



MEMORANDUM

To: Tribal Housing Clients

From: Ed Clay Goodman

Re: Update on COVID-19 Developments Impacting Indian Housing

Date: April 3, 2020

As you are all aware, the tribal and federal response to the COVID-19 pandemic is rapidly evolving. This memo provides an update on three areas. First, we provide brief updates from the NCAI Housing and Tribal Governance Workgroup and the NAIHC Legislative Committee, both of which held teleconference meetings on April 2. Next, following that, we provide an overview of various notices and guidance issued by HUD over the past month or so related to the COVID-19 pandemic. Finally, we provide a summary of the second HUD ONAP National Conference call, held on April 3, 2020.

I. NCAI and NAIHC Conference Call Updates

A. NCAI Tribal Government and Housing Workgroup.

The NCAI Tribal Government and Housing Workgroup has been tracking and developing advocacy materials for the various bills moving through Congress related to the COVID-19 emergency. The most recent steps taken by the workgroup involved drafting letters to HUD and to the Department of Interior, urging that they take steps to expeditiously release the funding appropriated to those Departments under the CARES Act for tribes, and to eliminate or minimize the red tape involved in releasing such funding. The HUD letter (addressed to Secretary Ben Carson) went out on April 2. The letter to Interior is in the final stages with the goal of getting it sent out later that same day.

Tony Walters (NAIHC Executive Director) was asked about HUD's plans for allocating the \$300 million to tribes and TDHEs. He reported that HUD was planning to allocate and distribute the \$200 million of IHBG funds through the IHBG allocation formula, using the FY 2020 allocations as the template. That should be able to take place relatively quickly. One question that remains open is whether HUD will require a new IHP or an amendment to the existing IHP as a precondition to receiving such funds. The \$100 million in Indian Community Development Block Grant (ICDBG) funds will be allocated and distributed on a non-competitive basis (as required by the CARES Act),

using the existing ICDBG “imminent threat” program. HUD will be releasing a notice of implementation regarding the ICDBG funds. Mr. Walters has a conference call with HUD today, and HUD is convening an open conference call/listening session on April 3.

There is no specific word from the Department of Interior on how they plan to disburse the \$434 million in tribal government funding. NCAI has urged Interior not to forget newly recognized tribes, who would not have been included in last year’s base (if Interior is going to use last year’s base as the basis for allocation). Chairman Ron Allen (Jamestown S’Klallam) indicated that IHS is going to allocate funds based on the FY 2020 base, and that BIA is likely to follow suit. But he noted that BIA has not reached out to NCAI or TIBC yet.

One final point about the CARES Act funds: tribes and TDHEs were urged to carefully document their expenditure of these funds, as there may be audits at the back end of how the funds were expended. Chairman Allen said that he and others have been advocating that tribes be treated the same as states, who will essentially be permitted to “self-certify” their use of these funds. Senators Daines (R-MT) and McSally (R-AZ) sent a letter to Treasury Secretary Steven Mnuchin making a similar point. However, no matter how this latter issue is ultimately resolved, it is important to carefully document expenditures of these funds in preparation for the potential audits to be undertaken at the back end of the process.

The remainder of the discussion was taken up with the possible contours of a fourth COVID-19 stimulus bill. The initial public statements about this next phase of legislation have focused on infrastructure. House Speaker Nancy Pelosi (D-CA) has stated that she would like to see this next bill focus on infrastructure funding, and circulated the language that House Democrats previously circulated that proposed approximately \$760 billion in infrastructure spending. The White House has also made some statements in support of the idea of a bill addressing infrastructure spending. Senate Majority Leader Mitch McConnell (R-KY) has been more cautious, stating that he wants to wait and see how the current bill works and how the pandemic continues to play out, to determine whether another stimulus bill is necessary.

In the meantime, this workgroup is going to focus on brainstorming and developing proposals for infrastructure development in Indian Country. NCAI prepared a detailed report on infrastructure needs in Indian Country a few years ago, and USET had been working from that report to develop a region-specific approach (that effort had been put on hold, but was being restarted now). Tyler Scribner (NCAI’s lead on this workgroup is also the lead staffer on Indian Country infrastructure issues) has circulated this NCAI infrastructure report. Please let us know if you would like a copy.

Chairman Allen urged the workgroup to think beyond “shovel-ready” projects (which was the approach taken under ARRA in 2009), and to focus also on development and engineering. This is going to be a long-term effort and should not just focus on projects that are ready to go. Mr. Scribner said that Congressional staff (from both houses) have reached out to him regarding potential infrastructure concepts for Indian Country, including telecommunications and roads. Kitcki Carroll, USET’s Executive Director, noted that the USET approach looked at five “buckets” for infrastructure projects: (1) physical infrastructure; (2) law enforcement/justice; (3) communications; (4) humans (education and employment); and (5) data. Mr. Carroll suggested that this workgroup begin to develop a list of the types of projects to be included.

B. NCAI Tribal Government and Housing Workgroup.

Mr. Walters convened the NAIHC Legislative Committee for a short (30 minute) meeting. The meeting covered much of the same ground as the NCAI workgroup (discussed above), particularly regarding the allocation and distribution of the \$300 million in Indian housing funding in the CARES Act. HUD ONAP is “still scrambling” on the procedures they are going to use to get this money out the door. There was some discussion of how the 20% administrative and planning expenses cap would impact the expenditure of the IHBG funds. One participant noted that many tribes plan to use such funds to cover salaries for employees placed on administrative leave to keep them at home during the “shelter in place” directives in effect in most jurisdictions. She noted that HUD is likely to treat these as “administrative and planning” expenses. HUD’s FAQ (discussed below) notes that tribes and TDHEs can request HUD to waive this cap. I have asked whether HUD should simply grant a blanket waiver, since many tribes/TDHEs are doing this already. The participant also noted that for those tribes and TDHEs who are using administrative leave this way, they should make sure their Personnel Policies allow for this kind of administrative leave.

Mr. Walters also briefly noted that despite all the focus on COVID-19, NAIHC is continuing to advocate for other priorities for Indian housing: NAHASDA reauthorization, Tribal HUD-VASH, increasing IHBG appropriations, and Continuum of Care Act. While Congress is out of town until late April and will not be taking any formal action, Mr. Walters is working with Congressional staff on these issues.

Finally, Mr. Walters also noted that discussions are already underway for a COVID-19 fourth stimulus bill that may focus on infrastructure. But it may also include other items, including “plus ups” of the amounts appropriated in the CARES Act and technical fixes needed. It is important for NAIHC members to stay in touch with their Congressional delegations.

The NAIHC Annual Convention in early May has not yet been “formally” cancelled, but NAIHC is in the final stages of working with the Seattle Westin about a reschedule of the event. Keep an eye out for a notice from NAIHC in the near future.

II. HUD COVID-19 Updates

On March 1, 2020, HUD Secretary Ben Carson was added to the White House Coronavirus Task Force, which subsequently published a message regarding coronavirus (COVID-19). HUD’s Office of Native American Programs (ONAP) has established a website providing relevant information for tribal housing programs during the COVID-19 pandemic. Both the Office of Public and Indian Housing (PIH) and Office of Multi-Family Housing followed suit. These documents and continually updated information may be found at <https://www.hud.gov/coronavirus>. This website also provides the latest information on COVID-19 from the Centers for Disease Control and Prevention (CDC) and the administration’s actions through the Office of Personnel Management (OPM), which affects federal agencies government-wide. Included in the HUD website is the White House’s “15 Days to Slow the Spread,” and updated “30 Days to Slow the Spread” Coronavirus Guidelines (Attached).

This report provides a brief summary of information and sources provided by HUD and the Office of Native American Programs (ONAP) thus far during the COVID-19 response. Please note, ONAP will be conducting a second conference call on Friday, April 3, 2020. If you have not received an invitation from ONAP, please contact Codetalk@hud.gov or contact your local field office for more information.

A. Real Estate Assessment Center (REAC) inspections

On March 13, 2020, Assistant Secretary for PIH Hunter Kurtz and Deputy Assistant Secretary for Multifamily Housing Lamar Seats published a letter announcing postponement of Real Estate Assessment Center (REAC) inspections. The letter stated that HUD quality assurance inspectors may conduct inspections if there are exigent circumstances or reason to believe there is a threat to life or property-specific location, and provided links to websites to host FAQs for both PIH and HUD’s Federal Housing Administration (FHA) Office of Multifamily Housing Programs (“Multifamily Housing”).

B. Eligible Activities to Support COVID-19 Response with Existing Funds

On March 16, 2020, the Office of Native American Programs (ONAP) provided guidance on eligible activities to support COVID-19 response for grantees to use ICDBG funds for buildings and improvements, business assistance, public services, and technical assistance. ONAP listed examples of permissible uses of ICDBG funding for

construction of or modification to buildings for testing, diagnostic, or treatment facilities. ICDBG funds can also be used to assist businesses, especially to create jobs, manufacture medical supplies, prevent job loss, or provide technical assistance or expand microenterprises that provide services supporting home quarantine. Public services such as health care worker training, mobile testing, providing carry-out services, or meal delivery can be supported with ICDBG funds. Tribal governments may use ICDBG funds for planning to meet national objectives or assist with infectious disease response. The ICDBG grantees must amend their Consolidated Annual Action Plans with updates for these changes in planned use of funds.

C. Section 184 Mortgage Letters

Also on March 16, 2020, the ONAP sent mortgagee letters to Section 184 Program lenders reminding them of the loss mitigation program options. ONAP suggests that these home retention options may be offered in light of the COVID-19 crisis, and that these loss mitigation tools are offered to all distressed borrowers by the lenders and servicers.

D. March 20 ONAP Conference Call

On March 20, the ONAP conducted a conference call to respond to grantee questions about the COVID-19 response and provide substantive information. We previously provided a memo on that call. The ONAP will conduct another conference call on Friday, April 3, 2020. ONAP staff are teleworking from alternate work sites, but are still available to assist grantees. Currently, ONAP is focused on processing and approving appropriate waivers to support tribal communities through the COVID-19 outbreak. ONAP is coordinating with the National American Indian Housing Council (NAIHC) to better assist tribes and grantees.

During the conference call ONAP stated that grantees should focus on the safety of their staff and residents when interpreting program requirements and standards during COVID-19. ONAP is focused on regulatory relief, including processing waiver requests and approving those with a sufficient basis if the purpose is to help the community from COVID-19 impacts. ONAP confirmed that program funding can be reprogrammed to address COVID-19. Currently, grantees may use the CDBG reprogramming guidance to make judgments, and ONAP plans on issuing an ICDBG-specific reprogramming guidance soon.

ONAP made several statements about its expectations for grantees to be flexible during COVID-19. First, ONAP made clear that tribes will not be required to evict tenants for non-payment of rent during COVID-19. ONAP encouraged grantees not to carry out such evictions using the flexibility in the Section 184 program, and iterated that

no tribes or Tribally Designated Housing Entities (TDHEs) should be concerned that HUD will make a finding against them for not evicting a tenant for failing to pay rent. Second, ONAP highlighted the Section 184 loss mitigation options, and encouraged grantees to review and implement them. Housing stability remains a HUD and ONAP priority, especially during the COVID-19 outbreak. Third, ONAP referred to the March 13 FHA mortgagee letter instituting a moratorium on all foreclosure proceedings regarding FHA loans, and announced ONAP's intention to do the same for all 184 and 184A loan guarantees to suspend foreclosure proceedings during the COVID-19 outbreak (which it did in its own letter on March 25). Fourth, ONAP encouraged flexible interpretations for program requirements and standards during COVID-19, with the priority being the health and safety of staff and residents. Grantees should only send staff to conduct inspections or maintenance that is essential for the health and safety of residents. All routine inspections or maintenance should be delayed to protect staff and residents by keeping them at home. Paid staff can continue to receive salaries under the grantees' emergency or administrative leave policies if they are affected by COVID-19. HUD policies and regulations will not prevent them from receiving pay; however, grantees' policies should be instituted or updated as necessary to clarify this situation. Finally ONAP announced that audit submission deadlines will be extended for COVID-19. Initially, all grantees with fiscal years ending before June 30, 2020, under the Single Audit Act deadlines will be automatically extended by 6 months for those audit deadlines due to OMB guidance. In addition, extension authority has been delegated down to the ONAP area offices to grant 30-day extensions.

E. March 25 Dear Tribal Leader Letter

On March 25, 2020, the Office of Native American Programs (ONAP) issued a Dear Tribal Leader Letter (DTLL) announcing that all HUD offices nationwide have moved to telework status, but ONAP Headquarters and Area staff remain available to assist. As discussed above, ONAP recommended in this letter (attached) that all tribes and Tribally Designated Housing Entities (TDHEs) institute temporary moratoria on all evictions and foreclosures for residents under ONAP grant programs.

F. HUD ONAP FAQs

HUD ONAP has also issued (to date) two sets of FAQs on COVID-19 issues. Both of those are attached. The initial FAQ was issued on March 13 by the PIH and covers both ONAP and Public Housing programs. The March 30 FAQ is from ONAP and directly addresses Indian housing programs. HUD notes that the information in these FAQs may change based on waivers or alternative requirements as circumstances arise. ONAP will continue providing updates through FAQs, which will supersede all previous FAQs released by ONAP.

The FAQs will focus on four distinct topics: emergency funding, COVID-19 informational resources, reporting extensions and waivers, and emergency operations and tribal policies.

The March 30 FAQ largely focused on the Coronavirus Aid, Relief and Economic Security Act (CARES Act) signed into law on March 27, 2020. ONAP will distribute the \$200 IHBG funds as quickly as possible using the FY 2020 funding formula for IHBG awards. These funds are intended to support the tribal and TDHE responses to COVID-19, and maintain their operations. The \$100 million ICDBG funds can be used for activities and project to prevent, prepare for, or respond to COVID-19, and for emergencies qualifying as “imminent threat[s] to health and safety.” HUD will publish an Implementation Notice providing guidance for applying for this funding, HUD issuance of waivers, and alternative requirements.

ONAP may waive Indian Housing Plan (IHP) reporting deadlines up to 90 days. Tribes and TDHEs should submit these requests to the area ONAP offices. HUD may also grant such deadline waivers for Annual Performance Reports (APR) to extend those deadlines. Tribes and TDHEs can make procurements from a single source through noncompetitive proposals under the federal regulations at 2 CFR § 200.320(f) if they meet the circumstances listed there. They must include their written rationale in the file and the cost analysis, and continue to abide by conflict of interest requirements. Furthermore, COVID-19 related work still requires environmental reviews, including Form 7015.15 submission, public posting for comments, and Section 106 consultation under the National Historic Preservation Act (NHPA).

III. HUD ONAP Second National Conference Call

On April 3, HUD and ONAP conducted a second conference call to respond to tribes and TDHEs’ questions about the COVID-19 response and provide the latest information on the COVID-19 situation and the newly enacted CARES Act. HUD Assistant Secretary Hunter Kurtz and ONAP Deputy Assistant Secretary Heidi Frechette, and Jad Atallah, Performance and Planning Director of HUD Office of Native American Programs, each gave brief opening remarks. Mr. Atallah noted that HUD has posted FAQs on a website devoted to the COVID-19 response: www.hud.gov/coronavirus. He encouraged all tribal partners and tribally designated housing entities (TDHE) to visit the website hud.gov/coronavirus, as HUD has answered numerous questions through the frequently updated FAQs. Tribes, TDHEs, and tribal partners can submit further questions to codetalk@hud.gov. Answers to the questions will be posted on the FAQs.

Ms. Frechette commented that the CARES Act provides additional funding to HUD to prevent, prepare for, and respond to the national impacts of the COVID-19 pandemic. The CARES Act also provides HUD with broad authority to waive statutes

and regulations for TDHEs (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). HUD expects to issue a PIH notice waiving numerous statutory and regulatory requirements shortly. These waivers will allow tribes and TDHEs to respond to the COVID-19 impacts in ways that meet the needs of their communities. Ms. Frechette noted that ONAP posted a second round of FAQs relating to this on www.hud.gov/coronavirus. (Those are attached.) Ms. Frechette reported that IHBG allocations were sent out this morning. (The spreadsheet showing those allocations is attached.) ONAP is currently drafting ICDBG implementation procedures and will release an Implementation Notice providing guidance on the same shortly.

Ms. Frechette also noted the FHA 60-day foreclosure moratorium began on March 18th. This provides forbearance relief for borrowers facing financial hardship due to COVID-19. Additionally, Section 4024 of the CARES Act provides a temporary moratorium on evictions for non-payment of rent for federally backed mortgages. ONAP will publish further guidance on moratoriums for 184 and 184A loans in the coming weeks.

Tony Walters (NAIHC Executive Director) made brief comments noting that funds from HUD are being distributed to tribes quicker than most other areas receiving funding through the CARES Act. NAIHC is continuing to share information on HUD funding processes and actions, and other legislation affecting tribal housing and COVID-19, as much as possible. NAIHC will be creating a new webpage with links to federal agency sites and information on COVID-19. NAIHC also reissued a survey today on the impacts to tribal housing. Mr. Walters encouraged all tribes and TDHEs to respond to the survey.

Mr. Atallah remarked that HUD is working to streamline the process of distributing funds to tribes as quickly as possible. In response to one question submitted prior to the call, he also noted that Tribes can use IHBG funding to serve families up to the 80-100% of the area median income (AMI). HUD is looking at waivers that would allow tribes to serve families with over 100% of the AMI. However, until HUD provides such a waiver, tribes and TDHEs should continue to comply with the current rule of only using IHBG funding to serve families at or below 80% of the AMI.

In response to a second question submitted prior to the call, Mr. Atallah stated that a TDHE cannot use the CARES Act funds to reimburse itself for the lost revenue that would have otherwise gone into program income or non-program income. However, TDHEs can use the funds intended to maintain normal operations during the COVID-19 pandemic period. HUD will provide further guidance on this topic in the coming weeks.

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

- Will tribes and TDHEs be able to download a copy of today's call and presentation?
 - Yes, the presentation has been recorded, and the recording and slides will be available on www.hud.gov/codetalk.
- How long will HUD allow tribes to use grant funds to provide salaries for employees staying at home who are unable to carry out their normal job because of the COVID-19 crisis?
 - The FAQs on www.hud.gov/coronavirus discuss this. HUD does not have a bright-line rule as to how long tribes should pay tribal staff. HUD can authorize use of grant funds for paying salaries and expenses for employees forced to stay home because of the crisis. Tribes must have policies in place addressing such, but it is alright for tribes to implement these policies now to apply retroactively. Funds used to pay staff staying at home will likely fall under administration and planning. However, if tribes are bumping up against the 20% cap, they can request more funding to cover these expenses. HUD will consider all such requests, in accordance with regulations.
- For the CARES Act funding included for the ICDBG program for emergencies that constitute imminent threat to health and safety, does HUD know the approximate size of these funding amounts?
 - HUD is still determining these amounts. HUD will publish a Waiver Notice addressing these amounts in the coming weeks.
- When does HUD expect to release the FY19/FY20 ICDBG awards?
 - HUD is still processing applications for ICDBG grant awards and is hoping to send them out in the near future.
- If TDHEs move a tenant into a unit during this crisis and waive inspections for health and safety reasons because of COVID-19, and then the inspections after the crisis for the unit fail to meet HUD standards, what should TDHEs do?
 - Tribes and TDHEs should wait to see what HUD will do with waiver relief. TDHEs may be required to ensure that housing meets local standards, but it is unlikely that there will be HUD compliance issues.
- Can tribes and TDHEs use CARES Act funds to serve tribal citizens that live outside the tribe's service area?

- The new CARES Act funding will be subject to the laws governing IHBG funding. If tribes want to use the funding to serve tribal members outside of their current service area, they can just redefine their IHBG funded service area.
- Is there a current list of eligible activities for the new CARES Act funding?
 - Tribes and TDHEs should look for the Waiver and Implementation Notices that HUD will be releasing soon, which will provide guidance on the eligible activities for the funding. Funding can be used to maintain operations during the crisis and to cover normal NAHASDA activities. However, all activities will have to tie back to the language of the CARES Act, which allows for funds to be used to prevent, prepare for, and respond to COVID-19.
- Will there be any extensions to IHBG audit deadlines?
 - Yes, deadlines have been extended for six months. The HUD area offices should have provided guidance to all recipients. If you have any questions regarding the audit deadlines, call your area office. Additionally, HUD has suspended grant monitoring schedules, except for a few specific cases.
- What is the timeline for posting the IHBG competitive funding awards?
 - HUD is hoping to post the awards during May or June. However, HUD may delay the process to allow tribes more time to apply, given the disruptions caused by the COVID-19 crisis.
- Will the stimulus package paychecks that individuals receive count as income for tenants?
 - HUD will provide a FAQ on this, although it is likely that the paychecks will not be counted as income.
- Will funding received through the CARES Act be subtracted from tribes' yearly HUD funding allocations?
 - No, the new CARES Act funding will be provided as a separate grant specific to COVID-19. HUD will not use it to subtract from future funding for tribes.
- Will tribes be required to match funding for the CARES Act funding grants?
 - No, tribes and TDHEs will likely not be required to provide a match for the new funding grants.
- If tribes purchase property for use as a shelter or to protect elders from the virus, do the tribes need to conduct an appraisal?

- Tribes are not required to do an appraisal. However, tribes should do an appraisal, as tribal purchases under HUD grant funding are required to be necessary and reasonable.
- Can tribes use new CARES Act funds to provide services for individuals residing in houses built under the 1937 Housing Act, if the houses are not covered under a tribe's IHP?
 - Tribes can use funds for individuals living in these homes, provided that they meet income requirements and other eligibility requirements. If the individual's income has dropped because of the COVID-19 crisis, tribes can recertify their income to see if they qualify.
- Can tribes use the CARES Act funding to cover essential items, such as food, and utility costs, such as water and sewer, for tenants?
 - Yes, IHBG funds and CARES Act funds can be used for essential items and utility assistance, provided the low-income requirements and other eligibility requirements are met and the activities tie back to preventing, preparing for, and responding to the COVID-19 pandemic.
- Can CARES Act funds be used to cover tribal income used to waive rent?
 - Yes, funds can be used to cover shortfalls from waiving rent.
- If tribes already expended funds in March to combat the COVID-19, can they seek reimbursements for these expenses?
 - Yes, CARES Act funds can be used for any measures the tribes took to prevent, prepare for, or respond to the COVID-19 pandemic. Funds can be used to reimburse tribes for any costs they expended extending back to the time the tribe first began to prepare for or respond to the pandemic.
- Will there be reporting requirements to prove that the funds were spent on COVID-19 activities?
 - Tribes and TDHEs must report on the activities as the law requires them to do. HUD will minimize reporting requirements as much as possible. However, tribes will still have to track and report on the activities at the end. The funds will likely be subject to OIG and congressional review, so it is advisable to track expenditures and activities as much as possible.
- If ICDBG funds are used to respond to imminent threats before the CARES Act funding is distributed to tribes, how will this affect tribes' funding?
 - All current funding available should be reprogrammed to prevent, prepare for, and respond to the pandemic, as the tribe deems necessary. HUD is attempting to distribute the CARES Act funding as quickly as possible, but tribes should use whatever funding they currently have to respond to imminent threats.

- Can tribes use funds to shelter homeless individuals or quarantined individuals suspected of having COVID-19?
 - Yes, these are eligible activities under IHBG funding. HUD has provided FAQs addressing this question on its website.
- How can tribes verify income for rent and mortgage relief now that most schools are closed?
 - Tribes should use their best judgement and minimize in-person contact. Tribes do not need to verify income in person.
- What will happen if tribes are not able to spend all of the CARES Act funds that they receive?
 - HUD is not sure what will happen, but encourages tribes to prioritize spending the money first for normal purposes under IHBG grants, as long as the activities are tied to COVID-19. HUD will address this as the situation progresses.
- Can tribes use funds to help tribal clinics purchase COVID-19 personal protective equipment and other materials?
 - HUD is not sure and will provide answers through further guidance as the information becomes available.
- Can CARES Act funds be used to purchase technology equipment to allow employees to work from home so as to comply with stay-at-home orders?
 - There is no prohibition on funding be used for such office equipment, as long as it is necessary to administer HUD programs.

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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.