (to prevent, prepare for, and respond to COVID-19), will allow the IHBG recipient to rely on certain information included in its previously submitted FY 2020 IHP, and will provide HUD with specific information that will be requested in further guidance.
 - HUD’s failure to act in a timely manner on an abbreviated IHP will **not** be deemed approved by operation of law.
 - Tribes or TDHEs that did not submit an IHP, or whose IHPs were not approved in FY 2020, will still be eligible to receive IHBG CARES funding, so long as the Tribe/TDHE submits an Abbreviated IHP to HUD, in accordance with further guidance that will be published by HUD.
 - Because obtaining certifications by the TDHE Board and/or the Tribal Governing Body, HUD is waiving the certification requirement and establishing the following alternative requirement:
 - If an authorized official of an Indian tribe or TDHE provides a statement to HUD indicating that it is not practical or safe for the Indian tribe or TDHE to secure new certifications due to the impact of COVID-19 on its operations, or the operations of a beneficiary Indian tribe, HUD will, consistent with Section 103(d) of NAHASDA, accept all IHP certifications that were previously submitted and accepted by HUD for FY 2020 IHBG grants (or for FY 2019

- IHBG grants for those IHBG recipients that have not yet submitted their FY 2020 IHP), in lieu of requiring new tribal certifications to be submitted.
- IHBG recipients that choose to use this alternative requirement will be deemed to have submitted such past certifications for the IHBG-CARES grant and will be bound by such certifications.
 - Under this alternative requirement, TDHEs may submit Abbreviated IHPs on behalf of their beneficiary Indian tribes without having to provide any required new IHP Tribal certifications when applying for IHBG CARES Act funds or amending their FY 2020 IHBG IHPs for COVID-19 related purposes.
 - However, these TDHEs are required to consult with their beneficiary Indian tribes that they serve, in a manner that is feasible and when it is safe and practical to do so, and submit any appropriate amendments or certifications to their Abbreviated IHPs if they are directed to do so by the beneficiary Indian tribe.
- HUD is waiving the requirement that certain IHP amendments that add new activities or involve a decrease in the amount of funds provided to protect and maintain the viability of FCAS units require HUD to review such modifications and determine that they comply with NAHASDA.
 - IHBG recipients may reprogram FY 2020 funding to add new activities and decrease funding for FCAS units without HUD prior review and approval, provided that the IHBG recipient is carrying out eligible COVID-19-related IHBG activities.
 - Similarly, the FY 2020 IHP must be amended to reflect these changes prior to submission of their APR, to reflect these added activities or a decrease in the amount of FCAS funds, but may request an extension if doing so is not feasible and safe for Tribal or TDHE staff at that time.
 - HUD is waiving the requirement that IHPs be submitted 75 days before the beginning of the Tribal program year, but only where the program year starts between April 1 and July 1, 2020. HUD may reassess this going forward and may grant further extensions if needed.
 - HUD is extending the deadlines for submitting APRs:
 - IHBG recipients with Program Years ending December 31, 2019, may submit their APR for their program year on June 28, 2020
 - IHBG recipients with program years ending March 31, 2020, may submit their APR for their program year on September 27, 2020.
 - HUD is waiving the requirement to document income eligibility as follows:
 - Recipients may deviate from their current written admissions and occupancy policies, and may allow less frequent income recertifications.
 - Recipients may carry out intake and other tasks necessary to verify income remotely if the IHBG recipient or eligible families chooses to do so, including allowing income self-certification over the phone (with a written record by the IHBG recipient's staff), or through an email with a self-certification form signed by a family

- HUD is waiving the “affordable housing activities” requirement to allow IHBG funds to be used to carry out a wide range of public health services, including but not limited to:
 - providing testing, diagnosis or other related services to residents;
 - establishing a fixed or mobile location to conduct testing and treatment;
 - paying for necessary equipment, supplies, and materials, including personal protective equipment;
 - carrying out public health services designed to help staff, eligible residents, and other third-party providers serving eligible residents, prepare for, prevent, or respond to COVID-19;
 - delivering meals on wheels or other food delivery services to eligible residents that are sheltered-in-place and complying with a stay at home order, or otherwise maintaining recommended social distancing.
- HUD is waiving the requirement that assistance be provided only to low-income Indian families to the extent necessary to allow IHBG funds to be used by recipients to prevent, prepare for, and respond to COVID-19 through the following limited activities that provide assistance to all affected and threatened people without regard to income limits or Indian status:
 - temporary shelter-in-place;
 - isolation centers;
 - purchasing and making medical testing kits available;
 - purchasing and distributing masks and other personal protection equipment, emergency food preparation and distribution;
 - cleaning and decontamination;
 - other directly related activities.
 - This assistance may *only be provided* to such otherwise ineligible families if:
 - it is provided during the COVID-19 emergency;
 - if it is designed to protect the health and safety of low-income Native American families;
 - if it is provided on an urgent basis (as documented by the IHBG recipient); and
 - if it is temporary in nature.
 - When providing this assistance, IHBG recipients must maintain records documenting that these criteria were met at the time that such assistance was provided.
 - *However, permanent rental assistance, mortgage assistance, housing rehabilitation and new housing construction may not be provided for the benefit of such otherwise ineligible families under this waiver and alternative requirement.*
- HUD is waiving the requirement to determine and maintain the useful life requirements for housing units assisted with IHBG CARES funds “if that assistance is related to cleanup of COVID-19 contamination and temporary use dwelling units for purposes of housing and quarantining families to inhibit the spread of COVID-19 to low-income Indian families and the Tribal community.”

- HUD is waiving the Total Development Costs requirement and is establishing an alternative requirement relating to limitations on cost or design standards and TDC with respect to dwelling and non-dwelling units developed, acquired or assisted with funding provided to be used by recipients to prevent, prepare for, and respond to COVID-19:
 - An IHBG recipient may exceed the current TDC maximum by **20 percent** without HUD review or approval if the purpose of the development, acquisition or assistance is to prevent, prepare for, and respond to COVID-19.
 - The recipient, however, must maintain documentation that indicates the dwelling and non-dwelling units developed, acquired or assisted with this funding will, after this crisis, be for IHBG eligible families and the design, size, and amenities are moderate and comparable to housing in the area.
 - The TDC limits can be exceeded by more than 20 percent if the recipient receives written approval from HUD Headquarters. This waiver applies to both single-family and multi-family housing, as well as non-dwelling structures supporting an activity to prevent, prepare for, and respond to COVID-19.
- IHBG CARES funds cannot be invested.

ICDBG CARES Funds Waivers

- HUD will not require Indian tribes to hold one or more meetings to obtain the views of residents before applying for ICDBG-CARES grant funding or amending their FY 2020 ICDBG grants to address COVID-19.
 - Indian tribes will continue to be required, however, to meet the citizen participation requirements by publishing or posting information on their plans to use ICDBG grants, and accepting and considering comments, to the extent the Indian tribe determines that that can be done without subjecting residents to unnecessary risks to health and safety.
 - Indian tribes may also choose to hold virtual meetings with the public to meet these streamlined citizen participation requirements, if feasible.
- The urgency and immediacy of the threat need not be independently verified before approval of an application.
- These applications need not demonstrate that COVID-19 is a non-recurring imminent threat and that it has an impact on an entire service area.
- HUD will presume these criteria are met unless HUD has evidence to the contrary.
- HUD is waiving the current ICDBG Imminent Threat grant ceilings (currently set at \$450,000 for projects in areas that have not received a Presidential Major Disaster Declaration, and \$900,000 for areas that have received a Presidential Major Disaster Declaration).
- HUD will publish an ICDBG-CARES Implementation Notice in the very near future and establish grant ceilings in that notice.

- Applicants will not have to demonstrate that other Tribal funding sources cannot be made available to alleviate the threat.
 - Additionally, HUD will not consider recently awarded IHBG funding provided under the CARES Act, and regular IHBG funding that has already been budgeted in the relevant IHP or contracted, when assessing available Federal resources.
 - HUD is also waiving the letter to proceed provision so that ICDBG applicants and grantees do not need to have received a letter to proceed from the Area ONAP as a condition of reimbursing themselves for eligible costs already incurred that can be reimbursed pursuant to the CARES Act.
- HUD is waiving the requirement that if any reserved funds are not used to fund imminent threat grants during a fiscal year, they will be added to the allocation of ICDBG funds for the subsequent fiscal year and will be used as if they were a part of the new allocation.
- HUD has removed the 15 percent cap on “public services funding”.
- HUD is waiving the requirement that ICDBG funds cannot be used for rent or mortgage payments after certain minimum periods of time.
 - ICDBG grant funds may be used to provide emergency payments for low and moderate income individuals or families impacted by COVID-19 for items such as food, medicine, clothing, and other necessities, as well as rental assistance and utility payment assistance, without regard for the 3-month limitation in 24 CFR § 1003.207(b)(4), but for a period not to exceed six months unless further expanded by HUD at a later date.
 - At this time, emergency mortgage assistance will remain limited to no more than 3 months under 24 CFR § 1003.207(b)(4).
- HUD is waiving the prohibition against using ICDBG funds to purchase equipment and is authorizing the use of ICDBG funds for the purchase of equipment necessary to prevent, prepare for, and respond to the COVID-19.
 - ICDBG grantees must ensure that ICDBG funds are used to supplement other Federal sources of funding for this purpose, including funding provided by the Indian Health Service, and should not be used to supplant such funding.
- HUD is allowing the use of ICDBG funds to pay for such operating and maintenance expenses of any public facility, to the extent it is used for COVID-19-related purposes:
 - In incurring such costs, ICDBG grantees may not use this waiver to pay for associated staffing costs of such public facilities.
 - ICDBG grantees must also ensure that ICDBG funds are used to supplement other Federal sources of funding for this purpose, including funding provided by the Indian Health Service, and should not be used to supplant such funding.

- HUD allowing Indian tribes and tribal organizations to use ICDBG funds to carry out new housing construction when such construction is carried out to reduce overcrowding, or to otherwise prevent, prepare for, or respond to COVID-19.
 - When assessing applications for ICDBG-CARES grants that propose to carry out new housing construction, HUD will only fund applications that propose to carry out new housing construction that is clearly designed to prevent, prepare for, and respond to COVID-19, and that the applicant plans to carry out expeditiously.
- HUD will issue additional ICDBG-CARES implementation guidance in the near future.

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