



215 SW Washington Street, Suite 200
Portland, OR 97204

T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

April 20, 2020

To: Tribal Housing Clients
Fr: HOBBS, STRAUS, DEAN & WALKER, LLP
Re: **HUD Conference Calls on CARES Act Funding and Waivers**

HUD ONAP held two conference calls late last week to answer questions regarding the CARES Act funding and the waivers outlined in OPIH Notice 2020-05. We described those waivers in detail in our memo dated April 13, 2020. This memo summarizes the questions and answers between TDHE/Tribal leaders and the HUD ONAP team, which included Assistant Secretary Hunter Kurtz, Deputy Assistant Secretary Heidi Frechette, and Director of Performance and Planning Jad Atallah. After some brief opening remarks by Secretary Kurtz and Secretary Frechette, the bulk of the comments made by HUD during the two calls were made by Mr. Atallah.

Using IHBG CARES Act funds for “maintaining normal operations.” One of the key points that Mr. Atallah emphasized throughout both calls was that the IHBG CARES Act funds can be used “to maintain or carry out normal operations during the novel coronavirus pandemic.” If, for example, tribal housing programs have already had to use regular IHBG or other funding to address coronavirus issues, the CARES Act funds can be used to fund the normal operations that the regular IHBG funding would otherwise have gone towards. Tribal housing programs cannot, he emphasized, reimburse themselves for rental/homebuyer payment abatements by directly depositing IHBG CARES Act funds into program income or non-program income accounts. However, where those rental or homebuyer revenues would have been used to pay for normal operations, you can use the IHBG CARES Act funds to pay for those normal expenses. Mr. Atallah emphasized the need to document those costs and expenditures carefully.

“Abbreviated IHP” for IHBG CARES Act funds. Another key point made during both calls is that HUD has developed an “abbreviated IHP” form that you will be required to submit to obtain the IHBG CARES Act funding. It will be accompanied by an implementation notice that will explain the process. The abbreviated IHP and implementation notice are going through expedited departmental and OMB review. Secretary Frechette and Mr. Atallah both repeatedly stated that these would be issued “very, very soon.” Once a tribe/TDHE submits the abbreviated IHP, HUD has fifteen days to release the funding, but they hope to do it more quickly than that. The abbreviated IHP will be in PDF format. It will not be submitted on EPIX. It will be the standard IHP form, but with a number of areas blocked out that you will not need to complete. You will need to budget specific amounts for each of the identified activities. In response to a comment about how that will be difficult to do up front, while things are constantly changing on

the ground, HUD conceded that would be hard but to do your best, and as things change you should submit amendments, which HUD promised to act on “expeditiously as possible.”

Guiding principles of waivers. The third overarching point made is that the waivers set out in the OPIH Notice 2020-05 have two primary purposes: (1) maintaining health and safety of housing program staff, board, and residents; and (2) extend needed relief to tribal housing programs quickly and efficiently. The waivers apply to the IHBG CARES Act funding and to FY 2020 IHBG funding.

The remainder of the questions and answers are set out in Q and A format below:

Q. What happens if a tribal housing program is unable to expend all the CARES funding before the pandemic is declared over?

A. We do not know. But HUD urges that you spend these funds on COVID-19 issues as quickly and efficiently as you can.

Q. If we have a shovel-ready construction project, can we use these funds for that?

A. If the project will address COVID-19, such as providing housing for persons who need to shelter at home, then yes. If you would have put regular IHBG funds into the project but had to use those regular funds for COVID-19 purposes, then using the IHBG CARES funding for this purpose will be part of “maintaining normal operations.” But the thorny issue is if the project construction schedule goes beyond the pandemic. You should figure out ways to use the IHBG CARES Act funds during the pandemic period.

Q. How will the abbreviated IHP relate to the FY 2020 IHP.

A. The IHBG CARES Act IHP will be a standalone IHP. But you can also amend your FY 2020 IHP to reprogram funds to COVID-19 activities. HUD will grant such amendments. FY 2020 IHBG funds used for COVID-19 activities will be subject to the same waivers and alternative requirements as the IHBG CARES funds.

Q. How can we get certifications for the abbreviated IHP if our Board and Councils are not meeting due to COVID-19 restrictions?

A. The 2020-05 notice sets out alternative requirements for the certification under these circumstances, which allow you to have the director of the housing program certify that due to COVID-19 and measures taken to prevent its spread, it was not practical or safe for the Board or Council to meet.

Q. What happens if, as a result of being laid off during the COVID-19 pandemic, a currently non-low-income family becomes low income? Can they be served?

A. If the family is low income at the time the services are provided, they are eligible for IHBG expenditures. If/when their income goes back to the prior levels, they will not be eligible for services. But also note that HUD has waived the income eligibility requirements for certain services provided during the COVID-19 epidemic:

- *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.

Q. Can we purchase units to be used for quarantine with the IHBG CARES Act funds, and when the pandemic is over, utilize those units for affordable low-income housing?

A. Yes, absolutely.

Q. Would such units be subject to useful life requirements?

A. Good question. HUD will need to review and provide more guidance in upcoming FAQs.

Q. Will environmental review requirements be waived for use of the IHBG CARES Act funds?

A. No. The CARES Act granted the ability to waive certain requirements, but also expressly stated that certain requirements cannot be waived, including environmental review requirements. However, HUD does have special environmental review requirements for emergencies that will be applicable, and HUD will be sharing more

detail on those requirements in a subsequent FAQ to be published on the Code Talk website.

Q. When will the ICDBG CARES Act funding become available?

A. HUD plans on issuing its implementation notice for these funds “right on the heels of” the IHBG CARES Act notice. HUD will be waiving a number of the normally applicable criteria for this funding (as described in the OPIH 2020-05 Notice). HUD will also be providing new caps for this funding, but HUD has not settled on what those new caps will be. HUD is trying to balance having the funding be allocated in amounts that will make a difference with spreading the funds as broadly as possible across Indian Country. HUD is soliciting comments from tribes and TDHEs on how this part of the program should be structured. Deadline for comments is Tuesday, April 21.

Q. Can we reprogram the ICDBG funding we already received to COVID-19 purposes?

A. No. The ICDBG funding you have already received must be used for the purposes for which you set out in your grant application.

Q. Will we need to demonstrate that we are leveraging the ICDBG CARES Act funding?

A. No. There will be no leveraging requirement. Further, these are non-competitive funds, so there will be no added “points” for leveraging.

Q. Can HUD clarify the income limits for using the ICDBG CARES Act funding for public services such as meal delivery?

A. Yes, HUD needs to do that and will provide more guidance in the implementation notice or in subsequent FAQs.

There were many more questions queued up that HUD could not get to in the time scheduled for the call. However, HUD will answer all of those questions and publish them in its next FAQ. Please keep an eye out on the Code Talk website.

###

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