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MEMORANDUM

April 22, 2020

To: Tribal Housing Clients

Fr: HOBBS, STRAUS, DEAN & WALKER, LLP

Re: **HUD Issues Implementation Notice and “Abbreviated IHP” for IHBG CARES Act Funding; Updated COVID-19 FAQ**

On Wednesday, April 22, 2020, HUD ONAP issued OPIH Notice 2020-06, which is the implementation notice for the IHBG CARES Act funding. A copy of the notice is attached to this memo. In addition, ONAP also released the “abbreviated IHP” that tribal housing programs and TDHEs will be required to submit to receive their allocation of the IHBG CARES Act funding. The form is a fillable PDF, and should not be submitted through the Energy and Performance Information Center (EPIC) system. Here is a link to the form:

[https://www.hud.gov/sites/dfiles/PIH/documents/IHBG CARES_IHP-APR_Form.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/IHBG_CARES_IHP-APR_Form.pdf).¹ This memo summarizes the main points in the Notice and the Abbreviated IHP form.

1. Applying for IHBG CARES Act Funding

IHBG CARES Act grants will be awarded as separate IHBG grants. In order for an Indian tribe or TDHE to receive its IHBG CARES Act funding grant, the tribal housing program or TDHE must first submit the Abbreviated Indian Housing Plan/Annual Performance Report (IHP/APR) (Form: HUD-52737) to its ONAP Area Office. You should only complete the abbreviated IHP portion of this form to receive an IHBG CARES Act grant, and you will be required to complete the Abbreviated APR portion of the form at a later date. The Abbreviated IHP form must be completed and submitted to the ONAP Area Office electronically and not through EPIC.

The abbreviated form is created by selecting a checkbox on the first page of the form (in Section 1 – Cover Page) labeled “IHBG CARES”. By selecting this box, the form automatically removes sections that do not have to be submitted to receive an IHBG CARES Act funding grant, and modifies the drop-down help files for the required fields to assist the IHBG CARES Act funding recipient in completing the form.

The Abbreviated IHP/APR is a shorter version of the IHP. Under the Abbreviated IHP, HUD is requesting less information than is normally included in a regular IHP/APR and including certain data fields to capture CARES Act requirements. IHBG CARES Act funding

¹ Note that we have been unable to open this link to the actual form. If you are unable to do so, please let us know.

recipients are only required to complete 7 sections (as opposed to the usual 15). Specifically, the Abbreviated IHP requires the IHBG CARES Act funding recipient to complete Sections 1 (Cover Page), 3 (Programs), 5 (Budget), 7 (IHP Certification of Compliance), 8 (IHP Tribal Certification), 9 (Tribal Wage Rate Certification), and 12 (Audits). Abbreviated IHPs must specify how the IHBG recipient will carry out activities or projects that meet the requirements of the CARES Act.

The Notice also reminds tribes and TDHEs of certain waivers already adopted by HUD ONAP in OPIH Notice 2020-05 for this funding, specifically:

- HUD will accept any Abbreviated IHP that cannot be formally adopted by an Indian tribe or TDHE in accordance with their normal policies and procedures for adopting IHPs, provided an official or principal of the Indian tribe or TDHE who is authorized to act on behalf of the Indian tribe or TDHE provides a statement to HUD indicating that it is not practical or safe for the Indian tribe or TDHE to assemble a board or other governing body to conduct business to secure required approvals, at the time, due to the impact of COVID-19.
- IHBG recipients are **not** required to provide HUD with all required IHP certifications in their Abbreviated IHPs 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.
- 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 an IHBG CARES grant. 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.

2. Review of Abbreviated IHP by HUD ONAP

HUD will make an initial determination of compliance within 15 days after receipt of a complete Abbreviated IHP to expedite awarding of IHBG CARES Act funding. However, a failure of HUD to act within 15 days will not result in an automatic “deemed approval” of the Abbreviated IHP. HUD will reject the Abbreviated IHP if the recipient fails to adequately describe how the proposed activities are tied to preventing, preparing for, or responding to COVID-19, or to meet other Abbreviated IHP requirements. HUD will notify the recipient of any deficiencies, and require the recipient to amend and resubmit the Abbreviated IHP for further consideration. You can subsequently amend the Abbreviated IHP to adjust any planned eligible activities or programs, provided such activities or programs are eligible during the COVID-19 emergency. HUD states that they expect amendments to be necessary for some IHBG CARES Act funding recipients as COVID-19 progresses over time.

Once the Abbreviated IHP is found in compliance, ONAP will email the IHBG CARES Act funding recipient an award letter and a grant agreement package to sign and return via email. Funds will not be available to draw down from the Line of Credit Control System (LOCCS) until the fully executed grant agreements are returned by the recipient and processed by HUD. All documents will be provided in electronic file format and must be returned in electronic file format. Documents such as the grant agreement can be signed, scanned, and sent back to ONAP electronically. However, recipients should maintain all documents with wet signatures in their records.

3. Eligible Purposes

The purposes for which the IHBG CARES Act funding can be used are spelled out in the CARES Act: preventing, preparing for, and responding to COVID-19, including maintaining normal operations and funding eligible affordable housing activities under NAHASDA during the period the program is impacted by COVID-19. Thus, any proposed activity under the Abbreviated IHP must be tied to at least one of the following purposes: (1) preventing COVID-19; (2) preparing for COVID-19; or (3) responding to COVID-19. But you may also use this funding to maintain normal operations and fund eligible IHBG activities during the period that a recipient's IHBG program is impacted by COVID-19. HUD will allow recipients to use IHBG CARES Act funding to maintain normal operations both now and after the COVID-19 National Emergency, provided that the IHBG CARES Act funding recipient can demonstrate that COVID-19 continues to impact its program.

HUD will also consider activities, projects, or programs that are designed to prevent, prepare for, and respond to COVID-19 in the short-term to long-term as activities that meet the purposes of the CARES Act. HUD also encourages IHBG CARES Act funding grantees to prioritize expending these funds as expeditiously as possible, given the ongoing COVID-19 National Emergency. IHBG CARES Act funding may also be used to cover or reimburse allowable costs incurred by the IHBG CARES Act funding recipient, provided the funds were used to prevent, prepare for, or respond to COVID-19. This includes covering or reimbursing allowable costs incurred back to the date the tribe or TDHE began preparing for COVID-19, even if prior to the date of enactment of the CARES Act.

HUD provides several paragraphs, quoted *verbatim* below, that set out examples of activities that would meet each of the three purposes (prevent, prepare for, and respond), as well as the “maintain normal operations” purpose. The examples are not meant to be the only kinds of activities you can carry out, but just illustrations of some ways to expend the funds.

- **Prepare for:** IHBG CARES grant funds may be used prior to a local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to develop processes and procedures to help keep people healthy, and other activities designed to reduce the risk of exposure to COVID-19, and avoid or slow the spread of the disease. Examples may include housing activities designed to reduce severe overcrowding, providing food delivery services to eligible families (including the elderly, disabled, and other high risk populations) to allow them to shelter in place,

and public health campaigns designed to educate families on how to prepare for a possible outbreak in the community and ways to minimize community spread.

- **Prevent:** IHBG CARES grant funds may be used during a COVID-19 local, service area, or regional coronavirus outbreak. This includes, but is not limited to, activities designed to prevent the initial or further spread of the virus to staff, Tribal housing residents, and the Tribal community. Examples may include distributing Personal Protective Equipment to housing maintenance staff, residents, and members of the community, using IHBG CARES funds to clean common areas to prevent infections, and much more.
- **Respond to:** Once COVID-19 has spread to staff, Tribal housing residents, and/or the Tribal community, examples of how Indian tribes and TDHEs may choose to respond to COVID-19 may include using IHBG CARES grant funds to care for those who have become infected and to limit the exposure and spread of the virus, provide rent assistance to eligible families that cannot pay rent, carrying out activities to reduce severe overcrowding, prevent homelessness to ensure families are stably housed, and much more. Funds may continue to be used after the local, service area, or regional coronavirus outbreak on any continuing expenses incurred due to the spread of COVID-19.
- **Maintaining normal operations.** In most cases, maintaining normal operations and carrying out eligible activities, projects, or programs during the period that a recipient's program is impacted by COVID-19 will likely tie back to the "Respond to" COVID-19 purpose. However, HUD recognizes that there may be circumstances where maintaining normal operations and carrying out eligible activities may tie back to the "Prepare for" or the "Prevent" eligible purpose. One example of maintaining normal operations is using IHBG CARES funds to carry out eligible IHBG activities that the recipient initially planned to carry out with its regular IHBG funds, but did not because it had to use its regular IHBG funds to carry out an unplanned activity to prevent, prepare for, or respond to COVID-19. In this scenario, the IHBG CARES grant funds can be used to carry out the original IHBG activity that the recipient planned on carrying out, but did not carry out, due to COVID-19.

As HUD notes, these descriptions are designed to provide general guidance to recipients and are not intended to limit the range of eligible IHBG CARES Act funding activities that can be carried out. Provided a recipient can, in HUD's judgment, reasonably tie their IHBG CARES Act funding activities back to one or more eligible purposes, HUD will accept the recipient's classification."

4. Eligible Activities

In this section HUD provides more specific examples of activities, projects, or programs that could be funded with IHBG CARES Act funding:

- **Eligible Housing Activities**

- Payment of tenant and homebuyer utilities;
- Installing a lockbox or other method for collecting rent payments without the need for personal contact;
- Supporting laundry facilities to assist residents with eliminating the spread of COVID-19;
- Paying for IHBG operating costs due to a significant reduction in rent receipts caused by COVID-19;
- Providing essential housing services to shelter residents including childcare, education services, employment assistance, outpatient health services, legal services, mental health services, and transportation, provided such services are not duplicative of other Federally-funded services;
- Working with resident groups to help educate residents on social distancing and other practices designed to minimize the risk of community spread of COVID-19;
- Acquiring, constructing, converting, or rehabilitating structures to reduce and prevent homelessness, and reduce vulnerability to COVID-19.

- **Emergency Response**

- Carrying out activities that would prevent individuals from becoming homeless and rapidly rehousing homeless individuals;
- Acquiring, constructing, converting, or rehabilitating structures that can serve as temporary emergency shelters, or converting existing facilities for this purpose, to ensure homeless persons are provided safe shelter and to minimize the risk of community spread of COVID-19;
- Providing short- term rental assistance to homeless persons in hotel/motels to minimize infection and spread of COVID-19;
- Providing units or other space for temporary quarantine purposes as a result of COVID-19;
- Providing emergency housing for health care workers;
- Purchasing Telehealth equipment to allow assisted residents access to health care providers from home;
- Purchasing and distributing personal protective equipment (PPE) such as gloves, surgical masks and goggles, hand hygiene products, soap, paper towels, hand sanitizer, hand wipes, tissues, and thermometers;
- Purchasing and distributing cleaning products such as disinfectants, sanitizers, waste disposal supplies, and other supplies to disinfect homes of residents, common areas, housing-related public facilities, and other public spaces like playgrounds;
- Purchasing of sanitation equipment;
- Purchasing and distribution of water, groceries, prescriptions, and other items for quarantined families, Elders, Veterans, at-risk populations, or disabled households;
- Purchasing beds or cots for isolation/quarantine centers.

- **Administrative Activities**

- Preparing housing or TDHE staff and Board of Commissioners to conduct business in a remote working environment, and providing them with necessary supplies to carry out the IHBG program;
- Setting up web-based communication options for program participants and staff;
- Implementing policies, procedures, and other measures to protect vulnerable populations;
- Revising the approval process for policies and procedures in order to limit person-to-person contact;
- Paying staff salaries including the salaries of employees who must shelter in place or are otherwise prohibited from interacting with community members due to COVID-19;
- Paying hazard pay for essential workers that are managing or maintaining units, or staffing emergency or isolation centers, provided such costs are considered necessary and reasonable under 2 CFR Part 200;
- Paying transportation costs of staff to perform IHBG program functions or assist tenants in accessing food, medical care, or prescriptions.

5. Reimbursement of Costs and Reporting Requirements

IHBG CARES Act funding may also be used to cover or reimburse any costs incurred by an IHBG recipient that are otherwise eligible and allowable under the IHBG CARES Act funding and that were paid by the IHBG recipient, dating back to the date that the IHBG recipient began preparing for COVID-19. Recipients must indicate in Section I of the Abbreviated IHP what date they began preparing for COVID-19. HUD will not accept dates that pre-date January 21, 2020 – the date of the first confirmed case of COVID-19 in the United States according to the CDC. Recipients must also add a program in the Abbreviated IHP specific to reimbursement costs. The Unique Identifier (Block 1 of Page 8 of 10 Section III) must be titled COVID-19 reimbursement costs. Recipients must maintain documentation demonstrating when the recipient began preparing for COVID-19, such as notes on formal planning meetings or calls, and must maintain documentation to support any costs incurred by the recipient that the recipient plans to cover or reimburse with IHBG CARES Act funding.

Tribes and TDHEs receiving and using these funds will be required to submit quarterly Federal Financial Reports (SF 425). You will also be required to submit information regarding expenditures in a separate “Abbreviated APR.” This form will be in addition to your regular annual IHBG APR. The implementation notice sets out some of the items that will need to be reported in the Abbreviated APR (see pp. 8-9 of the attached) but noted that HUD will be issuing additional guidance.

6. *Use of Existing IHBG Formula Funding:*

HUD strongly encourages IHBG recipients to consider revising FY 2020 IHP/APRs in order to reprogram FY 2020 IHBG formula funding to help address COVID-19, because this funding is more likely to be immediately available. Pursuant to the CARES Act, FY2020 IHBG formula funds that are reprogrammed to respond to prevent, prepare for, and respond to COVID-19 cannot be reimbursed by IHBG CARES grants. The Notice provides instructions for amending the FY 2020 IHP/APR form, using a unique identifier block to insert COVID-19 Prevention, COVID-19 Preparation, or COVID-19 Response – depending on the nature of the activities.

7. *HUD Issues Revised FAQ*

HUD has also released a revised FAQ (attached). This FAQ contains the questions and answers previously circulated, but is updated with new, additional information.

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If you have any questions about this memo, please contact Edmund Clay Goodman at egoodman@hobbsstrauss.com or at (503) 242-1745.